

March 20, 2020

SENATE MAJORITY LEADER INTRODUCES EMERGENCY STIMULUS BILL

To Our Clients and Friends:

In the wake of the coronavirus crisis (COVID-19), Congress continues to work on legislation to deliver critical aid to U.S. businesses and the American public. Yesterday, Senate Majority Leader Mitch McConnell (R-KY) released legislation responding to the economic impact of the coronavirus. The *Coronavirus Aid, Relief, and Economic Security Act* (“*CARES Act*”) is a \$1 trillion stimulus package providing aid for individuals, small businesses, and businesses operating in impacted industries, such as the hotel industry, as well as providing increased resources for the health care industry.

This is a Republican-only bill; it has not been supported to date by any Democrats. We understand, however, that Republican and Democratic leadership are negotiating over a stimulus package, which is likely to include at least some provisions from the CARES Act.

I. Key Provisions in the *CARES Act*

The key provisions of the bill as drafted are summarized below:

A. Individuals: Direct Rebates and Other Relief

The legislation provides direct aid in the form of a refundable tax credit rebate of up to \$1,200 for individuals, \$2,400 for married couples, with an extra \$500 for every child, for individuals and households that earn \$99,000 or less and \$198,000 or less, respectively. The legislation is structured such that individuals and married couples that earn greater than \$75,000 and \$150,000, respectively, are eligible for a lesser amount—reduced by \$5 for each additional \$100—up until the cut-off earnings.

For most individuals, moves the filing deadline for income taxes from April to July 15, 2020 and defers estimated tax payments until October 15, 2020.

The bill would also relax the 10% penalty for draws upon retirement savings by individuals affected by the virus up to \$100,000.

Further, the legislation guarantees loan forgiveness for federal student loans for a period of up to three months.

B. Businesses: Loan Guarantees and Other Relief

The legislation provides loan guarantees to businesses eligible on either the basis of size or the basis of industry.

1. Loan Guarantees for Approved Small-Business Applicants

The legislation provides a loan guarantee of \$300 billion for approved small businesses. A business that employs 500 employees or less—for whom the business paid salaries and payroll taxes—from March 1, 2020 through December 31, 2020, is eligible to receive a fee-free loan of up to \$10 million. For non-seasonal employers, the loan would be tied to the business's average total monthly payroll, mortgage, rent, and any other debt obligations incurred during the previous year before the date on which the loan is made. For seasonal employers, the loan would be tied to such debt obligations incurred from March 1 through June 30, 2019. We understand that at least the eligibility provisions are likely to change as a bipartisan package is negotiated.

2. Loan Guarantees for Industry-Specific Businesses

The legislation provides loan guarantees for air carriers—\$50 billion for passenger air carriers and \$8 billion for cargo air carriers. The bill provides \$300 billion in federally guaranteed loans for small businesses and \$150 billion for other large businesses in industries that have been hardest hit by the coronavirus if the bill does not provide them loans or loan guarantees. The bill has limits on when companies can receive relief. For example, the bill makes clear that large business loans are contingent on certain officers and employees receiving less than a specified compensation amount and the bill bans severance pay over a specified amount for a two-year period beginning March 1, 2020. Additionally, the federal government is authorized to take an equity stake in the business of a loan recipient (to the extent the loan recipient incurs a gain).

3. Relaxation of Tax Treatment of Losses

The legislation amends the treatment of net operating losses under the tax code by temporarily relaxing applicable limitations on the use of 2018 and later losses and allowing businesses to carry back net operating losses incurred in 2018 and 2019 up to five years. Further, the proposed legislation allows businesses to avoid estimated tax payments until October 15, 2020 and to defer certain 2020 payroll tax payments, in some circumstances. Further, the bill would suspend certain aviation kerosene excise taxes for the remainder of 2020.

The bill provides for other tax relief as well, such as relaxation of certain interest deductibility limits; we will be issuing a more detailed client alert on the tax provisions as the bill undergoes amendments.

C. Health Care Industry: Funding and Other Resources

In an effort to ensure that sufficient medical resources are available, the legislation requires certain federal agencies to assess and evaluate the medical product supply chain; mandates drug and medical device manufacturers to increase certain reporting on supplies; and prioritizes the federal government

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review of drug applications. Furthermore, the legislation requires insurers to cover “preventive services” for coronavirus and authorizes funding up to \$1.32 billion for the prevention, diagnosis and treatment of coronavirus.

II. Next Steps For CARES Act

As for next steps, negotiations between Senator Majority Leader Mitch McConnell (R-KY) and Senate Minority Leader Chuck Schumer (D-NY) are expected to continue over the weekend. The legislation requires 60 votes to pass the Senate, meaning that at least 7 Democratic Senators need to vote in favor of the legislation for it to pass. The Senate is expected to vote on the stimulus package expeditiously – possibly early next week.

The bill faces a number of challenges. Senate Democrats have complained that they were not brought into the negotiations until after the bill was introduced. Senate Democrats have outlined their own \$750 billion emergency plan. And House Democrats have signaled they want a broader stimulus package than the Senate Republican package. These challenges mean changes to the CARES Act almost certainly will be made. But Senator McConnell’s bill—which has the support of the Senate Republican Caucus—sets the stage for negotiations between House and Senate and Democrats and Republicans to kick into high gear over the size and direction of the legislation, which is the third bill Congress has considered this month aimed at coronavirus relief.

III. Opportunities to Shape Assistance

Gibson Dunn’s COVID 19 Task Force and its Public Policy Practice Group stands ready to assist companies promote and protect their interests before Congress or the Executive Branch during the coronavirus crisis. We can help clients receive timely, in-depth information on potential government action that may affect their business. Our services include:

- Advocacy before the legislative and executive branches of government’
- Assistance with general legislative, committee, and floor strategy;
- Analysis and drafting of legislation, including legislative amendments;
- Advocacy with agencies and branches (like the IRS) to craft regulatory or administrative relief;
- Establishment and running of coalitions to amplify advocacy efforts;
- Preparation prior to congressional testimony;
- Representation in congressional and Executive Branch investigations;
- Assistance in securing appropriations and other government benefits;
- Assistance with products and capabilities marketing to federal government agencies; and

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- Ongoing regulatory counsel.



*Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 outbreak. For additional information, please contact any member of the firm's **Coronavirus (COVID-19) Response Team**.*

*Gibson Dunn lawyers regularly counsel clients on issues raised by this pandemic, and we are working with many of our clients on their response to COVID-19. Please also feel free to contact the Gibson Dunn lawyers with whom you usually work in the firm's **Public Policy Group** or **Tax Group**, or the authors:*

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** Not admitted to practice in Washington, D.C.; currently practicing under the supervision of Gibson, Dunn & Crutcher LLP.*

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