

CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES ACT)

A Summary of Titles I, II and parts of Title IV of Division A by

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II.

KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT

A. Economic Injury Disaster Loan Assistance Loans (EIDL) and Paycheck Protection Program (PPP).

1. Background.

a. The EIDL is an existing SBA program for making loans to small businesses that was extended across the nation after the national emergency was declared to combat the COVID-19 pandemic. Improvements to EIDL have been made under the CARES Act.

b. The PPP will be a new program established by the Section 1102 of the CARES Act funded with \$349 billion in federally guaranteed loans to small businesses and provided through the SBA's Section 7(a) loan program.

c. If a business has already received an EIDL unrelated to COVID-19, or it receives a COVID-19 related EIDL between January 31, 2020 and June 30, 2020, it may also apply for a PPP loan. If the business ultimately receives a PPP loan, or refinances an EIDL into a PPP loan, then any advance amount received under the EIDL would be subtracted from the amount forgiven in the PPP. However, the business could not use its EIDL for the same purpose as its PPP loan. For example, if it used the EIDL to cover payroll for certain workers in April, it could not use PPP for payroll for those same workers in April, although it could use it for payroll in March or for different workers in April.

2. Comparison.

EIDL	PPP
LENDER	
SBA	Banks authorized to make loans guaranteed by the SBA under its Section 7(a) program.
PERMISSIBLE PURPOSES FOR THE LOAN	
Financial obligations and operating expenses that could have been met had the Federally declared national disaster not occurred (e.g., COVID-19), including: <ul style="list-style-type: none"> • Providing sick leave to employees unable to work due to direct effect of COVID-19; • Maintaining payroll during business disruptions during slow-downs; • Meeting increased supply chain costs; • Making rent or mortgage payments; and • Repaying debts that cannot be paid due to lost revenue. 	Payroll costs; costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums; employee salaries, commissions or similar compensation; payments of interest on any mortgage obligation (excluding any prepayment of or payment of principal on a mortgage obligation); rent; utilities; and interest on any other debt obligation incurred before February 15, 2020. "Payroll costs" are defined to mean the sum of the following: <ul style="list-style-type: none"> • wages, commissions, salary, or similar compensation to an employee or independent contractor, • payment of a cash tip or equivalent, • payment for vacation, parental, family, medical or sick leave, • allowance for dismissal or separation, • payment for group health care benefits, including premiums, • payment of any retirement benefits, and • payment of state or local tax assessed on the compensation of employees, Payroll costs do not include the following: <ul style="list-style-type: none"> • the compensation of any individual employee in excess of an annual salary of \$100,000, • payroll taxes,

	<ul style="list-style-type: none"> any compensation of an employee whose principal place of residence is outside the U.S., or <p>any qualified sick leave or family medical leave for which a credit is allowed under the new Families First Coronavirus Response Act.</p>
ELIGIBILITY	
<p>In addition to small business concerns, private nonprofit organizations and small agricultural business concerns, the following are now eligible entities for EIDLs under the CARES Act:</p> <ul style="list-style-type: none"> A business with 500 or fewer employees; Sole proprietorships, with or without employees, and independent contractors; Cooperatives with 500 or fewer employees; ESOPs with 500 or fewer employees; and Tribal small business concerns. <p>The SBA’s size standards used in determining whether a business is a small business concern under the SBA’s rules may be found at: https://www.sba.gov/size-standards/.</p>	<p>Any small business concern, or any business concern, 501(c)(3) nonprofit organization, veterans’ organization or tribal business concern with not more than the greater of 500 employees or, if applicable, the size standard in number of employees established by the Administration for the industry in which the business concern, 501(c)(3) nonprofit organization, veterans’ organization, or tribal business concern operates, is eligible for a PPP. Also eligible are the following:</p> <ul style="list-style-type: none"> Individuals who operate a sole proprietorship or as an independent contractor and eligible self-employed individuals. Any business concern that employs not more than 500 employees per physical location of the business concern and that is assigned a NAICS code beginning with 72 (Accommodation and Food Services companies). <p>The SBA’s size standards used in determining whether a business is a small business concern under the SBA’s rules may be found at: https://www.sba.gov/size-standards/.</p> <p>Affiliation rules apply to small business concerns, nonprofit organizations, veterans organizations, and tribal business concerns, but are waived for any business concern that employs not more than 500 employees per physical location of the business concern and that is assigned a NAICS code beginning with 72, franchises with codes assigned by the SBA as reflected on the SBA franchise registry, and businesses that receive</p>

