COVID-19 CARES Act Approved

Unprecedented in scale and scope, a $2 trillion stimulus bill was recently signed by President Trump. The bill, the *Coronavirus Aid, Relief and Economic Security Act* (CARES Act), includes relief for individual Americans, healthcare workers, small businesses and certain industries hit hard by the pandemic.

This is the third relief package to address the effects of the SARS-CoV-2 virus and the incidence of COVID-19 (COVID-19). The first package included $8.3 billion for the healthcare system and the second, the *Families First Coronavirus Response Act* (FFCRA), provided $150 billion for sick leave, unemployment and emergency testing. See the **BKD Thoughtware**® article "Families First Coronavirus Response Act to Provide Employer Tax Credits" for more information.

This article will provide a high-level overview of all aspects of the legislation. For ease of reference, section numbers have been included to help navigate the almost 900-page law.

Small Businesses Administration (Title I)

Payroll Protection Program (PPP) (Section 1102)

The 7(a)-loan program, administered by the U.S. Small Business Administration (SBA), provides financial assistance to small businesses. The CARES Act authorizes an additional $349 billion for general 7(a) business loans. For SBA Express loans, the statutory $350,000 limit is increased to $1 million through December 31, 2020. In general, the SBA responds to Express loans within 36 hours (compared to standard 7(a) loans, which may take weeks to process).

Recipients of 7(a) loans may be eligible for loan forgiveness on covered loans in an amount equal to the sum of the costs incurred for an eight-week period starting on the origination date of the loan between February 15, 2020, and June 30, 2020, due to payroll cost, mortgage interest payments, rent or utility payments. The CARES Act also gives the SBA authority to provide paycheck protection loans to help employers cover costs, including wages, paid leave and state taxes on employee wages. These benefits are available to employers of not more than the greater of 500 employees or, if applicable, the number of employees per organization within the industry as determined by SBA's sizing standards, including nonprofit organizations.

Borrower fees and lenders fees are waived. The "credit elsewhere" test and personal guaranteed requirements are also waived.

A borrower is limited from receiving PPP assistance and an Economic Injury Disaster Loan (EIDL) through SBA for the same purpose. A borrower who has an EIDL loan unrelated to COVID-19 that was made after January 31, 2020, can apply for a PPP loan, with an option to refinance the EIDL loan into the PPP loan. The emergency EIDL grant award of up to $10,000 would be subtracted from the amount forgiven under the PPP.

Entrepreneurial Development Programs (Section 1103)

The CARES Act sets aside $265 million for a small business concern that has experienced any of the following as a result of COVID-19:

- Supply chain disruptions, including changes in:
    - Quantity and lead time, including the number of shipments of components and delays in shipments
    - Quality, including shortages in supply for quality control reasons
    - Technology, including a compromised payment network
- Staffing challenges

- A decrease in gross receipts or customers
- A closure

Loan Forgiveness (Section 1106)

Borrowers will be eligible for loan forgiveness equal to the amount spent by the borrower during an eight-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020. Amounts forgiven may not exceed the loan's principal amount. Eligible payroll costs do not include compensation above $100,000 in wages. Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered eight-week period compared to the previous year or time period, proportionate to maintaining employees and wages:

- Payroll costs plus any interest payment on any covered mortgage obligation (but not prepayments) plus any payment on any covered rent obligation plus any covered utility payment.
- The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the monthly average number of full-time equivalent employees from February 15 to June 30, 2019, or at the election of the applicant, the monthly average of full-time equivalent employees from January 1 to February 29, 2020. This also is reduced by the reduction in pay of any employee beyond 25 percent of their compensation for the most recent full quarter before the eight-week covered period. To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that rehire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.

Section 1106 also allows forgiveness for additional wages paid to tipped workers.

Emergency EIDL Grants (Section 1110)

The CARES Act allocates $10 billion for emergency grants and expands eligibility for access to EIDLs to include tribal businesses, cooperatives and employee stock ownership plans with fewer than 500 employees or any individual operating as a sole proprietor or independent contractor for the 2020 calendar year. These new EIDLs also include an option for a $10,000 cash advance within three days of application that does not have to be paid back—even if the borrower's application is subsequently rejected. The advance must be used to:

- Provide paid sick leave to employees unable to work due to COVID-19
- Maintain payroll to retain employees during business disruptions or substantial slowdowns
- Meet increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains
- Make rent or mortgage payments
- Repay obligations that cannot be met due to revenue losses

Subsidy for Certain SBA Loan Payments (Section 1112)

The CARES Act allocated $17 billion for loan subsidies on existing 7(a) (including Community Advantage), 504 or microloan products; however, PPP loans are not covered.

