

Coronavirus Aid, Relief, and Economic Security (CARES) Act...Almost Over Finish Line

After days of intense negotiations, the Senate reached a bipartisan agreement Tuesday night on a historic COVID-19 relief package to stimulate the economy. The massive \$2 trillion dollar infusion of financial aid into the struggling economy was expected to move through the two chambers quickly and signed by the President by Friday. While Senate Majority Leader Mitch McConnell (R-KY) expressed confidence that the Senate would be able to pass the bill Wednesday night, a timeline for the bill's official release — as well as a vote on final passage — is in flux.

Sens. Ben Sasse (R-NE), Lindsey Graham (R-SC), and Tim Scott (R-SC) have taken issue with provisions on unemployment insurance, while Sen. Bernie Sanders (I-VT) has threatened to place a hold on the bill over transparency concerns about the \$500 billion allocated toward distressed industry relief. Speaker Nancy Pelosi (D-CA) stated that House lawmakers would take at least 24 hours to review the bill and would inform members about next steps as soon as they are determined. The House will likely move to pass the bill by unanimous consent; however, any member can object to this procedural move — a factor that could further delay movement on the package.

Described as "a wartime level of investment for our nation," this is Congress' third major bill in response to the crisis and the largest by far offering financial resources to the newly unemployed, families, small and large businesses, state and local governments, major industries such as airlines, hospitals and others. COVID-19 has infected at least 65,500 Americans to-date, brought our economy to a standstill, and so it is widely accepted by policymakers this will not be the last legislative stimulus considered by Congress.

ASHA has worked tirelessly, along with Argentum, throughout this process to accomplish two things: 1) to highlight the critical role that senior living operators and employees are playing on the front lines of this health crisis to protect our residents during these challenging times, and 2) to seek government financial relief in the amount of \$20 billion to help offset some of the costs associated with the enhanced care, staffing and supplies needed to keep the 1 million seniors living in our communities safe.

We made progress on both fronts. The significant outreach from ASHA and Argentum members to the Hill was quite impressive. We heard from offices all over the Hill that our message was being delivered. While we sought a higher level of funding and specific resources earmarked directly for the senior living industry, the final bill did increase the funding to \$100 billion, but it did not expressly make an allocation to senior living. However, we are pleased that senior living can make applications for the significant resources in the form of grants (\$100 billion) and loans (\$500 billion). We will continue to press Congress for additional relief to our industry as plans to develop a 4th stimulus bill begins to take shape.

The following describes two key funding Relief Programs available to senior living:

I Public Health and Social Services Emergency Fund:

This fund is intended to make available \$100 billion dollars in grants to eligible health care providers. Senior living is eligible for these grants under the stated definition which includes Medicare or Medicaid enrolled suppliers and providers, as well as public entities, for-profit and non-profit entities that provide diagnosis, testing or care for individuals with possible or actual cases of COVID-19. The fund will be available through grants or other mechanisms as defined by the Secretary of HHS. ASHA will work immediately to learn how the application process will be administered.

II Economic Stabilization and Assistance to the Severely Distressed Sectors of the United States Economy:

The \$500 billion “Exchange Stabilization Fund” will provide loans, loan guarantees, and other investments to eligible businesses including senior living. Of this amount, Congress allocated \$25 billion to passenger air carriers, \$4 billion to cargo air carriers, and \$17 billion to national security businesses. The remaining \$454 billion will be available to eligible businesses, including senior living, and imposes specific conditions:

- No stock buybacks (unless contractually obligated) for term of the loan plus one year
- Cannot pay dividends for term of the loan plus one year
- Businesses can only invest in, or loan to, American businesses
- Executive compensation restrictions for the term of the loan plus one year:
 - Employees > \$425,000 in 2019 cannot receive a raise, nor can severance be more than double maximum compensation
 - Executives > \$3 million in 2019 cannot make more than \$3 million + ½ of the amount over \$3 million in 2020

Federal Reserve Facility for Mid-Size Businesses (500-10,000 employees)

- Direct loans from private lenders
- Interest rate of no more than 2% per year
- No principal or interest due for the first six month
- None of the loans issued under these Treasury or Federal Reserve programs are eligible for loan forgiveness.
- Loans shall be treated as indebtedness for tax purposes.

