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Coronavirus Aid, Relief, and Economic Security Act or the “CARES Act” Summary of SBA 7(a) Small Business Interruption Loans

As of today, Republicans and Democrats are still negotiating the terms of the CARES Act, which were originally proposed by Republicans in Senate Bill 3548 last week. Over this past weekend, the terms of the CARES Act were further revised and detailed in House Resolution 748. The chart below provides an analysis of the key terms of H.R. 748 as it specifically relates to modifications to the SBA 7(a) lending program. Please note that this information is in summary format only and is subject to change as negotiations between the parties.

H.R. 748 “Paycheck Protection Program”
<p>COVERED PERIOD</p> <ul style="list-style-type: none"> The “covered period” for loan eligibility is defined as February 15, 2020 – June 30, 2020.
<p>ELIGIBLE BORROWERS/LOAN AMOUNT</p> <ul style="list-style-type: none"> During this covered period, eligible borrowers include: <ul style="list-style-type: none"> Sole proprietorships, independent contractors and eligible self-employed individuals (as defined in the Phase 2 legislation). Any business that has more than 1 physical location, does not have more than 500 employees per location and has a NAICS code beginning with 72 (generally, accommodation and food service sector companies). SBA affiliation rules are waived for NAICS code 72 businesses, any business concern operating as a franchise and assigned a franchise identifier, and businesses receiving assistance from SBICs. The maximum Loan Amount is calculated as the lesser of: <ul style="list-style-type: none"> 2.5 x the total average monthly payments by the borrower for payroll costs incurred during the 1-year period prior to the date on which the loans is made (adjusted for seasonal employers or businesses not in operation for a full year); or \$10,000,000.
<p>LOAN USES</p> <ul style="list-style-type: none"> Payroll costs, health coverage continuation during periods of paid sick, medical or family leave, and insurance premiums; employee salaries, commissions, or similar compensation; mortgage payments, rent, utilities, and interest on any other debt incurred prior to the covered period.

- Note – The loan may NOT be used to repay principal on prior debt.

LENDERS/ELIGIBILITY REVIEW

- Financial Institutions under 7(a) delegated authority. This authority can be extended to additional lenders who (as determined by SBA and Treasury) have the qualifications to process, close, disburse and service SBA guaranteed loans.
- Eligibility Review Criteria:
 - Borrower was in operation on February 15, 2020;
 - Had employees for whom the borrower paid salaries and payroll taxes; or
 - paid independent contractors on a 1099 basis; and
 - is substantially impacted by COVID-19.
 - **Note – H.R. 748 does not provide for a presumption of impact related to loan eligibility.**
 - *Borrower must certify it needs the loan for ongoing operations and the proceeds will be used for payroll, mortgage payments, lease payments and utility payments.*
 - During the covered period, the requirement that the entity could not obtain credit elsewhere does not apply.

LIMITATION

- Borrowers are precluded from receiving a 7(a) under this program to the extent they have received a 7(b)(2) Disaster Loan prior to February 15, 2020, or after March 31, 2020 for the same purpose.
- Borrowers must maintain an average number of monthly FTE during the covered period not less than the average number of monthly FTE during the above loan payroll measurement period.

FEES

- During the covered period there will be no SBA yearly fee or SBA guarantee fee.

GUARANTEE AMOUNT

- 100%.

LOAN DEFERMENT

- The SBA shall require 7(a) lenders to provide “impacted borrowers” (an eligible borrower who applies for a loan under the CARES Act) complete payment deferral relief for a period not more than 1 year.
 - *With regard to deferral, there is a presumption is that borrowers have been adversely impacted by COVID-19.*
 - Secondary Market – With respect to loans sold on the secondary market, if an investor declines to approve a lender’s deferral request, the SBA shall exercise the authority to purchase the loan so that the impacted borrower may receive the deferral.
 - SBA Guidance must be given to lenders within 30 days of enactment with regard to the deferral process.
 - Secondary Market Sales – Loans are NOT eligible for sale into the secondary market until the borrower has requested loan forgiveness, the SBA has determined the amount of forgiveness and has paid that amount to the lender. The remaining balance may be sold in the secondary market.

COMMITMENTS

- Covered loans get a risk weight of 0%.
- During the covered period, the authorized commitments for general 7(a) loans, including loans made under this new subsection is \$349 billion.

EXPRESS LOANS

- Increased the maximum loan amount from \$350,000 to \$1,000,000 (to then be prospectively repealed on January 1, 2021 to revert back to \$350,000).

