

SUMMARY OF CARES ACT PROVISIONS

Coronavirus Aid, Relief, and Economic Security Act, effective March 27, 2020 ("CARES Act")

[Link to Text of the CARES Act](#)

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I. BACKGROUND

State and local governments across the nation have provided a myriad of responses to the spread of COVID-19 and continue to face tremendous challenges. The \$2 trillion CARES Act was signed into law by President Trump on Friday, March 27, 2020. It builds upon various actions already taken by the federal government, including emergency actions by the Federal Reserve, and seeks to address numerous dislocations at the individual, corporate, and state and local levels across the country. Below, we summarize these as well our views on emerging opportunities to serve our clients.

II. FINANCIAL IMPACT OF COVID-19 ON GOVERNMENTAL UNITS

We expect that nearly every state and local government will see a **delay, reduction and shift** in revenues, whether from property, income, sales or other taxes due to the spread of COVID-19. Several jurisdictions have provided property and/or income tax payment deferral windows of several months, which could lead to short-term liquidity strains. Additionally, jurisdictions have observed and forecast a reduction in tax revenues tied to economic activities. *The reduction in sales tax revenues may be particularly pronounced for local units of government or states that do not have the mechanisms to tax online purchases as permitted by the Wayfair decision.* Sales tax reductions are also expected considering the shift in consumption to essential items such as grocery and pharmacy, which are often untaxed or taxed at lower rates.

III. STRUCTURE OF THE CARES ACT

DIVISION I: KEEPING WORKERS PAID & EMPLOYED, HEALTHCARE ENHANCEMENTS, AND ECONOMIC STABILIZATION

- Title I "Keeping American Workers Paid and Employed Act" includes:
- \$349 billion for new [SBA Paycheck Protection Program Loans](#) (500 or fewer EEs)
 - \$10 billion additional funding for [SBA Economic Injury Disaster Loans](#) (500 or fewer EEs)
- Title II "Assistance for American Workers, Families and Businesses" includes:
- Unemployment insurance, tax relief
- Title III "Supporting America's Healthcare System in the Fight Against the Coronavirus" includes:
- Health plan coverage of testing, changes to FMLA, HSA accounts
- Title IV "Economic Stabilization and Assistance to Severely Distressed Sectors"
- \$500 billion authority for the Treasury Secretary to provide loans, guarantees and investments from its Exchange Stabilization Fund
 - [\\$454 billion of this amount is to be used for loans, guarantees and investments](#) in support of the Federal Reserve's Section 13(3) lending facilities for eligible businesses, States and municipalities.
- Title V "Coronavirus Relief Fund"
- [\\$150 billion for States, territories, Indian Tribes and local governments](#), administered by Treasury
- Title VI "Miscellaneous Provisions"

DIVISION II: (OTHER) EMERGENCY APPROPRIATIONS

This Division contains a long list of appropriations to many of the agencies comprising the federal government. Pertinent to this summary, these include:

- [\\$30.75 billion to an Education Stabilization Fund](#)
- [\\$100 billion to an HHS Public Health and Social Services Emergency Fund](#)
- [\\$10 billion to maintain operations at qualifying airports](#)
- [\\$25 billion to support transit](#)

And other relevant appropriations including:

- \$2 billion for an Emergency Connectivity Fund under the federal E-Rate Program
- \$15.8 billion for the Supplemental Nutrition Assistance Program (SNAP)
- \$8.8 billion for Child Nutrition Programs
- \$3.5 billion for Child Care and Development Block Grants
- \$750 million for Head Start
- \$100 million for Project SERV grants (disinfect schools, mental health, distance learning)
- \$69 million for schools funded by the Bureau of Indian Education
- \$850 million for State and Local Law Enforcement Activities
- \$400 million for the Election Assistance Commission

