NATIONAL RESTAURANT ASSOCIATION

Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")

Executive Summary for Restaurants

Paycheck Protection Program

How Does It Work?

- The plan provides $349 billion in cash flow assistance through 100% federally guaranteed loans to small businesses and 501(c)(3) nonprofit organizations during this emergency. To help bring workers who may have already been laid off, the program can be retroactive to February 15, 2020, so employees can return onto payrolls. The loan's covered period is February 15 to June 30, 2020. The *expected forgiveness amount* can be expended on payroll costs, payments of interest on a mortgage obligation, rent obligations, and utility payments. The loan can pay for:
  - The sum of payments of any compensation with respect to employees that is a salary or wage;
  - Payment of cash tip or equivalent;
  - Payment for vacation, parental, family, medical, or sick leave;
  - Allowance for dismissal or separation;
  - Payment required for the provisions of group health care benefits, including insurance premiums;
  - Payment of any retirement benefit; or
  - Payment of State or local tax assessed on the compensation of employees.

The maximum loan amount must be the lesser of:

1) *Two and a half months payroll*, as calculated by taking the average total monthly payments by the business for payroll costs incurred during the 1-year period before the date on which the loan is made. For a seasonal employer, the business calculates the average total monthly payments for payroll during the 12-week period beginning February 15, 2019, or at the choice of the business, March 1, 2019, and ending June 30, 2019. Multiply this number by 2.5 for two and a half months payroll.
2) *$10,000,000*

Restricted from being included in the payroll calculation are: Any salaries above $100,000 per year and any qualified sick leave wages for which a tax credit is allowed under section 7001 or 7003 of the *Families First Coronavirus Response Act*.

What Businesses Are Eligible?

- Only small businesses that employ less than 500 employees are eligible for Paycheck Protection Program and SBA Loan Forgiveness. However, **restaurant, foodservice, caterers, and hotels that employ not more than 500 employees per physical location of the business are also eligible to receive a single loan** if they operate under the North American Industry Classification System code beginning with 72 (Accommodation and Food Services – U.S. Census Bureau).
- The program enacted by this legislation ***would remove*** the "Credit Elsewhere Test," which requires an extensive analysis to determine whether the borrower has the ability to obtain some, or all, of the requested loan funds from alternative sources, without causing undue hardship. That test could also have required them to utilize those alternative sources – rather than obtain the Small Business Administration (SBA) loan – if so.
- No collateral, or personal guarantee, shall be required for the covered loan.
  - Restaurant entities expressed concerns about the SBA's existing collateral requirements that could disqualify them from obtaining these loans. The Association successfully requested that the collateral requirements be eliminated.

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- Waives affiliation rules for businesses in the hospitality and restaurant industries, franchises that are approved on the SBA's Franchise Directory, and small businesses that receive financing through the Small Business Investment Company (SBIC) program.

What Is Loan Forgiveness?

- The borrower is eligible for loan forgiveness equal to the amount spent by the borrower during an eight-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.
    - Amounts forgiven may not exceed the principal amount of the loan.
- Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered eight-week period compared to the previous year or time period, proportionate to maintaining employees and wages:
    - Payroll costs **plus** any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation) **plus** any payment on any covered rent obligation + any covered utility payment.
    - 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% 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.
- The SBA Administrator and the Treasury Secretary may prescribe regulations granting de minimis exemptions from the requirements under this subsection.
- Borrowers will verify through documentation to lenders their payments during the period. Lenders that receive the required documentation will not be subject to an enforcement action or penalties by the Administrator relating to loan forgiveness for eligible uses.
- 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 remains intact.
- The calculation for an average monthly number of full-time equivalent employees is about 30 hours per week, under the Affordable Care Act. The forgiveness amount is reduced according to the amount of full-time employees on staff compared to the previous year, February 15, 2019 to June 30, 2019.
- Loan forgiveness may also cover any additional wages paid by businesses to tipped employees (as defined in the *Fair Labor Standards Act*).

Loan Mechanics

- The program is administered through the (SBA) 7(a) Loan Program, and the government guarantee increases to 100% through December 31, 2020, and then reduce to 75% for loans exceeding $150,000 and 85% for loans equal to or less than $150,000.
- Waives both borrower and lender fees for 7(a) loans.
- Increases the maximum loan for an SBA Express loan from $350,000 to $1 million through December 31, 2020.

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- Exclusions: Provides a limitation on a borrower from receiving this assistance and an economic injury disaster loan through SBA for the same purpose. However, it allows a borrower who has an economic injury disaster loan (EIDL) unrelated to coronavirus to apply for a PPP loan, with an option to refinance that loan into the PPP loan. The emergency EIDL grant award of up to $10,000 would be subtracted from the amount forgiven under the Paycheck Protection Program.

Qualified Improvement Property

- Businesses will be able to immediately write off costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building.
- This corrects the error in the Tax Cuts and Jobs Act and increases a business' access to cash flow by allowing them to amend a prior year return, while incentivizing investment.

Employee Retention Tax Credit

The employee retention tax credit (ERTC) for employers subject to closure due to coronavirus. The provision provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the crisis. The credit is available to employers whose 1) operations were fully or partially suspended, due to a coronavirus-related shut-down order, or 2) gross receipts declined by more than 50% when compared to the same quarter in the prior year. 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 coronavirus-related circumstances described above. **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.

Community Development Block Grants (CDBG)

$5 billion to enable nearly 1,240 states, counties, and cities to rapidly respond to coronavirus and the economic and housing impacts caused by it. Of the amounts provided, $2 billion will be allocated to states and local governments based on the prevalence and risk of COVID-19 and related economic and housing disruption.

Modifications for Net Operating Losses (NOLs)

- The provision relaxes limitations on a company's use of losses from prior years. 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.
- This also temporarily removes the taxable income limitation to allow an NOL to fully offset income.

Delay of Payment of Employer Payroll Taxes

- Employers can defer payment of the employer share of the Social Security tax.
- 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.

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Temporary exception from excise tax for alcohol used to produce hand sanitizer

- The federal excise tax is waived on any distilled spirits used for or contained in hand sanitizer that is produced and distributed in a manner consistent with guidance issued by the Food and Drug Administration and is effective for calendar year 2020.

Additional Tax Relief

- The tax filing deadline will be extended from April 15 to July 15
  - Businesses and individuals can postpone estimated tax payments due from the date of enactment until October 15, 2020 with no cap on the amount of payment postponed
- Modification of limitation on losses for taxpayers other than corporations
- Modification of credit for prior year minimum tax liability of corporations
- Modification of limitation on business interest

Emergency Relief and Taxpayer Protections

- Provides $500 billion to *Treasury's Exchange Stabilization Fund* to provide loans, loan guarantees, and other investments for direct lending, including:
  - $25 billion for passenger air carriers, and businesses approved to perform inspection, repair, replace, or overhaul services, and ticket agents; $4 billion for cargo air carriers; and $17 billion for businesses important to maintaining national security.
  - $454 billion for loans, loan guarantees, and investments in support of the Federal Reserve's lending facilities to eligible businesses, states, and municipalities.
- 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.

March 25, 2020