

## **President Trump Signs Into Law the Coronavirus Aid, Relief, and Economic Security (CARES) Act**

Article By: Katie P. Reed and Monica P. Schulteis  
Sunday, March 29, 2020

On March 27, 2020, President Trump signed into law the CARES Act (Senate Amendment to H.R. 748) following House passage via voice vote earlier in the day. The Senate unanimously cleared the package on Wednesday, March 25. Passage in both chambers resulted from intense negotiations among Congressional leaders and White House officials, led by Secretary Mnuchin.

The nearly \$2 trillion relief package is the boldest action to date in response to the COVID-19 pandemic and is the single largest relief bill in U.S. history. As detailed herein, the CARES Act includes: direct financial assistance to Americans; aid to small businesses and employees; efforts to stabilize the economy and keep people employed; and additional support for health care professionals, patients, and hospitals.

The CARES Act, also known as “Phase III,” follows a \$104 billion response package signed into law on March 18 (H.R. 6201, “Phase II”), which aimed to expand benefits for workers and provide nutritional assistance to families, and a smaller \$8 billion package (H.R. 6074, “Phase I”) earlier this month to boost funding for medical treatments and testing.

Further, lawmakers are already constructing a potential fourth stimulus package, and there is even talk of a possible fifth package.

The following is an overview of the CARES Act.

The CARES Act has two divisions:

Division A (Authorizing Language and Mandatory Spending)

Division B (Emergency Discretionary Appropriations)

Toplines:

- \$250 billion set aside for direct payments to individuals and families (with most American adults receiving \$1,200 and most children \$500).
- \$377 billion in small business loans.
- \$260 billion in unemployment insurance benefits.
- \$500 billion in loans for distressed companies.
- \$150 billion to assist states and localities.
- \$150 billion for hospitals to invest in equipment and infrastructure.

### **DIVISION A**

#### **BUSINESS PROVISIONS**

Government Loans for Struggling Industries & Related Transparency Measures (Title IV)

- Defines “Eligible Business” as a U.S. business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act.
- Provides \$500 billion to Treasury’s Exchange Stabilization Fund to provide loans, loan guarantees and other investments.
  - Direct lending is allocated as follows:
    - \$25 billion for passenger air carriers and related businesses,

- \$4 billion for cargo air carriers, and
  - \$17 billion for businesses important to maintaining national security.
- \$454 billion is available for Federal Reserve loans, loan guarantees, and investments to eligible businesses, states, and municipalities.
- Direct lending to airlines and national security business must meet several criteria, including:
  - Alternative financing is not reasonably available to business;
  - Loan is sufficiently secured or made at an interest rate that reflects the risk of the loan, and if possible, not less than an interest rate based on market conditions for comparable obligations before the COVID-19 outbreak;
  - Loan shall not exceed five years;
  - No stock buybacks or dividends for the length of any loan provided by the Treasury for one year after the loan was paid;
  - A borrower must retain 90% of workers until Sept. 30, 2020;
  - A borrower recipient must certify that the company is U.S.-domiciled and its employees are predominantly located in the U.S.; and
  - Loan cannot be forgiven.
- For direct lending to airlines and national security businesses, restrictions on any increases to executive compensation include
  - Employees making over \$3 million in 2019 would be prohibited from earning more than \$3 million plus 50% of the amount of their 2019 compensation that exceeded \$3 million.
  - Prohibiting recipients from increasing the compensation of any officer whose total compensation exceeds \$425,000 until one year after the loan is paid.
- Protects collective bargaining agreements.
- Requires real-time public disclosure of Treasury transactions in the loan program, including terms of loans, investments or other assistance to corporations.
- Prohibits businesses controlled by the president, vice president, members of Congress, and heads of executive departments from getting loans or investments from the program.
- Creates a Treasury Department Special Inspector General for Pandemic Recovery to provide oversight of the program.
- Creates a Congressional Oversight Commission, with subpoena power, to enhance legislative oversight.
- In addition to the transparency measures in the Treasury loan program, the bill creates a Pandemic Response Accountability Committee through the Council of Inspectors General on Integrity and Efficiency to enhance government-wide protection and oversight.

#### Other Aviation Industry Provisions (Title IV)

- \$25 billion in grants for the passenger air carriers.
- \$4 billion in grants for the cargo aviation industry.
- \$3 billion in grants for aviation industry contractors.
- Prohibitions on stock buybacks and dividends for the entire life of the grant plus one year.
- Restrictions on any increases to executive compensation.
  - Pay above \$425,000 is frozen for two years.
  - Employees making over \$3 million in 2019 would be prohibited from earning more than \$3 million plus 50% of the amount of their 2019 compensation that exceeded \$3 million.
- Collective bargaining agreements are protected.
- Health care benefits are expanded for airline contract workers.
- Repeals federal excise taxes collected in relation to commercial aviation.

