OFFIT KURMAN'S GUIDE TO THE CARES ACT

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OFFIT KURMAN'S GUIDE TO THE CARES ACT

Offit Kurman is pleased to present this detailed summary of pertinent provisions of the CARES Act, landmark legislation designed to help businesses and individuals deal with the impact of COVID-19. This summary is intended as a guide. Please note that regulations and guidance under the CARES Act are being published almost hourly by the applicable government agencies, and so information in this summary may have already changed since being published. It is therefore important that you consult with your advisors to inquire about any updates on the Act as well as your specific situation. Offit Kurman is ready and able to assist you.

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BUSINESS LOAN PROGRAMS

For assistance, contact the Offit Kurman Business Law and Transactions Group https://www.offitkurman.com/service/business.

Paycheck Protection Loans

SECTION 1101: DEFINITIONS

SECTION 1102: PAYCHECK PROTECTION PROGRAM

SECTION 1106: LOAN FORGIVENESS

This title of the CARES Act, the Paycheck Protection Program, contains provisions greatly expanding the current SBA loan guaranty program for qualifying businesses. The Act provides for a 100% SBA loan guaranty, as opposed to the current 75% loan guaranty. The total loans that may be made under this Title of the Act are $349 billion.

Summary: The Act provides for loans for payroll costs (salaries, commissions and similar compensation), healthcare costs, payments of interest on mortgage obligations, rent, utilities, and interest on any other debts, for businesses and nonprofit organizations with equal to or less than the greater of a) 500 employees or b) the standard of number of employees published by the SBA for the particular industry (and certain businesses in the accommodation and food services industries with multiple locations but not more than 500 employees at any one location) "Employees" includes full and part time employees. The Act also may allow a company to refinance an SBA economic disaster recovery loan made after January 31, 2020. These paycheck protection loans are available until June 30, 2020

Eligibility is premised on a good faith certification that the loan is needed given the uncertainty, that the funds will be used to retain workers/maintain payroll or make qualified payments, and that the loan would not be duplicative.

The Act provides for possible loan forgiveness. The amount of the loan forgiveness is based on the amounts spent on certain covered expenses during the covered period. See below for more on this. Employers should run these calculations ASAP as well as contact their lender for more detail and to potentially start the process of obtaining a loan.

Loan Amount

The maximum loan amount is the lesser of:

1. The sum of:
   a. **The product obtained by multiplying the average total monthly payments for "payroll costs" incurred during the 1-year period before the loan date by 2.5; and**
   b. **The outstanding amount of an SBA economic disaster recovery loan made after January 31, 2020; or**
2. $10M.

See definition of what is included in "payroll costs" in the paragraph below on Uses of the Loan. Payroll costs exclude compensation to an individual in excess of an annual salary of $100,000 as prorated, certain federal taxes, compensation to employees who reside outside of the United States, and benefits under the Families First Coronavirus Response Act. The loan amount calculation will only take into account up to $100,000 per employee (though it will be multiplied by 2.5).

Uses of the Loan

The loan may be used for the following costs during the period from February 15 to June 30, 2020: "payroll costs" (salaries, commissions and similar compensation, which contains the $100,000 salary limit, tips, group healthcare costs, including for continuation benefits, payments for leave, retirement benefits, state and local payroll tax), payments of interest on any mortgage obligation, rent, utilities, and interest on other debt incurred prior to February 15, 2020. The Act allows use of the loan proceeds for salaries and other compensation payments that are separate from the compensation included in "payroll costs, meaning that a business can use loan proceeds for salaries in excess of $100,000. Note, however, the effect of paying compensation in excess of $100,000, pro-rated, on the loan forgiveness, as discussed below.

Other loan terms

There is no personal guarantee or collateral required and, if a loan is not forgiven (see below), it would have a maturity date of no longer than 10 years from the date on which loan forgiveness is applied for. The Act states that the interest rate is not to exceed 4%. Subsequent to the date the Act was enacted, the SBA has indicated that loans will bear interest at 1% and be payable in two years. There is no SBA guaranty fee imposed on these loans. Lenders are required to provide for deferral of payments for between 6 and 12 months.

Forgiveness of the Loan

A borrower is eligible for forgiveness of the loan in an amount equal to the following costs incurred and payments made during the 8 week period beginning on the date a loan is made: "payroll costs", interest on mortgages, payments on covered rents, and payments on covered utilities. "Payroll costs" are limited to "payroll costs," as defined above, and does not include the additional costs referred to in the Use of the Loan section. So, the amount of forgiveness would not include wages paid in excess of $100,000 when annualized. The amount of the loan forgiveness may not exceed the loan principal. The amount that can be forgiven shall be reduced (but never increased) by multiplying the loan amount by the quotient that results from dividing the average number of full-time equivalent employees ("FTEE") per month employed by the eligible recipient during the covered period by either (a) the average number of FTEEs/month employed by the business from 2/15/19 – 6/30/19 or (b) the average number of FTEEs/month employed by the business from 1/1/20 – 2/29/20. The loan forgiveness is also reduced by the amount of any reduction in total wages of any employee who did not earn an annualized wage of $100,000 at any point in 2019 where that reduction is in excess of 25% of the total wages of the employee during the most recent full quarter before the covered period. However, the FTEE reduction can be avoided if the employer reduces its FTEEs between 2/15/20 and April 26 and, by 6/30/20, the employer has eliminated the FTEE reduction by rehiring.

A borrower seeking loan forgiveness is required to submit detailed evidence, including documents verifying payment of covered payroll costs, mortgage obligations, rent and utilities.

Next Steps

The Procedure to Obtain a Loan

A borrower seeking a Paycheck Protection Loan must apply for the loan from an SBA-approved lender that has received authority from the SBA to make the loan without approval from the SBA (i.e., no SBA authorization is required for each individual loan). SBA-approved lenders have begun to take Paycheck Protection Program loan applications.

To be eligible, a borrower must have been in operation on February 15, 2020, and have paid employee salaries and payroll taxes. The borrower must certify that: (i) the uncertainty of current economic conditions makes the loan request necessary to support ongoing operations; (ii) the borrower will use the loan proceeds to retain workers and maintain payroll or make mortgage, lease, and utility payments; and (iii) the borrower does not have an application pending for a loan, or has not received a loan, duplicative of the purpose and amounts applied for under the Paycheck Protection Loan program.

There is already a large demand for Paycheck Protection Loans, so prospective borrowers should start gathering documentation that we anticipate will be needed to process an application, including organizational, payroll and financial documents. We suggest the borrower work with its accountant and legal advisor to assemble these documents now.

