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On Friday, March 27th, Congress passed and the President signed into law the CARES Act, which included the much anticipated business loan availability being called the Paycheck Protection Program. The CARES Act contains a number of important tax provisions, while the Paycheck Protection Program provision of the CARES Act offers businesses immediate access to liquidity through a new loan program tied to prior year payroll. We have highlighted key details of both below. There are many details of this bill that will be forthcoming, so we will do our best to keep providing updates as they become available to us. Please visit www.fkco.com/covid-19 for additional resources.

General Highlights of the CARES Act

- Tax relief for individuals and businesses and direct cash payments for qualifying individuals
- Temporarily reverses or limits the revenue raising provisions of the Tax Cuts and Jobs Act (the TCJA) and makes several technical corrections to the TCJA
- $500 billion lending program providing loans, loan guarantees and investments
- Increases unemployment benefits, including “Gig” workers and the self-employed
- Funding to support public health programs, hospitals, medical providers and suppliers
- Protections against certain foreclosures and eviction (and relief for delayed payments)
- Funding for the Emergency Food Assistance Program, SNAP and CNP

Paycheck Protection Program

The Paycheck Protection Program provision of the CARES Act offers businesses immediate access to cash through a new loan program tied to prior year (or current year for new businesses) payroll. Loans made under the Paycheck Protection Program are backed 100% by the federal government. Eligible borrowers will find the lending requirements under the Paycheck Protection Program to be less stringent than provisions found in the SBA’s Disaster Loan program.

1. **Eligibility**

- Businesses in operation on February 15, 2020, that had employees or paid independent contractors on that date are eligible for the Paycheck Protection Program.
- Small Business Administration (SBA) loans are typically governed by borrower size constraints. These constraints frequently limit a business’s access to SBA loans. The size constraints are typically tied to revenue and employment levels. Each of these constraints has been relaxed in the CARES Act that President Trump signed into law on March 27,

2020. The CARES Act provides that businesses with (a) 500 or fewer full-time, part-time or other employees or (b) if higher than 500, the maximum number specified for the type of business in the SBA's Table of Small Business Size Standards are eligible to participate. The calculation of employees will be very important for businesses near 500 total employees.
- You are a sole proprietorship, independent contractor, or self-employed

2. Loan Terms

- An eligible business may borrow the lesser of $10 million or 2.5 times the average monthly payments by the applicant for payroll costs.
    - For example, if over the last 12 months your average monthly payroll was $1 million, your business could borrow $2.5 million ($1m x 2.5).
    - If you were not in business this time last year, your maximum loan is 2.5x your average payroll costs between January 1, 2020 and February 29, 2020.
    - Payroll Costs for the purpose of determining your loan size include:
        - Compensation (salary, wage, commission, or similar compensation)
        - Payments for vacation, parental, family, medical or sick leave
        - Severance compensation
        - Payments for group health care benefits, including insurance premiums
        - Payments of any retirement benefit
        - Payments of State and/or local tax assessed on the compensation of employees
    - The following costs **do not** count toward your loan size:
        - Compensation over $100,000 (per employee)
        - Certain withheld taxes
        - Compensation for employees outside of the U.S.
        - Required leave under the Families First Coronavirus Reponses
- The CARES Act does not require collateral or personal guarantees for a covered loan.
- The loan term is a maximum of 10 years at a maximum interest rate of 4%.
- The loan will have zero loan fees and zero prepayment fee.
- Loan payments will be deferred for the first 6-12 months.

3. Special Conditions

- Use of Loan Funds
    - Payroll Costs (as listed above)
    - Costs related to group health care benefits during the periods of sick, medical, or family leave, and insurance premiums
    - Employee salaries, commissions, or similar compensations (except as excluded above)
    - Payments on interest on any mortgage (but not payment or prepayment of principal)
    - Rent
    - Utilities
    - Interest on any other debt obligations that were incurred before the February 15, 2020

4. Loan Forgiveness

- The act allows for covered loan forgiveness if the borrower meets certain criteria. The loan forgiveness is equal to payroll costs (including healthcare benefits) + mortgage costs + rent + utilities during the covered period.
- The covered period begins on the origination date of the loan and ends eight weeks later.
- The loan forgiveness is reduced if the borrower:
    - Reduces the average number of full-time equivalent employees per month during the covered period, below the lesser of
        - the average number of full-time equivalent employees per month from February 15, 2019 to June 30, 2019 or
        - the average number of full-time equivalent employees per month from January 1, 2020 to February 29, 2020 or
    - Reduces the salary or wages of any employee in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed prior to the covered period.
- You must apply through your lender for forgiveness and provide:
    - Documentation verifying the number of employees on payroll (as stated above)
    - IRS payroll and State income tax filings
    - Unemployment insurance filings
    - Documentation (such as cancelled checks) verifying payments of rent, mortgage, interest, utilities and other debt
    - Certification from your business that the documentation provided is true and the amount of the loan being forgiven was used in line with the program's requirements.
- There is no reduction if a borrower re-hires employees who were terminated.
- Forgiven amounts are excluded from taxable income.