



**COVID-19 – Legislative Relief Summary and  
Highlights | 03.31.2020**

# | Summary of Legislative Action



# Congressional Action to Date: Phase 1

**H.R. 6074: Coronavirus Preparedness & Response Supplemental Appropriations Act  
Signed into law March 6, 2020**

## **Bill overview:**

- Provides \$8.3 billion in emergency funding in response to the coronavirus outbreak for:
  - The development and manufacture of vaccines and other supplies
  - State, local and tribal public health agencies
  - Loans for affected small businesses
  - Evacuations and emergency preparedness activities
  - Humanitarian assistance for affected countries
- Supplemental appropriations will be provided to the FDA, CDC, NIH, Public Health and Social Services Emergency Fund, Small Business Administration (the “SBA”), Department of State, and USAID
- Designates the supplemental appropriations as emergency spending, therefore exempt from discretionary spending limits



# Congressional Action to Date: Phase 2

## **H.R. 6201: Families First Coronavirus Response Act Signed into law March 18, 2020**

### **Bill Overview:**

- Creates a federal emergency paid leave program administered by the Social Security Administration
- Funding for Department of Labor to administer an emergency paid sick days program
- Allocates funding for the Senior Nutrition Program in the Administration for Community Living
- Provides funds for nutrition assistance, including \$500 million for the Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”) and \$400 million for The Emergency Food Assistance Program (“TEFAP”)
- Includes provisions to ensure Free and Reduced Priced Meals (“FARM”) access to school lunches
- Suspends Supplemental Nutrition Assistance Program (“SNAP”) work requirements
- Makes available to states \$1 billion for emergency grants and interest-free loans to support processing and paying unemployment insurance
- Requires OSHA to issue Emergency Temporary Standard requiring employers in the health care sector to develop exposure control plans to protect workers from COVID-19
- Requires private health insurers to expand coverage of certain COVID-19 related expenses



# Congressional Action to Date: Phase 3

## H.R. 748: Coronavirus Aid, Relief, and Economic Security Act (CARES) Act Signed into law March 27, 2020

### Bill highlights:

- **\$350 billion in loans for small businesses (Paycheck Protection Program)**
  - Loan proceeds can be used to cover payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments incurred from February 15, 2020 through June 30, 2020
  - Loans to small businesses would be forgiven if payrolls are maintained
- **\$500 billion lending funds for industries, states, and localities (Economic Stabilization Loans)**
  - Loans for companies with **more than** 500 employees
  - \$25 billion in loans to airlines
  - \$4 billion to cargo carriers
  - Bans loans to businesses owned by the president, vice president, heads of executive departments, or members of Congress
- **Payroll Tax Credit**
  - Businesses would get a tax credit for keeping idled workers on their payrolls during the COVID-19 pandemic
  - Businesses can get a refund of 50% of what they spend on wages, up to \$5,000 per worker
  - Businesses must prove a 50% loss compared to the same quarter in years past
  - Employers who opt for this tax credit will not be eligible for special SBA loans (to avoid double-dipping)
- **Deferral of Employer Payroll Taxes**
  - Employers and self-employed individuals can defer the 6.2% tax paid on wages that is used to fund social security
  - The deferred tax must be paid over by December 31, 2022 (with half due by December 31, 2021)



# Congressional Action to Date: Phase 3

**H.R. 748: Coronavirus Aid, Relief, and Economic Security Act (CARES) Act**  
**Signed into law March 27, 2020**

## **Bill highlights:**

- **Direct payments to individuals:** \$1,200 per adult, with an additional \$500 per child
  - The full amount will go to individuals who earn >\$75,000/year or \$150,000 for married couples
  - The payments scale down for higher-earning individuals, phasing out completely at \$99,000 for individuals, \$146,500 for heads of households with one child, and \$198,000 for joint filers without children
- **\$24 Billion in Relief for Farmers**
- **Unemployment benefits increased \$600/week for four months**
- **Commercial Property Improvement Tax Deductions:**
  - Businesses will be able to immediately deduct from their taxable income expenditures for commercial property improvements
  - This write-off was intended to be included in the 2017 tax reform
  - Businesses can file amended returns from prior years to make use of this deduction



