



The Federal Government's Response to the Covid-19 Crisis

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On Wednesday, March 25, 2020, the Senate unanimously passed an unprecedented \$2 trillion stimulus bill to address the ongoing Covid-19 crisis. The House approved it Friday, March 27, and it was signed into law by the President on March 27, 2020.

Here are the highlights of the 883-page bill.

- \$500 billion to big businesses in the form of loans and other assistance, as well as state and local governments – to be administered by the Treasury Department
- \$17 billion in loans for companies deemed critical to national security, such as airlines
- \$25 billion in grants to airlines, with conditions, and \$25 billion in loans to passenger carriers, \$3 billion to airline contractors providing ground staff such as caterers, and \$4 billion for cargo haulers
- \$350 billion in support for small businesses to be dispersed by a combination of grants, interest-free loans, low-interest loans with forgivable components, and with a commitment to retain workers
- \$150 billion in aid to hospitals and health-care providers
- \$16 billion to replenish the nation's stockpile of medical supplies and \$3.5 billion to expand production and development of vaccines and tests related to Covid-19
- \$1,200 in direct payments to each adult, earning below \$99,000, \$2,400 for married couples filing jointly with income below \$198,000, as well as \$500 for each child, as well as payments to people with no income and / or on Social Security
- Unemployment Insurance extension to 4 months, bolstered by \$600 weekly
- Bans on stock buybacks for any companies receiving a government loan through the term of the loan plus one additional year, limits on executive bonuses and protection of workers, and a "good faith certification" to stay neutral in union organizing
- \$4 trillion in direct aid to local governments and industries
- \$400 million in election assistance to States for 2020 voting
- Scheduled cuts to Medicare and Medicaid to be rolled back, which will provide billions more dollars in coming months and extend until November federal programs such as community health centers
- Deferment of student loan payments by six months
- Elimination of the Federal excise tax for distillers using their facilities to produce hand sanitizer

Additional Details

Paycheck Protection Program

\$349 billion in cash flow assistance through 100% federally guaranteed loans to small businesses and 501(c)(3) nonprofit organizations during this emergency, retroactive to February 15, 2020. Loan period is February 15 to June 30, 2020.

The *expected forgiveness amount* can be expended on payroll costs, payments of interest on a mortgage obligation, rent obligations, and utility payments.

- **What it can pay for:**
 - The sum of payments of any compensation with respect to employees that is a salary or wage;
 - Payment of cash tip or equivalent;
 - Payment for vacation, parental, family, medical, or sick leave;
 - Allowance for dismissal or separation;
 - Payment required for the provisions of group health care benefits, including insurance premiums;
 - Payment of any retirement benefit; or
 - Payment of State or local tax assessed on the compensation of employees.
- **The maximum loan amount must be the lesser of:**
 - *Two and a half months payroll*
 - Calculated by taking the average total monthly payments by the business for payroll costs incurred during the 1-year period before the loan date
 - For a seasonal employer, the business calculates the average total monthly payments for payroll during the 12-week period beginning February 15, 2019, or at the choice of the business, March 1, 2019, and ending June 30, 2019. Multiply this number by 2.5 for two and a half months payroll

OR

 - \$10,000,000
- **Restrictions**
 - Any salaries above \$100,000 per year and any qualified sick leave wages for which a tax credit is allowed under section 7001 or 7003 of the *Families First Coronavirus Response Act*.
- **Eligibility of Businesses**
 - Small businesses that employ less than 500 employees
 - The program enacted by this legislation **would remove** the “Credit Elsewhere Test,” which requires an extensive analysis to determine whether the borrower

has the ability to obtain some, or all, of the requested loan funds from alternative sources, without causing undue hardship.

- No collateral, or personal guarantee, shall be required for the covered loan.

- **Loan Forgiveness Terms**

- The borrower is eligible for loan forgiveness equal to the amount spent by the borrower during an eight-week period after the origination date of the loan
 - This includes: payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.
- Amounts forgiven may not exceed the principal amount of the loan.
- Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered eight-week period compared to the previous year or time period, proportionate to maintaining employees and wages:
 - Payroll costs **plus** any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation) **plus** any payment on any covered rent obligation + any covered utility payment.
 - The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25% of their prior year compensation.
- Borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.
- Borrowers will verify through documentation to lenders their payments during the period. Lenders that receive the required documentation will not be subject to an enforcement action or penalties by the Administrator.
- Any loan amounts not forgiven at the end of one year is carried forward as an ongoing loan with terms of a max of 10 years, at max 4% interest. The 100% loan guarantee remains intact.
- The calculation for an average monthly number of full-time equivalent employees is 30 hours per week, under the Affordable Care Act. The forgiveness amount is reduced according to the amount of full-time employees on staff compared to the previous year, February 15, 2019 to June 30, 2019.
- Loan forgiveness may also cover any additional wages paid by businesses to tipped employees (as defined in the *Fair Labor Standards Act*).

Employee Retention Tax Credit

The employee retention tax credit (ERTC) for employers subject to closure due to coronavirus. The provision provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the crisis. The credit is available to employers whose

- 1) operations were fully or partially suspended, due to a coronavirus-related shut-down order, or
- 2) gross receipts declined by more than 50% when compared to the same quarter in the prior year.

For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the coronavirus-related circumstances described above. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the 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. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

Modifications for Net Operating Losses (NOLs)

- The provision relaxes limitations on a company's use of losses from prior years. This provision provides that a loss from 2018, 2019, or 2020 can be carried back five years.
- This also temporarily removes the taxable income limitation to allow an NOL to fully offset income.

Delay of Payment of Employer Payroll Taxes

- Employers can defer payment of the employer share of the Social Security tax.
- The deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

Temporary exception from excise tax for alcohol used to produce hand sanitizer

- The federal excise tax is waived on any distilled spirits used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the Food and Drug Administration and is effective for calendar year 2020.

Additional Tax Relief

- The tax filing deadline will be extended from April 15 to July 15
- Businesses and individuals can postpone estimated tax payments due from the date of enactment until October 15, 2020 with no cap on the amount of payment postponed
- Modification of limitation on losses for taxpayers other than corporations
- Modification of credit for prior year minimum tax liability of corporations
- Modification of limitation on business interest

Emergency Relief and Taxpayer Protections

- Provides \$500 billion to *Treasury's Exchange Stabilization Fund* to provide loans, loan guarantees, and other investments for direct lending, including:
 - \$25 billion for passenger air carriers, and businesses approved to perform inspection, repair, replace, or overhaul services, and ticket agents; \$4 billion for cargo air carriers; and \$17 billion for businesses important to maintaining national security.
 - \$454 billion for loans, loan guarantees, and investments in support of the Federal Reserve's lending facilities to eligible businesses, states, and municipalities.
 - All direct lending must meet the following criteria:
 - Alternative financing is not reasonably available to the business;
 - 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;

- The duration of the loan shall be as short as possible and shall not exceed 5 years;
- Borrowers 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;
- Borrowers must, until September 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;
- A borrower must certify that it is a U.S.-domiciled business and its employees are predominantly located in the U.S.;
- The loan cannot be forgiven; and,
- In the case of borrowers critical to national security, their operations are jeopardized by losses related to the coronavirus pandemic.