

COVID-19 Economic Stimulus Programs Impacting ILPA Members Invested in U.S. Based Portfolio Companies: March 31, 2020



Overview: As countries around the world have been dealing with the impact of COVID-19 on their economies, a variety of economic stimulus measures have been implemented to provide support for workers and businesses in those countries. These measures will have an indirect impact on Limited Partners by providing potential vital financial support for portfolio companies of venture capital and private equity funds. ILPA is committed to keeping you informed about the impact of these programs so you can be informed about the options for the investments in your portfolio.

The United States has taken the following action to provide economic stimulus to domestic U.S. companies:

On March 27th, 2020, U.S. President Donald Trump signed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) into law. This emergency legislation provides billions of dollars of relief and loans to individuals, businesses, state and local governments, and the health care system, all of which are suffering due to the impact of COVID-19 in the United States. This legislation provides a total of \$2.2 trillion in relief and we expect subsequent further COVID-19 related stimulus measures to be moved forward in the next weeks and months. The CARES Act provides for two separate loan programs to help support US based businesses. The bill also provides a number of tax relief measures that may apply to portfolio companies, depending on their situation. Below is an overview of each of these programs and tax relief measures in the United States. At this time, some may not have fully been implemented, and ILPA intends to update this sheet periodically to ensure full and accurate information. If you have additional questions, please contact Brian Hoehn and Chris Hayes at bhoehn@ilpa.org and chayes@ilpa.org respectively.

(Small Company Lending Facility): U.S. Small Business Administration (SBA): Paycheck Protection Program (PPP)

Eligibility	What it Does	Facility Terms	Loan Forgiveness	Participation
Employers who maintain their payroll during the crisis. Companies with 500 employees or less	\$350 billion is made available through the existing 7(a) loan program administered by the SBA.	The maximum loan is the lesser of:	Borrowers are eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage, or other expenses impacted by COVID-19.	For more information on this program, click here: https://www.sba.gov/funding-programs/loans/paycheck-protection-program

Eligibility	What it Does	Facility Terms	Loan Forgiveness	Participation
<p>Applicable employee size standard under the applicable NAICS code 72: This code applies to accommodation and food service businesses, primarily franchises and applies the 500 employee threshold to an individual location of that type of business.</p>	<p>Loan proceeds may only be used for payroll, group health benefits, salary and employee commissions, interest on mortgages, rent, utilities, and interest on debt occurred before 2/15/2020.</p>	<p>(i)For companies that have been in business for a year or more: the average monthly payroll for the preceding year multiplied by 2.5 plus any pre-existing emergency loan.</p>	<p>The amount forgiven will be reduced proportionally by a reduction of employees. The act encourages employers to rehire any employees who have been laid off due to COVID-19 crisis without any penalty.</p>	
<p>Private equity owned companies may be excluded due to the SBA's "affiliation rule." Under the affiliation rule, if a private equity firm's portfolio companies collectively employ more than 500 people, each individual portfolio company could be ineligible for assistance, even if on its own it has fewer than 500 employees.</p>		<p>(ii)For companies that have not been in business for a year: the average monthly payroll for the period 1/1/2020 through 2/28/2020, multiplied by 2.5.</p>		

Eligibility	What it Does	Facility Terms	Loan Forgiveness	Participation
The affiliation rule is decided on a case-by-case basis. This would impact all portfolio companies in a fund, unless a Small Business Investment Company is a junior capital provider in connection with the investment (SBICs have an exemption from the rule).		(iii)Or \$10 million.		
ILPA intends to weigh in with the Treasury Department and the SBA to encourage a waiver of the affiliation rule to ensure broader access to these investments.		Interest rates cannot exceed 4%.		

(Large Company Lending Facility): Economic Stabilization and Industry Support – Loan Provisions

Eligibility	What it Does	Facility Terms	Loan Forgiveness	Participation
The business needs to show that it is solvent, it can repay the instrument, the requested amount is tied to its losses based on COVID-19 and that other forms of liquidity are not available to the company (as defined by prior prevailing rates).	The U.S. Treasury Department and the Federal Reserve System plan are administering another lending facility which is for larger businesses that may not be able to access the SBA loan program.	The Federal Reserve will price assistance on a risk adjusted basis and match pre-crisis rates and terms to the greatest extent possible.	These loans will not be forgiven.	For more information on this program, click here: https://home.treasury.gov/cares

