

# CARE Act of 2020: Business provisions

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) was signed into law as a stimulus package designed to aid individuals, families, and businesses impacted by COVID-19. Some of the key provisions that impact businesses are highlighted below. For coverage of the individual provisions, see [CARES Act of 2020: Individual Provisions](#). We will continue to provide additional information and analysis as new legislation is passed.

## Loans

### Paycheck Protection Program (“PPP”)

The CARES Act creates a new, potentially forgivable loan program to expand the Small Business Administration (“SBA”) loan programs currently in place. This program is available for both for-profit and not-for-profit businesses (including independent contractors, sole proprietors, and self-employed individuals).

For businesses in operation on February 15, 2020, the new program increases the maximum available SBA loan amount to \$10 million for businesses with generally no more than 500 employees per business location, and creates a loan forgiveness feature (for details, see “Loan forgiveness for PPP loans” under “Grants” below). These loans are intended to provide financial assistance to businesses impacted by COVID-19 to help with certain specific expenses (such as U.S. payroll costs and “covered compensation,” including sick or medical leave, group health benefits, insurance premiums, retirement benefits, mortgage interest, rent, and utility payments, among others).

The loan has no SBA fees, requires no personal guarantees, and provides for deferral of payments for at least six months (and up to one year).

The loan period begins as of February 15, 2020, and ends on June 30, 2020. It provides a loan amount that is calculated using a formula based on last year’s average monthly payroll costs incurred by the business (see below).

The “covered compensation” expense is capped at \$100,000 per employee, and it includes only employees living in the U.S.

The formula for determining the maximum amount of the loan is driven by when the company was in business and whether other loan and grant programs were utilized. But in general, the amount of the loan is subject to a maximum of 2.5 times the average total monthly payroll costs for the previous year, up to \$10 million.

Businesses receiving a PPP loan are not eligible for the payroll tax credit for shuttered businesses, and business receiving forgiveness of a PPP loan are not eligible to delay paying payroll taxes (see below, under Payroll Tax Relief). **Act Sec. 1102**

### **Express Loans**

In addition to the new PPP program, the Act increases the limit for Express Loans from the SBA from the current limit of \$350,000 to \$1 million for loans issued before the end of 2020. **Act Sec. 1102**

### **Emergency Economic Injury Disaster Loans (“EIDLs”)**

The Act relaxed the requirements and expanded the previously existing SBA EIDL program to also include sole proprietorships, independent contractors, agricultural cooperatives, not-for-profits, and ESOPs with 500 or fewer employees, if loans are made due to impact of COVID-19. These loans may be used for providing sick leave, maintaining payroll, meeting increased costs, making rent/mortgage payments, and repaying obligations. The maximum loan amount is \$2 million, and it features lower interest rates (2.75% for not-for-profits; 3.75% for others) to businesses that were in operation at least as of January 31, 2020.

Under the new provision, the verification of repayment rules is relaxed to allow more businesses to qualify. Also, multiple previously enforced requirements are waived: that the business be existing for more than one year, that a personal guarantee be provided on the loan for amounts under \$200,000, and that the business be unable to obtain credit elsewhere.

**A business can utilize both the PPP and the EIDL programs, as long as they are not used for the same expenses** (in other words, the limitations are designed to prevent double dipping). **Act Sec. 1110**

### **Subsidy for certain loan payments**

For currently existing (non-disaster) SBA loans (made under Section 7(a) of the Small Business Act), the SBA is required to pay the principal, interest, and any fees associated with that loan for six months beginning on the due date of the next payment. Similarly, the Act provides that even if the current loan is in deferment, once the deferral period ends, the SBA will pay six months of payments as they come due.

This same relief is available for new loans taken within up to six months of enactment of the Act (in other words, through September 27, 2020). **Act Sec. 1112**

### **Emergency relief and executive compensation restrictions for large businesses in troubled industries**

The Act requires that the Secretary implement special lending programs for eligible businesses, defined as businesses (including nonprofits) with between 500 and 10,000 employees. Such loans bear interest at no higher than 2%, with no interest or principal being due for the first six months. The loans are designed for businesses effectively shuttered by the COVID-19 shutdowns and quarantines. No loan forgiveness is available for these lending programs.

There are also loan programs specifically for air carriers and companies critical to national security, which are not subject to the 2% maximum interest rate.

The business applying for the loan must give a good faith certification that 1) the uncertainty of economic conditions make the loan request necessary to support the ongoing operations of the business, 2) the funds received will be used to retain at least 90% of the borrower’s current workforce at full compensation and benefits, until September 30, 2020, and 3) within four months after the termination date of the public health emergency, the business will restore at least 90% of the borrower’s workforce that existed as of February 1, 2020.

