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Coronavirus Aid, Relief, and Economic Security Act: Impact Summary

On Friday, March 27th, the President signed the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act" or "Act") into law. This sweeping legislation is the most significant stimulus package in our nation's history and it has far-reaching impacts.

Our partner, Lou Vlahos, has prepared a comprehensive summary of the Act's key provisions. Of course, the implementation of many of the initiatives included in the Act will require rule making and regulation. The summary presented in the following pages is intended to be just that — a summary of this very complex legislation. We hope that it will be a useful resource to you, but it is not meant to be legal advice. If you have specific questions regarding the Act, please consult with your professional advisors. Of course, we will continue to monitor developments and we are here to assist you in understanding the Act's impact on you and your business.

SPECIAL REPORT

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TREE TOPS

More than $2 trillion will be provided to individuals, businesses, and states, among others, in response to the coronavirus pandemic under the CARES Act. The legislation includes:

- $500 billion for loans and assistance to companies, as well as state and local governments, including $29 billion for loans to U.S. airlines and related businesses. Participating companies will be restricted with respect to stock buybacks and executive compensation would be restricted. Additional funds would be provided to aviation workers.
- $349 billion in low-interest small business loans that may be partially forgiven.
- Up to $1,200 of payments for individual taxpayers, and $500 per child, phased out when incomes exceed $75,000 for individuals and $150,000 for couples filing jointly.
- An additional $600 per week for those receiving unemployment benefits.
- $150 billion for aid to state, local, and tribal governments.
- A suspension of Medicare sequestration through the end of the year and the extension of several health programs, until December 2020.
- The measure would bar businesses controlled by the president, vice president, members of Congress, and heads of executive departments from receiving loans or assistance under the Treasury Department programs.

SMALL BUSINESSES

7(a) Loans

The CARES Act established a new Paycheck Protection Program to allow small businesses, nonprofits, and individuals seek loans through the Small Business Administration's 7(a) loan program.

The legislation authorizes $349 billion in total 7(a) lending from February 15 through June 30. It contemplates the use of streamlined eligibility criteria.

It also provides $349 billion for the SBA to guarantee 100% of loans made under the new program, as compared with a 75% or 85% guarantee for standard 7(a) loans.

Loans will be available during the covered period for:

- Any business or nonprofit, veterans group or tribal business, with the greater of (i) up to 500 employees or (ii) the number set by the SBA for borrowers operating in a particular industry.
- Sole proprietors, independent contractors, and eligible self-employed workers.
- Hotel and food service chains with 500 or fewer employees per location.

Eligible recipients may receive loans of up to the lesser of $10 million or 250% of their average monthly payroll costs.

Interest rates on such loans during the covered period will be capped at 4%.

Recipients may use the loan proceeds to cover eligible payroll costs -- including salaries, commissions, regular paid leave, and health-care benefits -- as well as mortgage interest, interest on existing debt, rent and utility payments.

Borrowers will be required to make a “good faith certification” that they’ll use the funds to retain workers, maintain payroll, and pay for rent and similar expenses.

The legislation waives rules requiring that recipients pay certain fees, provide collateral, or are unable to obtain credit elsewhere. SBA rules on company affiliates, which are used to determine small business size, are waived for franchises, food or lodging companies with 500 or fewer employees, as well as for businesses that receive financial assistance from a small business investment company.

Approved 7(a) lenders may issue covered loans if they determine a business was operating with salaried employees or paid contractors as of February 15, 2020. The legislation provides $25 million for the Treasury Department to set criteria to allow additional insured banks and credit unions to participate in the program.

The SBA is directed to assume that eligible loan applicants in operation as of February 15, 2020 have been adversely affected by COVID-19, and lenders are required to allow such loan applicants to defer payments for a period of between six and twelve months.

Loan Forgiveness

Recipients of SBA-guaranteed loans under the Paycheck Protection Program may apply for loan forgiveness for loans that are used to fund covered costs over the period from February 15, 2020 through June 30, 2020.

The SBA will pay lenders for any canceled debt, plus accrued interest. Lenders generally will not be subject to enforcement action under the Small Business Act related to loan forgiveness.

The amount of loan forgiveness will be reduced for businesses that fire employees or cut their salary. However, the legislation allows for the rehiring of employees recently terminated and for restoration of recent wage cuts, in each case because of the pandemic.

