

Small Business Provisions in *Coronavirus Aid, Relief, and Economic Security (CARES) Act*

SENATE SMALL BUSINESS COMMITTEE

American small businesses are facing an unprecedented economic disruption due to the novel coronavirus (COVID-19) outbreak. Cities and states have implemented mandatory closures of public spaces to ensure social distancing to prevent the spread of the virus, so those difficulties have only increased.

Congress has reached a bipartisan compromise on a \$2 trillion economic stimulus package to address the economic impact caused by the COVID-19 outbreak titled the *Coronavirus Aid, Relief, and Economic Security (CARES) Act*. Division A of the bill was negotiated by Senators Ben Cardin (D-Md.), Jeanne Shaheen (D-N.H.), Marco Rubio (R-Fla.), and Susan Collins (R-Maine), members of the Senate Small Business Task Force.

The bill includes provisions from the *Keeping American Workers Employed and Paid Act* sponsored by Rubio and Collins, as well as the *COVID-19 RELIEF for Small Businesses Act of 2020* sponsored by Cardin, Shaheen, and Democratic Senators Maria Cantwell (Wash.), Ed Markey (Mass.), Cory Booker (N.J.), Chris Coons (Del.), Mazie Hirono (Hawaii), Tammy Duckworth (Ill.), and Jacky Rosen (Nev.).

The bill also includes tax relief that would benefit small businesses outside the scope of the Small Business Administration. In particular, an employee retention credit for employers to keep workers employed at businesses that are suffering lost revenues due to the coronavirus. That legislation was based on legislation called the *Save America's Main Street Act*, sponsored by Senator Ron Wyden (D-Ore.) and Cardin.

Paycheck Protection Program

The stimulus includes nearly \$350 billion in funding for a provision to create a Paycheck Protection Program (PPP) that will provide small businesses, certain non-profits and other entities with zero-fee loans of up to \$10 million. Up to 8 weeks of average payroll and other costs will be forgiven if the business retains its employees and their salary levels. Principal and interest is deferred for up to a year and all borrower fees are waived. This temporary emergency assistance through the U.S. Small Business Administration (SBA) and the Department of Treasury is designed as a complement to other COVID-19 related financing assistance established in the bill as well as existing SBA loan programs.

The bill requires the SBA Administrator to set a cap on how much a bank can earn to process loan applications and prioritize underserved borrowers, including those in rural communities, minorities, women and veterans.

Emergency Economic Injury Grants

The stimulus includes \$10 billion in funding for a provision to provide an advance of \$10,000 to small businesses and nonprofits that apply for an SBA economic injury disaster loan (EIDL) within three days of applying for the loan. EIDLs are loans of up to \$2 million that carry interest rates up to 3.75 percent for companies and up to 2.75 percent for private non-profits, as well as principal and interest deferment at the Administrator's discretion. The loans may be used to pay for expenses that could have been met had the disaster not occurred, including payroll and other operating expenses.

The EIDL grant does not need to be repaid, even if the grantee is subsequently denied an EIDL, and may be used to provide paid sick leave to employees, maintaining payroll, meet increased production costs due to supply chain disruptions, or pay business obligations, including debts, rent and mortgage payments. Eligible grant recipients must have been in operation on January 31, 2020. The grant is available to small businesses, private non-profits, sole proprietors and independent contractors, tribal businesses, as well as cooperatives and employee-owned businesses.

A borrower that receives an EIDL between January 31, 2020 and June 30, 2020 as a result of a COVID-19 disaster declaration may also apply for a PPP loan or may refinance their EIDL into a PPP loan. In either case, the emergency EIDL grant award of up to \$10,000 would be subtracted from the amount forgiven in the Paycheck Protection Plan.

The bill also provides \$562 million to ensure that SBA has the resources to provide Economic Injury Disaster Loans (EIDL) to businesses that need financial support.

