

NDA Summary of H.R. 748, CARES Act

COVID-19 Phase 3 Stimulus Legislation

Provisions Applicable to Small Businesses (Under 500 Employees)

Economic Injury Disaster Loan Grants - The bill allocates \$10 billion for small and medium sized businesses, specifically defined as businesses with fewer than 500 workers, under the existing Economic Injury Disaster Loan Program.

The legislation makes the following changes to the existing SBA Economic Injury Disaster Loan program:

- The loans can be made based solely on credit scores;
- Loans below \$200,000 can be approved without a personal guarantee;
- Borrowers can receive \$10,000 cash advances that are forgiven if spent on paid leave, maintaining payroll, increased costs due to supply chain disruption, mortgage or lease payments, or repaying obligations that cannot be met due to revenue losses.

SBA 7(a) Loan Program - The bill allocates \$349 billion for small and medium sized businesses (fewer than 500 employees) for SBA's expanded 7(a) loan program. This program would be administered via an SBA approved lender in a specific community.

The loan includes a 100% government guarantee and defines the covered loan period as beginning on February 15, 2020 and ending on June 30, 2020.

Allowable uses of these loans include:

1. Payroll costs;
2. Certain costs related to the continuation of group health care benefits;
3. Employee salaries (including commissions);
4. Payment for vacation, parental, family, medical, or sick leave.
5. Mortgage, lease, rent and utilities payments;
6. Allowance for dismissal or separation;
7. Retirement benefits; and
8. Payment of State or local tax assessed on the compensation of employees.

The loans are capped at \$10 million per recipient. Payroll costs exclude compensation paid to individuals, including the self-employed, above \$100,000 a year.

The small business borrower will have a portion of their loan forgiven in the amount equal to their payroll costs (not including costs for compensation above \$100,000 annually), interest payments on mortgages, rent payments, and utility payments between February 15 and June 30, 2020.

Loan forgiveness will be reduced if the borrower reduces employment by a ratio similar to their reduction in employment or if borrower reduces salaries and wages by more than 25%.

Provisions Applicable to Medium/Large Businesses

Loan Programs for Medium and Large Businesses - The legislation states that the Treasury Secretary will “endeavor to seek the implementation” of a Middle Market loan facility for banks to provide loans to businesses and eligible nonprofits with 500-10,000 employees.

The interest rate on these loans 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 are allowed and no outsourcing or offshoring of jobs for the life of the loan and 2 years thereafter. The loan recipient will not abrogate collective bargaining for the term of the loan and two years. The recipient must also remain neutral in union organizing activities.

The legislation also authorizes the Federal Reserve to create a Main Street Lending Facility for small and mid-size businesses using 13-3 powers (with none of the requirements described above).

Provisions Applicable to Business Regardless of Size

Employee Retention Credit - Eligible employers (explained below) are allowed to claim a credit equal to 50% of qualified wages with respect to each employee on a quarterly basis. NDA advocated for this kind of credit in our recent lobbying efforts on Capitol Hill. Eligible employers are those carrying on a trade or business in 2020 during which in any calendar quarter:

- The operation of the trade or business is fully or partially suspended during the appropriate calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings due to COVID-19; or
- The trade or business experiences a significant decline in gross receipts, with a 50% decline in gross receipts when compared to the same quarter in the prior year. Businesses remain eligible until their gross receipts recover to 80% when compared to the same quarter in the previous year.
- Maximum wages, including health insurance benefits, eligible for the credit for all calendar quarters is \$10,000
- For businesses with 100 or fewer employees, generally all wages of full-time employees are eligible.
- For larger businesses, only those wages paid to full-time employees who are not providing services due to a suspension of business operations or reduction in gross receipts are eligible.
- Wages may also include an employer’s qualified health plan expenses allocable to the employee.
- 501 (c) tax-exempt organizations are eligible.
- Employers receiving a loan under section 7(a) of the Small Business Act are not eligible for the employee retention credit.
- Credit is refundable to the extent it exceeds payroll taxes.

Delay of Employer-Paid Payroll Tax Payments - Employers can defer payment of the employer share of Social Security taxes they are responsible for paying. These deferred taxes must be

repaid over the following two years. Half of the amount will be due by Dec. 31, 2021 and the other half by Dec. 31, 2022.

Net Operating Loss (NOL) Modifications - Under current law, businesses can carry forward net operating losses indefinitely to offset against future taxable income, but those losses may not exceed 80% of taxable income in any tax period. Under this bill, losses from 2018, 2019 and 2020 may be carried back five years from the year in which the loss was incurred.

- This will allow businesses with NOLs to amend prior year tax returns and obtain refunds to provide additional liquidity.
- The bill also repeals the 80% of income limitation so that NOLs from 2018, 2019 and 2020 may be carried forward to fully offset taxable income in years after the loss.

Modifications on Limitation of Business Interest - For businesses subject to the 30% of income limitation on deducting business interest expenses, the bill increases the limit to 50% for 2019 and 2020.

Paid Leave Clarifications - The bill includes some clarifications on the paid leave provisions previously passed by Congress. These include an explicit limitation on the weekly and total amounts that can be paid to a worker for sick leave and family leave related to the COVID-19 health pandemic.

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

The legislation also allows employers to receive an advance tax credit from Treasury for providing paid leave benefits instead of waiting to be reimbursed on the back-end. This will require a rulemaking or guidance to establish a process for how these advance tax credits can be issued to employers.

NIH Facilities Funds – The legislation allocates \$156 million for the “construction of, demolition of, renovation of, and acquisition of equipment for, vaccine and infectious diseases research facilities”. The money is intended to provide options for the National Institute of Health as their logistical needs for research evolve.

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