Borrowers under this program must certify that:

- “Uncertainty of economic conditions” requires a loan to support ongoing operations.
- The funds received will be used to retain 90 percent of the recipient’s workforce, at full compensation and benefits, until September 30, 2020.
- The borrower intends to restore 90 percent of the workforce that existed as of February 1, 2020, and to restore all compensation and benefits to workers no later than four months after the termination of the current public health emergency.
- The borrower is domiciled in the U.S. and has significant operations and a majority of its employees in the U.S.
- The borrower is not a debtor in bankruptcy proceedings.
- Borrowers will not engage in stock buybacks, unless contractually obligated, or pay dividends until the loan obligation is satisfied.
- The borrower will not outsource or offshore jobs for the term of the loan plus an additional two years.
- The borrower will not abrogate existing collective bargaining agreements for the term of the loan plus an additional two years.
- The borrower will remain neutral in any union organizing effort for the term of the loan.
- Same limits on Executive Compensation as above

Tax Relief for Business- The CARES Act also offers several ways for a senior living business to benefit from tax relief:

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.

Modifications for net operating losses

The provision relaxes the limitations on a company's use of losses. NOLs are currently subject to a taxable income limitation, and they cannot be carried back to reduce income in a prior tax year. This provision provides that a loss from 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. The provision will facilitate the ability to "monetize" recent and current loss carryforwards by filing amended returns for prior years and generating tax refunds that can be used for business needs, providing critical cash flow and liquidity during the COVID-19 emergency.

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. Under current law, taxpayers are not able to carryback current-year losses against prior-year income and, thereby, obtain a tax refund. Instead, losses may be carried forward indefinitely with the limitation that only 80 percent of a loss may be offset against a particular year's income. This proposal would enable taxpayers to carry back 2020 losses to 2017, 2018, and/or 2019 and eliminate the 80 percent loss limitation.

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 the taxable income (with adjustments) for 2019 and 2020. NOTE: The 2017 Tax Cuts and Jobs Act (TCJA) limited the amount of business interest deductible for tax purposes to no more than 30% of EBITDA. However, it allows real estate businesses to elect out of the limitation, but for those who don't this should be helpful.

Active losses of a pass-through business

The provision temporarily repeals the TCJA limitation on the active losses of a pass-through business. TCJA effectively limited an individual's ability to deduct current-year losses attributable to an active trade or business against the individual's wages and investment income. The CARES Act repeals the active loss provision for 2018, 2019, and 2020.

Employee retention tax credit

Makes available a refundable tax credit of up to \$5,000 per employee for businesses that continue to pay employees between March 13 and December 31, 2020. Unlike the emergency loans for small employers, the credit is not limited to businesses with 500 or fewer employees. An employer can qualify if its business is fully or partially suspended due to orders from a governmental authority related to COVID-19 **or the gross receipts of the business in a calendar quarter are less than 50% of receipts in the same quarter in the prior year.**

The credit equals 50% of wages and health benefits, up to \$10,000. The credit applies to the employer's share of quarterly payroll taxes, and any excess credit amount is fully refundable.

Recovery Rebates to Individuals

Provides for a direct payment to qualified Americans of up to \$1,200. Married couples could get \$2,400. Taxpayers who earn more than \$75,000 annually will begin to see that payment reduced by \$5 for every \$100 they earn over the \$75,000 threshold, with those who make more than \$99,000 getting nothing. Families with children would get \$500 per child.

Special Rules for Retirement

Waives the 10% early withdrawal penalty for distributions of up to \$100,000 from qualified retirement accounts for coronavirus related purposes. Tax can be paid over 3-year period, and individuals can recontribute to a fund within 3 years and not exceed annual limits

Next Steps: ASHA will continue to monitor any regulatory guidance from the Department of Health and Human Services (HHS) and The Treasury Department that provides additional direction for our industry to participate in the various Grant and Loan Programs. Based on the continued outlays of financial resources we expect the industry to make in the coming months, we will also seek additional funding opportunities in the next Stimulus and in government agency programs.