

CARES Act Summary

DISCLAIMER: The below summary is based on the CARES Act itself and summaries from Bloomberg Law, Venable LLP and Foley & Lardner LLP, all of which are attached. This is a good-faith attempt to provide a quick review of aspects of the CARES Act which we feel are relevant to our clients. Any execution/application of these provisions needs to be done only after you have consulted with your accountant, tax and/or labor counsel. The below cannot be considered accounting, tax or legal advice.

Keeping American Workers Employed & Paid Act

Small Business Loan Program

- Small Business 7(a) Loan Guaranty Program
- Employers have to maintain payroll during pandemic
- \$349b total available under the program
- Loan period = 2/15/2020 – 6/30/2020
- Businesses who qualify
 - For profit business with < 500 EE's made up of full-time, part-time and "other basis" employees
 - Sole proprietors
 - Independent contractors
 - Certain self-employed individuals
 - Businesses with multiple locations but less than 500 EE's at each location in Accommodation and Food Services industries
 - Tribal businesses with < 500 EE's
 - Non-profit 503(c) organizations
 - 501(c)(19) veterans organizations
- Loan amount = 250% of average monthly payroll costs incurred in the 365-day period prior to the date of the loan with salaries capped at \$100,000 per employee and max loan capped at \$10m
- Payroll costs means the sum of payments of any compensation with respect to employees that is:
 - Salary, wage, commission or similar compensation
 - Payment of cash tip or equivalent
 - Payment for vacation, parental, family, medical or sick leave
 - Allowance for dismissal or separation
 - Payment required for the provisions of group health care benefits, including insurance premiums (this could include medical, hospital indemnity, supplemental executive reimbursement plan, H.S.A., H.R.A. and F.S.A.)

- Payment of any retirement benefit
 - Payment of state and local tax assess on the compensation of employees AND
- The sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment or similar compensation and that is in an amount that is not more than \$100,000 in 1 year, as pro-rated for the covered period AND **shall not include**
- Compensation of an individual employee in excess of an annual salary of \$100,000 as prorated for the covered period
 - Taxes imposed or withheld under chapters 21, 22 or 24 of IRC
 - Any compensation of an employee whose principal residence is outside of the US
 - Qualified sick leave and qualified family leave un the Families First Coronavirus Response Act
- Loan can be used for the following purposes
 - Payroll costs
 - Group health care benefits such as paid sick, family or medical leave
 - Insurance premiums
 - Salaries and wages
 - Commissions, cash, etc., compensation to sole proprietors or independent contractors (including commission-based compensation) up to \$100,000 in 1 year, pro-rated for the covered period
 - Interest on any mortgage obligation
 - Rent
 - Utilities
 - Interest on other debt obligations
 - Borrower has to certify that loan request is necessary to current economic conditions, funds will be used to retain workers and maintain payroll, and that the recipient does not have an application pending or has not received funding **under this** section for the same purpose and duplicative amounts
 - Lenders will determine whether borrower was operational on 2/15/2020, had employees (or independent contractors) to whom it paid salaries and for whom it paid payroll taxes
 - Limitation on borrowers from receiving assistance and economic injury disaster loans through the SBA for the same purposes;
 - Provides for up to \$1m in small business loans through SBA Express Loans program through 12/31/2020

Loan Forgiveness

- Covered period = 8 weeks from the date of the loan origination
- The portion of the loan forgiven will be the sum of

- Payroll costs
- Mortgage interest payments on mortgages incurred prior to 2/15/2020
- Rent on leases established prior to 2/15/2020
- Utilities – electricity, gas, water, transportation, telephone & internet access for which services began before 2/15/2020
- Loan forgiveness amount reduced for employers terminating employees and cutting wages during the covered period
 - Divide the # of full-time equivalent employees (FTE's) employed during the Covered Period (8 weeks from the date of the loan origination) by
 - The average # of FTE's per month employed 2/15/2019 – 6/30/2019 OR
 - The average # of FTE's per month employed 1/1/2020 – 2/29/2020
 - For seasonal employers, use the average FTE's 2/15/2019 – 6/30/2019
 - Loan forgiveness amount will be reduced by the amount of any total salary or wage reduction in excess of 25% of total salary or wages of the employee during the most recent full quarter during which the employee was employed prior to the covered period
 - Employees considered in these calculations are employees who make less than \$100,000
- Employers who reduced pay of employees by more than 25% and/or laid off workers between 2/15/2020 and 6/30/2020 may still obtain loan forgiveness by re-hiring employees previously laid off and/or restoring their pay – the rehire and restoration of pay most likely needs to coincide with the loan origination date
- Employers with tipped employees may receive forgiveness for additional wages paid to tipped employees

