

## Major Impacts of the CARES Act on Firms and Employees

The Coronavirus Aid, Relief, and Economic Security (CARES) Act is the third federal legislation meant to address the COVID-19 crisis. It was passed by the Senate on March 25 and is expected to pass the House of Representatives Friday, March 27.

The CARES Act touches on many aspects of the healthcare industry and the overall economy. This memo focuses on the provisions most likely to impact the architecture profession. This is not legal advice; every firm should consult their own counsel for how these policies will impact them specifically. The policies included in the CARES Act build on the first two federal laws passed in response to COVID-19 on March 6 and March 18, 2020. Please see the previous memo from Tim Hawk, FAIA on March 22, 2020 for more detailed information on those bills.

There will likely be additional actions from Congress and the federal agencies to address the health crisis and the economy in the months ahead. A fourth legislative attempt may include infrastructure and other investments. AIA will send additional information as it becomes available.

### **Policies Impacting Firms:**

#### **Small Businesses and Sole- Proprietors (1-500 employees):**

- Paycheck Protection Program:
  - This bill authorizes \$349 billion to be spent from February 15, 2020 through December 31, 2020 to provide loans of up to \$10 million to small businesses.
  - All business types may be eligible, including nonprofits, sole proprietors, and other self-employed individuals, provided that they employ up to 500 people and meet other Small Business Administration eligibility requirements.
  - Specific allowable uses of the loan include payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments.
  - The amount of the loan spent within the 8 week period after receiving the loan may be converted to a grant (and therefore not repaid) if the recipient uses it for only those allowable uses, subject to certain salary requirements. This is to encourage businesses to retain their employees and use the funds as intended.
  
- Additional Funding for Development Centers:
  - \$240 million for Small Business Development Centers and Women's Development Centers to provide increased technical assistance to businesses.
  - \$10 million for Minority Business Development Centers for grants to support small businesses navigate their response to COVID-19.
  
- Emergency Economic Injury Disaster Loans (EIDL) Grants:

- Expands eligibility for access to Economic Injury Disaster Loans (EIDL) to include Tribal businesses, cooperatives, and ESOPs with fewer than 500 employees or any individual operating as a sole proprietor or an independent contractor during the covered period (January 31, 2020 to December 31, 2020). Private non-profits are also eligible for EIDLs.
  - During the covered period, allows SBA to approve and offer EIDL loans based solely on an applicant's credit score, or use an alternative appropriate alternative method for determining applicant's ability to repay.
  - There is an additional \$10 billion for grants to businesses that do not qualify for the EIDL loans.
- Unemployment Insurance:
    - Creates a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency.
    - Provides an "Emergency Increase in Unemployment Compensation Benefits" of an additional \$600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.
    - Provides funding to support "short-time compensation" 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 pay 100 percent of the costs they incur in providing this short-time compensation through December 31, 2020.

**Mid-Sized Businesses (500-10,000 employees):**

- Treasury Department will create a program to provide financing to banks/ lenders to make direct loans to eligible businesses (including nonprofits) with between 500 and 10,000 employees.
  - The loans will be issued with zero interest for at least the first 6 months with 2 percent interest per annum. The loan may not be forgiven later.
  - Eligible businesses must certify that the funds would be used to retain at least 90 percent of the workforce at full compensation and benefits until September 30, 2020. The business would also need to certify that it intends to restore 90 percent of the workforce that existed on February 1, 2020 with full compensation and benefits no later than 4 months after the end of the public health emergency is declared.

**All Businesses:**

- Employee Retention Credit
  - Provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis.

- The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19- related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year. The credit is based on qualified wages paid to the employee.
- For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above.
- For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.
- The credit is provided for the first \$10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.
- Delay Employer Payroll Taxes
  - 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.
  - 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.
- Modifications to Business Losses
  - Modifies the loss limitation applicable to pass-through businesses (S-corps) and sole proprietors, so they can utilize excess business losses and access critical cash flow to maintain operations and payroll for their employees.
  - There are some modifications to the use of losses for corporations, as well.
  - The corporate alternative minimum tax (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.
  - The provision 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 taxable income (with adjustments) for 2019 and 2020.
- Qualified Improvement Property (QIP)
  - 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.

- Temporary Relief from Troubled Debt Restructuring
  - At the discretion of the financial institution, any loan modifications due to the coronavirus pandemic does not have to be classified as “troubled debt restructuring,” even if they would be classified as such under normal circumstances. This could include forbearance or impairment. This means it would not negatively impact the credit of the borrower.
  - Eligible period is front March 1, 2020 through December 31, 2020 or 60 days after the national emergency is declared over, whichever is sooner.
  
