

# COVID-19 Alert

CARES ACT

APRIL 2020

## CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT

In response to the COVID-19 public health crisis and the resulting economic fallout, the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") was signed into law Friday, March 27, 2020 as the largest economic relief package in U.S. history. The Act will provide over \$2 Trillion of relief funds to American citizens, businesses, and hard-hit industries. While the scope of the Act is expansive and its efforts far reaching, the below summaries focus on the provisions that will be most impactful to Connecticut businesses and individuals.

### BUSINESSES

Designed to provide economic relief and enhance liquidity for businesses during the COVID-19 crisis, the CARES Act provides for the following:

#### Employee Retention - Refundable Payroll Tax Credits

- Businesses disrupted due to a COVID-related government order, and businesses that experience reduction in gross receipts of at least 50% over the prior year are eligible for a refundable credit against payroll tax of 50% on wages paid up to \$10,000 per employee.
- For businesses with 100 or fewer employees, this credit is available for all employees. For businesses with over 100 employees, the credit is only available for employees who are retained but not working due to COVID-related causes.
- The credit applies to wages paid after March 12, 2020 and prior to January 1, 2021.

#### Social Security Payroll Tax

- The deadline for employers to deposit social security payroll taxes may be delayed over a period of two years, with half becoming due December 31, 2021 and the balance becoming due December 31, 2022.

#### Changes to the Tax Cuts and Jobs Act (TCJA)

- Businesses are entitled to use their entire net operating losses to offset their taxable income for tax years beginning in 2018, 2019 and 2020, rather than being limited to 80%, and can carry that entirety back for a period of 5 years.
- Businesses can now write-off costs associated with building improvements, rather than depreciating those costs.
- The Act also suspends limitations governing excess farm losses, and limitations on losses against non-business income by pass-through entities for tax years beginning in 2018, 2019 and 2020.
- The Act allows businesses to accelerate the recovery of any corporate alternative minimum tax credits, which are allowed as refundable credits until 2021.

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- For tax years 2019 and 2020, businesses can deduct loan interest of up to 50% of adjusted taxable income, with special tax year 2019 rules applying to partnerships.

**Employee Student Loan Payments**

- The Act allows employers to contribute up to \$5,250 toward employee student loans in 2020 and exclude the payments from the employee’s income and from the employer’s taxable income.

**SMALL BUSINESS ADMINISTRATION**

The CARES Act creates a new “Paycheck Protection Program” loan program under the Small Business Act, available through June 30, 2020.

**Terms and Conditions**

- No collateral or personal guarantees are required.
- 0.50% interest rate; two-year maturity.
- No prepayment penalties.
- Non-recourse loans against any individual, shareholder, member or partner of an eligible loan recipient unless loan proceeds are used for unauthorized purposes.
- SBA economic injury disaster loans made on or after January 31, 2020 are eligible to be refinanced as a covered loan under this new business loan program.

**Eligibility**

- Businesses must have 500 or fewer employees, unless the SBA has established a different employee number standard for a particular business industry.
  - For hospitality and dining industries, multi-location businesses that operate in the accommodation and food services sector, and employ 500 or fewer employees per location, will be eligible.
- Sole proprietors, independent contractors, and certain self-employed individuals may be eligible for loans subject to substantiating documentation requirements.
- The SBA’s standard “credit elsewhere” requirement has been waived for these loans.
- Applicants must have been in existence prior to February 15, 2020, and have paid either employee salaries and payroll taxes, or independent contractors.
- Recipients of an SBA economic injury disaster loan will be eligible only if that loan is refinanced under this program as part of a covered loan, or if the disaster loan is used only for purposes outside of this program’s scope.

**Amount**

- Subject to a \$10 Million cap, loans are available in the amount of (i) 2.5x the average monthly payrolls based off of the one year period prior to the requested loan (for seasonal workers, the average monthly payroll consideration period will be the 12 week period beginning February 15, 2019, or the period from March 1, 2019 to June 30, 2019); plus (ii) the outstanding amount of any SBA disaster loan made on or after January 31, 2020 that is being refinanced under this new program.
- Upon request for businesses not in existence between February 15, 2019 to June 30, 2019, loans are available, subject to the \$10 million cap, in the amount of (i) 2.5x the average monthly payroll payments made from January 1, 2020 to February 29, 2020; plus (ii) the outstanding amount of any SBA disaster loan made on or after January 31, 2020 that is being refinanced under this new program.

**Permissible Uses**

- Uses already permitted under the SBA’s Business Loan Program.

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- Salaries, commissions, and payroll employee compensation.
  - Excluded: annual compensation in excess of \$100,000 per employee, employees with a principal residence outside the U.S., certain federal taxes, and sick and family leave wages allowed credit under the Families First Act.
- Certain group health care benefits and insurance premiums.
- Payments toward mortgage interest, rent, and utilities.
- Interest payments on prior existing debt obligations.

