

President Trump Issues Four Executive “Actions”: Payroll Tax, Student Loans, Unemployment and Evictions

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INTRODUCTION

On August 8, 2020, President Trump took the unusual—and highly controversial—unilateral executive action route to provide limited economic relief to U.S. citizens without the approval of Congress. His actions were in the form of three executive memoranda and one executive order, which are summarized herein.

MEMORANDUM TO DEFER PAYROLL TAXES (FOR THOSE MAKING LESS THAN \$104,000 ANNUALLY)

Payroll taxes help pay for Social Security and Medicare. Employees generally pay a 6.2 percent tax from every paycheck to fund Social Security. Employers are also required to chip in another 6.2 percent out of the company’s coffer for each employee.

Congress previously deferred most employer payroll taxes until the end of 2020, due to the widespread economic impact of the Coronavirus pandemic.

President Trump’s first memorandum, titled “*Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster*,” seeks to defer the workers’ portion of payroll taxes.

The Memorandum instructs the U.S. Treasury to defer “the withholding, deposit, and payment” of payroll taxes from workers who earn less than \$4,000 every two weeks (which adds up to about \$104,000 a year). The deferral is intended to apply for four months, from September 1, 2020 through December 31, 2020.

Payroll taxes are withheld from employers by employees. The Memorandum directs the Secretary of Treasury to issue guidance on how the deferral will be implemented. Until such guidance is published, employers are left to speculate on whether and how they may be impacted by the implementation and whether they may be subject to liability if they fail to implement the deferral correctly.

The Memorandum envisions a tax deferral, not a tax cut. Although workers may feel like their taxes have been eliminated during the deferral period, unless Congress later creates a tax cut, the deferred tax will be due in total in 2021 (along with the 2020 taxes that will be due at that time).

Click [here](#) for the full text of the memorandum on payroll taxes.

MEMORANDUM TO DELAY STUDENT LOAN PAYMENTS

The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) provided student loan deferment, which suspended loan payments and set a temporary zero percent (0%) interest rate through September 30, 2020.

Section 455(f)(2)(D) of the Higher Education Act of 1965 allows the Secretary of Education to defer student loan payments when the Secretary determines that a “borrower has experienced or will experience an economic hardship.” 20 U.S.C. 1087e(f)(2)(D).

The President’s second memorandum, titled “*Memorandum on Continued Student Loan Payment Relief During the COVID-19 Pandemic*,” instructs the Secretary of Education, under this authority, to continue the student loan deferment previously provided under the CARES Act “as necessary 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.” Whether the Secretary of Education has statutory authority to make a blanket determination that all borrowers have experienced economic hardship (or only has authority to consider applications for relief from an individual borrower) is subject to argument.

Click [here](#) for the full text of the memorandum on student loans.

MEMORANDUM ALLOCATING UNEMPLOYMENT AID (SUBJECT TO STATE PARTICIPATION)

Under the CARES Act, those approved for unemployment aid were receiving an extra \$600 a week provided from the federal government on top of their state aid (which averaged \$330 a week, but varies state-by-state). However, the CARES Act provided for the federal funding to expire at the end of July 2020.

President Trump’s third memorandum, titled “*Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019*,” calls for extra payments to restart at a level of \$400 a week, but for the federal government to pay only \$300 of that amount, on the condition that each individual State pick up the remaining \$100.

To fund the Federal portion of the unemployment aid, the President’s memorandum allocates up to \$44 billion from the Department of Homeland Security’s Disaster Relief Fund.

FEMA has dedicated a page of its website to provide information on how States can apply for participation in the supplemental unemployment aid. The deadline for such applications currently is September 10, 2020. Individuals who are eligible for unemployment aid should watch to see whether their individual State submits an application. Many states may be too “cash poor” to fund the State portion of the aid.

Click [here](#) for the full text of the memorandum on unemployment aid.

To access the FEMA page, click [here](#).

EXECUTIVE ORDER TO “CONSIDER” HALTING EVICTIONS

The federal government backs a vast majority of residential mortgages throughout the nation. The CARES Act provided a temporary moratorium on filing evictions for renters in homes covered by federally-backed (i.e., FHA, Fannie Mae, and Freddie Mac) mortgages as well as for most residents of federally subsidized apartments, including those supported by HUD, USDA or Treasury (Low Income Housing Tax Credit developments). However, the CARES Act moratorium expired on July 24, 2020.

President Trump’s executive order, titled “*Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners*,” does not extend this moratorium or impose a new one. Instead, the executive order calls for the Health and Human Services Secretary (Alex Azar) and the Centers for Disease Control and Prevention Director (Robert Redfield) to “consider” whether an additional eviction moratorium is needed considering the prolonged pandemic impact.

The executive order also does not allocate any federal money to assist renters. Instead, it charges the Treasury Secretary (Steven Mnuchin) and the Housing and Urban Development Secretary (Ben Carson) “to identify any and all available federal funds to provide temporary financial assistance to renters and homeowners.”

In short, notwithstanding its title, the executive order does not actually provide any assistance to renters or homeowners.

Click [here](#) for the full text of the executive order regarding evictions.

If you have questions or need help navigating business decisions in these challenging times, please contact your Lawrence Kamin attorney.

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