H.R. 748 - Middle Class Health Benefits Tax Repeal Act

- Passed the United States Senate 96-0 on March 25, 2020
- U.S. House of Representatives Set to vote on the bill on March 27, 2020
- President will sign the bill immediately after House vote

Division A - Small Business Interruption Loans

Section 1102 – Paycheck Protection Act

- **7(A) Loan Program** –
  - Covered Period Means: March 1, 2020 and ending on December 31, 2020.
  - Eligible Small Businesses: Not more than 500 employees
  - Types Included: Any business concern, private nonprofit organization, or public nonprofit organization
  - Maximum Loan Amount: $10 million
  - Use of Funds:
    - Payroll
    - Mortgage payments
    - Rent payments
    - Payments on any other debt obligations incurred during the 1 year period before the date on which the loan is made, except that, in the case of an applicant that is seasonal employer, as determined by the Administrator, the average total monthly payments for payroll shall be for the period beginning March 1, 2019 and ending June 30, 2019.
  - Increases the government guarantee of loans made for the Payment Protection Program 100% through December 31, 2020.
  - Waives the Affiliation rules for hospitality, restaurant industry, franchises, and small businesses that receive financing through the Small Business Investment Company (SBIC) program.
  - Allows for businesses with multiple locations that employ no more than 500 employees per location in certain industries to be eligible.
  - Requires eligible borrowers to make a good faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; they will use the funds to retain workers and maintain payroll, lease, and utility payments; and are not receiving duplicative funds for the same uses from another SBA program.
  - Waives both borrower and lender fees for participation in the Paycheck Protection Program.
  - Waives the credit elsewhere test for funds provided under this program.
  - Waives collateral and personal guarantee requirements under this program.
  - Outlines the treatment of any portion of a loan that is not used for forgiveness purposes. The remaining loan balance will have a maturity of not more than 10 years, and the guarantee for that portion of the loan will remain intact.

- Sets a maximum interest rate of 4%.
- Ensures borrowers are not charged any prepayment fees.
- Increases the government guarantee of 7(a) loans to 100 percent through December 31, 2020, at which point guarantee percentages will return to 75 percent for loans exceeding $150,000 and 85 percent for loans equal to or less than $150,000.
- Allows for a business to defer 100% of loan repayments for 6-months and no more than 1-year.

- **SBA Express Loans** –
  - Part of the 7(A) program and has specific criteria a borrower must meet:
    - The maximum loan amount for borrowers is $1 million
    - Revolving lines of credit are available for up to seven years
    - Lenders and borrowers negotiate the interest rate, which can be fixed or variable and tied to the prime rate, LIBOR, or optional peg rate. However, they can't exceed the SBA's maximum rates. (Up to 6.5% over base rate for loans of $50,000 or less and up to 4.5% over base rate for loans over $50,000.)
    - Typically, lenders use their own forms and procedures for processing the loan
    - For loans up to $25,000, lenders are not required to take collateral, but they may use their existing collateral policy for loans between $25,000 and $1 million.
  - After January 1, 2021 the maximum limit returns to $350,000.

  - Benefits:
    - Getting backed by SBA can increase the chances you will be approved for funding by a traditional lender.
    - You can use these funds to meet any business needs, including start-up and expansion costs.
    - There is a faster approval process – as fast as 3-days.

Section 1103 – Entrepreneurial Development

- Authorizes SBA to provide an association or associations representing resource partners with grants to establish:
  - one online platform that consolidates resources and information available across multiple Federal agencies for small business concerns related to COVID–19; and
  - 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 on the various federal resources available to ensure counselors are directing small businesses appropriately.

Section 1105 – Waiver of Matching Funds Requirement Under the Women's Business Center Program

- Eliminates the non-federal match requirement for Women's Business Centers (WBC) for a period of three months.

Section 1106 - Loan Forgiveness

- Establishes that the borrower shall be eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 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 8-week period compared to 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.
    - The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25 percent of their prior year compensation. To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.
    - Allows forgiveness for additional wages paid to tipped workers.
    - Borrowers will verify through documentation to lenders their payments during the period. Lenders that receive the required documentation will not be subject to an enforcement action or penalties by the Administrator relating to loan forgiveness for eligible uses.
    - Canceled indebtedness resulting from this section will not be included in the borrower's taxable income.
    - Any loan amounts not forgiven at the end of one year is carried forward as an ongoing loan with terms of a max of 10 years, at max 4% interest. The 100% loan guarantee remains intact.

