

# COVID-19

## *Potential Impact of Passed and Proposed Legislation*

March 25, 2019



Please consult your legal and tax advisors to understand the specific impact of this legislation on your Company

# 1 Coronavirus Preparedness and Response Supplemental Appropriations Act

- Overall :** Phase 1, signed into law March 6<sup>th</sup>, provides \$8.3 billion in emergency funding to federal agencies for their response to COVID-19 – only \$20 million was earmarked for the Small Business Administration (“SBA”) thus the majority of SBA relief related to COVID-19 will come from pre-existing funding
- Who It Applies To:** Small businesses and private non-profits with  $\leq 500$  employees suffering substantial economic injury from COVID-19. Defined as businesses unable to meet necessary operating expenses such as fixed debts, A/P, payroll, etc.
- Why It Matters:** Established the Economic Injury Disaster (“EID”) loan program providing up to a \$2 million working capital loan from the U.S. Treasury for small businesses suffering substantial economic injury related to COVID-19 with physical locations listed [here](#) and terms as follows:
- (1) Interest rate of 3.75% for small businesses and 2.75% for private non-profits
  - (2) Long-term repayments determined on a case by case basis, up to a maximum of 30 years with no payments required for the first 11 months
  - (3) Loans over \$25k will require collateral including real estate and personal guarantees from owners who own > 20% of the Company – The SBA can waive collateral requirements on a case by case basis
  - (4) New loan cannot be consolidated with any existing SBA loans
- Considerations:** SBA loans are likely preferable for borrowers seeking additional capital given longer maturities and favorable interest rates and repayment terms relative to BMO loans
- Borrowers only seeking payment relief should look to BMO first prior to accessing new SBA loans
- BMO’s credit agreements will likely need to be amended given collateral and personal guarantee requirements of SBA loans – terms to be determined on a case by case basis
- States are also launching separate funding programs that companies can access separately – BMO is working to summarize the newly created state programs available to the states in our footprint
- SBA may not have the infrastructure to disburse funds quick enough – Has historically only handled \$4 billion in disaster loans over the ten year period from 2005-2015 and averaged 4+ weeks for approvals

Source: <https://www.kff.org>, <https://www.sba.gov>, <https://www.cnbc.com>

## 2 Families First Coronavirus Response Act

- Overall :** Phase 2, signed into law March 18<sup>th</sup>, provides paid leave, establishes free testing, protects public health workers, and provides important benefits to children and families
- Who It Applies To:** Small businesses and private non-profits with  $\leq 500$  employees with:
- (1) Sick Leave requiring no minimum employment duration
  - (2) Job-Protected leave only applicable to employees who have worked for the organization for  $\geq 30$  days
  - (3) Employers may elect to exclude health care providers or emergency responders from both types of leave
- Why It Matters:** Established Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act providing the following effective 4/2/20 thru 12/31/20:
- (1) Up to 10 days of paid Sick leave for full-time workers or the average number of hours worked for part-time workers, capped at \$511/day if you are sick or \$200/day if you are caring for a sick dependent
  - (2) Up to 12 weeks of Job-Protected leave for those caring for a minor child whose school/place of care is closed due to COVID-19, with the first ten days unpaid and the remainder capped at the lesser of (a) 2/3 of the employee's regular hourly rate or (b) \$200/day
- Employers to receive a 100% tax credit against their Social Security and Medicare taxes – Benefits S Corp ESOPs given it's a credit against Social Security not Income taxes
- Considerations:** Tax credits will not matter if employer goes out of business because of liquidity issues to provide leave  
Argument could be made if employee is furloughed/ laid off prior to 4/2/20, the leave would not apply – Act is unclear so consulting legal advisors is recommended  
Employers with < 49 employees may not be subject to the required paid leave if it risks the entity's economic viability  
Washington Post estimates that at least 19 million workers are left out of the paid leave protections based on size and restricted industries

Source: <https://www.reinhartlaw.com>

## 3 Coronavirus Rescue Bill – *In Process*

- Overall :** Phase 3, provides \$2 trillion in funding for direct payment to families, additional small business relief, additional expanded unemployment benefits, as well as loan guarantees for specific industries
- Who It Applies To:** Direct Funding is available to individuals earning < \$99,000 and families earning < \$198,000  
SBA Express and 7(a) loans<sup>(1)</sup> are available to businesses with ≤ 500 employees willing to pay employees for two additional weeks with government support for the remaining six weeks
- Why It Matters:** Provides direct funding to individuals and families up to \$1,200 and \$2,400, respectively, with an additional \$500/dependent available
- Increases the maximum SBA Express Loan from \$350k to \$1 million
- Provides up to \$350 billion of funding through the SBA 7(a) loan program for small businesses to provide continuity of employment during interruption:
- (1) Proceeds for up to 6 weeks of payroll, capped at \$1,540/week per employee or \$10 million/business
  - (2) Employee compensation must be sustained for all employees for eight weeks post loan disbursement date
  - (3) Contemplated loan forgiveness for the payroll and debt obligation portions spent between 3/1 and 6/30 if the business retained all its employees during that time
- Terms of these loans are still unknown given pending legislation, but will be 100% guaranteed by the U.S. Government
- Considerations:** 7(a) loans would not offset costs for newly created leave programs but would encourage employee retention
- States unemployment sites have been crashing given skyrocketing unemployment claims – Phase III will be crucial to help states handle the number of claims
- The Senate still needs to pass the bill and the House is hopeful it can pass without an in person vote
- BMO is a preferred SBA provider

(1) SBA Express loans are revolving lines of credit available for working capital, equipment, and real estate with an accelerated turnaround time for approval ; 7(a) loans are term loans with longer maturities, favorable repayment terms and interest rates, available for working capital, equipment, and real estate

Source: <https://www.wsj.com>, [www.axios.com](http://www.axios.com), <https://context-cdn.washingtonpost.com>, <https://www.cnn.com>

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