In general, loan forgiveness will be determined without giving effect to terminations of employees and reductions in wages that occurred between February 15, 2020 and April 26, 2020 (the 30th day after enactment of the CARES Act) if such termination and/or reduction is eliminated prior to June 30, 2020. Certain businesses may receive additional forgiveness for wages paid to tipped employees.

Covered loans will have a maximum maturity of 10 years following a borrower's application for forgiveness. The SBA will continue to guarantee any remaining balances.

Canceled debt will be excluded from a borrowers' gross income for income tax purposes.

The legislation also provides $17 billion for the SBA to pay the principal, interest, and associated fees for loans under the SBA's 7(a), 504, and microloan programs for six months.

Disaster Loans

The legislation provides $10 billion to expand the SBA's disaster loan program from January 31, 2020 through December 31, 2020 to cover businesses, cooperatives, employee stock ownership plans, and tribal businesses with 500 or fewer employees, as well as sole proprietors and independent contractors.

The SBA will waive certain eligibility rules during the covered period for disaster loans made in response to COVID-19.

The legislation also authorizes the SBA to advance as much as $10,000 to existing and newly eligible disaster loan recipients within three days of receiving their applications. Recipients may use the advance funds to pay sick leave to employees affected by COVID-19, retain employees, address interrupted supply chains, make rent or mortgage payments, and repay debt. They will not have to repay the advance funds.

The legislation permanently expands the SBA's disaster loan program to cover small entities affected by emergencies for which the President determines the federal government has primary responsibility, as in the case of the coronavirus outbreak.

Bankruptcy

The legislation allows businesses with as much as $7.5 million in debt to qualify for a streamlined Chapter 11 bankruptcy process, increasing the current debt limit from $2.73 million for eligible small businesses.

For the one-year period beginning March 28, 2020 and ending March 27, 2021, the legislation excludes federal payments related to the coronavirus from income calculations under Chapter 11 bankruptcy proceedings. It also allows debtors experiencing hardship because of COVID-19 to modify existing bankruptcy reorganization plans.

Other Small Business Provisions

The legislation provides:
- $240 million for Small Business Development Centers and Women's Business Development Centers to assist small businesses affected by COVID-19, and $25 million to establish an online platform with related resources.
- $10 million for the Commerce Department's Minority Business Development Agency (MBDA).

In addition, it authorizes:
- $10 million for the MBDA to provide nonmatching grants to minority business centers and chambers of commerce to advise minority-owned businesses how to respond to COVID-19.

The SBA is directed to issue regulations to implement the foregoing program within 15 days of March 27, 2020 (the date of enactment).

The limit on SBA 7(a) express loans was increased to $1 million, from $350,000, through the end of 2020.

The SBA couldn't guarantee more than $100 billion in principal payments for its trust certificates from the date of the bill's enactment through September 30, 2021.

The legislation waives nonfederal fund matching requirements for three months for certain women and minority business centers.

UNEMPLOYMENT & PAID LEAVE

Pandemic Unemployment Assistance

The legislation provides an additional $600 per week in “federal pandemic unemployment compensation” to individuals receiving state unemployment benefits (even if the individual was making less). The extra payment would remain available through July 31, 2020. This payment will be excluded when determining eligibility for Medicaid and the Children’s Health Insurance Program (CHIP).

The legislation also provides, in the case of participating states, an additional 13 weeks of pandemic emergency unemployment compensation to individuals who have exhausted their regular benefits. Emergency benefits will remain available through December 31, 2020.

The legislation allows those individuals who are neither eligible for regular compensation or extended benefits under state law (for example, independent contractors), nor for pandemic unemployment assistance, and who self-certify that they are affected by the coronavirus (as set forth immediately below), to receive pandemic unemployment assistance for as long as 39 weeks, which will include any week for which they receive regular compensation or extended benefits.

Unemployment benefits under that program will be available to individuals who are in quarantine, caring for a diagnosed family member, or out of work because their employer closed due to the coronavirus. The program will also be available to those who are self-employed, have limited work history, or otherwise do not qualify for unemployment benefits. Benefits will not be provided to individuals who can telework with pay or who are receiving other paid leave benefits. The benefit provisions apply retroactively to January 27, 2020 and remain in place through December 31, 2020. Compensation will be provided without any waiting period.

