

A Summary of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act

The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was recently passed by the Senate in response to the COVID-19 outbreak. The CARES Act is designed to, among other things, assist businesses and individuals in withstanding many of the economic hardships brought on by the outbreak. Below is a summary of the provisions of the CARES Act passed by the Senate on March 25, 2020, by the House of Representatives on March 27, 2020 and was thereafter signed by President Donald Trump.

KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT

Paycheck Protection Program

The COVID-19 outbreak has disrupted businesses of all sizes throughout the United States. As part of the proposed \$2 trillion stimulus package, roughly \$350 billion in bridge loans will be made available to small and medium sized businesses to help reduce the economic hardship caused by the COVID-19 outbreak. Through section 7(a) of the Small Business Act, the Small Business Administration will administer special business loans designed to help businesses maintain their number of employees and payroll during the COVID-19 outbreak. Below are details regarding eligibility and specific features of these loans.

Eligibility

In addition to businesses that are typically eligible for small business loans under the Small Business Act, any business or nonprofit organization^[1] that employs no more than 500 employees^[2] will be eligible to receive a loan under the CARES Act. Further, if a business is classified as “accommodation or food services” under the Small Business Act and has more than one location and does not have more than 500 employees per location, that business is also eligible. The CARES Act also waives typical affiliation rules under the Small Business Act for businesses that operate hotels, motels or restaurants or provide traveler accommodations or catering services, are franchises, or receive financial assistance from a small venture investment company licensed under the Small Business Investment Act.

Businesses will be able to apply for loans under the CARES Act through June 30, 2020. A business applying for such a loan must only show that it was in operation on February 15, 2020 and had employees for whom the business paid salary and payroll taxes. All application fees are waived for purposes of applying for a loan under the CARES Act.

Loan applicants must make a good faith certification that the uncertainty of current economic conditions makes

the loan request necessary to support the ongoing operations of its business. The applicant must also acknowledge that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and/or utility payments. The applicant must also state that it does not have another application pending for the same purpose and that it has not previously received a loan under the CARES Act.

Loan Amount

The loan amount that a particular business will be eligible to receive is dependent upon its average monthly payroll costs. A business' loan amount will be determined by taking the business' average total monthly payroll costs incurred during the one-year period before the date on which the loan was made and multiplying that average monthly cost by 2.5. Loans under the CARES Act will be capped at \$10 million.

The term "payroll costs" under the CARES Act means the sum of payments of any compensation with respect to employees that is a:

- Salary, wage, commission, or similar compensation;
- Payment of cash or tip equivalent;
- Payment for vacation, parental, family or sick leave;
- Payment required for the provisions of group health care benefits, including insurance premiums;
- Payment of any retirement benefit; or
- Payment of state or local tax assessed on the compensation of employees.

"Payroll costs" shall not include:

- The compensation of an individual employee in excess of an annual salary of \$100,000 as prorated for the covered period;
- Taxes imposed or withheld under chapters 21, 22 or 24 of the IRC;
- Any compensation to an employee whose principal place of residence is outside the United States;
- Qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Act; or
- Qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Act.

Allowable Uses

In addition to the allowable uses for a normal small business loan under section 7(a) of the Small Business Act, a recipient of a loan under the CARES Act may use the proceeds of such loan for the following purposes:

- (i) payroll costs (as defined above);
- (ii) costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
- (iii) employee salaries, commissions, or similar compensations;
- (iv) payments of interest on any mortgage obligation (which shall not include any prepayment of or

payment of principal on a mortgage obligation);

(v) rent (including rent under a lease agreement);

(vi) utilities; and

(vii) interest on any other debt obligations that were incurred before the covered period.

Businesses may continue to use proceeds from a loan obtained pursuant to the CARES Act for the above listed purposes throughout the covered period which is defined as February 15, 2020 to June 30, 2020.

Loan Forgiveness

The CARES Act also contains a provision that allows for businesses to apply for loan forgiveness related to business loans obtained under the Act. The amount of loan forgiveness is equal to the following costs incurred and payments made by the business during the eight-week period beginning on the date of the origination of the loan:

- payroll costs (as defined above);
- any payment of interest on any covered mortgage obligation;
- any payment on any covered rent obligation; and
- any covered utility payment.

The amount of loan forgiveness will be reduced to the extent the borrower has reduced its number of employees or cut its employees' salaries. Reductions based on a reduction in a borrower's number of employees will be made by comparing the borrower's average number of employees during the period from February 15, 2020 through June 30, 2020 to the average number of employees the borrower had during the same period in 2019. Reductions will also be made to the extent the borrower has reduced its employees' salary and wages by more than 25 percent of the total salary or wages of its employees during the most recent full quarter.^[3]

However, businesses can be exempt from these reductions if the business reverses any reductions in its number of employees or employee salaries that occurred during the covered period by June 30, 2020. For example, if a business laid off 30% of its employees on March 15, 2020 but re-hired the same number of employees it laid off, before June 30, 2020, that business would not incur any reduction in its loan forgiveness.

To apply for loan forgiveness under the CARES Act, borrowers must submit certain documentation to their lender. This documentation includes:

(i) documentation verifying the number of full-time equivalent employees on payroll and pay rates for the periods described in the bill, including—

(A) payroll tax filings reported to the Internal Revenue Service; and

(B) state income, payroll, and unemployment insurance filings;

(ii) documentation, including canceled checks, payment receipts, transcripts of accounts, or other

documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments;

(iii) a certification from a representative of the eligible recipient authorized to make such certifications that—

(A) the documentation presented is true and correct; and

(B) the amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and

(iv) any other documentation the Small Business Administrator determines necessary.

Lenders must make a decision on a borrower's eligibility for loan forgiveness within 60 days of the date on which the application was submitted.

Loans with Remaining Balance After Application for Forgiveness

To the extent a loan obtained pursuant to the CARES Act still has a remaining balance after an application for loan forgiveness is made, the loan shall have a maximum maturity of 10 years from the date on which the borrower applied for loan forgiveness. Loans obtained under the CARES Act shall have an interest rate of no more than four percent. Lenders are required to defer payment on all loans received under the CARES Act for at least six months.

