

## 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.

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 economic assistance 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

Prior to the CARES Act, there was one Small Business Association (SBA) lending program available. It is called the Economic Injury Disaster Loan (EIDL) program. The CARES Act expanded the EIDL and created a second program called the Paycheck Protection Program (PPP). The PPP is a government-based loan program in which the amount of the outstanding loan may be forgiven to the extent a business keeps its employees.

### Economic Injury Disaster Loans

- The SBA's Economic Injury Disaster Loan provides vital economic support to small businesses to help overcome the temporary loss of revenue due to a disaster.
- The CARES Act deemed the COVID-19 pandemic a disaster for the purpose of opening those funds to small businesses.
- This program is for any small business with less than 500 employees or who qualifies as a small business under 13 CFR 121.301. For example, an electrical contractor with less than \$16.5 million in revenue is considered a small business.
- The size of an EIDL can be up to \$2 million to help overcome the temporary loss of revenue.
- There are no loan forgiveness provisions in the EIDL program.
- The loan must be applied for through the SBA website; and is 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-19 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.

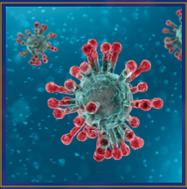


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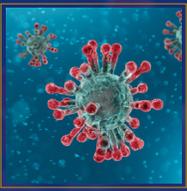


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- Small business owners are eligible to apply for an EIDL Advance of up to \$10,000. This advance will provide economic relief to businesses that are currently experiencing a temporary loss of revenue.

### The new “Paycheck Protection Program” (“PPP”)

- The legislation authorizes \$349 billion for the (SBA) 7(a) program.
- The PPP is open to businesses with fewer than 500 employees who have suffered or will suffer economic injury due to COVID-19.
- Affiliation rules do apply when determining the 500 employee level. However, the Act 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 are also eligible.
- Independent contractors and self-employed persons are also eligible.
- A business may be eligible if it has more than 500 employees if it meets the SBA’s size standards for its industry. For electrical contractors the measure is under \$16.5 million in revenue.
- The loans are at 1% for two years or five years if approved after June 5, 2020.
- An employer can apply for 250% of its average monthly payroll costs, up to \$10 million.
- Borrowers are eligible for loan forgiveness under certain circumstances that must occur during the 8-week or 24-week measurement period (beginning when the loan is funded, and ending no later than December 31, 2020).
- 60% of the loan is used for payroll costs.
- Allowable uses of the loan include employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments.
- The statute states how the comparison for purposes of loan forgiveness is average monthly full-time equivalent employees during the loan period compared to (a) average monthly full-time equivalents during Feb. 15, 2019-June 30, 2019, or (b) average monthly full-time equivalents during Jan. 1, 2020-Feb. 29, 2020 – at the election of the borrower.
- The amount of reduction in potential loan forgiveness may be mitigated based on the employer increasing its full-time equivalent employees during the loan period as compared to February 15, 2020.
- The borrower applies directly to its normal lender, and the lender applies to the SBA.
- Payments are deferred for six months.
- 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, to refinance the EIDL loan under the PPP 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.
- Employers can receive a PPP loan and FFCRA tax credits but cannot receive PPP loan forgiveness on wages that are eligible for a FFCRA tax credit.



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*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.

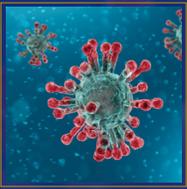
- Interest rate will be no more than 2% with no principle or interest paid for the first 6 months.
- Funds must be used to retain 90% of workforce at full wages and benefits through September 30, 2020 and intends to restore 90% of workforce on hand on February 1, 2020.
- No buybacks or dividend payments 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 employ-



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ees, 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, which amounts to a cap on the credit of \$5,000 per employee.

**Employers cannot 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 cannot 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) cannot also be used for the employee retention credit.**

### Delay of payment of employer payroll taxes

The provision defers the employer-portion of payroll and railroad retirement tax payments through the end of 2020. Deferred funds would be paid over two years in 2021 and 2022. **Deferral does not apply to employers with small business loan debt forgiven under the bill.** The measure defers 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 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 provides refundable tax credits of as much as \$1,200 per individual or \$2,400 for couples who file joint tax returns. An additional \$500 is provided for each qualifying child. The credit is reduced by 5% by 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 completely phases out for incomes exceeding \$198,000 for joint filers with no children, \$146,500 for heads of household with one child, and \$99,000 for single 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.

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