



SUMMARY OF CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT

In early April 2020 the Small Business Administration (“SBA”) issued final “rules” related to the “**Paycheck Protection Program**” (“PPP Program”). As March turned to April many businesses were frustrated with the changing guidance and multiple “applications” required. The final version of the application having been settled upon, Kinney Mason thought it would be beneficial to its clients to issue some notes concerning the PPP Program and the CARES ACT more broadly.

The CARES ACT allocated \$349,000 million for government backed loans to qualifying businesses that may be “forgiven” up to the full principal amount of the loan.

Kinney Mason believes that the frustration over the application process is going to pale in comparison to frustration related to receiving funds. New “processing” systems are going to have to be built in order to distribute the money to small businesses in an organized fashion. The SBA and financial institutions are not ready to start processing the new loans. Money will not be available for three or four weeks at the earliest. It is not clear how the loans will be underwritten or when the SBA website will be ready to truly handle the “traffic” and exchange of information required.

The program allows for a low interest (1%) loan that will be forgiven if employee wages and numbers are maintained through June 30, 2020 and if the money is spent on payroll costs, rent, mortgage interest, or utilities in the eight-week period from the origination date. The program is available through June 30, 2020.

PPP loans will be fully forgiven if the funds are used for payroll costs and interest on mortgages, rent, and utilities that were in place as of February 15, 2020. At least 75% of the forgiven amount must have been used for payroll. The employer is required to maintain or rehire employees. If headcount declines, the forgiveness is reduced. Loan payments are deferred for six months, but interest does accrue during that period. No collateral or personal guarantees from owners are required. Neither the government nor lenders will charge borrowers any fees. Forgiven portions are not subject to income taxes.

Payroll Costs. The PPP loan has a maturity of two (2) years and an interest rate of one percent (1%). The maximum loan amount is 2.5 times the average monthly payroll costs incurred during the year prior to the loan date, or if the business was not operational in 2019, 2.5 times the average total monthly payroll costs incurred for January and February 2020. Average monthly payroll costs include the following:

- Salary, wages, commissions, or similar compensation, like cash tips or equivalent;
- Vacation, parental, family, medical, or sick leave;
- Allowance for dismissal or separation;
- Group health care benefits, including insurance premiums;
- Retirement benefits; and
- Payment of state or local tax assessed on the compensation of the employee (state unemployment tax).

Compensation does NOT include the following:

- Salary over \$100,000 per employee;
- Payroll taxes (like FICA and Medicare);
- Compensation paid to employees outside the U.S.;
- Qualified sick leave or family leave for which a credit is allowed under the Families First Coronavirus Response Act;
- Retirement benefits; and
- Payment of state or local tax assessed on the compensation of the employee (state unemployment tax).

Application. If you have not reviewed the application yet, it is relatively simple, and you need to attest to the following:

- You were in business on February 15, 2020 and had employees for whom you paid salaries and payroll taxes or paid independent contractors
- You need the money to support your ongoing obligations
- You will use the money to support payroll, mortgage payments, rent, and utilities [It will be important to keep good records]
- You will document the payroll, covered mortgage payments, rent and utilities for the eight (8) weeks following the application
- You acknowledge forgiveness is based on the covered expenses, and that non-payroll costs (rent, mortgage, utilities) will only be 25% of the forgiveness
- You haven't previously received an SBA 7(a) loan
- You are telling the truth in the application, and
- You are providing information identical to what is on your tax returns

Qualification. You are eligible for a PPP loan if you: (1) are a small business with fewer than 500 employees in the United States; and (2) you were in operation on February 15, 2020 and either had employees for whom you paid salaries and payroll taxes or paid independent contractors as reported on a Form 1099-MISC. You are also eligible for a PPP loan if you are an individual who operates under a sole proprietorship or as an independent contractor or eligible self-employed individual, and you were in operation on February 15, 2020.

Amount You Can Receive. Add payroll costs from the last 12 months for employees (not independent contractors) who reside in the United States. Subtract compensation paid to any single employee if it exceeds \$100,000. Divide the resulting figure by 12 to arrive at monthly payroll costs. Multiply by 2.5. There is a cap of 10 million. Please note the resulting amount may need to be adjusted if your business received an Economic Injury Disaster Loan (EIDL).