Entrepreneurial and Minority Business Development

The Act authorizes the Small Business Administration to make grants to "resource partners" which include small business development centers and women's business centers. These grants are intended to provide financial assistance to resource partners so that they can provide education, training, and advice to small businesses and their employees on topics related to the COVID-19 outbreak. Specifically, the funds are to be used in providing advice to small businesses on: (1) how they can access and apply for federal resources that relate to COVID-19 relief; (2) prevention of coronavirus transmission; the effects of the COVID-19 outbreak on small business operations; (3) how to effectively work remotely; and (4) other issues effecting small businesses as a result of the COVID-19 outbreak.

There is a similar provision in the CARES Act that provides grants to minority business centers and minority chambers of commerce. These funds can be used to advise businesses that are owned predominantly by socially disadvantaged individuals or whose daily business operations are controlled by one or more socially disadvantaged individuals, on the same topics as listed above related to the COVID-19 outbreak.

Additional Small Business Loan Lenders

The CARES Act authorizes the Department of the Treasury to establish certain criteria for insured depository institutions, insured credit institutions, insured credit unions and other lenders that do not already participate

in lending under Small Business Administration programs, to participate in the Paycheck Protection Program until the presidential order declaring a national emergency related to the COVID-19 outbreak expires. A lender seeking to participate in the Paycheck Protection Program may only participate if it would not affect the safety and soundness of the institution or lender as determined by the Secretary of the Treasury. The Secretary of the Treasury may also issue regulations and guidance for lenders seeking to participate in the program.

Emergency Economic Injury Disaster Loans

The under section 7(b)(2) of the Small Business Act, the Small Business Administration provides loans for small businesses that have suffered substantial economic injury and are located in a declared disaster area. These loans are known as Economic Injury Disaster Loans and are designed to help businesses meet their financial obligations in the wake of a declared disaster.

The CARES Act contains a provision that expands the number of entities that are eligible for Economic Injury Disaster Loans. Under the CARES Act, in addition to small businesses that otherwise qualify under the Small Business Act, the following businesses will be eligible to receive Economic Injury Disaster loans from January 31, 2020 through December 31, 2020:

- Businesses with not more than 500 employees;
- Individuals who operate under a sole proprietorship, with or without employees, or as an independent contractor;
- Cooperatives with not more than 500 employees;
- An Employee Stock Ownership Plan (“ESOP”) (as defined in the Small Business Act) with not more than 500 employees; and
- Tribal business concerns (as defined in the Small Business Act) with not more than 500 employees.

The Act also temporarily alters certain aspects of Emergency Injury Disaster Loans during the covered period (January 31, 2020 through December 31, 2020). Specifically, the bill:

- Waives the personal guarantee requirement on advances and loans of less than \$200,000 for all applicants;
- Removes the requirement that an applicant must be in business for more than 1 year prior to the disaster, except that a business must have been in operation on January 31, 2020 to be eligible;
- Waives the requirement that an applicant must be unable to obtain credit elsewhere; and
- Allows lenders to approve an applicant based solely on their credit score without requiring the applicant to submit a tax return.

Eligible businesses can also apply for an emergency grant of up to \$10,000 in advance of receiving an Emergency Injury Disaster Loan. Advances received under this section may be used for any of the following purposes:

- providing paid sick leave to employees unable to work due to the direct effect of the COVID-19;
- maintaining payroll to retain employees during business disruptions or substantial slowdowns;
- meeting increased costs to obtain materials unavailable from the applicant’s original source due to interrupted supply chains;
- making rent or mortgage payments; and
- repaying obligations that cannot be met due to revenue losses.

Applicants will not be required to repay any advance received under this provision. If, however, an applicant that receives an advance eventually receives a loan under the Paycheck Protection Program, the amount of the advance will be reduced from the applicant's loan forgiveness amount under the Paycheck Protection Program.

Subsidies for Certain Small Business Loans

In addition to providing new lines of credit for small businesses, the CARES Act also includes a provision that seeks to provide subsidies for loans that small businesses may already have. Loans covered by this section include loans that are guaranteed by the Small Business Administration under the section 7(a) of the Small Business Act or Title V of the Small Business Investment Act, as well as loans made by an intermediary to a small business using loans or grants received under section 7(m) of the Small Business Act.

The CARES Act states that it is Congress' belief that because all borrowers have been affected by the COVID-19 outbreak, that in addition to the relief already provided for under the Act, the Small Business Administration "should encourage lenders to provide payment deferments, when appropriate, and to extend the maturity of covered loans, so as to avoid balloon payments or any requirement for increases in debt payments resulting from deferments provided by lenders."

In addition, the Small Business Administration must pay the principal, interest, and any associated fees that are owed for any of the types of loans listed above in a regular servicing status:

- For loans made before this bill is enacted not on deferment, for the six-month period beginning with the next payment due;
- For loans made before this bill is enacted that are on deferment, for the six-month period beginning with the next payment due after deferment; and
- For loans made within six months of enactment of this bill, for six months after the first payment is due.

The CARES Act also requires the Small Business Administration to work with the FDIC, the Office of the Comptroller of Currency, and state bank regulators to encourage those entities to not require lenders to increase their reserves on account of receiving payments from the Small Business Administration as part of the above listed principal, interest, and fee payments. In addition, the Small Business Administration must waive statutory limits on maximum loan maturities for any of the above-mentioned loans where the lender provides a deferral and extends the maturity of these loans during the one-year period following the enactment of the bill. The Small Business Administration will also extend lender site visit requirements where necessary due to the impact of the COVID-19 outbreak but will not extend such requirements more than 60 days after the occurrence of an adverse event causing a loan to be classified as in liquidation or 90 days after a payment default.

Small Business Bankruptcy Reorganization

The CARES Act further provides relief for small businesses that have filed or will file for bankruptcy protection by making certain amendments to the Small Business Reorganization Act under the Bankruptcy Code. The Small Business Reorganization Act provides quicker and less expensive reorganization for eligible debtors. Currently, only businesses with debt of less than \$2,725,625 are eligible under the Small Business Reorganization Act. However, the CARES Act raises this amount to \$7,500,000. This is intended to help businesses that would

normally have to close to stay in operation during the COVID-19 outbreak.

