

### **Summary Legislative Action: CARES Act**

#### **ISSUE:**

On March 25, the Senate passed its version of phase III COVID-19 relief legislation. The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) passed unanimously and is headed to the House of Representatives as soon as tomorrow. Final votes were delayed when an amendment was offered which would have kept unemployment benefits at 100% of the employees' wages. The amendment fell 11 votes short and concern remains that some employees may take advantage of potentially higher pay by leaving the workforce and collecting benefits.

If the House approves the legislation, it is presumed it will have White House support and will be signed by President Trump. The package is the largest stimulus legislation in U.S. history and will be administered across several departments and agencies in an attempt to support an unprecedented number of economic sectors. The Tennessee Chamber, in unison with the U.S. Chamber and many other state chambers were disappointed provisions giving aid to 501(c)(6) organizations were removed from the package. The cut prevents chambers of commerce at all levels from receiving aid to increase support to distressed members.

#### **Document adapted from US Chamber Summary**

*Bill text can be found: [here](#).*

*A section-by-section summary released by the Senate can be found [here](#).*

*A summary of the appropriations provisions released by the Senate can be found [here](#).*

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### **Small Business “Paycheck Protection Program:”**

- New \$349 billion lending program, modeled on existing SBA 7(a) program, with 100% government guarantee (as opposed to 75% guarantee for 7(a) loans).
- Eligibility:
  - Small businesses as defined by SBA size standards (generally up to 500 employees, but up to 1,500 employees depending on the sector and certain sectors are based on revenue).
  - Businesses in the Accommodation and Food Services Sector (NAICS Code 72) are eligible with up to 500 employees at each location.
  - 501 (c)(3) non-profits with fewer than 500 employees.
  - Sole proprietors, the self-employed, and independent contractors.
- Maximum Loans: Generally, monthly payroll costs for 2 ½ months, not to exceed \$10 million. Payroll costs exclude compensation paid to individuals, including the self-employed, above \$100,000 a year.
- Requirements: The employer certifies loan will be used to retain workers, maintain payroll, make mortgage or lease payments, and pay utilities.
- Loan Forgiveness: The borrower shall have a portion of their loan forgiven in the amount equal to their payroll costs (not including costs for compensation above \$100,000 annually), interest payments on mortgages, rent payments, and utility payments between February 15 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%.

### **Additional Small Business Provisions:**

- \$17 billion for SBA to cover six months of payments for businesses with current SBA loans.

### **Changes to SBA’s Economic Injury Disaster Loans (EIDLs):**

- Loans can be made based solely on credit scores.
- Loans available to all non-profits, including 501(c)(6)s.
- Loans below \$200,000 can be approved without a personal guarantee.
- Borrowers can receive \$10,000 cash advances that are forgiven if 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.

### **Loan Programs and Credit Facilities:**

- \$500 billion for loans and loan subsidies and support for Federal Reserve credit facilities.
- Eligibility: Air carriers and other businesses not otherwise receiving adequate relief under other provisions of the bill.
- Breakdown:
  - (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.
    - Via the Federal Reserve, the \$454 billion could be leveraged significantly, potentially providing up to \$4 trillion in financial support.
- Allows Federal Reserve to purchase corporate, state, and municipal bonds.
- Defines “United States businesses” as businesses “that are created or organized in the United States or under the laws of the United States and that have significant operations in and a majority of its employees based in the United States.”
- Restrictions for Loans Under 1, 2, and 3: Loans 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. Requires the Secretary to obtain warrants or senior debt instruments to enable the government to share in any gains. Secretary will not exercise voting power. Secretary can also conduct audits.
- Under 1, 2, or 3, imposes limits on executive compensation for borrowers.
  - 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.