	<p>financial assistance from one or more small business investment companies (SBIC).</p> <p>For purposes of determining whether small business concerns, nonprofit organizations, veterans' organizations, and tribal business concerns employ not more than 500 employees, the term "employee" includes individuals employed on a full-time, part-time or other basis.</p>
MAXIMUM AMOUNT THAT CAN BE BORROWED	
\$2 million	<p>The maximum amount that can be borrowed is the lesser of \$10 million or the amount determined by the sum of the following:</p> <ol style="list-style-type: none"> 1) 2.5x the average monthly payments for payroll costs (as defined above), measured over the 12 months preceding the loan origination date. Eligible borrowers not in business during the period from February 15, 2019 to June 30, 2019 may instead use the period from January 1, 2020 to February 29, 2020. Seasonal businesses may use the 12-week period beginning February 15, 2019 or, at their election, the period of March 1, 2019 to June 30, 2019. 2) The outstanding amount on any EIDL taken out between January 31, 2020 and the date on which EIDLs are able to be refinanced under the PPP.
ANNUAL INTEREST RATE	
3.75% for businesses; 2.75% for non-profits	Not to exceed 4%
MAXIMUM TERM OF THE LOAN	
Up to 30 years	Up to 10 years
DATE THE FIRST PAYMENT IS DUE	
One year after the loan origination date (interest is accrued during the deferment)	At least six months after the loan origination date, but not more than one year (interest is accrued during the deferment)
COLLATERAL	
Required for loans over \$25,000.	Collateral is not required and the loan is nonrecourse to the individual shareholders, members or partners, except to the extent the loan proceeds are used for an unauthorized purpose (see above).
PERSONAL GUARANTEES	

While the changes made by the CARES Act are in effect, personal guarantees are waived on advances and loans of not more than \$200,000.	No
AVAILABILITY OF A PROGRAM TO FORGIVE THE AMOUNT OWED ON THE LOAN	
No	Yes – calculated as the amount spent by the borrower during an 8-week period after the origination date of the loan for payroll costs (as defined above), interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility (including electricity, gas, water, transportation, telephone, or internet access) for which service began before February 15, 2020. Payroll costs are subject to the same exclusions as noted above.
REDUCTIONS IN THE AMOUNT THAT MAY BE FORGIVEN	
N/A	The amount forgiven is reduced based on failure to maintain the average number of full-time equivalent employees versus the period from either February 15, 2019 through June 30, 2019, or January 1, 2020 through February 29, 2020, as selected by the borrower. The amount forgiven is also reduced to the extent that compensation for any individual making less than \$100,000 per year is reduced by more than 25% measured against the most recent full quarter. Reductions in the number of employees or compensation occurring between February 15, 2020, and 30 days after enactment of the CARES Act will generally be ignored to the extent that reductions are reversed by June 30, 2020. Forgiven amounts will not constitute cancellation of indebtedness income for federal tax purposes.
CURRENT AVAILABILITY	
<p>Loans are available now and may be applied for online with the SBA. There is no obligation to accept the loan if you qualify. The SBA typically allows 60 days to accept the loan offer, but you can usually extend this if needed. The special features under the CARES Act are available on EIDL loans from January 31, 2020 to December 31, 2020 (“covered period”). During that time, the SBA will:</p> <ul style="list-style-type: none"> • Waive the "1 year in business prior to the disaster" requirement (except the 	<p>Now that the CARE Act is law, the SBA will need to provide their loan guidelines to the banks. The banks will then determine and implement their loan application processes. The loans will be available from February 15, 2020 to June 30, 2020. The SBA will waive its standard fees for the loan.</p>

