

COVID-19 Round 3 in D.C.: CARES Act Summary

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Please note: This alert will be updated periodically with new developments. It was last updated on March 26, 2020.

Congress has completed two rounds of legislation in response to the COVID-19 pandemic and resulting economic crisis. These include an [\\$8.3 billion supplemental appropriation \(round 1\)](#) signed into law on March 6, as well as the [Families First Coronavirus Response Act \(round 2\)](#), which President Trump signed into law on March 18.

The third round, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), is a \$2 trillion package that includes significant expansions in small business lending, unemployment insurance, tax relief to individuals and employers, health care measures, \$500 billion in economic stabilization funds, \$274 billion in emergency appropriations, and other measures aimed at combating the COVID-19 health care and economic crisis. Following the Senate's approval on March 25, 2020, it is being considered by the House this week and is expected to become law.

Provisions of the Coronavirus Aid, Relief, and Economic Security Act (As of March 26, 2020 at 3 p.m.)

Small Business (Title I)

Section 1102 of the CARES Act expands both lender and borrower eligibility for 7(a) loans and provides more protections for lenders. It also authorizes \$349 billion for the expanded Section 7(a) loan program. The Section 1102 changes to the 7(a) loan program are in effect from February 20, 2020 – June 30, 2020.

- Expansion of small business eligibility. Companies with the greater of no more than (i) 500 employees, or (ii) their applicable employee size standard for their North American Industrial Classification System, are eligible for loans under this program. The number of employees includes both full-time and part-time employees. If a company that falls under NAICS Code 72 (accommodations and food service) has multiple locations, the 500-employee limit applies to each location. Notably, the act is silent on companies with revenue-based size standards.

The bill suspends the Small Business Administration's (SBA) affiliation rules but only for companies in NAICS Code 72.

Small businesses that have alternate sources of credit are still eligible for these loans, and the fact that a company has a pre-existing emergency loan will not impact eligibility under the

expanded 7(a) program as long as the pre-existing loan was not used for payroll purposes.

- Loan terms. The act contains a formula for calculating loan amounts. The maximum loan is the lesser of:
 - For companies that have been in business for a year: The average monthly payroll for the preceding 12 months multiplied by 2.5 plus any pre-existing emergency loan. For companies that were not in business before the period February 15, 2019 – June 30, 2019: The average monthly payroll for the period January 1, 2020 through February 29, 2020 multiplied by 2.5.

OR

- \$10 million.
- The loan proceeds may be used only for payroll, group health benefits, salary and employee commissions, interest on mortgages, rent, utilities and interest on debt incurred before February 15, 2020.
- Interest rates cannot exceed four percent.
- Delegates authority to lenders to make determinations on borrower eligibility and creditworthiness without going through standard SBA channels.
- New lenders are invited to join the program and will be provided the same authorities as existing lenders.
- Requirements will be amended to determine eligibility based upon COVID-19 funding limitations, not repayment ability.
- Limits a borrower from receiving this assistance and an economic injury disaster loan through SBA for the same purpose, with limited exceptions.
- Waives collateral and personal guarantee requirements under the SBA 7(a) program.
- Increases the maximum loan for an SBA Express loan from \$350,000 to \$1 million through December 31, 2020, after which point the Express loan will have a maximum of \$350,000.
- Borrowers are eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage, and select other expenses impacted by COVID-19.

	<ul style="list-style-type: none"> • The amount forgiven will be reduced proportionally by a reduction of employees according to a specific formula and the act encourages employers to rehire any employees who have already been laid off due to the COVID-19 crisis without penalty. • The act requires the Senate to administer guidance to lenders and agents to ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets, including veterans and members of the military community, and small business concerns owned and controlled by socially and economically disadvantaged individuals. <p>Former Section 1108 of the Senate bill was removed. A narrower contractor relief provision (Section 3610) is included in the Labor Title of the bill and provides as follows:</p> <p>A contractor to be "reimbursed" for the cost of keeping certain employees "in a ready state" (presumably this means on payroll although the Act does not use that term). The reimbursement applies only when access to a worksite (contractor or Federal) has been curtailed due to COVID-19 restrictions and only if the employee cannot telework. Compensation is limited to the "minimum established contract billing rates" and capped at 40 hours per week. Paid leave, including sick leave, is reimbursable. As a process matter, a contract modification is required, meaning the contractor will likely have to present a Request for Equitable Adjustment for amounts it believes it is owed.</p> <p>While less expansive than previous language, this is an important potential remedy for contractors and should be considered in concert with other FAR based and contractual remedies, such as Suspension of Work/Stop Work Orders, Contract Changes clauses, and Excusable Delay clauses.</p>
<p>Unemployment Insurance Plus provisions (Title II, Subtitle A) Unemployment Insurance: (\$260 billion)</p>	<ul style="list-style-type: none"> • Creates a temporary Pandemic Unemployment Assistance program beginning January 27, 2020 through December 31, 2020, to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those seeking part-time employment, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency. • A covered individual is one who is not eligible for regular compensation or extended benefits under state or federal law, and self-certifies that he or she is otherwise able to work but is unable to do so for reasons related to the impacts of COVID-19 on the individual, the individual's family, the individual's place of work, movement restrictions and more.

