



# President Trump's Executive Actions on Student Loans, Wage Assistance, Payroll Taxes, and Evictions: Initial Takeaways

August 10, 2020

In enacting the [Coronavirus Aid, Relief, and Economic Stability Act \(CARES Act\)](#), Congress provided relief to those confronting economic hardship as a result of the Coronavirus Disease 2019 (COVID-19) pandemic. Certain CARES Act protections [related to student loans](#) are scheduled to expire in fall 2020. Other CARES Act relief, including [moratoria](#) on certain evictions and foreclosures and an additional \$600 in weekly [unemployment compensation](#), have already expired. Still other CARES Act relief, including [deferred collection of payroll taxes](#), extends to some taxpayers but not others. On August 8, 2020, in four executive actions, President Trump directed federal agencies to extend [student loan relief](#), provide further [lost wage assistance](#), expand [tax collection deferrals](#), and explore [additional eviction or foreclosure protections](#). This Sidebar takes a first look at the President's executive actions, explaining how these actions relate to existing or expired CARES Act authorities and potential statutory questions. This Sidebar closes by flagging potential issues for Congress.

## Student Loan Payment Relief

On August 8, 2020, President Trump signed [a presidential memorandum](#) expressing his view that payments and interest accrual on student loans should remain suspended past September 30, 2020, “until such time that the economy has stabilized, schools have re-opened, and the crisis brought on by the COVID-19 pandemic has subsided.” The memorandum [directs](#) the Secretary of Education to “continue the temporary cessation of payments and the waiver of all interest on student loans held by the Department of Education until December 31, 2020.”

The memorandum cites [Section 455\(f\)\(2\)\(D\) of the Higher Education Act \(HEA\)](#), which allows eligible borrowers to [defer](#) certain federally held student loans if they experience [economic hardship](#). Such a deferment temporarily [relieves](#) the borrower of an obligation to pay principal installments on the loan. For some (but not all) loans, a deferment also temporarily [suspends the accrual of loan interest](#).

To implement the proposed suspension of payments and interest accrual, the presidential memorandum [directs](#) the Secretary of Education “to take action pursuant to applicable law to effectuate appropriate

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waivers of and modifications to the requirements and conditions of economic hardship deferment described in” HEA Section 455(f)(2)(D). Under [HEA Section 435\(o\)](#)—which Section 455(f)(2)(D) [incorporates by reference](#)—a borrower is eligible for an economic hardship deferment if the borrower is (1) working full-time and (2) earning an amount of money that falls below a specified threshold. But HEA Sections [455\(f\)\(2\)\(D\)](#) and [435\(o\)](#) also authorize the Secretary of Education to promulgate regulations making additional borrowers eligible for an economic hardship deferment. The Secretary of Education previously [issued regulations](#) making economic hardship deferments available to certain borrowers who might not otherwise meet the criteria specified in [Section 435\(o\)](#). The presidential memorandum [contemplates](#) that the Secretary of Education will exercise available statutory authorities to further expand economic hardship deferment eligibility to borrowers adversely affected by the COVID-19 pandemic.

The presidential memorandum may raise several questions for policymakers. First, as mentioned above, a deferment under [Section 455\(f\)](#) does not suspend interest accrual for all types of student loans. To the contrary, [Section 435\(f\)\(1\)\(B\)](#) states that for certain loans, interest “*shall* accrue and be capitalized or paid by the borrower” during the deferment period. It therefore may be uncertain whether Section 455(f), standing alone, allows the Executive to waive “*all* interest on student loans held by the Department of Education” as the presidential memorandum [contemplates](#). That said, the presidential memorandum [directs the Secretary of Education](#) to take action pursuant to “applicable law” to effectuate the memorandum’s directives. The Trump Administration might attempt to argue that [other provisions of federal law](#) give the Secretary of Education the power to waive all interest on student loans held by the Department of Education, even if Section 455 does not.

Second, the memorandum [does not explicitly specify](#) who will be eligible for the expanded economic hardship deferments. The memorandum [appears to contemplate](#), however, that the Secretary of Education will make those deferments available to all borrowers who are currently covered by the CARES Act’s payment and interest suspension provisions.