- Restrictions Under Federal Reserve: Loans through the Federal Reserve generally (though with possible exceptions) prevent the borrower from repurchasing stock and dividend payments while the loan is outstanding plus an additional year.
  - The Treasury Secretary would be permitted to waive this requirement if it determines such waiver is necessary to protect the interests of the federal government, although he would be required to testify before Senate Banking and House Financial Services regarding the reasons for the waiver.
- In addition to whatever other loan facilities might be created, the 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.
  - Interest rate will be no more than 2% with no principle or interest paid for the first 6 months.
  - Funds must be used to retain 90% of workforce at full wages and benefits through September 30, 2020 and intends to restore 90% of workforce on hand on February 1, 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.
  - Recipient will not abrogate collective bargaining for term of the loan and two years. Will also remain neutral in union organizing activities.
  - (NOTE: this could be one of many loan facilities created and no borrower is required to use this particular facility.)
- Federal Reserve authorized to create a Main Street Lending Facility for small and mid-size businesses using 13-3 powers (with none of the requirements described above).
- Creates Office of the Special Inspector General for Pandemic Recovery within the Department of Treasury to conduct, supervise, and coordinate audits and investigations of loan and loan guarantees under this section.
- Establishes bipartisan Congressional Oversight Commission.

### **Business Tax Provisions:**

- Employee retention credit for employers subject to closure due to COVID-19 (permits fully refundable 50% tax credit applicable to the employer’s share of payroll taxes on wages up to \$10,000 per employee; widely available with special rules for

small employers).

- 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 ability of companies to recover AMT credits.
- Modification of limitation on business interest (for 2019, 2020, increases 30% limitation to 50%).
- Technical amendment regarding qualified improvement property.
- Temporary exception from excise tax for alcohol used to produce hand sanitizer (for 2020).

### **Pension and Employee Benefit Requirements:**

- Allow the Department of Labor to delay employee benefit related deadlines because of a public health emergency the same as declared national disasters or terroristic military actions.
- Delay 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

### **Payments & Relief for Individuals:**

- Direct payments to taxpayers equal to \$1,200 per individual (\$2,400 joint return) plus \$500 per child.
- Phased out for incomes above \$75,000 (\$150,000 joint).
- 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 Programs:**

- Extend unemployment insurance by 13 weeks and include a four-month enhancement of benefits
- 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:
  - Coronavirus diagnosis or presentation of symptoms and seeking medical attention.
  - A household member with coronavirus diagnosis.
  - Caring for a family member who has been diagnosed.
  - School or daycare closures and the individual is the primary child caregiver.
  - Workplace lock-down.
  - Advise from a health care provider to self-quarantine.
  - The individual was about to start a job that is no longer available because of coronavirus.
  - The individual is now the breadwinner of a household because someone has died from coronavirus.
  - The individual had to quit because of a circumstance resulting from coronavirus.
  - The individual's place of work is closed because of coronavirus.
- These provisions do not apply to an individual who can telework with pay.
- These provisions do not cover someone getting paid sick or paid family leave.
- The unemployment provisions run from January 27 to December 31, 2020.
- Receipt of assistance under the unemployment provisions shall not exceed 39 weeks unless otherwise extended.
- No one week waiting period.
- The federal government will pick up 100% of the cost.
- Upon agreement between a state, an additional \$600 per worker per week unemployment compensation payment is available.
- This compensation is 100% covered by the federal government.
- The additional payment sunsets on July 31.
- The federal government will pick up the cost for any states that waive the one-week waiting period. This sunsets on December 31, 2020.

### **Work Sharing Programs:**

- States that have an existing short-term compensation program can get 100% federal reimbursement for their costs related to that program.
- States that enact a short-term compensation program after enactment will also be eligible for reimbursement.
- States without a law can enter into an agreement with the Department of Labor to begin providing short-term compensation payments.
- 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:**

Changes to the “Phase 2” Bill that was just enacted:

- 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.

### **Health Care Provisions:**

- Repeals the requirement that over-the-counter medical and health items previously deemed to be qualified medical expenses must be prescribed by a physician in order for tax preferred funds to be used when purchasing them.
- Provides \$4.3 trillion to the Centers for Disease Control and Prevention to prevent, prepare for and respond to coronavirus, domestically or internationally
- Delays of DSH reductions.
- Provides \$75 billion to ensure healthcare providers continue to receive the support they need for COVID-19 related expenses and lost revenue.
- Appropriates not less than \$500 million to provide preparedness support to facilities around the country. \$200 million shall be provided to grantees within 30 days
- Allows for sharing of substance use disorder history across providers and in a patient’s electronic health record pursuant to the patient’s consent for purposes of treatment, payment, and health care operations as permitted by the HIPAA. It shall be permissible for a patient’s prior written consent to be given once for all such future uses or disclosures for purposes of treatment, payment, and health care operations, until such time as the patient revokes such consent in writing.
- Requires the coverage under Medicare Part B of COVID-19 vaccine and its administration without any cost-sharing.
- Requires Medicare Part D plans and MA-PD plans to permit eligible individuals enrolled in such a plan to obtain a single fill or refill at the option of the individual a total day supply not to exceed a 90-day supply for a covered Part D drug.
- Expands the Medicare accelerated payment program to 100% for hospitals during

