

LEGISLATIVE UPDATE:

AN ANALYSIS OF THE HISTORIC
\$2 TRILLION CARES ACT

TABLE OF CONTENTS

ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE ECONOMY [TITLE IV.A]	5
AIR CARRIER WORKER SUPPORT [TITLE IV.B]	12
KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT [TITLE I]	13
ASSISTANCE FOR AMERICAN WORKERS, FAMILIES, AND BUSINESSES [TITLE II]	19
SUPPORTING AMERICA'S HEALTHCARE SYSTEM [TITLE III]	24
PANDEMIC RESPONSE ACCOUNTABILITY COMMITTEE [DIVISION B].....	26

Executive Summary

On March 27, 2020, Congress passed an historic \$2 trillion stimulus package to address economic fallout from the coronavirus pandemic (“COVID-19”). The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act” or the “Act”) provides relief principally through direct payouts and loans to businesses of all sizes in the United States, and supports numerous government programs intended to provide a lifeline to the nation’s struggling workforce. Support for businesses includes tax relief and enormous new funding sources for small businesses (\$376 billion in grants and forgivable loans), the aviation industry (\$61 billion in loans and payroll support), and other businesses across the country (\$454 billion to backstop what may prove to be trillions of dollars of Federal Reserve lending and investment).

With an unprecedented outlay of funding and lending to individuals and businesses of all sizes throughout the economy, the CARES Act will touch nearly everyone in this country. Implementation and oversight of the numerous new and newly revised government programs will become a key feature of the economic environment in the United States for the foreseeable future. Although not reporting on every provision in the CARES Act, below we attempt to summarize the key provisions for anyone who might be impacted by the new law, including those businesses or individuals who might seek relief under its provisions, along with the most important eligibility requirements, restrictions, and conditions for each program.

As what follows below is just a summary, we encourage you to follow up with any questions or concerns. Jenner & Block offers a wide array of resources and lawyers with the types of experiences necessary to help our clients navigate the implications of these important new programs, led by our newly established COVID-19 Response Team. This team, described more fully below, includes lawyers who played key leading roles in the country’s response to the last economic crisis. It includes government veterans whose senior positions meant that they were intimately involved in the design of many of the government’s most recent bailout programs, oversaw the loan application and distribution processes that were a key part of them, and ran and responded to the investigations that followed.

* * *

The CARES Act is broken down into four main titles, each of which provides distinct types of relief to different parts of our economy. For larger businesses, the most significant will likely be Title IV.A, which authorizes the Treasury Department to extend \$500 billion to help businesses maintain personnel and continue operations. Of that amount, it allocates \$46 billion for direct lending to air carriers, ticket agents, and businesses critical to national security, and another \$454 billion to backstop possible losses in lending facilities set up by the Federal Reserve. The Federal Reserve will be able to leverage those funds into facilities that can provide support for what could potentially total more than \$4 trillion in lending to businesses, states, and municipalities. One such lending facility that is contemplated under the Act would enable lending on very attractive terms (including a six-month deferral of all payments and a 2% cap on interest rates) for struggling companies with more than 500 and fewer than 10,000 employees.

Importantly, loans made through these lending programs are subject to certain conditions.

- Loans made from the \$46 billion reserved for air carriers, ticket agents, and businesses critical to national security will include restrictions on stock buybacks, payment of dividends, layoffs, executive compensation, and golden parachutes.
- Loans made to businesses through the Federal Reserve lending facilities may include certain of these conditions as well, at the discretion of the Treasury Secretary.
- Loans made to mid-size businesses (*i.e.*, more than 500 employees and fewer than 10,000 employees) will be subject to their own set of conditions, including restrictions requiring the borrower to maintain certain employment levels and prohibiting stock buybacks, payment of dividends, and the offshoring of jobs.
- Loans may only be made to U.S.-based businesses.¹

For this \$500 billion Treasury fund, the Act also includes specified oversight and reporting provisions that will be critical to the implementation of these new programs.

- Oversight of Treasury and the Federal Reserve will be conducted by a new office of a Special Inspector General for Pandemic Recovery located within the Treasury Department and a new Congressional Oversight Commission.
- These newly created entities are nearly exact copies of the oversight bodies that were established to oversee the aid provided by the Emergency Economic Stimulus Act after the 2008 financial crisis.
- Like the Special Inspector General for the Troubled Asset Relief Program, the Special Inspector General for Pandemic Recovery (“SIGPR”) will have subpoena power and full law enforcement authority, allowing for the investigation of any fraudulent or criminal acts, with subsequent referral to the Department of Justice for prosecution. SIGPR will also have a duty to report detailed information on loans and investments made under the new program to Congress and the American people.
- For its part, the Congressional Oversight Commission will submit monthly reports to Congress commenting on the effectiveness of the programs and the recipients of the aid, and will likely hold robust hearings similar to those held by its TARP predecessor, the Congressional Oversight Panel, which was chaired by now Senator Elizabeth Warren.

Title I of the Act addresses small businesses, allocating \$376 billion in forgivable loans, grants, and other relief to companies, generally with 500 or fewer employees, whose ability to operate has been jeopardized by the economic impact of COVID-19. Many of those loans will be fully forgivable if, among other things, companies keep their employment numbers at pre-March 2020 levels and use the funds to pay for salaries, employee benefits and healthcare, mortgage payments, rent, utilities, and interest payments on other debts incurred in the first eight weeks following receipt of the proceeds. In

¹ Title IV.B provides additional support for the aviation industry, in the form of \$32 billion in grants to be used exclusively to pay employees of passenger air carriers, cargo carriers, and contractors that provide baggage handling, catering, cleaning, and other services.

other words, provided the recipients of these funds maintain their payrolls, a good portion of these small business loans will be converted into outright tax-free grants.

Title II largely addresses individuals. It includes one-time direct payments of \$1,200 to individuals making up to \$75,000 and \$2,400 to joint filers making up to \$150,000, with an additional \$500 provided per child, with smaller payouts to taxpayers making below \$100,000. It expands unemployment insurance benefits to reach many who previously would not have qualified, such as gig economy workers, and increases both the duration of unemployment benefits as well as increasing monthly payments by \$600 for four months. Also included in this Title are significant tax breaks for businesses and individuals. Finally, the funding in Title III supports the U.S. healthcare system as it responds to the crisis, such as providing funds to strengthen the supply chain for medical products, guaranteeing insurance coverage for COVID-19 testing, and appropriating \$100 billion for hospitals.

Finally, the CARES Act creates a new Pandemic Response Accountability Committee, comprised of the Inspectors General of various existing government agencies, to oversee the government's overall coronavirus response efforts, including funding.

