

Coronavirus Aid, Relief, and Economic Security (CARES) Act highlights (March 25)

After a long several days of negotiating, the Senate tonight **at last** reached final agreement on COVID Phase III stimulus legislation expected to score in the range of approximately \$2 Trillion over 10 years. We do not expect further modifications at this time, but as always and especially on something this broad, usual caveats and caution are warranted until the President signs this into law. **An unofficial W&M breakdown of the projected costs is attached in an image**, which is slightly behind the draft and leaves out a handful of items but is in the ballpark of a correct score.

The Senate is expected to vote imminently, following a likely-to-fail vote on an amendment by Sens. Sasse, Scott, and Graham to limit some of the UI provisions. The House is expected to attempt unanimous consent sometime Thursday or Friday, with fallback options developing if such an attempt. **Text** is attached.

Highlights of tax, stabilization, and Unemployment Insurance (UI) pieces are described below, with **key changes since the weekend highlighted**.

Highlights - Individual Grants and Tax Relief (Title II, Subtitle B): The legislation provides for several individual tax benefits for tax year 2020:

- **Cash Grant Tax Rebates:** Similar to rebates enacted in 2001 and 2008, the Treasury Secretary has authority to establish a regulatory scheme to make advance payments of these rebates “as rapidly as possible”:
 - Maximum grant of \$1,200 (\$2,400 joint) per taxpayer, limited to net income tax liability plus grant of \$500 per child;
 - No phase-in or other limitation for low-income taxpayers (such limitation from the original version of the policy has been removed);
 - Cash grant tax rebate is treated as a fully refundable tax credit, therefore available to taxpayers with net negative income tax liability;
 - Phases out by 5% of the excess of AGI over \$75,000 (\$150,000 joint), fully phased out at \$99,000 (\$198,000 joint) and Secretary may apply 2018 amounts to determine the phase-out;
 - Rebate denied to nonresident aliens, dependents, and estates or trusts;
 - ITIN Required;
 - Rebate is available for residents of U.S. territories and possessions;
- **Retirement fund early withdrawals** up to \$100,000 for qualified purposes, with no penalties and income tax payable over up to 3 years;
- **Charitable contribution deduction enhancements, only for tax year 2020:**
 - Above-the-line charitable deductions for non-itemized taxpayers up to \$300;
 - Limits on corporate giving increased from 10% (non-food) and 15% (food) to 25% of income.
- **Exclusion from gross income for employer-provided educational assistance (Sec. 2206):** From date of enactment through January 1, 2021, payments by employers to lenders or to employees of principal or interest on qualified education debt are tax-free, up to \$5,250, with no double-dipping with the existing § 127 exclusion or the § 221 deduction on student loan interest.

Highlights - Business Tax Relief (Title II, Subtitle C)

- **Employee retention payroll tax credit**
 - Payroll tax credit for a fixed percentage (50%) of eligible wages, up to \$10,000 per employee for 2020;
 - Excess of credit over payroll tax liability are refundable, similar to payroll credits in COVID-II;
 - Available for employers with a business that was already carrying on a trade or business in calendar year 2020; and
 - (1) has been fully or partially suspended during a calendar quarter in 2020 due to an order from a governmental authority related to COVID-19; or
 - (2) during a period beginning with the first quarter in which gross receipts for the business were less than 50% relative to the same quarter in 2019, and ending on the first quarter for which gross receipts exceed 80% relative to that quarter in 2019;
 - Tax-exempt 501(c) organizations are explicitly included;
 - No double-dipping allowed with the COVID Phase II FMLA and emergency leave payroll tax credits.
- **Interest expense limitation**
 - Limitation threshold increased from 30% of EBITDA to 50% of EBITDA for tax years beginning in 2019 and 2020;
 - Election allowed for taxpayers to measure the limitation against their 2019 income for 2020;
- **Delay of all employer-side OASDI payroll taxes** (6.2%, not the Medicare/HI 1.45%), payable over two years with half due by 12/31/21 and the remainder due by 12/31/22;
- **Net Operating Loss tax relief**
 - **Carryback:** NOLs from tax years 2018, 2019, or 2020 may be carried back five years;
 - **Limitation:** 80% Income limitation suspended for losses arising in taxable years beginning before 12/31/20;
- **Corporate AMT Credits** treated as refundable for taxable years beginning in 2018 and beyond;
- **Technical correction to TCJA:** two of the three Technical Corrections to TCJA from the base text (repatriation refunds of overpayments and downward attribution) have been removed, while QIP Remains:
 - **Qualified improvement property:** confirming repairs and improvements are eligible for a 15-year class life and eligible for bonus depreciation/full expensing;
- **Alcohol excise taxes on hand sanitizer:** exemption for alcohol excise taxes for hand sanitizer produced during 2020 related to COVID;
- **Aviation excise taxes:** taxes for airline tickets, segments, and cargo, and aviation fuel, from date of enactment through 12/31/20.

