On March 27, 2020, the U.S. Congress adopted the **Coronavirus Aid, Relief, and Economic Security ("CARES") Act**. The President signed the measure into law the same day. The law includes measures designed to reduce the damage to the U.S. economy caused by COVID-19, including payments to certain individuals and families, expanded unemployment insurance benefits and eligibility, small business loans and grants, emergency financial assistance to employers in certain industries that have been significantly impacted by the virus, and financial assistance to healthcare systems. While there are many ways in which this law could have been improved to further limit the impact of the pandemic on the lives of ordinary workers, it does provide some help during this difficult time.

This memorandum summarizes some of the features of this 880-page law that are likely to help Willig, Williams & Davidson clients and their members. As always, Willig, Williams & Davidson is here to tailor responses about the new law to clients with specific questions.

INDIVIDUAL & FAMILY PAYMENTS

Payment Amounts

The Act provides cash payments to some individuals and families (eligibility is explained below). "Single-filers" (a person who files as a "single-filer" on his or her annual tax return with the IRS) with an adjusted annual gross income ("AGI") of up to $75,000 on their federal tax return are eligible for a $1,200 payment, heads of household with an AGI of up to $112,500 on their federal tax return are eligible for a $1,200 payment, and joint-filers with an AGI of up to $150,000 on their federal tax return are eligible for a $2,400 payment. Individuals and families qualifying for the payment are also entitled to a flat $500 payment for each child under the age of 17. The payment amount is reduced by $5 for each $100 that a taxpayer's income exceeds $75,000 (single-filer), $112,500 (head of household), or $150,000 (joint-filer). This means that single-filers with AGIs exceeding $99,000, heads of households with AGIs exceeding $146,500, and joint-filers with AGIs exceeding $198,000 will not receive any rebate.

The payments are not treated as taxable income; instead, they are treated like a tax refund. Payments will not be reduced if an individual owes a debt to a federal or state agency or owes back taxes.

Below are some examples of how this works in practice:

- Joe is single with no children and has an AGI of $60,000. Joe will receive the full $1,200 payment.
- Joe is single with no children and has an AGI of $100,000. Joe will not receive a payment.
- Joe is a head of household filer with two children under 17 and has an AGI of $60,000. Joe will receive the full $1,200 payment, with an additional $1,000 to account for his two children, for a total payment of $2,200.
- Joe is a head of household filer with two children under 17 and has an AGI of $120,000. Joe's payment is $1,825, calculated as follows: $120,000 - $112,500 = $7,500; 5% of $7,500 = $375; $1,200 - $375 = $825 (payment amount) + $1000 to account for Joe's two children = $1,825.
- Joe is married (joint-filer) with one child under 17 and with a combined AGI of $120,000. Joe's family will receive the full $2,400 payment, plus $500 to account for their child, for a total payment of $2,900.
- Joe is married (joint-filer) with two children and with a combined AGI of $200,000. Joe and his spouse will receive a total payment of $900, calculated as follows: $200,000 - $150,000 = $50,000; 5% of $50,000 = $2,500; $2,400 -$2,500 = -$100 (negative) + $1,000 to account for Joe's two children = $900.

Eligibility

To determine the appropriate payment amount, the IRS will review an individual's 2019 federal tax return or 2018 federal tax return if no return is on file for 2019. If no tax return has been filed for 2018 or 2019, the IRS will review an individual's SSA-1099 (Social Security Benefit Statement). This means that individuals without enough income to file a tax return are still eligible to receive the full amount of the cash payment.

Those who are ineligible for the payment are people who are claimed as dependents on another's federal tax return, including college students and seniors who are claimed as dependents by others. Also, ineligible for the payments are those who do not have a social security number or who are not documented resident aliens. Unfortunately, this means that millions of families and individuals – many of whom are the most affected by the economic downturn and who are on the frontlines of the pandemic – will not receive the payment.