* * *

As noted above, Jenner & Block is well positioned to help our clients manage the challenging issues related to the current crisis, from applications for funds, to managing workforce concerns, to the Congressional oversight and government investigations that inevitably comes along with any such financial assistance. Our COVID-19 Response Team includes alumni from various government agencies and other lawyers involved in the fallout from the 2008 financial crisis whose experience can prove invaluable in times like these. This includes:

- [Neil Barofsky](#), the former Presidentially-appointed first Special Inspector General of the \$700 billion Troubled Asset Relief Program (“SIGTARP”). In his role as SIGTARP, Mr. Barofsky established and supervised the audit division that oversaw the financial assistance provided to corporations after the 2008 financial crisis, and provided real time advice and oversight as the Treasury Department developed and implemented many of the TARP programs. He also created and oversaw its law enforcement division, which conducted the criminal and civil investigations of those who abused the bailouts, and helped provide transparency through his testimony dozens of times to Congress.
- Firm Chair [Tom Perrelli](#), who draws on his experience as Associate Attorney General, the third-ranking official at the U.S. Department of Justice, where, among other things, he led the government's investigation and eventual \$25 billion settlement into the mortgage servicing abuses that arose out of that crisis and served as the lead Department of Justice representative involved in the American Recovery and Reinvestment Act in 2009;
- Partner [Erin Schrantz](#), who represented global clients who came under Congressional and Justice Department scrutiny related to their receipt of TARP funds;
- Partner [Damon Smith](#), who served as liaison to the Financial Crisis Inquiry Commission during his five years at the U.S. Department of Housing and Urban Development, where he served as acting general counsel; and

- Lawyers who advised Partner [Anton Valukas](#), in his role as the court-appointed Examiner in the Lehman Brothers Holdings bankruptcy, an event many commentators point to as the precipitating event triggering the 2008 financial crisis.

Additional materials prepared by the COVID-19 Response Team are available on Jenner & Block's [COVID-19 Resource Center](#). In addition to more general guidance, our team will be publishing additional industry- and topic-specific guidance on the CARES Act in the coming days and weeks, including our analysis of the Act's implementing regulations, which will include detail on the mechanics for applying for the loans authorized by the new law.

For more information on the CARES Act, please reach out to CARESAct@jenner.com or your primary Jenner & Block contact.

ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE ECONOMY [TITLE IV.A]

The “Coronavirus Economic Stabilization Act of 2020” (“CESA”)—Subtitle A of Title IV of the CARES Act—provides \$500 billion for loans, loan guarantees, and other investments to businesses, states, and municipalities as follows:

- \$46 billion is allocated for direct lending to air carriers, air cargo, and national security-related businesses, and
- \$454 billion is allocated to be used by the Treasury Department to backstop Federal Reserve lending programs to supply loans to businesses and state and local governments.

Patterned off of several TARP programs launched more than a decade ago, \$454 billion of the funds contemplated in Title IV will primarily be used to insure against possible losses in emergency lending facilities set up by the Federal Reserve. The Federal Reserve will set up special purpose vehicles, which it will then fund to support certain lending programs. Because the Federal Reserve seeks to avoid taking credit risk, the Treasury Department funds can serve as a backstop for these lending facilities. In other words, to the extent that borrowers cannot repay loans that are funded by these backstops or the Federal Reserve otherwise faces losses in any of these facilities, the Act provides that the Treasury Department will bear the first \$454 billion in losses. As a result, and because the Federal Reserve can expect that many borrowers will be able to repay the loans that it facilitates, its facilities can provide for far more than \$454 billion in lending. Indeed, during the last economic crisis, the Federal Reserve committed \$200 billion to the Term Asset-Backed Securities Loan Facility (“TALF”), based on a \$20 billion commitment of TARP funds from the Treasury as a backstop. Pointing to TALF and its 10-1 leverage ratio, many have speculated that the \$454 billion committed by the Act could result in facilities that will support an excess of \$4 trillion in loans to businesses, states, and municipalities sponsored by the Federal Reserve.

To provide oversight and transparency for these massive lending programs, CESA establishes a Congressional Oversight Commission and, separately, the Office of the Special Inspector General for Pandemic Recovery (“SIGPR”), led by a special inspector general who will be appointed by the President and confirmed by the Senate. The language creating SIGPR is nearly identical to the language used to create the special inspector general for the TARP program, and it is expected that SIGPR will take a similar approach in providing transparency and ferreting out waste, fraud, and abuse related to the program. This will include SIGPR audits of the programs and lending facilities created by Treasury and the Federal Reserve, their implementation of CESA, and the loan recipients’ compliance with the programs’ terms. SIGPR has also been provided with full law enforcement authority, and as it staffs up, it will begin commencing investigations of any suspected fraudulent or criminal activities with an eye to referring its findings to the Department of Justice for prosecution.

Importantly, details on how to apply for the loans provided for under CESA have not yet been finalized. The Treasury Secretary is required to publish procedures for application by April 6, 2020. All loans made or supported under CESA must be disbursed by December 31, 2020.

A. Loans Available to Businesses, States, and Municipalities

CESA allocates the \$500 billion as follows:

1. Up to \$25 billion in direct loans for passenger air carriers, their ticket agents, and related businesses;
2. Up to \$4 billion in direct loans for cargo air carriers;
3. Up to \$17 billion in direct loans for “businesses critical to maintaining national security”;² and
4. The remaining \$454 billion, and any amount not spent for the above three categories, for Federal Reserve programs or facilities to provide liquidity for eligible businesses, states, and municipalities through loans, loan guarantees, and other collateral secured investments, including by purchasing obligations or other interests directly from issuers and in secondary markets.

Unlike the SBA program lending program described below, none of the loans authorized under CESA is eligible for reduction through loan forgiveness.

B. Loan Requirements and Limitations

CESA authorizes funding to a broad array of eligible businesses by allowing for the purchase of obligations directly from issuers, the purchase of obligations in secondary markets, and/or direct loans, including securitized loans or other advances. CESA defines “eligible business” as an air carrier or any U.S. business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided elsewhere under the CARES Act. The Treasury Secretary has broad discretion in directing the use of these funds.

1. Restrictions on Borrowers

The Act imposes certain restrictions on CESA lending, as well as additional requirements on the direct loan recipients specified under categories (1) through (3).

The limitations on all CESA borrowers include the following:

² Though not specifically defined in the Act, public reporting indicates that this category is “seen as intended at least partly for Boeing.” Eric Lipton and Kenneth P. Vogel, *Fine Print of Stimulus Bill Contains Special Deals for Industries*, N.Y. Times (Mar. 25, 2020), <https://www.nytimes.com/2020/03/25/us/politics/virus-fineprint-stimulus-bill.html>. The *Wall Street Journal* also reported that “Boeing Co. stands to have access” to this category of loans. Jason Bellini, *What’s in the \$2 Trillion Senate Coronavirus Bill*, Wall St. J. (Mar. 26, 2020), <https://www.wsj.com/articles/whats-in-the-2-trillion-senate-coronavirus-bill-11585185450>.

