

## *The CARES Act and Its Small Business Loan Program*

As the Federal government takes action to help businesses combat the economic uncertainty created by the Novel Coronavirus ("COVID-19") crisis, we at Buchalter are working to help our clients and friends.

To combat the economic impact felt by the COVID-19 crisis, the Federal government passed the groundbreaking Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). In it, the Federal government will provide at least \$2 trillion in direct aid to states, municipalities, individuals and businesses. The aid comes in the form of direct loans to businesses, paychecks to individuals, tax breaks and grace periods and employment related aid. This is the single largest aid package that the Federal government has ever passed to stimulate or backstop the economy.

There are a number of facets of the CARES Act that will be addressed in the coming days. This note summarizes the key features associated with the \$349 billion small business loan, or paycheck protection, program.

### **Eligible Participants**

Generally, businesses with fewer than 500 employees are eligible to receive a loan. However, certain types of businesses with more than 500 employees may still be eligible based on a previous determination of the Small Business Administration in accordance with applicable regulations. Note that an "employee" for purposes of this program includes all those individuals employed on a "full-time, part-time, or other basis."

### **Loan Amount and Use**

Eligible borrowers are able to obtain loans from participating lenders in an amount equal to 2.5 times such borrower's average total monthly payroll costs. The total amount of any loan in this program shall not exceed \$10 million. Interest rates are capped at 4% and the maximum maturity is 10 years.

Loan proceeds may be used for the following expenses: payroll costs; costs related to health care benefits (including paid sick, medical or family leave and insurance premiums); employees' salaries, commissions or similar compensation; payment of interest on any mortgage obligation; rent; utilities; and interest on any other debt obligation incurred prior to the February 15, 2020. Loan proceeds may also be used in any manner consistent with allowable uses pursuant to section 7(a) of the Small Business Act.

Among other limitations, businesses that recently laid off workers would be required to repay a certain portion of the loan and there will be no loan forgiveness for loans covering salaries in excess of \$100,000 per year.

Businesses should work with their legal counsel to ensure that obtaining these loans will not trigger a default under any existing credit facilities or commercial contracts.

**Certification**

To obtain a loan, borrowers must make a good faith certification upon filing an application. Among other things, the borrower must certify that the uncertainty of the economic condition makes the loan request necessary to support the ongoing operation of the recipient, that the proceeds will be used to support employment and used for other allowable uses, and that the borrower neither has another application pending nor have they received another loan under section 7(a) of the Small Business act between February 15, 2020 and December 31, 2020 for the same purpose.

**Forgiveness**

Loans are able to be forgiven, i.e., cancelled, for all costs incurred and paid during the covered loan period for payroll costs, interest payments on any covered mortgage obligation, rent payments on covered rent obligation, and any covered utility payment. The amount of loan forgiveness is reduced if employees are laid off or salaries are reduced by more than 25%. Importantly, if a borrower rehires a previously terminated employee, the borrower will not be penalized for having reduced payroll at the beginning of the period and can have such amount apply to its forgiven amount.

**Other Potential Benefits**

Employers may also derive benefit from other relief provided by the Federal government. This includes employee retention tax credits and Tax Code Section 139 relief. Note that Section 139 relief permits employers to reimburse employees for certain "qualified disaster" expenses (such as personal, family, medical, living, transportation or funeral expenses incurred due to the pandemic) without such reimbursement being subject to such employee's gross income or the employer's payroll tax.

The Buchalter Corporate Practice Group is working with clients to apply for loans under the CARES Act and further evaluate the best way for our clients to maximize their benefits under the Act. Please feel free to reach out to us for assistance.

**Jeremy Weitz**

Shareholder, Corporate Practice Co-Chair  
(213) 891-5285  
[jweitz@buchalter.com](mailto:jweitz@buchalter.com)

**Tanya Viner**

Shareholder  
(213) 891-5091  
[tviner@buchalter.com](mailto:tviner@buchalter.com)

**Mark Goshgarian**

Attorney  
(213) 891-5072  
[mgoshgarian@buchalter.com](mailto:mgoshgarian@buchalter.com)