

**MEMO# 32333**

March 27, 2020

# **Congress Approves \$2.2 Trillion Legislative Package in Response to COVID-19 Pandemic; President's Approval Expected Shortly**

[32333]

March 27, 2020 TO: ICI Members  
Investment Company Directors  
ICI Global Members SUBJECTS: 529 Plans  
Alternative Investments

Closed-End Funds

Compliance

Cybersecurity

Derivatives

Disclosure

Distribution

Exchange-Traded Funds (ETFs)

Fixed Income Securities

Fund Accounting & Financial Reporting

Fund Governance

International/Global

Investment Advisers

Money Market Funds

Municipal Securities

Operations

Pension

Portfolio Oversight

Risk Oversight

State Issues

Systemic Risk

Tax

Technology & Business Continuity

Trading and Markets

Transfer Agency

Unit Investment Trusts (UITs)

Valuation

Variable Insurance Products RE: Congress Approves \$2.2 Trillion Legislative Package in

## Response to COVID-19 Pandemic; President's Approval Expected Shortly

On March 23, the US Senate voted 96-0 to approve the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The US House of Representatives then followed suit and approved this sweeping legislation by voice vote this afternoon. President Trump is expected to sign it into law shortly.

The Act is the third legislative package passed by Congress this month to help the nation respond to the COVID-19 outbreak—dwarfing the other two in size and representing the largest grant of fiscal relief in US history. It provides funding to address critical needs of hospitals and health care providers, direct payments and other forms of support to individuals and families, and vital assistance to states and localities, distressed industries, and employers.

Provisions of the Act that are intended to support the financial system and the broader economy include:

- Funding to support specific industry sectors, such as the airline industry and businesses critical to maintaining national security
- Funding to support Federal Reserve programs and facilities to provide liquidity to the financial system
- Loans (and loan forgiveness for certain expenses) to small businesses, independent contractors, and other self-employed persons
- Aid to mid-size businesses (defined as those with 500-10,000 employees)
- Deferral of tax payments and other tax relief for individuals and businesses
- Direct payments to most Americans, with phase-out at higher income levels
- Expanded unemployment insurance

This memorandum briefly discusses aspects of the CARES Act that are likely to be of particular interest to ICI members: economic stabilization through Treasury support for certain businesses and Federal Reserve facilities; authority to establish a guarantee program for money market funds; relief relating to retirement plans and accounts; and certain tax provisions. ICI will follow the implementation of the economic stabilization measures highlighted below and will keep members apprised of developments.

## **Economic Stabilization and Assistance to Severely Distressed Sectors of the US Economy**

### **Treasury support for certain businesses and Federal Reserve facilities**

#### ***General***

*Treasury Funding.* The Act authorizes the Treasury Secretary to make up to \$500 billion in loans, loan guarantees, and other investments to provide liquidity to “eligible businesses,” States, and municipalities<sup>[1]</sup> related to losses incurred as a result of COVID-19. “Eligible business” is defined to mean an air carrier or a US business “that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under”

the Act. Specific amounts are designated for (1) passenger air carriers and certain related services (\$25 billion), (2) cargo air carriers (\$4 billion), and (3) businesses “critical to maintaining national security,” which the Act does not define (\$17 billion).

*Federal Reserve Liquidity Facilities.* Up to \$454 billion (plus any amounts available but not used for the three categories of businesses listed above) is available to support Federal Reserve programs or facilities established to provide liquidity to the financial system. More specifically, the Act refers to programs or facilities that support lending to eligible businesses, States, or municipalities by: (1) purchasing obligations or other interests either directly from issuers or in secondary markets or otherwise; or (2) making loans or other advances secured by collateral. Of note, the Act directs the Treasury Secretary to “endeavor to seek the implementation of a program or facility...that provides liquidity to the financial system that supports lending to States and municipalities.”

Any program or facility established by the Federal Reserve under this authority would be subject to requirements relating to loan collateralization, taxpayer protection, and borrower solvency as set forth under Section 13(3) of the Federal Reserve Act (emergency lending authority). The collateral requirements should be able to be satisfied by Treasury using the funds allocated to it to provide credit protection to the Federal Reserve, although the Federal Reserve could require additional collateral as well. Such a program or facility can only purchase obligations or other interests from, or make loans or other advances to, US businesses,<sup>[2]</sup> except for securities that are based on an index or are based on a diversified pool of securities. The Act prohibits reducing the principal amount of any obligation issued by an eligible business, State, or municipality under a program described above through loan forgiveness.