The SBA must pay the principal, interest and any associated fees that are owed on the covered loans for a six-month period starting on the next payment due. Loans that are already on deferment will receive six months of payment by the SBA beginning with the first payment after the deferral period. Loans made up until six months after enactment also will receive a full six months of loan payments by the SBA.

The SBA must make payments no later than 30 days after the date on which the first payment is due. This requires the SBA to still make payments even if the loan was sold on the secondary market.

The SBA must encourage lenders to provide deferments and allows lenders, up to one year after enactment, to extend the maturity of SBA loans in deferment beyond existing statutory limits.

Assistance for Workers, Families and Businesses (Title II)

Individual

Unemployment Insurance Provisions (Sections 2101–2116)

The bill expands those covered by unemployment insurance to include those unemployed, underemployed or unable to work in the following situations:

- The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis; a member of the individual's household has been diagnosed with COVID-19; the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19; a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- The individual is unable to reach the place of employment because of a COVID-19 quarantine or self-quarantine advised by a healthcare provider
- The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of COVID-19
- The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19
- The individual has to quit his or her job as a direct result of COVID-19
- The individual's place of employment is closed as a direct result of COVID-19

The bill will add $600 for four months to the unemployment benefit determined under existing state laws. The enhanced unemployment assistance will be made available without any waiting period. If state benefits run out and an individual is still unemployed, the federal government will provide 13 additional weeks of unemployment insurance through December 31, 2020. The increased benefits will not count toward any income limits under Medicaid or the Children's Health Insurance Program.

Cash Payments (Section 2201)

The bill includes previously announced relief in the form of immediate cash payments of $1,200 to individuals, along with an additional $500 for each child. Adjusted gross income (AGI) thresholds for this relief are $150,000 for joint returns, $112,500 for head of households and $75,000 for individual filers.

The amount of recovery rebate a taxpayer receives is based on information reported on the taxpayer's 2019 tax return (or 2018 if the taxpayer has not yet filed a 2019 return). For individuals who did not file a return in either 2018 or 2019, the IRS will use the individual's 2019 Social Security income. Within 15 days of payment, the IRS will send each eligible taxpayer a letter to a last known address with details of the amount, date and method of payment, along with a number to contact if the taxpayer did not receive the payment.

Retirement Funds (Sections 2202–2203)

The CARES Act waives the 10 percent penalty on early distributions from qualified retirement plans for up to $100,000 of coronavirus-related distributions in 2020. Taxpayers may repay these amounts within three years of withdrawal without regard to that year's cap. Although these distributions are otherwise taxable for federal income tax purposes, the taxpayer may elect to include the distribution in taxable income ratably over a three-year period. Required minimum distribution requirements will be temporarily waived for calendar year 2020.

Modification of Limits on Charitable Deductions During 2020 (Sections 2204–2205)

Taxpayers who do not otherwise elect to itemize deductions are allowed an above-the-line deduction of up to $300 for charitable contributions made in cash (not stock) to any qualifying Section 501(c)(3) public charity, excluding donor-advised funds.

In addition, for individuals who itemize, as well as corporations, the CARES Act temporarily increases limitations on deductions for charitable contributions made in 2020. For individuals, the 60 percent of AGI limitation is suspended for 2020. For contributions of food inventory, the limitation is increased from 15 percent to 25 percent. Excess contributions may be carried forward to future years based on the existing charitable contribution carryforward rules.

Employer Payment of Student Loans (Section 2206)

Through December 31, 2020, 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 and books, provided by the employer under current law.

Business Provisions

Employee Retention Credit (Section 2301)

The CARES Act will allow a credit against applicable employment taxes for each calendar quarter in an amount equal to 50 percent of the qualified wages up to $10,000, resulting in a maximum credit of $5,000 per employee. To qualify for the credit, an employer must meet all the following criteria:

1. The employer must have carried on a trade or business during calendar year 2020
2. The operation of that trade or business is either:
    a. Fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel or group meetings due to COVID-19; or

    b. Receiving gross receipts, for at least one calendar quarter, that are less than 50 percent of the gross receipts received during the same calendar quarter(s) in the prior year. This period of significant decline in gross receipts is recognized until the gross receipts for a calendar quarter are greater than 80 percent of gross receipts for the same calendar quarter in the prior year.

The rules governing whether employers qualify for the credit depend on the number of employees who work for the employer. For employers with more than 100 full-time employees during 2019, an employee must be unable to provide services due to the circumstances outlined in 2a or 2b above. For employers with 100 or fewer full-time employees, the credit is allowed regardless of whether an employee is able to provide services, as long as the circumstances outlined in 2a or 2b above are met.

