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Executive Summary

The United States federal and state governments are acting swiftly to address the COVID-19 pandemic through legislation, executive orders, guidance, and other relief programs. Most recently, President Trump signed into law the Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES).

Michael Best and Michael Best Strategies are tracking these actions very closely and is in close communication with the federal and state governments. We are advising clients on the various United States federal and state avenues of relief, whether through lending, employment, or taxation provisions, that they may be able to use to get through this period of distress. We have a COVID-19 Resource Center and we encourage you to sign up for updates here.

We would appreciate the opportunity to assist you with any of their needs related to COVID-19. Below is a summary of major relief provisions provided to businesses and individuals, including lending, taxation, employment and healthcare. Our team will continue to update this guidance document with additional information.

This document is prepared for general information and is not a substitute for specific advice. Readers should contact Tom Schreibel or Sarah Helton, listed below, or their Michael Best or Michael Best Strategies contact regarding the specific facts and circumstances of individual matters due to the rapidly changing legal and epidemiological landscape surrounding this subject matter.

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Business Lending Programs Supported by Federal Reserve

The Federal Reserve Bank (FRB) has announced a “Main Street Business Lending Program” is intended to provide relief to what the FRB cites as small to midsize businesses.

While Congress’s focus has been on small businesses and consumers, FRB’s actions are focused on businesses that are basically healthy but in danger at these times because of the freeze-up in financial markets. Some have been insulated from the outbreak’s effect to this point, but rely on debt as part of their normal operations. Others have lost business because of the virus but could survive if they could borrow to cover their expenses.

Several of the FRB’s actions are derived from actions taken 2008-2009 financial crisis. But some are new, like the FRB is considering lending money directly to large corporations, something it has never done before. The FRB has framed the program as “bridge financing” to help otherwise healthy companies keep their doors open and their workers employed during a period of disruption.

The three new programs that FRB announced on March 23, 2020 are:

1. Main Street Business Lending Program: This program is intended to support lending to eligible small and midsize businesses. Such a program is likely to depend on additional money from the Treasury Department. The FRB hasn’t yet provided program details.

2. Term Asset-Backed Securities Loan Facility, or TALF: This facility will mirror one the FRB used in 2008 to support consumer and business credit markets. The FRB has stated that it will use this facility to lend money to investors to buy securities backed by credit card loans and other consumer debt.

3. Support Financing for Corporate Debt Obligations: The FRB announced a new facility to address the lack of new financing in the roughly $6 trillion market for highly rated corporate debt by offering bridge loans for up to four years, which includes limits on the payment of dividends and stock buybacks for firms that defer interest payments on their loans. A facility aimed at unblocking the market for existing corporate debt, allowing the FRB to purchase bonds already issued by highly rated companies and eligible exchange-traded funds, which have around $147 billion in investment-grade corporate debt.
Small Business Lending

SBA guidance, resources, and information for small businesses impacted by COVID-19 can be found here.

Please visit SBA’s size standards tool to find out if your business meets SBA’s small business size standards. You will need the 6-digit North American Industry Classification Code for your business and your business’s 3-year average annual revenue.

For employers who have more than one facility that each have less than 500 employees, please consult with our team to determine if affiliation rules apply.

SBA Economic Injury Disaster Loan Program (President Executive Order)

President Trump announced the administration’s action to provide relief to small businesses impacted by the coronavirus (COVID-19) through the Economic Injury Disaster Loan Program.

The SBA’s Economic Injury Disaster Loan program provides small businesses with targeted, low-interest working capital loans of up to $2 million that can provide economic support to small businesses to help overcome the temporary loss of revenue they are experiencing. These loans may be used to pay fixed debts, payroll, accounts payable and other bills that cannot be paid because of the disaster’s impact. The interest rate is 3.75% for small businesses. The interest rate for non-profits is 2.75%. SBA offers loans with long-term repayments in order to keep payments affordable, up to a maximum of 30 years. Terms are determined on a case-by-case basis, based upon each borrower’s ability to repay.

For any SBA EIDL loans made in response to COVID-19 before December 31, 2020, the SBA shall waive any personal guarantee on advances and loans below $200,000, the requirement that an applicant needs to have been in business for the 1-year period before the disaster, and the credit elsewhere requirement. During the covered period, SBA can approve and offer EIDL loans based solely on an applicant’s credit score, or use an alternative appropriate alternative method for determining applicant’s ability to repay.

The SBA is working with all states and territories to offer these loans. These loans are made available upon a formal request received from a state’s or territory’s Governor. Once a declaration is made for designated areas within a state, small businesses can apply for the disaster relief loan. The information on the application process for the Economic Injury Disaster Loan assistance will be made available to all affected communities as well as updated on SBA’s website. Here are the states and territories that have Presidential and SBA declared disasters.

SBA spokesperson Carol Chastang has stated that SBA generally approves a state’s request no longer than 48 hours and SBA may take two to three weeks to make a decision once a loan application is submitted by a business. If the loan is approved, disbursement of funds can be made within five days of receiving the loan closing documents.

Whether you have already received an EIDL unrelated to COVID-19 or you receive a COVID-19 related EIDL and/or Emergency Grant between January 31, 2020 and June 30, 2020, you may also apply for a Payroll Protection Program loan. If you ultimately receive a PPP loan or refinance an EIDL into a PPP loan, any advance amount received under the Emergency
Economic Injury Grant Program would be subtracted from the amount forgiven in the PPP. However, you cannot use your EIDL for the same purpose as your PPP loan. For example, if you use your EIDL to cover payroll for certain workers in April, you cannot use PPP for payroll for those same workers in April, although you could use it for payroll in March or for different workers in April.

