



CARES Act: Highlights

President Trump signed the bi-partisan Coronavirus Aid, Relief, and Economic Security (CARES) Act, a \$2.2 trillion relief package to bolster the economy during the COVID-19 pandemic.

Here are some highlights. It must be noted, however, that for each highlighted issue, there are many underlying specific requirements for which we would refer you to the text of the law. We would also suggest that you share the text with your legal, finance, and human resources divisions for their review.

Small Business Lending Programs

The law creates a new \$349 billion small business lending program modeled on the existing Small Business Administration (SBA) 7(a) program. These loans will be available with a 100% Federal guarantee. Application for loans can be made through the SBA, banks, or other lending institutions like credit unions.

Who is Eligible for These Loans?

- Companies with less than 500 employees and sole proprietors, self-employed, and independent contractors that paid wages and payroll taxes.

How Much Can Be Borrowed?

- The loan amount is 2.5 times the average total monthly payroll costs incurred in the one- year period before the loan is made not to exceed \$10 million.
- For businesses that were not in existence during the period from February 15, 2019, to June 30, 2019, upon request, the loan amount is 2.5 times the average total monthly payroll payments from January 1, 2020, to February 29, 2020.

What are the Requirements to Get Approved?

- Borrowers have to provide a good-faith certification that:
 - The loan is needed to continue operations during the pandemic;
 - Funds will be used to retain workers and maintain payroll or make business mortgage, lease, and utility payments;
 - The applicant does not have any other application pending under this program for the same purpose; and
 - From February 15, 2020, until December 31, 2020, the applicant has not received duplicative amounts under this program.
- Borrowers will not have to put up collateral or personal guarantees.
- Borrowers will not be subject to a credit analysis.

What Can the Loan Funds be Used For?

- Businesses may use the loans for:

- Payroll costs, which includes, compensation to employees, such as salary, wage, commissions, cash, etc. (up to an annual pay rate of \$100,000 per employee);
- Group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Payments of interest on business mortgage obligations; rent/lease agreement payments; utilities; and interest on any other debt obligations incurred before February 15, 2020.

What are the Loan Terms?

- The maximum interest rate is 4%.
- Payments will automatically be deferred for six months and could be deferred up to 12 months.

Can These Loans be Forgiven?

- Yes, borrowers can have a portion of their loan forgiven in the amount equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.
- Loan forgiveness will be decreased if the borrower **reduces** employees retained compared to the prior year, and by the reduction in pay of any employee in excess of 25% of the employee's prior-year compensation. Borrowers that rehire previously laid-off workers by June 30, 2020, will still qualify and not be penalized for having a reduced payroll during the loan period.

What Happens to Any Loan Amount Not Forgiven?

- Any loan amounts not forgiven at the end of one year will be carried forward as an ongoing loan with terms of a maximum of 10 years at 4% interest or less.

Business Tax Provisions

Will Businesses Get a Tax Credit for Retaining Employees?

- Businesses forced to close due to a government-ordered shutdown or who experience a year-over-year reduction in gross receipts of at least 50% will be eligible for a fully refundable 50% tax credit applicable to the employer's share of payroll taxes.

Can Businesses Postpone Payment of Employer Payroll Taxes?

- The law postpones the due date for depositing employer payroll taxes and 50% of self-employment taxes related to Social Security. The deferred amounts would be payable over the next two years – half due December 31, 2021, and half due December 31, 2022.

Can Businesses Carryback Net Operating Losses?

- Businesses can offset losses experienced in 2018, 2019, and 2020 against profits from the prior five years – a modification from the recent change in the Tax Cuts and Jobs Act (TCJA) in 2017. The bill also suspends the TCJA's 80% of taxable income limit on net operating loss carryovers for three years, so that the limit would not apply to tax years beginning in 2018, 2019, and 2020.

What About Interest Deductibility?

The law temporarily increases the limitation on interest deductions from 30% of adjusted taxable income to 50%.

Relief Provisions for Individuals

What Changes Are Made to the Paid Leave Provisions in FFCRA?

- Paid sick leave granted under the FFCRA is capped at \$511 per day and \$5,110 in the aggregate. \$200 per day and \$2,000 in aggregate for sick leave taken to care for a family member or because of a school closure. Workers who are laid off after March 1, 2020, but then rehired are eligible for paid FMLA leave.

What is the Amount of Direct Payments to Individuals?

- \$1200 for single filers whose adjusted gross income is under \$75,000, reduced by 5% for income above \$75,000; \$2,400 for joint filers whose adjusted income is under \$150,000, reduced by 5% for income above \$150,000; payments “as rapidly as possible;” electronically to account payee authorized on or after Jan. 1, 2018 for a tax refund; \$112,500 for head of household

What are the Unemployment Provisions?

- Unemployment insurance is extended by 13 weeks – not to exceed 39 weeks and includes a four-month enhancement of benefits up to \$600 per week.

What Mortgage Protections are Included?

- Forbearance of Federally-backed mortgages of up to 180 days, which can be extended another 180 days, with no charge for fees, penalties or additional interest as a result of delayed payments. Also, forbearance for those with multifamily Federally-backed mortgage loans. Tenants of Federally-backed mortgage premises could not be evicted for failure to pay rent for a 120-day period, and they may not be responsible for fees or penalties for failing to pay rent.

What Student Loan Protections are Included?

- Student loan payments are suspended through Sept. 30, 2020, without interest charged. Also, students are allowed to keep unspent Pell grants funds to maintain future Pell Grant eligibility if

they have to leave school due to the virus and to continue being paid for work-study programs even if they are unable to work.

Distressed Entities

What is Included for the health care system?

- \$16B for the strategic national stockpile to secure medical supplies; \$117B for hospitals; \$100B for health care providers; funding for rural health care services, telehealth networks, and resource centers; and waivers for home-delivered nutrition services and dietary guidelines.

What is Included for States, Cities, and Businesses?

- \$500 billion in loans with the restrictions that businesses that receive loans may not issue dividends for up to a year after the loan is no longer outstanding; that they must retain 90% of employment levels as of March 24 “to the extent practicable” through Sept. 30; and that loans cannot last longer than five years. Also, \$150 billion in emergency relief funds for states, tribes and local governments to help boost budgets given the drop-off in tax revenues.

What are the Loan Oversight and Safeguard Requirements that are Included?

- For companies that receive government assistance, limit on executive and employee compensation for those earning at least \$425,000 last year; stock buyback prohibition for companies until a year after the loan is paid back; prohibit businesses owned or partly owned – with 20% or greater stake in the business – by the President, VP, members of Congress, heads of Executive Departments, their spouses, children, and in-laws, from receiving loans or investments from Treasury programs; and inspector general and 5-member bipartisan congressional oversight commission for audits and investigations of loans, loan guarantees and other investments approved by Treasury.

What about Other Distressed Entities?

- Numerous, including airlines (\$25 billion in grants and \$25 billion in loans), unspecified businesses to maintain national security (\$17 billion), Amtrak (\$1 billion), State Dept. to evacuate American citizens overseas (\$324 million), the CDC, child nutrition and Federal healthcare-related programs, etc. No funds for cruise lines.

Phases 4 and 5

What is the Latest Regarding Possible Additional Legislative Action?

- There is already talk in Congress about Phases 4 and 5, possibly May for Phase 4 and July for Phase 5. Items being discussed for inclusion are regulatory reform, corporate tax relief, additional sick

leave benefit changes, health care worker and pension protections, increased funds for state and local governments, modifications to executive compensation and stock buybacks, and mega structural policy initiatives such as infrastructure.