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U.S. Senate Passes Covid-19 Relief Bill

On March 25, 2020, the Senate passed the “Coronavirus Aid, Re-4lief, and Economic Security Act (H.R.748)’’ or the ‘‘CARES Act,’’ a relief package that includes $2 trillion in funding to address the containment of the coronavirus, treatment, aid to states, and assistance for workers and businesses. The House of Representatives is expected to vote on the bill on Friday, March 27th.

Small Business Assistance

Nearly $350 billion would be provided to small businesses as forgivable loans to bridge the economic shutdown caused by the coronavirus.

Under the bill (HR 748), the Small Business Administration would provide the loans through its existing 7(a) program in amounts equal to two and a half months of payroll, with a maximum of $10 million. As long as the borrower uses the loan to cover payroll, interest on debt, rent or utilities, the loans would be forgiven.

The idea is to help small businesses retain workers while the economy largely shuts down to fight the spread of the COVID-19 disease caused by the coronavirus. That would allow companies to reopen quickly once the contagion countermeasures are lifted, while keeping the employees financially stable.

The bill would waive most of the SBA’s usual paperwork requirements and other prerequisites to speed the money into entrepreneurs’ hands. Borrowers making a good-faith statement are presumed eligible for the loans, which are limited to companies that have seen their business dry up or stop completely due to COVID-19. The paperwork would come on the back end when companies would need to prove they actually needed the loans and used them as intended when they applied for debt forgiveness.

Interest on the loans would be capped at 4 percent and only the principal of the loans would be forgivable. If a business terminates workers or reduces their pay, the amount forgivable would be reduced proportionately.

Forgiven debt is usually treated as income for tax purposes, but that would not apply to loans under this program, thereby keeping participating companies from being saddled with a larger tax bill next year.

Earlier versions of the bill capped eligibility at businesses with 500 employees, but the latest version would broaden that to companies with 500 employees per location. That would allow businesses with 600 employees across 20 locations to qualify, as well as franchisees.

Other Employer Relief Provisions

The bill provides over $450 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.

Tax-Related Provisions

The bill 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 bill establishes an employee retention credit for those subject to closure due to COVID-19. It 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. 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.

The centerpiece of the tax provisions is the inclusion of direct payments to households: $1,200 for individuals and $2,400 for joint filers, with an extra $500 per child. Those amounts phase out by 5 percent of adjusted gross income above $75,000 for single filers and $150,000 for married couples. A family of four earning $200,000 would see their credit reduced to $900 from the maximum $3,400.

Worker Retention

The bill includes an employee retention tax credit on wages up to $10,000 per employee per quarter kept on an employer’s payroll through the end of 2020. Companies eligible for the tax credit must have fully or partially suspended operations due to a government order and suffered a significant decline in revenues.

As an additional incentive to keep workers on staff, the measure would allow companies to defer the 6.2 percent Social Security tax on all wages up to $137,700 for the rest of the year, though they'd have to pay it back in equal installments in 2021 and 2022. What they owe, though, would be reduced by the tax credits earned by keeping employees on their payroll.

As with other disasters, Congress will allow no-penalty hardship withdrawals from 401(k)s and other retirement plans as Americans struggle to find cash to make it through the coronavirus pandemic.

The draft of the legislation contains relaxed rules for taking out loans against retirement savings, for deducting charitable contributions and for taking required minimum distributions from retirement plans.

The bill not only waives the 10 percent early withdrawal penalty from a retirement plan but gives those who make withdrawals three years to return the money to their plan.

Another provision would loosen rules and raise limits for those who wish to take out loans against their retirement savings. In the case of a loan, the individual remains invested in the market and would enjoy any potential bull market that could occur following the crisis. Those who make hardship withdrawals would miss out on investment gains if the markets rise.

Paid-Leave Provisions

Paid sick leave and expanded benefits under the Family and Medical Leave Act were enacted as part of the 2nd coronavirus legislative package (H.R.6201, Public Law No: 116-127) Congress passed, which President Trump signed into law on March 18th. Congress enacted a tax credit to assist businesses with covering these costs. H.R.748 does clarify that employers can receive an advance tax credit from the Treasury Department instead of having to be reimbursed on the back end for these costs. The Department will need to issue guidance on how the advanced tax credit will work.

Medical Device Related Provisions

The bill directs the National Academies to study the manufacturing supply chain of drugs and medical devices and provide Congress with recommendations to strengthen the U.S. manufacturing supply chain. It clarifies that the Strategic National Stockpile can stockpile medical supplies, such as the swabs necessary for diagnostic testing for COVID-19 and other medical supplies, providing $16 billion in funding to achieve this goal.

It provides permanent liability protection for manufacturers of personal respiratory protective equipment, such as masks and respirators, in the event of a public health emergency, to incentivize production and distribution.

Also, the bill clarifies that during a public health emergency, a medical device manufacturer is required to submit information about a device shortage or device component shortage upon request of the FDA.

A summary of the $340 billion supplemental appropriations component can be found **here**. A summary of the massive package, including tax, unemployment insurance, health care, small-business loans, paid leave, medical device and other provisions can be found **here**.