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EY Office of Public Policy
as of 26 March 2020

Coronavirus Aid, Relief and Economic Security (CARES) Act

The [CARES Act](#) (the Act), a \$2t legislative package, is the result of bipartisan negotiations between the Trump Administration (led by U.S. Treasury Secretary Steve Mnuchin) and congressional leadership. This is the third legislative vehicle aimed at providing the health care resources needed to fight COVID-19 and preventing a severe economic downturn through various measures, including by providing financial aid to American families and economic stimulus to significantly impacted sectors. The package includes extensive emergency funding for hospitals and providers.

The CARES Act was approved by the U.S. Senate on 25 March 2020. The U.S. House of Representatives is looking for a means of approving the legislation as soon as possible without calling its members back to Washington, DC. We anticipate that the CARES Act, in its current form, will be sent to the president's desk and be signed into law by the end of this week.

The CARES Act includes the following titles:

- ▶ [Division A](#) – Keeping Workers Paid and Employed, Health Care System Enhancements and Economic Stabilization
 - ▶ [Title I – Keep American Workers Paid and Employed Act](#)
 - ▶ [Title II – Assistance for American Workers, Families, and Businesses](#)
 - ▶ [Title III – Supporting America's Health Care System in the Fight Against the Coronavirus](#)
 - ▶ [Title IV – Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy](#)
 - ▶ [Title V – Coronavirus Relief Funds](#)
 - ▶ [Title VI – Miscellaneous Provisions](#)
- ▶ [Division B](#) – Emergency Appropriations for Coronavirus Health Response and Agency Operations

The following provides a high-level summary of the key sections in each title of the CARES Act.

Division A summary

Title I – Keeping American Workers Paid and Employed Act

Small Business Administration (SBA) loans. Title I would provide loan assistance to certain covered¹ businesses that employ fewer than 500 individuals, or the applicable size standard for the industry as provided by SBA (if higher), for expenses incurred between 15 February and 30 June 2020.

- ▶ This includes certain food and accommodation businesses that employ fewer than 500 individuals **per physical location** and small businesses that receive financing through the Small Business Investment Company program.
- ▶ Eligible borrowers must make a good faith certification that they have been impacted by COVID-19 and will use the funds to retain workers and maintain payroll and other debt obligations.
 - ▶ Allowable uses of a loan include payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, utilities, rent and mortgage payments, and interest on any other debt obligations.

¹ Covered businesses include public, private, nonprofit and veterans' organizations. Sole-proprietors, independent contractors and other self-employed individuals are also eligible for the loans.



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- ▶ The size of the loan would be the lesser of the borrower's monthly expenses or \$10m. The maximum loan amount is \$10m. Additionally, for the purposes of calculating the maximum loan amount, payroll costs are defined as not including individuals with salaries exceeding \$100k annually.
- ▶ Finally, loans will be provided through existing SBA-certified lenders, including banks, credit unions and other financial institutions. Section 1109 of the Act also grants authority to the U.S. Treasury and the Farm Credit Administration to quickly authorize bank and nonbank lenders to participate in the loan lending under this title. The SBA administrator will reimburse lenders at a rate of:
 - ▶ 5% for loans not more than \$350k
 - ▶ 3% for loans of more than \$350k and less than \$2m
 - ▶ 1% for loans of not less than \$2m

Loan forgiveness. This establishes that borrowers will be eligible for loan forgiveness equal to the amount spent by the borrower for the portion of the loan used to cover payroll and payments on pre-existing debt incurred prior to 15 February 2020. Loan forgiveness is conditional upon a borrower retaining their employees and payroll levels during the covered period. Forgiveness will be proportionally reduced by the number of layoffs and reductions in wages over 25%.

Grants. Title I establishes a series of grants for entrepreneurial development programs to be used for the education, training and advising of covered small business concerns and their employees:

- ▶ \$240m for SBA Small Business Development Centers and Women's Business Centers
- ▶ \$25m for grants to associations representing resource partners in several languages other than English
- ▶ \$10m for the Minority Business Development Agency within the U.S. Department of Commerce to provide grants to Minority Business Centers

Emergency economic injury disaster loan (EIDL) grants. An eligible entity (expanded to include sole proprietorships, cooperatives and employee stock ownership plans) that applies for an EIDL in response to COVID-19 may request that the SBA administrator provide an advance in an amount not to exceed \$10k. The funds may be used according to the following:

- ▶ The funds may be used to cover paid sick leave, maintain payroll to retain employees, meet increased costs, make rent or mortgage payments, and repay obligations that cannot be met due to revenue loss.
- ▶ An applicant will not be required to repay any amounts of the advance provided.
- ▶ The Act does not prohibit a recipient of an EIDL grant from receiving the SBA loan assistance detailed in section 1102 of the Act.

