# CARES Act: What Companies and Taxpayers Need to Know

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On March 27, 2020, Congress approved and the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, H.R. 748). In addition to the Families First Coronavirus Response Act (FFCRA) upon which we previously reported on, the CARES Act provides for approximately $2 trillion in assistance to individuals and businesses, among other things. For individuals, relief set out in the bill includes direct payments of $1,200 to millions of Americans and strengthened unemployment benefits. For businesses, the bill allocates hundreds of billions of dollars in loans and grants for struggling businesses, particularly small businesses, and expands the availability of pre-existing loan programs to more businesses. The bill includes:

normally be eligible, and (iii) an extension of unemployment compensation by 13 weeks beyond the states' existing eligibility periods. The Act further provides federal funding to states to cover the cost of the first week of unemployment benefits if states elect to waive typical one-week waiting periods (which California has done).

- **Pandemic Unemployment Assistance – Section 2102**
  Section 2102 creates the temporary Pandemic Unemployment Assistance program effective January 27, 2020, to remain in effect until December 31, 2020, which covers individuals who would not otherwise be eligible for unemployment insurance and benefits. Individuals covered by the CARES Act include the self-employed, independent contractors, gig workers, part-time employment seekers, those who lack sufficient work history, or those who have exhausted their unemployment benefits under existing schemes – provided they are able to self-certify that they are unemployed, partially unemployed, or unavailable due to the following reasons:
  - They have been diagnosed with COVID-19 or are experiencing symptoms of COVID-19 that require a medical diagnosis.
  - A member of their household has been diagnosed with COVID-19.
  - They are providing care for a family member or member of their household who has been diagnosed with COVID-19.
  - A member of their household for whom they have primary caregiving responsibility is unable to attend school or another facility that has been closed as a direct result of the COVID-19 public health emergency and because of this closure, they are unable to work.
  - They are unable to work because of a quarantine imposed as a result of the COVID-19 public health emergency.
  - They are unable to work because they have been advised to self-quarantine by a health care provider.
  - They were scheduled to start a job but are unable to do so as a result of the COVID-19 public health emergency.
  - They have become the breadwinner or major supporter for a household because the breadwinner in the household has died as a direct result of COVID-19.
  - They quit their job as a direct result of COVID-19.

Program for a maximum of ***39 weeks***, including any weeks for which the covered individual received regular unemployment benefits provided under Federal or State law. The amount of benefit provided to a covered individual under the Program is equal to the amount of unemployment benefit the covered individual would otherwise be entitled to under federal or state law plus an additional amount referred to as Federal Pandemic Unemployment Compensation in the amount of $600 per week. The Program removes any waiting periods established by state unemployment laws.

- **Emergency Increase in Unemployment Compensation Benefits – Section 2104**
  Section 2104 provides for an additional $600 per week payment beyond what individuals receive under state unemployment laws, referred to as "Federal Pandemic Unemployment Compensation," to recipients of unemployment insurance or Pandemic Unemployment Assistance for a period of up to four months.
- **Pandemic Emergency Unemployment Compensation – Section 2107**
  Section 2107 provides an additional 13 weeks of unemployment compensation, through December 31, 2020, to all individuals who otherwise would be ineligible for such compensation because they have exhausted all rights to regular unemployment compensation under applicable state or federal law with respect to this benefit year, provided they (i) have no rights to regular unemployment compensation under any applicable state or federal law, (ii) are not receiving unemployment compensation under Canadian law, and (iii) are able, available and actively seeking work. The amount of unemployment compensation payable to an individual under this Section is equal to the amount of unemployment benefit the individual would otherwise be entitled to under applicable federal or state law plus the amount of Federal Pandemic Unemployment Compensation ($600).

For a chart summarizing all employment benefits made available due to the pandemic under federal and California law, click HERE.

**Recovery Rebate for Individual Taxpayers**. The CARES Act would provide a $1,200 refundable tax credit for individuals ($2,400 for joint taxpayers). Additionally, qualifying taxpayers with children will receive a flat $500 for each child. The rebate starts to phase out for single taxpayers earning $75,000 or more, for head of household taxpayers earning $112,500 or more, and joint taxpayers earning $150,000 or more. The phase out is calculated at 5% per dollar of qualified income, or $50 per $1,000 earned above the phase out threshold. For example, a single taxpayer filing as an individual (not head of household) making $85,000 annually would receive a rebate of $700 (that is, $1,200 reduced by 5% of $10,000, or $500). It phases out entirely for single taxpayers with no

**Paycheck Protection Program – Section 1102**. The bill provides aid to businesses with fewer than 500 employees and allocates approximately $350 billion through June 30, 2020 for small business loans up to $10 million through approved lenders that are fully government-guaranteed. The loan proceeds may be used to cover payroll costs, such as employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments incurred from February 15, 2020 through June 30, 2020. The maximum amount of a loan equals 2.5 times the average regular monthly payroll expenses, subject to a hard cap of $10 million and other certain limitations.

