



What Manufacturing Companies Need to Know about the Stimulus Bills

Dorsey & Whitney LLP
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Welcome





Agenda

- Remarks from Jan Buberl of Huntsman Corporation
- Overview of Federal Legislative Response to Coronavirus
- Employment
- Financial Relief for Small Business
- Tax
- Main Street Loan Program
- What's Coming Next
- Concluding Remarks

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Federal Legislative Response and CARES Act Highlights



Troy Keller



Federal Legislative Response to Coronavirus

- **Phase I: \$8.3B Coronavirus response and research funding (March 6)**
 - Funding for state and federal prevention, preparation, and response efforts
 - \$3B for Coronavirus vaccine research and development
- **Phase II: \$112B Families First Coronavirus Response Act (March 18)**
 - Emergency paid sick leave for some workers
 - Aid for state unemployment insurance and food assistance
- **Phase III: \$2.2T Coronavirus Aid, Relief, and Economic Security Act (March 27)**
 - Largest economic aid package in U.S. history
 - Financial assistance for organizations of all types and sizes (\$367B for small businesses; \$500B for mid-size and large businesses, state and local governments)
 - Employment provisions (unemployment assistance, paid leave provisions)
 - Temporary tax changes for benefit of individuals and organizations
 - Specific assistance for healthcare, agriculture, tribes, intellectual property, etc.



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Phase III: Coronavirus Aid, Relief, and Economic Security Act (“Stimulus Act” or “CARES Act”)

- **Largest economic aid package in U.S. history (\$2.2 trillion)**
- **Financial assistance for organizations of all types and sizes**
 - Small Business Administration \$350 billion
 - Treasury/Federal Reserve Board funding - \$500 billion
- **Temporary tax changes for benefit of individuals and organizations**
- **Employment provisions**
 - Unemployment assistance
 - Paid-leave requirements
- **Healthcare funding and regulatory waivers**
- **Specific relief for agriculture, tribes, intellectual property, etc.**
- **Hundreds of billions in agency appropriations for federal response, which will result in large procurement spend**



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Employment



Aaron Goldstein



Employment: Management of Furloughs and Terminations

- **Terminations**
 - **WARN Act/State Mini-WARN Acts**
 - 50 or more employees over 90 days from a single site
 - 60 days' pay plus benefits for each employee
 - 50% reduction in hours is a termination
 - **Final Pay/Accrued Vacation**
 - **Adverse Impact**
 - **Individual Discrimination or Retaliation Claims**
- **Furloughs**
 - **Affordable Care Act Penalties?**
 - **WARN Act Redux?**
- **Pay Cuts: Exempt Employees - Salary Basis Test**



Employment: The FFCRA

- **Threshold Issues**
 - Went into effect on April 1, 2020; no retroactivity
 - Applies to employers with <500 employees; employers with <50 employees may apply for exemption
- **Emergency Paid Sick Leave**
 - Up to 80 hours of paid leave if unable to work for COVID-related reasons
 - 100% pay up to \$511/day for personal reasons
 - 66% pay up to \$200/day for caregiver responsibilities
- **Extended Paid Family & Medical Leave**
 - 12 weeks of FMLA if unable to work due to childcare responsibilities if schools/daycare closed for COVID-related reasons
 - Up to 10 weeks paid (66% regular rate, up to \$200/day)
- **Key distinction: Active employees get FFCRA paid leave; furloughed or terminated employees get unemployment**



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Employment: Unemployment Assistance

- **Overview of State Unemployment Systems**
 - Generally two levels of qualification:
 - Employment loss through no fault of employee
 - Employee must meet minimum levels of wage earnings over prior look back period & must not have received maximum benefits already
- **Unemployment assistance**
 - Encourages states to minimize waiting periods and other barriers to immediate access
 - Extends period for UI benefits
 - Eligibility now includes self-employed, independent contractors, gig economy workers
 - \$600/week additional benefit to try to get workers full recovery



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Financial Relief for Small Businesses



Ken Logsdon



Financial Relief for Organizations

- **Title I creates a new SBA program under Section 7(a) of the SBA Act**
 - The Paycheck Protection Program or “PPP”
 - Funding is set at approximately \$350 billion (additional funds on way?)
 - “covered loan” and “covered period” (February 15, 2020 to June 30, 2020)
- **The current Section 7(a) and 7(b) programs remain in place and are available to businesses under existing rules**
 - Funding is increased to \$50 billion
 - Underwriting and compliance requirements more conservative than as contemplated for the PPP
 - A lender must be an approved SBA lender