The borrower must certify that it will not outsource or offshore jobs or change collective bargaining agreements for the term of the loan plus two years. The business must also certify that it is domiciled in the U.S. with significant operations and employees in the U.S.

The borrower must also agree to executive compensation restrictions for certain officers and highly paid employees. The limitation applies to any officer or employee of the eligible business whose total compensation exceeded \$425,000 in calendar year 2019. The business must agree that for one year following execution of the loan, such officers or employees will not receive total compensation exceeding the amount for calendar year 2019, and that any severance pay or other benefits upon termination of employment will not exceed twice the maximum total compensation received in 2019.

In addition, for any officer or employee of the eligible business whose total compensation in 2019 exceeded \$3 million, the total compensation during the 12 months following the date of the loan may not exceed the sum of \$3 million plus 50% of the excess over \$3 million that the executive received in 2019.

Example: Laura is the CEO of an airline seeking a guaranteed loan under the CARES Act. Her total compensation in 2019 was \$5 million. During the 12-month period beginning with the date of the loan, Laura's total compensation may not exceed \$4 million (\$3 million plus 50% of the amount exceeding \$3 million). **(Act Secs. 4003, 4004)**

**The SBA has other loan programs that may be available to qualified applicants in addition to those created by the CARES ACT.**

## Grants

### Loan forgiveness for PPP loans

In addition to making it easier to receive a significant loan under the PPP, the CARES Act creates the potential for such a loan to be forgiven. For the first 8 weeks of the origination of the loan, any amount used by the business to cover payroll, mortgage interest, rent, and utility payments is eligible to be forgiven in full (up to the loan principal amount). To receive loan forgiveness, the business must continue to employ all its employees at approximately the same salary as the previous year. If the number of employees or their salary is reduced, so is the amount of the loan that may be forgiven (however, with regard to the reduction based on compensation, employees earning more than \$100,000 are not considered and a reduction of up to 25% of an employee's compensation is permitted).

Businesses that have already reduced their workforce or an employee's compensation due to COVID-19 have the opportunity to rehire workers and reinstate compensation by June 30, 2020, and still be eligible for the loan forgiveness.

Additionally, the amount of loan forgiven is not included in the taxable income of the business.

Any portion of the loan that is not forgiven is to be repaid over up to 10 years at up to 4% interest.

**Businesses that accept loan forgiveness are not permitted to take advantage of the ability to delay payment of employer payroll taxes (see below). Act Sec. 1106**

### Emergency Economic Injury Grant

Businesses applying for EIDL (see above) may request an emergency advance of up to \$10,000 to be distributed within three days of application. This \$10,000 does not need to be repaid (regardless of whether the loan is ultimately approved by the SBA). This grant may be used to pay sick leave, additional costs incurred related to COVID-19, or other business obligations.

**The amount of the grant reduces the amount of the PPP Loan that qualifies for loan forgiveness (see above). Act Sec. 1110**

## Payroll tax relief

### Employee retention credit for shuttered businesses

The Act allows a credit against payroll taxes equal to 50% of wages paid to employees from March 13,

2020, to December 31, 2020. The amount of eligible wages is limited \$10,000 per employee, meaning the maximum credit amount is \$5,000 per employee. For businesses with more than 100 employees, the credit is available only with respect to wages paid to employees who are not actually working. For businesses with 100 or less employees, the same credit is available for all wages paid whether the employee is actually working or not.

To qualify, the business must have experienced a full or partial shutdown of operations as a result of the order to limit travel, meetings, and commerce (whether for commercial, social, religious, or other purposes) due to COVID-19. It is also available to a business that experienced a more than 50% reduction in quarterly receipts (for same quarter from previous year).

**This credit is not available for businesses receiving a PPP loan**, discussed above, nor for governmental entities. **Act Sec. 2301**

#### **Delay of payment of employer payroll taxes**

Businesses and self-employed individuals who do not choose to take advantage of the SBA loan forgiveness program described above may be able to defer paying the employer share of the Social Security tax (but not Medicare tax) for 2020. The deferred amount must be paid half by December 31, 2021, and the second half by December 31, 2022. **Businesses receiving a PPP loan may want to consider the availability of loan forgiveness before using this credit. Act Sec. 2302**

#### **Payroll tax credit for required paid sick leave under Families First Coronavirus Response Act**

The Act clarifies a provision of the Families First Coronavirus Response Act by allowing employers to receive the payroll tax credit for emergency paid sick leave and paid family leave **in the quarter the payments are made**, instead of having to wait for reimbursement when the 2020 tax return is filed. **Act Sec. 3606**

### **Miscellaneous provisions**

#### **Entrepreneurial development**

The Act allocates funds to local Small Business Development Centers and organizations for counseling, training, and education to better support business owners regarding COVID-19 and the resources available to them via the SBA. **Act Sec. 1103**

#### **Bankruptcy**

The Act provides relief for small businesses in bankruptcy under all three forms of business bankruptcy. These amendments are effective only for bankruptcies filed on or after the date of enactment (March 27, 2020) and apply for one year from the date of enactment.