Work-Sharing Programs

States will have 100% of their costs covered for supporting “short-time compensation” programs through December 31, 2020. These voluntary programs will provide workers with prorated unemployment benefits to offset work reductions made by their employer in lieu of a layoff. It will not apply to seasonal or temporary workers.

The legislation provides $100 million for the Labor Department to award grants to states that enact short-time compensation programs.

Leave Program Modifications

The legislation amended the emergency sick leave program that was enacted on March 18, 2020 under the Families First Coronavirus Response Act.

Certain workers who were laid off on or after March 1, 2020, will be eligible to receive family leave benefits if they are rehired.

The Office of Management and Budget is authorized to exclude certain federal government employers and executive branch workers from leave requirements and benefits.

The legislation applies the same caps on the amount employers will be required to pay per employee for the leave programs.

TAXES & REBATES

Recovery Rebates

The legislation provides refundable tax credits of as much as $1,200 per individual, or $2,400 for couples, who file joint tax returns. An additional $500 will be provided for each child.

The credit will be reduced by 5% for the amount by which a taxpayer's income exceeds $150,000 for joint returns, $112,500 for heads of household, and $75,000 for other filers. The rebate completely phases out for incomes exceeding $198,000 for joint filers, $146,500 for heads of household, and $99,000 for individual filers.

The rebate will be based on 2019 taxes, or for individuals who haven't filed, against their 2018 taxes or 2019 Social Security statements.
Payments will be made through December 31, 2020. They may be delivered electronically to accounts where a taxpayer has authorized deposit of a tax refund or other federal payment on or after January 1, 2018. Notice will be sent to the taxpayer within 15 days of sending the payment.

A Social Security number will be required to claim the credit, although only one number is required if one spouse is a member of the Armed Forces.

Payroll Tax Deferral

The legislation defers employer payroll tax payments through the end of 2020. Deferred funds will be paid over two years, in 2021 and 2022.

Deferral will not apply to employers with small business loan debt that is forgiven under the bill. The measure will defer 50% of self-employed Social Security tax payments.

Employee Retention Credit

The legislation establishes a refundable credit against employer payroll taxes for certain employers that are hurt by the coronavirus but retain their employees. The credit will be for 50% of eligible employee wages paid after March 12, 2020, and before January 1, 2021. It will be provided for as much as $10,000 of compensation, including health benefits.

Employers may receive the credit if a government order related to the coronavirus pandemic requires them to partially or fully suspend operations, or if their gross receipts decline by certain thresholds. Alternate rules apply for tax-exempt organizations.

Employers with more than 100 full-time employees in 2019 may receive credits for wages paid to employees while they aren't providing services. Employers with fewer employees will receive credit for wages paid while operations are suspended or during a quarter in which the company has a significant decline in gross receipts.

Employers may not receive the credit if they receive a loan under the SBA Paycheck Protection Program for 7(a) loans established by the legislation (see above).

Retirement Plans

The legislation includes several retirement plan allowances that are often provided in legislation after major disasters.

Individuals may withdraw as much as $100,000 from their retirement accounts in 2020 without being subject to a 10% penalty. Funds will be treated as a tax-exempt rollover contribution if repaid in the next three years. If funds are not repaid, they will be taxed as income over three years.

Individuals are eligible to make withdrawals if they, their spouse, or their dependent are diagnosed with COVID-19, or if the pandemic hurts their finances, such as through layoffs or reduced hours.

Eligible individuals may receive loans for the lesser of $100,000 or the present value of their vested benefits in their employer retirement accounts in the 180 days after March 27, 2020 (the date of enactment). The limit is currently the lower of $50,000 or half the account's value.

Individuals affected by the coronavirus with retirement plan loans due by December 31, 2020, will have an extra year to repay them.

The legislation modified certain retirement plan and account minimum distribution rules for 2020.

Charitable Contributions

The legislation created a $300 above-the-line individual charitable contribution allowance for individuals who do not itemize their returns for tax years beginning January 1, 2020.

It also suspended for 2020 the limit on the individual charitable deduction, which is available to filers who itemize. The deduction is limited to 60% of individual taxpayers' adjusted gross incomes through 2025.

The corporate charitable deduction limit was increased in 2020 to 25% of taxable income, up from 10%. A deduction for food inventory contributions was increased to 25%, up from 15%.

Business Losses

The legislation allows business losses from tax years after December 31, 2017, and before January 1, 2021, to be carried back five years. The 2017 tax law had eliminated the two-year carryback period for losses realized after 2017.