#### Payroll Tax Credit (Title II, Subtitle C)

- Provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the crisis. The credit is available to employers whose (1) operations were fully or partially suspended due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when

compared to the same quarter in the prior year. Credit is based on qualified wages paid to the employees.

- Employers and self-employed individuals can defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees.

#### Other Business Provisions (Title II, Subtitle C)

- Provides that net operating losses (NOL) arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years and temporarily removes the taxable income limitation to allow an NOL to fully offset income.
- Fixes cost recovery for investments in Qualified Improvement Properties, which will allow businesses that made these investments in 2018 and 2019 to receive tax refunds now.
- Modifies the loss limitation applicable to pass-through businesses and sole proprietors so they can utilize excess business losses and access cash flow.
- Accelerates the ability for companies to recover Alternative Minimum Tax credits, permitting companies to claim a refund now.
- Temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns by increasing the 30% limitation to 50% taxable income (with adjustments) for 2019 and 2020.
- Enables businesses (particularly retail establishments, restaurants, and hotels) to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. This provision corrects an error in the Tax Cuts and Jobs Act.
- Prohibits foreclosures on all federally-backed mortgage loans for a 60-day period beginning on March 18, 2020. (Title IV)
- Landlords are prohibited for 120 days from taking legal action to recover possession of a rental property for nonpayment of rent or other fees or charges. The provision applies to any property where the landlord's mortgage is insured, guaranteed, supplemented, or protected by federal agencies or programs. (Title IV)

#### Small Business Assistance (Title I)

- Includes \$350 billion in loan forgiveness grants to small businesses and non-profits to maintain existing workforce and pay for expenses like rent, mortgage, and utilities.
- Size of the loans would equal 250% of an employer's average monthly payroll. The maximum loan amount would be \$10 million.
- Loans would be available immediately through more than 800 existing SBA-certified lenders, including banks, credit unions, and other financial institutions.
- Defines eligibility for loans as a small business, 501(c)(3) organization, a 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, or the applicable size standard for the industry as provided by SBA, if higher.
- Sole-proprietors, independent contractors, and other self-employed individuals are eligible for loans.
- Includes \$17 billion to cover six months of payments for small businesses with existing Small Business Administrative (SBA) loans.
- Requires SBA to pay all principal, interest, and fees on all existing SBA loan products for six months.
- Includes \$265 million for grants to SBA resource partners, including Small Business Development Centers and Women's Business Centers, to offer counseling, training, and related assistance to small businesses.
- Expands eligibility for entities suffering economic harm due to COVID-19 to access SBA's Economic Injury Disaster Loans.

#### Paid Leave (Title III, Subtitle C)

- Creates a limitation stating an employer (with less than 500 employees) shall not be required to pay more than \$511 per day and \$5,100 in the aggregate for sick leave or more than \$200 per day and \$2,000 in the aggregate to care for a quarantined individual or child for each employee.<sup>1</sup>
- Through September 30, 2020, authorizes federal agencies to pay contractors whose employees are required to provide services at government facilities and are denied access to those facilities due to COVID-19.

## UNEMPLOYMENT

### Unemployment Insurance (Title II, Subtitle A)

- Creates a temporary Pandemic Unemployment Assistance program through December 31, 2020. This program will provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others).
- Provides payment to states to reimburse nonprofit organizations, government agencies, and Indian tribes for half of the costs they incur through December 31, 2020 to pay for unemployment benefits.
- Includes an additional \$600 per week payment, on top of state benefit levels, to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months, through July 31. (Laid off workers currently qualify for up to 26 weeks of unemployment insurance. Benefit levels vary by state with most replacing about half of an individual's wages during that time.)
- Provides an additional 13 weeks of federally-funded unemployment insurance benefits beyond the normal 26 weeks through December 31, 2020 to help those who remain unemployed after state unemployment benefits are no longer available. The amount provided would be the same as the regular benefit paid by the state.
- 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. Under the bill, the federal government would pay 100% of a state's short-time compensation benefits for up to 26 weeks of benefits.
- Not all states have short-time compensation programs, but they can choose to develop one in order to take advantage of the federal assistance. If they choose to establish a program after the passage of this bill, the federal government would pay up to 50% of the state's benefit costs.
- Provides states with temporary, limited flexibility to hire temporary staff, re-hire former staff, or take other steps to quickly process unemployment claims.
- Includes funding for Labor Department Inspector General oversight of the program.

