Coronavirus Aid, Relief, and Economic Security (CARES) Act considerations for customers and vendors of the energy industry

April 2020
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Coronavirus Aid, Relief, and Economic Security (CARES) Act considerations for customers and vendors of the energy industry

Agenda

- CARES Act overview
- Credits and employment tax considerations
- SBA Paycheck Protection Program
- Insurance considerations
- Title IV considerations
- Conclusion
CARES Act overview
The CARES Act is meant to broadly address economic impacts of, and otherwise responds to, the COVID-19 outbreak.

The CARES Act was signed into law on March 27, 2020. The ~$2t legislative package is organized into two primary parts:

Keeping Workers Paid and Employed, Health Care System Enhancements, and Economic Stabilization (Division A)
- **Title I** - Keeping American Workers Paid and Employed Act
- **Title II** - Assistance for American Workers, Families, and Businesses
- **Title III** - Supporting America’s Health Care System in the Fight Against the Coronavirus
- **Title IV** - Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy
- **Titles V and VI** - Aid to states and miscellaneous provisions

Emergency Appropriations for Coronavirus Health Response and Agency Operations (Division B)
Coronavirus Aid, Relief, and Economic Security (CARES) Act considerations for customers and vendors of the energy industry

Highlights of the CARES Act

**Direct aid**
- **$260b**
  - Unemployment insurance
- **$150b**
  - Aid to states
- **$32b**
  - Grants to air carrier workers, contractors
- **$350b**
  - Supplemental appropriations
  - Includes $150b in health care funding

**Loans to business**
- **$500b**
  - Economic stabilization
    - (loans and relief for industries)
- **$25b**
  - Passenger airlines
- **$4b**
  - Air cargo carriers
- **$17b**
  - National security businesses
- **$377b**
  - Small business loan forgiveness grants, other grants

**Key features**
- Specific allotments for airlines, air cargo, national security businesses
- Restrictions on recipients
- Includes midsize businesses, nonprofits, state and local governments
- Oversight and transparency requirements
- US business eligibility requirements

**Tax provisions**
- **$292b**
  - Recovery rebate payments to individuals
- **$10b**
  - Retirement & charitable
- **$27b**
  - Business tax provisions
  - Modification of limitation on losses: **$170b**
  - Employer retention credit: **$55b**
  - Net operating loss provisions: **$26b**
  - Business interest deduction relief: **$13b**
  - Delay of employer payroll taxes: **$12b**
Credits and employment tax considerations
### Summary of workforce tax provisions of the CARES Act and the Families First Coronavirus Response Act

<table>
<thead>
<tr>
<th>Provision</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retention tax credit</td>
<td>Provides tax credit for employers continuing to pay employees who are not providing services due to COVID-19 circumstances; refundable payroll tax credit capped at 50% of $10,000 of wages and certain health plan expenses for the remainder of 2020</td>
</tr>
<tr>
<td>Paid leave tax credit</td>
<td>Applies for employers with less than 500 employees; payroll tax credit to offset cost of mandated extended leave; refundable payroll tax credit equal to 100% of required extended leave payments</td>
</tr>
<tr>
<td>Payroll tax deferral</td>
<td>Delays the timing of required federal tax deposits for certain employer payroll taxes incurred between March 27, 2020 and December 31, 2020; deferred taxes paid in 2021 and 2022 (50% in each year)</td>
</tr>
<tr>
<td>Unemployment insurance</td>
<td>Expands unemployment coverage to include:</td>
</tr>
<tr>
<td></td>
<td>- Self-employed individuals and independent contractors</td>
</tr>
<tr>
<td></td>
<td>- Pandemic unemployment assistance of an additional $600/week through July 2020</td>
</tr>
<tr>
<td></td>
<td>- An additional 13 weeks of benefits beyond current state provisions</td>
</tr>
</tbody>
</table>

- Companies utilizing Small Business Administration (SBA) loans under Title I of the CARES Act, which addresses the Paycheck Protection Plan (PPP), will be precluded from the employee retention credit under Title II, and vice versa.
- The payroll tax deferral is not available to a company if it obtains a PPP loan and has part of the loan forgiven.
SBA Paycheck Protection Program
### Paycheck Protection Program (PPP)

The US CARES Act will provide relief from COVID-19 financial impacts on American small businesses and consumers. A significant portion of small business relief will come in the form of the PPP to be distributed by all SBA certified lenders, depository institutions, federally insured credit unions and Farm Credit System institutions.

