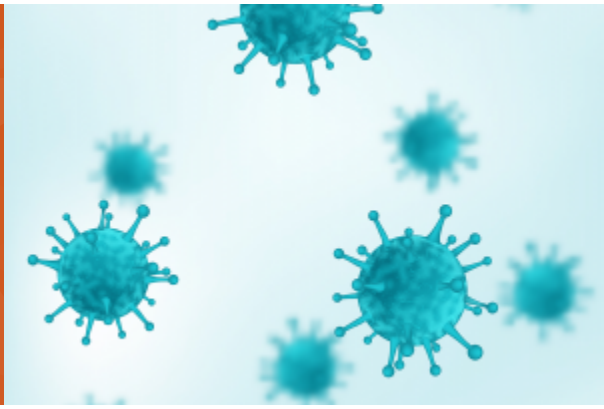
COVID-19 Alert: The CARES Act

A Plain Language Guide to the Coronavirus Aid, Relief and Economic Security ("CARES") Act

By:Matthew L. Mitchell and Joseph E. Hunt IV
March 30, 2020



See more related articles and posts in our: COVID-19 Resource Collection.

President Trump signed the CARES Act into law on March 27, 2020. With an estimated price tag in excess of $2 trillion, the CARES Act is intended to provide businesses and industry with a broad lending program designed to sustain working capital needs, provide immediate cash relief for middle- and working-class Americans, and increase public health spending to combat COVID-19.

The CARES Act is divided into two divisions:

- Division A: Keeping Workers Paid and Employed, Health Care System Enhancements, and Economic Stabilization; and
- Division B: Emergency Appropriations for Coronavirus Health Response and Agency Operations

This plain language guide is meant to provide a summary of the CARES Act with respect to the 6 titles contained in Division A:

- Title I: Keeping American Workers Paid and Employed Act
- Title II: Assistance for American Workers, Families, and Businesses
- Title III: Supporting America's Health Care System in the Fight Against the Coronavirus
- Title IV: Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy
- Title V: Coronavirus Relief Funds
- Title VI: Miscellaneous Provisions

Summary of Title I: Keeping American Workers Paid and Employed Act

- The CARES Act amends the Small Business Act to create a new Business Loan Program. For the period of February 15, 2020 to June 30, 2020 (the "**Covered Period**").
- The Small Business Administration ("**SBA**") is allowed under the CARES Act to provide 100% federally backed loans up to a maximum amount to eligible businesses to help pay operational/working capital costs such as payroll, rent, health benefits, insurance premiums, utilities, etc., under the Paycheck Protection Program (the "**PPP**").

- Subject to certain conditions outlined below, PPP loan amounts are forgivable.
- General Loan Terms and Program Operations

  – The SBA underwrites PPP loans in cooperation with the private sector (Lenders authorized to make loans under the current Business Loan Program are automatically approved to make and approve loans under the CARES Act).

  – The SBA can guarantee covered loans and no collateral or personal guarantee is permitted to be required for a PPP loan.

  – The interest rate on PPP loans under the CARES Act is not to exceed four percent (4%) per annum, with repayment terms up to 10 years.

  – There will be no subsidy recoupment fee associated with the loans and no prepayment penalty for any payments made.

  – While the SBA will place a UCC lien against the assets of the business upon issuance of an Economic Injury Disaster Loan ("**EIDL**"), no collateral is required from either the business or its owners for a PPP loan. In other words, PPP loans made for the Covered Period are **nonrecourse**; the lender would have no recourse against any individual, shareholder, member, or partner of an eligible loan recipient for non-payment, unless the individual uses the loan proceeds for unauthorized purposes (essentially using the proceeds for non-working capital purposes).

  – The CARES Act imposes an important limitation on a borrower, prohibiting a borrowing business from receiving a PPP loan and an SBA EIDL for the same purpose. It does allow an eligible borrower who has an EIDL unrelated to COVID-19 to apply for a PPP loan, with an option to refinance that existing loan into the PPP loan.

- Eligible Loan Recipients

  – "Small Business Concerns," as that term is presently defined by the SBA, are eligible for PPP loans. In general, a business qualifies as a Small Business Concern, and is therefore eligible for a PPP loan, if it employs fewer than (i) 500 employees (including full-time, part-time, and those employed on "other" bases) or (ii) the applicable size standard established under the North American Industry Classification System ("**NAICS**").