- Stock Buybacks. Borrowers (and affiliates) are prohibited from purchasing their stock for one year and a day after the duration of the loan,³ except to the extent required under a contractual obligation that predates enactment of the Act.
- Payment of Dividends. Borrowers may not pay dividends or make other capital distributions with respect to its common stock for one year and a day after the duration of the loan.
- Executive Compensation. For the duration of the loan and one year after, the borrower may not increase total compensation for any officer or employee whose total compensation exceeded \$425,000 in 2019. The borrower may pay any officer or employee who earned more than \$3 million in 2019 no more than \$3 million plus 50% of the excess over \$3 million that they earned in 2019.
- Golden Parachutes. For the same period, for the same set of officers and employees whose 2019 compensation exceeded \$425,000, the borrower may not provide severance pay or other benefits upon termination of employment that exceed twice the maximum total compensation received by the officer or employee in 2019.
- U.S.-Based Certification. The borrower must certify that it is created and organized under the laws of the United States and a majority of its employees are based in the United States.

However, for category (4) loans (those made through the Federal Reserve), CESA empowers the Secretary to waive all of the above-listed restrictions other than that the recipient be a U.S. business with a majority of its employees based in the United States. The Secretary may do so if he determines that such waiver is necessary to protect the interests of the federal government. If any such waiver is given, the Secretary must make himself available to testify before certain congressional committees to explain the reasons for the waiver.

2. Eligibility under Categories (1) to (3)

CESA provides that the Treasury Secretary may enter into agreements to make loans or loan guarantees to eligible businesses in categories (1) to (3), described above (pertaining to certain segments of the aviation and related industries). As soon as practicable, and in no case later than ten days after enactment, the Secretary must publish procedures for application and minimum requirements for these loans, which the Secretary may supplement in the Secretary's discretion. In making a loan to any business within this category, the Secretary must receive an interest in the business in return (specifically, stock or warrants for public companies; and stock, warrants, or senior debt for others). In making eligibility determinations, the Secretary in his discretion must establish that:

- Credit is not reasonably available to the applicant at the time of the transaction;
- The applicant is prudent to incur the intended obligation;

³ The prohibition of stock buybacks and the payment of dividends extends for the duration of the loan, (rather than a year and a day following its duration) under the Act's lending program for "mid-sized businesses" to be set up under Section 13(3) of the Federal Reserve Act. See Section C *infra*.

- The loan or loan guarantee is sufficiently secured or made at a rate that reflects the loan's risk, or is not less than a rate for comparable obligations under market conditions prior to the COVID-19 outbreak;
- The applicant will maintain its employment levels as of March 24, 2020, to the extent practicable, and will not layoff more than 10% of its workforce on that date through September 30, 2020;
- The duration of the loan or loan guarantee is as short as practicable and, in any case, not longer than five years; and
- The applicant has incurred or is expected to incur covered losses such that the continued operations of its business are jeopardized.

CESA authorizes the Secretary of Transportation to require that air carrier recipients of these loans maintain scheduled air transportation service to ensure such service to any point served by that carrier before March 1, 2020.

C. Assistance to Mid-Sized Businesses

CESA also encourages special assistance for “mid-sized” businesses through a category (4) lending facility. It urges the Treasury Secretary to seek implementation of one Federal Reserve program or facility under Section 13(3) of the Federal Reserve Act to provide financing to banks who would then in turn make direct loans to businesses and nonprofits with between 500 and 10,000 employees. CESA provides that such loans would carry very favorable terms, including a maximum interest rate of 2% and deferred principal or interest for the first six months, or a longer a period as the Secretary may allow in his or her discretion.

It imposes special conditions on loans to “mid-sized” businesses that benefit from this facility, requiring borrowers to certify that:

- The loan is necessary to support ongoing operations due to economic uncertainty as of the date of the application;
- The borrower will use the funds received to maintain at least 90% of their workforce, at full compensation and benefits, until September 30, 2020;
- The borrower intends to restore at least 90% of its workforce that existed as of February 1, 2020, and to restore all compensation and benefits to their workers no later than four months after the termination of the public health emergency declared by the Secretary of Health and Human Services on January 31, 2020;
- The borrower is domiciled in the United States and has significant operations and employees located in the United States, and it is created or organized under the laws of the United States and has a majority of its employees in the United States;
- The borrower is not a debtor in any bankruptcy proceeding;
- The borrower will not pay dividends with respect to the common stock of its businesses or engage in stock buybacks during the duration of the loan, except as required under a contractual obligation predating enactment;

- The borrower will not outsource or offshore jobs for the term of the loan and two years after completing repayment;
- The borrower will not abrogate existing collective bargaining agreements for the term of the loan and two years after completing repayment; and
- The borrower will remain neutral in any union organizing effort for the term of the loan.

D. Oversight and Transparency

CESA provides for oversight and transparency mechanisms to ensure compliance with its provisions. These include regular reports by the Treasury Secretary and the Federal Reserve, as well as the establishment of an inspector general and a Congressional Oversight Commission. CESA also contains conflict of interest provisions.

1. The Office of the Special Inspector General for Pandemic Recovery

As noted above, like the [2008 Emergency Economic Stabilization Act](#) did for TARP, CESA creates an office of a Special Inspector General responsible for auditing and investigating the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Treasury Secretary under this Act, as well as the Secretary's management of any program established under the Act.

The Act requires the Special Inspector General for Pandemic Recovery to make quarterly reports to Congress summarizing the SIGPR's activities over the prior three months. The reports will include detailed statements of all loans, loan guarantees, and other transactions, obligations, expenditures, and revenues associated with loans made to distressed sectors of the economy, as well as other information to be gathered by SIGPR, including: (a) an accounting of categories of loans; (b) a list of recipients; (c) an explanation for the Secretary's reasons for making the loan; (d) detailed biographical information for each person hired to manage or service the loan; and (e) an estimate of the principal, interest, and fees outstanding for each loan. In gathering information for these reports, SIGPR may demand information from the Treasury Department and other executive branch agencies, and must report to Congress immediately upon any refusal to provide information that the SIGPR deems "unreasonable."⁴

SIGPR also has full law enforcement authority, including the ability to subpoena documents, investigate fraud and criminal conduct, refer said conduct to the Department of Justice for prosecution, make certain arrests without a warrant, and seek and execute warrants for arrest or search and seizure. SIGPR will receive \$25 million in funding and can hire staff and consultants to carry out SIGPR's responsibilities, and the agency will be terminated five years after enactment of the Act.

