

What Educational Institutions Need to Know about the CARES Act

Monday, March 30, 2020

Overview

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history.

For educational institutions, the Act offers a combination of financial assistance and legislative changes designed to blunt the devastating effects of COVID-19 on the education system. In specific, the Act creates a \$30.9 billion Education Stabilization Fund to be distributed directly to states, local school districts, and institutions of higher education. The Act allows private educational institutions (including private elementary and secondary schools) to receive some funding.

The Act also includes a variety of provisions designed to ease the pressure on higher education institutions and students, including a suspension of federally-held student loan payments through September, several waivers designed to provide colleges with additional flexibility under federal law as they move operations online, and broad authority to the Secretary of Education Secretary to waive standardized testing and other requirements.

Finally, for nonprofits with fewer than 500 employees (including elementary schools, secondary schools, and higher education institutions), the Act’s paycheck protection program allots approximately \$350 billion to help small businesses, including nonprofits, maintain their payrolls for eight weeks. The legislation authorizes the Small Business Administration to provide businesses with fewer than 500 employees loans of up to \$10 million per business to cover payroll and other authorized expenses, including mortgage interest, rent expenses, and utilities. The Government will forgive the loans for businesses that maintain their payroll and only use the funds to cover authorized expenses. The program is available until June 30, 2020.

Key Points

Who's Getting the Money?

- **States and School Districts.** \$13.5 billion in formula funding will go directly to states based on how much money they receive through Title I. States must distribute at least 90% of the funds to school districts and charter schools, and can reserve up to 10% of funds for emergency needs as determined by the state.

Notably, private schools (termed “non-public schools” in the Act, and defined as a non-public elementary and secondary school that is accredited, licensed, or otherwise operates in accordance with State law, which existed prior to the state of emergency), are also eligible. The local educational agency receiving grant funds under the Act must provide students and teachers at non-public schools with “equitable services in the same manner” as under Section 1117 of Title IA, which provides financial assistance to qualifying private schools with a high percentages of children from low-income families. The Act directs local education agencies to consult with representatives of non-public schools to coordinate the scope of these services.

- **Governors.** \$3 billion in flexible formula funding for state governors to allocate at their discretion.
- **Higher Education.** \$14.25 billion directly to higher education institutions, with priority given to schools with a high number of Pell Grant recipients, excluding students who were exclusively enrolled online before the crisis.

What Can They Spend It On?

- **School Districts and Charter Schools.** Schools may use their portion for a wide variety of coronavirus-related activities, such as coordinating long-term school closures; purchasing educational technology to support online learning for students; efforts to help low-income students, homeless students, English learners, students with disabilities, and students of color; purchasing cleaning supplies to sanitize buildings; and additional activities authorized by federal elementary and secondary education laws.
- **Governors.** Governors may choose between school districts deemed “most significantly impacted by coronavirus,” colleges and universities, or any other school district or “education related entity,” including those providing child care and early childhood education.

- **Higher Education.** At least 50% of funds must be used to provide emergency financial aid grants to students to cover certain eligible expenses under a student's cost of attendance, such as food, housing, course materials, technology, health care and child care. The other 50% may be used to account for things like lost revenue and technology costs associated with the shift to online learning.

What About Federal Student Loans, Grants, and Work-Study?

All federal student loan payments are suspended through September 30, 2020, during which time no interest will accrue. The suspension will have no reflection on a student's credit, as it will be reported to consumer reporting agencies as if the student had been making regular payments. All involuntary collection for student debt is also suspended, including wage garnishing and reductions in tax refunds.

The Act lets students keep their Pell grants, as well as any unspent money from Pell grants or student loans. The Act also allows schools to continue paying work-study students who are unable to fulfill their obligations due to the COVID-19 crisis, and excludes COVID-19-disrupted semesters from students' federal Pell Grant limits and consideration for subsidized loans.

Additionally, as part of the \$5,250 in tax-free educational assistance benefits employers may provide to employees under current law, employers may now provide as a tax-free benefit student loan repayment assistance.

What Other Relief is Available for Colleges and Universities?

The Act includes a variety of provisions designed to give higher education institutions increased flexibility and ease some of the financial burden of the COVID-19 crisis, including:

- Waiver of non-federal share requirements for Title IV work-study and supplemental educational opportunity grants awarded in 2019-20 and 2020-21;
- Allowing the use of Supplemental Educational Opportunity Grant funds for emergency financial aid awards to undergraduate and graduate students for unexpected expenses as a result of the emergency.
- Allowing institutions to exclude from the calculation of "satisfactory progress" for Title IV purposes course credits attempted but not completed as a result of the emergency.
- Allowing non-US institutions to offer distance education for the duration of the COVID-19 emergency for Title IV purpose, if the emergency is declared by the foreign institution's government.

There is also additional funding in the Act for historically black colleges and universities, tribal colleges and universities, and other minority-serving institutions, including \$13 million to Howard University, and \$7 million to Gallaudet University.

Looking Ahead

While the package of financial funding and legislative changes will be welcomed by educational institutions that are struggling to adjust in the short term, it remains possible that additional federal funding and relief efforts will be necessary to support schools and students as the crisis progresses. It remains to be seen whether Congress will need to pass additional relief to assist the education sector in the months to come.

Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney. For guidance on CARES Act education issues, please contact [Tad Heuer](#), [Rachel Hutchinson](#), or [Dean Richlin](#).

What Elementary and Secondary Schools with IDEA Students Need to Know about the CARES Act

Monday, March 30, 2020

Overview

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history.

Given the disruption caused by the federal response to containing the COVID-19 outbreak, there are a number of policy changes that are requiring almost every private or public institution to reconsider and reconfigure how services are delivered. This is especially true for individuals with disabilities and the protections afforded to them and their families through the Individuals with Disabilities Act (IDEA) and other civil rights protections.

Key Points

For 45 years, IDEA has provided grants to states to ensure federal funding is available and used to provide specially designed school-based instruction at no cost to parents for children with disabilities. A key component of IDEA is funding that covers special education needs of children with disabilities between the ages of 3 and 21, which most recently served 7 million individuals. With millions of children out of school indefinitely, questions about civil rights protections have rightfully been raised about the delivery of educational services and supports for individuals with disabilities.

The Department of Education put forth guidance this month around key questions surrounding the provision of services during prolonged school closures caused by the COVID-19 outbreak. This guidance is important for state and local educational agencies who are faced with exceptional and unforeseen circumstances, such as prolonged school closures, which affect how students access school instruction and services.

Importantly, the guidance states that if a local education agency continues to provide education opportunities to the general student population during a school closure, such as through distance learning, the school must ensure that students with disabilities also have equal access to the same opportunities, including the provision of free appropriate public education (FAPE).

To the greatest extent possible, state and local education agencies must ensure students with disabilities can be provided the special education and related services identified in the student's specific individual education program (IEP) developed under IDEA, or through Section 504.

The Department guidance seeks to clarify requirements and flexibilities that schools will need to continue providing services to students with disabilities. The CARES Act includes a handful of provisions intended to address these questions. Those include:

- **National Emergency Education Waivers.** Within 30 days of enactment, the Secretary of Education will prepare and submit recommendations to Congress on any recommendations for additional waivers under IDEA that are needed in order for states and local educational agencies to continue meeting the needs of students during the public health emergency.
- **Emergency Designation.** The legislation also includes an "Education Stabilization Fund," which authorizes the Department of Education to provide emergency funding relief for state education agencies (with an approved application) for the continuation of various education programs, including IDEA. This funding can be used to provide guidance on carrying out requirements of IDEA, purchasing necessary assistive technology or adaptive equipment, or other educational technology, among other matters. The use of distant learning including components of telehealth to meet related service needs such as occupational therapy and physical therapy are being discussed. The Department of Education will publish guidance within 30 days of enactment on submitting applications for funding.

Looking Ahead

Given that much of the guidance addressing IDEA and COVID-19 will take time to be published, it is important to understand the availability of potential modifications to service delivery and how those modifications would affect students with disabilities in meeting their Individualized Education Program (IEP) goals and objectives. The use of distant learning including components of telehealth to meet related service needs such as oral placement therapy (OPT), speech-language therapy, are being discussed.

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The CARES Act: Provisions Affecting Retirement and Health Plans

Monday, March 30, 2020

Overview

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history. The Act contains a number of provisions regarding retirement and health plans that are intended to alleviate the financial burden of the plan sponsors and participants affected by the COVID-19 pandemic. The key aspects of these provisions are discussed below.

Key Points

Retirement Plans

Coronavirus-Related Distributions

- *Waiver of 10% Penalty Tax.* The Act allows participants in certain eligible retirement plans to take distributions of up to \$100,000 in 2020 without incurring the 10% penalty tax that otherwise would apply to certain distributions taken prior to turning age 59 ½. “Eligible retirement plans” generally refer to tax-qualified retirement plans and accounts, such as “401(k)” plans and individual retirement accounts. To qualify for this waiver, the participant (or his or her spouse or dependent) must have been diagnosed with the coronavirus or the participant must have experienced adverse financial consequences as a result of certain adverse changes to his or her employment status due to the coronavirus.
- *Income Inclusion Over Three Years.* Coronavirus-related distributions may be included in the participant’s taxable income ratably over a three-year period unless the participant elects to include them in the year of distribution.
- *Repayment as Rollover Contribution.* The Act permits coronavirus-related distributions to be repaid to an eligible retirement plan within three years after taking the distribution as if such repayment was a rollover contribution.

