



**Coronavirus Aid, Relief and Economic Security Act
(CARES Act)**
How Employers Can Take Advantage

Email questions for presenters to IMA@IMA-Net.org

BOLDLY MOVING MAKERS **FORWARD**

Coronavirus Aid, Relief, and Economic Security Act (CARES Act): How Employers Can Take Advantage

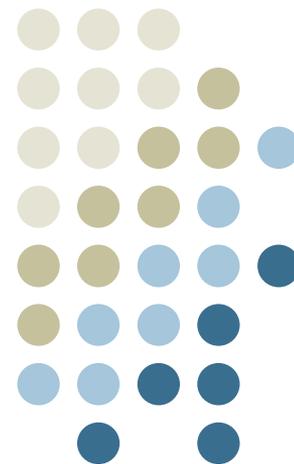
April 2, 2020

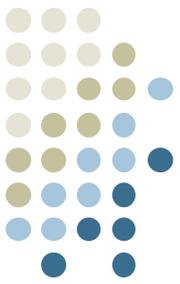
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Agenda

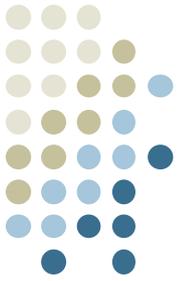
- Important Provisions for Employers Under the CARES Act
 - Paycheck Protection Program
 - Payroll Tax Credit
 - Additional Loan Programs
 - Unemployment Benefits
 - 401(k) Hardship and Loan options
- Section 139 – Qualified Disaster Payments

Paycheck Protection Program

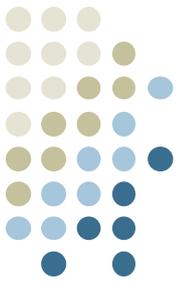


- Highlights and brief overview

Am I Eligible to Participate?



- Businesses with not more than 500 employees (or the industry size standard set by the SBA)
 - Based on physical location for employers in the accommodations and food service sectors
 - Threshold includes all employees regardless of status
 - Waiver of affiliate rules for certain businesses
- Sole proprietors, independent contractors, and certain self-employed individuals are eligible
- Other organizations may also be eligible (e.g. 501(c)(3) nonprofits)



What Will A Lender Look At?

- Considerations: Borrower was in operation on February 15, 2020 and had employees for whom the borrower paid salaries and payroll taxes or paid independent contractors
 - Bank Secrecy Act requirements
- Factors Not Considered:
 - No requirement to satisfy “credit elsewhere” test
 - No personal guarantees
 - No collateral

What Will A Lender Look At?



- Good Faith Certification:
 - Necessity of loan
 - Use of funds
 - Have not received and will not receive another PPP loan
 - Will provide verifying documentation for employees and covered costs
 - Forgiveness will only be provided for documented costs
 - Accuracy of information in application and supporting documents
 - Use of tax filings to calculate loan amount
 - Affirmation as to submitted tax documents
- Potential disqualification based on certain circumstances involving applicant and certain owners (e.g. bankruptcy, default on a federal loan, criminal charges)



How Much Money Can I Borrow And What Can I Use The Money For?



- Max Loan Amount = lesser of (i) 2.5 times average total monthly “payroll costs” during prior year or (ii) \$10MM
 - Special rules regarding employers not in business in 2019 and seasonal employers and certain economic injury disaster loans
 - Certain costs excluded from payroll costs
 - Treasury guidance indicates loan amount will be based on tax documents submitted with application
- Permissible uses include:
 - Payroll costs
 - Costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums
 - Employee salaries, commissions, or similar compensations
 - Payments of interest on certain obligations, rent, and utilities



Will My Loan Be Forgiven?



- Loan Forgiveness = amount incurred and paid for eligible expenses during the 8-week period beginning on the loan origination date
 - Cannot exceed principal amount of the financing
 - Potential reductions for reductions in employment and/or compensation
 - Certain employment and/or compensation reductions may be “cured” if done so not later than June 30, 2020
 - Forgiven amounts excluded from gross income under federal law
 - Expected that not more than 25% of forgiven amount may be for non-payroll costs
- Borrower is required to submit loan forgiveness application to lender with verifying documentation and a certification
 - Lender decision within 60 days of submitting application



What Will Happen With the Balance That is Not Forgiven?



