On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act, intended to stimulate the national economy in the wake of the COVID-19 pandemic. The bill provides direct financial assistance to Americans, eases access to loans and other economic assistance to businesses of all sizes and provides aid and support to healthcare providers. The CARES Act does modify the Families First Coronavirus Response Act (FFCRA) in several key ways. Below is a summary of the significant provisions in the CARES Act. Consider:

Paid Leave Provisions in the Families First Coronavirus Response Act

The CARES Act makes a few changes to the paid leave provisions in the Families First Coronavirus Response Act (FFCRA), enacted on March 18, 2020 to include:

Tax Credit Advances to Cover FFCRA Leave Codified

- Under FFCRA, private employers are eligible to receive dollar-for-dollar reimbursement through tax credits for all qualifying wages paid under FFCRA, up to the applicable per diem and aggregate payment caps (i.e., on payroll tax remittances). No such credit is available to public governmental employers.

- The CARES Act goes further and codifies the IRS' March 20, 2020, guidance, noting that employers can also receive potential tax credit *advances* from the U.S. Treasury for both emergency paid sick leave and emergency FMLA leave.

- Any tax credit advances are capped at the same amount as provided in FFCRA with respect to tax credits, as originally enacted.

    - For paid emergency FMLA leave, the amount of the credit is equal to 100 percent of the "qualified family leave wages" that the employer is required to pay for the applicable quarter. This dollar-for-dollar credit is capped at $200 per employee per day, up to a maximum aggregate amount for all calendar quarters of $10,000 per employee.

    - For paid emergency sick leave, the amount of tax credit is capped at $511 per employee per day if the employee takes leave for reasons of quarantine, self-quarantine, or symptoms/diagnosis and at $200 per employee per day if the employee takes leave to care for a quarantined individual, for qualifying child care reasons, or to care for an employee's own substantially similar condition. FFCRA also provides tax credits for self-employed individuals who would be entitled to receive emergency paid sick leave if they had been employed by a third-party employer.

- The CARES Act further states that the U.S. Secretary of the Treasury will provide appropriate forms and instructions for calculation of advances.

Certain Rehired Employees Eligible for Paid FMLA Leave

- Under FFCRA, emergency paid FMLA leave is generally available to full-time and part-time employees who have been employed with a covered employer for 30 calendar days or more.

- The CARES Act modifies FFCRA's FMLA employee coverage rule to provide that employees who were "laid off" by an employer on or after March 1, 2020, may potentially qualify for emergency paid FMLA leave if they are later rehired by the same employer. Layoff, however, is an undefined term.

- To be eligible for this exception, a re-hired employee must have worked for the employer for at least 30 of the last 60 calendar days prior to layoff.

Clarification Regarding Emergency Paid Leave Caps

- The CARES Act clarifies that individual and aggregate pay, tax credit, and tax credit advance caps for emergency paid sick leave and emergency FMLA leave under FFCRA apply "for each employee."

- The original text of FFCRA was ambiguous as to whether this limit applied on a per employee basis, or on a cumulative basis for all employees. This clarification is consistent with our and most other analysts' original interpretation.

Unemployment Insurance

- Unemployment insurance (UI) is a joint state-federal program that provides cash benefits to eligible workers. Each state administers its own UI program, including its own eligibility criteria and benefit amounts, while following federal guidelines. In this regard, states will have to enter into specific agreements with the U.S. Department of Labor in order to take advantage of many of the increased benefits provided by the CARES Act. These benefits include:

    - A temporary Pandemic Unemployment Assistance (PUA) program through December 31, 2020, to provide payment to workers who are not traditionally eligible for UI, such as the self-employed or independent contractors (including socalled gig economy workers), who are unable to work as a direct result of the coronavirus public health emergency.

- An *additional* emergency increase of $600 per week payment—termed by the legislation as "Federal Pandemic Unemployment Compensation"—to each recipient of UI or PUA for up to 4 months.

- Funding to pay the cost of the first week of UI through December 31, 2020, for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.

- An additional 13 weeks of unemployment benefits through December 31, 2020.