Plan Loans

- ***Increased Maximum Loan Amount.*** The Act increases the maximum amount that a participant can borrow from his or her account balance by increasing the applicable dollar limit from \$50,000 to \$100,000 and the applicable percentage limit from 50% to 100% of the participant's account balance. This provision is only available for 180 days following March 27, 2020.
- ***Extension of Loan Due Date.*** To the extent a participant has an outstanding loan from the plan and a repayment due date occurs at any time between the date the Act is enacted and December 31, 2020, such repayment date is delayed by one year. Any subsequent repayments must be appropriately adjusted to reflect the delay and the interest accrued during the delay.

Required Minimum Distributions

- The Act suspends the required minimum distributions in 2020 that otherwise would be required to be distributed to participants who turned age 70 ½. This relief is similar to the suspension that applied in the aftermath of the 2008 financial crisis.

Funding Relief for Single-Employer Defined Benefit Plans

- ***Extension of 2020 Minimum Required Contribution.*** Under the Act, any minimum required contribution (including any quarterly contribution) to a single-employer defined benefit plan that is otherwise due in 2020 may be delayed until January 1, 2021, but the delayed contribution will be adjusted to reflect the interest accrued during the delay.
- ***2019 Funding Ratio May Be Used.*** For purposes of determining whether any benefit and payment restrictions would apply to a defined benefit plan due to its funding status, the CARES Act allows the plan sponsor to elect to treat the plan's adjusted funding target attainment percentage (AFTAP) for the 2019 plan year as the AFTAP for the 2020 plan year.

Health Plans

- ***Diagnostic Testing.*** Group health plans and health insurance issuers are required to cover diagnostic testing for COVID-19 without any cost-sharing burden to the participants, generally at the negotiated in-network provider rate.

- **Preventive Services.** Group health plans and health insurance issuers are required to cover, without any cost-sharing burden to the participants, certain qualifying coronavirus preventive service as a preventive benefit under the Affordable Care Act, with such coverage to be effective no later than 15 days after a recommendation for the service is made.
- **Telehealth.** The Act provides that, for plan years beginning on or before December 31, 2021, a high deductible health plan may cover telehealth services before the applicable minimum deductible under the plan is satisfied without jeopardizing an individual's eligibility to contribute to a health savings account.
- **Over-the-Counter Products and Medications.** Over-the-counter products and medications are reimbursable from a health savings account (regardless of whether the eligible individual satisfies the deductible under the high deductible health plan) or from a health care flexible spending account.

Looking Ahead

With respect to retirement plans, it appears that the plan sponsors may, but are not required to, implement the relief outlined above (except for the extension of the loan due date, which appears to be mandatory). As such, plan sponsors should consider and coordinate with the plan's service providers to determine whether these new provisions are administratively practicable. Any plan amendments to reflect the new provisions under the CARES Act must be completed by the last day of the plan year beginning on or after January 1, 2022 (i.e. by December 31, 2022 for plans with calendar year plan years).

With respect to health plans, employers should consider the increased administrative and financial costs associated with providing these new benefits mandated by the CARES Act. Employers that maintain a self-insured health plan where claims are paid out of the employer's general assets will directly bear the cost of these new benefits, although employers that maintain a fully-insured health plan could still expect to see the increased cost reflected in higher premiums.

Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney. For guidance on CARES Act retirement plan or health plan issues, please contact [Terry Martland](#) or [Ellie Kang](#).

What the Energy Sector Needs to Know about the CARES Act

Monday, March 30, 2020

Overview

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history.

A number of specific provisions in the Act are aimed at energy infrastructure, cybersecurity, and low income heating assistance. While few provisions in the Act are targeted at competitive power producers specifically, other provisions and programs may ultimately be of benefit to the energy industry. Specifically, provisions increasing in funding to the Department of Energy, Nuclear Regulatory Commission, and Environmental Protection Agency may provide indirect benefits to energy companies.

Key Points

Business Loan Programs

The Act makes available billions of dollars in low-interest loans to any eligible business in the United States, which includes businesses in the energy sector. Details of these programs are below.

Lending to Eligible Businesses: The Act provides \$454 billion in low-interest loans, loan guarantees, and other investments in programs or facilities established by the Federal Reserve to support lending to eligible businesses, States, or municipalities. The legislation includes a directive to the Secretary of Treasury to establish a program from these funds to provide low-interest loans to mid-sized businesses with between 500 and 10,000 employees. All businesses receiving loans under this program must agree to certain conditions including maintaining 90 percent of their workforce on payroll through September 2020, restricting dividends or stock repurchases while the loan is outstanding, and restricting outsourcing or offshoring for two years after completing repayment of the loans.

Paycheck Protection Program for Small Businesses: The Act allots approximately \$350 billion to help small businesses, including non-profits, maintain their payrolls for eight weeks. The legislation authorizes the Small Business Administration to provide businesses with fewer than 500 employees loans of up to \$10 million per business to cover payroll and other authorized expenses. The Government will forgive the loans for businesses that maintain their payroll and only use the funds to cover authorized expenses. The program is available until June 30, 2020.

Agency Funding

The Act includes **\$221 million** for federal agencies to respond to coronavirus impacts on operations, including equipment and IT support to improve teleworking capabilities vital to continued operations, as well as supporting research into the coronavirus by the Department of Energy. Highlights include:

Department of Energy

- **\$28 million** to the Department of Energy's Department of Administration to prepare for and respond to the coronavirus.
- **\$99.5 million** is provided to the Department of Energy's Office of Science for costs related to equipment, personnel, and operations to support research on the coronavirus.

Department of Homeland Security

- **\$9.1 million** to address immediate needs for improved interagency coordination for the protection of critical infrastructure nationwide.

Nuclear Regulatory Commission

- **\$3.3 million** to prepare for and respond to the coronavirus.

Environmental Protection Agency

- **\$7.2 million** to support research efforts regarding coronavirus; staffing and associated costs for expediting registrations and other actions related to addressing coronavirus; cleaning and disinfecting of the agency's facilities; and enhancing the agency's telework infrastructure.

U.S. Army Corps of Engineers

- **\$70 million** to prepare for and respond to the coronavirus by providing additional equipment, licenses, and IT support to improve teleworking capabilities and ensure secure remote access for Corps staff.
- Funding will also improve capacity for remote operations for Corps projects and activation of Emergency Operations Centers nationwide to support continued operations of Corps projects.

Department of the Interior/Bureau of Reclamation

- **\$20.6 million** to the Bureau of Reclamation to prepare for and respond to the coronavirus by providing additional equipment, licenses, and IT support to improve teleworking capabilities and secure remote access.

Department of Health and Human Services

- **\$900 million** to the Low Income Home Energy Assistance Program help lower income households heat and cool their homes.

Looking Ahead

The energy sector and the regional electric grid faces numerous challenges with respect issues created by the current crisis, including reliability, resilience, cybersecurity, and emissions. The CARES Act provides certain relief to support the sector as a whole, but it remains to be seen, whether Congress will need to pass additional relief to assist the energy sector in the months to come.

Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney. For guidance on COVID-19 Energy sector issues, please contact [Kevin Conroy](#), [Tad Heuer](#), or [Carol Holahan](#).

The CARES Act: Tax Relief Provisions

Monday, March 30, 2020

Overview

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history.

The CARES Act includes several tax provisions intended to provide relief to businesses and individuals. These provisions address a variety of tax matters applicable to a wide range of taxpayers. While the provisions are aimed at business and taxpayers impacted by the COVID-19 pandemic, many apply regardless of whether a taxpayer has been directly impacted by the pandemic. In addition, although many of these provisions are effective for the COVID-19 outbreak period and the 2020 tax year, several provisions have retroactive effect that will impact tax years prior to 2020 (in some cases, entitling taxpayers to refunds or reductions of tax with respect to such prior years).

The following provides brief summaries of the more significant tax-related provisions applicable to businesses and individuals in the CARES Act. This summary does not address the provisions in the CARES Act relating to retirement plans, which are discussed in Foley Hoag’s, “[The CARES Act: Provisions Affecting Retirement and Health Plans.](#)”

Key Points

I. Business Tax Provisions.

Employee Retention Payroll Tax Credit. A refundable payroll tax credit with respect to the employer portion of Social Security taxes generally is available to any employer:

- (1) for each calendar quarter beginning after December 31, 2019 during which such employer is required to fully or partially suspend operations due to governmental orders issued in response to the COVID-19 pandemic; or
- (2) for the period (i) beginning on the first calendar quarter that the employer suffers a more than 50% decline in gross receipts compared to the same quarter of the previous year and (ii) ending with the quarter that begins after the first quarter after the quarter described in (i) during which such employer’s gross receipts are more than 80% of the employer’s gross receipts for the same quarter in the previous year.

The refundable payroll tax credit is equal to 50% of the qualified wages paid to each employee for each such eligible quarter, up to a maximum of \$10,000 of wages per employee. To the extent the available

payroll tax credit exceeds the amount of the employer portion of Social Security taxes that would otherwise be payable for the quarter, such excess shall be treated as an overpayment by the employer and shall be refunded, on a tax-free basis, to the employer.

For employers with more than 100 employees, “qualified wages” generally are wages that the employer pays employees who are not providing services due to the suspension of the business or a drop in gross receipts. For employers with 100 or fewer employees, all wages paid to employees during the applicable period of a suspension of business or a drop in gross receipts generally are qualified wages. For this purpose, qualified wages also include certain health plan expenses. The refundable payroll tax credit only applies to qualified wages paid after March 12, 2020 and before January 1, 2021.

