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The Coronavirus Legislation: An Overview

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Over the past month, Congress has enacted three pieces of legislation (the "Acts") aimed at helping individuals afflicted by the coronavirus and providing fiscal stimulus to restart an economy that has been devastated by the virus's effects. The legislation has wide-ranging consequences for individuals, businesses, and the economy.

This white paper summarizes the major provisions of the three Acts. It also summarizes the actions taken by the Federal Reserve to support the economy. Finally, the paper sets out some provisions that might be included in a forthcoming fourth piece of legislation.

The legislation described here is far-reaching, long, and complex. The information we provide is a high-level summary of certain provisions of that legislation. Additional exceptions may apply. Also, subsequent legislation or guidance may expand upon or alter the information. Readers must consult with their attorneys and advisors before relying on the information contained herein.

I. Coronavirus Preparedness and Response Supplemental Appropriations Act (Bill #1) ($8.3B)

1. Emergency funds to government agencies and states to respond to the coronavirus:

    a. Department of Health and Human Services (HHS)

    b. State Department and U.S. Agency for International Development (USAID)

    c. Small Business Administration

II. Families First Coronavirus Response Act (Bill #2) ($150B)
Provisions generally in effect for 2020 only.

1. Sick leave: Employers with < 500 employees must provide two weeks of paid sick leave for: (i) quarantine, (ii) coronavirus symptoms, (iii) caring for an individual subject to quarantine, or (iv) caring for a child whose school or place of care has been closed.

    a. Employees falling under (i) and (ii) are eligible for 100% pay up to a maximum of $511/day ($5,110 total).

    b. Employees falling under (iii) and (iv) are eligible for two-thirds pay up to a maximum of $200/day ($2,000 total).

2. Family and medical leave: Employers with < 500 employees must cover 12 weeks of family and medical leave for any of the four reasons noted above.

    a. The first two weeks of such leave may be unpaid. Thereafter, leave must be paid at two-thirds of the employee's regular rate.

    b. Employees may use the emergency sick leave (described in section 1 above) to cover wages during the first two unpaid weeks.

    c. Family paid leave benefit is capped at $200 per day and $10,000 in the aggregate.

3. Employer tax credits: The government bears the ultimate cost of sick and family leave payments required under the Act.

    a. For paid sick leave, employers receive a refundable tax credit against their portion of FICA taxes. The credit is capped at the maximum wage amounts set out in section (1) above ($511/day or $200/ day as applicable for up to ten days), plus any qualified health plan expenses allocable to those wages and the employer 's share of Medicare taxes on those wages.

    b. For paid family and medical leave, employers receive a refundable tax credit against their portion of FICA taxes. The credit is capped at the benefit amounts set out in section (2) above ($200 per day up to $10,000), plus any qualified health plan expenses allocable to those wages and the employer 's share of Medicare taxes on those wages.

4. Food and nutrition: Additional funds for food stamps, school-age children meals, elderly food programs, etc.

5. Free coronavirus testing (but not care).

6. Temporary increase in the federal portion of Medicaid funding paid to states.

7. Funds to help states process and pay unemployment claims.

8. The IRS subsequently has announced that it is extending the due date from April 15 to July 15 for certain tax filings and payments, including Forms 1040, quarterly estimated tax, and 2019 IRA contributions.

III. Coronavirus Aid, Relief, and Economic Stimulus Act (CARES) (Bill #3) ($2T)
Provisions generally in effect for 2020 only.

Individuals

1. Recovery checks for individuals: US individuals with adjusted gross income (AGI) less than $75K ($150K for joint returns) will receive a check for $1,200 ($2400 for joint returns), plus $500 for each child.

    a. The check amount phases down beginning at AGI of $75K for a single taxpayer, $150K for joint returns. It phases out fully at AGI of $99K for single taxpayers, $198K for joint filers.

    b. AGI is based on the taxpayer's 2019 tax return. If the taxpayer did not file a return in 2019, AGI is based on the 2018 return. Social Security recipients receive a rebate even if they did not file a return. Other non-filers may provide required information to the IRS.

2. Waive 10% early withdrawal penalty on coronavirus-related distributions up to $100K from IRA and 401(k) plans.

    a. A coronavirus-related distribution is one made to an individual:

        i. Who is diagnosed with COVID-19,

        ii. Whose spouse or dependent is diagnosed with COVID-19,

        iii. Who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care, closing or reducing hours of a business owned or operated by the individual.

    b. Tax payments on distributions may be spread over three years.

    c. Individuals may return distributions to their retirement account within three years. Such redeposits are not subject to annual contribution limits. Recontributed amounts presumably are not taxable.

3. Waive 401(k) and IRA RMD requirements for 2020.

    a. RMDs in later years need not be increased to take waived RMDs into account.

4. Single employer pension plan companies may delay 2020 funding contributions until January 1, 2021.

    a. Delayed contributions must be increased for accrued interest.

5. Additional unemployment insurance of $600 per week for up to four months to people who are currently receiving state unemployment insurance.

    a. Additional 13 weeks of unemployment benefits after state unemployment benefits are no longer available.

