The SBA has promulgated regulations implementing the Paycheck Protection Program created under the CARES Act. The regulations include several clarifications as to how small business apply and create several new terms. To summarize, the Paycheck Protection Program is a SBA 7(a) loan that certain qualified small business may apply to an SBA qualified bank for. This loan is then forgivable on application to the SBA qualified bank to the extent it is expended upon payroll costs and certain other items in the first eight (8) weeks after origination.

The CARES Act states that the maximum amount of a Paycheck Protection Program loan is determined by taking payroll costs and multiplying by 2.5. The regulation provides additional explanation stating that the calculation the applicant must perform is as follows:

- Step 1: Aggregate payroll costs (defined in detail below in f.) from the last twelve months for employees whose principal place of residence is the United States.
- Step 2: Subtract any compensation paid to an employee in excess of an annual salary of $100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of $100,000 per year.
- Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).
- Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.
- Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan (because it does not have to be repaid).

In addition, there are several ways in which the SBA interpreted the CARES Act in a more different way than the literal language of the CARES Act.

The SBA determined that the Interest rate is one hundred (100) basis points or one percent (1%) even though the CARES Act permits up to four percent (4%). This is interpretation will be good for borrowers as it is a low interest rate.

The SBA determined that maturity is two (2) years even though the CARES Act permits up to ten (10) years. A two (2) year term is less advantageous than a ten (10) year term in the case of non-forgiveness.

Payment deferral is for six (6) months, but interest will accrue. Accrual of interest was not clear in the CARES Act and makes deferral of payments in the case of non-forgiveness less appealing. However, the loan is forgivable for both principal and interest. So, as long as the borrower ensures that the use of the loan is limited to the forgivable purposes, this may be inconsequential.

Even though the CARES Act provides that the loan may be forgivable for payroll costs and mortgage, leases, and utility payments, the SBA has determined that not more than twenty-five percent (25%) may be used for mortgage, leases, and utility payments. In addition even though the CARES Act allows the monies to be used for other costs without forgiveness, the SBA has determined that not more than twenty five percent (25%) may be used for mortgage, leases, and utility payments. This limits the utility of the Paycheck Protection Program loans for non-payroll costs.

Information provided by Brendan Owens, Stafford Owens Law Firm