Existing SBA Loans. Title I allocates \$17b to the SBA to cover six months' worth of outstanding payments on SBA administered loans that were granted before the enactment of the Act and not in deferment.

Bankruptcy. Title I raises debt thresholds to \$7.5m (from the previous \$2.725m) for covered small businesses seeking bankruptcy relief. The increase sunsets after one year.

Emergency rulemaking authority. Not later than 15 days after the date of enactment of the Act, the SBA administrator shall issue regulations to carry out Title I.



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Title II – Assistance for American Workers, Families, and Businesses

Unemployment insurance. This title creates a temporary pandemic unemployment assistance program through 31 December 2020, to provide payment to those not traditionally eligible for unemployment benefits who are unable to work as a direct result of the COVID-19 public health emergency. It also provides additional federal funding to states for unemployment benefits programs for nonprofits and certain governmental entities. Title II also:

- ▶ Provides an additional \$600 per week for eligible unemployment insurance recipients
- ▶ Provides temporary full federal funding of the first week of unemployment compensation for states with no first week waiting period
- ▶ Provides states with additional flexibility to hire temporary workers to process unemployment claims
- ▶ Provides an additional 13 weeks of unemployment benefits through 31 December 2020, once other unemployment benefits are exhausted
- ▶ Establishes a short-term compensation program where employers reduce employee hours instead of conducting layoffs, and employees receive prorated unemployment benefits
- ▶ Appropriates funding for the U.S. Department of Labor Office of Inspector General to conduct oversight of the unemployment provisions
- ▶ Provides special rules for claims under the Railroad Unemployment Insurance Act

Recovery rebates and other individual provisions. This provides a tax rebate payment to US households in the following amounts, subject to income phase-outs. The IRS will base these amounts on the taxpayer's 2019 or 2018 return:

- ▶ \$1,200 for individuals; \$2,400 for joint filers
- ▶ \$500 for every child

This title includes several other individual tax provisions for those affected by COVID-19:

- ▶ Waives early withdrawal penalties for distributions up to \$100,000 from qualified retirement accounts, in addition to tax relief for such distributions
 - ▶ Provides flexibility for repayment of loans from qualified plans
- ▶ Waives the required minimum distribution rules for certain retirement accounts
- ▶ Modifies the deduction limitations and restrictions for charitable contributions
- ▶ Provides an exclusion from income for certain employer payments of employee student loans

Business provisions. Title II includes several temporary business-related tax provisions:

- ▶ Provides an employee retention credit for employers subject to full or partial closure due to COVID-19 shutdown orders or whose gross receipts declined more than 50% when compared to the same quarter in prior year
- ▶ Defers payment of employer share of payroll taxes
- ▶ Modifies the treatment of a company's net operating losses
- ▶ Modifies the loss limitation applicable to pass-through businesses and sole proprietors

Title III – Supporting America's Health Care System in the Fight Against the Coronavirus

Title III contains numerous provisions to modify US health care and medical systems to respond to challenges related to the COVID-19 response. It also provides certain education- and labor-related regulatory relief, funding flexibility and additional authorities.

Health care-related provisions. The Act provides additional supplies, resources and changes to the current health care programs to help address the current and expected challenges, including anticipated drug and personal protective equipment shortages, funding restrictions and other regulatory or programmatic restrictions. The bill includes (a non-exhaustive list):

- ▶ A number of provisions to help prevent and address drug shortages, including prioritization of reviews of drug applications and inspections to prevent or mitigate drug shortages, additional medical supplies required to be kept in the strategic national stockpile, as well as additional manufacturer reporting requirements in response to drug shortages and medical devices
- ▶ Liability protection for manufacturers of approved respiratory protective devices in the event of a public health emergency
- ▶ Clarification that all testing for COVID-19 is to be covered by private insurance plans without cost sharing, as well as clarification for pricing structures related to diagnostic testing and rapid coverage of preventive services and vaccines
- ▶ Supplemental funding (\$1.32b) to community health centers that are testing and treating patients for COVID-19
- ▶ Additional and reauthorized grants to expand telehealth capacity and rural health care access, coverage and outreach
- ▶ Establishment of a Ready Reserve Corps so that sufficient numbers of trained doctors and nurses are available for public health emergencies
- ▶ Liability protections for health care professionals providing care during the COVID-19 public health emergency, within the bounds of their licensure
- ▶ Additional flexibility for deployment of members of the National Health Service Corps during the emergency
- ▶ Provisions related to disclosure of certain substance use disorder records when related to coordinated care in response to COVID-19
- ▶ Direction to the U.S. Department of Health and Human Services (HHS) to issue guidance on what information can be shared from patient records during the COVID-19 public health emergency
- ▶ Provisions to enable continued service and program delivery to seniors and other populations (such as women and families) who rely on food and community programs or who may need additional assistance during the COVID-19 emergency
- ▶ Additional provisions related to health care workforce programs, coordination, education and training

