

# COVID-19: Presidential Order Deferring Individual Payroll Taxes

Updated September 2, 2020

On August 8, 2020, President Trump issued a [presidential memorandum](#) ordering the [deferral of individual payroll tax obligations](#) from September 1, 2020, through December 31, 2020. The deferral is for employees with biweekly compensation of generally less than \$4,000. The memorandum directed the Secretary of the Treasury to issue guidance to implement this policy. On August 28, 2020, guidance was provided in [IRS Notice 2020-65](#). A [September 2, 2020, letter to the Government Accountability Office \(GAO\)](#) asks for an expedited determination if the guidance in IRS Notice 2020-65 constitutes a rule according to the [Congressional Review Act](#) in an effort [to force a congressional vote to overturn the deferral](#).

This Insight discusses the individual payroll tax deferral outlined in the memorandum, compares this order to the business payroll tax deferral provided in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136), and addresses questions related to potential economic effects.

## What individual payroll taxes are affected by the order?

The presidential memorandum orders deferred collection and payments of the employee portion of the Old Age, Survivors, and Disability Insurance (OASDI) payroll tax, also known as the Social Security payroll tax. The [Social Security trust funds](#) are financed by a 12.4% payroll tax on wages up to the taxable earnings base ([\\$137,700 in 2020](#)). The tax is split equally between employers and employees, with each paying 6.2%. Self-employed individuals pay both the employer and the employee share, or 12.4%. The deferral is applicable to employees with less than \$4,000 in wages during the biweekly pay period (or equivalent amounts with respect to other pay periods). The deferral applies to the railroad retirement tax attributable to the individual Social Security tax. The memorandum and IRS Notice 2020-65 do not specify whether the deferral applies to self-employed individuals.

## How does the order affect payroll tax collections?

Employers collect the employee portion of the tax by deducting the tax from wages when wages are paid. Employers typically [deposit payroll taxes](#) with the Internal Revenue Service (IRS) semiweekly or

**Congressional Research Service**  
<https://crsreports.congress.gov>

IN11488

monthly, and report employment taxes paid on [quarterly federal tax returns](#) filed no later than 30 days after the end of the calendar quarter. Some employers with small payrolls may file annually. [Decisions about withholding](#) of employee payroll tax amounts, and thus decisions regarding participation in deferral, are made by the employer.

Employee payroll taxes are deferred, not forgiven, by the presidential order. Deferring employee payroll taxes could result in the deferred tax liability being due after December 31, 2020. The presidential memorandum did not specify how deferred employee payroll taxes are to be collected, but did direct the Secretary of the Treasury to explore avenues to eliminate the obligation to pay deferred taxes, including legislation. Permanent forgiveness would require congressional action.

IRS Notice 2020-65 provides that any deferred employee payroll tax be withheld and paid ratably in the first four months of 2021, between January 1, 2021, and April 30, 2021. Deferred payroll taxes not repaid during this period are subject to interest and penalties. The notice provides that employers “may make arrangements” to collect deferred taxes from employees. The notice does not, however, explicitly address how employers should handle the deferred employee payroll taxes for employees no longer employed by the employer during the repayment period.

Administrative concerns and issues not resolved in IRS Notice 2020-65 may limit the scope of employers opting to defer employee payroll taxes. Stakeholders assert [it would be unworkable](#) to implement a system where employees choose whether or not their employer defers their share of OASDI payroll taxes from September 1, 2020, through the end of the year. Employers have also [expressed concerns](#) about administrative costs associated with implementing the deferral and concerns about being liable for the deferred tax liability of employees who have changed jobs. Another concern is that [employers may be liable](#) for deferred employee payroll taxes if [employees’ employment terminates](#) before the end of the repayment period.

## How does the individual deferral compare to the CARES Act deferral for businesses?

The CARES Act contained a [delay in payment of employer payroll taxes](#) (as opposed to the employee’s share of payroll taxes). Specifically, the CARES Act deferred employer OASDI payroll taxes due between March 27, 2020, and December 31, 2020. Deferred tax liability is to be paid in two installments—with half of the deferred amount to be paid on or before December 31, 2021, and the remainder due on or before December 31, 2022. For businesses, the payroll tax deferral was intended to free up cash flow. The payroll tax deferral is similar to an interest-free loan, which businesses will presumably repay once normal business operations resume.

The CARES Act provides general revenue transfers to the Social Security trust funds in the event that the employer payroll tax deferral results in a loss of revenue. The presidential memorandum does not address how the employee payroll tax deferral might affect the Social Security trust funds, or specifically include any hold-harmless provision.

## Is the individual deferral likely to provide economic stimulus?

There are likely [limited economic effects](#) from changing the timing of when individual OASDI payroll taxes are paid. Delaying payroll tax liability for several months does not provide working individuals with additional economic resources in the longer term; nor does it change the incentives to work, save, or invest. Employees employed by employers choosing to defer payroll taxes could see increased take-home

pay in the near term. However, given the administrative concerns and other unresolved issues, [employers may be hesitant to defer employee payroll taxes](#), which could mean limited economic effects. Deferral of employee payroll taxes for [federal government executive branch employees](#) is expected, [according to the Agriculture Department's National Finance Center](#) communication on August 21, 2020. Payroll tax deferrals do not provide additional resources to nonworking or unemployed individuals. If deferred payroll tax liability is forgiven, the forgiveness of deferred payroll tax liability could provide additional [fiscal stimulus](#).

*Barry Huston, Analyst in Social Policy, and William Morton, Analyst in Income Security, contributed to this product.*

## Author Information

Molly F. Sherlock  
Specialist in Public Finance

Donald J. Marples  
Specialist in Public Finance

---

## Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.