- Amendments to the Families First Coronavirus Response Act (FFCRA):
  - An employer shall not be required to pay more than either \$511 per day and \$5,110 in the aggregate for each employee taking leave for either 1) quarantine or isolation COVID-19 order by federal, state or local officials, 2) advised by health care provider to self-quarantine due to COVID-19 or 3) experiencing symptoms of COVID-19 and seeking medical diagnosis.
  - An employer shall not be required to pay more than either \$200 per day and \$2,000 in the aggregate for each employee taking leave for either 1) caring for individual with COVID-19, 2) caring for a son or daughter if school or place of care has been closes or unavailable due to COVID-19 precautions, or 3) experiencing other substantial similar conditions specified by the Sec. of HHS in consultation with Secretaries of Treasury and Labor.
  
- Employer Payments of Student Loans:
  - Enables employers to provide a student loan repayment benefit to employees on a tax-free basis.
  - Under the provision, an employer may contribute up to \$5,250 annually toward an employee’s student loans, and such payment would be excluded from the employee’s income. The \$5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law.
  - The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

**Policies Impacting Members:**

- Direct Payments:
  - Individuals earning less than \$75,000 (\$150,000 for married couples) will receive a \$1,200 direct payment from the federal government. Families in that earning threshold will also receive \$500 for each child. Must have a Social Security Number to be eligible.

- The rebate amount is reduced by \$5 for each \$100 that a taxpayer's income exceeds the phase-out threshold. The amount is completely phased-out for single filers with incomes exceeding \$99,000, \$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children.
- Students or Recent Graduates:
  - Authorizes eligibility for institutions of higher education to make payments to affected work-study students for the period of time (not to exceed one academic year) they were unable to fill work-study obligations due to a qualifying emergency, such as COVID-19.
  - The Secretary to exclude loans or Pell Grants for any semester (or the equivalent) that students do not complete due to a qualifying emergency, such as COVID-19.
  - The Secretary shall suspend all student loan payments due under the Federal Family Education Loan Program or the William D. Ford Federal Direct Loan Program so that student loan payments can be deferred until Sept. 30, 2020.
- Housing Policies:
  - The bill establishes a foreclosure moratorium and consumer right to request forbearance for any federally-backed mortgage on a dwelling intended to house 1 to 4 families. This will last from the date the bill is enacted until end of the national emergency declaration or December 31, 2020, whichever is sooner. Forbearance lasts for 60 days and can be extended up to 4 times, 30 days each.
  - Multifamily property borrower with a federally-backed loan (who was current on payments as of February 1, 2020) may request forbearance, which must be granted for 30 days, with the option for two additional 30 day extensions, if those are requested. They cannot be evicted or charged late fees for that time. This will last until the end of the national emergency or December 31, 2020, whichever is sooner.
  - Temporary moratorium on eviction filings for 120 days for all dwellings currently occupied.
  - \$900M for the Low Income Housing Energy Assistance Program (LIHEAP).

**For Your Awareness:**

- \$500 billion Emergency Relief Fund:
  - This is intended to help air carriers and “a United States business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act” that has sustained direct or indirect losses significant enough to jeopardize business, as determined by the Secretary of the Treasury.
- \$150 billion Coronavirus Relief Fund:
  - This fund is intended to cover state/ local/ Tribal government expenses from March 1, 2020 through December 31, 2020.

- Out of the total, it sets aside \$8 billion for Tribal governments and \$3 billion (total) for Washington DC, Virgin Islands, American Samoa, Northern Mariana Islands, and Guam.
- All states will receive a direct payment of at least \$1.25 billion through this fund.
  
- Funding for Airports
  - \$10 billion to cover operating costs, COVID-19 response, and ongoing construction projects.
  
- Funding for Hospitals, Research and Healthcare Providers (some examples):
  - \$100 billion for a new program to provide direct aid to health care institutions on the front line - hospitals, public entities, nonprofits, Medicare and Medicaid enrolled suppliers and institutional providers - to cover costs related to the public health crisis.
  - \$16 billion to replenish the Strategic National Stockpile of medical supplies.
  - \$3.5 billion for the Biomedical Advanced Research and Development Authority to expand production of vaccines and diagnostics to combat the pandemic.
  - At least \$250 million to expand the Hospital Preparedness Program's support of emergency preparedness.
  - \$1 billion for the Defense Production Act to bolster domestic supply chains to enable the quick ramp-up of production of personal protective equipment.
  - \$4.3 billion to support federal, state and local public health agencies to prevent, prepare for and respond to the coronavirus.
  - \$200 million for CMS to assist nursing homes with infection control and support states' efforts to prevent the spread of the virus.