March 28, 2020

Businesses Receiving Discretionary Loan Relief are Subject to Executive Compensation Restrictions During the Loan Term Plus 1 Year

Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main COVID-19 Task Force page and/or your email for updates.

The CARES Act, signed into law on March 27, 2020, establishes a federal loan or loan guarantee program to be known as the Coronavirus Economic Stabilization Act of 2020. CESA provides liquidity to "Eligible Businesses"—U.S. businesses that have not otherwise received adequate economic relief in the form of loans or loan guarantees otherwise provided under the Act, as well as air carriers, and that have incurred or are expected to incur covered losses such that the continued operations of the business are jeopardized, as determined by the Secretary of the Treasury.

As a condition for receiving loan relief under section 4003, Eligible Businesses are prohibited under section 4004 from increasing the total compensation or paying severance or other benefits upon termination for certain officers and employees, and required to reduce the compensation of other officers and employees, during a "Restricted Period" beginning on the date on which the loan agreement is executed and ending on the date that is 1 year after the date on which the loan or loan guarantee is no longer outstanding.

Compensation Restrictions

Section 4004 requires that the terms of the loan or loan guarantee must provide that during the Restricted Period:

- no officer or employee of the Eligible Business whose total compensation exceeded $425,000 in 2019 will receive from the business:
    - total compensation that exceeds, during any 12 consecutive months of the Restricted Period, the total compensation the officer or employee received from the Eligible Business in 2019; or
    - severance pay or other benefits upon termination of employment from such business that exceeds twice the total compensation the individual received from the business in 2019.
- no officer or employee of the Eligible Business whose total compensation exceeded $3 million in 2019, will receive from the business during any 12 consecutive months during the Restricted Period, total compensation that exceeds

the sum of:

- $3,000,000, and
- 50% of the total compensation in excess of $3,000,000 he or she received in 2019.

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

If you have questions about the CARES Act and how it affects your benefit plans, reach out to a member of the Kilpatrick Townsend Employee Benefits team. Additional resources and information about coronavirus-related legal developments is available here: Coronavirus (COVID-19) Task Force.