

March 31, 2020

COVID-19 UPDATE

Summary of Relevant Portions of
the Coronavirus Aid, Relief, and
Economic Security Act (CARES ACT)

Construction Practice Group
Shutts & Bowen LLP

IMPACT OF THE CARES ACT ON THE CONSTRUCTION INDUSTRY:

Provides funding for construction projects, as follows -

- At least \$156,000,000 for the “... construction of, demolition of, renovation of, and acquisition of equipment for, vaccine and infectious diseases research facilities of or used by NIH (“National Institute of Health”), including the acquisition of real property...”;
- At least \$3,500,000,000 for Biomedical Advanced Research and Development “... for the construction or renovation of US-based next generation manufacturing facilities, other than facilities owned by the US Government...”;
- An additional \$1,500,000 available for construction, etc. of non-federally owned facilities for production of vaccines, therapeutics, and diagnostics, related to the Secretary’s determination of need for additional supplies;
- \$100,000,000,000 to remain available until expended for “Public Health and Social Services Emergency Fund” to include “building or construction of temporary structures, leasing of properties ... retrofitting facilities...”;
- \$150,000,000 in “Grants for Construction of State Extended Care Facilities”;
- And deposits an additional \$275,000,000 into the General Services Administration Real Property Activities Federal Buildings Fund for costs incurred “to prevent, prepare for, and respond to coronavirus, domestically and internationally.”

Further, the Act provides an additional \$5,000,000,000 for the “Community Development Fund” -

- \$2,000,000,000 of which is to be distributed pursuant to Sec. 106 of the Housing and Community Development Act of 1974.
- \$1,000,000,000 of which is to be allocated directly to States “to prevent, prepare for, and respond to coronavirus within the State” (or insular area) for, among other things, housing market disruptions.

Moreover, the Act expressly *excludes* construction loans from some of the provisions intended to offer protection to homeowners and renters - for ex. -

- **Sec. 4023** - Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans
 - General description: During the covered period, a multifamily borrower with a Federally backed multifamily mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request a forbearance under the terms set forth in this section.
 - “Federally Backed Multifamily Mortgage Loan” *does not* include “temporary financing such as a construction loan.”
- **Sec. 4024** - Temporary Moratorium on Eviction Filings
 - Temporary financing such as a construction loan is *not* included.



OTHER CONSTRUCTION INDUSTRY RELATED IMPACTS OF THE CARES ACT:

- As addressed previously, the Act provides additional funding for investments in new or existing construction projects.
 - Every critical sector, like healthcare, energy, and defense, is investing large amounts of money in repairing, upgrading, and building new facilities and infrastructure that help them deal with the crisis.
 - Contractors who work on healthcare and public works projects should see a sharp uptick in jobs as infrastructure and hospital projects get off the ground quickly.
- In most states and cities so far, construction in general is considered an essential business, and projects are being allowed to continue even as governors issue stay-at-home orders. But in states where construction is shut down, the CARES Act could reinvigorate projects in critical industries.
- Moreover, business loans are available for construction businesses and are forgivable if certain requirements are met.

Relief for Small Businesses (1-500 employees) -

- *The Paycheck Protection Program:*
 - The Act establishes the “Paycheck Protection Program,” which provides eligible businesses with loans up to 2.5 times the total monthly payroll costs (measured upon the previous year’s payroll) plus any outstanding amount of a SBA Disaster Loan made between January 31, 2020 and the date of refinance. A loan can be up to \$10 million each at an interest rate not to exceed 4%. Eligible businesses include any small business concern, and any business concern or nonprofit that employs not more than 500 employees.
 - Subject to certain restrictions, the loans under this program can be used for payroll costs, costs related to paid leave, salaries, mortgage obligations, and rent.
 - Recipients of loans under the Paycheck Protection Program may be eligible for forgiveness, subject to certain limitations.
 - The Act also: (i) expands the eligibility for the Economic Injury Disaster Loan (EIDL) Program to include businesses that employ not more than 500 employees; (ii) provides for an emergency grant of up to \$10,000 for applicants under the EIDL Program; and (iii) creates a grant system for entrepreneurial development and minority business centers to provide education, training, and advising.
 - **NOTE: Contractors who take advantage of the programs should keep detailed records as to how they utilize the proceeds in accordance with stated requirements.**
- *Emergency EIDL Grants*
 - Eligible entities may request an advance from the SBA in the amount of not more than \$10,000, which may be used for any of the purposes allowed under the Paycheck Protection Loans. An applicant shall not be required to repay any amounts of an advance provided under this subsection, even if subsequently denied a Paycheck Protection Loan. To the extent that the eligible entity is approved for a Paycheck Protection Loan, the Advance will be reduced from the loan forgiveness for payroll costs.
 - Entities eligible for the EIDL grants include: (i) businesses with not more than 500 employees; (ii) sole proprietorships and independent contractors; (iii) cooperatives with no more than 500 employees; (iv) ESOPs with not more than 500 employees; (v) tribal small business concerns; and (vi) any other entity eligible for a Paycheck Protection Loan.
 - The SBA is waiving personal guarantees on advances and loans not more than \$200,000 as well as the requirement that the applicant be in business for the one year period before the disaster (provided that the applicant was in business as of January 31, 2020).
 - Congress has appropriated \$10,000,000 for these grants. If that appropriation runs out, businesses will not be able to benefit from the grants.



Opportunity for construction workers to receive direct cash.