- **Organizational documents**
  - Articles of Incorporation/Organization of each applicant
  - Bylaws/Operating Agreement of each applicant
  - Copies of all owners' driver's licenses
- **Payroll verification documents**
  - 2019 IRS Forms 940 and 941
  - Payroll reports for the last 12 months
  - Bank statements to verify payroll
  - A breakdown of payroll benefits
  - Copies of most recent W-2s and 1099s
- **Financial documents**
  - The most recent financial statements – balance sheet, income statement, cash flow statement.

- Current mortgage or rent invoices

- **Documentation showing total of all health insurance premiums paid under a group health plan for the past 12 months**
- **Documentation showing the sum of all retirement plan funding that was paid by the Company for the past 12 months**

Other Points

Keep in mind that there is no one size fits all, and any company that is thinking about applying for a loan should consult with its advisors to obtain advice on its specific situation and to determine what is best for its business.

Also, if a loan is needed, consideration should be given as to whether a Paycheck Protection Loan or an Economic Injury Disaster Loan (discussed in greater detail below) is more appropriate, or a combination of the two loans. An Economic Injury Disaster Loan application can be submitted today and even if the application is ultimately denied, the borrower can receive $10,000 in an emergency cash advance that can be forgiven if spent on paid leave, maintaining payroll, increased costs due to supply chain disruption, mortgage or lease payments or repaying obligations that cannot be met due to revenue loss.

As noted above, the CARES Act allows a business that already has obtained (or possibly, is applying for) an Economic Injury Disaster Loan to also apply for a Paycheck Protection Loan if it will not duplicate the applicant's use of the Economic Injury Disaster Loan. The purposes for which a Paycheck Protection Loan may be used are similar to those for which an Economic Injury Disaster Loan may be used. However, Economic Injury Disaster Loans also may be used for "meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains". There is currently ambiguity as to whether a business may obtain a Paycheck Protection Loan and a new Economic Injury Disaster Loan - we expect the SBA to issue additional guidance on this in the coming days.

Although a business may determine that it will benefit from a Paycheck Protection Loan, banks are not required to extend credit to all qualifying customers. Thus, it makes sense for a company to focus on its existing lenders and to contact the lenders now to get in line.

Please note that a loan under the Paycheck Protection Program makes the borrower ineligible for the Employee Retention Tax Credit (discussed below) made available under the CARES Act.

If a company determines that a Paycheck Protection Loan will assist its business, the company

should apply as soon as possible, as there are approximately 30 million small businesses, only approximately 1,800 SBA-approved lenders nationwide, and the total amount that can be loaned to all companies under the program is limited.

Economic Disaster Protection Loans

SECTIONS 4001 TO 4004

Separate and apart from the Paycheck Protection Loan program, the CARES Act provides economic stabilization and relief to businesses and their employees that are economically distressed by the impact of the coronavirus (COVID-19). Title IV of the CARES Act provides liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus through loans, loan guarantees, and other investments in support of eligible businesses, States, and municipalities that do not, in the aggregate, exceed $500,000,000,000, and to provide the subsidy amounts necessary for such loans, loan guarantees, and other investments in accordance with the provisions of the Federal Credit Reform Act of 1990.

General

The CARES Act authorizes the Secretary of the Treasury (the "Secretary") to make loans, loan guarantees, and other investments available in the following categories in the stated aggregate amounts:

(1) Not more than $25,000,000,000 for passenger airlines and eligible businesses approved to perform inspection, repair, replace, or overhaul services, and ticket agents for airline travel.

(2) Not more than $4,000,000,000 shall be available to make loans and loan guarantees for cargo air carriers.

(3) Not more than $17,000,000,000 shall be available to make loans and loan guarantees for businesses critical to maintaining national security, which should include certain businesses that contract to provide products and services to government agencies.

(4) Not more than the sum of $454,000,000,000 and any amounts not otherwise used under paragraphs (1), (2), and (3) to make direct loans and loan guarantees to, and other investments in, programs or facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing liquidity to the financial system that supports lending to eligible

businesses, States, or municipalities by purchasing obligations or other interests directly from issuers or in the secondary market and making loans, including loans or other advances secured by collateral.

A loan, loan guarantee, or other investment by the Secretary shall be made in such form and on such terms and conditions and contain such covenants, representations, warranties, and requirements as the Secretary determines appropriate, with interest rates determined by the Secretary based on the risk and the current average yield on outstanding marketable obligations of the United States of comparable maturity.

Businesses should investigate all forms of financial and other relief available under the CARES Act in order to make short- and long-term planning decisions

Application Procedures

As soon as practicable, but in no case later than 10 days after the date of enactment of the CARES Act, that is, by April 6, the Secretary is required to publish procedures for application and minimum requirements, which may be supplemented by the Secretary in the Secretary's discretion, for making loans, loan guarantees, or other investments.

Loans and Loan Guaranty Agreements

The Secretary may enter into agreements to make loans or loan guarantees to one or more eligible businesses under clauses (1), (2) or (3) above if the Secretary determines that:

- the applicant is an eligible business for which credit is not reasonably available at the time of the transaction;
- the intended obligation by the applicant is prudently incurred;
- the loan or loan guarantee is sufficiently secured or is made at an interest rate that, (i) reflects the risk of the loan or loan guarantee; and (ii) is to the extent practicable, not less than an interest rate based on market conditions for comparable obligations prevalent prior to the outbreak of the coronavirus disease 2019;
- the duration of the loan or loan guarantee is as short as practicable and, in any case, not longer than 5 years;
- the loan agreement provides that, until the date 12 months after the date the loan or loan guarantee is no longer outstanding, neither the eligible business nor any affiliate of the eligible business may (i) repurchase stock or other equity security that is listed on a national securities

exchange of the eligible business or any parent company, except to the extent required under a contractual obligation in effect as of the date of enactment of the CARES Act; or (ii) pay dividends or make other capital distributions with respect to the common stock of the eligible business;

- the loan agreement provides that, until September 30, 2020, the eligible business shall maintain its employment levels as of March 24, 2020, to the extent practicable, and in any case shall not reduce its employment levels by more than 10 percent from the levels on such date;
- the loan agreement includes a certification by the eligible business that it is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States; and
- for purposes of a loan or loan guarantee, the eligible business must have incurred or is expected to incur covered losses such that the continued operations of the business are jeopardized, as determined by the Secretary.

Small and Medium Size Businesses and SBA Loan Facilities

The CARES Act provides assistance to many businesses that fit within the four categories listed above that may not meet the customary small business thresholds. Given the qualification criteria for businesses within each category, considering the size and nature of the business, legal requirements, and existing and projected financial and other contractual requirements, the programs available under the CARES Act should be evaluated separately for each business to determine eligibility and appropriateness. There may be multiple opportunities for relief under the CARES Act programs.

