Analysis by Holly Gross, Vice President of Government Relations
033020

<u>Congress Passes Third Relief Package: Coronavirus Aid, Relief, and Economic Security (CARES) Act</u>[1]

The CARES Act provides $2 trillion in emergency aid across the U.S., including $61 billion for airlines, $100 billion for hospitals and most importantly for our members, $10 billion in emergency loans for small businesses to help keep workers employed, including some that are forgivable, $17 billion for loan subsidies through the SBA, and $350 billion in loan guarantees. Here's a guide and checklist from the U.S. Chamber of Commerce to help your small business, and the following provides a breakdown of the primary provisions of interest.

Due to advocacy of the Columbus Chamber, business owners throughout the entire state of Ohio are eligible to apply for SBA Economic Injury Disaster Loans (EIDL), which became available just last week. You can apply here and watch the Chamber's training session here. The SBA website is experiencing significant traffic due to the influx of applications filed. If you are encountering difficulties, please contact your Chamber member resource specialist, who can help you navigate this process. Please note that the President signed the CARES Act on Friday, March 27 after Congress passed the legislation at a record pace. Additional guidance will be provided by the administering agencies in the coming days and weeks, so continue to check the Chamber's website for updates. We're here to help you weather this storm.

The CARES Act provides greater relief options for small businesses in responding to COVID-19:

- Small businesses may continue to file a traditional application for an SBA EIDL, with expanded options for those who are eligible.
- Small businesses may *also* be eligible for a $10,000 emergency grant from the SBA.
- Small businesses may apply for a Paycheck Protection Program loan through an accredited lender, even if you have received an EIDL and/or emergency grant. However, the loans may not be used for the same purpose.
- Small businesses are incentivized to retain workers through 1:1 tax credits for paid leave approved in the second stimulus package and loan forgiveness options in the third. However, in the event that you are forced to make layoffs, unemployment benefits have been significantly expanded.

1. **<u>Emergency Economic Injury Disaster Loans (EIDL) Grant and Changes to Traditional EIDL</u>**
   The CARES Act enables SBA EIDL applicants to request an advance on that loan of not more than $10,000, which the SBA must distribute within 3 days of applying. The advance, or emergency grant, does not need to be repaid under any circumstance, and may be used to keep employees on payroll, to pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations,

1 This update reflects an early analysis of H.R. 748, with additional guidance forthcoming.

including debts, rent and mortgage payments. If you have already applied for an EIDL, you are still eligible for the grant. Prior to disbursement, the applicant must certify under penalty of perjury that they are eligible for an EIDL, and SBA must verify.

Private non-profits structured as a 501(c)(3), cooperatives and ESOPs with fewer than 500 employees, as well as any individual operating as a sole proprietor or independent contractor (gig workers) during the COVID-19 covered period of Jan. 1, 2020 to Dec. 31, 2020, are now eligible for emergency EIDLs.

The legislation also waives 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, as well as the requirement that an applicant be unable to obtain credit elsewhere before being eligible to apply for EIDLs.

For the COVID-19 covered period, SBA may approve and offer EIDLs based solely on an applicant's credit score, or use an appropriate alternative method for determining applicant's ability to repay.

2. **Loan Forgiveness through the Paycheck Protection Program (PPP)**

The Paycheck Protection Program provides 100 percent federally guaranteed loans up to $10 million through Dec. 31, 2020. The maximum loan size for borrowers is capped at the lesser of 250% of the average monthly payroll costs (with a lookback of one year or relevant period for seasonal businesses), or $10 million. If employers maintain their payroll, a portion of the loan would be forgiven.

These loans are dispersed through designated financial institutions under the existing 7a program, but the legislation gave the U.S. Treasury flexibility to expand the universe of institutions able to offer these loans. Lenders make determinations on borrower eligibility and creditworthiness without going through the SBA, so consult with your lender to determine whether you qualify. The PPP is available to small businesses, 501(c)(3) organizations, sole-proprietors, independent contractors, and other self-employed individuals.

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.

The borrower shall be eligible for loan forgiveness equal to the amount spent during an 8-week period after the origination date of the loan. Amounts forgiven may not exceed the principal amount of the loan. Eligible payroll costs do not include compensation above $100,000 in wages. The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation. To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period. It also allows forgiveness for additional wages paid to tipped workers. Borrowers will verify through documentation to lenders their payments during the period.

Any loan amounts not forgiven at the end of one year is carried forward as an ongoing loan with terms of a max of 10 years, at max 4% interest. The 100% loan guarantee by the federal government remains intact.

3. **Small Business Debt Relief Program**
This program will provide immediate relief to small businesses with existing non-disaster SBA loans, in particular 7(a), 504, and microloans (excluding the Paycheck Protection Program outlined below). Under it, SBA will cover all loan payments on these SBA loans, including principal, interest, and fees, for six months. Loans that are already on deferment will receive six months of payment by the SBA beginning with the first payment after the deferral period. This relief will also be available to new borrowers who take out loans within the next six months.