Overview of Disaster Relief and Paycheck Protection Programs

SBA Disaster Relief Program	SBA Paycheck Protection Program
Up to \$2 million (needs based)	Up to \$10 million per loan (capped at 2.5x all payroll costs (monthly average of wages/benefits, etc., but excluding tax credits re family/sick leave and salaries >\$100k) incurred during, at option of applicant, 1-year period before loan is made or 2019 FYE (subject to adjustment for seasonal and new businesses) plus the outstanding amount of any loan made after January 31, 2020 under the SBA Disaster Relief Program)
≤ 3.75% per annum (2.75% re nonprofit)	1% per annum Fees: 5% for loans up to \$350,000 3% for loans >\$350,000 but <\$2,000,000 1% for loans \$2,000,000 and greater
Up to 30 years	For amounts that are not forgiven, maturity of 2 years from date borrower applies for loan forgiveness



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Overview of Disaster Relief and Paycheck Protection Programs

SBA Disaster Relief Program	SBA Paycheck Protection Program
Standard SBA size limitations/restrictions ⁴ or concerns not greater than 500 employees (all full and part-time employees at time loan is disbursed) are also eligible for loans made between January 31, 2020 and December 31, 2020	Employ not greater than (i) 500 employees (all full and part-time employees at time loan is disbursed including that of “affiliates”), (ii) if applicable, the SBA’s size standard/employees currently in effect (businesses assigned a NAICS code starting with 72 with less than 500 employees per location are eligible) or (iii) the “alternative size standards” previously designated by the SBA (i.e., tangible net worth of ≤ \$15 million and average net income after taxes of ≤ \$5 million over the two most recently completed fiscal years)



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Overview of Disaster Relief and Paycheck Protection Programs

SBA Disaster Relief Program	SBA Paycheck Protection Program
Nonprofits, sole proprietors/independent contractors, ESOPs, cooperatives, tribal business and other businesses	“small business concerns”, nonprofits (501(c)(3)/501(c)(19)), sole proprietors/independent contractors/self-employed, veterans organization, tribal business and other business concerns
Paying fixed debts, payroll, accounts payable and <u>other bills</u> that can’t otherwise be paid due to the economic impact	Paying payroll/employee benefits of U.S. based employees; operating costs (i.e., rent; mortgage payments; utilities; payments re previously incurred debt)



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Overview of Disaster Relief and Paycheck Protection Programs

SBA Disaster Relief Program	SBA Paycheck Protection Program
No forgiveness	Potential full forgiveness
Substantial economic injury	Financial assistance necessary for ongoing operations due to economic uncertainty
Guarantee and Collateral	N/A
Must show unable to access credit “on reasonable terms through traditional lending channels” - SBA Administrator Jovita Carranza	N/A



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Overview of Disaster Relief and Paycheck Protection Programs

SBA Disaster Relief Program		SBA Paycheck Protection Program	
\$50 billion appropriated		\$349 billion appropriated	
Qualified 7(a) lenders		7(a) lenders, credit unions, FDIC insured institutions and "additional lenders"	
Period: Until disaster period ends		Period: February 15 - June 30, 2020 (borrower must be in existence on February 15, 2020)	

Affiliation

- **The SBA's methods for determining affiliation between businesses is complex and can be highly fact dependent**
 - Control
 - Management
- **No need for affiliate analysis for NAICS code beginning with 72, franchises or company that receives financing from an SBIC**
- **Anyone considering applying for EIDL or PPP loans should carefully review the applicable laws, rules and regulations and official publications**

PPP Loan Forgiveness

- **Loan principal to be forgiven—certain expenses paid during the 8-week period commencing on the date a covered loan is originated (the “covered period”)**
- **During the covered period, forgivable expenses—**
 - Payroll costs (must be no less than 75% of amount forgiven)
 - Mortgage interest, rent and utility payments (narrow list)
 - “costs incurred and payments made during the covered period”?
- **The SBA will pay amounts forgiven to the lender/holder**
 - Computation of reimbursement subject to the numbers of employees and salary reductions/adjustments, etc.
- **Supporting documentation/certification required**



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Certifications

- **Lenders**
 - Borrower was in operation as of February 15, 2020 and paid salaries/taxes
 - Verification of average payroll taxes (including documents demonstrating qualifying payroll amounts)
 - “Good faith review, in a reasonable time, of the borrower’s calculations and supporting documents concerning average monthly payroll cost”
 - Compliance with AML know your customer rules
- **Borrower**
 - In operation on February 15, 2020 and had employees for whom salaries were paid
 - “Current economic uncertainty makes loan necessary to support operation”
 - Funds will be used for permitted purposes
 - Has not received another PPP loan
 - Eligible to receive a loan in accordance with the PPP



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Other Considerations

Terms of existing debt?

