

# PIA MEMBER GUIDE TO RELEVANT BUSINESS PROVISIONS IN THE CARES ACT

On March 25, the U.S. Senate unanimously passed H.R. 748, the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The House passed it on March 27, and, later that evening, the president signed the bill into law.

PIA National has begun assembling resources to help agents understand the provisions in the \$2 trillion bill, beginning with [this chart](#) showing the distribution of the \$2 trillion. To better help PIA members understand the assistance available to businesses, and in conjunction with the law firm of Jackson Lewis P.C., we have developed this detailed guide to the relevant provisions of the CARES Act.



# LOAN PROVISIONS

The provisions in Title I include loans available to businesses meant to prevent them from laying off employees and to ensure their continued viability for the next few months.

## **Small Business Administration (SBA) Paycheck Protection Program**

### **(Section 1102)**

- Small businesses with fewer than 500 employees are eligible to receive loans up to a maximum loan amount equal to no more than \$10 million
- Loans must be used for certain purposes, which include:
  - Payroll costs
  - Costs related to the continuation of group health care benefits during period of paid sick, medical, or family leave, and insurance premiums
  - Employee salaries, commissions, or similar compensation
  - Payments of interest on any mortgage obligation
  - Rent
  - Utilities
  - Interest on any other debt obligations incurred before the covered period
- A business's eligibility may depend on whether it:
  - Was in operation on February 15, 2020, and
  - Had employees to whom the borrower paid salaries and payroll taxes, or
  - Paid independent contractors
- An eligible recipient is required to make a good faith certification that:
  - Due to the current economic conditions, the loan is needed to support the ongoing operations of the business
  - The funds will be used to keep workers and maintain payroll or make mortgage, lease, or utility payments, and
  - The business isn't submitting a duplicative application for the same purposes
- The SBA requires lenders to provide complete payment deferment relief (including payment of principal, interest, and fees) for affected borrowers with covered loans for a period of at least six (6) months but no more than one year

# LOAN PROVISIONS

## **Loan Forgiveness**

### **(Section 1106)**

- Loan recipients are eligible for partial loan forgiveness
- An eligible loan recipient with tipped employees may receive loan forgiveness for additional wages paid to those employees
- To substantiate an application for loan forgiveness, the loan recipient must:
- Provide verifying documentation of the number of full-time equivalent employees on payroll and pay rates, and
- Certify that
- The documentation is true and accurate, and
- The amount for which forgiveness is requested was used to retain employees or to make mortgage, rent, or utility payments

## **Emergency EIDL Grants**

### **(Section 1110)**

- The SBA will provide emergency grants of \$10,000 to some businesses with less than 500 employees that were in operation on January 1, 2020 and that have applied for an SBA economic injury disaster loan (EIDL). The loan should be provided to the business within three days of its application. The applicant must provide a self-certification that it is eligible to apply. Even if applicants are later rejected for the economic injury disaster loan, they are not required to repay this advance payment.
- The grant must be used for allowable purposes, which include:
  - Providing paid sick leave to employees unable to work as a direct result of COVID-19
  - Maintaining payroll to retain employment during business interruption
  - Meeting increased costs to obtain materials unavailable due to interruption in supply chains
  - Paying rent or mortgage
  - Repaying obligations that cannot be met due to revenue loss

# UNEMPLOYMENT INSURANCE PROVISIONS

These provisions provide expanded unemployment insurance benefits to workers who are unemployed or underemployed because of the COVID-19 pandemic. Below is a summary of the expanded benefits and coverage requirements.

## **Subsidy for Certain Loan Payments**

### **(Section 1112)**

- SBA will pay the principal, interest, and fees owed on certain qualifying loans for six months
- Payments on covered loans will begin within 30 days of their due dates
- Payments will be applied in a manner so that the borrower is relieved of the obligation to pay

## **Enhancement of Benefits and Covered Individuals**

### **(Sections 2101-2116)**

This section:

- Extends the availability of unemployment insurance by 13 weeks and provides a four-month enhancement of benefits (this is in addition to preexisting, state-specific unemployment benefits)
- Makes unemployment compensation benefits available to those not traditionally eligible for regular unemployment benefits, including people with limited work history or those who have exhausted their state unemployment compensation benefits
- Provides that a “covered individual” eligible for benefits includes anyone who provides self-certification that he or she is able and available to work but is unemployed or partially unemployed due to any of the following:
  - Has been diagnosed with COVID-19
  - Is experiencing symptoms and seeking a medical diagnosis of COVID-19
  - A member of the individual’s household has been diagnosed with COVID-19
  - The individual is providing care for a family member or household member who has been diagnosed with COVID-19
  - The individual is the primary caregiver for a child or other person in the household who is unable to attend school or another facility as a direct result of COVID-19
  - The individual is unable to reach their place of employment as a direct result of the COVID-19 public health emergency