The Act also excludes COVID-19 related payments from being treated as “income” under Chapters 7 and 13 of the Bankruptcy Code. The Act also states that the calculation of disposable income for purposes of confirming a Chapter 13 bankruptcy plan does not include COVID-19 related payments. The CARES Act also provides relief for individuals and families who are currently operating under Chapter 13 bankruptcy plans by allowing them to modify their plan, including extending payments for up to seven years, if they are experiencing COVID-19 related financial hardships. These provisions will expire after one year.

ASSISTANCE FOR AMERICAN WORKERS, FAMILIES, AND BUSINESSES

Unemployment Insurance Programs

This subtitle is known as the “Relief for Workers Affected by Coronavirus Act.” Title II – Subtitle A, applies to “covered individuals” who are defined as any person who is not eligible for regular compensation or extended benefits under State or Federal Law or pandemic emergency unemployment compensation under section 2107 of this Act. In order to receive unemployment benefits, a “covered individual” must certify that they are otherwise able to work and available for work within the meaning of applicable state law, except that the individual is unemployed, partially unemployed, or unable or unavailable to work because of the following reasons:

- the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- a member of the individual’s household has been diagnosed with COVID-19;
- the individual is providing care for a family member or member of the individual’s household who has been diagnosed with COVID-19;
- a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility as a result of COVID-19 and such school or facility is required for the individual to work;
- the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of COVID-19;
- the individual is unable to reach the place of employment because the individual has been advised to self-quarantine by a medical provider due to concerns regarding COVID-19;
- the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 health emergency;
- the individual has become the breadwinner for a household because the head of the household died as a result of COVID-19;
- the individual has to quit their job as a result of COVID-19;
- the individual’s place of employment is closed as a direct result of the COVID-19 health emergency; or
- the individual meets any additional criteria established by the Secretary for unemployment assistance under this section

A “covered individual” may also certify that they are self-employed, seeking part-time employment, do not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under state or federal law or pandemic employment compensation under section 2107 and meets the requirements mentioned above. However, “covered individuals” do not include any individual who has the ability to telework and any individual who is receiving paid sick leave or other paid benefits.

Pursuant to Title II, Subtitle A, the Secretary of Labor shall provide to any covered individual unemployment benefit assistance while the individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment when the individual is not entitled to any other unemployment compensation or waiting period credit.

Any assistance authorized by this section shall be available for covered individuals for unemployment caused by COVID-19 beginning on January 27, 2020 and ending on or before December 31, 2020, so long as the covered individual’s unemployment, partial unemployment, or inability to work caused by COVID-19 continues. A covered individual can receive benefits under Subtitle A for a maximum of 39 weeks. This maximum will not include any weeks during which the covered individual received regular compensation or extended benefits under any federal or state law.

The amount of assistance approved by this Subtitle is the weekly benefit amount authorized under state unemployment compensation laws of the state where the covered individual was employed, except that this amount may not be less than the minimum weekly benefit amount described in the Code of Federal Regulations and the amount of Federal Pandemic Compensation under section 2104.

In the case of individuals who are self-employed, who live in a territory described in subsection (c) or (d) of section 625.6 of title 20, Code of Federal Regulations, or who would not otherwise qualify for unemployment compensation under state law, the assistance shall be calculated in accordance with section 625.6 of title 20, Code of Federal Regulations, or any successor thereto and shall be increased by the amount of Federal Pandemic Unemployment Compensation under section 2104. Notwithstanding state law, compensation under this Act shall be made to an individual otherwise eligible for such compensation without any waiting period.

Pursuant to Subtitle A, the Secretary of Labor may issue clarifying guidance to allow states to interpret their state unemployment compensation laws in a manner that would provide maximum flexibility to reimbursing employers as it relates to timely payment and assessment of penalties and interest pursuant to such state laws.

Emergency Increase in Unemployment Compensation Benefits

Any state may enter into and participate in an agreement under section 2104 with the Secretary of Labor for the increase in unemployment benefits. After entering into an agreement, if a state wishes to do so, it may terminate its agreement. Agreements pursuant to section 2104 will require that state agencies pay covered individuals payments **equal to the amount determined under state law, plus an additional amount of \$600 (referred to as “Federal Pandemic Unemployment Compensation”)**. Stated otherwise, covered individuals will receive an additional \$600 on top of whatever they are entitled to pursuant to state laws.

If individuals make false statements or representations, or cause others to do the same, in order to receive any

amount of Federal Pandemic Unemployment Compensation to which they are not entitled, that individual shall be ineligible for further Federal Pandemic Unemployment Compensation and shall be subject to prosecution. Further, for individuals who have received amounts of Federal Pandemic Unemployment Compensation to which they were not entitled, the state shall require the individual to repay the amounts they received, however, the State may waive repayment if it determines that payment of such Federal Pandemic Unemployment Compensation was without fault on the part of the individual and repayment would be contrary to equity and good conscience.

The monthly equivalent of any Federal Pandemic Unemployment Compensation paid to any individual under this Title will be disregarded when determining income for any purpose under the programs established under Titles XIX and Title XXI of the Social Security Act.

A state is eligible to enter into an agreement if the state law provides that compensation is paid to individuals for their first week of regular unemployment without waiting a week. An agreement under this section shall not apply with respect to a state upon a determination by the Secretary that the state law no longer meets the requirement under the preceding sentence.

Pandemic Emergency Unemployment Compensation

Under this provision of the Act, states will make payments of the Pandemic Emergency Unemployment Compensation to individuals: (1) who have exhausted all rights to regular benefits under state law or federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019); (2) who have no rights with respect to regular compensation with respect to a week under such law or any other state unemployment compensation law or to compensation under any other federal law; (3) who are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and (4) are able to work, available to work, and actively seeking work.

An individual will be deemed to have exhausted their right to regular compensation under a state law when no payments of regular compensation can be made under state law because the individual has received all regular compensation available; or the individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

The amount of Pandemic Emergency Unemployment Compensation payable to any individual for any week of total unemployment will be equal to (i) the amount of the regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under applicable state law for a week of total unemployment; and (ii) the additional amount of Federal Pandemic Unemployment Compensation under section 2104.