⁴ In a signing statement issued following President Trump's signing of the CARES Act, the President stated that he would not allow such reports without "presidential supervision." The relevant portion of the March 27, 2020 signing statement references the reporting provision of the Act, and then states: "I do not understand, and my Administration will not treat, this provision as permitting the SIGPR to issue reports to the Congress without the presidential supervision required by the Take Care Clause, Article II, section 3." Whether the Take Care Clause of the U.S. Constitution would permit such an action by the executive branch is an unresolved question of law.

2. Other Reporting

CESA requires that the Treasury Secretary publish detailed information about each loan made in categories (1) to (3) on the Treasury website within 72 hours of issuance. Such information must include the identity of the recipient, the amount of loan or loan guarantee, and the interest rate and any applicable terms and conditions, among other things.

The Secretary must also make regular reports to certain congressional committees regarding loans and loan guarantees in categories (1) to (3).⁵ Within seven days of making any such loan or loan guarantee, the Secretary must report to the specified congressional committees on the actions taken by the Secretary involving those categories during that period, including with respect to obligations, expenditures, and disbursements, and must include detailed financial statements setting forth all loans, loan guarantees, and transactions made by the Secretary, including the nature of any assets purchased, and any repayment activity. Within seven days of making the report to the committees, the Secretary must publish the report on the Treasury website. And every 30 days, the Secretary must publish on the Treasury website a report summarizing the information covered in those seven-day reports.

Likewise, the Federal Reserve must make regular reports to certain congressional committees regarding loans made in category (4).⁶ Within seven days of authorizing a new facility or financial assistance, the Federal Reserve must provide to the committees a report including the identities of the loan recipients, the dates and amounts of assistance, and the material terms of the assistance. Every 30 days, the Federal Reserve must provide to the committees summary reports on any outstanding loans or other financial assistance, identifying the amount of interest, fees, and other revenue received in exchange for the assistance, as well as the expected or final cost to the taxpayers of such assistance. The Federal Reserve must publish both kinds of reports to its website within seven days of providing them to the congressional committees.

3. Congressional Oversight Commission

CESA creates a five-member congressional commission responsible for oversight of the implementation of the provisions relating to loan relief under CESA. The commission will consist of one member appointed by the Speaker of the House, one member appointed by the House Minority Leader, one member appointed by the Senate Majority Leader, one member appointed by the Senate Minority Leader, and one Chair appointed by the Speaker of the House and Senate Majority Leader after consultation with the Senate and House Minority Leaders.

The commission will be responsible for submitting reports to Congress every 30 days. Similar to the Congressional Oversight Panel created by the Emergency Economic Stabilization Act of 2008, the commission can hire staff, hold hearings, enter into contracts, obtain official data, and receive

⁵ These congressional committees include the Senate Committee on Banking, Housing, and Urban Affairs, the Senate Committee on Finance, the House Financial Services Committee, and the House Committee on Ways and Means.

⁶ These congressional committees include the Senate Committee on Banking, Housing, and Urban Affairs and the House Financial Services Committee.

reports. Like its predecessor, the Congressional Oversight Commission is likely to hold robust hearings and issue commentary on the effectiveness of the CESA programs and loan recipients. The Congressional Oversight Commission will be terminated on September 30, 2025.

4. Conflicts of Interest Concerning Government Officials

CESA prohibits government officials from benefitting from the loan programs it establishes. Any business in which a controlling interest—defined as at least 20%—is held by the President, the Vice President, the heads of Executive departments, members of Congress, or their spouses, children, sons-in-law, or daughters-in-law, is ineligible to receive loan relief provided in categories (1) to (4) to distressed sectors of the economy. Anyone seeking such loan relief must certify that their business is not subject to this restriction.

AIR CARRIER WORKER SUPPORT [TITLE IV.B]

Separate and apart from the lending programs described above pertaining to air carriers and related businesses created by CESA in Subtitle A of Title IV of the CARES Act, Subtitle B allocates an additional \$32 billion in grants to passenger air carriers, cargo air carriers, and contractors, to be used exclusively for the continuation of payment of employee wages, salaries, and benefits, in the following amounts: (a) up to \$25 billion for passenger air carriers; (b) up to \$4 billion for cargo air carriers; and (c) up to \$3 billion for contractors with air passenger carriers. There are restrictions imposed upon the receipt of these grants separate from the restrictions and reporting requirements imposed by CESA.

A. Direct Payment of Payroll Support

The Act directs the Secretary to provide grants in an amount equal to the amount of salaries and benefits reported by an air carrier pursuant to Department of Transportation regulations for the period of April 1, 2019 through September 30, 2019. Contractors and air carriers that do not transmit those reports may provide sworn financial statements as to the amount of wages, salaries, benefits, and other compensation for the same period.

The Secretary will publish streamlined and expedited procedures no later than five days after the enactment of the Act for how air carriers and contractors can submit requests for the grants, and is to make initial payments no later than ten days after the enactment of the Act.

B. Requirements

In order to receive grants under this provision, air carriers and contractors must enter into an agreement with the Secretary or otherwise certify that they will adhere to the following:

- Furloughs/Pay Reductions. Recipients cannot conduct involuntary furloughs or reduce pay rates and benefits until September 30, 2020.
- Buybacks. Recipients and their affiliates are prohibited from purchasing back their stock, or the stock of their parent company, through September 30, 2021.
- Payment of Dividends. Recipients may not pay dividends or make other capital distributions through September 30, 2021.
- Executive Compensation. From March 24, 2020, through March 24, 2022, recipients may not increase total compensation for any officer or employee whose total compensation exceeded \$425,000 in 2019. The recipient may pay any officer or employee who earned more than \$3 million in 2019 no more than \$3 million plus 50% of the excess over \$3 million that they earned in 2019.
- Golden Parachutes. For the same period, for the same set of officers and employees whose 2019 compensation exceeded \$425,000, the recipient may not provide severance pay or other benefits upon termination of employment that exceed twice the maximum total compensation received by the officer or employee in 2019.

KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT [TITLE I]

The “Keeping American Workers Employed and Paid Act” is focused on supporting America’s small businesses. Its primary feature is the Paycheck Protection Program (“PPP”), which could extend nearly \$350 billion in fully forgivable loans through the Small Business Administration (“SBA”) to small businesses, generally with 500 or fewer employees. These loans, with annual interest capped at four percent, will be fully forgivable if, among other things, the company keeps employment at pre-March 2020 levels for eight weeks and uses the money to pay for salaries, employee benefits and healthcare, mortgage payments, rent, utilities, and interest payments on other newly incurred debt obligations. The loans will be applied for and granted through the SBA’s existing network of lenders, but other banks have been encouraged to apply to administer these loans. Title I also requires the SBA to make the required payments on all existing SBA loans for six months.