Visit [SBA's webpage](https://www.whitehouse.gov/coronavirus/2020-guidance-for-small-businesses/) to learn about eligible disaster areas, to apply online, and to check your application status. Business owners can call the disaster customer service center at 800-659-2955, or email [disastercustomerservice@sba.gov](mailto:disastercustomerservice@sba.gov). The deaf and hearing impaired may call 800-877-8339.

Read more about this program in our MB Q&A [here](#).

**Emergency Economic Injury Disaster Grant Program (EIDL) (CARES Act)**

An Emergency Grant is established to allow an eligible entity who has applied for an EIDL loan due to COVID-19 to request an advance on that loan, of not more than $10,000, which the SBA must distribute within 3 days. Applicants are not required to repay advance payments, even if subsequently denied for an EIDL loan.

In advance of disbursing the advance payment, the SBA must verify that the entity is an eligible applicant for an EIDL loan. This approval shall take the form of a certification under penalty of perjury by the applicant that they are eligible.

The advance payment may be used for providing paid sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage payments, and repaying obligations that cannot be met due to revenue losses.

An advance payment must be considered when determining loan forgiveness, if the applicant transfers into a loan made under SBA’s Paycheck Protection Program.

SBA’s authority to carry out Emergency EIDL Grants expires on December 30, 2020.

**SBA Paycheck Protection Loans (PPL) (CARES Act)**

The Paycheck Protection Loan (PPL) is a new loan product within the SBA’s 7a Loan Program authorized for $349 billion. Both existing SBA lenders and new lenders brought into the program with the assistance of the Department of Treasury will be able to offer these loans to eligible small businesses. For a top-line overview of the program [Click Here](https://www.sba.gov/how-to-get-small-business-loans/paycheck-protection-program-ppl).

Small businesses and certain nonprofits, including 501(c)(3) organizations and 501(c)(19) veteran organizations, and tribal business concerns, with less than 500 employees (or the number of employees allowed under a business’ NAICS code if more than 500). Additionally, sole proprietors, independent contractors, federal small business contractors, and self-employed individuals will also be eligible. Moreover, small businesses in the hospitality and food industry with more than one location could be eligible at the store and location level if the store employs less than 500 workers; meaning each store location could be eligible., if a franchisor appears in the SBA’s National Franchise Director, assistance will extend down to the franchisee at the store or location level.
The Paycheck Protection Program is 100 percent guaranteed by the SBA with an interest rate of 1% with zero loan fee and zero prepayment fee. The loan must be repaid in two years. The maximum loan amount is $10 million or 2.5 times the average monthly payroll based on the last 12 months. Here is the calculation provided by SBA if you were in business in the past 12 months:

- Step 1: Aggregate payroll costs from the last twelve months for employees whose principal place of residence is the United States.
- Step 2: Subtract any compensation paid to an employee in excess of an annual salary of $100,000 and/or any amounts paid to an independent contractor or sole proprietor in excess of $100,000 per year.
- Step 3: Calculate average monthly payroll costs (divide the amount from Step 2 by 12).
- Step 4: Multiply the average monthly payroll costs from Step 3 by 2.5.
- Step 5: Add the outstanding amount of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and April 3, 2020, less the amount of any “advance” under an EIDL COVID-19 loan (because it does not have to be repaid).

The loan covers payroll costs, including costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; employees’ salaries, commissions, or similar compensations; payments of interest on any mortgage obligation (not to include prepayment of or payment of principal on a mortgage obligation); rent (including rent under a lease agreement); utilities; interest on any other debt obligations that were incurred before February 15, 2020; and refinancing an SBA EIDL loan made between January 31, 2020 and April 3, 2020.

Seventy-five percent of the loan must be used for payroll costs.

The loan does not cover the following expenses: Employee/owner compensation over $100,000; Taxes imposed or withheld under chapters 21, 22, and 24 of the IRS code; Compensation of employees whose principal place of residence is outside of the U.S.; and Qualified sick and family leave for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act.

Eligible borrowers must make a good faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; they will use the funds to retain workers and maintain payroll, lease, and utility payments; and are not receiving duplicative funds for the same uses from another SBA program.

For eligibility purposes, the law requires lenders to, instead of determining repayment ability, which is not possible during this crisis, to determine whether a business was operational on February 15, 2020, and had employees for whom it paid salaries and payroll taxes, or a paid independent contractor.

All borrower and lender fees for the Paycheck Protection Loans are waived. The Credit Elsewhere Test, collateral requirements, and all requirements for personal guarantees under the Paycheck Protection Loans are waived.

The loans have automatic deferrals of principal, interest, and fee for six months.
Small businesses can obtain both a new Paycheck Protection Loan and an SBA Economic Injury Disaster Loan (EIDL) so long as they cover different items. Flexibility is granted through no repayment penalties on either the Paycheck Protection Loan or the EIDLs and a refinancing option has been included.

The employee retention credit for employers subject to closure or experiencing economic hardship and deferral of payment of employer payroll taxes is NOT available for those employers receiving assistance through the Paycheck Protection Program.

To increase speed and turnaround time within this new loan product, more than 800 existing SBA-certified lenders, including banks, credit unions, and other financial institutions, have been delegated authority and SBA would be required to streamline the process to bring additional lenders into the program. Delegated authority allows the lenders to process, close, and service a loan without SBA review. This authority will also extend to lenders who join the program and make these loans.