The terms and conditions of the state law which apply to claims for regular compensation and the payment thereof (including terms and conditions relating to availability for work, active search for work, and refusal to accept work) apply to claims for Pandemic Emergency Unemployment Compensation and its payment, except where inconsistent with the provisions of section 2107.

Pandemic Emergency Unemployment Compensation Account

Under the Act, states must establish, for each individual who files an application for Pandemic Emergency Unemployment Compensation, a Pandemic Emergency Unemployment Compensation Account with respect to the individual's benefit year. An individual's weekly benefit amount is the amount of regular compensation (including dependents' allowances) they would receive under state law for a week of total unemployment plus the amount of Federal Pandemic Unemployment Compensation permitted under the Act.

Temporary Financing of Short-Time Compensation

Under Section 2108, the federal government will fully refund states with short-time compensation programs already in place, all amounts paid under these programs. However, states will not be refunded for any short-time compensation paid out to individuals which are greater than 26 times the amount permitted by state law for a week of unemployment. Further, states will not be refunded for any payments under short-time compensation programs made to individuals who are employed on a seasonal, intermittent or temporary basis.

Section 2109 permits states which do not have short-time compensation programs already in place, to enter into agreements with the Secretary of Labor to implement these programs and receive refunds. States that implement short-time compensation programs pursuant to section 2109 will only receive a refund of one-half of the amount paid out to individuals as well as any administrative expenses. The limitations and restrictions described in section 2108 also apply to agreements under section 2109. For new short-time compensation programs, employers will be required to pay the state one-half of the short-time compensation paid under such program. However, if a state enters into an agreement under section 2109 and then subsequently enacts legislation providing for the payment of short-time compensation that meets IRC definitions, the state shall be eligible to receive payments described in section 2108 instead.

Further, section 2110 permits the Secretary of Labor to award grants to states that enact short-time compensation programs. These funds shall be used to: (1) create or support rapid response teams to advise employers about the alternatives to layoffs; (2) to educate or assist employers to enable them to determine whether they should participate in short-time compensation programs; and (3) to develop or enhance systems automating the submission and approval of plans and the filing and approval of new and on-going short-time compensation claims.

Lastly, section 2111 requires that Secretary of Labor to (1) develop model language for states to use in enacting short-time compensation programs, (2) provide technical assistance in implementing such programs and (3) establish reporting requirements for states with regard to the number of averted layoffs, participating employers and other relevant information.

Rebates and Other Individual Provisions

Subtitle B amends the Internal Revenue Code of 1986 ("IRC") by inserting after section 6427 the following new section: "Sec. 6428.2020 Recovery Rebates for Individuals."

Section 6428.2020(a) permits individuals to take a credit against their taxes for a cash payment of \$1,200 (\$2,400

in the case of individuals filing joint tax returns) and an additional \$500 for each qualifying child. The amount of the credit is reduced by 5 percent as the taxpayer's adjusted gross income exceeds: \$150,000 in the case of a joint return, \$112,500 in the case of a head of household, and \$75,000 in the case of all other taxpayers. "Eligible individuals" are defined as any individual other than a nonresident alien individual; an individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins; and an estate or trust.

These credits will be based upon an eligible individual's 2019 or 2018 tax return (depending upon whether their 2019 return has been filed). For individuals who do not file tax returns, their credit will be based upon information received from the Social Security Administration.

Further, Subtitle B amends multiple IRC rules for retirement funds. Section 2202 generally permits withdrawals from retirement plans for COVID-19 related distributions. Specifically, section 72(t) of the IRC shall not apply to a COVID-19 related distribution. However, the aggregate amount of distributions received by an individual which may be treated as COVID-19 related distributions shall not exceed \$100,000. Similarly, coronavirus-related retirement plan distributions will not be treated as violating any requirement of the IRC unless the aggregate amount of such distributions from all plans maintained by the employer to such individual exceeds \$100,000.

Any individual who receives a COVID-19 related distribution may, at any time during the three-year period beginning on the day after the distribution was received, make one or more contributions in an aggregate amount not to exceed the amount of their distribution to an eligible retirement plan to which the individual is a beneficiary and to which a rollover contribution can be made. In addition, loan distribution amounts will be increased pursuant to Subtitle B from \$50,000 to \$100,000. Lastly, Section 2203 of Subtitle B waives various minimum distribution rules for various contribution plans during 2020.

Subtitle B also makes numerous changes to charitable contributions. For example, section 2204 amends section 62(a) of the IRC so that in taxable years beginning in 2020, eligible individuals may make qualified charitable contributions (not to exceed \$300). Also, section 2205 modifies the limitations on charitable contributions during 2020.

Business Provisions

Section 2301(a) of the Act permits eligible employers to take credits against applicable employment taxes equal to 50 percent of qualified wages for each employee per calendar quarter. The amount of qualified wages for any employee which may be taken into account by the eligible employer for all calendar quarters shall not exceed \$10,000. The credit described above, with respect to any calendar quarter shall not exceed the applicable employment taxes (reduced by any credits allowed under section 3111(e)-(f) of the IRC and sections 7001 and 7003 of the Families First Coronavirus Response Act) on the wages paid with respect to the employment of all the employees of the eligible employer for such calendar quarter.

An “eligible employer” is defined as any employer: (i) which was carrying on a trade or business during 2020 and (ii) for any calendar quarter, for which the operation of the trade or business was fully or partially suspended due to governmental orders due to COVID-19 or which there is significant decline in gross receipts. Tax-Exempt Organizations are not subject to the significant decline in gross receipts provision. Section 2301(c)(2)(C).

“Qualified Wages” depend upon the number of employees that an eligible employer has. For employers for which the average number of full-time employees employed during 2019 was greater than 100, “qualified wages” are wages paid by the eligible employer with respect to which an employee is not providing services due to a suspension of services as a result of government orders in response to COVID-19 or significant decline in gross receipts. For employers who did not average more than 100 employees, wages paid by the eligible employer with respect to an employee during any period of operational suspension as described above, or any wages paid by an eligible employer in the quarter during a significant decline in gross receipts. However, if an eligible employer receives a covered loan under the Payroll Protection Program, such employer shall not be eligible for the above described credit.