- The Act provides direct payments to individuals, whether they have been laid off or are still working. U.S. adults are to receive \$1,200 each, with an additional \$500 per child in the family. The payment is reduced for workers who earn over \$75,000 annually (or \$150,000 as a household).
- IRS will distribute payments as tax refunds in order to get the money to U.S. workers quickly. (Please review the IRS website for Coronavirus Tax Relief for more particular information, or contact your CPA or tax attorney).
- The Act temporarily increases unemployment benefits by up to \$600 per week for a period of four months for workers laid off because of the pandemic.
- DOL has stated that workers may qualify for unemployment benefits, even if not technically unemployed, if:
 - Their employer has closed down due to COVID-19, preventing employees from coming to work;
 - The worker is quarantined but expects to come back to work after quarantine is over; or
 - An individual leaves employment due to a risk of exposure or infection or to care for a family member.

Business and Employment Tax Provisions -

- *Net Operating Losses:*
 - As part of the 2017 Tax Cuts and Jobs Act (“TCJA”), a corporation’s net operating losses realized after 2017 were only permitted to reduce 80% of taxable income.
 - The CARES Act temporarily eliminates this 80% limitation for net operating losses. Furthermore, a corporation’s losses from 2018, 2019, and 2020 are permitted to be carried back for 5 years (except no carrybacks may be used to offset any previous taxable income from Section 965).
- *Excess Business Losses:*
 - The CARES Act repeals the excess loss limitation of Section 461(l), which was implemented as part of the TCJA.
 - As a result, non-corporate taxpayers may be permitted to utilize business losses in excess of \$250,000 (\$500,000 for taxpayers filing jointly).
- *Increase in Section 163(j) Business Interest Deduction Limitation:*
 - Part of the formula for the business interest deduction limitation of Section 163(j) has been increased from 30% of adjusted taxable income to 50% of adjusted taxable income.
 - Taxpayers can also elect to use 2019 adjusted taxable income to calculate the taxpayer’s 2020 limitation.
- *Employee Retention Credit:*
 - The CARES Act provides for an employee retention credit that is a refundable payroll tax credit, which is a maximum of \$5,000 per employee (50% of a maximum of \$10,000 of qualified wages, including allocable health plan expenses).
 - This credit generally applies to a business that has suffered a significant decline in gross revenues (i.e., less than 50% of gross receipts from the same quarter in the prior year) or had business partially or completely suspended.
 - For employers with more than 100 employees, the only wages that are eligible are those that the employer pays employees who are not providing services due to the suspension of the business or a drop in gross receipts as described above. However, for employers with 100 or fewer employees, all wages paid qualify.
- *Permitted Delay of Social Security Tax Payments:*
 - Most taxpayers are permitted to delay payment of the employer share of Social Security tax for tax year 2020. However, 50% of the delayed payment must be made by December 31, 2021, and the remaining tax must be paid by December 31, 2022.
- *Corporate Alternative Minimum Tax (“AMT”) Credit:*
 - The AMT credit for corporations was made completely refundable for 2018.



COVID-19 UPDATE

RESPONSE TEAM

Shutts & Bowen has created a firmwide, multidisciplinary COVID-19 Response Team dedicated to assisting clients with navigating the legal issues arising from the Coronavirus/COVID-19 pandemic. In this rapidly evolving worldwide health phenomenon, Shutts & Bowen will provide clients with timely legal guidance and other resources needed to respond quickly to the immediate challenges impacting their organizations.

Shutts & Bowen's COVID-19 Response Team leverages the firm's deep bench of approximately 300 attorneys across 8 offices throughout Florida. Their practices span the entirety of the firm's practice areas, including hospitality; legislative affairs; government contracts; labor and employment; creditors rights and bankruptcy; tax; financial services; insurance; and many more.

From the onset of the pandemic, Shutts & Bowen's attorneys have been assisting their clients with strategic legal guidance

and timely counsel on the legal issues surrounding COVID-19. As business leaders face difficult decisions that will have serious ramifications for their employees, customers, and communities, the COVID-19 Response Team will help its clients with creative solutions to manage immediate concerns as well as long-term planning services.

For inquiries to the COVID-19 Response Team, please contact us at covid19@shutts.com.

UPDATE ON INDUSTRY SPECIFIC PORTIONS OF THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act" or "Act") was enacted on March 27, 2020 to provide emergency assistance and health care support for individuals, families, and businesses affected by COVID-19.

The forgoing is a summary of the relevant provisions of the Act, as they apply to the construction industry.

SHUTTS & BOWEN

PRACTICE GROUPS

With more than 30 practice areas, Shutts & Bowen offers a complete range of legal services to our local, state, national and international clients. Our attorneys handle a broad range of issues, including matters related to health emergencies and the COVID-19 crisis, in a wide array of legal areas, including:

- Administrative Law & Licensing
- Anti-Money Laundering
- Antitrust
- Appellate
- Class Action
- Commercial Leasing
- Commercial Lending
- Community Associations
- Complex Loan Workouts
- Construction
- Corporate
- Creditors' Rights & Bankruptcy
- Cuba Task Force
- Cybersecurity & Data Privacy
- Eminent Domain
- Environmental
- Financial Services
- Government Contracts
- Government Law
- Health Law & Life Sciences
- Hospitality
- Immigration
- Insurance
- Intellectual Property
- International Dispute Resolution
- Labor & Employment
- Land Use & Zoning
- Latin America
- Litigation
- Private Client Services
- Private Funds
- Public Finance
- Real Estate
- Securities Fraud Litigation
- Taxation
- White Collar Criminal Defense & Governmental Investigations





www.shutts.com