Section 1107 – Direct Appropriations

- $349 billion for loan guarantees
- $675 million for Small Business Administration salaries and expenses
- $25 million for the Office of Inspector General
- $240 million for small business development centers and women's business centers for technical assistance for businesses
- $25 million for resource partner associations to provide online information and training
- $10 million for minority business centers for technical assistance for businesses
- $10 billion for emergency EIDL grants
- $17 billion for loan subsidies

- $25 million for Department of Treasury salaries and expenses, and
- $100 billion for secondary market guarantee sales

Section1110 - Emergency EIDL Grants

- Expands eligibility for access to Economic Injury Disaster Loans (EIDL) to include Tribal businesses, cooperatives, and ESOPs with fewer than 500 employees or any individual operating as a sole proprietor or an independent contractor during the covered period (January 31, 2020 to December 31, 2020). Private non-profits are also eligible for both grants and EIDLs.
- Requires that for any SBA EIDL loans made in response to COVID-19 before December 31, 2020, the SBA shall waive any personal guarantee on advances and loans below $200,000, the requirement that an applicant needs to have been in business for the 1-year period before the disaster, and the credit elsewhere requirement.
- Establishes an Emergency Grant to allow an eligible entity who has applied for an EIDL loan due to COVID-19 to request an advance on that loan, of not more than $10,000, which the SBA must distribute within 3 days.
- Establishes that applicants shall not be required to repay advance payments, even if subsequently denied for an EIDL loan.
- Terminates the authority to carry out Emergency EIDL Grants on December 30, 2020.

Section 1112 - Subsidy for Certain Loan Payments

- Defines a covered loan as an existing 7(a) or microloan product. Paycheck Protection Program (PPP) loans are not covered.
- Requires the SBA to pay the principal, interest, and any associated fees that are owed on the covered loans for a 6-month period starting on the next payment due.
- Loans that are already on deferment will receive six months of payment by the SBA beginning with the first payment after the deferral period. Loans made up until six months after enactment will also receive a full 6-months of loan payments by the SBA.
- SBA must make payments no later than 30-days after the date on which the first payment is due.
- Requires the SBA to still make payments even if the loan was sold on the secondary market.
- Requires SBA to encourage lenders to provide deferments and allows lenders, up until 1-year after enactment, to extend the maturity of SBA loans in deferment beyond existing statutory limits.

Section 1113 – Bankruptcy

- 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. The increase sunsets after one year and the eligibility threshold returns to $2,725,625.
- 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.

Title II – Assistance For American Workers, Families, And Businesses

Subtitle A – Unemployment Insurance Provisions

Section 2102 – Pandemic Unemployment Assistance

- This section creates a temporary Pandemic Unemployment Assistance program through December 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.

Section 2103 - Emergency Unemployment Relief for Governmental Entities and Nonprofit Organizations

- This section provides payment to states to reimburse nonprofits, government agencies, and Indian tribes for half of the costs they incur through December 31, 2020 to pay unemployment benefits.

Section 2104 - Emergency Increase in Unemployment Compensation Benefits

- This section provides an additional $600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.

Section 2105 - Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week

- This section provides funding to pay the cost of the first week of unemployment benefits through December 31, 2020 for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.

Section 2107 - Pandemic Emergency Unemployment Compensation

- This section provides an additional 13 weeks of unemployment benefits through December 31, 2020 to help those who remain unemployed after weeks of state unemployment benefits are no longer available.

Section 2108 - Temporary Financing of Short-Time Compensation Payments in States with Programs in Law

- 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 pro-rated unemployment benefit. This provision would pay 100 percent of the costs they incur in providing this short-time compensation through December 31, 2020.

Section 2109 - Temporary Financing of Short-Time Compensation Agreements

- This section provides funding to support states which begin "short-time compensation" programs. This provision would pay 50 percent of the costs that a state incurs in providing short-time compensation through December 31, 2020.