6. Permit deduction of cash charitable contributions up to 100% of AGI (removes 50% AGI limitation imposed by Tax Cut and Jobs Act (TCJA)).

7. Students with federal loans may suspend payments through September. Students who drop out of school due to the virus are not required to repay the loan.

    a. Employers may pay student loans up to $5250 without employee tax (reduced by the value of other tax-free educational assistance provided).

8. Increase in the food stamp program and farmer bailout program.

Businesses

1. Employers and self-employed individuals may defer payment of the employer share of Social Security payroll taxes due between March 27, 2020, and December 31, 2020.

    a. Deferred taxes due may be paid over two years, half by December 31, 2021, and half by December 31, 2022.

2. Refundable employer tax credit equal to 50% on wages. Credit is taken against employer's portion of employment taxes due.

    a. Credit is available to employers whose (i) operations were fully or partially suspended due to a government order, or (ii) quarterly gross receipts declined by more than 50% when compared to the same quarter in the prior year.

3. Permit use of net operating losses to offset up to 100% of taxable income for 2018, 2019, and 2020, and allow NOL carrybacks for five years for NOLs arising

in 2018, 2019, and 2020 (removing income limitation of carryforwards and prohibition of carrybacks imposed by TCJA).

4. Permit deduction of corporate interest expense up to 50% AGI for 2019 and 2020 (reversing reduced limitation of 30% imposed by TCJA).

Small business

1. Paycheck Protection Program (PPP) provides for loans from the Small Business Administration (SBA) to businesses with 500 or fewer employees.

    a. Program is open to businesses, including charitable organizations, veterans' organizations, sole proprietorships, self-employed individuals, and independent contractors.

    b. Under SBA guidance, borrowers must certify that a PPP loan is necessary, taking into account their current business activity and their ability to access other sources of liquidity.

2. Loan amount is 250% of average monthly payroll expenses, up to $10M.

    a. Loan payments are deferred for 6 months, but interest will continue to accrue.

3. Loan principal may be forgiven in an amount equal to the sum of expenses for payroll, and, to the extent the underlying arrangements were already in place, mortgage interest, rent, leases, and utility service agreements.

    a. Payroll costs include payments for salary, wages, commissions, and tips (capped at $100,000 annually for each employee); employee benefits, including costs for vacation, parental, family, medical, or sick leave; group health care benefits; and retirement benefits.

    b. For a sole proprietor or independent contractor, payroll includes wages, commissions, income, and net earnings from self-employment, capped at $100,000 annually per employee.

    c. Not more than 25% of the forgiven amount may be used for non-payroll costs.

    d. Forgiven loans are not subject to income tax as discharge of indebtedness.

        i. Expenses that give rise to loan forgiveness are not deductible. According to the IRS, allowing deduction of these expenses would produce a double tax benefit. The ruling significantly reduces the tax value of PPP loan forgiveness. (*See* IRS Notice 2020-32).

4. If a business retains all of its employees at current compensation levels, the entirety of the loan may be forgiven.

    a. If the business lays off employees, the forgiveness will be reduced by the percentage decrease in the number of employees.

    b. If the business's total payroll expense on workers making less than $100,000 annually decreases by more than 25%, loan forgiveness will be reduced by the same amount.

    c. Borrowers that re-hire laid off workers will not be penalized.

    d. Amounts forgiven may not exceed the principal amount of the loan.

Industries

1. Loans, loan guarantees, and other investments to industries that have incurred or are expected to incur losses that put the operations of the business in jeopardy.

    a. The loan term may not exceed five years, and may not be forgiven.

    b. Set-asides for passenger airlines; cargo airlines; air carrier workers (as opposed to payments to assist their employers), businesses crucial to national security (a special allocation to Boeing).

    c. Limitations on businesses that receive loans or investments:

        i. No stock buybacks for the duration of the loan plus one year.

        ii. No dividends for the term of the loan plus one year.

        iii. Must maintain existing employment levels "to the extent practicable" and may not reduce employment levels by more than 10% during the loan term.

        iv. Must comply with limitations on total compensation of highly paid workers for the term of the loan plus one additional year.

    d. The bulk of the funds are earmarked to backstop the Fed efforts to prop up businesses by buying their bonds (see below).

    e. The Treasury Secretary has indicated that the government will take equity stakes in the companies receiving direct grants.

Other

1. Financial assistance to state and local governments, and to private nonprofits providing critical and essential services.

2. Grants for healthcare system: hospitals and health care providers, therapeutics, diagnostics, medical and preparedness needs, vaccine testing, drug innovation and development, etc.

IV. Paycheck Protection Program and Health Care Enactment Act (Bill #3.5) ($470B)

1. Paycheck Protection Program ($310B)

    a. Set-aside for minority and rural businesses ($60B)

    b. Small Business Economic Injury Disaster Loan Program (EIDL) ($60B)

        i. Businesses with < 500 employees may apply for a working capital loan up to $2M at interest rate of 3.75%, term of 30 years.

        ii. Payments deferred one year.

