



NEWS MEDIA ALLIANCE
Guide to The CARES Act
March 27, 2020

This document was prepared by Jeff Carlisle with Lerman Senter PLLC to provide a description of the various programs available under the Coronavirus Aid, Relief and Economic Security (CARES) Act into law. Before deciding to take any action, consult your own legal and financial advisors. If you have any questions about this guide, please contact Danielle Coffey, danielle@newsmediaalliance.org, at the News Media Alliance.

AID FOR BUSINESSES IN THE CARES ACT

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief and Economic Security (CARES) Act into law. This law – over 600 pages in length – provides hundreds of billions of dollars of relief to the American economy in the form of loan guarantees, direct grants, and deferrals. The relief is, however, distributed among numerous different government programs and sections of the Internal Revenue Code. The most widely reported benefit is the direct payment benefit to individuals. This is a summary of the many other provisions that will provide direct aid to or otherwise impact businesses during the pandemic.

SMALL BUSINESS ADMINISTRATION (SBA) PROGRAMS

Paycheck Protection Program Loans under Section 7(a)

The CARES Act expands availability and government guarantees of loans made under the SBA’s Paycheck Protection Program (PPP), and provides \$349 billion to fund loans. Loans will come from the 900+ banks and other financial institutions that are qualified to be SBA lenders and will be issued under the SBA’s existing Section 7(a) loan program. The SBA portal for borrowers can be found here:

<https://www.sba.gov/funding-programs/loans>

The loans authorized under the CARES Act are for a maximum of 2.5 times average monthly payroll or \$10 million, whichever is less. Loans will have interest rates of no higher than 4%, and can be used for payroll, group health care benefits, salaries and commissions, mortgage interest, rent, utilities and debt interest. Payments on the loans will be deferred for at least 6 months. The CARES Act specifies that borrower fees, lender fees, collateral and personal obligation requirements are all waived, and that prepayment fees will not apply. It also specified that the “credit elsewhere” requirement shall not apply, meaning applicants will not have to prove that they cannot obtain a loan elsewhere without undue hardship.

To be eligible for an SBA PPP loan, an applicant must have 500 employees or less, or meet the standard set by SBA for small businesses. ***For newspaper publishers, SBA has set a limit of 1,000 employees or less.*** Sole proprietors, independent contractors and other self-employed individuals are also eligible.

Express Loans

The CARES Act also increases the maximum amount of an SBA Express Loan – a Section 7(a) loan from qualified SBA lender that is processed faster than a regular loan. The maximum will be increased from \$350,000 to \$1,000,000 through the end of this year.

Loan Forgiveness

The CARES Act provides that SBA will forgive amounts paid in the first 8 weeks after receiving a PPP loan for payments made towards (1) payroll, (2) mortgage interest and rent obligations predating February 15, 2020, and (3) utility payments for service that began before February 15, 2020. This forgiveness will be reduced, proportionally, should the recipient reduce workforce or reduce wages, unless the reduction occurred within 30 days after passage of the CARES Act and was reversed through rehiring or restoration of wages before June 30, 2020. Loan forgiveness will be administered by lenders.

Economic Injury Disaster Loan (EIDL) Assistance

SBA’s EIDL program provides small businesses with loans of up to \$2 million to recover and rebuild after disaster losses. SBA directly administers the program and applications can be submitted at:

<https://disasterloan.sba.gov/ela>

Small businesses are defined the same as for Section 7(a): 500 employees or less, or meet the standard set by SBA for small businesses. ***For newspaper publishers, SBA has set a limit of 1,000 employees or less.*** The CARES Act also includes any individual acting as a sole proprietor or independent contractor. Personal guarantees on loans below \$200,000 are waived. Moreover, the requirement that the applicant must have been in business for one year and the credit elsewhere requirements are waived.

The CARES Act also allows an Emergency Grant of an advance on the loan of \$10,000, distributed within 3 days, which may be used for providing paid sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage

payments, and repaying obligations that cannot be met due to revenue losses. This advance does not need to be repaid, even if the applicant is subsequently denied.

Loan Subsidies

The CARES Act provides that SBA will pay for 6 months of principal, interest, and associated fees for existing Section 7(a) loans other than PPP loans, Section 504 SBA economic development loans, and SBA microloans. All payments under this program will relieve the borrower from the obligation of making those payments. This provision is written as a requirement for SBA, and so presumably will be applied automatically without the need for an application.

Bankruptcy

Currently, the eligibility to qualify under the Small Business Reorganization act for streamlined and flexible bankruptcy procedures under Chapter 11 is \$2,725,625. The CARES Act increases that eligibility to \$7,500,000. It also permits individuals currently in Chapter 13 bankruptcy to seek payment plan modifications if they are experiencing a material financial hardship due to the coronavirus pandemic, including extending their payments for up to seven years after their initial plan payment was due.