# **| Programs and Support for Equipment Manufacturers**



# Paycheck Protection Program

## Overview:

- Provides \$350 billion for expedited individual loans in amounts of up to \$10 million through approved lenders that are guaranteed 100% by the US government.
- The loan proceeds can be used to cover payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments incurred from February 15, 2020 through June 30, 2020.
- The maximum amount of a loan equals 2.5 months of regular payroll expenses (subject to a cap of a \$100,000 of annual salary per employee).
- **Benefits for Borrowers:** Borrowers are eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, 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. Borrower and lender fees are waived. Collateral and personal guarantee requirements are waived. The maximum interest rate is 4% and loan maturity can be as long as 10 years. No prepayment fees will be charged. Loan payments can be deferred for 6-12 months.
- **Benefits for Lenders:** Allows loans to be sold on the secondary market. Provides the regulatory capital risk weight of loans made under this program, and temporary relief from troubled debt restructuring (“TDR”) disclosures for loans that are deferred under this program. Lender compensation for servicing the loan is 5% for loans of not more than \$350,000; 3% for loans of more than \$350,000 and less than \$2,000,000; and 1% for loans of not less than \$2,000,000.





# Paycheck Protection Program

## **Eligible businesses include:**

- Businesses with fewer than 500 employees;
- Small businesses as defined the SBA Size Standards at 13 C.F.R. 121.201;
- 501(c)(3) nonprofits, 501(c)(19) veteran's organization, and Tribal business concern described in section 31(b)(2)(C) of the Small Business Act with not more than 500 employees;
- Hotels, motels, and restaurants with fewer than 500 employees at each physical location without regard to affiliation under 13 C.F.R. 121.103;
- Franchises with fewer than 500 employees without regard to affiliation under 13 C.F.R. 121.103; and
- Sole proprietors and independent contractors.



# Paycheck Protection Program

## Counting Employees and Affiliation Rules:

- The SBA counts all individuals employed on a full-time, part-time, or other basis, so the 500 employee cap includes employees obtained from a temporary employee agency, professional employee organization or leasing arrangements. Volunteers are not considered employees.
- The method for determining size includes the following principles:
- The average number of employees (including the employees of its domestic and foreign affiliates) for each of the pay periods for the preceding completed 12 calendar months.
- Part-time and temporary employees are counted the same as full-time employees.
- If a new company/venture, the average number of employees is used for each of the pay periods during which it has been in business.
- The average number of employees of a business with affiliates is calculated by adding the average number of employees of the business with the average number of employees of each affiliate. If the business has acquired an affiliate or been acquired as an affiliate during the applicable period of measurement or before the date on which it self-certified as small, the employees counted in determining size status include the employees of the acquired or acquiring concern. Furthermore, this aggregation applies for the entire period of measurement, not just the period after the affiliation arose.
- The employees of a former affiliate are not counted if affiliation ceased before the date used for determining size. This exclusion of employees of a former affiliate applies during the entire period of measurement, rather than only for the period after which affiliation ceased. However, if a business has sold a segregable division to another business concern during the applicable period of measurement or before the date on which it self-certified as small, the employees used in determining size status will continue to include the employees of the division that was sold.



# Paycheck Protection Program

## **Application Process:**

Current lenders through the SBA 7(a) Loan Program are authorized to make determinations on borrower eligibility and creditworthiness without going through the SBA.

## **Timeline:**

The SBA is required to issue implementing regulations within 15 days and the U.S. Dept. of Treasury will be approving new lenders.



# Economic Stabilization Loans – Federal Reserve Program and Facilities

## **Program Overview:**

\$454 billion loan program to provide liquidity to financial institutions that supports lending to eligible businesses, states and municipalities.

Law identifies a program for mid-sized businesses of between 500 and 10,000 employees, but states that the Secretary may establish other programs and facilities, including a Main Street Lending Program.

