

Federal “CARES” Act Summary



Creates a Small Business “Paycheck Protection Program”

This new \$349 billion lending program would be modeled after the Small Business Administration (SBA) existing 7(a) loan program, but would have a 100% federal government loan guarantee (as opposed to 75% currently). The loan eligibility criteria is as follows:

- Must be a small business as defined by the SBA (typically less than 500 employees, but various by business sector)
- Businesses in the Accommodation and Food Services Sector (NAICS Code 72) are eligible with up to 500 employees at each location.
- Non-profits with a 501 (c)(3) with fewer than 500 employees are eligible.
- Sole proprietors, the self-employed, and independent contractors are also eligible.

The requirement that a borrower cannot find credit elsewhere is waived, and all lenders can provide loans. Not personal guarantee or collateral is required. Lender would defer fees, principal and interest for at least 6 months, and up to 1 year.

Loan Terms: The loans could be made for an amount equal to 2.5 months of payroll costs, up to a maximum of \$10 million. Payroll costs exclude compensation paid to individuals above \$100,000 a year.

Loan Use: An employer must certify that the loan will be used to retain workers, maintain payroll, make mortgage or lease payments, or pay utilities.

Loan Forgiveness: Borrowers are entitled to loan forgiveness for the portion of their loan that is used for payroll costs for employees earning less than \$100,000 per year, interest payments on mortgages, rent payments, and utility payments made between February 15, 2020 and June 30, 2020. Loan forgiveness will be reduced if the borrower reduces employment by a ratio similar to their reduction in employment or if borrower reduces salaries and wages by more than 25%.

Changes to the SBA’s Economic Injury Disaster Loans (EIDLs)

Wisconsin was recently certified for Economic Injury Disaster Loans after Governor Evers sent a request to the SBA. These are low-interest loans made available to businesses impacted by a natural disaster, including COVID-19. The legislature makes the following changes:

- Loans can be based solely on credit scores.
- Loans are available to non-profit entities organized as a 501(c)(6).
- Loans of less than \$200,000 can be approved without a personal guarantee
- Borrowers can receive a \$10,000 cash advance that is forgiven if the money is spent on paid leave, maintaining payroll, increased costs due to supply chain disruption, mortgage or lease payments, or repaying obligations that cannot be met due to revenue losses

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Federal Reserve Loan Programs & Credit Facilities

The legislation makes \$500 billion available for loans and loan subsidies for various Federal Reserve credit facilities.

Loan Eligibility: Air carriers and other businesses not otherwise receiving adequate relief under other provisions of the bill are eligible for these loans.

Loan Categories:

- (1) \$25 billion in loans and loan guarantees for air carriers, air maintenance, and ticket agents.
- (2) \$4 billion in loans and loan guarantees for cargo air carriers.
- (3) \$17 billion in loans and loan guarantees for businesses critical to maintaining national security.
- (4) \$454 billion for loans, loan guarantees and investments in support of facilities established by the Federal Reserve to support lending to eligible businesses, states, or municipalities

Loan Restrictions:

- Loans described under categories (1), (2), or (3) above must be secured for a term of not more than 5 years, and while the loan is outstanding plus an additional 1 year, prevents stock repurchases and dividend payments, and requires borrowers to maintain existing employment level as of March 24, 2020.
- Loans described under categories (1), (2), or (3) above
- For one year after the date on which the loan or loan guarantee is no longer outstanding, no officer or employee whose total compensation exceeded \$425,000 in 2019 can receive a pay increase from 2019 levels or severance pay exceeding twice max compensation received in 2019. Additionally, officers or employees whose compensation exceeded \$3 million in 2019 may not receive compensation in excess of sum of \$3 million and 50% of the excess more than \$3 million that such employee received in 2019.
- Loans through the Federal Reserve generally prevent the borrower from repurchasing stock and dividend payments while the loan is outstanding plus an additional year.

Special Loan Facility:

In addition to other loan facilities that might be created, the US Treasury Secretary will “endeavor to seek the implementation” of a Middle Market loan facility for banks to provide loans to businesses and eligible nonprofits with 500-10,000 employees as follows:

- Interest rate of no more than 2%, with no principal or interest paid for the first 6 months
- Loan funds must be used to retain 90% of workforce at full wages and benefits through September 30, 2020
- No buybacks or dividend payments through the life of the loan.
- No outsourcing or offshoring of jobs for the life of the loan and 2 years thereafter.
- Loan recipient will not abrogate collective bargaining for term of the loan and two years.
- Employer must also remain neutral in union organizing activities
- **Note: This is just one loan facility that is required to be created under the bill, and was added at the assistance of organized labor. Other loan facilities will be created, and no business/borrower is required to use this particular loan facility that requires them to forgo their right to communicate with employees during a unionization attempt.**

Main Street Lending Facility:

The legislation authorizes the Federal Reserve to create a Main Street lending facility for small and mid-size businesses using its authority under section 13(3) that does not require borrowers to meet conditions related to union organization neutrality.