	<ul style="list-style-type: none"> • Provides payment to states to reimburse nonprofits, government agencies and Indian tribes for half of the costs they incur through December 31, 2020 to pay unemployment benefits. • Provides an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months. • Provides funding to pay the cost of the first week of unemployment benefits through December 31, 2020 for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive unemployment benefits. • For the Pandemic Unemployment Assistance, assistance is available for up to 39 weeks and the total shall include any week for which the covered individual received regular compensation or extended benefits under any federal or state law. If after the date of enactment of the act the duration of extended benefits is extended, the 39-week period will be extended by the number of weeks that is equal to the number of weeks by which the extended benefits were extended. • Provides funding to support "short-time compensation" programs where employers reduce employees' hours instead of laying them off and the employees with reduced hours receive a pro-rated unemployment benefit. This provision would pay 100 percent of the costs they incur in providing short-time compensation through December 31, 2020. • Temporarily eliminates the 7-day waiting period for railroad unemployment insurance benefits through December 31, 2020 (to make this program consistent with the change made for states through the same period in an earlier section of this title). • Gives the secretary of the Department of Labor the authority to issue operating instructions or other guidance as necessary in order to implement this subtitle, as well as allowing the Labor Department to waive Paperwork Reduction Act requirements, speeding up their ability to gather necessary information from the states.
<p>Rebates and Tax Policies for Individuals (Title II, Subtitle B)</p>	<ul style="list-style-type: none"> • Eligible individuals are entitled to recover a rebate of \$1,200 (\$2,400 for married couples) plus an additional \$500 for each child. There is a gradual phase-out for those reporting adjusted gross income of \$75,000 (\$150,000 for married) and greater. • Temporarily waives the existing 10 percent penalty for early withdrawals from qualified retirement plans up to \$100,000. Income tax due on such distributions is spread ratably over three

	<p>years. Increases amounts that can be taken on loan from qualified employer plans from \$50,000 to \$100,000.</p> <ul style="list-style-type: none"> Temporarily waives the minimum distribution requirements for pension plans given that the upcoming April 1 deadline that would be difficult to meet. Liberalizes the deductibility of charitable contributions (cash and food inventory) made by individuals and corporations. Eliminates employee income tax liability when employers make payments (up to \$5,250) to pay off employees' student loans.
<p>Business Tax (Title II, Subtitle C)</p>	<ul style="list-style-type: none"> Provides an employee retention credit for eligible employers. Credit is 50 percent of qualified wages (limited to \$10,000 per employee, per quarter) and is further limited by employment taxes, but is thereafter refundable. Qualified wages include health plan expenses. Provides for deferral of payment of the 6.2 percent payroll tax paid by both employers and self-employed individuals for the Social Security Trust Fund. Relaxes the rules on the limitations on the use of net operating losses. Businesses can carry back losses for five years and removes the taxable income limitation for carry forwards. Accelerates the ability for corporations to use alternative minimum tax credits and allowing businesses to claim a credit as a result. Temporarily increases the amount of interest expenses businesses are allowed to deduct, from the current 30 percent limitation to 50 percent. Enables businesses to immediately write off the costs of qualified improvement property. Temporarily suspends excise tax for alcohol used to produce hand sanitizer.
<p>Health Care Supply (Title III, Subtitle A, Part I)</p>	<ul style="list-style-type: none"> Requires the Department to contract with the National Academies of Science to perform a study and report on the medical product supply chain within 60 days. The report will assess and evaluate the dependence of the private sector, state and federal government on critical drugs and devices that are sourced or manufactured outside the U.S. Requires the strategic national stockpile to include personal protective equipment, ancillary medical supplies and other applicable supplies required for the administration of drugs,

	<p>vaccines and other biological products, medical devices and diagnostic tests.</p> <ul style="list-style-type: none"> • A respiratory protective device that is approved by the National Institute for Occupational Safety and Health (NIOSH) and determined by the secretary to be a priority for use in a public health emergency is considered a covered medical countermeasure. • Requires the Food and Drug Administration (FDA) to prioritize and expedite reviews of drug applications and any inspections necessary to mitigate or prevent drug shortages. • Expands drug manufacturer reporting requirements to include active pharmaceutical ingredients in the event of an interruption or permanent discontinuance in the manufacture of an active pharmaceutical ingredient if it is likely to lead to a meaningful disruption in the supply of the ingredient of a drug needed to protect the public health during a public health emergency, or a drug that is life-sustaining, life-supporting or intended for use in the prevention or treatment of a debilitating disease or condition. It also requires manufacturers to develop risk management plans. • Requires manufacturers of medical devices that are critical to the public health during a public health emergency to report discontinuances or interruption of the manufacture of the device that is likely to disrupt the supply of the device. • Requires manufacturers of devices critical to the public health (i.e., those that are life-supporting or sustaining) to notify the secretary of the Department of Health and Human Services (HHS) of any permanent or temporary interruption in manufacture of the device. The act also creates an expedited pathway for device consideration and inspection of a facility to mitigate such a shortage and establishes a public list of devices that are or may be in shortage.
<p>COVID-19 Testing and Provider Provisions (Title III, Subtitle A, Part II)</p>	<ul style="list-style-type: none"> • Amends the definition of a COVID-19 diagnostic test as contained in the recently enacted Family First Act (H.R. 6201) to provide more specificity. • Sets the price during the public health emergency period that a commercial insurer (both ERISA and non-ERISA) will pay for a COVID-19 diagnostic test as follows: (1) an existing negotiated rate if the insurer and manufacturer have one in effect, or (2) the cash price for the test as published on a website (the cash price may be negotiated between a plan and a provider). Manufacturers are required to publish the cash price or incur a civil monetary penalty of \$300 per day.

- Requires commercial insurers (ERISA and non-ERISA) to cover without cost sharing "qualifying coronavirus preventive services," which are defined as preventive services with an A or B rating from the U.S. Preventative Strategies Task Force (USPSTF) and vaccines listed by the Centers for Disease Control and Prevention (CDC) within 15 days of the rating or listing.
- Authorizes and appropriates \$1.32 billion for community health centers for the detection, prevention, diagnosis and treatment of COVID-19 disease. These amounts are in addition to regular appropriations, the Affordable Care Act (ACA) appropriations, and the \$100 million contained in the first Coronavirus Emergency Supplemental Appropriations Act.
- Expands grant funding for evidence-based telehealth networks and telehealth technologies by \$29 million for each fiscal year from 2021 through 2025.
- Expands rural health care services by \$79.5 million for each fiscal year from 2021 through 2025.
- Makes extensive technical changes to update the authorization and response authority of the U.S. Public Health Service Commissioned Corps and Ready Reserve.
- Pre-empts state law to provide liability protection and immunity to any volunteer health professional for harm caused by simple negligence in providing in good-faith treatment in response to and during the COVID-19 public health emergency.
- Allows patients to give a broad authorization to share their records. Once that is granted, HIPAA will govern those records. However, patients can revoke their authorization, and the bill retains restrictions on law enforcement use on the records.
- Certain nutrition requirements under the Older Americans Act meal programs would be waived during the COVID-19 public health emergency to ensure seniors can receive meals.
- Individuals participating in projects can extend their participation and increase the average participation cap for eligible individuals to ensure continuity of services during the COVID-19 emergency.
- Directs HHS to issue guidance on the sharing of protected health insurance information during the COVID-19 emergency period.
- Appropriates \$125.5 million in funding for each fiscal year from 2021 through 2025 for the Healthy Start program to help reduce infant mortality and address health disparities.

