

Williams & Jensen, PLLC

CARES Act Phase III Payroll Provisions

Section. 1102 Payroll Protection Program

This section amends the Small Business Act to create a “Paycheck Protection Program,” under which the Small Business Administrator can furnish loans to small businesses during a covered period between February 15 and June 20 of 2020. Small businesses, nonprofits, and veteran’s organizations with 500 or fewer employees are eligible for the loans.

These loans would be forgiven in their entirety if used to meet payroll costs, which is defined as the sum of compensation to employees including: (1) salaries or wages; (2) tips or equivalent cash payments; (3) paid time off (vacation, parental, family, medical, sick leave); (4) severance payments; (5) group health insurance benefits and premiums; (6) retirement benefits; and (7) state and local tax assessments on employee compensation. Sole proprietors and independent contractors are eligible for loans that do not exceed a prorated (for the covered period) sum of \$100,000 annually. The loans do not cover the following payments: (1) compensation of a single employee that exceeds \$100,000 prorated for the covered period; (2) taxes under chapters 21, 22, or 24 of the Internal Revenue Code; (3) compensation for employees residing outside the U.S.; and (3) qualified sick leave or family leave wages covered under the Families First Coronavirus Response Act. Businesses under 500 employees per physical location of the business concern and that is assigned a North American Industry Classification System code beginning with 72 at the time of disbursement shall be eligible to receive a covered loan. The maximum loan amount shall be equal to the lesser of either the sum of the product obtained by multiplying: (1) the average total monthly payments by the applicant for payroll costs incurred during the 1-year pay period before the date on which the loan is made, except that in the case of applicant that is seasonal employer as determined by the Administrator (2) the average total monthly payments for payroll shall be for the 12-week period beginning February 5, 2019 or the election at the eligible recipient, March 1, 2019 and ending June 30, 2019, or (3) \$10,000,000.

Allowable uses of covered loans under subsection “F” include; (1) payroll costs; (2) costs related to the continuation of group healthcare benefits during periods of paid sick, medical, or family leave, and insurance premiums; (3) employee salaries, commissions, or similar compensation; (4) payments of interest on any mortgage obligation; (5) rent; (6) utilities; and (7) interest on any other debt obligations which were incurred during this period. The Administrator shall reimburse a lender authorized to make a covered loan at a rate, based on the balance of financing outstanding at the time of disbursement of the covered loan on: (1) 5% of loans no more than \$350,000; (2) 3% of loans more than \$350,000 and no more than \$2,000,000; and (3) 1% on loans more than \$2,000,000.

Section 1106. Loan Forgiveness

This section defines (1) the term “covered loan” means a loan guaranteed under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102; (2) the term “covered mortgage obligation” means any indebtedness or debt instrument incurred in the ordinary course of business that (A) is a liability of the borrower; (B) is a mortgage on real or personal

property; and (C) was incurred before February 15, 2020; (3) the term “covered period” means the 8-week period beginning on date of the origination of a covered loan; (4) the term “covered rent obligation” means rent obligated under a leasing agreement in force before February 15, 2020; (5) the term “covered utility payment” means payment for a service for the distribution of electricity, gas, water, transportation, telephone, or internet access for which service began before February 15, 2020; (6) the term “eligible recipient” means the recipient of a covered loan; (7) the term “expected forgiveness amount” means the amount of principal that a lender reasonably expects a borrower to expend during the covered period on the sum of any (A) payroll costs; (B) payments of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation); (C) payments on any covered rent obligation; and (D) covered utility payments; and (8) the term “payroll costs” has the meaning given that term in paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102 of this Act.

An eligible recipient shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred and payments made during the covered period: (1) Payroll costs; (2) Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation); (3) Any payment on any covered rent obligation; (4) Any covered utility payment.

Section 1107. Direct Appropriations

This section of the CARES Act includes \$349,000,000,000 under the heading “Small Business Administration—Business Loans, Program Account, CARES Act” for the cost of guaranteed loans as authorized under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)), as added by section 1102(a) of this Act. \$675,000,000 under the heading “Small Business Administration Expenses” for salaries and expenses of the Administration. \$25,000,000 under the heading “Small Business Office of the Inspector General. \$265,000,000 under the heading “Small Business Administration—Entrepreneurial Development Programs”, of which \$240,000,000 shall be for carrying out section 1103(b) of this Act; and \$25,000,000 shall be for carrying out section 1103(c) of this Act; (5) \$10,000,000 under the heading “Department of Commerce—Minority Business Development Agency” for minority business centers of the Minority Business Development Agency to provide technical assistance to small business concerns; (6) \$10,000,000,000 under the heading “Small Business Administration—Emergency EIDL Grants” shall be for carrying out section 1110 of this Act; (7) \$17,000,000,000 under the heading “Small Business Administration—Business Loans Program Account, CARES Act” shall be for carrying out section 1112 of this Act; and (8) \$25,000,000 under the heading “Department of the Treasury—Departmental Offices—Salaries and Expenses” shall be for carrying out section 1109 of this Act.

Section 2104. Emergency Increase in Unemployment Compensation Benefits

This section provides an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.

Section 2105. Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week

This section provides funding to pay the cost of the first week of unemployment benefits through December 31, 2020 for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.

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