RAYMOND JAMES

The CARES Act: small businesses

Within the 2020 Coronavirus Aid, Relief and Economic Security (CARES) Act stimulus bill, many provisions were allocated to support small businesses.

OVERVIEW

Passed on March 27, 2020, the CARES Act provided an estimated $2 trillion in fiscal stimulus to combat the economic impact of COVID-19, and provided the healthcare industry the financial support, equipment and protection it needed to combat the virus.

As the COVID-19 pandemic affected life in ways we could not have imagined, the deadly virus and efforts to contain the spread prompted a significant government response. The legislation was intended to combat the economic risks associated with a slowdown in individual spending and help businesses of all sizes avoid closures and employee layoffs. It also provided necessary funds to help support states and municipalities.

This document highlights the major small business provisions in the CARES Act.

IMPORTANT TOPICS

Small business paycheck protections

Economic disaster loan and grants

Treasury loans, loan guarantee fund and Federal Reserve programs

Support for impacted industries and general economic support

Business tax provisions

Bank provisions

Healthcare funding

Educational funding

SMALL BUSINESS PAYCHECK PROTECTIONS

Inside the relief bill, Congress appropriated $349 billion in small business loans through the Small Business Administration (SBA) to help qualifying small businesses cover necessary business expenses, including some 2020 payroll for individual employees with compensation up to $100,000. This helped small businesses stay open and allowed them to keep paying their employees. As per the 2018 Small Business Profile from the SBA, small businesses employ 58.9 million people, or 47.5% of U.S. employees. The effect of having that percentage of people not working or receiving a paycheck would have decimated the economy.

LOAN PROVISIONS

Small businesses are defined as having 500 or fewer employees, or a number chosen by the SBA. Certain businesses under the North American Industry Classification (NAIC) code 72, like restaurants and lodging operations that do not employ more than 500 employees per physical location, were eligible for loans as well. The loans were up to 2.5 times the average monthly payroll cost in 2019, or up to $10 million. The interest rate for these loans is 1% for up to five years. Payments for loans could be deferred for six months with no prepayment penalty.

Businesses could use these funds for group health benefits, payroll costs, interest payments on mortgages, rent, utilities, and interest on debt for expenses.

What is a PPP loan?

Paycheck Protection Program Loans, also known as PPP Loans, charge interest at 1% and are administered by the SBA. Payment of interest, principal and fees were deferred for six months. As the program's name implies, PPP Loans are designed to provide cash to small businesses, including sole proprietors and independent contractors.

Types of businesses eligible for a PPP loan:

- Businesses and entities that were in operation on February 15, 2020.
- Businesses, nonprofits, veterans' organizations, and tribunal concerns with fewer than 500 employees or the applicable industry size standard under SBA rules.
- Individuals who operate a sole proprietorship or as independent contractors and eligible self-employed individuals.
- Any business that employs not more than 500 employees per physical location of the business concern and that is assigned a NAICS code beginning with 72, for which the affiliation rules are waived.
- Affiliation rules are also waived for any business concern operating as a franchise that is assigned a franchise identifier code by the Administration, and any company that receives funding through a Small Business Investment Company.

To learn more about an SBA loan, visit sba.gov.

LOAN FORGIVENESS

Loans could be forgiven if used for payroll costs, mortgage payments, rent payments and utility payments. Only 40% of the forgiveable amount would be attributal to nonpayroll costs. Loan forgiveness was also excluded from taxation. Small businesses must have maintained the same number of employees through the end of June 2020, otherwise the forgivable loan portion would be reduced. Reductions in the amount forgiven applied if employees who make less than $100,000 had their compensation cut by more than 25%. Any layoffs that occurred prior to accepting the loan were not subject to penalties. But if those businesses rehired employees who were laid off after accepting the loan, they received additional credit to cover those wages.

Loan forgiveness was issued by approved lenders. For details on the program, see the SBA or contact your local SBA-approved lending bank or financial institution.

THE PAYCHECK PROTECTION PROGRAM FLEXIBILITY ACT (PPPFA)

This act, which passed on June 5, expanded the provisions of the original PPP. Those expanded provisions include:

- The covered period for loan forgiveness was extended from eight to 24 weeks after the date of loan disbursement. Borrowers that have already received PPP loans retained the option to use an eight-week covered period. The deadline of June 30, 2020, remained as the last date on which a PPP loan application could be approved.
- Deferment was until the date on which the SBA remitted the loan forgiveness amount to the lender.
- Included two new exceptions to the requirement that borrowers must restore their full-time equivalent to February 15 levels. The two exceptions are:
    - If they were unable to hire similarly qualified employees for unfilled positions.
    - If the borrower could not restore its operations to comparable levels of business activity due to social distancing, sanitation requirements or customer safety needs. These exceptions ended on December 31, 2020.

