

The Coronavirus Aid, Relief and Economic Security (CARES) Act

On Thursday, March 19, Senate Republicans unveiled the [Coronavirus Aid, Relief and Economic Security \(CARES\) Act](#) (S.5348), their opening bid for Phase Three relief negotiations. This memo provides a summary and analysis of the legislation's following provisions:

- Division A—Small Business Interruption Loans
- Division B—Relief for Individuals, Families and Businesses
 - *Title I—Rebates and Other Individual Provisions*
 - *Title II—Business Provisions*
- Division C—Assistance to Severely Distressed Sectors of the U.S. Economy
 - *Title I—Economic Stabilization*
 - *Title II—Aviation Excise Taxes*
- Division D—Health Care Response
 - *Title III—Labor Provisions*

Division A—Small Business Interruption Loans

Section 1101: Definitions

- Defines “Administration” and “Administrator” as the Small Business Administration (SBA) and the SBA Administrator, respectively.
- Defines “small business concern” as already established SBA size standards.
- **Impact:** Provides clarity for purposes of administration of provisions. Note that eligibility for small businesses is expanded beyond “small business concerns” in Sec. 1102.

Section 1102. 7(a) Loan Program

- Provides \$300 billion for small business interruption loans administered through the SBA 7(a) loan program. Loans would be capped at \$10 million. Eligibility for loans would be expanded to nonprofits and companies of 500 employees or less, in addition to small business concerns. Loans would provide relief for COVID-19 pandemic-related costs incurred from March 1, 2020 to Dec. 31, 2020.
- Small business interruption loans would cover payroll support (which includes paid sick, medical, or family leave, and the continuation of group health care benefits); employee salaries; mortgage payments; rent; utilities; and any other debt obligations incurred before March 1, 2020. These loans would be optimized, with waived fees and 100% federal guarantees. Under the program, loan deferral for up to 1 year would also be available.
- Loan forgiveness would be available, but loan forgiveness would be reduced for employers who lay-off workers or make changes in compensation, except where employers pay additional wages to tipped workers.

- **Impact:** Division A incorporates the *Keeping Workers Paid and Employed Act* introduced by Sens. Marco Rubio (R-FL), Susan Collins (R-ME), and Lamar Alexander (R-TN). As the bill enters bipartisan negotiations, Senate Democrats have not outlined specific amounts for direct small business lending in their \$750 billion proposal, however a House Small Business Committee proposal released on March 19, provides \$100 billion in direct lending and an additional \$100 billion in guaranteed loans, with individual loans capped at \$2.5 million.

Section 1103: Entrepreneurial Development

- Provides financial assistance in the form of \$265,000,000 in grants to resource partners to provide education, training, and advice to covered small business concerns for the COVID-19 response.
- Resource partners would be small business development concerns (SBDCs) (receiving 80% of grants) and women's business centers (WBCs) (receiving 20% of grants).
- **Impact:** This section would **provide** education, training, and advice to covered small business concerns to help them better respond to COVID-19. .

Section 1104: Waiver Of Matching Funds Requirement Under The Women's Business Center Program

- Waives a statutory requirement to obtain cash contributions from non-Federal sources.
- **Impact:** Allows for grants to be quickly dispersed to WBCs without requiring those businesses to find a secondary source of non-federal funding for grants.

Section 1105: Loan Forgiveness.

- Makes loan forgiveness available, however loan forgiveness would be reduced for employers who lay-off workers or make changes in compensation, except where employers pay additional wages to tipped workers.
- **Impact:** This portion of the legislation incentivizes worker retention during the COVID-19 pandemic and provides relief for small businesses and nonprofits.

Section 1106: Direct Appropriations

- Provides for appropriations for the small business interruption loan program in the amount of \$299,400,000,000 for 7(a) loans
- Provides \$265,000,000 for Entrepreneurial Development Programs for SBDCs and WBCs.
- Also provides \$10,000,000 for minority business centers of the Minority Business Development Agency for technical assistance.
- **Impact:** Directs the appropriation of specific amounts of federal funds.

Section 1107: Minority Business Development Agency

- Provides \$10,000,000 in grants for the U.S. Department of Commerce's Minority Business Development Agency to assist provide education, training, and advice to covered small business concerns for response to COVID-19 as well as providing assistance with accessing and applying for 7(a) loans.

- No matching of funds for these grants is required.
- **Impact:** Allows for grants to be quickly dispersed for education, training, and advising to covered small business concerns in rural and economically distressed areas, without finding a secondary source of non-federal funding for grants.

