

COVID-19 Stimulus Act Alert

March 27, 2020 | by Gary Botwinick, Matthew Rheingold, Adam Sandler

On March 27, 2020, the President signed the \$2 trillion stimulus package as part of the third phase of the federal government's response to the COVID-19 pandemic. The "Coronavirus Aid, Relief, and Economic Act" or "CARES Act" includes cash relief for individuals, lending to small businesses and relief for certain industries. Among the 880-page legislation are the following key provisions:

Paycheck Protection Program

The CARES Act permits the Small Business Administration to provide cash flow assistance through 100% federally guaranteed loans to employers (including not for profit entities) who maintain their payroll during the pandemic. More specifically, as discussed in greater detail below, these specific loans would be forgiven for employers who do not lay-off and continue to pay their employees. Under the terms of the Act, there are no loan fees and small employers with 500 employees or fewer, including sole proprietors and nonprofits, would be eligible to apply for the loans with no collateral or personal guarantee requirements.

The size of the loan is tied to an applicant's "payroll costs" over the course of the year preceding the origination of the loan. In addition, the maximum maturity for any loan is ten years and the interest rate may not exceed four percent per year. The maximum loan amount is the lesser of:

- the sum of (i) average monthly "payroll costs" for the one-year period preceding the loan period multiplied by 2.5 and (ii) any disaster loan procured after January 31, 2020; and
- \$10 million.

While the definition of "payroll" is rather broad and any such costs cover wages, commissions, salary, tips, vacation or sick leave and retirement benefits, amongst others, payroll costs do not cover the compensation of any individual employee in excess of annual salary of \$100,000, payroll taxes, any

compensation to an employee whose principal place of residence is outside the United States or any qualified sick leave or family medical leave if a credit is allowed under the Coronavirus Relief Act, which was passed last week.

Moreover, while there are very few requirements to receive the loan, applicants must certify that (i) the loan is needed in order to continue operations during the pandemic, (ii) that the funds will be used to retain or pay employees or make mortgage, lease and utility payments, (iii) the applicant does not have any other application pending with the SBA for the same purpose, and (iv) the applicant has not previously received duplicative amounts from the SBA.

Perhaps, one of the most important aspects of the Act is that the government will forgive any portion of a business loan to small businesses (defined as those businesses with less than 500 employees) to the extent the business retains their employees and payroll levels during the covered period (defined as the 8-week period beginning on the date of the origination of a covered loan). More specifically, any portion of the loan used to cover payroll (up to an annual salary of \$100,000 per employee), interest payments on mortgages, rent and utility payments would be forgiven (and excluded from gross income). It is important to note, however, the Act specifically excludes individual employee compensation above \$100,000 per year. Additionally, the amount forgiven will be reduced for any employee cuts or reduction in employee wages.

Assistance for Mid-Sized Businesses

The Act also provides assistance for mid-sized businesses (defined as organizations with 500 to 10,000 employees). Under the Act, Borrowers will be eligible to receive low interest loans upon a certification that the funds will be used to retain at least ninety percent of the business's workforce, at full compensation and benefits, until September 30, 2020.

Loan Guaranty

As part of the Act, the maximum loan amount for SBA Express loans would be increased from \$350,000 to \$1 million. These loans would provide borrowers with a revolving line of credit for

working capital purposes.

Business Tax Provisions

- **Payroll Tax Credit** – Employers are eligible for a 50% refundable payroll tax credit on wages up to \$10,000 during the crisis. This credit is available to employers whose businesses were disrupted during the virus and were forced to shutdown or experienced a decrease in gross receipts of more than 50% when compared to the same quarter last year. The credit is available for employees retained but not currently working due to the crisis for businesses with more than 100 employees, and for all employee wages for businesses with less than 100 employees.
- **Payroll Tax Deferment** – The employer's portion of the social security payroll tax payment may be deferred until January 1, 2021. One-half of the deferred amount would be due on December 31, 2021 and the remaining one-half due on December 31, 2022.
- **Losses** – Businesses are permitted to use net operating losses (NOL) earned in 2018, 2019 and 2020 and carry back any such losses five years. The 80% of taxable income NOL limit is also suspended, so businesses may use the NOLs they have to fully offset their taxable income.

Stimulus for Individuals

- **Unemployment Benefits** – Funding will be provided to states so that gig economy workers (i.e. independent contractors) can receive unemployment benefits.
- **Stimulus Payments** – The federal government will issue payments to households equal to \$1,200 per adult and \$500 per child. These amounts are subject to reduction and are eventually phased out for taxpayers with adjusted gross income (AGI) exceeding \$75,000 for a single filer, \$150,000 for married joint filers and \$112,500 for head of household filers. The government will use the taxpayer's 2019 return if filed, or if not filed, the 2018 return.
- **Retirement Accounts** – The Act moves the deadline to make IRA contributions applicable to the 2019 tax-year from April 15, 2020 to July 15, 2020. Additionally, the Act suspends the 10% penalty on withdrawals from retirement accounts (up to \$100,000) taken prior to attaining the age of 59 ½, provided that the account holder, his/her spouse or one of his/her dependents has been diagnosed with Coronavirus or has suffered a reduction in work (as defined in the Act) as a result of the Coronavirus. Withdrawn amounts may be recontributed within 3 years or will alternatively be included as income ratably over a 3-year period. Finally, the Act also suspends 2020 required minimum distributions requirements.
- **Charitable Contributions** – Each taxpayer may receive up to a \$300 above the line deduction for qualified charitable contributions. The deduction is available even if the taxpayer does not itemize their deductions. Additionally, the deduction limits for charitable contributions have been temporarily changed as follows:
 - **Individuals** – the 60% of adjusted gross income (AGI) limit has been suspended;
 - **Corporations** – increased from 10% to 25% of adjusted taxable income; and

- **Food Inventory** – increased from 10% to 25% of adjusted taxable income.
- **Student Loans/Education** – The Act suspends payments and interest on all federally-held loans until September 30, 2020 without penalty. Also, employers could establish educational assistance programs, which will permit employers to provide tuition assistance for courses taken by an employee, in amounts up to \$5,250 per year, which could also be used to pay down existing student loans. Instead of being treated as wages, those payments would be excluded from income and payroll taxes (both the employee and employer portion).

We are still reviewing the CARES Act and are closely monitoring the unprecedented COVID-19 pandemic as it impacts our communities. We will provide additional commentary as necessary. Nevertheless, we are available to quickly respond to, and advise on, the anticipated risks and impact of this outbreak on your business, as well as to continue to provide our counsel on the matters for which you and your families rely on our assistance.

We are offering a flat fee consultation service, by telephone or videoconference, to business owners looking for help in navigating their way through these confusing and ever-changing laws. Please call our office at 973-586-4915 to arrange a time to speak. It remains our commitment to be with you *Every Step of the Way*.