



## Summary of Key Provisions in the Coronavirus Aid, Relief, and Economic Security (CARES) Act

March 25, 2020

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

- Provides \$350 billion to support loans through a new Paycheck Protection Program for:
  - Small employers with 500 employees or *fewer*, as well as those that meet the current Small Business Administration (SBA) size standards;
  - Restaurant and hospitality businesses with fewer than 500 employees per location;
  - Self-employed individuals and “gig economy” individuals; and
  - Certain nonprofits, including 501(c)(3) organizations and 501(c)(19) veteran organizations, and tribal business concerns with under 500 employees.
- The size of the loans would equal 250 percent of an employer’s average monthly payroll. The maximum loan amount would be \$10 million.
- Covered payroll costs include salary, wages and payment of cash tips (up to an annual rate of pay of \$100,000); employee group health care benefits, including insurance premiums; retirement contributions; and covered leave.
- Cost of participation in the program would be reduced for both borrowers and lenders by providing fee waivers, an automatic deferment of payments for one year, and no prepayment penalties.
- Loans would be available immediately through more than 800 existing SBA-certified lenders, including banks, credit unions and other financial institutions, and SBA would be required to streamline the process to bring additional lenders into the program.
- The Treasury Secretary would be authorized to expedite the addition of new lenders and make further enhancements to quickly expedite delivery of capital to small employers.
- Increases the maximum loan amount for SBA Express loans from \$350,000 to \$1 million. Express loans provide borrowers with revolving lines of credit for working capital purposes.

### **Loan Program and Credit Facility**

- \$500 billion for loans and loan subsidies and support for Federal Reserve credit facilities. This means both direct and indirect lending.
- 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. (lower)
  - (2) \$4 billion in loans and loan guarantees for cargo air carriers. (lower)

- (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. (higher)
  - Via the Federal Reserve, the \$454 billion will be leveraged to provide up to \$4.54 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, as of March 24 through Sept. 30; contains restrictions on executive compensation; no dividends.
- Conditions on loans made under (4)—all waivable by the Secretary if necessary to protect the interests of the Treasury:
  - Business may not repurchase its shares during the pendency of the loan + 12 months after, unless already obligated by contract;
  - Business may not pay dividends on common stock during the pendency of the loan + 12 months after;
  - Executive pay limitation—during pendency of loan + 12 months after:
    - Comp. defined as salary plus bonuses, stock awards, and other financial compensation.
    - Anyone who made \$425K or more during 2019 may not receive a raise, nor receive severance that is more than two times the amount of their maximum compensation.
    - Union contracts are exempt from this requirement.
    - For executives making more than \$3M in total comp during 2019:
      - Comp capped at \$3M + ½ of their total comp that exceeded \$3M during 2019
- Specific loan facility under (4) for small and mid-sized businesses:
  - The Secretary shall endeavor to seek the implementation of a program or facility that provides financing to banks and other lenders to make loans to eligible businesses, including nonprofit organizations, with between 500 and 10,000 employees.
  - Annualized interest no more than 2%/year.
  - No payments on principal nor interest due in first 6 months.
  - Funds must be used to retain 90 percent of business' workforce through Sept. 30, 2020, including benefits.
  - Loan recipient must intend to restore not less than 90 percent of its workforce that existed as of Feb. 1, 2020 no later than 4 months after the public health emergency has ended.
  - Must be a US company (there are several requirements around this).
  - Not in bankruptcy.
  - Cannot pay dividends or repurchase shares.
  - Cannot outsource or offshore jobs during the loan + 2 years after the loan.
  - Cannot abrogate an existing collective bargaining agreement.
  - Must remain neutral in any union drive during the term of the loan.

- The establishment of this facility (above) shall not limit the establishment of a Main Street Lending Program or any other lending program for small and midsize businesses.
- Authorizes the Secretary to require warrants, stock options, etc. to enable the government to share in any gains.
- Gives the Secretary discretion to set terms consistent with risk and current comparable yields
- No loan forgiveness available under this facility.
- 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.
- Real-time public reporting of Treasury transactions under the Act, including terms of loans, investments or other assistance to corporations.
- Prohibition on businesses controlled by the President, Vice President, Members of Congress, and heads of Executive Departments getting loans or investments from Treasury programs.
- Creation of Treasury Department Special Inspector General for Pandemic Recovery to provide oversight of Treasury loans and investments and a Pandemic Response Accountability Committee to protect taxpayer dollars.
- Creation of a Congressional Oversight Commission to enhance legislative oversight of pandemic response.

