

Financial relief for businesses under the CARES Act and related Federal Reserve initiatives

Six practical steps that companies can take now

1. **Contact your bank**
2. **Examine your cash flow needs**
3. **Review your insurance policies**
4. **Evaluate CARES Act tax relief provisions**
5. **Evaluate CARES Act and Federal Reserve loan options**
6. **Evaluate additional funding options**

For details on these steps see page 3.

The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.

As of March 27, 2020, the U.S. Senate and the U.S. House of Representatives have passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). U.S. President Donald Trump is expected to sign it into law shortly. The [CARES Act](#) is the third installment in a series of federal legislative initiatives enacted in response to the 2019 novel coronavirus (COVID-19) pandemic and is intended, in part, to provide financial relief to businesses.

Debt relief initiatives under the CARES Act

A significant portion of the CARES Act is dedicated to providing liquidity through business loans. Several other debt initiatives outside of the CARES Act have also been undertaken, including action by the Federal Reserve System (Federal Reserve).

Small business interruption loans

The CARES Act provides \$349 billion for U.S. Small Business Administration (SBA) loans to small businesses under Section 7(a) of the Small Business Act. The CARES Act expands eligibility to businesses that employ 500 or fewer employees, or that meet the size standards established by the SBA. Businesses having 500 or fewer employees per location and with a NAICS code beginning with 72 (Accommodation and Food Services) are also eligible. Loans under this program will be made by designated banks and lenders, and will be fully guaranteed by the SBA.

The CARES Act increases the maximum loan amount to up to \$10 million, with the actual loan amount to be tied to a formula based upon certain enumerated expenses over a specified period. Companies may use these SBA loans for:

- Certain 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 compensation
- Interest payments on mortgages
- Rent payments
- Utilities
- Other debt obligations incurred before Feb. 15, 2020

Requirements such as SBA loan fees, personal guarantees, collateral requirements, prepayment penalties and the requirement that the business not be eligible for credit elsewhere, are waived under the CARES Act. The maximum loan term is 10 years, and interest on the loan cannot exceed 4 percent.

More significantly, the CARES Act provides for complete payment deferment of not less than six months and a process for loan forgiveness in an amount equal to payroll costs, interest payments on mortgages, rent payments and utility payments. The loan forgiveness amount may be reduced if a company has laid off employees or decreased compensation, subject to conditional opportunities to rehire employees to avoid the reduction in loan forgiveness. The SBA is required to issue guidance to lenders implementing the loan deferment and forgiveness provisions within 30 days after the date of enactment of the CARES Act.

The small business interruption loans described above are distinct from the SBA's [economic injury disaster loans](#), which may be available in amounts up to \$2 million for certain types of businesses, directly through the SBA.

Loans under Title IV

The CARES Act makes available \$454 billion to the U.S. Department of the Treasury (Treasury) to support the Federal Reserve's lending initiatives. Unlike the SBA's small business interruption loans, the CARES Act does not provide an avenue for loan forgiveness for these Title IV loans. Loans under Title IV will also be subject to several conditions, including limitations on stock repurchases, dividends and executive compensation.

While the Federal Reserve announced several lending initiatives prior to the passage of the CARES Act, the CARES Act specifically states that the Treasury should endeavor to implement, through the Federal Reserve, a loan initiative for businesses with between 500 and 10,000 employees, with conditions, in part, related to employee retention, dividends and stock buybacks.

Federal Reserve debt relief initiatives

The [Federal Reserve has previously announced several initiatives](#), which are separate from the CARES Act, including two programs focused on corporate debt for large employers.

Based on these announcements, the Primary Market Corporate Credit Facility would be open to companies with investment-grade debt ratings, for the purchase of new bonds and loan issuance. Bridge financing would be provided for four years, and borrowers would be able to defer interest and principal payments for the first six months of the loan.

Additionally, the Secondary Market Corporate Credit Facility would provide liquidity for outstanding corporate bonds. In the secondary market, this facility would purchase corporate bonds issued by companies with investment-grade debt, as well as certain exchange-traded funds.

The Federal Reserve also announced current and future initiatives aimed at providing relief for small businesses, including the Term Asset-Backed Securities Loan Facility, which was initially established during the 2008 financial crisis. The Federal Reserve has also indicated its intent to establish the Main Street Business Lending Program to "support lending to eligible small-and-medium sized businesses."

The loans under the Federal Reserve's initiatives may carry certain conditions for the companies borrowing under those programs, but the Federal Reserve is still developing the exact terms and conditions of these facilities. It is not yet clear whether the Federal Reserve's previously announced lending initiatives will be subject to any or all of the conditions for the loans pursuant to Title IV of the CARES Act, discussed above. At the very least, the Federal Reserve has announced some limitations on stock buybacks and dividends during interest deferral periods.

