

The Coronavirus Aid, Relief and Economic Security (“CARES”) Act

Highlights of Key Provisions

Small Business Assistance

Paycheck Protection Program: The measure would establish a new Paycheck Protection [Program](#) to let small businesses, nonprofits, and individuals seek loans through the Small Business Administration’s (SBA) 7(a) loan program. The measure would authorize \$349 billion in total 7(a) lending from February 15, 2020 through June 30, 2020. It would also provide \$349 billion for the SBA to fully guarantee loans under the new program, compared with a 75% or 85% guarantee for standard 7(a) loans.

During the White House press conference on March 25, Treasury Secretary Mnuchin said that he envisioned these small business loans being available as early as Friday, April 3rd with funding available the same day. The magnitude of this program is unprecedented for the SBA. Therefore, we fear there could be delays in implementation.

Eligibility for Loan Assistance: Loans would be available during the covered period for:

- Any business, nonprofit, veterans group, or tribal business with 500 or fewer employees, or a number set by the Small Business Administration (SBA) for the relevant industry.
- Sole proprietors, independent contractors, and eligible self-employed workers.
- Hotel and food service chains with 500 or fewer employees per location.

LPL cannot provide you with business or tax advice, but we see no reason if you meet the above criteria that you would be ineligible to receive a loan. We suggest that you consult with your tax attorney before proceeding in the loan process.

Where to Apply for a Loan: Lenders authorized to make loans under the SBA’s current Business Loan Program are automatically approved to make and approve loans under this new program, and they may opt to participate in the program under the terms and conditions established by the Department of Treasury.

While we anticipate the Treasury Secretary extending such authority to additional private sector lenders, [Lender Match](#) on the Small Business Administration website is a free online referral tool that will connect you with already participating SBA-approved lenders.

Terms for Loans: Eligible recipients could receive loans for as much as \$10 million or 250% of their average monthly payroll costs, instead of \$5 million. *Interest rates during the covered period would be capped at 4%.*

Recipients could use the loans to cover eligible payroll costs. This includes salaries, commissions, regular paid leave, and health-care benefits, as well as mortgage interest and utility payments. The recipient would have to make a “good faith certification” that they’ll use the funds to retain workers, maintain payroll, and pay for rent and similar expenses. Recipients couldn’t use the funds to compensate individual employees at an annual rate above \$100,000, or to pay for emergency sick or family leave under the second coronavirus response [package](#).

The measure would waive rules requiring recipients to pay certain fees, provide collateral, or be unable to obtain credit elsewhere.

Approved 7(a) lenders could issue covered loans if they determine a business was operating with salaried employees or paid contractors as of February 15, 2020. The SBA would have to assume that eligible loan applicants in operation as of February 15 were adversely affected by COVID-19, and require lenders to let them defer payments for at least six months and as long as one year.

Loan Forgiveness: The Administrator has 30 days following enactment of the CARES Act to issue regulations on these forgiveness provisions.

Recipients of SBA-guaranteed loans under the Paycheck Protection Program could apply for loan forgiveness over eight weeks for eligible payroll costs and for mortgage interest, rent, and utility payments. Certain borrowers would be eligible for loan forgiveness equal to the amount spent during an eight-week period after the origination date of the loan on:

- Payroll costs;
- Interest payment on any mortgage incurred before Feb. 15, 2020;
- Rent on any lease in force before Feb. 15, 2020; and
- Utilities for which service began before Feb. 15, 2020.

The amount forgiven would be reduced in proportion to any reduction in employees retained compared to the prior year and to the reduction in pay of any employee beyond 25% of prior year compensation.

Covered loans would have a maximum maturity of 10 years following a borrower's application for forgiveness.

Loan forgiveness would be reduced for businesses that fire employees or cut their pay.

There is relief from these forgiveness reduction penalties for employers who rehire employees or make up for wage reductions by June 30, 2020. Specifically, in the following circumstances, the forgiveness reduction rules above will not apply to an employer between February 15, 2020 and 30 days following enactment of the CARES Act:

- The employer reduces the number of Full Time Equivalent Employees (FTEEs) in this period and, not later than June 30, 2020, the employer has eliminated the reduction in FTEEs; or
- There is a salary reduction, as compared to February 15, 2020, during this period for one or more employees and that reduction is eliminated by June 30, 2020 (it is unclear whether this is also intended to be limited to employees who made under \$100,000 in 2019).

Within 90 days of determining the ultimate forgiveness amount, the Administrator must remit payment plus interest accrued through the date of payment to the lender.

There are some required processes to apply for loan forgiveness. Borrowers seeking forgiveness of amounts must submit to their lender:

- Documentation verifying FTEE on payroll and their pay rates;
- Documentation on covered costs/payments (e.g., documents verifying mortgage, rent, and utility payments);
- Certification from a business representative that the documentation is true and correct and that forgiveness amounts requested were used to retain employees and make other forgiveness-eligible payments; and
- Any other documentation the Administrator may require.

