



*Jones, Nale & Mattingly PLC*

## **From your JNM Business Services Team**

In these uncertain and challenging times, JNM is here to offer advice and assistance navigating your business through the various series of news laws and guidance that has been finalized by the Federal Government over the past 2 weeks. The following is a detailed description of the various aspects of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that we believe will be most helpful. We encourage our clients to carefully review the various aspects of the CARES Act. JNM has developed various tools to advise and assist you with navigating this new law.

### **The CARES Act – Payroll Protection Program**

#### **Which businesses will be eligible for relief under the CARES Act?**

Under Title I of the CARES Act *qualifying businesses* that have suffered significant disruption as a result of COVID-19 will be able to receive no-fee “small business interruption loans.” Qualifying small businesses include “any business concern, nonprofit organization, veteran’s organization, religious organizations or Tribal business” that have:

- 500 employees or fewer, whether employed on a full-time, part-time, or other basis; or
- Meet the SBA’s industry-based “size standard” requirements for the applicable North American Industry Classification System (NAICS) code, which are based either on number of employees or annual receipts, if larger than 500 employees, in which the concern operates.

#### **What are the exceptions to the “500 employees” rule? How do the SBA’s affiliation rules come into play?**

To determine an applicant’s receipts or number of employees, each applicant can generally expect that it must aggregate all employees on an affiliate basis, including subsidiaries and, in the context of private equity-backed and venture capital-backed businesses, portfolio companies. Exceptions are made in the legislation for:

- Independently owned franchises, who are approved by the SBA, and hospitality businesses that fall within NAICS code 72, “Accommodation and Food Services,” and each of location with 500 or fewer employees; and
- Any business receiving financial assistance from a Small Business Investment Company (“SBIC”).

#### **What about independent contractor or gig economy workers?**

Yes, sole proprietors, independent contractors, gig economy workers, and self-employed individuals are all eligible for the Paycheck Protection Program.

### **Who will provide and administer the loans?**

Loans will be administered pursuant to SBA's section 7(a) loan program, as modified by the CARES Act. Loans will be made and serviced by existing banks and lenders enrolled in the SBA 7(a) program, as well as any other lenders determined by the SBA "to have the necessary qualifications to process, close, disburse and service loans made with the guarantee of the Administration."

### **What is the maximum loan size?**

The CARES Act sets the **maximum** loan amount under the Paycheck Protection Program as **250 percent of average monthly payroll costs, up to a total of \$10 million**. The amount is intended to cover eight weeks of payroll expenses and any additional amounts for making payments towards debt obligations. This eight-week period may be applied to any time frame between February 15, 2020 and June 30, 2020. Seasonal business expenses will be measured using a 12-week period beginning February 15, 2019, or March 1, 2019, whichever the seasonal employer chooses.

The terms of the loan may differ on a case-by-case basis. However, the **maximum terms of the loan can be up to ten years with an interest rate capped at 4% per annum and there shall be no prepayment penalties. The SBA will also reimburse lenders for origination or underwriting fees in an amount of: (i) 5% for loans of not more than \$350,000, (ii) 3% for loans of more than \$350,000 and less than \$2 million and (iii) 1% for loans equal to or greater than \$2 million**. The SBA will issue additional regulations and guidance with respect to other terms and conditions of the program.

### **Any other restrictions on loan terms?**

Yes, the CARES Act limits the use of Paycheck Protection Program loans to: (1) **payroll costs**, excluding the prorated portion of any compensation above \$100,000 per year for any person; (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**, commissions, or similar compensations; (4) **payments of interest on any mortgage obligation** that existed on February 15, 2020 (which shall not include any prepayment of or payment of principal on a mortgage obligation); (5) **rent** payments (including rent under a lease agreement); (6) **interest on any other debt obligations**; and (7) **utility payments**, including electricity, gas, water, transportation, and phone and Internet access for service incurred in the ordinary course of business prior to February 15, 2020, in each case, paid during the eight-week period commencing on the date of origination of the loan.

### **Will interest payments be deferred for any period?**

Yes, loan payments (including principal, interest and fees) will be deferred for at least six months and up to one year starting at the origination of the loan.

### **What portion of the loans will be eligible for forgiveness?**

The loan will be eligible for **forgiveness** to the extent that the loan proceeds have been used for the following costs incurred and payments made during the eight-week period after the loan is made: (1) **payroll costs**, excluding the prorated portion of any compensation above \$100,000 per year for any person; (2) group healthcare benefits and insurance premiums; (3) mortgage interest (but not on any prepayment of or payment of principal on a covered mortgage obligation); (4) **rent payments and leases in existence prior to February 15, 2020**, and; (5) certain **utility payments**, including electricity, gas, water, transportation, and phone and Internet access for service incurred in the ordinary course of business prior to February 15, 2020, in each case, paid during the eight-week period commencing on the date of origination of the loan. The Paycheck Protection Program can be used for other business-related expenses, like inventory, but that portion will not be forgiven.

A borrower will be required to submit a detailed application in support of loan forgiveness directly to the lender. The lender will make a determination on the application within 60 days of receipt of the application; the loan is forgiven at the end of the 8-week period after the borrower takes the loan. Borrowers will work with lenders to verify covered expenses and the proper amount of forgiveness. The SBA will reimburse the lender directly for the principal amount of any forgiven debt, plus interest accrued through the date of repayment. SBA will issue additional implementation guidance and regulations regarding the loan forgiveness process within 30 days after enactment of the CARES Act.

Forgiven amounts will not constitute cancellation of indebtedness income for federal tax purposes.

### **What portions of the loan will not be eligible for forgiveness?**

The purpose of the Paycheck Protection Program is to help businesses retain employees, at their current base pay. If all employees are retained, the entirety of the loan will be forgiven. If employees are laid off, the forgiveness will be reduced by the percent decrease in the number of employees. If the borrower's total payroll expenses on workers making less than \$100,000 per year decreases by more than 25%, loan forgiveness will be reduced by the same amount. If some employees have already been laid off, the loan can still be forgiven for the full amount of payroll costs if those employees are rehired by June 30, 2020.

### **Is the borrower responsible for interest on the forgiven loan amount?**

No, if the full principal of the Paycheck Protection Program loan is forgiven, the borrower is not responsible for the interest accrued in the 8-week covered period. The remainder of the loan that is not forgiven will operate according to the loan terms agreed upon by the borrower and the lender.

### **What can the loans be used for? Are there any restrictions?**

Payroll, rent, mortgage payments, utilities, sick leave, insurance benefits and healthcare premiums are among the permitted uses. Proceeds of loans may also be used to make interest payments on other debt obligations that were incurred prior to February 15, 2020. However, loan proceeds may not be used to make any payment or prepayment of principal of existing debt obligations (e.g., mortgages).

**Will these loans be secured? Where would these loans rank in security and priority as compared to any pre-existing third-party debt instruments?**

No, the loans will be unsecured and will not take precedence over existing debt instruments in terms of payment priority. The loans will also not require collateral or personal guarantees from owners of borrowers. There will be no recourse to owners or borrowers for nonpayment, except to the extent proceeds are used for an unauthorized purpose. The SBA has also waived prepayment penalties and has waived the guaranty fee and annual fee applicable to other 7(a) loans.

**What is the deadline to apply to the program?**

June 30, 2020.