

# Analysis of U.S. Government response to the Coronavirus Pandemic

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# Introduction

Congress and the President enacted the third piece of major legislation in response to the Coronavirus outbreak: The Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act is an approximately \$2.3 trillion emergency economic stimulus package that injects badly needed resources in the form of direct payments, loans, and grants to virtually every facet of our society. This document is a brief overview of Executive and Legislative action taken to date to address the pandemic and includes a broad overview of the CARES Act.

## Background

In response to the COVID-19 pandemic, the Trump Administration and Congress have taken myriad actions to address the economic uncertainty and healthcare crisis. President Trump declared a public health emergency in January. The Administration instituted travel advisories and restrictions, as well as issued guidance that recommends the public limit gatherings of no more than 10 people, for a period of 15 days (effective March 16 through March 30) and has announced plans to extend that even further. The federal government launched the 15 Days to Slow the Spread campaign, urging Americans to stay home. The Cybersecurity and Infrastructure Agency [advised](#) critical infrastructure employees to continue their responsibilities and use appropriate measures to protect their health. As the federal government leads the national response, state and local governments stand on the front lines. Every state has issued a public health emergency declaration and Governors have broad authority to protect the health and welfare of citizens.

Among the many things Federal agencies are doing to address the economic impact of the crisis, the [Department of Treasury](#) and [Federal Reserve Board](#) took steps to extend even more credit for the benefit of local governments, businesses, and average Americans. The U.S. Treasury, for example, announced use of the Exchange Stabilization Fund to provide \$30 billion in equity to expanded money market mutual fund liquidity and commercial paper funding facilities.



In a move to deal with the financial fallout of the pandemic, the Internal Revenue Service announced Tax Day has been moved from April 15 to July 15. This gives taxpayers more time to make tax payments without any interest or penalties.

Businesses are feeling the crunch from a loss of business related to the pandemic. The Small Business Administration (SBA) is offering both loan guarantees and direct loans for working capital to small businesses experiencing financial challenges. Loans may be used to pay fixed debts, payroll, rent, accounts payable and other bills that can't be paid because of the pandemic's impact. The CARES Act provides some loan forgiveness for firms that meet certain conditions.

Congress has passed several pieces of legislation in response to the virus. These bills have been generally referred to as "phases," indicating Congress recognizes no single piece of legislation is likely to be considered sufficiently comprehensive or final. An extended response period and long road to recovery is anticipated.

In early March, as an immediate response to COVID-19, Congress passed and the President enacted the [Coronavirus Preparedness and Response Supplemental Appropriations Act \(Phase 1\)](#). The legislation provides \$8.3 billion in emergency funding designed to treat and prevent the spread of the disease. Funding can be used for the development and manufacturing of vaccines and supplies, and appropriations for the Department of Health and Human Services (HHS), including the Centers for Disease Control (CDC), the National Institutes for Health (NIH), and the Food and Drug Administration (FDA). This bill also included \$20 million for administrative expenses to provide an estimated \$7 billion in low-interest disaster loans to small businesses.

The second major initiative, the [Families First Coronavirus Response Act \(Phase II\)](#), was passed by Congress and signed by the President on March 18. This legislation provides immediate aid to those impacted by the outbreak and provides funding for several nutrition assistance programs, as well as funding for states that process and pay unemployment benefits. This measure is best known for the mandate for employers with less than 500 employees to provide 2 weeks of paid sick leave, as well as 10 weeks of paid leave for childcare. Employers are able to be reimbursed for paying paid sick leave through the form of payroll tax credits. There is an exemption for certain health care providers and emergency responders. The bill provides \$1 billion for emergency grants and interest-free loans to support processing and the payment of unemployment insurance.





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

## On March 25, the Senate passed a \$2.3 trillion COVID-19 economic aid package, the largest in U.S. history.

The legislation passed the Senate by a unanimous vote of 96-0 and includes spending and tax breaks to strengthen the U.S. economy and fund a nationwide effort to curtail the coronavirus. The bill also includes emergency supplemental appropriations for hospitals, veterans' health care, preparedness, and disaster relief. The price tag of this package is roughly equal to 10 percent of the country's economic output. The House passed this legislation on March 27 and the President signed the package later that day.

