Coronavirus Aid, Relief, and Economic Security (CARES) Act and Implications for U.S. Real Estate
The Real Estate Roundtable brings together leaders of the nation’s top publicly-held and privately-owned real estate ownership, development, lending and management firms with the leaders of major national real estate trade associations to jointly address key national policy issues relating to real estate and the overall economy.

By identifying, analyzing and coordinating policy positions, The Roundtable’s business and trade association leaders seek to ensure a cohesive industry voice is heard by government officials and the public about real estate and its important role in the global economy. Collectively, Roundtable members’ portfolios contain over 12 billion square feet of office, retail and industrial properties valued at more than $3 trillion; over 2 million apartment units; and in excess of 3 million hotel rooms. Participating trade associations represent more than 2 million people involved in virtually every aspect of the real estate business.
Coronavirus Aid, Relief, and Economic Security (CARES) Act and Implications for U.S. Real Estate

Small Business Emergency Loans Under the "Paycheck Protection Program"
SMALL BUSINESS EMERGENCY LOANS UNDER THE “PAYCHECK PROTECTION PROGRAM”
CARES ACT – “PHASE 3” OF COVID-19 STIMULUS

This summary is based on The Real Estate Roundtable’s preliminary analysis of the CARES Act. It is subject to change.

WHAT BUSINESSES ARE ELIGIBLE FOR EMERGENCY SMALL BUSINESS LOANS?

- “Small businesses” that ordinarily qualify for Section 7(a) loans
- Businesses that do not employ more than 500 employees – with an important qualification if the business has multiple, affiliated locations (see next heading)
- Businesses in an industry that has been assigned an SBA “size standard.”
  - Even if that industry “size standard” is greater than 500 employees, it is eligible for an Emergency SBA Loan.
  - For SBA “size standards,” see the “look-up” table at 13 C.F.R. 121.201.
- 501(c)(3) non-profit organizations
- Sole proprietors, independent contractors, self-employed individuals, “gig” workers

IF MY BUSINESS HAS MULTIPLE LOCATIONS, HOW DO I COUNT EMPLOYEES TO DETERMINE IF I MEET THE 500-EMPLOYEE SIZE THRESHOLD?

- If your business is a hotel, restaurant, or bar covered by NAICS Sector Code 72 – and you do not employ more than 500 employees “per physical location” – then you may qualify for an Emergency SBA loan.
  - The converse is also likely the case. That is, if your business concern is covered by NAICS Code 72 – and you employ more than 500 workers at any one of your physical locations – then you do not qualify for an emergency SBA loan.
- If your business is not a hotel, bar or restaurant – and you have multiple locations – then you must add up all employees that work at your individual locations.

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1 Page 14, lines 8-9
2 Page 14, line 17
3 Page 14, line 18
4 Page 14, line 16
5 Page 10, line 16; page 14, lines 9-10. Note that (c)(6)s are not covered.
6 Page 15, line 1
7 Page 15, line 23
• If after aggregating employees across all locations you have more than 500 employees, then you are not eligible for an emergency Small Business loan.⁸

WHAT IF THE CONCERN OWNS OR OPERATES MULTIPLE BUSINESSES AS A FRANCHISE?

➢ Each franchise location is considered its own entity – if it is assigned an identification code in SBA’s “Franchise Directory.”⁹
➢ In other words, the business would not “aggregate” employees across all franchise locations (as designated by SBA).
➢ The business would only have to count employees at each separate location to stay within the “500 employee” eligibility cap

IF THE BUSINESS IS A HOTEL, RESTAURANT OR FRANCHISE – AND IT CAN “DISAGGREGATE” FOR PURPOSES OF COMING WITHIN THE 500-EMPLOYEE ELIGIBILITY COUNT – DOES THAT MEAN EACH SEPARATE LOCATION CAN GET ITS OWN SBA LOAN?

➢ The language is not clear.¹⁰
➢ On the one hand, language in the bill may be read to mean that each separate physical location is eligible for its own SBA Emergency Loan.
➢ On the other hand, the language could mean that only one single SBA loan goes to the “parent” company of the multiple concerns – as long as no single location has more than 500 employees.
➢ Clarification from the Small Business Administration and/or Congress will be necessary on this point.

WHAT IF THE BUSINESS OWNS AND OPERATES SEVERAL OFFICE BUILDINGS, AND EACH ASSET IS FORMED AS ITS OWN LLC OR LLP? IS EACH BUILDING ITS OWN SMALL BUSINESS?

