



CARES Act Relief What It Means for NAMA Members

NAMA Federal And State Affairs Team



CARLA BALAKGIE

President and CEO
NAMA



Visit: www.namanow.org/covid

Click here to
submit a question



Overview | Fly-In & Advocacy Summit | Key Issues | Policy Positions | Comments | Economic Research | FitPick & Nutrition | Action Center | State Council
Coronavirus Resources

Coronavirus (COVID-19)

[Submit a question to NAMA's Rapid Response Portal ▶](#)

As NAMA continues to monitor the spread of Coronavirus (COVID-19) we wanted to provide our community with government-issued guidance and answers to commonly asked questions about the virus.

NAMA's GA Team has been working around the clock to ensure that the convenience services industry is deemed an "essential industry" and therefore can continue to operate. Our efforts have already produced positive results.

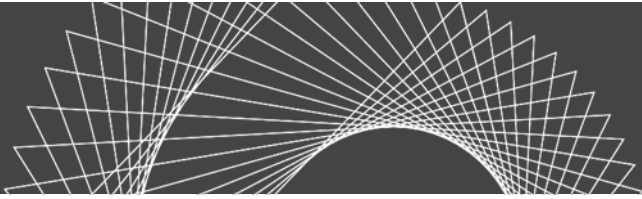
NAMA was successful in working with the Department of Homeland Security (DHS) to have them list ***"Workers supporting groceries, pharmacies, convenience stores, and other retail (including unattended and vending) that sells human food, animal/pet food and pet supply, and beverage products, including retail customer support service and information technology support staff necessary for online orders, pickup and delivery"*** as essential in its *Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response*

Today's Agenda

- CARES Act Overview
- Tax Provisions
- Small Business Provisions
- Economic Stabilization Loans (Mid-size Business)
- Unemployment Insurance Issues
- Phase 4 Preview

Coronavirus Aid, Relief, and Economic Security Act

CARES Act



Akin Gump
STRAUSS HAUER & FELD LLP

Webinar for the National Automatic Merchandising Association

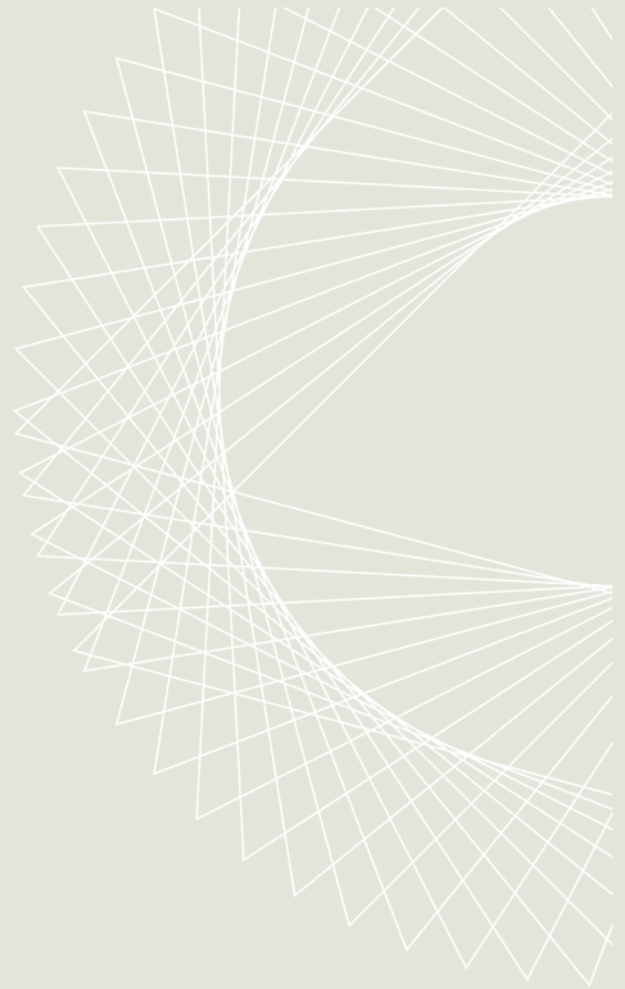
April 2, 2020

Topics

- CARES Act: An Overview
- Tax Provisions
- Small Business Assistance
- Economic Stabilization Assistance for Mid-Size and Large Businesses
- Expanded Unemployment Insurance/Paid Leave
- Outlook for “Phase 4”

CARES Act Overview

Jamie Tucker and Josh Teitelbaum



Key Tax Provisions

Zach Rudisill



Key Tax Provisions

- **NOL Benefits:**

- For 2018 through 2020, corporations will be able to carry back net operating losses (“NOLs”) arising in 2018 through 2020 to the five preceding tax years (prior to this change, no NOL carrybacks were allowed since 2018), including those years for which the corporate tax rate was 35% (as it was pre-2018, not its current 21%).
- Further, corporations will be allowed to use NOLs incurred in those years to fully offset their taxable income (removing the 80% limitation that has been in place since 2018).