Eligible entities can start applying on the following dates:

- Small businesses and sole proprietorships can apply starting April 3, 2020.
- Independent contractors and self-employed individuals can apply starting April 10, 2020.

The PPP is open through June 30, 2020.

For more information on this program please see this MB publications here and the links below:

- Copy of PPP loan application: Click Here.
- Interim Final Rule with details of borrower and lender requirements: Click Here.
- Updated Q&A for borrowers: Click Here.

**PPL Loan Forgiveness:** As part of the PPL Program, a loan forgiveness tool has been developed. The amount of loan forgiveness can be up to the full principal amount of the loan and any accrued interest. That is, the borrower will not be responsible for any loan payment if the borrower uses all of the loan proceeds for forgivable purposes described below and employee and compensation levels are maintained.

You will owe money when your loan is due if you use the loan amount for anything other than payroll costs, mortgage interest, rent, and utilities payments over the 8 weeks after getting the loan.

Due to likely high subscription, it is anticipated that not more than 25% of the forgiven amount may be for non-payroll costs.

You will also owe money if you do not maintain your staff and payroll.

- **Number of Staff:** Your loan forgiveness will be reduced if you decrease your full-time employee headcount.
- **Level of Payroll:** Your loan forgiveness will also be reduced if you decrease salaries and wages by more than 25% for any employee that made less than $100,000 annualized in 2019.
- **Re-Hiring:** You have until June 30, 2020 to restore your full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020.
To receive loan forgiveness, a business will have to work with a lender to justify their payroll was maintained through documentation. Documentation will include:

- Documentation verifying the number of employees on payroll and pay rates, including IRS payroll tax filings and State income, payroll and unemployment insurance filings.
- Documentation verifying payments on covered mortgage obligations, lease obligations, and utilities.
- Certification from a representative of your business or organization that is authorized to certify that the documentation provided is true and that the amount that is being forgiven was used in accordance with the program’s guidelines for use.

Lenders will be held harmless on decisions of eligibility and SBA will purchase the loan after the lender grants approval.

Any loan amounts not forgiven are carried forward as an ongoing loan with max terms of 10 years, at a maximum interest rate of 4%. Principal and interest will continue to be deferred, for a total of 6 months to a year after disbursement of the loan. The clock does not start again.

Express Loan Program

The maximum loan for a SBA Express loan is increased from $350,000 to $1 million through December 31, 2020, after which point the Express loan will have a maximum of $350,000. It also allows Veteran’s fee waivers for the 7(a) Express loan program to be permanently waived.

Existing 7(a), 504 or Microloan Product

SBA is required to pay the principal, interest, and any associated fees that are owed on the covered loans, which includes an existing 7(a) (including Community Advantage), 504 or microloan products, 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 will also receive a full 6 months of loan payments by the SBA.

SBA must make payments no later than 30 days after the date on which the first payment is due.

SBA is required to still make payments even if the loan was sold on the secondary market.

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

7(a) Loan Program: 7(a) loans are an affordable loan product of up to $5 million for borrowers who lack credit elsewhere and need access to versatile financing, providing short-term or long-term working capital and to purchase an existing business, refinance current business debt, or purchase furniture, fixtures and supplies. In the program, banks share a portion of the risk of the loan with SBA. There are many different types of 7(a) loans, you can visit this site to find the one that’s best for you. You apply for a 7(a) loan with a bank or a mission-based lender. SBA has a free referral service tool called Lender Match to help find a lender near you.

504 Loan Program: The 504 Loan Program provides loans of up to $5.5 million to approved small businesses with long term, fixed-rate financing used to acquire fixed assets for expansion or modernization. It is a good option if you need to purchase real estate, buildings, and
machinery. You apply through a Certified Development Company, which is a nonprofit corporation that promotes economic development. SBA has a free referral service tool called Lender Match to help find a lender near you.

**Microloan Program:** The Microloan Program provides loans up to $50,000 to help small businesses and certain not-for-profit childcare centers to start up and expand. The average microloan is about $13,000. These loans are delivered through mission-based lenders who are also able to provide business counseling. SBA has a free referral service tool called Lender Match to help find a microlender near you.

**Bankruptcy under Small Business Reorganization Act**

The Small Business Reorganization Act is amended to increase the eligibility threshold to file under subchapter V of chapter 11 of the U.S. Bankruptcy Code to businesses with less than $7,500,000 of debt. The increase sunsets after one year and the eligibility threshold returns to $2,725,625.

Additionally, the definition of income in the Bankruptcy Code for chapters 7 and 13 is amended to exclude coronavirus-related payments from the federal government from being treated as “income” for purposes of filing bankruptcy. This provision sunsets after one year.

The calculation of disposable income for purposes of confirming a chapter 13 plan shall not include coronavirus-related payments. This provision sunsets after one year.

Individuals and families currently in chapter 13 can seek payment plan modifications if they are experiencing a material financial hardship due to the coronavirus pandemic, including extending their payments for up to seven years after their initial plan payment was due. This provision sunsets after one year.

Read more about this provision in the MB publication [here](#).
Lending For All Businesses, Including State and Local Governments (CARES Act)

Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy (ESF)

The law provides for a $500 billion authorization for the Treasury Department to make loans, guarantees and "other investments" to support certain eligible businesses, as well as state and local governments.

