

Mid-Sized Business Assistance under the CARES Act

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), a \$2 trillion-plus bipartisan federal emergency relief bill, was signed into law.

While the small business (500 or less employees) relief aspects of the CARES Act have garnered significant attention, we want our business and nonprofit clients with between 500 and 10,000 employees (“Mid-sized Businesses”) to know that financial assistance may be available under the CARES Act to help mitigate some of the negative economic consequences of the COVID-19 pandemic.

The CARES Act encourages the United States Treasury Secretary (“Treasury Secretary”) to “endeavor to seek the implementation” of a program or facility to support banks and other lenders who make direct loans to Mid-sized Businesses. ***As of the date of this update, the Treasury Secretary has not yet issued such guidance. We will update this Client Alert as guidance is issued.***

While there is still much uncertainty regarding the specifics related to the loan program available to Mid-sized Businesses under the CARES Act, here are several of the important high-level points:

MID-SIZED BUSINESSES MAY BE ELIGIBLE FOR ASSISTANCE UNDER THE CARES ACT¹

Although Mid-sized Businesses (and certain nonprofit organizations) are not eligible for the Payroll Protection Program² available to small businesses under the CARES Act, Mid-sized Businesses may nonetheless be eligible for assistance under the CARES Act.

While the application process and other aspects of such financial assistance options are unclear at this time, the CARES Act provides that the Treasury 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 (i.e., businesses and, to the extent practicable, certain nonprofits with between 500 and 10,000 employees). Unlike the direct loans provided for under the CARES Act, mid-size business loans under this program would come from private lenders. The CARES Act limits the annualized interest rate applicable to direct loans to 2%, and principal and interest are waived for at least the first six months of the loan (or for such longer period as the Treasury Secretary may determine).

¹ The implementation of a CARES Act lending program or facility does not preclude the Federal Reserve from establishing a Main Street Lending Program to support lending to small and mid-sized businesses. The Federal Reserve announced on March 23, 2020 that it would establish a Main Street Business Lending Program, which may offer assistance to Mid-sized Businesses but is not covered by this Client Alert. We will monitor the situation and keep our Mid-sized Business clients updated as to any developments.

² For businesses and nonprofits with less than 500 employees, [the Paycheck Protection Program may be available under the CARES Act.](#)

GOOD-FAITH CERTIFICATION AND RESTRICTIONS APPLICABLE TO MID-SIZED BUSINESS LOANS

1. **Good-Faith Certification:** Eligible Mid-sized Business borrowers applying for a direct loan under the CARES Act must make a variety of good-faith certifications, examples of which include the following:
 - i. the loan is necessary due to current economic uncertainty to support its ongoing operations;
 - ii. the loan funds will be used to retain at least 90% of the recipient's workforce, at full compensation and benefits, until September 30, 2020;
 - iii. the recipient intends to restore not less than 90% of its workforce that existed as of February 1, 2020, and to restore all compensation and benefits to its workers no later than four months after the termination date of the public health emergency declared on January 31, 2020;
 - iv. the recipient is domiciled in the United States;
 - v. the recipient is not a debtor in a bankruptcy proceeding; (vi) the recipient will not outsource or offshore jobs for the term of the loan and two years after the loan is repaid;
 - vi. the recipient will not abrogate existing collective bargaining agreements for the term of the loan and for two years after the loan is repaid; and
 - vii. the recipient will remain neutral in any union organizing effort for the term of the loan.

2. **Restrictions on Stock Buybacks, Dividends.** For 12 months after the last date on which the direct loan is outstanding, eligible Mid-sized Business may not:
 - i. repurchase an equity security of the business or any of its parent companies that is listed on a national securities exchange, unless honoring an existing contractual obligation entered into prior to March 27, 2020, and
 - ii. may not pay dividends or make other capital distributions with respect to its common stock.

Our attorneys are available to assist and counsel Mid-sized Businesses applying for loans under the CARES Act or any other loan program.