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New Legislation Provides for New Options for Small Business Loans and Emergency Grants for COVID-19 Relief

Congressional action in the year-end "omnibus" legislation known as H.R. 133 – signed into law on December 27, 2020 – includes a number of new provisions related to Small Business Administration ("SBA") loans, including Economic Impact Disaster Loans ("EIDL") and the related EIDL emergency grants as well as other programs intended to direct additional economic relief to businesses.

<u>Changes to the EIDL Program</u>

The EIDL program is intended to provide assistance to businesses to address the economic impact due to a federally declared disaster. The COVID-19 disaster qualifies in all 50 states.

As an addition to the traditional disaster loan, the Coronavirus Aid Relief and Economic Security Act ("CARES Act") adopted the EIDL emergency grant ("EIDL Grant"), which was intended to be an infusion of funds to small businesses by providing a grant of up to $10,000 within three days of an application.

In practice, the EIDL Grants were a major disappointment, as the three-day requirement was rarely met, and the $10,000 amount was usually smaller due to limited funds. In addition, the CARES Act required that the amount of an EIDL Grant had to be deducted from the forgiveness amount of otherwise-forgivable Paycheck Protection Plan ("PPP") loans.

H.R. 133 makes numerous changes related to the EIDL program and COVID-19 relief.

- For qualifying businesses in low-income communities, the EIDL Grants are extended to December 31, 2021 ("Targeted EIDL Grants") and a new $20 billion is appropriated for funding.
    - Qualifying businesses who did not receive an EIDL Grant from the original CARES Act program can receive a Targeted EIDL Grant of $10,000.
    - Qualifying businesses who received less than $10,000 from the original CARES Act program can receive a Targeted EIDL Grant equal to the difference between $10,000 and the amount originally received.
- For the Targeted EIDL Grant program, a qualifying business must:
    - Apply by December 31, 2021;
    - Be located in a "low-income community" –
        - A census tract with a poverty rate greater than 20 percent; or
        - A census tract with a median family income under 80 percent of the state or metro area family income.

- Demonstrate an economic impact of a loss of at least 30 percent of gross income for an eight-week period in 2020 compared to the same period in 2019; and
- Employ fewer than 300 employees.

- The original EIDL Grant program is extended to December 31, 2021 with new funding, with the original three-day requirement extended to 21 days. Only businesses that did not receive an original EIDL Grant would be eligible and priority is given to the Targeted EIDL Grants.

- The requirement that the amount of an EIDL Grant be deducted from PPP forgiveness is repealed. This applies to original CARES Act grants and the new Targeted EIDL Grants.
  - The SBA is required to issue rules for rebating the deducted amount to PPP borrowers who have already received reduced forgiveness amounts. Vandenack Weaver will provide updates when the new rules are issued.

<u>Changes Related to SBA Loans</u>

H.R. 133 also makes various changes to other SBA loan programs related to COVID-19 relief. The CARES Act provided a six-month deferral period for outstanding SBA loans under the 7(a), 504 and microloan programs. New loans applied for through September 27, 2020 were also eligible for the deferral. Those original deferrals have now expired.

The new provisions include:

- A new three-month deferral period for most outstanding SBA loans – capped at a maximum of $9,000 principal and interest per month – beginning with payments in February 2021.

- An additional five-month deferral period (for a total of eight months) for borrowers in certain qualifying categories:
  - Borrowers in defined “hard-hit” sectors, including: food service and accommodation; arts, entertainment and recreation; education; and laundry and personal care services.
  - Borrowers of SBA microloans.
  - Borrowers of 7(a) “community advantage loans.”

- A six-month deferral period for new SBA loans originating between February 1 and September 30, 2021 – also capped at $9,000 per month.

- Temporary expanded federal guarantees of SBA 7(a) loans and temporary expanded guarantees and maximum dollar amounts for SBA express loans.

- Temporary extensions of the terms of SBA microloans (up to eight years) and the amount that can be advanced to a microloan intermediary.

- Temporary incentives for simplified refinancings.
- Extended eligibility for the 8(a) federal contracting program for small businesses.

Emergency Capital Investment Program

H.R. 133 also sets up an “Emergency Capital Investment Program” under the Department of the Treasury.

The program does not provide direct assistance to businesses, but will provide an influx of up to $9 billion of capital to qualifying institutions to support efforts to “provide loans, grants, and forbearance for small businesses, minority-owned businesses, and consumers, especially in low-income and underserved communities … that may be disproportionately impacted by the economic effects of the COVID-19 pandemic.”

Businesses affected by COVID-19 that have difficulty obtaining traditional sources of credit may seek out such alternative mission-oriented financial institutions, which may have increased capital resources as a result of this program.

More information on the programs described above can be obtained from Vandenack Weaver attorneys at 402-504-1300 or info@vwattys.com.