- All loans are expected to have the same terms
 - Maturity of 2 years
 - Fixed interest rate of 0.50%
- Loan payments deferred for 6 months – interest will accrue during deferral period
- No pre-payment penalty

When can I apply?

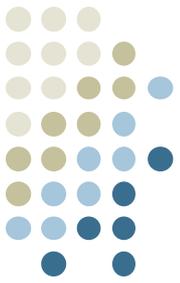


- April 3, 2020 = Small businesses and sole proprietorships
- April 10, 2020 = independent contractors and self-employed individuals
- Submit PPP loan application and required documentation, including payroll documentation, to lender by June 30, 2020
 - Subject to funding cap on PPP
- Information and PPP Loan Application:
<https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>



Emergency EIDL Grants

- EIDLs Generally: Loans to businesses suffering substantial economic injury due to a disaster
 - Up to \$2MM in funding
- CARES Act:
 - Expands eligibility to include businesses with not more than 500 employees, sole proprietors, and independent contractors
 - Provides for an emergency grant up to \$10,000 for EIDL applicants
 - Distributed within 3 days of receiving application
 - Use of funds only for permissible purposes
 - Reduces loan forgiveness if EIDL rolled into loan under PPP
 - Waiver of certain requirements



Emergency Grants & Payroll Tax Relief

Employee Retention Tax Credit



- Payroll tax credit for eligible employers impacted by COVID-19
 - Credit is equal to 50% of qualified wages per employee for the quarter
 - \$10,000 qualified wage maximum per employee for all quarters
 - Only for wages paid after March 12, 2020 and before January 1, 2021
- Eligible Employers:
 - Employers whose (a) business operations are fully or partially suspended due to a government shutdown order due to COVID-19, or (b) gross receipts for the quarter are less than 50% as compared to the same quarter in the prior year
 - Employers receiving a loan under the PPP are not eligible for the credit
- Qualified Wages:
 - More than 100 FTE = wages paid to an employee not providing services
 - Less than or equal to 100 FTE = wages paid to any employee

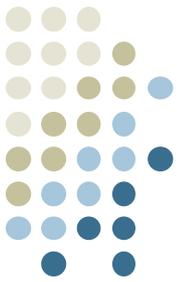


Payroll Tax Deferral



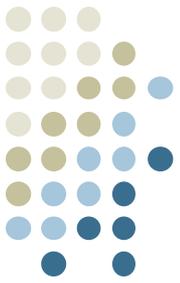
- Deferral of payment of the employer's share of certain payroll taxes for remainder of 2020
 - Paid over the next two years with 50% due by December 31, 2021 and the remainder by December 31, 2022
 - For self-employed individuals, deferral only allowed for 50%; same due dates apply
 - Not available to any taxpayer who has received loan forgiveness on a loan under the PPP

CARES ACT (cont.)



- A general overview of additional provisions and available relief

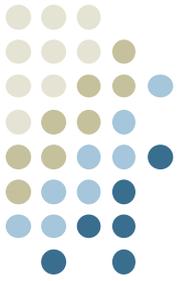
Available Financial Assistance from the Government under the Coronavirus Economic Stabilization Act of 2020



- **What is the form of assistance?**
 - \$500 billion of loans, loan guarantees and other investments
- **How will the \$500 billion be allocated among different sectors?**
 - **Federal Reserve Programs or Facilities**
 - **\$454 billion (plus any amounts not used in the Treasury Programs)** – loans, loan guarantees and other investments in programs and facilities to provide liquidity to the financial system that supports lending to eligible businesses, States and municipalities
 - **Treasury Programs**
 - **\$25 billion** – loans and loan guarantees for passenger air carriers, repair stations and ticket agents
 - **\$4 billion** – loans and loan guarantees for cargo air carriers
 - **\$17 billion** – loans and loan guarantees for businesses critical to maintaining national security
- **Preliminary procedures for applications and minimum requirements under the Treasury Programs were published on March 30th**