Section 2302 delays payment of employer payroll taxes. Specifically, the payment for applicable employment taxes for the payroll tax deferral period shall not be due before the applicable date. Notwithstanding section 6302 of the IRC, an employer will be treated as having timely made all deposits of applicable employment taxes that are required to be made for such taxes during the deferral period if all deposits are made not later than the applicable date. Certain subsections do not apply to taxpayers who have indebtedness forgiven with respect to a loan under the Payroll Protection Program. The “Applicable Date” is defined as December 31, 2021 with respect to 50 percent of the amounts to which Section 2302(a) or Section 2302(b) apply, and December 31, 2022 with respect to any remaining amounts. Section 2302(d)(3).

Other provisions of the Act also modify the IRC with regard to net operating losses and the limitation on losses for taxpayers other than corporations, the credit for prior year minimum tax liability of corporations, the limitation on business interest, and creates a temporary exception from excise tax for alcohol used to produce hand sanitizer.

SUPPORTING AMERICA’S HEALTH CARE SYSTEM IN THE FIGHT AGAINST CORONAVIRUS

Title III of the CARES Act encompasses six Subtitles including: (A) Health Provisions; (B) Education Provisions; (C) Labor Provisions; (D) Finance Committee; (E) Health and Human Services Extenders; and (F) Over-the-Counter Drugs.

Health Provisions

Subtitle A addresses four major areas in the fight against the COVID-19 outbreak: (I) supply shortages; (II) access to health care for COVID-19 patients; (III) innovation; and (IV) the health care workforce.

Addressing Supply Shortages

Part I addresses (A) medical product supplies, (B) mitigating emergency drug shortages, and (C) preventing

medical device shortages. First, as to medical product supplies, no later than 60 days after the enactment of the Act, the Secretary of Health and Human Services must enter into an agreement with the National Academies of Science, Engineering, and Medicine (the “National Academies”) to examine and report on the security of the United States medical product supply chain. The purpose of the report is to assess and evaluate the dependence of the United States and the federal government on critical drugs and devices that are sourced or manufactured outside of the United States. To conduct the study and develop this report, the National Academies must consider input from various federal agencies and consult with relevant stakeholders. The consultation may include conducting public meetings and other forms of engagement with entities with experience in health care and public health. This subpart also amends sections of the Public Health Service Act to require the strategic national stockpile to include certain types of medical supplies and the treatment of respiratory protective devices as covered countermeasures.

Second, as to mitigating emergency drug shortages, Part I also amends sections of the Federal Food, Drug and Cosmetic Act to prioritize review of drug applications and incentives and add manufacturer reporting requirements in response to the drug shortages. These amendments require drug manufacturers of any drug or active pharmaceutical ingredient that is critical to the public health during a public health emergency to notify the Secretary of Health and Human Services of a permanent discontinuance in the manufacture or interruption of the manufacture of the drug or of an active pharmaceutical ingredient of such drug that is likely to lead to a meaningful disruption in the supply of the drug. The notification must include a disclosure of the reasons for the discontinuation or interruption. The manufacturer of any such drug or active ingredient or any associated medical device used to prepare or administer the drug must create and implement a redundancy risk management plan.

Additionally, producers of drugs or devices who register with the Secretary of Health and Human Services are also required to make additional annual reports to the Secretary including the amount of the drug that was produced for commercial distribution. However, the Secretary may determine that certain biological products may be exempt from this reporting requirement. None of the amendments allow the Secretary to disclose any information that is a trade secret or confidential information. Finally, these amendments will become effective 180 days after the enactment of the Act.

Third, Part I also aims to prevent medical device shortages. This Part of the CARES Act amends Chapter V of the Federal Food, Drug, and Cosmetic Act to insert Section 506J titled “Discontinuance or Interruption in the Production of Medical Devices.” This new section applies to manufacturers of devices that are critical to public health during a public health emergency or which the Secretary determines that information on potential meaningful supply disruptions of such device is needed before or during a public health emergency. Section 506J requires such manufacturers to notify the Secretary of a permanent discontinuance in or interruption of the manufacture of the device that is likely to lead to meaningful disruption in the supply of that device in the United States as well as the reasons for such. This notice must be made six months before the date of the discontinuance or interruption or as soon as practicable if such six-month notice is not possible.

The Secretary must make this information available to the public including appropriate organizations such as physicians, health providers, patient organizations, and supply chain partners. However, if the Secretary determines that disclosure of such information would have an adverse effect on the public health, the Secretary

can choose not to make such information publicly available. Nothing in this new Section allows the Secretary to disclose any information that is a trade secret or confidential information.

Access to Health Care for COVID-19 Patients

Part II addresses (A) coverage of testing and preventive services, (B) support for health care providers, (C) other miscellaneous provisions, and (D) the health care work force. First, the coverage of testing and preventive services includes coverage and pricing of diagnostic testing as well as rapid coverage of preventive services and vaccines for COVID-19. As to the coverage of diagnostic testing for COVID-19, this Part amends the language of the Families First Coronavirus Response Act regarding in-vitro diagnostic tests for the detection of SARS-CoV-2 or the diagnosis of the virus that causes COVID-19. Under this amendment, such tests are now covered if the test is one that a developer has requested or intends to request an emergency use authorization or is developed and authorized by a state that has notified the Secretary of its intention to review such tests.

As to the pricing of diagnostic testing, this Section sets forth the reimbursement rates that insurance providers must reimburse to diagnostic testing providers, the requirement to publicize a cash price for diagnostic testing of COVID-19 as well as the civil monetary penalties imposed on diagnostic test providers that do not comply with the cash price publication requirement. Additionally, as to the rapid coverage of preventive services and vaccines for COVID-19, this Part mandates that the Secretaries of Health and Human Services, Labor and the Treasury require group health plans and health insurance issuers offering health insurance to cover (without cost-sharing) any qualifying coronavirus preventive service pursuant to the Public Health Service Act and any respective regulations.

