

COVID-19 Stimulus: Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

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Coronavirus Legislative History



PHASE 1: March 6

- **Coronavirus Supplemental Appropriations**
- Federal appropriations for healthcare agencies
- \$8.3 Billion

PHASE 2: March 18

- **Families First Coronavirus Response Act (FFCRA)**
- Benefits for employees/employers for those affected by Coronavirus
- \$350 Billion

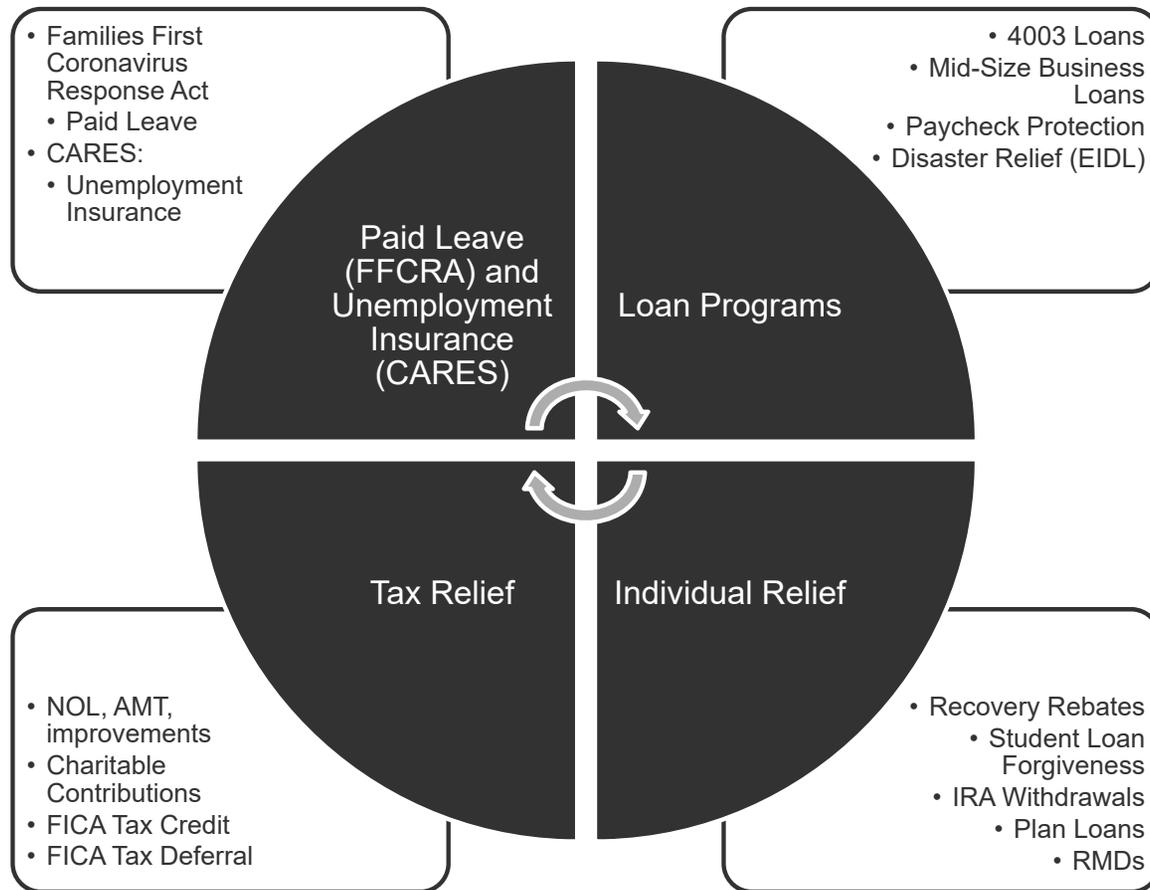
PHASE 3: March 27

- **Coronavirus Aid, Relief, and Economic Security Act (CARES)**
- Loan programs
- Individual Cash payments
- Tax relief
- Unemployment insurance
- \$2 Trillion

PHASE 4: 10 days?

