



Summary of the Coronavirus Aid, Relief, and Economic Security Act

In the face of economic damage from the COVID-19 pandemic, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) into law on March 27, 2020. This comprehensive legislative relief package is designed to help stabilize fragile industries and to provide tax credits and loans to businesses to help them retain their workforce. This package also includes options employers may want to consider, from payroll tax deferral to write-offs for paying down employee student debt. The options listed below may be able to help alleviate some of the losses caused by the COVID-19 pandemic.

The Paycheck Protection Program (Small Business Administration Loans)

The Paycheck Protection Program provides loans and loan guarantees for small businesses for the covered period of February 15 through June 30, 2020. These low interest loans are intended to be used to cover employee salaries and payroll, continue health benefits, and assist with rent, mortgage, or utilities, or any other loans taken out before February 15, 2020. The SBA loans can be taken out in amounts totaling 250% of the employer's average monthly payroll in 2019.

The program is available for small businesses, with less than 500 employees. It also includes 501(c)(3) nonprofits, veteran organizations, and small tribal businesses. The SBA's affiliation test applies with certain exceptions. School districts and other education entities can apply for the SBA loans if they are registered as a 501(c)(3) organization.

These loans are eligible for loan forgiveness if 75% of the funds are used to cover payroll, rent or mortgage, or utilities. However, loan forgiveness would be reduced for employers who lay-off workers or reduce employee pay.

Emergency Economic Injury Disaster Grants

The CARES Act authorizes the SBA to provide \$10,000 Economic Injury Disaster Loans to small businesses within 3 days. Also eligible are tribal small business concerns with fewer than 500 employees; or any individual operating as a sole proprietor or an independent contractor; as well as small business concerns, private nonprofit organizations, and small agricultural cooperatives. These loans are considered advance payments and won't be considered for loan forgiveness if they are converted into Paycheck Protection Program or other SBA 7(a) loans.

Short-Term Compensation Grants

Short-Term Compensation grant programs are administered by individual states with federal funds. These grants will provide bridge compensation to employees that are kept on their employer's payroll, but their employer has reduced their hours.



Employee Retention Payroll Tax Credit

The CARES Act provides an employer payroll tax credit, capped at \$10,000.00 per employee, for 50% of wages paid by employers to employees from March 13 through Dec. 31, 2020.

Employers qualify if they either (1) are subject to a full or partial shut-down order due to the COVID-19 crisis or (2) see gross receipts decline by more than 50% when compared to the same quarter in the prior year. If the qualifying event is a decline in gross receipts, employers stay eligible for the credit during 2020 until they reach 80% of gross revenues in a quarter compared to the same quarter in the prior year. Employers who have taken an SBA business interruption loans are not eligible for the tax credit.

If you qualify for a SBA business interruption loan, you will want to evaluate whether taking this credit or applying for an SBA loan makes the most sense.



Delay of Employer Payroll Tax Payment

Another payroll provision also allows for the delay of payment of 100% of the employer share of social security taxes from March 28 - December 31, 2020. The deferred amounts are to be paid in two later installments: 50% on Dec. 31, 2021 and 50% on Dec. 31, 2022.

Modification of Limitation on Business Interest

For 2019 and 2020, this provision increases the amount of interest expense that businesses (both corporations and partners in partnerships) are allowed to deduct, by increasing the limitation from 30% of adjusted taxable income to 50%. This provision will allow businesses to increase liquidity with a reduced cost of capital, so that they are able to continue operations.



Exclusion of Employer Payment of Student Loans

The CARES Act encourages employers to help their employees with payment of their student loan debt. Any employer's payments made on behalf of their employees will be treated as education assistance and will be excluded from the employer's gross income so long as certain conditions are met.

Expanded Bankruptcy Eligibility

Small businesses are now allowed to use the streamlined Chapter 11, Subchapter V bankruptcy process by increasing the debt limit for business and individual filers from \$2,725,625 to not more than \$7,500,000, excluding debt owed to affiliates or insiders. It also adds flexibility to Chapter 13 bankruptcies if income loss is due to the COVID-19 pandemic.

Access to Retirement Funds

The CARES Act allows qualified participants to have greater access to their retirement funds. It removes the 10% excise tax applicable to early withdrawal if the withdrawal is a coronavirus-related distribution (CRD) of no more than \$100,000. A CRD can be made from an Individual Retirement Account (IRA), and if permitted in the employer's plan, defined contribution retirement plans (like 401(k) plans), 403(b) plans, and Section 457(b) governmental sponsored deferred compensation plans.