<p>business must have been in operation on January 31, 2020);</p> <ul style="list-style-type: none"> • Waive the requirement that an applicant be unable to find credit elsewhere; and • Allows lenders to approve applicants based solely on credit scores (no tax return submission required) or “alternative appropriate methods to determine an applicant’s ability to repay.” <p>Entities applying for an EIDL in response to COVID-19 may, during the covered period, request an emergency advance from the SBA of up to \$10,000, which does not have to be repaid, even if the loan application is later denied.</p>	
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3. PPP Examples.

a. Ron’s Bicycle Shop applies for a paycheck protection loan on May 1, 2020. The business had \$1.2 million in payroll costs for the period May 1, 2019 through May 1, 2020, for a monthly average of \$100,000. Ron’s Bicycle Shop is entitled to a fully guaranteed federal loan in an amount not to exceed the lesser of (i) \$250,000 (\$100,000 in average payroll costs x 2.5), or (ii) \$10 million.

b. In the first 8 weeks after Ron’s Bicycle Shop borrows the \$250,000, the business pays \$200,000 in payroll costs, mortgage interest, and utility payments. Ron’s Bicycle Shop is eligible to have \$200,000 of the \$250,000 loan forgiven. The forgiveness will not create taxable income. In addition, because of the deferment rules in the CARES Act, any payments due on the remaining \$50,000 will not begin for six months.

B. Entrepreneurial Development. Section 1103 of the CARES Act authorizes the SBA to provide:

1. Financial awards to resource partners (Small Business Development Centers and Women’s Business Centers) to provide counseling, training, and education on SBA resources and business resiliency to small business owners affected by COVID-19.

2. An association or associations representing resource partners with grants to establish one online platform that consolidates resources and information available across multiple Federal agencies for small business concerns related to COVID–19, and a training program to educate Small Business Development Center, Women’s Business Center, Service Corps of Retired Executives, and Veteran’s Business Outreach Center counselors on the various federal resources available to ensure counselors are directing small businesses appropriately.

C. State Trade Expansion Program. Section 1104 of the CARES Act provides for federal grant funds appropriated to support the State Trade Expansion Program (STEP) in FY 2018 and FY 2019 to remain

available for use through FY 2021. Allows for state STEP participants to be reimbursed for events cancelled due to COVID-19, so long as it does not exceed their federal grant.

D. Waiver of Matching Funds Requirement under the Women’s Business Center Program. The CARES Act eliminates the non-federal match requirement for Women’s Business Centers (WBC) for a period of three months.

E. Minority Business Development Agency. Section 1105 of the CARES Act authorizes \$10 million for the Minority Business Development Agency within the Department of Commerce to provide grants to Minority Business Centers and Minority Chambers of Commerce for the purpose of providing counseling, training, and education on federal resources and business response to COVID-19 for small businesses. Eliminates the Minority Business Center program’s non-federal match requirement for a period of three months and allows for centers to waive fee-for-service requirements through September 2021.

F. United States Treasury Program Management Authority Regarding the PPP.

1. Section 1109 of the CARES Act establishes the authority of the U.S. Department of Treasury, the Farm Credit Administration, and other federal financial regulatory agencies to authorize bank and nonbank lenders to participate, including insured credit unions, in loans made under the Paycheck Protection Program.

2. For financial institutions admitted under this section, gives Treasury the authority to issue regulations and guidance for terms concerning lender compensation, underwriting standards, interest rates, and maturity. Interest rates set under this authority may not exceed the maximum permissible rate of interest set on loans made under Section 1102 of the CARES Act.

3. Requires that Treasury ensure that terms and conditions under this section for loans under the Paycheck Protection Program are the same as the terms and conditions established for loans under Section 1102 of the CARES Act for borrower eligibility, maximum loan amount, allowable uses, fee waivers, deferment, guarantee percentage, and loan forgiveness.

4. Allows Treasury to issue regulations and guidance as necessary, including to allow additional lenders to originate loans under the Paycheck Protection Program and establish terms.

5. Prohibits borrowers from applying for a loan under the Paycheck Protection Program if that borrower has a previously pending application for a Section 7(a) loan for the same purpose.

6. Establishes that the SBA will administer the Paycheck Protection Program, including purchasing and guaranteeing loans, with guidance from Treasury.

