The Coronavirus, Aid, Relief, and Economic Security (CARES) Act

On March 27, 2020, President Trump signed into law the [Coronavirus, Aid, Relief, and Economic Security (CARES) Act](), creating $2 trillion in aid for businesses and individuals. Congressional leadership has signaled that an additional relief package could be ready before legislators return to Capitol Hill.

We would like to thank the National Association of REALTORS® and the Real Estate Roundtable for their contributions to these summaries of the primary CARES Act provisions impacting the commercial real estate and property management industries.

SBA Provisions: 7(a) Paycheck Protection Plan and Economic Injury Disaster Loans (EIDL)

The CARES Act dramatically increased the role of the Small Business Administration (SBA) in efforts to assist U.S. businesses impacted by the COVID-19 crisis. The two main vehicles for these relief efforts are the SBA 7(b)(2) loans – Economic Injury Disaster Loans – and the SBA 7(a) loan program. Both loans are available to businesses with 500 or fewer employees that have been negatively impacted by the crisis.

SBA 7(a) Paycheck Protection Program
The CARES Act appropriates $349 billion to create a new SBA 7(a) loan program called the Paycheck Protection Program (PPP). The SBA will receive increased funding to assist with rapid processing of applications and can temporarily grant SBA lender status to lenders not currently participating in the program. It also allocates additional grant money for Small Business Development Centers around the country to provide aid and education to small businesses during the crisis and recovery.

Details of the program include:

- The loan amount will be 250% of the average salary expenditures/month for 2019, up to $10 million. For businesses not open yet in that period, the SBA will look at earlier receipts from 2020.
- PPP loans can be used for:
    - Utilities
    - Rent/mortgage interest
    - Payroll, including for independent contractors and employees who work on commission
- All or a portion of these loans will be forgivable for businesses that maintain the same average payroll levels – forgivable amounts phase out as if an employer lowers payroll.
- The bill also increases the SBA “Express Loan” limit from $350 thousand to $1 million.

Emergency Economic Injury Disaster Loan (EIDL) program
EIDLs are low-interest loans for small business that experience an economic hardship as the result of a declared disaster. Unlike other disaster loan programs, they do not require physical damage to a business.

Details of the program include:

- The EIDLs are available for up to $2 million.
- During the covered period, the SBA can determine loan eligibility based solely on the applicant's credit score or use of an alternative appropriate method for determining an applicant's ability to repay.
- The SBA must waive any personal guarantee on loan advances or loans under $200,000.
- The CARES Act provides $10 billion in funding to provide an emergency advance of up to $10,000 to small businesses within 3 days of the business applying for the EIDL
    - The $10,000 advance can be forgiven as long as it is spent on:
        - Paid sick leave to employees impacted by COVID-19
        - Payroll
        - Rent/mortgage payments
        - Debt obligations that the business is not able to meet due to revenue loss
        - Increased costs due to chain supply disruptions and materials

Multi-family housing

Mortgage forbearance:
Forbearance may be available to qualified owners of multifamily properties for 30 days with extensions up to 90 days. To qualify, the owner must be current on their payments as of Feb. 1, 2020 and the loan must be federally insured, assisted, or a supplemented loan (Fannie Mae, Freddie Mac, FHA or any loans backed or assisted by any branch of the federal government, including LIHTC). Anyone receiving the forbearance may not evict or charge late fees to tenants for the duration of the forbearance period.

Evictions
A 120-day moratorium has been placed on filing evictions and assessing fees for nonpayment of rent. This moratorium applies to all properties insured, guaranteed, supplemented, protected, or assisted in any way by HUD, Fannie Mae, Freddie Mac, or the rural housing voucher program or are covered by the Violence Against Women.

Affordable housing

The CARES Act provides additional funding to several federal housing programs to help cover the expected decrease in tenants' income:

- $1.25 billion for Section 8 voucher rental assistance for seniors, the disabled, and low-income working families
- $1 billion for project-based rental assistance
- $50 million for Section 202 Housing for the Elderly
- $15 million for Section 811 Housing for Persons with Disabilities

Tax provisions

Qualified improvement property technical correction

The CARES Act includes a technical correction to the 2017 Tax Cuts and Jobs Act (TCJA) that will allow real estate businesses to immediately expense or accelerate the depreciation of their interior improvements to nonresidential property, including leasehold improvements. Due to a TCJA drafting error, these expenditures are currently subject to a 39-year recovery period. Under the CARES Act, the improvements will be depreciated over zero, 15, or 20 years (depending on elections made by the taxpayer).

Net operating losses

The CARES Act allows businesses to carry back net operating losses from 2018, 2019, and 2020 for five years and temporarily removes the TCJA rule limiting losses to 80% of taxable income. The provision will facilitate the ability of real estate businesses to “monetize” recent and current loss carryforwards by filing amended returns for prior years and generating tax refunds that can be used for business needs. The provision does include a restriction on the carry back of losses by REITs.

Employee retention tax credit:

The CARES Act includes a refundable tax credit of up to $5,000 per employee for businesses that continue to pay employees between 3/13/20 and 12/31/20. Unlike the small business emergency loans, the credit is not limited to businesses with 500 or fewer employees. An employer can qualify if its business is fully or partially suspended due to orders from a governmental authority related to COVID-19 or the gross receipts of the business in a calendar quarter are less than 50% of receipts in the same quarter in the prior year. For businesses with over 100 employees, the credit is limited to wages paid to employees who are not able to provide services due to the qualifying circumstances.

Active losses of a pass-through business

The CARES Act temporarily repeals the TCJA limitation on the active losses of a pass-through business. TCJA effectively limited an individual’s ability to deduct current-year losses attributable to an active trade or business against the individual’s wages and investment income. The CARES Act repeals the active loss provision for 2018, 2019, and 2020.

Individual relief

The CARES Act provides individuals $1,200 for single tax returns and $2,400 for joint tax returns in addition to $500 for each child (under age 17 and qualifying for the child credit). Relief is reduced by 5% of the excess of adjusted gross income (AGI) over these thresholds:

- $75,000 for a single return
- $150,000 for a joint return
- $112,500 for a head of household return

The relief fully phases out for income higher than the following amounts:

- $99,000 for a single person with no qualifying child
- $198,000 for a couple filing a joint return with no qualifying children
- $218,000 for a couple filing a joint return with two qualifying children
- $146,500 for a single parent with one qualifying child (in all cases, the level of income before the phaseout is complete increases by $10,000 per child).

Expanded unemployment benefits

The CARES Act expands unemployment benefits to cover not only those who are unemployed, but also those experiencing reduced work, or cannot work for reasons related to the pandemic. Individuals who are self-employed, independent contractors, or work part-time are also eligible to receive benefits.

The CARES Act creates a temporary federal program called Pandemic Unemployment Assistance, which provides a maximum of 39 weeks of assistance. This new benefit amount varies by state and can be increase by up to $600 a week through the new Federal Pandemic Unemployment Compensation program. The length of benefits is 39 weeks, which reflects the regular 26 weeks provided under state programs plus the temporary 13-week expansion provided in the CARES Act.

Retirement funds

I.R.A. or workplace retirement plans
Those affected by the pandemic can withdraw up to $100,000 without incurring the standard 10% penalty. Income tax due on the amount withdrawn can be spread out across three years.

401(k) or other workplace retirement plans
For 180 days, those affected by the pandemic may withdraw up to $100,000 even if that is more than half of their balance.