A. Direct Lending

Direct lending is provided:

- $454 billion for businesses of all sizes, as well as any amounts available, but not used for direct lending, for loans, loan guarantees, and investments in support of the Federal Reserve's lending facilities to eligible businesses, states, and municipalities. Federal Reserve 13(3) lending is a critical tool that can be used in times of crisis to help mitigate extraordinary pressure in financial markets that would otherwise have severe adverse consequences for households, businesses, and the U.S. economy.

- $25 billion for passenger air carriers, eligible businesses that are certified under part 145 of title 15, Code of Federal Regulations, and approved to perform inspection, repair, replace, or overhaul services, and ticket agents;

- $4 billion for cargo air carriers; and

- $17 billion for businesses important to maintaining national security (likely for Boeing)

For the entire authorization, the Treasury Secretary would have authority to determine terms and conditions for the program, including the rates—which will be based on the risk and current average yield of Treasuries of comparable maturity.

**Terms and Conditions Associated with the Loans:** For the three sector-specific categories, the Treasury Secretary may make loans to businesses that can demonstrate: (1) they are an eligible business to which credit is not reasonably available at the time of the transaction; (2) the intended obligation is prudently incurred; and (3) the loan or guarantee is sufficiently secured or made at a rate that reflects the risk and, to the extent practicable, is not less than an interest rate based on market conditions for comparable obligations prior to the outbreak of COVID-19.

Additional terms require an applicant from these three sectors to: (1) show, to the extent practicable, the duration of the loan or guarantee will not exceed 5 years; (2) forego buying back stock or paying dividends for common stock (except if contractually obligated to do so) for 12 months after the obligation is no longer outstanding; (3) maintain employment levels as of March 24, 2020, to the extent practicable, until September 30, 2020, - and not "in any case" reduce those employment levels by more than 10 percent; (4) certify that the business is "created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States; and (5) demonstrate that it incurred losses such "that the continued operations of the business are jeopardized."
Many, but not all, of these restrictions also apply to the broader loan category for other eligible businesses or state and local governments. Most important, for example, businesses receiving money from this pool are subject to the same restrictions on stock repurchase and dividend issuance, although the Secretary retains the authority to waive dividend restriction if it is in the interest of the U.S. government to do. (However, the Secretary must be prepared to potentially defend that decision before Congress.) The restriction that recipients be U.S. businesses applies to this pool as well, but the loan duration, employment level, and loss restrictions do not.

The U.S. government can share in the gains made pursuant to such loans applies to the three-sector specific industries - but not for the broader general business loan pool. Additionally, the Treasury Department must liquidate its interest in any authorized loan programs in this title as soon as reasonably practical—while maximizing the U.S. government's interest.

Employee/Officer Compensation Provisions limit officers or employees who earned in excess of $3 million in total compensation in calendar year 2019 from earning, in 2020, total compensation more than the sum of $3 million plus 50 percent of the amount over $3 million of the total compensation they received in 2019.

B. Mid-Sized Businesses

Within the general business loan program, the CARES Act emphasizes that the Secretary should "endeavor to" make loans and investments available—to the extent practicable—to midsize businesses (including nonprofit organizations) with between 500 and 10,000 employees at a rate not higher than two percent annualized, and with no principal or interest payable for the first six months of the life of the loan. Entities wishing to take advantage of this program must make a good-faith certification that: (1) economic uncertainty requires those terms; (2) funds received will be used to retain 90 percent of the workforce at full compensation and benefit levels through Sept. 30, 2020; and (3) they intend to restore not less than 90 percent of their workforce level prior to Feb. 1, 2020 while restoring all compensation and benefit levels to workers no later than 4 months after their termination date.

These entities must also certify that they will not "outsource or offshore jobs for the term of the loan or two years after completing repayment of the loan"; will not abrogate collective bargaining rights during this time; and will remain neutral in a union organizing effort for the term of the loan.

C. Municipal Prioritization

The law requires the Secretary to attempt to provide liquidity to "the financial system that supports lending to States and municipalities."

D. New Administrative Issues of Notes

On the administrative side, the CARES Act authorizes the Treasury Department to designate financial institutions—including but not limited to depositories, brokers, dealers, and other institutions—as financial agents of the U.S. for the purpose of performing the Secretary's duties under this title. Additionally, the Secretary must prescribe regulations or guidance as appropriate to carry out the purpose of the title within 10 days following enactment.

New Inspector General: Section 4018 establishes, within the Treasury Department, the Office of the Special Inspector General for Pandemic Recovery who will oversee implementation of the
ESF. The President will be responsible for nominating this individual "as soon as practicable after any loan, loan guarantee, or other investment is made" under the program. The Special IG will be subject to the removal provisions in Section 3(b) of Inspector General Act.

The Special IG will have authority to conduct, supervise, and coordinate audits and investigations of "the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Secretary," in addition to the Secretary's management of the program. In doing so, the Special IG will have the authorities provided in section 6 of the Inspector General Act of 1978 and will be considered exempt from termination by the Attorney General. The bill authorizes $25 million to fund the Special IG's activities.