- TBD
- Clean up?
- State and local government?
- Expand relief and loan programs?

CARES Act Overview



Labor & Employment Considerations: FFCRA Paid Leave Review

Paid Sick Leave and Family Leave (4/1/20-12/31/20)

	Paid Sick Leave	Paid Family Leave
Which employers?	500 or fewer workers, government employers, and employers subject to a “multi-employer” agreement.	Same.
How much leave?	2 weeks (80 hours)	Up to 12 weeks (1 st 10 days unpaid)
Eligible employees?	All employees affected by the coronavirus, regardless of time employed with the employer.	Employed for at least 30 days <u>and</u> are caring for children whose schools are closed because of the coronavirus.
What rate of pay?	-Employee: regular rate, capped at \$511/day, or \$5,110 in the aggregate. -Care for others: two-thirds regular rate, capped at \$200/day, or \$2,000 in the aggregate.	Two-thirds of their regular rate, capped at \$200/day, or \$10,000 in the aggregate.
Caps?	Salary of \$130K+	Salary of \$75K+

Gig and self-employed workers: Same benefits if show they had to comply with a self-isolation recommendation or had to care for a child whose school was closed due to the coronavirus

Part-time employees: Proportionate benefits

How Do Employers Afford This?

- The FFCRA provides a tax credit to employers to cover the costs.
 - Credit applied to the tax the employer pays for each employee's Social Security (6.2% of each employee's compensation).
 - If leave costs exceed the employer's Social Security bill, government will send employer a check to cover the difference.
- Less than 50 Employees Exemption:
 - If leave benefits jeopardize the viability of a small business with fewer than 50 employees, they can obtain an exemption from the Dept. of Labor for child care leave if certain circumstances exist.
- Health Care Provider Exemption:
 - Most health care providers can exclude their employees from taking leave under the FFCRA.

Labor & Employment Considerations: CARES Act

Unemployment Compensation Programs

- Most states have passed legislation to expand state unemployment benefits during the COVID-19 crisis.
- The CARES Act provides up to 39 weeks of benefits for unemployment, partial unemployment, or inability to work due to coronavirus issues between January 27, 2020 and December 31, 2020.
- The Act also expands eligibility requirements to part-time employees, those who have exhausted their UI benefits, and those who self-certify that they are unemployed, partially unemployed, or unable to work because of COVID-related issues.
- No waiting period to receive benefits **AND** an additional \$600 per week from federal government for a period of four months.
- \$600 per week is in addition to the base amount per week allowed under state unemployment insurance programs.

Benefits for Nonprofits

- Nonprofit organizations will be reimbursed for half of the costs incurred by them through the end of 2020 to pay unemployment benefits.
- Short-Time Compensation: The Act provides federal funding for State short-time compensation programs through the end of 2020. These benefits are available to employees who are receiving compensation through a State program because their hours have been reduced to avoid a layoff (also referred to as “work share” programs).
- Employers are required to pay the State one-half of the amount of short-time compensation paid under the State program through the end of 2020.

Loans/Grants/Guarantees

Other loan facilities not established by Coronavirus-related legislation

- Private Financing
- SBA
 - Express Loan
 - Cap increased from \$350,000 to \$1,000,000 under CARES
 - For working capital
- Federal Reserves Main Street Program
 - Small to Medium-sized businesses
 - Referenced in CARES, but not established

1. SBA Economic Injury Disaster Loan (EIDL) Grant/Advance (Sec. 1110)

- EIDLs for COVID-19 emergencies authorized under the March 6 Coronavirus Preparedness and Response Supplemental Appropriations Act; part of SBA Loan Disaster Program
- Eligibility: Fewer than 500 employees; aggregation applied; includes nonprofits
- Eligible uses: working capital needs
- EIDL Loan
 - Maximum Principal \$2M
 - Interest: 3.75% per annum (business) or 2.75% (nonprofit)
 - Term: up to 30 years
- EIDL Advance/Grant
 - \$10,000 advance/grant within 3 days of application; doesn't have to be repaid, even if loan is denied or actually made
 - CARES authorized additional \$10 billion for EIDL grants
- Treasury regulations within 15 days
- Apply here: <https://www.sba.gov/page/disaster-loan-applications#section-header-0>

