
To: FCA Members
From: FCA International Director of Legislative Affairs
Subject: **Legislative Summary of CARES Act**
Date: March 30, 2020

Overview

President Trump signed the \$2.2 trillion “Coronavirus Aid, Relief, and Economic Security (CARES) Act” on Friday, March 27 following its passage in the Senate (3/25 via a 96-0 vote) and the House (3/27 via a 419-6 vote). The CARES Act is the third economic stimulus package Congress has passed in response to the coronavirus (COVID-19) pandemic, and its size and scope makes it the largest stimulus package that the U.S. has ever passed. Highlights of note to signatory contractors from the act include:

- \$500 billion for loans and assistance to companies and state and local governments (including \$29 billion for loans to U.S. airlines and related businesses).
- \$349 billion in low-interest small business loans that could be partially forgiven.
- Payments as much as \$1,200 for individual taxpayers (with an additional \$500 per child) that is phased out when incomes exceed \$75,000 for individuals and \$150,000 for couples filing jointly.
- An additional \$600/week for those receiving unemployment benefits.

Small Business Provisions *(for businesses with fewer than 500 employees)*

7(a) Loan Programs – The CARES Act establishes a new Paycheck Protection Program to let small businesses, nonprofits and individuals seek loans through the 7(a) Program, which is the Small Business Administration’s (SBA) primary program for providing financial assistance to small businesses.

The measure authorizes \$349 billion in total 7(a) lending from Feb. 15 through June 30 (instead of the current \$30 billion authorized for FY 20). It would also provide \$349 billion for the SBA to fully guarantee loans under the new program, compared with a 75 or 85 percent guarantee for standard 7(a) loans. Loans would be available during the covered period for:

- Any business, nonprofit, veterans group or tribal business with 500 or fewer employees (or a number set by the SBA for the relevant industry).
- Sole proprietors, independent contractors and eligible self-employed workers.

Key aspects of the 7(a) Paycheck Protection Program under the CARES Act include:

- Eligible recipients may receive loans for as much as \$10 million, or 250 percent of their monthly payroll costs (instead of \$5 million). Interest rates during the covered period would be capped at 4 percent.
- Recipients may use the loans to cover eligible payroll costs – including salaries, commissions, regular paid leave and healthcare benefits – as well as mortgage interest and utility payments. They would have to make a “good faith certification” that they’ll use the funds to retain workers, maintain payroll, and pay for rent and similar expenses.
- Eligible recipients may not use the funds to compensate individual employees at an annual rate above \$100,000 or to pay for emergency sick or family leave under the Families First Coronavirus Response Act (FFCRA).

- The SBA is now permitted to waive rules requiring recipients pay certain fees, provide collateral or be unable to obtain credit elsewhere. SBA rules on company affiliates used to determine small business size would be waived for franchises, food or lodging companies with 500 or fewer employees and businesses that get financial assistance from a small business investment company.

7(a) Loan Forgiveness – Under the 7(a) Paycheck Protection Program, recipients can apply for loan forgiveness over eight weeks for eligible payroll costs and for mortgage interest, rent and utility payments. The SBA would pay lenders for any canceled debt plus accrued interest. Lenders generally wouldn't be subject to enforcement actions under the Small Business Act related to loan forgiveness, and loan forgiveness would be reduced for businesses that fire employees or cut their pay. Covered loans would have a maximum maturity of 10 years following a borrower's application for forgiveness, and canceled debt would be excluded from borrowers' gross income for tax purposes.

SBA Disaster Loans – The CARES Act provides \$10 billion to expand the SBA's disaster loan program (from Jan. 31, 2020 through Dec. 31, 2020) to cover businesses, cooperatives, employee stock ownership plans and tribal businesses with 500 or fewer employees, as well as sole proprietors and independent contractors.

The measure also authorizes the SBA to advance as much as \$10,000 to existing and newly eligible disaster loan recipients within three days of receiving their applications. Recipients must use the advance funds to pay sick leave to employees affected by COVID-19, retain employees, address interrupted supply chains, make rent or mortgage payments and repay debt. Recipients are not required to repay the advance funds.

