The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) was signed into law on March 27, 2020, by President Trump. The CARES Act, a stimulus package providing $2 trillion in economic aid to individuals and businesses, is considered Phase Three of the federal COVID-19 relief legislation.

Phase One was the March 6, 2020 Coronavirus Preparedness and Response Supplemental Appropriations Act, and Phase Two was the March 18, 2020 Families First Coronavirus Response Act. (See the Families First Coronavirus Response Act (Coronavirus and the Law: Legislative Alert #1))

The CARES Act created a number of sub-acts. This article focuses on the Keeping American Workers Paid and Employed Act (the KAWPEA Act). Part of the KAWPEA Act amends Section 7(a) of the Small Business Act to create the Paycheck Protection Program (the PPP).

- Through the PPP, the Small Business Administration (SBA) will make or guarantee loans of up to $10 million to eligible businesses that were in operation on February 15, 2020.
- The SBA is expected to issue regulations on the PPP by April 11, 2020.
- This article does not discuss any bankruptcy aspects of the KAWPEA Act.

QUALIFICATIONS FOR AN SBA PAYCHECK PROTECTION LOAN

Are you an eligible business (EB)?

The PPP is available to any business that employs not more than the greater of 500 employees or, if applicable, the size standard in the number of employees established by the SBA for the industry in which the business operates.

For businesses with more than one physical location, the 500 employee threshold can be measured per physical location. Sole proprietorships and self-employed individuals are also eligible as long as such person or sole proprietorship submits supporting documentation as required by the SBA.

What is the Maximum Loan Amount?

A PPP loan cannot exceed $10 million. For an EB, the maximum amount of a loan is calculated as follows:

- The average total monthly payroll cost payments incurred during the one-year period before the date on which the loan is made,
- Multiplied by 2.5
- Plus the outstanding amount of an SBA disaster loan that was made between January 31, 2020, and the date upon which covered loans are made available to be refinanced.
- If that amount exceeds $10 million, then the PPP loan caps at $10 million.

USING AN SBA PAYCHECK PROTECTION LOAN

How can a PPP loan recipient use the loan money?

From February 15, 2020 through June 30, 2020, a PPP participant may use the loan for any of the following:

1. Payroll costs (defined below);
2. Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
3. Employee salaries, commission or similar compensations;
4. Payments on interest on any mortgage obligation (interest only, not principal)
5. Rent;
6. Utilities; and
7. Interest-only any other debt obligations that were incurred before the covered period.

How are “payroll costs” defined in the Paycheck Protection Program?

“Payroll costs” equal the sum of payments of any compensation to employees that includes any of the following:

1. Salary, wage, commission, or similar compensation;

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2. Payment of cash tip or equivalent;
3. Payment for vacation, parental, family, medical, or sick leave;
4. Allowance for dismissal or separation;
5. Payment required for the provisions of group health care benefits, including insurance premiums;
6. Payment of any retirement benefit; or
7. Payment of state of local tax assessed on the compensation of employees.

For a sole proprietor or independent contractor, “payroll costs” include payments that are wages, commissions, incomes, or net earnings from self-employment, or similar compensation that does not exceed $100,000 in one year, as prorated for the covered period of February 15, 2020 through June 30, 2020.

“Payroll costs” expressly do not include:
1. Compensation of an individual employee in excess of an annual salary of $100,000, as prorated for the covered period of February 15, 2020 through June 30, 2020;
2. Taxes imposed or withheld under FICA (Social Security and Medicare), the Railroad Retirement Act, and income;
3. Any compensation to an employee whose principal place of residence is outside of the United States;
4. Qualified sick leave or family leave wages for which a credit is already allowed under the Families First Coronavirus Response Act.

PPP loans are nonrecourse loans, meaning the SBA has no recourse against any individual shareholder, member, or partner of an EB for nonpayment the PPP loan except if the PPP loan is used for an unauthorized purpose.

APPLYING FOR A PAYCHECK PROTECTION LOAN
How does an EB apply for the PPP?
Third-party lenders, i.e. banks and credit unions, are permitted to provide PPP loans. It is expected the SBA will provide these third party lenders with an application and guidance on the process.

You can find a lender match on the SBA website.

From February 15, 2020 to June 30, 2020, there is no personal guarantee or collateral required for a PPP loan. The requirements for an EB are to certify:
1. The uncertainty of current economic conditions makes necessary the loan request to support the EB’s ongoing operation;
2. The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, utility payments;
3. The EB does not have another loan application pending for the same purpose; and
4. From February 15, 2020 through December 31, 2020, the EB has not previously received a PPP loan for the same purpose.

LOAN FORGIVENESS UNDER THE PAYCHECK PROTECTION PROGRAM
How much of the loan will be forgiven?
There is 100% forgiveness in an amount equal to the sum of the following costs incurred and payments made during the 8-week period beginning with the loan origination date (the Covered Period):
1. Payroll costs (as defined above);
2. Any payment on any mortgage on real or personal property that was incurred in the ordinary course of business before February 15, 2020,
3. Any payment on any rent obligation under a lease agreement of which was in force before February 15, 2020, and
4. Any utility payment for electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020.

The amounts forgiven shall be considered canceled indebtedness by a lender.

