



DC LEGISLATIVE & REGULATORY SERVICES, INC.

March 26, 2020

**From:** David Crow, Laurie Flanagan, David Beaudreau, Jr., Jay Vroom and Meredith Rynkiewicz

**Re:** **3<sup>rd</sup> Coronavirus Stimulus Bills**

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The Senate passed a 3<sup>rd</sup> economic stimulus bill, the “Coronavirus Aid, Relief, and Economic Security (CARES) Act” late last night by a vote of 96-0. The House is expected to pass the \$2 trillion economic relief package tomorrow. President Trump has promised to swiftly sign the measure into law.

The bill includes a package of tax relief provisions, corporate and small business loan programs and a taxpayer rebate program. It includes funding for various nutrition programs and a \$9.5 billion assistance program for livestock operations, specialty crop producers, and farmers who sell directly to farmers markets, schools and restaurants. The bill provides funding to EPA for the expedited review of pesticides that are effective against the novel coronavirus that causes COVID-19. In addition, the bill extends the Department of Homeland Security’s Chemical Facility Anti-Terrorism Standards program through July 23, 2020. The bill also includes a host of funding for federal agencies and programs. Finally, the bill provides an additional \$600 per week for those receiving unemployment benefits.

A summary of the bill’s various tax and funding provisions are below.

### **Tax Provisions**

#### **Rebates to Individuals**

- U.S. residents with adjusted gross income up to \$75,000 (\$150,000 married) will receive a \$1,200 (\$2,400 married) rebate, plus an additional \$500 per child.
- The IRS will use taxpayers’ 2019 tax returns if filed, or in the alternative their 2018 returns, to determine eligibility.
- The rebate amount is reduced by \$5 for each \$100 that a taxpayer’s income exceeds the threshold.

- Taxpayers with incomes exceeding \$99,000 (\$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children) will not receive a rebate.

## Employee Retention Credit

- An eligible employer receives a refundable credit for up to 50 percent of qualified wages for each calendar quarter.
- The maximum amount of qualified wages per employee that may be taken into account for all calendar quarters is \$10,000.
- The credit is first allowed against the tax imposed by section 3111(a) or 3221(a), and then any credit in excess of such payroll tax liability will be treated as an overpayment and refunded to the eligible employer under sections 6402(a) and 6413(b).
- Defines as “eligible employer: as an employer (other than an employer receiving a business interruption loan) that conducted an active trade or business during calendar year 2020 and:
  - The operation of that business was fully or partially suspended by governmental order due to the coronavirus (COVID-19) during such calendar quarter; or <sup>[[1]]</sup><sub>[[SEP]]</sub>
  - The calendar quarter falls between the first calendar quarter beginning after 2019 in which the business has suffered a more than 50% drop in gross receipts as compared to the same calendar quarter for the prior year and the first subsequent calendar quarter in which the business’s gross receipts are at least 80% as compared to the same calendar quarter for the prior year. <sup>[[1]]</sup><sub>[[SEP]]</sub>
- An employer that receives a small business interruption loan is not an <sup>[[1]]</sup><sub>[[SEP]]</sub>eligible employer. <sup>[[1]]</sup><sub>[[SEP]]</sub>
- The bill defines qualified wages based on employer size.
  - For employers with 100 or less full-time equivalent employees, they may take into account all wages paid to employees during the relevant period.
  - For employers with more than 100 full-time equivalent employees, they may only take into account wages paid to employees who are not providing services during the relevant period, and such wages taken into account shall not exceed the amount they would have been paid previously.
  - Qualified wages include any qualified health plan expenses allocable to such other qualified wages, but does not include wages taken into account under the paid sick leave and family and medical leave credit provisions of the Families First Coronavirus Response Act. <sup>[[1]]</sup><sub>[[SEP]]</sub>
  - Persons treated as a single employer under section 52(a) or (b) (relating to the work opportunity tax credit) or section 414(m) or (o) (relating to certain employee benefit plans) are treated as a single employer for purposes of the credit. <sup>[[1]]</sup><sub>[[SEP]]</sub>

- Tax-exempt organizations may be eligible for these credits in certain cases, but governmental entities are not. <sup>[17]</sup><sub>[SEP]</sub>
- The credit only applies to wages paid after March 12, 2020 and before December 31, 2020. <sup>[17]</sup><sub>[SEP]</sub>

### **Deferral of Certain Payroll Taxes**

- An employer's share of social security taxes (and Railroad Retirement Act taxes) from the effective date through the remainder of 2020 is deferred and is due 50% on December 31, 2021 and 50% on December 31, 2022.
- There will be no interest or penalties associated with these payment dates.

