CARES Act Payroll Protection Loan Program – US Treasury Issues Updated Guidance

BY RORY Z. FAZENDEIRO AND GEORGE W. TETLER III • APRIL 2, 2020

The United States Treasury and Small Business Administration (SBA) issued guidance late in the day on March 31, 2020 updating and clarifying certain portions of the CARES Act Payroll Protection Program.

The Treasury's announcement confirms that all loans will have identical features, including a fixed interest rate of .5% per annum and a maturity term of 2 years. Our previous alert referenced the text of the CARES Act bill providing for loans with a 10-year maturity with an interest rate not to exceed 4% per annum, but the Treasury's guidance lowered the interest rate and maturity period.

Payroll Protection loans can be obtained in amounts of up to two months of average monthly payroll costs from the last year plus an additional 25% of that amount (i.e., 2.5 times the average monthly amount), subject to a $10 million cap. The CARES Act was originally unclear on how to treat employees making over $100,000, but the guidance clarifies that "Payroll Costs" are subject to a straight cap of $100,000 on an annualized basis for each employee. In other words, for employees making more than $100,000, the employer can borrow 2.5 times monthly payroll costs based on an annualized salary of $100,000.

As detailed in our previous Alert, loan recipients will owe money when their loan becomes due if loan amounts are used for anything other than payroll costs, mortgage interest, rent, and utilities payments over the 8 weeks after getting the loan. Importantly, the Treasury guidance clarifies that for loan forgiveness, it is anticipated that not more than 25 percent of the forgiven amount may be for non-payroll costs.

WHETHER, WHEN AND HOW TO APPLY

It is recommended that businesses and non-profits take the time to analyze and plan for how the loan funds will be used, and to estimate the amount of the loan that can be forgiven.

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The Treasury guidance indicates that starting April 3, 2020, small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders. Starting April 10, 2020, independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders.

To apply, businesses and non-profits need to complete the Paycheck Protection Program loan application and submit the application with the required documentation to an approved lender beginning on April 3, 2020. Click HERE for the application.

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