2. Hospitals and testing ($100B)

    a. Health care provider relief: reimburse hospitals and health care providers for expenses and lost revenue. ($75B)

    b. Coronavirus testing, split between federal and state ($25B)

V. Federal Reserve Actions

1. As it did during the 2008 crisis, the Fed is purchasing Treasury bonds and mortgage-backed securities on the secondary market in a process called "quantitative easing". The purchases inject cash into the economy in an effort to lower interest rates and foster bank lending by increasing the cash they hold.

2. The Fed also has established a number of novel facilities to purchase a range of financial instruments, including corporate bonds, loans backed by consumer assets (*e.g.,* car loans), and commercial paper. These transactions are intended to "support smooth market functioning" by providing a market and fostering demand for securities otherwise viewed as risky in the current environment.

3. The Fed will provide four-year bridge financing to investment-grade companies.

a. Borrowers may opt to defer interest payments for six months, but they may not buy back shares or pay dividends during the period the company is not paying interest.

b. Companies that receive direct financial assistance under coronavirus legislation are not eligible to participate in the Fed's corporate lending programs.

4. The Fed has established a "Main Street Lending Facility" to make its emergency bridge financing program (section 3 above) available to small and midsized businesses as well.

   a. The program will be available to companies with less than 15,000 employees or below $5 billion in annual revenues.

   b. The programs' minimum loan size will be $500,000. Loans will be at below-market rates with terms up to four years. Payments may be deferred for one year. Loans may not be forgiven.

5. The Fed has set up a facility to purchase assets used in money market funds to help those funds meet redemption demands while retaining their stable net asset value.

6. The Fed has set up a temporary repo facility to purchase Treasuries held by foreign central banks. The facility is intended to provide a way for foreign banks to obtain U.S. dollars other than selling securities in the open market.

   a. The coronavirus pandemic has fueled massive demand for dollars as investors seek stable assets. Treasury bonds typically have served this purpose, but record low yields have made them less desirable. The facility will provide a temporary source of dollar liquidity, reducing the need for central banks to acquire dollars by selling their Treasury securities into an illiquid market. This effort will help avoid disruptions to the Treasury market and upward pressure on yields.

7. The CARES Act allocates $454B to backstop the Fed facilities.

VI. Bill #4 - possible provisions

1. Liability protection to shield employers from coronavirus-related lawsuits (key for Republicans).

2. Additional state funding (key for Democrats): States are desperate for money due to lost tax revenue and payment of higher unemployment and other benefits.

a. The Republicans are wary of adding to the deficit to "bail out" states that have large pension fund shortages. Republicans assert that these states are run by Democrats who have mismanaged finances and failed to engage in fiscal restraint. In the Republicans' view, the federal government should not borrow money to defray obligations that the state should bear instead.

b. Some Republicans have said that, rather than receive additional funds from the federal government, states should declare bankruptcy.

   i. Bankruptcy is a procedure whereby a court discharges the debtor's responsibility to pay some or all of its debts, thereby allowing the debtor's business to continue.

   ii. Existing law does not permit a state to declare bankruptcy (although cities can). Because a state may not declare bankruptcy, all of its obligations remain intact. But the state nonetheless has more debts than assets, and so must choose which obligations to pay.

   iii. Typically, the primary contention is between bondholders and pension recipients. States tend to favor the former, as the failure to pay bondholders would drive up future borrowing costs. However, the constitutions of some states require that pension payments have precedent.

c. A possible compromise would require states to use the new funds to pay for increased spending or revenue shortfalls resulting solely from the coronavirus pandemic. Funds could not be used to cover shortfalls that existed prior to the outbreak (such as underfunded pension plans). But implementing and enforcing that restriction is difficult, given that money is fungible. States could use new funds to free up money for other purposes.

3. Bolster components of the CARES Act:

   a. Additional checks for individuals

   b. Additional paid sick and medical leave

   c. Extended unemployment benefits

   d. Aid to small businesses

   e. Additional funds to backstop the Fed's lending facilities

4. Possible new items:

   a. Free health care for virus victims

   b. Federal student debt cancellation

   c. Assistance for mortgage markets and travel industries

   d. Creating 50-year Treasury bonds to lock in low interest rates

   e. Postal service assistance

   f. Housing assistance

   g. Infrastructure

      i. Roads

      ii. Public transit

      iii. Broadband

      iv. Water supply projects (bridges, dams, etc.)

      v. Health infrastructure, including hospital and health center construction

      vi. Schools

5. Possible tax changes:

   a. Payroll tax cut

   b. Capital gains tax cut

   c. Allow businesses to deduct the full cost of capital assets in the year purchased. (TCJA allows this treatment through 2022. Presumably this proposal would extend that treatment to later years.)

   d. Eliminate the $10K cap on state and local tax (SALT) deduction imposed by the TCJA.

   e. Allow businesses to deduct full cost of meals and entertainment

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