

The CARES Act: Small Businesses

Understanding how the stimulus bill affects small businesses

Given the enormity of the 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act, there is much to consider in determining how provisions in the stimulus bill can help small businesses.

OVERVIEW

Passed on March 27, 2020, the CARES Act provides an estimated \$2 trillion in fiscal stimulus to combat the economic impact of COVID-19, and provides the healthcare industry the financial support, equipment and protection it needs to combat the virus.

As the COVID-19 pandemic has affected life in ways we couldn't imagine, the deadly virus and efforts to contain the spread have prompted a significant government response. The legislation is intended to combat the economic risks associated with a slowdown in individual spending and helps businesses of all sizes avoid closures and employee layoffs. It also provides necessary funds to help support states and municipalities.

This document highlights the major small business provisions in the CARES Act and how they can help during this unforeseen time.

SMALL BUSINESS PAYCHECK PROTECTIONS

Inside the relief bill, Congress has appropriated \$349 billion in small business loans through the Small Business Administration (SBA) to help qualifying small businesses cover necessary business expenses, including payroll (from 2/15/20 - 6/30/20) for individual employees with compensation up to \$100,000. This will help small businesses stay open and allow them to keep paying their employees to be ready to go back to work when this pandemic ends. The hope is with this assistance, employees will have enough resources to survive and they can go back to work. As per the 2018 Small Business Profile from the SBA, small businesses employ 58.9 million people, or 47.5% of U.S. employees. The effect of having that percentage of people not working or receiving a paycheck would decimate the economy.

IMPORTANT TOPICS

- Small business paycheck protections
- Economic disaster loan and grants
- Treasury loans, loan guarantee fund, and Federal Reserve programs
- Support for impacted industries and general economic support
- Business tax provisions
- Bank provisions
- Healthcare funding
- Educational funding

LOAN PROVISIONS

Small businesses are defined as having 500 or fewer employees, or a number chosen by the SBA. Certain businesses under the North American Industry Classification (NAIC) code 72, like restaurants and lodging operations that do not employ more than 500 employees per physical location, are eligible as well. The loans are up to 2.5 times the average monthly payroll cost in 2019, or up to \$10 million. The maximum interest rate for these loans is 4% for up to 10 years. Payments for loans can be deferred for at least six months but no more than one year with no prepayment penalty.

Businesses can use these funds for group health benefits, payroll costs, interest payments on mortgages, rent, utilities, and interest on debt for expenses.

What is a PPP Loan

Paycheck Protection Program Loan, also known as PPP Loans, will charge interest at no more than 4% and will be administered by the Small Business Administration (SBA). Payment of interest, principal and fees will be deferred for at least six months but not more than 1 year. As the program's name implies, PPP Loans are designed to provide cash to small businesses, including sole proprietors and independent contractors.

Types of Businesses Eligible for a PPP Loan

- Businesses and entities must have been in operation on February 15, 2020.
- Businesses, nonprofits, veterans' organizations, and tribal concerns with fewer than 500 employees or the applicable industry size standard under SBA rules.
- Individuals who operate a sole proprietorship or as independent contractors and eligible self-employed individuals.
- Any business that employs not more than 500 employees per physical location of the business concern and that is assigned a NAICS code beginning with 72, for which the affiliation rules are waived.
- Affiliation rules are also waived for any business concern operating as a franchise that is assigned a franchise identifier code by the Administration, and company that receives funding through a Small Business Investment Company.

To learn more about an SBA loan, visit www.sba.gov.

LOAN FORGIVENESS

Loans can be forgiven if used for payroll costs, mortgage payments, rent payments and utility payments. Loan forgiveness will also be excluded from taxation. Small

businesses must have maintained the same number of employees through the end of June 2020, otherwise the forgivable loan portion may be reduced. Reductions in the amount forgiven will also be applied if employees who make less than \$100,000 have their compensation cut by more than 25%. Any lay offs that occurred prior to accepting the loan will not be subject penalties. But if those businesses rehire employees who were laid off after accepting the loan, they will receive additional credit to cover those wages.

Loan forgiveness will be issued by approved lenders. For details on the program, see the SBA or contact your local SBA-approved lending bank or financial institution.

ECONOMIC DISASTER LOAN AND GRANTS

The CARES Act expands access to Economic Injury Disaster Loans under Section 7(b)(2) of the Small Business Act.

Loans are available for reasons other than payroll costs. This also allows for emergency grants in the form of an immediate advance of up to \$10,000 if a business owner applies for a disaster loan, even if not approved for disaster loan.