The CARES Act includes anti-abuse measures that prevent employers from double-counting wages used to determine the employee retention credit in the calculation of other credits such as the Work Opportunity Tax Credit under Internal Revenue Code (IRC) §51 or the Employer Credit for Paid Family and Medical Leave under IRC §45S. In addition, employers receiving small business interruption loans (covered below) are not eligible for the employee retention credit.

Delayed Payment of Employer Payroll Taxes (Section 2302)

The CARES Act expands the payroll tax relief provided under the FFCRA by allowing employers to delay remittance of their share of Social Security tax that would have been deposited between the date of the CARES Act's enactment and December 31, 2020. Instead, 50 percent of those taxes must be deposited by December 31, 2021, and the remainder deposited by December 31, 2022.

Similar relief is provided for self-employed individuals under the Act. However, those taxpayers still must pay 50 percent of the Social Security tax portion of these taxes, *i.e.*, the employee's share, in the same manner as usual. Employers who have had indebtedness forgiven under the Small Business Act are not eligible for this payroll and self-employment tax deferral relief.

Net Operating Losses (Section 2303)

Under the CARES Act, the current net operating loss (NOL) rules—put in place by the *Tax Cuts and Jobs Act* (TCJA)—are temporarily revised to allow losses arising in tax years 2018, 2019 or 2020 to be carried back five years. In addition, the provision limiting NOLs to only 80 percent of a taxpayer's taxable income is suspended for taxable years beginning before January 1, 2021, allowing companies to fully offset taxable income by such carrybacks or carryforwards.

The CARES Act also provides a technical correction to the TCJA to retroactively align the effective date of the NOL limitation and NOL carryback/carryforward provisions. In addition, for noncorporate taxpayers, the limitation on excess business losses imposed by the TCJA would be retroactively postponed and applied only to taxable years beginning after December 31, 2020.

Modifications of Limitations on Business Interest (Section 2306)

The TCJA created a new limitation on business interest expense deductions for tax years beginning after December 31, 2017. The CARES Act temporarily modifies the 30 percent limitation—as originally provided in the TCJA—to 50 percent for all taxpayers except partnerships. While taxpayers may elect to use the 30 percent limitation instead, this provision would affect taxable years beginning in 2019 or 2020 and allow businesses to increase liquidity with a reduced cost of capital. In addition, businesses may elect to use their 2019 income to calculate the adjusted taxable income to which the 50 percent would apply.

Unless they elect not to, partners of partnerships subject to the business interest expense limitation rules would be able to treat 50 percent of any allocated excess business interest expense (EBIE) from the partnership during 2019 as fully deductible in tax year 2020. The remaining 50 percent of EBIE is subject to the normal rules under IRC §163(j) and is only deductible by the partner in a future year if that same partnership passes through excess taxable income or excess business interest income.

Qualified Improvement Property (Section 2307)

The CARES Act corrects a provision in the TCJA so that businesses will be able to immediately write off costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. Companies would be allowed to amend a prior year return.

Alcohol Excise Taxes (Section 2308)

Any distilled spirits used for sanitizer are exempt from the federal tax in 2020, if the production follows U.S. Food & Drug Administration guidelines.

Healthcare Provisions (Title III)

Not surprisingly, this was one of the largest sections of the CARES Act; only certain items are included below.

Medical Supplies & Testing

Medical Supplies (Sections 3101–3112)

The CARES Act also has provisions to address access to supplies and medications and establish a reporting mechanism on the security of the U.S. medical supply chain. The report is intended to assess and evaluate the dependence of the commercial sector, state and federal government on critical drugs and medical devices sourced or manufactured overseas and would include recommendations to address any supply chain vulnerabilities and potential disruptions. The CARES ACT also includes provisions to increase the reporting of potential shortages or discontinuance from manufacturers of active pharmaceutical ingredients and manufacturers of medical devices critical to providing healthcare, as well as require certain medical supplies and drugs to be included in the strategic national stockpile.

Diagnostic Testing (Sections 3201–3203)

The CARES Act amends or clarifies certain portions of the FFCRA including pricing, vaccines and preventative services, including the following:

- Requires health insurers to reimburse providers for diagnostic testing of COVID-19 based on the cash price published by the provider, unless there is a previously negotiated rate or a newly negotiated rate that is less than the cash price. Any provider that does not publish a cash price for COVID-19 diagnostic testing is subject to a $300 per day fine.
- Expands the type of COVID-19 laboratory tests that health insurers are required to fully cover, including tests that have not yet received an emergency use authorization.
- Permanently allows health savings accounts to be used for medicine without a prescription and for menstrual products.