A. The Paycheck Protection Program (“PPP”)

Under the new PPP program, the SBA will make or guarantee loans of up to \$10 million to eligible entities, authorizing \$349 billion to cover loans made through the PPP, as well as general business loans otherwise authorized under the [Small Business Act](#), 15 U.S.C. § 636(b)(2). Loans made under the Economic Injury Disaster Loan program (discussed further below) after January 31, 2020, but before the date that PPP loans are made available can be refinanced as part of a PPP loan.

1. Eligibility

Eligible Borrowers

Eligible borrowers for PPP loans include:

- Any business concern, 501(c)(3) nonprofit, 501(c)(19) veterans’ organization, or tribal business concern described in Section 31(b)(2)(C) of the Small Business Act with no more than: (1) 500 employees, or (2) such higher number established by the SBA on an industry-by-industry basis. The SBA’s regulations provide that a business in a particular industry can be “small” even if it has more than 500 employees. For example, the preexisting SBA guidance states that “tobacco manufacturers” are considered “small” as long as they have fewer than 1,500 employees total. As such, a tobacco manufacturer with fewer than 1,500 employees is eligible for one of the special SBA loans under the Act, based on its pre-existing classification as “small” by the SBA.
- Sole proprietors, independent contractors, and other self-employed individuals.
- Businesses assigned a North American Industry Classification System (“NAICS”) code beginning with 72 (comprising establishments that provide customers with lodging and/or prepare meals, snacks, and beverages for immediate consumption) with 500 or fewer employees per physical location.

Additionally, the Act waives the SBA affiliation rules (which specify that the number of employees is determined in the aggregate with a company’s affiliates) for certain categories of businesses.

The Act also urges the SBA Administrator to issue guidance to lenders and their agents to encourage lending to eligible borrowers in underserved and rural markets, or in operation for less than two years, as well as borrowers owned by veterans or members of military community, certain socially and economically disadvantaged individuals, and women.

Eligible Uses

PPP loans may be used for allowable expenses ordinarily permitted under Section 7(a) of the SBA (e.g., acquiring real estate, making a capital improvement, or acquiring inventory), as well as the following expenses incurred from February 15, 2020 through June 30, 2020 (the “covered period”), including:

- Payroll costs, except for the compensation of an individual employee in excess of an annual salary of \$100,000 as prorated for the covered period;
- Costs related to continuation of group healthcare benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- Employee salaries, commissions, or similar compensation;
- Mortgage interest payments;
- Rent, including rent under a lease agreement;
- Utilities; and
- Interest on any other debt obligations that were incurred before the covered period.

Application

The Act authorizes a streamlined application and underwriting process for PPP loans by requiring lenders to consider only whether the borrower was operational on February 15, 2020, and had a paid independent contractor or employees for whom it paid salaries and payroll taxes. The borrower’s ability to repay the PPP loan is not considered, nor is its financial health. Eligible borrowers are required to certify in good faith that the loan would be necessary to support ongoing operations due to current economic conditions; that the funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments; and that they have not already submitted a duplicative application or received funds as a result of such an application.

2. Loan Features

Loan Amount

The interest rate on PPP loans is capped at 4%. PPP loans can be as large as \$10 million. The maximum loan amount for PPP loans for each individual borrower is defined in the Act as the lesser of (a) \$10 million or (b) 2.5 months of regular payroll expenses based on 2019 average monthly payroll expenses (subject to a prorated cap of \$100,000 per employee).

Other Loan Features

The Act establishes several favorable loan features for PPP borrowers.

First, PPP loans are designed as no-collateral, non-recourse loans. The Act specifically prohibits lenders from requiring a personal guarantee or any collateral for covered loans, and it prohibits the SBA from requiring recourse against any individual shareholder, member, or partner or an eligible recipient of a covered loan for nonpayment—unless that shareholder, member, or partner uses the covered loan proceeds for an unauthorized purpose. This is a significant departure from typical SBA loans, which often provide for either collateral or a personal guarantee.

Second, the Act waives certain fees and prepayment penalties, as well as the requirement that a prospective borrower demonstrate that it is unable to obtain credit elsewhere.

Third, the Act caps the maturity period at ten years from the date on which the borrower applies for loan forgiveness (discussed further below), and provides that the SBA will guarantee any balance that remains after any loan forgiveness reduction.

Finally, the Act provides that the lender is required to defer any borrower payments for at least six months (and up to one year).

3. Loan Forgiveness

The CARES Act also implements a forgiveness program for PPP loans.

Covered PPP loan amounts for specified expenses during the eight-week period following loan origination may be forgiven, but only to the extent the borrower has not made reductions in employees or salaries as compared to the previous year. Qualifying expenses include payroll costs, mortgage interest payments on mortgage debt incurred before February 15, 2020, rent payments on any lease in effect prior to February 15, 2020, and utility payments for services that began before February 15, 2020. Forgiveness of PPP loans will not be included in the borrower's taxable income.

Forgiveness Levels

The Act establishes limits, however, on the amounts that can be forgiven. These limits are designed to incentivize borrowers to retain their employees and not reduce their salary or wages. In particular, the amount forgiven may not exceed the principal of the loan, and it will be reduced:

- Proportionally by any reduction in employees retained compared to the period of February 15 to June 30, 2019, or, at the election of the borrower, the first two months of 2020—except where such reduction is eliminated by June 30, 2020; and
- For any employee not paid at a rate of more than \$100,000 per year in 2019, by the amount of any reduction in total salary or wages made during the first eight weeks of a covered loan that is in excess of 25% of the employee's total salary or wages during the most recent full quarter of employment—except where such reduction is eliminated by June 30, 2020.
- Exemption for Re-Hires: Reductions in the number or salary of employees, as described above, made between February 15, 2020, and 30 days after the Act's enactment are not considered in the amount of loan forgiveness if the employer eliminates such reductions by June 30, 2020.

Forgiveness Application

Borrowers seeking forgiveness must submit an application to the lender verifying the number of employees on payroll and their pay rates for the periods used to calculate the amount of forgiveness sought. Borrowers must also certify that the forgiveness amount was used to retain employees or to make mortgage interest, rent, or utility payments. The application for forgiveness is determined by the lender, which must issue its decision within sixty days.

4. Lenders

Lenders qualified to participate in the SBA 7(a) lending program may opt-in to participate in the PPP, and may do so while continuing to participate in the 7(a) program.

Additional lenders that are not currently participating in SBA lending programs may also apply to participate in the PPP until the date on which the declared COVID-19 national emergency expires. Criteria for such participation will be established by the Department of the Treasury in consultation with the SBA Administrator and the Chairman of the Farm Credit Administration, but it is expected that nearly all FDIC-insured banks will qualify, and that the application process will be expedited in order to maximize the near-term impact of the program.

The SBA will pay authorized lenders for processing PPP loans, within five days of disbursement, at certain percentages by loan amount: 5% on loans up to \$350,000, 3% on loans greater than \$350,000 and less than \$2 million, and 1% on loans of \$2 million or more (which is higher than what a lender would receive for a typical SBA loan).