For PPP Loans - Recourse to individual shareholders, members or partners that use proceeds for a purpose other than payroll, rent, utilities, interest?

SBICs as approved lenders?

Resources:

Size Standards and Affiliation Principles Applicable to SBA Financing Assistance Programs:
<https://www.law.cornell.edu/cfr/text/13/121.301>

A Guide to the SBA's Size Program and Affiliation Rules:
[https://www.sba.gov/sites/default/files/2018-09/2018-07-13%20AFFILIATION%20GUIDE Updated%20%281%29.pdf](https://www.sba.gov/sites/default/files/2018-09/2018-07-13%20AFFILIATION%20GUIDE%20Updated%20%281%29.pdf)



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How to Get Access to Funds?

Disaster Relief Program

1. SBA's Website
2. Processes already in place
3. Limited to 7(a) Lenders

Paycheck Protection Program

1. Guidance to be provided by Treasury/SBA
2. Work directly with lender
3. Any 7(a) Lender, an FDIC Insured depository institution and "additional lenders" designated by



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CLE Code



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Tax



Mary Streitz



Tax

The FFCRA and the Stimulus Act contain a number of significant, mostly temporary, changes to the federal tax laws aimed at providing immediate and short-term economic relief to individual and business taxpayers, falling into three general categories:

- Payroll tax relief for employers to offset certain costs of COVID-19 emergency
- Relief for businesses
- Relief for individuals



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Payroll Tax Relief for Employers (and Self-Employed Individuals)

• FFCRA Credits

- For sick leave and family leave wages required to be paid under FFCRA on and after April 1, 2020, refundable employment tax credits equal to entire amount of such wages
- Credits apply against 6.2% Social Security tax portion of employer's share of FICA tax
- If credit exceeds tax liability, excess is refundable
- In other words, the federal government reimburses employers for 100% of the sick leave and family leave wages required to be paid under FFCRA



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Payroll Tax Relief for Employers (cont'd)

- **CARES Act Employee Retention Credits**

- Refundable employment tax credits of up to \$5,000 per employee equal to 50% of the following wages paid (“Qualified Retention Wages”):
 - **If employer has more than 100 full-time employees**, available for wages paid to employees **who were not able to provide services** due to the COVID-19 emergency as a result of government closure or partial closure orders or as a result of a decline in any quarter in 2020 in employer’s gross receipts of more than 50% compared to same quarter in 2019
 - If employer has 100 or fewer full-time employees, also available for wages paid to **any** employees in in these circumstances, even if they are able to work
 - Aggregation rules apply to related parties to determine total number of employees



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Payroll Tax Relief for Employers (cont'd)

- **CARES Act Employee Retention Credits (cont'd)**

- Certain exceptions apply, including that employers who receive a small business interruption loan under the Paycheck Protection Program not eligible
- Like the FFCRA credits, credits apply against 6.2% Social Security tax portion of employer’s share of FICA tax and are refundable
- Credit applies to Qualified Retention Wages paid from March 13 to December 31, 2020



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Payroll Tax Relief for Employers (cont'd)

- **Procedural matters:**

- No failure to deposit penalties imposed for amounts of employment taxes not deposited in anticipation of the FFCRA and CARES Act credits, as follows:
 - To the extent amounts not deposited are less than or equal to the amount of refundable tax credits to which employer is entitled as of the time of the deposit, **and**
 - Employer did not seek payment of an advance credit by filing Form 7200
- If these conditions are satisfied, employer can withhold the amount of the anticipated credits from deposits of **any** employment taxes and **any** FICA and federal income tax withholdings from employees
- Form 7200 provides an alternative mechanism for claiming advance credits



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Payroll Tax Relief for Employers (cont'd)