The plan includes approximately \$500 billion that can be used to back loans to distressed companies, including \$50 billion for loans to U.S. airlines, as well as state and local governments. It also contains more than \$350 billion in aid to small businesses. While stipulating airlines are eligible for a special fund for loans to that industry, the legislation is otherwise broad in its approach, recognizing the coronavirus has affected almost every sector of the economy.

### Business tax relief

The bill provides numerous provisions to help businesses of all sizes and across all industries to keep them afloat during this unprecedented time of economic turmoil.

#### Employee retention credit for employers subject to closure due to COVID-19

This provision provides an employee retention payroll tax credit for a fixed percentage (50 percent) of eligible wages, up to \$10,000 per employee. Eligible employers must have a business that was already operating in 2020; and has been suspended, or partially suspended, due to government order, or in which revenue was less than 50 percent relative to the same quarter in 2019, and ending on the first quarter for which gross receipts exceed 80 percent relative to that quarter in 2019. Tax-exempt 501(c) organizations are included. Wages for employers with greater than 100 full-time employees are excluded when providing services.

To prevent double dipping, employers that receive Small Business interruption loans are not eligible for the retention credit. Additionally, wages that qualify for the required paid leave credit are not eligible for the credit.

#### Delay of payment of employer payroll taxes

The 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. The Social Security Trust Funds will be held harmless under this provision.

#### Modifications for net operating losses

The provision relaxes the limitations on a company's use of losses. Net Operating Losses (NOLs) 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 a loss from a tax year beginning after 2017 and ending before 2021 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. This also allows corporations to take deductions that would apply under the current 21% rate and apply them in previous years against the 35% rate.

#### 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, and corporate AMT credits were made available as refundable credits over several years, ending in 2021. This provision of the CARES Act 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

The 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 the 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 (QIP)

The provision enables businesses, especially in the retail and 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 (TCJA), often referred to as the “retail glitch,” not only increases companies’ access to cash flow by allowing them to claim the benefit retroactively to the enactment of TCJA, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.

### Modification of limitations on charitable contributions during 2020

The provision increases the limitations on deductions for charitable contributions of cash by corporations (as well as individuals who itemize), and allows non-itemizers a \$300 above-the-line deduction. For corporations, the 10 percent limitation is increased to 25 percent of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

### Additional pension & employee benefits

- Allows the Department of Labor to delay employee benefit-related deadlines because of a public health emergency the same as declared national disasters or terroristic military actions.
- Delays 2020 funding obligations for single-employer defined pension contributions until January 1, 2021 (plus interest).
- For benefit restrictions, allows a plan sponsor to use the adjusted funding target attainment percentage for the last plan year ending before January 1, 2020 for plan years including calendar year 2020.

## Emergency appropriations

The CARES Act includes \$340 billion in emergency funding to help all levels of government combat the Coronavirus outbreak. The emergency appropriations package brings the full resources of the federal government to help protect the health and well-being of Americans. More than 80 percent of this funding (\$274 billion) will flow to state and local governments and communities.

A high-level breakdown of the full emergency appropriations package includes:

- \$117 billion for hospitals and veterans’ health care;
- \$45 billion for the FEMA Disaster Relief Fund, which is used by FEMA to direct, coordinate, manage, and fund response and recovery efforts;

- \$16 billion for the Strategic National Stockpile, the nation's largest supply of life-saving pharmaceuticals and medical supplies for use in a public health emergency;
- \$4.3 billion for the Centers for Disease Control; and
- \$11 billion for vaccines, therapeutics, diagnostics, and other medical needs.

## Assistance to state and local government

The CARES Act includes \$150 billion for the Coronavirus Relief fund, which is designated for direct aid to state and local governments running out of cash to combat the pandemic. This funding is in addition to the \$274 billion set aside for specific elements of state and local governments’ response to COVID-19. The Coronavirus Relief fund is allocated by population, but sets aside \$8 billion for tribal governments and \$3 billion for U.S. territories and the District of Columbia. The minimum available to a state is \$1.25 billion. Funding is also set aside to go directly to local governments with populations over 500,000 (any aid localities receive is subtracted from the total state amount). The funding is available only for expenses incurred between March 1 and December 30, 2020 and cannot fund items already included in a state’s approved budget.

