CARES ACT: Key Provisions
March 26, 2020

Lending Support

Loans to Eligible Businesses: The U.S. Treasury will provide $500 billion in loans and loan guarantees. To be eligible for this program, a company must not otherwise receive adequate economic relief from other provisions of the bill.

- All direct lending must meet the following criteria:
  - Alternative financing is not reasonably available.
  - The loan is sufficiently secured or is made at an interest rate that reflects the risk.
  - The duration is as short as possible, with a maximum term of five years.
  - Borrowers and their affiliates cannot engage in stock buybacks (unless contractually obligated).
  - Borrowers cannot pay dividends until the loan is no longer outstanding or one year after the date of the loan.
  - Borrowers are prohibited from reducing their workforce below March 24, 2020 levels until Sept. 30, 2020.
  - The company must be domiciled in the United States, with a predominantly U.S. employee base.
  - For businesses critical to national security, their operations must be jeopardized by COVID-19-related losses.
  - Until one year after the loan is outstanding, recipients of any direct lending are barred from increasing compensation for an officer or employee whose total compensation exceeds $425,000.
    - Limits on severance packages for these employees are imposed.
    - Executives earning more than $3 million in 2019 compensation may not earn from the $3 million plus 50% of the excess over $3 million.
    - Of the $500 billion, $46 billion is set aside for direct lending to specific industries.
      - $25 billion for passenger airlines
      - $4 billion for cargo air carriers
- $17 billion for businesses important to maintaining national security
- Via the Federal Reserve, $454 billion could be leveraged to provide potentially up to $4 trillion in financial support.

More information about the role the Federal Reserve is playing to respond to the COVID-19 pandemic is available here.

**Small Business Loans:** $350 billion would be provided for small business loans administered by the Small Business Administration under the new Paycheck Protection Program. This would provide loans of up to $10 million per company; loan size would be dependent on a company’s payroll. For more information about SBA’s emergency loan programs, click here (CARES Act loan programs won’t be included until enactment).

Small businesses as defined by the SBA are generally up to 500 employees, but can be up to 1,500 employees depending on the sector; certain sectors are based on revenue.

- The loans are available to companies with no more than 500 employees or that meet the applicable size standard for the industry as provided by the SBA if higher.
- Loans can be forgiven. The amount of the forgiveness is equal to the amounts spent by the borrower during the eight weeks from loan origination on payroll costs (up to $100,000 in wages), mortgage interest, rent or utilities (subject to certain restrictions).
  - The forgiveness amount is reduced by layoffs (though employer may rehire workers to mitigate this reduction) or pay reductions in excess of 25%. Amounts forgiven are not treated as taxable income to the borrower.
  - Loan amounts can only be used for payroll, mortgages, rent, insurance premiums and utility payments. Companies could not apply for both an SBA disaster loan and a loan under this program. This program is only in place through Dec. 31, 2020.
  - For eligibility purposes, the provision requires lenders to determine whether a business was in operation on Feb. 15, 2020, and has employees, instead of repayment ability.
Borrowers are not permitted to receive both an SBA economic injury disaster loan and a loan under this new program, unless the disaster loan is unrelated to COVID-19.

Borrowers must certify that the loan is necessary because of COVID-19, and that the proceeds will be used for payroll and specified other uses.

Fees for borrowers participating in the program are waived.

Maximum term is 10 years, and maximum interest rate is capped at 4%.

**Tax Relief**

**Net Operating Loss Carryback:** This provision retroactively allows companies to use tax losses to offset income from prior years. Losses from 2018, 2019 and 2020 may be carried back five years, allowing companies to amend prior-year returns. This provision applies to both corporations and pass-through businesses. Restoring carryback for this period of time would raise current cash for businesses without permanently reducing federal revenue.

**Increase in Allowable Interest Deductions:** The maximum amount of business interest deductions is increased for 2019 and 2020 from 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) to 50% of EBITDA.

**Payroll Tax Deferral:** This provision allows an employer to defer its share of 2020 payroll tax, paying these amounts over the next two years.

**Payment of Tax Refunds:** Tax reform imposed a one-time tax on earnings held overseas, which could be paid over eight years. The IRS has taken the position that companies cannot receive refunds until the eight-year period is completed. The bill overturns the IRS position.