### Cash to Americans through Direct Payments and Retirement Provisions

#### Direct Payments to American Workers, (Title II, Subtitle B)

- Cash payments to working class are \$1,200 (\$2,400 married), with an additional \$500 cash payment available per child.
- Full payment is available for Americans making up to \$75,000 (individuals) and \$150,000 (married). This applies even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits.
- The value decreases and then phases out completely for those making over the full payment income cap. Rebate amount is reduced by \$5 for each \$100 that a taxpayer's income exceeds the phase-out threshold. Complete phase-out occurs with incomes exceeding \$99,000 for single filers and \$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children.

#### Retirement Accounts (Title II, Subtitle B)

- For 2020, those that are subject to mandatory minimum distributions from their qualified retirement accounts would be able to keep their funds invested without penalty.

- Individuals are allowed in 2020 to take distributions from their qualified retirement accounts, such as 401(k) plans and IRAs, of up to \$100,000 without having to pay the 10% penalty on early distributions if the distribution is related to adverse financial consequences as a result of contracting COVID-19, or related factors.

## HEALTH CARE

### “Marshall Plan” for Health Care Systems (Title III, Subtitles A and D)

- Clarifies that the Strategic National Stockpile can stockpile medical supplies, such as testing swabs.
- Provides permanent liability protection for manufacturers of respirators.
- Requires FDA to prioritize and expedite the review of drug applications and inspections to prevent a drug shortage.
- Requires drug manufacturers to submit more information when there is an interruption in supply and to maintain contingency plans to ensure a backup supply of products.
- During a public health emergency, clarifies that medical device manufacturers are required to submit information about a device shortage upon request of FDA.
- Clarifies all testing for COVID-19 is to be covered by private insurance plans (without cost-sharing).
- Provides free coverage of a COVID-19 vaccine (without cost-sharing) within 15 days.
- Provides \$1.32 billion in supplemental funding to community health centers for testing and treating of COVID-19.
- Reauthorizes grant programs that promote the use of telehealth technologies, including the expansion of telehealth access, insurance coverage, rural telehealth access, Medicare reimbursement for services, and others.
- Reauthorizes rural health care services programs.
- Allows nurse practitioners and physicians’ assistants to prescribe home health services.
- Supports the healthcare workforce, including reauthorization of health professions workforce programs, education and training related to geriatrics, and nursing workforce development.
- Removes barriers to allow the Biomedical Advanced Research and Development Authority (BARDA) to partner with private sector on research and development and to allow BARDA to expedite diagnostics and vaccines.

### Medicare and Medicaid Provisions (Title III)

- Allows for accelerated Medicare payments.
- Creates a 20 percent add-on payment for inpatient treatment.
- Increases payments for the work component of physician fees in areas where labor cost is determined to be lower than the national average through December 1, 2020.
- Extends funding for quality measure endorsement input, and selection increased to \$20 million for each of the years 2020 and 2021.
- Extends funding for beneficiary outreach and counseling related to low-income programs through November 30, 2020.
- Increases Medicare Access to Post-Acute Care.
- Delays scheduled reductions in Medicaid disproportionate share hospital payments through November 30, 2020.
- Extends the Medicaid Community Mental Health Services demonstration that provides coordinated care to patients with mental health and substance use disorders, through November 30, 2020.

## EDUCATION

### Education (Title III, Subtitle B)

- Provides emergency support to local school systems and higher education institutions to support ongoing functionality during the crisis.
- Authorizes the Department of Education to defer payments on current HBCU Capital Financing loans during the national emergency period.

#### Student Loans (Title II, Subtitle B; Title III, Subtitle B)

- Through September 30, 2020, requires the Secretary to defer student loan payments, principal and interest, without penalty to the borrower for all federally owned loans. Provides federal loan protections and Pell grant protections for students who ceased enrollment as a result of COVID-19.
- Provides tax relief to encourage employers to implement student loan repayment programs. This excludes up to \$5,250 in qualifying student loan repayments paid by the employer on behalf of the employee from income for income tax purposes.

### OTHER

#### State and Local Expenditures Fund (Title V)

- Creates a \$150 billion fund, with a small-state minimum of \$1.5 billion.
- Assists states, tribes, and local governments that must pay for new expenses related to COVID-19 response.
- Tribes are allotted \$8 billion.

#### Postal Service (Title VI)

- Provides \$10 billion of borrowing authority for the US Postal Service to respond to effects of coronavirus while preserving the authority of the Treasury to set the terms of the loan.