7. All Section 7(a) lenders can opt-in to participate in the Paycheck Protection Program.

G. Subsidy for Certain Loan Payments.

1. Section 1112 of the CARES Act Requires the SBA to pay the principal, interest, and any associated fees that are owed on a “covered loan” for a six-month period starting on the next payment

due. Loans that are already on deferment will receive six months of payment by the SBA beginning with the first payment after the deferral period. Loans made up until six months after enactment will also receive a full 6 months of loan payments by the SBA.

2. The SBA must make payments no later than 30 days after the date on which the first payment is due. The SBA must still make payments even if the loan was sold on the secondary market.

3. The SBA is further required to encourage lenders to provide deferments and allows lenders, up until one year after enactment, to extend the maturity of SBA loans in deferment beyond existing statutory limits.

4. A “covered loan” for purposes of Section 1112 means as an existing Section 7(a) loan (including the Community Advantage pilot loan program), a Section 504 loan, or a microloan product. Paycheck Protection Program (PPP) loans are not covered.

G. Bankruptcy. Section 1113 of the CARES Act:

1. Amends Section 1182(1) of Title 11 to define “debtor” as persons engaged in commercial or business activities and their affiliates (excluding persons who primarily own single asset real estate) that have aggregate, noncontingent, liquidated secured and unsecured debts (at the date of petition filing or the order for relief) of \$7,500,000 or less (excluding debts owed to affiliates or insiders), half or more of which arose from those activities.

2. Exempts from this new definition any members of a group of affiliated debtors that has aggregate, noncontingent, liquidated secured and unsecured debts over \$7,500,000 (excluding debt owed to affiliates or insiders), corporations subject to 1934 Act reporting requirements, and affiliates of an issuer under the 1934 Act.

3. Exempts National Emergency Act payments for COVID-19 from “current monthly income” and “disposable income” when determining the power of courts to approve debtor plans rejected by trustees or claim holders. Debtors that have experienced material financial hardship due to COVID-19 can modify a plan confirmed prior to this Act’s enactment date if approved after notice and hearing, but only if that plan doesn’t provide payments more than seven years after the first payment was due under the original plan, and follows requirements of 1322(a), 1322(b), 1323(c) and 1325(a). This modification terminates one year after the enactment of this Act.

III.

ASSISTANCE FOR AMERICAN WORKERS, FAMILIES, AND BUSINESSES

A. Unemployment Insurance Provisions.

1. Pandemic Unemployment Assistance.

a. Section 2102 of the CARES Act creates the temporary Pandemic Unemployment Assistance program, effective January 27, 2020, to remain in effect until December 31, 2020, which covers individuals who would not otherwise be eligible for unemployment insurance and benefits – the self-employed, independent contractors, gig workers, part-time employment seekers, those who lack sufficient work history, or who have exhausted their unemployment benefits under existing schemes – provided they are able to self-certify that they are unemployed, partially unemployed, or unable to unavailable to work because:

i. They have been diagnosed with COVID-19 or are experiencing symptoms of COVID-19 that require a medical diagnosis.

ii. A member of their household has been diagnosed with COVID-19.

iii. They are providing care for a family member or member of their household who has been diagnosed with COVID-19.

iv. A member of their household for which they have primary caregiving responsibility is unable to attend school or another facility that has been closed as a direct result of the COVID-19 public health emergency and because of this closure they are unable to work.

v. They are unable to work because of a quarantine imposed as a result of the COVID-19 public health emergency.

vi. They are unable to work because they have been advised to self-quarantine by a health care provider.

vii. They were scheduled to start a job but are unable to do so as a result of the COVID-19 public health emergency.

viii. They have become a “major support for a household” because the breadwinner in the household has died as a direct result of COVID-19.

ix. They quit their job as a direct result of COVID-19.

b. The amount of benefit provided to a covered individual under the program is equal to the amount of unemployment benefits the individual would otherwise be entitled to receive under Federal or State law, plus an additional \$600 per week referred to as Federal Pandemic Unemployment Compensation (see below).

c. Covered individuals may receive benefits under the program for a maximum of 39 weeks, including any weeks for which the covered individual received regular unemployment benefits under Federal or State law.

d. The program removes any waiting periods established by State unemployment laws.

e. Individuals who are able to telework with pay, or who have received paid sick leave or other paid leave benefits, are ineligible to receive assistance under the program.

