

WILLIAMS & JENSEN, PLLC

Fr: Ryan Sigmon

Re: Small Business Webinar

Dt: March 31, 2020

Summary

On March 31, Williams & Jensen hosted a webinar on the small business provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Topics discussed included: (1) the Payroll Protection Program, (2) Venture Capital and Private Equity, (3) Eligibility and, (4) EIDL Loans.

Moderators

Susan Hirschmann, Williams & Jensen
James Burchfield, Williams & Jensen

Panelists

Ellen Harrington, Majority Policy Director, House Small Business Committee
Matt Gomez, Majority Counsel, House Small Business Committee
Kevin Fitzpatrick, Minority Staff Director, House Small Business Committee
Joe Harts, Minority Policy Director, House Small Business Committee
Rob Yavor, Minority Senior Professional Staff Member, House Small Business Committee

Q&A

Payroll Protection Program

Burchfield asked what is included in average monthly payroll expenses. **Harrington** responded that the payroll expenses are broadly defined and include items such as family and medical leave, salaries, wages, commissions, tips, medical group health benefits, insurance, retirement and, state and local taxes, among others. **Harts** stated that paycheck protection loans can be used for anything small businesses need. He noted that the only things that will be forgiven is continuing to pay employees, paying rent, paying interest on mortgages, and paying utilities. **Yavor** emphasized that the reason the bill's language is vague is to include as many small businesses as possible. He stated that the goal is to have the program up and running by Friday.

A caller asked about the time period for loans to be forgiven. **Yavor** responded that the loan forgiveness spans 8 weeks. He noted that any drop in wages or salaries below 25 percent will be taken out of the loan forgiveness amount.

A caller asked for clarification regarding the \$100,000 limit on what a loan can be used for. **Harts** responded the forgiveness extends up to \$100,000 per employee.

A caller asked if the 8-week availability of payment protection program loans is predicated on the date of the loan or the date when payroll coverage was sought. **Harts** responded that it is the date of origination. **Yavor** stated that the borrower is able to select the 8-week coverage period.

A caller asked for clarification regarding calculating average payroll. **Harts** responded that it is 2.5 times the average payroll costs for the previous year, based on when the loan is given. He noted that there are provisions for seasonal workers where one would look at a period of 2 months.

Burchfield asked for a timeline from loan application to distribution of funds. **Gomez** stated that 7(a) loan approval typically takes 2-3 weeks and loan disbursement typically takes 5 days. He noted that there are numerous provisions in the bill designed to expedite the process by eliminating certain requirements and expanding the eligible pool of lenders.

Venture Capital and Private Equity

Burchfield asked how the affiliation rule will be interpreted with respect to private equity (PE) portfolio companies. **Harts** responded that PE firms are, by and large, are “not available.” **Yavor** stated that the legislation limits the participation of venture capital (VC) and PE backed companies. He said they are currently working with the Senate to achieve better guidance on this issue. He noted there is an exemption for small business investment companies (SBIC).

A caller asked if VC and PE backed companies can still apply for the paycheck protection program. **Gomez** stated that under the current language VC backed companies would not be eligible unless they received financing from an SBIC.

A caller asked for clarification on affiliation rules. **Yavor** stated the bill expands the program to all for-profit businesses and, non-profit 501(C)(3)s and 501(C)(19)s, and noted that most affiliation rules still apply. He emphasized that they are working through ways to support PE and VC backed organizations.

A caller asked if VC backed businesses would be eligible for the program or if they should instead focus on employment tax deferral. **Gomez** responded that VC backed businesses would not be eligible unless they are participating in the SBIC program and should focus on the employment tax deferral. He emphasized that Congress is aware of the VC issue and stated that he expects some form of action to address this problem.

Eligibility

A caller asked how businesses started in January 2020 would qualify. **Yavor** responded that the bill has specific directions for businesses that were not in operation during the previous year. **The caller** asked if payroll includes 1099 contractors. **Gomez** stated that they would be included.

A caller asked about how a new company would be eligible for the program if they did not have employees on payroll for a period of time. **Yavor** stated that the current language is that a company must be operational with people on payroll on February 15. He said they will continue to look for guidance regarding operational companies without employees prior to January 2020.

Burchfield asked if companies that had more than 500 employees in 2019, but less than 500 employees now, are eligible. **Gomez** responded that this is an “ambiguity in the bill” and

congressional intent is to capture as many businesses as possible. He stated that any company that fell below 500 employees during the period should be eligible. He emphasized that they should look for further guidance coming out for clarification.

A caller asked if payment for foreign employees of U.S. subsidiaries can be used in the calculation. **Yavor** responded that foreign employees will not be included in the calculation. **The caller** asked about collateralization of 7(a) loans. **Gomez** stated that collateral requirements are waived under the paycheck protection program.

Burchfield asked if a foreign controlled business can receive a loan if guaranteed by an American citizen. **Yavor** stated that they can, but affiliation rules will apply and should be understood by the company.

Economic Injury Disaster Loans (EIDL)

Burchfield asked if it is better for a company to apply online for an EIDL loan or apply through the same financial institution that they would otherwise use. **Gomez** responded that EIDL loans are done through the SBA website. **Harrington** emphasized that the EIDL program is up and running now and small businesses can request an advance for up to \$10,000. She noted that small businesses can refinance their EIDL loan into the paycheck protection program. She emphasized that two loans cannot be taken for the same purpose. **Burchfield** asked if EIDL loans would expedite paycheck protection program process. **Harrington** responded that she did not think it would because EIDL loans are through the SBA and paycheck protection loans are through one's financial institution. **Yavor** emphasized that businesses should reach out to their local lenders that they have relations with.

A caller asked if there is a maximum amount that can be borrowed through an EIDL loan. **Harrington** responded that the maximum amount that can be borrowed through an EIDL loan is \$2 million.