This provision benefits those with existing SBA loans or new loans obtained within six months of the signing of the bill where the SBA will pay six months of principal, interest and fees on qualifying loans.

TREASURY LOANS, LOAN GUARANTEE FUND, AND FEDERAL RESERVE PROGRAMS

For businesses with between 500 and 10,000 employees, the U.S. Treasury's Exchange Stabilization Fund has set up direct loans to offset the effects of decreased revenues and keep people working. Interest rates on these loans is capped at 2% and borrowers can defer payments for a minimum of six months and up to one year.

Businesses applying for loans:

- Must retain at least 90% of their staff at full compensation and benefits until September 30, 2020.
- Must restore at least 90% of their staff that existed on February 1, 2020, and restore all compensation and benefits to workers within four months of the end of the public health emergency.
- Must not outsource or offshore jobs for at least two years after repayment of the loan.

- Will not pay dividends to its stockholders or repurchase any equity security or its parent that is listed on a securities exchange while the loan is outstanding, except to the extent required under a contractual obligation in effect before the CARES Act was enacted. Businesses must not end collective bargaining agreements for at least two years after repayment of the loan, and must not block union organizing while the loan is outstanding.

Companies owned by the president, vice president and members of Congress or cabinet heads are not eligible for any loans.

SUPPORT FOR IMPACTED INDUSTRIES AND GENERAL ECONOMIC SUPPORT

The relief bill allocates a \$500 billion fund to help the hardest-hit businesses and industries. This includes \$454 billion in loans and guarantees investments in programs to eligible businesses, including airlines, air cargo carriers, integral national security businesses, states, and municipalities. The Treasury can also use a credit fund to purchase obligations or other interests directly from issuers or from the secondary market to provide liquidity where needed.

It also provides payroll protection grants to protect airline and air cargo employees and contractors and keep workers employed for when normal business levels resume. Further support for airlines includes suspension of certain air travel and aviation fuel excise taxes through January 1, 2021. Compensation for these loans include interest and equity stakes in airlines if needed by warrants, stock options, or common or preferred stock.

There will be restrictions on executive compensation for certain officers and employees. Companies can't buy back their own shares or pay out dividends until one year after the loan is repaid. Airlines that receive loans must maintain service routes and destinations.

Some other businesses essential in keeping the economy moving that are eligible for funds include the United States Postal Service (USPS), airports, mass transit systems and Amtrak. There are also funds allocated for emergency appropriations for government agency response efforts.

BUSINESS TAX PROVISIONS

PAYROLL TAX DEFERRAL

A key provision of the stimulus bill provides employers the

ability to delay the payment of employer payroll taxes until December 31, 2021. At that time, half of the payroll tax will be due with the rest due by December 31, 2022. This is intended to try to alleviate the burden on employers who have struggled to make payroll. This also includes self-employed individuals. Businesses that take out paycheck loans may not be eligible for this deferral.

NET OPERATING LOSS (NOL) CARRY BACK

Businesses will be able to carry back NOLs again, which were allowed prior to the 2017 Tax Cuts and Jobs Act. The NOL carry back option allows businesses to use the losses against prior year income, which helps to reduce prior year income and claim refunds. The 2017 tax act disallowed the option to use an NOL for prior years and only to be carried forward indefinitely (offsetting income in future years).

The CARES Act allows businesses to use their 2018, 2019 or 2020 NOL to be carried back up to five years, which could provide refunds to some businesses needing cash. Another provision changes the amount of the NOL that could be used against income. Under the 2017 tax act, businesses could only use an NOL to offset 80% of taxable income, whereas the CARES Act allows businesses to offset up to 100% of taxable income for 2018, 2019 and 2020.

The CARES Act also removes the 2017 tax act's limitation on business losses for non-corporations. Businesses should speak with their CPA to discuss the use of prior year NOLs or suspended losses.

QUALIFIED IMPROVEMENT PROPERTY CORRECTION

The act also corrects an element of the 2017 tax act that prevented some businesses with "qualified improvement property" – defined as improvements made to the interior of nonresidential buildings – from claiming accelerated (bonus) depreciation for business investment. It was intended to allow businesses to take depreciation quicker and lower taxable income to provide an incentive for investment, but this new category of "qualified improvement property" was left out. Now, a business with this category of property may file amended tax returns to claim this benefit, which may provide a tax refund. Businesses that could benefit from this include real estate owners, restaurants and retail businesses.

EMPLOYEE RETENTION CREDIT

The act provides an employee retention credit for qualified businesses with reduced revenue due to government restrictions in COVID-19. Operations must have been fully or partially suspended and gross receipts (revenue) must have

declined by more than 50% compared to the same quarter in the prior year. The credit is equal to up to 50% of qualified wages up to \$10,000 (including health benefits) per employee, resulting in a maximum credit of \$5,000 per employee.