IV. SUMMARY OF CARES ACT PROVISIONS MOST RELEVANT TO STIFEL PUBLIC FINANCE

A. LOANS FOR BUSINESSES, INCLUDING NON-PROFITS, UNDER 500 EMPLOYEES

1. SBA Paycheck Protection Program ("PPP") Loans (\$349 billion)

- a) **Maximum PPP Loan Amount** The lesser of:
- \$10,000,000
 - 2.5 times average monthly "payroll costs"
- b) **"Payroll Costs"** The definition of "payroll costs" includes, among other items:
- salary, wage, commission, or other similar compensation
 - payments of cash tips
 - payments for vacation, parental family, medical, or sick leave
 - allowance for dismissal / separation
 - healthcare benefits (including insurance premiums)
 - retirement benefits
 - payroll taxes
- The definition of "payroll costs" excludes, among other items:
- compensation of an individual employee to the extent in excess of \$100,000 per year
 - compensation paid to employees with primary residence outside the U.S.
- c) **Maximum Interest Rate** 4% per annum
- d) **Loan Forgiveness** PPP Loans may be eligible for forgiveness to the extent the loan proceeds are used for payments of:
- "payroll costs" (except for the exclusions described above, including compensation of an individual employee to the extent in excess of \$100,000 per year)
 - mortgage interest
 - rent payments
 - utility payments
- e) **Limitations on Loan Forgiveness** **Workforce Reductions and Salary/Wage Reductions:** The amount of the PPP Loans subject to forgiveness shall be reduced if, between February 15, 2020, and June 30, 2020, the company (i) reduces the number of full-time equivalent employees, or (ii) reduces the wages/salary of certain employees below a certain threshold.
- Cure:** If the company reduces its workforce or reduces salary/wages during the period between February 15, 2020, and 30 days after enactment of the CARES Act, but subsequently rehires employees or eliminates salary/wage reductions by June 30, 2020, the limitations described above may not apply and the PPP Loans may again be eligible for forgiveness.
- f) **Term** Up to 10 years for any portion of a PPP Loan that is not forgiven
- g) **Personal Guarantee** No personal guarantees are required
- h) **Collateral** Unsecured
- i) **Payment Deferrals** Payments of principal, interest and fees are automatically deferred for six to 12 months.
- j) **Period of Loan Availability** February 15, 2020, to June 30, 2020

- k) Permitted Use of Proceeds** Uses permitted for ordinary SBA 7(a) loans are permitted uses for PPP Loans, but the loan is forgivable only if proceeds are used to pay for items listed above.
- SBA 7(a) loans may be used for financing working capital, refinancing existing debt, and/or for financing the purchase of furniture, fixtures, machinery, equipment, land/buildings, or a business. Note that for certain uses, additional conditions may apply.
- l) Eligibility Requirements** To qualify, an applicant must:
- either (i) qualify as a “small business concern” under existing SBA rules and regulations, or (ii) be a business concern or nonprofit organization with fewer than 500 employees (generally), which number includes employees of all affiliates
 - have been in operation on February 15, 2020
 - either (i) have employees to whom it has paid wages and on behalf of whom it has paid payroll taxes or (ii) have paid independent contractors
 - certify that the loan is necessary to support ongoing operations and that it will use funds for a permitted loan use
- Note that the SBA considers an applicant’s affiliates in counting the number of employees and uses a broad definition of “affiliates.” Find guidance to the SBA’s affiliation rules [here](#).
- A business with more than 500 employees may qualify for a PPP Loan if such business is a “small business concern.” In making this determination, the SBA considers the applicant’s industry, revenue, and number of employees. Find the SBA’s “Size Standards Table” [here](#).
- m) Special Provisions** If an applicant’s NAICS Code begins with “72” (hospitality/foodservice businesses):
- Special Size Rule: Applicants that do not otherwise qualify as “small business concerns” will qualify if they have no more than 500 employees at any one location.
 - Affiliation Rules Waived: The SBA’s affiliation rules described above are waived
- n) Fee Waivers & Reimbursement** SBA will not collect certain fees, will reimburse the processing fees of SBA-approved lenders up to a certain amount, and will not assess prepayment penalties.
- o) Eligibility for EIDL Loans** At present, the SBA has not provided firm guidance on whether applicants can apply for both a PPP Loan and an EIDL Loan and use those loan proceeds for COVID-19 relief, though it is clear that applicants may use a PPP Loan to refinance a prior EIDL Loan.
- p) Application Forms** Application forms for PPP Loans are not yet available. The SBA will modify/streamline existing SBA 7(a) application forms.
- q) Lenders** Existing SBA-approved lenders will make and administer the loans. Under the CARES Act, the SBA may give additional lenders authority to make PPP Loans. The SBA has a tool to help companies find SBA-approved lenders found [here](#).
- The federal government will fully guarantee all PPP Loans. The SBA will classify PPP Loans as SBA 7(a) Loans.
- r) Citation** See Title I of CARES Act, §§ 1101–1114