ECONOMIC DISASTER LOAN AND GRANTS

The CARES Act expanded access to Economic Injury Disaster Loans under Section 7(b)(2) of the Small Business Act. Loans were available for reasons other than payroll costs. This also allowed for emergency grants in the form of an immediate advance of up to $10,000 if a business owner applied for a disaster loan, even if not approved for disaster loan.

This provision benefited those with existing SBA loans or new loans obtained within six months of the signing of the bill where the SBA paid six months of principal, interest and fees on qualifying loans.

TREASURY LOANS, LOAN GUARANTEE FUND AND FEDERAL RESERVE PROGRAMS

For businesses with between 500 and 10,000 employees, the U.S. Treasury's Exchange Stabilization Fund set up direct loans to offset the effects of decreased revenues and keep people working. Interest rates on these loans was capped at 2% and borrowers could defer payments for a minimum of six months and up to one year.

Businesses applying for loans:

- Must have retained at least 90% of their staff at full compensation and benefits until September 30, 2020.
- Must have restored at least 90% of their staff that existed on February 1, 2020, and restored all compensation and benefits to workers within four months of the end of the public health emergency.
- Must not have outsourced or offshored jobs for at least two years after repayment of the loan.
- Did not pay dividends to its stockholders or repurchase any equity security or its parent that is listed on a securities exchange while the loan was outstanding, except to the extent required under a contractual obligation in effect before the CARES Act was enacted. Businesses must not have ended collective bargaining agreements for at least two years after repayment of the loan, and must not have blocked union organizing while the loan was outstanding.

Companies owned by the president, vice president and members of Congress or cabinet heads were not eligible for any loans.

SUPPORT FOR IMPACTED INDUSTRIES AND GENERAL ECONOMIC SUPPORT

The relief bill allocated a $500 billion fund to help the hardest-hit businesses and industries. This included $454 billion in loans and guaranteed investments in programs to eligible businesses, including airlines air cargo carriers, integral national security businesses, states and municipalities. The Treasury could also use a credit fund to purchase obligations or other interests directly from issuers or from the secondary market to provide liquidity where needed.

It also provided payroll protection grants to protect airline and air cargo employees and contractors and keep workers employed for when normal business levels resumed. Further support for airlines included suspension of certain air travel and aviation fuel excise taxes through January 1, 2021. Compensation for these loans included interest and equity stakes in airlines if needed by warrants, stock options or common or preferred stock.

There were restrictions on executive compensation for certain officers and employees. Companies could not buy back their own shares or pay out dividends until one year after the loan was repaid. Airlines that received loans must have maintained service routes and destinations.

Some other businesses essential in keeping the economy moving that were eligible for funds included the United States Postal Service, airports, mass transit systems and Amtrak. There were also funds allocated for emergency appropriations for government agency response efforts.

BUSINESS TAX PROVISIONS

PAYROLL TAX DEFERRAL

A key provision of the stimulus bill provided employers the ability to delay the payment of employer payroll taxes until December 31, 2021. At that time, half of the payroll tax will be due with the rest due by December 31, 2022. This is intended to try to alleviate the burden on employers who have struggled to make payroll. This also includes self-employed individuals. Businesses that take out paycheck loans may not be eligible for this deferral.

NET OPERATING LOSS (NOL) CARRY BACK

Businesses will be able to carry back NOLs again, which were allowed prior to the 2017 Tax Cuts and Jobs Act. The NOL carry back option allows businesses to use the losses against prior year income, which helps to reduce prior year income and claim refunds. The 2017 tax act disallowed the option to use an NOL for prior years and only to be carried forward indefinitely (offsetting income in future years).

The CARES Act allows businesses to use their 2018, 2019 or 2020 NOL to be carried back up to five years, which could provide refunds to some businesses needing cash. Another provision changed the amount of the NOL that could be used against income. Under the 2017 tax act, businesses could only use an NOL to offset 80% of taxable income, whereas the CARES Act allows businesses to offset up to 100% of taxable income for 2018, 2019 and 2020.

The CARES Act also removed the 2017 tax act's limitation on business losses for noncorporations. Businesses should speak with their CPA to discuss the use of prior year NOLs or suspended losses.

QUALIFIED IMPROVEMENT PROPERTY CORRECTION

The act also corrected an element of the 2017 tax act that prevented some businesses with "qualified improvement property" – defined as improvements made to the interior of nonresidential buildings – from claiming accelerated (bonus) depreciation for business investment. It was intended to allow businesses to take depreciation quicker and lower taxable income to provide an incentive for investment, but this new category of "qualified improvement property" was left out. Now, a business with this category of property may file amended tax returns to claim this benefit, which may provide a tax refund. Businesses that could benefit from this include real estate owners, restaurants and retail businesses.