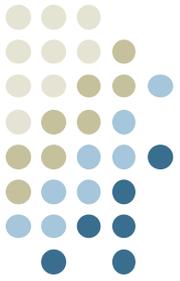
Federal Reserve Programs or Facilities Assistance for Mid-sized Businesses



- **Who qualifies for assistance?**
 - An “Eligible business” may receive assistance
 - US business
 - Created or organized in the US or under the laws of the US
 - With significant operations in the US
 - A majority of its employees based in US
 - Cannot have otherwise received adequate economic relief in the form of loans or loan guarantees provided under the CARES Act, such as SBA loans under the Payroll Protection Program
 - Must have between 500 and 10,000 employees
 - Must not be a debtor in a bankruptcy proceeding
 - Must not be insolvent

Federal Reserve Programs or Facilities

Assistance for Mid-sized Businesses



- **Terms of the Loans**

- “[T]he Secretary shall endeavor to seek the implementation of a program or facility...that provides financing to banks and other lenders that make direct loans to eligible businesses.”
- What we know now:
 - **Direct Loans from banks and other lenders**
 - **Interest Rate** – Annualized interest rate not higher than 2%
 - **Deferred Payments** – No principal or interest due for the first 6 months after any such direct loan is made
 - **Loan Forgiveness** – Unlike loans under the Payroll Protection Program, the principal amount of any loan may not be reduced through loan forgiveness

Federal Reserve Programs or Facilities Assistance for Mid-sized Businesses

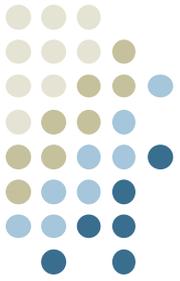


- **Required Good-faith Certifications Regarding:**
- **General Matters**
 - the uncertainty of economic conditions makes the loan request necessary to support the ongoing operations of the business
 - the business is a US business
- **Workforce Matters**
 - the funds will be used to retain at least 90% of the business' workforce, at full compensation and benefits, until Sept. 30, 2020
 - the business intends to restore not less than 90% of the workforce that existed as of February 1, 2020, and
 - the business intends to restore all compensation and benefits to its employees no later than 4 months after the termination date of the public health emergency



Federal Reserve Programs or Facilities

Assistance for Mid-sized Businesses



- **Dividend and Stock Repurchase Matters**
 - The business will not
 - pay dividends with respect its common stock, and
 - if publicly traded, not repurchase its stock (unless required under a contract in effect as of the date of enactment of the CARES Act)
- **Labor Matters**
 - The business will not outsource or offshore jobs for the term of the loan and 2 years after completing repayment of the loan
 - The business will not abrogate existing collective bargaining agreements for the term of the loan and 2 years after completing repayment of the loan
 - The business will remain neutral in any union organizing effort for the term of the loan



Federal Reserve Programs or Facilities

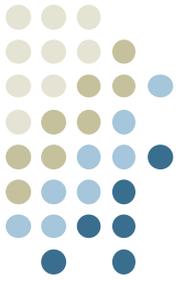
Main Street Lending Program



- **YET TO COME**
 - The Federal Reserve is specifically authorized to establish a “Main Street Lending Program” or other similar program or facility that supports lending to small and mid-sized businesses
 - Such lending may be on such terms and conditions as the Board may set

Treasury Programs

Loans and Loan Guarantees



- **Who qualifies for assistance?**
 - Passenger air carriers, repair stations and ticket agents
 - Cargo air carriers
 - Businesses critical to maintaining national security
- **Still must qualify as eligible businesses**
 - Air carriers
 - U.S. businesses that have not otherwise received adequate economic relief in the form of loans or loan guarantees under the CARES Act