➢ No, not for purposes of this SBA Emergency Loan Program.

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⁸ Jump to the second-to-last heading in this document to see what provisions in the CARES Act might assist businesses exceeding the 500-employee threshold.
⁹ Page 16, line 21.
¹⁰ Compare p. 14 line 13 (“business concern” eligible for loan); p. 16 lines 3-7 (“per physical location” of NAICS Code 72 concern “shall be eligible to receive a covered loan”); p. 16 lines 8-24 (SBA’s “affiliation rules” suspended for NAICS Code 72 concerns and franchises).
Because the concern is not a hotel or restaurant (covered by NAICS Code 72), the SBA’s “affiliation rules” at 13 C.F.R. 121.103 apply to this situation.\textsuperscript{11}

The affiliation rules are complicated. Basically, business concerns are considered affiliates of each other when one has the “power to control” the other.\textsuperscript{12}

Because these office LLPs have common ownership, employees must be aggregated across all buildings.

If there are 500 or less employees across all buildings, then the business concern is eligible for an Emergency SBA Loan.

If there are more than 500 employees across all buildings, then the business concern is not eligible for an SBA loan.

**WHAT IF THE BUSINESS IS RETAIL, IT IS NOT FRANCHISED, AND IT INCLUDES SEVERAL STORES?**

- Same treatment as above.
- Each store is not its own separate business (assuming the stores are not franchised\textsuperscript{13}).
- Retail businesses are subject to the SBA “affiliation rule”\textsuperscript{14} and must aggregate employees across all stores.
- If, across all stores, the business has 500 employees or less, then it is eligible for an emergency SBA loan.
- If, across, all stores, the business has more than 500 employees, then it is not eligible for an Emergency SBA loan.

**WHAT IF THE BUSINESS OWNS A NUMBER OF SENIOR CARE FACILITIES, AND THEY ARE NOT FRANCHISED?**

- Same treatment as above.
- Each facility is not its own separate business (assuming the facilities are not franchised\textsuperscript{15}).
- The business is subject to the SBA “affiliation rule”\textsuperscript{16} and must aggregate employees across all facilities.
- If, across all senior care facilities, the business has 500 employees or less, then it is eligible for an emergency SBA loan.

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\textsuperscript{11} Page 16, lines 10-11, 15-24 (SBA affiliation rule waived only for NAICS Code 72 (“Accommodation and Food Service”), and SBA-identified franchises. In this example, the commercial office business is covered by NAICS Code 53, “Real Estate Rental and Leasing.”

\textsuperscript{12} 13 C.F.R. 121.103(a)(1). “SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists.” 13 C.F.R. 121.103(a)(2).

\textsuperscript{13} See footnote 9.

\textsuperscript{14} “Retail Trade” is designated as NAICS Codes 44-45, and thus subject to the SBA “affiliation rule.”

\textsuperscript{15} See footnote 9.

\textsuperscript{16} Senior living facilities would fall under NAICS Code 62, “Health Care and Social Assistance,” and thus subject to the SBA “affiliation rule.”
If, across, all senior care facilities, the business is more than 500 employees, then it is not eligible for an Emergency SBA loan.

**What if the business concern is a home building company, a real estate brokerage company, or a construction contacting or subcontracting company?**

The business is eligible for an Emergency SBA loan if it employs 500 people or less.

**If a business qualifies, how big of an SBA loan can it get?**

- Either $10 million
- Or 2.5 times payroll
- Whichever is less.

**What can a business use the loan for?**

- Payroll costs (e.g., salary, tips, paid vacation, severance, payment of retirement benefits, state/local compensation taxes)
- Costs for employee health care, sick leave, family leave, and insurance benefits
- Salaries, commissions and similar compensation
- Payments of mortgage interest (not principal)
- Rent
- Utilities
- Interest on any other debt obligation “incurred before the covered period.”

**For what period of time will the loan cover these costs?**


**Who disburses the loan to the qualifying business?**

- An SBA-approved lender, listed here.
- SBA and the Treasury may determine that other lenders are qualified to process, disburse and service these Emergency Loans.

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17 Page 19, line 25
18 Page 18 line 3 through page 19 line 24
19 Page 18, line 2
20 Page 10, line 1
21 Page 21, lines 7-8.
22 Page 22, line 4
- SBA does not disburse the loans directly.

