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Congress Enacts Massive Coronavirus Aid and Relief Package

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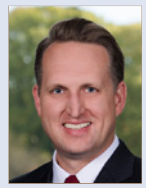
Summary of Coronavirus Aid, Relief, and Economic Security ("CARES") Act

The Coronavirus Aid, Relief, and Economic Security ("CARES") Act is a sweeping bipartisan measure that provides relief to small and large businesses, the health care sector, and individuals and families. This massive legislation—estimated to cost roughly $2 trillion—creates new federal programs, overhauls existing laws and regulations, and injects capital and federal spending into a broad swath of the American economy. The CARES Act will shape business decisions for both large and small companies, spawn complex new government actions and regulations, and leave a lasting impact on the private and public sectors for years to come.

This memorandum summarizes the CARES Act's principal provisions, including:

- A brand-new Paycheck Protection Program, which expands eligibility for, and provides $349 billion to fund, special new loans, loan forgiveness, and other relief to small businesses affected by the COVID-19 crisis.
- A new $500 billion federal stimulus program for air carriers and other companies in severely distressed sectors of the American economy. The lending programs impose stock buyback, dividend, executive compensation, and other restrictions on direct loan recipients.
- Important changes to the tax code that provide economic relief to businesses.
- The creation of rapid tax rebates and expansion of unemployment benefits to provide relief to individuals.
- Substantial federal spending and significant changes for health care companies, providers, and patients.

We are available to examine how these provisions may affect your organization in more detail.



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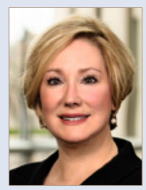

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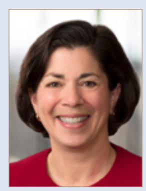

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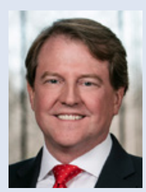

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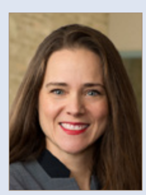

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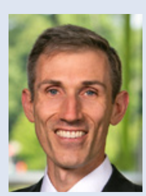

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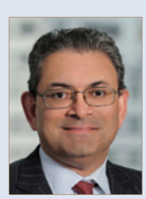

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NEW PAYCHECK PROTECTION PROGRAM: EXPANDED LOANS FOR SMALL BUSINESSES

The CARES Act appropriates $349 billion to a new Paycheck Protection Program administered by the Small Business Administration ("SBA"). That program will provide loans and loan forgiveness to furnish businesses with liquidity to keep employees on the payroll.

How much money is available? The maximum amount available to a small business from a Paycheck Protection Program loan is the lesser of: (i) 2.5 times the amount of the business's average monthly payroll costs, excluding any compensation of an employee in excess of an annual salary of $100,000 or compensation to an employee with a principal residence outside of the United States; or (ii) $10 million.

How can the money be used? Businesses can use these loans to pay:

- Payroll costs, including salaries, wages, paid leave, group health care benefits, retirement benefits, and state or local taxes; and
- Interest on any mortgage obligation, rent, utilities, and interest on certain preexisting debt obligations.

Who is eligible for these loans? The SBA ordinarily applies the size standards in 13 C.F.R. § 121.201 to determine eligibility for SBA loans. The Paycheck Protection Program alters the SBA's size standards to expand eligibility for these new SBA loans in two significant ways.

- The Act increases the maximum size of businesses under the standard to the greater of: (i) 500 employees; or (ii) the current maximum in the SBA's regulations.
- For accommodations or food service businesses, the Act applies the 500-employee size standard at each business location, not to the total across all locations.

Moreover, under the SBA's affiliation rule, the SBA aggregates the business and all affiliated companies for purposes of the size standards. The Paycheck Protection Program waives the affiliation rule for three types of businesses:

- Accommodations or food service businesses with no more than 500 employees at each business location;
- Franchises assigned an SBA franchise identifier code; and
- Businesses that receive financial assistance through the Small Business Investment Company program.

