Proposed Legislation - COVID-19
CARES Act: Coronavirus Aid, Relief, and Economic Security Act

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This summary of proposed provisions applicable to businesses has been prepared based on non-final versions of the legislation, press reports, and other summaries. We are providing this summary to give clients a glimpse of the type of assistance and programming the federal government is expected to offer in response to the current pandemic, but it is subject to the final provisions of the legislation.

On March 25, 2020, U.S. Senate negotiators and the Trump Administration reached agreement on the CARES Act, a $2 trillion stimulus package that would be the third phase of the federal government's response to the COVID-19 pandemic. It includes $500 billion in corporate liquidity from the Federal Reserve; $377 billion for small business loans and other assistance; $150 billion for hospitals, community health centers, and health care providers; and $150 billion for state and local governments and includes tax rebates, 13 weeks of expanded unemployment benefits, and business tax relief.

The proposed stimulus package needs to be passed by both the Senate and the House, and then signed by the president. The Senate is currently considering the bill. The House is not in session, but will return to the floor on March 26 to consider the bill.
Provisions of the proposed legislation applicable to businesses include:

**SMALL BUSINESS ECONOMIC INJURY DISASTER LOANS AND OTHER RELIEF**

- $377 billion is proposed to be allocated for Small Business Interruption Loans and other assistance, aimed at helping small businesses make payroll and cover other expenses.
- $350 billion of such relief would come through 100% guaranteed Small Business Administration (SBA) loans, a portion of which the SBA would forgive based on allowable expenses for the borrower.
- $10 billion of the relief would be provided through direct grants for businesses that do not qualify for the Economic Injury Disaster Loans program.
- $17 billion in relief resulting from the SBA stepping in and making six months of principal and interest payments for all currently outstanding SBA backed business loans.

**ECONOMIC INJURY DISASTER LOANS**

The Economic Injury Disaster Loans would provide cash flow assistance through 100% federally guaranteed loans to employers that maintain their payroll during the pandemic. There would be no loan fees. For employers that do not lay off and continue to pay their employees, their loans would be forgiven. It is proposed that this provision apply retroactively to March 1, 2020, to encourage employers to bring workers who may have already been laid off back onto payrolls.

- Small employers with 500 employees or fewer, including nonprofits, would be eligible to apply for the loans.
- Loans would be available immediately through existing SBA-certified lenders, including banks, credit unions, and other financial institutions, and SBA would be required to streamline the process to bring additional lenders into the program.
- The secretary of treasury would be authorized to expedite the addition of new lenders and make further enhancements to expedite delivery of capital to small employers.
- The size of the loans would be tied to an applicant’s average monthly payroll, mortgage, rent, utility payments, and other debt obligations over the previous year. The maximum loan amount would be $10 million.
- Conditional upon the business retaining their employees and payroll levels during the covered period (March 1, 2020, through June 30, 2020), the portion of the loan used to cover payroll and payments on pre-existing debt would be forgiven. Further, employers with tipped employees would receive forgiveness for additional wages paid to such employees during the covered time.

**LOAN GUARANTY PROGRAM**

The bill would expand the allowable uses for the existing 7(a) SBA loan program to permit payroll support, including paid sick leave, supply chain disruptions, employee salaries, mortgage payments, and other debt obligations to provide immediate
access to capital for affected small businesses.

- The maximum loan amount for SBA Express loans would be increased from $350,000 to $1 million. These loans would provide borrowers with revolving lines of credit for working capital purposes.
- The cost of participation in the 7(a) program would be reduced for both borrowers and lenders by providing fee waivers, an automatic deferment of payments for one year, and no prepayment penalties.

**ENTREPRENEURIAL DEVELOPMENT**

The bill proposes providing grants to Business Development Centers to offer counseling, training, and related assistance to small businesses affected by COVID-19, in two forms:

- $265 million for Small Business Development Centers and Women’s Business Centers. The non-federal match for Women’s Business Centers would be waived for a period of three months.
- $10 million for Minority Business Development Agency’s Minority Business Centers.

**LOANS AND GUARANTEES FOR SEVERELY DISTRESSED SECTORS OF THE UNITED STATES ECONOMY**

The legislation would make available a total of $500 billion to be administered by the secretary of the treasury through the Federal Reserve, through the Exchange Stabilization Fund, to provide sufficiently collateralized loans and loan guarantees to eligible “seriously distressed and absolutely essential companies” and “a broad-based credit facility that would be available across categories, across sectors and industries,” according to Senator Pat Toomey (PA), including the following amounts:

- Up to $50 billion for passenger air carriers
- Up to $8 billion for cargo air carriers
- Up to $150 billion for other eligible entities

**These would be loans, not grants, and would have to be repaid.**

- The Federal Reserve would expect to be able to lend multiples of the $500 billion capital buffer appropriated to the Treasury Department, with estimates ranging up to the $4 trillion mark.
- The bill would ban stock buy-backs for any corporation that accepts government assistance during the term of the loan and for one year thereafter, and provide transparency as to the identity of loan recipients.
- Businesses owned by the president, vice president, members of Congress, and the heads of federal executive departments would be ineligible to receive loans or investments under the program.
- The legislation would create a special inspector general and five-person oversight board for the fund, with subpoena power, appointed by Congress for corporate assistance, similar to the Troubled Asset Relief Program in 2008.
- The treasury secretary would be afforded flexibility to provide collateralized
loans and loan guarantees to domestic entities “that have incurred losses as a direct result of the coronavirus global pandemic” so they can maintain operations.

- Entities eligible for loans or loan guarantees would be those for whom credit is not otherwise reasonably available at the time of the transaction.
- An entity would only be eligible for relief if the treasury secretary determines its continued operations are jeopardized as a result of losses stemming directly from the coronavirus outbreak.
- Interest rates on any loans extended by the treasury secretary would be no less than the current average yield on outstanding marketable obligations of the United States of comparable maturity.
- The legislation would explicitly bar the treasury secretary from using the funds provided to make grants or direct cash payments to entities: “Nothing in this Act shall be construed to allow the president or treasury secretary to provide relief to eligible entities except in the form of sufficiently collateralized loans and loan guarantees.”

**TAX RELIEF FOR BUSINESSES**

It is anticipated that the bill would include several tax provisions aimed at providing relief for businesses. We will be following this alert with a detailed tax analysis.

**DISASTER ASSISTANCE FOR FISHING INDUSTRY**

The bill provides $300 million to help fishermen around the country struggling due to disappearing economic markets caused by the novel coronavirus pandemic. Tribal, subsistence, commercial, and charter fishermen, as well as aquaculture farmers, are all eligible for the disaster assistance.

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