Business Tax Changes

- Creates an employee retention credit for employers subject to closure due to COVID-19 that permits fully refundable 50% tax credit applicable to the employer’s share of payroll taxes on wages up to \$10,000 per employee (with special rules for small employers).
- Allows delay of payment of employer payroll taxes (defer payment of the employer share of the Social Security tax due between now and January 1, 2021 to December 31, 2021 (50% due) and December 31, 2020 (remaining due)).
- Modifications for net operating losses (for 2018, 2019, 2020, loss can be carried back 5 years, temporarily suspends 80% limitation; extends to pass-throughs, sole proprietors).
- Accelerates the ability of companies to recover Alternative Minimum Tax (AMT) credits.
- Modification of limitation on business interest (for 2019, 2020, increases 30% limitation to 50%).
- Temporary exception from excise tax for alcohol used to produce hand sanitizer (for 2020).

Pension and Employee Benefit Requirements

- Allows the DOL to delay employee benefit related deadlines because of a public health emergency the same as declared national disasters or terroristic military actions
- Delays any required minimum pension contributions due in 2020 until January 1, 2021 (plus interest).
- For benefit restrictions, allow a plan sponsor to use the adjusted funding target attainment percentage for the last plan year ending before January 1, 2020 for plan years including calendar year 2020.

Mortgage Forbearance & Credit Reporting

- During the “covered period,” a borrower with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency may request forbearance on the Federally backed mortgage loan, regardless of delinquency status.
 - The “covered period” is 60 days (2 months) and allowable extensions of up to 4 periods of 30 days each (4 months).
- Requires furnishers to credit reporting agencies who agree to account forbearance, or agree to modified payments with respect to an obligation or account of a consumer that has been impacted by COVID-19, report such obligation or account as “current” or as the status reported prior to the accommodation during the period of accommodation unless the consumer becomes current.
 - This applies only to accounts for which the consumer has fulfilled requirements pursuant to the forbearance or modified agreement.
 - This credit protection is available beginning January 31, 2020 and ends at the later of 120 days after enactment or 120 days after the date the national emergency declaration related to the coronavirus is terminated.

Payments & Relief to Individuals

- Direct payments to taxpayers equal to \$1,200 per individual (\$2,400 joint return) plus \$500 per child, with the payment amount gradually phased-out for incomes above \$75,000 or \$150,000 if filing jointly.
- Penalty-free COVID-19-related distributions up to \$100,000 and loan amount increases and modifications to individuals from tax-favored retirement plans.
- Waiver of required minimum distributions from retirement plans and IRAs for 2020.
- Tax exclusion for people who are receiving student loan repayment from their employer.

Unemployment Benefits

- Unemployment benefits would be extended by 13 weeks – current maximum in Wisconsin is 26 weeks – for a total of 39 weeks.
- Unemployment compensation is available for those not eligible for regular UI, including those who may have exhausted benefits.
- An individual must provide certification that he or she is able and available to work, but is unemployed or underemployed due to:
 - o COVID-19 diagnosis or presentation of symptoms and seeking medical attention.
 - o A household member with coronavirus diagnosis.
 - o Caring for a family member who has been diagnosed.
 - o School or daycare closures and the individual is the primary child caregiver.
 - o Workplace lock-down
 - o Advice from health care provider to self-quarantine.
 - o The individual was about to start a job that is no longer available because of coronavirus.
 - o The individual is now the breadwinner of a household because someone has died from coronavirus.
 - o The individual had to quit because of a circumstance resulting from coronavirus.
 - o The individual’s place of work is closed because of coronavirus.
- Benefits are not available to employees who can telework with pay.
- Employees being paid with sick pay or paid family leave are ineligible for benefits.
- No one week waiting period – federal government will pay the cost for any state that waives the one-week waiting period until December 31, 2020.
- Upon agreement between a state, an additional \$600 per worker per week unemployment compensation payment is available. This additional compensation is 100% covered by the federal government, but sunsets on July 31, 2020.

Work Sharing Benefits

Work sharing allows employers to reduce an employee’s hours, instead of laying him or her off, while allowing the employee to collect unemployment benefits to supplement reduced income.

- States like Wisconsin that have an existing short-term compensation program can get 100% federal reimbursement for their costs related to that program.
- Employers participating in a short-term compensation program will pay half the cost to the state.
- \$100 million in grants are made available for states to develop short-term compensation programs, and the Secretary of Labor will develop model legislation.

Paid Leave Changes

The legislation made a number of changes to the COVID-19 “Phase 2” bill, known as the FFCRA, that relate specifically to paid leave for employees:

- Paid FMLA leave under FFCRA is capped at \$200 per day and \$10k in aggregate.
- Paid sick leave under the FFCRA is capped at \$511 per day and \$5,110 in aggregate; this amount drops to \$200 per day and \$2000 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 but then rehired are eligible for paid FMLA leave.
- Employers can keep money they would have deposited for payroll taxes in anticipation of refunds from the Treasury for paid sick and paid FMLA leave provided to employees, including amounts that would have been refunded.