2. Emergency Unemployment Relief for Government Entities and Non-Profits. Section 2103 of the CARES Act establishes a mechanism for the Federal Treasury to pay States to reimburse nonprofits, government agencies, and Indian tribes for one-half of the costs they incur to pay for unemployment benefits through December 31, 2020.

3. Emergency Increase in Unemployment Compensation Benefits. Section 2104 of the CARES Act provides for an additional \$600 per week payment, referred to as “Federal Pandemic Unemployment Compensation,” to recipients of unemployment insurance or Pandemic Unemployment Assistance for a period of up to four months. The Federal Pandemic Unemployment Compensation will not count as income for purposes of determining eligibility for Medicaid and the State Children’s Health Insurance Program (CHIP).

4. Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week. Section 2105 of the CARES Act establishes a mechanism for the Federal Treasury to reimburse States that provide unemployment compensation to individuals for their first week of regular unemployment (i.e., without a one-week waiting period). All costs associated with waiving the waiting period can be fully covered by the States through December 31, 2020.

5. Pandemic Emergency Unemployment Compensation.

a. Section 2107 of the CARES Act provides an additional 13 weeks of unemployment compensation, through December 31, 2020, for all individuals who otherwise would be ineligible for such compensation because they have exhausted all rights to regular unemployment compensation under applicable state or federal law with respect to this benefit year, provided they (i) have no rights to regular unemployment compensation under any applicable State or Federal law, (ii) are not receiving unemployment compensation under Canadian law, and (iii) are able, available and actively seeking work.

b. The amount of unemployment compensation payable under this Section is equal to the amount of unemployment benefit the individual would otherwise be entitled to under applicable Federal or State law, plus the additional \$600 per week of Federal Pandemic Unemployment Compensation.

6. Temporary Financing of Short-Time Compensation Payments in States with Programs in Law.

a. Section 2108 of the CARES Act provides funding for existing short-time compensation or workshare programs where employers reduce employee hours instead of laying off workers, and the employees with reduced hours receive a pro-rated unemployment benefit. This provision would reimburse states for 100 percent of the costs they incur in providing this benefit through December 31, 2020.

b. Section 2108 precludes reimbursements for benefits paid to individuals who are employed by the participating employer on a seasonal, temporary, or intermittent basis.

7. Temporary Financing of Short-Time Compensation Agreements. Section 2109 of the CARES Act provides funding to support States which begin new short-time compensation or workshare programs. Under these programs, the Treasury would cover 50 percent of the costs that a State incurs in providing short-time compensation through December 31, 2020. The other 50 percent of the costs would be paid by the participating employers.

B. Rebates and Other Individual Provisions.

1. Recovery Rebates for Individuals.

a. Section 2201 of the CARES Act adds new Section 6428 to the Internal Revenue Code allowing a credit against 2020 income taxes, but advanced, generally based on information from 2019 income tax returns.

b. If the 2019 return has not yet been filed, then the credit will be based upon the 2018 return instead. If neither return has been filed, e.g., the taxpayer collected Social Security, but did not have enough taxable income to necessitate the filing of a return, then the IRS will determine eligibility based on Form SSA-1099, Social Security Benefit Statement.

c. The payments are to be made “as rapidly as possible,” but in any event by December 31, 2020. Generally, they will be paid electronically if direct deposit information has been provided to the IRS with the 2019 or 2018 tax return.

d. The amount of the credit is \$1,200 or \$2,400 in the case of married couples filing a joint return. Taxpayers eligible for the credit can also receive \$500 for each child eligible for the child tax credit. Nonresident aliens and persons for whom an exemption is claimed under Section 151 by another taxpayer are not eligible.

e. The total credit phases out at a rate of 5% of adjusted gross income (AGI) above \$75,000 (\$112,500 for head of household filers and \$150,000 for married joint returns). For example, this means the credit fully phases out for individuals whose AGI exceeds \$99,000 and married couples whose AGI exceeds \$198,000 (assuming no children).

f. In 2021, when 2020 tax returns must be prepared, taxpayers will need to recompute the amount owed based on 2020 data and compare it to the advance payment actually received. If the advance payment was less than the amount owed in 2020, e.g., the taxpayer was phased out in 2019 but not 2020 or had another child, then the excess will be treated as a credit that reduces the 2020 tax liability.

d. Generally, all individuals must have Social Security numbers. However, among members of the armed forces, only one spouse must have an SSN.