## Assistance to severely distressed sectors of the economy

The legislation provides \$500 billion to Treasury’s Exchange Stabilization Fund to provide loans, loan guarantees and other investments for big businesses impacted by the pandemic. Eligible businesses are set forth by Treasury regulation, but are broadly available to distressed sectors. Passenger and cargo air carriers are expressly eligible for loans. The legislation sets aside \$32 billion in grants to the airline industry (passenger and cargo carriers and contractors) exclusively to support employee wages and benefits. All loans will be publicly disclosed.

### All direct lending comes with the following conditions:

- Limits on employee and executive total compensation for highly compensated individuals (salaries above \$425,000) including severance pay or “golden parachutes” until 1 year after the loan is no longer outstanding;
- Corporate stock buybacks are prohibited (unless contractually obligated) for the duration of the assistance plus 1 year after the loan;
- Borrowers must maintain the same level of existing payroll; and
- The loan cannot exceed 5 years.

### **Additional loan programs and credit facility implications include:**

- In addition to whatever other loan facilities might be created, the Treasury Secretary will “endeavor to seek the implementation” of a Middle Market loan facility for banks to provide loans to businesses and eligible nonprofits with 500-10,000 employees.
  - Interest rate will be no more than 2 percent with no principle or interest due for the first 6 months.
  - Funds must be used to retain 90 percent of workforce at full wages and benefits through September 30, 2020 and intends to restore 90 percent of workforce on hand on February 1, 2020.
  - No buybacks or dividend payments through the life of the loan.
  - No outsourcing or offshoring of jobs for the life of the loan and 2 years thereafter.
  - Recipient will not abrogate collective bargaining for the term of the loan and for two years after completing repayment. Will also remain neutral in union organizing activities.
  - (NOTE: This could be one of many loan facilities created and no borrower is required to use this particular facility.)
- The Federal Reserve is authorized to create a Main Street Lending Facility to support lending to small and mid-size businesses.

## **Small business**

The legislation provides more than \$377 billion to support small businesses that are experiencing unprecedented economic disruption due to COVID-19 and city and state implementations of shelter in place procedures. The small business provisions center on a new program called the Paycheck Protection Program, along with Emergency Economic Injury Grants (EEIG), and debt relief for existing and new SBA borrowers.

### **Paycheck Protection Program**

The legislation creates a “paycheck protection program” for guaranteed loans to small businesses with 500 or fewer employees (though the number of employees can be significantly larger for certain industries), the self-employed, and “gig economy.” A total of \$349 billion in lending is authorized. These loans have a 100 percent government guarantee and can be used to provide payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, mortgage payments, and any other debt obligations. Additional features include:

#### **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, based on revenue).

- Businesses in the Accommodation and Food Services Sector (NAICS Code 72) are eligible with up to 500 employees at each location.
- 501 (c)(3) non-profits, 501 (c)(19) veterans organizations, and tribal businesses with fewer than 500 employees.
- Sole proprietors, the self-employed, and independent contractors.

#### **Regulatory streamlining:**

- SBA’s standard “no credit elsewhere” test is waived.
- All lenders (non-SBA lenders to be approved by Treasury and SBA) can provide loans.
- No personal guarantee or collateral required.
- Lenders defer fees, principal, and interest for 6 months.

#### **Maximum loans:**

- Loans can be up to 2.5 times the borrower’s average monthly payroll costs, not to exceed \$10 million. Payroll costs exclude compensation amounts paid to individuals, including the self-employed, in excess of \$100,000 a year.

#### **Requirements:**

- The employer certifies the loan will be used to retain workers, maintain payroll, make mortgage or lease payments, or pay utilities.

#### **Loan forgiveness:**

- If a small business employer maintains payroll, this program allows for loan forgiveness equal to the portion spent by the borrower on payroll costs, interest payments on any mortgage obligations, rent, and utilities during an 8-week period after the origination date of the loan.
- The borrower shall have a portion of their loan forgiven in the amount equal to their payroll costs (not including costs for compensation amounts above the pro-rated share of wages exceeding \$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 percent.
- Loan balances remaining after forgiveness will have a maximum maturity of 2 years and an interest rate not to exceed 1 percent.

