



## **SBIA Summary of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)**

This is a top-line summary of the small business provisions in the final version of the CARES Act, the Senate's emergency economic relief package. House and Senate negotiators reached agreement on the nearly \$2 trillion package early on March 25, 2020.

The Senate unanimously approved the legislation by a vote of 96-0. The measure is the biggest economic rescue package in U.S. history. The bill now goes to the House where passage is expected Friday. Speaker Pelosi and Minority Leader McCarthy are working to ensure that the bill passes by unanimous consent, which means that House members are not required to return to Washington for a vote. However, if any single House member objects to this process, then the House must reconvene for an in-person vote.

*SBIA reminds readers that this summary is for informational purposes only. It is not legal advice. Please consult your firm's legal and accounting professionals regarding any matters with the CARES Act that may affect your firm and its portfolio companies. SBIA reserves the right to revise this summary as new information and analyses become available.*

[Numbers in (parenthesis) refer to the page number in the CARES Act.]

### **TITLE I—KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT**

#### **Sec. 1102. Paycheck Protection Program.**

- **Overall.** Qualifying small business concerns are eligible for federal-guaranteed emergency “Paycheck Protection Program” (“PPP”) interest-bearing (not more than 4%), non-recourse loans for business interruption because of CV-19. (9); (22; 25)
  - Loans to help borrowers cover payroll costs (i.e., count only employee earnings <\$100K/annual salary (12); domestic-based employees only) and other working capital expenses not already covered by previous federal CV-19 relief laws. (10-13)
  - Loans made through 7(a) lenders and other designated institutions.
  - Loans are eligible for forgiveness, but with any unforgiven portion repayable after 10 years with an option for deferral. (26-29)
  - No pre-payment penalty. No double-dipping from SBA Economic Injury Disaster Loan (EIDL) program. (24-30) Eligible processing fee limit determined by SBA. (29-31)  
Appropriated amount/loans: \$349 billion. (52)

- **Eligible Borrowers.**
  - Eligible PPP borrowers include: (i) “*small business concern*” defined at 15 U.S.C. 636. (ii) “any business concern that employs not greater than 500 employees, or, if applicable, the SBA’s size standard/employees. (14); (iii) sole proprietors/independent contractors/self-employed persons (15); and, (iv) food service business concerns (NAICS 72) with multiple locations, but that employ not more than 500 persons per location. (15-16).
  - Eligible borrowers must make good faith certification to lender that borrower needs the funds to operate because of current economic disruption and will deploy funds for eligible uses. (23-24)
  
- **Covered Period.** The “covered period” is Feb 15 – June 30, 2020 (e.g., small business was operational). (10)
  
- **Affiliation.** During the covered period, affiliation rules waived for borrowers that are an SBIC-financed small business, small business in the food service sector (NAIS 72), and franchises assigned a franchiser identifier code by SBA. (6-17) *The language does not specify the scope of the affiliation waiver for SBIC-financed small businesses, more specifically, whether it applies to any small business regardless the amount of SBIC financing received.*
  
- **Credit Elsewhere.** During the covered period, the “credit elsewhere” requirement is waived for small business borrowers. (24)
  
- **Collateral and Personal Guarantee.** During the covered period, “collateral” and “personal guarantee” requirements are waived for small business borrowers. (24-25)
  
- **Maximum Loan Amount.** Lesser of \$10 million, or:
  - (*For Existing Small Businesses*) = small business borrower’s total average monthly payroll for the previous year, excluding comp above \$100K/employee, times 2.5, plus the unrealized share of any 7(a) loan already approved under FY20 budget. (Payroll period/seasonal small businesses: either Feb. 15, 2019, or March 1, 2019 – June 30, 2019, at borrower’s election). (17-19)
  - (*For “Otherwise Eligible Businesses”*) = small business not in business during the covered period: payroll between Jan.1 -Feb. 29, 2020, times 2.5, plus the unrealized share of any 7(a) loan already approved under federal FY20 budget. (17-19)
  
- **Allowable Uses/Loan Funds.** Borrower uses loan funds to meet payroll costs/cover employee benefits, including commissions or similar compensation; operating costs (e.g., rent; mortgage interest payments; utilities; interest on debts incurred before covered period). (20-21)

- **Designated Lenders.** Treasury and SBA may designate “additional lenders” under this emergency loan program that “have the necessary qualifications to process, close, disburse and service loans made with the guarantee of the Administration.” (22) Lenders may approve loans with delegated SBA authority (no separate SBA approval required). (21-22) *SBICs and BDCs may qualify as “additional lenders” under this emergency program.*
  - *Lender reimbursement rates (29):*
    - *5%/covered loans (<\$350K)*
    - *3%/covered loans (\$350K-<\$2M)*
    - *1%/covered loans (\$2M+)*