### DIVISION B

The emergency supplemental appropriations portion of the agreement contains \$330 billion in new funding to address the pandemic. This does not include the mandatory or authorizing provisions of the act (as summarized above). It includes the following:

- \$100 billion for a new program to provide grants to hospitals, public entities, not-for-profit entities, and Medicare and Medicaid enrolled suppliers and institutional providers to cover unreimbursed health care related expenses or lost revenues attributable to the public health emergency resulting from the coronavirus.
- \$16 billion to replenish the Strategic National Stockpile supplies of pharmaceuticals, personal protective equipment, and other medical supplies, which are distributed to state and local health agencies, hospitals and other healthcare entities facing shortages during emergencies.
- \$11 billion to support research and development of vaccines, therapeutics, and diagnostics to prevent or treat the effects of coronavirus.
- \$1 billion for the Defense Production Act to support domestic supply chains, enabling industry to quickly increase production of personal protective equipment, ventilators, and other medical supplies.
- \$4.3 billion to the Centers for Disease Control for federal, state, and local public health agencies to respond to COVID-19, including for the purchase of personal protective equipment, laboratory testing to detect positive cases, infection control and mitigation at the local level to prevent the spread of the virus; and other public health preparedness and response activities.
- \$185 million through the Health Resources and Services Administration to support rural critical access hospitals, rural tribal health and telehealth programs.

- \$200 million for the Centers for Medicare and Medicaid Services (CMS) for priorities such as assisting nursing homes with infection control and support states' efforts to prevent the spread of coronavirus in nursing homes.
- \$45 billion for the Federal Emergency Management Agency (FEMA) Disaster Relief Fund, which is for state, local, tribal, and territorial governments, as well as private non-profit organizations providing critical services. Reimbursable activities may include medical response, personal protective equipment, National Guard deployment, coordination of logistics, safety measures, and community services. This is more than double the current available funding.
- \$30.75 billion for grants to provide emergency support to local school systems and higher education institutions to support ongoing functionality during the crisis.
- \$25 billion for transit systems for health and safety measures but also to ensure access to employment and other essential services.
- \$10 billion in grants for airports.
- \$1 billion to recapitalize Amtrak.
- \$3.5 billion in additional funding for Child Care Development Block Grants to provide childcare assistance to healthcare sector employees, emergency responders, sanitation workers, and other essential workers.
- \$25 billion for food assistance, including nearly \$16 billion for the Supplemental Nutrition Assistance Program (SNAP) and nearly \$9 billion for child nutrition.
- \$7 billion for affordable housing and homelessness assistance programs.
- \$6.5 billion for Community Development Block Grants, the Economic Development Administration, and the Manufacturing Extension Partnership to help mitigate local economic crises and rebuild impacted industries like tourism and manufacturing supply chains.
- \$400 million in election assistance for states, including to increase the ability to vote by mail, expand early voting and online registration, and increase the safety of voting in-person through additional voting facilities and more poll-workers.
- \$2 billion to strengthen response capacity for tribal governments.

<sup>1</sup> As a reminder, the Families First Coronavirus Response Act (P.L. 116-127) enacted in mid-March requires employers with less than 500 employees to grant full time employees 80 hours of sick leave if needed to deal with virus-related health issues (with part-time employees eligible for the typical number of hours they work). Employees are also eligible for up to twelve weeks of paid leave (at two-thirds the individual's earnings) if needed to care for a family member or small child due to the virus.

©2020 Greenberg Traurig, LLP. All rights reserved. [www.gtlaw.com](http://www.gtlaw.com)

### ***About this Author***

#### **Katie P. Reed** - Assistant Director

Katie is an Assistant Director in the Government Law and Policy Practice of Greenberg Traurig's Washington, D.C. office. She represents clients before the House and Senate on issues related to agriculture, energy and environment, tobacco, and appropriations and provides legislative research and support on a broad range of matters...

#### **Monica P. Schulteis** -Director

Monica Pahl Schulteis is a Director in the firm's Government Law & Policy Practice, representing clients on a wide range of issues including health care, education, postal, energy, government oversight, homeland security, appropriations, small business, technology and taxation. Monica's bipartisan approach allows her to effectively advocate for her clients in both chambers of Congress as well as within the Administration. She has worked closely with many key policymakers in several House and Senate Congressional committees, including: House Energy and Commerce; House Education and the Workforce and Senate Health, Education, Labor, and Pensions Committees; House Ways and Means and Senate Finance Committee, House and Senate Appropriations Committees; Oversight and Government Reform and Senate Homeland Security and Government Affairs Committees; and House and Senate Small Business Committees...

Source URL: <https://www.natlawreview.com/article/president-trump-signs-law-coronavirus-aid-relief-and-economic-security-cares-act>