**Employee Retention Tax Credit:** This provision creates a new, temporary refundable payroll tax credit for companies affected by COVID-19 (i.e., with operations suspensions or a significant decline in gross receipts). The maximum credit is $10,000 per employee. The credit amount is based on wages, including health benefits. For businesses with more than 100 employees, only wages paid during a period that services are not provided due to COVID-19 are counted. For companies with fewer than 100 employees, all wages are counted. This credit is for wages paid through the end of 2020.
**Corporate Alternative Minimum Tax Credits:** This provision allows companies to accelerate recovery of corporate AMT credits.

**Qualified Improvement Property:** This provision corrects an error in tax reform, allowing companies to write off certain facilities improvements more quickly.

**Employee Support**

**Paid Leave:** This provision sets a cap on maximum payments employers will be required to pay for new emergency paid leave requirements. The provision also allows employers to receive an advance tax credit on paid leave rather than having to be reimbursed on the back end. The provision also ensures that federal contractors who are unable to work will continue to be paid.

**Unemployment Insurance:** This provision provides additional federal funds for workers who are unemployed or underemployed.

**Short-Time Work Compensation:** (Shared Work/Work Share Programs): The bill provides 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. Specifically, 100% of the costs states incur in providing this short-time compensation through Dec. 31, 2020 would be covered. Nearly 30 states currently have programs in operation. This also provides support for states interested in implementing their short-time work compensation program as a result of the COVID-19 pandemic and want to seek reimbursement after the fact. AEM staff actively worked on confirming this provision, citing equipment manufacturers success with these types of programs such as that administered by the state of Washington - [https://www.esd.wa.gov/SharedWork](https://www.esd.wa.gov/SharedWork).

The U.S. Dept. of Labor has a variety of resources available (and links to state-by-state resources) for AEM members available [here](https://www.esd.wa.gov/SharedWork).

**Individual Relief**

**Individual Rebate Checks:** This provision provides checks of up to $1,200 to single individuals and $2,400 to married couples (increased by $500 per child). Check
amounts begin to reduce as income exceeds a threshold amount ($75,000 for individuals/$150,000 for married filers) and are completely eliminated once income reaches $99,000 for individuals/$198,000 for joint filers with no children). Income amounts are based on the taxpayer’s 2018 return.

**Distributions from Retirement Plans:** This provision waives the 10% penalty for distributions from certain retirement plans. The maximum allowable distribution is $100,000. Individuals can recontribute these amounts to their plans over a period of up to three years. This provision is applicable to individuals diagnosed with COVID-19, whose spouse or dependents have been diagnosed or who experience adverse financial consequences from the virus.

**Sector Support**

**Agriculture Sector**

- $14 billion in borrowing authority for the Commodity Credit Corporation (CCC). AEM joined a letter earlier this week to Congressional leadership urging an expansion and replenishment of USDA's borrowing authority under the CCC. This will enable another round of Market Facilitation Payments to help with the cash flow of farmers and ranchers as they deal with challenges presented by the COVID-19 pandemic and ensure they have access to the equipment and related inputs they need.
- $20.5 million to allow for the Rural Business Cooperative Service to make $1 billion in lending authority available for loan guarantee program
- $100 million in grants for the ReConnect Program to provide rural broadband (includes cost of construction, improvement, or acquisition of facilities and equipment needed to provide service in eligible rural areas)
- $25 million for the Distance Learning, Telemedicine, and Broadband program
- $9.5 billion to assist specialty crop producers; producers who support local foods systems such as farmers markets, schools, and restaurants; and livestock producers, including dairy
- $25.06 billion for food and nutrition programs like CNP, SNAP, and the Emergency Food Assistance Program
Economic Development, Manufacturing Sector Support

- $1.5 billion for economic development grants to states

Energy and Water Sector Support

- $50 million to the Army Corps of Engineers to ensure that operation of Corps projects across the country continue such as U.S. locks and dams, canals, and a wide range of public works programs vital to the transportation of goods such as agricultural commodities.

Transportation Sector Support

- $10 billion for the Airport Improvement Program (AIP) to maintain operations at U.S. airports and shore up other available funding for capital projects and programs, including facility construction projects, that are already underway. AEM joined a letter last week to Congressional leadership urging this additional authorization for airports to mitigate the adverse effects of COVID-19 has had on the aviation industry.
- $56 million for Essential Air Service (EAS)
- $25 billion for Transit Infrastructure Grants
- $1.018 billion for Amtrak
- $6 million for DOT administrative expenses
- $5 million for DOT Inspector General