2. SBA Economic Injury Disaster Loans (\$10 billion of additional funding)

- a) General** The SBA's Economic Injury Disaster Loan ("EIDL") program is an existing program. Information on the program including online application materials are available [here](#).
- The CARES Act eased the programs eligibility requirements and added loan features -- and provides the program with \$10 billion in additional funding. Those changes, and certain basic program features, are summarized below.
- b) "Covered Period"** The CARES Act defines the "covered period," during which special eligibility and loan provisions apply, as January 31, 2020 to December 31, 2020.
- c) Maximum Amount** Up to \$2 million
- d) Maximum Interest Rate** The maximum interest rate is:
- 3.75% for small businesses
 - 2.75% for non-profits
- e) Term** The loan term varies based on the borrower's ability to repay, but some applicants may qualify for long-term loans up to 30 years.
- f) Eligibility Requirements** To qualify for a loan, the applicant must show that it has suffered a "substantial economic injury," which means economic harm that results in the applicant's inability (i) to meet its obligations as they mature, (ii) to pay its ordinary and necessary operating expenses, or (iii) to market, produce, or provide its products or services.
- The CARES Act eased certain other eligibility requirements:
- Ordinarily, to qualify for an EIDL, the applicant must establish that it is a small business concern, private nonprofit organization, or small agricultural cooperative. The CARES Act has expanded its eligibility criteria to also include any business with less than 500 employees.
 - Ordinarily, to qualify for an EIDL, an applicant must show that it is unable to obtain credit elsewhere. Under the CARES Act, this requirement is waived.
 - The requirement that an applicant be in business for one year prior to date it applies for an EIDL loan also is waived, so long as the business was in operation by January 31, 2020.
- g) Personal Guarantee** Personal guarantees will not be required for loans of less than \$200,000.
- h) Payment Deferrals** According to SBA officials, payments of principal and interest under all new and existing EIDLs will automatically be entitled to deferment through the remainder of 2020.

- i) Cash Advance** Under the CARES Act, the SBA may advance up to \$10,000 of the proceeds of an EIDL to an applicant on an expedited basis, within three days after the SBA receives an application.
- The CARES Act specifies that the cash advance may be used for:
- Providing sick leave to employees unable to work due to COVID-19
 - Maintaining payroll to retain employees during business disruptions or substantial slowdowns
 - Meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains
 - Making rent or mortgage payments
 - Repaying obligations that cannot be met due to revenue losses
- If the SBA ultimately rejects the application, the applicant may retain this initial \$10,000 advance without needing to repay it.
- j) Streamlined Review and Approval Process** The SBA is foregoing some of its ordinary requirements to speed up the application process. For example:
- The CARES Act authorizes the SBA to approve EIDLs based solely on an applicant's credit score or "alternative appropriate methods" for determining the applicant's ability to pay.
 - The SBA will not require prior year tax returns to be included in the application.
 - According to SBA officials, for loans of \$500,000 or less, the SBA will rely on the applicant to certify that it is a small business concern.
- k) Citation** See Title I of CARES Act, § 1114

B. FEDERAL RESERVE LOANS, GUARANTEES AND INVESTMENTS (\$500 BILLION)

1. General

- The CARES Act provides the Treasury Secretary with authority to make loans, guarantees and investments in an amount not to exceed \$500 billion.
- (\$25 billion is allocated to air carriers; \$4 billion to air cargo carriers, and \$17 billion to businesses critical to maintaining national security.)
- The remaining \$454 billion is allocated "to make loans and loan guarantees to, and other investments in, programs or facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing liquidity to financial systems that supports lending to eligible businesses, States, or municipalities by
 - Purchasing obligations or other interests directly from issuers . . .
 - Purchasing obligations or other interests in secondary markets or otherwise, or
 - Making loans, including loans or other advances secured by collateral."
- The Treasury has stated it expects to leverage these amounts for an impact of \$4 trillion.
- The loan programs are targeted toward businesses (including non-profits).
- The loans to businesses come with well-publicized restrictions on stock buyback, dividends and executive compensation, as well as workforce retention requirements.
- For governmental entities and the bond market, the key provisions under this Title are those allowing municipal bond purchases in the primary and secondary markets (see "Federal Reserve Liquidity Facilities" below).