2. Special Rules for Use of Retirement Funds.

a. Section 2202 of the CARES Act waives the 10-percent early withdrawal penalty for distributions up to \$100,000 from both employer-sponsored retirement plans and IRAs for coronavirus-related purposes made on or after January 1, 2020 and before December 31, 2020. The distributions are subject to tax but spread over three years, and the taxpayer may recontribute the funds to an eligible retirement plan within three years.

b. The limitation on loans from employer-sponsored retirement plans made to qualified individuals for coronavirus-related purposes during the 180-day period beginning on the date of enactment is increased from \$50,000 to \$100,000 (or, if less, the qualified individual's nonforfeitable benefit under the plan). In addition, should the due date of any loan occur between the date of enactment of the CARES Act and December 31, 2020, it will be delayed for one year.

c. A coronavirus-related distribution is a one made to an individual: (i) who is diagnosed with COVID-19, (ii) whose spouse or dependent is diagnosed with COVID-19, or (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 due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.

3. Temporary Waiver of Required Minimum Distribution Rules for Certain Retirement Plans and Accounts. Section 2203 of the CARES Act waives the required minimum distribution rules for certain defined contribution plans and IRAs for calendar year 2020. A defined contribution plan will not fail to be treated as being operated in accordance with the terms of the plan during such period, solely because the plan operates in accordance with the CARES Act, so long as the plan is retroactively amended to incorporate the new rules by the last day of the first plan year beginning on or after January 1, 2022.

4. Allowance of Partial Above the Line Deduction for Charitable Contributions. Section 2204 of the CARES Act allows taxpayers to deduct charitable contributions made in cash up to \$300, whether they itemize their deductions or not.

5. Modification of Limitations on Charitable Contributions During 2020. Section 2205 of the CARES Act increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020. For corporations, the 10-percent limitation is increased to 25 percent of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

C. Business Provisions.

1. Employer Retention Credit for Employers Subject to Closure Due to COVID-19.

a. Section 2301 of the CARES Act grants eligible employers a refundable credit equal to 50% of qualified wages paid to full-time employees. The credit is not available if the employer has also taken out a small business interruption loan under the SBA's Section 7(a) program.

b. For each eligible employee, a maximum of \$10,000 in wages can be taken into account for the retention credits (i.e., a maximum of \$5,000 in retention credits per employee) for wages paid between March 12, 2020 and January 1, 2021. An employee's qualified wages includes qualified health plan expenses.

c. For employers with more than 100 full-time employees (determined as the average number of full-time employees during 2019), the only wages that are eligible for the credit are for wages paid to employees who cannot provide services due to the COVID-19 circumstances outlined in subparagraphs (ii)(a) or (ii)(b) of paragraph (d) below. However, for employers with fewer than 100 full-time employees, retention credits may be earned irrespective of the employee providing services, so long as the employer satisfies the requirements in subparagraphs (ii)(a) or (ii)(b) of paragraph (d) below. Tax-exempt organizations are eligible while federal, state, and local government employers are not eligible.

d. An eligible employer means any employer: (i) that was carrying on a trade or business during calendar year 2020, and (ii) with respect to any calendar quarter for which, (a) the operation of their trade or business was fully or partially suspended due to governmental order as a result of COVID-19, or (b) the calendar quarter is within the period beginning with (1) the calendar quarter after December 31, 2019 for which gross receipts for the calendar quarter are less than 50% of the gross receipts for the same calendar quarter of the prior year and the ending with (2) the calendar quarter following the first calendar quarter beginning after the calendar quarter described in (1) for which gross receipts of the employer are greater than 80% gross receipts for the same calendar quarter in the prior year.

e. If the retention credits exceed an employee's applicable taxes, then the credits will be considered tax overpayments and refunded to the employer under sections 6402(a) and 6413(b) of the Internal Revenue Code. Employers are prohibited from double-counting wages used to determine retention credits in the calculation of other credits, such as the Work Opportunity Tax Credit under Section 51 of the Internal Revenue Code or the Employer Credit for Paid Family and Medical Leave under Section 45S.