## **Highlights of Mid-Sized Business Program:**

- The annual interest rate is not higher than 2%.
- The Secretary of the Treasury (the “Secretary”) can determine that there shall be no principal or interest for first 6 months or longer.
- The loan is not forgivable.
- The business must certify that the loan is necessary to support operations, must use the loan proceeds to retain 90% of workforce with full compensation and benefits until September 30, 2020, restore no less than 90% of the workforce that existed as of February 1, 2020 and restore all compensation and benefits within 4 months after termination of the emergency declaration related to COVID-19.



# Economic Stabilization Loans – Federal Reserve Program and Facilities

## **Highlights of Mid-Sized Business Program:**

- The business must be created or organized in the U.S. with significant operations and employees in the U.S.
- The business cannot be a debtor in a bankruptcy proceeding.
- There are restrictions on stock buybacks, dividends/capital distributions, and executive compensation although they can be waived if the Secretary determines it is in the government interest and testifies before Congress.
- The business cannot offshore or outsource jobs for two years after the loan is repaid.



# Deferral of Employer Payroll Taxes

Beginning March 27, 2020, employers may defer payment of their share (6.2% of employee wages) of the Social Security tax they otherwise generally must deposit to the U.S. Treasury electronically either semi-weekly or monthly through the end of 2020.

## **Highlights:**

- The deferral is only with respect to the 6.2% social security portion of the payroll taxes known as Federal Insurance Contributions Act (“FICA”) taxes.
- It will not impact the 1.45% Medicare tax each employer is required to pay with respect to its employees.
- It also is separate from withheld amounts covering the employee’s portion of the FICA taxes and is separate from ordinary income tax withholding.
- The payroll tax deferral period applies to any wages paid from March 27 through December 31, 2020.
- The deferred amounts will have to be paid back to Treasury in two installments. The first installment (50% of the amount deferred) is due December 31, 2021. The second installment (the remaining amount deferred) is due December 31, 2022.
- The benefit is also made available to self-employed individuals.
- Estimated tax payments otherwise required during the March 27 through December 31, 2020 period will exclude these deferred payroll tax amounts.
- That said, the Internal Revenue Service (“IRS”) has automatically postponed the due date of quarterly estimated corporate tax payments otherwise due April 15 to July 15, 2020.

**NOTE: Employers who received SBA loans that were forgiven under the CARES Act are NOT eligible for this payroll tax deferral.**



# Relaxed Net Operating Loss (NOL) Rules

*Maximizes ability of losses to offset income and carryback to receive refund*

For 2018 through 2020, corporations will be able to carry back net operating losses (“NOLs”) arising in 2018 through 2020 to the five preceding tax years (prior to this change, no NOL carrybacks were allowed since 2018), including those years for which the corporate tax rate was 35% (as it was pre-2018, not its current 21%).

Further, corporations will be allowed to use NOLs incurred in those years to fully offset their taxable income (removing the 80% limitation that has been in place since 2018).

## **Highlights:**

- Companies with losses in 2020 (but that paid taxes in prior years) will have to wait until they file their 2020 tax return (after their 2020 tax year has closed) to see the benefit.
- In the meantime, companies should be able to adjust the amount of their estimated tax installment payments to account for any decrease in income as compared to 2019 (and corporations with their first quarterly estimated tax payment for their 2020 tax year due April 15 have an automatic postponement of the due date to July 15, 2020).
- Fiscal year taxpayers may have more of an ability to seek a quick refund if they can establish that they overpaid their estimated tax by at least 10% of their now-revised expectation.
- Companies with losses in 2018 and 2019 should be better positioned to carry those losses back to offset income in a prior year (either by filing an amended return for 2018 or filing their 2019 return/application for tentative refund to carry back to a prior year).
- Note that this could re-open an otherwise closed tax year (the normal statute of limitations for assessment is three years from the filing of a return), possibly giving the IRS some ability to assess additional tax in the carryback year (limited to the amount of the refund).



