Businesses in the CARES Act the Coronavirus Stimulus Package

Small Business Loans and Assistance

Paycheck Protection Program--$349 Billion in new small business lending through the SBA 7(a) program for small businesses and nonprofits under 500 employees that are affected by COVID-19. These loans will be written on favorable terms and will feature forgiveness for the portion of the loan used on payroll, rent, mortgage payments, and utilities in the coming weeks, provided that employers retain their payroll or re-hire workers previously laid off—Details Below

Provides the authority for the Administrator of the U.S. Small Business Administration (SBA) to make loans under the Paycheck Protection Program.

Defines eligibility for loans as a small business, 501(c)(3) nonprofit, a 501(c)(19) veteran's organization, or Tribal business concern described in section 31(b)(2)(C) of the Small Business Act with not more than 500 employees, or the applicable size standard for the industry as provided by SBA, if higher.

Includes sole-proprietors, independent contractors, and other self-employed individuals as eligible for loans.

Allow businesses with more than one physical location that employs no more than 500 employees per physical location in certain industries to be eligible and is below a gross annual receipts threshold in certain industries to be eligible.

Waives affiliation rules for businesses in the hospitality and restaurant industries, franchises that are approved on the SBA's Franchise Directory, and small businesses that receive financing through the Small Business Investment Company (SBIC) program.

Specifies allowable uses of the loan include payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments.

Defines the covered loan period as beginning on February 15, 2020 and ending on June 30, 2020.

Establishes the maximum 7(a) loan amount to $10 million through December 31, 2020 and provides a formula by which the loan amount is tied to payroll costs incurred by the business to determine the size of the loan.

Provides a limitation on a borrower from receiving this assistance and an economic injury disaster loan through SBA for the same purpose. However, it allows a borrower who has an Economic Injury Disaster Loans (EIDL) loan unrelated to COVID-19 to apply for a PPP loan, with an option to refinance that loan into the PPP loan. The emergency EIDL grant award of up to $10,000 would be subtracted from the amount forgiven under the Paycheck Protection Program.

Increases the maximum loan for a SBA Express loan from $350,000 to $1 million through December 31, 2020, after which point the Express loan will have a maximum of $350,000.

Sets a maximum interest rate of four percent.

Entrepreneurial Development--*$240 million*

Authorizes SBA to provide additional financial awards to resource partners (Small Business Development Centers and Women's Business Centers) to provide counseling, training, and education on SBA resources and business resiliency to small business owners affected by COVID-19.

Authorizes SBA to provide an association or associations representing resource partners with grants to establish:

- one online platform that consolidates resources and information available across multiple Federal agencies for small business concerns related to COVID–19; and
- a training program to educate Small Business Development Center, Women's Business Center, Service Corps of Retired Executives, and Veteran's Business

Emergency Economic Injury Disaster Loans (EIDL) Grants--*$10 Billion*

Expands eligibility for access to Economic Injury Disaster Loans (EIDL) to include Tribal businesses, cooperatives, and ESOPs with fewer than 500 employees or any individual operating as a sole proprietor or an independent contractor during the covered period (January 31, 2020 to December 31, 2020). Private non-profits are also eligible for both grants and EIDLs.

Requires that for any SBA EIDL loans made in response to COVID-19 before December 31, 2020, the SBA shall waive any personal guarantee on advances and loans below $200,000, the requirement that an applicant needs to have been in business for the 1-year period before the disaster, and the credit elsewhere requirement.

During the covered period, allows SBA to approve and offer EIDL loans based solely on an applicant's credit score, or use an alternative appropriate alternative method for determining applicant's ability to repay.

Establishes an Emergency Grant to allow an eligible entity who has applied for an EIDL loan due to COVID-19 to request an advance on that loan, of not more than $10,000, which the SBA must distribute within 3 days.

In advance of disbursing the advance payment, the SBA must verify that the entity is an eligible applicant for an EIDL loan. This approval shall take the form of a certification under penalty of perjury by the applicant that they are eligible.

Outlines that advance payment may be used for providing paid sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage payments, and repaying obligations that cannot be met due to revenue losses.