**HOW FAST WOULD A BUSINESS RECEIVE THE LOAN, IF IT QUALIFIES?**

- There is no deadline by which a lender must disburse the loan after it receives an application.
- But Congress wants to speed the process, and minimize the agency friction that might typically arise in SBA loan programs.
- For example, SBA lenders are themselves delegated with authority to make and approve loans with minimal agency review.\(^{23}\)
- When the lender reviews the borrower’s eligibility, the criteria are minimal. A business is presumed to be economically impacted by the pandemic if it was in operation on February 15, and had employees or paid independent contractors.\(^{24}\) That’s it.

**WHEN A BUSINESS APPLIES, WHAT DOCUMENTS MUST IT PROVIDE TO THE BANK?**

- Minimal documentation is required from the borrower to apply for an Emergency SBA Loan.
- Just a “good faith certification” that it needs to money to continue operations, that it will use the money to pay workers and mortgages, leases, and utility bills; and that it is not “double-dipping” with other SBA loans.\(^{25}\)
- Ordinary SBA application fees are waived.

**MUST THE BUSINESS, OR ITS PARTNERS OR SHAREHOLDERS, PROVIDE A PERSONAL GUARANTEE OR COLLATERAL?**

- No\(^{26}\)

**IF A BUSINESS GETS A LOAN, ARE RE-PAYMENTS DEFERRED?**

- Yes. Principal and interest is deferred for at least 6 months, but not more than a year.\(^{27}\)

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\(^{23}\) Page 21, line 10  
\(^{24}\) Page 21, line 14  
\(^{25}\) Page 23, line 4  
\(^{26}\) No personal guarantee (p. 24 line 23); no collateral (p. 25 line 1)  
\(^{27}\) Page 26, line 18
HOW LONG DOES A QUALIFYING BUSINESS HAVE TO RE-PAY THE LOAN?
➢ 10 years from the date the borrower applies for an 8-week “forgiveness” period.²⁸
➢ See heading below for more information on “forgiveness.”

WHAT’S THE INTEREST RATE?
➢ 4% or less²⁹

ARE THE LOANS NON-RECRUSE?
➢ Yes. As long as the recipient uses the loans for the allowed uses listed above, the SBA has no recourse against any individual partner, shareholder, or member of the business concern.³⁰

IS ANY PART OF THE SBA LOAN FORGIVEN?
➢ Yes. Consult the “Loan Forgiveness” section of the bill for details.³¹
➢ Generally: Certain amounts of these Emergency SBA Loans are forgiven for 8 weeks after the date the loan is originated.
➢ The “forgiven amount” converts that portion of the loan into a grant to the qualifying business. These components of the debt are cancelled.
➢ The loan balance (after forgiven amounts) remains 100% guaranteed by the SBA.
➢ But not all elements of the loan are forgiven. Only payroll costs, interest on a mortgage, rent, and utility payments can be forgiven.
➢ Any forgiven amount cannot exceed principal.
➢ The amount of forgiveness is also reduced if the business lays-off workers during the crisis. The clear objective of the forgiveness section is for businesses to retain their workers.

WHAT ARE THE TAX CONSEQUENCES IF PART OF THE LOAN IS FORGIVEN AND THE BUSINESS DOESN’T HAVE TO RE-PAY IT? IS THAT INCOME?
➢ No. Any forgiven loan amounts under this section do not count as income.³²

²⁸ Page 25, line 12
²⁹ Page 25, line 18
³⁰ Page 22, line 18
³¹ Section 1106, starting at p. 41, line 10
³² Page 52, line 5.
WHAT IF THE BUSINESS IS WOMEN- OR MINORITY-OWNED?

- Supplemental resources in the CARES Act – and under “ordinary” SBA assistance programs – may be available for women- and minority-owned businesses.

IF THE BUSINESS IS “SIZED-OUT” AND DOESN’T QUALIFY FOR AN EMERGENCY SBA LOAN, ARE THERE OTHER PROVISIONS IN THE CARES ACT THAT MIGHT GIVE FINANCIAL ASSISTANCE DURING THE COVID-19 CRISIS?

- **Consult Section 2301, which offers a refundable “Employee Retention Tax Credit.”**
  - The tax credit is up to $5,000 per employee for businesses that continue to pay employees between March 13 and December 31, 2020.
  - This payroll tax credit is available for businesses “sized-out” of the Emergency SBA Loan Program.

- **Consult Section 4003(b)(4),\(^{33}\) authorizing the Fed to stand-up a credit facility to extend loans and loan guarantees for entities including businesses that are sized-out of the SBA Emergency Loan section.**
  - However, there are a number of “strings attached” to receipt of loans under this section, that need to be carefully considered.