Education-related provisions. The Act also provides increased flexibility and use of funds to help affected students, student loan borrowers and educational institutions. This includes a waiver of institutional matching requirement for campus-based aid programs and flexibility in certain institutional funding requirements to be used for other purposes (such as students affected by COVID-19), and allows funding to be accessed by students impacted by COVID-19 (including work study).

The Act also provides federal student loan flexibility:

- ▶ For students who do not complete the semester as a result of COVID-19, it excludes the term from counting toward lifetime subsidized loan or lifetime Pell grant eligibility, and clarifies that the student is not required to return Pell grants or federal student loans and that the student's grades do not affect loan academic requirements.
- ▶ It also requires the U.S. Secretary of Education to suspend all payments for student loans through 30 September 2020, without interest accrual; it suspends involuntary collection activities related to the loans during the suspension and also provides that suspended payments are treated as regularly scheduled payments by the borrower for purposes of consumer reporting.



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Labor-related provisions. The Act seeks to clarify some of the provisions included in the previously passed and enacted Families First Coronavirus Response Act ([Public Law 116-27](#)) related to paid leave, sick leave and unemployment insurance. The Act (a non-exhaustive list):

- ▶ Creates a limitation stating an employer shall not be required to pay more than \$200 per day and \$10,000 in the aggregate for each employee
- ▶ Creates a limitation stating an employer shall not be required to pay more than \$511 per day and \$5,110 in the aggregate for sick leave or more than \$200 per day and \$2,000 in the aggregate for leave to care for a quarantined individual or child for each employee
- ▶ Provides additional accessibility requirements for unemployment compensation and assistance
- ▶ Allows certain executive branch employees to be exempted from the paid family leave mandate and paid sick leave mandate at the discretion of the Director of the Office of Management and Budget's
- ▶ Allows an employee who was laid off by an employer as of 1 March 2020, or later, to have access to paid family and medical leave in certain instances if they are rehired by the employer (employee would have had to work for the employer at least 30 days of the last 60 days prior to being laid off)
- ▶ Allows employers to receive an advance tax credit from the U.S. Treasury Department (Treasury) instead of having to be reimbursed on the back end, and establishes regulatory authority to implement the tax credit advances
- ▶ Provides the Department of Labor the ability to postpone certain ERISA filing deadlines for a period of up to one year in the case of a public health emergency
- ▶ Allows for a one-year delay in payment of minimum required contributions for single-employer plans
- ▶ Confirms that federal contractors who are unable to work on site or telework during the duration of the COVID-19 crisis will continue to be paid (at a minimum contract rate; (payments to contractors are reduced by any applicable credits they may receive under the legislation)

Additional provisions. The Act also includes:

- ▶ Provisions to encourage and incentivize social distancing and quarantine, such as an allowance for high-deductible health plans with a health savings account to cover telehealth services prior to reaching the deductible and use of health savings accounts and flexible spending accounts for purchase of over-the-counter medical products without a prescription
- ▶ Several Medicare-related provisions to expand the program's flexibility, delivery of services and access for those in need of care related to COVID-19
- ▶ Extensions and reauthorizations of a number of HHS programs (related to Medicare and Medicaid, as well as other community or other low-income, high- or at-risk population programs)
- ▶ A new regulatory process that allows the U.S. Food and Drug Administration to administratively approve changes to over-the-counter drugs

Title IV – Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy

Economic Stabilization Fund. Title IV establishes an Economic Stabilization Fund (ESF or Fund) of \$500b to provide direct loans, loan guarantees and other investments to eligible US businesses who have incurred or are expected to incur losses as a result of the COVID-19 crisis such that the operations of the business are in jeopardy.

Of the \$500b total, a portion is set aside for direct lending to specified industries:

- ▶ Passenger airlines \$25b
- ▶ Cargo airlines \$4b
- ▶ Businesses crucial to national security \$17b

The remaining \$454b is set aside for loans, loan guarantees and investment in support of the Federal Reserve facilities to eligible businesses, states and municipalities.