Finally, the law creates a Congressional Oversight Commission to oversee the execution of the ESF program by the Secretary and the Board of Governors of the Federal Reserve System. The Commission must submit regular reports to Congress and review the implementation of the program. Reports must begin no later than 30 days following the first exercise of the Secretary's authority under the ESF program. Membership in the Commission will consist of one member appointed by each of the Speaker of the House, the House Minority Leader, the Senate Majority Leader, and the Senate Minority Leader. The fifth member, Commission's Chair, will be jointly appointed by the Speaker and the Senate Majority Leader.
Taxation: Business & Individual

The Department of Treasury and Internal Revenue Services (IRS) has taken steps to help taxpayers, businesses and others affected by the coronavirus. View details of IRS’ actions here. IRS will be releasing further information on these business and individual tax credit provisions.

Business Taxation

Tax Day now July 15 and Tax Payment Deferral

The Treasury Department and Internal Revenue Service announced that the federal income tax filing due date is automatically extended from April 15, 2020, to July 15, 2020. Taxpayers can also defer federal income tax payments due on April 15, 2020, to July 15, 2020, without penalties and interest, regardless of the amount owed. This deferment applies to all taxpayers, including individuals, trusts and estates, corporations and other non-corporate tax filers as well as those who pay self-employment tax.

Taxpayers do not need to file any additional forms or call the IRS to qualify for this automatic federal tax filing and payment relief. Individual taxpayers who need additional time to file beyond the July 15 deadline, can request a filing extension by filing Form 4868 through their tax professional, tax software or using the Free File link on IRS.gov. Businesses who need additional time must file Form 7004.

The IRS urges taxpayers who are due a refund to file as soon as possible. Most tax refunds are still being issued within 21 days.

Read MB’s publication on Tax Filing and Payment Deadlines here.

Employee Retention Credit for Employers Subject to Closure Due to COVID-19

The law provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shutdown order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first $10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

The credit is not available to employers receiving assistance through the SBA Paycheck Protection Program. The credit is provided through December 31, 2020.

Read MB’s publication on the employee retention credit here.
Delay of Payment of Employer Payroll Taxes
The provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The Social Security Trust Funds will be held harmless under this provision.

Deferral is not provided to employers receiving assistance through the SBA Paycheck Protection Program.

Read more about this deferral provision in our MB publication here.

Modifications for Net Operating Losses
The CARES Act relaxes the limitations on a company’s use of losses. Net operating losses (NOL) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The provision provides that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income. These changes will allow companies to utilize losses and amend prior year returns, which will provide critical cash flow and liquidity during the COVID-19 emergency.

Modification of Limitation on Losses for Taxpayers Other than Corporations
The CARES Act modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they can utilize excess business losses and access critical cash flow to maintain operations and payroll for their employees.

Modification of Credit for Prior Year Minimum Tax Liability of Corporations
The corporate alternative minimum tax (AMT) was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. The CARES Act accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.

Modification of Limitation on Business Interest
The CARES Act temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50 percent of taxable income (with adjustments) for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.

Technical Amendment Regarding Qualified Improvement Property
The CARES Act enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. The provision, which corrects an error in the
Tax Cuts and Jobs Act, not only increases companies’ access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.

**Temporary Exception from Excise Tax for Alcohol Used to Produce Hand Sanitizer**

The CARES Act waives the federal excise tax on any distilled spirits used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the Food and Drug Administration and is effective for calendar year 2020.

**Refundable Payroll Tax Credits for Qualifying Businesses Related to Paid Sick Leave and Family Leave**

The Treasury Department, IRS and the Department of Labor (Labor) announced that small and midsize employers **with fewer than 500 employees** can begin taking advantage of two new refundable payroll tax credits, designed to immediately and fully reimburse them, dollar-for-dollar, for the cost of providing Coronavirus-related leave to their employees. This paid leave and tax credit relief to employees and small and midsize businesses is provided under the Families First Coronavirus Response Act (Act) signed into law on March 18, 2020.

**A. Paid Sick Leave Credits**

The tax credit allowed for the 80 hours of required paid sick leave depends on the reason the employee is out of work.

The maximum credit is $511 per day for an employee who is out of work because:

- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
- The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The employee is experiencing symptoms of COVID-19 and seeking medical diagnosis.

The maximum credit is $200 per day for an employee who is out of work because:

- The employee is caring for an individual who is subject to a federal, state, or local quarantine order, or an individual who has been advised to self-quarantine due to concerns related to COVID-19;
- The employee is caring for the employee’s son or daughter, if the child’s school or child care facility has been closed, or the child’s care provider is unavailable due to COVID-19 precautions; or
- The employee is experiencing any other substantially similar condition specified by Health and Human Services in consultation with the Department of the Treasury and the Department of Labor.

An employer may choose to pay a greater amount of sick leave than required under FFCRA, but it will not be allowed a tax credit for the excess. Furthermore, an employer would not be entitled to a credit if it voluntarily pays amounts to its employees who do not satisfy any of the criteria listed above.
Although an employer is required to pay up to 80 hours of paid sick leave, the tax credit allowed to an employer is limited to 10 days of combined sick leave; accordingly, if an employer pays less than eight hours of sick leave per day for a full-time employee, the tax credit will not cover the total cost of the sick leave.

The $200 or $511 per day maximum tax credit includes sick pay paid to an employee, plus amounts paid by the employer to maintain group health plan benefits for the employee if such group health plan is tax-free to the employee (as most employer-provided health plans are). This allows the employer to seek reimbursement for the cost of continuing to provide health insurance while the employee is on sick leave.

The tax credit allowed to an employer is treated as income to the employer. The tax credit is applied to offset the employer’s share of the social security component of its payroll taxes, and the tax credit is refundable. Because the tax credit is refundable, if the amount of the sick leave or family leave payments exceed the employer’s social security portion of its payroll taxes, the excess will be refunded to the employer, so that the government will fund the entire amount of the sick leave.