In addition to the Paycheck Protection Program described above, most small and medium size economically distressed businesses seeking financial stabilization and relief to the business and their employees may be eligible for loans through the SBA under the expanded Economic Injury Disaster Loan Program (the "EIDL" Program) which adds the COVID-19 crises to eligible economic disasters. The CARES Act greatly expands the EIDL Program with $10 billion of additional funding for the SBA.

The SBA has promulgated a COVID-19 ECONOMIC INJURY DISASTER LOAN APPLICATION and is relying upon the self-certifications contained in this application to verify that the Applicant is an eligible entity to receive the advance, and that the Applicant is providing this self-certification under penalty of perjury for verification purposes.

EIDLs

The CARES Act expands EIDL eligibility for the period between January 31, 2020 through December 31, 2020, to include any business with not more than 500 employees, individuals operating as sole proprietors or as independent contractors, and any cooperative, ESOP or tribal small business concern with not more than 500 employees. The loan may be used for payroll and other costs as well as to cover increased costs due to supply chain interruption, to pay obligations that cannot be met due to revenue loss and for other uses. Subject to further guidance from the SBA, these applicants are also subject to the SBA's affiliation rules (combining related companies) governing financial assistance programs.

The CARES Act provides for longer-term EIDL loans with more favorable borrowing terms. While there are no loan forgiveness provisions applicable to EIDL loans, companies that have already applied for or received EIDLs due to economic injury attributable to the COVID-19 pandemic can seek to refinance their EIDL loans under the Paycheck Protection Program to take advantage of that program's loan forgiveness provisions. Additionally, while companies may be eligible for loans under both programs, they are unable to seek recovery under the EIDL loan for the same costs that are covered by a Paycheck Protection Program loan.

Personal guarantees are not required for EIDL loans up to $200,000. Owners of more the 20% of the applicant must personally guaranty loans in excess of $200,000. However, unless changed by the SBA, it appears that the requirement for collateral on EIDL loans over $25,000 would still apply and the SBA must be satisfied that the applicant has the ability to repay the loan. In order to expedite approval of EIDL applications the SBA can approve a loan based solely on the credit score of the applicant or other means of determining the applicant's ability to repay the loan, without requiring the submission of tax returns.

A significant benefit under the CARES Act is the ability of an applicant to request an immediate advance of up to $10,000 to pay allowable current working capital needs; the advance is expected to be paid by the SBA within 3 days and is essentially a grant which is not required to be repaid, even if the application is denied, but the amount of the advance must be deducted from any loan forgiveness amounts under a Paycheck Protection Program loan, described above.

The applicant must have suffered "substantial economic injury" from COVID-19 in order to qualify for an EIDL loan. EIDL loans may be used for payroll and other costs as well as to cover increased costs due to supply chain interruption, to pay obligations that cannot be met due to revenue loss and for other uses. Award of an EIDL loan is based on a company's actual economic injury determined by the SBA (less any recoveries such as insurance proceeds) up to $2 million. The interest rate on EIDL

loans is 3.75% fixed for small businesses and 2.75% for nonprofits. The EIDL loans have up to a 30-year term and amortization (determined on a case-by-case basis).

Applications for EIDL loans are submitted directly to the SBA, while, as noted above, Paycheck Protection Program loans are made by SBA-approved lenders to whom applications should be submitted.

Direct Loan Facilities

The Secretary may make a direct loan, loan guarantee, or other investment under clause (4) above as part of a program or loan facility that provides direct loans only if the applicable eligible business agrees, in addition to the restrictions generally stated above with respect to repurchasing stock or equity and paying dividends for loans and guaranties, to comply with the limitations on compensation set forth below, but the restrictions regarding repurchasing stock or equity, paying dividends and/or limiting executive compensation with respect to any such program or loan facility may be waived upon a determination that such waiver is necessary to protect the interests of the Federal Government.

Restrictions on Compensation

The Secretary may only enter into an agreement with an eligible business to make a loan or loan guarantee under clauses (1), (2) or (3) above if such agreement provides that, during the period beginning on the date on which the agreement is executed and ending on the date that is one year after the date on which the loan or loan guarantee is no longer outstanding—

- **no officer or employee of the eligible business whose total compensation (salary, bonuses, awards of stock), and other financial benefits exceeded $425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 1, 2020)—**
  - will receive from the eligible business total compensation which exceeds, during any 12 consecutive months of such period, the total compensation received by the officer or employee from the eligible business in calendar year 2019; or
  - will receive from the eligible business severance pay or other benefits upon termination of employment with the eligible business which exceeds twice the maximum total compensation received by the officer or employee from the eligible business in calendar year 2019; and
- **no officer or employee of the eligible business whose total compensation exceeded $3,000,000 in calendar year 2019 may receive during any 12 consecutive**

months of such period total compensation in excess of the sum of—

- $3,000,000; and
- 50 percent of the excess over $3,000,000 of the total compensation received by the officer or employee from the eligible business in calendar year 2019.

Protections for Labor

Acceptance of loan funds pursuant to this loan program comes with certain protections for laborers. First among these protections is the requirement that the recipient will not outsource or offshore jobs for the term of the loan and 2 years after completing repayment of the loan. In addition, a business that receives a loan pursuant to this program cannot do away with existing collective bargaining agreements for the term of the loan and 2 years after completing repayment of the loan" Likewise, for those businesses that do not have a unionized workforce now, this is still an issue insofar as acceptance of loan funds is conditioned on remaining neutral in any union organizing effort for the term of the loan.

BANKRUPTCY PROVISIONS

For assistance, contact the Offit Kurman Creditors Rights, Reorganization and Bankruptcy Group https://www.offitkurman.com/service/bankruptcy -restructuring.

SECTION 1113: BANKRUPTCY

Section 1113 of the Act introduces the bankruptcy protection-related changes. The CARES Act provides for temporary changes in three categories of proceedings: (1) In chapter 11 (reorganization) cases under the new Small Business Reorganization Act that went into effect less than a month before the declaration of national state of emergency to the COVID pandemic ("SBRA Cases"); (2) in chapter 7 (liquidation) cases; and (3) in pending chapter 13 (individual repayment plan) cases.

SBRA Cases

The SBRA offers a more efficient and streamlined path for businesses and business owners to the successful restructuring of their debt. The debtor has an increased ability to have a reorganization plan approved by the court over the objections of creditors. Under the original law, to qualify for the streamline procedure, the debtor had to meet the following eligibility requirements:

(1) the debtor must be engaged in commercial or business activities;

(2) the debtor must have no more than $2,725,625 of noncontingent liquidated secured and unsecured debt as the date of filing or the order for relief;

(3) 50 percent of such debt must have been generated from business and commercial activities; and

(4) the debtor cannot have as its primary activity the owning of single-asset real estate.

