

NOW +

NEXT

FOOD, BEVERAGE & AGRIBUSINESS ALERT | NIXON PEABODY LLP

APRIL 7, 2020



Food and beverage industry and the CARES Act

By Tyler Savage and Marissa Wiley

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act, (the Act) to provide emergency assistance to businesses affected by the 2020 novel coronavirus (COVID-19) pandemic.

This alert focuses on the provisions of the Act that help participants in the food and beverage industry, such as restaurants (including franchises), craft breweries, wineries, and other food and beverage producers or retailers. We also outline the various areas in which funds have been appropriated and identify those who can benefit from these specific funds.

Small Business Administration assistance

The Act provides significant economic assistance to small businesses through the Small Business Administration (SBA). For example, the Act expanded the SBA Section 7(a) loan program, which is structured to incentivize employers to continue to employ their workers and provide health benefits. In broad terms, the loan program is especially attractive because a certain amount of the debt will be forgiven if it is used during a specific time period to pay payroll, utilities, rent, and certain mortgage obligations. In addition, a business eligible to receive a loan through the Section 7(a) loan program is also eligible to receive an economic injury disaster loan emergency grant of up to \$10,000, which will be advanced prior to receiving the full loan amount. [Click here for more detailed information about the SBA economic assistance.](#)

In order to be eligible for the assistance offered through the SBA, a business must be a “small business” as determined by the SBA’s size standards, which are tailored to a particular applicant’s industry. It is important to note, however, the Act expands the definition of a “small business,” particularly for franchises.

Therefore, food and beverage businesses should consider whether they meet the Act’s revised “small business” definition and are eligible to receive the SBA’s newly expanded financial assistance resources.

In addition to the resources offered by the SBA, food and beverage businesses of any size can take advantage of the various tax benefits included in the Act. For example, the Act provides for a retention tax credit on employment taxes to encourage employers to keep workers on payroll

during the crisis. Subject to certain stipulations, the credit is available to employers whose operations are fully or partially suspended due to a COVID-19-related shutdown order, or employers whose gross receipts are down by more than 50% as compared to the same quarter last year. The Act also delays payment of employer payroll taxes, allowing employers to defer their share of Social Security tax.

In the event that an employer is not able to keep its employees on payroll, the Act enlarges unemployment benefits by offering benefits to those who would otherwise be ineligible, such as employees with limited work histories or who are unable to work as a direct result of the public health emergency. Moreover, the Act offers an additional weekly check of \$600, above the existing state unemployment benefits and the promised individual stimulus checks, and provides for an additional 13 weeks of unemployment benefits. The Act also increases funding for food stamps or the Supplemental Nutrition Assistance Program.

In addition, the Act enables businesses to immediately write-off costs associated with improving facilities instead of depreciating those improvements over the 39-year life of the building and increases the amount of interest expense businesses are allowed to deduct on their 2019 and 2020 tax returns.

The above resources are just a few ways in which the Act aims to assist food and beverage businesses and their employees through this public health crisis. Businesses should act quickly to qualify and utilize these and other resources, as the funds provided under the Act are finite and are likely to be in high demand.

Division B of the Act

Division B of the Act identifies various emergency appropriations for coronavirus health response and agency operations. This section outlines the various areas in which funds have been appropriated and to identify those who can benefit from these specific funds. In each case, the funds appropriated (as summarized below) are available both domestically and internationally to prevent, prepare for, and respond to the coronavirus.

Food and beverage producer support

\$9,500,000,000 is earmarked and will be made available for providing support for agricultural producers impacted by COVID-19, including producers of specialty crops, producers that supply local food systems, including farmers' markets, restaurants, schools, and livestock producers, including dairy producers.

Salaries, expenses, and related costs related to the food production industry

The following programs will receive support and such amounts are designated by Congress as being for emergency requirements pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (Section 251(b)(2)(A)(i)) and generally will be available (unless fully expended) through September 30, 2021:

- \$750,000 for conducting audits and investigations of projects and activities carried out with funds made available in the Act to the Department of Agriculture
- \$55,000,000 for expenses and salary costs associated with the Agricultural Quarantine and Inspection Program
- \$45,000,000 for expenses for salary costs associated with commodity grading, inspection, and audit activities

- \$33,000,000 for support of temporary and intermittent workers, relocation inspections, and costs of overtime for inspectors under the Federal Meat Inspection Act, Poultry Products Inspection Act, and the Egg Products Inspection Act
- \$3,000,000 for necessary expenses to hire temporary staff and overtime expenses for the Farm Service Agency
- \$14,000,000,000 to be used for the completion of reimbursement to the Commodity Credit Corporation (CCC) for net realized losses sustained, but not previously reimbursed, as reflected in the CCC's June 2020 report of its financial condition

The passage of the Act is intended to provide much-needed relief across this country, especially workers and small-business owners who have been impacted by the coronavirus, and should help make citizens throughout the country more financially secure. The USDA (the Secretary of Agriculture) is still working to establish how these funds will be deployed but has committed to deliver the enumerated relief assistance to members of the food production industries as quickly as possible.

For more information on the content of this alert, please contact our [Coronavirus Response team](#), your Nixon Peabody attorney, or:

- Wesley Gangi, 312-977-4478, wgangi@nixonpeabody.com
 - Keri McWilliams, 202-585-8770, kmcwilliams@nixonpeabody.com
 - Tyler Savage, 585-263-1105, tsavage@nixonpeabody.com
 - Marissa Wiley, 518-427-2676, mwiley@nixonpeabody.com
-