TREASURY PROGRAMS

Separate from the SBA loan programs, the CARES Act also authorizes \$500 billion for loans and loan guarantees from the Department of Treasury's Exchange Stabilization Fund. \$46 billion is authorized for direct loans from the Treasury to passenger and cargo air carriers and businesses important to maintaining national security. The remaining \$454 billion is authorized for loans and loan guarantees to eligible businesses, states and municipalities under Section 13(3) of the Federal Reserve Act and administered by Treasury. Historically, Section 13(3) has only been used for broad-based credit facilities for banks, as it was during the 2008 financial crisis. The CARES Act, however, significantly expands the use of the fund to cover businesses larger than the businesses covered by SBA loan programs. *It is important to note that there are significant differences between the SBA program and the Treasury programs, and that significantly more obligations will attach to participation in the Treasury programs.*

The full scope and specific terms of the program will be determined through subsequent Treasury regulations, but for the moment the CARES Act provides the following detail.

Programs and Eligibility

There are two possible programs under this section of the CARES Act: (1) direct loans from Treasury (separate from the \$46 billion authorized to specific businesses above) and (2) financing to banks and other lenders that make loans available to eligible mid-sized businesses (Mid-Sized Business Loans).

Direct Loans from Treasury

Direct loans from Treasury may be made to any business defined by the Treasury in its subsequent regulations, as long as the borrower is created or organized in the U.S. and has significant operations and a majority of its employees in the U.S. The interest rate for Direct

Loans will be set by Treasury, but is not intended to be less than the market rate prior to the pandemic. The duration of such a loan may be no longer than 5 years.

Borrowers must agree (1) not to repurchase public equity securities until 12 months after the date the loan is no longer outstanding; (2) not to pay dividends or make other capital distributions with respect to common stock until 12 months after the date the loan is no longer outstanding; and (3) to limit compensation to officers and employee.

This last requirement is specific to direct loans from the Treasury to eligible businesses. Specifically, it puts the following restrictions on recipients from loan origination until the loan has no longer been outstanding for one year (the Loan Period):

- (1) any officer or employee with compensation over \$425,000 in 2019 will be limited to 2019 compensation during any 12 months of the Loan Period, and severance pay or other termination will be limited to twice 2019 compensation; and
- (2) any officer or employee with compensation over \$3,000,000 in 2019 may, during any 12 months of the Loan period, only receive compensation of \$3,000,000 plus 50% of the excess over \$3,000,000 received in 2019 (so if the employee received \$4,000,000 in 2019, compensation would be limited to \$3,500,00).

Mid-Sized Business Loans from Lenders

Mid-Sized Business Loans are targeted at businesses and nonprofits between 500 and 10,000 employees. They will be provided by banks and other financial institutions financed by Treasury. Lenders supported by Treasury have not yet been defined, but presumably eligible lenders will be designated by subsequent Treasury regulations.

The terms of Mid-Sized Business Loans are limited to an interest rate of no more than 2% per year, and the Secretary may, in his discretion, grant limited loan forgiveness by determining that for the first 6 months no principal or interest is payable.

Prospective recipients must make a series of certifications – that the recipient is a U.S. business, is not a debtor in bankruptcy, and that the uncertainty of economic conditions makes the loan necessary to support ongoing operations. Recipients must also certify that it will abide by a series of restrictions on operations: recipients must

- (1) use funds to retain at least 90% of the recipient's workforce at full compensation and benefits until September 30, 2020;
- (2) intend to restore 90% of its workforce as of February 1, 2020, and restore all compensation and benefits no later than 4 months after the end of the federal public health emergency;
- (3) not pay dividends on common stock or repurchase public equity securities while the loan is outstanding;
- (4) not outsource or offshore jobs for 2 years after completing repayment;
- (5) not abrogate existing collective bargaining agreements for 2 years after completing repayment; and

- (6) the recipient will remain neutral in any union organizing effort during the term of the loan.

Note that the compensation restrictions described above for direct loans from Treasury do not apply to Mid-Sized Business Loans under the wording of the CARES Act.

EXPANSION OF UNEMPLOYMENT INSURANCE

The CARES Act significantly expands unemployment benefits by providing additional federal funding in addition to what states may already provide. As a general matter, state unemployment insurance payments range from \$200 to \$550 a week, and can be paid anywhere from 12 to 28 weeks, depending on the state program. The definition of individuals who qualify for unemployment benefits is also expanded to those who are affected by the coronavirus, defined very broadly. Eligibility would be expanded to include an independent contractor such as a carrier.

The CARES Act will provide the following additional benefits through December 31, 2020:

- (1) provides payments to individuals not usually eligible for benefits, such as self-employed, independent contractors and individuals with a limited work history;
- (2) provides an additional \$600 per week for up to four months;
- (3) pays first week of benefits for states that pay benefits on application rather than waiting one week;
- (4) after state unemployment runs out, provides an additional 13 weeks of payments; and
- (5) provides funding for states to support “short time” compensation, where employers may reduce hours and states may then pay pro-rated unemployment benefits.

RETIREMENT AND PENSION FUNDS

The CARES Act enacts several modifications to the rules applicable to 401Ks and other retirement accounts. Businesses should be aware of these changes as they may result in significant withdrawals from 401Ks.

