



March 31, 2020

MEMORANDUM FOR NAMI MEMBERS, BOARD OF DIRECTORS, GENERAL MEMBER REPRESENTATIVES, SCIENTIFIC AFFAIRS COMMITTEE, LABOR AND EMPLOYMENT COMMITTEE, WORKER SAFETY COMMITTEE, INTERNATIONAL AFFAIRS COMMITTEE, AND FOOD SAFETY AND INSPECTION AFFAIRS COMMITTEE

FROM: MARK DOPP, SENIOR VICE PRESIDENT AND GENERAL COUNSEL AND NATHAN FRETZ, VICE PRESIDENT LEGISLATIVE AFFAIRS

SUBJECT: CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the Families First Coronavirus Response Act (FFCRA) are historic pieces of legislation enacted during historic times. The CARES Act provides unprecedented economic support to millions of Americans and small businesses and the FFCRA provides unprecedented paid leave for millions of Americans dealing with the coronavirus and is effective April 1.

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

The CARES Act covers an array of topics that will affect many businesses. For example, there is an employee retention tax credit for employers subject to closure or suffering reduced sales due to COVID-19 (Section 2301 of the law). Employers also may defer payment of the employer share of Social Security taxes they owe the federal government relating to wages paid from enactment through the end of 2020. The CARES Act allows the deferral to extend for two years, with half the deferred tax paid by December 31, 2021, and the other half by December 31, 2022.

The CARES Act also expands unemployment compensation benefits, increasing benefits and who is eligible to receive them. Until December 31, 2020, people not typically qualifying for benefits (self-employed, people looking for part-time work, and those without a sufficient work history) are eligible for unemployment compensation benefits. Moreover, qualified persons not able to seek work due to COVID-19-related issues are eligible. Those issues include people with an official diagnosis or COVID-19 symptoms, but also people who cannot get to work because of 1) a quarantine, 2) the employee's child's school or day care is closed, 3)

the person cannot start employment because of COVID-19 closures, and other, similar reasons. The CARES Act also:

- increases benefits by \$600 per week through July 31, 2020, which is in addition to the amount the person receives under existing state laws;
- expands the time one is eligible for benefits from 26 weeks to 39 weeks;
- eliminates the one-week waiting period to allow claimants to get benefits immediately; and
- provides federal government funding for the benefits.

The CARES Act also has tax changes favorable to businesses and are intended to provide flexibility to companies during this crisis. Those changes include: increasing the limit on charitable deductions for corporations from 10 percent to 25 percent of taxable income; increasing the limit on deductions for contributions of food inventory from 15 percent to 25 percent; among others.

The CARES Act also amended slightly the paid leave benefits created in the FFCRA, which is effective April 1, 2020. The FFCRA requires some public employers and private employers with less than 500 employees to provide Family Medical Leave Act leave for employees with absences caused by the COVID-19 crisis. Those reasons include complying with orders from a health care provider, caring for a family member who is ill, and caring for a child whose school was closed. FFCRA requires covered employers to provide 80 hours of paid sick leave to full-time employees (and the average number of hours worked by part-time employees over a two-week period). FFCRA further requires covered employers to provide FMLA leave to be unpaid for the first 14 days and then paid by an employer at 2/3 of the employee's regular rate of pay thereafter. For paid sick leave, FFCRA required an employer to pay the full rate of pay for employees, with some caps.

CARES and FFCRA

The FFCRA expanded paid sick leave and family and medical leave. The CARES Act, however, limits FFCRA paid leave requirements. Employers providing expanded FMLA leave for the COVID-19 reasons in FFCRA may cap pay at no more than \$200/day or \$10,000 in the aggregate. Employers providing the paid sick leave required by FFCRA may cap pay at no more than \$511/day, or \$5,110 in the aggregate, for people taking leave to self-isolate because of a diagnosis, obtaining a medical diagnosis, or complying with an order because being at work would jeopardize the health of others due to exposure to coronavirus or exhibiting coronavirus symptoms. Employees seeking paid sick leave to care for or assist others or to care for a child whose school was closed, the limit is \$200/day and \$2,000 in the aggregate. Employers can retain money that would have been deposited for payroll taxes in anticipation of refunds for the paid sick leave and paid FMLA leave benefits provided to employees under FFCRA. To qualify for the

advance credit companies must comply with forms and instructions issued by the Treasury Secretary.