Section 1113 of the CARES act increases the debt threshold to $7,500,000. This opens the door to the streamlined SBRA process to many businesses and individuals that would be otherwise ineligible. The increased debt limit will be in force for one year from the date of the enactment of the CARES Act.

Chapter 7 Cases

For purposes of determining an individual debtor's eligibility for chapter 7 protection, coronavirus-related payments from the federal government are excluded from the calculation of the debtor's current monthly income.

Chapter 13 Cases

The CARES Act eliminates coronavirus-related payments from the calculation of a debtor's disposable income for purposes of confirming a chapter 13 repayment plan.

The CARES Act allows modification of already confirmed chapter 13 plans for debtors who have experienced or are experiencing a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID–19) pandemic. The payments under a plan modified as a result of the pandemic can stretch up to 7 years after the time the first payment under the original confirmed plan is made. Normally, chapter 13 plans can be no longer than 5 years.

The changes with respect to the individual bankruptcy proceedings shall apply to any case commenced before, on, or after the date of enactment of the CARES Act and will be applicable for one year from the effective date of the Act.

LABOR AND EMPLOYMENT

For assistance, contact the Labor and Employment Group https://www.offitkurman.com/service/labor-employment.

SECTIONS 2101 TO 2116: UNEMPLOYMENT INSURANCE PROVISIONS

This part of the Act expands unemployment benefits to individuals that are independent contractors and self-employed, who are typically not covered.

Emergency Increase in Unemployment Compensation Benefits. For any week from now until July 31, 2020, in which an individual is eligible to receive regular compensation under state law, their benefits will now include the amount the employee was otherwise entitled to under state law, plus an additional $600.

Pandemic Emergency Unemployment Compensation. Individuals who have exhausted all rights to regular unemployment compensation under state or federal law, have no rights to regular unemployment compensation under state or federal law, are not receiving compensation under Canadian law and are able, available and actively seeking work, may receive unemployment compensation equal to the state weekly benefit amount, plus $600. This assistance will be available for 13 weeks. This will be paid before any extended unemployment compensation benefits are paid.

Pandemic Unemployment Assistance. From now through December 31, 2020, a Covered Individual is entitled to pandemic unemployment benefits weeks that:

1. the individual is unemployed, partially unemployed, or unable to work;
2. not entitled to regular or extended benefits or pandemic emergency unemployment compensation, including one who has exhausted their rights to regular or extended unemployment benefits; and
3. Provides certification as specified below.

Individuals may receive the State weekly unemployment benefit (at least 50% of regular compensation) plus an additional $600. Individuals may not receive these benefits for more than 39 weeks, which includes the weeks an individual received regular or extended benefits.

Certification. The individual must provide certification that the individual is otherwise able and available for work under state law, but is unemployed (or partially so) because:

1. The individual has been diagnosed with coronavirus, or has symptoms;
2. A member of the individual's household has been diagnosed with coronavirus;
3. The individual is providing care for a family member with coronavirus;
4. A child for whom the individual has primary care is unable to attend school or another facility, which is closed because of coronavirus (and that care is required for the individual to work);
5. The individual is unable to reach the place of work because of a coronavirus-imposed quarantine;
6. The individual is unable to reach place of work because a health care provider advised the individual him/her to self-quarantine due to coronavirus;
7. The individual was scheduled to start work, but doesn't have a job or is unable to get to the job because of coronavirus;
8. The individual has become the breadwinner or major support for the household because the head of the household died due to coronavirus;
9. The individual had to quit the individual's job because of coronavirus;
10. The individual's place of employment is closed due to coronavirus;
11. The individual meets any other criteria established by Secretary of Labor for unemployment assistance; or
12. The individual is self-employed, seeking part-time employment, does not have sufficient work history for unemployment insurance benefits or would otherwise not qualify for regular, extended or emergency benefits

Who is excluded from coverage? An individual who has the ability to telework with pay, or an individual who is receiving paid sick leave or other paid leave benefits (even if qualified under the above).

Waiver of One Week Waiting Period. Unemployment compensation will be paid to individuals for their first week of regular unemployment without a waiting a week.

Implementation. The new law will be implemented through agreements with states which the Secretary of Labor believes have an adequate system to administer the aid. States will receive 100% of the amount of the unemployment assistance to administer the aid and any consequential expenses from the federal government.

Short Term Compensation Program. States with Short Term Compensation Programs (those in which employers voluntarily participate and reduce employee hours in lieu of layoffs, by at least 10% and not more than 60%, and employees receive a pro rata portion of unemployment compensation) will be reimbursed for payments. States may choose to create such a program, but such states must require that employers pay half of short-term compensation paid to employees.

SECTION 2301: EMPLOYEE RETENTION CREDIT FOR EMPLOYERS SUBJECT TO CLOSURE DUE TO COVID-19

Section 2301 provides a credit to employers who do not obtain a Paycheck Protection Program loan (see discussion above), and that suffer either a full or partial shutdown because of a government order or a "significant decline" in revenue as measured by quarterly gross receipts compared to the corresponding quarter of the prior year. An eligible employer means any employer (i) in business in 2020, and (ii)(I) whose business is fully or partially suspended during the quarter due to order of a governmental authority due to COVID-19 or (II) which has a significant decline in gross receipts. The period of a significant decline in gross receipts begins with the first quarter for which there is a 50% reduction in gross receipts compared to the same quarter in the prior year and ends with the quarter following the first quarter in which gross receipts are greater than 80% of the gross receipts in the same quarter in the prior year. Employers receive a credit against employment taxes equal to 50% of the "qualified wages" with respect to each employee for each applicable quarter. For employers that averaged greater than 100 full time employees in 2019, qualified wages means wages paid to an employee who is not providing services because of a COVID-19-related full or partial shutdown or significant decline in gross receipts. For employers that averaged 100 full time employees or less in 2019, qualified wages means wages paid during any full or partial shutdown or any quarter in which there was a significant decline in gross receipts. Qualified wages for each employee "for all calendar quarters shall not exceed $10,000." Internal Revenue Code aggregation rules treating affiliated employers as one employer apply for purposes of counting the number of employees.

SECTION 2302: DELAY OF PAYMENT OF EMPLOYER PAYROLL TAXES

Section 2302 allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government. Employers generally are responsible for paying a 6.2% Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. This payroll tax deferral is not available to employers that have a loan forgiven pursuant to the Paycheck Protection Program.