Treasury Loans Stabilization Funds--$*500 Billion*

Defines an "Eligible Business" as a United States business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act. This Section also defines a "State" as any of the several States, the District of Columbia, any of the territories and possessions of the United States, any bi-State or multi-State entity, and any Indian tribe.

<u>Emergency Relief and Taxpayer Protections</u>

- Provides $500 billion to Treasury's Exchange Stabilization Fund to provide loans, loan guarantees, and other investments, distributed as follows:

1. Direct lending, including:
   a. **$25 billion** for passenger air carriers, eligible businesses that are certified under part 145 of title 15, Code of Federal Regulations, and approved to perform inspection, repair, replace, or overhaul services, and ticket agents;
   b. **$4 billion** for cargo air carriers; and
   c. **$17 billion** for businesses important to maintaining national security.
2. **$454 billion,** as well as any amounts available but not used for direct lending, for loans, loan guarantees, and investments in support of the Federal Reserve's lending facilities to eligible businesses, states, and municipalities. Federal Reserve 13(3) lending is a critical tool that can be used in times of crisis to help mitigate extraordinary pressure in financial markets that would otherwise have severe adverse consequences for households, businesses, and the U.S. economy.

All direct lending must meet the following criteria:

1. Alternative financing is not reasonably available to the business;
2. The loan is sufficiently secured or made at an interest rate that reflects the risk of the loan and, if possible, not less than an interest rate based on market conditions for comparable obligations before the coronavirus outbreak;
3. The duration of the loan shall be as short as possible and shall not exceed 5 years;
4. Borrowers and their affiliates cannot engage in stock buybacks, unless contractually obligated, or pay dividends until the loan is no longer outstanding or one year after the date of the loan;
5. Borrowers must, until September 30, 2020, maintain its employment levels as of March 24, 2020, to the extent practicable, and retain no less than 90 percent of its employees as of that date;
6. A borrower must certify that it is a U.S.-domiciled business and its employees are predominantly located in the U.S.;
7. The loan cannot be forgiven; and
8. In the case of borrowers critical to national security, their operations are jeopardized by losses related to the coronavirus pandemic.

Treasury will endeavor to implement a special 13(3) facility through the Federal Reserve targeted specifically at nonprofit organizations and businesses between 500 and 10,000 employees, subject to additional loan criteria and obligations on the recipient, such as:

1. <u>The funds received must be used to retain at least 90 percent of the recipient's workforce, with full compensation and benefits, through September 30, 2020;</u>
2. <u>The recipient will not outsource or offshore jobs for the term of the loan plus an additional two years;</u>
3. <u>The recipient will not abrogate existing collective bargaining agreements for the term of the loan plus an additional two years; and</u>
4. <u>The recipient must remain neutral in any union organizing effort for the term of the loan.</u>

<u>Limitation on Certain Employee Compensation.</u>

Prohibits recipients of any direct lending authorized by this Title from increasing the compensation of any officer or employee whose total compensation exceeds $425,000, or from offering such employees severance pay or other benefits upon termination of employment which exceeds twice the maximum total annual compensation received by that employee, until one year after the loan is no longer outstanding. Officers or employees making over $3 Million last year would also be prohibited from earning more than $3 Million plus fifty percent of the amount their compensation last year exceeded $3 Million.

Special Inspector General for Pandemic Recovery.

Establishes within the Department of the Treasury the Office of the Special Inspector General for Pandemic Recovery. The Special Inspector General shall be appointed by the President and shall conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Treasury Secretary under this Title. The Special Inspector General shall keep Congress informed through quarterly reports that provide the details of all such loans, loan guarantees, or other investments.

Conflicts of Interest.

Any company in which the President, Vice President, an executive department head, Member of Congress, or any of such individual's spouse, child, son-in-law, or daughter-in-law own over 20 percent of the outstanding voting stock shall not be eligible for loans, loan guarantees, or other investments provided under this Title.

Congressional Oversight Commission.