The tax credit is only available for sick leave that an employer is required to pay under the FFCRA. The paid sick leave requirements for employers do not commence until April 1, 2020. However, the Secretary of the Treasury has the authority to allow the tax credit for sick leave paid for a period prior to this April 1 start date and may release more information on the start date soon.

Examples

- If an eligible employer paid $5,000 in sick leave and is otherwise required to deposit $8,000 in payroll taxes, including taxes withheld from all its employees, the employer could use up to $5,000 of the $8,000 of taxes it was going to deposit for making qualified leave payments. The employer would only be required under the law to deposit the remaining $3,000 on its next regular deposit date.
- If an eligible employer paid $10,000 in sick leave and was required to deposit $8,000 in taxes, the employer could use the entire $8,000 of taxes in order to make qualified leave payments and file a request for an accelerated credit for the remaining $2,000.
- Equivalent child care leave and sick leave credit amounts are available to self-employed individuals under similar circumstances. These credits will be claimed on their income tax return and will reduce estimated tax payments.

B. Paid Family and Medical Leave

A company that employs less than 500 employees is also obligated to pay family leave to its employees for up to 12 weeks to employees who are out of work because they are caring for a child whose school or daycare provider is closed due to COVID-19.

An employer is allowed a credit of 100% of such family leave payments. The maximum credit amount for family leave payments required by FFCRA is $200 per day per employee, with a maximum of $10,000 per employee for all quarters.

C. Prompt Payment for the Cost of Providing Leave

When employers pay their employees, they are required to withhold from their employees' paychecks federal income taxes and the employees' share of Social Security and Medicare
taxes. The employers then are required to deposit these federal taxes, along with their share of Social Security and Medicare taxes, with the IRS and file quarterly payroll tax returns (Form 941 series) with the IRS.

IRS states that eligible employers who pay qualifying sick or child care leave will be able to retain an amount of the payroll taxes equal to the amount of qualifying sick and child care leave that they paid, rather than deposit them with the IRS. The payroll taxes that are available for retention include withheld federal income taxes, the employee share of Social Security and Medicare taxes, and the employer share of Social Security and Medicare taxes with respect to all employees.

If there are not sufficient payroll taxes to cover the cost of qualified sick and child care leave paid, employers will be able file a request for an accelerated payment from the IRS. The IRS expects to process these requests in two weeks or less. IRS will be releasing the details of this new, expedited procedure.

To see Frequently Asked Questions please click here.

Individual Taxation

2020 Recovery Rebates for Individuals

All U.S. residents with adjusted gross income up to $75,000 ($150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for the full $1,200 ($2,400 married) rebate. In addition, they are eligible for an additional $500 per child. This is true even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits.

For the vast majority of Americans, no action on their part will be required in order to receive a rebate check as IRS will use a taxpayer’s 2019 tax return if filed, or in the alternative their 2018 return. This includes many low-income individuals who file a tax return in order to take advantage of the refundable Earned Income Tax Credit and Child Tax Credit. The rebate amount is reduced by $5 for each $100 that a taxpayer’s income exceeds the phase-out threshold. The amount is completely phased-out for single filers with incomes exceeding $99,000, $146,500 for head of household filers with one child, and $198,000 for joint filers with no children.

Use of Retirement Funds

The 10% early withdrawal penalty for distributions up to $100,000 from qualified retirement accounts is waived for coronavirus-related purposes made on or after January 1, 2020. In addition, income attributable to such distributions would be subject to tax over three years, and the taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year’s cap on contributions. Further, the provision provides flexibility for loans from certain retirement plans for coronavirus-related relief.

A coronavirus-related distribution is a one made to an individual: (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19,
closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.

**Temporary Waiver of Required Minimum Distribution Rules for Certain Retirement Plans and Accounts**

The required minimum distribution rules for certain defined contribution plans and IRAs for calendar year 2020 is temporarily waived. This provision provides relief to individuals who would otherwise be required to withdraw funds from such retirement accounts during the economic slowdown due to COVID-19.

**Allowance of partial above the line deduction for charitable contributions**

Americans are encouraged to contribute to churches and charitable organizations in 2020 by permitting them to deduct up to $300 of cash contributions, whether they itemize their deductions or not.

**Modification of limitations on charitable contributions during 2020**

The provision increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020. For corporations, the 10-percent limitation is increased to 25 percent of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

**Exclusion for certain employer payments of student loans**

The provision enables employers to provide a student loan repayment benefit to employees on a tax-free basis. Under the provision, 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, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.
**Employment**

**Paid Sick Leave**

*The Department of Labor frequently updates its guidance and Q&A documents on the paid leave provisions. Read the latest [here](#).*

Private sector employers with fewer than 500 workers and government entities have to provide employees who are unable to work or telework with immediate paid sick time off to:

- Comply with a federal, state, or local quarantine or isolation order.
- Self-quarantine per a health-care provider’s advice.
- Obtain a medical diagnosis for coronavirus.
- Care for an individual who is in quarantine or for a child whose school or day care has closed due to coronavirus.

Full-time employees receive 80 hours of sick leave under the new emergency leave program and part-time workers would be granted time off that’s equivalent to their scheduled or normal work hours in a two-week period. Paid sick time wouldn’t carry over from year to year.