<p>Research and Innovation (Title III, Subtitle A, Part III)</p>	<ul style="list-style-type: none"> • Removes limitations and grant cap (\$100 million) on other arrangements (beyond contracts, grants, cooperative agreements, etc.) between the Biomedical Advanced Research and Development Authority and external entities in the development of medical countermeasures during a public health emergency. Authorizes a report on the use of these funds. • Accelerates consideration of a new animal drug if that drug alone, or in combination with another drug, has the potential to treat an animal disease that could cause serious illness in humans.
<p>Health Care Workforce (Title III, Subtitle A, Part IV)</p>	<ul style="list-style-type: none"> • Makes extensive changes to Title VII of the PHSa, which authorizes various Allied Health programs administered by HRSA. In general, the section reduces various authorized funding levels. • Requires the Secretary of HHS to develop a comprehensive and coordinated plan and report concerning the health care workforce development programs of HHS, including education and training programs. • Amends Title VIII of the PHSa to authorize grants for the establishment or operation of Geriatrics Workforce Enhancement Programs. • Makes extensive changes to Title VIII of the PHSa, which authorizes nursing workforce programs. In general, this section reduces authorized levels, creates new demonstrations, allows nursing retention grants and creates a clinical nurse specialist activity.
<p>Education (Title III, Subtitle B)</p>	<ul style="list-style-type: none"> • Federal Supplemental Educational Opportunity Grant (SEOG): Allows institutions to award additional SEOG funds to students impacted by COVID-19. • Pell Grants: The secretary shall exclude from a student's Federal Pell Grant duration limit any semester that the student does not complete due to COVID-19. For students who dropped out of school as a result of COVID-19 it excludes the term from counting toward lifetime Pell eligibility. • Institutional waivers: The secretary shall waive the institutional requirement with respect to the amount of grant or loan assistance to be returned under such section if a recipient of assistance withdraws from the institution of higher education during the payment period or period of enrollment as a result of a qualifying emergency. • Canceling loan obligation: Cancels a borrower's obligation to repay the entire portion of a loan associated with a payment period for a recipient of such loan who withdraws from the

	<p>institution of higher education during the payment period as a result of a qualifying emergency.</p> <ul style="list-style-type: none"> • Temporary relief for federal student loan borrowers: <ul style="list-style-type: none"> ○ Suspends all payments due for loans made under the Higher Education Act for six months, during which interest will not accrue. ○ The secretary has directed the Office of Federal Student Aid to halt all collection actions and wage garnishment for borrowers for a 60-day period, beginning March 13, 2020. ○ In addition, the Secretary now must notify impacted borrowers of the changes no later than 15 days after enactment. As well, beginning August 1, the Secretary must alert student loan borrowers no less than 6 times – via postal mail, telephone or electronically – that payment obligations will resume on October 1, 2020. • For employers who provide student loan repayment benefits to employees, those benefits made following the date of enactment of this legislation through December 31, 2020 can do so on a tax-free basis and will be excluded from the employee's income. The annual \$5,250 benefit cap includes educational assistance such as tuition, fees and books.
<p>Labor (Title III, Subtitle C)</p>	<ul style="list-style-type: none"> • Creates a limitation on Paid Family and Medical Leave under the Families First Act, 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. • 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 work for the employer at least 30 days prior to being laid off. • Allows employers to receive an advance tax credit from Treasury instead of having to be reimbursed on the back end. • 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.
<p>Telehealth and Access (Title III, Subtitle D)</p>	<ul style="list-style-type: none"> • Includes a safe harbor for high deductible health plans that begin on or before December 31, 2021, that provide pre-deductible coverage for telehealth and other remote care services.

- Eliminates the requirement under Section 9003 of the ACA that permitted the use of HSAs to prescribed medicines or drugs, meaning an individual would no longer need a prescription for drugs or medicines to receive preferred tax treatment under an has. This change would apply for amounts paid or expenses incurred after December 31, 2019.
- Eliminates the requirement in Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 (Public Law 116-123) that limits the COVID-19 Medicare telehealth expansion authority during the COVID-19 emergency to situations where the physician or other professional has treated the patient in the past three years. This would enable beneficiaries to access telehealth, including in their home, from a broader range of providers, reducing COVID-19 exposure.
- Allows, during the COVID-19 outbreak, Federally Qualified Health Centers and Rural Health Clinics to furnish telehealth services to beneficiaries in their home or other settings. Medicare would reimburse for these services at a composite rate similar to payments provided for comparable telehealth services under the Medicare Physician Fee Schedule.
- Eliminates a requirement during the COVID-19 outbreak that a nephrologist conduct some of the required periodic evaluations of a patient on home dialysis face-to-face, allowing these vulnerable beneficiaries to get more care in the safety of their home.
- As determined by the HHS secretary, during the emergency period a physician or nurse practitioner may conduct a face-to-face encounter via telehealth.
- Directs the HHS secretary to consider ways to encourage the use of telecommunications systems, including for remote patient monitoring during the emergency period by clarifying guidance and through outreach as appropriate.
- Allows physician assistants, nurse practitioners, certified nurse midwives, and other professionals to order home health services for beneficiaries, reducing delays and increasing beneficiary access to care in the safety of their home.
- Provides prompt economic assistance to health care providers on the front lines fighting the COVID-19 virus, helping them to furnish needed care to affected patients.
- Increases the payment that would otherwise be made to a hospital for treating a patient admitted with COVID-19 by 20 percent and clarifies a state's ability to make a similar adjustment under its Medicaid program. It would build on the CDC's decision