Support for Healthcare Providers

Supplemental Awards for Health Centers (Sections 3211–3226)

The CARES Act provides the following additional funding:

- An additional $1.3 billion for the prevention, diagnosis and treatment of COVID-19.
- Annual funding of $79.5 million for rural healthcare services outreach, rural health network development and small healthcare provider quality improvement grant programs for fiscal year (FY) 2021 through 2025.
- Reauthorization of health start program with annual funding of $125.5 million FY 2021 through 2025.

Telehealth (Sections 3701–3708)

The CARES Act provides $275 million for the Public Health and Social Services Emergency Fund, $180 million of which is allocated to the Health Resources and Services Administration – Federal Office of Rural Health Policy to provide telehealth and rural health services. In addition, the CARES Act modifies several policies in the provision of telehealth services, which may increase access to care during the emergency period:

- Medicare Telehealth Flexibility – eliminates the requirement in the *Coronavirus Preparedness and Response Supplemental Appropriations Act* that providers must have treated a patient in the past three years to provide telehealth service during the emergency period.
- Medicare Telehealth Services for Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) During Emergency Period – allows FQHCs and RHCs to serve as distant sites to provide telehealth services and reimburse for telehealth services at a rate similar to the comparable national average payment rate for telehealth services under the physician fee schedule.
- Home Dialysis – waives the requirement for face-to-face visits between home dialysis patients and physicians during the emergency period.
- Hospice – allows hospice recertification to be completed via telehealth during the emergency period.

Medicare Payments (Sections 3709–3720)

This section of the CARES Act rescinds existing payments cuts, clarifies portions of the FFCRA and waives certain existing rules.

- Temporarily suspends the 2 percent sequestration payment reduction for Medicare claims from May 1 through December 31, 2020, and extends the sequestration spending reduction through 2030. This will boost payments for healthcare providers, physician services, skilled nursing facilities, home care and hospice.
- Payments that would otherwise be made to a hospital for treating a COVID-19 patient are increased by 20 percent. This add-on payment will be available through the duration of the COVID-19 emergency period.
- Waives the Inpatient Rehabilitation Facility (IRF) three-hour rule, which requires that a beneficiary be expected to participate in at least three hours of intensive rehabilitation at least five days per week to be admitted to an IRF. It would allow a long-term care hospital (LTCH) to maintain its designation even if more than 50 percent of its cases are less intensive. It also would temporarily pause the current LTCH site-neutral payment methodology. This gives acute care hospitals the flexibility to transfer patients out of their facilities and into alternative care settings to prioritize resources needed to treat COVID-19 cases.
- Prevents scheduled reductions in Medicare payments for durable medical equipment, *i.e.*, wheelchairs, which helps patients transition from hospital to home and remain in their home through the length of the COVID-19 emergency period.
- Eliminates Medicare Part B cost-sharing for the COVID-19 vaccine.
- Allows up to three months of fills and refills of covered Medicare Part D drugs.
- Allows state Medicaid programs to pay for direct support professionals—caregivers trained to help with activities of daily living—to assist disabled individuals in the hospital to reduce length of stay and free up beds.
- Clarifies the FFCRA to ensure that 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 an enrollment option.
- Clarifies the FFCRA to ensure that beneficiaries can receive all tests for COVID-19 in Medicare Part B with no cost sharing.
- Prevents scheduled 15 percent reductions in Medicare payments for clinical diagnostic laboratory tests furnished to beneficiaries in 2021. It also would delay by one year the upcoming reporting period during which laboratories are required to report private payor data.
- Expands, for the duration of the COVID-19 emergency period, an existing Medicare accelerated payment program. Qualified facilities would be able to request up to a six-month advanced lump sum or periodic payment. This advanced payment would be based on net reimbursement represented by unbilled discharges or unpaid bills. Most hospital types could elect to receive up to 100 percent of the prior period payments, with critical access hospitals able to receive up to 125 percent. A qualifying hospital would not be required to start paying down the loan for four months and also would have at least 12 months to complete repayment without a requirement to pay interest.
- Amends the FFCRA to ensure that states can receive the Medicaid 6.2 percent FMAP increase.

Health and Human Services Extenders

Medicare Provisions (Sections 3801–3803)

- Extends funding for a geographic index floor on physician fees through December 1, 2020.
- Provides funding for the U.S. Department of Health and Human Services (HHS) to contract with a consensus-based entity, *e.g.*, the National Quality Forum (NQF), to carry out duties related to quality measurement and performance improvement through November 30, 2020.
- Extends funding for beneficiary outreach and counseling related to low-income programs through November 30, 2020.