The Act protects lenders that receive the required forgiveness application and accompanying documentation attesting that the borrower has accurately verified the payments for covered expenses. Such lenders cannot be subjected to enforcement actions or penalties relating to loan forgiveness for those payments.

B. Economic Injury Disaster Loan Grants

The CARES Act includes \$10 billion for emergency grants of up to \$10,000 for borrowers that apply for a loan under the Economic Injury Disaster Loan (“EIDL”) program in response to COVID-19.

1. Eligibility

Under Section 7(b)(2) of the Small Business Act, the EIDL program covers small businesses, private nonprofit organizations, and agricultural cooperatives located in an area affected by a disaster, which now includes all U.S. states and territories.

For the covered period of January 31, 2020, through December 31, 2020,⁷ the Act expands eligibility for loans under the EIDL program to include: businesses and small tribal businesses with no more than 500 employees; cooperative and Employee Stock Ownership Plans (“ESOPs”) with no more

⁷ American Samoa is covered from only March 21, 2020.

than 500 employees; and sole proprietors, independent contractors, and other self-employed individuals.

EIDL applicants may request an emergency grant of up to \$10,000, which will take the form of an advance on the borrower's loan, to be disbursed within three days of the borrower's application. The advances do not need to be repaid, even if the recipient is subsequently denied the EIDL program loan.

A business that receives an EIDL under this program during the covered period is still eligible to apply for a PPP loan, or the business may refinance their EIDL into a PPP loan. However, any emergency EIDL grant award would be subtracted from the amount forgiven in the PPP. Businesses may not use PPP loans and EIDLs to cover the same eligible costs.

Emergency advances/grants may be used for the same purposes as an EIDL, including the following:

- Providing paid sick leave to employees unable to work due to the direct effect of 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; and
- Repaying obligations that cannot be met due to revenue losses.

2. Waiver of Certain Requirements

The Act waives certain requirements otherwise applicable to the EIDL program, including the rules requiring personal guarantees on advances and loans of up to \$200,000; the requirement that an applicant have been in business for the one-year period prior to the disaster (except that the business must have been in operation on January 31, 2020); and the inability to obtain credit elsewhere.

In addition, an applicant may be approved based solely on a credit score or "alternative appropriate methods" that "determine an applicant's ability to pay."

C. Subsidy for Certain Loan Payments

For certain existing SBA loan programs, the Act requires the SBA to pay the principal, interest, and any associated fees owed for a six-month period beginning with the next payment due. The Act appropriates \$17 billion for this purpose. This does not apply to loans made under the PPP, which, as noted above, already defers payment for at least six months.

D. Implementation

Regulations

The SBA Administrator must issue implementing regulations within fifteen days of the date of enactment. The PPP program cannot commence until such regulations are issued. The SBA Administrator has thirty days to issue guidance and regulations implementing the loan forgiveness section.

Appropriations

The Act makes appropriations for fiscal years 2020 and 2021 in order to implement this Title, including \$675 million for SBA salaries and expenses, and \$265 million for the SBA Entrepreneurial Development Program.

Oversight

The Act relies on existing oversight functions at the SBA for oversight of the new programs, and appropriates \$25 million for SBA Office of the Inspector General. The CESA mandated oversight provisions discussed above do not apply.

ASSISTANCE FOR AMERICAN WORKERS, FAMILIES, AND BUSINESSES [TITLE II]

The “Relief for Workers Affected by Coronavirus Act” focuses on relief for individual taxpayers and business tax relief. The Act authorizes direct payments of \$1,200 (\$2,400 for joint filers) to taxpayers, subject to income limitations, and loosens some restrictions on retirement distributions. The Act also provides a number of significant tax benefits to businesses, including allowing businesses to carry net operating losses from 2018, 2019, and 2020 back five years, increasing the limitation on the business interest deduction to 50% of earnings, and making the corporate refundable alternative minimum tax (“AMT”) credit available in 2018 and 2019. Finally, the Act expands unemployment benefits for most workers.

A. Recovery Rebates & Other Individual Provisions

Title II provides money to individual taxpayers, through rebate checks and other mechanisms.

1. Rebate Checks

Certain individuals will receive one-time rebate checks, and the amount of the check depends on the individual’s income:

- \$1,200 rebate for individual taxpayers with adjusted gross incomes of up to \$75,000 and heads of households with adjusted gross incomes of up to \$112,500.
- \$2,400 rebate for joint filers with combined adjusted gross incomes of up to \$150,000.
- For these qualifying taxpayers, the rebate check is increased \$500 for each qualifying child.

Income eligibility is based on the filer’s 2019 tax return, if filed, and otherwise on their 2018 return or social security filings. The amount of the credit is reduced by \$5 for every \$100 that a taxpayer’s income exceeds the thresholds above, until it is phased out completely. The credit phases out for those with incomes above \$99,000 (single filers without children) or \$198,000 (joint filers without children). Phase out amounts for filers with children are slightly higher. For example, checks for joint filers with two qualifying children will phase out for those with incomes above \$218,000.

The Treasury Secretary is authorized to distribute the payments electronically “to any account the payee authorized” for delivery of tax refunds. The Act does not specify how checks will be sent to individuals who have not authorized such an account, but it requires the Secretary to conduct a public awareness campaign about the availability of the rebate.

2. Retirement Funds

The Act provides for 401(k) loan and withdrawal relief for qualified individuals (principally identified as individuals who have the virus, whose spouse or dependents have the virus, or who have otherwise experienced adverse financial consequences as a result of the virus).

For qualified individuals, the Act will temporarily allow for increased 401(k) loan limits (up to \$100,000, compared to the usual limit of \$50,000) for a six-month period after enactment, as well as a

one-year extension on the deadline of any 401(k) loan repayment due during the remainder of 2020. Qualified individuals may also request a COVID-19-related distribution, up to \$100,000, from their retirement accounts, including 401(k)s, regardless of whether another in-service withdrawal is available. The early distribution penalty is waived, and the taxation of a COVID-19-related distribution may be spread out over a three-year period. Individuals can re-contribute the distribution amount within three years, regardless of any cap on annual contributions.

For retirement plans which would otherwise require distributions on certain dates, the Act lifts those requirements for 2020. Specifically, it allows a waiver of 2020 required minimum distributions (“RMDs”) from a defined contribution plan or IRA, including distributions required to be made by April 1, 2020.

3. Charitable Contributions

Title II makes a variety of changes to the tax code in order to encourage charitable contributions in 2020. First, any individual who does not elect to itemize deductions can still deduct \$300 worth of charitable contributions above the line. Second, the charitable deduction limitation for individuals (previously 50% of adjusted gross income) is lifted for 2020, and the limitation on charitable deductions for corporations is increased from 10% of taxable income to 25%. The Act also increases the limitation on deductions for contributions of food inventory to charity from 15% to 25%.