	<p>to expedite the use of a COVID-19 diagnosis to enable better surveillance as well as trigger appropriate payment for these complex patients.</p> <ul style="list-style-type: none"> • Allows inpatient rehabilitation facilities (IRFs) to waive the "3-hour rule," which requires the IRF inpatient to be able to participate in three hours of rehabilitation therapy per day, five days per week, or 15 hours of rehabilitation therapy over one week. • Prevents a scheduled decrease in payment amounts for durable medical equipment (DME), which helps patients transition from hospital to home and remain in their home, through the length of COVID-19 public health emergency. • Ensures that access to testing and a coronavirus vaccine (once one is licensed) would be quickly covered without cost-sharing permanently, including under Medicare Advantage. • Requires Medicare Prescription Drug (P.D.) Plans and M.A.–P.D. plans to allow for fills and refills of covered Part D drugs for up to a 3-month supply during the COVID-19 emergency period. • Allows state Medicaid programs to pay for direct support professionals, including caregivers trained to assist with activities of daily living for disabled individuals in the hospital to reduce the length of stay and free up beds. • Expands coverage without cost-sharing provisions included in H.R. 6201 for those under Medicaid to experimental COVID-19 in-vitro diagnostic products. • Prevents scheduled reductions in Medicare payments for clinical diagnostic laboratory tests furnished to beneficiaries in 2021 and delays by one year the upcoming reporting period during which laboratories are required to report private payer data. • Expands, for the duration of the COVID-19 emergency period, an existing Medicare accelerated payment program that allows qualified facilities to request up to a six-month advanced lump sum or periodic payment. <p>If a state increased premiums between the Families First Act and the enactment of the CARES Act, the state would still be eligible for the FMAP increase under the Families First Act (6.2 percent).</p>
<p>Medicare, Medicaid, and Public Health (Title III, Subtitle E)</p>	<ul style="list-style-type: none"> • Extension of the work geographic index floor under the Medicare program through November 30, 2020.

	<ul style="list-style-type: none"> • Extension of funding for quality measure endorsement, input and selection increased to \$20 million prorated through November 30, 2020. • Extension of funding outreach and assistance for low-income programs at \$13 million prorated through November 30, 2020. • Extension of the Money Follows the Person rebalancing demonstration program at \$450 million prorated through November 30, 2020. • Extension of spousal impoverishment protections through November 30, 2020. • Delay of DSH reductions through November 30, 2020. • Extension and expansion of the Community Mental Health Services demonstration program through November 30, 2020. • Extension of the Sexual Risk Avoidance Education (SRAE) program at current funding levels through November 30, 2020 at current funding levels. • Extension of the Personal Responsibility Education Program (PREP) through November 30, 2020 at current funding levels. • Extension of demonstration projects to address health workforce needs through November 30, 2020 • Extension of the Temporary Assistance for Needy Families Program and Related Programs through November 30, 2020. • Extends the Community Health Center program, the National Health Service Corps, and the Teaching Health Center Graduate Medical Education program through November 30, 2020.
<p>Over-the-Counter Drugs (Title III, Subtitle F)</p>	<ul style="list-style-type: none"> • Changes the process for FDA's regulation of over-the-counter (OTC) drug products to an administrative order process and addresses specific issues related to certain products. Would establish a user fee program for the consideration of new OTC product applications.
<p>Economic Stabilization and Industry Support Generally (Title IV)</p>	<ul style="list-style-type: none"> • Emergency Relief and Taxpayer Protections: this section is a complex federal funding facility that is meant to keep businesses solvent in addition to the tax changes and the payroll support of the Paycheck Protection Plan. • Congress is using a relationship between Treasury and the independent Federal Reserve to make the funds available that has the net effect of leveraging the amount available to easily exceed the roughly \$500 billion allotted in this bill. • The Fed has existing authority under Section 13(3) of the Federal Reserve Act to lend directly to companies. Treasury will backstop

the Fed's programs that is authorizes under Section 13(3), subject to the eligibility terms of this act.

- Funds available: The airlines have a firm commitment to get \$25 billion of loans or loan guarantees, \$4 billion for air carriers, and \$17 billion for national security industries. They can borrow those amounts directly from Treasury as a loan or from a bank with a repayment guarantee from the Treasury. Stock and other financial instruments are not an option for this set-aside. \$454 billion is available for all other assistance, which can be leveraged when used in combination with the Federal Reserve.
- Form of assistance: Because the government has authority to make "loans, loan guarantees and other investments," the government (in combination with the Fed) can offer companies this funding for the \$454 billion in exchange for warrants, stock options, stock or other kinds of equity instruments that would allow the government to benefit from any upside (similar to TARP). If it is a loan, the government will receive interest income.
- Eligibility: To be eligible for this kind of access to liquidity, the state, municipality or business needs to show that it is solvent, it can repay the instrument, the requested amount is tied to its losses based on coronavirus and that other forms of affordable liquidity is not available (as defined by prior prevailing rates).
 - Broad eligibility: The act ensures that the use of this authority cannot be on terms limited to just one company. Instead the terms and ability to borrow must be available on an industry basis or cover a larger swath of the economy. Taken in combination with other terms, the cost of this liquidity source will be stable for an entire entity, with minor individual company overlays (if at all) based on the ability to repay assessments.
- Terms: The Fed will price assistance on a risk-adjusted basis and at terms that match pre-crisis rates and terms, to the greatest extent possible.
 - Loans must have a duration of five years or less.
 - Stock buybacks are not permitted unless prior contracts require it. No dividends may be paid or other capital contributions made, until the loan is repaid or one year from the date of the loan.
 - Borrowers must maintain their March 24 employment levels until September 30 and must retain no less than 90 percent of its employees until September 30.
 - Unlike the "Paycheck Protection Act," these loans are not going to be forgiven.