SECTIONS 3601 – 3606: TECHNICAL MODIFICATIONS TO THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT

These Sections provide technical clarifications to the recently passed Families First Coronavirus Response Act, but do not provide substantive changes from prior interpretations. For example, the CARES Act amends the Emergency Family Medical Leave Act Expansion Act (contained in the Families First Coronavirus Response Act) to make clear that the limit on paid leave during the expanded Family Medical Leave Act ("FMLA") use period is $200 per day and $10,000 in aggregate per employee. Similarly, the CARES Act amends the Emergency Paid Sick Leave Act (also contained in the Families First Coronavirus Response Act) to make clear that the benefit limits (which still vary based on the reason for the use of the leave) are per employee. Under both paid leave sections of the Families First Coronavirus Response Act, the employer is not required to pay more than these specified limits. Also, the CARES Act adds language to the Emergency Paid Sick Leave Act that gives the Office of Management and Budget authority to exempt certain federal employees and further clarifies that, in the Emergency Family Medical Leave Expansion Act, the thirty day employee eligibility requirement actually means thirty days of employment with the current employer and that an employee who was laid off March 1, 2020 or later and who worked for the employer for not less than 30 of the last 60 calendar days is eligible for expanded FMLA if rehired by that same employer; in other words, a temporary break in employment along these lines will not negate eligibility for expanded FMLA.

Finally, and significantly to employers, the CARES Act modifies the process by which the government will credit/reimburse employers for paying paid leave under either portion of the Families First Coronavirus Response Act. First, the CARES Act modifies both the Emergency Family Medical Leave Act Expansion Act and the Emergency Paid Sick Leave Act to permit Treasury to allow the credit due to the employer to be advanced by the Treasury prior to any quarterly payroll tax submission. Along these lines, the CARES Act also eliminates penalties for employers that do not deposit payroll taxes consistent with the Families First Coronavirus Response Act.

ERISA

For assistance, contact the Offit Kurman Tax Group
https://www.offitkurman.com/service/tax-law.

3607: EXPANSION OF DEPARTMENT OF LABOR AUTHORITY TO POSTPONE CERTAIN DEADLINES

The Department of Labor has the authority to extend ERISA deadlines for employee benefit plans for up to a year. That authority was originally only in circumstances of terrorism or a presidentially declared disaster. This amendment expands those circumstances to include a public health emergency declared by the Department of Health and Human Services Secretary.

3608: SINGLE-EMPLOYER PLAN FUNDING RULES

Minimum required contributions to a single-employer-defined benefit plan, including quarterly contributions, that would otherwise be due during calendar year 2020, can be delayed until January 1, 2021. If the plan sponsor chooses to delay making contributions, the amount of any minimum required contribution will be increased with interest at the plan's effective rate from the time the contribution was originally due until when it is actually made.

A single-employer plan may choose to use its adjusted funding target attainment percentage ("AFTAP") calculation for the most recent plan year ending before January 1, 2020 as its AFTAP for plan years that include calendar year 2020 in determining funding-based limits on benefits and accruals. This allows plans to avoid applying the benefit and payment restrictions (such as limitations on lump sum distributions) that apply to plans that have an AFTAP of less than 80% for the plan year beginning on or after January 1, 2020 if the plan's AFTAP for the immediately prior plan year is equal to or greater than 80%.

TAX CHANGES

For assistance, contact the Offit Kurman Tax Group
https://www.offitkurman.com/service/tax-law.
For Sections 2202 and 2203, contact the Estates and Trusts Group
https://www.offitkurman.com/service/estates-and-trusts-planning.

SECTION 2201: REBATES FOR INDIVIDUALS

This section provides for personal rebates, known as "recovery rebates" for all qualified individuals and married couples (income must be below certain thresholds to qualify). All U.S. residents or citizens with adjusted gross income under $75,000 ($112,500 for head of household and $150,000 married couples filing jointly), are eligible for the full $1,200 ($2,400 married couple) rebate. If the individual or married couple also have dependent children under the age of 17, the government will pay an additional $500 per child.

There are income limits, however. The rebate amount is reduced by $5 for each $100 that a taxpayer's income exceeds the phase-out threshold. The amount is completely phased-out for single filers with incomes exceeding $99,000, $146,500 for head of household filers with one child, and $198,000 for joint filers with no children. For that typical family of four, the amount is completely phased out for those with adjusted gross incomes exceeding $218,000.

If income in 2019 was in the phase-out range, a taxpayer will still receive a partial rebate based on the taxpayer's 2019 tax return. However, the rebate is actually an advance on a tax credit that may be claimed on the 2020 tax return. If income is lower in 2020 than in 2019, any additional credit the taxpayer is eligible for will be refunded or reduce tax liability when the 2020 tax return is filed next year.

Note that there is no requirement that an individual have any income to obtain the rebate. Even individuals with $0 of income are eligible for a rebate as long as they are not the dependent of another taxpayer and have a work-eligible SSN.

The rebate is treated like any other refundable tax credit, such as the child tax credit and earned income tax credit, and not considered income. Moreover, if the credit amount qualified for based on 2020 income is less than what would be qualified for based on 2019 income, the rebate does not have to be paid back.

3701: EXEMPTION FOR TELEHEALTH SERVICES

Previously, telehealth services were considered an eligible expense for use with a Health Savings Account ("HSA"). However, those expenses could not be covered until the high-deductible health plan ("HDHP") deductible was met. This section provides a temporary safe harbor to HDHPs so that such a plan will not lose qualified status if it offers cost-free telehealth and other remote services to plan members before the annual deductible is satisfied.

This section is effective upon enactment and only applies to plan years beginning on or before December 31, 2021.

3702: INCLUSION OF CERTAIN OVER-THE-COUNTER MEDICAL PRODUCTS AS QUALIFIED MEDICAL EXPENSES

Purchases of menstrual care products are added as qualified medical expenses for use with an HSA, flexible spending account (FSA) or health reimbursement arrangement (HRA). Menstrual care products are defined as tampon, pad, liner, cup, sponge, or similar product used by individuals with respect to menstruation. This applies to expenses incurred after December 31, 2019.

SECTION 2202: SPECIAL RULES FOR USE OF RETIREMENT FUNDS

SECTION 2203: TEMPORARY WAIVER OF REQUIRED MINIMUM DISTRIBUTION RULES FOR CERTAIN RETIREMENT PLANS AND ACCOUNTS

These sections of the Act provide for favorable tax treatment for withdrawals from retirement plans and temporarily waive minimum distribution amounts.