The PPP was originally funded with $349 billion in the $2.2 trillion CARES Act that the President signed March 27. But within two weeks of the program’s opening on April 3, the program had depleted its funding after approving nearly 1.7 million loans. On April 24, the CARES Act was amended to provide an additional $310 billion, which includes $60 billion dedicated to underserved communities such as minority and rural businesses.

#### Loan details

Loans will cover certain costs during the eight-week period after the loan is made:

- Maximum loan amount of 2.5x average payroll over the past year, up to $10 million
- Payroll costs capped at an annualized amount of $100,000 per employee
- No more than 25% of the forgiven amount may be for non-payroll costs
- Loan with a two-year term at 0.5% interest; no prepayment penalties if paid earlier than two years
- Payments deferred for six months, though interest will accrue during this time period
- No interest charged on amounts forgiven at the end of the period
- Safe harbor granted for ineligible businesses that applied for PPP and repay the loan in full by May 7

#### Beneficiaries and timing

Loans will be available to the following types of organizations if they employ 500 or fewer employees or otherwise meet size standards established by the SBA for specific industries:

- This is available to any business concern (e.g., corporation, partnership), nonprofit, veterans organization, tribal business concern, sole proprietorship, independent contractor or eligible self-employed individual.
- Starting April 3, 2020, small businesses and sole proprietorships can apply.
- Starting April 10, 2020, independent contractors and self-employed individuals can apply.

#### Eligibility and documents

Eligibility criteria and conditions include:

- Must have been in business prior to February 15, 2020
- Will need to complete the PPP loan application prior to June 30, 2020 (due to limited funds, it is recommended to apply as early as possible)
- Must provide certification for purpose and reason for loan
- Payroll documentation required
- Personal guarantees, collateral, receipt of tax returns and some fees to be waived
- No need to provide proof that the borrower is unable to receive credit elsewhere
- Will need to provide good faith certification of application accuracy

#### Forgiveness details

Criteria for forgiveness will depend on uses of the proceeds, as well as certain dollar amounts:

- Loan proceeds must be used to cover payroll costs, mortgage interest, rent and utilities.
- The date of the following must be prior to February 15, 2020, to be eligible for forgiveness: incurred interest on mortgage obligations, rent-in-force date and utility service start date.
- Employee levels are maintained, and compensation levels are maintained within 25% of 2019 salary levels. Forgiveness levels will be reduced if these requirements are not met.
- For staffing or salary-level changes made between February 15, 2020 and April 26, 2020, organizations have until June 30, 2020, to restore full employment levels.
The following are documents that borrowers should consider having ready when applying.

**Expected documentation requirements**

1. **Payroll documentation**
   - Payroll and benefit detail by employee for 2019 and 2020
   - Employee levels and evidence of those earning over $100,000 in annual salary

2. **Mortgage or rent documentation**
   - Evidence of mortgage interest incurred prior to February 15, 2020
   - Rent-in-force date required to be prior to February 15, 2020

3. **Utilities documentation**
   - Evidence of utility expenses
   - Utility start date required to be prior to February 15, 2020

4. **Tax documentation**
   - Supporting tax documentation for the prior year to support the employee and payroll levels

5. **Other loan documentation**
   - If other loan(s) outstanding related to COVID-19, all documentation on the loan(s)

6. **Seasonal/new employers**
   - For seasonal employers, payroll details for the time period suggested (February 15, 2019 to June 30, 2019)
Example PPP loan calculation

Below is an example of a simple maximum loan amount calculation.

<table>
<thead>
<tr>
<th>Loan amount calculation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Total employee headcount</td>
<td>300*</td>
</tr>
<tr>
<td>B. Average monthly payroll cost for prior year</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>C. Average monthly payroll cost for prior year x 2.5</td>
<td>$2,500,000</td>
</tr>
</tbody>
</table>

* Note: Employee salary is capped at $100,000 on an annualized basis, per employee.