The legislation allows the full amount of net operating loss carryovers and carrybacks to be used for tax years beginning before January 1, 2021. The deduction was limited to 80% of taxable income under the 2017 tax overhaul. A separate deduction limit will be established for tax years beginning after December 31, 2020.

The legislation also modified net operating loss deduction limits ("the excess business loss rules") for pass-through business entities and sole proprietorships.

Other Business Provisions

The legislation:

- Allows companies to more quickly access their remaining alternative minimum tax credits. The 2017 tax overhaul eliminated the corporate AMT but made remaining AMT credits refundable over several years, ending in 2021.
- Allows businesses to deduct 50% of their interest expenses in 2019 and 2020, with adjustments, instead of the 30% established by the 2017 tax law. Separate rules apply for partnerships.
- Addresses the "retail glitch" from the 2017 tax overhaul, in which the depreciation schedule for certain restaurant and retail businesses' qualified improvement property was inadvertently lengthened to 39 years. The legislation classifies qualified improvement property as 15-year property, or 20-year property under an alternative depreciation system. This classification makes the property eligible for the temporary "bonus depreciation" deduction established by the 2017 tax law, which would allow it to be written off immediately.

HEALTH PROVISIONS

Testing

Health insurers are required to reimburse providers for all coronavirus testing and related visits based on the cash price that the provider lists online, unless they have a previously negotiated rate or negotiate a new rate that is less than the cash price. Testing providers that do not list their prices online during the emergency may be penalized a maximum of $300 per day.

The legislation expands the types of coronavirus lab tests that will have to be fully covered by insurance, including tests that have not yet received an emergency use authorization from the Food and Drug Administration.

Vaccines

Health insurers are required to cover vaccines and other services intended to prevent COVID-19 without any cost-sharing. The requirement will take effect 15 business days after a recommendation from the U.S. Preventive Services Task Force or CDC Advisory Committee on Immunization Practices.

High-Deductible Health Plans

The legislation allows telehealth services to be covered under a high-deductible health plan before a patient reaches the deductible for plan years beginning on or before December 31, 2021.

Spending Accounts

The legislation allows health savings accounts to be used for medicine without a prescription and for menstrual products. The provisions would also apply to other spending accounts such as flexible spending arrangements.

Provider Support

Health Centers: The legislation provides an additional $1.32 billion for fiscal 2020 for supplemental awards to community health centers to prevent and treat COVID-19. Funding is subject to Hyde amendment restrictions that prevent the use of federal funds for abortions, except in cases of rape or incest or if the mother's life is in danger.

Health Records: The legislation allows patient records related to substance use disorders to be disclosed to health-care providers and other entities in accordance with the Health Insurance Portability and Accountability Act after a patient gives initial consent. Substance use records are currently governed under stricter privacy regulations than HIPAA.

The legislation provides that the information generally cannot be used in civil, criminal, administrative, or legislative proceedings against a patient, or to discriminate against individuals seeking access to health care, employment, housing, courts, or public benefits.

The legislation also directs HHS to issue guidance on sharing protected patient health information during the coronavirus emergency.

Funding for the health centers, NHSC, and THCGME program will be subject to existing restrictions on using federal funds for abortion.

Medicare & Medicaid

Sequestration

The legislation suspends automatic Medicare payment cuts to hospitals and doctors, known as "sequestration," from May 1, 2020 through December 31, 2020.
The measure also extends for one year, through 2030 (previously through 2029), the broader sequestration of mandatory funding, including Medicare payments.

The sequestration, which is required under the Budget Control Act, reduces Medicare payments by 2% annually, including $15.3 billion for fiscal 2020.

Medicare Payments

Hospitals will receive a 20% increase in their Medicare payments for treating a patient with COVID-19 during the coronavirus emergency.

The legislation prevents a scheduled reduction in Medicare payments for durable medical equipment, such as wheelchairs or other equipment used at home, for the duration of the coronavirus emergency.

It eliminates a 15% reduction in payments for clinical diagnostic lab tests for 2021 and then extend the 15% reduction through 2024. It also delays an associated payment rate reporting requirement for labs for a year.

The Medicare hospital accelerated payment program will be expanded during the emergency period so that it applies to more types of hospitals and to cover as long as six months. HHS may increase the amount of payment that would otherwise be made up to 100%, or 125% for critical access hospitals.