2. Loans for Businesses, including Non-Profits, between 500 to 10,000 Employees

- No principal or interest payments for 6 months
- Maximum 2% interest rate

- Borrower must certify:
 - Economic uncertainty makes its loan request necessary
 - It will retain at least 90% of its workforce until September 30, 2020
 - It intends to restore not less than 90% of its workforce as it existed on February 1, 2020 and to restore all compensation and benefits to its workers no later than 4 months after the termination date of the coronavirus health emergency declaration
 - It is not a debtor in a bankruptcy proceeding
 - It is organized under the laws of the United States and domiciled in the United States, with significant operations and a majority of its employees in the United States

3. Federal Reserve Liquidity Facilities

- Prior to the passage of the CARES Act, the Federal Reserve established and expanded (or announced) emergency liquidity facilities:
 - Money Market Mutual Fund Liquidity Facility (MMLF)
 - Commercial Paper Funding Facility (CPFF)
 - Primary Market Corporate Credit Facility (PMCCF)
 - Secondary Market Corporate Credit Facility (SMCCF)
 - Term Asset-Backed Securities Loan Facility (TALF)
 - Main Street Business Lending Program (MSBLP)
- Prior to adoption of the CARES Act:
 - the MMLF expanded to include municipal VRDOs
 - the CPFF expanded to include municipal commercial paper
- The CARES Act provides that the "Secretary shall endeavor to seek implementation of a program or facility . . . that provides liquidity to the financial system that supports lending to States and municipalities." This provision appears to support the above expansions and provide authority for additional expansions.
- Mechanically, the Federal Reserve establishes a special purpose vehicle for each liquidity facility, with the Treasury making an equity investment in each through its Exchange Stabilization Fund (which received \$454 billion under the CARES Act). The Federal Reserve's pertinent lending authority derives from Section 13(3) of the Federal Reserve Act.¹

C. CORONAVIRUS RELIEF FUND (\$150 BILLION)

1. Allocations to Territories, States and Local Governments with Population over 500,000

- \$3 billion for U.S. territories and the District of Columbia
- \$8 billion for Tribal governments
- Minimum of \$1.25 billion per state
 - Allocations to states are based on their relative population
 - The majority of states are expected to receive between \$1.25-\$4 billion
 - For estimated state allocations, see: [NCSL Estimated State Allocations - Coronavirus Relief Fund](#)
- Local governments are also eligible for aid allocated by population
 - Local governments are defined as "units of general government below the State level with a population that exceeds 500,000"
 - Any such aid is subtracted from the amount otherwise available to the related state
 - Localities are capped at 45% of the amount associated with their population relative to their state's population

¹ Federal Reserve lending, under Section 13(3) of the Federal Reserve Act, is a tool that is used in a time of crisis to mitigate extraordinary pressure in financial markets that would otherwise have severe adverse consequences for households, businesses and the U.S. economy. See Congressional Research Service, [Federal Reserve Emergency Lending](#) (March 27, 2020). This is the same mechanism used in 2008-09 used to provide liquidity and, more controversially, to provide assistance to firms considered "too big to fail."