LOAN FORGIVENESS

- “Covered Period” is the 8 week period beginning on the date of origination of the covered loan.
- Borrowers are eligible for forgiveness of indebtedness for the sum of the following costs incurred and payments made during the covered period:
 - Payroll costs;
 - Interest on mortgages incurred before February 15, 2020;
 - Rent on a lease in place prior to February 15, 2020;
 - Payment on most utilities if in place prior to February 15, 2020.
- Amounts forgiven are considered cancellation of indebtedness, and the purchase of the guarantee is otherwise treated in accordance with SBA rules. Amounts forgiven are *not* taxable income to the borrower.
- *The SBA remits the forgiven amount plus interest not less than 90 days after the amount is determined.*
- 7(a) lenders may report to the SBA the “expected forgiveness amount” on a covered loan up to 100% of principal, and the SBA purchases that amount as if it were a guaranteed amount under 7(a).
- Limit – The amount forgiven shall not exceed total payroll costs during the covered period plus debt payments on obligations that were incurred prior to the covered period.
 - The amount forgiven is reduced by a percentage equal to:
 - The Average number of FTEs per month during the covered period divided by the Average number of FTEs per month for 2/15/2019 to 6/30/2019) – 1.
 - For avg FTEs a borrower would average FTEs for each pay period during a month.
 - The amount forgiven is also reduced by the amount of any reduction in compensation greater than 25% (based on most recent full quarter) for employees making less than \$33,333 during the covered period or less than \$100,000 in 2019.
 - Borrowers with tipped employees are eligible for forgiveness for additional wages paid to the tipped employees.
- There is an exemption in the calculation of average FTEs for employees terminated or salary reductions made from February 15, 2020 – April 1, 2020 which the employer hires back prior to June 30, 2020.
- Borrowers must apply for loan forgiveness and verify FTEs and pay rates by providing:
 - Payroll tax filings; state income, payroll and unemployment insurance filings; financial statement verifying debt payments before the covered period;
 - Documentation verifying payments with proceeds are being made towards covered obligations;
 - Certification that documents supporting application are true and correct, and that proceeds were used for appropriate purposes
 - and any other documentation the SBA deems necessary.
 - Forgiveness payments will not be allowed without the required documentation.

- Lenders have a 60-day period to decide on loan forgiveness applications.
- SBA guidance must be given to lenders within 30 days of enactment with regard to the loan forgiveness process.
- There is a safe harbor for lenders against enforcement actions if the lender “determines that an eligible recipient has accurately verified the payments for payroll costs, payments on covered mortgage obligations, payments on covered lease obligations, or covered utility payments during the covered period.”

APPROPRIATION

- \$299.4B would be appropriated for the cost of 7(a) guaranteed loans interruption loans as detailed in H.R. 748.

LOAN TERMS:

- No collateral is required for the covered loan.
- No personal guarantee is required for the covered loan.
- Maturity (if there is a balance after forgiveness) – Max of 10 years from the date the borrower applies for loan forgiveness.
- Interest Rate – interest in accordance with the maximum interest rate in effect on February 15, 2020 for a loan under this section.
- No subsidy recoupment fee.
- Lenders will be reimbursed within 5 days for lender’s processing at a rate of 5% of the balance of the financing outstanding at the time of the disbursement of the covered loan.

US TREASURY PROGRAM MANAGEMENT

- The Treasury Department, in consultation with SBA, and bank regulatory agencies will establish the criteria for banks and specialty lenders that do not already participate in SBA lending programs to participate in a small business interruption loan program to provide 7(a) loans in accordance with the CARES Act until the date the national emergency declared by the President with respect to COVID-19 expires.
- Eligibility criteria otherwise applicable to 7(a) loans shall not apply to loans made under the CARES Act.
- Banks must continue to operate in a safe and sound manner.
- *The Treasury Department, in consultation with the SBA, shall issue regulations and guidance that set out compensation, underwriting standards, interest rates, maturity, and other relevant terms and conditions.*
- Regulations should be consistent with the terms stated in the Act.
- To receive a loan under this Act, borrowers must certify that they do not have a 7(a) application pending and has not received a 7(a) loan from February 15, 2020 – December 31, 2020.

TDR RELIEF

- Covered loan modifications on or after March 13, 2020 shall not be required to comply with FASB 310-40 (TDR) until such time as the federal banking agency deems appropriate.
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LOAN PAYMENT SUBSIDY

- \$16.8B appropriated for loan payment subsidies for “covered loans” which appears to include all 7(a) guaranteed loans.
- The text reads, “in addition to the relief provided by the [Small Business Act], the [SBA] should encourage lenders to provide payment deferments, when appropriate, and to extend the maturity of covered loans, so as to avoid balloon payments or any requirement for an increase in debt

payments resulting from deferments provided by lenders during the period of the national emergency...”

- The SBA shall pay principal, interest, and fees owed on a covered loan in regular servicing status:
 - For a covered loan made before the enactment of the Act and not on deferment, for a 6-month period beginning on the next payment date;
 - For a covered loan made before the enactment of the Act and on deferment, for a 6-month period beginning with the payment date after the deferment period; and
 - For a covered loan made during the period beginning on the date of enactment of this Act and ending on the date that is 6 months after, for 6 months beginning with the first payment date.
 - These payments are made within 30 days of the due date.
 - The SBA shall also coordinate with bank regulators to encourage bank regulators not to require lenders to increase their reserves due to receiving these subsidy payments; waive statutory limits on maximum maturities for covered loan duration where the lender provides a deferral and extends the maturity of a covered loan during the 1-year period following enactment; and extend lender site visit requirements.

*This outline does not address Emergency EIDL Grants or other changes to section 7(b)(2) of the Small Business Administration Act.