The Employee Retention Credit: This credit provides a refundable payroll tax credit equal to 50% of up to \$10,000 in wages per employee (including health benefits) paid by certain employers during the coronavirus crisis. The credit is available to employers:

- whose operations were fully or partially shut down by government order limiting commerce, travel, or group meetings due to coronavirus, or
- whose quarterly receipts are less than 50% for the same quarter in the prior year.

Wages paid to employees during which they are furloughed or otherwise not working (due to reduced hours) as a result of their employer's closure or economic hardship are eligible for the credit. However, for employers with 100 or fewer employees, all employee wages qualify for the credit, regardless of whether they are furloughed or face reduced hours.

To prevent double dipping, employers that receive Small Business interruption loans are not eligible for the credit. Additionally, wages that qualify for the required paid leave credit are not eligible for the credit.

The credit is for wages paid by eligible employers from March 13, 2020 through December 31, 2020.

Delay of payment of employer payroll taxes: The provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying a 6.2% Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The Social Security Trust Funds will be held harmless under this provision.

Similar to the Employee Retention Credit, deferral is not provided to employers receiving assistance through the Paycheck Protection Program.

Modification of limitation on losses for taxpayers other than corporations: The provision modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they can utilize excess business losses and access critical cash flow to maintain operations and payroll for their employees.

Individual Assistance

2020 recovery rebates for individuals: All U.S. residents with adjusted gross income up to \$75,000 (\$150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for the full \$1,200 (\$2,400 married) rebate. In addition, they are eligible for an additional \$500 per child. This is true even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits.

For the vast majority of Americans, no action on their part will be required in order to receive a rebate check as IRS will use a taxpayer's 2019 tax return if filed, or in the alternative their 2018 return. This includes many low-income individuals who file a tax return in order to take advantage of the refundable Earned Income Tax Credit and Child Tax Credit. The rebate amount is reduced by \$5 for each \$100 that a taxpayer's income exceeds the phase-out threshold. The amount is completely phased-out for single filers with incomes exceeding \$99,000, \$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children.

Retirement Assistance

Plan withdrawals and loan relief: The proposal would provide tax relief for retirement plan and IRA "coronavirus-related distributions" taken by individuals on or after January 1, 2020 and before December 31, 2020. For any such distribution, the proposal:

- permits in-service distributions, even if such amounts are not otherwise distributable from the plan under the Internal Revenue Code;
- provides an exception to the 10% early distribution penalty;
- exempts the distribution from the 402(f) requirements and mandatory 20% withholding applicable to eligible rollover distributions;
- permits the individual to include income attributable to the distribution over the three-year period beginning with the year the distribution would otherwise be taxable; and

- permits recontribution of the distribution to a plan or IRA within three years, in which case the recontribution is generally treated as a direct trustee-to-trustee transfer within 60 days of the distribution.

Employers would be permitted, but not required, to make available distributions described above and accept any repayments. This special tax treatment would be limited to aggregate distributions of \$100,000.

Definition of “coronavirus-related distribution: To be a coronavirus-related distribution, a distribution must be made to an individual:

- who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention,
- whose spouse or dependent (as defined in section 152 of the Internal Revenue Code of 1986) is diagnosed with such virus or disease by such a test, or
- who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of the Treasury (or the Secretary’s delegate).

In addition, the bill provides that: “The administrator of an eligible retirement plan may rely on an employee’s certification that the employee satisfies the conditions [described above] in determining whether any distribution is a coronavirus-related distribution.”

Plan loans: First, the proposal would increase the maximum loan limit for qualified individuals to the lesser of:

1. \$100,000 (from \$50,000); or
2. the greater of \$10,000 or 100% (from 50%) of the present value of the participant’s vested benefit.

This increased loan amount would be available for loans made during the 180-day period beginning on the date of enactment. Second, the proposal would extend the due date of any qualified individual’s loan repayment that would otherwise be due during 2020 (but on or after the date of enactment) to one year after the otherwise applicable due date. For this purpose, a qualified individual is an individual who would qualify for a coronavirus-related distribution under the above conditions.

Required minimum distributions (“RMDs”): RMDs for 2020 are waived for 2020 for all types of DC plans (including 401(k), 403(b), and governmental 457(b) plans) and IRAs. This also applies to RMDs due in 2020, but attributable to 2019.

It is a true waiver. The client does not need to make up the distribution next year.

There is no language in the bill saying that if someone already took their RMD, they can put the money back, similar to a 60 day rollover. However, in 2009, the last time there was RMD relief, the IRS allowed RMDs made to be rolled back. We cannot assure you that the IRS will do that again, but the case for this relief is much stronger this time than in 2009, so we would be surprised if this were not allowed. If this is not allowed, individuals eligible for a coronavirus distribution who received such a distribution in 2020 can roll it back, up to \$100,000.

Plan amendments: The plan amendment deadline for adopting any of the relief provided under the proposals above would be no earlier than the last day of the first plan year beginning on or after January 1, 2022 (January 1, 2024 for governmental plans).