Third, while the [presidential memorandum](#) states that “[a]ll persons who wish to continue making student loan payments shall be allowed to do so,” it does not specify whether borrowers will need to apply for the deferments, or if the Secretary of Education will instead automatically grant deferments to eligible borrowers unless they opt out. Under [existing regulations](#), deferment is (with limited exceptions) [not automatic](#); a borrower must usually request a deferment and submit an application containing various documents. Although the Secretary of Education could potentially amend those regulations to automatically grant deferments, doing so could have both advantages and disadvantages. On one hand, dispensing with the requirement that borrowers file an application to receive a deferment could reduce burdens on both borrowers and the federal government. On the other hand, some borrowers might prefer *not* to receive an automatic deferment, preferring to continue paying off their loans. For instance, some student loan forgiveness programs—such as the [Public Service Loan Forgiveness \(PSLF\) Program](#)—require the borrower to [make payments](#) over an extended period to receive relief.

Fourth, Section 3513 of the CARES Act affords borrowers certain types of relief that the presidential memorandum [does not mention](#). For instance:

- Section 3513(e) [suspends involuntary collection](#) on student loans covered by the CARES Act’s principal and interest suspension provisions.
- Section 3513(d) affords borrowers certain [consumer credit reporting protections](#) during the suspension period.
- Section 3513(c) [requires](#) the Secretary of Education to “deem each month for which a loan payment was suspended” under the CARES Act as if the borrower “had made a payment for the purpose of any loan forgiveness program or loan rehabilitation program,” such as the PSLF program.

The memorandum does not expressly address these topics. Notably, however, when the Trump Administration took administrative action in March 2020 to grant relief to student loan borrowers, the Secretary of Education [instructed](#) the U.S. Treasury and collection agencies to cease involuntary collection actions and wage garnishments for at least 60 days.

Also, it is presently unclear whether the Secretary of Education will give stakeholders an opportunity to comment on any regulations she might promulgate to implement the memorandum. Federal law ordinarily requires the Secretary of Education to engage in a [negotiated rulemaking process](#) with stakeholders and [accept and consider public comments](#) before a regulation governing student loans becomes effective. But the Secretary of Education may [bypass these procedures](#) when following them would be “[impracticable, unnecessary, or contrary to the public interest](#).” Given the significant and continuing impact of COVID-19 and [Section 3513’s impending expiration date](#), the Secretary of Education [might be able to publish](#) regulations to implement aspects of the memorandum that become effective immediately, without first accepting public comment.

## Lost Wage Assistance

The President’s second executive action deals with wage assistance. The CARES Act [authorized and appropriated](#) full funding for “Federal Pandemic Unemployment Compensation” (FPUC). FPUC [provided](#) an additional \$600 in weekly unemployment compensation. FPUC [covered](#) weeks of unemployment “ending on or before July 31, 2020,” meaning that qualified individuals have [stopped](#) receiving FPUC.

Citing the need to “provide financial assistance” to those “who have lost employment as a result of the pandemic,” the President [directed](#) the Secretary of Homeland Security, acting through the Administrator of the Federal Emergency Management Agency (FEMA), to approve a “lost wages assistance program.” Under this program, “states” (defined to include the District of Columbia and the territories) may apply for a federal grant to make \$400 weekly payments to individuals who, for each week of assistance claimed, also receive at least \$100 in weekly unemployment assistance from other specified sources. The federal grant would contribute \$300 to this weekly payment using up to \$44 billion appropriated to FEMA’s Disaster Relief Fund, which is [available](#) for “necessary expenses in carrying out” the [Stafford Act](#). States would be required to contribute the remaining \$100 from funds available to the state. The memorandum recommends that states use their unobligated [Coronavirus Relief Fund](#) money to pay their state match. Grants are to be available for weeks of unemployment ending between August 1, 2020, and December 6, 2020, but the program could terminate earlier if Congress enacts supplemental COVID-19-related unemployment compensation or the Disaster Relief Fund’s balance falls below \$25 billion from its present level of “more than \$70 billion.”