- **Interest Deductibility:**

- In 2019 and 2020, corporations will be allowed to deduct more of their borrowing costs (up to 50% of their earnings, instead of only up to 30%). In addition, companies will be allowed to elect to use their 2019 earnings for purposes of calculating their 2020 business interest deduction limit.
- Beginning March 27, 2020, employers may defer payment of their share (6.2% of employee wages) of the Social Security tax they otherwise generally must deposit to the U.S. Treasury electronically either semi-weekly or monthly through the end of 2020.

Key Tax Provisions (cont'd)

- **Payroll Retention Credit:**

- Certain employers may receive a refundable payroll tax credit of as much as \$5,000 per employee for wages and health benefits paid from March 13 through December 31, 2020. If the aggregate credit amount exceeds the employer's payroll tax liability, then any excess shall be refundable.
- Employers that qualify either had their business fully or partially suspended by a COVID-19-related government order or experienced a significant decline in gross receipts. The credit amount is equal to 50% of the qualified wages of an employee, but such wages cannot be more than \$10,000 per employee.

- **Alternative Minimum Tax Refunds:**

- The CARES Act allows a corporation with eligible minimum tax credits to accelerate its refunds. The Tax Cuts and Jobs Act ("TCJA") repealed the alternative minimum tax ("AMT") for corporations. Those with AMT credits were allowed to carry them forward and take a refundable credit pursuant to a set schedule that went through 2022. The CARES Act modifies the schedule so that corporations can take the entire amount of the refundable credit in 2018 and 2019 (or choose to take all of it in 2018).

Key Tax Provisions (cont'd)

- **Employer Retention Credit:**
 - Certain employers may receive a refundable payroll tax credit of as much as \$5,000 per employee for wages and health benefits paid from March 13 through December 31, 2020. If the aggregate credit amount exceeds the employer's payroll tax liability, then any excess shall be refundable.
 - Employers that qualify either had their business fully or partially suspended by a COVID-19-related government order or experienced a significant decline in gross receipts. The credit amount is equal to 50% of the qualified wages of an employee, but such wages cannot be more than \$10,000 per employee.

Small Business

Elise Farrell



Overview of the Paycheck Protection Program (PPP) SBA Loan

- Provides \$349 billion for expedited individual loans up to \$10 million through approved lenders that are guaranteed 100% by the U.S. government
- Proceeds can be used to cover payroll support, such as employee salaries; paid sick or medical leave; insurance premiums; and mortgage interest, rent, and utility payments incurred during the covered period
 - The maximum amount of a loan equals 2.5 months of regular payroll expenses (subject to a cap of a \$100,000 of annual salary per employee)
- Provides loan forgiveness as long as:
 - Loan proceeds are used for allowable expenses; and
 - Employee and compensation levels are maintained

Benefits for Borrowers

- Benefits for Borrowers
 - Eligibility for loan forgiveness equal to the amount spent during an 8-week period after the origination date of the loan on allowable expenses (payroll costs, rent, mortgage interest, utilities)
 - Government has indicated that due to high subscription, it anticipates that not more than 25% of the forgiven amount may be for non-payroll costs
 - All borrower and lender fees, collateral, and personal guarantee requirements are waived
 - Interest rate is 0.5% and the loan is due in 2 years
 - No prepayment fees or penalties
 - Loan payments can be deferred for 6 months

Eligible Businesses

- Small businesses as defined by the SBA Size Standards
- Businesses with fewer than 500 employees
 - Including 501(c)(3) nonprofits, 501(c)(19) veteran’s organization, and Tribal business concern described in section 31(b)(2)(C) of the Small Business Act
- Hotels, motels, and restaurants (*i.e.* NAICS code 72) with fewer than 500 employees at each physical location, or in the aggregate, without regard to affiliation
- Franchises in the SBA’s Franchise Directory (available [here](#)) without regard to affiliation;
- Businesses that receive financial assistance from small business investment companies licensed by the SBA; and
- Sole proprietors, independent contractors, gig economy workers, and self-employed individuals
- Employers who elect to take advantage of the “Employees Retention Tax Credit for Employers subject to closure due to COVID-19” are not eligible to take advantage of these loans