Treasury Programs

Terms for Loans and Loan Guarantees



- **What terms do we know today?**
 - **Terms and Conditions** – The Secretary of the Treasury has broad discretion regarding the terms and conditions, which **may** include requirements for audited financial statements
 - **Term** – Not longer than 5 years
 - **Interest Rate**
 - based on the risk of each specific loan or guarantee, and
 - current average yield on outstanding marketable obligations of the United States of comparable maturity
 - **Security** – Must be sufficiently secured **or** made at a rate that
 - reflects the risk of the loan or loan guarantee, and
 - is to the extent practicable, not less than an interest rate based on market conditions for comparable obligations prevalent prior to the outbreak of the coronavirus
 - **Loan Forgiveness** – **Unlike loans under the Payroll Protection Program, the principal amount of any loan may not be reduced through loan forgiveness**



Treasury Programs

Applicable Restrictions



- **Restrictions on Employment Levels**
 - Until September 30, 2020
 - must maintain employment levels as of March 24, 2020, to the extent practicable, and
 - in any case may not reduce its employment levels by more than 10% from the levels on such date
- **Restrictions on Stock Repurchases, Dividends, and Capital Distributions**
- **Restrictions on Compensation and Severance Payments**

Treasury Programs

Warrants and Senior Debt



- **What type of financial protection will the Treasury require?**
 - If listed on a national securities exchange, must give Government a warrant or another equity interest in the business
 - If not listed on a national securities exchange, must give Government a warrant or a senior debt instrument
- **What terms and conditions will apply?**
 - Final terms of the warrants and senior debt not yet established
 - Will provide for the Government to reasonably participate in the equity appreciation (if a warrant or equity interest) or a reasonable interest rate premium (if a debt interest)
 - Government may sell, exercise, or surrender the warrants, equity interests and the debt interests
 - At this time, does not appear there will be any Government voting power with respect to any common stock



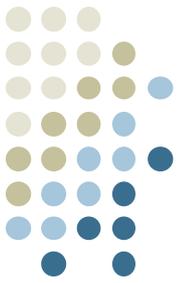


Treasury Programs

What Information Should I be Compiling Now?

- **Debt.** A description of existing secured and unsecured debt, credit lines, outstanding/maximum balances, and existing security holders and creditors
- **Debt Service.** A description of scheduled debt service for the next 3 years
- **Employment Levels.** A By head count and total compensation amount, as of March 24, 2020, and any proposed changes.
- **Financial Statements.** The consolidated financial statements of the business and any parent for the previous 3 years, including (if available) audited financial statements
- **Covered Losses.** A description of the covered losses that the business has incurred or will incur as a result of coronavirus
- **Lack of Credit Elsewhere.** Evidence that the business can't otherwise reasonably obtain credit elsewhere.
- **Passenger Service Operations.** Available seat miles, revenue per seat mile, and cost per available seat mile (for 2019, and a forecast for 2020 prepared no earlier than 10/1/19, including any assumptions)





Treasury Programs

What Information Should I be Compiling Now?

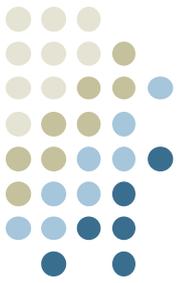
- **Cargo Service Operations.** Available ton miles, revenue per ton mile, and cost per available ton mile (for 2019, and a forecast for 2020 prepared no earlier than 10/1/19, including any assumptions)
- **Security.** A description of the type and general value of all security available to be pledged by the business and its subsidiaries to secure the loan (on a senior and a subordinated basis)
- **Use of Proceeds.** The purposes for which the business will use the loan proceeds
- **Financial Needs.** Quantitative information on the business's financial needs for the remainder of 2020, including expected revenues, operating costs, and credit, and how the loan will address those needs together with other sources of funding and financing
- **Operating Plan.** A discussion of the business's operating plan for the remainder of 2020 if the loan is approved, including how the proposed loan fits within the business's business plan and an analysis showing that the loan is prudently incurred
- **Cost Restructuring.** A description of any plans the business has to restructure its obligations, contracts, staffing, or organization to improve the business's financial condition