Medicaid Provisions (Sections 3811–3814)

- Extends the Medicaid Money Follows the Person demonstration that helps patients transition from the nursing home to the home setting through November 30, 2020.
- Extends the Medicaid spousal impoverishment protections program through November 30, 2020, to help a spouse of an individual who qualifies for nursing home care to live at home in the community.
- Delays a $4.0 billion scheduled reduction in Medicaid disproportionate share hospital (DSH) payments through November 30, 2020. DSHs have large numbers of low-income and uninsured patients.
- 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. It also would expand the demonstration to two additional states.

Education Provisions (Sections 3501–3519)

The CARES Act provides several areas of relief for educational institutions:

- Waives the institutional matching requirement for campus-based aid programs. Allows institutions to transfer unused work-study funds to be used for supplemental grants.
- Allows institutions to award additional Federal Supplemental Educational Opportunity Grant funds to students impacted by COVID-19.
- Allows institutions to issue work-study payments to students who are unable to work due to workplace closures as a lump sum or in payments similar to paychecks.
- For students who dropped out of school as a result of COVID-19, it excludes the term from counting toward lifetime subsidized loan eligibility.
- For students who dropped out of school as a result of COVID-19, it excludes the term from counting toward lifetime Pell eligibility.
- For students who dropped out of school as a result of COVID-19, the student is not required to return Pell grants or federal student loans to the Secretary of Education. It also waives the requirement that institutions calculate the amount of grant or loan assistance that the institution must return to the Secretary of Education in the case of students who dropped out of school as a result of COVID-19.
- For students who dropped out of school as a result of COVID-19, the student’s grades do not affect their federal academic requirements to continue to receive Pell Grants or student loans.
- Permits foreign institutions to offer distance learning to U.S. students receiving Title IV funds for the duration of the COVID-19 declaration of disaster.

- Provides the Secretary of Education with waiver authority to provide waivers from the *Elementary and Secondary Education Act* (ESEA), except civil rights laws, that are necessary and appropriate due to the COVID-19 declaration of disaster.
- Authorizes the Secretary of Education to defer payments on current Historically Black Colleges and Universities Capital Financing loans during the national emergency period so HBCUs can devote financial resources to COVID-19 efforts.
- Requires the Secretary of Education to defer student loan payments, principal and interest for six months, through September 30, 2020, without penalty to the borrower for all federally owned loans. This provides relief for more than 95 percent of student loan borrowers.
- Provides participants serving in the National Service Corps programs with the educational award they were due to receive before their duties had been suspended or placed on hold during the COVID-19 declaration of disaster. Extends the age limits and the terms of service to allow individuals serving in national service programs to continue participating in programs after the COVID-19 declaration of disaster ends.
- Provides local workforce boards with additional flexibility to use funds received under the Workforce Innovation and Opportunity Act for administrative costs, including for online resources. Allows governors to utilize reserved workforce funds on rapid response activities in response to COVID-19.
- Authorizes the Secretary of Education to waive certain outcome requirements for fiscal year 2021 grant programs for HBCUs and other minority-serving institutions.
- Authorizes the Secretary of Education to waive or modify current allowable uses of funds for institutional grant programs (TRIO/GEARUP/Title III/Title V/and sections of Title VII) so colleges can redeploy resources and services to COVID-19 efforts. Permits institutions to request waivers from the Secretary of Education for financial matching requirements in competitive grant and other MSI grant programs in the Higher Education Act so colleges can devote institutional resources to COVID-19 efforts.
- For teachers who could not finish their year of teaching service as a result of COVID-19, their partial year of service shall be counted as a full year of service toward TEACH grant obligations or Teacher Loan Forgiveness. Waives a requirement that teachers must serve consecutive years of teaching service for Teacher Loan Forgiveness eligibility, if a teacher’s service is not consecutive as a result of COVID-19.

Labor Provisions (Sections 3601–3611)

This section of the CARES Act includes clarifications on several issues; most notably:

- Creates a limitation stating an employer shall not be required to pay more than $200 per day and $10,000 in the aggregate for each employee under this section.
- Creates a limitation stating an employer shall not be required to pay more than $511 per day and $5,110 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 under this section.
- Provides that applications for unemployment compensation and assistance with the application process, to the extent practicable, be accessible in two ways: in person, by phone or online.
- Allows an employee who was laid off by an employer 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 have worked for the employer for at least 30 days prior to being laid off.