Distribution

The payments are expected to be made via direct deposit if the IRS has that information associated with previous tax returns. If direct-deposit information is not on file with the IRS, it will mail the check to the taxpayer's address on file. It is expected to take approximately two months to distribute the payments, with some likely arriving sooner to those who have direct deposit.

If one's income in 2019 is above the income thresholds set forth above, but falls below the income thresholds in 2020, then the taxpayer will receive a credit on his or her 2020 return according to the payment amounts set forth above. If one's income in 2019 is below the income thresholds but increases in 2020 to go above the income threshold, then the taxpayer will not be required to repay it with respect to their 2020 return (no penalty). Further, if an individual did not file a 2018 or 2019 tax return and did not have an SSA-1099 on file, but does file a 2020 return, that individual will still receive the applicable credit on his or her 2020 federal return.

UNEMPLOYMENT INSURANCE

The Act significantly improves benefits and eligibility for unemployment insurance available to unemployed and underemployed workers. It uniformly increases the amount of unemployment insurance paid to each claimant by a flat $600 per week for a period of up to four months of unemployment or under employment and increases the period during which a person may receive unemployment insurance benefits by up to 13 weeks, in addition to the amount the State currently offers (up to 26 weeks, in Pennsylvania).

Additionally, it allows workers who typically are ineligible for unemployment insurance to receive it – part-time workers, self-employed workers, freelance workers and other "gig economy" workers. Finally, the Act provides full funding for states that waive any "waiting week," allowing workers to be eligible for unemployment benefits from the first day of layoff, termination or reduced work hours due to COVID-19, and relaxes the work search requirement for employees unable to search because of COVID-19 illness or quarantine.

SMALL BUSINESS LOANS & GRANTS

There is a smorgasbord of financial options for small businesses, non-profit organizations, sole proprietors, independent contractors, and other institutions that may be otherwise eligible for approximately $350 billion in loans, grants and other economic assistance, and potential loan forgiveness, created by the Act. The highlights summarized here include the Paycheck Protection Program and the expanded Economic Industry Disaster Loans ("EIDL") program.

Paycheck Protection Program

The Paycheck Protection Program ("Program") will be overseen by the U.S. Small Business Administration ("SBA"). Businesses with 500 or fewer employees will be eligible for loans of up to $10 million through December 31, 2020. (Note: For businesses in the hospitality industry meeting certain requirements and that have more than one physical location, the threshold is employment of no more than 500 employees per physical location, and receipts below a certain level.) The maximum interest rate for these loans may not exceed four percent. These loans will come from approved lenders, overseen by the SBA. Collateral and personal guarantee requirements, normally required by the SBA, are waived for loans obtained through the Program. Payments on these loans are deferable for at least six months or up to one year.

Loan forgiveness, equal to the amount spent during an 8-week period after the origination of the loan on payroll costs (eligible payroll costs do not include compensation over $100,000 in wages), mortgage interest, rent, and utilities is available, provided the borrower complies with requirements designed to incentivize the retention of employees, and maintenance of their salary and wages, or reverses any reductions that have already occurred, during the covered loan period of February 15, 2020 through June 30, 2020. Loan forgiveness may be up to the entire principal of the loan.

Borrowers seeking loan forgiveness will need to provide documentation to show that they qualify for loan forgiveness. Further, in an additional federal tax break, borrowers will not be taxed on the amount of any loan that is forgiven. Any portion of a loan that is not forgiven will have a maturity date of not more than 10 years.

Emergency Industry Disaster Loans

The Act provides for approximately $10 billion dollars for emergency EIDL. EIDL was, a pre-COVID-19 program for businesses who met certain criteria. The Act expands access to these loans to private non-profit entities (such as Unions), ESOPs, cooperatives, and Native American tribal businesses, as well as sole proprietors and independent contractors.

