

CARES Act: Benefits Available To Large and Mid-Size Businesses

1. Large businesses

Title IV of the CARES Act provides \$500 billion in emergency funding to the U.S. Department of Treasury's Exchange Stabilization Fund to provide economic relief in the form of loans, loan guarantees, and other investments in businesses, states and municipalities impacted by coronavirus.

Airlines and national security. The government has committed \$29 billion for direct loans or loan guarantees to the airline industry and \$17 billion for businesses deemed critical to national security. We will briefly summarize these provisions since they do not relate to most businesses in the cruise industry.

Businesses eligible for this relief must have continued operations jeopardized by losses from the coronavirus crisis. To be eligible for the funding, other forms of alternate financing must not be reasonably available to the business. The Federal Reserve Bank will price assistance on a risk-adjusted basis and, if possible, at interest rates and terms based on market conditions for comparable obligations before the coronavirus outbreak. Borrowers and their affiliates cannot engage in stock buybacks, unless required under pre-existing contracts, or pay dividends, until one year after the date the loan or loan guarantee is no longer outstanding.

The Treasury Department will publish procedures for submitting applications and minimum requirements within 10 days of the date of the enactment of the CARES Act.

Other business and local government support. The remaining \$454 billion is available to support relief to all other eligible businesses, states and municipalities in the form of interest-bearing loans, loan guarantees and other investments, including equity investments in programs and facilities established by the Federal Reserve Bank. Borrowers with direct loans under these facilities cannot, absent a waiver, engage in stock buybacks, unless required under pre-existing contracts, or pay dividends, until one year after the date the loan is no longer outstanding. The restrictions on compensation outlined above applicable to airline carriers and national security businesses likewise apply.

All applicable requirements under Section 13(3) of the Federal Reserve Act apply to these programs and facilities. This includes a requirement that any borrower be solvent (i.e., not in bankruptcy, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any other federal or state insolvency proceeding).

2. Medium-sized businesses

The CARES Act also provides for the Treasury Department and the Federal Reserve to work together to implement a special Section 13(3) Federal Reserve facility that provides financing to banks and other lenders that make direct loans to nonprofits and mid-sized businesses (500 to 10,000 employees).

Eligible borrowers applying for direct loans under this program will be required to certify, among other things, that the uncertainty of economic conditions makes the loan request necessary to support ongoing operations and the funds received will be used to retain at least 90 percent of the recipient's workforce, with full compensation and benefits, through September 30, 2020, and the recipient intends to restore not less than 90 percent of its February 1, 2020 workforce with full compensation and benefits no later than four months after the end of the coronavirus public health emergency.

The recipient must also agree it will not pay dividends or conduct stock buybacks while the loan is outstanding, except for pre-existing obligations, and the recipient will not outsource or offshore jobs for the term of the loan plus an additional two years. To be eligible the recipient must be created/organized and domiciled in the U.S. with significant operations and a majority of employees located/based in the U.S.

The recipient must not be a debtor in a bankruptcy proceeding and must agree it will not abrogate existing collective bargaining agreements for the term of the loan plus an additional two years; and the recipient will remain neutral in any union organizing effort for the term of the loan. Businesses will need to evaluate the relative costs and benefits of receiving assistance given the foregoing requirements.

Congress left a tremendous portion of the terms of these large company programs for the Department of Treasury to determine in regulations. Those regulations are required to be issued within 10 days and will provide greater insight into the implementation and terms of these loans.

3. Conclusion

The CARES Act also includes various tax benefits for individuals and businesses that are not addressed in this article. The small business program in the CARES Act is much more favorable than those for larger businesses, an established system of banks that make SBA loans already exists and far fewer conditions/strings are attached to those benefits. We will not understand the program for larger businesses well until the Treasury Department issues the implementing regulations.

Please contact your Bodman attorney or Wayne Roberts at (248) 743-6039 or wroberts@bodmanlaw.com. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts of interest with other clients. Thank you for your patience and understanding.