

CARES Act – Large Enough to Help Medium-sized Businesses



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A lot of attention has surrounded the relief provided to individuals and small businesses under the Coronavirus Aid, Relief and Economic Security Act (CARES Act) signed by the president on March 27, 2020. But medium-sized businesses are also eligible for relief under the CARES Act.

Title IV of the CARES Act, also referred to as the Coronavirus Economic Stabilization Act of 2020 (Economic Stabilization Act) provides at least \$454 billion to the Treasury's Exchange Stabilization Fund to provide liquidity to eligible businesses, states and municipalities. Under Section 4003 of the Economic Stabilization Act the Treasury Secretary is directed to establish a program to provide direct loans to certain eligible businesses, and to the extent practicable, nonprofit organizations, with between 500 and 10,000 employees. These loans allow for deferment of principal and interest payments for at least the first six months but do not provide for any loan forgiveness. The term of the loans can be no more than five years with the annual interest rate capped at 2%. Loans to medium-sized businesses must be made before December 31, 2020.

While the terms of the loans may be attractive to medium-sized businesses during the COVID-19 pandemic, the restrictions businesses must certify to and abide by in order to be receive funds are significant. These restrictions include:

- Uncertain economic conditions created by the COVID-19 pandemic make the loan necessary to support on-going operations;
- The loan funds the business receives must be used to retain at least 90% of its employees at full compensation and benefits until September 30, 2020;
- If the business has already laid off its employees, the business must intend to restore at least 90% of its employees that existed on February 1, 2020 and to restore all compensation and benefits to its employees no later than 4 months after the termination date of the COVID-19 public health emergency;
- The business must be domiciled in the United States with significant operations and employees located in the United States;
- The business will not outsource or offshore jobs for the term of the loan plus 2 years after completing repayment of the loan;
- The business will remain neutral in any union organizing efforts for the term of the loan;
- The business will not cancel existing collective bargaining agreements for the term of the loan plus 2 years after completing repayment of the loan; and
- The business will not pay dividends with respect to common stock of the business or repurchase any equity security of the business or any parent company that is listed on a national securities exchange during the term of the loan.

Medium-sized businesses must also agree to certain limitations for highly compensated officers and employees which are applicable during the term of the loan and for one year after repayment. To any officer or employee who received \$425,000 in 2019, the business may not pay total compensation in excess of amounts such officer or employee received from the business in 2019. Further, such officers and employees may not receive severance pay or other benefits upon termination in excess of twice the maximum total compensation such officer or employee received from the business in 2019. In addition, officers and employees whose total compensation exceeded \$3,000,000 in 2019 may not receive total compensation in excess of \$3,000,000 plus 50% of the excess over \$3,000,000, received by the officer or employee in 2019.

The CARES Act does not include a specific timeline for the launch of the medium-sized business loan program, but regulations are in the process of being prepared that will implement the program. The Economic Stabilization Act only provides that the loans would be made by banks and other lenders as well as that the loans will be part of the Federal Reserve emergency lending program which operates through Federal Reserve Banks. The Economic Stabilization Act states that loans made under the Federal Reserve emergency lending program must comply with the Federal Reserve Act requirements regarding collateralization which requires that all credit extended under such a program be secured to the satisfaction of the lending Federal Reserve Bank. We expect the regulations to designate the applicable lenders and clarify the collateralization requirements of the medium-sized business loan program.

It is interesting to note that these loans are not permitted to be made to “covered entities” which include any entity in which 20% or more of the equity is owned by the President, Vice President, head of an Executive department, or Member of Congress, or any spouse, children, son-in-law or daughter-in-law of the foregoing. The Act provides that the Chief Executive Officer and Chief Financial Officer of the borrowing medium-sized business must certify that the entity is eligible to obtain the loan and is not an entity in which a covered individual directly or indirectly holds a controlling interest.

The medium-sized business loan program is distinct from the relief programs offered to small businesses. For information on relief to small businesses, please see our April 3, 2020 articles entitled [“COVID-19 UPDATE: Guidance on Paycheck Protection Program \(PPP\) Loans”](#) and [“Businesses Have COVID-19 Worries; These Resources Can Help.”](#)