Outside of the statutory and regulatory limitations, companies that may seek financing under these initiatives should review the terms of their existing credit facilities for any terms that may restrict their participation, including limitations imposed on incurring additional debt.

Tax relief

Several provisions of the CARES Act are aimed at improving the cash position of companies through tax relief. At a high level, these provisions include the following:

Social Security payroll tax payments

Employers may defer one half of their share of Social Security payroll tax payments until Dec. 31, 2021, and the remaining half until Dec. 31, 2022. The Medicare portion of payroll taxes may not be deferred. The deferral begins for payroll tax amounts due on the date on which President Trump signs the CARES Act, and continues through Dec. 31, 2020. **Accordingly, employers should take action to defer their share of Social Security payroll tax in their payroll immediately after enactment of the CARES Act.** Note that the employer continues to be obligated to remit amounts withheld from the employee's pay in a timely manner.

Net operating loss carryback

As a result of the Tax Cuts and Jobs Act (TCJA), companies were unable to carryback net operating losses to a previous tax year. However, under the CARES Act, companies are permitted to carryback a loss from 2018, 2019 or 2020 for five years, subject to certain limitations. Net operating losses can now also fully reduce taxable income, as opposed to the previous 80 percent cap

on these reductions. By amending previously filed tax returns to reflect these accommodations, companies may be able to gain liquidity and preserve financial flexibility.

Deduction of business interest

The deduction for business interest is now limited at 50 percent of adjusted taxable income for both 2019 and 2020, as opposed to the previous cap at 30 percent. This new cap potentially allows for increased interest deductions.

Qualified improvement property

Qualified improvement property is now eligible for expensing under Internal Revenue Code Section 168(k), allowing companies to immediately write off those costs associated with improving property instead of depreciating those improvements over an extended period of time. As a result of this change, companies may have a refund opportunity for 2018 and 2019.

Alternative minimum tax credits

The TCJA eliminated the corporate alternative minimum tax. Alternative minimum tax credits were thereafter available as refundable credits over several years, but the CARES Act now permits companies to utilize alternative minimum tax credits immediately.

Payroll tax credits

Companies that either suspended operations (fully or partially) due to a COVID-19-related government order limiting commerce, travel or group meetings or had gross receipts decline 50 percent compared to the same quarter in the prior year, are eligible for a refundable payroll tax credit for 50 percent of qualified wages paid by employers to employees during the COVID-19 crisis, up to the first \$10,000 in compensation for each employee. For employers with more than 100 employees, qualified wages is limited to payment of wages to employees who are not actually providing services due to the suspended operations of the employer.

Six practical steps that companies can take *now*

With the CARES Act nearing final adoption and several Federal Reserve initiatives announced and in the works, companies have an early view into the types of relief for which they might qualify. Unfortunately, there remains significant uncertainty around the timing and mechanics of implementation of the provisions of both the CARES Act and the Federal Reserve initiatives.

While specifics should become clearer over the next days and weeks, here are some affirmative steps most companies can take **now** in order to best position themselves during this period of uncertainty:

1. Contact your bank

If you have not already, contact your lender to discuss your company's financial position and potential funding needs, which could include bridge financing, loan modifications and forbearance arrangements, covenant amendments, and other options. Discuss the impact that any additional borrowings under government or other programs may have on current debt covenants. Godfrey & Kahn attorneys expect that banks will be on the forefront of preparations for administration of the funding forthcoming from the SBA.

2. Examine your cash flow needs

Examine your short-term and long-term cash flow modeling, and stress test your financial positions against reasonably possible scenarios. These may include, for example, full, partial and periodic business closures for short-, medium- and long-term timeframes.

3. Review your insurance policies

Contact your insurance agents or brokers, and review your policies to determine what, if any, coverage may be available in connection with business interruptions.

4. Evaluate CARES Act tax relief provisions

Evaluate the impact that the various tax relief provisions of the CARES Act will have on your business. As noted above, employers can and should take action now to defer their share of Social Security payroll tax in the payroll immediately following the enactment of the CARES Act.

5. Evaluate CARES Act and Federal Reserve loan options

Evaluate the various lending facilities under the CARES Act and the Federal Reserve initiatives described above, including your company's potential eligibility and the impact of any short-term solutions (for example, reductions in force and layoffs) on eligibility and loan terms.

6. Evaluate additional funding options

Evaluate any other equity or debt funding sources to which you may have access, beyond what will be offered under government assistance programs.

Take deliberate action

Once you have consulted with your internal and external teams of advisors, move deliberately to implement your company's strategy. Once made, deferring the execution of difficult decisions generally serves only to worsen the overall situation.

For more information on the legal implications of the CARES Act and the Federal Reserve initiatives on your business, contact a member of our Tax or Corporate Practice Groups.