### **Net Operating Losses**

- The Tax Cuts and Jobs Act (TCJA) eliminated net operating loss (NOL) carrybacks and generally restricted the deduction of NOLs to 80% of taxable income.
- The bill allows a five-year NOL carry back for losses incurred in tax years beginning in 2018, 2019 and 2020. Also, for taxable years beginning before 2021, a taxpayer would be permitted to deduct 100% of loss carry forwards and carry backs.
- For taxable years beginning after 2020, a taxpayer would be permitted to deduct 100% of loss carry forwards from years beginning before 2018, but loss carry forwards from years beginning after 2017 would remain subject to the 80% of taxable income limitation.

### **Loss Limitation for Non-Corporate Taxpayers**

- The TCJA imposed a limitation on certain "excess business losses" under section 461(l)(1)(B). The bill delays the applicability date of the section 461(l)(1)(B) excess business loss limitation applicable to non-corporate taxpayers from tax years beginning after December 31, 2017 to tax years beginning after December 31, 2020, along with some technical corrections.

### **Interest Limitation**

- Under the TCJA, the deduction for net business interest expense is generally limited to 30 percent of adjusted taxable income (ATI).
- The bill modifies the section 163(j) interest limitation in two ways:
  - The limitation would be increased to 50 percent (rather than 30 percent) of ATI for taxable years beginning in 2019 and 2020; and
  - For taxable years beginning in 2020, the taxpayer would be able to determine its interest limitation by using its ATI from 2019 (rather than 2020).

## **Acceleration of Alternative Minimum Tax (AMT) Credits**

- The TCJA repealed the corporate AMT and allowed taxpayers the use of all remaining AMT credits over a four-year period beginning in 2018.
- The bill accelerates the use of remaining AMT credits by allowing taxpayers to apply the entire refundable credit amount in tax years beginning in 2018 and 2019. Taxpayers may make an election to take the entire refundable credit amount in 2018.
- The provision also provides that any application for refund of an amount pursuant to such election should be processed within 90 days of the date the claim is filed. <sup>[1]</sup><sub>SEP</sub>

## **Qualified Improvement Property**

- The bill includes a technical correction treating “qualified improvement property” as 15-year property, making the property eligible for immediate expensing.

## **Increase of Charitable Contribution Limitation**

- A percentage of taxable income limitation is imposed on the total amount of charitable contributions that a corporation or individual can deduct in a given taxable year. <sup>[1]</sup><sub>SEP</sub>
- For charitable contributions paid in cash in 2020, the bill increases the percentage income limitation for corporations (from 10 percent) to 25 percent of taxable income and suspends the limitation entirely for individuals.
- Contributions to private foundations or donor advised funds do not qualify for the increased limitation.
- The limitation on business contributions of food inventory is increased from 15% to 25%.

## **Exclusion for Employer Payments of Student Loans**

- The bill excludes from gross income up to \$5,250 paid by an employer to an employee for the principal or interest on a qualified education loan.
- This provision applies to payments made after enactment of the bill and before January 1, 2021. The employer may either directly pay the employee or the lender. <sup>[1]</sup><sub>SEP</sub>

## **Temporary Abatement of Distilled Spirits Excise Tax for Use in Hand Sanitizer**

- Distilled spirits that are removed from a bonded premise during calendar year 2020 will not be subject to excise tax if used or contained in hand sanitizer in a manner consistent with FDA guidance related to the

coronavirus outbreak. [SEP]

### **Single-Employer Plan Funding Rules**

- The bill provides companies with more time to meet their [SEP] funding obligations by delaying the due date for any contribution otherwise due under Code section 430(j) during 2020 until January 1, 2021. At that time, contributions that had been due earlier would be paid with interest (effective rate of interest for the plan) during the delay. [SEP]
- A plan may elect to determine the applicability of benefit restrictions for the 2020 plan year based on the plan's funded status for the 2019 plan year to avoid restrictions due to declining returns. [SEP]

