

Corporate Law Alert: Additional Detail on Small Business Provisions of CARES Act

The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, signed into law on March 27, 2020, includes several loan provisions intended to assist small businesses and not-for-profits in maintaining their operations and payrolls. Below is a detailed summary of these provisions, as described by the U.S. Senate Committee on Small Business & Entrepreneurship.

A link to the Committee’s full summary and FAQs regarding each of these programs is provided [here](#).

Paycheck Protection Program (“PPP”) Loans

This program provides businesses with cash-flow assistance through one hundred percent federally guaranteed loans to employers who maintain their payroll during this emergency. If employers maintain their payroll, the loans will be forgiven. This program includes forgiveness of up to eight weeks of payroll based on employee retention and salary levels, no SBA fees, and at least six months of deferral with maximum deferrals of up to a year. Small businesses and other eligible entities will be able to apply if they were harmed by COVID-19 between February 15, 2020 and June 30, 2020. This program would be retroactive to February 15, 2020, in order to help bring workers who may have already been laid off back onto payrolls. Loans are available through June 30, 2020.

Small Business Debt Relief Program

This program will provide immediate relief to small businesses with non-disaster SBA loans, in particular 7(a), 504, and microloans. SBA will cover all loan payments on these SBA loans, including principal, interest and fees, for six months. This relief will also be available to new borrowers who take out loans within six months of the President signing the bill into law.

Economic Injury Disaster Loans & Emergency Economic Injury Grants

These grants provide an emergency advance of up to \$10,000 to small businesses and private non-profits harmed by COVID-19 within three days of applying for an SBA Economic Injury Disaster Loan (EIDL). To access the advance, you must first apply for an EIDL and then request the advance. The advance does not need to be repaid under any circumstance, and may be used to keep employees on payroll, pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent and mortgage payments.

Additional Funds for Counseling & Training

The CARES Act includes expanded funding for local small business counsel, including Small Business Development Center (SBDC), Women’s Business Center (WBC), SCORE, and Minority Business Development Agency’s Business Centers (MBDCs). In addition, these resources will develop a joint platform that consolidates information and resources related to COVID-19 in order to provide

consistent, timely information to small businesses.

Relief for Government Contractors

Agencies will be able to modify terms and conditions of a contract and reimburse contractors at a billing rate of up to 40 hours per week of any paid leave, including sick leave. Eligible contractors are those whose employees or subcontractors cannot perform work on site and cannot telework due to federal facilities closing because of COVID-19.

Small Business Tax Provisions

Employee Retention Credit for Employers Subject to Closure or Experiencing Economic Hardship

This provision provides a refundable payroll tax credit for 50 percent of wages paid by eligible employers to certain employees during the COVID-19 crisis. The credit is available to employers, including not-for-profits, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings. The credit is also provided to employers who have experienced a greater than 50 percent reduction in quarterly receipts, measured on a year-over-year basis.

Wages of employees who are furloughed or face reduced hours as a result of their employer's closure or economic hardship are eligible for the credit. For employers with 100 or fewer fulltime employees, all employee wages are eligible, regardless of whether an employee is furloughed. The credit is provided for wages and compensation, including health benefits, and is provided for the first \$10,000 in wages and compensation paid by the employer to an eligible employee. Wages do not include those taken into account for purposes of the payroll credits for required paid sick leave or required paid family leave, nor wages taken into account for the employer credit for paid family and medical leave (IRC sec. 45S).

- **This credit is not available to employers receiving assistance through the Paycheck Protection Program. The credit is provided through December 31, 2020.**

Delay of Payment of Employer Payroll Taxes

This provision allows taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one at the end of 2021 and the other at the end of 2022. Payroll taxes that can be deferred include the employer portion of FICA taxes, the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer FICA rate), and half of SECA tax liability.

- **Deferral is not provided to employers receiving assistance through the Paycheck Protection Program.**

Conclusion

As of the time of this writing, the agencies responsible for these programs have not had the opportunity to fully implement them. Hancock Estabrook is monitoring the implementation of the CARES Act and will keep its clients updated as more information becomes available.