2. Paycheck Protection Loan Program (Forgiveness) (Sec. 1102)

- Paycheck Protection Program (PPP) Loans authorized under CARES Act
 - \$349 billion authorized for Paycheck Protection loans and EIDL grants/loans
- Eligibility: generally employers with less than 500 employees; includes nonprofits
 - Aggregation of affiliated employers is required, but separate work sites in restaurant and lodging industries can qualify
- Term: up to 10 years; 6 months to 1 year initial forbearance
- Max Principal: lesser of \$10M or 2.5 times the average monthly payroll for the 12 months prior to the funding of the loan
 - Payroll compensation includes tips, medical insurance costs, paid leave, severance pay, retirement plan contributions, and state and local employment taxes
 - Payroll calculations can include leased employees
 - Individual employee compensation limited to \$100,000 per year
- Note: EIDL loans may be refinanced with Paycheck Protection Loans—which may give rise to additional forgiveness amounts

2. Paycheck Protection Loan Program (Forgiveness) (Sec. 1102)

- Loan Forgiveness for Paycheck Protection Program Loans (Sec. 1106)
 - Forgiveness
 - Loan will be fully forgiven to the extent it is expended during the first eight weeks if:
 - Average number of employees (on an FTE basis) is not changed from the average number of employees (on an FTE basis) from (a) February 15, 2019 through June 30, 2019 or (b) January 1, 2020 through February 29, 2020
 - No employee's compensation during such period is reduced by more than 25%
 - To the extent either condition is violated, a proportionate share of the loan will remain outstanding and balance will be forgiven
 - » If employees separated between February 15 and April 27 are rehired by June 30, 2020, they will be treated as having been employed through the entire period
 - Under CARES Act 1106(i), forgiven portion of the loan is not taxable for federal tax purposes
 - Note: under CARES Act 2302(a)(3), if any part of the loan is forgiven, employer is not eligible for two-year deferral of employer's share of Social Security taxes
 - Non-forgiven portion
 - Repayable over maximum period of up to 10 years
 - Interest rate capped at 4%
- Why would an employer seek a Paycheck Protection Loan even if employer will does not expect to continue current employment levels?

3.A. 4003(b)(4) Loan Program (Economic Stabilization Fund)

- \$454 Billion fund for 4003(b)(4) loans
- Eligibility: all businesses; states and municipalities; statute is unclear whether nonprofits with fewer than 500 employees are eligible; US-organized and US-based
- Term: Terms undefined except specified industries
- Executive/employee compensation restrictions for the life of the loan (these restrictions may not be required for small employers):
 - for those who made \$425K or more in 2019, unless a collective bargaining agreement applies: no pay increase and severance can't be more than twice your annual compensation
 - For those who made over \$3M in 2019: salary capped at \$3M plus 50% of what you were getting above \$3M
- Appears to require SBA lender underwriting and Treasury will require loan covenants and conditions specific to the transaction
- Collateral may or may not be required depending on the circumstances
- For direct loans: restrictions on repurchases of publicly traded securities and common stock dividends until 1 year after repayment

3.B. Mid-Sized Businesses (Sec. 4003(c)(3)(D))

- Program within the Economic Stabilization Fund
 - Not mandatory Treasury has to establish this program, but lends to encouraging it
- Eligibility: Between 500 and 10,000 employees; includes nonprofits; foreign entities domiciled in the United States
- Interest: 2% cap
- Term: statute does not set a maximum term
 - No P&I for first six months (Secretary may extend initial forbearance period)

3.B. Mid-Sized Businesses (Sec. 4003(c)(3)(D))