To qualify, an individual must meet one of the following conditions:

- Have been diagnosed with COVID-19,
- Have a spouse or dependent diagnosed with COVID-19,

Experience adverse financial consequences due to certain virus-related events including quarantine, furlough, or layoff, having hours reduced, or losing child care.



Waiver of Required Minimum Distribution for 2020

The CARES Act provides a temporary waiver of the required minimum distribution rules for defined contributions plans, governmental deferred compensation plans and individual retirement plans. Individuals can preserve retirement funds if their entire account in 2020 is deflated due to poor market performance in 2020. They are protected from having to take a distribution based on their 2019 account balance.

Corporate Charitable Contributions

To promote philanthropy, the CARES Act increases the limitation on charitable deductions to 25% of taxable income for corporations. It also increases the limit on deductions for donations of food inventory to 25%.

Net Operating Losses

This temporary provision applies to tax years beginning in 2018 through 2020. Net Operation Losses (NOLs) can be carried back five years, and they are not subject to any taxable income limitations.

Businesses that have already filed 2018 or 2019 tax returns reporting NOLs subject to the taxable income limitation or the prohibition against carrybacks, can consider amending their tax returns to claim additional losses and possibly carry back any unused NOLs. Any NOLs arising with unfiled 2019 tax returns will benefit from these new temporary rules. Under both situations, NOLs can be carried back to former tax years and applied against income taxed at pre-Tax Cuts and Jobs Act (TCJA) rates.



Business Interest Expense Limitations

The CARES Act temporarily increases the amount of deductible business interest expense limitation to 50 percent of a taxpayer's Adjusted Taxable Income (ATI) (plus business interest income) for tax years beginning in 2019 and 2020.

For taxpayers other than partnerships, the increased ATI limitation is applicable to 2019 and 2020 tax years. Any 2019 tax returns that have already filed that report a business interest expense limitation can be amended to reflect the increased interest expense threshold. Partnerships remain subject to the 30 percent of ATI limitation for their 2019 tax returns but are provided with increased flexibility in utilizing excess business interest expense carryforward on their 2020 tax returns. Partnerships are eligible to use the 50 percent of ATI limitation on their 2020 tax returns.

Excess Business Loss Limitation

For tax years beginning in 2018 through 2020, business losses are fully deductible against business and non-business income. Taxpayers whose losses were limited on their 2018 or 2019 tax returns by the previous effective date of the business loss limitation amend these returns to modify the treatment of those losses.

The CARES Act also makes several technical corrections to the excess business loss limitation that clarify including the determination of business income and the treatment of disallowed losses that are carried forward. The modifications provide that wages earned as an employee do not constitute business income for purposes of Section 461(l). Capital losses are not treated as business losses for these purposes, but capital gains are treated as business income up to the lesser of the business capital gain income or total capital gain income.



Qualified Improvement Property (QIP) “Fix”

The CARES Act retroactively sets a 15-year recovery period to QIP. Taxpayers that placed in service QIP during 2018 or 2019 can correct the recovery period on the property and claim bonus depreciation. Taxpayers may make this correction through filing a Form 3115, Application for Change in Accounting Method, with their 2019 or 2020 tax return. Taxpayers can also amend their 2018 or 2019 return if the amendment is completed prior to the date they file their tax return for the following year.

Education Stabilization Fund

The CARES Act establishes an Education Stabilization Fund, funded at \$30.75 billion, with funds mostly split between emergency relief funds for higher education (\$14.25 billion) and elementary and secondary schools (\$13.5 billion). The Stabilization Fund also earmarks approximately \$3 billion for state governors to disburse through grants to local school districts that the applicable state education agency considers most impacted by COVID-19.

Available funds: A total of \$30.75 billion is available as federal stimulus funds to support higher education and K-12 education through September 30, 2021.

- **Allocation:** The Bureau of Indian Education and states with the highest coronavirus burden. The remainder of the funds will be allocated to state governors, elementary and secondary education, and higher education.
- **Eligibility for funds hinges on a commitment to employ.** Any school district or higher education must commit to continue to pay its employees and contractors during the period of any disruptions or closures related to the COVID-19 pandemic. School districts will want to continue paying their employees and contracted vendors to the fullest reasonable extent to ensure they remain eligible for the funds. Districts that are unable to continue paying should fully document and be prepared to explain the reasons why they have discontinued payments, in the event that they may attempt to retain eligibility.

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