The Paycheck Protection Program also waives the SBA's usual rule that the business be unable to obtain credit elsewhere, as well as its usual personal guarantee and collateral requirements.

The Paycheck Protection Program provides loan forgiveness in an amount equal to eight weeks of payroll costs, mortgage interest, rent, and utility payments to any business that does not reduce its number of employees, cut one or more employees' salary or wages, or, if it has reduced its number of employees or salary or wages, rehires or restores salary or wages to the prior staffing level by June 30, 2020.

FEDERAL STIMULUS RELIEF FOR SEVERELY DISTRESSED ECONOMIC SECTORS

This program authorizes the Treasury Secretary to make loans, loan guarantees, and other investments in support of eligible businesses, states, and municipalities.

How much money is available under the CARES Act's lending programs? The CARES Act authorizes up to $500 billion for lending programs, including:

- Up to $25 billion to make loans and loan guarantees for passenger air carriers, eligible businesses that are certified under 14 CFR Part 145 (maintenance repair operations), and ticket agents.
- Up to $4 billion to make loans and loan guarantees for cargo air carriers.
- Up to $17 billion to make loans and loan guarantees for "businesses critical to maintaining national security."
- Up to $454 billion, plus any remainder from the three categories above, to make loans and loan guarantees to, and investments in, Federal Reserve programs or facilities, for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, states, or municipalities.

What conditions does the CARES Act impose on stimulus loans to passenger air carriers and related businesses, cargo air carriers, and businesses critical to national security? The Act directs the Treasury Secretary to publish procedures for applications and minimum requirements within 10 days after enactment of the Act. The Act also imposes several conditions in addition to otherwise applicable Treasury rules, including:

- A borrower and its affiliates cannot engage in stock buybacks of borrower or parent (unless required by contract in effect on date of the Act) or pay dividends until one year after the loan is no longer outstanding.
- A borrower must agree, until September 30, 2020, to maintain employment levels as of March 24, 2020, and must retain no less than 90% of employees as of that date.
- A borrower must certify that it is a U.S.-domiciled business and that its employees are predominantly located in the United States.
- The duration of the loan shall be as short as possible and shall not exceed five years.
- Alternative financing is not reasonably available to the borrower.
- The loan is sufficiently secured or made at an interest rate that reflects the risk of the loan and, if possible, not less than an interest rate based on market conditions for comparable obligations before the coronavirus outbreak.
- The loan cannot be forgiven.
- The borrower's operations must be jeopardized by losses related to the COVID-19 pandemic.

The loan programs also impose restrictions on compensation the borrower pays the employee. In particular, the borrower may not increase the compensation of an employee whose total compensation exceeds $425,000 but is less than $3 million, or pay such employees severance or termination payments that exceed twice the maximum total annual compensation received by that employee. The Act also imposes a special compensation prohibition on officers or employees making more than $3 million: such employees may not receive compensation in excess of $3 million plus 50% of their pay in excess of $3 million.

The Secretary's regulations may impose other conditions, including on air carriers and businesses critical to national security.

What requirements and other considerations does the CARES Act impose on Treasury's support for Federal Reserve liquidity programs and facilities? The Act authorizes the Treasury Secretary to make loans and loan guarantees to, and other investments in, Federal Reserve liquidity programs or facilities that support lending to eligible businesses, states, or municipalities by: (i) purchasing obligations or other interests directly from issuers; (ii) purchasing obligations or interests in secondary markets; or (iii) making loans.

- Applicable requirements of Section 13(3) of the Federal Reserve Act would apply to an obligation or interest acquired under such a program or facility.
- The principal amount of any obligation issued by an eligible business, state, or municipality under such a program or facility cannot be reduced through loan forgiveness.
- Specifically with regard to direct loans made pursuant to such a program or facility, equity repurchase prohibitions (except to the extent required by contract in effect on the date of the Act) regarding the business and any parent company, capital distribution prohibitions, and limitations on certain employee compensation would generally apply until 12 months after the loan is no longer outstanding.
- The Act also notes that the Treasury Secretary shall endeavor to seek the implementation of a Federal Reserve liquidity program or facility that provides financing to banks and other lenders that make direct loans to mid-sized businesses, and includes specific requirements for borrowers under such a program or facility.