  – In counting employees for purposes of this eligibility requirement, the CARES Act incorporates the SBA's complex "Affiliation" rule. This SBA Affiliation rule instructs that businesses that are under common control or otherwise affiliated to aggregate their number of employees for purposes of determining whether the business satisfies the employee limitation to qualify as a small business concern under SBA rules for its particular industry.

  – The CARES Act contains a limited waiver of the Affiliation rule for businesses in the Accommodation (*i.e.*, hotels and restaurants) and Food Services industries, identified as NAICS Sector code "72." Otherwise, the Affiliation Rule applies to determining PPP loan eligibility of all other businesses.

– SPECIAL NOTE: Unless clarified by subsequent implementing regulations, it appears that most venture and private equity backed portfolio companies will be ineligible for PPP loans as a result of the Affiliation Rule. According to the Affiliation Rule, entities are "affiliates" when one controls or has the power to control the other, or a third party (or parties) controls or has the power to control both. It does not matter if control is actually exercised. Further, "control" is very expansively defined under SBA regulations and includes majority ownership of voting equity, contractual control-type rights, management control, identity of interest, economic dependence, and a number of other types of "control" that can exist in majority and minority ownership scenarios. Importantly, the SBA notes that affiliation is an "all facts and circumstances" test, so while no one single factor may be sufficient to constitute affiliation, the SBA may find affiliation exists on a case-by-case basis. BOTTOM LINE: IT APPEARS LIKELY THAT A PE OR VC BACKED BUSINESS MUST BE AGGREGATED WITH ITS AFFILIATES TO DETERMINE WHETHER OR NOT IT MEETS THE SIZE STANDARD SET BY THE SBA.

– Sole proprietors, independent contractors, and self-employed individuals (as defined in the Families First Coronavirus Response Act) are also eligible loan recipients.

- Loan Maximum, Borrower Eligibility Requirements, and Permissible Uses

– Maximum loan amount is capped as the lesser of **(a)** 2.5 times the average total monthly payroll costs incurred in the 1 year period before the loan is made plus the outstanding amount of an SBA Disaster Loan Program loan; or **(b)** 2.5 times the average total monthly payroll from January 1-February 29, 2020, for businesses that have been in existence for less than a year plus the outstanding amount of an SBA Disaster Loan Program loan; or **(c)** $10 million.

– While the SBA's EIDL Disaster Loan Program caps loans at $2 million, the CARES Act expands the ability of certain businesses to qualify for even larger loans if needed.

– Borrower Eligibility Requirements are LOW. They simply require a good faith certification that:

* The loan is needed to continue operations during the COVID-19 emergency;

* Funds will be used to retain workers and maintain payroll, or make mortgage, lease, and utility payments;

* The applicant business does not have any other application pending under the CARES Act for the same purpose; and

* From February 15, 2020 until December 31, 2020, the applicant has not received duplicative amounts under the CARES Act.

– Permissible Uses:

* Payroll. THIS INCLUDES compensation to employees for salary, wage, commissions, paid leave, severance, group health benefits, insurance premiums, retirement benefits, state and local payroll taxes, and compensation to sole proprietors or independent contractors, up to $100k per year per individual (prorated for the Covered Period);

– Payroll costs EXCLUDE: individual employee compensation above $100k per year (prorated for the Covered Period), certain federal taxes, compensation for employees with a principal place of residence outside the US, and sick/family leave wages for which credit is already allowed under the Families First Act.

* Also permissible are group health benefits and insurance premiums paid during sick, medical, or family leave; payments of interest on mortgage obligations; rent/lease agreement payments; utilities; and interest on any other debt obligation incurred *before* the Covered Period.

- Loan Forgiveness and Payment Deferral Relief

– Payment Deferral

* The CARES Act provides that businesses that were operating on February 15, 2020, and have a pending or approved loan application under it are *presumed* to qualify for complete payment deferment relief (principal, interest, and fees) for six months to one year.

* Lenders are required to provide this relief and the SBA has 30 days from enactment of the CARES Act to provide guidance on this process.

– Loan Forgiveness

* Indebtedness is forgiven and excluded from gross income in an amount not to exceed the principal amount of the loan for the following costs incurred and payments made during the Covered Period:

– Payroll costs;

– Interest payments on mortgages;

– Rent; and

– Utilities.

