

## CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY (CARES) ACT

### OVERVIEW

The **\$2 trillion bill** has five titles: (1) small business employee retention & unemployment; (2) individual & unemployment benefits, business tax provisions (3) the health care system & labor revisions, (4) economic stability & liquidity measures, (5) state & local assistance, and an appropriations section.

- **TITLE I** – Small Business Employee Retention and Unemployment
  - **Paycheck protection program**, which incents **small businesses** to maintain existing payroll through loans and providing loans that can be forgiven under certain circumstances when used for business purposes
  - Provisions related to **Entrepreneurial Development, State Trade Assistance, Economic Injury Disaster Loans, and Bankruptcy**
  
- **TITLE II** – Individual and unemployment benefits, business tax provisions
  - Enhanced **unemployment benefits** that enhances current benefits by \$600 per week and includes individuals not normally eligible for the program
  - **Direct payments** of up to \$1,200 per individual and \$2400 per family, plus \$500 for dependent children, up to certain income thresholds
  - **Employee retention credit** for employers
  - Delayed payment of **employer payroll taxes**
  - Modifications for **Net Operating Losses**
  - **Loss limitation** for certain taxpayers
  - Acceleration of **AMT credits**
  - Temporary increase in the **interest expense deduction**
  
- **TITLE III** – Health Care System and Labor Revisions
  - Support for **research, testing for individuals, and health care providers**
  - **Telehealth** enhancements
  - Reauthorizes the **Healthy Start** program
  - Revisions to provisions related to **labor** from the Phase 2 COVID-19 bill
  
- **TITLE IV** – Economic Stability and Liquidity Measures
  - Creation of a **Treasury Stabilization fund**, providing \$29 billion for air carriers and \$17 billion for national security support businesses
  - **\$454 billion** in direct lending to all other eligible businesses
  
- **TITLE V** – State and local assistance
  - **\$150 billion** to states, territories, tribal & local gov'ts; **\$1.25 billion small state** set-aside
  
- **EMERGENCY APPROPRIATIONS HIGHLIGHTS**
  - **\$1.5 billion EDA** grants to support economic injury in states and communities
  - **\$25 billion to the Federal Transit Administration** for public transit grants
  - **\$75 million** to the Corporation for Public Broadcasting for stabilization grants
  - **\$45 billion to include reimbursements by FEMA** to states and localities by the Disaster Relief Fund for emergency and major disaster declarations

## SECTION-BY-SECTION

### TITLE I— SMALL BUSINESS EMPLOYEE RETENTION AND UNEMPLOYMENT

- **Paycheck Protection Program**
  - **SUMMARY**
    - Amends Small Business Act to create new Business Loan Program
    - Program funded at **\$349 billion** through 12/31/20
    - Max loan shall be \$10 million through 12/31/20, limited by a payroll formula.
    - Covered loan period shall be 2/15/20 to 6/30/20.
    - Increases the government guarantee to 100 percent through 12/31/20
    - Allowable uses: payroll (salaries, paid sick or medical leave), insurance premiums, and mortgage, rent, and utility payments
    - Loan amounts not forgiven (see below for forgiveness criteria) are carried forward as an ongoing loan with a ten-year, 4% max interest loan
    - Allows complete deferment of loan payments for 6-12 months
  - **DETAILS**
    - Eligibility includes small businesses, 501(c)(3) non-profits, veterans' organizations, and Tribal business concerns with not more than 500 employees, or the applicable size standard for the industry as provided by SBA, if higher
    - Includes sole-proprietors, independent contractors, and other self-employed individuals as eligible for loans
    - Allow businesses with more than one physical location that employs no more than 500 employees per physical location in certain industries to be eligible and is below a gross annual receipts threshold in certain industries to be eligible
    - Waives affiliation rules for franchises in the hospitality and restaurant industries
    - Provides delegated authority to lenders under the Paycheck Protection Program for eligibility determination and redefines "ability to repay" given the current crisis
    - Requires eligible borrowers to make a good faith certification that the loan is necessary, and they will use the funds to retain workers and maintain payroll, lease, and utility payments
    - Loan balance that is not eligible for forgiveness will fall under a ten-year note
- **Loan Forgiveness**
  - Forgiveness defined as equal to amount spent by the borrower during an 8-week period after the origination date of the loan for:
    - Payroll costs (compensation above \$100k excluded)
    - 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
  - Amounts forgiven may not exceed the principal amount of the loan