Establishes a Congressional Oversight Commission charged with oversight of the implementation of this Title by the Department of the Treasury and the Board of Governors of the Federal Reserve System, including efforts of the Department and the Board to provide economic stability as a result of coronavirus. The Oversight Commission shall consist of 5 members as follows:

- 1 member appointed by the Speaker of the House of Representatives;
- 1 member appointed by the House Majority Leader;
- 1 member appointed by the Senate Majority Leader;
- 1 member appointed by the Senate Minority Leader;
- 1 member appointed by the Speaker of the House and Senate Majority Leader, after consultation with the Senate Minority Leader and House Minority Leader.

The Panel may hold hearings, take testimony, and secure from any federal department or agency information it deems necessary to carry out its responsibility. The Panel is required to submit reports to Congress every 30 days specifying:

(1) The impact of purchases made under this Title on the financial well-being of the people of the United States, financial markets, and financial institutions;

(2) The extent to which the information made available on transactions under this Title has contributed to market transparency; and

(3) The effectiveness of loans, loan guarantees, and investments made under this title of minimizing long-term costs to the taxpayer and maximizing the benefits for taxpayers.

The Oversight Commission shall terminate on September 30, 2025.

Business and Tax Provisions

Employee retention credit for employers subject to closure due to COVID-19

The provision provides a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.

The credit is based on qualified wages paid to the employee. For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above. For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order. The credit is provided for the first $10,000 of compensation, including health benefits, paid to an eligible employee. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.

Delay of payment of employer payroll taxes

The provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages. The provision requires that the deferred employment tax be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022. The Social Security Trust Funds will be held harmless under this provision.

Modifications for net operating losses

The provision relaxes the limitations on a company's use of losses. Net operating losses (NOL) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year. The provision provides that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years. The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income. These changes will allow companies to utilize losses and amend prior year returns, which will provide critical cash flow and liquidity during the COVID-19 emergency.

Modification of limitation on losses for taxpayers other than corporations

The provision modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they can utilize excess business losses and access critical cash flow to maintain operations and payroll for their employees.

Modification of credit for prior year minimum tax liability of corporations

The corporate alternative minimum tax (AMT) was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. The provision accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.

Modification of limitation on business interest

The provision temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50 percent of taxable income (with adjustments) for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.

Technical amendment regarding qualified improvement property

The provision enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. The provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies' access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.

Temporary exception from excise tax for alcohol used to produce hand sanitizer

The provision waives the federal excise tax on any distilled spirits used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the Food and Drug Administration and is effective for calendar year 2020.

Labor Provisions

Limitation on Paid Leave

Creates a limitation stating an employer shall not be required to pay more than $200 per day and $10,000 in the aggregate for each employee under this section.

Emergency Paid Sick Leave Limitation

Creates a limitation stating an employer shall not be required to pay more than $511 per day and $5,110 in the aggregate for sick leave or more than $200 per day and $2,000 in the aggregate to care for a quarantined individual or child for each employee under this section.

Unemployment Insurance

Provides that applications for unemployment compensation and assistance with the application process, to the extent practicable, be accessible in two ways: in person, by phone, or online.

Paid Leave for Rehired Employees

Allows an employee who was laid off by an employer March 1, 2020, or later to have access to paid family and medical leave in certain instances if they are rehired by the employer. Employee would have had to work for the employer at least 30 days prior to being laid off.

Advance Refunding of Credits

Allows employers to receive an advance tax credit from Treasury instead of having to be reimbursed on the back end. Creates regulatory authority to implement the tax credit advances.

Expansion of DOL Authority to Postpone Certain Deadlines

Amends Section 518 of ERISA to provide the Department of Labor the ability to postpone certain ERISA filing deadlines for a period of up to one year in the case of a public health emergency.

Single-Employer Plan Funding Rules

Provides single employer pension plan companies with more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until January 1, 2021. At that time, contributions due earlier would be due with interest. The bill also provides that a plan's status for benefit restrictions as of December 31, 2019, will apply throughout 2020.

