H.R. 748, the Coronavirus Aid, Relief, and Economic Security (CARES) Act

Provisions applicable to businesses

Title I - Keeping American Workers Paid and Employed

Small Business Administration

Paycheck Protection Program

- Creates new $349 billion lending program. Authorizes SBA to offer enhanced Economic Injury Disaster Loans, which are 100% guaranteed loans to businesses needing financial support after being adversely impacted by COVID-19.
  - **Eligibility.** Businesses and 501(c)(3) nonprofits with fewer than 500 employees that were operational as of Feb. 15, 2020, and had employees for whom they paid salaries and payroll taxes or a paid independent contract (includes sole proprietorships, independent contractors and other self-employed individuals). Borrower not required to provide personal guarantee or collateral.
  - **Loan amount.** Loan amount is tied to payroll costs: Size of loan equals 250% of employer's average monthly payroll (up to $100,000 per employee) to be used for payroll support, such as employee salaries; paid sick or medical leave; insurance premiums; and mortgage, rent and utility payments. Not to exceed $10 million.
  - **Forgiveness.** SBA will forgive a portion of the loan based on allowable expenses of the borrower. The amount forgiven will be reduced proportionally by any reduction in employees retained compared with the prior year and reduced by the reduction in pay of any employee beyond 25 percent of the prior year compensation. Borrowers that rehire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period. Remaining portion (unforgiven) has maximum of 10-year maturity and maximum of 4% interest rate. 100% guaranteed through Dec. 31, 2020, at which point changes to 75% guarantee for loans over $150,000. Borrower won't be charged any prepayment fees.
    - Loan forgiveness eligibility is 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 before Feb. 15, 2020, payment of rent on any lease in force before Feb. 15, 2020, and payment on any utility for which service began before Feb. 15, 2020.

    - Amounts forgiven may not exceed the principal amount of the loan. Eligible payroll costs do not include compensation above $100,000 in wages. Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered eight-week period compared with 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 and any covered utility payment
  - **Certification.** Borrower must make a good faith certification that the loan is necessary as a result of the uncertainty of current economic conditions caused by COVID-19; that the funds will be used to retain workers and maintain payroll, lease and utility payments; and borrower is not receiving duplicative funds for the same uses from another SBA program.

Emergency Grant

- Provides additional $10 billion in funding to SBA so any eligible entity that has applied for an EIDL loan because of COVID-19 can request an advance on that loan of not more than $10,000, which SBA must distribute within three days. Applicants shall not be required to repay advance payments even if subsequently denied the loan. May be used for providing paid sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage payments, and repaying obligations that cannot be met because of revenue losses.

Increase in cap on SBA Express Loans

- Increases the maximum loan for an SBA Express loan from $350,000 to $1 million through Dec. 31, 2020, after which point the Express loan will have a maximum of $350,000.

Subsidy for Certain Existing SBA Loan Payments

- Provides $17 billion for SBA to cover six months of principle, interest payments and any associated fees for small businesses with existing SBA-backed loans starting on the next payment due. Loans that are already on deferment will receive six months of payment by SBA beginning with the first payment after the deferral period. Loans made up until six months after enactment will also receive a full six months of loan payments by SBA. Requires SBA to make payments even if the loan was sold on the secondary market and to encourage lenders to provide deferments and allows lenders, up until one year after enactment, to extend the maturity of SBA loans in deferment beyond existing statutory limits.

Changes to Existing Bankruptcy

- Amends the definition of income in the Bankruptcy Code for Chapters 7 and 13 to exclude coronavirus-related payments from the federal government from being treated as “income” for purposes of filing bankruptcy. Sunsets after one year.
- Clarifies that the calculation of disposable income for purposes of confirming a Chapter 13 plan shall not include coronavirus-related payments. Sunsets after one year.

- Explicitly permits individuals and families currently in Chapter 13 to seek payment plan modifications if they are experiencing a material financial hardship because of the coronavirus pandemic, including extending their payments for up to seven years after their initial plan payment was due. Sunsets after one year.

Entrepreneurial Development

- Authorizes SBA to provide additional financial awards to resource partners (Small Business Development Centers and Women's Business Centers) to provide counseling, training and education on SBA resources and business resiliency to small-business owners affected by COVID-19.
- Authorizes SBA to provide an association or associations representing resource partners with grants to establish:
    - An online platform that consolidates resources and information available across multiple federal agencies for small business concerns related to COVID–19.
    - A training program to educate Small Business Development Center, Women's Business Center, Service Corps of Retired Executives and Veteran's Business Outreach Center counselors about the various federal resources available to ensure counselors are directing small businesses appropriately.