Counting Employees & Affiliation Rules

- Method for determining size includes:
 - Average number of employees (including the employees of its domestic and foreign affiliates) for each of the pay periods for the preceding completed 12 calendar months
 - Includes all individuals employed on a full-time, part-time, or other basis, including temporary employees (volunteers do not count)
 - The average number of employees of a business with affiliates is calculated by adding the average number of employees of the business with the average number of employees of each affiliate
 - Entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both, even if that power is not exercised.

Loan Amount

- Eligible borrowers can seek a total loan amount equal to average monthly payroll for 2019, multiplied by 2.5
 - “Payroll costs” include salary, wages, commissions, cash tips, employee benefits (e.g. paid vacation or leave), insurance premiums and other group health care payments, paid retirement benefits, and state or local taxes
 - For a sole proprietor or independent contractor payroll costs also include wages, commissions, or other compensation from self-employment that does not exceed \$100,000
 - “Payroll costs” do not include individual compensation in excess of \$100,000 per employee, certain taxes, compensation paid to an employee if their place of residence is outside the U.S., and paid leave under the Families First Coronavirus Relief Act
- Borrowers that have existing loans under certain SBA programs may be subject to different limits

PPP Application Form

- The PPP Application Form is available [here](#)

Applicant Ownership

List all owners of Applicant with greater than 20% ownership stakes. Attach a separate sheet if necessary.

Owner Name	Title	Ownership %	TIN (EIN,SSN)	Address

If questions (1) or (2) below are answered "Yes," the loan will not be approved.

Question	Yes	No
1. Is the Business or any owner presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Business, any of its owners, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last 7 years and caused a loss to the government?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the Business or any owner an owner of any other business or have common management with any other business? If yes, attach a listing of all Affiliates and describe the relationship as addendum A.	<input type="checkbox"/>	<input type="checkbox"/>
4. Has the Business received an SBA Economic Injury Disaster Loan between January 31, 2020 and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.	<input type="checkbox"/>	<input type="checkbox"/>

PPP Application Form

Applicants who are individuals and all 20% or greater owners of the business must answer the following questions. If questions (5) or (6) are answered "Yes" or question (7) is answered "No", the loan will not be approved.

Question	Yes	No
5. Are you presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, on probation or parole?	<input type="checkbox"/>	<input type="checkbox"/>
Initial here to confirm your response to question 5 →		<input type="checkbox"/>
6. Within the last 7 years, for any felony or misdemeanor for a crime against a minor, have you: 1) been convicted; 2) pleaded guilty; 3) pleaded nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment)?	<input type="checkbox"/>	<input type="checkbox"/>
Initial here to confirm your response to question 6 →		<input type="checkbox"/>
7. <input type="checkbox"/> I am a U.S. Citizen <u>OR</u> <input type="checkbox"/> I have Lawful Permanent Resident status <input type="checkbox"/> No		
Initial here to confirm your response to question 7 →		<input type="checkbox"/>

PPP Application Form

- The borrowing business and each 20% or greater owner must make good faith certifications that:
 - Current economic uncertainty makes this loan request necessary to support its ongoing operations
 - The funds will be used to retain workers, payroll, and for other allowable expenses
 - It will provide documentation to the lender verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, and other covered expenses for the 8-week period following this loan
 - During the period beginning on February 15, 2020 and ending on December 31, 2020, the borrower has not and will not receive another loan under this program
 - The information provided in the application and all supporting documents and forms are true and accurate

PPP Application Form

CERTIFICATIONS

The Business and each 20% or greater owner must certify in good faith to all of the below by **initialing** next to each one:

Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.

The funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments; I understand that if the funds are used for unauthorized purposes, the federal government may pursue criminal fraud charges.

Documentation verifying the number of full-time equivalent employees on payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight week period following this loan will be provided to the lender.

Loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities. Due to likely high subscription, it is anticipated that not more than twenty-five percent (25%) of the forgiven amount may be for non-payroll costs.

During the period beginning on February 15, 2020 and ending on December 31, 2020, the Applicant has not and will not receive another loan under this program.