Second, this Part affords support to health care providers. Additional amounts for supplemental awards for health care providers include \$1,320,000,000 during 2020 for the detection of SARS-CoV-2 or the prevention, diagnosis, and treatment of COVID-19. Moreover, the Public Health Service Act is amended with regard to telehealth network grants including the addition of a provision affording appropriated funds in the amount of \$29,000,000 for each fiscal year of 2021 through 2025 for the carrying out of that section. The Public Health Service Act is also amended with regard to rural health care services outreach, network development, and small provider quality improvement grant programs including a provision affording appropriated funds in the amount of \$79,500,000 for each fiscal year of 2021 through 2015 for the carrying out of that section.

The support afforded to health care providers also places a limitation on liability, under both federal or state law, for volunteer health care professionals during the COVID-19 emergency response. This limitation only applies if the professional's act or omission occurs in the course of providing health care services, in the professional's capacity as a volunteer, in a good faith belief that the individual being treated is in need of health care services, and in the course of providing health care services that are within, and do not exceed, the scope of the license, registration or certification of the volunteer.

However, this limitation does not apply if (1) the professional's act or omission constitutes willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious flagrant indifference to the rights or safety of the individual harmed by the health care professional; or (2) the professional rendered the health care services under the influence of alcohol or an intoxicating drug. This section preempts any state laws inconsistent with this section, unless such laws provide greater protection from liability, and it is in addition to the protections

afforded by the Volunteer Protection Act. Additionally, this section is effective immediately and it is only in effect for the length of the public health emergency.

Further, this Part amends the Public Health Service Act with regard to commissioned corps and ready reserve corps in the case of a public health emergency. This Part also provides flexibility for members of the National Health Service Corps members to provide health services at certain places and for a specified number of hours that the Secretary of Health and Human Services determines to be necessary to respond to the public health emergency.

Innovation

Part III addresses removal of the cap on other transactions authority (“OTA”) during public health emergencies and the priority of zoonotic animal drugs. The Act amends the Public Health Service Act to provide for the removal of the cap on OTA during public health emergencies. Further, the Act amends the Federal Food, Drug, and Cosmetic Act to afford priority and expedite the development and review of new zoonotic animal drugs.

Health Care Workforce

The CARES Act also addresses the reauthorization of health professions workforce programs, health workforce coordination, education and training relating to geriatrics, and nursing workforce development. As to the reauthorization of health professions workforce programs, the Act amends the Public Health Service Act to include a provision in the centers of excellence section, affording appropriated funds in the amount of \$23,711,00 for each fiscal year from 2021 through 2025 to carry out this section. The centers of excellence referred to in this section of the Public Health Service Act are designated health professions schools that meet certain conditions and receive grants from the Secretary, and enter into contracts for the purpose of supporting programs of excellence in health professions education for under-represented minority individuals.

This section also affords appropriated funds for scholarships, loan repayments and fellowships, and educational assistance in health professions regarding individuals from disadvantaged backgrounds in the amounts of \$51,470,000, \$1,190,000, and \$15,000,000, respectively, for the fiscal years from 2021 through 2025. This section also provides priority in making such awards to qualified applicants that train residents in rural areas, including for Tribes or Tribal Organizations in such areas.

The Act’s provision on the education and training relating to geriatrics amends the Public Health Service Act to provide grants, contracts, or cooperative agreements to health professions schools or programs for the establishment or operation of Geriatrics Workforce Enhancement Programs that meet certain requirements. Such requirements relate to the support of training, activities conducted by the program, the duration of the program, and the filing of an application with the Secretary. Special consideration will be given to entities that provide services in areas with a shortage of geriatric workforce professionals. Additionally, the Secretary is required to establish or maintain a program, the Geriatric Academic Career Awards, to provide geriatric academic career awards to eligible entities applying on behalf of eligible individuals to promote career development of such individuals as academic geriatricians or other academic geriatrics health professionals.

Finally, regarding the nursing workforce development, the Public Health Service Act is amended to include in the

definition of nurse managed health clinic a nurse practice arrangement, managed by advanced practice nurses, that provides primary care or wellness services to underserved or vulnerable populations and that is associated with a school, college, university or department of nursing, federally qualified health center, or independent nonprofit health or social services agency. This Section further amends the above-mentioned Act regarding the awarding of grants and contracts to carry out innovative demonstration projects or provide for strategic workforce supplementation activities as needed to address national nursing needs including the training and education of nursing students.

The advanced education nursing grants section of the Public Health Service Act is also amended to include a new section regarding authorized clinical nurse specialist programs. Such clinical nurse specialist programs eligible for support under that section include education programs that provide registered nurses with full-time clinical nurse specialist education and have as their objective the education of clinical nurse specialists who will, upon completion of such a program, be qualified to effectively provide care through the wellness and illness field to inpatients and outpatients experiencing acute and chronic illness. Further, the Secretary may grant awards to or enter into contracts with eligible entities and give priority to entities providing care to individuals with mental health or substance abuse disorders, individuals who are homeless, and survivors.

The Secretary may also make such grants to enhance the nursing workforce by initiating and maintaining nurse retention programs developing and implementing internships, accredited fellowships, and accredited residency programs in collaboration with one or more accredited schools of nursing, to encourage the mentoring and development of specialties. An eligible entity under this section includes an accredited school of nursing. The provision affording appropriated funds for that title of the Public Health Act is amended to reflect an amount of \$137,837,000 for each of fiscal years 2021 through 2025.

Education Provisions

Requirements Under the Higher Education Act

The CARES Act dispenses with the requirement under the Higher Education Act that a participating institution provide a non-federal share to match federal funds for 2019-2020 and 2020-2021, except for private, for-profit institutions. Further, the Act allows institutions to use supplemental education opportunity grants, under the Higher Education Act, for emergency aid to students. For this purpose, higher education institutions may:

- (i) waive the amount of need calculation under § 471 of the Higher Education Act;
- (ii) allow for a student affected by COVID-19 to receive funds in an amount that is not more than the maximum Federal Pell Grant for the applicable award year; and
- (iii) utilize a contract with a scholarship-granting organization designated for the sole purpose of accepting applications from or disbursing funds to students enrolled in the institution of higher education, if such organization disburses the full allocated amount provided to the institution to the recipients.

