News & Events

The Federal CARES Act – What You Need to Know About the Largest Stimulus Bill in History

March 27, 2020 – Client Alert

On March 27, 2020, Congress passed a $2 trillion stimulus bill designed to provide relief to individuals and businesses impacted by the coronavirus (COVID-19) outbreak. The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) includes appropriations of more than $850 billion in loans to impacted businesses, as well as numerous tax breaks and protections for individuals and employers alike.

We are providing this executive summary of the CARES Act to alert clients to the potential benefits they may be entitled to under the Act. There are many additional intricacies to the Act that will be explored in further alerts, and many aspects that will be subject to further regulations over the coming weeks. In the meantime, our attorneys are ready to help navigate the complexities of the 883-page Act across a range of disciplines, including its implications for employment, real estate, tax, bankruptcy, and other practices.

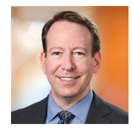
Lending for Small Businesses

The "Keeping American Workers Paid and Employed Act"[1] provides relief for small businesses (among others) impacted by the COVID-19 outbreak. The Act includes nearly $350 billion in funding for loans through the Small Business Administration (SBA) under the "Paycheck Protection Program." The program will provide small businesses of 500 or fewer employees with zero-fee loans for which principal and interest is deferred for up to a year. The maximum loan amount is $10 million and is calculated for each eligible company as 2.5 times the company's average monthly payroll costs for employees making less than $100,000. Qualifying businesses are eligible to receive these loans without personal guarantees or collateral.

The loans are subject to forgiveness in an amount of up to 8 weeks of payroll, paid sick leave, insurance costs, mortgage, rent, utility payments, and other covered obligations. Loan forgiveness may be reduced proportionally to the extent the business lays off employees or reduces their wages, according to a formula provided in the Act. Any such forgiveness reduction penalty may be cured if the employer rehires or makes up wage reductions by June 30, 2020.

ASSOCIATED PEOPLE

Josh Geller



Aaron J. Moss

ASSOCIATED SERVICES

Coronavirus Resource Center

Employment

Real Estate

Corporate, Finance & Securities

Taxation

Bankruptcy, Reorganization & Capital Recovery

ASSOCIATED TASK FORCE CONTACTS

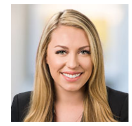
Keith Patrick Banner
Bankruptcy
310-201-7469
Email

Sarkis Haroutunia
Real Estate
310-785-6888
Email

Eric Perlmutter-Gumbiner
Corporate
310-201-7438
Email

Kelly M. Raney

In order to obtain the loan, qualifying businesses and individuals must submit an application certifying (among other things) that the uncertainty of current economic conditions necessitates the loan to support the business's ongoing operations and that the funds will be used to retain workers and maintain payroll, and/or make mortgage payments, lease payments, and utility payments. Notably, businesses in the hospitality and dining industries may be eligible for the loans even if they are not a "small business" (i.e., employing fewer than 500 individuals), provided that they employ 500 or fewer employees at each of their physical locations. Independent contractors, sole proprietors, and certain self-employed individuals are also eligible for loans.



Employment
310-201-7409
Email

The Act also expands the availability of "emergency injury disaster loans" (EIDL) and makes available $10,000 advances (payable within 3 days of applying) for businesses to maintain payroll, preserve their supply chain, or meet other obligations like rent or mortgage payments. The advances need not be repaid even if the application for the EIDL is subsequently denied.

We are prepared to assist clients in preparing necessary applications and obtaining loan forgiveness, and we encourage clients to apply promptly.

Assistance for Workers and Businesses

The "Relief for Workers Affected by Coronavirus Act" provides federal funding for unemployment benefits including $600 per week for up to four months in addition to state benefits. Notably, the types of workers who qualify for federal benefits has been expanded to include individuals not otherwise covered by state unemployment compensation laws, such as independent contractors, the self-employed and gig economy workers. Those who have been prevented from working as a result of COVID-19 (for instance, those quarantined as a result of exposure, or those whose places of employment have shut down by operation of a "shelter at home" order) will receive the same unemployment compensation benefits as regular employees receive under applicable state law.

Taxpayers are entitled to direct tax rebates in the form of checks of up to $1,200 for individuals earning up to $75,000 per year or $2,400 for couples earning less than $150,000, plus $500 per child for qualifying taxpayers. Rebates are gradually scaled down until income thresholds of $99,000 per individual and $198,000 per couple are reached, at which point they are phased out entirely. The CARES Act also relaxes certain caps on individual charitable contributions.

Retirement Funds

In the event an individual is diagnosed with COVID-19 or experiences adverse financial consequences as a result of the COVID-19 crisis, the CARES Act permits special disbursements and loans of up to $100,000 from 401k and other qualified retirement plans, waiving the normal 10% early withdrawal penalty. Any withdrawal amount required to be included in gross income may be spread out over a three-year period for this purpose.