4. Employer Payments for Student Loans

Title II enables employers to provide a student loan repayment benefit to employees tax-free. Under this section, an employer can contribute up to \$5,250 to an employee’s student loans any time after the date of enactment until January 1, 2021.

B. Business Tax Provisions

Title II makes a variety of changes to business tax provisions.

1. Employment Tax Credits

To encourage continued employment and healthcare coverage, the Act provides a quarterly refundable tax credit against employment tax liability for businesses that either must suspend business due to a government order to shut down due to COVID-19, or suffer a significant decline in gross receipts due to the crisis. The credit amount is 50% of the first \$10,000 of qualified wages per employee, including certain non-wage healthcare costs, up to a total credit amount of \$5,000 per employee for all quarters combined. For employers that had more than 100 employees in 2019, eligible wages are those paid to employees not providing services due to the crisis, up to \$10,000 of qualifying wages per employee. This credit is in addition to other credits that may be available.

The employment tax credit provision generally applies beginning in the first quarter of 2020 in which there has been a partial or complete suspension of business due to the crisis or in the first quarter of 2020 in which gross receipts are less than 50% of the prior year’s quarterly receipts, and continuing until quarterly receipts reach 80% of corresponding prior year’s quarter. Employers taking PPP loans under the Act are ineligible for the credits.

2. Family Leave Advances

Under the previously enacted [Families First Coronavirus Response Act](#), certain qualified family leave expenses generate 100% employment tax credits. In an effort to push more funds to employers more quickly, the CARES Act amends that previously enacted provision to allow for advancing (funding) those credits to certain employers and waiving penalties for nonpayment of taxes in anticipation of receiving those credits.

3. Employment Tax Deferral

The Act allows for a deferral of 2020 payroll taxes (the 6.2% employer-paid social security tax and certain other taxes). Fifty percent of the payroll tax is deferred for one year, until December 31, 2021, and the remaining 50% for two years, until December 31, 2022. The deferral provision limits personal and contractor liability for deferred employment taxes.

Deferral does not apply, however, to an employer who has had indebtedness forgiven under Section 1106 or 1109 of the Act (*i.e.*, the PPP loan forgiveness provisions, as extended by the Treasury Management Program Authority provisions of the Act). As noted above, that PPP forgiveness is not taxable. Similar changes affect self-employment taxes and related estimated income tax payments.

4. Net Operating Losses and Alternative Minimum Tax Credits

The Act allows Net Operating Losses (“NOLs”) from 2018, 2019, and 2020 to be carried back five years. The Act does this by modifying the NOL carryforward and carryback rules recently changed in the [Tax Cuts and Jobs Act](#) (“TCJA”) of 2017.

Under the Act, NOLs from 2018, 2019 and 2020 may now be carried back five years, and fully offset income from those years without respect to the income limitations of the TCJA of 2017. The provision also coordinates NOL carrybacks with Section 965 inclusions, and includes special rules for real estate investment trusts and insurance companies. Additional changes loosen somewhat the rules in Section 461(l) limiting the carryover of excess business losses by non-corporate taxpayers. The Act also relaxes the corporate refundable AMT credit provision that would have allowed recovery in 2018 through 2021 to make the AMT credit available in 2018 and 2019 with an election back to recover it all in 2018.

5. Loosened Business Interest Limitations

The TCJA business interest provisions of Section 163(j) generally limited the business interest deduction to 30% of adjusted taxable income (generally EBIT, or earnings before interest and tax) for the 2019 and 2020 years. The Act increases that limitation for those years to 50% and allows taxpayers to use their 2019 income, rather than 2020 income, for purposes of applying this higher 50% limitation in 2020. Special rules apply to further relax excess business interest limitations for partnerships for 2019 and 2020.

C. Unemployment Insurance Benefits

The Act creates a Temporary Pandemic Unemployment Assistance Program for workers who have been affected by COVID-19, including those who are not traditionally eligible for unemployment benefits (*i.e.*, self-employed workers, independent contractors, and “gig” workers) who are unable to work as a result of the pandemic.

1. Eligibility

A person is eligible for benefits if they are not eligible for regular employment compensation and are otherwise able to work, and:

- They have been diagnosed with COVID-19, or are experiencing COVID-19 symptoms and are seeking a diagnosis;
- A member of their household has been diagnosed with COVID-19;
- They are providing care for a family member who has been diagnosed with COVID-19;
- Their child is unable to attend school or another facility that is closed because of COVID-19, making them unable to work;
- They are unable to reach their place of employment because of a quarantine imposed due to COVID-19;
- They are unable to reach their place of employment because they have been told to self-quarantine by a healthcare provider;
- They were scheduled to commence employment but cannot because of COVID-19;
- Their head of household has died from COVID-19, and they have become a breadwinner;
- They have to quit their job because of COVID-19;
- Their place of employment has closed because of COVID-19; or
- They meet any other criteria established by the Secretary of Labor.

This benefit also applies to individuals who are self-employed, are seeking part-time employment, do not have sufficient work history, or otherwise would not qualify for regular unemployment under state or federal law, and become unemployed or cannot find work due to COVID-19. This section does not include someone who can telework with pay, or is otherwise receiving paid leave, even if they have been impacted by COVID-19 in the ways listed above. Assistance under the program is for a maximum of thirty-nine weeks.

The Act also provides for an additional \$600 per week to be made available to recipients of traditional unemployment benefits until July 31, 2020.

In addition, the Act provides an additional thirteen weeks of unemployment benefits for anyone who has exhausted their rights to regular unemployment benefits under state law, most of which

provide twenty-six or fewer weeks of unemployment. This is designed to make a total of thirty-nine weeks of unemployment benefits available for most people.

2. Short-Term Compensation Programs

The Act supports states' short-term compensation programs, as defined under Section 3306(v) of the [Internal Revenue Code](#). Under such programs, employers reduce the number of hours their employees work instead of laying them off, and employees are in turn compensated for their reduced salary on a pro-rata basis. The federal government will cover 100% of the costs of these programs in states where they already exist or where they are newly enacted into law, and 50% of the program if the state sets up such a program on a temporary basis.

3. Other Provisions

Other provisions include:

- The federal government will provide emergency unemployment relief by reimbursing states for 50% of their unemployment costs for nonprofits, government agencies, and Indian tribes;
- The federal government will fully fund the first week of compensable unemployment insurance for states who agree to waive the waiting week; and
- The Act amends the Families First Coronavirus Response Act to provide emergency flexibility to states hiring temporary staff, former employees, or retirees through December 31, 2020.