Additionally, the CARES Act allows for payments under a work-study program to go to students even if they have not completed the full program. This does not apply to students who were not eligible for work-study or who withdrew from a work-study program prior to COVID-19-related closures. Further, the Act allows for institutional

and student waivers under the Higher Education Act of return payments of federal grants or loans if the recipients had to withdraw due to COVID-19 or another emergency. It also gives the Secretary of Education the power to grant "national emergency educational waivers" from the Every Student Succeeds Act, the Higher Education Act, the Carl D. Perkins Career and Technical Education Act, and The Elementary and Secondary Education Act of 1965. Specifically, the legislation gives the Secretary of Education the power to "waive any statutory or regulatory requirement (such as those requirements related to assessments, accountability, allocation of funds, and reporting), for which a waiver request is submitted . . . if the Secretary determines that such a waiver is necessary and appropriate." These waivers will generally last for one academic year and do not apply to civil rights legislation.

Miscellaneous Higher Education Provisions

The CARES Act suspends payments for federal student loans until September 30, 2020. Interest shall not accrue in the interim. Further, interruption in service during forced closure shall not apply to disqualify teachers who need consecutive years of service to receive loan forgiveness. The Act also provides for loan deferments for HBCUs.

Labor Provisions

As part of the Families First Coronavirus Response Act, Congress passed the Emergency Paid Sick Leave Act. It is now amended as follows: (1) employers do not have to pay more than \$511 per day, or \$5,110 in the aggregate, to employees who are forced to leave work because they were subject to a federal, state, local, or health care provider order to quarantine or self-isolate or because they are experiencing symptoms of COVID-19 and are seeking a medical diagnosis; and (2) employers do not have to pay more than \$200 per day, or \$10,000 in the aggregate, for employees who are forced to leave work because they have to care for someone who was forced to quarantine or self-isolate or because they are suffering from a substantially similar condition as defined by the Secretaries of Health and Human Services, Treasury, and Labor. Finally, an employer's requirement to pay for the leave of an employee expires when the equivalent of 80 hours of work has been paid for or when an employee returns to work.

The Emergency Paid Sick Leave Act is also amended to say that an eligible employee is an employee who has been employed for at least 30 calendar days by the employer with respect to whom leave is requested. Further, the Families First Coronavirus Response Act is amended to allow the advancement of the payroll credit for required paid family leave.

In the case of any minimum required contribution that would be due under the Employee Retirement Income Security Act of 1974 is now due on January 1, 2021, with interest accruing.

Finance Committee

Exemption for Telehealth Services

In the case of plan years beginning on or before December 31, 2020, a plan shall not fail to be treated as a high deductible health plan because it lacks a deductible telehealth service.

Menstrual Care Products

Costs for menstrual care products shall be treated as incurred for medical care and will be reimbursed.

Funding Telehealth Services

The Act ensures that, during the emergency, telehealth services in federally-backed or rural health clinics are funded by the federal government.

Dialysis Patients

The Act temporarily dispenses with the requirement that dialysis patients meet face to face with their doctors.

Hospice Care

The Act allows hospice care visits to be done remotely through the use of telehealth services. Further, the bill generally recommends that telehealth services be used for medical visits when possible, during the emergency.

Inpatient Rehabilitation Services

During the emergency period, the Secretary of Health and Human Services will waive the requirement that an inpatient of a rehabilitation facility receive at least 15 hours of therapy per week.

COVID-19 Vaccine

The COVID-19 vaccine, when it becomes available, will be covered by Medicare without any cost-sharing.

Prescription Drug Plans and MA-PD Plans

During the emergency, the above-mentioned plans will permit eligible individuals enrolled in such plans to obtain, in a single fill or re-fill, the total day supply prescribed for such individual.

Providing Home and Community-based Service in Acute Care Hospitals

This is not designed to replace hospital care but rather to smooth the transition between hospital care and home and community-based care.

Health and Human Services Extenders

Extension of Spousal Impoverishment Protections

A state is not prohibited from applying an income or resource disregard under a methodology authorized by the Medicaid and CHIP Payment Access Commission (the “Public Law”) or on the basis of an individual’s need for home and community-based services or disregarding an individual’s spousal income and assets under a plan amendment to provide medical assistance for home and community-based services for individuals by reason of being eligible under the Public Law.

Extension and Expansion of Community Mental Health Services Demonstration Program

States will be selected to monitor certain community health clinics. Such program will aim to measure the effects of access to certified community behavioral health clinics on patient health and cost of care.

Extension of Other Programs

The bill extends the Sexual Risk Avoidance Education Program, the Personal Responsibility Education Program, the demonstration projects to address health profession work-force needs program, and the Temporary Assistance for Needy Families Program along with related programs.

Over-the-Counter Drugs

Classification of “safe” drugs

The bill declares that a drug will be considered safe and effective if it: (1) is in conformity with the general requirements for nonprescription drugs; and (2) is administered in a dosage that has been used to a material extent and for a material time. A drug will not be recognized as safe and effective if the evidence dictates that the drug is not safe and effective or there is inadequate evidence to determine that the drug is safe and effective.

ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE UNITED STATES ECONOMY

Emergency Relief Loans for Mid-Sized Businesses

The CARES Act authorizes the Secretary of the Treasury to make certain loans to industries and businesses that have been distressed by the COVID-19 outbreak. As part of this provision, over \$454 billion has been set aside for loans and other investments in programs and facilities established by the Board of Governors of the Federal Reserve System to provide liquidity to the financial system that supports lending to eligible businesses. The Act further states that one of the programs the Secretary of the Treasury shall endeavor to seek the implementation of, is one that provides financing to banks and other lenders that make direct loans to eligible businesses.

Eligible businesses under the provision include for-profit and non-profit businesses with between 500 and 10,000 employees. Such direct loans are subject to an interest rate that is not higher than 2% per annum. For the first six months after any such loan is made, or for such longer period as the Secretary of the Treasury may determine in his discretion, no principal or interest shall be due and payable.

