



COVID-19 RESPONSE TEAM

SUMMARY OF RELEVANT PORTIONS OF THE CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES ACT)

MARCH 30, 2020

FOR MORE INFORMATION ABOUT HOW WE CAN ASSIST YOUR BUSINESS DURING THE COVID-19 PANDEMIC, PLEASE VISIT WWW.SHUTTS.COM/SHUTTS-BOWEN-COVID-19-RESPONSE/.

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.

Below is a summary of the relevant provisions of the Act.

If you would like additional information about any of the topics below, please email us at COVID19@shutts.com.

THE CARES ACT: WHAT YOU NEED TO KNOW

- 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.

FINANCE COMMITTEE

- Enhances telehealth services for federally qualified health centers and rural health clinics during the emergency period by requiring the Secretary to pay for such telehealth services.
- Amounts paid for menstrual care products are now treated as “paid for medical care” for HSAs, Archer MSAs, and Health Flexible Spending Arrangements and Health Reimbursement Arrangements.
- Increases Medicare telehealth flexibilities during the emergency period.
- Temporarily suspends Medicare sequestration from May 1, 2020 to December 31, 2020, and extends direct spending reductions through fiscal year 2030.

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.

UNEMPLOYMENT INSURANCE PROVISIONS

- Title II Subtitle A establishes new unemployment insurance provisions specifically designed to alleviate unemployment problems that arise due to COVID-19 and its impact on the economy.
- Pandemic Unemployment Assistance: The Act expands the unemployment assistance available (“Pandemic Unemployment Assistance”) to those individuals whose employment was negatively impacted by COVID-19. Covered individuals will receive additional unemployment benefits through December 2020, so long as they are unemployed, partially unemployed, or unable to work and not entitled to compensation.
 - The list of “covered individuals” is expansive and includes all individuals who are (a) not eligible for other compensation and (b) self-certify that they would otherwise work, but are unemployed, partially unemployed, or are unable to work due to any one of eleven reasons related to COVID-19 (e.g., they are experiencing symptoms, they have to look after a family member, the business is closed due to COVID-19, etc.).
 - Pandemic Unemployment Assistance is not available to individuals who have the ability to telework with pay, are receiving paid sick leave, or are receiving other paid leave benefits.
 - Pandemic Unemployment Assistance is available to covered individuals from January 27, 2020, through December 31, 2020, but is limited to a maximum of 39 weeks per individual. This 39 week period is significantly longer than the 26 weeks permitted under most state unemployment programs. Notwithstanding the applicable state law, this assistance is to be made available without a waiting period.
 - The weekly benefit amount is the sum of the state unemployment weekly benefit amount plus an additional \$600 (the “Federal Unemployment Compensation”); provided, however, that Federal Unemployment Compensation is only available from the date of enactment (not available retroactively) through July 31, 2020.
 - Federal Unemployment Compensation will be disregarded for the purposes of determining income for Medicaid and CHIP.

- **Pandemic Emergency Unemployment Compensation:** The Act also provides compensation for those individuals without any other compensation available.
 - Applies to individuals who: (i) have exhausted all rights to regular compensation under state and other federal laws with respect to a benefit year, (ii) have no rights to regular compensation under state and other federal laws with respect to a week, (iii) are not receiving compensation under Canadian unemployment laws, and (iv) are able to work, available to work, and actively seeking work.
 - The weekly benefit is equal to the amount of regular compensation under the applicable state law plus the \$600 Federal Unemployment Compensation. As with Pandemic Unemployment Assistance, the Federal Unemployment Compensation is only available through July 31, 2020.
- **Short-Time Compensation:** Those states that have (or later establish) Short-Time Compensation programs may receive funding for such programs beginning on the enactment date and extending through December 31, 2020.
 - Short-Time Compensation is available to individuals who are permanently employed but whose hours and wages have been cut due to an unexpected downturn.
 - This funding will provide for payments up to 26 times the amount of the weekly regular compensation for the individual, provided the individual is permanently employed by his or her employer.
- **Federal-State Agreements:** The unemployment programs and funding provided in the CARES Act are subject to the applicable state entering into an agreement with the federal government to be bound by certain terms. The Act encourages the state to enter these agreements by limiting the funding and grants to those states that enter into the agreements. However, if a state elects not to enter into one of these agreements, its residents will not have access to the benefits under the applicable program (except those otherwise provided by the state).

