

Rescission of Unused CARES Act Funds and Termination of Temporary Emergency Lending Facilities

The CARES Act authorized the Treasury and the Federal Reserve to use up to \$500 billion for establishing emergency lending facilities under section 13(3) of the Federal Reserve Act for restoring liquidity to frozen credit markets with the extension of credit to fundamentally creditworthy businesses, states, and municipalities. Despite liquidity being restored in the spring, as a result of these facilities, and the funding and authority for these facilities expiring at the end of 2020, progressives were aiming to use them as a slush fund to advance their political and social policy agenda, including bailing out fiscally irresponsible states and cities and lending money to their politically-favored organizations, such as green energy corporations.

Consistent with the text of the CARES Act and Republican efforts to keep the Federal Reserve free from such political interference, this legislation rescinds and repurposes more than \$429 billion in unused CARE Act funds; definitively ends these lending facilities by December 31, 2020; and stops these facilities from being restarted or replicated without congressional approval. This legislation is a complete win for taxpayers and Republicans. The Republican goals were to prevent a future administration from misusing these facilities while not interfering with the Federal Reserve's ability to respond in a crisis. Republicans have achieved those goals.

The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act

This **\$325 billion** title would provide additional assistance to the hardest-hit small businesses, nonprofits, and venues that are struggling to recover from the impact of the COVID-19 pandemic. The title would provide funding for a second round of forgivable loans through the Paycheck Protection Program for small businesses and nonprofits experiencing significant revenue losses, make programmatic improvements to PPP, fund grants to shuttered venues, and enact emergency enhancements to other SBA lending programs. This critical assistance will provide small business owners with the capital they need to survive the pandemic and includes critical resources for the smallest businesses.

Paycheck Protection Program Second Draw Loans:

- Creates a second round of PPP loans for eligible businesses.
- Defines eligibility for the PPP second draw as small businesses that have no more than 300 employees and demonstrate at least a 25 percent reduction in gross revenues between comparable quarters in 2019 and 2020.
- Establishes a maximum loan size of 2.5X average monthly payroll costs, up to \$2 million.
 - Allows small businesses assigned to the industry NAICS code 72 (Accommodation and Food Services) to receive PPP second draw loans equal to 3.5X average monthly payroll costs in order to help these businesses combat onerous State and local restrictions.
 - Maintains existing expansions in eligibility for businesses assigned to the industry NAICS code 72 (Accommodation and Food Services).
- Borrowers receive full loan forgiveness if they spend at least 60 percent of their PPP second draw loan on payroll costs over a time period of their choosing between 8 weeks and 24 weeks.
- Affirms the eligibility of churches and religious organizations and prohibits a future administration from making them ineligible.
 - Preserves the application of affiliation rules to nonprofits, which makes Planned Parenthood ineligible.
- Includes set-asides to support first-time PPP borrowers with 10 or fewer employees, second-time PPP borrowers with 10 or fewer employees, first-time PPP borrowers who have been made newly eligible, and second-time returning PPP borrowers. Additionally, provides for a set-aside for loans made by community lenders.

Paycheck Protection Program Improvements:

- Expands PPP allowable and forgivable expenses to include supplier costs on existing contracts and purchase orders, including the cost for perishable goods at any time, costs relating to worker protective equipment and adaptive costs, and technology operations expenditures.
- Provides needed assurances to PPP lenders that no enforcement action could be taken against a lender who originated the loan in good faith, complied with all regulations, and relied in good faith on a borrower's certification and documentation.
- Enhances borrower flexibility by allowing borrowers to select their loan forgiveness covered period between 8 weeks and 24 weeks.
- Simplifies the forgiveness application process for smaller loans up to \$150,000 while increasing SBA's ability to audit and review forgiven loans.
- Allows PPP borrowers to include additional group insurance payments when calculating their PPP payroll costs. This would cover insurance plans such as vision, dental, disability and life insurance.
- Allows borrowers who returned all or part of their PPP loan to reapply for the maximum amount applicable. It also allows lenders to recalculate borrower's loan amounts due to changes in regulations regardless of whether SBA Form 1502 has been submitted.
- Establishes the loan amount calculation for farmers and ranchers to better align with recent years' income.
- Provides Farm Credit System Institutions with greater certainty and equity in PPP lending participation.
- Defines "seasonal employer."
- Expands PPP eligibility for certain 501(c)(6) nonprofits and Destination Marketing Organizations with 300 or fewer employees that do not receive more than 15 percent of their revenue from lobbying.
- Expands PPP eligibility to local newspapers and T.V., and radio stations previously made ineligible by their affiliation with other stations.

