REBNY®
REAL ESTATE BOARD OF NEW YORK

REBNY Resources:

An Overview of the Federal Stimulus for the Real Estate Industry

During the Coronavirus (COVID-19) Crisis

Summary of Key Provisions of the CARES Act

Within the next several days, Congress is expected to pass, and the President is expected to sign the federal stimulus package known as the CARES Act in response to the ongoing Coronavirus (COVID-19) crisis in the United States. This package includes $2 trillion in relief efforts focused on support for workers; support for residential owners and residents; lending support for businesses; tax support for businesses; and support for state and local governments.

The Real Estate Board of New York (REBNY) has created the following overview of relief programs available through the CARES Act to help our members navigate this ongoing crisis.

SUPPORT FOR WORKERS

Expanded Unemployment Insurance Program

The legislation expands unemployment insurance for self-employed and contract workers who are typically ineligible for the program. The extended and expanded UI program in the bill 1) increases the amount of time a worker may receive unemployment insurance, 2) raises the maximum unemployment benefit amount by $600 per week above one's base unemployment compensation benefit and 3) ensures that workers who are laid-off or out of work, on average, will receive their full pay for four months. The $260 billion-dollar plan will deliver at least $15 billion directly to New York.

Direct Payments to Americans

The bill provides all U.S. residents with adjusted gross income up to $75,000 ($150,000 married), who are not a dependent of another taxpayer and have a work eligible social security number, with a $1,200 ($2,400 married) rebate. In addition, they are eligible for an additional $500 per child. This rebate is awarded to those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits. The rebate amount is reduced by $5 for each $100 that a taxpayer's income exceeds the phase-out threshold. The amount is completely phased-out for single filers with incomes exceeding $99,000, $146,500 for head of household filers with one child and $198,000 for joint filers with no children.

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SUPPORT FOR RESIDENTIAL OWNERS AND RESIDENTS

Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans

Provides up to 90 days of forbearance for multifamily borrowers with a federally backed multifamily mortgage loan who have experienced a financial hardship. Borrowers receiving forbearance may not evict or charge late fees to tenants for the duration of the forbearance period. Applicable mortgages include loans to real property designed for 5 or more families that are purchased, insured or assisted by Fannie Mae, Freddie Mac or HUD. The authority provided under this section terminates on the earlier of the termination date of the national emergency concerning the coronavirus or December 31, 2020.

Foreclosure Moratorium and Consumer Right to Request Forbearance

The legislation prohibits foreclosures on all federally backed mortgage loans for a 60-day period beginning on March 18, 2020 and provides up to 180 days of forbearance for borrowers of a federally backed mortgage loan who have experienced a financial hardship related to the COVID-19 emergency. Applicable mortgages include those purchased by Fannie Mae and Freddie Mac, insured by HUD, VA, or USDA, or directly made by USDA. The authority provided under this section terminates on the earlier of the termination date of the national emergency concerning the coronavirus or December 31, 2020.

Temporary Moratorium on Eviction Filings

For 120 days beginning on the date of enactment, landlords are prohibited from initiating legal action to recover possession of a rental unit or to charge fees, penalties, or other charges to the tenant related to such nonpayment of rent where the landlord's mortgage on that property is insured, guaranteed, supplemented, protected or assisted in any way by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program or the Violence Against Women Act of 1994.

LENDING SUPPORT FOR BUSINESSES

Paycheck Protection Program

Creates a new $349 billion SBA lending program, modeled on existing 7(a) program, with 100% government guarantee. Eligible small businesses are those defined by SBA size standards (generally up to 500 employees) and include (but are not limited to):

- Businesses in the accommodation and food services sector (restaurants and hotels) are eligible with up to 500 employees at each location.
- Non-profits with fewer than 500 employees who are 501(c)3s and do not receive Medicaid funding.
- Sole proprietors, the self-employed and independent contractors.

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Maximum loans are generally monthly payroll costs for 2 ½ months, not to exceed $10 million. Payroll costs exclude compensation paid to individuals, including the self-employed, in excess of $100,000 a year.

The bill text requires only a "good faith" certification that the economic conditions make the loan necessary, and that you will use the funds to "retain workers and maintain payroll or make mortgage payments, lease payments and utility payments."

Subject to certain limitations, payments made under the loan during the 8-week period after origination are forgivable. Forgivable costs include money spent on eligible payroll costs (not including comp above $100k in wages), mortgage interest, rent or utilities. The among forgiven cannot exceed the principal of the loan.