- Substantially delays required dates for deposit of the employer portion of Social Security taxes, imposed at 6.2% of employee wages up to \$137,700 per employee
 - Applies to taxes due from March 27, 2020 through the end of the year
 - 50% of such taxes must be deposited by December 31, 2021
 - The remaining 50% of such taxes must be deposited by December 31, 2022
 - Employers who receive loan forgiveness with respect to a Paycheck Protection Program loan are not eligible for this deferral



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Relief for Businesses

- Relaxes limitations on corporate net operating loss deductions (“NOLs”) that were enacted in 2017
 - Can use 100% of NOLs to fully offset taxable income for 2018, 2019, and 2020 tax years, instead of 80%
 - Can carry NOLs accrued in 2018, 2019, and 2020 back 5 years from year in which accrued
- Delays effective date of loss limitations applicable to passthrough entities and sole proprietors from December 31, 2017, to December 31, 2020
- Accelerates ability of corporations to claim refunds and credits of AMT carryforwards resulting from repeal of corporate AMT in 2017
- Increases availability of business interest deductions
- Increases 10%-of-taxable income charitable deduction limitation for corporations to 30% of taxable income for cash contributions in 2020



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Relief for Individuals

This relief, provided under the CARES Act, includes:

- Immediate, one-time refunds issued to eligible taxpayers of up to \$1,200 per individual plus \$500 per qualifying child
 - Reduced by \$5 for each \$100 of AGI above \$75,000 AGI if single, \$112,000 AGI if head of household, \$150,000 AGI if married filing joint return
 - Credits fully phased out for single filers > \$99,000 AGI, HOH filers > \$146,500 AGI, married joint filers without children > \$198,000 AGI
- Relief to encourage charitable gifts
 - Permanent allowance of up to \$300 in charitable deductions to non-itemizers
 - Suspension of 50%-of-AGI charitable deduction limitation for cash contributions in 2020
- Expansion of \$5,250 tax-free employer educational assistance to include student loan repayments in 2020



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Main Street Loan Program



Troy Keller



Title IV—Stabilization Act

- **\$500 Billion**
 - \$25 billion to passenger air carriers
 - \$4 billion to cargo carriers
 - \$17 billion to critical national security businesses
 - \$454 billion to be used either by the Treasury or by the FRB or both
- **Language of Act provides enormous flexibility to Treasury to structure loan and guaranty programs**
 - Subject to enhanced oversight
 - Subject to the Government's right to take stock or warrants
 - Can the FRB actually do this?
- **Largest businesses likely subject to TARP-like loan negotiations**
- **Special category for Mid-Sized businesses**



Main Street Loan Program

Available for companies up to 10,000 employees or \$2.5 billion in size. Financed by Fed, but loans issued by banks. Companies can participate in this and PPP.

Adjustable annual interest rate of SOFR + 250-400 basis points with no required payments on the principal or interest in the first 12 months.

Loan size restrictions: \$25mm/total debt of 4X 2019 EBITDA for stand-alone facility; \$150mm / 30% total debt / total debt of 6X 2019 EBITDA for extension of existing facilities.

[These are the initial proposed terms. Likely to change]



REQUIRED ATTESTATIONS

- Borrower can't repay other debt of equal or lower priority until loan repaid in full.
- **Using proceeds of the loan, borrower will make reasonable efforts to maintain its employees.**
- Must follow compensation, stock repurchase and capital distribution restrictions.
- **That Borrower requires financing due to exigent circumstances presented by COVID-19.**
- Various lender attestations confirming other credit lines will remain available.

\$600 Billion Total Size of Program

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WHAT CAN YOU DO NOW?

THE ROLLOUT OF THE MAIN STREET LOAN PROGRAM IS EXPECTED IN COMING DAYS BUT HERE ARE STEPS YOU CAN TAKE NOW.

Socialize within your company (including at Board level) whether the conditions and restrictions would be palatable.

Analyze your debt covenants to see what flexibility you would have to add significant debt and under what terms.

Start now to work on your pitch. Start with your investor deck, but consider the objectives of the loan program.

Reach out to your banking relationships, just like with the SBA loans



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Will There be Additional Stimulus Packages?

- CARES Act 3.5
 - Refill PPP
 - Packages for hospitals and states
- Stimulus 4
 - Similar Targets as CARES Act
 - Address crisis related issues
 - Paycheck protections
 - More individual payments
- Stimulus 5
 - Infrastructure
 - More



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Closing



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Questions

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