BELOW IS A MORE DETAILED REVIEW OF THE CARES ACT

BUSINESS PROVISIONS

Paycheck Protection Program (PPP) (emergency loans)

- Increases the government guarantee of loans to 100% through 12/31/20.
- Includes sole-proprietors, independent contractors, and other self-employed individuals as eligible for loans.
- Requires the Administrator to register each loan using the taxpayer TIN, as defined by the Internal Revenue Service, within 15 days.
- Waives affiliation rules for businesses in the hospitality and restaurant industries, franchises that are approved on the SBA's Franchise Directory, and small businesses that receive financing through the Small Business Investment Company (SBIC) program.
- Defines the covered loan period as beginning on February 15, 2020 and ending on June 30, 2020.
- Establishes the maximum 7(a) loan amount to \$10 million through December 31, 2020 and provides a formula by which the loan amount is tied to payroll costs incurred by the business to determine the size of the loan.
- Specifies allowable uses of the loan include payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments.
- Provides delegated authority, which is the ability for lenders to make determinations on borrower eligibility and creditworthiness without going through all of SBA's channels, to all current 7(a) lenders who make these loans to small businesses and provides that same authority to lenders who join the program and make these loans.
- For eligibility purposes, requires lenders to, instead of determining repayment ability, which is not possible during this crisis, to determine whether a business was operational on February 15, 2020, and had employees for whom it paid salaries and payroll taxes, or a paid independent contractor.

- Provides an avenue, through the U.S. Department of Treasury, for additional lenders to be approved to help keep workers paid and employed. Additional lenders approved by Treasury are only permitted to make Paycheck Protection Program loans, not regular 7(a) loans.
- Requires eligible borrowers to make a good faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; they will use the funds to retain workers and maintain payroll, lease, and utility payments; and are not receiving duplicative funds for the same uses from another SBA program.
- Waives both borrower and lender fees for participation in the Paycheck Protection Program. Waives the credit elsewhere test for funds provided under this program.
- Waives collateral and personal guarantee requirements under this program.
- Outlines the treatment of any portion of a loan that is not used for forgiveness purposes. The remaining loan balance will have a maturity of not more than 10 years, and the guarantee for that portion of the loan will remain intact.
- Sets a maximum interest rate of four percent.
- Ensures borrowers are not charged any prepayment fees.
- Increases the government guarantee of loans to 100 percent through December 31, 2020, at which point guarantee percentages will return to 75 percent for loans exceeding \$150,000 and 85 percent for loans equal to or less than \$150,000.
- Allows complete deferment of PPP loan payments for at least six months, and not more than a year, and requires SBA to disseminate guidance to lenders on this deferment process within 30 days.

Loan Forgiveness

- Establishes that the borrower shall be eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.
- Amounts forgiven may not exceed the principal amount of the loan. Eligible payroll costs do not include compensation above \$100,000 in wages. Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered 8-week period compared to the previous year or time period, proportionate to maintaining employees and wages:

Payroll costs plus any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation) plus any payment on any covered rent obligation plus and any covered utility payment.
- The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation. To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.
- Allows forgiveness for additional wages paid to tipped workers.
- Borrowers will verify through documentation to lenders their payments during the period. Lenders that receive the required documentation will not be subject to an enforcement action or penalties by the Administrator relating to loan forgiveness for eligible uses.
- Upon a lender's report of an expected loan forgiveness amount for a loan or pool of loans, the SBA will purchase such amount of the loan from the lender.
- Canceled indebtedness resulting from this section will not be included in the borrower's taxable income.

| | |
|----------------------------------|---|
| | <ul style="list-style-type: none"> Any loan amounts not forgiven at the end of one year is carried forward as an ongoing loan with terms of a max of 10 years, at max 4% interest. The 100% loan guarantee remains intact. |
| Direct Appropriations | <p>CARES created funds for the following uses:</p> <ul style="list-style-type: none"> \$349 billion for loan guarantees (PPP); \$675 million for Small Business Administration salaries and expenses; \$25 million for the Office of Inspector General; \$240 million for small business development centers and women’s business centers for technical assistance for businesses; \$25 million for resource partner associations to provide online information and training; \$10 million for minority business centers for technical assistance for businesses; \$10 billion for emergency EIDL grants; \$17 billion for loan subsidies; \$25 million for Department of Treasury salaries and expenses; and \$100 billion for secondary market guarantee sales. |
| Quick Summary of PPP | <p>The Paycheck Protection Plan (PPP) is the \$349 billion in loan guarantees that will provide small businesses and other entities with zero-fee loans of up to \$10 million. Up to 8 weeks of average payroll and other costs will be forgiven if the business retains its employees and their salary levels. Principal and interest are deferred for up to a year and all borrower fees are waived. This temporary emergency assistance through the U.S. Small Business Administration (SBA) and the Department of Treasury can be used in coordination with other COVID-financing assistance established in the bill or any other existing SBA loan program.</p> |
| Emergency Economic Injury | <p><u>Emergency Economic Injury Grants</u></p> <ul style="list-style-type: none"> The stimulus includes \$10 billion in funding for a provision to provide an advance of \$10,000 to small businesses and nonprofits that apply for an SBA economic injury disaster loan (EIDL) within three days of applying for the loan. EIDLs are loans of up to \$2 million that carry interest rates up to 3.75 percent for companies and up to 2.75 percent for nonprofits, as well as principal and interest deferment for up to 4 years. The loans may be |