The following businesses are considered eligible for the Paycheck Protection Program:

1. Businesses with fewer than 500 employees.
2. Small businesses as defined by the Small Business Administration (SBA) Size Standards at 13 C.F.R. 121.201.
3. 501(c)(3) nonprofits, 501(c)(19) veteran's organization, and Tribal business concern described in Section 31(b)(2)(C) of the Small Business Act with not more than 500 employees.
4. Hotels, motels, restaurants, and franchises (NAICS Code 72) with fewer than 500 employees at each physical location.
5. Businesses that receive financial assistance from Small Business Investment Act Companies licensed under the Small Business Investment Act of 1958.
6. Sole proprietors and independent contractors.

Eligible small businesses may also receive loan forgiveness equal to the amount spent by the borrower during an eight-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020, with the amount of any such forgiveness reduced if the borrower subsequently reduces its employee headcount or employee compensation beneath certain established thresholds. Any amount of loan used to pay any single employee more than $100,000 will be excluded from forgiveness. Borrower and lender fees, collateral, and personal guarantee requirements all are waived. The CARES Act authorizes the Small Business Administration to issue loans with interest rates of up to 4% with a maximum maturity date of 10 years, though the regulations issued by the Treasury Department after enactment of the law set the interest rate at 1% with a maturity date of only 2 years. There is no penalty for prepayment, and loan repayments can be deferred for 6-12 months. Eligibility for loans under the Paycheck Protection Program is based on whether the business (1) was operational on February 15, 2020, and

**SBA Economic Injury Disaster Loans & Advances – Section 1110**. The bill expands the types of entities eligible to receive (1) up to $2 million in direct loans from the Small Business Administration (with the actual loan amount depending on the amount of the actual injury), and (2) loan guarantees for substantial economic injury caused by the COVID-19 pandemic. Eligible borrowers under this program are those that are unable to meet their obligations as they mature or to pay their ordinary and necessary operating expenses as a result of the COVID-19 pandemic. The loan proceeds may be used for (i) working capital necessary to carry on the concern until normal operations resume, (ii) expenditures necessary to alleviate the specific economic injury, (iii) providing paid sick leave to employees, (iv) maintaining payroll, (v) meeting increased costs to obtain materials, (vi) making rent or mortgage payments, and (vii) repaying obligations that cannot be met due to revenue losses. Due to potential delays in disbursing these loans, the bill also authorizes emergency grants of up to $10,000 to eligible borrowers, available immediately. Note that borrowers receiving an Economic Injury Disaster Loan relating to the COVID-19 pandemic cannot also receive a loan under the Paycheck Protection Program. The Economic Injury Disaster Loan application can be found here.

New Eligible Entities:

1. Generally, businesses with fewer than 500 employees.
2. Tribal businesses with fewer than 500 employees.
3. Cooperatives with fewer than 500 employees.
4. Employee Stock Ownership Plans with fewer than 500 employees.
5. Individuals operating as a sole proprietor or an independent contractor during the covered period (January 31, 2020 to December 31, 2020).

Other Eligible Entities:

1. Small businesses as defined by the Small Business Administration Size Standards.
2. Private non-profits with exemptions under sections 510(c), (d) or (e) of the Internal Revenue Code.

**Section 7(a) Loan Subsidies – Section 1112**. The bill allocates $17 billion to the Small Business Administration to cover principal, interest, and fees on loans guaranteed by the Small Business Administration for up to six months.

with the financial fallout from the pandemic. These include:

- **Five-Year NOL Carryback and Suspended 80% Limitation – Section 2203**
  For taxable years 2018 to 2021, the 80% income limitation on net operating losses ("NOLs") has been suspended. The bill also allows for NOLs earned in 2018, 2019, or 2020 to be carried back five taxable years.
- **Waiver of Penalty on Early Withdrawal from Retirement Account – Section 2103**
  The bill removes the 10% penalty on early withdrawals from retirement accounts for any "coronavirus-related distribution." A coronavirus-related distribution is a distribution from a retirement plan made between March 27, 2020 and December 31, 2020 to an individual (i) who has tested positive for coronavirus, (ii) whose spouse or domestic partner has been diagnosed with coronavirus, or (iii) who experiences adverse financial consequences as a result of coronavirus. Amounts withdrawn are taxable over three years, but may be recontributed without affecting retirement account caps. Eligible retirement accounts include individual retirement accounts ("IRAs"), 401ks, and other eligible plans under Section 402(c)(8)(B) of the Internal Revenue Code.
- **Temporary Waiver of Required Minimum Distribution from Retirement Account – Section 2203**
  The bill waives the required minimum distribution for 2020 from 401k plans, IRAs and other eligible retirement accounts.
- **Interest Deduction Limitation – Section 2206**
  The bill increases the amount of deductible business interest expenses from 30% to 50% of EBITDA for tax years beginning in 2019 and 2020.
- **Technical Correction Regarding Deduction for Qualified Improvement Property – Section 2307**
  The bill includes an amendment to the 2017 Tax Cuts and Jobs Act, which reduces the depreciable life of qualified improvement property, such as leasehold improvements, from 39 years to 15 years. This amendment is retroactive to January 1, 2018, and therefore taxpayers may file amended tax returns to receive the benefits of additional and bonus depreciation.

The full text of the CARES Act is available online here.

This alert was authored by Coblentz Employment attorneys Troy Valdez, Rosan Agbajoh, and Christopher Westman, with contributions from our Tax attorneys Jeffry Bernstein and Jessica Wilson. For more information or to discuss how the CARES Act impacts your

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