2. Timing

- *“Not later than 30 days after the date of enactment of this section, the Secretary shall pay each State and Tribal government, and each unit of local government [defined in the Act] ... the amount determined for the State, Tribal government, or unit of local government, for fiscal year 2020 under subsection (c).”*

2. Eligible Expenses

- Eligible expenses must meet three conditions:
 1. Must be necessary expenditures incurred due to the COVID-19 public health emergency
 2. Must not be accounted for in the state or locality’s most recently approved budget (as of the time of the CARES Act’s enactment)
 3. Must be incurred between March 1 and December 30, 2020
- Implication: Cannot use this money for currently budgeted expenses, but may reallocate funds and use Coronavirus Relief Fund money on new expenses related to COVID-19

D. EDUCATION

1. Education Stabilization Fund (\$30.75 billion)

a) Funds allocated to Governors of each State

- \$3 billion is allocated to each State respectively based on a formula (60% relative population of individuals ages 5 through 24; 40% relative number of children counted under the Elementary and Secondary Education Act of 1965 (“ESEA”))
- These funds are meant to provide emergency support to local education agencies (“LEAs”), institutions of higher education and other education related entities (not restricted to public institutions) most significantly impacted by coronavirus

b) Funds for K-12

- \$13.5 billion is allocated to K-12
- To be allocated to each state in the same proportion as each state received under part A of Title I of the ESEA in the most recent fiscal year
- States then distribute 90% of such amounts, as sub-grants, to LEAs, including charter schools that are LEAs, in proportion to the amount of funds such LEAs and charter schools received under part A of Title I of the ESEA in the most recent fiscal year
- To receive funding, states must agree that their spending on schools for fiscal years 2020, 2021, and 2022 will be at least the average of their school spending from the three prior fiscal years; provided, however, that the Secretary of Education may waive this requirement “for the purpose of relieving fiscal burdens on States that have experienced a precipitous decline in financial resources”
- LEAs may use these monies for purposes including:
 - Any activity authorized by the ESEA
 - Coordinating preparedness responses to the coronavirus emergency
 - Providing principals and school leaders with necessary resources
 - Addressing the unique needs of low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness and foster care youth
 - Developing and implementing preparedness procedures
 - Training on sanitation and minimizing the spread of infectious disease
 - Purchasing supplies to clean and sanitize facilities
 - Planning and coordinating long-term closures, including how to provide meals, technology for online learning, guidance for carrying out compliance with the Individuals with Disabilities Act and continuity of educational services

- Purchasing of educational technology for students that "aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities . . ."
- Providing mental health services and supports
- Planning and implementing activities related to summer learning and supplemental after-school programs
- Other activities necessary to maintain operational continuity

c) Funds for Higher Education

- \$14.25 billion is allocated by the Secretary of Education, as follows:
- 90% directly to institutions of higher education based on a formula (75% relative share of FTE Pell Grant recipients, 25% FTE non-Pell Grant recipients, in both cases excluding those exclusively enrolled in distance learning courses)
 - These funds may be used generally to "prevent, prepare for and respond to coronavirus"
- 7.5% as additional funding of certain programs established under the Higher Education Act, in proportion to the relative funding of those programs under the Further Consolidated Appropriations Act of 2020
 - These funds may be used to defray expenses, including:
 - Lost revenue
 - Reimbursement of expenses
 - Technology associated with transition to distance learning
 - Faculty and staff training
 - Payroll
 - These funds may also be used for grants to students for any component of the student's "cost of attendance" including food, housing, course materials, technology, health care and child care
- 2.5% through part B of Title VII of the Higher Education Act, for institutions the Secretary determines have the greatest unmet needs related to the coronavirus emergency
 - These funds may be used for any/all of the purposes outlined above.

2. Other Education Appropriations

- \$2 billion Emergency Connectivity Fund under the federal E-Rate program to help schools and libraries provide: off-site Wi-Fi hotspots, connected devices to students, staff, and library patrons; and broadband internet access through the Wi-Fi hotspots or connected devices.
- \$15.8 billion for the Supplemental Nutrition Assistance Program
- \$8.8 billion for Child Nutrition Programs to help ensure students receive meals when school is not in session
- \$3.5 billion for Child Care and Development Block Grants, which provide child-care subsidies to low-income families and can be used to augment state and local systems
- \$750 million for Head Start early-education programs
- \$100 million in Project SERV grants to help clean and disinfect schools, and provide support for mental health services and distance learning
- \$69 million for schools funded by the Bureau of Indian Education

3. Other Education-Related Provisions

- States and school districts may apply for targeted one-year waivers from sections of ESSA dealing with several funding mandates, including:
 - to waive the requirement to maintain education spending to receive federal funds
 - to waive restrictions on school-wide Title I programs regardless of the share of low-income students in districts and schools
 - to waive certain requirements governing Title IV Part A, which funds programs aimed at student well-being and providing a well-rounded education.