the emergency period and extends the period to 6 months.

- Extends the date on which a series of funding provisions are set to expire from May 22<sup>nd</sup> until November 30, 2020.
- Builds on new coverage requirements for diagnostic and testing of COVID 19 for private plans by broadening the testing that would be covered without cost-sharing beyond FDA-approved testing to include 1) tests provided by clinical labs on an emergency basis (including public health labs); and 2) state-developed labs.
- Requires all comprehensive private health insurance plans reimburse the test provider based on the rate negotiated between the plan and the provider (i.e., the in-network rate). If there is no negotiated rate between the plan and provider (i.e., the provider is out-of-network), the plan would fully reimburse the provider based on the provider's own "cash price" which must be publicly available (listed on a public website). Providers who fail to make their price public could face a civil monetary penalty of up to \$300 per day from the Department of Health and Human Services.
- Ensures that access to testing and a coronavirus vaccine (once one is developed) would be quickly covered without cost-sharing on a permanent basis as a preventive service.
- Includes a safe harbor for High Deductible Health Plans that begin on or before December 31, 2021 which would allow pre-deductible coverage for telehealth and other remote care services without violating federal rules for HDHPs paired with Health Savings Accounts
- Expands grant funding for evidence-based telehealth networks and telehealth technologies (by \$29 million for each fiscal year from 2021 through 2025) and rural health care services (by \$79.5 million for each fiscal year from 2021 through 2025).
- Increase the weighting factor by 20% for COVID-19 patients under the Medicare hospital inpatient prospective system and revise payment rates for durable medical equipment during the emergency period.
- Expand and adjust policies regarding Medicare's coverage of telehealth and home health services.
- Provides \$1.32 billion in supplemental funding to community health centers on the front lines of testing and treating patients for COVID-19.
- Temporarily lifts the Medicare sequester, which reduces payments to providers by 2%, from May 1 through December 31, 2020, boosting payments for hospital, physician, nursing home, home health, and other care.
- Waives the Inpatient Rehabilitation Facility (IRF) 3-hour rule, which requires that a beneficiary be expected to participate in at least 3 hours of intensive rehabilitation at least 5 days per week to be admitted to an IRF. This will provide acute care



hospitals flexibility, during the COVID-19 emergency period, to transfer patients out of their facilities and into alternative care settings in order to prioritize resources.

- Prevents scheduled reductions in Medicare payments: for durable medical equipment during the emergency period and for clinical diagnostic tests furnished to beneficiaries in 2021.
- Ensures that uninsured individuals can receive a COVID-19 test and related service with no cost-sharing in any state Medicaid program that elects to offer such enrollment option.
- Ensures that states are able to receive the Medicaid 6.2% FMAP increase.
- Delays scheduled reductions in Medicaid disproportionate share hospital payments through November 30, 2020.

#### **Student Loans:**

- Requires the Secretary of Education to defer student loan payments, principal, and interest through September 30, 2020 without borrower penalty.
- Suspends reporting to credit agencies.
- Suspends all involuntary collection on defaulted student loans, including wage garnishment and reduction in tax refunds or other government-provided benefits.

#### **Airline Industry Support:**

- Provides \$32 billion in grants to airline industry (air passenger, cargo, and contractors) exclusively to support employee wages and benefits.
- The government may take warrants, debt securities, or other instruments as compensation.

#### **State and Local Aid:**

- Provides \$150 billion to states and local government based on each state's population for the purpose of funding unforeseen expenses related to COVID-19.