## **Unemployment Insurance Provisions**

### ***Sections 2102-2106:***

The CARES Act includes assistance for unemployment as a result of COVID-19 for a broad swath of individuals. To be covered, an individual must not be eligible for regular compensation or extended benefits under state or federal law and cannot be receiving paid sick leave or other paid leave benefits.

- Covered individuals are otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work for a wide range of COVID-19 related reasons (including illness, caring for a family member, school closures, inability to reach the place of employment, quarantines, place of employment is closed, or had to quit their job, among other reasons).
- Coverage is for weeks of unemployment, partial unemployment, or inability to work due to COVID-19 beginning on or after January 27 and ending on or before December 31, 2020.
- Benefit duration is generally limited to 39 weeks.
- Benefit amount is tied to the state's regular unemployment compensation rate plus \$600 (the Federal Pandemic Unemployment Compensation). States cannot reduce their regular benefit amount as it was in effect under state law as of January 1, 2020.
- Under the agreements laid out in the bill, the federal government will:
  - Reimburse states for the Federal Pandemic Unemployment Compensation (the \$600) plus any additional administrative expenses.
  - Provide full temporary full funding for the first week of compensable regular unemployment (due to the requirement states waive the one week waiting period).

### ***Section 2107 – Pandemic Emergency Unemployment Compensation***

- For individuals who've exhausted regular state and federal UC in the benefit year and are able, available and actively seeking work, a 100% federal funded benefit kicks in.
  - The individuals receive the state's regular benefit amount plus the \$600. But in this case, the federal government pays the whole thing.
  - This would be for people who lost their jobs prior to COVID and exhausted benefits or for people who were impacted by COVID and exhausted the 39 weeks if this crisis stretches out for a very prolonged period of time.
  - Provides states flexibility to waive the work requirements due to COVID-19 illness, quarantine, or movement restrictions.

### ***Short-time Compensation Programs***

- Establishes grants for short-time compensation programs and provides federal technical assistance.

### **Business Tax Provisions**

The bill includes several tax provisions that the NRF has worked for to provide retailers with additional liquidity and help offset the cost of retaining employees during this period of economic decline.

- Correction of an error in the 2017 Tax Act on improvements made to stores and restaurants, allowing retailers to amend returns and get refunds for taxes overpaid in 2018 and 2019.
- Allow businesses to carryback losses from 2018, 2019 and 2020 to previous 5 years and get refunds against taxes paid in profitable years.
- Delay payroll taxes due for 2020 – pay 50% in 2021 and 50% in 2022.
- Provide a 50% refundable payroll tax credit for employers whose businesses have been fully or partially suspended due to government limitation on commerce or whose businesses have experienced a 50% decline in gross receipts.
- Allow greater deductibility of interest expenses incurred.

### **Healthcare**

- Required coverage without cost sharing of coronavirus services and vaccine by all health insurance and group health plans.
- Safe Harbor for Telehealth Services – promotes telehealth services by providing a safe harbor to protect against loss of high deductible plan status.
- Enables the use of an HSA or FSA for the purchase of over-the-counter medicines and supplies without a prescription (ACA prohibition).
- Health and Human Service Extenders: these are the Medicare and Medicaid extenders originally set to expire on May 22. These provisions have now been extended until November 30.

## **Labor Provisions**

### ***Union-related Provisions***

- Under the loan facility for small and mid-sized businesses (500-10,000 employees), loan recipients:
  - Cannot abrogate an existing collective bargaining agreement for term of the loan plus two years after repayment.
  - Must remain neutral in any union drive during the term of the loan.

### ***Leave Provisions***

- There are a few leave-related provisions in the CARES Act, primarily technical corrections to the COVID-II leave mandates for employers with *fewer* than 500 employees.
  - Strengthens limitations on the benefit caps for the COVID II paid leave mandates.
  - Provides DOL with investigative authority.

## **Borrowing Authority for the United States Postal Service**

- Provides \$10 billion of borrowing authority for the USPS to respond to effects of coronavirus.
  - Treasury Department sets the terms of the loan and has the ability to only provide the loan as needed in the event that costs or revenues continue to suffer as a result of coronavirus.
  - Must be used for operating expenses.
  - Cannot be used to pay any outstanding debt.
- USPS shall prioritize the delivery of postal products for medical and emergency purposes.
- USPS may establish temporary delivery points, as deemed necessary, in order to protect USPS employees and individuals receiving deliveries.

## **Price-Gouging Protection**

The CARES Act in final form does not have price-gouging protections included in it. It is expected that a price-gouging provision could be enacted at a later time, possibly when Congress takes up COVID-19 phase 4 legislation.