March 26, 2020

Compensation Impact of Stimulus Bill

Late Wednesday night, the U.S. Senate passed the largest stimulus bill in U.S. history, known as the CARES Act, which provides $2 trillion in total stimulus relief for consumers, businesses, and States/municipalities due to the COVID-19 outbreak. The CARES Act is pending approval from the U.S. House of Representatives, which could come as early as Friday, March 27. Given this development, provided in this Market*update* is a summary of the bill as it pertains to compensation-related matters.

Under the Act, the federal government would be authorized to provide up to $500 billion in loans, loan guarantees, and other investments to eligible businesses, States, and municipalities. If any eligible business enters into an agreement to receive loans, loan guarantees, or other investments from the federal government, pursuant to this CARES Act, the following compensation-related restrictions would apply:

- Officers and employees that received more than $425,000 in total compensation in calendar year 2019 are barred from the following until 1 year after the loan is no longer outstanding:
  - Receiving total compensation in excess of their 2019 calendar year total compensation, for any 12 consecutive month period; and
  - Receiving severance/termination benefits in excess of 2x their 2019 calendar year total compensation
  - Note: This exception does not apply to any employee compensation that is determined through an existing collective bargaining agreement entered into prior to March 1, 2020
- Officers and employees that received more than $3,000,000 in total compensation in calendar year 2019 are barred from receiving total compensation, for any 12 consecutive month period, in excess of the midpoint of (i) $3,000,000 and (ii) their 2019 calendar year total compensation
  - Note: As an example, an executive that received total compensation of $6,000,000 in calendar year 2019 could not receive, for any 12 consecutive month period, more than $4,500,000 in total compensation, until 1 year after the loan is no longer outstanding
- For purposes of these calculations, the bill defines total compensation as “salary, bonus, awards of stock, and other financial benefits”; no further detail is disclosed, and no additional guidance is provided for companies in which their fiscal year does not align with the calendar year
- Note: While not compensation-related, eligible businesses may also not issue dividends or repurchase equity securities until 1 year after the loan is no longer outstanding
- Companies that are not considered passenger air carriers, cargo air carriers, and businesses critical to national security[1] may receive a waiver to the above restrictions from the federal government, if the determination is made that such waiver is necessary to protect the interests of the federal government

As part of the $500 billion pool, the federal government would be able to provide financing to financial institutions to make direct loans to eligible midsized businesses (i.e., between 500 - 10,000 employees). Any eligible midsized business must make a good-faith certification for the following compensation-related items (among others):

- The funds from the loan will be used to retain at least 90% of the recipient’s workforce, at full compensation and benefits, until September 30, 2020
- The recipient intends to restore at least 90% of the workforce that existed on February 1, 2020, with full compensation and benefits, no later than 4 months after the termination date of the public health emergency

To discuss this topic and any additional issues, please contact us at 212-886-1022.

[1] *Note: There are also additional restrictions related to companies that fall within these classifications (i.e., passenger air carriers, cargo air carriers, and businesses critical to national security)*

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