Application of Cooperative and Small Employer Charity Pension Plan Rules to Certain Charitable Employers whose primary Exempt Purpose is Providing services with respect to Mothers and Children

Amends a the definition of CSEC Plans to provide that a pension plan will be a CSEC plan if, as of January 1, 2000, the plan was sponsored by an employer that (i) is exempt from taxation under Code section 501(c)(3), (ii) has been in existence since 1938, (iii) conducts medical research directly or indirectly through grant making, and (iv) has as its primary exempt purpose providing services with respect to mothers and children. This section is effective for plan years beginning after December 31, 2018.

Rebates and Individual Provisions

2020 Recovery Rebates for Individuals

All U.S. residents with adjusted gross income up to $75,000 ($150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, are eligible for the full $1,200 ($2,400 married) rebate. In addition, they are eligible for an additional $500 per child. This is true even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits.

For the vast majority of Americans, no action on their part will be required in order to receive a rebate check as IRS will use a taxpayer's 2019 tax return if filed, or in the alternative their 2018 return. This includes many low-income individuals who file a tax return in order to take advantage of the refundable Earned Income Tax Credit and Child Tax Credit. The rebate amount is reduced by $5 for each $100 that a taxpayer's income exceeds the phase-out threshold. The amount is completely phased-out for single filers with incomes exceeding $99,000, $146,500 for head of household filers with one child, and $198,000 for joint filers with no children.

Special rules for use of retirement funds

Consistent with previous disaster-related relief, the provision waives the 10-percent early withdrawal penalty for distributions up to $100,000 from qualified retirement accounts for coronavirus-related purposes made on or after January 1, 2020. In addition, income attributable to such distributions would be subject to tax over three years, and the taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions. Further, the provision provides flexibility for loans from certain retirement plans for coronavirus-related relief.

A coronavirus-related distribution is a one made to an individual: (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.

Temporary waiver of required minimum distribution rules for certain retirement plans and accounts

The provision waives the required minimum distribution rules for certain defined contribution plans and IRAs for calendar year 2020. This provision provides relief to individuals who would otherwise be required to withdraw funds from such retirement accounts during the economic slowdown due to COVID-19.

Allowance of partial above the line deduction for charitable contributions

The provision encourages Americans to contribute to churches and charitable organizations in 2020 by permitting them to deduct up to $300 of cash contributions, whether they itemize their deductions or not.

Modification of limitations on charitable contributions during 2020

The provision increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020. For corporations, the 10-percent limitation is increased to 25 percent of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

Exclusion for certain employer payments of student loans

The provision enables employers to provide a student loan repayment benefit to employees on a tax-free basis. Under the provision, an employer may contribute up to $5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The $5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

Economic Stabilization Provisions

Credit Protection During Covid-19.

This section requires that furnishers to credit reporting agencies who agree to account forbearance, or agree to modified payments with respect to an obligation or account of a consumer that has been impacted by COVID-19, report such obligation or account as "current" or as the status reported prior to the accommodation during the period of accommodation unless the consumer becomes current. This applies only to accounts for which the consumer has fulfilled requirements pursuant to the forbearance or modified payment agreement. Such credit protection is available beginning January 31, 2020 and ends at the later of 120 days after enactment or 120 days after the date the national emergency declaration related to the coronavirus is terminated.

Foreclosure Moratorium and Consumer Right to Request Forbearance.

Prohibits foreclosures on all federally-backed mortgage loans for a 60-day period beginning on March 18, 2020. Provides up to 180 days of forbearance for borrowers of a federally-backed mortgage loan who have experienced a financial hardship related to the COVID-19 emergency. Applicable mortgages included those purchased by Fannie Mae and Freddie Mac, insured by HUD, VA, or USDA, or directly made by USDA. The authority provided under this section terminates on the earlier of the termination date of the national emergency concerning the coronavirus or December 31, 2020.

Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans.

Provides up to 90 days of forbearance for multifamily borrowers with a federally backed multifamily mortgage loan who have experienced a financial hardship. Borrowers receiving forbearance may not evict or charge late fees to tenants for the duration of the forbearance period. Applicable mortgages include loans to real property designed for 5 or more families that are purchased, insured, or assisted by Fannie Mae, Freddie Mac, or HUD. The authority provided under this section terminates on the earlier of the termination date of the national emergency concerning the coronavirus or December 31, 2020.