Additional restrictions apply in the case of Federal Reserve programs or facilities that provide direct loans to eligible businesses. Eligible businesses receiving such loans must comply, for example, with limitations on employee compensation, stock repurchases, and dividend payments or other capital distributions. The Treasury Secretary can waive the foregoing requirements upon a determination that doing so is necessary “to protect the interests of the Federal Government.” In that event, the Secretary must make himself available to testify before the Senate Banking Committee and the House Financial Services Committee regarding the reasons for the waiver.

*Conflicts of Interest.* The Act prohibits entities controlled, directly or indirectly, by certain persons, including the President, Vice President, members of Congress and their immediate family members, from being eligible for transactions pursuant to the Treasury funding or Federal Reserve liquidity facilities authorized under the Act. “Control” is defined as owning, controlling, or holding not less than 20 percent, by vote or value, of the outstanding amount of any class of equity interest in an entity.

*Rules of Construction.* The Act makes clear that “nothing in [Title IV, Subtitle A of the Act] shall be construed to allow the Secretary to provide relief to eligible businesses, States, and municipalities except in the form of loans, loan guarantees, and other investments as provided in [Title IV, Subtitle A] and under terms and conditions that are in the interest of the Federal Government.”

*Termination Date.* The authority to make new loans, loan guarantees, or other investments terminates on December 31, 2020. Loans, loan guarantees, or other investments outstanding on that date can be modified, restructured, or otherwise amended but cannot be forgiven. No loan or loan guarantee can be extended beyond five years from its initial

origination date.

## **Disclosure**

*Treasury and Federal Reserve Reports to Congress.* The Act directs the Treasury Department and Federal Reserve to submit a report summarizing any loans, loan guarantees, programs or facilities established under the Act to relevant Congressional committees within seven days of making the loans or loan guarantees or authorizing a new facility or other financial assistance. The Treasury Department and Federal Reserve also must publish the report on their respective websites. The Act further directs the Treasury Department and Federal Reserve to submit reports every 30 days for any outstanding loans, loan guarantees, or financial assistance. In addition, the Secretary of the Treasury and the Chair of the Federal Reserve must testify quarterly before the oversight committees.

*GAO Study and Report.* The Act requires the Government Accountability Office (GAO) to study the loans, guarantees, and other investments authorized under the Act and to submit a study within nine months to several Congressional committees. The GAO must follow up with annual reports to the extent that loans, loan guarantees, or other investments remain outstanding.

## **Oversight**

*Special Inspector General for Pandemic Recovery.* The Act establishes the Office of the Special Inspector General for Pandemic Recovery in the Treasury Department, with a Special Inspector General to be appointed by the President. The Special Inspector General will conduct audits and investigations of the loans, loan guarantees, other investments or programs made by the Treasury Department pursuant to the Act. The Act requires the Special Inspector General to submit quarterly reports to Congress that include a statement of loans, loan guarantees, other transactions, obligations, expenditures, and revenues associated with programs established under the Act.

*Congressional Oversight Commission.* The Act creates a Congressional Oversight Commission to oversee the Treasury Department and Federal Reserve's implementation of programs established by the Act, including efforts to provide economic stability. The Commission will submit reports to Congress every 30 days on the impact of the programs established under the Act on the economy, the effect of information provided pursuant to the Act on market transparency, and the costs and benefits of loans, loan guarantees, and investments made pursuant the Act to taxpayers. Members of the Commission will be appointed by bipartisan bicameral Congressional leadership.

## **Authority to establish Money Market Fund Guaranty Program**

From the date of enactment until December 31, 2020, the Act lifts the prohibition (dating from the 2008 financial crisis) on using the Treasury Department's Exchange Stabilization Fund (ESF) to guarantee money market funds. Any resulting money market fund guarantee must: (1) be limited to the total value of a shareholder's account in a participating fund as of the close of business on the day before the guarantee is announced; and (2) terminate no later than December 31, 2020. The Act appropriates funds to reimburse the ESF for amounts used in a Treasury money market fund guaranty program in the event any claim payment exceeds fees collected by the ESF.

