

# CARES Act Update

April 2020

## The CARES Act

On Friday, March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The bill provides for \$2.2 trillion in emergency aid to ease the financial impact of the COVID-19 crisis. Among other things, the bill provides \$500 billion to support loans, guarantees, and other investments to stricken industries, expands jobless benefits, and provides for direct payments to millions of Americans.

## Key Provisions of the CARES Act

An overview of the CARES Act is available [here](#). A summary of each of the provisions of the bill can be found [here](#).

### Economic Stabilization and Assistance to Severely Distressed Sectors

Title IV of the CARES Act sets forth \$500 billion of funding to support certain industries that have been severely impacted by COVID-19. Those industries are entitled to direct loans and loan guarantees from the U.S. Treasury Department (“U.S. Treasury”) amounting to \$46 billion. The remaining \$454 billion of funding is to be used by the U.S. Treasury for a combination of direct lending and guarantees and to support lending programs through bank or non-bank lenders. U.S. Treasury has significant discretion to determine the form and the terms and conditions including covenants, representations, warranties and other requirements. A matrix summarizing the availability of funding for different categories of business can be found at this [link](#).

### Paycheck Protection Program for Smaller and Specially Qualified Businesses

For smaller and specially qualified businesses, the CARES Act offers financial assistance via the new Paycheck Protection Program (“PPP”). The PPP is being implemented under the Small Business Act as part of its Section 7(a) loan program, the primary lending program of the Small Business Administration (“SBA”). The PPP provides loans (“PPP Loans”) of up to \$10 million to companies that meet certain size requirements based on number of employees. PPP Loans can be used for a variety of purposes, and may be forgivable to the extent used for certain payroll, mortgage, rent and utility payments.

A general overview of the PPP can be found [here](#).

FAQs on the PPP for food service and accommodation franchisees is available at this [link](#).

## SBA Implementation of the PPP

The SBA has [noted](#) that it expects to have the PPP “up and running” by April 3, 2020, and has issued the following guidance:

- [PPP Overview](#)
- [PPP Sample Application Form](#)
- [PPP Information Sheet for Borrowers](#)
- [PPP Information Sheet for Lenders](#)

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## Changes in the Tax Code and Related Provisions

The CARES Act, along with the Families First Coronavirus Response Act, effective on April 1, 2020, will have a significant impact on companies and their employees through [changes in the tax code and related provisions](#).

## Impact of the CARES Act on Specific Industries

### Impact on the Pharmaceutical and Medical Devices Industries

For the [pharmaceutical and medical device industries](#), the CARES Act focuses on ensuring the availability of lifesaving drugs in a public health crisis by addressing supply chain security and supply shortages of critical drugs and medical products, as well as by encouraging innovation through loosening restrictions on government collaboration with the private sector on research and development of pandemic, epidemic, and countermeasure products.

The CARES Act [incentivizes medical device manufacturers](#) to produce and distribute medical devices by providing additional liability protection, and by awarding funds to hospitals in medically underserved areas for use in the prevention, diagnosis and treatment of COVID-19, but also adds a responsibility to give notice of potential or actual supply shortages. Further, the CARES Act provides funding to the federal government to aid the development, manufacture, and production of medical supplies and countermeasures, vaccines, and small molecule active ingredients, as well as other preparedness and response activities.

### Impact on the Aviation Industry

The CARES Act will direct US\$500 billion in loans, loan guarantees and other investments to adversely impacted aviation industry and will make available an additional US\$32 billion in payroll support to aviation workers. In exchange for receiving financial assistance, aviation businesses must agree to accept certain restrictions on their activities, such as no distribution of dividends, limits on stock buybacks, and no employee furloughs, layoffs or pay reductions. Further information can be found [here](#).

The U.S. Treasury has issued the following procedures and guidelines for the Aviation industry:

- [Procedures and Minimum Requirements](#) for loans to air carriers and eligible businesses and national security businesses under Division A, Title IV, Subtitle A of the CARES Act.
- [Guidelines and Application Procedures](#) for payroll support to air carriers and contractors under Division A, Title IV, Subtitle B of the CARES Act.

### CARES Act: Mid-sized Business Lending Program

Responses to the questions that non-US companies may have about their eligibility for aid under the CARES Act can be found [here](#).

### Questions of interest to Non-US Companies Under the CARES Act

We provide [here a more in-depth discussion](#) of the Act's provision for the lending program for mid-sized businesses and non-profits under Section 4003(c)(3)(D). It contains an annex that describes some of the specific requirements that may need to be satisfied when one applies for relief under the program.

### Impact on International Trade

The CARES Act [does not expressly alter U.S. trade policy](#). However, certain provisions of the Act may presage future trade actions by the United States intended to mitigate perceived vulnerabilities in the supply chain for pharmaceuticals, medical devices and similar goods. Moreover, the law's provision of government financial assistance to certain U.S. industries could lead to new trade disputes.

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## Agencies' Response

### Financial Services Regulatory Agencies

Several provisions of the CARES Act are of particular interest to financial institutions and other financial services providers (e.g., expanding which lenders may participate in certain loan programs). Discussion of these provisions can be found [here](#).

Additional information regarding [liquidity facilities](#) and [investment programs](#) authorized by the CARES Act is also available. Other related actions taken by the federal bank regulatory agencies can be found [here](#).

### Competition Agencies

[Several competition agencies in the U.S. and around the world](#) have announced new policies to provide for expedited review of proposed collaborations or a relaxing of regulations to permit collaborations. However, competition agencies also will be on alert for anticompetitive behavior during this crisis. [The CARES Act does nothing to ease the scrutiny](#) that firms might be subject to if they align too closely. Companies should continue to follow antitrust guidelines and sensitivities when collaborating with competitors in response to COVID-19.

### Enforcement agencies

The US Securities and Exchange Commission ("SEC") and the US Department of Justice ("DOJ") have already given notice that they will be actively investigating and prosecuting COVID-19-related frauds. In this environment, companies will need to pay special attention to maintaining strong corporate controls and procedures. A [review](#) of the fraud prosecutions in the immediate aftermath of the 2008 financial crisis provides some insights into how companies can mitigate the risk of fraud and fraud-related enforcement proceedings.

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