Eligible loan amount = (average monthly payroll cost x 2.5)

  = ($1,000,000 x 2.5)

  = $2,500,000
Below is an example of the PPP loan life cycle in the event that full employment is maintained by the borrowing business. For the purposes of this scenario, assume a loan funding date of April 3, 2020.

### Scenario with full employment maintained

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Values</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 3</td>
<td>Total employee headcount</td>
<td>300</td>
</tr>
<tr>
<td></td>
<td>Average monthly payroll cost for prior year</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>Average monthly payroll cost for prior year x 2.5</td>
<td>$2,500,000</td>
</tr>
<tr>
<td></td>
<td>Loan funded</td>
<td>$2,500,000</td>
</tr>
<tr>
<td>April 3–May 29</td>
<td>Loan proceeds used by business to pay eligible costs under PPP</td>
<td></td>
</tr>
<tr>
<td>June 1</td>
<td>Total employee headcount at the end of eight-week period</td>
<td>300</td>
</tr>
<tr>
<td></td>
<td>Salary cost of employees</td>
<td>No less than $750,000 per month*</td>
</tr>
<tr>
<td></td>
<td>Loan forgiveness requested by business (bank has 60 days from this date)</td>
<td></td>
</tr>
<tr>
<td>July 31</td>
<td>Loan forgiven by bank (assuming all requirements met)</td>
<td>$2,500,000</td>
</tr>
<tr>
<td></td>
<td>Outstanding loan amount</td>
<td>$0</td>
</tr>
</tbody>
</table>

*Note: Salary must be maintained within 25% of the previous salary amounts per PPP requirements for loan forgiveness.*
## Scenario with 50% of employees maintained

Below is an example of the PPP loan life cycle in the event that only 50% of employment is maintained by the borrowing business. For the purposes of this scenario, assume a loan funding date of April 3, 2020.

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
<th>Values</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 3</td>
<td>Total employee headcount</td>
<td>300</td>
</tr>
<tr>
<td></td>
<td>Average monthly payroll cost for prior year</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>Average monthly payroll cost for prior year x 2.5</td>
<td>$2,500,000</td>
</tr>
<tr>
<td></td>
<td>Loan funded</td>
<td>$2,500,000</td>
</tr>
<tr>
<td>April 3 - May 29</td>
<td>Loan proceeds used by business to pay eligible costs under PPP</td>
<td></td>
</tr>
<tr>
<td>June 1</td>
<td>Total employee headcount at the end of eight-week period</td>
<td>150</td>
</tr>
<tr>
<td></td>
<td>Salary cost of employees</td>
<td>$500,000</td>
</tr>
<tr>
<td></td>
<td>Loan forgiveness requested by business (bank has 60 days from this date)</td>
<td></td>
</tr>
<tr>
<td>July 31</td>
<td>Loan partially forgiven by bank (assuming 50% of loan forgiven)</td>
<td>$1,250,000</td>
</tr>
<tr>
<td></td>
<td>Outstanding loan amount</td>
<td>$1,250,000**</td>
</tr>
</tbody>
</table>

**Note: This outstanding loan amount is subject to the loan terms stated in the PPP (e.g., payments deferred six months, 0.5% interest rate, two-year term).**
Key considerations

► There are no restrictions on the types of companies that can utilize the employee retention credit or the payroll tax deferral.
  ▶ Companies of all sizes can utilize both programs.
► Companies utilizing SBA loans under Title I of the CARES Act, which addresses the PPP, will be precluded from the employee retention credit under Title II, and vice versa.
► The payroll tax deferral is not available to a company if it obtains a PPP loan and has part of the loan forgiven.
► Affiliate rules are being revisited.