# Modified Limitation on Business Interest

*More of a company's debt service payments can be deducted*

In 2019 and 2020, corporations will be allowed to deduct more of their borrowing costs (up to 50% of their earnings, instead of only up to 30%).

In addition, companies will be allowed to elect to use their 2019 earnings for purposes of calculating their 2020 business interest deduction limit.

## Highlights:

- In 2019 and 2020, corporations can deduct an amount of business interest expense equal to up to 50% of their earnings.
- Before this change, a corporation was only allowed to deduct the interest expense it pays on its loans to the extent the amount did not exceed 30% of the company's "adjusted taxable income" (comparable to earnings before interest, taxes, depreciation and amortization (EBITDA)).
- The CARES Act will increase the limit to 50% of the company's adjusted taxable income just for 2019 and 2020.
- However, it will also allow corporations to elect to use their 2019 adjusted taxable income for 2020, ensuring that even though their earnings may be harmed by the COVID-19 outbreak, their otherwise increased business interest deduction will not be.
- The interaction of this rule with the NOL rule described above may allow a company to juice up its NOL carryback, as the larger interest deduction combined with anticipated losses in 2020 could result in a larger loss in 2020 that could then be carried as far back as 2015.
- By retroactively loosening the business interest expense deduction cap, taxpayers may be able to seek a quick refund for 2019.
- A special rule for partnerships applies the increased limitation only to partners in partnerships for 2020 (not 2019).





# Modified Refundable Minimum Tax Credit

*Corporations with minimum tax credits may be able to accelerate their refunds*

The CARES Act allows a corporation with eligible minimum tax credits to accelerate its refunds. The Tax Cuts and Jobs Act (“TCJA”) repealed the alternative minimum tax (“AMT”) for corporations. Those with AMT credits were allowed to carry them forward and take a refundable credit pursuant to a set schedule that went through 2022.

The CARES Act modifies the schedule so that corporations can take the entire amount of the refundable credit in 2018 and 2019 (or choose to take all of it in 2018). Taxpayers may file an application for a tentative refund with the IRS, enabling them to access the cash within 90 days.

## Highlights:

- Before the change, any AMT credits that a company generated pre-TCJA and otherwise had available to carry forward were refundable in 2018 through 2022.
- The refund amount was limited in each year to (essentially) 50% of the remainder.
- For example, a \$20 million AMT credit generated pre-TCJA might generate a \$10 million refund in 2018, a \$5 million refund in 2019, a \$2.5 million refund in 2020, a \$1.25 million refund in 2021 and a \$1.25 million refund in 2022.
- The CARES Act modifies the refundable credit so that corporations will take the entire amount in 2018 and 2019.
- So, in the example above, a \$10 million refund in 2018 and a \$10 million refund in 2019.
- Further, corporations that prefer to can elect to take the entire amount in 2018.



# Employee Retention Payroll Credit

*Cash benefit of up to \$5,000 per retained employee (only available to certain employers)*

Certain employers may receive a refundable payroll tax credit of as much as \$5,000 per employee for wages and health benefits paid from March 13 through December 31, 2020. If the aggregate credit amount exceeds the employer's payroll tax liability, then any excess shall be refundable.

Employers that qualify either had their business fully or partially suspended by a COVID-19-related government order or experienced a significant decline in gross receipts. The credit amount is equal to 50% of the qualified wages of an employee, but such wages cannot be more than \$10,000 per employee.

## Highlights:

- A significant decline in gross receipts occurs when receipts in a quarter in 2020 are less than half of the receipts of the same quarter in 2019.
- As soon as the gross receipts recover to greater than 80% (2020 quarter as compared to 2019 quarter), the benefit goes away (if the employer only qualified because of gross receipts and not because of a government order).
- Qualified wages vary depending on whether the employer has more than 100 full-time employees or not.
  - For those with more than 100 full-time employees, qualified wages are those paid when employees are not providing services (*i.e.*, furloughed).
  - For those with 100 or fewer full-time employees, essentially all wages qualify for the credit (so that the employees can still be working).
- An aggregation rule applies to treat multiple entities as a single employer for this purpose.
- If the employer received an SBA Paycheck Protection Program (CARES Act Section 1102) loan (or a Work Opportunity Credit under Internal Revenue Code ("IRC") Section 51 or an IRC Section 45S credit for paid family and medical leave under the Families First Coronavirus Response Act), then it likely is not eligible for the employee retention credit.
- This change was estimated to cost about \$54.6 billion.



