



Overview of The Coronavirus Aid, Relief and Economic Security (CARES) Act

Coronavirus Response Legislation

Congress just completed the third round of legislation in response to the COVID-19 pandemic and resulting economic crisis. These include an [\\$8.3 billion supplemental appropriation \(round 1\)](#) signed into law March 6, as well as the [Families First Coronavirus Response Act \(round 2\)](#), which President Trump signed into law March 18. The third round, the [Coronavirus Aid, Relief, and Economic Security Act – CARES Act \(round 3\)](#), was signed into law March 27. The CARES Act is a \$2 trillion package that includes significant expansions in small business lending, unemployment insurance, tax relief to individuals and employers, health care measures, \$500 billion in economic stabilization funds and other measures aimed at combating the COVID-19 health care and economic crisis.

CARES Act Summary

Many have called the CARES Act a stimulus bill, but probably the best way to characterize the effort would be to call it a survival bill. Americans are seeking ways to weather the storm and financial assistance for employers and employees is needed to bridge the financial gap created by the virus. Once the economy returns to normal (whatever normal will look like in the future), we may then truly need a stimulus bill to boost spending to speed up recovery. That being said, the best way to summarize the government's effort to aid survival is by discussing the bill's provisions in three buckets.

- Business Loan Programs
- Business Tax Changes
- Individual and Employee Assistance

While there are obviously other provisions in the legislation, this document will focus on those most likely to impact the hospitality industry and small businesses in the near term. **Please Note: Additional regulations are needed to fully understand how to comply with the provisions included in the CARES ACT, and the information below is based on the plain reading of the bill text.**

Business Loan Programs

Overview: The CARES Act essentially makes three loan programs available for impacted businesses. The first and only forgivable loan program is called the Paycheck Protection Program. The second program, the Economic Injury Disaster Loans (EIDL) Program, will open up \$10,000 grants (for specified purposes) to businesses with fewer than 500 employees and the EIDL program will allow these same businesses to take low interest loans of up to \$2M. If you are

applying for an EIDL today, there is potential for you to transfer those funds into the Paycheck Protection Program if the funds are used for the same purpose. The final loan program enacted by the CARES Act is the Economic Stabilization and Industry Support Loan. Borrowers could use equity instruments, like stock, to secure funds. The government will collect interest on these loans, and if mid-size businesses (500-10,000 employees) take advantage of these loans, they will need to agree to remain neutral on any union-organizing event, among other provisions, through the life of the loan. Additional regulations will be needed to fully understand how to both apply for these loans, and to understand how to comply with the requirements needed to allow a business to qualify for loan forgiveness where available.

Business Loan Program #1 - Paycheck Protection Program

A covered business includes, as a result of COVID-19, businesses that have:

- Supply chain disruptions
 - Quantity and lead time – number of and delays in shipments
 - Quality
 - Technology – compromised payment network
- Staffing challenges
- Decrease in customer sales
- Business closure
- Program overview available here: <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>

Eligible Covered Business

- Businesses with fewer than 500 employees per location
- SBA affiliation rules are waived with respect to accommodation, food and beverage businesses, franchises and businesses currently receiving [SBIC](#) financial assistance

Updates to the SBA 7(a) Loan Program

- Loan application is currently available online:
<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Application-3-30-2020-v3.pdf>
- The amount appropriated in this legislation for commitments for 7(a) general business loans is \$349 billion
- The size of the loans would equal 250 percent of a borrower's average monthly payroll with a maximum of \$10 Million
 - As mentioned in the "eligible covered business" section, businesses with multiple hiring entities under one control group may be able to apply for assistance for each individual hiring entity
- Increases the maximum loan for an SBA Express Loan from \$350,000 to \$1 million through June 30, 2020
- The bill defines the covered loan period as beginning on February 15, 2020 and ending on June 30, 2020
- Allowable uses for covered loans:
 - Payroll costs;
 - Costs related to continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
 - Employee salaries;
 - Mortgage payments;
 - Rent and utilities; and
 - Interest on any other debt obligations that were incurred before the covered period

- An eligible recipient who had previously received an economic injury disaster loan (EIDL) this year can refinance their existing loan and receive a 7(a) covered loan
- The legislation waives both borrower and lender fees
- No collateral or personal guarantees is required
- Increases the government guarantee of 7(a) loans to 100 percent through December 31, 2020, at which point guarantee percentages will return to 75 percent for loans exceeding \$150,000 and 85 percent for loans equal to or less than \$150,000
- Allows complete deferment of 7(a) loan payments for not less than six months and not more than one year. It requires SBA to disseminate guidance to lenders on this deferment process within 30 days
- Additional information available here: <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>