Section 1108: Waiver Of Prepayment Penalty

- No prepayment penalty for any pre-payment of a loan made on or before Dec. 31, 2020.
- **Impact:** Specifies that small businesses may avoid a prepayment penalty if the loan is paid back on or before Dec. 31, 2020.

Section 1109: United States Treasury Program Management Authority

- Directs the Treasury Department to establish criteria for FDIC-insured lending institutions, and other specialized lenders that do not already participate in SBA lending, to participate in the small business interruption loans program.
- Due to the national emergency, eligibility criteria for lenders would be suspended, but a lender must demonstrate that participation would not affect the safety and soundness of the institution or lender.
- **Impact:** This section expands the number of eligible lenders in order to ensure loans are distributed quickly.

Division B—Relief for Individuals, Families and Businesses

Title I—Rebates and Other Individual Provisions

Section 2101: 2020 Recovery Rebates for Individuals

- Up to \$1,200 recovery checks to individuals (\$2,400 married filing jointly (MFJ)) and an additional \$500 per child.
- Phases out after taxpayer reaches \$75,000 and \$150,000 MFJ and completely phases out at \$99,000 and \$198,000 MFJ.
- The minimum rebate check is \$600 and \$1,200 MFJ if the taxpayer meets the requirements of qualifying income of at least \$2,500 or net income tax liability of more than zero with gross income greater than the basic standard deduction..
- Amounts are based on taxpayers 2018 tax return.
- **Impact:** Puts immediate cash into the hands of individuals and families.

Section 2102: Delay of Certain Deadlines

- Extends the April 15th filing date to July 15th and aligns filing date with the extended payment filing date.
- Postpones any estimated tax payments due until October 15, 2020.
- **Impact:** Provides individuals and corporations with more liquidity.

Section 2103: Special Rules for Use of Retirement Funds

- Waives early withdrawal penalties (10%) for distributions up to \$100,000 for those impacted by coronavirus.
- Income attributable to the distributions are subject to tax over three years.
- The taxpayer may recontribute the funds to an eligible retirement plan within three years.
- **Impact:** Allows individuals access to more cash without tax penalties.

Section 2104: Allowance of Partial Above the Line Deduction for Charitable Contributions

- Encourages contributions to churches and charitable organizations by permitting a deduction up to \$300 of cash contributions.
- Available to taxpayers whether they itemize or not.
- **Impact:** Promotes philanthropy.

Section 2105: Modification of Limitations on Charitable Contributions During 2020

- Increases the limitations on deductions for charitable contributions.
- The 50-percent of adjusted gross income limitation is suspended for individuals.
- The 10-percent limitation is increased to 25 percent of taxable income for corporations.
- Increases the limitation on deductions for contributions of food inventory from 15% to 25% .
- **Impact:** Promotes philanthropy.

Title II—Business Provisions

Section 2201: Delay of Estimated Tax Payments for Corporations

- Any corporate estimated tax payments due after the date of enactment are now due on October 15, 2020, and need to be made as a single payment.
- This provides additional time to make estimated tax payments, but does not otherwise change any filing requirements.
- **Impact:** Corporations are able to preserve cash to fund business operations and the delay may result in minimal tax payments because of losses.

Section 2202: Delay of Payment of Employer Payroll Taxes

- Employers and self-employed individuals may delay payment of 100 percent of the employer share of social security taxes due after the date of enactment through the end of 2020.
- The deferred amounts are paid in two installments: 50 percent on December 31, 2021, and 50 percent on December 31, 2022.
- **Impact:** This provision frees up cash for all businesses and self-employed individuals to fund business operations and support retaining employees – with a deferral over the next two years that avoids lump sum payments which may create cash flow difficulties.

Section 2203: Modification of Net Operating Losses

- The provision allows 100 percent of losses for tax years 2018, 2019, and 2020 (rather than 80 percent).
- The provision allows a five-year carryback for losses in tax years 2018, 2019, and 2020.
- **Impact:** This will allow businesses to carryback 100 percent of losses as far as 2013 to offset taxable income and access cash to support business operations in 2020 and future years.

Section 2204: Modification of Limitation on Losses for Taxpayers Other Than Corporations

- The provision suspends the \$250,000 (\$500,000 for joint return) limitation on excess business losses for pass through businesses and sole proprietors for tax years 2018, 2019, and 2020.
- The provision also allows a five-year carryback for losses in tax years 2018, 2019, and 2020.
- **Impact:** This will allow pass-through businesses and sole proprietors to carryback losses as far as 2013 to offset taxable income and access cash to support business operations in 2020 and future years.

Section 2205: Modification of Credit for Prior Year Minimum Tax Liability of Corporations.