### **Sec. 1105. Loan Forgiveness.**

- **Covered Loans.** Eligible for loan forgiveness on the PPP loan total provided borrower demonstrates that loan proceeds were used for eligible purposes, including payroll/benefits (excluding employee comp above \$100K); mortgage interest; rent; utilities. (43)
  - “Covered Period” means the eight-week period beginning on date lender originates PPP loan for borrower. (41)
  - Amount forgiven limited to principal amount borrowed. (45)
  - If borrower reduces salaries, number of employees, or both during the covered period, then the loan amount available for forgiveness is reduced by the amount of any reduction in:
    - i. **Number of Employees (45):**  
Calculated by dividing the #/FTEs during the Covered Period by either (a) average #/FTE per month (Feb 15-June 30, 2020); or (b) average #/FTE per month (Jan. 1-Feb. 29, 2020).
      - *For SEASONAL EMPLOYERS: #/FTEs per month (Feb 15-June 30, 2020)*
    - ii. **Salary/Wages (47):**  
Loan amount available/forgiveness is reduced by the amount of any reduction in total salary or wages of any employee during the covered period that is in excess of 25 percent of the total salary or wages of the employee during the most recent full quarter during which the employee was employed before the covered period.
      - But, if a small business borrower rehires or ends the salary reduction before June 30, 2020, then the small business has eliminated the layoff or salary cuts and its loan amount eligible for forgiveness is not affected. (48)
      - SBA and Treasury may issue regulations that grant *de minimis* exemptions from these requirements. (49)
- Borrowers shall apply for forgiveness with the lender directly. (49) No documentation, no forgiveness. (51)
- Cancelled indebtedness is not taxable to the borrower as gross income. (52)
- SBA shall issue regulations governing loan forgiveness within 30 days of enactment. (52)

## **Sec. 1109. United States Treasury Program Management Authority.**

- **Lender Designation.** The U.S. Treasury may designate “insured depository institutions, insured credit unions; institutions of the Farm Credit System chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and other lenders that do not already participate” in SBA lending programs to participate in the PPP lending program. (62) *This provision permits the federal government to expand pool of potential lenders that are fiscally safe and sound, including qualifying BDCs, SBICs, and RBICs, eligible to make loans under this emergency program.*
  - Treasury to issue regulations that govern the terms and conditions for such lenders (e.g., compensation, interest rates, underwriting standards). (63)

**Sec. 1114. Emergency rulemaking authority.** Not later than 15 days after the date of enactment of this Act, the SBA shall issue regulations. (83)

## **TITLE II—ASSISTANCE FOR AMERICAN WORKERS, FAMILIES, AND BUSINESSES**

**Section 2303. Modifications for net operating losses.** The provision relaxes the limitations on a company’s use of losses. Net operating losses (NOL) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The provision provides that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income. These changes will allow companies to utilize losses and amend prior year returns, which will provide critical cash flow and liquidity during the COVID-19 emergency.

**Section 2306. Modification of limitation on business interest.** The provision temporarily increases the amount of interest expense businesses can deduct on their tax returns, by increasing the 30-percent limitation to 50 percent of taxable income (with adjustments) for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.

## **TITLE IV—ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE UNITED STATES ECONOMY**

**Sec. 4003. Emergency Relief and Taxpayer Protection.** This Emergency Stabilization Fund (ESF) backstops the Federal Reserve’s 13(3) ability, with up to \$50 billion, to purchase obligations directly from issuers of such obligations for businesses that have not otherwise received adequate economic relief in the form of loans or loan guarantees. (514)

**Fed 13(3) Lending Authority:** The Fed announced its emergency lending authority under Section 13(3) of the Federal Reserve Act to create additional programs to stabilize important financial markets. It [announced](#) three facilities: the Primary Market Corporate Credit Facility (PMCCF), the Secondary Market Corporate Credit Facility (SMCCF) and the Term Asset-Backed Securities Loan Facility (TALF)

- In addition to the steps above, the Federal Reserve expects to announce soon the establishment of a Main Street Business Lending Program *to support lending to eligible small-and-medium sized businesses*, complementing efforts by the SBA.
- Any lending through a 13(3) facility established by the Federal Reserve under this Section must be **broad-based**, with verification that each participant is not insolvent and is unable to obtain adequate financing elsewhere. Loan forgiveness is not permissible in any such credit facility.

### **Sec. 4013. Temporary Relief from Troubled Debt Restructurings.**

- Accounting Standards Relief for Modified Loans. Waives the normal application of GAAP for "**financial institutions**" from March 1, 2020, until the earlier of December 31, 2020, or 60 days after termination of the public health emergency declared on January 31, 2020 for loans *modified* (that would otherwise be treated as troubled debt restructurings) as a result of CV-19, and to loan impairments related to such modifications. (539)  
*\* The term "financial institution" is yet to be defined by Treasury, but SBIA has requested BDCs be considered under the definition.*

### **Sec. 4014. Optional Temporary Relief from Current Expected Credit Losses.**

- Accounting Standards Relief. Sec. 4014(b)(1) waives the normal application of GAAP for "**insured depository institutions**" from March 1, 2020, until the earlier of December 31, 2020, or the date of termination of the public health emergency declared on January 31, 2020. (542)  
*\*SBIA worked closely with member companies and Members of Congress to expand this section to include all non-bank lenders, but it was not included in the final package. SBIA will continue work with policymakers and regulators on relief for BDCs and their portfolio companies.*