

## CARES ACT ASSISTANCE FOR BUSINESSES WITH MORE THAN 500 EMPLOYEES



The CARES Act, signed into law March 27, grants financial incentives to small businesses that retain workers instead of laying them off. The measures include forgivable loans, tax credits and deferrals, and funding for an unemployment program offered through employers.

The CARES Act also has a loan program for businesses that employ between 500-10,000 employees. It's called the CARES Act Title IV Midsize Business Loans program (also known as the Section B(4) Funds).

The CARES Act does not include a specific timeline for the launch of this particular program. However, it is expected that the US Treasury will provide regulations and guidelines in the next couple weeks for this loan program.

We will advise our clients on the loan program once the Treasury guidelines are out. Businesses should also contact their existing bank (s) to get updates regarding this loan program.

### Is my business eligible?

Eligible business which is defined to include:

1. air carriers or

2. a US business “that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under the CARES Act.” (Sect. 4002(4))

Such businesses must have been

1. created or organized in the United States or under the laws of the United States and
2. have significant operations in and a majority of its employees based in the United States. (Sec. 4003(c)(3)(C))

Nonprofit organizations may also be eligible to the extent practicable.

Applications must be submitted prior to *December 31, 2020*.

### What is the interest rate on the loan?

The interest rate will not exceed 2%.

### What is the tax treatment of the loan?

The loan is to be treated as debt for tax purposes.

### When will we have to pay principal and interest on the loan?

Payments will be automatically deferred for at least six months.

### Can the loan be forgiven in whole or in part?

No loan forgiveness is planned at this time.

### What Conditions are Attached to Receive a Midsize Business Loan?

- **No Payment of Dividends.** The borrower will be prohibited from paying dividends or making other capital distributions on its common stock during term of the loan, and for a year after the date the loan is no longer outstanding (Sec. 4003(c)(3)(A)(ii)(I));
- **No Stock Buybacks.** The borrower cannot make stock buybacks of equity securities of the borrower, or any parent of borrower, that are listed on a national securities exchange (except to the extent required by a preexisting contract), during term of the loan, and for a year after the date the loan is no longer outstanding (Sec. 4003(c)(3)(A)(ii)(I));
- **Employee Compensation Cap.** The borrower must agree to cap all employee compensation (including salary, stock, and bonuses) for a period ending one year after the loan is repaid as follows:
  1. Employees receiving more than \$425,000 per year cannot receive (i) more compensation than they received in 2019 (except for compensation determined through a collective bargaining agreement entered into prior to March 1, 2020) or (ii) severance pay or other benefits upon termination exceeding twice the 2019 compensation amount. (Sec. 4003(c)(3)(A)(ii)(III) referencing Sec. 4004(a)(1)).
  2. Officers or employees receiving more than \$3 million per year cannot receive total compensation in excess of (i) \$3 million plus (ii) 50% of the excess over \$3 million. (Sec. 4003(c)(3)(A)(ii)(III) referencing Sec.4004(a)(2)).

The Treasury may waive the forgoing conditions as necessary “to protect the interests of the Federal Government.” (Sec. 4003(c)(3)(A)(iii)).

### What Certification is Required by the Borrower?

- **Impact of COVID-19.** The loan request is necessary to support the ongoing operations of the borrower due to the impact of COVID-19.
- **Intent to Maintain Compensation.** Funds will be used to retain at least 90% of the borrower's workforce, at full compensation and benefits, until September 30, 2020;
- **Intent to Maintain Workforce.** The borrower intends to restore at least 90% of the workforce that existed as of February 1, 2020, and to restore all compensation and benefits to the workers of the borrower no later than 4 months after the COVID-19 public health emergency is canceled;
- **Domestic Status.** The borrower is (i) created or organized in the United States, (ii) domiciled in the United States, and (iii) has significant operations and a majority of its employees based in the United States;
- **No Bankruptcy.** The borrower is not a debtor in a bankruptcy proceeding.
- **No Outsourcing.** The borrower will not outsource or offshore jobs for the term of the loan and two years after completing repayment.
- **Collective Bargaining Obligations.** The borrower will not abrogate existing collective bargaining agreements for the term of the loan and two years after; and
- **Neutral in Organizing Efforts.** The borrower will remain neutral in any union organizing effort for the term of the loan.

Our Hoge Fenton Rapid Response team is ready to assist you. Please contact **Darlene Chiang** if you have any additional questions on the CARES Act Loan Program. For more COVID-19 Corporate & Business Law resources, click **here**.



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