

## **CARES Act: Q&A on Key Provisions**

On March 25, 2020, the U.S. Senate unanimously approved the Coronavirus Aid, Relief and Economic Security (CARES) Act. The CARES Act is broad in scope, with provisions addressing a variety of issues. Below are questions and answers to selected key provisions for manufacturers.

### **What are the key manufacturing provisions in the CARES Act?**

The CARES Act establishes new lending programs for small and large businesses, amends the tax code and includes new items relevant to unemployment insurance.

### **When does the CARES Act go into effect?**

There is not a single effective date that applies to all provisions of the CARES Act. Some items make retroactive changes to existing law. Accordingly, it is important to examine each provision in the bill.

### **Lending Programs**

#### **A. Small Business Lending Provisions**

### ***What loans would be made available to small businesses under the CARES Act?***

The CARES Act creates a new loan program run out of the Small Business Administration called the Paycheck Protection Program, which is designed to provide businesses capital to continue paying their workers during the COVID-19 crisis. The new program will be part of the SBA's existing 7(a) loan program.

### ***Who is eligible for the Paycheck Protection Program?***

Small businesses, as well as certain 501(c)(3) non-profits, veterans organizations and tribal businesses, with fewer than 500 employees are eligible for loans under the program. Sole proprietorships, independent contractors and self-employed individuals are also eligible. Companies cannot receive loans under both the Paycheck Protection Program and the Economic Injury Disaster Loan program.

### ***How much capital is available under the program?***

Congress has appropriated \$349 billion to the SBA for the Paycheck Protection Program. The maximum loan amount will be \$10 million, depending on a business's payroll costs.

### ***For what purposes may a business use its loan?***

The loans are primarily intended to be used to pay employee compensation and benefits during the COVID-19 crisis, including salaries, health care costs and paid leave. The loans can also be used for rent payments, utility bills or mortgage interest payments.

### ***Can the loans be forgiven?***

Loans under the program will be forgiven to the extent the funds are used to cover payroll costs (on salaries up to \$100,000), rent payments, utility bills or mortgage interest payments in the eight weeks following origination of the loan.

Loan forgiveness will be reduced to the extent that businesses fire workers or reduce employee pay by more than 25%. To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that rehire workers previously laid off will not be penalized for having reduced their payroll.

Any portion of a loan not forgiven can be repaid over the course of 10 years with an interest rate of at most 4%.

### ***How will lenders administer the program?***

The bill grants “delegated authority” to SBA-approved lenders, meaning that the lenders can make loan decisions without needing to consult with the SBA. Lenders are required to consider whether a business was operating and paying salaries and payroll taxes as of Feb. 15, 2020, when making a lending decision (rather than traditional metrics describing a borrower’s ability to repay the loan).

Loan repayments must be deferred for six months and can be deferred further up to one year from the origination of the loan. SBA borrower and lender fees are waived for the Paycheck Protection Program, as are collateral and personal guarantee requirements.

All loans under the program will be guaranteed by the federal government.

### ***When does the program begin?***

The SBA is required to issue rules within 15 days of the bill’s passage to implement the program. Loans will be available under the program until June 30, 2020.

#### **B. Large Business Lending Provisions**

### ***What loans would be made available to larger businesses under the CARES Act?***

The bill provides \$500 billion to the Treasury Department’s Exchange Stabilization Fund to provide loans, loan guarantees and other investments to businesses impacted by the COVID-19 crisis. Treasury will make direct loans to passenger airlines (\$25 billion), cargo air carriers (\$4 billion) and businesses important to maintaining national security (\$17 billion). The remaining \$454 billion will be made available to impacted businesses under the Federal Reserve’s 13(3) crisis lending facility.

### ***What businesses are eligible for 13(3) loans?***

Businesses and 501(c)(3) non-profits with more than 500 but less than 10,000 employees would be eligible for loans under the program.

***What other qualifications are there to receive loans under the 13(3) facility?***

- Loans will only be made available if alternative financing is not reasonably available to the business.
- Loans must be sufficiently secured or made at an interest rate that reflects the risk of the loan (and, if possible, the interest rate should be based on market conditions prior to the COVID-19 outbreak).
- The duration of the loans will be “as short as possible” and shall not exceed five years.
- A borrower must certify that it is a U.S.-domiciled business and that its employees are predominantly located in the U.S.
- Loans provided under the program cannot be forgiven.

***What restrictions will be placed on businesses that receive loans under the program?***

The funds received must be used to retain at least 90% of the borrower’s workforce, with full compensation and benefits, through Sept. 30, 2020. As a condition of the loan, borrowers would be required, to the extent practicable, to maintain their employment levels as of March 24, 2020, through Sept. 30, 2020, and in all cases retain no less than 90% of their employees as of that date.