TAX RELIEF FOR BUSINESSES

The CARES Act provides significant tax relief to businesses.

What assistance is available to employers who keep employees on payroll even though the business is subject to closure? The CARES Act provides eligible employers a fully refundable credit against the employer portion of Social Security taxes (6.2% of wages). The credit is equal to 50% of qualified wages paid, up to a maximum of $5,000 of credit per employee. Qualified wages include wages paid to an employee for any period in which the employer was an eligible employer. For employers with more than 100 employees, however, the wages must be paid to employees who are not providing services during that period.

An employer is eligible if the employer's business either: (i) was fully or partially suspended due to governmental orders in response to the COVID-19 pandemic; or (ii) suffered a significant decline (50% or more) in gross receipts in the current calendar quarter from the same quarter in the prior year. An employer eligible due to a decline in gross receipts remains eligible until the first calendar quarter in which its gross receipts return to 80% or more of the gross receipts from the same calendar quarter in the prior year.

This credit is available for wages paid between March 13, 2020, and December 31, 2020.

What other tax relief does the Act make available?

Delay of Payment of Employer Payroll Taxes. Employers may defer payment of the employer portion of Social Security taxes (6.2% of wages) that would be payable between enactment of the bill and December 31, 2020. Self-employed individuals may defer payment of half of the self-employment tax that would be payable between enactment of the bill and December 30, 2020.

Deferred payments are required to be repaid over the next two years, with 50% of the deferred taxes to be paid by December 31, 2021, and the remaining 50% to be paid by December 31, 2022. Employers will not be subject to deposit penalties, and self-employed individuals will not be subject to estimated tax penalties with respect to the deferred payments if they are paid by the extended due dates. The deferral is not available to a taxpayer who has a loan forgiven under the Paycheck Protection Program made available under Title I of the CARES Act.

Modifications with Respect to Net Operating Losses, Interest Deductions, and Qualified Improvement Property.

Temporary Repeal of Taxable Income Limitation. As a result of the 2017 Tax Cuts and Jobs Act ("TCJA"), corporate taxpayers generally may use post-2017 net operating loss ("NOL") carryforwards to offset only 80% of their taxable income. The Act generally delays the effective date of this change to 2021. The TCJA's 80% limitation will generally apply to 2021 and later years.

Modifications of Rules Relating to Carrybacks. The TCJA generally eliminated the carryback of NOLs, prohibiting taxpayers from using NOLs to claim refunds for prior year taxes. The Act generally allows NOLs from 2018, 2019, and 2020, to be carried-back up to five years (with certain limitations applicable to REITs and with respect to amounts included under the "repatriation tax" provisions of the TCJA), potentially allowing taxpayers to use NOLs once again to claim refunds.

Modification of Limitations on Losses for Taxpayers Other Than Corporations. The TCJA introduced rules that limited the deductibility of losses by non-corporate taxpayers, such as partners in a partnership and sole proprietors. The Act retroactively delays the application of those rules until 2021 and allows taxpayers whose losses were limited by these rules to amend prior year returns to fully deduct any losses that were so limited.

Modification of Credit for Prior Year Minimum Tax Liability of Corporations. The TCJA repealed the Alternative Minimum Tax ("AMT") for corporations and allowed corporate taxpayers to recover certain AMT taxes as a credit against their income tax. The credits were to be taken over four years, from 2018 to 2021. The Act allows corporations to immediately recover those credits in tax year 2018 by amending their 2018 return and claiming a refund.

Modification of Limitation on Business Interest. After the TCJA, business interest deductions were limited to 30% of adjusted taxable income ("ATI"). ATI is roughly equivalent to EBITDA. The Act in-creases the limitation from 30% of ATI to 50% of ATI for 2019 and 2020. The Act also allows taxpayers to calculate the limitation for 2020 using ATI from 2019.