How to Work With Your Bank



- **Temporary Relief for Community Banks**
 - Reduction of the Community Bank Leverage Ratio to 8 percent from 9%
 - Suspension of the requirements under U.S. GAAP for loan modifications related to the coronavirus pandemic that would otherwise be categorized as a troubled debt restructuring (TDR)
 - Suspension of any determination of a loan modified as a result of the effects of the coronavirus as being a troubled debt restructuring
 - Suspension of compliance with Financial Accounting Standards Board Accounting Standards Update No. 2016-13 including the current expected credit losses (referred to as CECL) methodology for estimating allowances for credit losses
- **How to talk to your bank about relief**
 - Start the conversation early
 - What we are seeing in the market
 - Fee waivers; deferred payments; loan modifications; low-rate loans



Additional Provisions and Relief to Understand in Designing Compensation Programs

FFCRA



- Don't forget about FFCRA requiring employers with less than 500 employees to provide paid leave in certain circumstances.
- This needs to be accounted for when determining amounts considered in Paycheck Protection Loans (can't double-dip)
- For more information:
 - Various articles continually updated and made available on SA website.
 - SA website includes links to previous webinars outlining complicated considerations in administering leave under FFCRA

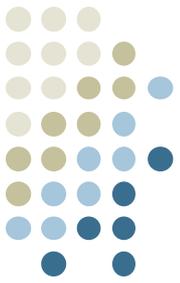


Unemployment: Will Your Employees Want To Work Anymore?



- State unemployment doesn't cover everyone
 - For example, if you are sick with COVID-19, you're not otherwise available to work and don't qualify for unemployment.
 - Or, if you're an independent contractor, you don't qualify for unemployment
- CARES enacted \$600/week for up to 39 weeks for individuals with qualifying reasons
 - The Pandemic supplement available through CARES covers individuals that might not otherwise get unemployment
 - If you DO QUALIFY for state benefits, you get the \$600 on top of your state benefits.
 - In IL for example, individuals could get about \$400 as a weekly benefit, approximately \$100 in dependent allowance, AND \$600 as a pandemic supplement = approximately \$1,100 in weekly benefits.

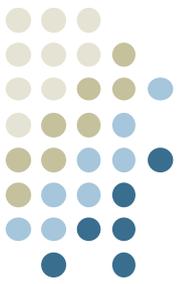




Expanded 401(k) Provisions

- Disaster related Distributions allowed up to \$100,000 for 403(b), 401(k) and IRAs
 - No 10% excise tax imposed
 - Includable in taxable income over 3 years (with possibility of repayment during 3 years also)
- Available Loan Amounts increased
 - Max of \$50k increased to \$100k
 - Can defer payments up to 1 year (including those otherwise due in 2020)



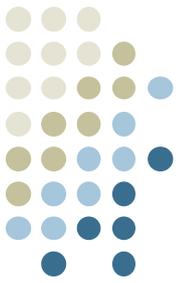


401(k) Provisions (cont.)

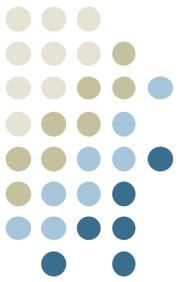
- Also, temporary waiver of required minimum distributions from 401(k), 403(b), IRAs and certain 457(b) plans.
- Can start operating with these provisions right away.
- Plan amendments can be retroactive and implemented as late as December 31, 2022.
(must be adopted by end of Plan year beginning on or after 1/1/22)



Qualified Disaster Payments Under 139



- Must be 3 things:
 1. “reasonable and necessary” as a result of qualified disaster
 2. Can’t simply be income replacement (such as sick, vacation, etc.)
 3. Can’t be used for expenses that are otherwise reimbursable or covered by insurance
- NO DOCUMENTATION REQUIRED
- NO FORMAL PLAN DOCUMENT REQUIRED



Thank You! Questions?

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To view timely COVID-19 updates as they happen, visit our resource center here:

<https://www.salawus.com/practices-covid19-task-force.html>





**IMA Recommended
COVID-19
Online Resources at:**

<https://ima-net.org/covid-19/>

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