

March 25, 2020

Congress and the White House Agree on \$2 Trillion Dollar CARES Relief Package; Administration Vows to Go after Hoarding and Gouging of Vital Supplies

Related Practices

CARES Act Relief
COVID-19 Resource Center
Michael Best Strategies LLC

On Capitol Hill

CARES AID REACHES \$2 TRILLION IN BIPARTISAN DEAL WITH WH

The Senate will convene at 12:00 pm, Wednesday, March 25th, and resume consideration of the motion to proceed to H.R.748, Coronavirus Phase III.

Next Steps: Congress is expected to convene after Easter to consider a Coronavirus Phase IV bill.

Overview

- The CARES Act contains provisions that could directly provide a minimum of \$2.742 trillion in near-term liquidity. The bill would also provide significant corporate tax relief that could be worth \$100 billion or more, pushing the total amount of liquidity generated by the CARES Act alone to near \$3 trillion.
- The key tax item is a five year net-operating loss (NOL) carryback for tax years 2018, 2019, and 2020. Through a technical fix, the NOL carryback is made available to pass-through businesses as well. The NOL carryback provides a refund from previously paid taxes. Such a refund would be particularly helpful in a year like 2020, when losses could be high.
- Treasury Secretary Steve Mnuchin said the CARES Act would facilitate up to \$4 trillion in financing for U.S. business by leveraged lending from the Federal Reserve, backstopped by Treasury funding, as well as by Treasury loans and loan guarantees. The CARES Act is a big part of the Treasury story, but the CARES Act on its own provides impressive further liquidity from a combination of spending, tax deferral, tax relief, and small business lending.

The fiscal stimulus is MUCH LARGER than the bill introduced by Senate Republicans last week.

The COVID-19 response bill now before the U.S. Senate could have a total direct price tag of over \$2 trillion, providing a tidal wave of liquidity to support an economy in crisis. ***(note this bill linked is not the final, final version of the bill which will be provided by noon today).***

Based on numbers in the bill itself, and on estimates found in public sources, the CARES Act could provide a minimum of \$2.742 trillion in near-term liquidity. The as-yet unscored tax provisions might increase this total by another \$100 billion, or more.

The CARES Act is more about financial stabilization than fiscal stimulus, but it would create a torrent of liquidity pouring dollars into the economy through direct payments, tax credits, tax deferrals, loans, and loan guarantees.

Also with financial stabilization in mind, the CARES Act gives the Treasury Department new authority to support the Federal Reserve's 13(3) lending program, and it grants apparently unlimited powers for the FDIC to guarantee the debt of insured depository institutions and non-interest bearing transaction accounts. The CARES Act also would suspend the CECL accounting standard, which banks have said would hamper lending during a crisis. All of this points to increased lending, and a safety net for depositors and creditors beneath the institutions doing the lending.

Topline on Relief Provided:

There are eight sets of provisions for which can reliably estimate costs from public data, find reported estimates in the media, or take specific figures from the bill itself. These total \$2.742. Commentary on each of these follows:

Temporary deferral of employer side social security contributions: \$720 billion. This is estimated at \$60 billion per month for twelve months. Deferred taxes would be due half in 2021, and half in 2022.

Financial support to distressed businesses, state governments, and municipalities: \$500 billion. The Treasury Department would be authorized to make up to \$500 billion in loans, loan guarantees, and investments. The Treasury could use part of these funds to support the Fed's purchase of securities through its 13(3) lending program. Treasury loan guarantees could support total lending that is a multiple of the guarantees themselves.

Emergency Small Business loans: \$350 billion. Federally guaranteed loans would be offered through the Small Business Administration. Part of these loans would convert to grants. Would apply for those who keep their payrolls steady through the crisis. Small businesses that pledge to keep their workers would also receive cash-flow assistance structured as federal guaranteed loans. If the employer continued to pay its workers for the duration of the crisis, those loans would be forgiven.

Individual tax rebates: \$300 billion. Tax rebates of up to \$1,200 per individual and \$2,400 to couples, with \$500 for every child. (See the Congressional estimate reported in The Hill.)