Debt Relief for Existing and New SBA Borrowers

The stimulus includes \$17 billion in funding for a provision to provide immediate relief to small businesses with standard SBA 7(a), 504, or microloans. Under this provision, SBA will cover all loan payments for existing SBA borrowers, including principal, interest, and fees, for six months. This relief will also be available to new borrowers who take out an SBA loan within six months after the President signs the bill. The measure also encourages banks to provide further relief to small business borrowers by allowing them to extend the duration of existing loans beyond existing limits; and enables small business lenders to assist more new and existing borrowers by providing a temporary extension on certain reporting requirements. While SBA borrowers are receiving the six months debt relief, they may apply for a PPP loan that provides capital to keep their employees on the job. The six months of SBA payment relief may not be applied to payments on PPP loans.

The stimulus also includes a permanent fix that allows SBA to waive fees for veterans and their spouses in the 7(a) Express Loan Program, regardless of the President's budget. Under current law, SBA may only waive fees on 7(a) Express loans to veterans when the President's budget does not project a cost above zero for the overall 7(a) loan program.

Paid Leave for Government Contractors

The stimulus includes a provision that provides paid leave for employees working on small business contracts with the federal government. The measure allows agencies to modify the terms of a contract to reimburse small business contractors for the cost of providing paid leave, including sick leave, to employees or subcontractors who are unable to perform work on-site due to a facility closure and cannot telework.

Resources for Business Counseling Services

Many large companies are struggling to respond to the unprecedented economic disruption our nation is facing, so small businesses that have even fewer resources to dedicate to navigating the economic impacts of COVID-19 must have access to reliable counseling and mentorship services.

The stimulus provides \$250 million in grants to the nation's network of Small Business Development Centers (SBDCs) and Women's Business Centers (WBCs), as well as the Minority Business Development Agency's Business Centers (MBDCs), to provide mentorship, guidance and expertise to small businesses. The funding will allow SBDCs, WBCs, and MBDCs to hire staff and provide programming to help small businesses and minority-owned businesses respond to COVID-19.

The bill also provides \$25 million for the associations that represent SBDCs and WBCs to create a joint platform that consolidates information and resources related to COVID-19 in order to provide consistent, timely information to small businesses.

The SCORE mentoring program and Veterans Business Outreach Center program are encouraged to use the platform and participate in the COVID-19 education sessions for their volunteer mentors and small business counselors.

Tax Provisions

Employee Retention Credit for Employers Subject to Closure or Experiencing Economic Hardship

This provision would provide a refundable payroll tax credit for 50 percent of wages paid by eligible employers to certain employees during the COVID-19 crisis. The credit is available to employers, including non-profits, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings. The credit is also provided to employers who have experienced a greater than 50 percent reduction in quarterly receipts, measured on a year-over-year basis.

Wages of employees who are furloughed or face reduced hours as a result of their employer's closure or economic hardship are eligible for the credit. For employers with 100 or fewer full-time employees, all employee wages are eligible, regardless of whether an employee is furloughed. The credit is provided for wages and compensation, including health benefits, and is provided for the first \$10,000 in wages and compensation paid by the employer to an eligible employee. Wages do not include those taken into account for purposes of the payroll credits for required paid sick leave or required paid family leave, nor for wages taken into account for the employer credit for paid family and medical leave (IRC sec. 45S).

The credit is not available to employers receiving assistance through the Paycheck Protection Program. The credit is provided through December 31, 2020.

Delay of Payment of Employer Payroll Taxes

This provision would allow taxpayers to defer paying the employer portion of certain payroll taxes through the end of 2020, with all 2020 deferred amounts due in two equal installments, one at the end of 2021, the other at the end of 2022. Payroll taxes that can be deferred include the employer portion of FICA taxes, the employer and employee representative portion of Railroad Retirement taxes (that are attributable to the employer FICA rate), and half of SECA tax liability.

Deferral is not provided to employers receiving assistance through the Paycheck Protection Program.