- Forgiveness is governed by a comparison of the covered period to the same period in 2019, and shall be equal to:
    - Payroll costs **plus** any payment of interest on any covered mortgage obligation (excluding prepayments) **plus** any payment on any covered rent obligation **plus** and any covered utility payment
  - The amount forgiven will be **reduced by the following formulas:**
    - **Reduced proportionally** by reduction in employees compared to the prior year, and
    - **Reduced directly by the reduction in pay** of any employee beyond 25 percent of their prior year compensation
  - Borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period
  - Allows forgiveness for additional wages **paid to tipped workers**
  - Canceled indebtedness resulting from this section will not be included in the borrower's taxable income
- **Entrepreneurial Development**
    - Authorizes Small Business Administration to provide additional financial awards to resource partners to provide education on COVID-19 SBA resources and business resiliency
  - **State Trade Expansion Program**
    - Allows for State Trade Expansion Program (STEP) funds in FY 2018 and FY 2019 to remain available for use through FY 2021 and allows authority to provide reimbursements for cancelled events
  - **Waiver of Matching Funds Requirement under the Women's Business Center Program**
    - Eliminates non-federal match for Women's Business Centers for three months
  - **Minority Business Development Agency**
    - Authorizes \$10 million for the Minority Business Development Agency
    - Eliminates the program's non-federal match requirement for a period of three months
  - **Emergency EIDL Grants**
    - Expands eligibility for access to Economic Injury Disaster Loans (EIDL) to include Tribal businesses, cooperatives, and ESOPs with fewer than 500 employees or, any individual operating as a sole proprietor or an independent contractor during the covered period, 1/31/20 to 12/31/20
    - Private non-profits are also eligible for both grants and EIDLs
  - **Bankruptcy**
    - Increases the eligibility threshold to file under subchapter V of chapter 11 of the U.S. Bankruptcy Code to businesses with less than \$7,500,000 of debt
    - Amends the definition of income to exclude coronavirus-related payments from the federal government from being treated as "income" for purposes of filing bankruptcy
    - Sunsets after one year

## TITLE II— INDIVIDUAL AND UNEMPLOYMENT BENEFITS, BUSINESS TAX PROVISIONS

### *Individual Provisions*

- **Unemployment Insurance Provisions**
  - Creates temporary Pandemic Unemployment program through 12/31/21
  - Aids those not usually eligible for unemployment benefits (i.e. independent contractors, self-employed, etc.) who cannot work due to direct effects of the COVID-10 public health emergency
  - Provides emergency relief for government entities and nonprofits
  - Payment to states to reimburse nonprofits, government agencies, and Indian tribes for half of the costs they incur through 12/31/21
  
- **Rebates and Other Individual Provisions**
  - Includes direct payments to Americans with adjusted gross income up to \$75k (\$150k married) are eligible for the full \$1,200 (\$2,400 married) rebate plus \$500 per child
  - Phased down for incomes between \$75,000 and \$99,000
  - Waives the 10-percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for coronavirus-related purposes
    - Income would be subject to tax over three years
    - Waives the required minimum distribution rules for certain defined contribution plans and IRAs for calendar year 2020
  - The provision increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations
  - Enables employers to provide a student loan repayment benefit (up to \$5,250) to employees on a tax-free basis, excluded from employee income

### *Business Provisions*

- **Employee retention credit for employers** subject to closure due to COVID-19
  - Refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis
  - The credit is available to employers whose:
    - (1) operations were fully or partially suspended, due to a shut-down order, or
    - (2) gross receipts declined by more than 50 percent
  - Based on qualified wages paid to the employee:
    - **For employers with greater than 100 full-time employees:** qualified wages are wages paid to employees under normal circumstances
    - **For eligible employers with 100 or fewer full-time employees,** all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order
  - The credit is provided for the **first \$10,000 of compensation**, including health benefits, paid to an eligible employee
  - The credit is provided for wages from 3/13/20 through 12/31/20

- **Delay of payment of employer payroll taxes**
  - The provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax
  - Repaid 50% by in 2021 and remaining 50% by 12/31/22
- **Modifications for net operating losses**
  - Provides that an NOL from 2018, 2019, or 2020 can be carried back five years
  - Temporarily removes taxable income limitation to allow NOL to fully offset income
- **Limitation on losses for taxpayers other than corporations**
  - Modifies loss limitation applicable to pass-through businesses and sole proprietors
- Accelerates the ability of companies to **recover AMT credits** (which were made available through the 2017 tax cut), permitting companies to claim a refund now
- Temporarily increases the amount of **interest expense businesses** are allowed to deduct on their tax returns to 50 percent of taxable income for 2019 and 2020
- Waives the **federal excise tax on any distilled spirits** used for or contained in hand sanitizer that is produced and distributed for calendar year 2020

### TITLE III – HEALTH CARE SYSTEM AND LABOR REVISIONS

- **Support for the Research**
  - Prioritize reviews of drug applications; incentives
  - Manufacturer reporting requirements in response to drug or medical device shortages
- **Support for Individuals**
  - Coverage of diagnostic testing for COVID-19
  - Rapid coverage of preventive services and vaccines for coronavirus
  - Provides free coverage of a vaccine within 15 days for COVID-19
- **Support for Health Care Providers**
  - Supplemental awards for health centers
  - Telehealth network and telehealth resource centers grant programs
- **Miscellaneous Provisions**
  - Reauthorization of Healthy Start
  - Importance of blood supply
- **Innovation**
- **Education Provisions**
  - Protections for students and educational institutions impacted by COVID-19