EMPLOYEE RETENTION CREDIT

The act provided an employee retention credit for qualified businesses with reduced revenue due to government restrictions in COVID-19. Operations must have been fully or partially suspended and gross receipts (revenue) must have declined by more than 50% compared to the same quarter in the prior year. The credit was equal to up to 50% of qualified wages up to $10,000 (including health benefits) per employee, resulting in a maximum credit of $5,000 per employee.

There are different stipulations for different business sizes based on qualified wages and number of employees (less than 100 or 100 or more). Any wages used for the new payroll tax credit for family leave or sick leave in previous coronavirus bills or used for SBA paycheck protection program could not be used.

OTHER NOTABLE PROVISIONS

Another provision included a temporary increase of limits on business interest expenses from 30% to 50% of adjusted taxable income for tax years 2019 and 2020. This provided higher deductions, which lowered taxable income.

The charitable deduction limit also increased from 10% of adjusted taxable income to 25%.

BANK PROVISIONS

As financial institutions are a vital part of the economy and an essential middleman to distribute funds to individuals and businesses, the bill provided a provision to reduce regulatory requirements on financial institutions to increase the speed and amount of funds into the hands of the people who needed them.

Provisions included:

- Temporarily authorized the Office of Comptroller of the Currency to exempt any transaction from its lending limits if the exemption is in the public's best interest.
- Lowered the community bank capital ratio to lend out more and provided a reasonable grace period to get back to limits.
- Provided temporary relief for loan modifications for impacted borrowers to ease restructure debt without holding extra capital, which would otherwise be categorized as troubled debt restructuring (TDR).
- Added nonbank financial companies to assist in distributing funds.
- Provided relief from current expected credit losses through December 31, 2020, or the termination of the current public health emergency, to delay financial institutions from measuring credit losses.
- Temporarily suspended the limitation on Exchange Stabilization Funds for guarantee program for the U.S. Money Market Fund industry.
- Provided a 100% guarantee on SBA 7(a) loans.
- Allowed the FDIC to guarantee bank accounts through the end of 2020.
- Prohibited foreclosures for 60 days, a moratorium on eviction filing for 120 days, and a one-year forbearance for borrowers with federally backed mortgages who experienced financial hardship due to COVID-19. Federally backed mortgages included those purchased or securitized by Fannie Mae or Freddie Mac; insured by the Federal Housing Administration, the U.S. Department of Veterans Affairs or the U.S. Department of Agriculture (USDA); and directly issued by USDA.

HEALTHCARE FUNDING

The act also took aim to combat the public health impact on medical resources and had serious repercussions for medical institutions. Included were funds to help offset costs to hospitals and other providers. Other funds were dedicated to assist state and local response measures for detection, diagnostics, prevention and treatment of COVID-19, and provided for an increase to the national stockpile for drugs, protective equipment, medical supplies and additional funding for FEMA's Disaster Relief Fund.

MEDICARE INCLUSIONS

Medicare usually pays 80% of the fee for services. Generally, the provider does not receive the full 80%, as Medicare has a fee that reduces the payments to providers by 2%, called the 2% sequestration. The CARES Act eliminated this 2% fee through the end of 2020. Medicare also increased payments by 20% to the diagnosis-related group rate for patients with COVID-19 and eliminated Part B cost-sharing for COVID-19 testing and any future vaccines. It also allowed states to offer COVID-19 testing and related services through Medicaid regardless of eligibility without cost-sharing. These changes allowed needed funds for service providers and more access to testing for people without insurance.

TELEHEALTH SERVICES

The act expanded and encouraged telehealth services by lessening the requirements to make these services available to more people during the emergency. It reauthorized programs such as telehealth network and telehealth resource centers grants, several rural health grant programs, provides for modernization of the Public Health Service, and several health workforce development programs.

OTHER HEALTHCARE PROVISIONS

Included in the bill was a provision that prioritized reviews of drug applications for drugs that faced a shortage.

Another allowed the FDA to regulate certain nonprescription drugs that are marketed without an approved drug application. It reformed the regulatory process for OTC drug approvals, permitting the FDA more flexibility and provided incentives for pharmaceutical companies to research and manufacture innovative drugs.

EDUCATIONAL FUNDING

As educational facilities had to close to keep students and staff safe, $30 billion was allocated for instructional continuity. The act appropriated funds to institutions of higher education to prevent, prepare and respond to COVID-19. Funds were used for lost revenue, technology costs associated with the transition to distance learning, and grants to students for food, housing, course material technology, healthcare and child care.

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