The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act

- Establishes a procedure in the bankruptcy process if the Administrator determines certain small business debtors in Chapter 11 are eligible for PPP loans.
- Eliminates the requirement that EIDL advances be subtracted from PPP forgiveness.

Emergency Enhancements to SBA's Lending Programs

- Temporarily enhances the terms of the 7(a) loan program by increasing the loan guarantee to 90 percent and offering reduced or no fees for the borrower and the lender. Additionally, it would temporarily increase the 7(a) express loan limit and loan guarantee to provide access to needed working capital.
- Temporarily eliminates fees for the 504 loan program and favorable terms for refinancing loans.
- Increases the aggregate loan limit for microloan intermediaries in order to ensure intermediaries have increased capacity to make loans to underserved and underbanked borrowers.
- Extends the Small Business Debt Relief program, Section 1112 of the CARES Act, which would defer payments of principal and interest on new and existing SBA 7(a), 504, and Microloan programs for eligible entities.

Increased Transparency and Accountability in SBA Programs:

- Mitigates fraud by requiring new measures for the SBA to verify eligibility for EIDL Advance grants.
- Appropriates \$20 million to the SBA Inspector General to prevent fraud, waste, and abuse in the Targeted EIDL Advance grant program.
- Increases transparency of SBA's PPP forgiveness audit and review process by requiring the SBA to submit a detailed forgiveness audit plan to Congress within 30 days of enactment. Appropriates \$50 million to support SBA's PPP audit authority.
- Requires the SBA Administrator and the Secretary of the Treasury to testify within 120 days of enactment and twice a year for two years to the Senate and House Small Business Committees.
- Requires the SBA to comply with GAO requests within 15 days unless the Administrator provides the Senate and House Small Business Committees with a detailed justification for the inability of the Administrator to comply.
- Codifies the list of ineligible businesses for PPP, which includes: publicly-traded businesses; entities listed in 13 C.F.R. 120.110 except for entities from that regulation which have otherwise been made eligible by statute or guidance; entities affiliated with entities in the People's Republic of China; registrants under the Foreign Agents Registration Act; and entities that are receiving a grant under the live venues grant program.
- Prohibits PPP loan proceeds to be used for lobbying activities.
- Requires the President, Vice President, the head of an Executive department, or a Member of Congress as well as their spouse to disclose this status when receiving forgiveness on a Paycheck Protection Program initial loan. Prohibits these individuals from obtaining a future PPP loan.

Support for Venues:

- Establishes a \$15 billion grant program to support **shuttered live venues, theaters, museums, and zoos** that have experienced significant revenue losses.
- Provides enhanced verification and requires increased transparency of SBA's oversight plans to ensure funds are directly benefiting eligible entities.

Increased Appropriations: \$325 billion

- \$284.45 billion for Paycheck Protection Program Second Draw Loans.
 - \$25 million for Minority Business Development Centers under the Minority Business Development Agency (MBDA) to assist minority business enterprises with technical assistance, such as applying for PPP.
 - \$50 million to SBA for PPP auditing and fraud mitigation purposes.
- \$15 billion for grants for shuttered live venues, theaters, museums, and zoos.
- \$20 billion for the EIDL Advance program, of which \$20 million is for the SBA Inspector General.
- \$3.5 billion for continuing the Section 7(a) Debt Relief program.
- \$2 billion to carry out SBA lending enhancements.

The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act

- Of this amount, \$57 million for the Microloan program for technical assistance and direct lending to underserved borrowers.

Rescission of Unobligated Funds: \$146 billion

- Rescinds \$137.5 billion in unobligated funds from PPP.
- Rescinds \$9 billion in unobligated funds from Section 1112 of the CARES Act.