## **Other**

### **Debt guarantee for non-interest-bearing transaction accounts**

The Act allows the Federal Deposit Insurance Corporation to establish a temporary program to guarantee debt, including noninterest-bearing transaction accounts, of solvent insured depository institutions and solvent insured depository institution holding companies. Any such program or guarantee must terminate by December 31, 2020.

### **Temporary hiring flexibility for SEC and CFTC**

The Act permits the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) to hire staff to fill temporary and term appointments to enable those agencies to prevent, prepare for, or respond to COVID-19. The temporary hiring flexibility extends to the termination of the COVID-19 national emergency declaration made by the President on March 13, 2020 or December 31, 2020, whichever is sooner.

## **Relief Relating to Retirement Plans and Accounts[3]**

### **Waiver of required minimum distributions**

The Act includes a provision waiving required minimum distributions (RMDs) in calendar year 2020 for individual retirement accounts (IRAs) and retirement plans, including 401(k) plans, 403(b) plans, and governmental 457(b) plans. The waiver also applies to certain RMDs for calendar year 2019, applicable only for individuals taking their first RMD. The Act includes relief for those who may have already taken an RMD in 2020—it allows such distributions to be recontributed into a retirement plan or IRA.

### **Distributions from IRAs and retirement plans**

The Act waives the 10 percent additional tax for early distributions associated with any “coronavirus-related distribution” taken in 2020 for amounts not to exceed \$100,000. Coronavirus-related distributions can be taken from IRAs and retirement plans including 401(k) plans, 403(b) plans, and governmental 457(b) plans. The provision applies to individuals who have been diagnosed with “the virus SARS-CoV-2” or “coronavirus disease 2019 (COVID-19);” individuals whose spouse or dependent is diagnosed with such virus or disease; or individuals who experience adverse financial consequences as a result of: (i) being quarantined, being furloughed or laid off or having reduced working hours due to the virus or disease; (ii) being unable to work due to lack of child care due to the virus or disease; (iii) closing or reducing hours of a business owned or operated by the individual due to the virus or disease; or (iv) other factors as determined by Treasury (collectively, “Qualified Individuals”).

### **Plan loans**

During the 180-day period beginning on the date of enactment of the Act, Qualified Individuals may receive loans from qualified plans in amounts up to \$100,000, up to the entire vested balance of their account. Plan loans typically are capped at \$50,000 or 50 percent of their account balance. For loans to Qualified Individuals outstanding as of, or after, the date of enactment, the Act allows certain repayments to be extended for one year.

## **Tax Provisions**

### **Extensions for federal income tax filings**

Unlike earlier legislative proposals in the House and Senate, the CARES Act does not provide all taxpayers with an additional three months in which to file federal income tax returns. For returns that would have been due on April 15, 2020, including on extension, the Treasury Department has issued guidance extending the filing deadline to July 15, 2020.<sup>[4]</sup> In a recent letter, ICI urged Treasury and the Internal Revenue Service to provide comparable filing relief to funds with tax returns due on May 15 or June 15 of this year.<sup>[5]</sup>

### **Modification of limitation on deductible business interest**

Section 2306 of the Act modifies the limitation on business interest that was enacted in 2017.<sup>[6]</sup> Specifically, the Act increases the amount of deductible net business interest expense from 30 percent to 50 percent of adjusted taxable income for any taxable year beginning in 2019 or 2020. Taxpayers also may elect to use their adjusted taxable income from their last taxable year beginning in 2019 in applying the limitation for any taxable year beginning in 2020.

Paul Schott Stevens  
President & CEO

#### **endnotes**

<sup>[1]</sup> Municipality” is defined to include a political subdivision of a State and an instrumentality of a municipality, State, or political subdivision of a State.

<sup>[2]</sup> The Act specifies “businesses that are created or organized in the United States or under the laws of the United States and that have significant operations in and a majority of its [sic] employees based in the United States.”

<sup>[3]</sup> For a more detailed discussion of the retirement provisions in the CARES Act, see [Institute Memorandum No. 32328](#), dated March 27, 2020.

<sup>[4]</sup> See [Institute Memorandum No. 32321](#), dated March 26, 2020 and [Institute Memorandum 32310](#), dated March 24, 2020.

<sup>[5]</sup> See ICI Letter [COVID-19: IRS Guidance Urgently Needed for RICs to IRS and Treasury](#), dated March 23, 2020.

<sup>[6]</sup> See [Institute Memorandum No. 30991](#), dated December 21, 2017.