An employer that receives a small business loan pursuant to the Paycheck Protection Program under Section 1102 of the CARES Act (such loans referred to herein as “[Stimulus Loans](#)”) is not eligible for this refundable payroll tax credit. (The Stimulus Loan program is discussed in more detail in Foley Hoag’s “[COVID-19 Relief Loans for Small Businesses](#).” The CARES Act directs the Secretary of the Treasury to issue guidance relating to various aspects of the implementation of the refundable payroll tax credit, including advance payments of such credit and the recapture of any such credit when the employer subsequently receives a Stimulus Loan.

Employer Payroll Tax Deferral. Effective as of March 27, 2020, employers (including self-employed individuals) may defer the employer portion of Social Security taxes due between the enactment of the CARES Act and January 1, 2021. Employers will have until Dec. 31, 2021 to pay half of the amount deferred and until Dec. 31, 2022 to pay the remaining half. An employer that receives any loan forgiveness with respect to a Stimulus Loan under Section 1106 or Section 1109 of the CARES Act is not eligible for this tax deferral. Guidance has not yet been issued to clarify the mechanics and timing of any payment of payroll taxes that were deferred prior to any disqualifying loan forgiveness, including whether interest or penalties would be imposed on such previously unpaid payroll taxes.

Loan Forgiveness for Stimulus Loans. As described in more detail in Foley Hoag’s “[COVID-19 Relief Loans for Small Businesses](#),” the CARES Act created the Stimulus Loan program for small businesses. The CARES Act provides that Stimulus Loans made pursuant to this program may be partially or wholly forgiven and further provides that the forgiveness of such loans will not result in taxable cancellation of indebtedness income to the borrower. However, as described above under “**Employee Retention Payroll Tax Credit**,” an employer that receives a Stimulus Loan is not eligible for the employee retention payroll tax credit. In addition, as described above under “**Employer Payroll Tax Deferral**,” an employer that receives any loan forgiveness with respect to a Stimulus Loan is not eligible for the employer payroll tax deferral.

Increase in Deductible Portion of Business Interest. For tax years beginning in 2019 and 2020, the portion of business interest that may be deducted has been increased from 30% to 50% of adjusted taxable income. Additionally, for tax years beginning in 2020, taxpayers may elect to use their 2019 adjusted taxable income (adjusted in the event of a short 2020 tax year) for purposes of calculating the amount of their deductible business interest. For partnerships, the modification to the business interest limitation does not apply to tax years beginning in 2019; however, unless a partner elects otherwise, 50% of any excess business interest expense allocated to the partner for such a tax year will be treated as business interest paid by the partner that is not subject to any adjusted taxable income limitation and the remaining 50% will be subject to the usual limitations.

Net Operating Losses Limitation Lifted and Limited Carryback Permitted. The 80% taxable income limitation on the use of net operating losses (“NOLs”) has been temporarily suspended to allow most businesses to use NOLs to offset 100% of their taxable income for tax years beginning in 2018, 2019 and 2020. For tax years beginning after 2020, NOLs are again subject to the 80% taxable income limitation. Additionally, the prohibition on the carryback of NOLs has been temporarily suspended to allow the carryback of NOLs arising in a tax year beginning in 2018, 2019 or 2020 to each of the five years preceding the tax year in which the NOLs arise. As a result, qualifying businesses may amend applicable prior year tax returns to obtain a tax refund from the carryback of 2018, 2019 and 2020 NOLs. The CARES Act also addresses the interaction of these new NOL rules with the deemed repatriation tax under Section 965 of the Internal Revenue Code.

Modification of Loss Limitations for Non-Corporate Taxpayers. Previously, non-corporate taxpayers (*i.e.*, pass-through entities and sole proprietorships) were not allowed a deduction for “excess business losses” pursuant to Section 461 of the Internal Revenue Code. The CARES Act provides that for the 2020 tax year, such taxpayers may deduct such losses.

Exclusion for Certain Employer Payments of Student Loans. The exclusion from an employee’s taxable income for up to \$5,250 of employer-provided educational assistance has been expanded to include an employer’s payments made after March 27, 2020 and prior to January 1, 2021 on certain qualified education loans of the employee that were incurred for the employee’s education. The payments must be made in accordance with the general requirements for employer-provided educational assistance programs, including (but not limited to) payments being made according to a written plan and not in lieu of other consideration provided by the employer. The payments can be made to either the employee or the employee’s lender. Any payments made by the employer will be deductible as a business expense; however, employees may not deduct any interest paid by the employer.

Accelerated Deduction for Certain Facilities Improvements. As described in more detail in Foley Hoag’s [“What the Real Estate Sector Needs to Know about the CARES Act,”](#) the CARES Act fixes a technical error in the Tax Cuts and Jobs Act of 2017 (the “TCJA”) regarding bonus depreciation as it applies to certain “qualified improvement properties” (which generally relates to certain aspects of non-residential real property). With this correction, taxpayers may now immediately deduct expenses for improvements to “qualified improvement properties.” These changes apply retroactively, so taxpayers may file amendments to claim the deductions for tax years beginning in 2018 and 2019.

Modification of Credit for Prior Year AMT Liability. The TCJA eliminated the corporate alternative minimum tax (“AMT”), and AMT credits (“AMTCs”) generated before the TCJA generally could be carried forward and refunded in tax years beginning in 2018 through 2021, subject to limitations in each year. Under the CARES Act, a corporation with an outstanding AMTC may now claim a full refund of this amount in 2019, or make an election to claim the refund for 2018. If a corporation elects to claim a refund of their outstanding AMTC in 2018, they must file an application with the Secretary of the Treasury (or the Secretary’s delegate) by December 31, 2020. The CARES Act requires that such applications be processed within 90 days of filing.

Charitable Contributions by Corporations. For corporations, the deduction for charitable contributions generally is limited to an amount equal to 10% of the corporation’s taxable income. For the 2020 tax year, the CARES Act permits corporations to deduct the amount of any “qualified contributions” to the extent that the aggregate of such contributions by the corporation does not exceed the excess of 25% of the corporation’s taxable income over the amount of all other charitable contributions so allowed, with

any excess generally being eligible for a 5 year carryover. To be a “qualified contribution,” the contribution generally must be made in cash to a qualifying organization and must not be for the establishment or maintenance of an existing donor advised fund or be attributable to a contribution carryover from a prior year.

II. Individual Tax Provisions.

“Recovery Rebates” for Individuals. Certain eligible individuals (other than dependents, nonresident aliens, estates or trusts) will receive a “recovery rebate” of up to \$1,200 for adult individuals and up to \$2,400 for adult individuals filing a joint return, plus an additional \$500 for each qualifying child under the age of 17. Eligibility for the recovery rebate will begin to phase out to the extent the adjusted gross income (“AGI”) of individuals exceeds \$112,500 for individuals filing as a head of household, \$150,000 for married individuals filing a joint return, and \$75,000 for all other individuals (including single filers). Determinations of AGI for this purpose will be made based on the individual’s AGI reported on their 2019 income tax return (or 2018 income tax return if the 2019 income tax return is not available).

The “recovery rebate” payments, in fact, are an advance payment of a 2020 refundable tax credit. As such, individuals who exceed the phase out amounts in 2019 or 2018, as applicable, but are below the phase out amount in 2020 will receive the payment in the form of a refundable tax credit on their 2020 tax return. The recovery rebates will not be taxable income for federal tax purposes. In addition, it appears that individuals who receive a recovery rebate (based on 2019 or 2018 income tax returns, as applicable) but ultimately have an AGI in excess of the phase out amounts for 2020 may not be required to return any portion of a recovery rebate received.

If an eligible individual filed a federal income tax return in 2018 or 2019, payment processing will be based on payment or address information already on file with the IRS. Electronic payments will be automatic and made to an account the individual authorized for the 2018 tax year or later. The CARES Act provides the IRS with additional tools to locate and provide rebates to low-income seniors who normally do not file a tax return by allowing the IRS to rely on other information, such as the Form SSA-1099, Social Security Benefit Statement. However, seniors (as well as other non-filers) are encouraged to file a 2019 tax return to ensure they receive their recovery rebate as quickly as possible. Treasury Secretary Mnuchin has also indicated that there will be a Web-based portal for non-filers to submit the information needed to receive a recovery rebate. In addition, the CARES Act instructs the IRS to engage in a public campaign to alert all individuals of their eligibility for the rebate and how to receive it if they have not filed either a 2019 or 2018 tax return.

Charitable Contributions by Individuals. For the 2020 tax year, individuals who elect not to itemize deductions may claim a deduction of up to \$300 for certain “qualified contributions.” To be a “qualified contribution,” the contribution generally must be made in cash to a qualifying organization and must not be for the establishment or maintenance of an existing donor advised fund or be attributable to a contribution carryover from a prior year.

In addition, for individuals, the deduction for charitable contributions generally is limited to 50% of the individual’s AGI. For the 2020 tax year, the CARES Act permits individuals to deduct the amount of any “qualified contribution” to the extent that the aggregate of such contributions by the individual does not exceed the excess of 100% of the individual’s adjusted gross income (as defined for this purpose) over the amount of all other charitable contributions so allowed, with any excess generally being eligible for a 5 year carryover.

Looking Ahead

We anticipate that Treasury and the IRS will provide additional guidance regarding the CARES Act provisions and that Congress will likely pass additional tax legislation in the months to come to address the COVID-19 pandemic. Foley Hoag will continue to monitor and provide updates with respect to these tax matters.