DIVISION ___ — COVID- RELATED TAX RELIEF ACT OF 2020

Sec. 2 & 3. Additional 2020 recovery rebates for individuals. The provision provides a refundable tax credit in the amount of \$600 per eligible family member. The credit is \$600 per taxpayer (\$1,200 for married filing jointly), in addition to \$600 per qualifying child. The credit phases out starting at \$75,000 of modified adjusted gross income (\$112,500 for heads of household and \$150,000 for married filing jointly) at a rate of \$5 per \$100 of additional income.

The provision also provides for Treasury to issue advance payments based on the information on 2019 tax returns. Eligible taxpayers treated as providing returns through the nonfiler portal in the first round of Economic Impact Payments, provided under the CARES Act, will also receive payments. Treasury may issue advance payments for Social Security Old-Age, Survivors, and Disability Insurance beneficiaries, Supplemental Security Income recipients, Railroad Retirement Board beneficiaries, and Veterans Administration beneficiaries who did not file 2019 returns based on information provided by the Social Security Administration, the Railroad Retirement Board, and the Veterans Administration.

In general, taxpayers without an eligible social security number are not eligible for the payment. However, married taxpayers filing jointly where one spouse has a Social Security Number and one spouse does not are eligible for a payment of \$600, in addition to \$600 per child with a Social Security Number.

The provision aligns the eligibility criteria for the new round of Economic Impact Payments and the credit for the Economic Impact Payments provided by the CARES Act. Taxpayers receiving an advance payment that exceeds the amount of their eligible credit will not be required to repay any amount of the payment. If the amount of the credit determined on the taxpayer's 2020 tax return exceeds the amount of the advance payment, taxpayers will receive the difference as a refundable tax credit.

Advance payments are generally not subject to administrative offset for past due federal or state debts. In addition, the payments are protected from bank garnishment or levy by private creditors or debt collectors.

Additionally, the provision instructs Treasury to make payments to the territories that relate to each territory's cost of providing the credits.

Sec. 4. Extension of certain deferred payroll taxes. On August 8, 2020, the President of the United States issued a memorandum to allow employers to defer withholding employees' share of social security taxes or the railroad retirement tax equivalent from September 1, 2020 through December 31, 2020, and required employers to increase withholding and pay the deferred amounts ratably from wages and compensation paid between January 1, 2021 and April 31, 2021. Beginning on May 1, 2021, penalties and interest on deferred unpaid tax liability will begin to accrue.

The provision extends the repayment period through December 31, 2021. Penalties and interest on deferred unpaid tax liability will not begin to accrue until January 1, 2022.

Sec. 5. Regulations or guidance clarifying application of educator expense tax deduction.

The provision requires the Secretary of the Treasury to issue guidance or regulations providing that personal protective equipment and other supplies used for the prevention of the spread of COVID-19 are treated as eligible expenses for purposes of the educator expense deduction. Such regulations or guidance shall be retroactive to March 12, 2020.

Sec. 6. Clarification of tax treatment of Paycheck Protection Program loans.

The provision clarifies that gross income does not include any amount that would otherwise arise from the forgiveness of a Paycheck Protection Program (PPP) loan. This provision also clarifies that deductions are allowed for otherwise deductible expenses paid with the proceeds of a PPP loan that is forgiven, and that the tax basis and other attributes of the borrower's assets will not be reduced as a result of the loan forgiveness. The provision is effective as of the date of enactment of the CARES Act. The provision provides similar treatment for Second Draw PPP loans, effective for tax years ending after the date of enactment of the provision.

Sec. 7. Emergency financial aid grants.

The provision provides that certain emergency financial aid grants under the CARES Act are excluded from the gross income of college and university students. The provision also holds students harmless for purposes of determining eligibility for the American Opportunity and Lifetime Learning tax credits. The provision is effective as of the date of enactment of the CARES Act.

Sec. 8. Clarification of tax treatment of certain loan forgiveness and other business financial assistance under the coronavirus relief legislation.