Highlights, Emergency Economic Stabilization (Titles IV and V)

- **\$500 billion (up from \$208 billion) in Treasury-Administered loans** at a rate determined by the Secretary:
 - **\$25 billion (down from \$50, with the remaining \$25 re-designated as grants, below) to passenger air carriers;**

- **\$4 billion (down from \$8, with the remaining \$4 re-designated as grants, below) to cargo air carriers;**
- **\$17 billion to “businesses critical to maintaining national security;”**
- **\$454 (up from \$425) billion for all other businesses;**
- **Procedures and regulations** due no more than 10 days after enactment;
- **Limitations and Handcuffs** on loan recipients more broadly include:
 - **Compensation limitation:** Loan recipients must not increase the compensation of any officer or employee who earned \$425,000 in 2019, for the period between **3/24/20** and **3/1/22**;
 - **Employment levels:** Loan recipients must “maintain its existing employment levels as of **March 24, 2020 (changed from March 13),** to the extent practicable” **and not to reduce** employment by more than **10% from such date;**
 - **Dividends and Share repurchases (buybacks):** Loan recipients must agree not to repurchase equity / engage in stock buybacks while loan is outstanding or for 12 months thereafter.
- **Nonprofits and mid-size businesses** with between 500 and 10,000 employees are now explicitly carved into the \$454 billion allocated for stabilization loans, with a new program to be stood up carrying a specific set of restrictions:
 - Interest on loans not to exceed 2%, with no principal or interest payments due within 6 months;
 - Funds required to be used to maintain at least 90% of recipient’s workforce, at full compensation and benefits, through 9/30/20;
 - Within 4 months of termination of the public health emergency, a commitment to restore 90% of the workforce as it existed on 2/1/20;
 - Majority of employees must be based in United States and the recipient will agree not to outsource jobs for the term of the loan plus two years;
 - Recipient will **pay no dividends and perform no share buybacks** during the term of the loan;
 - Recipient will not abrogate collective bargaining agreements for the term of the loan plus two years and will remain neutral in union organizing efforts during the term of the loan.
- **Air Carrier Worker Support (Title IV, Subtitle B, Sec. 4112): \$32 Billion** in grants to be used explicitly for the continuation of employee wages, salaries, and benefits:
 - **\$25 Billion** in grants to air carriers;
 - **\$4 Billion** in grants to cargo air carriers;
 - **\$3 Billion** in grants to contractors.
- **Conflicts of Interest (Sec. 4019):** Entities are prohibited from applying for any stabilization loan or grant relief in any covered person owns, directly, or indirectly, a controlling interest in such applying entity. Covered persons include POTUS, VPOTUS, cabinet officials, members of Congress, and their direct family members.
- **Congressional Oversight Commission (Sec. 4020)** is established to oversee the economic stabilization loan and grant programs.
- **Coronavirus Relief Fund (Title V, Sec. 5001): \$150 billion** reserved for payments to state governments, local governments, and tribes, at least \$3 billion of which is reserved for DC and \$8 billion of which is reserved for tribal governments.

Highlights, Unemployment Insurance (Title II, Subtitle A): Several expansions to UI, including but not limited to:

- **Emergency eligibility expansion (Sec. 2102):** Expansion during 2020 for UI to cover individuals not otherwise covered by UI under a variety of conditions, including:
 - COVID-19 diagnosis of the individual or a family member, family care obligations and school closures, or self-quarantine advice from a health provider;
 - **Very notably, eligibility includes individuals who are unable or unavailable to work (but not actually laid off or unemployed) because their place of employment is closed “as a direct result of the COVID-19 public health emergency”;**
 - Does not include employees who can telework with pay or who are receiving paid leave benefits.
- **Emergency increase (Sec. 2104):** For both regularly eligible individuals and those covered by the expansion, weekly UI payments are increased by \$600 per week through July 31, 2020 (often described as a “four month” expansion);
- **Funding:** Reportedly and in text, no new obligations for employers as a result of these expansions and increases.