The CARES Act: What Midsize Business Owners and Not-For-Profit Organizations Need To Know[1]

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748) (the "CARES Act"). The CARES Act implements an important source of liquidity for midsize business owners and not-for-profit organizations—the Coronavirus Economic Stabilization Act of 2020 ("CESA"). Under this initiative, midsize businesses and not-for-profit organizations with 500 to 10,000 employees can receive low-interest loans to provide a much-needed cash infusion to help endure financial uncertainties created by COVID-19.[2]

I. Overview of the Coronavirus Economic Stabilization Act of 2020

CESA authorizes lenders to provide loans to eligible businesses and not-for-profit organizations that have incurred or expect to incur losses directly or indirectly as a result of COVID-19. The CARES Act allocates $500 billion to this program. $46 billion of this amount is earmarked for specific industries,[3] and $454 billion, and any amount remaining from the $46 billion, will be available to eligible businesses and not-for-profit organizations.[4] The loans will have a maximum maturity of five years and a maximum interest rate of 2.00%. Loan payments will be deferred for at least six months. These loans are intended to be used to maintain the borrower's workforce at 90%, at full compensation and full benefits, until September 30, 2020. Furthermore, the borrower must intend to restore at least 90% of the workforce that existed as of February 1, 2020, and all compensation and benefits to workers within four months after the date in which the Secretary of Health and Human Services determines that the public health emergency no longer exists. Unlike other programs under the CARES Act, forgiveness for loans under CESA is expressly prohibited.

II. Certifications Required by Applicants for Loans Under CESA

To qualify for a loan under CESA, midsize business owners and not-for-profit organizations must certify that:[5]

1. the uncertainty of current economic conditions makes the loan necessary to support its ongoing operations;

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[1] For information on the low-interest rate loan programs available to small businesses and not-for-profit organizations with fewer than 500 employees, *see* our memorandum "The CARES Act: What Small Business Owners and Not-for-Profit Organizations Need to Know," found here.

[2] Businesses that qualify for this program may also be eligible for an employee tax retention credit. For more information, *see* our memorandum "Employee Leave Provision Under CARES Act and FFCRA," found here.

[3] These industries include passenger air carriers, eligible businesses certified to perform inspection, repair replace or overhaul services, ticket agents, cargo air carriers, and businesses critical to maintaining national security.

[4] Section 4003(b)(4) of CESA authorizes these funds to be used for loans provided by financial institutions and for loans or primary and secondary credit facilities created by the Federal Reserve for eligible businesses, not-for-profit organizations, states and municipalities. This memorandum focuses on loans available to midsize businesses and not-for-profit organizations that are to be provided by financial institutions. It does not discuss the programs created by the Federal Reserve, including the Main Street New Loan Facility, or funding for other eligible businesses, states, or municipalities. The Federal Reserve's programs are described in our memorandum "Federal Reserve Announces up to $2.3 Trillion in New Lending Programs in Support of Economy," found here.

[5] Sections 4003(c)(3)(A)(ii); 4003(c)(3)(D); 4002(4)(B).

2. the applicant intends to maintain its workforce at 90%, at full compensation and full benefits, until September 30, 2020;
3. the applicant intends to restore at least 90% of the workforce that existed as of February 1, 2020 and all compensation and benefits to workers within four months after the date in which the Secretary of Health and Human Services determines that the public health emergency no longer exists;

4. the applicant is domiciled and organized or created in the United States or under the laws of the United States;

5. the applicant has significant operations and a majority of its employees in the United States;

6. the applicant has not received adequate economic relief in the form of loans or loan guarantees under a different provision of the CARES Act; and

7. the applicant is not a debtor in a bankruptcy proceeding.

III. Certain Restrictions on Borrowers That Receive Loans Under CESA

Any business or not-for-profit organization that receives a loan under CESA must comply with the following after receiving the loan.[6]

1. For the <u>term of the loan</u>, a borrower <u>must</u> remain neutral in any union organizing effort.

2. For the <u>term of the loan</u>, a borrower <u>must not</u>:

    a. pay a dividend; and

    b. repurchase any publicly traded security of the business or its parent, unless there existed a prior contractual obligation before March 27, 2020.

3. For the <u>term of the loan and for two years</u> after the loan is repaid, a borrower <u>must not</u>:

    a. outsource or offshore jobs; and

    b. abrogate collective bargaining agreements.

Additional guidance is expected from the Treasury Department. Businesses and not-for-profit organizations are susceptible to closures and slowdowns due to restrictions on gathering, stay-at-home orders, loss of consumer income, and illness. This program under the CARES Act is intended to provide them and their employees a way forward in these uncertain times.

[6] Section 4003(c)(3)(D). Additional certifications and restrictions apply to loans provided under Federal Reserve programs and facilities, such as limitations on certain employee compensation.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email authors Helene R. Banks at 212.701.3439 or hbanks@cahill.com; or Robyn Sablove at 212.701.3753 or rsablove@cahill.com; or email publications@cahill.com.