Borrowers and their affiliates would be prohibited from engaging in stock buybacks or paying dividends until one year after the date that the loan is no longer outstanding.

Borrowers would be prohibited from outsourcing or offshoring jobs for the term of the loan plus an additional two years.

Borrowers would be prohibited from abrogating existing collective bargaining agreements for the term of the loan plus an additional two years.

Borrowers would be required to remain neutral in any union organizing effort for the term of the loan.

Borrowers would be subject to certain executive compensation limitations:

- Any officer or employee whose total compensation exceeded \$425,000 in 2019 would not be eligible for any pay increases above their 2019 compensation until one year after the date that the loan is no longer outstanding. They would also be prohibited, for the same period, from receiving severance pay in excess of twice their 2019 compensation.
- Any officer or employee whose total compensation exceeded \$3 million in 2019 would have their compensation capped at \$3 million plus half of their excess 2019 compensation above \$3 million until one year after the date that the loan is no longer outstanding.

**Unemployment Insurance**

***What is the relationship between the federal government and state governments with respect to unemployment insurance?***

The federal Department of Labor has oversight responsibility for the UI programs operated in the 50 states, but each state regulates qualification requirements and administers the payments. States have started to amend their standards in response to COVID-19 to make more workers

eligible to receive benefits if they are temporarily laid off or working reduced hours (see examples in [Georgia](#), [New York](#) and [Ohio](#)). The CARES Act made federal funds available to states to increase their weekly unemployment benefits and added additional funds available if states eased some of their unemployment requirements.

***Are workers not typically eligible for unemployment now able to receive benefits?***

Yes. The CARES Act created a Pandemic Unemployment Assistance program modeled after the Disaster Unemployment Assistance program that will provide benefits to cover self-employed, independent contractors and part-time workers. The benefits will be administered by the states but federally funded and will be eligible through Dec. 31, 2020.

***How much money can workers receive while on unemployment?***

It varies in each state. You can find more information on your state's level of unemployment benefits [here](#).

***Is there an increase in benefits that workers can receive?***

Yes. The federal government will provide an additional \$600 per week in Federal Pandemic Unemployment Compensation on top of every weekly unemployment benefit that a worker receives until July 31, 2020.

***A worker has exhausted their unemployment benefits that a state provides. May they receive more?***

Yes. The CARES Act established Pandemic Emergency Unemployment Compensation to provide an additional 13 weeks of unemployment benefits for workers who have exhausted their state benefits until Dec. 31, 2020.

***Some senators have said that workers on unemployment will be able to receive more money than they were making while employed and this will create an incentive not to work. Is this true?***

It depends. There could be instances in which workers receive more in unemployment benefits than they were making at their job. This is because the CARES Act creates a new, temporary benefit of \$600 per week in Federal Pandemic Unemployment Compensation. This amount is in addition to funds that workers will receive from their traditional state unemployment benefits. Each state determines the percentage of wages that workers receive while on unemployment. For more information on the levels of unemployment benefits that each state provides, please see the [Department of Labor's website](#).

***Is the additional \$600 per week in Federal Pandemic Unemployment Compensation taxable?***

Yes. It will be taxable, similar to regular unemployment benefits, but it will not be considered with respect to Medicaid or CHIP eligibility.

***Do states need to amend their laws to be eligible to provide the additional \$600 per week in Federal Pandemic Unemployment Compensation?***

No.

***My state requires a one-week waiting period after becoming unemployed to receive benefits. Will this still be the case?***

It depends. In response to COVID-19, some states have changed their unemployment policies for workers to become immediately eligible for unemployment benefits. If you are in a state that has taken this measure and allows workers to become eligible to receive benefits immediately, the federal government will reimburse states 100% of the first-week benefits that they administer until Dec. 31, 2020.

***Is there a federal program to receive benefits without the one-week waiting period?***

No. To receive immediate benefits, each state would have to change its requirements, unless it has already done so.

***How much will workers be paid for the additional 13 weeks that they can receive?***

It varies in each state.

***Can workers receive unemployment benefits if an employer has reduced their hours?***

Yes. If workers are in a state that allows for workers to receive unemployment benefits while still on a company's payroll (i.e., work-sharing), workers are eligible to receive unemployment benefits and the federal government will reimburse the state. The CARES Act will incentivize states to allow for work-sharing by providing 100% reimbursement if a work-share program is in place.