- This provision accelerates the ability of businesses to recover alternative minimum tax ("AMT") credits.
- The corporate AMT was repealed as part of the Tax Cuts and Jobs Act of 2017, but corporate AMT credits were made available as refundable credits over several years, ending in 2021.
- **Impact:** This will benefit corporations with AMT credits by permitting them to claim a refund now and obtain additional cash flow.

Section 2206: Modification of Limitation on Business Interest

- For 2019 and 2020, this provision increases the amount of interest expense that businesses are allowed to deduct, by increasing the limitation from 30% of taxable income to 50%.
- **Impact:** This provision will allow businesses to increase liquidity with a reduced cost of capital, so that they are able to continue operations.

Section 2207: Technical Amendments Regarding Qualified Improvement Property

- The Tax Cuts and Jobs Act of 2017 had a technical error which required the costs of qualified improvement property (improvements to the interior of nonresidential buildings) to be depreciated over the 39-year life of the building.
- This technical correction classifies qualified improvement property as 15-year life, which also allows such property to be eligible for bonus depreciation.

- **Impact:** This provision not only increases companies' access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements.

Section 2208: Installments Not to Prevent Credit or Refund of Overpayments or Increase Estimated Taxes

- The provision is a technical correction to the Tax Cuts and Jobs Act of 2017.
- The provision corrects language that has prevented corporations that overpaid their 2017 taxes due to the deemed repatriation tax from obtaining a refund if they elected to pay the tax using the eight-year installment option.
- **Impact:** Businesses subject to the deemed repatriation tax will be able access overpayments from 2017 to help fund current business operations.

Section 2009: Restoration of Limitation on Downward Attribution of Stock Ownership in Applying Constructive Ownership Rules

- The provision is a technical correction to the Tax Cuts and Jobs Act of 2017.
- The provision is intended to correct certain fact patterns that resulted in taxpayers facing increased taxation and reporting requirements.
- **Impact:** This is a policy change from the Tax Cuts and Jobs Act of 2017, and will result in tax relief for some taxpayers, but a tax increase for others.

Division C—Assistance to Severely Distressed Sectors of the U.S. Economy

Title I—Economic Stabilization

Section 3102: Emergency Relief Through Loans and Loan Guarantees

- Authorizes Treasury to make loans or loan guarantees of \$208 billion.
 - Maximum \$50 billion for passenger airlines
 - Maximum \$8 billion for cargo airlines
 - Maximum \$150 billion for all other businesses
- Dictates four requirements for a business to eligible.
 - Losses, direct or incremental, incurred as a result of coronavirus, which jeopardize the continued operations of the business.
 - Credit is not reasonably available at the time of the loan.
 - The obligation was prudently incurred.
 - There was no excessive employee compensation (see Section 3103 below).
- Treasury has rights to dictate terms.
 - Treasury may require covenants, representations, warranties, and security.
 - In setting the interest rate, Treasury must take into consideration current average yield on outstanding marketable obligations of the US of comparable maturity.

- Equity stake: Treasury may require that the US participate in the gains of the obligor through warrants, stock options, common or preferred stock, or other equity instruments.
- Earnings and interest on aviation loans go to the Airport and Aviation Trust Fund. Earnings and interest from loans or loan guarantees to others go to the Treasury as miscellaneous receipts.
- **Impact:** This section fulfills the Administration request and gives broad authority to Treasury to determine who receives loans or loan guarantees, the amounts and other terms of such loans, and whether the government needs to obtain an equity stake in the business.

Section 3103: Limitation on Certain Employee Compensation

- Businesses seeking loans must enter in binding agreement with the Secretary to limit officer and employee compensation for the period March 1, 2020 through March 1, 2022.
- Each officer or employee whose total compensation is greater than \$425,000 in 2019 cannot receive more than:
 - His or her 2019 compensation in any 12-month rolling period ending March 1, 2022.
 - Twice his or her 2019 compensation in severance or other benefits upon termination of employment.
- **Impact:** This executive compensation limitation will prohibit businesses giving executives raises until March 2022.

Section 3104: Continuation of Certain Air Service

- The Secretary of Transportation is authorized to require, to the extent reasonable and practicable, that an air carrier receiving loans continues to provide and maintain air transportation services.
- **Impact:** This section will ensure that air carrier that receive loans will continue to provide services.

Section 3105: Reports

- The Secretary will require a study and report related to the loans and loan guarantees under this section nine months after the enactment.
- **Impact:** The report allows Congress to review the impact of the loan and loan guarantees following the coronavirus crisis.

Section 3106: Coordination with Secretary of Transportation

- The Secretary of Transportation will coordinate with the Secretary of Treasury.
- **Impact:** Ensures coordination between the Treasury Department and Transportation Department.

