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## CARES ACT: SIX KEY COMPONENTS

*Updated March 31, 2020*

The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) provides federal assistance in response to the COVID-19 pandemic. This document provides a summary of six key components of the CARES Act applicable to small and middle-market businesses based on the express language of the CARES Act. Information may change as applicable agency rules and guidance are issued.

### **1. Paycheck Protection Program**

- a. A new \$349 billion loan program.
- b. Eligible businesses can borrow money for certain qualified costs such as (i) payroll costs, (ii) continuation of health care benefits, (iii) employee compensation (up to \$100,000 annual pay per employee), (iv) mortgage interest, (v) rent, and (vi) utilities.
- c. Small business definition now includes any “business concern” that employs 500 or fewer individuals (with limited exceptions and expansions).<sup>1</sup>
- d. Maximum loan amount is the lesser of (i) \$10,000,000, or (ii) 2.5x average total monthly payroll cost.
- e. Payroll cost definition is very broad and specifically includes benefit costs and amounts paid to independent contractors.
- f. Maximum per employee annual payroll cost is \$100,000 (if an employee makes more, only \$100,000 annual salary—as prorated for applicable period—applies toward the maximum loan amount and forgiveness).
- g. A portion of the loan may be forgiven based on eligible payroll, mortgage interest, rent payments, and utility payments made during the first 8 weeks following receipt of the loan.
- h. Loan forgiveness will not be treated as income.
- i. Eligible loan forgiveness is reduced by (i) EIDL funds received (see below), (ii) compensation reductions in excess of 25% (on a per employee basis), (iii) reduction of total number of full-time equivalent employees (proportionately), and (iv) per employee annualized pay in excess of \$100,000.
- j. Debt service payments on the loan can be deferred for up to 1 year.
- k. Loan terms include (i) no collateral or personal guarantees, (iii) no SBA loan fees, (iii) no prepayment penalties, and (iv) maximum 4% interest.
- l. The SBA and lending institutions are currently working on applicable rules, procedures, and forms.

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<sup>1</sup> The 500-employee threshold is unclear at this time. The final SBA rules and additional guidance will have significant impact on program eligibility. For example, current SBA guidelines prevent most private equity portfolio companies from participating in traditional SBA programs based on affiliation rules.

## **2. Emergency Economic Injury Disaster Loans**

- a. Expands on the existing EIDL SBA program.
- b. The EIDL program provides low interest loans and even outright grants to qualifying businesses with less than 500 employees to pay debts and payroll.
- c. Businesses can apply directly through the SBA at <https://covid19relief.sba.gov/#/>.
- d. Loan terms generally include (i) principal amounts up to \$2,000,000, (ii) 3.75% interest, (iii) terms up to 30 years, (iv) collateral required for loans in excess of \$25,000, (v) guarantees required for loans in excess of \$200,000, and (vi) SBA will subordinate to existing liens.
- e. Grants are generally available at the SBA's discretion upon application.
- f. \$10,000 grants can be made within 3 days following application.
- g. Significantly, the EIDL program is already operational. Businesses can apply now.

## **3. Subsidies for Traditional SBA Loan Programs**

- a. SBA will make monthly payments for the next 6 months.
- b. This applies to most SBA loans other than the Paycheck Protection Program and EIDL loans.
- c. This appears to be a significant benefit but may be clarified or limited through final SBA rules or additional guidance.

## **4. Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy**

- a. The CARES Act permits the Treasury Secretary to make up to \$500 billion in loans and guarantees to business and government entities.
- b. The Treasury Secretary has discretion to create the eventual lending program, therefore, many details will follow; however, the program must include the following minimum conditions:
  - i. Provide low interest loans to businesses with between 500 and 10,000 employees.
  - ii. Loans must include at least 6 months of payment deferrals.
  - iii. Borrowers must provide a good-faith certification that (i) they intend to maintain at least 90% of their current workforce, (ii) will not pay dividends or repurchase stock (or other equity securities), (iii) will not outsource or offshore jobs during the loan period or 2 years thereafter, (iv) will not abrogate existing collective bargaining agreements with labor unions, and (v) will remain neutral regarding current or future union organizing activity.
  - iv. Certain caps on individual compensation over \$425,000 (likely a freeze of 2019 compensation up to \$3,000,000 and then only 50% of compensation permissible thereafter).
  - v. Certain amounts are reserved to support the airline and other specific industries.
- c. The Treasury Secretary will create this program and it will likely include significant discretion on eligibility requirements.

**5. Assistance for American Workers, Families, and Businesses**

- a. Expands eligibility for unemployment insurance and provides individuals with an additional \$600 per week on top of the unemployment amount determined by each state.
- b. Note, certain states have also limited a business's required contribution to unemployment accounts.

**6. Certain Additional Tax Benefits**

- a. ***Employee Retention Tax Credit:*** Businesses not taking advantage of the Payroll Protection Program or tax credits provided under the Families First Coronavirus Relief Act may receive a refundable credit of up to \$10,000 per employee for wages paid while the business was shut down due to a COVID-19 related governmental order, or during which gross receipts were reduced by 50% as compared to gross receipts for the same quarter in 2019. Businesses with 100 or fewer employees may receive a credit related to wages paid for all employees during the applicable period. Businesses with greater than 100 employees may receive the credit only for wages paid to employees not providing services during the applicable period. The amount of credit cannot exceed the total amount of Social Security payroll taxes owed on wages of all employees during the applicable period.
- b. ***Payroll Tax Holiday:*** Businesses can postpone payment of the employer portion of Social Security payroll taxes that would otherwise be payable through January 2021. 50% of postponed payment will be due by December 31, 2021 and the remaining 50% will be due by December 31, 2022. Note, this is in addition to the earlier payroll tax benefits in the Families First Coronavirus Response Act.
- c. ***NOL Expansion:*** Businesses can carryback corporate net operating losses generated in 2018, 2019, and 2020 for five years and fully offset taxable income with corporate net operating losses (without regard for 80% limit imposed by TCJA<sup>2</sup>). Businesses can utilize net operating losses generated in 2018, 2019, and 2020 to receive refunds on taxes paid in prior years and to reduce tax payments in 2020 and beyond. Non-corporate taxpayers can off-set 100% of their other taxable income and are not limited by the \$250,000 threshold.
- d. ***Modifications of Limitation on Business Interest:*** For 2019 and 2020, businesses can increase the amount of interest expense deduction on tax returns from the current 30% limitation (imposed under TCJA) to 50% of taxable income (with certain adjustments).

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<sup>2</sup> Tax Cuts and Jobs Act of 2017.