Businesses applying for a loan under this provision must make a good-faith certification that:

- the uncertainty of economic conditions as of the date of the application makes necessary the loan request to support the ongoing operations of the recipient;
- the funds it receives will be used to retain at least 90 percent of the recipient's workforce, at full compensation and benefits, until September 30, 2020;
- the recipient intends to restore not less than 90 percent of the workforce of the recipient that existed as of February 1, 2020, and to restore all compensation and benefits to the workers of the recipient no later than four months after the termination date of the public health emergency declared by the Secretary of Health and Human Services on January 31, 2020, under section 319 of the Public Health Services Act (42 U.S.C. 247d) in response to COVID-19;
- the recipient is an entity or business that is domiciled in the United States with significant operations and employees located in the United States;
- the recipient is not a debtor in a bankruptcy proceeding;
- the recipient is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States;
- the recipient will not pay dividends with respect to the common stock of the eligible business, or repurchase an equity security that is listed on a national securities exchange of the recipient or any parent company of the recipient while the direct loan is outstanding, except to the extent required under a contractual obligation that is in effect as of the date of enactment of this Act;
- the recipient will not outsource or offshore jobs for the term of the loan and two years after completing repayment of the loan;
- the recipient will not abrogate existing collective bargaining agreements for the term of the loan and two years after completing repayment of the loan; and
- that the recipient will remain neutral in any union organizing effort for the term of the loan.

Temporary Relief for Community Banks

The CARES Act temporarily amends the Economic Growth, Regulatory Relief, and Consumer Protection Act to lower the Community Bank Leverage Ratio to 8%. The Economic Growth, Regulatory Relief, and Consumer Protection Act is further temporarily amended to give qualifying banks below the Community Bank Leverage Ratio a reasonable grace period to satisfy the Ratio. These temporary amendments will remain in effect from the date on which the appropriate federal banking agencies issue the rule and end either upon the termination of the national emergency declaration related to the COVID-19 outbreak or December 31, 2020, whichever comes first.

Temporary Relief for Troubled Debt Restructures

The CARES Act contains a provision that permits financial institutions to suspend the requirements under the Generally Accepted Accounting Principles for loan modifications related to the COVID-19 outbreak that would be otherwise categorized as a troubled debt restructuring. The Act also allows financial institutions to suspend any determination of a loan modified as a result of the effects of the COVID-19 pandemic as being a troubled debt restructuring, including impairment for accounting purposes.

Temporary Relief from Current Expected Credit Losses

The CARES Act also contains a provision that temporarily removes the requirement for insured depository institutions, bank holding companies, or any affiliate thereof to comply with the Financial Accounting Standards Board Accounting Standards Update No. 2016-13, including the current expected credit loss methodology for estimating allowances for credit losses. This relief will last from the enactment of the Act through either the termination of the national emergency declaration related to the COVID-19 outbreak or December 31, 2020, whichever comes first.

Loan Forbearance

The covered period with respect to these sections begins on January 30, 2020 and ends on the later of 120 days after the enactment of the CARES Act and 120 days after the declared national emergency terminates (the “Covered Period”).

During the Covered Period, a borrower with a federally-backed mortgage loan experiencing financial hardship due to COVID-19 may request forbearance by: (1) submitting a request to his or her servicer; and (2) affirming that he or she is experiencing such financial hardship. Such forbearance will last for 180 days and may be extended for an additional 180 days. During the forbearance period, fees, penalties, and interest will not accrue. The forbearance period for multifamily borrowers will be up to 30 days with a possibility of extending the period for two additional 30-day periods. There is also a foreclosure moratorium for not less than 60 days beginning on March 18, 2020. There is also a temporary moratorium on evictions.

CORONAVIRUS RELIEF FUNDS

This part of the CARES Act sets aside \$150,000,000 for state, local, and tribal governments as part of the Coronavirus Relief Fund. Three billion dollars is earmarked for U.S. territories, including Washington D.C. and \$8 billion is earmarked for tribal governments. Money is to be appropriated to the state governments proportionally by population size but will not be less than \$1,250,000,000. These funds may be used for the following: (1) necessary expenditures for public health due to COVID-19; (2) expenditures for things that were not included in the most recent budget; and (3) expenditures for costs incurred between March 1, 2020, and December 30, 2020.

MISCELLANEOUS PROVISIONS

Postal Service Funding

The CARES Act sets aside up to \$10 billion for the Postal Service. It also says that the Postal Service should prioritize the delivery of medical supplies and products.

Higher Education Emergency Funding

The CARES Act creates a Higher Education Emergency Relief Fund through which institutions of higher education will receive roughly \$14 billion out of the roughly \$31 billion allocated to education generally. Approximately 90% of the roughly \$14 billion will be awarded to higher education institutions through formula grants. The formula is as follows: (1) 75% according to the relative share of full-time equivalent students who receive Federal Pell Grants who were not exclusively enrolled in distance education courses (online courses) prior to the pandemic;

and (2) 25% according to the relative share of full-time equivalent students who do not receive Federal Pell Grants and who were not enrolled in online courses prior to the pandemic.

Further, 7.5% of the total money to be awarded under the Higher Education Act will be proportionally based on the relative share of funding appropriated to such programs in the Further Consolidated Appropriations Act to be used for:

- lost revenue;
- reimbursement for expenses;
- technology costs due to moving courses online, including faculty and staff training; and
- for grants to students.

Finally, 2.5% awarded under the Higher Education Act based on unmet needs, as determined by Secretary DeVos and which may be used for the same purposes as above.

No less than 50% of these funds must be spent as grants to students for expenses relating to the disruption of campus operations, including, but not limited to, food, housing, course materials, technology, healthcare, and childcare. The distribution mechanism for these funds will be the same distribution mechanism that the Secretary of Education already uses under the Higher Education Act. Finally, roughly \$1 billion is allocated to HBCUs.

CONCLUSION

The CARES Act was officially signed into law by the President on March 27, 2020. Many of the programs which it creates are expected to roll out in the near future. We will be sure to keep you up to date on any changes to the CARES Act or any of its programs.

Footnotes

[1] Sole proprietorships, independent contractors, and certain self-employed individuals are eligible for loans under the CARES Act but must provide additional documentation including payroll tax filings, Forms 1099-MISC, and income and expense reports.

[2] Or, in the alternative, the size standard in number of employees established by the Small Business Administration for the industry in which the business operates if that amount is greater than 500.

[3] The term “employee” for purposes of calculating reductions in salary is defined as any employee who did not receive, during any single pay period during 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000.