- Allows employers to receive an advance tax credit from the U.S. Department of the Treasury instead of having to be reimbursed on the back end.
- Ensures that federal contractors who cannot perform work at their duty station or telework because of the nature of their jobs due to COVID-19 continue to get paid.

ERISA & Pension Relief (Sections 3607–3609)

- Gives the Department of Labor the ability to postpone certain ERISA filing deadlines for a period of up to one year in the case of a public health emergency.
- Provides single employer pension plan companies with more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until January 1, 2021. At that time, contributions due earlier would be due with interest. The bill also provides that a plan's status for benefit restrictions as of December 31, 2019, will apply throughout 2020.
- For plan years beginning after December 31, 2018, the CARES Act amends the definition of Cooperative and Small Employer Charity (CSEC) pension plans to provide that a pension plan will be a CSEC plan if, as of January 1, 2000, the plan was sponsored by an employer that:
    - Is exempt from taxation under Code section 501(c)(3)
    - Has been in existence since 1938
    - Conducts medical research directly or indirectly through grant making
    - Has as its primary exempt purpose providing services with respect to mothers and children

Industry Assistance (Title IV)

Emergency Relief (Section 4003)

The bill provides the following loans, loan guarantees and other investments for the airline industry:

- Passenger air carriers – $25 billion in loans and loan guarantees
- Cargo air carriers – $4 billion in loans and loan guarantees
- Business critical to national security – $17 billion in loans and loan guarantees
- Federal Reserve system – $454 billion to provide liquidity to eligible businesses, states or municipalities. This would include purchases from issuers or in the secondary market or making loans or other advances secured by collateral.

Aviation (Sections 4111–4120)

In addition to the loans and loan guarantees noted above, the bill provides additional money for the continuation of wages, salaries and benefits, including up to $25 billion for air carriers, up to $4 billion for cargo air carriers and up to $3 billion for contractors. The amounts allocated will be based on reported salaries and benefits for the period from April 1, 2019, to September 20, 2019. To be eligible, recipients must not conduct furloughs or pay cuts until September 30, 2020, and must not conduct stock buybacks or pay dividends until September 30, 2021. The relief comes with compensation limits for higher-paid employees.

Financial Institutions (Section 4008)

Modifies the Dodd-Frank Act to give the FDIC authority to establish a temporary program to guarantee bank debt. The FDIC is granted broad discretion to guarantee bank liabilities, specifically including noninterest-bearing transaction accounts. The FDIC will determine whether to exercise its authority and as to what liabilities. Such authorities, programs, guarantees and increases shall terminate no later than December 31, 2020.

The CARES Act also temporarily waives national bank lending limits to nonbank financial companies through the earlier of the end of the national emergency or December 31, 2020.

Community Banks (Section 4012)

The CARES Act will temporarily reduce the Community Bank Leverage Ratio (CBLR) for qualifying community banks from 9 percent to 8 percent and provide for a reasonable grace period if a community bank's CBLR falls below the prescribed level. The interim rule expires at the earlier of December 31, 2020, or the date on which the national emergency declaration related to coronavirus is terminated.

Credit Unions (Section 4016)

Temporarily enhances access to the Central Liquidity Facility (CLF), including for corporate credit unions, to meet liquidity needs. Increases resources available to meet liquidity needs through the CLF. The amendments provided under this section sunset on December 31, 2020.

The CARES Act includes the follow relief for credit unions:

- Makes credit unions eligible to participate in the PPP, which would allow for 100 percent federally guaranteed loans to small businesses that maintain their payroll.
- The National Credit Union Administration (NCUA) is given authority to temporarily increase share insurance coverage for noninterest-bearing transaction accounts.

Money Market Funds (Section 4015)

The CARE Act temporarily suspends the statutory limitation on the use of the Exchange Stabilization Fund for guarantee programs for the U.S. money market mutual fund industry. Any guarantee shall be limited to the total value of a shareholder's holdings in a participating fund as of the close of business on the day before the announcement of the guarantee. Any guarantee established as a result of the application of this section shall terminate not later than December 31, 2020.

Troubled Debt Restructurings (TDR) (Section 4013)

From March 1, 2020, through 60 days after the end of the national emergency (or December 31, 2020, if earlier), a financial institution may elect to suspend GAAP principles and regulatory determinations with respect to loan modifications related to COVID-19 that would otherwise be categorized as TDRs. Banking agencies must defer to the financial institution's election.

Further actions and clarifications may be required from banking regulators, the SEC and FASB. On March 23, 2020, bank regulators also provided TDR guidance. See the Thoughtware article "Bank Regulators Provide COVID-19 Relief for TDRs." BKD will continue to follow developments on this topic.