- Treasury is going to issue the guidelines for eligibility and repayment terms in 10 days.
- Special mid-size business provisions: Treasury and the Fed are going to collaborate on a special Fed program for mid-sized businesses (between 500 – 10,000 employees) that will have special terms relating to 90 percent employee retention, with full compensation and benefits through Sept 30, a prohibition on off-shoring jobs for the term of the loan plus 24 months, maintain existing union agreements for the term of the loan plus 24 months and "remain neutral" on any attempts of employees to unionize for the term of the loan.
- Banks are going to be the main distribution channel for these loans and known as "financial agents." No one will need to go directly to the Fed or Treasury to obtain the support. Like the Paycheck Protection Plan, the banks would earn a fee income for taking the loan paperwork and offering approvals based on a delegated authority. In turn, they will immediately sell the instruments back to the Fed or Treasury (depending on the entity).
- Banking provisions:
 - FDIC will guarantee accounts at FDIC-insured institutions at 100 percent, including business accounts and other noninterest bearing accounts. Taken in combination with the recent Fed support for MMMFs, this should ensure some stability in the deposit accounts of most institutions. Credit unions may also avail themselves of extra insurance provided by the National Credit Union Administration.
 - OCC waives lending limits to non-bank financial services companies if the OCC determines it is in the public interest.
 - Allows smaller institutions to reduce their CBLR from 9 percent to 8 percent until the earlier of the end of the crisis or December 31, 2020.
 - Temporary Relief from Troubled Debt Restructurings: This provision allows banks to renegotiate loan terms with coronavirus-impacted borrowers (companies and individuals) without having to hold extra capital, as long as the new terms needed as a result of coronavirus impacts (and not pending pre-crisis for other solvency reasons).

Suspends the application of a new accounting standard known as "CECL" that may result in significant increased capital charged for longer term debts, such as mortgages.
 - Non-Applicability of Restrictions on ESF During National Emergency: This provision essentially repeals the ban on the government providing a form of deposit insurance for MMMFs.

- Credit Unions will have increased access to the Central Liquidity Facility through December 31.
- Credit reporting: Lenders and other furnishers who offer forbearance or other special accommodations to borrowers may not report the account as delinquent to credit reporting agencies for at least 120 days from January 31, 2020 or 120 days after the end of the emergency declaration.
- Mortgage relevant provisions:
 - In the single-family residential space, the loans that are insured or otherwise guaranteed by FHA, VA, USDA, Fannie Mae and Freddie Mac are prohibited from foreclosure actions for 180 days, as well as an additional 180 days at the request of the borrower. Penalties and delinquency related fees may not be charged to the consumer if forbearance is requested. Borrowers may extend their forbearance for up to an additional four months if they can demonstrate a COVID-19 related hardship.
 - In the multi-family residential space, loans that are insured or otherwise guaranteed by FHA, VA, USDA, Fannie Mae or Freddie Mac or are part of HUD-assisted housing are eligible for a 90-day forbearance on mortgage and interest payments. Evictions are prohibited for borrowers who receive forbearance. This borrower-requested forbearance expires the earlier of December 31 or the termination of the emergency declaration.
 - In the rental space (single- and multi-family), landlords are subject to a 120-day moratorium on filing eviction proceedings for the nonpayment of rent if the property is insured or guaranteed by FHA, VA, USDA, Fannie Mae or Freddie Mac or are part of HUD-assisted housing. Unpaid rent will still accrue, but landlords may not charge fees or assess other punitive charges during the 120-day period. Landlords also are prohibited from reporting the delinquency to the credit agencies, if they are a furnisher.
- Transparency: All transactions that are funded under this section will be made public within 72 hours of execution. Publicly traded companies should be aware of the publicity.
- Prohibits the secretary or any actor from conditioning loans or loan guarantees on an entity's renegotiating new terms with a collective bargaining representative.
- Aviation-relevant provisions: loan recipients must maintain scheduled service, when deemed necessary by the secretary of Transportation. Federal excise taxes on commercial aviation are repealed (ticket tax, cargo tax and aviation fuel).

Conflicts of Interest:

- Prohibits businesses in which the president, senior executive branch officials or members of Congress – or certain of their family members – have significant ownership interests from receiving Emergency Relief funds from the federal funding facility established through Treasury and the Federal Reserve.
- The prohibition applies to any business in which a "covered official" holds at least a 20 percent direct or indirect equity stake. The term "covered official" includes the president, vice president, the head of all executive branch departments (but not other federal agencies), and any member of Congress. The term also includes the spouse, child (including adult children), son-in-law, or daughter-in-law of such executive branch officials and members of Congress. For purposes of this prohibition, the holdings of covered officials who are related to each other are aggregated.

Any business that receives Emergency Relief funds is required to submit a certification – executed by both the CEO and CFO or their equivalents – that the conflict of interest ban does not apply and that the business is otherwise eligible to receive the funds. This may require a business seeking to apply for such funds to review its ownership structure to confirm that a "covered official" does not hold a 20 percent or greater equity stake in the business.

Congressional Oversight Commission

- Establishes a Congressional Oversight Commission charged with review of the implementation of these economic stabilization measures by the federal government generally and specific oversight of the implementation of these measures undertaken by the Treasury Department and the Federal Reserve Board, including efforts of the department and the Board to provide economic stability as a result of coronavirus.
- The Commission shall consist of five members. The Speaker, House Minority Leader, Senate Majority Leader, and Senate Minority Leader shall each select one member, and the Chairperson of the Commission shall be jointly appointed by the Speaker and the Senate Majority Leader, in consultation with the minority leaders of each chamber. Four members of the Commission shall constitute a quorum, but the Commission may hold hearings without a quorum.
- The Commission may hold hearings, take testimony, and obtain on request any data or information it deems necessary to carry out its responsibilities from any federal agency or department.