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Data Sharing, Information Technology, and the CARES Act

Monday, March 30, 2020

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On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history.

Among the many priorities in Act, data sharing and information technology play a key role as a need that impacts nearly all aspects of federal, state, and local government operations, as well as numerous providers of healthcare services in both the public and private sectors.

The portions of the Act aimed at data sharing and information technology address a mix of immediate and long term priorities, and will likely lay the groundwork for continued investments once the COVID-19 crisis has abated. In addition to laying bare needs in the public health context, COVID-19 has also highlighted the need for flexibility with respect to information sharing and significant divides between populations and geographic areas in accessing needed information resources.

In the immediate term, the last several weeks have seen unprecedented use of and need for remote working technologies across all sectors of the economy in order to maintain social distancing and permit business and government activity to continue to operate. It is unsurprising, then, that significant amounts of supplemental funding to federal and state agencies are aimed at enabling remote operations of governments, healthcare providers, and businesses.

These funds go hand-in-hand with federal efforts to promote the use of telemedicine and telehealth, many of which precede the COVID-19 crisis and dovetail with federal efforts to make health care data more portable and more accessible to patients.

Key Points

- **Emphasis on Telehealth and Telemedicine.** The Act funds multiple initiatives to advance the role of telehealth and telemedicine, most significantly with respect to the Department of Veterans Affairs, but also more generally. In addition to providing funds, the Act aims to ease various statutory restrictions on the use of telemedicine, especially in the Medicare context.

- **COVID-19 Information Technology.** Understandably, significant amounts of funding are directed towards information technologies that are specifically intended to address the COVID-19 crisis, including funds to the National Science Foundation and Centers for Disease Control and Prevention. These funds will also support state and local efforts to coordinate disease prevention and response efforts.
- **Remote Working.** Nearly every category of supplemental funding contains funding to enable government agencies to adapt to remote working. The Act also contains funding for government-wide initiatives to promote use of virtual private networks, digital signature technology, and website development, as well as significant funding for cybersecurity related to critical infrastructure.
- **Broadband Infrastructure.** The Act provides grants for the construction and improvement of broadband infrastructure in rural areas, and also funds a separate grant program for rural communities to advance distance-learning technologies for students, teachers, and medical professionals.

Looking Ahead

Many of the funding and legal provisions of the Act are short-horizon, in the sense that they are intended to facilitate data sharing that is necessary to address the COVID-19 crisis and enable both federal agencies and businesses to conduct effective remote work.

However, many provisions of the Act also reflect long-standing (if not always well-funded) priorities for lawmakers, such as bridging the digital divide between urban and rural areas, promoting greater use of telemedicine and telehealth (which itself often aims to alleviate the urban/rural divide), and marshaling greater resources to address mental health.

Funding aside, the Act also reflects greater acceptance of the role of technology in the medical context. This emphasis is consistent with both state and federal efforts in recent years to promote the use of telemedicine, particularly to address unmet needs in mental health and substance use disorder treatment and the needs of especially vulnerable populations. More generally, it is consistent with federal efforts to mandate greater interoperability and information sharing, including providing patients with more avenues to access medical information.

In sum, COVID-19 is forcing the government's hand on building a more consistent and capable digital infrastructure to respond not only to public health crises, but to health issues more generally. The need rapidly to resort to remote working has also reminded policymakers that access to digital resources is neither equal nor universal, and that continued investments will be needed to keep residents from being left behind.

Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney. For guidance on CARES Act data sharing and information technology issues, please contact [Jeremy Meisinger](#) or [Colin Zick](#).

What Nonprofit Organizations Need to Know about the CARES Act

Monday, March 30, 2020

Overview

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history.

The CARES Act contains numerous provisions relevant to nonprofit organizations.

- First, it allocates hundreds of billions of dollars in funding to help employers meet payroll and other expenses, and nonprofits are eligible to receive that funding.
- Second, the Act creates tax incentives for individuals and corporations to increase charitable donations.
- Third, the Act provides funding for nonprofit organizations with specific missions, such as food banks, domestic violence groups, services for homeless youth, and supporting the arts and humanities.

Additionally, it is worth noting that the CARES Act provides hundreds of billions of dollars in funding to states and localities [[read *Foley Hoag alert here*](#)]. Certain of those funds could in turn be used to assist nonprofit organizations or to partner with nonprofits in assisting affected individuals.

Key Points

Sector-Wide Provisions for Nonprofits

Paycheck Protection Program for Small Businesses and Nonprofits. The Act allots approximately \$350 billion to help small businesses, [including nonprofits](#), maintain their payrolls for eight weeks. The legislation authorizes the Small Business Administration to provide businesses with fewer than 500 employees loans of up to \$10 million per business to cover payroll and other authorized expenses, including mortgage interest, rent expenses, and utilities. The Government will forgive the loans for businesses that maintain their payroll and only use the funds to cover authorized expenses. The program is available until June 30, 2020.

Economic Injury Disaster Loan Advances. The Act allows small businesses and nonprofits who apply for an economic injury disaster loan (“EIDL”) to receive an emergency grant of \$10,000 within 3 days of applying for the EIDL. The \$10,000 grant may be used to keep employees on payroll, to pay for sick leave, meet increased production costs due to supply chain disruptions, or pay business obligations,

including debts, rent, and mortgage payments. If a nonprofit receives the grant and also receives a loan under the Paycheck Protection Program, any amount forgiven under the Paycheck Protection loan will be decreased by the \$10,000 grant.

Charitable Contributions by Corporations. For corporations, the deduction for charitable contributions generally is limited to an amount equal to 10% of the corporation's taxable income. For the 2020 tax year, the CARES Act permits corporations to deduct the amount of any "qualified contributions" to the extent that the aggregate of such contributions by the corporation does not exceed the excess of 25% of the corporation's taxable income over the amount of all other charitable contributions so allowed, with any excess generally being eligible for a 5 year carryover. To be a "qualified contribution," the contribution generally must be made in cash to a qualifying organization and must not be for the establishment or maintenance of an existing donor advised fund or be attributable to a contribution carryover from a prior year.

Charitable Contributions by Individuals. For the 2020 tax year, individuals who elect not to itemize deductions may claim a deduction of up to \$300 for certain "qualified contributions." To be a "qualified contribution," the contribution generally must be made in cash to a qualifying organization and must not be for the establishment or maintenance of an existing donor advised fund or be attributable to a contribution carryover from a prior year.

In addition, for individuals, the deduction for charitable contributions generally is limited to 50% of the individual's AGI. For the 2020 tax year, the CARES Act permits individuals to deduct the amount of any "qualified contribution" to the extent that the aggregate of such contributions by the individual does not exceed the excess of 100% of the individual's adjusted gross income (as defined for this purpose) over the amount of all other charitable contributions so allowed, with any excess generally being eligible for a 5 year carryover.

Sector-Specific Provisions for Nonprofits

Food Banks and Food-Assistance Nonprofits. The Act allocates \$450 million for commodities and distribution of emergency food assistance through community partners, including food banks.

Legal Aid. The Act allocates \$50 million to the Legal Services Corporation, which in turn funds legal aid organizations across the county, to address the increased need for legal services due to coronavirus.

Arts and Humanities. The Act contains \$75 million for National Endowment of the Arts grants, including funding to state arts agencies and other partners in an effort to help local, state, and regional communities provide continued access to cultural organizations and institutions of learning. The Act likewise provides \$75 million for National Endowment for the Humanities grants, including funding for state humanities councils and other partners in an effort to help local, state, and regional communities provide continued access to cultural organizations and institutions of learning.

Substance Abuse and Mental Health. The Act provides \$425 million to address mental health and substance use disorders as a result of the coronavirus pandemic. This includes \$250 million to Certified Community Behavioral Health Clinics, \$50 million for suicide prevention, and \$100 million in flexible grant money to address mental health, substance use disorders, and provide resources and support to youth and the homeless during the pandemic.

Children and Families. The Act allocates \$6.3 billion to the Department of Health and Human Services' Administration for Children and Families. This includes \$3.5 billion in grants to states to provide assistance to child care providers and to assist certain families with child care; \$1 billion in community services block grants which go directly to local community-based organizations to provide a wide-range of social services and emergency assistance; \$45 million for family violence shelters; and \$25 million for programs providing services and housing for runaway and homeless youth.

Looking Ahead

Nonprofit organizations are facing numerous challenges in the midst of this public health crisis and the economic maladies it has caused. While these challenges will continue, the CARES Act creates avenues for immediate relief to help keep employees on the payroll and creates incentives for those who can afford it to increase their charitable giving. Additionally, the Act allocates much-needed funding to nonprofits in several critical sectors.

Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney. For guidance on COVID-19 nonprofit issues, please contact [Tad Heuer](#) or [Scott Bloomberg](#).

What Healthcare Providers Need to Know about the CARES Act

Monday, March 30, 2020

Overview

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history.

For healthcare providers struggling to cope with an unprecedented influx of critically ill patients and limited, scarce resources (ranging from limited hospital beds, medical equipment such as ventilators, and personal protective equipment in short supply), the stimulus comes at a time of great need.

The cornerstone of the Act for healthcare providers is a \$100 billion appropriation in emergency funding broadly available to healthcare providers responding to COVID-19 with funds disbursed through an application process administered by the Department of Health and Human Services (HHS). Healthcare providers serving the Medicare population will also benefit from a temporary freeze on 2% mandatory cuts to Medicare under budget sequestration in place since March 1, 2013. Under the final legislation, hospitals, physicians, nursing homes, home health agencies, and other furnishing care to Medicare beneficiaries would see this increased payment boost from May 1, 2020 through December 31, 2020.