* Forgiveness amounts get reduced according to a formula for any employee cuts or reductions in wages.

– Reduction Formulas

* Employee Cuts: the maximum forgiveness is calculated as the maximum allowable amount *multiplied* by the average number of full-time employees ("**FTEs**") per month, divided by either (i) the average number of FTEs per month employed from February 15, 2019 to June 30, 2019, or (ii) the average number of FTEs per month employed from January 1, 2020 to February 29, 2020, the choice to be made by the borrower.

– Example: $1 million of maximum forgiveness, highest average of FTEs in (i) and (ii) above is 20, and the average number of FTEs is reduced to 15.

= ($1 million * 15) / 20 = $750,000 is the new maximum allowable forgiveness since you let go 25% of your employees.

* Wage Reduction: Straight reduction by the amount of any reduction in total salary or wages of any employee during the Covered Period that is in excess of 25% of the employee's salary/wages during the employee's most recent full quarter of employment before the Covered Period.

– Borrowers seeking loan forgiveness will have to submit to their Lender:

* Documentation verifying FTEs on payroll and pay rates;

* Documentation on mortgage, rent, and utility payments;

* Certification from an officer that the documentation is true and correct and that forgiveness amounts requested were used to retain employees and make other forgiveness-eligible payments; and

* Any other documentation the SBA may require (open for further details).

– The SBA has 30 days from the enactment of CARES to issue regulations on loan forgiveness.

Summary of Title II: Assistance for American Workers, Families, and Businesses

Subtitle A – Unemployment Insurance Provisions

Provides additional unemployment compensation to individuals affected by COVID-19

Covered Individual = individual who:

- is not eligible for regular compensation or extended benefits under State or Federal law or Pandemic Emergency Compensation, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation;
- provides self-certification that the individual

– is otherwise able to work and available to work, except is unemployed, partially employed, or unable or unavailable to work because the individual has been/is:

* diagnosed with COVID-19 or experiencing symptoms of COVID-19 and seeking a diagnosis;

* member of individual's household has been diagnosed with COVID-19;

* individual is providing care for a family member or member of household with COVID-19;

* child or other person in household who individual is primary caregiver is unable to attend school or other facility that is closed because of COVID-19 emergency causing individual the inability to work;

* individual cannot reach place of employment because of quarantine imposed as a result of COVID-19 emergency;

* individual was scheduled to begin work but now cannot as a direct result of COVID-19 emergency;

* individual has become breadwinner or major support for household because head of household died as a direct result COVID-19;

* individual must quit job as a direct result of COVID-19;

* individual's place of employment is closed as s direct result of COVID-19; or

* individual meets additional criteria established by the Secretary of Labor under this section.

– Extends coverage to individuals who are self-employed, seeking part-time employment, do not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or Pandemic Emergency Unemployment Compensation.

– Extends coverage to government workers and non-profit individuals.

– Carves out (meaning these individuals are *ineligible*) individuals who:

* have the ability to telework with pay; or

* individuals receiving paid sick leave or other paid benefits leave, regardless of whether they meet any of the other qualifications.

– Eligibility triggered by loss of work on or after January 27, 2020; ending December 31, 2020.

– Benefits to last as long as covered individual's partial unemployment or inability to work continues,

* But not to exceed 39 weeks (includes weeks in which individual received benefits under any Federal or State law – except if started after the date of enactment of this Act, duration is extended by the number of weeks that is equal to the number of weeks by which the extended benefits were extended)

- Amount of Assistance

– **Weekly amount** = the weekly benefit amount authorized under the unemployment compensation law of the State where covered individual was employed; but may not be less than the minimum weekly benefit amount in section 625.6 of title 20, Code of Federal Regulations

– **PLUS Amount of Federal Pandemic Unemployment Compensation under Section 2104 ($600)**

- Amount of Assistance for Self-Employed Individuals

– weekly benefit amount calculated in section 625.6 of title 20, Code of Federal Regulations

– shall be increased by the amount of Federal Pandemic Unemployment Compensation ($600).

- Provides remedies for individuals found to engage in **fraud** related to benefits under the Act, including criminal prosecution, ineligibility, and repayment
- Federal Pandemic Unemployment Compensation **not to be counted as income** for purposes of Medicaid and CHIP
- Terms and conditions of the State law will apply, except where inconsistent with the Act
- States should exercise flexibility in standards requiring individuals to actively search for work due to COVID-19 limitations

- No waiting period prior to payments beginning

- Work Share Programs

  – States with work-sharing programs (also called "short-term compensation") will have full work-sharing costs covered;

  – States interested in setting up such a program get assistance in paying startup costs, and a 50 percent match in expenses.