#### **Deferment:**

- Lenders under this program are required to provide complete payment deferment relief for impacted borrowers for 6 months.

### SBA Economic Injury Disaster Loans (EIDLs)

The legislation includes \$10 billion in funding to provide an advance “grant” of \$10,000 to small businesses and nonprofits that apply for an SBA economic injury disaster loan (EIDL). Funds are to be provided to applicants within three days of application. The EIDLs are loans of up to \$2 million and carry interest rates of 3.75 percent for companies and 2.75 percent for nonprofits. The loans should be used to pay for expenses that could have been met if the pandemic had not occurred.

Additional provisions include:

- Loans can be made based solely on credit scores.
- Loans available to all non-profits, including 501(c)(6)s.
- Loans below \$200,000 can be approved without a personal guarantee.
- Borrowers can receive \$10,000 cash advances that are forgiven if used for paid leave, maintaining payroll, increased costs due to supply chain disruption, mortgage or lease payments, or repaying obligations that cannot be met due to revenue losses.

### SBA Debt Relief

The legislation provides \$17 billion in funds for SBA to provide debt relief to both existing and new borrowers under its flagship loan program. The provision states:

- SBA will make scheduled principal and interest payments for six months for borrowers with existing 7(a) general business loans
- SBA will also make 6 months of payments for any new 7(a) loans issued prior to September 27, 2020

### Unemployment benefits

The legislation expands unemployment benefits and comes alongside direct cash payments to qualifying individuals. The new Pandemic Unemployment Assistance disaster program extends benefits to workers who would not otherwise qualify like gig-economy workers, self-employed and independent contractors, and those who have exhausted benefits. The legislation expands the size and scope of unemployment benefits with \$250 billion in funding. It also provides an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months. Additional parameters include:

- These provisions do not apply to an individual who can telework with pay.
- Does 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 assume 100 percent of the cost.
- Upon agreement by a state, an additional \$600 per worker per week unemployment compensation payment is available.
- This compensation is 100 percent covered by the federal government.
- The additional payment sunsets on July 31.
- The federal government will pick up the cost for any states that waive the one-week waiting period. This sunsets on December 31, 2020.

### Transparency and oversight

The legislation creates real-time, public reporting of Treasury transactions, including terms of loans, investments or other assistance to corporations. The bill creates a Treasury Department Special Inspector General for Pandemic Recovery to provide oversight of Treasury loans and a Pandemic Response Accountability Committee to protect taxpayer dollars. The provisions also establish a five-member bipartisan Congressional Oversight Commission. The Treasury Secretary is required to publicly report detailed information on each authorized transaction within 72 hours and provide weekly reports to Congress.

### Banking relief, mortgage forbearance, and credit reporting

The economic assistance provisions in the legislation provide financial assistance to states, municipalities, and businesses and provide important help to homeowners and renters. The bill includes \$454 billion to be invested in the Federal Reserve facilities to provide liquidity to banks for lending to states, municipalities, and businesses. Key provisions include:

- Regulatory relief from accounting standards COVID-19 related loan modifications made by banks.
- Temporary relief from Current Expected Credit Losses (CECL) standards.
- During the covered period, a borrower with a federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request forbearance on the federally backed mortgage loan, regardless of delinquency status.
  - Covered period is 60 days (2 months) and allowable extensions of up to 4 periods of 30 days each (4 months.)
- Requires furnishers to credit reporting agencies who agree to account forbearance, or agree to modified payments with respect to an obligation or account of a consumer that has been impacted by COVID-19, report such obligation or account as “current” or as the status reported prior to the accommodation during the period of accommodation unless the consumer becomes current.

- Applies only to accounts for which the consumer has fulfilled requirements pursuant to the forbearance or modified payment agreement.
- Such credit protection is available beginning January 31, 2020, and ends at the later of 120 days after enactment or 120 days after the date the national emergency declaration related to the coronavirus is terminated.