**Forgiveness & Deferral**

- Loans are eligible for forgiveness up to the aggregate cost of payroll, mortgage interest, rent, and utility payments during the 8-week period following loan funding.
- The amount forgiven is subject to be reduced for any reduction in salaries or wages of 25% or more, and any reduction in employee numbers, not restored by June 30, 2020.
- Any loan balance remaining after forgiveness will continue to be guaranteed by the SBA and have a maturity of 2 years from the date of forgiveness application
- Approved or pending applicants under this program will be entitled to complete deferral relief from SBA lenders for 6 months, and up to 1 year.

The CARES Act also makes changes to the SBA’s disaster loan program; to learn more about the SBA’s economic injury disaster loans, click [here](#).

**INDIVIDUALS**

**Unemployment Benefits**

- Eligibility for unemployment benefits has been extended to include gig workers, such as self-employed workers, independent contractors, and those with limited work history, to the same extent as regular employees.
- Unemployment benefits will include an additional \$600.00 per week for recipients up to four months, and, through December 31, 2020, benefits will continue for an additional 13 weeks after workers have exhausted their state-provided unemployment benefits.
- As an incentive for states to repeal any “waiting week” restrictions that prevent workers from getting benefits immediately upon layoff, the federal government will fully fund the first week for states that remove such delay.
- The Act also requires flexibility of the requirement to actively seek work for those who are unable due to COVID-19 related causes.

**Refundable Tax Credits**

- Qualifying individual taxpayers will receive a one-time refundable tax credit (not counted as taxable income) based off available 2019 or 2018 tax returns.
- Individuals with income up to \$75,000, heads of households with income up to \$112,500, and joint taxpayers with income up to \$150,000, will receive a \$1,200 rebate (\$2,400 for joint taxpayers). Taxpayers with children will receive an additional flat \$500 rebate per child aged 16 years or younger.
- The rebate declines 5% for every dollar beyond the qualified income threshold, so individuals without children that make \$99,000 or more, and joint filers without children that make \$198,000 or more are phased out and will not receive any rebate.
- Taxpayers that earn higher incomes in 2020 will not be required to repay any overpayment when filing taxes for 2020, and taxpayers that qualify for in 2020 will receive a credit for the 2020 tax year regardless of whether they qualified in tax year 2019.

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**Retirement Fund Distributions**

- The Act waives the 10% tax penalty for premature distributions from certain retirement accounts (401(k)s, IRAs, and certain qualified trusts, deferred compensation plans and annuities) up to \$100,000 in connection with COVID-19 related challenges.
- Withdrawn amounts are able to be restored with re-contributions over a three year period following the distribution date without affecting the retirement account caps.
- Any amount of distributions not repaid can be taxed ratably over a period of three tax years beginning with the tax year in which the distribution was made.
- The Act also permits a one year delay in required minimum distribution requirements for certain defined contribution plans, and also delays minimum funding contribution requirements for qualified plans until January 1, 2021.

**Retirement Fund Loans**

- The CARES Act increases the maximum qualified plan loan amount to \$100,000.
- The percentage test limit for qualified plan loans is increased from half of the present value to the full present value of the entire benefit under the plan.
- If any such loan is due for repayment on or before December 31, 2020, repayment may be delayed for up to one year from the original due date, and subsequent loan repayments adjusted to reflect such delay, along with any interest accrued therefrom.

**Charitable Deductions**

- The Act allows a \$300 deduction of charitable cash contributions in 2020 regardless of whether the taxpayer itemizes deductions.
- The charitable contribution deduction limit of 50% adjusted gross income for individuals has been suspended for 2020, and has been increased to a 25% limitation on corporations.

**Student Loans**

- Payments for student loans held by the Department of Education under the Higher Education Act are suspended until September 30, 2020, and interest shall not accrue during the suspension.

**Mortgage Loans**

- Federally-Backed Mortgage Loans:
  - Commencing March 18, 2020, there is a 60-day moratorium on foreclosures, except with respect to properties that are vacant or abandoned.
  - Multi-family (5+ units) mortgagees experiencing financial hardship due to COVID-19 can seek up to 90 days of forbearance, with evictions, late fees or penalties prohibited during any forbearance period.
  - Mortgagees of 1-4 family properties experiencing financial hardship due to COVID-19 can seek up to 360 days of forbearance, and during that time no fees, penalties or interest beyond those scheduled shall accrue.

**Evictions** – Lessors will not be allowed to bring eviction proceedings for the nonpayment of rent, fees, or other charges during the 120-day period following enactment of CARES Act with respect to properties assisted by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program, or the Violence Against Women Act of 1994.

Please contact the Reid and Riege attorney with whom you regularly work, or a member of our Business Services practice listed to the right, if you have questions or would like to discuss this information in greater detail.

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