	<p>The Commission also has the authority to hire staff and engage consultants and may contract with third parties as necessary.</p> <ul style="list-style-type: none"> The Commission is required to submit regular reports to Congress addressing (i) how the Treasury Department and the Federal Reserve Board are using their authority to carry out these economic stabilization measures, including with respect to how they are using their contracting authority; (ii) the impact of loans, loan guarantees, and investments made pursuant to these measures on the financial well-being of the people of the United States, financial markets, and financial institutions; (iii) the extent to which the information made available on covered transactions has contributed to market transparency; and (iv) the effectiveness of loans, loan guarantees, and investments made pursuant to these measures on minimizing long-term costs to the taxpayer and maximizing the benefits for taxpayers. The first of these reports is due no later than 30 days after the first time the Treasury Department and the Federal Reserve Board exercise their authority under this legislation and the Commission shall file subsequent reports every 30 days thereafter. The Commission shall terminate on September 30, 2025.
<p>Coronavirus Relief Fund (Title V)</p>	<ul style="list-style-type: none"> Provides \$150 billion to states, territories and tribal governments to use for expenditures incurred due to the public health emergency with respect to COVID-19 in the face of revenue declines, allocated by population proportions, with a minimum of \$1.25 billion for states with relatively small populations. \$3 billion is reserved for the District of Columbia and the territories and \$8 billion for tribal governments.
<p>\$274 billion Supplemental Appropriations</p>	<ul style="list-style-type: none"> \$117 billion for hospitals and veterans' health care; \$11 billion for vaccines, therapeutics, diagnostics, and other preparedness needs; \$4.3 billion for the Centers for Disease Control; \$16 billion for the Strategic National Stockpile; \$12 billion for America's military; \$10 billion for block grants to states; \$13.5 billion for K-12 education; \$14 billion for higher education (this includes \$62 million for HBCU Capital Financing Program); \$45 billion for FEMA disaster relief fund; \$10 billion for airports; \$20 billion for public transportation emergency relief; and \$285 million for USDA agencies.
<p>Additional Detail on Airport / Transit Appropriations</p>	<ul style="list-style-type: none"> The bill includes \$10 billion to remain available until expended for airports: to prevent, prepare for, and respond to coronavirus. Requires any airport development project using these new funds to follow the prevailing wage standard. Large, medium, and small hub airports must maintain 90 percent of workforce (after making adjustments for retirements or voluntary employee separations) through end of 2020, with hardship waivers from the Department

of Transportation (DOT) possible for economic hardship or reductions in aviation safety or security.

- \$10 billion is distributed by:
 - \$500 million to fund the local share (matching requirements) of fiscal year 2020 AIP grants with any remainder moved to the \$7.4 billion pot below.
 - \$7.4 billion for commercial service airports to be used for any lawful purpose, which means any activity airports can legally use funds now.
 - 50 percent set aside for distribution based on each sponsor's calendar 2018 enplanements as a percentage of total 2018 enplanements.
 - 50 percent dedicated to helping airports with debt service payments.
 - \$2 billion for distribution through AIP entitlement formula to be used for any lawful purpose.
 - 100 percent federal share (no local match)
 - \$100 million for general aviation airports
 - 100 percent federal share (no local match)

The legislation also includes \$100 million for the Transportation Security Administration (TSA) for the following purpose:

- Cleaning and sanitization at checkpoints and airport common areas
- Overtime and explosive detection materials

All funds noted above to be derived from the General Fund.

- \$25 billion for transit infrastructure "to remain available until expended, to prevent, prepare for, and respond to coronavirus. Funds will be apportioned by the same ratio of FY 2020 appropriations through these Federal Transit Administration (FTA) formula programs:
 - \$13.9 billion for Section 5307 Urbanized Area Formula Program Grants
 - \$1.8 billion Section 5311 Formula Grants for Rural Areas
 - \$7.6 billion for Section 5337 State of Good Repair
 - \$1.7 billion for Section 5340 Fast Growth-High Density Grants
- FTA must apportion these funds within seven days of the date of bill enactment.
- Funding is "available for the operating expenses of transit agencies related to the response to a coronavirus public health emergency" ... "beginning on January 20, 2020, reimbursement for operating costs to maintain service and lost revenue due to the coronavirus public health emergency, including the purchase of personal protective equipment, and paying the administrative leave of operations personnel due to reductions in service".

	<ul style="list-style-type: none"> • The operating expenses are not required to be included in a transportation improvement program (TIP), long-range transportation and statewide transportation plans, or a statewide transportation improvement program (STIP). • At the option of the grant recipient, federal share can be up to 100 percent.
<p>Summary of Airline Provisions</p>	<p>Airline Loans:</p> <ul style="list-style-type: none"> • Up to \$25 billion for loans and loan guarantees for passenger air carriers, Part 145 maintenance facilities, and ticket agents. • Up to \$4 billion for loans and loan guarantees for cargo air carriers. • Up to \$17 billion for loans and loan guarantees to "businesses critical to maintaining national security". <p>Airline Grants:</p> <p>Pandemic Relief for Aviation Workers "continuation of payment of employee wages, salaries, and benefits":</p> <ul style="list-style-type: none"> • \$25 billion for passenger air carriers, • \$4 billion for cargo air carriers, • \$3 billion for airline contractors <p>Procedures for Providing Payroll Support</p> <ul style="list-style-type: none"> • financial assistance to carriers based on salaries and benefits paid in April 1 – September 30, 2019. • Treasury is required to issue "streamlined and expedited procedures" for air carriers and contractor within five days of bill enactment and provide initial payments to air carriers and contractors that request financial assistance within 10 days. <p>To be eligible for financial assistance, airlines must not:</p> <ul style="list-style-type: none"> • Conduct involuntary furloughs or reduce pay and benefits until September 30, 2020; • Buy back their stock through September 30, 2021; or • Pay stock dividends through September 30, 2021 <p>DOT is "authorized to require" airlines to maintain all service to destinations served as of March 1, 2020 and maintain that service through March 1, 2022.</p>
<p>Additional Detail on Education Appropriations</p>	<ul style="list-style-type: none"> • Education Stabilization Fund: Flexible funding that will get out the door quickly to help elementary and secondary schools, institutions of higher education, students, teachers, and families with immediate needs related to coronavirus, including: <ul style="list-style-type: none"> ○ Elementary and secondary Education: \$12 billion in formula funding that can be released quickly directly to states, to help schools respond to coronavirus and related school closures, including immediate needs of students

