

AVIATION

ALERT

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COVID-19: A Brief Overview of the Coronavirus Aid, Relief, and Economic Security Act

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On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was adopted by Congress and signed into law. The massive federal legislation is intended to provide economic relief to, among others, businesses affected by the COVID-19 pandemic. The CARES Act is an approximately \$2 trillion stimulus package with significant implications for numerous industries and nearly all aspects of the economy.

Overview

The CARES Act includes significant assistance to businesses, including various forms of tax relief. It also provides much-needed relief to individuals in the form of supplemental unemployment payments of \$600 per week for up to four months and direct payments of up to \$1,200 dollars per individual (with an additional payment of \$500 per child) depending on income (the direct payments begin to phase out for incomes above \$75,000 for individuals and \$150,000 for joint filers). Additionally, the CARES Act includes numerous appropriations, many of which are designed to aid businesses. The amounts provided below are approximations, and a number of comparatively small appropriations are not listed:

- \$500 billion – Economic Stabilization Fund
- \$349 billion – Small Business Administration (“SBA”) loans
- \$150 billion – State and Local Fund, with \$8 billion allocated for tribal governments
- \$127 billion – Public Health and Social Services Fund
 - \$100 billion – reimbursement of healthcare providers for expenses relating to the pandemic
 - \$27 billion – largely directed to stockpiling PPE and manufacturing/producing vaccines, diagnostic tools, etc.
- \$45 billion – FEMA
- \$31 billion – Department of Education to provide funding for schools’ costs associated with facilitating response to pandemic
- \$25 billion – Federal Transit Administration for transit infrastructure grants
- \$15.8 billion – Supplemental Nutritional Assistance Program
- \$10.5 billion – Department of Defense
- \$10 billion for maintaining operations at airports
- \$9.5 billion – Department of Agriculture for support of agricultural producers affected by the epidemic
- \$9 billion – Department of Housing and Urban Development
 - \$5 billion for Community Development Grants

- \$8.8 billion – Child Nutritional Programs
- \$4.3 billion – CDC for COVID-related response
- \$4 billion – Homeless Assistance Grants
- \$3.5 billion – Childcare and Development block grants

Business Assistance

As set forth above, the CARES Act allocates \$500 billion for an Economic Stabilization Fund to be administered through the Department of the Treasury. The Economic Stabilization Fund is intended to promote liquidity for businesses. To be eligible, a business must be incorporated in or organized under the laws of the United States and have significant operations in the United States. It also must have a majority of its employees based in the United States. While there is no definition of “significant operations,” it appears intended to benefit mid-sized businesses in addition to large corporations affected by the pandemic. Although small businesses are not excluded from applying for relief through the Economic Stabilization Fund, the Small Business Administration program may be more responsive to their needs (discussed below). Businesses receiving these loans may not undertake stock buybacks, pay dividends, or issue capital distributions on common stock during the period of the loan plus twelve months. Businesses receiving loans also must accept caps on executive compensation.

The CARES Act also allocates \$349 billion for loans to small businesses – generally, businesses with fewer than 500 employees (including sole proprietorships and self-employed individuals) are eligible. Loans are to be calculated based on payroll costs, cannot exceed \$10 million, and will be at an interest rate not to exceed 4%. The loans may be used for payroll, including sick and medical leave, as well as rent/mortgage payments, utilities, and insurance. The loans are subject to forgiveness based on the amount expended during the eight-week period following issuance in an amount up to payroll costs plus mortgage interest, plus rent, plus utilities, subject to certain limitations. Additionally, the limit on SBA express loans is increased to \$1 million through the end of the year. The CARES Act also expands eligibility

for Economic Injury Disaster Loans, and authorizes a grant of up to \$10,000 to be issued within 3 days of application.

Aviation Industry

Of specific interest to the aviation sector, the CARES Act allocates \$25 billion of the Economic Stabilization Fund for loans and loan guarantees to passenger airlines, and those contractors approved to perform inspection, repair, or overhaul services, and ticket agents. An additional \$4 billion in loans is allocated to cargo carriers. The Act separately provides \$32 billion in grants for wages and benefits to employees, with \$25 billion to passenger airlines, \$4 billion to cargo airlines, and \$3 billion to airline contractors. Airline contractors are defined as entities that contract directly or subcontract to provide catering or functions at the airport relating to transportation of passengers, cargo, or mail, including:

- loading and unloading;
- assistance to passengers under the Air Carrier Access Act;
- security, ticketing, and check-in;
- ground handling; and
- cleaning, sanitation, and waste removal.

The payroll support is calculated based on payroll costs for the second and third quarters of 2019. Of note, entities receiving benefits under the foregoing CARES Act provisions directed to the aviation industry must not only adhere to the general requirements prohibiting stock buybacks, dividends, or capital distributions on common stock through the period of the loan plus one year, but must also agree that, through September 24, 2020, they will maintain their employment levels as of March 24, 2020, “to the extent practicable,” with no more than a ten percent reduction. Additionally, the Secretary of the Treasury can require airlines to continue operation of certain flights, with special consideration for small and rural communities, and maintenance of healthcare supply chains.

Applications will be processed by the Secretary of the Treasury, whose office is tasked with evaluating

whether: 1) credit is reasonably available in the marketplace; 2) the loan is prudent; and 3) the loan is secured or is at an interest rate reflecting the risk and reflecting to the extent possible market rate conditions as existed prior to the pandemic. The Treasury Department is required to publish procedures for application and minimum requirements within 10 days of enactment, i.e. by April 6, 2020.

Although no such procedures have yet been promulgated, the loan guarantees of the Air Transportation Stabilization Board (“ATSB”), established to assist the airline industry in the aftermath of the September 11, 2001, terrorist attacks, may be instructive. Like the CARES Act, the ATSB required that the loan be made only if credit was not reasonably available in the market place, and that the loan be prudent. The ATSB application set forth a number of eligibility considerations, including but not limited to whether the borrower: 1) was in bankruptcy protection or receivership; 2) would submit to audits; 3) would limit executive compensation; and 4) had delinquent federal debt. The third prong – compensation – is reflected in the CARES Act, and it is plausible that the other eligibility considerations would be implemented in the proposed program.

This Alert is based on information available at the time of publishing. It is subject to change. Business leaders should consult with counsel and refer to government websites and publications for the most up-to-date information.

For more detailed analysis on a wide range of legal issues, please see Schnader’s COVID-19 Resource Center at www.schnader.com/blog/covid-19-coronavirus-resource-center. ◆

This summary of legal issues is published for informational purposes only. It does not dispense legal advice or create an attorney-client relationship with those who read it. Readers should obtain professional legal advice before taking any legal action.

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