| | |
|--------------------------------------|---|
| | <p>used to pay for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses.</p> <ul style="list-style-type: none"> • The EIDL grant does not need to be repaid, even if the grantee is subsequently denied an EIDL, and may be used to provide paid sick leave to employees, maintaining payroll, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent and mortgage payments. Eligible grant recipients must have been in operation on January 31, 2020. The grant is available to small businesses, private nonprofits, sole proprietors and independent contractors, tribal businesses, as well as cooperatives and employee-owned businesses. |
| <p>Additional SBA Details</p> | <p><u>Debt Relief for Existing and New SBA Borrowers</u></p> <ul style="list-style-type: none"> • The stimulus includes \$17 billion in funding for a provision to provide immediate relief to small businesses with standard SBA 7(a), 504, or microloans. Under this provision, SBA will cover all loan payments for existing SBA borrowers, including principal, interest, and fees, for six months. This relief will also be available to new borrowers who take out an SBA loan within six months after the President signs the bill. The measure also encourages banks to provide further relief to small business borrowers by allowing them to extend the duration of existing loans beyond existing limits; and enables small business lenders to assist more new and existing borrowers by providing a temporary extension on certain reporting requirements. While SBA borrowers are receiving the six months debt relief, they may apply for a PPP loan that provides capital to keep their employees on the job. <p><u>The stimulus also includes a permanent fix that allows SBA to waive fees for veterans and their spouses in the 7(a) Express Loan Program, regardless of the President’s budget. Under current law, SBA may only waive fees on 7(a) Express loans to veterans when the President’s budget does not project a cost above zero for the overall 7(a) loan program.</u></p> |
| <p>Payroll Tax Credit</p> | <ul style="list-style-type: none"> • This provision would provide a refundable payroll tax credit for 50 percent of wages paid by eligible employers to certain employees during the COVID-19 crisis. The credit is available to employers, including non-profits, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings. |

The credit is also provided to employers who have experienced a greater than 50 percent reduction in quarterly receipts, measured on a year-over-year basis.

- Wages of employees who are furloughed or face reduced hours as a result of their employers' closure or economic hardship are eligible for the credit. For employers with 100 or fewer full-time employees, all employee wages are eligible, regardless of whether an employee is furloughed. The credit is provided for wages and compensation, including health benefits, and is provided for the first \$10,000 in wages and compensation paid by the employer to an eligible employee. Wages do not include those taken into account for purposes of the payroll credits for required paid sick leave or required paid family leave, nor for wages taken into account for the employer credit for paid family and medical leave (IRC sec. 45S).
- The Secretary of the Treasury is granted authority to advance payments to eligible employers and to waive applicable penalties for employers who do not deposit applicable payroll taxes in anticipation of receiving the credit. The credit is not available to employers receiving Small Business Interruption Loans.

Taxpayers could defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one due at the end of 2021, the other at the end of 2022.

EDUCATION PROVISIONS

Important Student Loan Elements

- Cancels payments for all federal student loan borrowers with federally held loans (Direct Loans and FFEL loans that are held by the U.S. Department of Education) through September 30, 2020, meaning such borrowers will not be required to make any payments toward outstanding interest or principal.
- Suspends interest accrual for such loans, meaning balances for such borrowers will not grow.
- Prohibits forced collections such as garnishment of wages, tax refunds, and Social Security benefits; and negative credit reporting during this time period.
- Directs student borrowers continue to receive credit toward Public Service Loan Forgiveness, Income-Driven Repayment forgiveness, and loan rehabilitation.
- Starting in August, requires student loan borrowers to receive notices to help inform them that their regular loan payments will resume at the end of September. These notices are intended to provide a transition period to help borrowers stay on track as regular loan payments begin again and to enroll in other relief options (such as income-driven repayment) at such time. Allows institutions of higher education to issue work-study payments to students who are unable to work due to work-place closures as a lump sum or in payments similar to paychecks.
- Allows institutions of higher education to issue work-study payments to students who are unable to work due to work-place closures as a lump sum or in payments similar to paychecks.
- Note: There are important provisions for students who dropped out of school completely which are not covered here.