Title II - Assistance for American Workers, Families, and Businesses

Unemployment Insurance

<u>Unemployment Insurance Provisions:</u>

- **Pandemic Unemployment Assistance.** Creates a temporary pandemic unemployment assistance program through Dec. 31, 2020, to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history and others) who are unable to work as a direct result of the coronavirus public health emergency.
    - Provides an additional $600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.
- **Short-time compensation.** Provides funding to support "short-time compensation" programs where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a prorated unemployment benefit. This provision would pay 100 percent of the costs they incur in providing this short-time compensation through Dec. 31, 2020.
    - Provides funding to support states that begin short-time compensation programs. This provision would pay 50 percent of the costs that a state incurs in providing short-time compensation through Dec. 31, 2020.
    - Provides $100 million in grants to states that enact short-time compensation programs to help them implement and administer these programs.
    - Requires the Department of Labor to disseminate model legislative language for states, provide technical assistance and establish reporting requirements related to short-time compensation programs.

- **Additional unemployment benefits.** Provides an additional 13 weeks of unemployment benefits through Dec. 31, 2020, to help those who remain unemployed after weeks of state unemployment benefits are no longer available.

2020 Recovery Rebates for Individuals:

- **Recovery rebate checks.** Eligible individuals to receive checks of $1,200 ($2,400 for those filing jointly) and increases by $500 per child. Amount reduced by $5 for each $100 a taxpayer's adjusted gross income exceeds $75,000 ($150,000 for those filing jointly). Completely phases out after $99,000 ($146,000 for head of household filers with one child and $198,000 for those filing jointly).

Business tax provisions

- **Employee retention payroll credit.** For employers subject to closure because of COVID-19. 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 operations were fully or partially suspended as a result of a COVID-19-related shutdown order or whose gross receipts declined more than 50 percent when compared with the same quarter in the prior year.
    - The credit is based on qualified wages paid to the employee. For employers with more than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services because of 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 shutdown 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 Dec. 31, 2020.
    - The credit is unavailable to employers receiving assistance through the Paycheck Protection Program.
- **Delay of payment of employer payroll taxes.** Allows employers and self-employed individuals to defer payment of the employer's share of the Social Security tax to the federal government with respect to employees. Employers generally are responsible for paying a 6.2 percent Social Security tax on employee wages. The provision requires the deferred employment tax be paid over the following two years with half of the amount required to be paid by Dec. 31, 2021, and the other half by Dec. 31, 2022. Employer cannot defer payment if it is receiving assistance through the Paycheck Protection Program loan and any portion has been already forgiven.
- **Modifications for net operating losses.** Allows a net operating loss from 2018, 2019 or 2020 to be carried back five years, temporarily removing the taxable income limitation to allow net operating loss to fully offset income. Also modifies the loss limitation applicable to pass-through businesses and sole proprietors so they can benefit from net operating loss carryback rules and access critical cash flow and maintain operations and payroll.

- **Charitable contributions.** Allows partial above-the-line deductions for charitable contributions up to $300 (regardless of whether the taxpayer itemizes) and for those who itemize, increases limits on deductions for charitable contributions during 2020, suspending the 50% adjusted gross income limitation for individuals and increasing corporate limitation to 25% of taxable income. Also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.
- **Modification of qualified improvement property.** Allows businesses to immediately write off costs associated with improving facilities.
- **Early withdrawal penalty waived from retirement accounts.** 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 Jan. 1, 2020.
    - Income attributable to such distributions would be subject to tax over three years, and the taxpayer may recontribute the funds to an eligible retirement plan within three years without regard to that year's cap on contributions.
    - Provides flexibility for loans from certain retirement plans for coronavirus-related relief.
    - A coronavirus-related distribution is one made to an individual who is diagnosed with COVID-19; whose spouse or dependent is diagnosed with COVID-19; or who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced, being unable to work due to lack of child care due to COVID-19.
- **Required minimum distribution rules waived.** Waives the required minimum distribution rules for certain defined contribution plans and IRAs for calendar year 2020. This provision provides relief to individuals who would otherwise be required to withdraw funds from such retirement accounts during the economic slowdown because of COVID-19.
- **Alternative Minimum Tax refund.** Allows companies to claim a refund now for alternative minimum tax credits.
- **Interest expense adjustment.** 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.

Title III – Supporting American's Health Care System in the Fight Against the Coronavirus

<u>Education Provisions</u>

- **Deferred student loan payments.** Requires the Secretary of Education to defer student loan payments, principal and interest for 6 months through Sept. 30, 2020, without penalty to the borrower for all federally owned loans.
- **Workforce Innovation and Opportunity Act.** Provides local workforce boards with additional flexibility to use funds received under the Workforce Innovation and Opportunity Act for administrative costs, including for online resources. Allows governors to use reserved workforce funds on rapid response activities in response to COVID-19.

Title IV – Economic Stabilization and Assistance to Severely Distressed Sectors of the U.S. Economy

Coronavirus Economic Stabilization
(This generally applies to companies not eligible for other provisions of this legislation.)