SUPPORTING AMERICA'S HEALTHCARE SYSTEM [TITLE III]

The “Coronavirus Aid, Relief, and Economic Security Act” enacts a number of measures to support the healthcare system. It makes modifications to family and paid sick leave provisions, improves the supply of testing kits, ventilators, and masks, expands coverage for COVID-19-related care, provides other support to healthcare providers dealing with the crisis, and provides student loan relief. It appropriates \$100 billion to reimburse hospitals and eligible healthcare providers for expenses and lost revenues attributable to COVID-19.

A. Family and Sick Leave Provisions

1. Family and Medical Leave

Title III expands coverage under the Emergency Family and Medical Leave Expansion Act (“FMLEA”), by including workers who were laid off and later rehired. For a discussion of those changes contained in the Families First Coronavirus Response Act, see [Financial Relief in Response to COVID-19, So Far... Episode I](#). Traditionally, an employee would only be eligible for paid leave if they worked for thirty calendar days before requesting leave. The Act amends the definition of “eligible employee” to include an employee who was laid off by an employer on March 1, 2020 or later, had worked for the employer for at least thirty days in the sixty calendar days prior to the layoff, and was subsequently rehired by the employer. Such rehired employees will now have access to paid family leave.

2. Updates for Pension Plans

For employers, Title III also makes two important changes relative to pension plans. The Act will delay the due date for any minimum required contribution to a pension plan. For any contribution that would be due in 2020, the due date will be January 1, 2021, but the contribution amount must be increased by the amount of interest it would have accrued under the plan. Separately, for purposes of determining a pension plan’s funded status under Internal Revenue Code Section 436, plan sponsors may elect to use the plan’s funding percentage for the last plan year ending before 2020 as the funding percentage for the plan year(s) including calendar year 2020.

3. Other Provisions

Among other things, the Act also allows employers to receive advance refunding of tax credits under Section 7001 of the Families First Coronavirus Response Act, instead of waiting for reimbursement; and provides that federal contractors who cannot perform work because their work sites are inaccessible due to COVID-19 will continue to be paid.

B. Education Provisions

The CARES Act defers payments and interest on federal student loans for six months, until September 20, 2020. It also makes adjustments for campus aid-based grants and qualifying federal work-study programs, as well as other adjustments to teacher loan forgiveness programs and student loan eligibility for students who dropped out as a result of COVID-19. This section also makes some changes to institutional grant programs so institutions of higher education can use resources to respond to COVID-19.

C. Healthcare Provisions

1. Medical Products and Drug Supply

The Act appropriates \$16 billion for the Strategic National Stockpile to respond to COVID-19, and also allows the Stockpile to cover personal protective equipment, such as masks, medical supplies, and diagnostic tests. The Act also prioritizes review of certain drug applications, and requires additional reporting from drug manufactures in the case of a drug shortage or interruption in drug production. It directs the National Academies to study the manufacturing supply chain of drugs and medical devices and provide a report to Congress on how to strengthen that supply chain.

2. Insurance Coverage for COVID-19 Testing

The Act makes a number of changes to existing law relating to health insurance coverage, designed to benefit individuals receiving care for COVID-19. It makes testing for COVID-19, as well as an eventual vaccine for COVID-19 and other qualifying preventative services, covered by private insurance plans with no cost to patients. For group health plans, this means that any qualifying COVID-19 preventative service must be covered without cost sharing. It also requires health plans to pay certain rates for diagnostic testing. If a plan does not have a negotiated rate with a provider, the plan must reimburse the provider's cash price. Each provider of a COVID-19 diagnostic test must publish the price of the test on the internet.

3. Support for Healthcare Providers

The Act provides \$1.32 billion in grants for community health centers, increases by 20% payments made to hospitals by Medicare for treating patients with COVID-19, and limits legal liability for volunteer healthcare professionals who provide volunteer medical services related to COVID-19. The Act also temporarily lifts the Medicare sequester—*i.e.*, a scheduled reduction in some Medicare payments—thereby increasing payments to healthcare providers. The Act additionally expands the existing Medicare accelerated payment program for the duration of the COVID-19 emergency, and revises payment rates for durable medical equipment under Medicare through December 31, 2020.

4. Drug Development

The Act includes incentives for speeding up drug development and innovation, including removing the cap on other transaction authority (“OTA”), which gives the government flexibility in contracting, during public health emergencies. The Act also provides for expedited review of drugs that can prevent the transmission of animal-to-human diseases like COVID-19 and reforms the regulatory process for over-the-counter drugs.

5. Telehealth Services; Account-Based Plans

The Act amends regulations for high deductible health plans. For plan years beginning on or before December 31, 2021, a high deductible health plan may offer coverage, without cost sharing (or before the deductible is met), of telehealth or remote care services. The availability of telehealth under Medicare is also expanded.

PANDEMIC RESPONSE ACCOUNTABILITY COMMITTEE [DIVISION B]

In order to oversee the federal government's coronavirus response, including all funds made available under any COVID-19 legislation, the CARES Act creates a new Pandemic Response Accountability Committee ("PRAC"). The purpose of the new PRAC function is to root out fraud, waste, abuse, and mismanagement within the government's overall coronavirus response and spending, and to improve coordination between agencies and the federal, state, and local governments. The Act appropriates \$80 million for the PRAC.

The PRAC may conduct audits and reviews, hold hearings, issue subpoenas, and investigate fraud and criminal conduct, which it may refer to the Department of Justice for prosecution. The PRAC is required to report regularly to the President, Congress, and the public on its findings and recommendations, including any management, risk, or funding problems requiring immediate attention, as well as periodic updates on its work as it considers appropriate.

The PRAC will be comprised of Inspectors General from several federal departments and agencies, including the Departments of Defense, Health and Human Services, Treasury, Labor, and Justice, among others. The PRAC will be led by a Chairperson, selected from among the various Inspectors General by the current Chairperson of the Council of the Inspectors General on Integrity and Efficiency. The Chairperson will appoint an Executive Director and Deputy Executive Director of the PRAC, who will serve as full-time employees and appoint and supervise PRAC staff.

On March 30, 2020, Glenn Fine, the Acting Inspector General for the Pentagon, was selected to serve as the Chairperson of the PRAC.

EDITORS

Partners Neil Barofsky, Michael Ross and Ali Arain

ADDITIONAL CONTRIBUTORS

Partners Geoffrey Davis, Sarah Haddy, Christian Kimball, Gail Morse, Edward Prokop, Damon Smith, Joseph Torres and Special Counsel David Sussman

Associates Jacob Alderdice, Kara Brandeisky, David Clark, Elpitha Lambros, Corinne Smith, Vaishalee Yeldandi and Law Clerks Susanna Everts, Isabel Farhi and Grace Wallack

For more information on the CARES Act, please reach out to CARESAct@jenner.com or your primary Jenner & Block contact.