Small Business Relief

The Act contains general payroll relief as an incentive to employers to retain their employees. Eligible employers are entitled to an employee retention tax credit equal to 50% of the qualified wages, capped at a $5,000 credit per employee. Any employer whose operations were fully or partially suspended by government order or who suffered a significant decline in gross receipts (50% year-on-year decline) is eligible for the retention credit. Payroll taxes are deferred altogether for most employers over the next two years—with half due by December 31, 2021 and the remainder by December 31, 2022. Business operating losses for 2020 can also be carried back for up to five years.

Healthcare and Paid Sick Leave Provisions

The CARES Act expands the recently enacted Families First Coronavirus Response Act (FFCRA). In addition to several changes to health care coverage for COVID-19 testing, the Act clarifies provisions relating to paid sick leave and family leave, including the following:

- It expands the definition of "eligible employees" under the FFCRA to include individuals who were: (1) laid off by their employer on or after March 1, 2020; (2) had worked for that employer for at least 30 days in the last 60 calendar days prior to the lay-off; and (3) were rehired by the employer.
- It allows for advances on the tax credits called for by the FFCRA and penalty relief for a failure to deposit tax amounts if the failure was due to the anticipation of the tax credits. The details and process for tax credit advances will be worked out in instructions provided by the Department of Labor (DOL).
- The CARES Act also makes a clarification that the paid leave dollar limits under these provisions are per employee.

Department of Labor regulations are expected in April to address additional questions and details under these Families First Act provisions.

Economic Stabilization and Assistance to Severely Distressed Sectors

The CARES Act appropriates $500 billion for loans, loan guarantees, and investments to be overseen by the Treasury Department for the benefit of states, municipalities, and certain eligible businesses, including air carriers and other qualifying businesses. The Treasury Secretary will publish procedures in the coming weeks by which companies may apply for this additional lending. Until those procedures are put in place, it is difficult to anticipate how these funds will be made available to distressed sectors of the economy. The CARES Act does place limits on executive compensation for companies that obtain economic stabilization loans. The CARES Act also creates the Office of the Special Inspector General for Pandemic Recovery to supervise the loans and investments made by the Treasury Department.

We will publish further alerts and guidance once regulations are put in place to implement these economic stabilization provisions.

Residential Mortgage Forbearance and Foreclosure Moratorium

During the COVID-19 national emergency, a borrower with a federally backed mortgage loan experiencing financial hardship as a result of the emergency may obtain a forbearance of up to 180 days, regardless of delinquency status, which may be extended for an additional period of up to 180 days at the request of the borrower. During such forbearance, no fees, penalties, or added interest shall be charged on delayed payments. Multifamily borrowers may also request forbearance for up to 30 days, with two additional 30-day extensions.

For the 60-day period beginning March 18, 2020, no servicer of a federally backed mortgage may initiate any foreclosure or execute a foreclosure-related eviction (except in the case of vacant or abandoned property). The Act further prevents landlords from bringing actions to recover possession from a tenant for nonpayment of rent for certain federally insured or guaranteed housing for a period of 120 days.

Temporary Relief for Federal Student Loan Borrowers

The Act automatically defers payments for federally owned student loans for six months, through September 30, 2020.

Bankruptcy-Related Provisions

The CARES Act amends the recently passed Small Business Reorganization Act. Where previously the SBRA applied only to small businesses with aggregate debts of less than $2.7 million, the CARES Act raises that debt limit to $7.5 million, which will provide a greater number of small businesses the opportunity to participate in the SBRA's more streamlined and less costly procedures to reorganize a small business.

The CARES Act also provides that Chapter 13 plans confirmed prior to the COVID-19 pandemic can now be amended on account of a "material financial hardship" caused by the pandemic. The Act also allows Chapter 13 debtors to exclude from their "current monthly income" (which is generally used as a baseline to calculate how much disposable income should go to pay creditors) "payments made under Federal Law" relating to the national emergency declared relating to COVID-19.

***

Should you have any questions, please do not hesitate to contact our attorneys at Greenberg Glusker.

This alert was written by Josh Geller and Aaron Moss.

Associated Coronavirus Task Force members include:

- Kelly Raney, Employment Law Group, kraney@ggfirm.com
- Eric Perlmutter-Gumbiner, Corporate & Tax Law Group, epg@ggfirm.com
- Sarkis Haroutunian, Real Estate Law Group, sharoutunian@ggfirm.com
- Keith Patrick Banner, Bankruptcy, Reorganization & Capital Recovery Law Group, kbanner@ggfirm.com

---

[1] For ease of reference, subsections of the CARES Act have been denominated with their own names. For instance, Division A, Title I of the CARES Act has been titled the "Keeping American Workers Paid and Employed Act."