



AM Law Alert

The CARES Act of 2020



The Coronavirus Aid, Relief and Economic Securities Act

by Patrick Hayes *We received some excellent feedback on our summary yesterday, and have made some minor clarifications, or in some cases, expanded upon our summaries. The write-up below contains these additions.*

On March 27, 2020, President Trump signed into law the [Coronavirus Aid, Relief, and Economic Security Act](#) (also, the "CARES Act"), a historic economic stimulus package to aid in offsetting the economic devastation caused by the COVID-19 pandemic. At \$2.2 trillion in emergency stimulus, the bill is the largest stimulus package in United

States history. We have compiled the following summary of some of the provisions of the Act that we believe are relevant to our clients. By no means is this an exhaustive summary of the Act, but we hope that it is helpful.

Title I. Keeping American Workers Paid and Employed Act

The **Paycheck Protection Loan Program** is the centerpiece of the current legislation and covers the period from February 15, 2020 through June 30, 2020. As the name suggests, it provides loans to vulnerable businesses to enable them to continue paying their employees during this economic downturn, as well as a handful of other expenses.

Who is eligible?

The Act expands the number of businesses that are eligible for SBA loans, which now include small businesses, 501(c)(3) nonprofit, 501(c)(19) veterans organizations, and tribal business concerns described in section 31(b)(2)(C) of Small Business Act. Businesses are eligible to receive the covered loan if they employ not more than the greater of (i) 500 employees or (ii) if applicable, the size standard in number of employees [established by the SBA](#). [Affiliate rules](#) still apply for determining the number of employees (meaning all companies under common control are evaluated together), except in the case of restaurants and hospitality businesses, in which case separate locations can count as free-standing businesses.

A borrower must make a good faith certification that (a) the loan is necessary due to uncertain economic conditions caused by COVID-19, (b) the entity will use the funds to (i) retain workers and maintain payroll, (ii) make lease and mortgage payments, and (iii) utility payments, and (c) the entity is not receiving duplicative funds from another SBA program.

How much?

The Act provides that the maximum amount of the loan is equal to 2.5 times the company's average total monthly payroll costs (up to \$10

million). "Payroll costs" is defined to include salary, wages, commissions, tips, PTO, health insurance, retirement benefits and local employment taxes for U.S. based service provider. It excludes compensation to employees outside the U.S. and qualified sick leave and family leave wages that are creditable under the [Families First Coronavirus Response Act](#). Prorated salary or wage costs for Employees making more than \$100,000 cannot be included in the formula for determining payroll costs

The Act also waives the requirements of being able to obtain credit elsewhere, providing a personal guaranty, and pledging collateral. Lenders will determine eligibility based on whether a business was operational before February 15, 2020 and had employees for whom it paid salaries and payroll taxes, or paid independent contractors.

How may the loan be used?

It will allow businesses to use the loan for qualified costs related to employee compensation and benefits, including (i) payroll costs, (ii) continuation of health care benefits, (iii) employee compensation (for those making less than \$100,000), (iv) mortgage interest rate obligations, (v) rent, (vi) utilities, and (vii) interest on debt incurred before the covered period.

Any loan forgiveness?

All or a portion of the loan may be forgivable, and debt service payments on the loan may be deferred for up to 1 year. In addition, the amount forgiven will not be taxed as income. Specifically, the amount forgiven will equal the amount spent by the borrower, during the 8-week period beginning on the loan origination date for (i) rent, (ii) payroll costs for workers making less than \$100,000, (iii) interest on its mortgage, and (iv) utility payments. Any loan amounts not forgiven at the end of one year are thereafter carried forward as an ongoing loan, with a maximum term of 10 years and a maximum interest rate of 4%.

For example, if Company A has a monthly payroll of \$100,000, monthly rent of \$10,000, and \$3,000 of interest, under the Act, Company A can borrow \$250,000 (2.5 times the payroll amount), assuming that all employees make less than \$100,000. However, the most that can be forgiven is \$226,000 (i.e. two months of payroll, two rent payments, and two interest payments). The balance of \$24,000 will be carried as a loan thereafter at a 4% interest rate.

The Act aims to incentivize companies to retain employees by proportionally reducing the amount forgiven by any reduction in employees retained compared to the prior year. It also encourages employers to rehire any employees who have been laid off due to the COVID-19 crisis. A borrower that re-hires previously laid-off employees will not be penalized for having a reduced payroll at the beginning of the period.

When will this be implemented?

The U.S. Small Business Administration and Treasury Department still need time to prepare this program for roll-out and to schedule a date for when they will allow banks to begin taking applications. The SBA will have 15 days from the enactment of the Act to promulgate regulations necessary to carry out CARES and 30 days to issue guidance after CARES is implemented.

Altogether, the CARES Act uses the already existing SBA organization to deploy additional financial capital. However, due to the size and strain on SBA resources, we encourage all of our clients who wish to take advantage of the Paycheck Protection Loan Program to review the [7\(a\) Loan Application Checklist](#) and check with their lenders to see if they will be participating and have any necessary documentation ready to apply. This [link](#) has a simplified overview of the Paycheck Protection Loan Program.

Any changes to bankruptcy?

The Act also expands bankruptcy relief for small businesses by amending the [Small Business Reorganization Act \(SBRA\)](#) to raise the

eligibility threshold from \$2,725,625 to \$7,500,000 of debt, for those small businesses wishing to file for Chapter 11 protection. This increase, which sunsets after one year, will allow for more struggling small businesses to file, while expediting the reorganization process and lowering costs for the debtor.

For the full summary of the CARES Act, [click here](#).

Important Information on COVID-19



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- March 25 -- [City of Austin Memorandum Causing Confusion](#)
- March 24 -- [Stay Home, Work Safe](#)
- March 24 -- [Bankruptcy and Restructuring Options](#)
- March 23 -- [The Case for Not Triggering Force Majeure](#)
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- March 19 -- [Trump Signs Law to Grant Paid Sick Leave](#)
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