Eligibility	What it Does	Facility Terms	Loan Forgiveness	Participation
	The program makes \$454 billion available to companies in exchange for warrants, stock options, stock or other kinds of equity instruments that would allow the government to benefit from any upside.	Loans must have a duration of 5 years or less.		
	If it is a loan, the government will receive interest income.	Stock buybacks are not permitted unless prior contracts require it. No dividends may be paid nor other capital contributions made until the loan is repaid or one year from the date of the loan.		
	The Treasury support will allow the Federal Reserve, by some estimates, to issue nearly \$4 trillion in loans and debt guarantees to US businesses.	Executive salaries must be capped at 2019 levels.		
	The Act ensures that the use of this authority cannot be on terms limited to just one company. The terms and ability to borrow must be made available on an industry basis or cover a large swath of the economy to ensure that companies within an industry sector are treated equally.	Borrowers must maintain their 3/24/2020 employment levels until 9/30/2020 and must retain no less than 90% of their employees until 9/30/2020.		

Midsize Business Loan Program

Eligibility	What it Does	Facility Terms	Loan Forgiveness	Participation
<p>The CARES Act requires the Treasury Secretary to ask the Federal Reserve to create a special direct loan program for businesses with between 500 and 10,000 employees</p>	<p>The Federal Reserve has not yet announced the details of the loan programs and/or credit facilities it will create.</p>	<p>Loan proceeds must be used to bring employment levels back to 90% as it existed on 2/1/2020. It must maintain those levels until 9/30/2020</p>	<p>Because the details have not been released – it is unclear if the loans will be forgiven. ILPA will be monitoring and will update this section.</p>	<p>For updates on this program, please click here: https://home.treasury.gov/cares</p>
<p>To be eligible, the businesses needs to show that they are a US business with significant operations in the US, they are not a debtor in a bankruptcy proceeding, and the economic conditions created by the COVID-19 pandemic make the loan necessary to support ongoing operations.</p>		<p>Businesses must not outsource or offshore jobs until at least 2 years after the loan is repaid.</p>		
		<p>Businesses must not abrogate existing collective bargaining agreements for at least 2 years after the loan is repaid. It will remain neutral in any union organization effort during the term of the loan.</p>		

Eligibility	What it Does	Facility Terms	Loan Forgiveness	Participation
		Stock buybacks are not permitted unless prior contracts require it. No dividends may be paid, or other capital contributions made until the loan is repaid or one year from the date of the loan.		
		Executive salaries must be capped at 2019 levels.		

Tax Relief Measures: The following tax relief measures have been implemented as part of the CARES Act in the United States:

Temporary Repeal of Net Operating Loss Limitation	
Eligibility	What it Does
All businesses are eligible.	Beginning in 2018, the IRS Code section 172 net operating loss (NOL) rules were modified by limiting the amount of NOLs a business could utilize in a given year to 80% of taxable income. The Act temporarily suspends the 80% limitation.
The temporary amendment applies to losses realized for tax years beginning before 1/1/2021.	The Repeal will allow businesses to carryback unused losses.
	The Act permits businesses to utilize 100% of their current losses against past and future profits. It allows businesses to carry back such losses for up to five years.

Temporary Modification of Net Business Interest Deduction Limit

Eligibility	What it Does
Leveraged Portfolio Companies will be able to utilize this relief to write off additional interest expense on debt than is currently permitted. The 30% cap was put in place during the 2017 Tax Reform legislation.	The Act modifies the net business interest deduction limit from 30% of the taxpayer's adjusted taxable income for the year to 50% for the 2019 and 2020 tax years.
	This provision is meant to provide relief to businesses that rely on debt to function as well as the corresponding interest deductions of such debt to shield taxable income.

Employee Retention Credit for Employers Subject to Closure due to COVID-19

Eligibility	What it Does
"Eligible employers" are businesses that were operating during the 2020 calendar and whose trade or business is: (i) Fully or partially suspended due to orders from an appropriate governmental authority due to COVID-19, or (ii) Experiencing an approximate 50% decrease in gross receipts compared to the same calendar quarter in the previous year.	The Act provides "eligible employers" a refundable credit against their payroll taxes for each calendar quarter equal to 50% of wages paid by such employer. Eligible employers may only take into account \$10,000 of compensation for each employee when determining the share of the credit.
For employers with more than 100 employees qualified wages only include those paid to employees who aren't providing services due to the suspension of the business	The credit shall only apply to wages paid after 3/12/2020 and before 1/21/2020
For employers with less than 100 employees qualified wages include all employee wages notwithstanding the operations of the business.	