- **Section 4003(c)(3)(D)\(^{34}\) will need to be fleshed out by the U.S. Treasury. This gives general authority for Treasury to stand-up a credit facility for lenders to make direct loans to businesses with between 500 to 10,000 employees.**
  - Treasury is not mandated to create this lending facility, but is only given authority to do so.
  - Any loans for “500+” businesses would be at 2% interest, with no principal and interest due for the first 6 months.
  - The business must commit to retain 90% of its employees.
  - Treasury (and perhaps Congress) will need to create further guidelines on additional business eligibility requirements for these loans, and the amount of these loans.

WHAT OTHER RESOURCES MIGHT BE AVAILABLE TO ASSIST A SMALL BUSINESS DURING THE COVID-19 CRISIS?

- Consult small business resources available from states, cities, and municipalities.
- These jurisdictions might have business microloan programs that supplement SBA Emergency Small Business Loans.

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\(^{33}\) Page 513, line 19
\(^{34}\) Page 520, line 21.
Coronavirus Aid, Relief, and Economic Security (CARES) Act and Implications for U.S. Real Estate

Mid-Sized Lending Facility
This summary is based on The Real Estate Roundtable’s preliminary analysis of the CARES Act. It is subject to change.

OVERVIEW

Title IV of the CARES Act authorizes $454 billion for loans, loan guarantees, and other investments to eligible businesses to provide liquidity to the financial system. Among the uses of the $454 billion, legislation states that the Treasury Secretary “shall endeavor to seek the implementation of a program or facility” that provides financing to banks and other lenders that make direct loans to businesses and nonprofit organizations with 500 to 10,000 employees.

Unlike the small business emergency loans for businesses with 500 or fewer employees, there is no direct appropriation for the Mid-Sized Lending Facility, and there is no authorization for loan forgiveness. Implementation of the program is at the discretion of the Treasury Secretary.

KEY ELEMENTS OF THE MID-SIZED BUSINESS FACILITY (PER CONGRESSIONAL INTENT)

- Available to eligible businesses and nonprofits with between 500 and 10,000 employees
- Loans would have a maximum interest rate of 2 percent
- No principal or interest shall be due or payable in the first 6 months after a loan originates
- Under sec. 4003(c)(3)(D)(i), the borrower must make a “good faith certification” at the time of application regarding economic need, employee retention, and several other issues. Specifically, the certification must state the following:
  1. the uncertainty of economic conditions at the time of application makes necessary the loan request to support the ongoing operations of the recipient;
  2. the funds it receives will be used to retain at least 90 percent of the recipient’s workforce, at full compensation and benefits, until September 30, 2020;
  3. the recipient intends to restore not less than 90 percent of the workforce of the recipient that existed as of February 1, 2020, and to restore all compensation and benefits to the workers of the recipient no later than 4 months after termination of the HHS Secretary’s COVID-19 public health emergency declaration;
  4. the recipient is an entity or business that is domiciled in the United States with significant operations and employees located in the United States;
  5. the recipient is not a debtor in a bankruptcy proceeding;
6. the recipient 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;
7. the recipient will not pay dividends with respect to the common stock of the eligible business, or repurchase publicly traded stock of the recipient or its parent company, while the loan is outstanding (unless contractually required);
8. the recipient will not outsource or offshore jobs for the term of the loan and 2 years after completing repayment;
9. the recipient will not abrogate existing collective bargaining agreements for the term of the loan and 2 years after completing repayment; and
10. the recipient will remain neutral in any union organizing effort for the term of the loan.

➢ The mid-sized lending facility also would be subject to many of the terms and conditions that apply to programs and facilities established by the Treasury Secretary and Federal Reserve for larger businesses. These include requirements in section 13(3) of the Federal Reserve Act related to loan collateralization, taxpayer protection, and borrower solvency.

