

“Phase Three” COVID-19 Relief Bill: Key Provisions

Lending Provisions

Loans to Eligible Businesses: This provision provides Treasury \$500 billion to provide loans and loan guarantees. To be eligible for this program, a company must not otherwise receive adequate economic relief from other provisions of the bill.

- All direct lending must meet the following criteria:
 - Alternative financing is not reasonably available.
 - The loan is sufficiently secured or is made at an interest rate that reflects the risk.
 - The duration is as short as possible, with a maximum term of five years.
 - Borrowers and their affiliates cannot engage in stock buybacks (unless contractually obligated).
 - Borrowers cannot pay dividends until the loan is no longer outstanding or one year after the date of the loan.
 - Borrowers are prohibited from reducing their workforce below March 24, 2020, levels until Sept. 30, 2020.
 - The company must be domiciled in the United States, with a predominantly U.S. employee base.
 - For businesses critical to national security, their operations must be jeopardized by COVID-19-related losses.
- Until one year after the loan is outstanding, recipients of any direct lending are barred from increasing compensation for an officer or employee whose total compensation exceeds \$425,000.
 - Limits on severance packages for these employees are imposed.
 - Executives earning more than \$3 million in 2019 compensation may not earn from the \$3 million plus 50% of the excess over \$3 million.
- Of the \$500 billion, \$46 billion is set aside for direct lending to specific industries.
 - \$25 billion for passenger airlines
 - \$4 billion for cargo air carriers
 - \$17 billion for businesses important to maintaining national security

Small Business Loans: This provision provides \$350 billion for small business loans administered by the Small Business Administration under the new Paycheck Protection Program. This would provide loans of up to \$10 million per company; loan size would be dependent on a company’s payroll.

- The loans are available to companies with no more than 500 employees or that meet the applicable size standard for the industry as provided by the SBA if higher.
- Loans can be forgiven. The amount of the forgiveness is equal to the amounts spent by the borrower during the eight weeks from loan origination on payroll costs (up to \$100,000 in wages), mortgage interest, rent or utilities (subject to certain restrictions).
 - The forgiveness amount is reduced by layoffs (though employer may rehire workers to mitigate this reduction) or pay reductions in excess of 25%. Amounts forgiven are not treated as taxable income to the borrower.
- Loan amounts can only be used for payroll, mortgages, rent, insurance premiums and utility payments. Companies could not apply for both an SBA disaster loan and a loan under this program. This program is only in place through Dec. 31, 2020.

- For eligibility purposes, the provision requires lenders to determine whether a business was in operation on Feb. 15, 2020, and has employees, instead of repayment ability.
- Borrowers are not permitted to receive both an SBA economic injury disaster loan and a loan under this new program, unless the disaster loan is unrelated to COVID-19.
- Borrowers must certify that the loan is necessary because of COVID-19 and that the proceeds will be used for payroll and specified other uses.
- Fees for borrowers participating in the program are waived.
- Maximum term is 10 years, and maximum interest rate is capped at 4%.

Tax Provisions

Net Operating Loss Carryback: This provision retroactively allows companies to use tax losses to offset income from prior years. Losses from 2018, 2019 and 2020 may be carried back five years, allowing companies to amend prior-year returns. This provision applies to both corporations and pass-through businesses.

Increase in Allowable Interest Deductions: The maximum amount of business interest deductions is increased for 2019 and 2020 from 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) to 50% of EBITDA.

Payroll Tax Deferral: This provision allows an employer to defer its share of 2020 payroll tax, paying these amounts over the next two years.

Payment of Tax Refunds: Tax reform imposed a one-time tax on earnings held overseas, which could be paid over eight years. The IRS has taken the position that companies cannot receive refunds until the eight-year period is completed. The bill overturns the IRS position.

- While not in the NAM COVID-19 plan, we have advocated this change.

Employee Retention Tax Credit: This provision creates a new, temporary refundable payroll tax credit for companies affected by COVID-19 (i.e., with operations suspensions or a significant decline in gross receipts). The maximum credit is \$10,000 per employee. The credit amount is based on wages, including health benefits. For businesses with more than 100 employees, only wages paid during a period that services are not provided due to COVID-19 are counted. For companies with fewer than 100 employees, all wages are counted. This credit is for wages paid through the end of 2020.

Corporate Alternative Minimum Tax Credits: This provision allows companies to accelerate recovery of corporate AMT credits.

Qualified Improvement Property: This provision corrects an error in tax reform, allowing companies to write off certain facilities improvements more quickly.

Health Care Provisions

Supply Chain: The provision addresses a range of supply chain concerns related to the management and supply of the Strategic National Stockpile. The provision also requests permanent liability protections for makers of PPE that are called for public health emergency countermeasures. Families First legislation took liability protections to 2024. In addition, the provision adds reporting requirements on pharmaceutical manufacturers and device makers

regarding potential supply concerns and requires the government to lead more activities around drug and device shortages.

Report on Medical Supply Chain: The National Academies of Sciences, Engineering and Medicine is required to issue a report on the U.S. medical product supply chain within 60 days. The report would examine the supply of critical drugs and the impact on public health and national security of reliance on non-U.S. sources of production of drugs and devices, as well as the economic impact of an increase in domestic manufacturing.

Access: The provision clarifies no COVID-19 cost sharing for private insurance, requires free vaccine coverage without cost sharing following current vaccine practices guidelines and includes a range of public health measures to address COVID-19 treatment and response, including liability protections for doctors who volunteer.

Innovation: This provision advances additional private-sector partnerships but lifts the cap on current limits related to Biomedical Advanced Research and Development Authority, extends the priority review at the Food and Drug Administration to incentivize companies to develop countermeasures more quickly and provides breakthrough therapy designations for animal drugs that can prevent human diseases.

Telehealth: This provision removes barriers and facilitates telehealth services, especially for high-deductible health plans that utilize health savings accounts.

Labor Provisions

Paid Leave: This provision sets a cap on maximum payments employers will be required to pay for new emergency paid leave requirements. The provision also allows employers to receive an advance tax credit on paid leave rather than having to be reimbursed on the back end. The provision also ensures that federal contractors who are unable to work will continue to be paid.

Unemployment Insurance: This provision provides additional federal funds for workers who are unemployed or underemployed. The provision also establishes short-term compensation programs for states that allow for employers to reduce workers' hours while still providing employees a pro-rated unemployment benefit.

Individual Provisions

Individual Rebate Checks: This provision provides checks of up to \$1,200 to single individuals and \$2,400 to married couples (increased by \$500 per child). Check amounts begin to reduce as income exceeds a threshold amount (\$75,000 for individuals/\$150,000 for married filers) and are completely eliminated once income reaches \$99,000 for individuals/\$198,000 for joint filers with no children). Income amounts are based on the taxpayer's 2018 return.

Distributions from Retirement Plans: This provision waives the 10% penalty for distributions from certain retirement plans. The maximum allowable distribution is \$100,000. Individuals can recontribute these amounts to their plans over a period of up to three years. This provision is applicable to individuals diagnosed with COVID-19, whose spouse or dependents have been diagnosed or who experience adverse financial consequences from the virus.