NSSGA Summary of CARES Act -- "Phase 3" of COVID 19 Legislative Response

On March 25, Congress came to agreement on a $2.2 trillion emergency relief package that provides a needed injection of funding to support our nation's economy and healthcare system as we continue to weather the ongoing COVID-19 crisis. This legislation is focused on short-term relief through emergency financial, healthcare, tax and unemployment measures that will support struggling businesses, unemployed families and our healthcare system. We would expect a large stimulus package that is focused on longer-term economic growth, with a possible infrastructure title, to be considered in future legislative action in the coming months. The below rundown highlights the many provisions that may impact your business:

Lending Provisions

Loans to Eligible Businesses: This provision provides Treasury $500 billion to provide loans and loan guarantees to businesses impacted by the crisis. To be eligible for this program, a company must not otherwise receive adequate economic relief from other provisions of the bill. This lending is a critical tool that can help mitigate extraordinary pressure in financial markets and is expected to generate up to $4 trillion in economic activity.
Of the $500 billion, $46 billion is set aside for direct lending to specific industries including, $25 billion for passenger airlines, $4 billion for cargo air carriers and $17 billion for businesses important to maintaining national security. All direct lending must meet the following criteria:

- Alternative financing is not reasonably available.
- The loan is sufficiently secured or is made at an interest rate that reflects the risk.
- The duration is as short as possible, with a maximum term of five years.
- Borrowers and their affiliates cannot engage in stock buybacks (unless contractually obligated).
- Borrowers cannot pay dividends until the loan is no longer outstanding or one year after the date of the loan.
- Borrowers are prohibited from reducing their workforce below March 24, 2020, levels until Sept. 30, 2020.
- The company must be domiciled in the United States, with a predominantly U.S. employee base.
- For businesses critical to national security, their operations must be jeopardized by COVID-19-related losses.
- Until one year after the loan is outstanding, recipients of any direct lending are barred from increasing compensation for an officer or employee whose total compensation exceeds $425,000. Limits on severance packages for these employees are imposed.
- Executives earning more than $3 million in 2019 compensation may not earn from the $3 million plus 50% of the excess over $3 million.

Small Business Loans: This legislation provides $350 billion for small business loans administered by the SBA under the new Paycheck Protection Program. This would provide loans of up to $10 million per company and loan size would be dependent on a company's payroll. The loans are available to companies with no more than 500 employees or that meet the applicable size standard for the industry as provided by the SBA if higher.

The legislation allows for the loans to be forgiven. The amount of the forgiveness is equal to the amounts spent by the borrower during the eight weeks from loan origination on payroll costs (up to $100,000 in wages), mortgage interest, rent or utilities (subject to certain restrictions).

Business Tax Provisions

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

Delay of payment of employer payroll taxes: Bill allows employers and self-employed individuals to defer payment of the employer share of the 6.2% Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Language 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.

Modifications for net operating losses: There is language that relaxes the limitations on a company's use net operating losses (NOL), which are currently subject to a taxable income limitation, and 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.

Modification of limitation on losses for taxpayers other than corporations: Includes a modification to 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

Increase to limitation on business interest: The legislation provides a temporary increase increases to the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation to 50 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: Allows 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.

Modification of limitations on charitable contributions during 2020: The bill 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.

Exclusion for certain employer payments of student loans: The legislation 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.

Expansion of Unemployment Insurance

Pandemic Unemployment Assistance: The legislation 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. Provides an additional $600 per week payment to each recipient of unemployment insurance or Pandemic Unemployment Assistance for up to four months.

Short-Term Compensation: Provides $100 million in grants to states 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.

Individual Provisions

Individual Rebate Checks: The legislation will provide checks of up to $1,200 to single individuals and $2,400 to married couples (increased by $500 per child). Check amounts begin to reduce as income exceeds a threshold amount ($75,000 for individuals/$150,000 for married filers) and are completely eliminated once income reaches $99,000 for individuals/$198,000 for joint filers with no children). Income amounts are based on the taxpayer's 2018 return.

Distributions from Retirement Plans: This provision waives the 10% penalty for distributions from certain retirement plans. The maximum allowable distribution is $100,000. Individuals can recontribute these amounts to their plans over a period of up to three years. This provision is applicable to individuals diagnosed with COVID-19, whose spouse or dependents have been diagnosed or who experience adverse financial consequences from the virus.

Emergency Appropriations

In total, the legislation provides $340 billion in emergency appropriations for federal agencies, far more than the $45 billion the White House has sought for them to deal with the pandemic. At least a third of the funding is expected to go toward hospitals through the Department of Health and Human Services.

It is important to note the legislation provides increased funding to every agency to ensure continued operation during these times by providing resources for cleaning, remote access, teleworking, IT infrastructure and to address other needs so federal agencies can continue to operate and function.

FEMA Disaster Relief Fund – receives an additional $45 billion

FAA Airport Improvement Program (AIP) – $10 billion to maintain operations at our nation's airports that are facing a record drop in passengers. AIP funds will be distributed by formula. $500M will increase federal share of FY 2020 AIP grants from 90 to 100%. $7.4B in AIP grants can be used for any purpose which airport revenues can be lawfully applied at 100% and apportioned 50% by 2018 enplanements and 50% for airport debt service costs.

Federal Highway Administration – Language to clarify that states can issue special permits for overweight vehicles and loads to allow for the free flow of critical relief supplies during the current coronavirus epidemic for the duration of the fiscal year.

National Highway Traffic Safety Administration (NHTSA) - Extends any highway traffic safety grant deadline if delays in state or federal commitment is due to coronavirus.

Federal Transit Administration (FTA), Transit Infrastructure Grants – $25 billion for transit providers, including states and local governments across the country, for operating and capital expenses. Funding will be distributed using existing FTA formulas. Funds to be appropriated within 7 days of enactment to help with any relevant economic impact from COVID-19.

Amtrak – $1.018 billion for Amtrak operating assistance to cover revenue losses related to coronavirus. $492M in grants for the Northeast Corridor and $526M in grants for the National Network.

HUD Community Development Block Grant (CDBG) – $5 billion. CDBG is a flexible program that provides communities and states with funding to provide a wide range of resources to address COVID-19.

Harbor Maintenance Trust Fund - Provides clarification that any discretionary appropriations for the Army Corps of Engineers derived from the Harbor Maintenance Trust Fund shall be subtracted from the estimate of discretionary budget authority and outlays allowing for a spend down of the trust fund surplus.

DOL – Extra $15 million for the Department of Labor to implement the paid leave and emergency Unemployment Insurance stabilization activities.

SBA - The bill provides $562 million for Small Business Administration (SBA) Disaster Loans Program.

VA – $150 million to support construction and modification or alteration of existing hospital, nursing home, and domiciliary facilities in state homes to prevent, prepare for, and respond to coronavirus.