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Taxpayer Protections in the CARES Act Limit Executive Compensation

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On Friday, March 27, the House passed the historic, \$2 trillion “Coronavirus Aid, Relief, and Economic Security Act,” or the “CARES Act.” The Act, which was signed the same day by President Trump, provides economic assistance to unemployed Americans, help for health care providers, and emergency relief for U.S. businesses reeling from the impact of the global COVID-19 pandemic.

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The emergency relief for U.S. businesses provided through Section 4003 of the CARES Act comes with taxpayer protections, including broad limits on executive compensation. The executive pay limits are not surprising, as the Troubled Asset Repurchase Program (TARP) established similar restrictions for troubled financial institutions following the financial crisis in 2008.

Section 4004 of the CARES Act limits the total compensation — defined as “salary, bonuses, awards of stock and other financial benefits” — that can be received by officers or employees of eligible businesses receiving financial aid. The Act uses calendar year 2019 as a baseline year for the pay restrictions, which are summarized in the following chart:

CARES Act Executive Pay Limitations

Officers or Employees of Business Receiving Aid	Total Compensation Limit	Examples: Annual Total Compensation	
		CY 2019	CARES Limit
Those whose total compensation exceeded \$425,000 in 2019	<ul style="list-style-type: none"> • Equal to total compensation received by the individual in 2019, <i>or</i> • Limit on severance pay/termination benefits of two times total compensation received in 2019 	\$500,000	\$500,000
Those whose total compensation exceeded \$3 million in 2019	<ul style="list-style-type: none"> • \$3 million, <i>and</i> • 50 percent of total compensation over \$3 million received in 2019 	\$4 million	\$3.5 million

If an officer or employee’s total compensation fell below \$425,000 in 2019, the individual is not subject to limitations under the CARES Act.

The compensation limits begin on the date that the loan or loan guarantee is executed, and end one year after the date on which the loan or loan guarantee is no longer outstanding. The same compensation limitations apply to air carriers and contractors (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to enactment of this Act), but the time period for the pay restrictions is the two-year period ending March 24, 2022, as described in Section 4116 of the Act.

In addition to the executive pay restrictions, businesses receiving financial assistance under the CARES Act are subject to certain terms and conditions intended to protect taxpayers and American workers:

- No capital distributions, such as stock dividends or stock buybacks while the business is receiving financial assistance under the CARES Act.
- Good-faith efforts to maintain workforces at March 24, 2020 levels through September 30, 2020, and at 90 percent of March 24, 2020 levels beyond then.
- No foreign loans made while receiving assistance under the CARES Act.

Any business that receives assistance under the CARES Act should identify all employees that earned more than \$425,000 for the 2019 calendar year and create a system for tracking the compensation of these individuals. The Act does leave some ambiguities regarding the calculation of total compensation, and the identification of covered officers and employees:

- Whether equity compensation should be valued at grant or when received.
- How compensation for employees who worked a partial year in 2019 should be handled.
- How to handle employees hired in 2020.

At this time, it is unclear if additional guidance will be issued to help clarify these ambiguities. Absent additional guidance, businesses receiving aid should make their best judgments around how to track which employees may be subject to the limits and what the potential caps may be. It will be interesting to see if the executive compensation limits discourage companies from taking aid. CAP will continue to monitor the executive compensation limits of the CARES Act and provide updates as they evolve.



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