Other Business Provisions:

Exchange Stabilization Fund – The CARES Act establishes the Exchange Stabilization Fund (ESF), which allocates \$500 billion under the legislation to provide loans, loan guarantees and other investments to aid businesses struggling due to COVID-19. Of the \$500 billion available through the ESF, \$46 billion was specifically allocated to specific industries (including \$25 billion to airlines). The remaining \$454 billion is available in direct lending through the Department of Treasury to eligible businesses, states and municipalities.

All direct lending must meet the following criteria:

1. Alternative financing is not reasonably available to the business.
2. The loan is sufficiently secured or made at an interest rate that reflects the risk of the loan, and if possible, not less than an interest rate based on market conditions for comparable obligations before the coronavirus outbreak.
3. The duration of the loan shall be as short as possible and not exceed five years.
4. Borrower and their affiliates cannot engage in stock buybacks (unless contractually obligated) or pay dividends until the loan is no longer outstanding or one year after the date of the loan.
5. Borrower must, until Sept. 30, 2020, maintain its employment levels as of March 24, 2020, to the extent practicable, and retain no less than 90 percent of its employees as of that date.
6. A borrower must certify that it's a U.S.-domiciled business, and its employees are predominantly located in the U.S.
7. The loan cannot be forgiven.
8. In the case of borrowers critical to national security, their operations are jeopardized by losses related to the coronavirus pandemic.

Additionally, the Department of Treasury mandates that these funds specifically target nonprofit organizations and businesses between 500 and 10,000 employees, subject to additional loan criteria and obligations on the recipient such as:

1. The funds received must be used to retain at least 90 percent of the recipient's workforce, with full compensation and benefits, through Sept. 30, 2020.
2. The recipient will not outsource or offshore jobs for the term of the loan plus an additional two years.
3. The recipient will not revoke existing collective bargaining agreements for the term of the loan plus an additional two years.
4. The recipient must remain neutral in any union organizing effort for the term of the loan.

Employee Retention Credit for Employers Subject to Closure Due to COVID-19 – This CARES Act provision 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 shut-down 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 more 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 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. It is provided for wages paid or incurred from March 13, 2020 through Dec. 31, 2020.

Employer Payroll Taxes Payment Delay – The CARES Act contains a provision that allows employers and self-employed individuals to defer payment of the employer share of the Social Security Tax, which they otherwise are responsible for paying to the federal government with respect to their employees. Employers are generally responsible for paying a 6.2 percent Social Security Tax on wages. The provision requires that the deferred employment tax be paid over the following two years, with half the required amount to be paid by Dec. 31, 2021 and the other half by Dec. 31, 2022.

Net Operating Losses Modification – 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.

Unemployment Compensation – Under the CARES Act, eligible individuals would receive an extra \$600 per week of federal unemployment benefits *in addition to* the weekly benefit offered by the state's unemployment compensation.

For example, in Pennsylvania, unemployment is calculated by taking a 50 percent average of an individual's weekly wages (with a maximum benefit capped at \$573). Under the new federal

unemployment compensation, the employee would receive \$1,173 per week (\$500+\$673). The CARES Act stipulates that an employee may begin to receive the \$600 federal unemployment benefit the day after the legislation is signed into law (March 28, 2020). The federal unemployment compensation benefit ends on July 31, 2020, though employees would still be able to collect state unemployment benefits for their typical 26 weeks (though this could be less depending on the state).

The typical one-week waiting period before being eligible to collect unemployment benefits has been waived at the federal level, meaning employees can begin receiving their federal benefits immediately. Some states have also waived their mandatory unemployment waiting period.

Retirement Income – The CARES Act allows individuals to take a penalty-free distribution from their IRAs and qualified retirement plans (up to \$100,000). This means the standard 10 percent penalty for withdrawals under the age of 59 would be waived. The no-penalty allowance applies to coronavirus-related distributions, meaning people who have been diagnosed with the virus or have experienced financial hardship due to quarantine, layoffs, reduced hours or furloughs. Any individual meeting those conditions can draw upon their retirement benefits without being subject to penalty between the legislation's enactment (March 27, 2020) through Dec. 31, 2020.

Retirement distributions must be included in gross income and are subject to regular income tax. However, this tax can be spread out and taken over three years.