Other key provisions include a dramatic expansion in HHS’s ability to waive Medicare telehealth flexibilities, opening up a pathway for Medicare beneficiaries to receive telehealth services from a broader range of providers and, potentially, through a broader range of technologies. The CARES Act also creates a new Medicare “add-on” for hospital inpatients diagnosed with COVID-19 during the public health emergency, increasing Medicare payment rates by 20% for this critical population. Finally, Part A providers and Part B suppliers will be able to apply for accelerated payments through an expanded program from the Centers for Medicare & Medicaid Services (CMS) for unbilled or unpaid claims (click [HERE](#) for CMS’ Fact Sheet on the expanded Accelerated and Advance Payment Program).

Lastly, the Act also continues the so-called “health extenders”, including a delay in the pending Medicaid Disproportionate Share Hospital Payment (DSH) cuts through November 30, 2020. Included in the health extenders are a number of critical provisions for safety net providers and programs, including an extension in funding for federally qualified community health centers (FQHCs), teaching health center graduate medical education (GME payments), and the Money Follows the Person demonstration.

We discuss these and other key provisions for healthcare providers below.

Key Points

- **\$100 Billion Appropriation for Healthcare Providers Responding to COVID-19.** Perhaps garnering more press attention than all of the other healthcare-related provisions in the latest stimulus bill put together, and for good reason, the Act appropriates \$100 billion to broadly “prevent, prepare for, and respond to” COVID-19. Notably the language in the appropriation is left broad, granting the Secretary of HHS wide discretion to administer these funds, through grants or otherwise, to “eligible health care providers” for “health care related expenses or lost revenues” attributable to COVID-19. Congress also left immensely broad the definition of providers to whom payments can be made – they include Medicare or Medicaid enrolled suppliers and providers, public entities, and any entity in the United States that “provides diagnoses, testing, or care for individuals with possible or actual cases of COVID-19.”

The level of discretion granted to HHS by Congress cannot be overstated. While Congress directs HHS to establish a process whereby providers must submit an application setting forth their need for funds in order to receive a grant, and to require grant recipients to submit relevant reports and documentation, there are very few strings for how these dollars must be spent and how they are paid. So, for example, the appropriation will allow for funds to be expended on a variety of non-healthcare items and services, including: construction of temporary buildings, leasing of properties, purchase of medical supplies and PPE, workforce training, and more.

Providers interested in grant funding should be on the watch for grant/funding opportunities in the near future from HHS. We expect HHS to develop an application process in the coming days and weeks, as well as to issue more detailed guidance on funding priorities, opportunities, and restrictions.

- **\$1.32 Billion for FQHCs.** In addition to the \$100 billion fund for health care providers generally, the CARES Act specifically authorizes \$1.32 billion in supplemental funding for the detection, prevention diagnosis, and treatment of COVID-19 by FQHCs. We anticipate such funding will be administered similar to existing section 330 funding.
- **Relief From the 2% Medicare Sequester.** The Budget Control Act of 2011, and later the American Taxpayer Relief Act of 2012, put in place a mandatory budget sequestration, resulting in a 2% reduction in Medicare fee-for-service claims beginning March 1, 2013. For example, since 2013 a physician providing a service for which Medicare allows \$100 has been paid a rate of \$78.40 ($(\$100 \times 80\%) - 2\% = \78.40). Section 3709 of the CARES Act prevents this 2% reduction from applying from May 1, 2020 through December 31, 2020. Hospitals, physician, skilled nursing facilities, home health agencies, and other Medicare providers and suppliers will see a temporary increase in payments during this time period. Note that to account for this temporary freeze, the legislation also extends the effect of sequestration by a year (now through fiscal year 2030).
- **Hospital Add-on for COVID-19 Services.** Acute care hospitals are currently paid for inpatient hospital services furnished to Medicare beneficiaries based on a beneficiary’s assignment to a particular diagnosis-related group, or MS-DRG. Depending upon a beneficiary’s diagnosis and severity of illness, at discharge, a patient is assigned to a particular MS-DRG, which has a pre-assigned payment rate from the Medicare program. In most cases, the payment made to a

hospital for a particular MS-DRG is agnostic to the types of services and procedures a Medicare inpatient receives, incentivizing hospitals to use resources wisely in managing any given patient.

In recognition of the extraordinary efforts and unanticipated costs involved in managing patients with COVID-19 in the inpatient setting, section 3710 of the Act increases the weighting factors applied to the MS-DRG to which any given COVID-19 patient is assigned by 20%. CMS will identify eligible discharges through the use of diagnosis and/or condition codes and will implement the payment add-on through program instruction, meaning we expect the process to be in place in relatively short-order. Note that effective April 1, 2020, CMS has established a new diagnosis code, U07.1, to identify cases of COVID-19. Depending on the procedure codes and demographic information of the patient, one of several MS-DRGs will be assigned.

- **Broad New Telehealth Flexibilities in Medicare.** To address some inherent limits in the current Medicare telehealth benefit (for example, in most cases a Medicare provider is only paid for telehealth services provided to a beneficiary physically present in a healthcare facility in a rural area), on March 4, 2020 President Trump signed into law the *first* COVID-19 supplemental (the Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020) extending flexibilities to HHS in administering the telehealth benefit. In particular, that legislation allows a Medicare beneficiary to receive telehealth services from any location, including their own home. Still, it left in place a number of restrictions, including the limitation on who can be a “qualified” telehealth provider and the types of equipment that must be used in a telehealth encounter.

The Act includes a number of provisions enhancing the flexibility and availability of telehealth benefits. Section 3703 grants the Secretary of HHS broad authority to waive *any* of the existing Medicare telehealth requirements. Going forward, we expect HHS will use this authority to issue guidance further relaxing who can provide telehealth services, and in what settings. So, too, section 3704 gives FQHCs new flexibilities to furnish telehealth services to beneficiaries in their homes, paying providers at rates comparable to telehealth services under the Medicare Physician Fee Schedule. Section 3705 waives the face-to-face requirement for home dialysis patients, allowing increased use of telehealth for Medicare patients receiving home dialysis. Finally, section 3706 of the Act permits the physician recertification visit authorizing an extension of the hospice benefit to be conducted via telehealth during the emergency period.

- **New Flexibilities for IRFs and LTC Hospitals.** Recognizing the need for flexibility in managing patient populations between settings of care, section 3711 makes several technical changes designed to remove barriers to hospitals transferring patients out to their facilities and into either Inpatient Rehabilitation Facilities (IRFs) or Long Term Care Hospitals (LTCHs) to free up much-needed bed space. With respect to IRFs, the Act freezes the so-called 3-hour rule, which requires IRFs to provide 3 hours of therapy per day to patients, at least five days per week. With respect to LTCHs, the Act pauses the current site-neutral payment methodology applicable to LTCHs that has been in place since 2016 under the Pathway for SGR Reform Act of 2013, and similarly waives a requirement that a LTCH must have no more than 50% of its Medicare cases paid at the site-neutral rate to receive the otherwise fee-schedule payable rate. We understand that some state hospital associations have also asked CMS for additional flexibilities for IRFs, and CMS is considering those requests separately from implementation of the Act.
- **Expanding the Medicare Accelerated Payment Program.** While Medicare already has in place an “Accelerated and Advance Payment Program” to allow providers and suppliers of Medicare

covered items and services in financial distress to receive an accelerated or advance payment, section 3719 of the Act expands this program by increasing the types of facilities eligible for the program, by expanding the amount of payment available, and lengthening the period for repayment/recoupment. On March 28, 2020 CMS issued a [Fact Sheet](#) on the expanded Accelerated and Advance Payment Program, including a step-by-step guidance for how to request such payments by submitted a request to the appropriate Medicare Administrative Contractor (MAC).

Inpatient acute care hospitals, children's hospitals, and certain cancer hospitals will be able to request up to 100% of the Medicare payment amount for a six-month period. Critical access hospitals (CAH) will be able request up to 125% of their payment amount for a six-month period. These hospital providers will have up to one year from the date the accelerated payment was made to repay the balance. All other Part A provider and Part B suppliers will be able to request up to 100% of the Medicare payment amount for a three-month period, and have 210 days from the date the accelerated payment was made to repay the balance.

- **New Home Health Flexibilities.** Recognizing the need for many COVID-19 patients to receive certain services in their own home as well as the important role of direct support professionals in the acute care setting, the Act implements a number of new flexibilities in these areas. First, section 3707 directs HHS to issue guidance on ways to encourage the use of telehealth, including remote patient monitoring, when furnishing telehealth services to Medicare beneficiaries in their homes. Second, under current law only a physician can order home health services for a Medicare beneficiary. To address what could be a back-log of orders, section 3708 permanently expands the providers that can order home health to include physician assistants, nurse practitioners, and clinical nurse specialists. In addition to directing the Secretary of HHS to issue rulemaking on this new scope of practice expansion, it also extends this same authority to the Medicaid program.

Finally, section 3715 expands Medicaid's home and community-based services benefit (typically provided by states under waivers) to the acute hospital setting. In particular, the C Act authorizes payment by a State Medicaid program for home and community-based services (such as assistance with activities of daily living) furnished in the acute care hospital setting so long as: (1) the services are identified in an individual's person-centered service plan; (2) provided to meet the needs of the individual that are not met through the provision of hospital services; (3) not a substitute for hospital services; and (4) designed to ensure smooth transitions between the acute and community-based settings.