### **Treasury Department Corporate Loans**

- \$25 billion for passenger air carriers, \$4 billion for cargo air carriers and \$17 billion for businesses that work in national security.
- \$454 billion for loans to businesses, states and municipalities.
- Businesses that receive loans may not issue dividends for up to a year after the loan is no longer outstanding, and must retain 90% of employment levels as of March 24, "to the extent practicable," through September 30. The loans also cannot exceed five years.
- There's a specific provision in the program for direct loans to mid-sized businesses, defined as between 500 and 10,000 employees, as well as non-profit organizations, where no payments will be due for the first six months after the loan is issued.
- A congressional oversight commission will monitor how the money is spent.

### **Small Business Administration Loans and Programs**

#### **Paycheck Protection Program (PPP)**

- Includes nearly \$350 billion to create a PPP that will provide small businesses and other entities with zero-fee loans of up to \$10 million.
- Up to 8 weeks of average payroll and other costs will be forgiven if the business retains its employees and their salary levels.
- Principal and interest is deferred for up to a year and all borrower fees are waived.
- The bill requires the SBA Administrator to set a cap on how much a bank can earn to process loan applications and prioritize underserved borrowers, including those in rural communities, minorities, women and veterans.

## **Emergency Economic Injury Grants**

- \$10 billion in funding to provide advances of \$10,000 to small businesses and nonprofits that apply for an SBA economic injury disaster loan (EIDL) within three days of applying for the loan.
- EIDLs are loans of up to \$2 million that carry interest rates up to 3.75% for companies and up to 2.75 percent for nonprofits, as well as principal and interest deferment for up to 4 years. The loans may be used to pay for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses.
- The EIDL grant does not need to be repaid, even if the grantee is subsequently denied an EIDL, and may be used to provide paid sick leave to employees, maintaining payroll, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent and mortgage payments. Eligible grant recipients must have been in operation on January 31, 2020.
- The grant is available to small businesses, private nonprofits, sole proprietors and independent contractors, tribal businesses, as well as cooperatives and employee-owned businesses.
- A business that receives an EIDL between January 31, 2020 and June 30, 2020 as a result of a COVID-19 disaster declaration is eligible to apply for a PPP loan or the business may refinance their EIDL into a PPP loan. In either case, the emergency EIDL grant award of up to \$10,000 would be subtracted from the amount forgiven in the Paycheck Protection Plan.

## **Debt Relief for Existing and New SBA Borrowers**

- \$17 billion in funding to provide immediate relief to small businesses with standard SBA 7(a), 504, or microloans. Under this provision, SBA will cover all loan payments for existing SBA borrowers, including principal, interest, and fees, for six months.
- This relief will also be available to new borrowers who take out an SBA loan within six months after the President signs the bill.
- The measure encourages banks to provide further relief to small business borrowers by allowing them to extend the duration of existing loans beyond existing limits; and enables small business lenders to assist more new and existing borrowers by providing a temporary extension on certain reporting requirements.
- While SBA borrowers are receiving the six months debt relief, they may apply for a PPP loan that provides capital to keep their employees on the job. The six months of SBA payment relief may not be applied to payments on PPP loans.

## **Paid Leave for Government Contractors**

- Provides paid leave for employees working on small business contracts with the federal government.

## **Resources for Business Counseling Services**

- Provides \$275 million in grants to the nation's network of Small Business Development Centers (SBDCs), Women's Business Centers (WBCs), Minority Business Development Agency's Business Centers (MBDCs), to provide mentorship, guidance and expertise to small businesses.
- Provides funds for the associations that represent SBDCs and WBCs to create a joint platform that consolidates information and resources related to COVID-19 in order to provide consistent, timely information to small businesses.

## **Other Funding Provisions**

### **Environmental Protection Agency**

- \$2.41 million <sup>[L]</sup><sub>[SEP]</sub> for cleaning and disinfecting equipment and continuation of EPA programs
- \$1.5 million for expediting registration and other actions related to <sup>[L]</sup><sub>[SEP]</sub> pesticides to address coronavirus.