Section 3107: Definitions

- This section defines air carrier, coronavirus, covered loss, eligible business and Secretary.
- **Impact:** Defines applicable terms.

Section 3108: Rule of Construction

- This section will be construed to provide relief in the form of loans and loan guarantees for the businesses outlined in this section unless it is against the interest of the federal government.
- **Impact:** This will ensure that the loans the government is providing are in the government's best interest.

Title II—Aviation Excise Taxes

Section 3201: Suspension of Certain Aviation Excise Taxes

- The bill instructs that no tax will be imposed under Sec. 4261 and 4271, federal excise aviation taxes, as they relate to commercial aviation for the duration of the tax holiday.
- The tax holiday repeals the aviation taxes through December 31, 2020. These taxes are applied to the commercial transportation of persons, transportation of property, and kerosene used in commercial aviation.
- **Impact:** This will benefit all commercial airline companies, a severely distressed sector, as many airline corporations have been grounded due to the coronavirus outbreak. The airline industry had previously reported that the industry would need assistance of roughly \$58 billion.

Division D—Health Care Response

Title III—Labor Provisions

Section 4601: Limitation on Paid Leave

- Provides clarification to the *Families First Coronavirus Response Act* by stating that paid leave under the extension of the Family and Medical Leave Act may not exceed \$200 per day and \$10,000 in the aggregate for each employee. The bill previously did not state “each employee,” though this was implied.
- **Impact:** No impact—clarifying language of a technical nature.

Sec. 4602: Emergency Paid Sick Leave Limitation

- Provides clarification to the *Families First Coronavirus Response Act* by stating that sick leave under the emergency paid sick leave may not exceed \$511 per day and \$5,110 in the aggregate for sick leave or more than \$200 per day and \$2,000 in the aggregate to care for a quarantined individual or child for each employee under this section. The bill previously did not state “each employee,” though this was implied.
- **Impact:** No impact—clarifying language of a technical nature.

Sec. 4603: Regulatory Authorities Under the Paid Sick Leave Act

- Expands the authority for the Secretary of Labor to regulate and exempt small businesses with fewer than 50 employees from paid leave provisions in the section. Small businesses now may be exempted from providing sick leave to employees if the reason for leave is: (1) an employee must care for a child due to a school or daycare closure, or the employee is caring for an individual who is subject to COVID-19 quarantine order or an individual who has been advised to self-quarantine due to COVID-19 concerns or symptoms; AND (2) provision of such leave would jeopardize the value of the business as a going concern.
- **Impact:** Provides flexibility in administering paid sick leave provisions for businesses with less than 50 employees. Small businesses are now required to provide paid leave to employees who: (1) are subject to a federal, state, or local quarantine or isolation order related to COVID-19; (2) have been advised by a healthcare provider to self-quarantine due to COVID-19 concerns; or (3) are experiencing symptoms of COVID-19 and are seeking a medical diagnosis. Small business with under 50 employees were previously not required to provide leave if it would have jeopardized their business and the leave was to care for a child due to a school or daycare closure.

Section 4604: Unemployment Insurance

- Provides that applications for unemployment compensation and assistance be accessible in person, by phone, or online. Previously required that the application process be available via two methods.
- **Impact:** Narrows requirements for the accessibility of the applications for unemployment compensation.

Section 4605: OMB Waiver of Paid Family and Paid Sick Leave

- Allows the Office of Management and Budget (OMB) to exclude certain categories of executive branch employees for good cause from coverage under the paid sick leave and paid family and medical leave provisions of the *Families First Coronavirus Response Act*.
- **Impact:** This section gives the executive branch needed flexibility.

Section 4606: Paid Family Leave for Rehired Employees

- Provides under the *Families First Coronavirus Response Act* that certain employees who were laid off by their employers not earlier than March 1, 2020 and were subsequently rehired by their employers, will be considered eligible for paid family and medical leave, if they had worked for their employers for 30 of the last 60 calendar days prior to their layoff.
- **Impact:** This section clarifies that employees who were laid off before they could have been eligible for paid family and medical leave, will be eligible for such leave once they have been rehired.

Section 4607: Advance Refunding of Credits

- Allows the Secretary of the Treasury to waive penalties for employers who fail to make a deposit if such failure was due to the anticipation of a credit under the paid sick leave or paid family leave provisions of the *Families First Coronavirus Response Act* . This section also allows the Secretary of the Treasury to issue forms and instructions allowing the advance payment of the credit and for reconciliation for such advance credit payments for both the paid sick leave and paid family leave provision for self-employed individuals.
- **Impact:** This section clarifies that employers and the self-employed can receive advance tax credits from the Treasury and creates the regulatory authority for the implementation of these advance tax credits.