The CARES Act waives the 10% early withdrawal penalty for distributions of up to \$100,000 for coronavirus-related purposes made on or after January 1, 2020. Income from such a withdrawal is then taxed over three years. The CARES Act also waives required minimum distributions for 2020, to provide relief to individuals who might otherwise have to withdraw significant amounts during the economic slowdown.

The CARES Act also provides relief for single employer pension plans. First, it allows companies with more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until January 1, 2021. At that time, contributions due earlier would be due with interest. Second, it provides that a plan’s status for benefit restrictions (allowed for underfunded plans under the Pension Protection Act of 2006) as of December 31, 2019, will apply throughout 2020.

TAX CODE CHANGES

The CARES Act provides for several significant temporary changes to the tax code that will impact payroll taxes, charitable contributions, benefits, and tax treatment of losses and depreciable property. Consult your tax advisor before making business decisions based on these changes.

Employment Tax Credit

The CARES Act provides a credit against employment taxes of 50% of “qualified wages” for each employee from March 13 through December 31, 2020. The credit can be paid to any trade or business, and with respect to any quarter (1) had its business fully or partially suspended due to government orders or (2) suffered a decline in gross receipts over a period beginning when gross receipts were less than 50% compared to the same quarter in the prior year and ending when gross receipts exceed 80%.

“Qualified wages” is defined based on the number of employees. For businesses with more than 100 employees, qualified wages are limited to wages paid for specific employees who are not providing services due to shutdown or during decline period. For businesses with 100 employees or fewer, qualified wages are all wages paid during the eligibility period.

The employment tax credit will only apply to first \$10,000 of employee compensation, including health benefits.

Delay of Payment of Employer Payroll Taxes

The CARES Act delays employer payroll taxes -- meaning the 6.2% Social Security tax -- paid by employers and self-employed individuals. Under the CARES Act, 50% will be due December 31, 2021 and the remainder will be due December 31, 2022.

Net Operating Losses

The CARES Act loosens restrictions on tax treatment of net operating losses by allowing such losses from 2018-2020 to be carried back 5 years to reduce prior year income, and also by removing the taxable income limitation and thus allow a full offset against income.

Corporate Alternative Minimum Tax

The corporate alternative minimum tax (AMT) was repealed by the Tax Cuts and Jobs Act (TCJA) in 2017, though businesses were allowed to claim a refund of AMT credits through 2021. The CARES Act increases liquidity for businesses by allowing them to accelerate the credit by claiming the entire amount for either the 2018 tax year or the 2018 and 2019 tax years, and then receive a refund from Treasury within 90 days of a claim.

Deductible Interest

The CARES Act increases the amount of deductible interest expense businesses may claim, raising the limit from 30% of taxable income to 50% for tax years 2019 and 2020.

Qualified Improvement Property

The TCJA had intended to provide bonus depreciation to “qualified improvement property.” Bonus depreciation allows businesses to write off the entire cost of improvement to property in

the year the costs were incurred, rather than depreciating that cost over the useful life of the property. Qualified improvement property is generally defined as any improvement made to the interior portion of a nonresidential building any time after the building was placed in service.

The TCJA should have made qualified improvement property eligible for bonus depreciation by changing its depreciable life to 15 years. The TCJA, however, neglected to do so. The CARES Act fixes this oversight by reducing the depreciable life of qualified improvement property to 15 years, and making the change retroactive to January 1, 2018, thus allowing business owners to file amended returns to claim the entire deduction they otherwise would have been entitled to claim.

Charitable Contributions

The CARES Act raises the limit on corporate charitable donations of 10% of taxable income to 25% of taxable income. Separately, it raises the limitation on deductions for contributions of food inventory from 15% to 25%.

Employer Payments of Student Loans

The CARES Act encourages employers to provide a student loan repayment benefit by allowing the employer to contribute up to a \$5,250 payment against an employee's loans, which would be tax-free compensation to the employee.

FAMILY MEDICAL LEAVE ACT

The CARES Act makes several changes to the Family Medical Leave Act, clarifying Coronavirus relief provided in earlier laws by adding:

- (1) employers shall not be required to pay more than \$200 per day and \$10,000 in aggregate for paid leave.
- (2) employers shall not be required to pay more than \$511 per day and \$5,110 in the aggregate for emergency paid sick leave; and
- (3) employers shall not be required to pay more than \$200 per day and \$2,000 in aggregate for leave to care for a quarantined individual or child.

The CARES Act also expands availability of COVID-19 FMLA Leave and COVID-19 Paid Sick Leave enacted by the Families First Coronavirus Response Act earlier this year. Any individual laid off on or after March 1, 2020, who is then rehired on or after April 1, 2020, and who had been employed by the employer for at least 30 of the 60 days prior to the termination, will be eligible for COVID-19 FMLA Leave upon rehire. All re-hired employees will be eligible for COVID-19 Paid Sick Leave upon rehire.

The CARES Act also accelerates tax credits to employers for paying for leave under the Family Medical Leave Act by providing for advance tax credit, rather than waiting until the end of the tax year.