Summary of Federal Response to COVID-19

INCLUDING HIGHLIGHTS OF PHASE III LEGISLATION

In response to the coronavirus disease, or COVID-19, that is taking its toll on both the public health and economic health of the United States, the Congress and Trump Administration have taken a number of steps through enacted legislation, as well as declaration and public guidance.

While the health care response led by the Coronavirus Task Force, directed by Vice President Mike Pence in coordination with relevant federal agencies, includes numerous steps to combat the virus and its human toll, **this majority of this memo focuses on the impact of the virus, and the federal response, as it relates to business activities.**

Administrative Action

Effective March 1, 2020, the federal government has been operating under a national emergency. Since then, the Administration has instituted travel advisories and restrictions, as well as issued guidance that recommends the public limit gatherings of no more than 10 people. The Administration has also issued recommendations that Americans work or engage in schooling from home. Workers in a critical infrastructure industry (as outlined by the Department of Homeland Security) were advised to continue their responsibilities with appropriate measures taken to protect their health. Beyond these recommendations, the President's legal authority remains somewhat limited. Most states have given governors the authority to issue mandates considered necessary to protect life and property during an emergency.

In other Administrative actions, the Department of Treasury and Federal Reserve Board have expanded measures to enhance liquidity and support the flow of credit to American workers, households and businesses. And, in an unprecedented move, the Internal Revenue Service announced that Tax Day has been moved from April 15 to July 15. This also impacts 1st Quarter estimated payments. No interest or penalties will be charged for filing during this extended window.

Recently Enacted Legislation

Congress, led by Republicans in the Senate, and Democrats in the House, have passed several pieces of legislation in response to the virus. These bills have been generally referred to as "phases", indicating that Congress recognizes their legislative action is not likely to be considered comprehensive or final. A long road of recovery and response is anticipated.

Phase I: Funding the Medical Response

In early March, Congress passed and the President enacted a supplemental Appropriations bill that provided an additional $8B in funding for the Department of Health and Human Services (HHS), including Centers for Disease Control (CDC), National Institutes for Health (NIH), and the Food and Drug Administration (FDA). This bill also included $20M for administrative expenses to provide an estimated $7B in low-interest disaster loans to small businesses.

Phase II: Aid for Workers

Mid-March, Congress passed and the President enacted legislation that included appropriations for a number of nutrition assistance programs, as well as funding for states that process and pay unemployment benefits. This measure is best known for the mandate for employers with less than 500 employees to provide 2 weeks of paid sick leave, as well as 10 weeks of paid leave for childcare. It also reimburses those employers for paid leave in the form of payroll tax credits. There is an exemption for certain health care providers and emergency responders.

On March 24, the DOL released its first round of published guidance. A few helpful links:

Fact sheet for employers:
https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave

Fact sheet for employees:
https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave

Q&A:
https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

Phase III: Mitigation for impacted businesses and stimulating the economy

In a third piece of legislation, the Trump administration, Congressional Democrats and Republicans struck a deal on a massive package providing more than $2 Trillion in spending and tax breaks to strengthen the U.S. economy and fund a nationwide effort to curtail the coronavirus. The bill also includes emergency supplemental appropriations for hospitals, veterans' health care, preparedness, and disaster relief. The price tag of this package is enormous, unprecedented, and is roughly equal to about 10% of the country's economic output.

The Act includes approximately $500 billion that can be used to back loans to distressed companies, including $50 billion for loans to U.S. airlines, as well as state and local governments. It also contains more than $350 billion to aid small businesses, including loan forgiveness and emergency grants.

While the new law impacts multiple federal agencies and businesses across all sectors of the economy, there are a number of provisions of interest to highlight. Excerpts, or interpretations, of legislative summaries and text provided by Senate Majority Leadership and relevant committees for these provisions are as follows:

- **Business Tax Relief**

  Modification of limitations on charitable contributions during 2020

  The provision increases the limitations on deductions for charitable contributions by corporations (as well as individuals who itemize). For corporations, the 10-percent limitation is increased to 25 percent of taxable income. This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

Employee retention credit for employers subject to closure due to COVID-19

This provision provides for an employee retention payroll tax credit for a fixed percentage (50%) of eligible wages, up to $10,000 per employee. Eligible employers must have a business that was already operating in 2020; and has been suspended due to government order, or in which revenue was less than 50% relative to the same quarter in 2019, and ending on the first quarter for which gross receipts exceed 80% relative to that quarter in 2019. Tax-exempt 501(c) organizations are included. Some wages for employers with greater than 100 full-time employees are excluded when providing services related to COVID-19.

To prevent double dipping, employers that receive Small Business interruption loans are not eligible for the retention credit. Additionally, wages that qualify for the required paid leave credit are not eligible for the credit.

Delay of payment of employer payroll taxes

The provision 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.

Modifications for net operating losses

The provision relaxes the limitations on a company's use of losses. NOLs are currently subject to a taxable income limitation, and they cannot be carried back to reduce income in a prior tax year. This provision provides that a loss from 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 years 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 provision 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.

Modification of credit for prior year minimum tax liability of corporations

The corporate AMT was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021. The provision accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.

Modification of limitation on business interest

The provision 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 the taxable income (with adjustments) for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.

Technical amendment regarding qualified improvement property

The provision enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. The provision, which corrects an error in the Tax Cuts and Jobs Act, often referred to as the "retail glitch" not only increases companies' access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.

