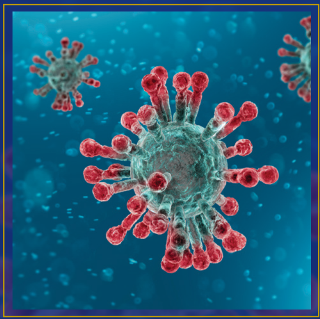

NECA Summary

Key Provisions of Phase III COVID Response Legislation

The Coronavirus Aid, Relief, and Economic Security (CARES) Act

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

NECA

3 Bethesda Metro Center
Suite 1100
Bethesda, MD 20814
301-657-3110 • www.necanet.org

published 3/28/2020

Following days of protracted negotiations, Congress passed and the President signed a $2 trillion measure to respond to the coronavirus pandemic, the CARES Act.

The third supplemental package contains scores of provisions providing relief to large segments of the United States economy decimated by the crisis, including assistance to individual taxpayers. It is important to note that congressional enactment of this legislation is only the first step in the process. After passage, departments and agencies across the federal government will be responsible for implementation, a process that could be challenging for newly created or significantly expanded programs. We will be monitoring these developments and provide updates.

The legislation provides support for particularly hard-hit industries, flexibility for banks and financial institutions to deal with a rapidly evolving environment, and tools for the federal government to ensure the supply of critical materials.

Small Business Assistance

As of today, there is one Small Business Association (SBA) lending program available called the Economic Injury Disaster Loan (EIDL) program. The CARES Act creates a second program called the Paycheck Protection Program, which is a loan guarantee program in which the amount of the outstanding loan is forgiven to the extent a business keeps employees on the payroll through 2020.

Economic Injury Disaster Loans

- There is an SBA loan program now open in which small businesses may apply directly to the SBA for an "Economic Injury Disaster Loan" (EIDL). The bill expands eligibility for access to EIDLs 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 EIDLs.
- The size of an Economic Injury Disaster Loans can be up to $2 million to help overcome the temporary loss of revenue borrowers are experiencing as a result of COVID. There are no loan forgiveness provisions in the EIDL program. The loan must be repaid to SBA.
- These loans may be used to pay fixed debts, payroll, accounts payable and other bills that can't be paid because of the COVID impact. The interest rate is 3.75% for small businesses.
- The bill 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 with the requirement that an applicant needs to have been in business for the 1-year period before the disaster.
- The bill 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. The bill 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.

- Requires that an advance payment be considered when determining loan forgiveness, if the applicant transfers into a loan made under SBA's Paycheck Protection Program.
- 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.
- SBA disaster loans may be long-term, up to a maximum of 30 years. Terms are determined on a case-by-case basis, based upon each borrower's ability to repay.
- Applications are online (***https://disasterloan.sba.gov/ela/***) submitted directly to SBA by the borrower. Background financial information on the business is required to be submitted.

The new "Paycheck Protection Program" ("PPP")

The bill creates an expanded loan guaranty program (the Paycheck Protection Program) for small businesses and nonprofits struggling to keep people on the payroll.

The legislation authorizes $349 billion for the (SBA) 7(a) program through year end to extend to small, nonprofit, and Tribal businesses with fewer than 500 employees, giving them the ability to seek loans to cover payroll and other expenses. The loan period will be from February 15, 2020 to June 30, 2020 with a maximum interest rate of 4% and maximum loan value of $10 million based on a formula tied to payroll costs incurred by the business. Allowable uses of the loan include employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments.

Repayment of these loans is guaranteed by the US Small Business Administration (SBA). Borrowers are eligible for loan forgiveness of actual payroll costs after the loan compared to the previous 12 months. To encourage rehiring employees who have already been laid off due to the COVID-19 crisis, borrowers that rehire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.

The borrower applies to its normal lender, and the lender applies to the SBA.

- Allows any business or nonprofit (501c3) with 500 or fewer employees to access the SBA 7(a) loan guaranty program.
- This is a guaranty of a private lender's loan, so the borrower's lender applies to the SBA for the guaranty.
- The maximum loan amount is $10 million; a formula ties the approved loan amount to payroll costs incurred by the business.
- Allows complete deferment of loan payments for at least six months and not more than one year.
- The borrower is eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to Feb 15, 2020, payment of rent on any lease in force prior to Feb 15, 2020, and payment on any utility for which service began before Feb 15, 2020.
- First possible period eligible for forgiveness is the 8 week period following lender's origination of the loan.