Workers have to be paid at least their normal wage or the federal, state, or local minimum wage, whichever is greater. They would be paid, however, at two-thirds of wages for providing caregiving to another individual or child. Leave assistance is capped at $5,110 for a worker’s quarantine or diagnosis and at $2,000 to provide care for another individual or child.

Employers are prohibited from:

- Requiring a worker to use any other available paid leave before using the sick time.
- Requiring a worker to find a replacement to cover their hours during time off.
- Discharging or discriminating against workers for requesting paid sick leave or filing a complaint against the employer.

The Labor Department is authorized to issue regulations to exempt small businesses with fewer than 50 employees or exempt certain health care providers from the paid leave requirements.

An employer is subject to civil penalties for a violation of paid sick leave requirements. This paid sick leave is in addition to whatever sick leave is already offered by the employer (including subject to state or local requirements).

Workers under a multiemployer collective bargaining agreement and whose employers pay into a pension plan would have access to paid emergency leave.

Employers may receive a refundable sick leave credit for employees who are unable to work for the reasons above. See our taxation section for more details on the employer credit.

The provision takes effect April 1, 2020.
Expanded Paid Family and Medical Leave

*The Department of Labor frequently updates its guidance and Q&A documents on the paid leave provisions. Read the latest [here](#).*

The law creates an emergency paid leave program to directly respond to the coronavirus. Private sector employers with *fewer than 500 workers* and government entities have to provide as many as 12 weeks of job-protected leave under the Family and Medical Leave Act (FMLA) for employees who are unable to work or telework because they have to care for a child younger than 18 whose school or day care has closed because of the coronavirus.

The first 10 days of leave could be unpaid, though a worker could choose to use accrued vacation days, personal leave, or other available paid leave for unpaid time off. Following the 10-day period, workers would receive a benefit from their employers that will be at least two-thirds of their normal pay rate. Leave assistance to workers would be capped at $200 per day or $10,000 total.

An exemption for small businesses has been provided for the paid family and medical leave provision. The Secretary of Labor is authorized to exempt health care providers and emergency responders and small businesses with *fewer than 50 employees* if the requirement would jeopardize the business as an ongoing concern. The requirements to restore the employee to their position after the paid leave is taken do not apply to businesses with fewer than 25 employees if the position no longer exists because of the public health emergency (provided the employer takes certain actions to try and assist the employee). Employers with less than 50 employees are exempt from civil actions brought by employees for violations of this section. Employers of employees who are healthcare providers or emergency responders may elect to exclude such employees from the paid FMLA.

Employers may receive a refundable sick leave credit for employees who are unable to work for the reasons above. See our taxation section for more details on the employer credit.

This provision takes effect on April 1, 2020.

Unemployment Compensation Benefits

*States*: State governments have the flexibility with respect to waiting periods and in interpreting the “able, available and actively looking” test for Unemployment Compensation (UC) eligibility. The law provides an additional $1 billion for state unemployment programs. The law authorizes extended unemployment benefits (beyond the usual 26 weeks), fully funded by the federal government, for states that experience a spike in unemployment.

Funding is provided to states to pay the cost of the first week of unemployment benefits through December 31, 2020 if states choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.

Payment is provided to states to reimburse nonprofits, government agencies, and Indian tribes for the half of the costs they incur through December 31, 2020 to pay unemployment benefits.

States are provided with temporary, limited flexibility to hire temporary staff, rehire former staff, or take other steps to quickly process unemployment claims.
The law provides $100 million in grants to states that enact “short-time compensation” programs to help them implement and administer these programs.

**Individuals:** Each recipient of unemployment insurance or Pandemic Unemployment Assistance is provided an additional $600 per week payment for up to four months.

An additional 13 weeks of unemployment benefits through December 31, 2020 is provided to help those who remain unemployed after weeks of state unemployment benefits are no longer available.

The Pandemic Unemployment Assistance program was created through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency.

Read MB’s publication on Expanded Unemployment Benefits [here](#).
Healthcare

Treatment for COVID-19 Patients

To help patients, the CARES Act invests in our medical system in several ways. First, the bill provides money for providers through Medicare. It allows for accelerated Medicare payments. This will help hospitals, especially those facilities in rural and frontier areas, get the reliable and stable cash flow they need to help them maintain an adequate workforce, buy essential supplies, create additional infrastructure, and keep their doors open to care for patients. The law creates a 20 percent add on payment for inpatient treatment. It delays the sequester until the end of this calendar year, which gives providers both money and certainty.

Second, the bill provides over $140 billion in appropriations to support our health system, including:

$100 billion for a new program to provide grants to hospitals, public entities, not-for-profit entities, and Medicare and Medicaid enrolled suppliers and institutional providers to cover unreimbursed health care related expenses or lost revenues attributable to the public health emergency resulting from the coronavirus and

- $16 billion to the Strategic National Stockpile to procure personal protective equipment, ventilators, and other medical supplies for federal and state response efforts
- $11 billion to support research and development of vaccines, therapeutics, and diagnostics to prevent or treat the effects of coronavirus
- $4.3 billion to the CDC to support federal, state, and local public health agencies to prevent, prepare for, and respond to the coronavirus
- $185 million through HRSA to support rural critical access hospitals, rural tribal health and telehealth programs
- $200 million for CMS for priorities like assisting nursing homes with infection control and support states’ efforts to prevent the spread of coronavirus in nursing homes

Finally, the bill pumps new resources into our public health, education and emergency preparedness infrastructure:

