

Summary of Revised “CARES” Act Released by Majority Leader McConnell on Sunday, March 22, 2020

NOTE:

The bill is subject to further changes as negotiations continue.

The U.S. Chamber of Commerce will revise this document as it continues to review the draft bill and any subsequent changes. Summary as of 4:30 PM Sunday, March 22, 2020.

Small Business “Paycheck Protection Program”

- New \$349 billion SBA lending program, modeled on existing 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.
 - Non-profits with fewer than 500 employees who are 501(c)3s and do not receive Medicaid funding.
 - Sole proprietors, the self-employed, and independent contractors.
- Regulatory Streamlining: SBA’s standard “no credit elsewhere” test is waived and non SBA-lenders approved by Treasury and SBA can provide loans.
- 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 that they will maintain their average full-time equivalent employment, with incentives to re-hire if employees have been furloughed.
- 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%.

- Borrowers who receive Small Business Interruption Loans are not eligible to receive SBA Economic Injury Disaster Loans (EIDLs).

Loan Program and Credit Facility:

- \$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) \$50 billion in loans and loan guarantees for air carriers.
 - (2) \$8 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) \$425 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 \$425 billion could be leveraged significantly, potentially providing up to \$4 trillion in financial support.
- Allows Federal Reserve to purchase corporate, state and municipal bonds.
- 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, prevents stock repurchases and requires borrowers to maintain existing employment to the extent practical.
- Authorizes the Secretary to require warrants, stock options, etc. to enable the government to share in any gains.
- Imposes limits on executive compensation for borrowers.
- Restrictions Under Federal Reserve: Loans through the Federal Reserve generally (though with possible exceptions) prevent the borrower from repurchasing stock while the loan is outstanding.

Business Tax Provisions

- Delay of payment of employer payroll taxes (defer payment of the employer share of the Social Security tax over following 2 years).
- 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.

Some provisions of previous drafts have been deleted, including:

- Delay of estimated tax payments for corporations (postpone estimated tax payments due after the date of enactment until October 15, 2020).
- Technical amendment to permit credits or refunds for §965 overpayments.
- Technical correction to restore limit on downward attribution of stock ownership in applying constructive ownership rules.

Pension Filings:

- Allow the Departments of Labor, Treasury and the Pension Benefit Guarantee Corporation to delay employee benefit related filings, disclosures and premium payments the same as declared national disasters or terroristic military actions and waive any penalties or excise taxes.

Banking Relief:

- Regulatory relief from accounting standards for loan modifications related to COVID-19 made by banks.
- Temporary relief from CECL standards.

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 and loans, up to \$100,000, to individuals from tax-favored retirement plans.

Pandemic Unemployment Assistance:

- 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.

Emergency Increase in Unemployment Benefits:

- 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 June 30.
- 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.

Limitations on Paid Leave under the Families First Coronavirus Response Act (FFCRA):

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 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.

Improving Access to Health Care:

- 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.
- 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.
- 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
- Allows HSAs to be used to fund costs associated with participation in a direct primary care arrangement where a consumer pays a regular fee to have access to a primary care doctor who does not accept insurance.
- 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 15 percent 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.

Appropriations:

Provides \$242 billion in additional federal appropriations, including:

- \$75 billion for hospitals;
- \$20 billion for veterans health care;
- \$11 billion for vaccines, therapeutics, diagnostics, and other preparedness needs;
- \$4.5 billion for the Centers for Disease Control;

- \$1.7 billion for the Strategic National Stockpile;
- \$12 billion for America's military;
- \$10 billion for block grants to states;
- \$12 billion for K-12 education;
- \$6 billion for higher education;
- \$5 billion for FEMA disaster relief fund;
- \$10 billion for airports;
- \$1 billion for Amtrak; and
- \$20 billion for public transportation emergency relief.

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