Section 2112 - Waiver of the 7-day Waiting Period for Benefits under the Railroad Unemployment Insurance Act

- This section temporarily eliminates the 7-day waiting period for railroad unemployment insurance benefits through December 31, 2020 (to make this program consistent with the change made in unemployment benefits for states through the same period in an earlier section of this subtitle).

Section 2113 - Enhanced Benefits under the Railroad Unemployment Insurance Act

- This section provides an additional $600 per week payment to each recipient of railroad unemployment insurance or Pandemic Unemployment Assistance for up to four months (to make this program consistent with the change made in unemployment benefits for states in an earlier section of this subtitle).

Section 2114 - Extended Unemployment under the Railroad Unemployment Insurance Act

- This section provides an additional 13 weeks of unemployment benefits through December 31, 2020 to help those who remain unemployed after weeks of regular unemployment benefits are no longer available (to make this program consistent with the change made in unemployment benefits for states in an earlier section of this subtitle).

Subtitle B – Rebates and Other Individual Provisions

Section 2201 - 2020 recovery rebates for individuals

- 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, are eligible for the full $1,200 ($2,400 married) rebate.
- In addition, they are eligible for an additional $500 per child. This is true even for those who have no income, as well as those whose income comes entirely from non-taxable means-tested benefit programs, such as SSI benefits.
- For the vast majority of Americans, no action on their part will be required in order to receive a rebate check as IRS will use a taxpayer's 2019 tax return if filed, or in the alternative their 2018 return.
    - This includes many low-income individuals who file a tax return in order to take advantage of the refundable Earned Income Tax Credit and Child Tax Credit.
    - 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.

Section 2202 - Special rules for use of retirement funds

- Consistent with previous disaster-related relief, the provision 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 January 1, 2020.
- In addition, 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.
- Further, the provision provides flexibility for loans from certain retirement plans for coronavirus-related relief.
   - A coronavirus-related distribution is a one made to an individual: (1) who is diagnosed with COVID-19, (2) whose spouse or dependent is diagnosed with COVID-19, or (3) 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, closing or reducing hours of a business owned or operated by the individual due to COVID-19, or other factors as determined by the Treasury Secretary.

Section 2203 - Temporary waiver of required minimum distribution rules for certain retirement plans and accounts

- The provision 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 due to COVID-19.

Section 2204 - Allowance of partial above the line deduction for charitable contributions

- The provision encourages Americans to contribute to churches and charitable organizations in 2020 by permitting them to deduct up to $300 of cash contributions, whether they itemize their deductions or not.

Section 2205 - Modification of limitations on charitable contributions during 2020

- The provision increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations.
- For individuals, the 50-percent of adjusted gross income limitation is suspended for 2020.
- For corporations, the 10-percent limitation is increased to 25 percent of taxable income.
- This provision also increases the limitation on deductions for contributions of food inventory from 15 percent to 25 percent.

Section 2206 - Exclusion for certain employer payments of student loans

- The provision enables employers to provide a student loan repayment benefit to employees on a tax-free basis.
- Under the provision, an employer may contribute up to $5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income.
- The $5,250 cap applies to both the new student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law.
- The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

Subtitle C – Business Provisions

Section 2301 - Employee retention credit for employers subject to closure due to COVID-19

- The provision 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.
  - 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.
  - 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.

Section 2302 - Delay of payment of employer payroll taxes

- The provision allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees.
- Employers generally are responsible for paying a 6.2-percent Social Security tax on employee wages.
- 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.
- The Social Security Trust Funds will be held harmless under this provision.

Section 2303 - Modifications for net operating losses

- The provision relaxes the limitations on a company's use of losses.
- Net operating losses (NOL) are currently subject to a taxable-income limitation, and they cannot be carried back to reduce income in a prior tax year.
- The provision provides that an NOL arising in a tax year beginning in 2018, 2019, or 2020 can be carried back five years.
- The provision also temporarily removes the taxable income limitation to allow an NOL to fully offset income.
- These changes will allow companies to utilize losses and amend prior year returns, which will provide critical cash flow and liquidity during the COVID-19 emergency.