4. **Pandemic Unemployment Assistance Program**
The CARES Act temporarily builds out unemployment insurance through Dec. 31, 2020. While the federal government made these changes and appropriations, it is the responsibility of the State to administer them. Governor DeWine has already opened up the state's unemployment insurance program by eliminating the one-week waiting period and making eligible employees that are no longer able to work due to COVID-19 and the related mandates. Details here.

The newly enacted temporary Pandemic Unemployment Assistance program gives access to individuals not traditionally eligible, including self-employed, independent contractors and those with limited work history, who are unable to work as a direct result of the coronavirus.

The legislation gives 13 additional weeks of unemployment benefits, to allow workers to receive up to 39 weeks, through the end of 2020. It also provides an additional $600 each week to individuals receiving unemployment benefits for up to four months.

Further, $100 million in grants will be funneled to states that establish "short-time compensation" programs partially financed by the government, where employers would reduce employee hours instead of laying off workers and the employees with reduced hours would receive a prorated unemployment benefit. We will be watching to determine whether Ohio adopts this type of a model and make Chamber members aware of the details when available.

Ohioans can apply for unemployment benefits online 24 hours a day, seven days a week, at unemployment.ohio.gov. It is also possible to file by phone at 877-644-6562 or TTY at 888- 642-8203, Monday through Friday 8 a.m. to 5 p.m. Employers with questions should email UCTech@jfs.ohio.gov.

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Additional Provisions of Interest

- Extends the tax filing deadline until July 15 and the deadline for estimated tax payments until Oct. 15.
- Provides “rebate” payments up to $1,200 directly to qualifying individuals making up to $75,000 on a tiered basis.
- 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.
- 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.
- 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.
- Provides a refundable payroll tax credit for half of the wages paid by employers who were severely impacted during the pandemic, which would cover employee wages and be applied against the employer's share of payroll taxes. Because the legislation would also defer employer payroll tax payments, the bill would allow businesses to receive advance payments through the Treasury Department.
- Allows employers and self-employed individuals to defer payment of the 6.2 percent employer share of the Social Security tax for up to two years
- 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.
- Allows restaurants, hotels and retail businesses to immediately write off new investment costs associated with improving facilities (rather than doing so over a 39-year period).
- Waives the federal excise tax on any distilled spirits used to make hand sanitizer.
- Amends the Small Business Reorganization Act to increase for one year the eligibility threshold to file for bankruptcy from $2,725,625 of debt to $7,500,000 of debt. It would also exclude coronavirus-related payments from the government from counting as “income” when filing for bankruptcy.
- Provides flexibility to states to use federal workforce funds to respond to coronavirus needs.

Additional Noteworthy Appropriations (Partial List)

- $80M to FDA for countermeasures and vaccine development.
- $1.5B for Economic Development Administration to fund grants in states suffering economic injury.

- $2.45B for the Defense Industrial Base to mitigate impact on production lines / supply chains
- $45B for FEMA related activities to respond to pandemic.
- $945M for NIH for coronavirus vaccine and treatment research.
- $30.9B for Education Stabilization Fund to help K-12 schools respond to coronavirus closures.
- Provides $150B to States for expenditures incurred due to the public health emergency with respect to coronavirus in the face of revenue declines, allocated by population proportions, with a minimum of $1.25B for states with relatively small populations.

Congress Passes Second Coronavirus Response Bill and Considers Third (from last week)

Emergency Paid Sick Leave
Private sector employers with fewer than 500 employees must provide 2 weeks of paid sick leave for full-time covered employees, which they may use for mandated or healthcare-advised quarantine, caring for an individual in quarantine, or caring for a child due to forced school closures. Employees receive their regular rate of pay capped at $511/day for quarantine related leave, and 2/3 pay capped at $200 per day for caring for a child.

Emergency Family and Medical Leave
Private sector employers with fewer than 500 employees must provide 10 weeks of paid family and medical leave for employees employed for at least 30 days, if the employee is unable to work or telework due to a need for leave to care for a child under 18 years of age. Wage replacement must be no less than 2/3 of regular rate of pay capped at $200/day. The Secretary of Labor has the authority to make exceptions for small businesses with fewer than 50 employees to prevent emergency paid leave from causing hardship.

For both emergency paid sick leave and family and medical leave, employers receive a 100% payroll tax credit (refundable as needed) for required wages plus certain health care expenses. The bill ensures that no business has a liability larger than the credit it receives. Both provisions go into effect in the next two weeks and expire on December 31, 2020. Special rules apply for part-time employees and self-employed individuals.

The Third stimulus bill is in the works now. The current draft includes direct payments to individual taxpayers, as well as small business interruption loans that will aim to provide continuity of employment. This proposed provision would authorize the creation of a new loan program and appropriate $300 billion for it. It would be 100% guaranteed by the U.S. government but issued by lending institutions. More details to follow as this proposal makes its way through the legislative process.