CECL (Section 4014)

This provision would exempt an insured depository institution, bank holding company or any affiliate thereof from FASB Accounting Standards Update (ASU) 2016–13, *Measurement of Credit Losses on Financial Instruments*, including the current expected credit losses (CECL) methodology for estimating allowances for credit losses. This relief is limited to the period starting with the CARES Act enactment date and ending on the *earlier* of the termination date of the COVID-19 national emergency or December 31, 2020.

There is some uncertainty as to how this would apply. Congress gives the SEC the authority to set accounting rules, and the SEC has delegated that task to FASB. The SEC could exercise its authority to promulgate a rule to overturn or delay CECL implementation. There is a precedent for such an action; in 1978, the SEC overturned FASB Statement No. 19, which covered oil and gas companies expense recognition related to drilling dry wells.

The CARES Act would temporarily exempt certain financial institutions but no other businesses in the ASU's scope. While banks expect the biggest accounting change from CECL, other businesses that extend credit to customers would still need to follow the new rules. Community banks and credit unions would not benefit from this temporary relief since it will expire before the ASU's current effective date.

BKD will continue to follow any FASB or SEC developments on this topic.

ASC 326 – CECL Current Effective Dates

SEC Filers, Not SRCs
Interim and annual periods beginning after December 15, 2019

All Others
Interim and annual periods beginning after December 15, 2022

Foreclosure & Eviction Moratoriums (Sections 4022–4024)

Foreclosures are prohibited on all federally backed mortgage loans for a 60-day period beginning on March 18, 2020. The CARES Act also provides up to 180 days of forbearance for borrowers of a federally backed mortgage loan who have experienced a COVID-19 financial hardship. Applicable mortgages include those purchased by Fannie Mae and Freddie Mac, insured by HUD, VA, or USDA or directly made by USDA.

The CARES Act provides up to 90 days of forbearance for multifamily borrowers with a federally backed multifamily mortgage loan who have experienced a financial hardship. Borrowers receiving forbearance may not evict or charge late fees to tenants for the duration of the forbearance period. Applicable mortgages include loans to real property designed for five or more families that are purchased, insured or assisted by Fannie Mae, Freddie Mac or HUD.

These mortgage moratoriums terminate on the earlier of the termination date of the national emergency concerning the coronavirus or December 31, 2020.

For 120 days after CARES Act enactment, landlords will be prohibited from initiating legal action to recover possession of a rental unit or to charge fees, penalties or other charges to the tenant related to such nonpayment of rent if landlord's mortgage is insured, guaranteed, supplemented, protected or assisted in any way by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program or the *Violence Against Women Act of 1994*.

State, Local and Tribal Relief Funds (Title V – Section 5001)

The bill will set aside $150 billion for states, tribal governments and local governments. Each state will receive at least $1.25 billion with the remainder of funds allocated based on population. Tribal governments will be allocated $8 billion to be divided based on each government's COVID-19-based spending as determined by the Secretary of the Interior and Indian tribes.

Funding Provisions (Title VI)

This section provides funding provisions for various branches of government. These were last-minute additions to the Senate bill. This highlights the largest appropriations and is not a complete list. In addition to the agencies listed below, the CARES Act provides $10 billion to the U.S. Postal Service.

Agricultural Programs (Title I)

The CARES Acts designates $9.5 billion to providing support for agricultural producers impacted by coronavirus, including producers of specialty crops, producers that supply local food systems, including farmers markets, restaurants and schools, and livestock producers, including dairy producers.

- Rural Developmental Programs – $20.5 million
- Domestic Food Programs
    - Child Nutrition Services – $8.8 billion
    - Supplemental Nutrition Assistance Program – $15.8 billion
        - $100 million of this total is designated for the food distribution program on Indian reservations and $200 million is designated for grants to the Northern Mariana Islands, Puerto Rico and American Samoa
    - Commodity Assistance Program – $450 million
- Commodity Credit Corporation Fund – $14 billion

Department of Defense (Title III)

- National Guard, Army – $746 million
- National Guard, Air Force – $482 million
- Operations and Maintenance (Army, Navy, Air Force, Marines and National Guards) – $1.9 billion
- Defense Production Act purchases – $1.0 billion
- Working capital funds – $1.5 billion
- Defense Health Program – $3.8 million

Department of Energy (Title IV)

The CARES Act provides $100 million to Office of Science and National Nuclear Security Administration to help prevent, prepare for and respond to coronavirus, domestically or internationally, and for necessary expenses related to providing support and access to scientific user facilities.