Emergency Relief and Taxpayer Protections

- **Treasury Exchange Stabilization Fund.** Provides $500 billion to Treasury's Exchange Stabilization Fund to provide loans, loan guarantees and other investments distributed as follows:
  - Direct lending, including:
    - $25 billion for passenger air carriers, eligible businesses that are certified under part 145 of title 15, Code of Federal Regulations, and approved to perform inspection, repair, replace or overhaul services and ticket agents
    - $4 billion for cargo air carriers
    - $17 billion for businesses important to maintaining national security
  - $454 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 (U.S. businesses that have not otherwise received adequate economic relief in the form of loans or loan guarantees provided), 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.
- **Criteria for direct lending.** All direct lending must meet the following criteria:
  - Alternative financing is not reasonably available to the business.
  - 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.
  - The duration of the loan shall be as short as possible and shall not exceed five years.
  - Borrowers and their affiliates cannot engage in stock buybacks unless contractually obligated or pay dividends until one year after the loan is no longer outstanding.
  - Borrowers must, until Sept. 30, 2020, maintain employment levels as of March 24, 2020, to the extent practicable and retain no less than 90 percent of employees as of that date.
  - Borrowers must certify they are U.S.-domiciled businesses and their employees are predominantly located in the U.S.
  - The loan cannot be forgiven.
  - In the case of borrowers critical to national security, their operations are jeopardized by losses related to the coronavirus pandemic.

- **13(3) facility.** Any lending through a 13(3) facility established by the Federal Reserve under this section must be broad-based with verification that each participant is not insolvent and is unable to obtain adequate financing elsewhere. Loan forgiveness is not permissible in any such credit facility.
- **Treasury to create facility for loan program.** Treasury will endeavor to implement a special 13(3) facility through the Federal Reserve targeted specifically at nonprofit organizations and businesses between 500 and 10,000 employees subject to additional loan criteria and obligations on the recipient, such as:
  - The funds received must be used to retain at least 90 percent of the recipient's workforce with full compensation and benefits through Sept. 30, 2020.
  - The recipient will not outsource or offshore jobs for the term of the loan plus an additional two years.
  - The recipient will not abrogate existing collective bargaining agreements for the term of the loan plus an additional two years.
  - The recipient must remain neutral in any union organizing effort for the term of the loan.
- **Prohibitions on direct lending.** Prohibits recipients of any direct lending from increasing the compensation of any officer or employee whose total compensation exceeds $425,000 or from offering such employees severance pay or other benefits upon termination of employment that exceeds twice the maximum total annual compensation received by that employee until one year after the loan is no longer outstanding. Officers or employees making more than $3 million in the prior year would also be prohibited from earning more than $3 million plus fifty percent of the amount their compensation exceeding $3 million the previous year.
- **Special Inspector General.** Establishes within the Department of the Treasury the Office of the Special Inspector General for Pandemic Recovery. The Special Inspector General shall be appointed by the President and shall conduct, supervise and coordinate audits and investigations of the making, purchase, management and sale of loans, loan guarantees and other investments made by the Treasury Secretary under this title. The Special Inspector General shall keep Congress informed through quarterly reports that provide the details of all such loans, loan guarantees or other investments.

Labor Provisions

Labor provisions

- **Limitation on Paid Leave.** Employer shall not be required to pay more than $200 per day and $10,000 in the aggregate for each employee.
- **Limitation on Emergency Paid Sick Leave.** Employer is not required to pay more than $511 per day and $5,110 in the aggregate for sick leave or more than $200 per day and $2,000 in the aggregate for leave to care for a quarantined individual or child. Employer's requirement to provide paid leave expires at the time when the employer has paid that employee for paid leave for an equivalent of 80 hours of work or upon the employee's return to work after taking paid leave.

- **Clarifies paid leave for rehired employees.** 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 he or she is rehired by the employer. Employee would have had to work for the employer at least 30 days before being laid off.
- **Advanced credit payment.** Provides for advanced payment of the credit.
- **ERISA filing delay.** Provides the Department of Labor the ability to postpone certain ERISA filing deadlines for a period of up to one year in the case of a public health emergency.
- **Single employer pension plan companies.** Provides single employer pension plan companies with more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until Jan. 1, 2021. At that time, contributions due earlier would be due with interest. The bill also provides that a plan's status for benefit restrictions as of Dec. 31, 2019, will apply throughout 2020.
- **Federal contractors.** Ensures federal contractors who cannot perform work at their duty-station or telework because of the nature of their jobs because of COVID-19 continue to receive pay.

10255 W. Higgins Road, Suite 600, Rosemont, IL 60018-5607 U.S.A. **TELEPHONE:** (847) 299-9070 **FAX:** (847) 299-1183 **EMAIL:** nrca@nrca.net **www.nrca.net**