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GROUP

Summary of Federal Response to COVID-19

INCLUDING HIGHLIGHTS OF PHASE III LEGISLATION

March 25, 2020

As you are aware, in response to the coronavirus disease, or COVID-19, that is taking its toll on both the public health and economic health of the United States, Congress and the Trump Administration have taken a number of steps through enacted legislation, declarations and federal guidance.

While the health care response led by the Coronavirus Task Force, directed by Vice President Mike Pence in coordination with relevant federal agencies, includes numerous steps to combat the virus and its human toll, this document focuses on the impact of the virus, and the federal response, as it relates to general business activities.

Administrative Action

President Trump officially declared a national emergency. The Administration instituted travel advisories and restrictions, as well as issued guidance that recommends the public limit gatherings of no more than 10 people, for a period of 15 days (effective March 16). The federal government also issued guidelines that Americans work or engage in schooling from home. Workers in a critical infrastructure industry (as outlined by the Department of Homeland Security) were advised to continue their responsibilities with appropriate measures taken to protect their health. Beyond these recommendations, the President's legal authority remains somewhat limited. Most states have given governors the authority to issue mandates considered necessary to protect life and property during an emergency.

In other Administrative action, the Department of Treasury and Federal Reserve Board expanded measures to support the flow of credit to municipalities, as well as enhance liquidity and flow of credit to American workers, households and businesses. This included expansion of the money market mutual fund liquidity facility and commercial paper funding facility, as well as several new programs that will provide up to $300 billion in new financing. The US Treasury, by use of the Exchange Stabilization Fund, announced it will provide $30 billion in equity to these facilities.

The Internal Revenue Service, in an unprecedented move, announced that Tax Day has been moved from April 15 to July 15. No interest or penalties will be charged for filing during this extended window.

Additionally, the Small Business Administration (SBA) is offering states low-interest federal disaster loans for working capital to small businesses suffering substantial economic injury as a result of COVID-19. Loans may be used to pay fixed debts, payroll, accounts payable and other bills that can't be paid because of the disaster's impact. Loans that may include loan forgiveness for eligible businesses are forthcoming in pending legislation.

Recently Enacted Legislation

Congress, led by a Republican majority in the Senate, and a Democratic majority in the House, have passed several pieces of legislation in response to the virus. These bills have been generally referred to as “phases”, indicating that Congress recognizes their legislative action is not likely to be considered comprehensive or final. A long road of recovery and response is anticipated.

Phase I

In early March, Congress passed and the President enacted a supplemental Appropriations bill that provided an additional $8B in funding for the Department of Health and Human Services (HHS), including Centers for Disease Control (CDC), National Institutes for Health (NIH), and the Food and Drug Administration (FDA). This bill also included $20M for administrative expenses to provide an estimated $7B in low-interest disaster loans to small businesses.

Phase II

Mid-March, Congress passed and the President enacted legislation that included appropriations for a number of nutrition assistance programs, as well as funding for states that process and pay unemployment benefits. This measure is best known for the mandate for employers with less than 500 employees to provide 2 weeks of paid sick leave, as well as 10 weeks of paid leave for childcare. It also reimburses those employers for paid leave in the form of payroll tax credits. There is an exemption for certain health care providers and emergency responders.

Yesterday, the DOL released its first round of published guidance. A few helpful links:

Fact sheet for employers:
https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave

Fact sheet for employees:
https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave

Q&A:
https://www.dol.gov/agencies/whd/pandemic/ffcra-questions

Legislation Under Consideration

Phase III

In the early hours this morning, the Trump administration struck a deal with Senate Democrats and Republicans on a package providing an estimated $2 Trillion in spending and tax breaks to strengthen the U.S. economy and fund a nationwide effort to curtail the coronavirus. The bill also includes emergency supplemental appropriations for hospitals, veterans’ health care, and preparedness, and disaster relief. The price tag of this package is enormous, unprecedented, and is roughly equal to 10% of the country’s economic output.

The plan includes approximately $500 billion that can be used to back loans to distressed companies, including $50 billion for loans to U.S. airlines, as well as state and local governments. It also contains more than $350 billion to aid small businesses. While stipulating the airlines as eligible for a special fund of money available for loans, the legislation is otherwise broad in its approach, recognizing that the coronavirus has affected almost every sector of the economy. While there is limited loan forgiveness to qualified small businesses, there are no direct payments made available to any companies in this legislation.

Timing

After numerous hiccups throughout the day, Senate Majority Leader Mitch McConnell has indicated he anticipates passage of this legislation in the Senate late this evening. After Senate passage, it would still have to pass in the House of Representatives before it gets to President Trump's desk. We expect House action to take place as early as tomorrow, possibly Friday. It remains to be seen if Speaker Pelosi will need to call Members of Congress back from their home districts to vote in-person, or if she is able to pass the bill by voice vote, avoiding further exposing Members of Congress to the virus that is already spreading among this body. Any one Member of Congress could ask for a recorded vote. Even if a recorded vote is requested, it is expected to pass overwhelmingly, having been negotiated and agreed to by Democratic and Republican Leadership in both chambers.