### **Department of Agriculture (USDA)**

- \$9.5 billion in emergency COVID-19 response funding to support agricultural producers impacted by COVID-19, including producers of specialty crops, producers that supply local food systems, and livestock producers.
- \$15.8 billion in mandatory funding for the Supplemental Nutrition Assistance Program.
- \$8.8 billion for child nutrition programs.
- \$450 million for the Emergency Food Assistance Program (TEFAP), of which \$150 million could be used for costs associated with distribution.
- Allows the Commodity Credit Corporation to use as much as \$14 billion in previous funding to reimburse net realized losses.
- Supplemental funding for various USDA agencies to offset the cost of lost user fee revenues.
- \$1 billion in lending authority for the Business and Industry Loan Guarantee Program, which provides financing to business owners that might not be able to qualify for a loan on their own.
- \$100 million in grants for the costs of construction, improvement, or acquisition of facilities and equipment needed to provide broadband service in

- eligible rural areas
- \$25 million for the Distance Learning Telemedicine and Broadband grants.

### **Department of Homeland Security (DHS)**

- \$45 billion for the Federal Emergency Management Agency's Disaster Relief Fund.
- \$400 million for grants overseen by FEMA.
- \$140.8 million for the Coast Guard.
- \$100 million for the Transportation Security Administration.
- \$178.3 million for other Department needs.
- Delay REAL ID requirements until at least Sept. 30, 2021.
- Extends the Chemical Facility Anti-Terrorism Standards program through July 23, 2020.

### **Department of Labor (DOL)**

- \$360 million for the Labor Department, of which \$345 million would be for the Employment and Training Administration.
- The funds are to support programs that provide training and supportive services for dislocated workers, seniors, migrant farmworkers, and homeless veterans.

### **Department of Transportation (DOT)**

- \$25 billion for Federal Transit Administration grants that could be used for operating expenses relating to the coronavirus, including lost revenue, purchasing personal protective equipment, and preventative maintenance and cleaning.
- \$10 billion for the Federal Aviation Administration's Airport Improvement Program.
- \$1 billion for Amtrak, including \$526 million for National Network Grants and \$492 million for Northeast Corridor Grants.

### **Department of the Interior**

- \$453 million for the Bureau of Indian Affairs to deep clean facilities, purchase equipment to improve teleworking, and purchase personal protective equipment and \$69 million to the Bureau of Indian Education for similar activities.
- \$158.4 million for supplies and equipment to clean buildings and public areas supporting law enforcement and emergency management operations.
- \$55 million for Insular Affairs to assist U.S. territories.



## **Department of State**

- \$350 million for migration and refugee assistance.
- \$324 million for diplomatic programs.
- \$258 million for international disaster assistance.
- \$88 million for the Peace Corps.
- Allows the State Department to provide medical services for U.S. citizens, nationals, and permanent residents abroad, as well as third-country nationals connected to them or to U.S. missions abroad if they're unable to obtain such help.
- Allows the State Department and the U.S. Agency for International Development to offer additional paid leave to employees relating to the coronavirus, which would be retroactive to leave provided since Jan. 29 and extend through Sept. 30, 2022.
- Authorizes \$3 billion for the World Bank's International Development Association, \$7.3 billion for the African Development Bank, and \$513.9 million for the African Development Fund.
- Authorizes increasing the International Finance Corporation's capital stock and supporting borrowing at the International Monetary Fund.

## **Department of Energy**

- Extends through fiscal 2022 the Energy Department's authority to draw down and sell crude oil from the Strategic Petroleum Reserve (SPR) and to deposit the proceeds into the Energy Security and Infrastructure Modernization Fund.
- Spreads over three years a requirement in the fiscal 2020 appropriations law to sell \$450 million from the SPR to fund the reserve's Life Extension II project.
- \$100 million for the department's Office of Science.

## **Army Corps of Engineers (ACOE)**

- \$70 million for the Army Corps of Engineers.
- Changes the treatment of money appropriated from the Harbor Maintenance Trust Fund on January 1, 2021, or the enactment of a new water resources development act, whichever occurs first.

## **Health and Human Services (HHS) Department**

- \$100 billion for the Public Health and Social Services Emergency Fund to reimburse eligible health-care providers for health-care expenses or lost revenue directly attributable to the coronavirus.

