

March 30, 2020

## Navigating Title IV of the CARES Act for Loans and Loan Guarantees to Eligible Large Businesses

### Related Practices

CARES Act Relief  
Corporate  
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On March 25, 2020, the Senate unanimously passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). On March 27, 2020, the House of Representatives passed the CARES Act and President Trump signed the bill into law. The CARES Act was enacted as a direct response to the economic distress caused by the COVID-19 pandemic and provides relief to individuals, businesses, and hospitals. In particular, Title IV of the CARES Act provides the Secretary of the Treasury with the authority to make loans or loan guarantees to states, municipalities, and eligible businesses with certain limitations and restrictions.

Subtitle A of Title IV, which can be referred to as the Coronavirus Stabilization Act of 2020, contains two key sections applicable to eligible businesses: (1) emergency relief and taxpayer protections, and (2) limitation on certain employee compensation, which describe the requirements and restrictions for loans and loan guarantees made under the CARES Act.

#### **1. Emergency Relief and Taxpayer Protections**

The CARES Act authorizes the Treasury Secretary to make up to \$500 billion worth of loans and loan guarantees to eligible businesses, states, and municipalities. The CARES Act imposes limitations on certain industries for this pool of loan and loan guarantee money. Under the CARES Act, no more than (a) \$25 billion can be loaned to passenger air carriers, (b) \$4 billion can be loaned to air cargo carriers, and (c) \$17 billion can be loaned to businesses maintaining national security. After such allocation, the remaining \$454 billion can be used to lend to eligible businesses, states, and municipalities. "Eligible business" is defined as air carriers or a United States business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under the CARES Act. This emergency relief program is available to every other American business

not otherwise eligible for the Paycheck Protection Program or other initiatives funded through the Small Business Administration. Our client alerts on the SBA Paycheck Program and its application to small businesses and nonprofits and lenders provide further detail on the SBA Paycheck Program.

For eligible businesses that receive loans or loan guarantees through the Federal Reserve programs, the CARES Act provides for various restrictions and limitations while such loan or loan guarantee is outstanding. These limitations for such eligible businesses include: (a) for twelve months following repayment, cannot repurchase stock (or other outstanding equity interests); (b) for twelve months following repayment, cannot pay dividends; and (c) must comply with the limitations on employee compensation discussed below. The Treasury Secretary can waive these restrictions by explaining the reasons for the waiver in testimony before Congress.

Eligible businesses that receive such loans or loan guarantees can make loans or other advances to other businesses, such as subsidiaries or affiliates. Such receiving businesses must be organized in the United States, have significant operations in the United States, and have a majority of their employees based in the United States.

The CARES Act further provides for the Treasury Secretary to establish a program or facility for eligible businesses, businesses with between 500 and 10,000 employees, to receive direct loans with annualized interest rate not higher than 2% per annum. Such eligible businesses can include nonprofit organizations. No principal or interest is due for the first six months after the direct loan is made; however, such eligible business must make a good-faith certification that the recipient:

- is making the loan request to support its ongoing operations;
- will use the funds it receives to retain at least 90% of its workforce until September 30, 2020;
- intends to restore not less than 90% of its workforce that existed as of February 1, 2020;
- is organized in the United States, has significant operations in the United States, and a majority of its employees are based in the United States;
- is not a debtor in a bankruptcy proceeding;
- will not pay dividends or repurchase stock (or other equity securities);
- will not outsource or offshore jobs during the loan period or two years thereafter;
- will not abrogate existing collective bargaining agreements with labor unions; and
- will remain neutral regarding current or future union organizing activity.

## **2. Limitation on Certain Employee Compensation**

For eligible businesses that receive loans or loan guarantees, the CARES Act imposes certain compensation caps for officers and employees. Officers or employees that received \$425,000 or more in total compensation in 2019 will have their future compensation capped at the amount they received in 2019 from the time the loan or loan guarantee is in effect and for twelve months after the loan or loan guarantee is no longer outstanding. Additionally, no such officer or employee shall receive severance

payments or other compensation received upon termination which exceeds twice the maximum total compensation received by the officer or employee from the eligible business in 2019.

For officers and employees of those eligible businesses receiving loans or loan guarantees whose total compensation exceeded \$3,000,000 in 2019, additional caps apply. Under the CARES Act, these individuals may receive compensation up to \$3,000,000 plus 50% of the excess over \$3,000,000 of the total compensation received by the officer or employee from the eligible business in 2019. Similar to the above, such caps apply during the loan period and for twelve months after the loan or loan guarantee is no longer outstanding.

As you take advantage of the relief provided for under the CARES Act, we encourage you to reach out to your personal Michael Best attorney or, with respect to applying for loans and loan guarantees under the CARES Act, to Greg Lynch and Erika Tribuzi. We are continuing to monitor the outbreak on a daily and hourly basis, and we are ready to provide you support as you navigate the challenges and uncertainties during the COVID-19 pandemic.

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