There are different stipulations for different business sizes based on qualified wages and number of employees (less than 100 or 100 or more). Any wages used for the new payroll tax credit for family leave or sick leave in previous coronavirus bills or used for SBA paycheck protection program cannot be used.

OTHER NOTABLE PROVISIONS

Another provision includes a temporary increase of limits on business interest expenses from 30% to 50% of adjusted taxable income for tax years 2019 and 2020. This provides higher deductions, which lowers taxable income.

The charitable deduction limit also increased from 10% of adjusted taxable income to 25%.

BANK PROVISIONS

As financial institutions are a vital part of the economy and an essential middleman to distribute funds to individuals and businesses, the bill provides a provision to reduce regulatory requirements on financial institutions to increase the speed and amount of funds into the hands of the people who need them.

Provisions include:

- Temporarily authorizing the Office of Comptroller of the Currency to exempt any transaction from its lending limits if the exemption is in the public's best interest.
- Lowering the community bank capital ratio to lend out more and providing a reasonable grace period to get back to limits.
- Providing temporary relief for loan modifications for impacted borrowers to ease restructure debt without holding extra capital, which would otherwise be categorized as troubled debt restructuring (TDR).
- Adding non-bank financial companies to assist in distributing funds.
- Providing relief from current expected credit losses (CECLs) through December 31, 2020, or the termination of the current public health emergency, to delay financial institutions from measuring credit losses.

- Temporarily suspending the limitation on Exchange Stabilization Funds for guarantee program for the U.S. Money Market Fund industry.
- Providing a 100% guarantee on SBA 7(a) loans.
- Allowing the FDIC to guarantee bank accounts through the end of the year.
- Prohibiting foreclosures for 60 days, a moratorium on eviction filing for 120 days, and a one-year forbearance for borrowers who have federally backed mortgages who have experienced financial hardship due to COVID-19. Federally backed mortgages include those purchased or securitized by Fannie Mae or Freddie Mac; insured by the Federal Housing Administration, the U.S. Department of Veterans Affairs or the U.S. Department of Agriculture (USDA); and directly issued by USDA.

HEALTHCARE FUNDING

The act also takes aim to combat the public health impact that could drain medical resources and have serious repercussions for medical institutions. Included are funds to help offset costs to hospitals and other providers. Other funds are dedicated to assist state and local response measures for detection, diagnostics, prevention and treatment of COVID-19, and provide for an increase to the national stockpile for drugs, protective equipment, medical supplies and additional funding for FEMA's Disaster Relief Fund.

MEDICARE INCLUSIONS

Medicare usually pays 80% of the fee for services. Generally, the provider does not receive the full 80%, as Medicare has a fee that reduces the payments to providers by 2%, called the 2% sequestration. The CARES Act eliminates this 2% fee through the end of 2020. Medicare will also increase payments by 20% to the diagnosis-related group rate for patients with COVID-19 and eliminate Part B cost-sharing for COVID-19 testing and any future vaccines. It also allows states to offer COVID-19 testing and related services through Medicaid regardless of eligibility without cost-sharing. These changes allow needed funds for service providers and more access to testing for people without insurance.

TELEHEALTH SERVICES

The act expands and encourages telehealth services by lessening the requirements to make these services available to more people during the emergency. It reauthorizes programs such as telehealth network and telehealth resource

centers grants, several rural health grant programs, provides for modernization of the Public Health Service, and several health workforce development programs.

OTHER HEALTHCARE PROVISIONS

Included in the bill is a provision that prioritizes reviews of drug applications for drugs that may face a shortage.

Another allows the FDA to regulate certain non-prescription drugs that are marketed without an approved drug application. It reforms the regulatory process for OTC drug approvals, permitting the FDA more flexibility and providing incentives for pharmaceutical companies to research and manufacture innovative drugs.

EDUCATIONAL FUNDING

As educational facilities have had to close to keep students and staff safe, \$30 billion is allocated for instructional continuity. The act appropriates funds to institutions of higher education to prevent, prepare and respond to COVID-19. Funds may be used for lost revenue, technology costs associated with the transition to distance learning, and grants to students for food, housing, course material technology, healthcare and child care.

Let's work together with your tax and legal professionals to
determine how the legislation affects you directly.

While we are familiar with the tax provisions of the issues presented herein, as financial advisors of Raymond James, we are not qualified to render advice on tax or legal matters. You should discuss tax or legal matters with the appropriate professional.

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