Assistance to Severely Distressed Sectors of the Economy

Title IV provides $500 Billion to Treasury's Exchange Stabilization Fund to provide loans, loan guarantees and other investments for eligible businesses. Eligible businesses are set forth by Treasury regulation, but are broadly available to distressed sectors, although aviation (including passenger and cargo air carriers) and businesses related to national security are expressly eligible for loans. The business cannot otherwise have received adequate economic relief in the form of loans or loan guarantees under this legislation. Non-profits are eligible.

All direct lending comes with the following conditions:

- Limits on employee and executive total compensation for highly compensated individuals (salaries above $425,000) including severance pay or "golden parachutes" until 1 year after the loan is no longer outstanding;
- Corporate stock buybacks are prohibited (unless contractually obligated) for the duration of the assistance plus 1 year after the loan;
- Borrowers must maintain same level of existing payroll;
- The loan cannot exceed 5 years.
- There is no loan forgiveness as it relates to these loans.

Small Business Loan Programs

Paycheck Protection Program

The legislation creates a "paycheck protection program" for small businesses with 500 employees or fewer, the self-employed, and "gig economy" workers with $350B in total appropriated funding. The PPP provides funds to pay up to 8 weeks of average payroll costs + 25% (capped at $10M overall, and $100K per employee) retroactive to February 15.

- Funds can also be used to pay interest on mortgages, rent, and utilities (but at least 75% of the forgiven amount must have been used for payroll).
- Funds are provided in the form of loans that will be fully forgiven when used for payroll costs, interest on mortgages, rent, and utilities.
- Loan payments will also be deferred for six months.
- No collateral or personal guarantees are required.
- No fees.
- Note: The SBA has affiliation rules that can affect whether a business will eligible. The initial guidance on those rules can be found here: https://www.sba.gov/document/policy-guidance--ppp-affiliation-interim-final-rule

Full forgiveness is based on the employer maintaining or quickly rehiring employees and maintaining salary levels. Forgiveness will be reduced if full-time headcount declines, or if salaries and wages decrease. Businesses may apply now through their preferred SBA lender, but are encouraged to apply as quickly as possible because funds may run out.

A detailed information sheet on the PPP can be found here: https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf

SBA Economic Injury Disaster Loan (EIDL) and Emergency Grant for Small Businesses

The SBA provides EIDL loans of up to $2 million to small businesses, self-employed individuals, nonprofit organizations, and others that can establish that they have been adversely affected by COVID-19.

- All EIDL applicants will receive an automatic grant, up to $10,000, within three days after submitting an application, which does not need to be repaid.
- The grant is only available through the end of 2020.
- EIDL funds may be used for payroll costs, increased costs to obtain materials due to supply chain disruptions, rent or mortgage payments, and other debt obligations.
- There is no loan forgiveness on these loans. Payments may be deferred for up to a year.
- The interest rate is low – 3.75% (for small businesses)

General SBA Debt Relief on Existing SBA Loans

The SBA will pay principal, interest and fees on covered existing SBA loans for 6 months.

More information on the above Small Business programs can be found here: https://www.sba.gov/funding-programs/loans/coronavirus-relief-options

- **Assistance to Laid-off Workers**

The Act creates a new Pandemic Unemployment Assistance disaster program to cover individuals who are not usually eligible for Unemployment Insurance including self-employed and independent contractors.

- Through 2020, unemployment covers those not traditionally eligible for unemployment benefits such as the self-employed, independent contractors, gig workers, and those with limited work history, and others.
- State unemployment insurance is increased by $600 per week for four months.
- Provides for an additional thirteen (13) weeks of unemployment benefits through December 31, 2020, for those who remain unemployed.
- These benefits would be paid by the federal government after state unemployment benefits have been exhausted.
- Unemployment benefits are administered and implemented by state governments, but more general information can be found here: https://www.dol.gov/general/topic/unemployment-insurance

- **Assistance to Employers for Reduced Hours**

The Act provides funding to support states “short-time compensation” programs, where employers reduce employees’ hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit.

- This provision would pay 100 percent of the costs the employer incurs in providing short-time compensation through December 31, 2020.
- This is administered and implemented by state governments.

- **Medium-sized Business Lending**

Main Street Lending Program

The Act permits the Federal Reserve to establish a "Main Street Lending Program," or other similar program or facility under its own unilateral authorities to support lending to small and mid-sized businesses (up to 10,000 employees).

- This has not yet been announced (maybe later this week?), but is likely to include:
- “Close to market rate" loan terms for anyone who can’t get a loan otherwise due to rating, risk, etc.
- No forgiveness, as in the SBA loans.
- Executed through discount window lending to commercial banks.

What's next?

Recognizing that Congress will have passed multi trillion-dollar legislation over a short time period at extraordinary speed, requiring remarkable bipartisan and bicameral talks over long, complex, and highly fraught negotiation, almost everyone agrees that the hard work is not over. Both parties maintain they have "gritted their teeth", or "held their nose" at times for the benefit of compromise. All have indicated they have done so with an eye toward fixing their concerns, or adding missed priorities, in what is likely to be subsequent legislation.

Already, Leader McConnell and Treasury Secretary Mnuchin have announced their intention to seek Congressional approval for further funding for the Paycheck Protection Program, as soon as this week. It is also widely expected that an additional future bill will likely include measures that further stimulate the economy through direct payments to Americans, as well as address other health care and economic needs. Further down the road, we anticipate there to be a legislative focus on "recovery" which will likely include a long-awaited infrastructure package. Until then, we believe the Congress will remain focused on immediate needs related to the pandemic.

Contact us

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