A fact sheet prepared by the Department of Labor's Wage and Hour Division explaining and employer's obligations under FFCRA can be found [here](#). And a frequently asked questions and answers document can be found [here](#). Finally, the poster employers must post or distribute to employees can be found [here](#).

Assistance for Distressed Industries

The CARES Act provides \$500 billion to the Treasury's Exchange Stabilization Fund to provide loans, loan guarantees, and other investments to businesses in industries affected by COVID-19. Of that amount, \$46 billion is earmarked for the passenger airline and air cargo industries, and industries critical to national security. The remaining \$454 billion will be made to other affected businesses.

Loans will be provided under the Federal Reserve's 13(3) crisis lending program. Businesses with more than 500 but less than 10,000 employees are eligible. To be eligible, an entity must have had a covered loss, which is broadly defined as losses incurred directly or indirectly because of COVID-19. Direct lending must meet these criteria:

- Alternative financing is not reasonably available;
- The loan is sufficiently secured or made at an interest rate that reflects the loan's risk and, if possible, not less than an interest rate based on market conditions for comparable obligations before the coronavirus outbreak;
- The loan's duration shall be as short as possible and not exceed five years;
- Borrowers and their affiliates cannot engage in stock buybacks, unless contractually obligated, or pay dividends until the loan is no longer outstanding or one year after the date of the loan;
- Borrowers must, until September 30, 2020, maintain employment levels as of March 24, 2020 and retain no less than 90 percent of employees as of that date;
- A borrower must certify it is a U.S.-domiciled business and its employees are predominantly in the U.S.;
- The loan cannot be forgiven; and
- For borrowers critical to national security, their operations are jeopardized by losses related to the coronavirus pandemic.

For comprehensive summaries addressing all aspects of the law see links to the following law firms' websites, [Cozen O'Connor](#), [Akerman](#), and [Hogan Lovells](#).

Small Business Information and Products

The CARES Act expands loan programs available through the Small Business Administration (SBA) to immediately assist small businesses (generally 500 or few employees) due to COVID-19's impact. Many SBA loan programs have increased maximum loan amounts, broader eligibility requirements, deferred payments and borrowers may be eligible for loan forgiveness.

Below is a description of loan options and, when available, links to the SBA website for additional information or loan applications are included. SBA's main webpage for small business guidance and loans can be accessed [here](#). SBA will update its website with the new loan tools.

Paycheck Protection Program

The CARES Act establishes a new Paycheck Protection Program (PPP) under SBA's Section 7(a) loan program. PPP creates federally backed loans available in an amount 2.5 times the monthly average payroll cost to a qualifying company for the one-year before the loan. The loan may not exceed \$10 million and it may be used for payroll support, including salaries and paid sick or medical leave, mortgage, rent, and utility payments. PPP requires eligible borrowers to make a good faith certification: the loan is necessary because of the uncertainty created by economic conditions caused by COVID-19; the funds will be used to retain workers and maintain payroll, lease, and utility payments; and the borrower is not receiving duplicative funds for the same uses from another SBA program. Businesses are eligible to receive a loan if they employ not more than the greater of 500 employees or the maximum number of employees established by SBA for the industry in which the borrower operates. These limits may exceed 500 employees and be as high as 1,500 employees. For more detailed information about the PPP, see the attached [document](#) prepared by the U.S. Chamber of Commerce.

Express Loan Program

The SBA Express Loan program allows for payment of working capital costs not otherwise tied to COVID-19, including real estate purchases, business expansion or refinancing business debt and the maximum amount of the Express Loan was increased from \$350,000 to \$1 million through the end of 2020.

Economic Injury Disaster Loan Program

The Economic Injury Disaster Loan (EIDL) program is still available for potentially affected small businesses. [Click here to apply](#). The primary changes to the EIDL program by the CARES Act are waivers of the requirement that the applicant could not access credit elsewhere, personal guarantees for loans under

\$200,000, and that the requirement that the business was in operation for one year. More information on the SBA's Economic Injury Disaster Loan program can be found at [SBA.gov/Disaster](https://www.sba.gov/disaster).

Additional Small Business Resources

SBA's Small Business Development Center can be found [here](#). In addition, SBA's Lender Match Tool (online tool connecting small businesses with SBA-approved lenders) can be found [here](#).

* * * * *

We will update this memorandum as needed. Please contact Mark Dopp at mdopp@meatinstitute.org or Nathan Fretz at nfretz@meatinstitute.org with questions.