Looking Ahead

The breadth and scope of the CARES Act is unprecedented and it is unsurprising that many of its most critical provisions (and most significant dollar amounts) are focused on those at the frontline of the COVID-19 crisis: healthcare providers. In the coming days and weeks we expect additional information from the Federal agencies tasked with implementing these provisions, including applications for Federal grant funding specific to healthcare providers responding to the public health emergency.

Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney. For guidance on CARES Act healthcare provider issues, please contact [Tom Barker](#) or [Ross Margulies](#).

What Biopharmaceutical and Medical Device Manufacturers Need to Know About the CARES Act

Monday, March 30, 2020

Overview

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history.

This alert focuses on those key provisions of the Act that directly impact biopharmaceutical and medical device manufacturers. Our CARES Act alerts focused on employers, loan provisions, the healthcare provider industry, and labs/diagnostics are available on Foley Hoag’s website or by contacting your Foley Hoag attorney.

In immediate response to COVID-19, the Act requires health insurance plans (that satisfy minimum essential coverage) to cover an evidence-based item or service that has in effect an A or B rating from the United States Preventive Task Force (USPTF) or an immunization that has in effect a recommendation from the Advisory Committee on Immunization Practices of the Centers for Disease Control (CDC). It also requires Medicare Part B and Medicare Advantage prescription drug plans (MA-PDs) to cover COVID-19 vaccines, and requires MA-PDs and standalone Part D plans (PDPs) to allow beneficiaries to fill their Part D prescriptions for a maximum of 90-days, with exceptions for drugs with safety edits. Finally, the Act suspends the 2% sequestration cut under Medicare, which effectively increases the payment for Medicare Part B drugs, and it provides reimbursement relief for suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS).

The CARES Act also addresses general emergency and pandemic preparedness. It expands the National Stockpile to include not only drugs and biologicals, but also personal protective equipment, ancillary medical supplies, and other applicable supplies required for the administration of drugs, vaccines, and other biological products, medical devices, and diagnostic tests, and it treats classifies respiratory protective devices as covered countermeasures. The Act also imposes on manufacturers requirements to notify the Secretary of shortages not only for drugs, but also potential shortages in the manufacture of active ingredients for such drugs and for medical devices necessary to address a public health emergency. Finally, the legislation directs the Food and Drug Administration (FDA) to prioritize review of certain drug approvals that could help combat a public health emergency.

Apart from the changes directly related to the COVID-19 crisis and general emergency preparedness, the Act also proposes sweeping changes to the over-the-counter (OTC) monograph process. The OTC process has long been criticized for being extraordinarily administratively burdensome for the Food and

Drug Administration (FDA) to initiate, and therefore the proposed replacement would significantly modernize the process and provide for more regular updates. The proposed new OTC process would involve the issuance of administrative orders, financed by a new user fee program, that would include an abbreviated public comment process, formal dispute resolution, hearings, and judicial review of final agency actions. OTC products that are marketed but do not pursue the administrative order process would be considered misbranded—OTC products that are currently marketed would be grandfathered in and considered GRASE.

Key Points

Covering COVID-19 Products and Services. Requires group health plans and health insurance issuers offering group or individual health insurance to cover, within 15 days of the recommendations below and without cost-sharing, any qualifying coronavirus preventive service. A “qualifying coronavirus preventive service” includes an evidence-based item or service that has in effect an A or B rating from the USPTF or an immunization that has in effect a recommendation from the Advisory Committee on Immunization Practices of the CDC. The CARES Act also requires coverage COVID-19 vaccines under Medicare Part B and Medicare Advantage and waives beneficiary cost-sharing.

Increasing Payment For Part B Drugs and DMEPOS. Suspends the 2% sequestration payment cuts under Medicare until December 31, 2020, which affects payment for drugs and biologicals and effectively increases payment from approximately ASP + 4% to ASP + 6%. It also ensures that payment for DMEPOS in rural and noncontiguous areas is maintained at its current payment amount through December 31, 2020 as originally planned, or longer if the public health emergency is still in place. Furthermore, the legislation provides a slight payment relief for DMEPOS furnished in areas other than rural or noncontiguous areas by providing a blended payment amount of 75% of the adjusted fee schedule and 25% of the unadjusted fee schedule (instead of 100% of the adjusted fee schedule) through December 31, 2020.

Allowing 90-Day Refills Under Medicare Part D. Requires MA-PD and Part D plans to allow beneficiaries to obtain a three-month supply of a Part D drug notwithstanding any cost and utilization management the plan has in place, except where safety edit applies.

Expanding the Strategic National Stockpile. Expands the medical products that the United States maintains in the Strategic National Stockpile to explicitly include “personal protective equipment, ancillary medical supplies, and other applicable supplies required for the administration of drugs, vaccines, and other biological products, medical devices, and diagnostic tests”. The legislation also classifies respiratory protective devices as covered countermeasures.

Combating Zoonotic Diseases. Requires the Secretary to prioritize the review, upon the sponsor’s request, of zoonotic animal drug applications that indicates it could potentially prevent or treat zoonotic disease in animals, including a vector borne-disease, that has the potential to cause serious adverse health consequences in humans.

Addressing Drug Shortages. Requires the Secretary to prioritize the review of supplemental drug approvals and abbreviated new drug applications that could mitigate potential shortages of relevant drugs. It also requires manufacturers to notify the Secretary of potential disruptions in the supply of drugs critical to a declared public health emergency, including disruptions in the manufacture of an active pharmaceutical ingredient that is likely to lead to a shortage of such a drug, and medical devices

necessary to respond to a public health emergency. For identified drugs/active ingredients, the manufacturer is also required to develop a “risk management plan” that identifies and evaluates risks to the supply of the drug.

Report on Securing Domestic Product Supply Chains. Commissions the National Academies of Sciences, Engineering and Medicine to examine the security of the United States product supply chain. The objective is to assess and evaluate the dependence of the United States on critical drugs and devices that are sourced or manufactured outside the country. This includes assessing the potential economic impact of increasing domestic manufacturing.

Reforming the OTC Process. Modifies the OTC drug monograph review process, deeming currently marketed OTC drugs as GRASE. It directs the Secretary to report to Congress an evaluation of the cough and cold monograph with respect to children under age six. It replaces the existing process with an administrative order process, which includes an abbreviated public comment process, formal dispute resolution, hearings, and judicial review of final agency actions. The process also allows for an 18-month exclusivity period for the requestor of an administrative order to help spur innovation. To support this new process, the legislation establishes a user fee program, and OTC drugs that do not comply with the monograph requirements are considered misbranded.

Looking Ahead

The CARES Act, especially as it relates to the biopharmaceutical industry, was remarkably self-contained to the COVID-19 public health emergency and did not include any of the controversial drug pricing policies proposed by the 116th Congress in other drug pricing legislation. The most significant non-COVID-19 provisions in the CARES Act involves the sweeping reforms to the OTC process, and despite the new user fee program created to help the FDA administer the OTC process, it is unclear how quickly the FDA could implement these changes given the ongoing public health emergency.

At least for the short-term, we are doubtful that Congress will pick up any deeply controversial drug pricing reform package as Congress will mostly be focused on ensuring an adequate healthcare response to COVID-19 and on shoring up the economy as it falters during this steep cessation of economic activity. As Congress prepares for another likely COVID-19 package in May, that may be drug pricing reform policies included in the package, but any such changes, if at all, are likely to be limited and incremental in nature.

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What the Real Estate Sector Needs to Know about the CARES Act

Monday, March 30, 2020

Overview

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history.

While few provisions in the Act are targeted at the real estate sector specifically, the forgivable SBA loans, Net Operating Loss Rule amendments, interest expense deductions, payroll tax credits, and other programs that extend to all employers will be of great benefit to the real estate industry.

The most significant benefit to real estate developers is a retroactive amendment to the bonus depreciation rules in the federal Tax Code that allow more favorable deductions improvements to nonresidential real property, including retroactively for the past two tax years. Effective immediately, taxpayers may claim a deduction in the amount of 100% bonus depreciation for “qualified improvement property.” Historically, the limit on claims was capped at 50% bonus depreciation, while the 2017 amendments to the Tax Code actually functionally eliminated claims for bonus depreciation entirely due to a drafting error. Business can now immediately expense costs for qualifying improvements through the bonus depreciation rules.

The Act also includes a foreclosure moratorium on certain residential real estate, creating mandatory forbearance periods before servicers of residential loans can foreclose. The forbearance periods differ depending on the size of the property.

Additional provisions provide increases in funding for Department of Housing and Urban Development (“HUD”) programs that often provide grants, subsidies, and other indirect benefits to real estate developers, such as the Community Development Block Grant (“CDBG”) program the Section 8 Housing Assistance Voucher program.

Key Points

Lending to Eligible Businesses. The Act provides \$454 billion in low-interest loans, loan guarantees, and other investments in programs of facilities established by the Federal Reserve to support lending to eligible businesses, States, or municipalities. The legislation includes a directive to the Secretary of Treasury to establish a program from these funds to provide low-interest loans to mid-sized businesses with between 500 and 10,000 employees. All businesses

receiving loans under this program must agree to certain conditions including maintaining 90 percent of their workforce on payroll through September 2020, restricting dividends or stock repurchases while the loan is outstanding, and restricting outsourcing or offshoring for two years after completing repayment of the loans.

