

COVID-19: CARES ACT LIMITS EXECUTIVE COMPENSATION FOR U.S. BUSINESSES PARTICIPATING IN CESA RELIEF

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As part of the recently passed Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), the Treasury Department will provide loans, loan guarantees, and other investments for U.S. businesses, states, and municipalities dealing with losses incurred as a result of COVID-19. Among other requirements, businesses that enter into these loan agreements are subject to certain limits on executive compensation during the period beginning on the date the loan agreement is entered into and ending one year after the loan or loan guarantee is no longer outstanding (the “Restriction Period”). Note that these limits are not applicable to businesses that participate in the small business relief that was also provided under the CARES Act.^[1] More information on the small business relief under the CARES Act can be found [here](#). The rules described below apply to certain specialized industries (passenger air carriers, cargo air carriers, and businesses critical to maintaining national security) as well as other mid-sized businesses in any industry with between 500 and 10,000 employees. The restrictions on executive compensation are as follows:

- No officer or employee of the business whose total compensation exceeded \$425,000 in 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 1, 2020) may receive from the business:
 - Total compensation which exceeds, during any 12 consecutive months of the Restriction Period, the total compensation received by the officer or employee from the business in 2019; or
 - Severance pay or other benefits upon termination of employment with the business which exceeds twice the maximum total compensation received by the officer or employee from the business in 2019.
- No officer or employee of the business whose total compensation exceeded \$3,000,000 in 2019 may receive during any 12 consecutive months of the Restriction Period total compensation in excess of the sum of:
 - \$3,000,000; and

- 50% of the excess over \$3,000,000 of the total compensation received by the officer or employee from the business in 2019.

For purposes of these rules, “total compensation” is defined as amounts received by an employee as salary, bonuses, awards of stock, and other financial benefits. The term “other financial benefits” is not defined but presumably could include all elements of compensation. Essentially, pay for employees and officers who received more than \$425,000 but less than \$3,000,000 in total compensation in 2019 will be frozen for each year during the Restriction Period. Employees and officers who received more than \$3,000,000 in 2019 will be subject to a pay cut. For example, an employee who made \$5,000,000 in 2019 will have his or her total compensation capped at \$4,000,000 for each 12-month period during the Restriction Period.

There are many unanswered questions regarding the executive compensation limitations that will hopefully be answered in future guidance from the Treasury Department. For example, the law does not address when compensation is deemed to be received or the procedure for reducing compensation to comply with the limits, particularly with respect to compensation that is payable under an enforceable contractual agreement. In addition, the law does not address how compensation will be measured for employees who only worked a portion of 2019 or whether employees who are hired during the Restriction Period are subject to the limits. Until additional guidance is issued, employers should carefully consider the effects of these limitations on their existing employment arrangements and their overall business model prior to seeking relief under the loan program created under the CARES Act.

A more complete summary of the Coronavirus Economic Stabilization Act of 2020 can be found [here](#). You can also view other thought leadership, guidance, and helpful information on our dedicated COVID-19 / Coronavirus resources page at <https://www.bclplaw.com/en-GB/topics/covid-19/coronavirus-covid-19-resources.html>

[1] Small business relief is available through the CARES Act to businesses with 500 or fewer employees, unless the covered industry’s Small Business Administration size standard allows for more than 500 employees.

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