

In the wake of the Coronavirus (COVID-19) pandemic, Congress has acted quickly to pass three appropriations bills to ensure the United States is readily equipped to combat the virus and withstand the economic fallout associated with the public health emergency. To date, the following bills have been passed and/or enacted into law:

1. Coronavirus Preparedness and Response Supplemental Appropriations Act (Public Law 116-123). Became law on March 6, 2020.
2. Families First Coronavirus Response Act (Public Law 116-127). Became law on March 18, 2020.
3. Coronavirus Aid, Relief, and Economic Security (CARES) Act. Passed the Senate on March 25th and will be considered in the House on March 27th.

These bills offer new government protections to employers and employees to lessen the economic distress associated with the COVID-19 pandemic. These safeguards and their implications are detailed below.

Unemployment Insurance

The CARES Act provides \$260 billion to expand the unemployment insurance (UI) benefit for workers initially created in the second supplemental bill. The bill creates a temporary Pandemic Unemployment Assistance program to expand those not typically eligible for UI, including self-employed and part-time workers, independent contractors and the gig economy, and those with limited work history. The bill also increases the UI payment by \$600 per week and ensures the benefit would be available for four months. The federal government will provide temporary full funding of the first week of regular unemployment for states with no waiting period and extend UI benefits for an additional 13 weeks through December 31, 2020 after state UI benefits end.

The CARES Act seeks to offer options to employers who do not want to lay off employees by offering federal funding to support “short-time compensation” programs, where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit.

Paid Leave

The Families First Coronavirus Response Act provides for emergency paid sick leave for individuals who are unable to work or telework because the employee is: 1) subject to quarantine or an isolation order; 2) advised by a health care worker to self-quarantine due to coronavirus concerns; or 3) is experiencing symptoms of coronavirus and seeking a medical diagnosis. Under these circumstances, an employer is required to pay the employee’s regular pay, up to \$511 per day and \$5,110 over the benefit period.

The bill also provides for emergency paid sick leave for individuals who are unable to work or telework because the employee is: 1) caring for an individual who is subject to

quarantine or isolation order or has been advised by a health care provider to self-quarantine due to coronavirus concerns; 2) caring for their child if their school or day care has been closed; or 3) is experiencing “any other substantially similar condition specified by” the Secretary of Health and Human Services in consultation with the Secretaries of the Treasury and Labor. Under these circumstances, the employer is required to pay two-thirds of the employee’s regular pay, up to \$200 per day and \$2,000 over the benefit period.

These paid sick leave provisions apply to private business with less than 500 employees (with some exceptions) and all public businesses. Full time employees are entitled to two weeks (80 hours) of paid sick time and part time employees are entitled to an amount equal to the average number of hours such employee works over a 2-week period. Employer may not require an employee to use other paid leave provided by the employer before the employee uses the paid sick time provided under this law, and this paid sick time cannot carry over from one year to the next.

Payroll Credit for Required Paid Sick Leave

The Families First Coronavirus Response Act also provides employers a payroll tax (or Railroad Retirement Tax Act) credit equal to 100 percent of the qualified sick leave wages paid by the employer as a result of the new requirement described above. Employers that are subject to the paid sick leave mandates would pay their employees according to the mandates’ requirements. They then would use the 100 percent tax credit to offset any payroll tax liability the employer has in a calendar quarter. If there is still credit leftover after the credit has been applied to the employer’s payroll tax liability, the employer will receive a refund in the amount of that excess.

Self-employed individuals who receive a credit may use that credit against estimated income tax payments. Estimated tax payments are due throughout the year. Self-employed individuals can also receive a refund after the end of their tax year.

Direct Assistance to Individuals and Families

The CARES Act provides for “recovery rebates” for all those who are not claimed as a dependent of another taxpayer and have a work eligible social security number. Taxpayers earning under \$75,000 (or less than \$150,000 for joint filers) are eligible for the full \$1,200 rebate (or \$2,400 for joint filers), plus an additional \$500 per child. This is true even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits. For the majority of Americans, no additional action will be required in order to receive the rebate amount. The Internal Revenue Service (IRS) will use the taxpayer’s 2019 tax return if filed (or alternatively their 2018 tax return).