- The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year. To encourage employers to rehire any employees who have already been laid off due to the COVID crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.
- Any loan amount not forgiven at the end of one year is carried forward as an ongoing loan with terms up to 10 years, at an interest rate no higher than 4%.
- A borrower cannot receive both a PPP loan and an EIDL loan for the same purpose. However, the program allows a borrower who received an EIDL loan after January 31, 2020 and before the date on which PPP loans are made available to refinance the EIDL loan under the PPP program.
- Broader adoption of the program is encouraged through inclusion of multi-location businesses that may employ more than 500 people across locations so long as they are below a gross annual receipts threshold. It also 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.
- Eligible borrowers are required to make a good faith certification that the loan is necessary due to COVID-19 related economic stress; funds will be used to retain workers and maintain payroll, lease, and utility payments; and are not receiving duplicative funds for the same uses from another SBA program.
- Waives both borrower and lender fees for participation in the program, credit elsewhere test for funds as well as collateral and personal guarantee requirements in favor of government guarantee increases to 100 percent through December 31, 2020, at which point guarantee percentages will return to 75 percent for loans exceeding $150,000 and 85 percent for loans equal to or less than $150,000.
- Allows complete deferment of 7(a) loan payments for at least six months and not more than a year and requires SBA to disseminate guidance to lenders on this deferment process within 30 days.

Note that receiving a PPP loan disqualifies the borrower from obtaining certain payroll tax credits to which the borrower may have otherwise been entitled under the CARES Act, and having a PPP loan forgiven renders an employer ineligible for deferral of the employer's share of Social Security Taxes that the employer may have otherwise been able to take advantage of under the CARES Act.

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

Title IV of the CARES Act provides authorities to support particularly hard-hit industries, flexibility for banks and financial institutions to deal with a rapidly evolving environment, and tools for the federal government to ensure the supply of critical materials.

Specifically, the proposal authorizes a $500 billion Coronavirus Relief Fund to provide financial support to struggling industries, including the passenger and air cargo industries as well as those 'critical to national security.'

The bill does this by providing as much as $454 billion, and any other unused loan funds, to make loans, loan guarantees, and other investments to support programs or facilities established within the Federal Reserve. Funds could be used to purchase obligations or other interests from businesses, states, or municipalities directly or in secondary markets.

The Treasury Department would set loan rates based on risk and the current average yield on U.S. debt. Loan forgiveness wouldn't be allowed.

In addition to whatever other loan facilities might be created, the Treasury Secretary will "endeavor to seek the implementation" of a Middle Market loan facility for banks to provide loans to businesses and eligible non-profits with 500-10,000 employees.

- Interest rate will be no more than 2% with no principle or interest paid for the first 6 months.
- Funds must be used to retain 90% of workforce at full wages and benefits through September 30, 2020 and intends to restore 90% of workforce on hand on February 1, 2020.
- No buybacks or dividend payments through the life of the loan.
- No outsourcing or offshoring of jobs for the life of the loan and 2 years thereafter.
- Recipient will not abrogate collective bargaining for term of the loan and two years. Will also remain neutral in union organizing activities.

Business 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.

Employers couldn't receive the credit if they receive a loan under the SBA Paycheck Protection Program for 7(a) loans established by the bill (see above). Employers couldn't use the credit for wages for which they also receive a credit under the work opportunity tax credit or a paid leave credit established by the 2017 tax overhaul (Public Law 115-97). Wages taken into account for the paid leave credits established under the second coronavirus response law (Public Law 116-127) couldn't also be used for the employee retention credit.

Delay of payment of employer payroll taxes

The bill would defer employer payroll and railroad retirement tax payments through the end of 2020. Deferred funds would be paid over two years in 2021 and 2022. **Deferral wouldn't apply to employers with small business loan debt forgiven under the bill.** The measure would defer 50% of self-employed Social Security tax payments.

Modifications for net operating losses

The bill 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 legislation 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.

Direct Payments to Individuals

The measure would provide refundable tax credits of as much as $1,200 per individual or $2,400 for couples who file joint tax returns. An additional $500 would be provided for each child. The credit would be reduced by 5% for the amount a taxpayer's adjusted gross income exceeds $150,000 for joint returns, $112,500 for heads of household, and $75,000 for other filers. The rebate would completely phase out for incomes exceeding $198,000 for joint filers, $146,500 for heads of household, and $99,000 for individual filers, according to a summary from the Senate Finance Committee.

The rebate would be based on 2019 taxes, or for individuals who haven't filed, against their 2018 taxes or 2019 Social Security statements. A Social Security number would be required to claim the credit, although only one number would be required if one spouse was a member of the Armed Forces.

This material is for informational purposes only. The material is general and is not intended to be legal advice. It should not be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, applicable CBAs, prime contracts, subcontracts, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.