## Health care provisions

The legislation includes numerous healthcare provisions to reduce costs for individuals and provide flexibility and financial resources for health care providers dealing with an influx of patients. A key focus of the legislation is to cover COVID-19 testing and vaccines; provide additional funding to providers and suppliers of health care resources; and expand telehealth coverage under Medicare. The legislation provided funds to hospitals, community health centers, the Centers for Disease Control and Prevention (CDC), and veterans' health care. Specific provisions include:

- 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.
- Provides \$4.3 billion to the Centers for Disease Control and Prevention to prevent, prepare for, and respond to coronavirus, domestically or internationally. This includes \$1.5 billion for State and Local Preparedness Grants.
- Delays Medicaid Disproportionate Share Hospital (DSH) reductions.
- Provides \$127 billion to the Public Health and Social Services Emergency Fund, which includes \$100 billion in direct reimbursement for hospitals and healthcare providers for COVID-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 (SUD) history across providers and in a patient's electronic health record pursuant to the patient's consent for purposes of treatment, payment, and health care operations as permitted by HIPAA. It shall be permissible for a patient's prior written consent to be given once for all such future uses or disclosures for purposes of treatment, payment, and health care operations, until such time as the patient revokes such consent in writing.
- Requires the coverage under Medicare Part B of COVID-19 vaccine and its administration without any cost-sharing.
- Requires Medicare Part D plans and MA-PD plans to permit eligible individuals enrolled in such a plan to obtain a single fill or refill at the option of the individual a total day supply not to exceed a 90-day supply for a covered Part D drug.
- Expands the Medicare accelerated payment program to 100

percent for hospitals during the emergency period and extends the period to 6 months.

- 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
  - tests provided by clinical labs on an emergency basis (including public health labs); and
  - State-developed labs.
- Requires all comprehensive private health insurance plans to 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 (HDHP) 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 (HSAs.)
- 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.)
- Increases the weighting factor by 20 percent for COVID-19 patients under the Medicare hospital inpatient prospective system and revises payment rates for durable medical equipment during the emergency period.
- Expands and adjusts policies regarding Medicare's coverage of telehealth and home health services.
- Provides \$1.32 billion in supplemental funding to community health centers on the front lines of testing and treating patients for COVID-19.
- Temporarily lifts the Medicare sequester, which reduces payments to providers by 2 percent, from May 1 through December 31, 2020, boosting payments for hospital, physician, nursing home, home health, and other care.

- Waives the Inpatient Rehabilitation Facility (IRF) 3-hour rule, which requires that a beneficiary be expected to participate in at least 3 hours of intensive rehabilitation at least 5 days per week to be admitted to an IRF. This will provide acute care hospitals flexibility, during the COVID-19 emergency period, to transfer patients out of their facilities and into alternative care settings in order to prioritize resources.
- Prevents scheduled reductions in Medicare payments for:
  - durable medical equipment during the emergency period; and
  - clinical diagnostic tests furnished to beneficiaries in 2021.
- Ensures uninsured individuals can receive a COVID-19 test and related service with no cost-sharing in any state Medicaid program that elects to offer such enrollment option.
- Ensures states can receive the Medicaid 6.2 percent Federal Medical Assistance Percentages (FMAP) increase.
- Delays scheduled reductions in Medicaid disproportionate share hospital payments through November 30, 2020.

## Next steps

Though next legislative and executive actions remain unclear and will depend on the course the virus takes in the United States, both Democrats and Republicans have signaled their intent to advance actions to further mitigate the impact of the COVID-19 epidemic. Among those things under consideration:

- Additional funding for hospitals and care providers;
- Infrastructure investment needed for COVID-19 response;
- A better definition of who qualifies for family and medical leave;
- Health care worker and pension protections;
- Increasing SNAP benefits by 15 percent;
- More funds to state and local governments;
- Free coronavirus testing, doctor visits and follow-up treatment; and
- Higher amounts of direct payments to Americans.

## Additional resources

We will continue to analyze and provide you with updates on pending legislation and regulation. In the meantime, you can access the almost [900-page bill](#) provided by Congress. And be sure to check out the Grant Thornton National Tax Office's analysis at [Tax Legislative Update 2020-03](#).

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