LABOR PROVISIONS

| | |
|--|--|
| Limitation on Paid Family and Medical Leave | <ul style="list-style-type: none"> Clarifies the limitation on compensation during paid leave, stating an employer shall not be required to pay more than \$200 per day and \$10,000 in the aggregate for each employee under this section. |
| Limitation on Paid Sick Leave | <ul style="list-style-type: none"> Clarifies the limitation on compensation during paid sick days, stating an employer shall not be required to pay more than \$511 per day and \$5,110 in the aggregate for sick leave or more than \$200 per day and \$2,000 in the aggregate to care for family under this section. |
| Paid Family and Medical Leave for Rehired Employees | <ul style="list-style-type: none"> Allows an employee who was laid off by an employer March 1, 2020, or later to have access to paid family leave in certain instances if they are rehired by the employer. Employee would have had to work for the employer at least 30 days prior to being laid off. |
| Advance of Paid Leave Tax Credit | <ul style="list-style-type: none"> Makes the refundable tax credit provided for in CV2 able to be an advanced refundable tax credit instead of having to be reimbursed to employers on the back end of providing paid leave to employees. Creates regulatory authority to implement the tax credit advances. |
| Expansion of DOL Authority to Postpone Certain Deadlines. | <ul style="list-style-type: none"> Section 518 of ERISA provides the Department of Labor limited ability to postpone certain ERISA filing deadlines for a period of up to one year. This section allows the Secretary of Labor to delay filings by notice or otherwise in the case of a public health emergency declared by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act. |
| Single-Employer Plan Funding Rules | <ul style="list-style-type: none"> Provides funding relief for single employer defined benefit pension plans. Specifically, provides companies with more time to meet funding obligations by delaying the due date for any contribution otherwise due during 2020 until January 1, 2021. At that time, contributions due earlier would be due with interest. Provides that a plan's status for benefit restrictions as of December 31, 2019 will apply throughout 2020. |
| Quick Summary of Labor Details For Individuals | <ul style="list-style-type: none"> CARES would create a new program modeled on Disaster Unemployment Assistance that would provide unemployment benefits to individuals who do not qualify for regular unemployment compensation and are unable to work because of the COVID-19 public health emergency. Pandemic Unemployment Assistance will cover self-employed workers (including |

gig workers and independent contractors), part-time workers, and those with limited work histories. The changes made in sections 2104 and 2107 to increase the size of regular unemployment benefits and make them available for additional weeks will also apply to benefits received through the Pandemic Unemployment Assistance program. Pandemic Unemployment Assistance will be state administered but fully federally funded. Except as otherwise provided in this section, federal regulations for Disaster Unemployment Assistance will apply to Pandemic Unemployment Assistance. The program is effective through December 31, 2020.

- \$600 in Federal Pandemic Unemployment Compensation is added to every weekly unemployment benefit, effective until July 31, 2020. This \$600 benefit will be taxable (like regular unemployment benefits), but it will be disregarded in determining Medicaid or CHIP eligibility.
- An additional 13 weeks of federally funded unemployment compensation is available for individuals who have exhausted their state unemployment benefits available immediately through December 31, 2020.
- One organization summarized unemployment changes as follows:
 - **Full Paycheck Replacement:** \$600 increase for every American, which equates to 100 percent of wages for the average American without a paycheck struggling through the Crisis
 - **Waiving Waiting Weeks:** Gets money in people’s pockets sooner by providing federal incentives for states to eliminate waiting weeks.
 - **Extension of Benefits:** An additional 13 weeks of federally funded unemployment insurance benefits are immediately be made available.
 - **Expanding Access:** Allow part-time, self-employed, and gig economy workers to access UI benefits.