Department of the Treasury (Title V)

- IRS – $250 million
- SBA, Disaster Loans Program – $562 million for Section 7(b) loans

Department of Homeland Security (Title VI)

Funding Provisions (Title VII)

Department of the Interior

- Bureau of Indian Affairs – $453 million to help prevent, prepare for and respond to coronavirus, domestically or internationally, including, but not limited to, funds for public safety and justice programs, executive direction to carry out deep cleaning of facilities, purchase of personal protective equipment, purchase of IT to improve teleworking capability, welfare assistance and social services programs (including assistance to individuals) and assistance to tribal governments, including tribal governments that participate in the ''Small and Needy'' program. Not less than $400 million shall be made available to meet the direct needs of tribes.
- Bureau of Indian Education – $69 million for funding for tribal colleges and universities, salaries, transportation and IT. No less than $20 million of this total will be allocated for tribal colleges and universities.

Department of Health and Human Services

- Indian Health Services (IHS) – $1.0 billion. No less than $450 million is to be distributed by IHS-operated programs on to tribes and tribal organizations through contracts or grants

Funding Provisions (Title VIII)

Department of Labor

- Training and Employment Services – $345 million

Department of Health and Human Services

- U.S. Centers for Disease Control and Prevention – $4.3 billion, with at least $1.5 billion designated for states, localities, territories, tribes, tribal organizations and urban Indian health organizations
- National Institute of Allergy and Infectious Diseases – $706 million
- Substance Abuse and Mental Health Services – $425 million
- Medicare and Medicaid – $200 million, with at least $100 million allocated for nursing home facilities in locations with community transmission of coronavirus.
- Administration for Children and Families, low-income energy assistance – $900 million
- Child Care and Developmental Block Grants – $3.5 billion
- Children and Families Services Programs – $1.9 billion
  - $1 billion of this total is to be used for Community Services Block Grants and $750 million will be used for the Head Start programs, including summer programs
- Aging and Disability Services Programs – $1 billion
- Public Health and Social Services Emergency Funds – $27 billion
  - No more than $16 billion is to be used for the Strategic National Stockpile

Department of Education

The CARES Act allocates $30.8 billion to the Education Stabilization Fund, which is broken into three major components: Higher Education Emergency Relief Fund – $14 billion; Elementary and Secondary Emergency Relief Funds – $13 billion; and the Governor's Emergency Education Relief Funds – $3 billion.

Governor's Emergency Education Relief Fund (Section 18002)

The grants to each state (including the District of Columbia and Puerto Rico) will be based 60 percent on the relative population of individuals age 5 to 24 and 40 percent on the relative number of children counted under the ESEA.

Elementary and Secondary Emergency Relief Funds (Section 18003)

Funds will be available to each state educational agency based on the same proportion as each state received under ESEA in the most recent fiscal year. States must then allocate at least 90 percent of their funds as subgrants to local educational agencies, including charter schools, in the same proportion as each locality's most recent ESEA allocation. Nonpublic schools must be provided equitable services.

Higher Education Emergency Relief Fund (Section 18004)

The CARES Act breaks higher education relief into several categories: 90 percent of the total fund, or $12.5 billion, will be allocated to institutions based 75 percent on Pell Grant-eligible students and 25 percent of remaining enrollment (not Pell-eligible).

Seven and a half percent of the total fund, or $1.0 billion, will be available for additional awards to be allocated by the Secretary of Education based on current allocations under the *Further Consolidated Appropriations Act*. These awards can be used to defray expenses including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings and payroll incurred by institutions of higher education, and for grants to students for any component of the student's cost of attendance, including food, housing, course materials, technology, healthcare and child care.

The CARES Act reserves $350 million for higher education institutions with the greatest unmet need to be used to defray expenses (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings and payroll) incurred by institutions of higher education and for grants to students for any component of the student's cost of attendance, including food, housing, course materials, technology, healthcare and child care.

Gallaudet and Howard Universities received separate direct allocations of $7.0 million and $13.0 million respectively.

Social Security Administration

The CARES Act allocates $300 million to cover various administrative expenses as a result of COVID-19.

Department of Veterans Affairs (Title X)

- General operating expenses – $13 billion
- Medical services – $14 billion
- Medical community care – $2 billion
- Information technology – $2 billion

Conclusion

BKD will continue to follow this developing situation. Visit BKD's COVID-19 Resource Center to learn more. If you have questions about these changes, contact your **BKD Trusted Advisor**™ today.

Contributors

Anne Coughlan

Julia Dengel

Yelena Bosovik

Nick Chambers