Before the CARES Act, individuals younger than 59 ½ who withdrew funds from their retirement plan were subject to a 10% early withdrawal penalty PLUS the income tax on the withdrawal. The CARES Act now waives the 10% penalty for individuals. The distribution is limited to amounts up to $100,000 and must be deemed a "coronavirus-related distribution."

A "coronavirus-related distribution" is defined as a distribution made during the 2020 calendar year to individuals who (1) are diagnosed with COVID-19 or SARS-CoV-2; (2) have a spouse or dependent who was diagnosed with COVID-19 or SARS-CoV-2; or (3) are experiencing financial consequences as a result of (1) being quarantined, furloughed, laid off or having reduced hours because of COVID-19 or (2) being unable to work because of lack of child care due to SARS-CoV-2 or COVID-19; or (3) the closing or reduction of hours of a business owned or operated by such individual due to SARS-CoV-2 or COVID-19.

While the distribution escapes the 10% penalty, it does not escape the income tax. The Act, however, allows the taxpayer to spread the income over a 3-year period beginning with 2020. The taxpayer also has the choice to avoid any income recognition by repaying the distribution to the retirement plan within three years of receiving it.

Required Minimum Distributions (RMD) are suspended for 2020 only. If a taxpayer would ordinarily be required to take a Required Minimum Distribution from the taxpayer's retirement account (including inherited IRAs and traditional IRAs), the taxpayer has the option to not take a distribution during 2020. If the taxpayer already received the 2020 RMD, the taxpayer has up to 60 days to return a distribution to an IRA or deposit it in another qualified retirement account without owing taxes on it.

SECTIONS 2204 AND 2205: ALLOWANCE OF PARTIAL ABOVE THE LINE DEDUCTION FOR CHARITABLE CONTRIBUTIONS; MODIFICATION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS DURING 2020

Section 2204 of the Act allows an individual to make a cash contribution of up to $300 to qualifying charities and deduct the contribution "above-the-line" in computing adjusted gross income. This means the taxpayer receives the deduction in addition to the standard deduction. The Act establishes the "above-the-line" deduction for 2020 and future years, but only a taxpayer who does not itemize deductions may take advantage of this provision.

For those taxpayers who itemize, Section 2205 of the Act suspends the limits, although temporarily, on charitable giving for 2020. Prior to the Act, deductible cash contributions to public charities were generally limited to 60% of a taxpayer's adjusted gross income (AGI). The CARES Act now allows cash contributions to be deducted up to 100% of AGI for 2020. If a taxpayer had excess contributions, the taxpayer can carry those over to the next five years. The Act did not forget about corporate donors. Their limit will increase from 10% of adjusted taxable income to 25%.

SECTION 2303: NET OPERATING LOSSES AND "EXCESS BUSINESS LOSSES"

Section 2303 of the CARES Act amends Section 172 of the Internal Revenue Code so as to require net operating losses ("NOLs") to be carried back to each of the five taxable years preceding the NOL. Qualifying NOLs are those net taxable losses that are incurred for taxable years after December 31, 2017 but before January 1, 2021 (e.g., essentially NOLs generated in the taxable years of 2018, 2019 and 2020). Carrybacks of NOLs had been eliminated by the 2018 Tax Cuts and Jobs Act. This new provision will allow taxpayers to carry back qualifying NOLS to offset up to 100% of taxable income in the prior five taxable years, and obtain an immediate refund if taxes have already been paid for these prior taxable years. As an aside, taxpayers can continue to carry NOLs forward indefinitely to future taxable years to offset up to 80% of the taxable income in those future years. If a taxpayer does not want to carry back NOLs, then the taxpayer must file an election no later than the due date for its tax return (including extensions) (attention should be paid to the statute of limitations for the carryback). The CARES Act excludes this five-year carryback benefit from being used by insurance companies, REITS and taxpayers subject to deemed repatriation (of foreign sourced income) under Internal Revenue Section 956.

However, so as not to exclude non-corporations, Section 2304 generally extends the same NOL carryback benefit to non-corporate taxpayers, that is, pass-through entities (S corporations, limited liability companies and partnerships), and individuals. Additionally, Section 2304 suspends the application of "excess business losses" under Internal Revenue Code Section 461(l)(1), which were recently introduced by the Tax Cuts and Jobs Act, for the 2018 - 2020 taxable years.

SECTION 2305: UNUSED CORPORATE ALTERNATIVE MINIMUM TAX ("AMT") CREDIT

Section 2305 of the Act allows corporations with unused AMT credits to take the entire amount of such unused credit in 2018 and/or 2019, with an expedited process for receiving a tentative refund (typically refunds in excess of $5 million have more scrutinized review by the Joint Committee on Taxation with lengthy delays). Previously under the Tax Cuts and Jobs Act, the AMT rules were changed so that the AMT no longer applied to corporations. However, if a corporation had an unused credit, then it could only use such credit over the 2018 - 2021 taxable years (generally according to a 50% declining balance type of amortization of the unused credit – e.g., 50% in 2018, 25% in 2019, 12.5% in 2020, 12.5% in 2021)

SECTION 2306: MODIFICATIONS OF LIMITATION ON BUSINESS INTEREST DEDUCTION

This provision temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30% of taxable income limitation to 50% of taxable income (with adjustments) for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.

SECTION 2307: TECHNICAL AMENDMENTS REGARDING DEDUCTIONS FOR QUALIFIED IMPROVEMENT PROPERTY COSTS

This provision enables businesses, especially in the hospitality industry, to immediately write off costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. The provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies' access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.

SECTION 2308: TEMPORARY EXCEPTION FROM EXCISE TAX FOR ALCOHOL USED TO PRODUCE HAND SANITIZER

For the 2020 taxable year, Section 2308 eliminates the federal excise tax for distilled spirits used to make hand sanitizer, provided the taxpayer follows certain rules of the FDA in making the hand sanitizer.

HEALTH RELATED PROVISIONS

For assistance, contact the Offit Kurman Healthcare Group https://www.offitkurman.com/service/health-care.

SECTION 3201: COVERAGE OF DIAGNOSTIC TESTING OF COVID-19

SECTION 3202: PRICING OF DIAGNOSTIC TESTING

SECTION 3203: RAPID COVERAGE OF PREVENTIVE SERVICES AND VACCINES FOR CORONA VIRUS

Under the CARES Act, health insurance/group plans are required to reimburse providers of diagnostic testing for COVID-19. The insurer must reimburse the provider for the cash price or any negotiated rate with the provider.