➢ The Federal Reserve is working on a Main Street Lending Program for businesses with 500 to 10,000 employees under section 13(3) of the Federal Reserve Act. See: To Avoid a Repeat of 2008, Main Street America Says Help Needs to be Fast, Reuters, Mar. 26). Whether the Federal Reserve Main Street program will incorporate the key congressional directives for the Mid-Sized Lending Facility remains unclear.
Coronavirus Aid, Relief, and Economic Security (CARES) Act and Implications for U.S. Real Estate

Federal Reserve 13(3) Lending Programs and Facilities in the CARES Act
WHAT ARE THE VARIOUS FEDERAL RESERVE LENDING FACILITIES OR PROGRAMS ESTABLISHED UNDER SEC. 13(3) OF THE FEDERAL RESERVE ACT THAT PROVIDE LIQUIDITY TO THE FINANCIAL SYSTEM?\(^1\)

- Treasury will use the $454 billion to capitalize one or more Federal Reserve lending facilities or programs. Specifically, Treasury will contribute the “equity” (i.e. the first loss position on the portfolio of loans made by the fund) and the Federal Reserve will supply leverage at a multiple of the Treasury contribution that corresponds to the credit risk of the loan portfolio. If this fund is used to loan only to investment-grade borrowers, the Federal Reserve’s contribution will be much larger (perhaps around $3 trillion) than if the fund loans to borrowers with a BB credit rating or below. Any Federal Reserve lending facility or program must also comply with Sec. 13(3) requirements related to loan collateralization, taxpayer protection, and borrower solvency.

- Within the $454 billion made available to provide liquidity to the financial system by supporting lending to eligible businesses, the CARES Act states that the Treasury Secretary “shall endeavor to seek the implementation of a program or facility” that provides financing to banks and other lenders that make direct loans to businesses and nonprofit organizations with 500 to 10,000 employees.

- Unlike the small business emergency loans for businesses with 500 or fewer employees, there is no direct appropriation for the Mid-Sized Lending Facility, and there is no authorization for loan forgiveness. Implementation of the program is essentially at the discretion of the Treasury Secretary.

\(^1\) CARES Act, Section 4003.
The Fed facilities established/named to date are listed and linked below:

1. Commercial Paper Funding Facility (CPFF)
2. Primary Dealer Credit Facility (PDCF)
3. Money Market Mutual Fund Liquidity Facility (MMLF)
4. Primary Market Corporate Credit Facility (PMCCF)
5. Secondary Market Corporate Credit Facility (SMCCF)
6. Term Asset-Backed Securities Loan Facility (TALF)
7. Main Street Business Lending Program (pending establishment)

**WHAT IS THE MAIN STREET LENDING PROGRAM?**

- The Federal Reserve is also authorized to establish a Main Street Lending Program or similar facility or program to support lending to small and mid-sized businesses on terms and conditions set by the Fed consistent with Sec. 13(3).
- Impact: Provides substantial financial assistance for distressed areas of the economy through loan, loan guarantees, and investment either directly by Treasury or through a facility or program run by the Federal Reserve. Treasury has broad authority to determine who receives loans or loan guarantees, loan amounts, and other terms of such loans. Each relief provision also requires recipients to abide by certain terms and conditions for either the duration of their loan or a certain affixed time.

**WHAT BUSINESSES ARE ELIGIBLE FOR THESE LENDING FACILITIES?**

- Businesses receiving funds through a program or facility must be created or organized in the United States, has significant operations in the United States, and a majority of its employees are based in the United States. The principal amount of any obligation cannot be reduced through loan forgiveness. Recipients must comply with the executive compensation limits in Sec. 4004 unless the Treasury secretary waives such requirement if it is necessary to protect the interests of the federal government. Treasury has the authority to require terms and conditions, as well as any covenants, representations, warranties and requirements (including requirements for audits) as deemed appropriate for any loan, loan guarantee or other investment.

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2 Ibid.
3 CARES Act, Section 4003.
WHAT IS THE PROCEDURE FOR A BUSINESS TO RECEIVE FUNDS THROUGH ONE OF THESE LENDING FACILITIES?4

➢ Treasury must publish procedures for application and minimum requirements within 10 days of enactment. Additional requirements for direct loans by Treasury made as part of a Federal Reserve Program or Facility include:

➢ During the duration of the loan plus 12 months after the loan is no longer outstanding, the borrower: (i) cannot repurchase its own equity or its parent company’s equity that is listed on a national securities exchange unless contractually required before enactment of the Act, and (ii) cannot pay dividends or make other capital distributions on its common stock.

WHAT CONDITIONS AND LIMITATIONS ARE ATTACHED TO LOANS ASSOCIATED WITH THESE PROGRAMS?5

➢ Businesses eligible for loans and loan guarantees under Secs. 4003(b)(1) through (3) must agree to limitations on total compensation (salary, bonuses, stock awards, and other financial benefits) paid to officers and employees whose total compensation was more than $425,000 in 2019.