Telehealth

The legislation removes a requirement from the first coronavirus response measure (the Coronavirus Preparedness and Response Supplemental Appropriations Act) that a doctor must have treated a patient within the last three years in order to use expanded telehealth authorities under Medicare.

Federally qualified health centers and rural health clinics may furnish telehealth service to beneficiaries in another location during the coronavirus emergency and be reimbursed at a rate that is similar to the national average for comparable services under the Medicare physician fee schedule.

Individuals receiving home dialysis will not be required to have periodic in-person assessments to qualify for telehealth services during the coronavirus emergency. Face-to-face encounters for recertifying eligibility for hospice care may be conducted via telehealth during the emergency period instead of in person.

Medicare Coverage

Medicare Part B, which provides general medical insurance, will fully cover a COVID-19 vaccine without any cost-sharing. Drug plans will have to allow Part D prescription drug beneficiaries to receive a 90-day supply of medication during the public health emergency.

Post-Acute Care

The legislation waives a requirement that patients at inpatient rehab facilities receive at least 15 hours of therapy per week during the emergency period. It also directs HHS to waive a payment adjustment for long-term care hospitals that don’t have at least a 50% discharge payment percentage.

Medical Supplies

The legislation expands the Strategic National Stockpile to include personal protective equipment and supplies such as swabs used for COVID-19 testing.

It also makes permanent a provision in the Families First Coronavirus Response Act extending liability immunity to manufacturers of respiratory protective devices, such as masks and ventilators that HHS designates for use during a declared public health emergency.

Drug & Device Shortages

Manufacturers of drugs that are critical to public health during an emergency are required to notify the FDA of supply chain interruptions for active pharmaceutical ingredients. Device manufacturers will have to make similar disclosures.

Makers of covered drugs, active ingredients, and related devices will have to maintain risk management plans for facilities to evaluate supply risks.

The FDA will be required to:

- Prioritize application reviews and inspections for drugs and devices that may mitigate shortages.
- Publish a list of device shortages, though it may withhold such information to prevent hoarding.
- Drug makers will be required to report annually on the amount of each drug they create for commercial distribution. The FDA may require the information to be submitted during a public health emergency. Biological products may be exempted if the FDA determines it is not necessary to protect public health.

Over-the-Counter Drugs

The legislation modifies the FDA's regulatory framework for nonprescription drugs and establishes user fees to support the new process. The user fees will be authorized from fiscal 2021 through 2025 and will include facility fees and fees for administrative order requests.

It creates an administrative order process for determining whether a nonprescription drug is "generally recognized as safe and effective." The legislation includes opportunities for public comment and dispute resolution. There will also be expedited procedures for drugs that pose an imminent public health hazard and for safety labeling changes.

Final orders issued in response to a drug maker request will include 18 months of exclusivity.

Other Provisions

The legislation also:

- Allows physician assistants and nurse practitioners to order home health services for Medicare beneficiaries.
- Allows state Medicaid programs to cover home and community-based services that are provided in acute-care hospitals.
- Delays by 30 days a requirement in the Families First Coronavirus Response Act that a state maintain premiums to receive the 6.2 percentage point increase in Medicaid funding.

FINANCIAL SUPPORT

Loans & Investments

The legislation provides $500 billion to the Treasury Department's Exchange Stabilization Fund, to be used to make loans, loan guarantees, and other investments to businesses, states, and municipalities in 2020.

Of that amount, it provides for loans and loan guarantees of as much as:

- $25 billion for passenger airlines, ticket agents, and aviation inspection and repair services.
- $17 billion for businesses critical to national security.
- $4 billion for cargo airlines.

Significantly, as much as $454 billion, and any other unused loan funds, will be available to make loans, loan guarantees, and other investments to support programs or facilities established within the Federal Reserve. Funds may be used to purchase obligations or other interests from businesses, states, or municipalities directly or in secondary markets.

The Treasury Department will set loan rates based on risk and the current average yield on U.S. debt. Loan forgiveness will not be allowed.

Airlines, related businesses, and critical national security businesses with losses that threaten their continued operation may receive loans if:

- They cannot reasonably obtain credit elsewhere.
- The investment is prudent.
- The loan or loan guarantee is secured or made at a rate that reflects its risk and is not less than interest rates on comparable obligations before the coronavirus outbreak, to the extent practicable.
- The duration is as short as practicable, and not longer than five years.