- **Labor Provisions Revising Phase 2 Bill**
  - **Limitation on Paid Leave**
    - 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 under this section
  - **Emergency Paid Sick Leave Limitation**
    - 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 to care for a quarantined individual or child for each employee under this section
    - 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
  - **Access to Unemployment Insurance through phone/online means**
  - **Paid Leave for Rehired Employees**
    - Allows an employee who was laid off by an employer 3/1/20 or later to have access to paid family and medical leave in certain instances if they are rehired by the employer
  - **Advance Refunding of Credits**
- **Finance Committee**
  - Expansion of access to telehealth services
  - Medicare add-on for inpatient hospital COVID-19 patients
- **Health and Human Services Extenders**
  - Medicare provisions, Medicaid provisions, other health programs, and public health provisions
- **Over-the-Counter Drugs**
  - Allows the FDA to approve changes to over-the-counter (OTC) drugs and clarifies other regulations around OTC drugs

#### TITLE IV – ECONOMIC STABILITY AND LIQUIDITY MEASURES

- **Definitions**
  - Defines an “Eligible Business” as a U.S. business that has not otherwise received “adequate economic relief” under this Act
  - Defines a “State” as any of the several States, DC, territories and possessions, any bi-state or multi-state entity, and any Indian tribe

- **Emergency Relief and Taxpayer Protections**

- **SUMMARY**

- \$500 billion to Treasury Stabilization Fund for loans, loan guarantees and other investments, distributed as follows:
  - Direct lending:
    - \$25 billion for passenger air carriers
    - \$4 billion for cargo air carriers
    - \$17 billion for businesses important to maintaining national security
  - \$454 billion for direct lending, loans, loan guarantees and investments through Federal Reserve 13(3) lending to eligible businesses, states and municipalities
- Treasury will create a special 13(3) facility through the Federal Reserve targeted at nonprofits and businesses between 500 and 10,000 employees (subject to additional loan criteria and obligations)

- **DETAILS**

- Direct lending through the Treasury's Exchange Stabilization Fund follows strict criteria including:
  - Alternative financing is not reasonably available
  - Loan is sufficiently secured and interest rate that reflects the risk
  - The duration of the loan shall not exceed 5 years
  - Borrowers cannot engage in stock buybacks, unless contractually obligated, or pay dividends for one year (or loan paid back)
  - Borrowers retain >90% of employees as of 3/24/20
  - U.S.-domiciled business with employees predominantly in the U.S.
  - The loan cannot be forgiven
  - In the case of borrowers critical to national security, their operations are jeopardized by losses related to the coronavirus pandemic
  - Limits recipients of any direct lending from this Title from increasing compensation on certain income thresholds

- **Special Inspector General for Pandemic Recovery**

- Creates office of the Special Inspector General

## TITLE V — STATE AND LOCAL ASSISTANCE

- **Coronavirus Relief Fund**

- Provides \$150 billion to States, Territories, and Tribal governments to use for expenditures incurred due to the public health emergency with respect to COVID-19 in the face of revenue declines, allocated by population proportions, with a minimum of \$1.25 billion for states with relatively small populations

## EMERGENCY APPROPRIATIONS HIGHLIGHTS

- **Economic Development Administration**
  - \$1.5 billion to support economic development grants for states and communities suffering economic injury as a result of the coronavirus
- **Federal Transit Administration**
  - \$25 billion to the Federal Transit Administration for public transit grants. Under the bill, these grants are subject to FY20 apportionment formulas and must be given out within a week of the law's enactment
- **Corporation for Public Broadcasting**
  - \$75 million to the Corporation for Public Broadcasting for stabilization grants to maintain programming services and to preserve small and rural public telecommunication stations
- **FEMA**
  - \$45 billion to include reimbursements by FEMA to states and localities by the Disaster Relief Fund for emergency and major disaster declarations. \$400 million for grants that can be disbursed in a timely manner for firefighters, emergency managers and providers of emergency food and shelter.
- **Housing and Urban Development**
  - \$5 billion for the Community Development Block Grant (CDBG) program that provides states and locals with funding to provide a wide range of resources to address COVID-19, such as services for senior citizens, the homeless, and public health services. Funding will be distributed using formula
- **Law Enforcement and Criminal Justice**
  - \$850 million for Justice Department grants and programs to assist state and locals in responding to COVID-19. These funds have no match requirements and will support criminal justice needs around COVID-19, including overtime for officers and personal protective equipment and supplies.