



## Senate Passes Phase 3 Coronavirus Response

Late last evening, the Senate passed the nearly \$2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act. This bill, known as Phase 3, is extremely beneficial for dealerships of all sizes and includes generous and unprecedented provisions to help provide liquidity for dealerships and to help businesses keep their employees on the payroll. The House of Representatives is expected to vote on the Senate measure tomorrow; and the President has pledged to sign the bill into law quickly.

NADA advocated for provisions included in the Senate bill, such as new federal funding to cover operational and payroll expenses for small businesses through June 30, deferring payroll tax payments for employers, and other important tax relief. NADA continues to advocate for the broadest possible business relief to help dealerships continue in operations and retain employees.

The following provides a **preliminary** summary of provisions of most interest to franchised dealers.

### Small Business Loan Provisions

**A completely new, temporary lending program to aid small business** The bill will provide \$349 billion to support loans through a new Paycheck Protection Program, which Congress designed to keep employees on the payroll and save small businesses. The Small Business Administration (SBA) will stand up a completely new program that will only nominally be part of the existing SBA Section 7(a) loan program. To expedite the funding of the new loans, the Treasury Department and SBA will expand the number of participating banks and credit unions, and captive finance companies may also be included.

**Minimal eligibility requirements** Any business operational on February 15, 2020, that paid salaries and payroll taxes will be eligible, but there is a limit of no more than 500 employees. Fortunately, the bill includes provisions to waive normal affiliation rules which should be applicable to many dealers. For dealers, there will be no test for total revenue.

**Borrower certification to obtain loan** Borrowers will be required to make a good-faith certification that the loan is necessary due to economic conditions caused by COVID-19 and that it will use the funds to retain workers and maintain payroll, lease and utility payments.

**Loans have terms NOT found in traditional bank loans** Lenders will not require application fees, closing costs, collateral or personal guarantees. The maximum interest rate will be 4%, and the first

six months' payments (principal and interest) will be automatically deferred. Finally, the lenders are not expected to perform credit analysis, because the loans will be 100% guaranteed by the SBA.

**Maximum loan amount** The maximum amount will be 250% of an employer's average monthly payroll (based on a 12-month look back from the date of the loan), but NOT MORE than \$10 million.

**Permitted uses of the loan** The loan can be used for "payroll costs," which include salary, commission, or similar compensation (up to an annual rate of pay of \$100,000 per employee); employee group health care benefits, including insurance premiums; retirement contributions; and covered leave from February 15, 2020, to June 30, 2020. Permitted uses also include payments of interest on mortgages, rent, utilities and interest on any other debt obligations that were incurred before February 15, 2020.

**Loans may be forgiven** In general, borrowers will be eligible for loan forgiveness equal to the amount of certain expenses spent during an eight-week period after the origination date of the loan. These expenses are payroll costs, interest payments on any secured debt 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.

**Percentage of employee retention related to amount of loan forgiveness** The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year, and by the reduction in pay of any employee in excess of 25% of the employee's prior-year compensation. However, to encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that rehire previously laid-off workers by June 30, 2020, will still qualify and not be penalized for having a reduced payroll during the loan period.

**No effect on federal income tax** Canceled indebtedness under this program will not be included in the borrower's taxable income.

**Loan amounts not forgiven** Any loan amounts not forgiven at the end of one year will be carried forward as an ongoing loan with terms of a maximum of 10 years at 4% interest or less.

### **Tax Provisions Applicable to All Businesses**

The CARES Act contains many dealer-friendly tax provisions that will assist dealers in maintaining liquidity during the disruptions caused by the ongoing coronavirus outbreak.

**Net operating loss (NOL) carryback** Dealers will be permitted to offset losses in 2018, 2019 and 2020 against profits from the prior five years. NOL carryback was previously eliminated by the Tax Cuts and Jobs Act (TCJA) in 2017. This provision may provide dealers with losses in 2020 with substantial refunds. Losses that are used to offset pre-TCJA profits, which were taxed at a higher rate, will be refunded at pre-TCJA tax rates, providing an additional boost.

**Modification on losses for taxpayers other than corporations** The TCJA generally limited the amount of losses noncorporate taxpayers, including pass throughs, could claim to \$500,000. Under

the bill this limitation is suspended, allowing dealers to utilize excess business losses along with the new NOL carryback provisions to access critical cashflow.

**Qualified improvement property (QIP) technical fix** The TCJA intended for businesses to deduct improvements made to retail property immediately under the TCJA's bonus depreciation provisions, but due to a drafting error the depreciation lifespan was set at 39 years. This bill corrects this error retroactive to 2018. Dealers with significant outlays on QIP in previous years should consider amending their 2018 and 2019 returns to claim the deductions and receive a refund.

**Interest deductibility limit increased.** The TCJA limited the deductibility of business interest to 30% of a dealership's adjusted taxable income, except for floor plan financing interest, which remained 100% deductible. The bill allows businesses to deduct up to 50% of their adjusted taxable income for 2019 and 2020. Dealers should note that, coupled with the proposed IRS rules on the interplay between bonus depreciation and floor plan financing interest, if their total business interest, including floor plan financing interest, amounts to less than 50% of adjusted taxable income for these years, they may also be able to avail themselves of the bonus depreciation provisions in TCJA. Dealers unable to use full expensing in 2019 due to interest expenses between 30% and 50% of their adjusted taxable income may be able to generate refunds by filing an amended 2019 return.

**Employee retention credit** Dealers who have been forced to close their business due to a government-mandated shutdown will be allowed a refundable payroll tax credit for retaining their employees. The credit is generally available to dealers whose operations have been fully or partially closed due to a government mandate and whose gross receipts have declined by more than 50%. For dealers with 100 or fewer employees, all employee wages qualify for the credit regardless of whether the business is shut down or not. The credit is limited to the first \$10,000 of compensation paid per employee. This credit is available through the end of 2020.

**Delay of payroll taxes** The bill allows businesses to delay the 6.2% employer portion of the Social Security payroll tax for the remainder of 2020. The delayed tax liability would then be paid back apportioned equally over the following two years.

As further details become available, NADA will release a more extensive summary of these provisions. For any questions, contact [legislative@nada.org](mailto:legislative@nada.org).