To obtain the loans, the employer must certify that they will maintain their average full-time equivalent employment, with incentives to re-hire if employees have been furloughed.

The borrower will have a portion of their loan forgiven in the amount equal to their payroll costs (not including costs for compensation in excess of $100,000 annually), interest payments on mortgages, rent payments and utility payments between February 15 and June 30, 2020. Loan forgiveness will be reduced if the borrower reduces employment by a ratio similar to their reduction in employment or if borrower reduces salaries and wages by more than 25%.

Loan Program and Credit Facility to Support Impacted Industries

The legislation includes $454 billion in support of business, States and municipalities, in the form of loans, loan guarantees and other investments through programs or facilities established by the Federal Reserve.

Eligibility for, and conditions of, assistance through Federal Reserve programs include:

- Businesses must be created or organized in the U.S. or under its laws and have significant operations in and a majority of employees based in the U.S.
- Limits on stock buybacks, payment of stock dividends and limits on executive compensation.

The Treasury Secretary is further authorized to implement a program to provide financing to banks and other lenders that make direct loans to eligible mid-size businesses with between 500-10,000 employees. Features of the program include:

- Direct loans have an annualized interest rate not higher than 2% with no principal or interest for 6 months.
- The funds will be used to retain at least 90% of its workforce at full compensation and benefits until September 30, 2020.
- The recipient intends to restore not less than 90% of its workforce that existed as of 2/1/20 and to restore full benefits to workers no later than 4 months after termination of the public health emergency declared by the HHS Secretary.
- The recipient is an entity or business domiciled in the U.S. with significant operations and employees in the U.S.
- The recipient will generally not pay dividends with respect to common stock or repurchased equity security while the loan is outstanding, not outsource or offshore jobs for term of the loan and 2 years following repayment and will remain neutral in any union organizing effort for the term of the loan.

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Expanded FDIC Authority

Provides the Federal Deposit Insurance Corp. expanded authority to guarantee bank accounts and ease key lending regulations. The bill would give the FDIC greater authority to back-up accounts, including by guaranteeing business transaction accounts. The FDIC previously used the transaction account authority in the 2008 financial crisis to shore-up confidence in accounts used for payroll and other business purposes. The bill would make it easier for small banks to take advantage of streamlined capital requirements that Congress ordered regulators to establish in 2018 through the community bank leverage ratio.

Temporary Relief from Troubled Debt Restructurings

A financial institution may elect to suspend requirements under U.S. Generally Accepted Accounting Principles for loan modifications related to the coronavirus pandemic and suspend any such determination regarding loans modified as a result of the effects of the coronavirus. Federal banking agencies and the NCUA must defer to a financial institution to make a suspension. Such elections may begin on March 1, 2020 and last no later than 60 days after the lifting of the coronavirus national health emergency.

Bankruptcy Changes

Amends the Small Business Reorganization Act to increase the eligibility threshold to file under subchapter V of chapter 11 of the U.S. Bankruptcy Code to businesses with less than $7,500,000 of debt.

TAX SUPPORT FOR BUSINESSES

Employee Retention Credit for Employers Subject to Closure Due to COVID-19

The legislation 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 (1) operations were fully or partially suspended due to a COVID-19-related shut-down order or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year. The credit is based on qualified wages paid to the employee, which differ based on employer size. 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.

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 COVID-19-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.

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Delay of Payment of Employer Payroll Taxes

The legislation allows employers and self-employed individuals to defer payment of the 6.2 percent employer share of the Social Security tax they are responsible for paying to the federal government. The provision requires that 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.

Advance Refunding of Credits

Allows employers to receive an advance tax credit from Treasury instead of having to be reimbursed on the back end. Creates regulatory authority to implement the tax credit advances.

Short-Time Compensation Agreements

This section 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 December 31, 2020.

Qualified Improvement Property

The provision enables businesses, especially in the hospitality industry, to immediately write off costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building.. The provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies’ access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.

5-Year Net Operating Loss (NOL) Carryback

Provides that a loss from 2018, 2019 or 2020 can be carried back five years and removes the 80% taxable income limitation to allow an NOL to fully offset income.

Modification of Limitation on Business Interest

The provision temporarily increases the amount of interest expense businesses can deduct on their tax returns, by increasing the 30-percent limitation to 50 percent of taxable income (with adjustments) for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.

SUPPORT FOR STATE & LOCAL GOVERNMENTS

An expenditure relief fund of roughly $150 billion will deliver at least $5.8 billion to New York, with more than $1.4 billion going to NYC and about half-a-billion to Long Island’s Nassau and Suffolk County budgets.

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