  – States to enter into agreements with the Federal government; to be terminated with 30 days' written notice

  – States with agreements will be paid 100% of

    * Total amount of assistance provided by the State; plus

    * Additional administrative expenses related to processing of applications under the Act.

  – Payments to states may be made in advance or as reimbursements

    * Funding to come from general fund of the Treasury

    * Payments to States for administrative expenses to come from the funds in the employment security administration account

Subtitle B – Tax Relief for Individuals

- Recovery Rebates

  – $1,200 per US adult ($2,400 for joint filers), as well as $500 per child under the age of 17 (so 16 years of age or younger). Persons who are claimed as dependents on anyone's tax return will not receive a check.

    * These amounts are subject to payment phaseout limitations for individuals making in excess of $75,000 (for every $100 earned above the threshold, payment drops by $5) and completely phases out for individual filers at $99,000.

    * Joint filers get the maximum at a threshold of $150,000 and phase out completely at $198,000.

    * Head of household gets the maximum at $112,500 and phase out completely at $146,500.

  – People receiving Social Security retirement and disability payments are eligible for the rebate payment, as are those who are currently unemployed.

  – The CARES Act exempts the rebate payments from offset to pay debts owed to other federal agencies, state income tax obligations, and unemployment compensation debt, but does not carve out an exception for past-due child support payment obligations.

  – Payments and threshold determinations are based on the 2019 tax return, unless it has not been filed, in which case it will be based off the 2018 return. In the event a US person has not filed a tax return due to not having an obligation to do so (such as Social Security) then eligibility will be based on the Social Security Benefit Statement.

– The payment mechanism here is that it is an advance refundable tax credit. This means it is an advanced payment of a tax credit for the 2020 tax year. It will not be included in taxable income.

– The Treasury Secretary expects direct payments will begin to be issued to US taxpayers approximately 3 weeks after the CARES Act is signed into law, with those electing direct deposit on their 2019 (or 2018, as the case may be) tax return potentially receiving it sooner.

- Retirement Provisions

  – The CARES Act waives the 10% additional tax for premature distributions related to COVID-19 in amounts that do not exceed a threshold of $100k subject to certain rules:

    * Penalty free distribution is applicable to retirement plans and IRAs;

    * Amounts distributed must be repaid over a 3-year period beginning on the date the distribution was actually received;

      – To the extent that the amounts are not repaid, the income inclusion with respect to any COVID-19 distribution can be included ratably over the three taxable years beginning with the taxable year in which the distribution was received

    * Amounts can be paid to a qualified plan or an IRA so long as the account is one to which a rollover contribution could be made under the Internal Revenue Code (the "**Code**");

    * The distribution provision applies to individuals who have been diagnosed with COVID-19 by a test approved by the Centers for Disease Control ("**CDC**"), their spouse or dependent who has been diagnosed by such a test, or a person who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, or suffered reduced working hours, or who is unable to work due to lack of child care (in other words, this is quite broad); and

      – The CARES Act allows a plan to rely on a certification provided by the participant.

    * Distributions will be deemed to meet the permissible distribution requirements of section 401(k). Essentially this means that they will satisfy the hardship distribution provisions of the Code.

- Charitable Contributions

  – Allows a $300 above the live deduction for cash contributions made to churches and charitable organizations in 2020, regardless of whether the taxpayer itemizes deductions

  – Suspends the 50% limitation on individuals for 2020.

- Student Loans

  – The Act expands the definition of employer-provided educational assistance that is excluded from gross income to include up to $5,250 in student loan payments made by an employer between the date of enactment of the CARES Act and December 31, 2020.

Subtitle C – Tax Relief for Businesses

- Employee Retention Credit

  – The CARES Act provides "eligible employers" with a refundable credit against payroll tax liabilities related to Social Security and Railroad Retirement) equal to 50% of the first $10,000 in wages per employee, inclusive of the value of health plan benefits. The employee retention credit is effective for wages paid after March 12, 2020, and through December 31, 2020.