Please note: SBA guidelines for the PPP continue to evolve. We recommend you review those guidelines before submitting your loan applications.
Insurance considerations
Immediate actions as you recover from financial losses associated with COVID-19

► Review your insurance program and policies as soon as possible to identify potential coverages for:
  ► Property damage
  ► Business interruption
► Notify your carriers that you have experienced a loss
► Document everything and track all costs associated with COVID-19
► Actively pursue your claim and explore opportunities for funding through all potential available sources
► Explore other funding opportunities – SBA loans, CARES Act, nonprofit funding sources
Key questions to ask yourself when analyzing your situation and COVID-19 impact

► Do you think you have COVID-19 coverage?
  ▶ Have you canceled or postponed any events due to COVID-19?
  ▶ Do you have an employee who became ill with COVID-19 symptoms?
  ▶ If you shut down operations, was it for one of the following reasons:
    ▶ COVID-19 found on site
    ▶ Preemptive action to help reduce the spread of COVID-19
► Have you incurred additional costs (e.g., cleaning, testing, overtime payments) or relocated operations due to COVID-19?
► Do any of your customers, suppliers or vendors have any impact that may affect your operations?
► Will you qualify for CARES Act consideration?
Title IV considerations
Title IV – ESF overview

Title IV of the CARES Act established the Economic Stabilization Fund (ESF) to make $500b in support available to businesses.

The $500b is apportioned as follows:

- $454b
  - $25b Passenger airlines
  - $4b Cargo air carriers
  - $17b National security businesses
- $4b
- Set aside in support of the Federal Reserve facilities to eligible businesses, states and municipalities

**Direct lending**

- Loans must be repaid; applicable interest rate to be market rate loans directly with the Treasury for a maximum of five years, specifically for (i) passenger airlines ($25b), (ii) cargo air carriers ($4b) and (iii) businesses essential to national security ($17b).
- Restrictive covenants include:
  - Credit not reasonably available from other sources
  - No common share dividends, capital distributions or buybacks until 12 months after repayment
  - Must maintain 90% of March 24, 2020, headcount through September 30, 2020, at full salary and benefits
  - Must have incurred or expect to incur losses from COVID-19
  - Must be a US-based company, including significant operations and employees
  - Highly paid staff ($425k+ salaries) compensation and termination restrictions until 12 months after loan repayment and caps on termination benefits

**Federal Reserve lending**

- Loans must be repaid; maximum interest rate of 2% per annum on loans facilitated by the Federal Reserve and must be repaid by December 31, 2025 (at the latest), specifically for midsize businesses (500–10,000 employees), states and municipalities. Loan repayment grace period is for first six months and up to as much as one year.
- Restrictive covenants, in addition to the direct lending restrictions, include:
  - No offshoring of jobs until two years after loan repayment
  - No interference in collective bargaining agreement/union matters
  - Not currently a debtor in a bankruptcy proceeding
  - Must maintain 90% of the February 1, 2020, headcount through September 30, 2020
- Application process is not open yet.
CARES Act: Tactical actions for the now and next

Now
► Evaluate eligibility for PPP program
► Defer paying federal employment tax
► If federal income tax is overpaid at the end of 2019, evaluate filing fast-track refund by April 15, 2020
► Evaluate eligibility for employee retention tax credit for 50% of wages paid to employees during crisis
► Investigate available forms of financing in the ESF
► Consider benefits of employer payment of employee student loans
► Consider implications to Work Opportunity Tax Credit benefits
► Note that payments are taxable for federal and state employment tax purposes
► Evaluate benefit plans, review legislation expanding sick days and consider impact to mandatory paid leave requirements
► Consider state unemployment tax cost management strategies

Next
► Consider amending tax returns to claim bonus depreciation for qualified improvement property
► Evaluate ways to maximize benefits from changes to net operating loss rules
► Evaluate various state stimulus provisions
► Analyze tax implications of debt modifications and restructurings
► Explore property tax assessment reductions
► Explore deductions or tax credits from enhancing customer interface technology
► Review point-of-sale tax systems and prior filings to confirm sales tax has been and is now assessed, collected and remitted correctly

Evaluate eligibility for PPP program? then add this in the notes section....While the PPP program may run out of funding as early as this week or later this month, there is bipartisan support to replenish this pool of funds.
Conclusion
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