The President relies on Section 408 of the Stafford Act as authority for the lost wage assistance set forth in the memorandum. In general, [Section 408\(a\)](#) allows the President to provide financial assistance to “individuals and households” who, “as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means.” The statute authorizes housing assistance (under Section 408(c)) and what FEMA [terms](#) “other needs assistance” (under Section 408(e)). This latter category [includes](#) financial assistance “to address personal property, transportation, and other necessary expenses or serious needs resulting from the major disaster,” and the President cites this particular subsection as support for his lost wage initiative.

The Stafford Act [requires](#) the President to promulgate regulations “to carry out” Section 408, including by setting “criteria, standards, and procedures for determining eligibility for assistance.” FEMA’s regulations implementing Section 408 [define](#) key statutory terms: “serious need” and “necessary expense.” A “serious need” is “the requirement for an item, or service, that is essential to an applicant’s ability to prevent, mitigate, or overcome a disaster-related hardship, injury or adverse condition.” A “necessary expense” is

“the cost associated with acquiring an item or items, obtaining a service, or paying for any other activity that meets a serious need.”

Whether Section 408 authorizes lost wage assistance may turn on how these definitions are applied. One reading might require FEMA to ensure that individuals use federal financial assistance for an item, service, or activity that is essential to coping with COVID-19. While this reading might be more or less flexible, it would potentially exclude expenses that are disaster-related but not “essential,” as well as expenses that are not disaster-related at all. The President’s memorandum does not appear to expressly identify or limit the items, services, or activities for which federal lost wage assistance may be used. That said, it seems likely that at least some eligible claimants might use lost wage assistance to pay for “essential” expenses allowed under Section 408’s implementing regulations and [policies](#).

Another provision of the Stafford Act might also bear on the scope of the President’s Section 408 authority. [Section 410\(a\)](#) of the Act specifically authorizes FEMA to provide benefit assistance to individuals who are “unemployed as a result of a major disaster.” (Authority to implement this assistance, which FEMA calls “Disaster Unemployment Assistance” (DUA), has been [delegated](#) to the Secretary of Labor.) However, DUA extends [only](#) to weeks of unemployment “with respect to which [an] individual is not entitled to any other unemployment compensation” and limits the weekly payments to “the maximum weekly amount” authorized under the law of the state where the disaster occurred. The President’s memorandum [provides](#) benefits to a different population (“eligible claimants” who receive at least \$100 in unemployment assistance from other specified sources) at an amount (\$400) not tied to state law.

This aspect of the memorandum has generated some disagreement. At least [one legal commentator](#) argues that Section 410’s express authorization for narrower disaster-related unemployment compensation prevents the President from using Section 408 to provide broader disaster-related unemployment compensation, while [another commentator](#) rejects this argument.

## Payroll Tax Deferral

The President’s August 8 actions also included a [memorandum](#) instructing the Treasury Secretary to defer certain payroll tax obligations between September 1 and the end of the year. Under the Internal Revenue Code, employees and employers both owe payroll taxes. But employers are [responsible](#) for withholding their employees’ portion of the tax and are liable for unpaid employee obligations. President Trump’s August 8 memorandum instructs the Treasury Secretary to defer—that is, postpone the deadline for—the withholding, deposit, and payment of the *employee* portion of the Old-Age, Survivors, and Disability Insurance (OASDI) component of Federal Insurance Contributions Act taxes, which [represents](#) 6.2 percent of employees’ wages. This deferral is generally limited to employees whose pretax wages and compensation amount to less than \$4,000 during any biweekly pay period. (The memorandum does not purport to affect the *employer* portion of OASDI taxes, which [Section 2302 of the CARES Act](#) allowed employers to defer between March 27, 2020, and the end of the year).

To defer the relevant obligations, the President instructs the Treasury Secretary to rely on [26 U.S.C. § 7508A](#), which allows the Secretary to postpone certain tax liabilities of persons affected by a federally declared disaster for up to a year. The President has already issued applicable [declarations](#) in connection with COVID-19 for all 50 states, the District of Columbia, and the territories.

