Association Advocacy in COVID-19: The CARES Act and Future Legislation

Presenters:

Julia Judish
Special Counsel, Pillsbury Winthrop Shaw Pittman LLP

Sandra G. Swirski
Partner, Urban Swirski & Associates

Mary Kate Cunningham, CAE
VP, Public Policy at ASAE
Historical Perspective

Previous two national emergencies were met with growth in government and more centralized authority at the federal level

• After 9/11
  ➢ New Department of Homeland Security and Office of the Director of National Intelligence
  ➢ Massive spending on security and defense infrastructure

• 2008 Recession
  ➢ Business relief -- Too little and too late
  ➢ Individuals -- $600 stimulus checks dribbled out; tax rebates too
  ➢ Dodd-Frank Act’s new regulatory authorities
  ➢ Uneven economic recovery

• McConnell, Schumer, Pelosi were all in Congress, two as leaders
The Money

• CARES Act enacted on March 27, 2020 with a $2 trillion in stimulus funds

• More funding already needed

➢ By April 17, the Small Business Administration suspended new loans for two major programs: Paycheck Protection Program ("PPP") and Economic Injury Disaster Loans and Grant program ("EIDL")

• But more appropriations will restart those programs

• Access challenges due to bank Know Your Customer regulations
Overview of CARES Act Programs: Paycheck Protection Program

• Only qualifying nonprofits are **501(c)(3)** and **501(c)(19)** organizations < **500 employees**

• Loan amount determined by payroll costs – generally 2.5 X average monthly payroll costs for prior one-year period, up to $10 Million

• Covers payroll costs incurred thru June 30, 2020 (employee salaries, paid leave, insurance premiums) + mortgage, rent, and utility payments

• Principal forgiven for the first 8-week period of loan if spent on covered costs
  
  - Forgiveness excludes cash compensation > $100,000 annualized
  - No more than 25% of forgiveness may be for non-payroll costs.
Overview of CARES Act Programs: Paycheck Protection Program (cont’d)

• Must certify that PPP loan “necessary ... to support ongoing operations”

• Forgiveness reduced proportionally for salary reductions of 25%+ or decrease in full-time employees

• Forgiveness restored if salaries restored and employees rehired by 6/30/2020

• Remaining balance payable over a two-year term at 1% fixed interest rate
Overview of CARES Act Programs: Employee Retention Tax Credit

• **Any 501(c) tax-exempt organization** eligible **unless receiving PPP loan**

• Two ways to qualify:
  - 50% decline in gross receipts during calendar quarter vs. same quarter in 2019
  - **Fully or partially suspended operations** in any 2020 quarter due to COVID-19 governmental orders (partially suspended = operations continue but not at “normal capacity”)

• Payroll tax credit of up to 50% of employee qualified wages paid in covered quarter – **up to $5,000 tax credit per employee**

• Covers March 13 – December 31, 2020
Overview of CARES Act Programs: Employee Retention Tax Credit (cont’d)

• Tax refund if credit exceeds payroll taxes due that quarter

• If 100+ employees: credit covers wages only for employees not providing services to employer during that quarter (e.g., employees on paid leave)

• If < 100 employees: credit covers qualified wages of all employees that quarter

• Qualified wages = salaries + allocated health plan expenses

• Wages for FFCRA credits excluded
Overview of CARES Act Programs: Economic Injury Disaster Loan & Grant

• Application available to any 501(c) tax-exempt organization with < 500 employees

• Statute says covers lost revenues of up to $2 Million
  ➢ In practice: limited to $25k

• $10k advance treated as grant if used for covered expenses
  ➢ Covered expenses = paid leave, maintaining payroll, increased costs due to supply chain disruption, mortgage or lease payments, or repaying obligations that cannot be met due to revenue loss
  ➢ SBA says limiting grant to $1k per employee, so less for small orgs

• Not available to entities “primarily engaged in political or lobbying activities”
  ➢ Longstanding regulatory limitation (13 CFR § 123.301(h))
Overview of CARES Act Programs: Economic Injury Disaster Loan & Grant (cont’d)

• Interest rate for nonprofits of 2.75%.

• Waives the requirement for applicants to demonstrate that they are unable to obtain credit from other sources

• Presumably otherwise subject to existing SBA EIDL regulations at 13 CFR § 123.300:
  - Must certify that “unable to meet obligations as they mature or to pay ordinary and necessary operating expenses”
  - Must certify that “have used all reasonably available funds”
Overview of CARES Act Programs: Unemployment Insurance Expansion

Three initiatives for states to extend UI to individuals affected by COVID-19:

• Benefit eligibility expanded from 26 to 39 weeks,
• Pandemic Unemployment Assistance adds $600/week through 7/31/2020
• Independent contractors, self-employed, gig economy workers also eligible

Different rules in different states, changing rapidly. Some states:

• Waive waiting periods
• Grant benefits for reduced hours or furloughs
• Waive active job hunt requirement
• Waive increase in employer charges for COVID-19 layoffs
ASAE Advocacy in the CARES Act

• Association advocacy beginning in early March when Larry Kudlow, Director, National Economic Council, made comments about targeted aid for travel and tourism.

• Associations were initially included in the Paycheck Protection Program, until a new version of the CARES Act on Sunday, March 22 changed the definition of nonprofit to Section 501(c)(3) nonprofits only.

• ASAE launched a grassroots campaign for inclusion. Associations professionals from around the country contacted their Members of Congress. Over 10,000 emails to the Hill were sent that week.
Grassroots Campaign: Congress is hearing from associations!

• In April, ASAE and more than 4,300 organizations across the country sent a letter to Congress and the Administration to once again call for critically needed support for associations amid COVID-19.

• Congressional Video Town Hall with Rep. Ami Bera (CA-7) and Rep. Stephanie Murphy (FL-7).

• We continue to educate Congress about the financial stress the COVID-19 pandemic has created for associations at the same time many of our organizations are trying to assist our own members to obtain emergency aid.
How You Can Help

• Write Congressional leadership and your legislators

• ASAE template language

• Customize as much as possible

• Share on social and tag your Members of Congress
2020 Political Pressures

**Bottom line:** Each side wants to take credit for what’s working and blame the other side for bungling what’s not, including:

- Are federal funds being targeted to the most in need?
- Have we prioritized the sectors of our economy most in need?
- Are we spending enough?
- How are we prioritizing the supply of medical/safety equipment?
- How do we decide where to reopen and when?
- Who and where to test?
What’s Next?

• Interim bill to add more funds
  ➢ $300B for PPP but bankers asking for more, maybe c6s are added in
  ➢ Hospitals get their own pot of money
  ➢ Maybe the Federal Reserve’s $600B Main Street Lending Program is addressed to make clear that nonprofits can participate

• Oversight

• CARES 2.0
  • Maybe state/local governments get their own pots of money
Thank you for participating!

If you have any suggestions for additional COVID-19 webcast topics, please email them to Karen Bernstein, ASAE senior learning manager at:

kberstein@asaecenter.org