



## CARES Act Guide: Overview of Executive Compensation Limits

On March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act or the "CARES Act", into law. The CARES Act will provide significant financial relief to individuals and small businesses, especially those businesses in certain sectors of the U.S. economy that have been hit hardest by the COVID-19 pandemic, by providing \$2 trillion in stimulus to the U.S. economy.

A significant portion of the CARES Act focuses on supporting American workers, families and businesses through a combination of unemployment provisions, tax rebates, retirement plan changes and modifications to the Internal Revenue Code of 1986, as amended (the "Code"). This Quick Study focuses on the Executive Compensation Limits included in the CARES Act. Please note that Locke Lord has separate Quick Studies that review the CARES Act's provisions related to the [Business Tax Changes](#), [Employee Benefits Changes](#), [Charitable Contributions](#), and [Expanded Unemployment Benefits](#).

For more CARES Act information please see: [Saving Our Small Businesses: CARES Act Expands Economic Injury Disaster Loan Program to Provide Additional Financial Relief to Small Businesses](#), [Saving Our Small Businesses: Lender Considerations for Participating in the New Forgivable Paycheck Protection Program Loans to Small Businesses](#), [Saving Our Small Businesses: Congress Reaches Agreement on New Forgivable Paycheck Protection Loans to Small Businesses](#), [Saving Our Small Businesses: "Phase Three" Economic Recovery Proposal Includes New Forgivable SBA Loans for Small Businesses Impacted](#) and [Saving Our Small Businesses: SBA Disaster Assistance Loans for Small Businesses Impacted by COVID-19](#).

### Limits on Compensation Payments to Executives

In general, there are no limits on the amount of compensation and severance payments to executives. The CARES Act provides for direct payments to U.S.-based businesses, not-for-profits, states and municipalities, which may be funded by loans, loan guarantees or other investments by either the Department of Treasury or the Federal Reserve pursuant to a \$500B Exchange Stabilization Fund. As a condition to receiving this funding, the recipient must agree to restrictions on compensation and severance for its senior executives. The restrictions apply during the period beginning on the date a loan agreement or loan guarantee is executed and ending on the date 1 year after the date on which the loan or loan guarantee is no longer outstanding. These restrictions include:

- No officer or employee of the business whose compensation exceeded \$425,000 in calendar year 2019 may:
  - Receive compensation which exceeds, during any consecutive 12 month period, the total compensation received by the officer or employee during calendar year 2019;
  - Receive 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 during calendar year 2019;
- No officer or employee of the business whose compensation exceeded \$3,000,000 in calendar year 2019 may:
  - Receive compensation which exceeds, during any consecutive 12 month period, receive total compensation in excess of the sum of (i) \$3,000,000, and (ii) 50% of the excess over \$3,000,000 of the total compensation received by the received by the officer or employee during calendar year 2019.



- For this purpose the term “total compensation” includes salary, bonuses, awards of stock, and other financial benefits provided by an eligible business to an officer or employee of that business.

The Act also provides for in excess of \$30B in financial support payments to airlines, cargo air carriers and contractors. Similar to the approach taken for support payments to other businesses, as a condition to receiving this funding, the recipient must agree to restrictions on compensation and severance for its senior executives. The restrictions apply during the 2-year period beginning on March 24, 2020 and ending March 24, 2022. These restrictions include:

- No officer or employee of the business, or contractor, whose compensation exceeded \$425,000 in calendar year 2019 may:
  - Receive compensation which exceeds, during any consecutive 12 month period during that two-year period, the total compensation received by the officer or employee during calendar year 2019;
  - Receive 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 during calendar year 2019;
- No officer or employee of the business whose compensation exceeded \$3,000,000 in calendar year 2019 may:
  - Receive compensation which exceeds, during any consecutive 12 month period, receive total compensation in excess of the sum of (i) \$3,000,000, and (ii) 50% of the excess over \$3,000,000 of the total compensation received by the received by the officer or employee during calendar year 2019.

For this purpose the term “total compensation” includes salary, bonuses, awards of stock, and other financial benefits provided by an eligible business to an officer or employee of that business.

The restrictions described above will be included in the agreements entered into with the U.S. government to receive funding. As a result, it will be important to quickly identify the individuals who will be subject to these limitations. In addition, the CARES Act does not address a number of key issues that may arise including how the value of non-cash benefits (i.e., equity awards) will be determined. We anticipate that there will be some level of guidance provided to address those issues in the near future. That guidance will also need to address how these rules may apply to executives who were hired during 2019 or are hired during 2020 or later years.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors.

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