- 100 percent funding of "short-time compensation" programs through December 31, 2020, where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a prorated unemployment benefit.

- Grants and start-up costs for states to develop short time compensation programs.

CARES Act Financial Assistance

Small Business Administration (SBA) "Paycheck Protection Program"

- This $349 billion lending program is intended to help keep small businesses running and to keep their workers employed. It is modeled after the existing SBA 7(a) program but the loans here are 100 percent guaranteed, as opposed to 75 percent. Details include:

- *Eligibility*. The program generally covers:
  - small businesses and nonprofits with fewer than 500 employees;
  - hospitality businesses with fewer than 500 employees at each location;
  - sole-proprietors, independent contractors, and self-employed individuals.

- *Loan Forgiveness*. This program provides loan forgiveness equal to the amount spent on payroll (capped at $100,000 in wages), rent, mortgage interest, and utilities for eight weeks beginning on the origination date of the loan. The loan forgiveness provisions will be reduced in proportion to any reduction in employees and to a reduction in employees' pay of greater than 25 percent.
- *Timing*:
  - The provisions are retroactive to February 15, 2020, and cover loans from that date to June 30, 2020. The retroactivity provision is intended to encourage rehiring.
  - The SBA will be required to issue implementing regulations within 15 days of the law's enactment.

Economic Stabilization for Distressed Industries

This part of the act provides for $500 billion in lending as follows:

1. $25 billion for passenger airlines;
2. $4 billion for cargo airlines;
3. $17 billion for businesses critical to "maintaining national security;" and
4. $454 billion for loans, loan guarantees, and investments in support of facilities established by the federal government under section 13(3) of the Federal Reserve Act authority for the purpose of providing liquidity to businesses, states, or municipalities

This assistance is available to businesses that otherwise do not receive relief under the act. Borrowers that accept direct lending (those in categories 1, 2, and 3 above):

- may not buy back stock or issue dividends while the loan is outstanding,
- must maintain employment levels as of March 24, 2020 (to the extent practicable), and
- must adhere to limitations placed on executive compensation increases.

Other borrowers are generally prohibited from buying back stock and issuing dividends while this loan is outstanding plus an additional year.

This program also authorizes the secretary of the U.S. Department of Treasury to establish a" Main Street Lending Program."

Union Neutrality Requirements Attached to Loans

- As part of the Federal Reserve lending provisions, the bill states that the Department of Treasury's secretary "shall endeavor to seek the implementation of a program or facility" to make loans to employers with 500 to 10,000 employees. One of the requirements of borrowing through such a potential program is that the borrower makes a good-faith certification that it "will remain neutral in any union organizing effort for the term of the loan."
- It is important to note that this requirement applies to just one type of loan program that may not even be created. Even if such a loan facility is created by the Treasury Secretary, employers are not required to use this facility and may borrow elsewhere.

Employer Tax Benefits

- ***Retention Credit***. In certain circumstances, the CARES Act provides a payroll tax credit for 50 percent of wages paid by employers to employees, up to $10,000 per employee.

- ***Payroll Tax Delay***. Employers are permitted to defer the payment of their share of the Social Security tax—half of the share owed by December 31, 2021, and the other half by December 31, 2022.

Retirement / Pensions

- The act's retirement-related provisions allow single-employer pension plan companies to delay the due date for any contribution otherwise due during 2020 until January 1, 2021.
- The provisions waive the required minimum distribution rules for certain defined contribution plans and individual retirement accounts (IRAs) for 2020.
- According to the act, there is no withdrawal penalty for distributions of up to $100,000 from qualified retirement accounts for COVID-19-related purposes.

Individual Rebates

- All U.S. residents with adjusted gross incomes of up to $75,000 ($150,000 for married couples), who are not a dependent of another taxpayer are eligible for the full $1,200 ($2,400 for married couples) rebate. In addition, they are eligible for an additional $500 per child.

SESCO Management Consultants will continue to monitor and report on developments with respect to the COVID-19 pandemic and will post updates in the firm's **COVID-19 Resource Center** as additional information becomes available.

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