	<p>and teachers, improving use of education technology, supporting distance education, and making up for lost learning time.</p> <ul style="list-style-type: none"> ○ Higher education: \$6 billion in funding to institutions of higher education to both directly support students facing urgent needs related to coronavirus, and to support institutions as they cope with the immediate effects of coronavirus and school closures (including "significant changes to the delivery of instruction"). This includes formula funding to all institutions of higher education and targeted funding for those with the greatest need and minority serving institutions, including HBCUs (\$62 million for HBCU Capital Financing Program. Current borrowers are not required to pay principal installments or interest for 180 days). ○ State Flexibility Funding: \$3 billion in flexible funding to be allocated by states based on the needs of elementary and schools and institutions of higher education in their state.
<p>Additional Detail on Housing</p>	<ul style="list-style-type: none"> ● Community Development Block Grant (CDBG): \$5 billion. Distribution of Funds, as follows: <ul style="list-style-type: none"> ○ \$2 billion direct allocation to states and local governments through the regular program formula (all grantees that received a CDBG allocation in FY20 will receive this funding). HUD must allocate the funds within 30 days of enactment of the bill. ○ \$1 billion to states based on a new formula (public health needs, risk of transmission of coronavirus, number of coronavirus cases compared to the national average, economic and housing market disruptions, and other factors determined by HUD) ○ States will allocate the funds to entitlement/non entitlement communities ○ HUD must allocate the funds within 30 days of enactment of the bill ○ \$2 billion to be allocated directly to states and local governments via a new formula to be developed by HUD (prioritizing risk of transmission of coronavirus, number of coronavirus cases compared to the national average, and economic and housing market disruption resulting from coronavirus). The funds will be used to cover or reimburse allowable costs incurred by a state or locality regardless of the date on which the costs were incurred. ○ Allocations will be made on a rolling basis ○ Provisions Related to the \$5 Billion CDBG Allocation <ul style="list-style-type: none"> ▪ Extends the deadline for submission of the FY19 and FY20 con plan/action plans. Due date is now August 16, 2021. ▪ Suspends the 15 percent cap on public services

- Suspends in-person public hearings; allows grantees the option of holding virtual hearings.
- Allows HUD to waive further program requirements (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment).

- **Homeless Assistance Grants:** \$4 billion. These funds will enable state and local governments to address coronavirus among the homeless population. These grants, in combination with additional waiver authority, will provide effective, targeted assistance to contain the spread of coronavirus among homeless individuals. These grants will also provide state and local governments with homelessness prevention funding for individuals and families who would otherwise become homeless due to coronavirus. Distribution of Funds, as follows:

- \$2 billion allocated through the regular program formula to all grantees that received funding in FY20
- HUD must allocate the funds within 30 days of enactment of the bill
- \$2 billion allocated to states and local governments to areas with the greatest need via a formula to be developed by HUD (risk of transmission of coronavirus, high numbers or rates of sheltered homeless, and economic and market conditions)
- Very low-income individuals and families (30 percent or less of AMI) at risk of homelessness are eligible for homelessness prevention assistance
- HUD must allocate the funds within 90 days

Additional provisions on ESG:

- Allows recipients to deviate from regular procurement standards when procuring goods and services to prevent, prepare for, and respond to the coronavirus
- Recipients can use up to 10 percent of the allocation for administrative purposes. In addition to the 10 percent for admin, these funds can be used to provide hazard pay, including for time worked prior to the date of this bill, for staff working directly to prevent, prepare for, and respond to coronavirus among the homeless or persons at risk of homelessness.
- The funds are not subject to the citizen participation requirements
- No match requirement
- No cap on emergency shelter activities
- Funds can be used to provide temporary shelters (through leasing of existing property, temporary structures, or other means) to prevent, prepare for, and respond to the coronavirus

- Environmental review standards will not apply to these funds

- **Tenant-Based Rental Assistance:** \$1.25 billion. These funds will preserve Section 8 voucher rental assistance for seniors, the disabled, and low-income working families, who will experience loss of income from the coronavirus.
- **Public Housing Operating Fund:** \$685 million. These funds will provide Public Housing Agencies with additional operating assistance to make up for reduced tenant rent payments, as well as to help contain the spread of coronavirus in public housing properties.
- **Rental Assistance Protections for Low-Income Americans:** \$3 billion is included for housing providers to help more than 4.5 million low-income households made up of more than 9.6 million individuals currently assisted by HUD to safely remain in their homes or access temporary housing assistance in response to economic and housing disruptions caused by COVID-19. This includes:
 - \$1.935 billion to allow public housing agencies (PHAs) to keep over 3.2 million Section 8 voucher and public housing households stably housed;
 - \$1 billion to allow the continuation of housing assistance contracts with private landlords for over 1.2 million Project-Based Section 8 households;
 - \$65 million for housing for the elderly and persons with disabilities for rental assistance, service coordinators, and support services for the more than 114,000 affordable households for the elderly and over 30,000 affordable households for low-income persons with disabilities; and
 - \$65 million for Housing Opportunities for Persons with AIDS in order to maintain rental assistance and expand operational and administrative flexibilities for housing and supportive service providers to assist nearly 61,000 households. Given that this population is particularly vulnerable, the bill includes temporary relocation services to contain and prevent the spread of COVID-19 for these at-risk households.
- **Housing Relevant Provisions:**
 - In the single-family residential space, the loans that are insured or otherwise guaranteed by FHA, VA, USDA, Fannie Mae and Freddie Mac are prohibited from foreclosure actions for 60 days starting March 18 for borrowers who request it. Penalties and delinquency related fees may not be charged to the consumer if