Paycheck Protection Program for Small Businesses. The Act allots approximately \$350 billion to help small businesses, including non-profits, maintain their payrolls for eight weeks. The legislation authorizes the Small Business Administration to provide businesses with fewer than 500 employees loans of up to \$10 million per business to cover payroll and other authorized expenses. The Government will forgive the loans for businesses that maintain their payroll and only use the funds to cover authorized expenses. The program is available until June 30, 2020.

Expansion of Business Depreciation Rules for Qualified Improvement Property. The CARES Act fixes a mistake in the 2017 tax reform amendments to the tax code (the 2017 Tax Act), which eliminated tax deduction claims for bonus depreciation costs on many interior non-residential real estate improvements, equipment purchases and other repairs and renovations. Historically, the Tax Code capped taxpayer claims at 50% bonus depreciation for several categories of improvements, such as qualifying business equipment, interior improvements to leased commercial space, restaurants, and retail businesses. Due to a drafting error, the 2017 Tax Act functionally eliminated those deductions.

Now, as a result of the CARES Act, taxpayers may immediately claim deductions for improvements to “qualified improvement properties” under the Tax Code’s bonus depreciation rules. Moreover, the changes apply retroactively, so taxpayers may file amendments to claim the deductions for tax years 2018 and 2019.

Forbearance Moratorium. The Act acknowledges the direct and indirect impacts of the COVID-19 epidemic on housing security and seeks to keep adversely impacted individuals, both homeowners and renters, in their homes for at least the next several months. In that regard, any borrower of a federally-backed mortgage loan who is experiencing financial hardship because of the COVID-19 emergency may request a forbearance of up to 180 days. A borrower is required to provide only an attestation of hardship and is not required to provide any other supporting documentation. No interest will accrue on the loan during the forbearance period.

Eviction Moratorium. The Act also provides temporary protection to renters. For certain covered properties, the Act imposes a temporary moratorium on eviction filings or attempting to recover possession of property from a tenant as a result of a tenant’s failure to pay rent during the 120-day period following enactment of the Act. Covered landlords are also prohibited from charging late fees or penalties for late payments of rent during the 120-day period.

Federal Government Contractors. Federal government contractors whose contract performance has been impacted by the closure of their work sites may benefit from a CARES Act provision that allows agencies to modify the terms and conditions of their government

contracts to continue to pay contractors. However, reimbursement authorization is limited to any paid leave, including sick leave, that a contractor provides to “keep its employees or subcontractors in a ready state” and “in no event beyond September 30, 2020.” The reimbursement will be reduced by other credits received.

Real Estate-Related Appropriations. The Act also makes a number of significant new appropriations for programs of relevance to the real estate sector. HUD will establish its own procedures for how those new appropriated funds will be distributed or how applications for those new funds can be made.

- \$5 billion to HUD for the Community Development Block Grant program, to be disbursed through September 30, 2022.
- \$1.25 billion in tenant rental assistance, preserve Section 8 rental assistance for who lose income due to the current crisis.
- \$685 million to assist public housing agencies facing operating shortfalls due to reduced tenant rent payments and for containing the spread of COVID-19 in public housing properties.
- Almost \$1.5 billion for various targeted housing and rental programs.

Looking Ahead

The real estate sector faces numerous challenges with respect to issues created by the current crisis, at the municipal, state, and federal levels, involving issues such as property valuation and taxation, rent challenges faced by commercial and residential tenants, as well as ensuring viability of construction of new projects and management and maintenance of existing ones. The CARES Act provides certain options for immediate relief to the sector, both in the form of the emergency loan fund as well as more targeted provisions. However, it remains to be seen whether Congress will need to pass additional relief to assist the real estate sector in the months to come.

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What the Transportation Sector Needs to Know about the CARES Act

Monday, March 30, 2020

Overview

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history.

Several provisions of the Act are targeted at the transportation sector, as summarized below. As has been well publicized, many provisions deal with assistance to the airline industry. Also included in the Act is an additional appropriation to the United States Department of Transportation (“USDOT”) for salaries and expenses to “*prevent, prepare for, and respond to coronavirus, including necessary expenses for operating costs and capital outlays,*” and an additional “obligation limitation” for the Federal Motor Carrier Safety Administration for the same purposes.

The Act also clarifies the authority of the Federal Highway Administration to permit overweight vehicles and heavy loads to travel the nation’s roadways to permit for the free flow of supplies during the outbreak through the end of the fiscal year, and authorizes USDOT to waive or postpone the requirements of “Highway Safety Grants” if it determines that the outbreak is having an impact on the implementation of the grants or the grant program. Finally, the Act provides additional funding to the USDOT Inspector General to fund additional oversight activities related to these activities.

Key Points

Airlines and National Security. The Act includes \$454 billion in emergency loans to be made available to American businesses generally and aviation in specific, as well as loans, operating under similar terms, for airlines and businesses involved in maintaining national security (most of which is aimed at maintaining operations at the Nation’s airports facing a record drop in passenger volume). The Act designates \$25 billion in loans and loan guarantees for commercial airlines, and another \$4 billion for cargo air carriers. National Security businesses are allocated \$17 billion for loans and loan guarantees.

Airline Requirements and Relief. The Act expands, with conditions, Federal authority over the operations of air carriers, while simultaneously attempting to support the long-term financial viability of the industry. It authorizes the Secretary of Transportation to require an air carrier receiving loans and loan guarantees under the act to maintain scheduled air transportation service as the Secretary deems necessary to any point served by that carrier before March 1, 2020. However, the Act also provides significant assistance to air carriers, including in the form of a temporary reprieve from certain excise taxes for the period beginning after March 27, 2020 and ending before January 1, 2021.

Funding for AMTRAK. The Act includes assistance to the National Railroad Passenger Corporation (“AMTRAK”) in the form of \$492 million in “Northeast Corridor Grants” and \$526 million for the “National Network Grant Program” to “*prevent, prepare for, and respond to coronavirus.*” It also permits AMTRAK to combine this grant authority and authorizes the Secretary of Transportation to make new or amend existing grants to the National Railroad Passenger Corporation for activities associated with the Northeast Corridor, and it limits AMTRAK’s repayment obligations in certain respects.

Federal Transit Administration Funding. The Act provides \$25 billion to the Federal Transit Administration (“FTA”) for “Transit Infrastructure Grants” to remain available until expended and to be used “*to prevent, prepare for, and respond to coronavirus.*” The Act provides that the funds shall be apportioned not later than 7 days after the date of enactment of the Act using fiscal year 2020 apportionment formulas. Not more than 0.75 percent (but not more than \$75,000,000) of the grant funds for transit infrastructure grants provided under this the Act may be used for administrative expenses and ongoing program management oversight.

Included as authorized expenses under the Act are reimbursement for operating costs to maintain service and lost revenue due to the outbreak, including the purchase of personal protective equipment, and paying the administrative leave of operations personnel due to reductions in service. To speed the expense of the funds, the Act provides that these operating expenses need not be included in a transportation improvement program, long-range transportation plan, statewide transportation plan, or a statewide transportation improvement program. The Federal share of grants to be made available can be as high as 100%.

Looking Ahead

The transportation sector, like most of the nation’s economy, has been and will continue to be hard hit in this crisis. It is unclear the full extent of the impacts, but as of today, it is clear that transit agencies and AMTRAK have been greatly impacted by the loss of farebox revenues while dealing with largely fixed operating costs and increased operating costs as the work to harden vehicles against the virus even while they adjust service plans to account for declining ridership. Still, they must keep operating to move people during the crisis. Both highway and transit agencies are experiencing impacts to their capital and maintenance programs, already impacted by huge backlogs, as much work has been curtailed or shut down and workers strive to make workplaces safe. And, the airline industry will continue to be greatly impacted by the huge decline in passenger volume.

All of these factors point to the inescapable conclusion that these funds will go fast and, while helpful, will not nearly cover the impact of the outbreak. The sector should look to additional assistance in the future and to a stimulus-like action similar to the American Recovery and Reinvestment Act of 2009 that was designed to stimulate the economy in the wake of the 2008-2009 recession.

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What State and Local Governments Need to Know about the CARES Act

Monday, March 30, 2020

Overview

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history.

For state and local governments who are coordinating emergency public service responses across a broad range of services — from health response to education to transit to housing services — the Act provides a range of emergency supplemental appropriations that will prove critical to meeting those needs in the coming months. The Senate Appropriations Committee estimates that more than 80% of the \$340 billion in emergency appropriations will go to state and local governments and communities.

The Act also creates several emergency loan funds for states and municipalities, and makes additional legislative changes that will be of interest to the state and local provision of services in areas including education, housing, and unemployment benefits.

Key Points

New Direct Financial Assistance

- **Coronavirus Relief Fund.** The Act creates a **\$150 billion** Relief Fund for states and local governments to cover expenditures incurred due to COVID-19 between March 1 and December 30, 2020. Funds will be disbursed within 30 days of enactment, in amounts available are proportional to state population. Crucially, local governments can make *direct requests stating their proposed use of funds*, and payment to local governments will be made directly and deducted from the amount available to their state.
- **Emergency Loans.** The Act creates a **\$454 billion** loan fund to be administered by the Treasury to “provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus. Regulations for applications are to be promulgated within ten days after enactment.

New Appropriations and Legislation

Almost every federal agency is set to receive significant new appropriations for programs that are relied upon by state and local governments. Each federal agency will establish its own procedures for how

those new appropriated funds will be distributed or how applications for those new funds can be made. In addition, there are several of key legislative changes included in the Act.

