Legislative Support for Small Businesses During Coronavirus Pandemic

Many U.S. businesses—large and small—are experiencing uncertainty and varying levels of hardship as they try to stay afloat during the coronavirus (COVID-19) pandemic. Hit particularly hard are small businesses and their workforce, which according to the Small Business Administration (SBA) encompasses 99.9 percent of U.S. businesses and represents nearly half of the U.S. private sector workforce. What lies ahead for the economy during 2020, and maybe even 2021, is surely unknown as these are unprecedented times. In the meantime, the federal government is deeply involved in helping to stabilize the economy until it can be opened up fully again.

Four bills have so far been enacted to help U.S. businesses and workers survive this time of turmoil, and more are expected. The Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law on March 27, 2020, and authorizes the SBA to administer the Paycheck Protection Program (PPP). The PPP provides federally guaranteed, low-interest loans to businesses with 500 or fewer employees, and it includes the potential for loan forgiveness. The program's key purpose is to keep employees on business payrolls during this unprecedented economic downturn. Specifically, the PPP loans help employers meet payroll (and certain other operating) costs during the eight weeks after the loan is disbursed. Among other things, approved payroll costs include wages (and withheld taxes), leave payments, and employee benefits such as retirement benefits and group healthcare coverage.

Second PPP Legislative Action

In the first PPP bill, the CARES Act provided approximately $350 billion in small-business loans. The program was so popular that the funds were depleted by mid-April. Subsequently, on April 24, the Paycheck Protection Program and Health Care Enhancement Act (H.R. 266) was signed into law, adding another $320 billion to the program, which includes $60 billion earmarked specifically for PPP loans to be administered through small, medium, and local financial institutions, like credit unions and community banks. The intent was to provide access to PPP loans to traditionally underserved businesses.

General Terms of the Loan

The PPP is administered by the SBA, but loans are obtained through financial organizations. Businesses with no more than 500 employees—including not-for-profits, sole proprietors, and independent contractors—can apply for the PPP loans through approved lenders. If the employer follows certain requirements, the loan will be forgiven and considered tax-free.

No collateral or personal guarantees are required, and neither the government nor lenders will charge small businesses any fees. PPP loans that are not forgiven must be repaid within two years at a one percent interest rate, but any loan repayments will be deferred for six months. Loan forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels. The amount of the loan forgiven will be reduced if full-time headcount declines or if salaries and wages decrease.

Specific details of the program and information on how to apply can be found at the SBA website. Small-business owners may find it helpful to confirm whether the financial organizations they currently do business with are participating in the program.

PPP Loan Payroll Costs Include Retirement and Health Coverage

In an interim final rule and FAQs issued in April, the SBA confirmed that eligible payroll costs include a number of employee benefits, including among other things, employer contributions to defined contribution or defined benefit retirement plans, group healthcare coverage (including payment of premiums), and certain parental, family, sick, and medical leave (with some exceptions if certain tax credits are claimed). Employees that are furloughed but remain on the payroll could presumably continue their salary deferrals to retirement accounts as well as their portion of health coverage and contributions to health savings accounts (HSAs), at their option. Employers may also continue their retirement contributions to these accounts if such contributions would be considered qualifying payroll expenses for the eight-week period.

Loan Forgiveness

Perhaps the key feature of the program is loan forgiveness. If program rules are followed, the PPP provides for forgiveness of the loan—up to the full principal amount plus accrued interest. Loans will generally be forgiven if employees are kept on the payroll for eight weeks following the loan date and if the loan assets are used for payroll, rent, mortgage interest, or utilities. The amount spent on payroll costs will determine how much of the loan can be forgiven; no more than 25 percent of the forgiven loan amount can be for non-payroll costs.

In addition to retirement contributions and healthcare and certain leave benefits, payroll costs also include the following.

- Salary, wages, commissions, and tips up to $100,000 of annualized pay per employee
- Allowance for dismissal or separation
- Payment for vacation, parental, family, medical, or sick leave
- State taxes and local taxes withheld from the employee's compensation
- Payments of compensation or income to a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment not more than $100,000
- Excluded are qualified sick leave and qualified family leave for which credit is claimed under the Families First Coronavirus Response Act (FFCRA); compensation paid to an employee whose principal residence is outside the United States; and the employer portion of payroll taxes (FICA), Railroad Retirement Tax (RRTA), and federal employment taxes

The $100,000 per-employee limit on annual payroll expense does not apply to non-cash benefits such as employer contributions to qualified retirement plans, health benefits, and taxes withheld from employees' pay. The borrower may also use up to 25 percent of the funds for mortgage interest, rent payments, or utility payments if the indebtedness or service started before February 15, 2020.

Strong Cautions for Employers: Consult Your Tax or Legal Adviser and Your Lender

The employer is required to document and certify to the lender that the loan funds were used to retain workers and to maintain payroll or make mortgage interest, lease, and utility payments for the eight-week period following the loan in order to qualify for loan forgiveness. The SBA has also indicated it will release additional guidance regarding loan forgiveness. Because these loans may be used cover a variety of expenses, employers should work with their tax or legal advisors and the PPP lender in determining how to qualify for loan forgiveness.