The provision clarifies that gross income does not include forgiveness of certain loans, emergency EIDL grants, and certain loan repayment assistance, each as provided by the CARES Act. The provision also clarifies that deductions are allowed for otherwise deductible expenses paid with the amounts not included in income by this section, and that tax basis and other attributes will not be reduced as a result of those amounts being excluded from gross income. The provision is effective for tax years ending after date of enactment of the CARES Act. The provision provides similar treatment for Targeted EIDL advances and Grants for Shuttered Venue Operators, effective for tax years ending after the date of enactment of the provision.

Sec. 9. Authority to waive certain information reporting requirements.

The provision gives Treasury authority to waive information filing requirements for any amount excluded from income by reason of the exclusion of covered loan amount forgiveness from taxable income, the exclusion of emergency financial aid grants from taxable income or the exclusion of certain loan forgiveness and other business financial assistance under the CARES act from income.

Sec. 10. Application of special rules to money purchase pension plans.

The CARES Act temporarily allows individuals to make penalty-free withdrawals from certain retirement plans for coronavirus-related expenses, permits taxpayers to pay the associated tax over three years, allows taxpayers to recontribute withdrawn funds, and increases the allowed limits on retirement plan loans. This section clarifies that money purchase pension plans are included in the retirement plans qualifying for these temporary rules. The provision applies retroactively as if included in Section 2202 of the CARES Act.

Sec. 11. Election to waive application of certain modifications to farming losses. This section allows farmers who elected a two-year net operating loss carryback prior to the CARES Act to elect to retain that two-year carryback rather than claim the five-year carryback provided in the CARES Act. This section also allows farmers who previously waived an election to carry back a net operating loss to revoke the waiver. These clarifications eliminate unnecessary compliance burdens for farmers. The provision applies retroactively as if included in Section 2303 of the CARES Act.

Sec. 12. Oversight and audit reporting. The CARES Act authorizes the Comptroller General to conduct monitoring and oversight of federal response efforts related to the Coronavirus 2019 pandemic and its general effects. The Comptroller General is required to provide briefings and reports to “appropriate congressional committees.” The CARES Act omitted the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives in its list of “appropriate congressional committees.” This section includes those two committees in the appropriate-committee list, as the Comptroller General’s monitoring and oversight is expected to cover matters in the committees’ jurisdiction and may involve accessing federal tax data.

Sec. 13. Disclosures to identify tax receivables not eligible for collection pursuant to qualified tax collection contracts. Section 1205 of the Taxpayer First Act (P.L. 116-25) excludes supplemental social security (SSI) and social security disability insurance (SSDI) beneficiaries from the IRS private debt collection program beginning on January 1, 2021. The IRS and SSA need statutory authority to share information to determine which taxpayers are SSI or SSDI beneficiaries and eligible for exclusion from the IRS program. The provision provides the authority needed to share such information and make the Taxpayer First Act provision work as intended.

Sec. 14. Modification of certain protections for taxpayer return information. The provision modifies a provision in the CARES Act. The CARES Act modified Section 3 of the FUTURE Act (P.L. 116-91), which amended section 6103 of the Code to allow the IRS to share tax return information of student aid applicants, their parents, students, and borrowers with the Department of Education and further allowed that tax return information be redisclosed to colleges and universities (and certain scholarship organizations) with the taxpayer confidentiality protections afforded under section 6103 of the Code. Section 3516 of the CARES Act repealed the 6103 changes in the FUTURE Act and stripped all the taxpayer confidentiality protections applicable to the tax return information shared by IRS with the Department of Education (and the subsequent redisclosure to colleges, universities, and scholarship funds). The provision unwinds and fixes the changes made by the CARES Act and restores taxpayer confidentiality protections to the tax return information shared by IRS while allowing certain uses as requested by the committees with education jurisdiction.