Public Safety

- **FEMA Disaster Relief.** Through FEMA, a **\$45 billion** Disaster Relief Fund (in addition to \$45 billion in FEMA operational funds) to provide major disaster and general financial assistance to governments and nonprofits providing critical services.
- **National Guard.** Through the Department of Defense, **\$1.5 billion** for assisting states deploying the National Guard (between Army and Air Force) in response to coronavirus.
- **Police.** Through the Department of Justice, **\$850 million** for Byrne Justice Assistance Grant (JAG) programs for state and local governments for criminal justice needs related to COVID-19, including overtime, personal protective equipment, and medical needs and supplies for detainees. These awards are expressly *not* subject to the contentious “1373, Notice, and Access” conditions that have been applied to JAG grants in recent years.
- **Emergency Public Safety, Food, & Shelter.** Through FEMA, **\$400 million** in grant funds for firefighters (including purchases of PPE), emergency managers, and emergency food and shelter providers.
- **REAL ID Extension Legislation.** The Act extends the deadline for states to comply with the REAL ID driver license and identification card issuance requirements until not earlier than September 30, 2021.

Elementary and Secondary Education

- **Local Education Funding.** Through the Department of Education, the Act appropriates **\$13.5 billion** in emergency formula grants to states for elementary and secondary education, and **\$3 billion** in flexible formula funding to state governors.

At least ninety percent of grants to states must be made to local educational agencies (LEAs), in proportion to the funds those LEAs received under Title I in the most recent fiscal year. The LEAs may use fund for any ESEA activity, coronavirus preparation, assisting disadvantaged populations, improving preparedness and training, sanitizing of facilities, planning for closures and IDEA services, purchasing educational technology for students, providing mental health services, and developing summer and supplemental programs.

- **Local Education Legislation.** Our separate alert on education provisions details a number of provisions applicable to elementary and secondary education, including the authority of the Secretary of Education to waive a variety of statutory and regulatory provisions under the federal ESEA at the request of states and/or local educational agencies. These waivers will also be applicable to public charter schools.

Higher Education

- **Higher Education Funding.** Through the Department of Education, the Act appropriates **\$14 billion** to higher education institutions for any cost associated with significant changes to the delivery of instruction due to coronavirus, with certain express exceptions. Priority given to schools with a high number of Pell Grant recipients.

The Act provides that 90% of funds are to be devoted to “each institution of higher education,” 7.5% to “address needs directly related to coronavirus”, and 2.5% to institutions with “the greatest unmet needs related to coronavirus.” Funds will be made available using the Title IV distribution system. At least 50% of funds must be used to provide emergency financial aid grants to students to cover certain eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care and child care. The other 50% may be used to account for things like lost revenue and technology costs associated with the shift to online learning.

- **Higher Education Legislation.** Our separate alert on education provisions details a number of campus-based aid waivers for higher education institutions and their students pertaining primarily to requirements applicable to financial aid programs, including non-federal share requirements, work-study requirements, loan refunds, and Pell grants. State colleges and universities will want to be aware of these relief provisions.

Housing

- **Housing Community Services Block Grants.** Through HUD, **\$5 billion** in formula funding to states and communities for housing, homelessness, and public health.
- **Homeless Assistance Grants.** Through HUD, **\$4 billion** for states and local governments to provide services to the existing homeless population and in homelessness prevention funding.
- **Tenant-Based Rental Assistance.** Through HUD, **\$1.25 billion** to assist public housing agencies maintain normal operations, divided between \$850 million to preserve Section 8 voucher rental assistance and \$400 million to make adjustments in CY2020 section 8 renewal funding allocations.
- **Rental Assistance.** Through HUD, **\$1 billion** to assist make up for reduced tenant rental payments to owners or sponsors of section 8 housing as a result of coronavirus, \$50 million for assistance to owners or sponsors of section 202 elderly housing as a result of coronavirus, and \$15 million for assistance to owners or sponsors of section 811 disabled housing.
- **LIHEAP.** Through HUD, **\$900 million** in Low Income Home Energy Assistance Funds assistance funds.
- **Public Housing Operating Fund.** Through HUD, **\$685 million** to assist public housing agencies facing operating shortfalls due to reduced tenant rent payments and for containing the spread of coronavirus in public housing properties.

- **Forbearance and Eviction Moratorium Legislation.** The Act establishes both a forbearance moratorium and an eviction moratorium. With respect to forbearance, the Act allows those with federally-backed mortgage loans to seek forbearance of up to 180 days. With respect to evictions, the Act establishes a 120-day moratorium on eviction filings relating to units either in a covered federal housing program or under federally-backed mortgage loans.

Health and Welfare

- **Local Health Preparedness.** Through the CDC, **\$1.5 billion** for grants to state and local preparedness and response activities, including surveillance, epidemiology, lab capacity, infection control, mitigation, communications, and public health analytics infrastructure modernization.
- **Children and Families.** Through the Department of Health and Human Services, **\$3.5 billion** in state Child Care and Development Block Grants for immediate assistance to child care providers service low-income families, **\$750 million** to Head Start, **\$1 billion** in Community Services Block Grants to local community-based social services and emergency assistance organizations, **\$45 million** in state grants for child welfare services, and **\$45 million** in formula grants for temporary housing and assistance to victims of family, domestic, and dating violence.
- **Substance Abuse and Mental Health Services.** Through the Department of Health and Human Services, **\$250 million** for Certified Community Behavior Health Clinics, **\$50 million** for suicide prevention programs, and **\$100 million** for grants to public entities to enable such entities to address emergency substance abuse or mental health needs in local communities.
- **Elder and Disability Services.** Through the Department of Health and Human Services, **\$955 million** for senior nutrition, community-based support services, and independent living.
- **Elder Nutrition Services Legislation.** The Act allows state and local aging agencies to transfer certain otherwise-dedicated nutrition services funds to meet emergency needs. It also provides certain waivers for home-delivered nutrition services for individuals who are practicing social distancing.

Transit and Infrastructure

- **Public Transit.** Through the Department of Transportation, **\$25 billion** in emergency transit grants for state and local transit providers for operating and capital expenses through the Federal Transit Administration. Funds may be used for operating expenses of transit agencies related to coronavirus response, including reimbursement for operating costs to maintain service and lost revenue, purchase of PPE, and paying administrative leave of operations personnel due to reductions in service.
- **Airports.** Through the Department of Transportation, **\$100 million** for general aviation airports.
- **Harbors Legislation.** Exempts from discretionary spending caps the Army Corps of Engineers funding provided through the Harbor Maintenance Trust Fund, which may allow for increased harbor dredging expenditures by the Corps.

Unemployment and Economic Development

- **Economic Development.** Through the Economic Development Administration, **\$1.5 billion** in grants for economic development to states communities and through September 2022 for necessary expenses responding to economic injury as a result of coronavirus.
- **Dislocated Worker National Reserve.** Through the Department of Labor, **\$345 million** in grants for states and communities to respond to workforce impacts as a result of coronavirus.
- **Fishery Assistance.** Through the Department of Commerce, **\$300 million** for financial assistance to “subsistence, commercial, and charter fisher participants”, including aquaculture businesses and “other fishery-related businesses,” suffering revenue losses due to coronavirus greater than 35% as compared to prior 5-year average revenue.
- **Emergency Unemployment Relief Legislation.** The Act allows the Secretary of Labor to give states “maximum flexibility” in interpreting their unemployment compensation laws with respect to reimbursing employers with respect to payments and as to assessing penalties and interest. The Act also allows for federal reimbursement of certain state unemployment funds, and provides for temporary “full federal funding” of the first week of compensable regular unemployment for states with no “waiting week,” and authorizes emergency state staffing flexibility to assist with processing unemployment claims. States will also be eligible for grants for short-time compensation programs.

Food Assistance

- **Food Assistance.** Through the USDA, the Act appropriates **\$8.8 billion** for child nutrition programs in schools, **\$15.5 billion** for additional SNAP funds, and **\$450 million** for the Emergency Food Assistance Program.

Elections

- **Election Preparation.** Through the Election Assistance Commission, **\$400 million** in state election security grants to prepare for the 2020 election cycle.

Public Arts

- **Arts Organizations.** Through the National Endowment for the Arts (**\$75 million**) and the National Endowment for the Humanities (**\$75 million**), grants for local, state, and regional arts and humanities councils, with 40% going to state arts agencies and regional arts organizations, and 60% going to direct grants, with matching requirements being waived.

Rural Communities

- **Rural Utilities and Broadband.** Through USDA, **\$100 million** for constructing or improving rural broadband service, and \$25 million to support distance learning and telemedicine in rural areas.

- **Rural Television.** Through the Corporation for Public Broadcasting, **\$75 million** for stabilization grants for small and rural public telecommunications stations.
- **Rural Business Loans.** Through USDA, **\$20.5 million** for loans to rural businesses for coronavirus preparation and response.

Looking Ahead

States and municipalities face numerous challenges in the current crisis, not only in responding to the immediate public health crisis, but addressing the numerous ancillary economic and social services impacts of the crisis on their citizens across a range of key areas from education to housing to transit to public safety.

The CARES Act provides certain options for immediate relief to government entities, both in the form of dedicated emergency loans as well as its more targeted provisions. However, it remains to be seen whether Congress will need to pass additional relief to assist state and local governments in the months to come, particularly if certain states or municipalities are affected disproportionately and require greater funding than is provided by the formula grants through which many of the additional appropriations may be distributed.

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