Loan Forgiveness

- Total forgiveness will be allowed if the borrower maintains the same average number of FTE's per month as:
 - The average monthly employees in the period between February 15, 2019 and ending on June 30, 2019; or
 - The average monthly employees in the period between January 1, 2020 and ending on February 29, 2020
 - It appears the borrower can choose the period they'd like to use, and then just calculate the average monthly number
 - The borrower calculates the average number using the average number of FTE's for each pay period of the month
 - Essentially, the amount of the loan eligible for forgiveness will be reduced proportionally by the number of employees laid off during this period relative to the borrower's prior employment levels
- Total forgiveness will be allowed if – in addition to staff level requirements – employers maintain total wages and salary for employees making less than \$100,000 at 75% of the wages and salary paid to the employee for the most recent full quarter during which the employee was employed before the covered period.
 - To be clear, for the purposes of determining forgiveness amounts, payroll costs will exclude the compensation of any employees in excess of \$100,000 in annualized compensation and qualified sick leave and qualified family leave wages enacted by *the Families First Coronavirus Response Act*
 - Forgiveness amounts will not be included in taxable income
- Any reductions in excess of 25% will reduce the full forgiveness about by the amount proportional to the additional reduction
- For any tipped employee, the language states borrowers “may receive forgiveness for additional wages paid to those employees.”
 - Without additional language from regulators, we could read this to say that full loan forgiveness will be given for any amount paid to satisfy the tip credit portion of the employer's minimum wage obligation – the tip credit language is referenced in the bill language
 - We'll want to understand if any additional wages will be eligible for forgiveness to help tipped employees get back to previous income levels.
- **What period of time will the staffing and wage and salary calculations be made?**
 - According to 1106 (a)(3), the term “covered period” means the 8-week period beginning on date of the origination of a covered loan
- **Circumstance Related to Staffing Levels between Feb. 15 and April 25 (estimate)**

- The amount of loan forgiveness will be determined without regard to a reduction in the number of full-time equivalent employees of an eligible recipient or a reduction in the salary of 1 or more employees of the eligible recipient, as applicable, during the period beginning on February 15, 2020 and ending on the date that is 30 days after the date of enactment – April 25th?
- Amounts forgiven under this section shall be considered canceled indebtedness by a lender authorized under section 7(a)
- An eligible recipient seeking loan forgiveness needs to submit to the lender:
 - Documentation verifying the number of full-time employees on payroll and pay rates;
 - Documentation verifying payments on covered mortgage obligations and utility payments; and
 - Certification that the documentation is valid

Business Loan Program #2 – Emergency Economic Injury Disaster Loans (EIDL)

- **Eligible entities include:**
 - Startup, cooperative, employee-owned, small business, nonprofit, or independent contractor with less than 500 employees.
 - This program does not include the allowance for accommodation and food and beverage franchisees to exceed the size standards.
- The application is currently available online - <https://covid19relief.sba.gov/#/>
- The covered period for an EIDL loan is from January 31 – December 31, 2020
- For SBA EIDL loans made in response to COVID-19 before December 31, 2020, the SBA shall waive:
 - Any personal guarantee on advances and loans below \$200,000
 - The requirement that an applicant needs to have been in business for the 1-year period before the disaster, and
 - The credit elsewhere requirement.
- A lender may approve an applicant based solely on the applicant's credit score and does not require the applicant to submit a tax return
- An eligible entity that applies for an emergency loan may request an advance (grant), not to exceed \$10,000, within 3 days after the SBA receives the application
- Applicants will not be required to repay any amounts of the advance provided, even if subsequently denied a SBA disaster loan
- An eligible entity may use the loan for:
 - Providing paid sick leave to employees unable to work due to COVID-19
 - Maintaining payroll to retain employees
 - Meeting increased costs to obtain materials unavailable due to interrupted supply chains;
 - Making rent or mortgage payments; and
 - Repaying obligations that cannot be met due to revenue losses
- If an applicant that receives an advance under this program transfers into, or is approved for, the 7(a) loan program, the advance amount shall be reduced from the loan forgiveness amount for a loan for payroll costs made under section 7(a).

Emergency Rulemaking Authority

The bill requires that SBA enact these programs with regulations no later than 15 days after the Act is signed into law

How can you prepare now?

Businesses should prepare by assembling the documents outlined below and reviewing and completing the applications.