- Funds community health centers through November 30, 2020
- Reauthorizes key rural grant programs to strengthen rural community health
- Invests $30.750 billion into a flexible Education Stabilization Fund to help states, school districts and institutions of higher education for costs face increased costs as they deal with the safety and health issues related to coronavirus as well as continue to develop plans for providing online learning for all students
- Takes steps to address supply shortages, including in the Strategic National Stockpile and removing legal barriers to the production of more masks
- Removes barriers to allow the Biomedical Advanced Research and Development Authority (BARDA) to more easily partner with private sector on research and development and to allow BARDA to expedite diagnostics and vaccines
Expansion of Telehealth

CARES Act contains a significant expansion of telehealth by allowing patients to see doctors with whom they don’t already have a relationship, connecting folks on home dialysis with providers, and allowing federally qualified health centers and rural health centers to participate. The bill also expands telehealth services for home health and hospice.

Overburdened physicians need relief, so nurse practitioners and physicians’ assistants will be able to prescribe home health services.

Finally, the law makes it easier for post-acute facilities to be fully utilized during this crisis.

Health Savings Accounts and Flexible Spending Accounts

The CARES Act ensures that Americans are able to use all tax-favored health care accounts, like HSAs and FSAs, to buy over-the-counter medicines tax-free without a prescription. In addition, high deductible health care plans with HSAs will now be able to provide coverage pre-deductible for telehealth services.

Free Coronavirus Testing

Under the FFCRA, insurers are required to cover coronavirus tests and related services, such as provider visits for testing, without cost-sharing or prior authorization requirements. The cost-sharing prohibition also applies to Medicaid, Medicare, TRICARE, veterans’ health programs, the Indian Health Service, and coverage provided to federal civilian employees.

The law appropriates $1 billion to allow the National Disaster Medical System to reimburse provider costs associated with testing uninsured individuals.

Major insurance companies, including BlueCross BlueShield Association companies, Humana Inc., and UnitedHealth Group Inc., have committed to waiving coronavirus test co-pays, according to Vice President Mike Pence.
Federal Guidance

Federal Guidance for Businesses and Employers

On March 16, the President announced the Coronavirus Guidelines for America – 15 Days to Slow the Spread. The President’s guidelines serve as national guidance in addition to any directives ordered by state and local authorities. They will help slow the spread of the coronavirus. The guidelines include actions like:

- Even if you are young, or otherwise healthy, you are at risk and your activities can increase the risk for others. It is critical that you do your part to stop the spread of the coronavirus;
- Avoid social gatherings in groups of more than 10 people;
- Avoid eating or drinking in bars, restaurants, and food courts – use drive-thru, pickup, or delivery options;
- Practice good hygiene, including washing your hands, avoid touching your face, sneeze or cough into a tissue or in the inside of your elbow, and disinfect frequently.

Federal guidance and state and local directives are critical to follow to end this pandemic, but they will greatly impact businesses. Michael Best Strategies is working with federal and state governments to learn of all assistance that can support our clients.

Other Federal Resources

Department of Health and Human Services:

- HHS Twitter (here)
- HHS Facebook (here)

Centers for Disease Control and Prevention:

The CDC provides the most up-to-date information about COVID-19. Here are some of its resources for businesses:

- CDC Twitter (here)
- CDC Facebook (here)
- How COVID-19 Spreads
- Symptoms
- Prevention & Treatment
- Testing
- Frequently Asked Questions
- What to Do If You Are Sick with COVID-19
- Stigma Related to COVID-19
- What You Need to Know
• What to Do If You Are Sick with COVID-19
• Facts about COVID-19
• Information for People at Higher Risk and Special Populations
• Communication Resources

Information for Businesses:
• Interim Guidance for Businesses and Employers
• Information for Communities, Schools, and Businesses
• Environmental Cleaning and Disinfection Recommendations – Community Facilities
• DOL: OHSA Resources for Workers and Employers on COVID-19
• WHO: Get Your Workplace Ready for COVID-19
• CISA: Risk Management for COVID-19
• EPA: Disinfectants for Use Against COVID-19
• PDF

Situation Updates:
• Situation Summary
• Cases in the U.S.
• Global Locations with COVID-19
• Risk Assessment
• CDC in Action: Preparing Communities

Information for Travel and Transportation:
• Information for Travel
• State: Travel Advisories
• State: Traveler’s Checklist
• State: Smart Traveler Enrollment Program
• DOT: FAQs from FTA Grantees Regarding COVID-19

Information for Community Events and Gatherings:
• Interim Guidance for Mass Gatherings and Large Community Events
• Interim Guidance for Community- and Faith-Based Organizations
• EPA: Disinfectants for Use Against COVID-19
• PDF

Click here to view the live tracking of COVID-19 by Johns Hopkins University
About Michael Best Strategies

Michael Best Strategies is one of the nation’s fastest-growing B2B consulting firms specializing in government relations, public affairs, crisis management, shared value business planning, political partnership development, and community/stakeholder engagement strategies. With offices in Washington, D.C., Chicago, Milwaukee, Madison, Waukesha, Austin, Denver, and Salt Lake City, we work with clients at the local, regional, and national levels to advance their unique goals and objectives. Our industry expertise includes healthcare, agriculture, energy and environment, manufacturing, tax and finance, trade, higher education, and food and beverage. Michael Best Strategies is affiliated with Michael Best & Friedrich LLP, a full service law firm with more than 250 lawyers operating in 14 offices nationwide. For more information, visit michaelbeststrategies.com.

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