	<p>forbearance is requested. Borrowers may extend their forbearance for up to an additional 4 months if they can demonstrate a COVID-19 related hardship. This borrower-requested forbearance expires the earlier of December 31 or the termination of the emergency declaration.</p> <ul style="list-style-type: none"> ○ In the multi-family residential space, loans that are insured or otherwise guaranteed by FHA, VA, USDA, Fannie Mae or Freddie Mac or are part of HUD-assisted housing are eligible for a 90 day forbearance on mortgage and interest payments. Evictions are prohibited for borrowers who receive forbearance. This borrower-requested forbearance expires the earlier of December 31 or the termination of the emergency declaration. ○ In the rental space (single and multi-family), landlords are subject to a 120-day moratorium on filing eviction proceedings for the non-payment of rent if the property is insured or guaranteed by FHA, VA, USDA, Fannie Mae or Freddie Mac or are part of HUD-assisted housing. Unpaid rent will still accrue, but landlords may not charge fees or assess other punitive charges during the 120-day period. Landlords are also prohibited from reporting the delinquency to the credit agencies, if they are a furnisher.
<p style="text-align: center;">Provisions of Specific Benefit to Native American Tribes</p>	<ul style="list-style-type: none"> ● \$8 billion set aside from the \$150 billion Coronavirus Relief Fund, for direct payments to Indian tribes for additional expenditures not accounted for in their budgets and incurred after March 1, 2020. ● \$1.032 billion additional funding for the Indian Health Service (IHS) to support the payment, within 30 days, to tribal health systems to respond to the pandemic, including expanded support for: <ul style="list-style-type: none"> ○ Medical services, equipment, supplies and public health education for IHS direct service ○ Mobile triage units ○ Medicines ○ Transportation ○ Tribally operated and urban Indian health care facilities ○ Purchased/referred care ○ New investments for telehealth services, electronic health records improvement, and disease surveillance by tribal epidemiology centers. ● \$453 million additional funding for the Bureau of Indian Affairs (BIA) for aid to tribal governments, including support for: <ul style="list-style-type: none"> ○ Welfare assistance and social service programs, including assistance to tribal members affected by the coronavirus crisis ○ Expand public safety and emergency response capabilities ○ Increase BIA capacity for teleworking so the agency is better prepared to assist tribes ○ Meet increased staffing and overtime costs.

- \$100 million additional funding for the Food Distribution Program on Indian Reservations (FDPIR) supplementing the food stamp program.
- \$69 million additional funding for the Bureau of Indian Education (BIE) to meet needs at BIE-funded schools, including staffing, transportation, telework, and cleaning activities and assistance for tribal colleges and universities to help respond to the crisis.
- \$300 million additional funding to tribes and tribal organizations through the Department of Housing and Urban Development (HUD) – \$200 million for the Indian Housing Block Grant program and \$100 million for the Indian Community Development Block Grant program to meet imminent threats to health and safety in American Indian and Alaska Native communities.
- \$15 million is set aside for tribes and tribal organizations, out of \$425 million to the Substance Abuse and Mental Health Services Administration (SAMHSA), to help prevent, prepare for, and respond to the coronavirus.
- \$15 million is set aside for tribes and tribal organizations, out of a \$27 billion Public Health and Social Services Emergency Fund, to carry out telehealth and rural health activities.
- \$154 million is set aside for tribes and tribal organizations, out of a \$30.75 billion Education Stabilization Fund at the Department of Education, for the support of programs operated or funded by the BIE.
- Provides funds necessary to cover one-half of Unemployment Insurance Benefit costs charged to a tribal government employer if it has elected to participate in a state unemployment compensation fund as a reimbursing employer.
- Extends mandatory funding for Special Diabetes Program for Indians (SDPI) at current levels through November 30, 2020.
- Makes Indian tribes eligible, along with businesses and state, local and territorial governments, for up to \$500 billion in loans, loan guarantees and other investments from the Treasury Department's Coronavirus Stabilization Fund, all subject to repayment and specific limitations.
- Makes tribal small businesses eligible to receive a loan through the Paycheck Protection Program if they have 500 or fewer employees or otherwise meet industry-specific size limitations.

	<ul style="list-style-type: none"> • Makes tribal small businesses with 500 or fewer employees eligible for the \$10 billion made available for emergency Small Business Administration grants. • \$125 million is set aside for tribes and tribal organizations, out of \$1.5 billion nationwide, for grants and cooperative agreements under the Centers for Disease Control and Prevention to carry out surveillance, epidemiology, laboratory capacity, infection control, mitigation, communications, and other preparedness and response activities. • Authorizes priority to be given applicants for Geriatrics Workforce Enhancement Program grants for services provided older adults by tribes and tribal organizations. • Authorizes tribes to directly request from the Department of Education secretary a national emergency educational waiver of certain statutory or regulatory requirements.
<p>Additional Detail on DOE</p>	<ul style="list-style-type: none"> • Removes prior language that provided \$3 billion to the Department of Energy to purchase oil for the Strategic Petroleum Reserve but does provide authority for DOE to delay legally required sales from the SPR. • Appropriates \$99.5 million to the Office of Science to support national laboratory scientific user facilities and \$28 million for departmental administration to support remote access and teleworking for employees related to coronavirus prevention, preparation, and response.
<p>Additional Detail on DOI</p>	<ul style="list-style-type: none"> • Appropriates \$12.5 million to the water and related resources account and \$8.1 million to the policy and administration account to support remote access, teleworking, disinfection of facilities, incident management and liability, and medical equipment related to the virus response efforts. • Appropriates \$158.4 million to the Office of the Secretary for cleaning buildings and public areas as well as law enforcement and emergency personnel and increased telework capacity. • Appropriates \$55 million for the Office of Insular Affairs to assist with prevention and mitigation of the virus outbreak, including medical supplies and equipment.
<p>Additional Detail on EPA</p>	<ul style="list-style-type: none"> • Appropriates \$7.2 million for research support regarding coronavirus including staffing and costs for expediting registrations related to addressing the virus as well disinfecting facilities and enhancing telework infrastructure.

Additional Detail on Nuclear Regulatory Commission	<ul style="list-style-type: none"> • Appropriates \$3.3 million to support remote access and teleworking along with operational and security activities related to virus prevention, preparation, and response.
Additional Detail on Agency for Toxic Substances and Disease Registry	<ul style="list-style-type: none"> • Appropriates \$7.5 million for mapping of coronavirus infection hot spots, including for cruise ships which will also be provided technical assistance to address environmental health concerns associated with the virus. • Appropriates \$5 million to the pediatric environmental health specialty units to provide guidance and outreach on disinfectants and protective practices for schools, daycare facilities, and homes.

This summary was compiled by members of Holland & Knight's [Public Policy & Regulation Group](#). If you have questions or need further information, please contact the authors.

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