    * Eligible employers are those who carried on a trade or business during 2020 and satisfy one of two tests:

      – Have business operations fully or partially suspended due to orders from a governmental entity limiting commerce, travel, or group meetings; or

      – Experience a year-over-year reduction in gross receipts of at least 50%.

  – AN ELIGIBLE EMPLOYER THAT RECEIVES A PPP LOAN IS NOT ELIGIBLE FOR THE EMPLOYEE RETENTION TAX CREDIT.

- Employer Payroll Tax Delay

  – CARES Act postpones the due date for depositing employer payroll taxes and 50% of self-employment taxes related to Social Security and Railroad Retirement and attributable to wages paid during 2020. The deferred amounts would be payable over the next two years – half due December 31, 2021, and half due December 31, 2022.

- Certain Changes under the Tax Cuts and Jobs Act ("**TCJA**")

  – The CARES Act temporarily suspends the net operating loss ("**NOL**") 80% limitation of taxable income for three years, so that the limit does not apply to tax years beginning in 2018, 2019, and 2020. Translation: Companies with NOLs can fully offset taxable income for those years if they have sufficient NOLs.

  – NOLs arising in 2018, 2019, and 2020 can be carried back 5 years (the TCJA eliminated NOL carrybacks).

  – Suspends the limitation on the use of a pass-through business' losses against non-business income for three years under Code Section 461(l)(1). These limits do not apply for tax years 2018, 2019, and 2020.

  – The Act temporarily increases the limitation on business interest deductions imposed by the TCJA. It increases the 30% of adjusted taxable income ("**ATI**") threshold to 50% of ATI for tax years 2019 and 2020.

  – The CARES Act allows corporate Alternative Minimum tax ("**AMT**") credits that were repealed as part of TCJA to exist as refundable credits until 2021 and accelerates the ability for companies to recover those AMT credits.

Summary of Title III: Supporting America's Health Care System in the Fight Against Coronavirus

- Testing and Preventive Services

– The CARES Act expands on the type of testing covered with no cost sharing beyond that which the Families First Act covered.

* In-vitro diagnostic testing, both approved by the FDA and "not currently approved, but requested" or "to-be requested under an emergency provision" with the FDA is included.

– Group health plans and insurers are also required to reimburse a provider for the negotiated cost of the testing (of if there is no negotiated cost, the cash price reflected on the provider's website).

* "Preventative Measures" – defined as "an item, service, or immunization that is intended to prevent or mitigate COVID-19" are required to be covered as no-cost sharing obligations if/when they become available. Translation: There will be no out of pocket expense for a COVID-19 immunization.

- Changes to Paid Sick Leave and Family Leave Provisions from Families First Act

– The Office of Management and Budget ("OMB") is allowed to exclude certain US government employers and executive branch employees from the expanded COVID-19 FMLA requirements, but they must show good cause.

– The CARES Act provides a new rule for rehired employees under which the definition of an "eligible employee" (originally defined as an individual employed for at least the last 30 calendar days) includes someone who:

* was laid off by the employer on March 1, 2020 or later;

* had worked for the employer for at least 30 days in the last 60 calendar days prior to the layoff; and

* has been rehired by the employer.

– The CARES Act allows for advances on anticipated tax credits for employers' paid family leave costs and provides penalty relief for failure to deposit tax amounts in anticipation of credits allowed under this section.

– Clarifies that the $200/day/$10,000 total cap on paid leave is per employee. This was apparently omitted from the Families First Act.

– The CARES Act gives OMB authority to exclude certain US government employers and executive branch employees from the expanded COVID-19 paid sick leave requirements, but they must show good cause.

– The CARES Act clarifies that the paid leave dollar amounts under the Families First Act is per employee.

- Health Savings Accounts

– Clarifies that for plan years beginning on or before December 31, 2021, a plan does not fail to be a high deductible health plan ("**HDHP**") by failing to have a deductible for (i) telehealth and (ii) other remote care services.

– The CARES Act repeals a rule from the Affordable Care Act that prohibited over-the-counter ("**OTC**") medication from being a qualified medical expense.

* As something Morse employees should know too given our HDHP plan: This means that health savings accounts or Flexible Spending Accounts can be used to cover OTC products without a prescription, and expands the definition of "qualified medical expenses" to include menstrual products.