Providers offering diagnostic testing for COVID-19 must publicize the cash price of testing on their public internet website or face a civil penalty from the Department of Health and Human Services of up to $300 per day. Health insurers must cover, without cost-sharing, any coronavirus preventive service within 15 days that service becomes recommended, including any CDC-recommended immunizations. In this section, Congress appropriated $1.32 billion for supplemental awards for COVID-19 prevention, diagnosis, and treatment.

SECTIONS 3703 TO 3707

These Sections of the Act expand access to telehealth services by eliminating the requirement that a telehealth provider have seen a patient in person within the last 3 years, and by allowing qualified health centers and rural clinics to provide telehealth services. Medicare is to provide reimbursement at comparable telehealth rates. The Act also temporarily waives the face-to-face requirements for home dialysis periodic evaluations and hospice recertifications, allowing these to be completed via telehealth instead. The Department of Health and Human Services is directed to encourage telehealth during the emergency period.

SECTION 3221: CONFIDENTIALITY AND DISCLOSURE OF RECORDS RELATING TO SUBSTANCE USE DISORDER

SECTION 3224: GUIDANCE ON PROTECTED HEALTH INFORMATION

These sections of the Act address privacy, allowing patients to give consent for disclosure of their medical records, after which the privacy of their records is governed by HIPAA. De-identified health information, which is information stripped of its direct identifiers that can be used to identify the patient, may be given to a public health authority. A patient's health records may not be used in any civil or criminal proceeding in Federal or state court without the patient's consent. The Department of Health and Human Services is directed to issue guidelines on sharing patients' protected health information during the COVID-19 public health emergency within 180 days of the Act's enactment.

GOVERNMENT CONTRACTS

For assistance, contact the Offit Kurman Government Contracting Group https://www.offitkurman.com/service/government-contracting.

SECTION 3610: FEDERAL CONTRACTOR AUTHORITY

This Section empowers contracting officers to use funds made available through the CARES Act, or any other Act, to reimburse government contractors at the "minimum applicable contract billing rates" (capped at 40 hours per week) to keep the contractor in a ready state, including to protect life and safety of government and contractor personnel, between now and September 20, 2020. This law applies to contractors who cannot perform work on a site "approved by the Federal Government" due to facility closures or restrictions, and who cannot telework. Funds issued pursuant to this authority shall be reduced to reflect applicable credits to which a contractor is entitled under the Act, or otherwise.

BANKING

For assistance, contact the Offit Kurman Banking Group https://www.offitkurman.com/service/banking-and-finance2.

SECTION 4012 TO 4013, 4016: RELIEF OFFERED FOR COMMUNITY BANKS AND CREDIT UNIONS.

Sections 4012, 4013 and 4016 of the CARES Act are designed to relieve smaller financial institutions such as community banks, other institutions covered by FDIC and qualifying credit unions, from regulations which restrict the institution's ability to make loans to borrowers during the COVID-19 pandemic, due to capital reserve requirements.

Normally, a bank or credit union is required to maintain a "leverage ratio" (tangible assets to all assets) established by regulators at not less than 8% nor more than 10%. When that ratio falls below the minimum, an institution is subject to possible regulatory action.

When the bank or credit union makes a modification to a loan that does comply with generally accepted accounting principles or which restructures a "troubled loan," such action adversely affects its leverage ratio, by impairing its capital, and puts the institution at risk.

Sections 4012, 4013, and 4016 provide that, during the period between March 1, 2020 and ending on the earlier of December 31, 2020, or 60 days after COVID–19 emergency terminates:

A. The leverage ratio is set at the floor of 8%.

B. Community banks with ratios falling below the floor have a generous grace period within which to continue lending without running afoul of federal banking regulations;

C. Community banks and credit unions shall not be penalized for making loan modifications which defer principal and/or interest payments provided (1) the underlying loan was not more than 30 days past due as of December 31, 2019; and (2) the borrower's credit was not in distress for a non-Covid-19 reason. Such loans are not to be considered "troubled loans."

Practice note - many banks are now granting their customers a 90 day payment deferral holiday, accruing interest and tacking payments on the end of the existing amortization/balloon payment period.

CONSUMER RIGHTS

For assistance, contact the Offit Kurman Financial Institutions Regulatory Group https://www.offitkurman.com/service/financial-institutions-regulatory.

SECTION 4021: CREDIT PROTECTION DURING COVID-19

This section of the Act provides that agreements to defer payments, make a partial payment, forbear any delinquent amounts, and modify a loan during the covered period shall not be treated or reported as payment failures. The covered period begins on January 31, 2020 and ends on the later of July 25, 2020 or 120 days after the national emergency terminates. For mortgage lenders that sell their loans to secondary market investors, this means that a borrower's failure to make payments during the covered period may not be considered early payment defaults and will reduce the likelihood that lenders are obligated to repurchase loans sold to investors.

REAL ESTATE AND CREDITORS RIGHTS

For assistance, contact the Offit Kurman Creditors Rights, Reorganization and Bankruptcy Group https://www.offitkurman.com/service/bankruptcy-restructuring.

SECTION 4022: FORECLOSURE MORATORIUM AND CONSUMER RIGHT TO REQUEST FORBEARANCE

Section 4022 of the Act provides for a forbearance right and a foreclosure moratorium on certain federally backed mortgage loans secured by residential real property. Specifically, this section applies to the following federally backed loans secured by a first or subordinate lien: Loans (A) insured by the Federal Housing Administration under Title II of the National Housing Act (12 U.S.C. § 1707, et seq.); (B) insured under section 255 of the National Housing Act (12 U.S.C. § 1715z-20); (C) guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. § 1715z-13a, 1715z-13b); (D) guaranteed or insured by the Department of Veterans Affairs; (E) guaranteed or insured by the Department of Agriculture; (F) made by the Department of Agriculture; or (F) purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Borrowers who desire a forbearance during the "covered period" must request forbearance by submitting a request to the loan servicer and affirming that the borrower is experiencing a "financial hardship" during the COVID-19 emergency. Note that this section does not define "covered period" and "financial hardship," although Section 4023 defines "covered period" as the period beginning on the date of enactment and ending on the sooner of (A) the termination of the national emergency, or (B) December 31, 2020. Such a forbearance "shall be granted" for up to 180 days and shall be extended for an additional 180 days at the request of the borrower. During the forbearance, certain additional interest, fees and penalties do not accrue.

Finally, except with respect to a vacant or abandoned property, a servicer of a Federally backed mortgage loan may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for not less than the 60-day period beginning on March 18, 2020.

Section 4023: Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans

Section 4023 of the CARES Act permits certain multifamily residential borrowers to receive mortgage forbearance for up to 90 days during the covered period, which the Act defines as from March 27, 2020 to the sooner of December 31, 2020 or the end of the state of emergency declared relative to COVID-19.