Term of Loan

- Defer loan payments for 6 months possibly up to 1 year
- Maturity 10-years after borrower's application for forgiveness
- Waives collateral and personal guarantee requirements; waives fees for borrowers and lenders; waives pre-payment penalties
- Caps interest rate at 4%
- SBA will guarantee 100% of the outstanding balance
- Canceled debt would be excluded from borrower's gross income for tax purposes

Emergency EIDL Grants

- \$10b in small business loans as part of the SBA's economy injury disaster loan (EDIL) program
- Covered period = 1/31/2020 – 12/31/2020

- Eligible entity = small businesses (< 500 EE's), private non-profit organizations, small agricultural cooperatives, sole proprietors, independent contractors, cooperatives or ESOPS with fewer than 500 EE's and tribal businesses
- Can request advance of loan up to \$10,000 which will be distributed by SBA within 3 days of application submission
- No requirement to re-pay advance even if loan is denied
- Advance can be used to provide paid sick leave to employees, maintain payroll, address increased costs to obtain materials, rent, mortgage payments, and repay obligations unmet due to revenue loss
- Advance amount will be reduced from loan forgiveness amount under the SBA 7(a) program

Bankruptcy

- Chapter 11 debt limit moved to \$7.5m
- Amends definition of income under Chapters 7 and 13 to exclude COVID-19-related payments from income for bankruptcy purposes
- Allows payment plan modifications under Chapter 13

State Trade Expansion Program: provides for reimbursements for financial losses related to a foreign trade mission or a trade show exhibition that was cancelled solely due to COVID-19

Assistance for American Workers, Families, and Businesses

Unemployment Insurance

- Expands scope to individuals who are eligible for unemployment benefits to the following individuals:
 - Individuals furloughed or out of work as a direct result of COVID-19
 - Self-employed workers
 - Gig workers
 - Individuals who have exhausted existing state and federal unemployment benefits
 - However, excludes those who can telework with pay and individuals receiving paid sick leave or other paid benefits
- Provides additional \$600 per week in federal pandemic unemployment compensation to individuals receiving state unemployment benefits and made available through 7/31/2020
- Extends unemployment benefits for individuals affected by COVID-19 for up to 39 weeks, which would include any week for which they receive regular compensation or extended benefits, AND if they meet any of the following:

- Diagnosed with COVID-19 or experiencing symptoms of COVID-19 and is seeking a medical diagnosis
- A member of the individual's household has been diagnosed with COVID-19
- Providing care for a family member diagnosed with COVID-19
- A person in the household is unable to attend school or another facility that is closed as a direct result of the COVID-19 pandemic
- Individual is unable to reach the place of employment due to a quarantine for COVID-19 or been advised to self-quarantine for COVID-19
- Individual has become the breadwinner or head of household due to head of household having died due to COVID-19
- Individual must quit his or her job due to COVID-19
- Individual's place of employment is closed due to COVID-19
- Coverage period = 1/27/2020 – 12/31/2020
- If individuals have already exhausted regular unemployment benefits, pandemic emergency unemployment compensation will provide additional 13 weeks of benefits.

Individual Rebates

- Tax credit of \$1,200 for individuals who are not dependent of another taxpayer and have a work-eligible Social Security #; the amount will be increased by \$500 for every qualifying child
- Rebates reduced by \$5 for every \$100 over \$150,000 (joint filing) or \$112,500 (head of household filing) or \$75,000 (all other filers)
- Rebate is determined off of 2019 tax filing or 2018 tax filing if 2019 taxes are not filed
- Rebate is phased out at \$99,000 for single filers, \$146,500 for head of household providers with one child and \$198,000 for joint filers with no children
- Ineligible individuals = non-resident aliens, individuals eligible for 151 personal exemptions, estate and trusts

Retirement Funds

- Waives 10% early withdrawal penalty for COVID-19-related distributions up to \$100,000
 - Withdrawal made between 1/1/2020 and 12/31/2020
 - Qualifications for COVID-19 Distributions
 - Diagnosis of COVID-19 for individual, spouse or dependent OR
 - Experience adverse financial consequences as a result of quarantine, furlough or layoff OR
 - Experience a reduction in hours or inability to work due to lack of childcare
- Income from distribution will be taxed over 3 years
- Individuals may re-pay withdrawal over 3 years without triggering that year's cap on contributions