The rebate amount is reduced by \$5 for each \$100 that a taxpayer’s income exceeds the phase-out threshold. The amount is completely phased-out for single filers with incomes exceeding \$99,000, \$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children.

Assistance for Severely Distressed Sectors

The CARES Act provides \$500 billion to Treasury's Exchange Stabilization Fund to provide loans, loan guarantees, and other investments, that will be distributed as follows:

- (1) Up to \$46 billion in direct lending, including:
 - a. \$25 billion for passenger air carriers, eligible businesses that are certified under part 145 of title 15, Code of Federal Regulations, and approved to perform inspection, repair, replace, or overhaul services, and ticket agents;
 - b. \$4 billion for cargo air carriers; and
 - c. \$17 billion for businesses important to maintaining national security.

Treasury is required to issue guidance within 10 days of enactment on how to access these funds.

(2) \$454 billion, as well as any amounts available but not used for direct lending, for loans, loan guarantees, and investments in support of the Federal Reserve's lending facilities to eligible businesses, states, and municipalities. Federal Reserve 13(3) lending is a critical tool that can be used in times of crisis to help mitigate extraordinary pressure in financial markets that would otherwise have severe adverse consequences for households, businesses, and the U.S. economy.

All direct lending must meet the following criteria:

- (1) Alternative financing is not reasonably available to the business;
- (2) 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;
- (3) The duration of the loan shall be as short as possible and shall not exceed 5 years;
- (4) Borrowers and their affiliates cannot engage in stock buybacks, unless contractually obligated, or pay dividends until the loan is no longer outstanding or one year after the date of the loan;
- (5) Borrowers must, until September 30, 2020, maintain its employment levels as of March 24, 2020, to the extent practicable, and retain no less than 90 percent of its employees as of that date;
- (6) A borrower must certify that it is a U.S.-domiciled business and its employees are predominantly located in the U.S.;
- (7) The loan cannot be forgiven; and
- (8) In the case of borrowers critical to national security, their operations are jeopardized by losses related to the coronavirus pandemic.

The CARE Act Prohibits recipients of any direct lending authorized by this Title from increasing the compensation of any officer or employee whose total compensation exceeds \$425,000, or from offering such employees severance pay or other benefits upon termination of employment which exceeds twice the maximum total annual compensation received by that employee, until one year after the loan is no longer outstanding. Officers or employees making

over \$3 Million last year would also be prohibited from earning more than \$3 Million plus fifty percent of the amount their compensation last year exceeded \$3 Million.

Any lending through a 13(3) facility established by the Federal Reserve under this Section must be broad-based, with verification that each participant is not insolvent and is unable to obtain adequate financing elsewhere. Loan forgiveness is not permissible in any such credit facility.

Treasury will endeavor to implement a special 13(3) facility through the Federal Reserve targeted specifically at nonprofit organizations and businesses between 500 and 10,000 employees, subject to additional loan criteria and obligations on the recipient, such as:

- (1) The funds received must be used to retain at least 90 percent of the recipient's workforce, with full compensation and benefits, through September 30, 2020;
- (2) The recipient will not outsource or offshore jobs for the term of the loan plus an additional two years;
- (3) The recipient will not abrogate existing collective bargaining agreements for the term of the loan plus an additional two years; and
- (4) The recipient must remain neutral in any union organizing effort for the term of the loan.

Small Business Assistance

The CARES Act provides exclusive assistance to any businesses meeting the Small Business Administration (SBA)'s small business size standard, which is typically 500 employees or fewer. The bill includes \$350 billion to create a Paycheck Protection Program (PPP) that will provide small businesses and other entities with zero-fee loans of up to \$10 million. Up to 8 weeks of average payroll and other costs will be forgiven if the business retains its employees at their regular salary levels. Small businesses and other eligible entities will be able to apply if they were harmed by COVID-19 between February 15, 2020 and June 30, 2020.

The bill also provides includes \$10 billion to provide an advance of \$10,000 to small businesses and nonprofits that apply for an SBA economic injury disaster loan (EIDL) within three days of applying for the loan. To access the advance, any entity must first apply for an EIDL and then request the advance. The advance does not need to be repaid under any circumstance, and may be used to keep employees on payroll, to pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent and mortgage payments. The grant is available to small businesses, private nonprofits, sole proprietors and independent contractors, tribal businesses, as well as cooperatives and employee-owned businesses.