Section 2304 - Modification of limitation on losses for taxpayers other than corporations

- The provision modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they can utilize excess business losses and access critical cash flow to maintain operations and payroll for their employees.

Section 2305 - Modification of credit for prior year minimum tax liability of corporations

- The corporate alternative minimum tax (AMT) was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021.
- The provision accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.

Section 2306 - Modification of limitation on business interest

- The provision 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.
- 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.

Section 2307 - Technical amendment regarding qualified improvement property

- The provision enables businesses, especially in the hospitality industry, to write off immediately 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.

Subtitle C—Labor Provisions

Section 3601 - Limitation on Paid Leave

- Creates a limitation stating an employer shall not be required to pay more than $200 per day and $10,000 in the aggregate for each employee under this section.

Section 3602 - Emergency Paid Sick Leave Limitation

- Creates a limitation stating an employer shall not be 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 to care for a quarantined individual or child for each employee under this section.

Section 3603 - Unemployment Insurance

- Provides that applications for unemployment compensation and assistance with the application process, to the extent practicable, be accessible in two ways: in person, by phone, or online.

Section 3604 - OMB Waiver of Paid Family and Paid Sick Leave

- Allows the Director of the Office of Management and Budget to exclude for good cause certain Executive Branch employees from the Paid Family Leave mandate.
- Allows the Director of the Office of Management and Budget to exclude for good cause certain Executive Branch employees from the Paid Sick Leave mandate.
- 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 they are rehired by the employer.
- Employee would have had to work for the employer at least 30 days prior to being laid off.

Section 3606 - 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.

Section 3607 - Expansion of DOL Authority to Postpone Certain Deadlines

- Amends Section 518 of ERISA to provide 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.

Section 3608 - Single-Employer Plan Funding Rules

- 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 January 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 December 31, 2019, will apply throughout 2020.

Section 3609 - Application of Cooperative and Small Employer Charity Pension Plan Rules to Certain Charitable Employers whose primary Exempt Purpose is Providing services with respect to Mothers and Children

- Amends a the definition of CSEC Plans to provide that a pension plan will be a CSEC plan if, as of January 1, 2000, the plan was sponsored by an employer that
    - (i) is exempt from taxation under Code section 501(c)(3),
    - (ii) has been in existence since 1938,
    - (iii) conducts medical research directly or indirectly through grant making, and
    - (iv) has as its primary exempt purpose providing services with respect to mothers and children. This section is effective for plan years beginning after December 31, 2018.

Section 3610. Federal Contractor Authority

- Ensures that federal contractors who cannot perform work at their duty-station or telework because of the nature of their jobs due to COVID-19, continue to get paid.

TITLE IV—ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERLY DISTRESSED SECTORS OF THE UNITED STATES ECONOMY

Subtitle A—Coronavirus Economic Stabilization Act of 2020

Section 4003. Emergency Relief and Taxpayer Protections

- Provides $500 billion to Treasury's Exchange Stabilization Fund to provide loans, loan guarantees, and other investments, distributed as follows:

(1) Direct lending, including:

    a. $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;
    b. $4 billion for cargo air carriers; and
    c. $17 billion for businesses important to maintaining national security.

(2) $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, 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.

- All direct lending must meet the following criteria:
  (1) Alternative financing is not reasonably available to the business;
  (2) 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;
  (3) The duration of the loan shall be as short as possible and shall not exceed 5 years;
  (4) Borrowers and their affiliates cannot engage in stock buybacks, unless contractually obligated, or pay dividends until the loan is no longer outstanding or one year after the date of the loan;
  (5) Borrowers must, until September 30, 2020, maintain its employment levels as of March 24, 2020, to the extent practicable, and retain no less than 90 percent of its employees as of that date;
  (6) A borrower must certify that it is a U.S.-domiciled business and its employees are predominantly located in the U.S.;
  (7) The loan cannot be forgiven; and
  (8) In the case of borrowers critical to national security, their operations are jeopardized by losses related to the coronavirus pandemic.

Section 4004 - Limitation on Certain Employee Compensation

- Prohibits recipients of any direct lending authorized by this Title 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 which 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 over $3 Million last year would also be prohibited from earning more than $3 Million plus fifty percent of the amount their compensation last year exceeded $3 Million.