I further certify that the information provided in this application and the information that I have provided in all supporting documents and forms is true and accurate. I realize that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a Federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000.

I acknowledge that the lender will calculate the eligible loan amount using tax documents I have submitted. I affirm that these tax documents are identical to those I submitted to the IRS. I also understand, acknowledge and agree that the Lender can share the tax information with SBA's authorized representatives, including authorized representatives of the SBA Office of Inspector General, for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.

Use of Loan Proceeds, Forgiveness and Reduction in Forgiveness Amount

- Loan proceeds may only be used to pay (1) payroll costs (up to an annual rate of pay of \$100,000 per employee), including benefits, (2) interest on mortgage obligations incurred before February 15, 2020; (3) rent under lease agreements in place before February 15, 2020; and (4) utilities for which service began before February 15, 2020
- Loan amounts expended during the 8-week period following the loan origination will be forgiven, up to the total amount of the loan, if 75% or more is used for payroll costs and no more than 25% of the forgiven amount is used for non-payroll costs (as anticipated)
- No forgiveness if loan is used for non-covered costs
- The forgiven amount will be reduced if you reduce your staff or decrease salaries and wages by more than 25% for any employee that made less than \$100,000 in 2019
- Borrowers have until June 30, 2020 to restore full-time employment and salary levels for any changes made between February 15, 2020 and April 26, 2020

Application Process

- You can apply at any lending institution that is approved to participate in SBA's 7(a) lending program (Treasury will also be approving additional lenders)
- Lenders can begin accepting applications on April 3, 2020 for small businesses and sole proprietorships
 - Independent contractors and self-employed individuals must wait until April 10, 2020
- Applicants are eligible to apply for the PPP loan until June 30, 2020
- You can find your local lenders in the resource guide on your local SBA office's website (available here: <https://www.sba.gov/content/find-local-sba-office>)
- SBA is required to issue implementing regulations, which we expect to occur prior to April 3, 2020

Economic Stabilization Loans (Treasury / Federal Reserve)

Brendan Dunn



Overview

- The Federal Reserve, in coordination with the Treasury Department, has already established a series of facilities and programs designed to inject liquidity broadly into the economy.
- Above and beyond programs dedicated to airlines and national security-oriented companies, the CARES Act also appropriates at least \$454 billion to Treasury to support lending programs for eligible businesses, states and municipalities
- Identifies a Mid-Size Lending Program for mid-sized businesses of between 500 and 10,000 employees, but also states that the Secretary has broad authority with the Federal Reserve to establish other programs and facilities, including a Main Street Lending Program
- The Federal Reserve has already stated that it “expects to announce soon the establishment of a Main Street Business Lending Program to support lending to eligible small-and-medium sized businesses, complementing efforts by the SBA.”
- Unlike lending under the SBA program, assistance under these programs is not forgivable.

Direct Lending Programs

- Ultimately, Treasury and the Federal Reserve have broad discretion to design lending programs under the CARES Act as they see fit and with few proscriptive requirements.
- The law does not state how the Secretary must distribute the loans and loan guarantees or the maximum or minimum amount of each loan, although an eligible business may not have other credit reasonably available to it and loans must be prudently incurred.
- Restrictions on stock buybacks, dividends and capital distributions and on executive compensation do exist.

Optional Mid-Size Lending Program

- The CARES Act requires the Treasury Secretary to “endeavor” to establish a Mid-Size Lending program for companies with between 500 and 10,000 employees.
- This program establishes significant employee retention and rehiring requirements. Participants must retain 90% of workforce with full compensation and benefits until September 30, 2020, and certify that they intend to restore no less than 90% of the workforce that existed as of February 1, 2020 and must restore all compensation and benefits within 4 months after termination of the emergency declaration related to COVID-19.
- The business must be created or organized in the U.S. with significant operations and employees in the U.S.
- The business cannot be a debtor in a bankruptcy proceeding.
- Restrictions on stock buybacks, dividends/capital distributions, and executive compensation apply.
- The business cannot offshore or outsource jobs or abrogate existing collective bargaining agreements for two years after the loan is repaid.
- Borrowers to remain neutral in union organizing efforts for the term of the loan.