# UNEMPLOYMENT INSURANCE PROVISIONS

- The individual is unable to work because a health care provider has advised the individual to self-quarantine due to COVID-19 concerns
- The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of COVID-19
- The individual has become the breadwinner or major support for a household because the head of household has died as a direct result of COVID-19
- The individual has had to quit their job as a direct result of COVID-19
- The individual's place of employment is closed as a direct result of COVID-19
- Says that individuals are not eligible if they are able to work remotely with pay. Individuals are not eligible if they are receiving paid sick leave or paid family leave
- Directs state unemployment insurance providers to determine eligibility. However, states may provide less than the unemployment insurance provided under federal law.
- Provides an additional \$600 per week to each recipient of unemployment insurance for a maximum of four months (set to expire on July 31, 2020)
- The total amount of benefits provided will be equal to the amount determined under state law, plus an additional amount of \$600 per worker per week
- Provides an additional 13 weeks of unemployment benefits to those who remain unemployed after state unemployment benefits are exhausted (expires on December 31, 2020)
- Limits unemployment assistance under these provisions to 39 weeks, unless otherwise extended
- Permits states to eliminate the one-week waiting period for eligible recipients to receive unemployment benefits (expires on December 31, 2020)
- The Secretary of Labor may issue guidance to aid in the implementation of these provisions

# SPECIAL BUSINESS PROVISIONS

## **Social Security Tax Credit for Employers Subject to Full or Partial Suspension of Business Due to COVID-19**

### **(Section 2301)**

- Employer tax credit equal to 50 percent of “qualified wages” paid to employees from March 13, 2020 through December 31, 2020
- The tax credit applies against the employer portion of Social Security taxes payable on W-2 wages paid to all employees (after first applying the tax credits for payment of required sick leave and required FMLA leave)
- The tax credit is available to employers who meet either of the following conditions (“eligible employer”):
  - The employer’s operations are either fully or partially suspended by a government order relating to COVID-19 OR
  - The employer’s gross receipts during a calendar quarter are less than 50 percent of the gross receipts for the same calendar quarter during 2019
- The tax credit is based on the qualified wages paid by an eligible employer during the calendar quarter
  - More than 100 average number of full-time employees during 2019: qualified wages includes ONLY wages that continue to be paid to employees who are NOT providing services due to a COVID-19 suspension of business operations or a greater than 50 percent reduction in gross receipts
  - 100 or less average number of full-time employees during 2019: qualified wages include ALL wages paid to employees regardless of whether the employee is providing services
  - In all cases, the total amount of qualified wages that can be counted for an individual employee during the entire COVID-19 period cannot exceed \$10,000
  - “Wages” refers to W-2 wages used to determine FICA (Social Security and Medicare) taxes BUT NOT counting required sick leave payments and FMLA leave payments made in accordance with the Families First Coronavirus Response Act.

# SPECIAL BUSINESS PROVISIONS

## **Delayed Payment of Employer Social Security Taxes**

### **(Section 2302)**

- ALL employers—whether affected by COVID-19—are permitted to delay payment of 2020 employer Social Security taxes
  - 50 percent of the deferred 2020 employer Social Security tax is payable by December 31, 2021
  - Remaining 50 percent of the deferred tax is payable by December 31, 2022

## **Department of Labor (DOL) Authority to Relax Filing Deadlines**

### **(Section 3607)**

- Section 518 of ERISA authorizes the DOL to extend certain filing deadlines under certain circumstances
- CARES extends this authority to include public health emergencies like the COVID-19 pandemic

## **Single-Employer Funding Rules**

### **(Section 3608)**

- Single-employer defined benefit plans must generally satisfy minimum funding rules by making certain minimum required contributions
- CARES relaxes this requirement by extending the due date for contributions that would otherwise be due in 2020 until January 1, 2021
- Any extended contributions are adjusted for accrued interest
- For purposes of applying the benefit restrictions imposed by Section 436 of the Code, a plan may use the adjusted funding target attainment percentage for the last plan year ending before January 1, 2020

## **Tax-Free Employer Payment of Student Loans**

### **(Section 2206)**

- Amends the special educational assistance rules of Section 127 of the Code to permit an employer to pay the principal and/or interest on an employee's qualified education loan tax-free up to \$5,250 for a calendar year
  - Applies to payments made after date of enactment and before January 1, 2021
  - The \$5,250 annual cap applies to TOTAL of student loan payments PLUS other educational assistance payments made during the calendar year

All the Section 127 requirements for tax-free payments continue to apply.

# EXECUTIVE COMPENSATION

Provisions on limiting executive pay apply to a business only if it accepts direct lending relief available via this Act.

## **Executive Compensation Limitations**

### **(Section 4004)**

- If a company accepts certain emergency direct lending relief under CARES, the company must agree to certain limitations on the compensation (including salary, bonuses, equity, and other financial benefits) paid to its officers and employees that remain in effect until one year after the loan or loan guarantee ceases
- These limitations are as follows:
  - No officer or employee whose total compensation in 2019 exceeded \$425,000 (excluding certain collectively bargained employees)
  - May receive compensation during any 12-month period greater than the amount received in 2019 or
  - May receive severance pay or benefits upon termination that exceed two times the maximum total compensation received in 2019
- Additionally, no officer or employee whose total compensation in 2019 exceeded \$3,000,000 may receive compensation during any 12-month period greater than \$2,000,000 plus 50 percent of the amount greater than \$3,000,000 received in 2019

Sources: Jackson Lewis P.C. and CARES Act legislative text