The President’s memorandum echoes [a letter from March](#) in which he instructed the Treasury Secretary to use his Section 7508A authority to “provide relief from tax deadlines” to Americans adversely affected by COVID-19. The Secretary responded to that letter by [postponing](#) the due date for certain federal income tax payments from April 15 to July 15. In extending that deadline, the Treasury Secretary determined that any taxpayer who owed the relevant obligations was “affected” by COVID-19 for purposes of Section

7508A. The Treasury Secretary will presumably make a similar determination for covered employees in implementing the August 8 memorandum.

While the President appears to be on firm legal footing in instructing the Treasury Secretary to postpone the relevant payroll tax obligations, there is some disagreement about the measure's practical consequences. The Trump Administration has [argued](#) that deferring payroll tax obligations will cushion the blow of COVID-19 by putting more money in employees' pockets. But some commentators have [contended](#) that the deferral will prove ineffective because of employers' liability for their employees' unpaid payroll taxes. Because merely *deferring* payroll taxes does not *forgive* the relevant obligations, [some](#) experts predict that employers will continue to withhold payroll taxes to satisfy their responsibilities. The alternative—paying over the extra money to employees and entrusting them to satisfy their obligations after the deferral period—may expose employers to liability they would rather avoid. The Trump Administration [has indicated](#) that it will pursue measures to ultimately forgive these deferred payroll tax obligations.

## Evictions and Foreclosures

Finally, the President's August 8, 2020, executive actions include consideration of eviction and foreclosure issues. The CARES Act allows certain borrowers of a [federally backed multifamily mortgage loan](#) to request and receive forbearance for up to 90 days, during which time an eviction moratorium is in place for tenants residing in a property affected by the forbearance. The CARES Act also included a [120-day moratorium](#) on initiating a legal action to recover possession of a dwelling for nonpayment of rent or issuing a 30-day notice to vacate, when the property at issue carried a federally backed mortgage or benefitted from certain federal assistance. Additionally, the CARES Act allows [borrowers with a federally backed single-family mortgage loan](#) to request and receive forbearance for up to 360 days. It also suspended foreclosures for federally backed single-family mortgages for 60 days. While some of these CARES Act protections have expired, borrowers or tenants may also have access to [continued federal relief through other means](#).

The President [directed](#) executive branch officials to consider further measures for providing tenant or borrower relief. The President instructed the Secretary of Health and Human Services (HHS) and the Director of the Centers for Disease Control and Prevention (CDC) to examine whether temporarily halting evictions for nonpayment of rent is “reasonably necessary to prevent the further spread of COVID-19 from one State or possession into any other State or possession.” The President's directive does not cite specific statutory or regulatory authority for such action. But the language quoted above is similar to language used in HHS's interstate quarantine [statutory](#) and [regulatory](#) authorities. The President directed the Secretaries of the Treasury and HUD to “identify any and all available Federal funds” available to provide assistance to tenants and borrowers struggling to pay for housing because of the pandemic, and the Secretary of HUD is to pursue other action “to promote the ability of renters and homeowners to avoid eviction or foreclosure.” The executive order also directed the Director of the Federal Housing Finance Agency to “review all existing authorities and resources that may be used to prevent evictions and foreclosures for renters and homeowners resulting from hardships caused by COVID-19.”

On its own, the President's executive order largely just directs relevant officials to review existing authorities and funding to determine if eviction or foreclosure protections can be implemented through executive action. Whether these officials have authority to offer any particular protection will depend on the text of relevant statutes and any conditions Congress has placed on relevant funding sources.

## Considerations for Congress

Because most of the President's August 8 actions rely on statutory authorities that Congress has purportedly conferred on the President or federal agencies, Congress has significant authority to modify, rescind, or ratify many of these initiatives. Congress could address concerns about the consequences and effectiveness of the President's payroll-tax deferral by, for example, passing legislation *forgiving* payroll tax obligations during the relevant time period. Congress could also pass legislation ratifying FEMA's use of Section 408 for wage assistance or waiving interest on student loans during the COVID-19 disaster to resolve the potential legal questions discussed above. Finally, Congress could also eliminate or limit the statutory authorities implicated by these measures if it disapproves of the President's actions.

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