- Provides for increase in plan loan limits from \$50,000 to \$100,000; loan repayments delayed for one year
- Loan has to be made within 6 months of CARE Act date
- Temporarily waives minimum distribution rules for 403(a), 403(b), defined contribution plans, 457(b) defined contribution plans and individual retirement plans
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Charitable Contributions

- For individuals who do not itemize, individuals can take above-the-line deduction of up to \$300 for charitable contributions beginning in 2019 and 2020
- For 2020, individual limitation of charitable contributions is suspended
- For 2021 - 2025 individual limitation of charitable contributions will be 60% of taxpayer's adjusted gross income
- For 2020, corporate limitations of charitable contributions is increased to 25% of taxable income (previously 10%)
- For 2020, corporate deduction for food inventory contributions will be increased from 15% to 25%

Employer Payment of Student Loans: From 3/27/2020 – 12/31/2020, employer payment of an employee's student loan debt will be tax-free

Business Provisions

- Employee Retention Credit for Employees Subject to COVID-19 Closure
 - For wages paid or incurred 3/13/2020 – 12/31/2020
 - Employers receive credit if a government order related to the pandemic requires employer to partially or completely suspend operations OR if gross receipts declined by certain thresholds
 - Alternate rules apply for tax-exempt organizations
 - Employer cannot receive the credit if they receive SBA 7(a) loan
 - Refundable payroll tax of 50% of qualified wages for each calendar quarter
 - Wages taken into account should not exceed \$10,000 including health benefits paid to an eligible employees
 - For employers with 101+ EE's, wages are wages paid to employees when they are not providing services due to COVID-19-related circumstances
 - For employer < 101 EE's, all wages qualify
- Employer Payroll Taxes
 - Payroll taxes deferred through the end of 2020
 - Deferred funds paid with half of the amount to be paid by 12/31/2021 and the other half by 12/31/2022

- Deferrals do not apply for an employer with small business loan debt forgiven under SBA 7(a)
- Defers 50% of self-employed Social Security tax payments
- Net Operating Losses (NOL):
 - Loss from 2018, 2019 or 2020 can be carried back by 5 years preceding the loss, allowing the taxpayer to apply the NOL against any taxable amount to get a tax refund
 - Removes the taxable income limitation to allow NOL to fully offset income
 - Also applies to non-corporate taxpayers
- Accelerate the corporate alternative minimum tax credit
- Business can deduct interest expenses at 50% for 2019 and 2020 (previously 30%)
- Business can immediately write off costs associated with improving facilities

Other Provisions

Health Care: Health plans cannot charge for diagnostic tests and preventative services associated with COVID-19

Education

- Colleges/Universities
 - 100% of unexpended federal work-study allotments may be converted to grants for students affected by COVID-19
 - Supplemental Educational Opportunity Grant allocations to undergraduate and graduate students facing unexpected expenses and unmet financial need resulting from qualifying emergency
 - Work-study payments may continue to students who cannot work due to COVID-19
 - Students who cannot complete semester due to COVID-19
 - will not have that semester count against their lifetime subsidized loan eligibility or Pell grant eligibility
 - do not have to repay associated portions of Pell grants or other loan assistance
 - will have the academic requirements waived for qualification of Pell grants and other loan assistance
- Federal Student Loan Borrowers
 - Federal Student Loan payments suspended through 9/30/2020
 - Interest shall not accrue during this period

- For Federal loan forgiveness programs, loan rehabilitation program and reporting to consumer reporting agencies, loans will be deemed to have been paid during this period
- During this period all involuntary collections including wage garnishments and reduction of tax refunds will be suspended

Labor Provisions

- Amendment to Emergency Sick Leave program enacted under the 2nd Coronavirus Response Measure
 - Certain workers laid off on or after 3/1/2020 would be eligible to receive full family leave and sick leave benefits if they are rehired
 - The caps would remain the same as previously outlined
 - Treasury would have to waive penalties for employers failing to make payroll payments in anticipation of tax credits for the paid family and sick leave programs
- Certain tax-related ERISA deadlines can be postponed
- Single-employer pension plan contribution due in 2020 can be delayed to 1/1/2021 and plans' adjusted funding target attainment % as of 12/31/2019 may be treated as including calendar year 2020

Health Savings Accounts (H.S.A.) and Flexible Spending Accounts (F.S.A.)

- Telehealth co-pays may be waived under high deductible health plans with H.S.A.
- Over the counter medical products including menstrual care products are treated as medical products and may be purchased pre-tax with H.S.A. and F.S.A. funds