Expanded Unemployment Insurance: \$250 billion. The bill itself gives no indication of the total costs. It simply authorizes the Treasury to make such payments as are needed out of the general fund, and stipulates that "such sums shall not be required to be repaid." However, the \$250 billion estimate has been reported by Politico Pro (subscription required). The bill would extend unemployment insurance by 13 weeks and include a 4-month enhancement of benefits. It would allow workers to maintain their full salaries if forced out of work as a result of the pandemic.

Deferral of individual taxes: \$200 billion. The estimate is based on Congressional testimony by Treasury Secretary Mnuchin. This figure includes individuals and small business passthrough entities.

Deferral of corporate income tax (3 quarters): \$180 billion. The estimate is based on nine months of corporate income tax revenue to the government at \$20 billion per month. (Note that tax deferral was in the original version of the CARES Act as introduced by McConnell.)

Specific Appropriations: \$242 billion. These are detailed in the bill.

Corporate Tax Relief

The amount of corporate tax relief offered in the bill is difficult to estimate without an official score. The proposed tax breaks mostly have to do with reversing (only temporarily) or correcting changes made in the Tax Cuts and Jobs Act of 2017.

The main items are:

(1) net operating loss **(NOL) carrybacks**

- (2) faster access to previously banked **alternative minimum tax credits**
- (3) an increase in the **deduction for business interest from 30% to 50%** of business interest
- (4) a **technical correction for qualified investment property (QIP), fixing the notorious “retail glitch”** in the 2017 tax reform bill.

The CARES Act would provide **five-year NOL carrybacks** for tax years 2018, 2019, and 2020. Since the year 2020 is likely to bring the largest corporate losses in U.S. history, the NOLs for 2020 could be unusually valuable. The NOL carrybacks would provide an immediate tax refund from prior tax years. A technical fix would allow pass-through entities to claim the NOLs as well. Meanwhile restaurants and retailers would be the main beneficiaries of the QIP fix.

So what are they worth? In 2017, the TCJA modified Section 172 carrybacks and carryforwards. It eliminated the carrybacks, and restricted the amount of carryforward that could be applied in any one year. The Joint Committee on Taxation scored this provision raising \$202 billion in over ten years. This is not to say that a two-year NOL carryback is necessarily worth \$20 billion a year, and that three years of five-year NOL carryback is necessarily worth considerably more, but the order of magnitude, in tens of billions, is suggestive.

The 30% limit on interest expense raises \$18 billion and \$20 billion in 2019 and 2020 according to the same score. We extrapolate cautiously that increasing the deductible percentage of interest expense back to 50% for two years would cost the Treasury about \$50 billion in total. We do not have enough data to estimate the value of QIP and the AMT tax credits, but they are sufficiently important issues to the business community that would judge them non-trivial in scale.

Our guesstimate is that the tax relief offered by the CARES Act would be on the order of \$100 billion, or perhaps more, since the dollar amount of losses to be carried back from 2020 is unknowable at this time, but sure to be very large.

Across the Nation:

The Cybersecurity and Infrastructure Security Agency (CISA) recently identified 16 critical infrastructure sectors for recommended continued operations throughout the COVID-19 crisis. If your organization is a covered part of the critical infrastructure to the U.S., you are recommended to consult with Michael Best & Michael Best Strategies to prepare the suggested certifying documents demonstrating federal, state, and local justification for continued operations. We also recommend entities within your supply chain do the same.

Our financial services team has also been tracking housing-related initiatives and responses to COVID-19. This tracker, available [here](#), is also a *working draft* and should not be considered legal advice. It covers the White House, Capitol Hill, various federal agencies, and state-level actions.

Almost 1 in 1,000 people in New York have contracted coronavirus. That’s an “attack rate”—or the percentage of population that has a disease—for New York State similar to that in Italy. NY Governor Andrew M. Cuomo issued an emergency order for hospitals to boost capacity by at least 50 percent. At least 157 people have died in the state, with an increase of 5,000 cases on March 23.