While the current Phase III legislation as proposed is lengthy and impacts multiple federal agencies and businesses across all sectors of the economy, there are a number of provisions of interest to highlight. Excerpts, or interpretations, of legislative summaries and text provided by Senate Majority Leadership and relevant committees for these provisions in the current proposal are as follows:

- **Business Tax Relief**

Modification of limitations on charitable contributions during 2020

The provision increases the limitations on deductions for charitable contributions by corporations (as well as individuals who itemize). 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.

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

This provision provides for an employee retention payroll tax credit for a fixed percentage (50%) of eligible wages, up to $10,000 per employee. Eligible employers must have a business that was already operating in 2020; and has been suspended due to government order, or in which revenue was less than 50% relative to the same quarter in 2019, and ending on the first quarter for which gross receipts exceed 80% relative to that quarter in 2019. Tax-exempt 501(c) organizations are included. Some wages for employers with greater than 100 full-time employees are excluded when providing services related to COVID-19.

To prevent double dipping, employers that receive Small Business interruption loans are not eligible for the retention credit. Additionally, wages that qualify for the required paid leave credit are not eligible for the credit.

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. These changes will allow companies to utilize losses and amend prior years returns, which will provide 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.

Modification of credit for prior year minimum tax liability of corporations

The corporate 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.

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. 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.

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, often referred to as the "retail glitch" 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.

Assistance to Severely Distressed Sectors of the Economy

Title IV provides $500 Billion to Treasury's Exchange Stabilization Fund to provide loans, loan guarantees and other investments for eligible businesses. Eligible businesses are set forth by Treasury regulation, but are broadly available to distressed sectors, although aviation (including passenger and cargo air carriers) and businesses related to national security are expressly eligible for loans. The business cannot otherwise have received adequate economic relief in the form of loans or loan guarantees under this legislation. Non-profits are eligible.

All direct lending comes with the following conditions:

- Limits on employee and executive total compensation for highly compensated individuals (salaries above $425,000) including severance pay or "golden parachutes" until 1 year after the loan is no longer outstanding;
- Corporate stock buybacks are prohibited (unless contractually obligated) for the duration of the assistance plus 1 year after the loan;
- Borrowers must maintain same level of existing payroll;
- The loan cannot exceed 5 years.

There is no loan forgiveness as it relates to these loans.

Small Business

The legislation creates a "paycheck protection program" for small businesses with 500 employees or fewer, the self-employed, and "gig economy" workers with $377B in funding. These loans provide payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, mortgage payments, and any other debt obligations. Borrowers would need to demonstrate they have been impacted by COVID-19 and will use the funds to retain workers, maintain payroll and other debt obligations.

Federal agencies would be required to extend contract performance periods and promptly pay small business contractors impacted by COVID-19.

The bill expands eligibility for SBA's Economic Injury Disaster Loans (EIDL) and includes $10B for SBA emergency grants of up to $10,000 to provide immediate relief for operating costs.

SBA Loan Forgiveness and Debt Relief

If the small business employer maintains payroll, the program allows for loan forgiveness equal to the portion spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage obligations, rent, and utilities. An additional $17B is provided for 6 months of payments for small businesses with existing SBA loans.

The SBA will provide details of the programs and their requirements through guidance, as well as approving and onboarding new lenders, as quickly as possible.

- **Unemployment Benefits**

  The legislation creates a new Pandemic Unemployment Assistance disaster program to cover individuals who are not usually eligible for Unemployment Insurance including self-employed and independent contractors. The legislation expands the size and scope of unemployment benefits with $250B in funding. It also provides an additional $600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.

Department of Labor will issue guidance regarding these benefits.
More information to come here: https://www.dol.gov/agencies/whd/flsa/pandemic

What's next?

Recognizing that Congress will have passed multi trillion-dollar legislation over a short time period at extraordinary speed, requiring remarkable bipartisan and bicameral talks over long, complex, and highly fraught negotiation, almost everyone agrees that the hard work is not over. Both parties maintain they have "gritted their teeth", or "held their nose" at times for the benefit of compromise. All have indicated they have done so with an eye toward fixing their concerns, or adding missed priorities, in what is likely to be Phase IV or Phase V legislation. The House of Representatives, led by Speaker Nancy Pelosi, has already drafted portions of legislation with committee Chairs that include such priorities that could be offered in future proposals. Most Congressional staff believe that another package could be possible within 30 days.

In the meantime, we wait for final passage of Phase III. We will update clients on new developments as is warranted.

Contact us

If you have any questions, or need more information, please contact:

Sarah Hamlett
email: shamlett@signaldc.com
mobile: (202) 904-0355