The CARES Act also includes \$17 billion to provide immediate relief to small businesses with standard SBA 7(a), 504, or microloans. SBA will cover all loan payments for existing SBA borrowers, including principal, interest, and fees, for six months. This relief will also be available to new borrowers who take out an SBA loan within six months of enactment. Banks are authorized to provide relief to small business borrowers by allowing them to extend the duration

of existing loans beyond existing limits. While SBA borrowers are receiving the six months debt relief, they may apply for a PPP loan that provides capital to keep their employees on the job.

The CARES Act also encourages the Federal Reserve to establish a facility that supports lending to small and mid-size businesses.

Employee Retention Tax Credit

The CARES Act provides a refundable payroll tax credit for 50 percent of wages paid by eligible employers to certain employees during the COVID-19 crisis. The credit is available to employers, including non-profits, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings. The credit is also provided to employers who have experienced a greater than 50 percent reduction in quarterly receipts, measured on a year-over-year basis.

Wages of employees who are furloughed or face reduced hours as a result of their employers' closure or economic hardship are eligible for the credit. For employers with 100 or fewer full-time employees, all employee wages are eligible, regardless of whether an employee is furloughed. The credit is provided for wages and compensation, including health benefits, and is provided for the first \$10,000 in wages and compensation paid by the employer to an eligible employee. Wages do not include those taken into account for purposes of the payroll credits for required paid sick leave or required paid family leave, nor for wages taken into account for the employer credit for paid family and medical leave (IRC sec. 45S).

The Secretary of the Treasury is granted authority to advance payments to eligible employers and to waive applicable penalties for employers who do not deposit applicable payroll taxes in anticipation of receiving the credit. The credit is not available to employers receiving Small Business Interruption Loans.

Delay of Payroll Tax

The CARES Act allows taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one at the end of 2021, the other at the end of 2022. Deferral is not provided to employers that avail themselves of SBA 7(a) loans designated for payroll.

Payroll taxes that can be deferred include the employer portion of FICA taxes, the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer FICA rate), and half of SECA tax liability.

Modification of Net Operating Losses

The 2017 Tax Law limited net operating losses (NOLs) arising after 2017 to 80 percent of taxable income and eliminated the ability to carry NOLs back to prior taxable years.

The CARES Act modifies the treatment of NOL carrybacks, such that, in the case of taxable years beginning before 2021, taxpayers will be eligible to carry back NOLs to the prior five taxable years. Effectively, this delays the 80 percent taxable income limitation until 2021 and temporarily extends the carryback period from zero to five years. The Act also disregards temporarily NOL carrybacks for the section 965 transition tax. C corporations may elect to file for an accelerated refund to claim the carryback benefit.

The Act also modifies the treatment of NOL carryforwards. In the case of taxable years beginning before 2021, taxpayers will be entitled to an NOL deduction equal to 100 percent of taxable income (rather than the 80 percent limitation in present law). In the case of taxable years beginning after 2021, taxpayers will be eligible for (1) a 100 percent deduction of NOLs arising in tax years prior to 2018, and (2) a deduction limited to 80 percent of modified taxable income for NOLs arising in tax years after 2017.

The Act also includes a technical correction to the 2017 Tax Law, relating to the effective date of the NOL carryback repeal.

Student Loan Assistance

The CARES Act enables employers to provide a student loan repayment benefit to employees on a tax-free basis. Employers may contribute up to \$5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The \$5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance, such as tuition, fees, or books. The provision applies to any student loan payments made by an employer on behalf of an employee before January 1, 2021.

Retirement Assistance

The CARES Act allows individuals to waive the 10-percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for coronavirus-related purposes made on or after January 1, 2020. Income attributable to such distributions would be subject to tax over three years, and the taxpayer may retribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions. This applies to any individual: (1) who is diagnosed with COVID-19; (2) whose spouse or dependent is diagnosed with COVID-19; or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19. The CARES Act also waives the required minimum distribution rules for certain defined contribution plans and IRAs for calendar year 2020.