More than 300,000 coronavirus tests have now been carried out, according to VP Pence on March 23.

The state of New York has tested more than 78,000 people and can now test 16,000 people a day, compared with 1,000 last week.

The skies above the U.S. may also get quieter soon as airlines are working on a draft plan that may see them shut down almost all domestic passenger flights on a voluntary basis as government officials mull making this compulsory. Thousands of flights were canceled on March 23, sometimes because there were fewer than ten passengers.

White House COVID-19 Updates:

Attorney General Organizes U.S. Attorneys to go after Price Gouging and Hoarding of Critical Supplies Needed to Combat the Coronavirus (FACTSHEET, EO TEXT)

Statement by Secretary Steven T. Mnuchin on Essential Financial Services Workers

- “I strongly support the Department of Homeland Security’s recent guidance identifying financial services sector workers as essential critical infrastructure workers during the COVID-19 response emergency.”

DOL Publishes Guidance Explaining Paid Sick Leave and Expanded Family and Medical Leave Under the Families First Coronavirus Response Act

- Today, the DOL’s Wage and Hour Division announced its first round of published guidance to provide information to employees and employers about how each will be able to take advantage of the protections and relief offered by the Families First Coronavirus Response Act when it takes effect on April 1, 2020.

DOT’s Federal Motor Carrier Safety Administration CDL Waiver

- FMCSA grants, until June 30, 2020, a waiver from certain regulations applicable to interstate and intrastate commercial driver’s license and commercial learner’s permit holders and to other interstate drivers operating commercial motor vehicles. You can find the Enforcement Notice [here](#).

HHS Awards \$100 Million to Health Centers for COVID-19 Response

- Today, HHS, through the Health Resources and Services Administration, awarded \$100 million to 1,381 health centers across the country with funding provided by the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020.

CMS Approves Medicaid Section 1135 Waivers for 11 Additional States in Response to COVID-19

- The waivers were approved within days of states’ submitting them, and offer states new flexibilities to focus their resources on combatting the outbreak and providing the best possible care to Medicaid beneficiaries in their states. These waivers support President Trump’s commitment to operating a COVID-19 response that is locally executed, state managed and federally supported.

FDA Takes Action to Increase U.S. Supplies Through Instructions for PPE and Device Manufacturers

- Today, the U.S. Food and Drug Administration took action to increase U.S. supplies to support the U.S. response to COVID-19 by providing instructions to manufacturers importing personal protective equipment and other devices.

Food Safety and the Coronavirus Disease 2019 FAQs

- In food production/processing facilities and retail food establishments, an evaluation should be made to identify and implement operational changes that increase employee separation. However, social distancing to the full 6 feet will not be possible in some food facilities.

FDA Helps Facilitate Veterinary Telemedicine During Pandemic

- As part of the U.S. Food and Drug Administration's ongoing commitment to combatting the coronavirus pandemic and providing flexibility across FDA-regulated industries, the agency announced today that it intends to temporarily not enforce certain requirements in order to allow veterinarians to better utilize telemedicine to address animal health needs during the pandemic.

FDA and EMA Collaborate to Facilitate SARS-CoV-2 Vaccine Development

- On March 18, the FDA and the European Medicines Agency jointly chaired the first global regulators meeting to discuss regulatory strategies to facilitate the development of SARS-CoV-2 vaccines.

FHFA Moves to Provide Eviction Suspension Relief for Renters in Multifamily Properties

- Today, to keep renters in multifamily properties in their home and to support multifamily property owners during the coronavirus national emergency, the Federal Housing Finance Agency is announcing that Fannie Mae and Freddie Mac will offer multifamily property owners mortgage forbearance with the condition that they suspend all evictions for renters unable to pay rent due to the impact of coronavirus.

FHFA Directs Enterprises to Grant Flexibilities for Appraisal and Employment Verifications

- Today, to facilitate liquidity in the mortgage market during the coronavirus national emergency, the Federal Housing Finance Agency directed Fannie Mae and Freddie Mac to provide alternative flexibilities to satisfy appraisal requirements and employment verification requirements through May 17, 2020.