Summary of Title IV: Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy

- Title IV of the CARES Act deals primarily with the $500 billion allocation to the Department of the Treasury ("**Treasury**") Exchange Stabilization Fund (the "**Fund**"). The Fund will provide loans, loan guarantees, grants, and investments in the Federal Reserve's lending facilities as well as directly into the US economy.

- General Overview. The $500 billion under the Fund is allocated as follows:

  – $25 billion in loans and loan guarantees to passenger air carriers;

  – $4 billion in loans and loan guarantees to cargo air carriers;

  – $17 billion in loans and loan guarantees to businesses "critical to maintaining national security"; and

  – The remaining $454 billion is allocated to loans, loan guarantees, and investments in support of lending and credit facilities established by the Federal Reserve to support eligible businesses, states, and municipalities.

- Application Procedures: The Treasury Secretary is required to publish application procedures and minimum requirements to obtain these loans, loan guarantees, and other investments within 10 days of enactment of the CARES Act. Bottom Line is the process here is still undefined.

- Loan and Loan Guarantee Criteria:

  – Treasury Secretary has discretion to make loans and loan guarantees for a duration no longer than 5 years and at an interest rate not less than prevailing market rates prior to the COVID-19 outbreak. **The loans cannot be forgiven**;

  – A business must be US-domiciled and its employees must be predominately located in the United States. The business also must show that alternative financing is not reasonably available; and

  – For 12 months after the expiration of the loan or loan guarantee, the business will be prohibited from buying back its company stock, paying dividends, or making other capital distributions. The business is also prohibited from reducing its workforce by more than 10%.

- Main Street Lending Program

  – The CARES Act reiterates support for the Federal Reserve to establish a facility that would support lending to small and mid-size businesses.

    * As of March 30, the Main Street Lending Program that was announced by the Federal Reserve on March 23 still does not exist and details remain forthcoming.

- Non-Profit Lending Program

– The CARES Act directs the Federal Reserve to ensure a separate lending program for non-profit organizations with between 500 and 10,000 employees. The requirements for this are that the maximum interest rate on the loans is not higher than 2% per annum and there are no payments due for the first six months post-disbursement.

– The non-profit borrower must self-certify that:

* The loan is necessary to support ongoing operations;

* The non-profit borrower will retain 90% of its workforce through at least September 30, 2020; and

* The non-profit borrower will not outsource jobs for a period of time ending 2 years after full repayment of the loan.

- Residential Mortgage and Foreclosure Moratorium

– The CARES Act provides that a borrower with a federally-backed mortgage loan may request forbearance (regardless of delinquency status) without penalties, fees, or interest, by submitting a request to the borrower's servicer and affirming financial hardship due to COVID-19.

* The forbearance must be granted for up to 180 days and extended for an additional period of up to 180 days at the request of the borrower. Servicers must notify the borrower in writing of their right to request forbearance throughout the period of a national emergency.

– The CARES Act also prohibits the servicer of a federally-backed mortgage loan, except for a vacant or abandoned property, to initiate any foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for at least 60 days beginning on March 18, 2020.

- Eviction Protections

– The CARES Act prevents landlords from bringing legal causes of action to recover possession from a tenant for nonpayment of rent or other fees or charges for 120 days if the dwelling is a property insured, guaranteed, supplemented, protected, or assisted in any way by any of:

* the US Department of Housing and Urban Development;

* Fannie Mae;

* Freddie Mac;

* The rural housing voucher program; or

* The Violence Against Women Act of 1994

- Safeguards

– Executive Compensation Restriction

* A borrower under this Title IV must agree to cap all employee compensation (inclusive of salary, stock, and bonuses) at $425,000 per employee per year for a period that ends 1 year from the date after full repayment of the loan. If employees

receive more than $425,000 per year, the restriction is that their compensation cannot exceed that which they received in 2019, and any severance payments to them upon termination cannot exceed 2 times this 2019 compensation amount.

– For employees receiving more than $425,000 per year, (i) these employees cannot receive more compensation than they received in 2019; or (ii) severance pay or other benefits upon termination cannot exceed twice the 2019 compensation amount.

– A further limitation is imposed on officers and employees who earned more than $3 million of total compensation in 2019, such that they cannot receive total compensation in excess of (i) $3 million plus (ii) 50% of the excess over $3 million.

Example: A CEO earned $5 million in total compensation in 2019. Her limit under Title IV here is $4 million = $3 million + ($2 million * 50%).