- Chapter 7 (Liquidation): The Act amends the definition of “current monthly income” to exclude payments received under federal law relating to the COVID-19 emergency.
- Chapter 11 (Business Reorganization): The Act increases the debt eligibility threshold for a small business filing for bankruptcy relief from \$2,725,625 to \$7,500,000.
- Chapter 13 (Adjustment of Debts): The Act amends the definition of “current monthly income” and the definition of “disposable income” for purposes of confirmation of a Chapter 13 plan to state that they do not include payments made under federal law relating to the COVID-19 emergency.

**Act Sec. 1113**

#### **Business charitable deduction**

The Act makes two enhancements to the charitable deduction for businesses. First, the 10% percentage limitation for charitable deductions by a C corporation is increased to 25% for calendar year 2020. Second, the percentage limitation for charitable contributions of food inventory by businesses during 2020 is increased from 15% to 25%. **Act Sec. 2204**

### **Exclusion for certain employer payments of student loans**

If a business makes a student loan payment to or on behalf of an employee, up to \$5,250 of that payment may be excluded from the employee's income, so long as the payment is made after March 27, 2020, and before January 1, 2021. **Act Sec. 2206**

### **Single-employer plan funding rules**

The Act allows employers sponsoring a defined benefit plan additional time to make funding contributions due in 2020. Such contributions may be delayed until January 1, 2021; however, interest on the deferred contribution continues to accumulate. **Act Sec. 3608**

### **Enhancements of the Tax Cuts and Jobs Act ("TCJA")**

To stimulate the economy and provide financial relief to businesses, a number of provisions of the TCJA have been amended.

#### **1) Modifications for net operating losses ("NOLs")**

The CARES Act made two changes to the prior treatment of net operating losses. First, for tax years 2018–2020, NOLs may be retroactively carried back over the prior five years to reduce taxable income of those years. (Companies will need to file amended returns to receive a refund.) Second, as to NOL carryforwards, the amount of the NOL deduction permitted is increased to 100% of taxable income (from the previous 80% limit). Beginning in 2021, the reduction is again limited to 80% of taxable income. **Act Sec. 2303**

#### **2) Modification of limitation on losses for taxpayers other than corporations**

The Act temporarily suspends the excess active business loss limitation and the active farming loss rules implemented by the Tax Cuts and Jobs Act ("TCJA") in 2017, until January 1, 2021. (Under the TCJA, any active losses above \$250,000 were disallowed.) **Act Sec. 2304**

#### **3) Modification of credit for prior year minimum tax liability of corporations**

The new provision allows corporations to claim 100% of outstanding AMT credits in 2019 and even to accelerate claims to 2018, rather than limiting the credit (as required by the TCJA). The corporate alternative minimum tax was repealed by TCJA, but these loosened restrictions benefit C corporations with outstanding AMT credits from prior years. **Act Sec. 2305**

#### **4) Modifications of limitation on business interest**

The Act suspends the limitation on business interest that is allowed as a deduction, changing it from 30% to 50% of Adjusted Taxable Income for tax years beginning in 2019 and 2020. Additionally, it permits businesses to use 2019 income when calculating the amount of taxable income to use for the deduction for years beginning in 2020. **Act Sec. 2306**

#### **5) Qualified improvement property**

This change to the text of the TCJA allows 100% bonus depreciation for costs associated with certain improvements to nonresidential buildings, rather than requiring them to be recovered as depreciation over the 39-year life of the building. This amendment is retroactive, as if included in the 2017 legislation, so it may offer immediate cash flow to businesses amending their returns. **Act Sec. 2307**

### **Clarification of Emergency Family and Medical Leave provision of Families First Coronavirus Response Act**

The Act clarifies the Emergency Family and Medical Leave provision of the Families First Coronavirus Response Act to state that an employee laid off after March 1, 2020, who had worked for the employer for

at least 30 days out of the last 60 days prior to the layoff, will have access to paid Emergency Family and Medical Leave if they are rehired by the employer. **Act Sec. 3605**

**Paid leave for government contractors**

The Act authorizes Federal government agencies to modify contracts with small businesses to reimburse them for the cost of providing sick leave to employees or subcontractors who are unable to work due to facility closures or other restrictions, and who cannot telework. The reimbursements are available for up to 40 hours per week and apply through September 30, 2020. **Act Sec. 3610**



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