Sec. 15. Election to Terminate Transfer Period for Qualified Transfers from Pension Plan for Covering Future Retiree Costs. Section 420 of the Internal Revenue Code permits “qualified future transfers,” under which up to 10 years of retiree health and life costs may be transferred from a company’s pension plan to a retiree health benefits account and/or a retiree

life insurance account within the pension plan. Such transfers must meet a number of requirements: the plan must be 120 percent funded at the outset, it must be 120 percent funded throughout the transfer period, all unused amounts must be transferred back, and the plan is subject to a maintenance of effort requirement. Applying the current-law requirements during the market volatility related to the coronavirus pandemic has caused plans that have been historically far over 120 percent funded to fall below 120 percent and face a requirement to immediately restore these large market losses in order to get back to 120 percent funded. This provision would allow employers to make a one-time election during 2020 and 2021 to end any existing transfer period for any taxable year beginning after the date of election, provided the maintenance of effort continues to apply as if the transfer period were not shortened, the employer ensures the plan stays at least 100 percent funded throughout the original transfer period, the plan has funding targets for the first five years after the original transfer period, and all amounts left in the retiree benefits account at the end of the shortened transfer period must be returned to the pension plan (without application of an excise tax to such amounts).

Sec. 16. Extension of credits for paid sick and family leave. The provision extends the refundable payroll tax credits for paid sick and family leave, enacted in the Families First Coronavirus Response Act, through the end of March 2021. It also modifies the tax credits so that they apply as if the corresponding employer mandates were extended through the end of March 2021. This provision is effective as if included in FFCRA.

Sec. 17. Election to use prior year net earnings from self-employment in determining average daily and self-employment income for purposes of credits for paid sick and family leave. Allows individuals to elect to use their average daily self-employment income from 2019 rather than 2020 to compute the credit. This provision is effective as if included in FFCRA.

Sec. 18. Certain technical improvements to credits for paid sick and family leave. Makes technical changes coordinating the definitions of qualified wages within the paid sick leave, paid family and medical leave, and the exclusion of such leave from employer OASDI tax. This provision is effective as if included in FFCRA.

Rescission of Unused CARES Act Funds and Termination of Temporary Emergency Lending Facilities

Sec. ____ : Rescissions

In response to the severe market turmoil caused by the COVID-19 pandemic this spring, the CARES Act provided \$500 billion in funding for the Treasury and the Federal Reserve to set up temporary emergency lending facilities that expire on December 31, 2020. These facilities succeeded in restoring liquidity to frozen credit markets to ensure the flow of credit to fundamentally creditworthy businesses, states, and municipalities. As a result of this success, only a small portion of the \$500 billion in funds has been used. This provision rescinds the unused portion of these funds (more than \$429 billion), allowing them to be used for other important purposes, and reiterates that the authority to lend these funds expires on December 31, 2020.

Sec. ____ : Emergency relief and taxpayer protections

The CARES Act provided \$500 billion in funding for the Treasury and the Federal Reserve to operate temporary emergency lending programs and facilities. Section 4003(e) of the CARES Act provides that any proceeds—principal or gains—returned to the Treasury from such lending programs and facilities shall be deposited in certain specified Treasury accounts, including the Social Security Trust Fund. This provision reiterates that such proceeds shall be deposited in this way, notwithstanding any other provision of law.

Sec. ____ : Termination of Authority

The CARES Act provided \$500 billion in funding for the Treasury and the Federal Reserve to operate temporary emergency lending facilities. Section 4029 of the CARES Act terminates the authority of the Treasury and the Federal Reserve to operate these facilities on December 31, 2020. This provision ensures that these lending facilities definitively end on December 31, 2020 and stops these facilities from being re-started or replicated without congressional authorization. The only facilities that are affected by this provision are the Primary Market Corporate Facility, the Secondary Market Corporate Credit Facility, the Municipal Liquidity Facility, the Main Street Lending Program, and the Term-Asset Backed Securities Loan Facility (TALF). Because an earlier version of TALF was established in 2008 prior to the CARES Act, this provision allows TALF—but only TALF—to be replicated in the future without congressional authorization.

Sec. ____ : Rule of Construction

This provision clarifies that this legislation's provisions rescinding more than \$429 billion in unused funds, definitively ending the CARES Act lending facilities, and stopping those

facilities from being re-started or replicated without congressional authorization will not interfere with the Federal Reserve's authority to respond to a future crisis.