#### **Appropriations:**

Provides \$340 billion in new federal spending for Fiscal Year 2020 – 80% of which goes to state and local governments and communities and includes:

- \$20.5 million for the USDA Rural Business Cooperative Service – the legislation provides \$1 billion in lending authority available for the Business and Industry loan guarantee program, which provides financing to business owners that might not be able to qualify for a loan on their own.
- \$80 million for the Food and Drug Administration – the legislation provides

additional funding to support the development of necessary medical countermeasures and vaccines, advance domestic manufacturing for medical products, and monitor medical product supply chains.

- \$1.5 billion for the Economic Development Administration – funding to support economic development grants for states and communities suffering economic injury as a result of the coronavirus.
- \$50 million for the Manufacturing Extension Partnership (MEP) – funding included to be distributed among the 51 MEP centers to help small and medium sized manufacturers recover from the economic impacts of the coronavirus.
- \$6 million for the National Institute of Standards and Technology – funding to support continuity of operations during the coronavirus pandemic, including research and measurement science activities to improve coronavirus testing capabilities and support development of coronavirus diagnostics.
- \$10 million for the National Institute for Innovation in Manufacturing Biopharmaceuticals (NIMBL) – funding for NIMBL to improve national readiness and domestic biopharmaceutical manufacturing capability.
- \$60 million for the National Aeronautical and Space Agency (NASA) – funding to support NASA with resources for operational adjustments associated with mission delays caused by NASA center closures related to the coronavirus pandemic.
- \$2.45 billion for the Defense Industrial Base – additional funding for the Defense Working Capital Funds as the military services work to mitigate the impact of the coronavirus on production lines, supply chain, military depots, and labs. Additionally, funds will go to the Defense Production Act to increase access to materials necessary for national security and recovery from the pandemic.
- \$70 million for the U.S. Army Corps of Engineers – additional funding to support Emergency Operations Centers to ensure the continuous operation of Corps projects across the country related to coronavirus prevention.
- \$562 million for the Small Business Administration (SBA) – additional funding for administrative expenses and program subsidy for the SBA’s Disaster Loans Program.
- \$9.1 million for the Cybersecurity and Infrastructure Agency – funding to address immediate needs for improved interagency coordination for the protection of critical infrastructure worldwide.
- \$45 billion for the Federal Emergency Management Administration (FEMA) – funding to continue FEMA’s entire suite of response and recovery activities and reimbursements provided to states and localities nationwide by the Disaster Relief Fund.
- \$453 million for the Bureau of Indian Affairs – funding for the coronavirus containment and detention facilities and aid to tribal governments.

- \$7.2 million for the Environmental Protection Agency (EPA) – funding to support research efforts regarding coronavirus and associate costs with cleaning and disinfecting Agency facilities.
- \$1 billion for the Indian Health Service – funding to address critical response needs in Indian country including medical equipment and medical supplies to fight the coronavirus.
- \$127 billion for the Public Health and Social Services Emergency Fund – funding included for reimbursement to hospitals and healthcare providers so that they may continue to receive the support they need for coronavirus related expenses and lost revenue.
- \$4.3 billion for the Centers for Disease Control (CDC) – funding for public health preparedness and response which includes direct funding to state and local public health responders as well as State and Local Preparedness Grants.
- \$945.5 million for the National Institute of Health (NIH) – funding for vaccines, therapeutic, and diagnostic research to increase our understanding of the coronavirus and underlying risks.
- \$30.9 billion for the Department of Education – funding for the Education Stabilization Fund and Elementary and Secondary Education in formula funding directly to the states to help schools respond to coronavirus and related school closures.
- \$19.6 billion for the Department of Veterans Affairs (VA) – funding for Medical Services and Medical Facilities to support the increased demand for healthcare services at the VA.
- \$353 million for the United States Agency for International Development (USAID) – funding to bolster the response to coronavirus domestically and abroad including support for the cost of evacuating personnel abroad.
- \$31.1 billion for the Department of Transportation (DOT) – funding included for the Federal Aviation Administration, Airport Improvement Program, Essential Air Service, Federal Highway Administration, Federal Transit Administration Transit Infrastructure Grants, and Amtrak.
- \$900 million for Low Income Home Energy Assistance (LIHEAP) - grants to states to support immediate home energy assistance for low-income households affected by coronavirus.