- Good faith certification:
 - Economic uncertainty for ongoing operations
 - Will use funds to retain at least 90% of employees at full pay/benefits until 9/30/20
 - Will restore not less than 90% of employees as of 2/1/2020, and full pay/benefits not later than 4 months after end of HHS public health emergency declaration
 - US-domiciled entity with significant US operations
 - Not a debtor in a bankruptcy proceeding
- During term of loan: no common stock dividends on common stock or repurchases, neutral position in union organizing efforts
- During term of loan and 2 years after repayment: no outsourcing or offshoring jobs, abrogating collective bargaining agreements
- It is unlikely that any mid-sized business could attempt to structure a 4003(b)(4) loan without complying with these requirements

3.C. Loan Programs for Specific Industries (Sec. 4003(b)(1)-(3))

- Total of \$46 billion among three sub-funds for 4003(b)(1)-(3) loans
- Eligibility: airlines, air cargo carriers, and national defense industry borrowers
- Term: not to exceed 5 years
- Requirements:
 - Maintenance of total employee counts (at 90% level) through September 30, 2020
 - Collateralization of loan
 - No public company stock buy backs and no common stock dividends until one year after loan repayment
 - Warrants for equity position to US government

Individual Relief

Special Matters for Individuals

- **Recovery Rebate: Refundable Advance Paid Tax Credit (Sec. 6428)**
 - \$1,200 per adult, \$2,400 per couple, and \$500 per child
 - Income up to \$150,000 (Joint), \$75,000 (Separate or Single), \$112,500 (Head of Household)
 - Phase out above these amounts
- **Federal Student Loan Suspension (Sec. 3513)**
 - Payments, interest accrual, and collections suspended until 9/30/20
 - Secretary will issue notices when this happens, and must give 6 notices prior to when payments will begin again

Special Matters for Individuals

- IRA Withdrawals (Sec. 2202)
 - COVID-related hardship withdrawals not subject to 10% penalty
 - Income from withdrawal taxed over 3 year period
 - 3 years to repay withdrawal
- Plan Participant Loans (Sec. 2202)
 - COVID-related hardship
 - For loan made 180 days after passage
 - Loan limits increased to lesser of \$100,000 or 100% of account balance
 - 5 year repayment period commences after one year
- Required Minimum Distributions (Sec. 2203)
 - 2020 RMDs for those over 70 ½ are suspended for one year

Tax Matters

FICA

- FICA Credit (Sec. 2301)
 - Eligibility: employers suffering COVID work limitation or quarterly gross receipts reduction of at least 50%
 - Small employers (less than 100): credit for 50% of FICA taxes of wages paid to all employees after reduction
 - Large employers (more than 100): credit for 50% of FICA taxes of wages paid to employees who are not providing services
 - Limitation: limited to employer FICA on \$10,000 of compensation
 - Unavailable if you receive Paycheck Protection Loan
- Employer FICA Deferral (Sec. 2302)
 - 50% of 2020 Employer FICA can be delayed to end of 2021
 - Balance can be delayed to end of 2022
 - Deferment is not available if there is Payroll Protection Loan forgiveness

NOLs, AMT, and Business Interest Expense

- Net Operating Losses (Sec. 23030)
 - Carrybacks restored and extended to five year carryback for 2017-2020
 - 120 day claim window for those seeking NOL carrybacks for 2017
- AMT
 - Refundable AMT credits: these were deductible over years as timing differences disappeared
 - Election to accelerate into current year and into 2018
- Business Interest Expense (163(j)) (Sec. 2306)
 - Deduction expanded to 50% of pre-interest expense for 2019 and 2020 (previously 30%)
 - Can use 2019 as income tax base for calculating interest deduction for 2020

Improvement Deductions and Charitable Contribution Deductions

- Qualified Improvement Property (Sec. 2307)
 - Improvements required to be depreciated over 39 years under TCJA may now be deducted over permitted personal property depreciation schedules
- Charitable contributions (Sec. 2204, 2205)
 - Above the Line Deduction
 - 2020 cash gifts up to \$300 are deductible above the line for non-itemizers
 - Not applicable to private foundations, supporting organizations, or Donor-Advised Funds
 - Contribution Limits
 - 2020 contribution limit for itemizers for cash gifts increased to 100% of contribution base (up from 60%)
 - 2020 corporate contribution limit increased from 10% to 25%

Questions?



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