

# RATH YOUNG PIGNATELLI

## **CORONAVIRUS STIMULUS BILL – EARLY DETAILS ON NEW SBA LOAN PROGRAM FOR SMALL BUSINESSES**

The U.S. Senate voted late in the evening on March 25, 2020 to adopt a massive stimulus bill (the “CARES Act”) intended to support the U.S. economy in response to the coronavirus outbreak. The bill was then quickly adopted by the House and signed into law by the President on March 27, 2020.

One major component of the bill is a new \$350 billion SBA loan program that would provide low cost (and potentially forgivable) loans to small businesses impacted by coronavirus.

A brief overview of the key provisions of the SBA loan program is included below. We will continue to provide updates on this program (and other provisions of the bill) as they become available.

- The SBA is permitted to make authorized loans for the period from February 15, 2020 to June 30, 2020 (the “covered period”). To be eligible, businesses must generally have not more than 500 employees (or a greater number based on the size standard applicable to the industry). Certain companies in the Accommodation and Food Services Industry (NAICS Code 72) may be eligible if they have no more than 500 employees per physical location.
- Businesses must certify in an application for a loan under this program that: (i) the loan is necessary due to economic uncertainty; (ii) the funds will be used for permitted purposes (as described below); (iii) no duplicative application is being made for the same funds; and (iv) the employer has not received duplicative funds under another application during the period from February 15, 2020 to December 31, 2020.
- The loan amount for an eligible business is capped at lesser of: (i) 2.5x average monthly qualifying payroll costs during prior year (or, by request, payroll costs for the period from January 1, 2020 to February 29, 2020) plus any outstanding disaster recovery loans received from the SBA since January 1, 2020; or (ii) \$10,000,000. For purposes of this calculation, the term “payroll costs” includes compensation to employees, such as salary, wage, commissions, cash, etc., paid leave, severance payments, payment for group health benefits, including premiums, retirement benefits, state and local payroll taxes, and compensation to sole proprietors or independent contractors up to \$100,000 annually (prorated for the covered period). The term excludes annual compensation to employees in excess of \$100,000 (prorated for the covered period), certain federal taxes, compensation to employees whose principal place of residence is outside the U.S. and sick and family leave for which credits are available under the Families First Coronavirus Response Act.

# RATH YOUNG PIGNATELLI

- Loans must be used for the following expenses: (i) payroll costs (as defined above); (ii) continuation of group health benefits during paid sick, medical or family leave, and insurance premiums; (iii) salaries, commissions and the like; (iv) payments of interest on a mortgage (but not principal); (v) rent; (vi) utilities; and (vii) interest on other debt incurred before February 15, 2020.
- Loans would be available immediately from SBA-approved lenders. (The Treasury Department also has the authority to expand the number of qualified lenders.)
- The loans include the following waivers: (i) they are nonrecourse (unless used for a non-permitted purpose) and no personal guarantees are required; (ii) fees are waived; and (iii) there is no requirement that applicant demonstrate inability to obtain credit elsewhere.
- Interest is capped at 4%.
- Loan repayments must be deferred for at least 6 months (and up to 1 year). Maximum maturity for any amount remaining (after application of forgiveness) is 10 years.
- Recipients are eligible to have loans forgiven (in an amount not to exceed the loan principal) to the extent used during the 8-week period beginning with the date of the origination of the loan for the following purposes: (i) payroll, (ii) interest on mortgages on real or personal property incurred prior to February 15, 2020, (iii) rent on a lease obligation incurred before February 15, 2020 or (iv) utilities for which service began before February 15, 2020.
- Amounts that would otherwise be included in gross income as a result of the loan forgiveness are excluded from gross income.
- Loan forgiveness is reduced to the extent that: (i) the business has fewer full-time equivalents (FTEs) per month during the 8-week period following origination of the loan than it did in a prior measuring period (either February 15, 2019 to June 30, 2019 or January 1, 2020 to February 29, 2020); or (ii) to the extent of any reduction in wages (A) in excess of 25% of the total wages paid during the immediately preceding calendar quarter, (B) for any employee with an annual salary not in excess of \$100,000, (C) during the 8-week period after the loan is originated.
- However, loan forgiveness reductions attributable to staff reductions or wage reductions occurring during the period from February 15, 2020 through the date that is 30 days after enactment of the act will not be applied if the business rehires the staff or restores the wages that would otherwise contribute to the reduction, by not later than June 30, 2020.