***What if the state does not allow work-sharing?***

If a state does not have a work-sharing program or it has not amended its laws, the state can enter into an agreement in which the federal government reimburses 50% of the benefits administered through Dec. 31, 2020.

***Are there funds available to states to implement work-share programs?***

Yes. The CARES Act established a federal grant program to aid states in implementing or improving its work-share program.

***Will guidance implementing the CARES Act be issued in an expedited manner?***

The CARES Act allows for the Department of Labor to issue guidance as it sees fit without the requirements of the Paperwork Reduction Act.

## **Tax Provisions**

### ***What are the key tax provisions in the CARES Act?***

The following provisions are important for manufacturers:

- Net operating loss carryback
- Increase in allowable interest deduction
- Deferral of payroll tax
- Employee retention tax credit
- Faster recovery of corporate AMT tax credits

#### A. Net Operating Loss Carryback

### ***How does the Net Operating Loss (NOL) carryback provision work?***

Under the CARES Act, companies with losses from 2018, 2019 and 2020 may be able to carry them back five years and offset up to 100% of taxable income. By way of background, the 2017 tax reform legislation (the Tax Cuts and Jobs Act) eliminated the ability of companies to carry back losses. Without the enactment of the CARES Act, companies may only carry forward a loss and use it to offset up to 80% of taxable income.

### ***Does the loss carryback apply to pass-through entities, such as partnership and S Corporations?***

Yes. This applies to both pass-throughs and corporations.

### ***How does a business utilize the NOL carryback?***

Companies will need to amend prior year returns to claim the NOL carryback.

#### B. Increase in Allowable Interest Deduction

### ***How much interest on business debt will may I deduct?***

Under the CARES Act, the maximum amount of business interest deductions is increased from 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) to 50% of EBITDA. By way of background, prior to TCJA companies could deduct their full interest payments on debt (subject to certain limitation). Following TCJA, the maximum businesses can deduct is 30% of EBITDA for tax years beginning in 2018 through 2021. Starting in 2022, a more restrictive “EBIT” standard goes into effect.

### ***To what tax years does the increase in the maximum interest deduction apply?***

Taxable years beginning in 2019 and 2020.

### ***Does the CARES Act address the 2022 EBIT change?***

No. Further action will be needed from Congress to prevent the more restrictive EBIT standard from taking effect in 2022.

### C. Payroll Tax Deferral

#### ***What payroll taxes can businesses defer?***

Businesses can defer payment of the employer's share of FICA taxes. By way of background, the FICA payroll tax rate is a total of 15.3%, which includes 12.4% for Social Security and 2.9% for Medicare. The employer share is 7.65%.

#### ***What types of entities may defer payroll taxes under the CARES Act?***

Both corporations and pass-through entities may defer payroll taxes under the CARES Act.

#### ***To what year does the deferral apply?***

The payroll tax deferral period covers the period beginning on the date of enactment of the CARES Act and ending on Dec. 31, 2020.

#### ***When do business have to pay these amounts?***

Businesses will need to pay these amounts over the next two years. Specifically, businesses will need to pay half of the deferred taxes at the end of 2021 and the remaining half in 2022.

#### ***Are there any restrictions on the ability to defer these taxes?***

Yes. Deferral is prohibited for businesses that use an SBA 7(a) loan for payroll purposes.

### D. Employee Retention Tax Credit

#### ***What is the employee retention tax credit?***

The CARES act creates a new, temporary refundable payroll tax credit for "eligible employers" affected by COVID-19.

#### ***What is an eligible employer?***

An eligible employer is an entity whose operation (1) is fully or partially suspended in response to governmental orders limiting commerce, travel or group meetings or (2) has experienced a significant decline in gross receipts, defined as a decline of 50% or more in quarterly receipts when compared to the prior year quarter.

#### ***How much is the credit?***

The credit is 50% on the first \$10,000 of wages (including health benefits). For purposes of this credit, wages cannot include those used in determining the required paid sick leave, required paid family leave or employer family and medical leave tax credits.

#### ***What is the time period for qualifying wages?***

Wages incurred or paid from March 13, 2020, through Dec. 31, 2020.

***Are there any restrictions on employers being able to take the credit?***

Yes. The credit is not available to those employers getting Small Business Interruption loans.

E. Corporate AMT Credits

***How does the CARES Act provide relief for corporations with unused AMT credits?***

The CARES act accelerates the recovery of corporate AMT credits. More specifically, under the CARES Act, corporations can claim 100% of their AMT credits in 2019. The legislation also allows corporations to elect to claim these credits in 2018. By way of background, the TCJA eliminated the AMT and allows corporations to claim their unused AMT credits before 2021.