

THE COVID-19 ECONOMIC STIMULUS PACKAGES

HOW THE FEDERAL GOVERNMENT RELIEF PROGRAMS WILL OPERATE, AND WHAT THAT MEANS FOR YOUR BUSINESS OR INDUSTRY



What We'll Cover

- Overview of federal economic stimulus to date (Phases I and II)
- Phase III: small business package
- Phase III: business relief and distressed industries
- Phase IV stimulus package

Federal Stimulus to Date

PHASE I: The Coronavirus Preparedness and Response Supplemental Appropriations Act

- Enacted on March 6th
- **\$8.3 billion** emergency funding designed to treat and prevent the spread of COVID-19
- Most funds went to HHS to develop **vaccines and testing kits**; to **state and local health departments** for staffing increases and laboratory equipment; and to the federal government to aid in the **international containment of the virus**

Federal Stimulus to Date

PHASE II: The Families First Coronavirus Response Act (FFCRA)

- Enacted on March 18th, takes effect on April 1st
- **\$3.5 billion** in funding
- Employment Provisions:
 - Emergency Paid Sick Leave Act; and
 - Emergency Family and Medical Leave Expansion Act
- Look for Kelley Drye advisory links in the email following this webinar

PHASE III: The CARES Act

Coronavirus Aid, Relief, and Economic Security Act (CARES ACT)

- Enacted on March 27th
- **\$2 trillion** in funding
- Provides a **wide-range of relief** to small, medium and large business as well as individuals

The CARES Act

Title I: KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT

- Over **\$370 billion** in short-term economic relief for small entities
- Vastly expands use of existing SBA programs
 - Deferment of pre-existing SBA 7(a) loans (6 mos - 1 yr)
 - \$10 billion for SBA Economic Injury Disaster Loan (EIDL) “bridge” (up to \$10,000 within 3 days)
 - Establishes the “Paycheck Protection Program” (“PPP”)

The Paycheck Protection Program

- Funding through the Small Business Administration's traditional Section 7(a) lenders and authority
- But backed with a 100% federal guarantee
- Expedited, low-interest business interruption loans
 - Available to "small" for-profits, 501(c)(3)'s, veterans' organizations and Tribal concerns
 - Also extends to independent contractors and self-employed individuals (includes the gig economy)

PPP Program Overview

- Lending authority “during the covered period” of February 15, 2020, through June 30, 2020
- Available for a wide range of daily business expenses
- Provides tax-free forgiveness of the portion of loan used for payroll, mortgage interest and rent expenses, and utilities during the 8-week period beginning on the date the loan was originated
- Major undertaking to stand up \$349B loan program in two weeks

Do I Qualify as “Small”?

- “Up to 500 employees” or SBA “small concern”
 - 500 employees is broad PPP rule of thumb
 - SBA “small concern” based on NAICS codes
 - NAICS => employee count or income-based
- SBA small business “affiliation” rules apply, except
 - Affiliation rules waived for traveler accommodation and food services sectors, franchises, and SBIC borrowers
 - Accommodation and food service entities may have up to 500 employees per physical location

PPP Loan Structure

- Term of up to 10 years, capped interest rate of 4%
 - Total deferment for 6 mos – 1 yr
 - Fees are waived, no pre-payment penalties
- No collateral or personal loan guarantee
- Non-recourse to principals (if rules followed)
- Maximum loan amount calculation based on monthly payroll costs, capped at \$10 million
- Permissible uses include payroll/other comp; healthcare & leave; rent, mortgage interest and utilities
- Underwriting?

PPP Loan Eligibility & Maximums

- Borrower “good faith certifications”
 - Loan reasonably necessary because of COVID-19
 - Acknowledge permissible uses
 - No “double-dip”
- Lender must be able to document payroll
- Maximum loan is lesser of \$10M or 2.5 times monthly “payroll”
 - Payroll includes all compensation elements
 - Prorated \$100K/employee limit

Tax-Free Loan Forgiveness

- Up to 8 weeks of payroll, mortgage interest, rent and utilities eligible for forgiveness
 - Payroll limits of \$100K/annually per employee
- Borrower applies to lender and SBA pays lender
- Level of forgiveness based on 1) maintaining current payroll/workforce or 2) restoring payroll/workforce by June 30
- Documentation and certification required

QUESTIONS?

Business Tax Relief – Title II

Assistance For American Workers, Families, And Businesses (Business Provisions)

- Employee Retention Tax Credit
 - Refundable payroll tax credit for 50% of wages paid by employers during the COVID-19 crisis.
 - Available to employers whose
 - 1) Operations were fully or partially suspended, due to a COVID-19-related shut-down order, or
 - 2) Gross receipts declined by more than 50% when compared to the same quarter in the prior year.

Business Tax Relief – Title II

- Delays estimated tax payments for corporations and payment of employer payroll taxes
 - Certain employer payroll taxes for the period between enactment and December 31, 2020 are deferred until December 31, 2021 and December 31, 2022, with 50% of such taxes payable by each date.
- Expands availability of net operating losses
 - Reinstates the carryback period to five years for net operating losses sustained in 2018, 2019, or 2020 to provide tax relief for businesses whose revenues are constrained. Previously carryback period was two years.