Temporary Moratorium on Eviction Filings.

For 120 days beginning on the date of enactment, landlords are prohibited from initiating legal action to recover possession of a rental unit or to charge fees, penalties, or other charges to the tenant related to such nonpayment of rent where the landlord's mortgage on that property is insured, guaranteed, supplemented, protected, or assisted in any way by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program, or the Violence Against Women Act of 1994.

Temporary Lending Limit Waiver.

Temporarily provides a nonbank financial company an exception to the OCC's lending limits aligned with the exception for financial companies, and temporarily authorizes the Comptroller of the Currency to exempt any transaction from the lending limits, if the exemption is in the public interest. The temporary exemption from lending limits and authorization to exempt transactions expires at the earlier of December 31, 2020, or the date on which the national emergency declaration related to coronavirus is terminated.

Temporary Relief for Community Banks.

Requires the Federal banking agencies by interim rule to temporarily reduce the Community Bank Leverage Ratio (CBLR) for qualifying community banks from 9 percent to 8 percent, and provide for a reasonable grace period if a community bank's CBLR falls below the prescribed level. The interim rule expires at the earlier of December 31, 2020, or the date on which the national emergency declaration related to coronavirus is terminated.

Temporary Relief from Troubled Debt Restructurings.

A financial institution may elect to suspend requirements under U.S. Generally Accepted Accounting Principles for loan modifications related to the coronavirus pandemic, and suspend any such determination regarding loans modified as a result of the effects of the coronavirus. Federal banking agencies and the NCUA must defer to a financial institution to make a suspension. Such election may begin on March 1, 2020 and last no later than 60 days after the lifting of the coronavirus national health emergency.

Optional Temporary Relief from Current Expected Credit Losses.

An insured depository institution (including a credit union), bank holding company, or any of its affiliates has the option to temporarily delay measuring credit losses on financial instruments under the new Current Expected Credit Losses methodology. Such option to delay expires at the earlier of December 31, 2020, or the date on which the national emergency declaration related to coronavirus is terminated.

Non-Applicability of Restrictions on ESF During National Emergency.

Temporarily suspends the statutory limitation on the use of the Exchange Stabilization Fund (Section 131 of the Emergency Economic Stabilization Act of 2008) for guarantee programs for the United States money market mutual fund industry. Any guarantee shall be limited to the total value of a shareholder's holdings in a participating fund as of the close of business on the day before the announcement of the guarantee. Any guarantee established as a result of the application of this Section shall terminate not later than December 31, 2020.

Temporary Credit Union Provisions; Expanding Liquidity

Temporarily enhances access to the Central Liquidity Facility (CLF), including for corporate credit unions, to meet liquidity needs. Increases resources available to meet liquidity needs through the Facility. The amendments provided under this section sunset on December 31, 2020.

Increasing Access to Materials Necessary for National Security and Pandemic Recovery.

Waives for a two-year period the requirement for a separate act of Congress to authorize certain projects exceeding $50 million and the requirement that any amounts unused in the Defense Production Act Fund at the end of the fiscal year that exceed $750 million be swept and returned to the Treasury's General Fund. This Section also waives for one year following enactment the requirement for a 30-day layover after Presidential notification to Congress before a project may start and the requirement that Congress separately authorize certain projects exceeding $50 million in aggregate cost.

Emergency Appropriations

Support for Manufacturing – $50 million is provided for the Hollings Manufacturing Extension Partnership to help small- and medium-sized manufacturers recover by finding value within the supply chain and expanding markets. For every one dollar of federal investment, MEP generates $27.20 in new sales growth for manufacturers. The bill also includes an additional $10 million for the National Institute for Innovation in Manufacturing Biopharmaceuticals to support the development and manufacture of new medical countermeasures and biomedical supplies to combat the coronavirus.

Assistance for Fishermen – The bill provides $300 million to help fishermen around the country struggling due to disappearing economic markets caused by the novel coronavirus pandemic. Tribal, subsistence, commercial, and charter fishermen, as well as aquaculture farmers, are all eligible for the disaster assistance.