- to waive caps on spending for different priority areas, including the 15% expenditure cap on digital devices
- to waive the 15% limit on carrying over Title I money to the next academic year

E. HEALTHCARE

1. HHS Public Health and Social Services Emergency Fund (\$100 billion)

- Department of Health and Human Services (HHS) is to make grants from this fund to reimburse health care providers for care-related expenses or lost revenues that are directly attributable to COVID-19
- Program is available to hospitals, public entities, non-profit entities and Medicare or Medicaid enrolled suppliers and providers
- Eligible expenses also include:
 - building or construction of temporary structures,
 - leasing of properties,
 - medical supplies and equipment including personal protective equipment and testing supplies,
 - increased workforce and training,
 - emergency operation centers,
 - retrofitting facilities, and
 - surge capacity
- “Secretary of Health and Human Services shall, on a rolling basis, review applications and make payments.”

2. Medicare/Medicaid Adjustments

- 20% Medicare payment increase for treatment of patients with COVID-19
- Temporary suspension of the 2% Medicare sequester beginning May 1, 2020
- Waiver of the “50% rule” (which cuts payments for certain long-term care hospitals)
- Expansion of Medicare accelerated payments (to advance up to 6 months of Medicare payments as a loan to stabilize cash flow)
- Delays cuts to Medicaid Disproportionate Share Hospital (DSH) payments until FY 2021

3. Other Measures

- Numerous measure to promote telehealth services
- Measures meant to speed drug innovation and expedite approval process
- New drug and device manufacturer reporting requirements regarding supply chain
- Limits on liability for volunteer healthcare workers operating within their licenses

F. Airports (\$10 billion)

- Federal Aviation Administration “Grants-in-Aid for Airports”
- \$10 billion in grants for maintaining operations at qualifying airports around the nation; funds will be distributed by formula and will be available until expended. Of this amount:
 - At least \$7.4 billion for any purpose for which airport revenues may lawfully be used
 - Maximum of \$2 billion for any purpose for which airport revenues may lawfully be used and i) apportioned by formula, ii) not subject to reduced statutory apportionment requirements and iii) have no maximum apportionment limit
 - At least \$500 million to pay 100% of federal share costs
 - Not less than \$100 million for general aviation airports for any purpose for which airport revenues may lawfully be used.
- All airports receiving funds must continue to employ at least 90% of the number of current employees through December 31, 2020
- Does not apply to non-hub airports or non-primary airports

G. Transit (\$25 billion)

- Federal Transit Administration Infrastructure Grants
- \$25 billion in grants available local public transit systems including buses, subways, light rail, commuter rail, trolleys and ferries
- Grant monies will be apportioned according to existing fiscal year 2020 FTA apportionment formulas, and will be available until expended

H. Other Notable Provisions

1. Payments to Taxpayers

- The Treasury Secretary expects payments to be made on or before April 6th for taxpayers with direct deposit information on file. Checks will be mailed to those without direct deposit information on file, and could take an estimated four months. An estimated 93.6% of income tax filers are anticipated to receive checks according to the Tax Foundation. The income test will be based upon 2018 income tax returns.
 - Single Adults - \$1,200 with incomes up to \$75,000, phase out to \$99,000
 - Married Couples - \$2,400 with incomes up to \$150,000, phase out to \$198,000
 - Head of Household - \$1,200 with incomes up to \$112,500, phase out to \$162,000
 - Children under 17 years old provide a \$500 per child supplement

2. Expanded Unemployment Insurance Coverage

- Unemployment insurance coverage is provided by state-specific funds typically funded by employer & employee contributions. Each state's funding sources and benefit levels are set individually and vary widely. Under the CARES Act, unemployment benefits nationally will be boosted by \$600 per week for 4 months and will be funded by the federal government. This includes gig and freelance workers.

3. Student Loan Deferrals

- Federal student loan payments will be deferred until September 30. Any accrued interest will be waived.

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