- **Familiarize yourself with [the application process](#) for an Emergency Economic Injury Disaster Loan**
- **Familiarize yourself with [the application](#) for the Paycheck Protection Program**
- **Understand if your bank is a current SBA 7(a) lender and if not find one that is a SBA lender and begin the 7(a) application process as this process will likely be the avenue for funds for the Paycheck Protection Program**
- **Gather the following documents and information:**
 - Business tax returns (previous three years)
 - Business certificate or license
 - Business leases
 - Payroll information for the last 12 months

Business Loan Program #3 – Economic Stabilization and Industry Support Loans

- These loans are a complex federal funding facility that is meant to keep businesses solvent in addition to the tax changes and the payroll support of the Paycheck Protection Plan.
- Congress is using a relationship between Treasury and the independent Federal Reserve to make the funds available that has the net effect of leveraging the amount available to easily exceed the roughly \$500B allotted in this bill.
- Funds Available: \$454B is available for assistance to impacted industries (outside of airlines), which can be leveraged when used in combination with the Federal Reserve.
- Form of Assistance: Because the government has authority to make “loans, loan guarantees and other investments,” the government (in combination with the Fed) can offer companies this funding for the \$454B in exchange for warrants, stock options, stock or other kinds of equity instruments that would allow the government to benefit from any upside (similar to TARP). If it is a loan, the government will receive interest income.
- Eligibility: To be eligible for this kind of access to liquidity, the state, municipality or business needs to show that it is solvent, it can repay the instrument, the requested amount is tied to its losses based on coronavirus and that other forms of affordable liquidity is not available (as defined by prior prevailing rates).
- Broad Eligibility: The Act ensures that the use of this authority cannot be on terms limited to just one company. Instead the terms and ability to borrow must be available on an industry basis or covering a larger swath of the economy. Taken in combination with other terms, the cost of this liquidity source will be stable for an entire entity, with minor individual company overlays (if at all) based on some particular ability to repay assessments.
- Terms: The Fed will price assistance on a risk-adjusted basis and at terms that match pre-crisis rates and terms, to the greatest extent possible.
 - Loans must have a duration of 5 years or less.
 - Stock buybacks are not permitted unless prior contracts require it. No dividends may be paid until the loan is repaid or one year from the date of the loan.
 - Borrowers must maintain their March 24th employment levels until Sept 30th and must retain no less than 90% of its employees until Sept 30th.
 - Unlike the ‘Paycheck Protection Act’- these loans are not going to be forgiven.
 - Treasury is going to issue the guidelines for eligibility and repayment terms in 10 days.
- Special Mid-size business provisions: Treasury and the Fed are going to collaborate on a special Fed program for mid-sized businesses (between 500 – 10,000 employees) that will have special terms relating to
 - 90% employee retention, with full compensation and benefits through Sept 30th.

- A prohibition on off-shoring jobs for the term of the loan + 24 months
- The maintenance of existing union agreements for the term of the loan + 24 months, and
- The business must “remain neutral” on any attempts of employees to unionize for the term of the loan
- Banks are going to be the main distribution channel for these loans. No one will need to go directly to the Fed or Treasury to obtain the support. Like the Paycheck Protection Plan, the banks would earn a fee income for taking the loan paperwork and offering approvals based on a delegated authority. In turn, they will immediately sell the instruments back to the Fed or Treasury (depending on the entity).

Business Tax Changes

Overview: The final bucket of major provisions focuses on business tax changes, including credits for retaining employees. Businesses will be able to delay the payment of payroll taxes and then spread the payment out over two years if needed. Impacted employers will be able to carryback losses from this year or the previous two years for up to five years with no income limitation. Interest expenses will be allowed to be deducted at 50% instead of the previous rate of 30%. And finally, we have the correction to the Qualified Improvement Property language, so you should be able to depreciate 100% of the costs of eligible improvements since September 27th, 2017.

Employee Retention Tax Credit for Employers Subject to Closure due to COVID-19

- The provision provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 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.
- The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above.
- For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.
- The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee.
- The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.
- **If an eligible employer receives a covered loan under the Paycheck Protection Program, such employer shall not be eligible for the credit under this section.**

Delay of payment of employer payroll taxes

- This provision allows employers and self-employed individuals to 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.
- Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages.
- The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

Modifications for net operating losses

- This provision relaxes the limitations on a company's use of losses.
- Net operating losses (NOL) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year.
- This provision provides that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years.
- The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income. These changes will allow companies to utilize losses and amend prior year returns, which will provide critical cash flow and liquidity during the COVID-19 emergency.

Modification of limitation on losses for taxpayers other than corporations

- The provision modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they can utilize excess business losses and access critical cash flow to maintain operations and payroll for their employees.

Modification of credit for prior year minimum tax liability of corporations

- The corporate alternative minimum tax (AMT) was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. The provision accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.

Modification of limitation on business interest

- This provision temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50 percent of taxable income (with adjustments) for 2019 and 2020.
- As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.

Technical amendment regarding qualified improvement property

- The provision enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building.
- The provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies' access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.
- This has been a top priority for the restaurant industry since the error was made in the Tax Cuts and Jobs Act.