Expanded Unemployment Insurance Benefits/Paid Leave

Josh Teitelbaum



New & Expanded Unemployment Insurance

Two new programs to make three changes:
Get more kinds of people more money for more weeks

- **(1) Pandemic Unemployment Assistance** (PUA): for those workers previously ineligible for unemployment compensation that are now unemployed for a COVID-specific reason, a new, temporary 39 week benefit
- **(2) Pandemic Emergency Unemployment Compensation** (PEUC): for those workers eligible for their state-based program, 13 additional weeks of unemployment compensation
- **NOTE:** Under both programs, beneficiaries get an **additional \$600** from the federal government
- **NOTE:** No impact on employer's unemployment insurance contribution at the state or federal level
- **NOTE:** States will have to enter into specific agreements with the DOL in order to take advantage of the increased unemployment insurance benefits provided by the CARES Act

PUA: New Eligibility

For 39 weeks until December 31, 2020, workers that were not previously eligible for unemployment insurance can access the benefit including: Partially or self-employed, Independent contractors, “Gig economy” workers, Freelancers, and Individuals with limited work history

These workers must have a COVID-specific reason for their unemployment, like:

- I MIGHT HAVE IT - They have been diagnosed with COVID-19 or have symptoms and are seeking a diagnosis;
- MY HOUSE HAS IT - A member of their household has been diagnosed with COVID-19;
- I'M CARING FOR IT - They are providing care for someone diagnosed with COVID-19;
- WHAT ABOUT THESE KIDS? - They are providing care for a child or other household member who can't attend school or work because it is closed due to COVID-19;
- YOU TOLD ME TO STAY - They are quarantined or have been advised by a health care provider to self-quarantine;
- I'M TRYING TO WORK HERE - They were scheduled to start employment and do not have a job or cannot reach their place of employment as a result of a COVID-19 outbreak;
- IT'S JUST ME NOW - They have become the breadwinner for a household because the head of household died of COVID-19;
- I CAN'T EVEN WITH THIS - They had to quit their job as a direct result of COVID-19; or
- I GOT NOWHERE TO GO - Their place of employment is closed as a direct result of COVID-19.

The additional \$600 under PUA is retroactive for spells of unemployment beginning as early as January 27, 2020 and available until July 31, 2020

PEUC: More Money, More Weeks

State Exhaustion. If an individual that is eligible for state benefits, then the state benefits must be exhausted before accessing more weeks of federal CARES Act UI benefits:

- **More Money**: If you meet your state's requirements, then you qualify for an **extra \$600 per week** through July 31, 2020. The additional \$600 is fully funded by the federal government and available retroactively from the date the state enters into an agreement with the DOL.
- **More Time**: If you meet your state's requirements, then you're eligible for an **additional 13 weeks of** benefits, which would be equal to your state weekly unemployment benefit plus the additional \$600.
- **Keep Working**: To receive the additional 13 weeks of benefits, the individual must be available to work and actively seeking work, even if the state does not impose this requirement.
- **Timing & Funding**: The additional 13 weeks of assistance are fully funded by the federal government and are available retroactively the date the state enters into an agreement with the DOL through December 31, 2020.

Preview of “Phase 4”

Jamie Tucker and Josh Teitelbaum



Resources

www.akingump.com

www.treasury.gov

www.sba.gov



Visit: www.namanow.org/covid

Click here to
submit a question



Overview | Fly-In & Advocacy Summit | Key Issues | Policy Positions | Comments | Economic Research | FitPick & Nutrition | Action Center | State Council
Coronavirus Resources

Coronavirus (COVID-19)

[Submit a question to NAMA's Rapid Response Portal](#)

As NAMA continues to monitor the spread of Coronavirus (COVID-19) we wanted to provide our community with government-issued guidance and answers to commonly asked questions about the virus.

NAMA's GA Team has been working around the clock to ensure that the convenience services industry is deemed an "essential industry" and therefore can continue to operate. Our efforts have already produced positive results.

NAMA was successful in working with the Department of Homeland Security (DHS) to have them list ***"Workers supporting groceries, pharmacies, convenience stores, and other retail (including unattended and vending) that sells human food, animal/pet food and pet supply, and beverage products, including retail customer support service and information technology support staff necessary for online orders, pickup and delivery"*** as essential in its *Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response*



Eric Dell
Senior Vice President
External Affairs
edell@namanow.org



Mike Goscinski
Director
State and Federal Affairs
mgoscinski@namanow.org



Sandy Larson
Sr. Director and Counsel
State Affairs
slarson@namanow.org



Wes Fisher
Manager
Government Affairs
wfisher@namanow.org