All those receiving direct lending from the ESF must be created or organized in the United States *and* have significant operations and a majority of their employees in the US. Organizations receiving loans or investments from the ESF are subject to a number of limitations. Most notably:

- ▶ Stock buybacks are prohibited for the duration of the loan *plus* one additional year for borrowers and their affiliates.
- ▶ Dividends may not be paid on the business's common stock for the term of the loan *plus* one additional year for borrowers and their affiliates.
- ▶ Borrowers must maintain existing employment levels *to the extent practicable* from 24 March 2020 to 30 September 2020, and *shall not* reduce their employment levels by more than 10%.
- ▶ There are limitations on the total compensation, severance or other benefits upon termination of highly paid executives or workers for the term of the loan *plus* one additional year.

Loans and investments made from the fund must be reported publicly, within 72 hours, by the Treasury, and the legislation creates a Special Inspector General for Pandemic Recovery (appointed by the president and subject to Senate confirmation) to provide oversight. The Special Inspector General is directed to make reports to Congress with detailed information on loans and investments made by the Fund. A five-member Congressional Oversight Commission is also established to oversee the implementation of the ESF by Treasury and the Federal Reserve.

Finally, businesses controlled by the president, vice president, members of Congress and heads of executive departments (and the immediate families of these listed individuals) are not eligible for relief from the Fund.

Air carriers – additional provisions. Additional funds are specifically set aside for grants to preserve the jobs and compensation/benefits of air carrier workers:

- ▶ Passenger air carrier workers \$25b
- ▶ Cargo carrier workers \$4b
- ▶ Air carrier contractors \$3b

Other provisions grant air carriers relief from certain aviation excise taxes; however, they are also required to continue to provide air service deemed essential by the U.S. Secretary of Transportation. Air carriers receiving loans or grants are also subject to limitations on:

- ▶ Furloughing workers or reducing their pay
- ▶ Stock buybacks
- ▶ The payment of dividends on common stock
- ▶ Limitations on the total compensation of highly paid workers
- ▶ Forced negotiations of collective bargaining agreements

Midsized businesses. The Secretary of the Treasury is instructed to *endeavor* to establish a program or facility through the Federal Reserve to aid midsized businesses and nonprofits with between 500 and 10,000 employees. Any loans made under such a program would be at an interest rate no higher than 2%, with no payments due in the first six months. These midsized businesses must make certain certifications regarding workforce retention, pay and benefits; and a guarantee not to send jobs offshore (for the term of the loan *plus* two years), abiding by collective bargaining agreements, and not to interfere with any union organizing effort. This title is not intended to limit the ability of the Federal Reserve to establish a Main Street Lending Program or similar facility.



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Consumer protections. Consumers are granted a number of protections from the economic downturn caused by COVID-19. Under the Fair Credit Reporting Act, accommodations are allowed so that that consumer credit reports are not adversely impacted when a creditor gives relief due to COVID-19-related hardships. Borrowers with federally backed mortgage loans (including those on multifamily properties) are granted forbearance from foreclosure due to financial difficulties related to COVID-19. Likewise, renters in covered federal housing programs or properties secured by federally backed mortgages are granted a moratorium from eviction actions for 120 days.

Other provisions. Financial institutions are granted specific temporary authorities and relief ranging from a change in the community bank lending ratio to allowing banks and credit unions to guarantee non-interest-bearing transaction accounts. Notably, the legislation also gives depository institutions, bank holding companies and their affiliates the option of delaying compliance with the new Current Expected Credit Losses accounting standard until the end of 2020 or when the public emergency declaration related to coronavirus is lifted, whichever is earlier.

Title V – Coronavirus Relief Funds

This title appropriates an additional \$150b for states, tribal governments and local governments for fiscal year 2020.

Title VI – Miscellaneous Provisions

Title VI extends an additional \$10b in borrowing authority to the U.S. Postal Service to fund operating expenses during the COVID-19 public health crisis.

Division B summary

Funding. Division B includes \$340b in emergency supplemental funding, including:

- ▶ \$117b for hospitals and veterans' health care
- ▶ \$45b for the Federal Emergency Management Agency Disaster Relief Fund
- ▶ \$16b for the Strategic National Stockpile
- ▶ \$4.3b for the Centers for Disease Control and Prevention
- ▶ \$11b for vaccines, therapeutics, diagnostics and other medical needs

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