REBATES AND OTHER INDIVIDUAL PROVISIONS

- **2020 Recovery Rebates:** The CARES Act provides for rebates for individuals. In general, each individual single filer is entitled to \$1,200, while married couples that file jointly are entitled to \$2,400. There is an additional \$500 provided for each qualifying child. There is a phase out of the rebates for single filers with an adjusted gross income over \$75,000 and joint filers with an adjusted gross income greater than \$150,000. As a result of the phase out, no rebate is available for single filers with an adjusted gross income of \$99,000 or higher and joint filers with an adjusted gross income of \$198,000 or higher. Different adjusted gross income limitations apply for those that file as head of household. The rebate is not available to nonresident aliens or dependents of other taxpayers.
- **Retirement Distributions and Loans:** Eligible taxpayers are permitted to take \$100,000 of distributions from their qualified retirement accounts without incurring the 10% early withdrawal penalty on such distributions. The amount of a distribution will generally be included in income ratably over three years. For these purposes, an eligible taxpayer is an individual: 1) who has been diagnosed with COVID-19; 2) whose spouse or dependent has been diagnosed with COVID-19; or 3) who has experienced adverse financial consequences from being quarantined, furloughed, laid off, having work hours reduced, unable to work due to lack of child care, reduction of business hours, or other factors to be determined by Treasury. Taxpayers are also generally permitted to borrow up to \$100,000 from their qualified retirement plans. In addition, the CARE Act waives required minimum distributions for certain retirement plans for 2020.
- **Employer Repayment of Employee Student Loan Expenses:** Until December 31, 2020, an employee may generally exclude from taxable income up to \$5,250 of student loan payments by his or her employer.
- **Charitable Deductions:** Taxpayers are permitted an “above the line” charitable deduction of up to \$300. Taxpayers that itemize deductions would be permitted to deduct up to 100% of their adjusted gross income for 2020. The charitable deduction limitation for corporations is increased to 25% of taxable income. There is also an increase in the deduction cap for charitable contributions of food.

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.

- Bonus Depreciation of Costs of “Qualified Improvement Property”: The CARES Act fixes an error in the TCJA that prevented businesses from claiming 100% bonus depreciation on certain costs for “qualified improvement property,” which is generally an interior improvement of a nonresidential building that is placed in service after the building is first placed in service. This provision is retroactive as if it was originally included in the TCJA.

LABOR PROVISIONS

- Title III – Subtitle C revises the terms of the Family and Medical Leave Act and the Emergency Paid Sick Leave Act to provide clarity with regard to some of the provisions established by the Family First Coronavirus Response Act (providing paid sick leave and emergency family leave for individuals negatively impacted by the COVID-19 pandemic).
- New language was added to the Emergency Family Medical Leave Act to provide that a recently re-hired employee may be eligible for paid leave under the act, notwithstanding the fact that they did not work for the business for the most recent 30 calendar days. Under this provision, an employee who was fired and later rehired will be eligible for paid emergency family medical leave if the employee worked for the business at least 30 of the last 60 calendar days.
- In practice, the re-hiring exception allows individuals who were originally laid off due to the COVID-19 crisis, but were later re-hired (as the employer is incentivized to do if it takes out a Paycheck Protection Loan), to be treated as if he or she satisfies the 30 day employment requirement for the paid leave. If taken, payment of this paid leave would be included in the forgiveness of the Paycheck Protection Loan (see Loan Forgiveness above).

FINANCIAL SERVICES REGULATORY RELIEF

The CARES Act contains several measures intended to provide regulatory relief to financial services firms during the COVID-19 crisis.

These measures are primarily contained in Title IV of the CARES Act and include:

- Lending Limit Waiver: Authorization for the Office of the Comptroller of the Currency to temporarily exempt bank financings from lending limits, provided the OCC has determined that the exemption is in the public interest.

- Financial Support: Further guarantees by the FDIC of obligations of solvent insured depository institutions and their parent holding companies.
- Debt Restructuring Relief: Authorization for the election by financial institutions of suspensions of requirements under U.S. GAAP (Generally Accepted Accounting Principles) for loan modifications that would ordinarily be categorized as troubled debt restructurings.
- Capital Standards Relief for Community Banks: Requirements that federal bank regulatory agencies temporarily reduce certain capital standards (specifically, the Community Bank Leverage Ratio or CBLR) for qualifying community banks to 8%. Reasonable grace periods are available for community banks that fall below required levels until December 31, 2020, or longer if the national emergency declaration for COVID-19 continues beyond that date.
- New Oversight Office: Establishment of an Office of Special Inspector General for Pandemic Recovery, which will have oversight and audit authority over loan sales and guarantees supported by the Treasury Department, among other powers.
- New Mid-Sized Business Lending Program: Title IV of the CARES Act also provides for development of a program by the Department of the Treasury to provide funds to banks to extend credit to businesses that employ between 500 and 10,000 people. Interest on such loans is limited to 2% per annum and principal and interest payments must be deferred for at least the first six months of the loan term. Certifications by the borrower to the Department of the Treasury are required to be eligible for these loans, including a commitment by the borrower to retain 90% or more of its workforce until at least September 30, 2020.

Except for the election to suspend GAAP during the COVID-19 crisis, regulatory relief afforded under the CARES Act for financial institutions, including community banks, in connection with lending activities generally will require additional agency rulemaking and/or notices and applications to regulatory authorities in connection with the relief.

NOT-FOR-PROFITS

- Generally, under the CARES Act, not-for-profit entities that are 501(c)(3) or 501(c)(19) entities are entitled to the same loans and subject to the same eligibility requirements for such loans as for-profit entities (including cap on number of employees, etc.).