Relief for Distressed Industries

Title IV: Assistance to Severely Distressed Sectors of the U.S. Economy

- \$500 billion to Treasury Secretary to make or guarantee loans to eligible businesses
 - \$454 billion for providing liquidity to the financial system that supports lending to eligible businesses, States, or municipalities
 - \$25 billion for passenger air carriers and other businesses in airline industry
 - \$4 billion for cargo air carriers.
 - \$17 billion for national security industry

Relief for Distressed Sectors – Title IV

- Targeted at air carriers and other businesses that have “not otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act”
- Treasury Secretary discretion to decide eligible business based on availability of credit, whether obligation is “prudently incurred,” and the loan is sufficiently secured.
- Secretary must publish procedures for application and minimum requirements within 10 days
- Business must have incurred or is expected to incur covered losses such that the continued operations of the business are jeopardized

Relief for Targeted Companies in Distressed Sectors

Loan conditions:

- Market interest rate loans not greater than 5 year term
- No stock buy backs, no dividends for 12 months
- Maintain employment levels as of March 24, 2020, to the extent practicable, but no reduction greater than 10% from that level
- U.S. company, significant operations and majority of employees in U.S.
- Limits on executive compensation
- Debt or equity available for gov't
- No loan forgiveness

Additional Relief for Targeted Co's in Distressed Sectors

- Title IV financial assistance Pandemic Relief for Aviation Workers -- Direct.
 - passenger air carriers \$25 billion
 - cargo air carriers \$4 billion; and
 - Contractors \$3 billion

Relief for Distressed Sectors

Title IV: Financial Assistance Pandemic Relief for Aviation Workers

- Funds must be used for the exclusive purpose of maintaining employee payrolls and are disbursed in amounts equal to the payrolls of receiving firms over the period from April 1 through September 30 of 2019
- No involuntary furloughs or reductions in pay rates and benefits until September 30, 2020
- No dividends or stock buy-backs until September 30, 2021
- Executive compensation cap

Relief for Distressed Sectors

Outside of targeted distressed sectors - loan conditions:

- U.S. Company, significant operations and majority of employees in U.S.
- No stock buy backs, no dividends for 12 months
- Executive Compensation Limits
- No Requirement Gov't Equity
- Treasury may waive requirements

Relief for Midsized Businesses

- Treasury financing to banks and other lenders that make direct loans to eligible businesses including, to the extent practicable, nonprofit organizations, with 500 - 10,000 employees
- Annualized interest rate that is not higher than 2% per annum, no principal or interest first 6 months (Treasury discretion).

Relief for Midsized Businesses

- The funds are used to support on-going operations and those received must be used to retain at least 90% of the recipient's workforce, with full compensation and benefits, through September 30, 2020
 - Intent to restore not less than 90% of its workforce as of February 1, 2020 and to restore all compensation and benefits
 - Recipient must be U.S. business and not outsource or offshore jobs for the term of the loan plus an additional 2 years
 - Recipient will not abrogate existing collective bargaining agreements for the term of the loan plus an additional 2 years
 - Recipient must remain neutral in any union organizing effort for the term of the loan

Oversight of Spending Program

Office of the Special Inspector General

- Creates Office of the Special Inspector General for Pandemic Recovery appointed by the President, by and with the advice and consent of the Senate
- Conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary of the Treasury

Oversight of Spending Program

- Establishes a Congressional Oversight Commission charged with oversight of the Department of the Treasury and the Board of Governors of the Federal Reserve System
- The Oversight Commission shall consist of 5 members appointed by (1) Speaker, (2) House Majority Leader, (3) Senate Majority Leader, (4) Senate Minority Leader; and (5) Jointly by Speaker of the House and Senate Majority Leader, after consultation with the Senate Minority Leader and House Minority Leader

State Restrictions: Stay at Home Orders

- Essential/Critical – federal vs. state definitions
- Federal role in critical infrastructure protection and resilience
- Department of Homeland Security CISA guidelines
- Status and nature of state and local “stay at home orders”

QUESTIONS?

Phase IV: What's Next

- What does a Phase IV package look like?
- What is the expected timing of a Phase IV package?

QUESTIONS?

Resources we will send in our follow up email:

[Copy of these slides](#) (with recording to follow)

[Link](#): Kelley Drye's COVID-19 Resource Center

[Client Advisory](#): Federal Relief Package Includes \$350 Billion for Small Business – Here Are the Details

[Client Advisory](#): Proposed CARES Act Could Potentially Provide Important Tax Benefits to Businesses

[Client Advisory](#): New DOL Guidance Puts Employers on Notice: FFCRA Takes Effect on April 1

[Webinar Invitation](#): COVID-19 Financial Remedies: Force Majeure, Business Interruption Insurance Coverage and Contractual Provisions (Wed April 1st 12:30 – 1:30)



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