Technical Amendments Regarding Qualified Improvement Property. Under the TCJA, businesses are permitted to deduct 100% of the cost of certain property acquired by the taxpayer. The deduction is commonly referred to as "bonus depreciation." In what was widely considered a technical error, improvements made to the interior of a building used for business ("Qualified Improvement Property") were not made eligible for bonus depreciation, and were instead required to be depreciated over 39 years. The Act retroactively corrects that error and makes it clear that Qualified Improvement Property is eligible for bonus depreciation. This change allows taxpayers to amend tax returns from 2017 forward to claim additional bonus depreciation deductions and potentially claim refunds.

TAX REBATES FOR INDIVIDUALS AND FAMILIES AND UNEMPLOYMENT BENEFITS FOR AFFECTED WORKERS

What tax rebates does the CARES Act provide to individuals and families? The CARES Act provides an immediate rebate of up to $1,200 ($2,400 for married taxpayers filing jointly) plus an additional $500 for each qualifying child of the taxpayer(s). The rebate is reduced by 5% of the taxpayer's adjusted gross income ("AGI") as it exceeds: (i) $75,000 for single taxpayers (or married taxpayers filing separately); (ii) $112,500 for heads of household; and (iii) $150,000 for joint filers. The rebates will be issued rapidly as checks or direct deposits into accounts individuals designated on prior tax returns for purposes of receiving refunds. The fund will be administered by the U.S. Department of Health and Human Services.

Moreover, the CARES Act eases rules for individuals to make in-service withdrawals or to take loans from qualified retirement plans in 2020. It also waives required minimum distributions that would otherwise occur from certain defined contribution retirement accounts.

How does the CARES Act expand unemployment benefits? The CARES Act makes changes to unemployment assistance to increase benefits and broaden eligibility for individuals whose jobs have been affected by COVID-19. The Act creates a temporary Pandemic Unemployment Assistance program for people who otherwise would be ineligible for unemployment benefits, including individuals who are self-employed, are seeking part-time employment, have insufficient work history, or otherwise would not qualify for regular unemployment.

The Act pays $600 per week, through July 31, 2020, above the unemployment benefits otherwise available under state formulas to each individual receiving unemployment insurance or Pandemic Unemployment Assistance. The Act also extends unemployment benefits for an additional 13 weeks for those who remain unemployed after state unemployment resources are unavailable. These benefits will be available through December 31, 2020.

The Act incentivizes states to eliminate the regular one-week waiting period for benefits eligibility. Regular terms and conditions of state unemployment compensation apply to unemployment claims.

HEALTH CARE PROVISIONS

What are the most important health care provisions of the CARES Act? The Act creates a $100 billion fund to reimburse hospitals and health care providers for costs attributable to COVID-19 and makes other important changes to federal health laws.

Care for COVID-19 patients. The Act expands the requirement for health insurers, with no cost sharing by the patient, to cover FDA-approved or HHS-identified COVID-19 diagnostic tests. It also requires test providers to display the test's cash price on a website and insurers to reimburse that price or a negotiated price.

Expanded Scope for Telehealth. The Act expands telehealth authorization and increases Medicare reimbursements for certain COVID-19 care as well as certain non-COVID-19 care.

Over-the-Counter Drugs. The Act updates and streamlines the existing over-the-counter ("OTC") monograph system for OTC drug products, transitioning from a process of formal rulemaking to administrative orders. It also provides for limited marketing exclusivity under certain circumstances for qualifying products.

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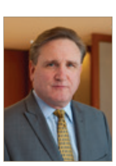

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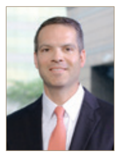

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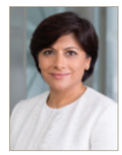

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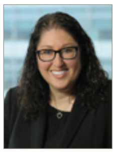

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