– Inspector General for Pandemic Recovery

* The CARES Act establishes an Office of the Special Inspector General for Pandemic Recovery, which is lead by a Presidentially-appointed, Senate-confirmed Special Inspector General.

* The Office will function for five years and has a $25 million total budget.

* The Special Inspector General is tasked with conducting, supervising, and coordinating audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Treasury Secretary.

* The Special Inspector General must file quarterly reports with Congress that provide:

– The details of all loans, loan guarantees, and other investments;

– A listing of eligible businesses receiving a loan, loan guarantee, or other investments;

– An explanation of the reason the Treasury Secretary deemed this business as eligible for the funding, including justifications of the amounts paid and other financial terms associated with the transaction;

– Payment information made by eligible companies under the loans, loan guarantees, and other investments received.

– Congressional Oversight Commission

* The Act establishes a Congressional Oversight Commission (the "**Commission**") to conduct oversight of the Treasury Department, the Federal Reserve, and their implementation of the CARES Act.

– The Commission has 5 members:

1 member appointed by the Speaker of the House;

1 member appointed by the House Minority Leader;

1 member appointed by the Senate Majority Leader;

1 member appointed by the Senate Minority Leader; and

1 Chairperson appointed by the Speaker of the House and the Senate Majority Leader after consultation with the Senate Minority Leader and the House Minority Leader.

* The Commission must furnish 4 distinct reports, every 30 days, to Congress, addressing (1) the use by the Treasury Secretary and the Federal Reserve of the powers granted under the Act, (2) the impact and effectiveness of the loan, loan guarantee, and investment programs on the financial well-being of US citizens, the economy, financial markets, and financial institutions, (3) the extent to which transaction information publication has contributed to market transparency, and (4) how the loans, loan guarantees, and investments have minimized long-term taxpayer costs and maximized taxpayer benefits.

* The Commission's authority terminates on September 30, 2025.

– Plain Language Requirement

* Section 4026 of the CARES Act requires the Treasury Secretary to publish on the Treasury's website a "plain language description" about each loan and loan guarantee within 72 hours of the transaction.

– Conflicts of Interest

* The Act prohibits any company in which the President, Vice President, Secretary of any executive department or agency, Member of Congress, or any named individual above's spouse, child, son or daughter-in-law own a controlling interest from participating in Title IV programs.

* "Controlling Interest" is defined as owning, controlling or holding not less than 20% (by vote or value), individually or in the aggregate with any named covered individual, of any class of equity in an entity.

- Tax Treatment of Loans

– Loans under Title IV are treated as debt for federal income tax purposes.

Summary of Title V: Coronavirus Relief Fund

- Appropriations to the States, Tribal governments, and local governments

– $150 billion

* Of this, $3 billion is reserved to DC, Puerto Rico, US Virgin Islands, Guam, Mariana Islands, and American Samoa;

* $8 billion is reserved to making payments to Tribal governments.

– No state will receive less than $1.25 billion for fiscal year 2020.

* By our rough estimate, Massachusetts is set to receive approximately $2.7 billion under this allocation.

– Beyond the minimum amount, funding for the states is determined based on a "relative state population" formula.

* Local governments with populations of 500,000 or more are also eligible for aid, but any aid they receive is subtracted from the amount otherwise available to the state government.

– For Example: Massachusetts has $2.7 billion. Consider Boston (city proper only) with a population of ~700,000 people, and Massachusetts' population of 6.9 million. Boston is roughly 10% of the state population, so $270 million of Massachusetts' total is associated with Boston's population. The city of Boston can claim 45% of that $270 million, or approximately $121.5 million, which would come out of the state's $2.7 billion amount.

– This $150 billion is *in addition* to the roughly $274 billion already allocated to the states for their responses to the COVID-19 pandemic not covered by the CARES Act.

Summary of Title VI: Miscellaneous Provisions

- Postal Service

– Authorizes the United States Postal Service ("**USPS**") to borrow up to $10 billion from the Treasury for operating expenses.

* Includes a specific carve out that USPS is not allowed to use any of the borrowing to pay outstanding debt.

– Requires the USPS to prioritize deliveries of postal products for medical purposes.

Morse is following this topic closely. Please feel free to reach out to your Morse contact, or to speak with Joe Hunt or Matt Mitchell directly, should you have any questions.

Go to our full COVID-19 Resource Collection.