Any eligible entity that has applied for an EIDL in response to COVID-19 may also request a maximum $10,000 advance on that loan. Critically, applicants are not required to repay the advance even if they are ultimately denied in their application for an EIDL. However, applicants must certify their eligibility when they apply. This advance may be used for paid sick leave for employees, payroll costs, rent, mortgage payments, as well as for other obligations due to revenue loss because of the virus.

Caveat: A borrower may not receive both Paycheck Protection Program assistance and an EIDL for the same purpose, but if a borrower already has an EIDL -- unrelated to COVID-19 – that borrower may still apply for a loan with the Program and refinance the EIDL through the Program. In such cases, the $10,000 grant through the EIDL would be subtracted from any loan forgiveness obtained through the Program.

FUNDING FOR DISTRESSED INDUSTRIES

The Act provides for $500 billion in emergency funding to the Treasury's Exchange Stabilization Fund, the majority of which will be provided as loans to industries that are particularly hard hit by COVID-19, including hospitality, restaurants, and retail. For nonprofit organizations, and businesses between 500 and 10,000 employees, there are certain additional conditions upon receipt of these loans, as follows:

- The recipient must utilize the funds to retain at least 90% of its workforce with full compensation and employee benefits, through September 30, 2020;
- The recipient may not outsource or offshore jobs for the term of the loan, plus an additional two years;
- The recipient may not abrogate an existing collective bargaining agreement for the term of the loan, plus an additional two years; and
- The recipient must remain neutral in any union organizing effort for the term of the loan.

The Act creates a Treasury Department Special Inspector General for Pandemic Recovery to oversee, supervise, and audit the loans.

FUNDING FOR HEALTHCARE SYSTEMS AND MISCELLANEOUS HEALTHCARE CHANGES

The Act also provides for approximately $100 billion for hospitals and healthcare facilities, whose workers are on the frontlines fighting the pandemic. These monies are to be used for purchasing personal protective equipment and testing supplies to be distributed to state and local health agencies, hospitals and other healthcare facilities facing shortages, for training for health care workers; and for constructing new facilities to accommodate patients and emergency centers. Healthcare facilities and providers will also receive increased Medicare payments. Additional monies will be invested in COVID-19 research and enhance the Strategic National Stockpile which is the nation's largest supply of life-saving medical equipment, supplies, and pharmaceuticals for use in a public health emergency.

For workers, the Act makes the following pertinent changes:

- Expands the acceptable diagnostic testing products for COVID-19 that must be covered by group health plans and health insurance issuers at no cost-sharing.

- Requires non-grandfathered group health plans to cover, without cost-sharing and on an expedited basis, certain recommended services, including vaccines (when they become available) to prevent or mitigate COVID-19.
- Clarifies that the recently enacted Families First Coronavirus Response Act (FFCRA) does not require employers to pay an eligible employee more than $200 per day, or $10,000 in the aggregate for paid family leave under FFCRA's expansion of the FMLA.
- Clarifies that the FFCRA does not require employers to pay an eligible employee more than $511 per day and $5,110 total in sick leave for each employee receiving paid sick leave for individual symptoms, self-quarantine on advice of a health care provider, or mandated quarantine or isolation, or more than $200 per day, and $2,000 total in sick leave for employees otherwise eligible for sick leave for care of a quarantined individual or child.
- Requires otherwise eligible employees who were laid off on or after March 1, 2020 to be eligible for paid family and/or medical leave (under the FFCRA) if they are rehired by the employer.
- Permits employers to delay minimum required contributions to single employer defined benefit plans until January 1, 2021, at which time required contributions, plus interest, will be due.
- Expands the use of "telehealth" in multiple ways, such as by temporarily allowing High Deductible Health Plans with Health Savings Accounts to cover telehealth prior to the individual satisfying the deductible under the plan.
- Expands the list of products that may be purchased with funds in a Health Savings Account, Health Reimbursement Account, or Health Flexible Spending Account without a prescription.