# | Support for Employees



# Direct Employee Support

## **Direct payments to individuals:**

- \$1,200 per adult, with an additional \$500 per child.
- The full amount will go to individuals who earn >\$75,000/year or \$150,000 for married couples.
- The payments scale down for higher-earning individuals, phasing out completely at \$99,000 for individuals, \$146,500 for heads of households with one child, and \$198,000 for joint filers without children.

## **Unemployment Benefits increased to \$600/week for four months**

**COVID-19 Testing Coverage:** Private insurance plans, Medicare Advantage, TRICARE, the Veterans Health Administration (“VHA”), the Indian Health Service, and Medicaid and the Children’s Health Insurance Program (“CHIP”) are required to cover diagnostic testing at no cost to patients, including a provider visit to receive the testing. Medicare Part B already covers the cost of testing; the Act would require the program to cover beneficiary cost-sharing for the provider visit.

## **Nutrition and Food Assistance:**

- The Families First Act provides \$500 million for WIC and \$400 million for TEFAP.
- The Act also allows waivers to requirements for school meal programs in the case that a school is closed for at least 5 consecutive school days for schools attended by an “eligible child” who would otherwise receive a free or reduced-price lunch.
- The Act expands several food assistance benefits, including the SNAP. It notably suspends the work requirements for SNAP and allows states to request waivers to provide certain emergency SNAP benefits.



# Direct Employee Support

## Eviction and Foreclosure Protection:

- On March 18, 2020, the Federal Housing Finance Agency (“FHFA”) directed Fannie Mae and Freddie Mac (the “Enterprises”) to suspend foreclosures and evictions for at least 60 days. This applies to homeowners with Enterprise-backed single-family mortgages.
  - The Enterprises are also providing payment forbearance to borrowers, allowing for mortgage payments to be suspended for 12 months due to hardship caused by COVID-19.
  - Borrowers must reach out to their mortgage servicers as soon as possible to work out a payment plan.
- On March 23, 2020, the FHFA announced that the Enterprises will offer multifamily property owners mortgage forbearance with the condition that they suspend all evictions for renters unable to pay rent due to the impact of COVID-19

## Tax Filing Deadline Extension:

- Federal Income Tax April 15, 2020 filing deadline extended to July 15, 2020.
- Taxpayers can automatically take advantage of the deadline and do not have to file a request for an extension.
- Penalties and interest will not apply, even if the taxpayer owes money.
- Not all States have extended their filing deadline for as long a period (*e.g.*, Virginia’s state tax return filing deadline is currently June 1, 2020).

## 60-day Forbearance for Federally-Held Student Loans:

- Borrowers provided an automatic student loan deferral of 6 months; this will allow borrowers to stop making payments without being marked delinquent.
- To learn who their lender is, borrowers can call the Federal Student Aid Information Center at 1-800-433-3243 or visit [StudentAid.gov/login](https://StudentAid.gov/login).
- Once the suspension lifts payments must be resumed.
- This does not apply to privately-held student loans, though some private lenders may also offer flexibility during this time.



# | Additional Resources



- **AEM COVID-19 Information & Resource Center:**  
(<https://www.aem.org/covid-19-information-and-resources/>)
- **Small Business Administration: Small Business Guidance & Loan Resources**  
(<https://www.sba.gov/page/coronavirus-covid-19-small-business-guidance-loan-resources>)
- **Internal Revenue Service: Coronavirus Tax Relief**  
(<https://www.irs.gov/coronavirus>)





**Association of Equipment Manufacturers**

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