Are there any loan forgiveness limitations?
The forgiveness amount cannot exceed the principal loan amount. The forgiveness amount will be reduced, but not increased, by multiplying the eligible forgiveness amount by the average number of full-time equivalent employees per month during the Covered Period and either (a) the average number of full-time equivalent employees per month during February 15, 2019 – June 30, 2019, or (b) the average number of full-time equivalent employees per month during January 1, 2020 – February 29, 2020.

The borrower may choose either to use (a) or (b) above in this calculation.

Employee Categories Defined by the Forgiveness Program
If you are a seasonal employer, the full-time equivalent employees per month shall use the average number of employees during February 15, 2019 – June 30, 2019.

Salary/Wage Employees
For salary and wage employees who do not receive, at an annualized rate of pay, more than $100,000, the forgiveness amount will be reduced by any the amount that employer reduces the total salary or wages of any
employee that is more than 25% of the employee’s total salary or wages during the most recent full quarter during which the employee was employed before the Covered Period.

**Tipped Workers**

The business may receive forgiveness for additional wages paid to tipped employees.

**Rehired or Repaid Employees**

If during the period between February 15, 2020 and April 26, 2020, there is a reduction in the number of full-time equivalent employees, as compared to February 15, 2020 and not later than June 30, 2020, and the employer has eliminated any reduction that occurred between the February 15, 2020 and April 26, 2020 period as compared to February 15, 2020, then the amount of forgiveness shall be determined without regard to such reductions made during February 15, 2020 and April 26, 2020.

Also, if during the period between February 15, 2020 and April 26, 2020, the employer has eliminated any reduction in salary or wages of any full-time equivalent employees not later than June 30, 2020, then the amount of forgiveness shall be determined without regard to such reductions made during February 15, 2020 and April 26, 2020.

**What is the interest rate and is there a deferment period?**

The interest rate is capped at 4%. Payments of principal, interest, and fees are deferred for at least six months but not more than one year from the date the loan is issued. During the Covered Period, the normal SBA requirements for fees, credit elsewhere, and personal guarantees are waived. There is no prepayment penalty on a PPP loan.

Any remaining balance on a PPP loan that is not forgiven will continue to be guaranteed by the SBA and the covered loan will have a maximum maturity of ten years from the date the PPP loan recipient applies for loan forgiveness.

**What is in the loan forgiveness application?**

For any part of the PPP loan to be forgiven, the recipient must submit an application to the lender servicing the loan. The lender will supply the loan forgiveness application and the loan recipient applying for loan forgiveness must, at minimum, include the following documentation:

1. Documentation verifying the number of full-time equivalent employees on payroll and pay rates, including payroll tax filings reported to the IRS and state income, payroll, and unemployment insurance filings;
2. Documentation including canceled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered rent obligations, and covered utility payments;
3. A certification that (a) the documentation presented is true and correct; and (b) the amount for which forgiveness is requested was used to retain employees, make interest payments on covered mortgage obligations, payments on covered rent obligations, and covered utility payments;
4. Any other documentation the SBA determines necessary.

The lender will issue a decision on loan forgiveness within 60 days of receiving the loan forgiveness application.

**What about existing SBA loans?**

If you received a Section 7(a) SBA loan on or before March 27, 2020, the SBA will pay the principal, interest, and associated fees of such loan for a certain period. If the loan is not currently deferred, then the SBA will pay the next 6-month period beginning with the next payment due. If the loan is currently deferred, then the SBA will pay the 6-month period beginning with the next payment due after the deferment period.

**EMERGENCY ECONOMIC INJURY DISASTER LOAN (EIDL) GRANTS**

From January 31, 2020 through December 31, 2020, the KAWPEA Act also permits an EB to apply for a disaster loan under section 7(b)(2) of the Small Business Act. The requirement that an applicant is unable to obtain credit elsewhere is waived.

In addition to loosening the eligibility requirements for an SBA disaster loan, the KAWPEA Act allows an EB to request a $10,000 advance on the EB’s pending disaster loan application. Once requested the EB is supposed to receive this Emergency EIDL grant within three days of the SBA receiving the EB’s disaster loan application.

The $10,000 advance may be used only for the following:

1. Provide paid sick leave to employees unable to work due to COVID-19;
2. Maintain payroll to retain employees;
3. Meet increased costs to obtain materials unavailable from the applicant’s original source due to interrupted supply chains;
4. Make rent or mortgage payments; and
5. Repay obligations that cannot be met due to revenue losses.

The $10,000 emergency EIDL advancement will not be required to be repaid even if the business is subsequently denied an SBA disaster loan. However, if the business (Continued on page 4)
receives an advance and is approved for the PPP loan program, then the $10,000 advance will be reduced from the PPP loan forgiveness amount for payroll costs.

Emergency EIDL grants are first-come, first-served, and shall not be allowed after December 31, 2020. The federal government allocated $10 billion for these EIDL grants. You can find more information about disaster assistance on the SBA’s website.

**Additional Firm Resources:**

**KAWPEA and BANKRUPTCY**

After reviewing your options, if you think you may need guidance on a company bankruptcy please reach out to our attorneys in that field, Mike Hastings and Rich Maxwell.

**LABOR & EMPLOYMENT ISSUES**

If you have questions about a designation as an independent contractor, payroll calculations, or employee classifications, please contact King Tower or any of our Labor and Employment attorneys.

**SMALL BUSINESS ADMINISTRATION AND EIDLs**

If you have questions about the Small Business Administration’s Emergency Economic Injury Disaster Loan program and the grants made available under the KAWPEA Act, contact Autumn Visser or Lindsey Moore.