2. Delay of Payment of Employer Payroll Taxes. Section 2302 of the CARES Act allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that 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. The Social Security Trust Funds will be held harmless under this provision.

3. Modifications for Net Operating Losses. Section 2303 of the CARES Act relaxes the limitations on a company's use of losses. A net operating loss (NOL) of a corporate taxpayer arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, generally can be carried back five years preceding the taxable year of such loss. In addition, the effective date of the "80% NOL limitation" rule enacted in December 2017 is changed to be effective for tax years beginning after December 31, 2020, thereby making 100% of NOLs generally available for offset in 2018, 2019 and 2020.

4. Modification of Limitation on Losses for Taxpayers Other than Corporations. As part of the Tax Cuts and Jobs Act, Congress denied non-corporate taxpayers a deduction for “excess business losses.” Section 461(l) of the Internal Revenue Code defines an “excess business loss” as the excess of a taxpayer’s deductions from all trades or businesses over aggregate gross income from the taxpayer’s trades or businesses plus \$250,000 (or \$500,000 if a joint return is filed). For partnerships or S corporations, the loss limitation applies at the partner or shareholder level, and not at the entity level. Any excess business loss is treated as a net operating loss carryover to the following taxable year under Code Section 172. The excess business loss limitation rule applies for the taxable year of a non-corporate taxpayer beginning after December 31, 2017, and before January 1, 2026. Section 2304 of the CARES Act essentially eliminates the limitation on excess business losses for taxable years beginning in 2018, 2019, and 2020. This change delays the limitation of the use of excess business losses for three years from the effective date for the TCJA.

5. Modification of Credit for Prior Year Minimum Tax Liability of Corporations. The corporate AMT was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. Section 2305 of the CARES Act accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.

6. Modification of Limitation on Business Interest. Section 2306 of the CARES Act temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50 percent of the taxable income (with adjustments) for 2019 and 2020.

7. Technical Amendment Regarding Qualified Improvement Property. Section 2307 of the CARES Act enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. The provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies’ access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.

IV.

ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE ECONOMY

A. Foreclosure Moratorium and Consumer Right to Request Forbearance. Section 4022 of the CARES Act provides that owners of single-family homes that are backed by a federal mortgage loan may request forbearance of up to a year. For the purposes of this section, “single-family” means homes designed for one to four families, and a “federally backed mortgage loan” is a loan insured by a federal agency, such as the Federal Housing Administration (FHA) or the Department of Veterans Affairs. Any borrower experiencing direct or indirect financial hardship relating to the coronavirus is able to request 180 days forbearance, regardless of delinquency status. This period can be extended another 180 days at the request of the borrower. During this period of forbearance, no fees or interest will be applied to the borrower. In addition, servicers of federally backed mortgage loans cannot initiate foreclosure

proceedings or foreclosure-related evictions for at least 60 days beginning March 18, 2020. This restriction does not apply to vacant or abandoned properties.

B. Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans. Section 4023 of the CARES Act extends the forbearance options available to single-family borrowers to borrowers in multifamily properties, such as apartment buildings. For the duration of the forbearance, a multifamily borrower may not evict a tenant solely for nonpayment of rent or other charges, nor charge late fees or other penalties to those tenants. The multifamily forbearance period ceases upon the end of the national emergency or December 31, 2020, whichever occurs first.

C. Temporary Moratorium on Eviction Filings. Section 4023 of the CARES Act provides that for 120 days from the enactment of the Act (i.e., March 27, 2020), lessors of all properties backed by federal mortgage loans can neither evict tenants nor charge fees or penalties for the nonpayment of rent.