Individual and Employee Assistance

Overview: Employers have made a number of different decisions related to their workforce. There have been layoffs, furloughs, reduced hours and in some cases hiring and rehiring. This section highlights a few new programs that individuals will have available to them should their employment and/or financial situation be impacted by COVID-19. In particular, notice the new unemployment insurance benefits, the rebate checks to individuals under a certain income, changes to retirement plan distributions, educational assistance and finally, corrections to the previously-passed paid leave provisions.

Pandemic Unemployment Assistance

- This section creates a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency.
- This program may provide up to 39 weeks of UI to people not otherwise eligible for regular unemployment compensation (including the self-employed and those who have exhausted their regular and extended benefits)

Emergency Increase in Unemployment Compensation Benefits

- This section provides an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.
- This increased benefit will be fully funded by the federal government and available from the date a state enters into an agreement until July 31, 2020.
- The state must agree not to decrease the generosity of their existing unemployment benefits.
 - **This section will be important to pay attention to.** Anyone (need clarification here) claiming unemployment benefits due to involuntary separation will receive this additional, weekly payment.
 - **The weekly benefit amount varies by state.** The national average is \$364 per week. Due to archaic UI technology at the state level, the \$600 benefit will be added on top of the state's weekly benefit amount for every beneficiary to ease distribution.
 - As an example, an individual receiving \$364 from the state per week, will now receive \$964 per week or roughly \$24 per hour for an FTE.
 - **Given the staffing requirements in the Paycheck Protection Program, borrowers will want to monitor the potential for past employees to remain unemployed in order to take advantage of the larger per hour payments allowed by the unemployment insurance program through July 31, 2020.**

Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week

- The federal government will pay the cost of the first week of unemployment benefits through December 31, 2020 for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.

Pandemic Emergency Unemployment Compensation

- The bill will provide an additional 13 weeks of unemployment benefits through December 31, 2020 to help those who remain unemployed after weeks of state unemployment benefits are no longer available.

Temporary Financing of Short-Time Compensation Payments in States with Programs in Law

- The bill will 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. This provision would pay 100 percent of the costs' states incur in providing this short-time compensation through December 31, 2020.

2020 recovery rebates for individuals

- All U.S. residents with adjusted gross income up to \$75,000 (\$150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for the full \$1,200 (\$2,400 married) rebate.
- In addition, they are eligible for an additional \$500 per child. This is true 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.
- For the vast majority of Americans, no action on their part will be required in order to receive a rebate check as IRS will use a taxpayer's 2019 tax return if filed, or in the alternative their 2018 return.
- This includes many low-income individuals who file a tax return in order to take advantage of the refundable Earned Income Tax Credit and Child Tax Credit.
- The rebate amount is reduced by \$5 for each \$100 that a taxpayer's income exceeds the phase-out threshold.
- The amount is completely phased-out for single filers with incomes exceeding \$99,000, \$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children.

Special rules for use of retirement funds

- Consistent with previous disaster-related relief, the provision waives the 10-percent early withdrawal penalty for distributions up to \$100,000 from qualified retirement accounts for coronavirus-related purposes made on or after January 1, 2020.
- In addition, income attributable to such distributions would be subject to tax over three years, and the taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions.
- Further, the provision provides flexibility for loans from certain retirement plans for coronavirus -related relief.
- A coronavirus-related distribution is a one made to an individual: (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.

Exclusion for certain employer payments of student loans

- This provision enables employers to provide a student loan repayment benefit to employees on a tax-free basis.
- Under the provision, an employer may contribute up to \$5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income.
- The \$5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law.
- The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

Limitation on Paid Leave

- The bill will create a limitation on the expansion of FMLA due to COVID-19 stating an employer shall not be required to pay more than \$200 per day and \$10,000 in the aggregate for each employee over the 12-week leave period.

Emergency Paid Sick Leave Limitation

- The bill will create a limitation stating an employer shall not be required to pay more than \$511 per day and \$5,110 in the aggregate for paid sick leave related to an individual's COVID-19 leave or more than \$200 per day and \$2,000 in the aggregate to care for a quarantined individual or child for each employee.

Paid Leave for Rehired Employees

- Allows an employee who was laid off by an employer on March 1, 2020, or later to have access to paid family and medical leave in certain instances if they are rehired by the employer.
- Employee would have had to work for the employer at least 30 days prior to being laid off.

Disclaimer: *The foregoing information is not intended as legal or investment advice. Recipients should consult their own legal and investment advisors for advice that addresses their own particular circumstances. In addition, the information contained herein is a brief summary of a long and complex piece of legislation, and such summary is qualified in its entirety by reference to the actual text of the legislation. Finally, because the legislation summarized herein remains subject to final approval by Congress and the President, it is not final and may change.*