| | |
|--|--|
| <p>Rebates (Government Direct Payments)</p> | <ul style="list-style-type: none"> • \$1,200 of direct payments are contemplated for singles and heads of households (\$2,400 for married couples filing joints returns). The provision also provides \$500 per qualifying child dependent under age 17 (using the rules under the Child Tax Credit). A family of four would receive \$3,400. • Rebates phase out at a 5% rate above adjusted gross incomes of \$75,000 (single)/ \$122,500 (head of household)/ \$150,000 (joint). There is no income floor or phase-in – all recipients will receive the same amounts, provided they are under the phaseout threshold. • Tax filers must provide Social Security Numbers (SSN) for each family member claiming a rebate (adoption taxpayer identification numbers accepted for adopted children). An exception on SSN is made for spouses of active military members. The rebates are fully available to residents of U.S. Territories, including Puerto Rico. • The rebates will be paid out as advance refunds (in the form of checks or direct deposit) on the basis of taxpayers’ filed tax year 2019 returns (or tax year 2018, if a 2019 return has not yet been filed). |
| <p>10% Retirement Distribution Penalty Waived</p> | <ul style="list-style-type: none"> • This provision would waive the additional 10 percent tax on early distributions from IRAs and defined contribution plans (such as 401(k) plans) in the case of coronavirus-related distributions. A coronavirus-related distribution may be made between January 1 and December 31, 2020, by an individual who is (or whose family) is infected with the coronavirus or who is economically harmed by the coronavirus. Distributions are limited to \$100,000 and may be re-contributed to the plan or IRA. Employers are permitted to amend defined contribution plans to provide for these distributions. Additionally, defined contribution plans are permitted to allow plan loans up to \$100,000 and repayment of existing plan loans is extended for employees who are affected by the coronavirus. |

MISCELLANEOUS PROVISIONS

BANKING/ LANDLORD- TENANT/ OVERSIGHT OF BUSINESS ACTIONS

- **Forbearance and Moratorium on Foreclosures** – The bill provides American homeowners with important protections to help keep them in their homes. Homeowners with FHA, USDA, VA or other federally backed mortgages including those guaranteed by Fannie Mae and Freddie Mac may request forbearance on payments for up to 12 months with no fees, penalties, or extra interest. The bill also includes a 60-day moratorium on foreclosures and evictions of homeowners with FHA, USDA, VA, or 184/184A loans, or whose mortgages are backed by Fannie Mae and Freddie Mac.
- **Moratorium on Evictions** – The bill also provides additional protections from eviction for millions of Americans. Owners of multifamily rental properties with federally backed loans will be eligible to receive forbearance on those loans for 90 days, during which period they may not evict or charge late fees or other penalties to tenants for nonpayment of rent. Owners of federally subsidized properties or properties with a federally backed mortgage loan may not evict or charge penalties or fees to a tenant who cannot pay rent for 120 days following this act.
- **No Stock Buybacks and Dividends and Stronger Worker Protections** – The bill prohibits stock buybacks and dividends for loan recipients for the length of any loan plus one year. It also requires loan recipients to retain employees and honor collective bargaining agreements.
- **Temporary Regulatory Changes to Safeguard Bank Deposits and Help Borrowers** – The FDIC and NCUA will guarantee balances in transaction accounts for banks and credit unions, and the FDIC will guarantee certain debt issuances. Restrictions on lending limits and other regulations for large and small banks make it easier for lenders to work with borrowers affected by the COVID-19 pandemic.
- **Prohibition on Conflicts of Interest** – The bill prohibits the President, Vice President, members of the Executive Branch and Congress, and their families from receiving funds under this Act, as well as conflicts of interest and self-dealing.

- | | |
|--|--|
| | <ul style="list-style-type: none">• Ongoing Reporting and Public Accountability – The bill mandates that the Treasury Secretary and the Chair of the Federal Reserve provide reporting of transactions entered into under this title. The Treasury Secretary is required to provide transaction disclosures within 72 hours and provide weekly reports to Congress. The Federal Reserve is required to provide weekly transaction disclosures and monthly reports to Congress. All of the disclosures and reports will be made public.• In addition, the Treasury Secretary and the Fed Chair will testify quarterly before the oversight committees on transactions under the Act, and the GAO will conduct a study nine months after enactment, and annually thereafter, and submit reports to the oversight committees on the loans, loan guarantees, and other investments made under the Act.• Strong Oversight of Lending Facilities –The bill establishes a Special Inspector General for Pandemic Recovery to monitor the distribution of funds and conduct audits and investigations of such funds. The Special IG will issue quarterly reports and regularly testify to Congress on operations of the facility. In addition to the Special IG, a five-member bipartisan Congressional Oversight Panel will also report on the activities of the Secretary of the Treasury, as well as the impact of this act on the economy and markets. |
|--|--|