- \$27 billion for the Public Health and Social Services Emergency Fund for coronavirus preparation and response, such as vaccines, countermeasures, and medical surge capacity.
- \$4.3 billion for the Centers for Disease Control and Prevention, of which at least \$1.5 billion would be provided to state, local, and tribal entities.
- \$500 million for global disease detection and response and \$500 million for public health data surveillance and analytics infrastructure.
- \$3.5 billion for the Administration for Children and Families (ACF) Child Care and Development Block Grant.
- \$1.87 billion for ACF's children and families services programs, which includes \$1 billion for the Community Services Block Grant and \$750 million for Head Start.
- \$1.03 billion for the Indian Health Service, which could be used for surveillance, testing capacity, community health representatives, public health support, telehealth, and other activities.
- \$955 million for aging and disability programs operated by the Administration for Community Living.
- \$945 million for the National Institutes of Health, including \$706 million for the National Institute of Allergy and Infectious Diseases.
- \$900 million for the ACF Low-Income Home Energy Assistance Program.
- \$425 million for the Substance Abuse and Mental Health Services Administration, of which \$250 million would go to Certified Community Behavioral Health Clinics.
- \$275 million for the Public Health and Social Services Emergency Fund for other health needs, including \$90 million for the Ryan White HIV/AIDS Program.
- \$200 million for the Centers for Medicare and Medicaid Services program management account.
- \$80 million for the Food and Drug Administration for countermeasure development, advanced product manufacturing, and supply monitoring.
- Requires labs that run coronavirus test to report the results from each test to HHS during the emergency period.

### **Department of Defense**

- \$3.81 billion for the Defense Health Program to respond to the coronavirus.
- \$1.9 billion for various service branch Operation and Maintenance accounts.
- \$1.45 billion for working capital funds.
- \$1.1 billion for TRICARE contracts under the Defense Health Program.
- \$1 billion for procurement expenses incurred under the Defense Production Act.
- \$746.6 million for Army National Guard personnel.
- \$482.1 million for Air Force National Guard personnel.

## **Department of Education**

- \$30.8 billion to create an Education Stabilization Fund relating to the coronavirus.
- Provide \$100 million for “Safe Schools and Citizenship Education,” which could be used by elementary, secondary, and post-secondary schools for cleaning affected schools, counseling, and distance learning.

## **Veterans Affairs Department**

- \$14.4 billion for medical services.
- \$2.15 billion for information technology systems.
- \$2.1 billion for medical community care.
- \$606 million for medical facilities.
- \$150 million for grants for construction of state extended care facilities.
- \$100 million for Medical Support and Compliance.

## **Department of Housing and Urban Development**

- \$5 billion for the Community Development Fund, which funds the Community Development Block Grant program.
- \$4 billion for Homeless Assistance Grants.
- \$1.25 billion for tenant-based rental assistance.
- \$1 billion for project-based rental assistance.
- \$685 million for the Public Housing Operating Fund.
- \$300 million for Native American Programs.

## **Funding for Other Agencies and Programs**

- \$1.9 billion for the Commerce Department. Most of that amount, \$1.5 billion, would be provided to the Economic Development Administration to respond to “economic injury” resulting from the coronavirus outbreak.
- \$1 billion for the Justice Department, including \$850 million for state and local law enforcement assistance.
- \$562 million for Small Business Administration disaster loans.
- \$400 million for election security grants that would be distributed by the Election Assistance Commission.
- \$300 million for the Social Security Administration.
- \$275 million for the General Services Administration Federal Buildings Fund.
- \$250 million for the Internal Revenue Service to cover costs associated with delaying tax filing deadlines and implementing tax changes under the second coronavirus measure.
- \$200 million for the Federal Communications Commission, to help health-care providers with telecommunications services, information services, and devices to enable telemedicine and other activities.

- \$93 million for the Legislative Branch, including funding for teleworking.
- \$75 million each for the National Endowment for the Arts, National Endowment for the Humanities, and Corporation for Public Broadcasting, plus \$50 million for the Institute of Museum and Library Services and \$25 million for the Kennedy Center.
- \$800 million for a new Pandemic Response Accountability Committee that would oversee loans and other funds provided to nonfederal entities under the bill and other coronavirus response laws.