➢ For the period beginning on the date of a loan agreement or loan guarantee and ending one-year after the loan agreement or guarantee is no longer outstanding:

   • No officer or employee whose total compensation in 2019 was more than $425,000 can receive:
     - during any 12-consecutive-month period, total compensation in excess of the employee’s total compensation for 2019; or
     - severance that is more than twice the employee’s total compensation for 2019; and
   
   • If an employee’s total compensation for 2019 exceeded $3 million, then for any 12-consecutive-month period, the employee’s total compensation cannot exceed $3 million plus 50% of the employee’s total compensation for 2019 in excess of $3 million.

   • These limitations do not apply to union employees under collective bargaining agreements entered into prior to March 1, 2020.

➢ Impact: Requires businesses that are receiving loans under Sec. 4003 to limit total compensation paid to high earners and encourage businesses to put the borrowed funds into their employee base and other business purposes.

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4 Ibid.
5 CARES Act, Section 4004.
Coronavirus Aid, Relief, and Economic Security (CARES) Act and Implications for U.S. Real Estate

Tax Policy
This summary is based on The Real Estate Roundtable’s preliminary analysis of the CARES Act. It is subject to change.

**EMPLOYEE RETENTION TAX CREDIT (Sec. 2301)**

- The CARES Act includes a refundable tax credit of up to $5,000 per employee for businesses that continue to pay employees between March 13 and December 31, 2020. Unlike the emergency loans for small employers, the credit is not limited to businesses with 500 or fewer employees. An employer can qualify if its business is fully or partially suspended due to orders from a governmental authority related to COVID-19 or the gross receipts of the business in a calendar quarter are less than 50% of receipts in the same quarter in the prior year.

- In the case of businesses with more than 100 employees, the credit is limited to wages paid to employees who are not able to provide services due to the qualifying circumstances. The language would appear to allow an employer to claim the credit for wages paid to employees that are providing partial services. For example, in addition to applying to wages paid to a furloughed employee, the credit would apply if an employer continues to pay a full-time salary to an employee that is working part-time due to the business interruption.

- The credit equals 50% of wages and health benefits, up to $10,000. The credit applies to the employer’s share of quarterly payroll taxes, and any excess credit amount is fully refundable.

**NET OPERATING LOSSES (Sec. 2303)**

- The CARES Act allows businesses to carry back net operating losses from 2018, 2019, and 2020 for five years and temporarily removes the TCJA rule limiting losses to 80% of taxable income. The provision will facilitate the ability of real estate businesses to “monetize” recent and current loss carryforwards by filing amended returns for prior years and generating tax refunds that can be used for business needs.
QUALIFIED IMPROVEMENT PROPERTY (Sec. 2307)

- The CARES Act includes a technical correction to TCJA that will allow real estate businesses to immediately expense or accelerate the depreciation of their interior improvements to nonresidential property, including leasehold improvements. Due to a TCJA drafting error, these expenditures are currently subject to a 39-year recovery period. Under the CARES Act, the improvements will be depreciated over zero, 15, or 20 years (depending on elections made by the taxpayer).

LIMITATION ON BUSINESS INTEREST (Sec. 2306)

- The CARES Act liberalizes the limitation on the deductibility of business interest in 2019 and 2020. TCJA limited the amount of business interest deductible for tax purposes to no more than 30% of EBITDA. TCJA allows real estate businesses to elect out of the limitation. However, some real estate businesses continue to operate under the 30% limitation because the real estate exception lengthens the cost recovery period for real property (especially multifamily property) and property improvements. For these businesses, the CARES Act increases the limitation on deductible business interest to 50% of EBITDA in 2019 and 2020. In addition, the CARES Act allows businesses to elect to use earnings from 2019 for purposes of calculating their limitation in 2020.

EMPLOYER PAYROLL TAX DEFERRAL (Sec. 2302)

- The CARES Act permits employers and self-employed individuals to defer the employer-share of Social Security payroll taxes (6.2%) from the date of enactment until the end of 2022. The deferred amount must be repaid in 2021 (50%) and 2022 (50%). The provision effectively offers the equivalent of an interest-free loan to employers, independent contractors, and sole proprietors.

CANCELLATION OF INDEBTEDNESS INCOME (Sec. 1106(J))

- Any loan forgiveness under the $350 billion small business emergency loan program is excluded from income for tax purposes.

TAX TREATMENT OF ECONOMIC STABILIZATION INVESTMENTS (Sec. 4003(H))

- The CARES Act directs Treasury to issue guidance clarifying that any warrants, stock options, preferred or common stock, or other equity does not result in an ownership change for tax purposes (sec. 382).