To be eligible for the forbearance, the multifamily borrower must:

- **Be a borrower of a residential mortgage loan secured by a lien against a property with 5 or more dwelling units;**
- **Have a "Federally backed multifamily mortgage loan," which is defined by the Act as having a first or subordinate lien that is "insured, guaranteed, supplemented or assisted in any way by any officer or agency of the Federal government" or at all related or connected to "a housing or urban development program administered by HUD or a housing or related program administered by any other such officer or agency" or is purchased or securitized by the Federal Home Loan Mortgage Corporation [Freddie Mac] or the Federal National Mortgage Association [Fannie Mae]." (emphasis supplied); and**
- **Experience a financial hardship "due, directly or indirectly, to the COVID-19 emergency."**

In order to take advantage of the offered forbearance, a covered multifamily residential borrower:

• Must make a request—either orally or in writing (we strongly recommend this be done in writing)—to its loan servicer which documents the financial hardship. Upon receipt of this request, the servicer is to provide the forbearance for 30 days.

• Must not, for the duration of the forbearance, evict or initiate eviction of a tenant from a dwelling unit in the applicable property solely for nonpayment of rent; must not charge late fees, penalties, or other charges for late payment of rent; must not issue any notice to vacate until after expiration of the forbearance; and must not require a tenant to vacate without giving the tenant a 30-day notice.

After receipt of the initial forbearance request, the multifamily residential borrower may request up to two additional 30-day extensions. To do so, the multifamily residential borrower must request the extension in 30-day terms at least 15 days prior to the end of the forbearance period.

The multifamily residential borrower may also discontinue the forbearance at any time. The prohibition against evictions and issuing notices under this section of the Act only exists during the period of the forbearance and not during the loan repayment period.

> **Note**: it is our recommendation that eligible multifamily residential borrowers take advantage of the forbearance to the extent permitted by law, especially when this section 4023 is read in conjunction with section 4024, which specifically prohibits evictions for a 120-day period for all properties with Federally backed mortgages (using the same definition), as well as other properties. As evictions will not be permitted under section 4024 for 120 days, it is highly likely, if not virtually certain, that eligible multifamily residential borrowers will face financial hardship related to the COVID-19 emergency.

LANDLORD – TENANT MATTERS

For assistance, contact the Offit Kurman Landlord Representation Group https://www.offitkurman.com/service/landlord-tenant-representation.

SECTION 4024: TEMPORARY MORATORIUM ON EVICTION FILINGS

Section 4024 of the CARES Act prohibits the eviction—as well as related filings—for any residential tenant in a dwelling at a property covered by the Act for 120 days from the date the Act was signed (March 27th), or until July 25, 2020.

Covered dwellings are dwellings occupied by residential tenants, with a lease or without, in a covered property. Covered properties fall into one of two categories.

First, properties that participate in one of the following federal housing programs are covered properties—

- Public housing (42 U.S.C. § 1437d)
- Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f)
- Section 8 project-based housing (42 U.S.C. § 1437f)
- Section 202 housing for the elderly (12 U.S.C. § 1701q)
- Section 811 housing for people with disabilities (42 U.S.C. § 8013)
- Section 236 multifamily rental housing (12 U.S.C. § 1715z–1)
- Section 221(d)(3) Below Market Interest Rate (BMIR) housing (12 U.S.C. § 17151(d))
- HOME (42 U.S.C. § 12741 et seq.)
- Housing Opportunities for Persons with AIDS (HOPWA) (42 U.S.C. § 12901, et seq.)
- McKinney-Vento Act homelessness programs (42 U.S.C. § 11360, et seq.)
- Section 515 Rural Rental Housing (42 U.S.C. § 1485)
- Sections 514 and 516 Farm Labor Housing (42 U.S.C. §§ 1484, 1486)
- Section 533 Housing Preservation Grants (42 U.S.C. § 1490m)
- Section 538 multifamily rental housing (42 U.S.C. § 1490p-2)
- Low-Income Housing Tax Credit (LIHTC) (26 U.S.C. § 42)

- The Rural Housing Voucher Program (42 USC § 1490r)

Second, properties that have a "Federally backed mortgage loan" or a "Federally backed multifamily mortgage loan" are covered properties. More specifically under this prong, a property is a covered property if there is a first or subordinate lien that is "insured, guaranteed, supplemented or assisted in any way by any officer or agency of the Federal government" or at all related or connected to "a housing or urban development program administered by HUD or a housing or related program administered by any other such officer or agency" or is purchased or securitized by the Federal Home Loan Mortgage Corporation [Freddie Mac] or the Federal National Mortgage Association [Fannie Mae]." (emphasis supplied).

> **Note**: there is a correlation between this section 4024 and section 4023 in terms of covered properties. Covered properties under section 4023 that are eligible for mortgage forbearance from their servicers are also subject to the eviction moratorium. Of course, under section 4023, those properties must halt evictions in order to obtain the mortgage forbearance. Given the overlap, as noted above in the discussion of Section 4023, our recommendation is that covered properties seek and obtain mortgage forbearance for the months of April, May, and June while the eviction moratorium remains in effect (alternatively, it would make sense to do so for May, June and July if a property does not suffer any immediate impact in April from the COVID19 emergency, but this would mean that the property would need to halt evictions through July in order to take advantage of the forbearance for the full month of July).

The moratorium on evictions prohibits—for 120 days from March 27th (so until July 25th)—any landlord from filing any legal action to recover possession of a covered dwelling "for nonpayment of rent or other fees or charges." Landlords of covered properties are also prohibited from charging fees, penalties, or other charges to the tenant related to nonpayment of rent. Additionally, landlords cannot require the tenant to vacate a covered dwelling without providing at least a 30-day notice and also may not issue any 30-day notice until the end of the 120-day moratorium. In plain terms, this stops the eviction process for failure to pay rent entirely for landlords of covered properties.

For those properties that are not otherwise considered covered properties except for their acceptance of vouchers from the Section 8 Housing Choice Voucher program (42 U.S.C. § 1437f), the moratorium on evictions under section 4024 is applicable only to the specific dwellings occupied by residential tenants utilizing vouchers from the Section 8 Housing Choice Voucher program.

CONCLUSION

Be on the lookout for more from Offit Kurman on the CARES Act.

Offit Kurman, P.A. is dedicated to assisting its business and individual clients in these trying times. We will continue to monitor and keep you apprised of further developments in the CARES Act and other laws that are enacted by our governments to deal with the coronavirus. For further information about coronavirus related resources, please visit our resource page at www.offitkurman.com/resources/covid19.

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