DOJ and FTC Announce Expedited Antitrust Procedure and Guidance for Coronavirus Public Health Efforts

- The U.S. Department of Justice Antitrust Division and the Federal Trade Commission today issued a joint statement detailing an expedited antitrust procedure and providing guidance for collaborations of businesses working to protect the health and safety of Americans during the COVID-19 pandemic.

NOAA Fisheries Issues Emergency Action to Waive Observer Coverage on a Case-by-Case Basis

- Today, in response to the spread of COVID-19, NOAA Fisheries issued an emergency action to provide the authority, on a case-by-case basis, to waive observer coverage, some training, and other program requirements while meeting conservation needs and providing an ongoing supply of fish to markets.

DOD Aims to Fill Medical Gaps with Military While States, Cities Ramp Up

- The Navy hospital ship USNS Mercy will go to Los Angeles to help relieve pressure on hospitals there so they can focus more on COVID-19 patients, Secretary Esper said. Esper said in the next couple of weeks, the USNS Comfort, currently at Norfolk, Virginia, will head to New York City for the same purpose. The crew and staff there, he said, are preparing for that mission.

Esper Lists DOD's Top Priorities During COVID-19 Pandemic

- Protecting the Defense Department's people, maintaining military readiness and supporting the whole-of-government interagency response are DOD's top three priorities amid the coronavirus pandemic, Secretary Esper said.

Department of State's Global Effort to Bring Americans Home

- As of today, we have repatriated more than 9,000 Americans from 28 countries. Our teams, working around-the-clock in Washington and overseas, will bring home thousands more in the coming days, from every region of the world.

After OPM Action, VA Invites Retired Medical Personnel Back to Work

- The Office of Personnel Management approved a request from the Department of Veterans Affairs (VA), March 19, to waive a section of federal law that governs retired VA workers. The waiver makes it easier for the department to rehire retired VA health care workers and will help VA health care facilities bolster their medical staffs during the COVID-19 pandemic.

March 24 Coronavirus Press Briefing

- President Trump, Vice President Pence, and Members of the Coronavirus Task Force Hold a Press Briefing VIDEO, REMARKS
- 1600 Daily: President Trump Is Standing Up For Working Families in This Crisis
- How Can You Keep the Most Vulnerable Safe from Coronavirus?
- How Can You Engage in Social Distancing?
- Is It Still Safe to Donate Blood?
- Dr. Deborah Birx: If You Feel Sick, Stay Home

Around the World:

The United Kingdom has imposed a “stay-at-home” lockdown for three weeks to contain the spread of the virus. Shopping for necessities, medical appointments, and exercise once a day while respecting social distancing are permitted, Prime Minister Boris Johnson said in a televised address on March 23.

In the Chinese province of Hubei, where the coronavirus pandemic first took hold, restrictions will be lifted this month, with its capital Wuhan to follow in April. This comes after authorities reported a steady decline in locally transmitted cases of the virus, the newspaper said.

Spain, the worst affected country in Europe after Italy, recorded more than 500 deaths from coronavirus in the past twenty hours, taking the death toll to 2,696. Madrid remains at the center of the outbreak there. That’s the highest daily increase so far in Spain.

Meanwhile in Italy, COVID-19 cases are probably ten times higher than the official figure as testing has been limited to people seeking care in hospital. Italy is the worst-affected country in the world, with 6,077 deaths in barely a month, almost twice the number of fatalities in China, where the outbreak began.

Officials made the difficult decision to postpone the Tokyo Olympics until 2021, in a huge blow to Japan following a \$12 billion investment in the run-up to the global event. The decision, a first in the Games’ 124-year modern history, comes as a relief to athletes, worried about how to train as the world heads into lockdown because of the coronavirus outbreak.

Related People

Denise Bode

dabode@michaelbeststrategies.com

T 202.844.3804