Agreements will have to:

- Prohibit the business and its affiliates from purchasing outstanding stock, paying dividends, or making other common stock-related capital distributions for the term of the loan plus one year.
- Require the business to maintain employment levels as of March 24, 2020, until September 30, 2020, to the extent practicable, and agree not to reduce employment levels by more than 10%.
- Include a certification that the business is U.S.-based.

- Include wage limits for highly compensated employees that would last for one year after the loan has been repaid.
- Officers and employees with total compensation, including salary and other financial benefits, greater than $425,000 in 2019 may not receive an increase over their 2019 compensation or termination pay that exceeds twice that level.
- Officers and employees with 2019 compensation greater than $3 million may not receive compensation in any 12 consecutive months greater than $3 million plus half of the amount their 2019 compensation exceeded $3 million.

The Treasury Department may issue a waiver if necessary to protect the federal government's interests, but the department will have to be available to testify to Congress about the waiver.

Federal Reserve lending programs will have to endeavor to provide financing to banks or other lenders to make direct loans to businesses, including nonprofits, with between 500 and 10,000 employees. Those loans will have an interest rate not higher than 2%, and will not require interest or principal repayments in the first six months.

Borrowers will have to certify that they:

- Will use the loan to retain at least 90% of their workforce until September 30, 2020.
- Intend to restore at least 90% of their workforce as of February 1, 2020, within four months of the end of the coronavirus public health emergency.
- Are U.S.-based.
- Will not pay dividends or repurchase equities.
- Will not outsource jobs or relocate them outside the country, or abrogate existing collective bargaining agreements for the term of the loan and two subsequent years.
- Will remain neutral on any union organizing efforts during the loan term. The Treasury Department would also have to endeavor to establish a program that provides liquidity to the financial system that supports lending to states and municipalities.
- Will agree not to reduce pay and benefits or conduct involuntary furloughs until September 30, 2020.

OVERSIGHT PROVISIONS

Special IG

The legislation creates an Office of the Special Inspector General for Pandemic Recovery within the Treasury Department to audit and investigate the department's loans and other activities under the bill. The special inspector general will be appointed by the President and subject to Senate confirmation, and the office may be staffed as necessary using competitive hiring procedures.

The office will report to Congress quarterly with detailed information on all loans, guarantees, and other Treasury Department transactions under the legislation. The department will have to address any deficiencies identified in a report or certify to Congress that action will not be necessary or appropriate.

The legislation requires that $25 million of the $500 billion appropriated will be made available to the Office of the Special Inspector General. The office will terminate five years after the legislation's enactment.

Pandemic Response Accountability Committee

The legislation provides $80 million for a Pandemic Response Accountability Committee that will oversee loans and other funds provided to nonfederal entities under the legislation and other coronavirus response laws.

The committee will be established within the Council of Inspectors General on Integrity and Efficiency. It will include inspectors general of relevant departments and an executive director selected with congressional input.

The committee will detect and prevent fraud, waste, abuse, and mismanagement, and identify major risks. Its tasks will include conducting audits, and reviewing grant and contract reporting and program administration. It may issue subpoenas to compel testimony.

Suspected violations of criminal law will be reported to the Justice Department. Information on how the funds are used will have to be posted to a public website.

Federal agencies will have to report monthly on any use of coronavirus funds that exceeds $150,000.

The committee will terminate on September 30, 2025.

Conflicts of Interest

Businesses owned by the president, vice president, a cabinet secretary, or member of Congress will not be eligible for loans, guarantees, and other relief under the bill. The bar will apply to entities in which the government official owns at least 20% of any class of equity, measured by vote or value.

The prohibition will include any interests owned by spouses, children, and children's spouses.

Entities will have to certify to the Treasury Department and the Federal Reserve that they are eligible to participate under the conflict of interest provisions before any transaction may be approved.

Oversight Commission

The legislation creates a Congressional Oversight Commission within the legislative branch to oversee the Treasury Department and Federal Reserve's stabilization activities related to the pandemic.

The commission will report to Congress on the use and effects of authorities provided by the legislation, especially with regard to market transparency and long-term costs and benefits to taxpayers.

The commission will consist of members appointed by the speaker and minority leader of the House, the two party leaders of the Senate, and a chairperson appointed jointly by the speaker and the Senate majority leader after consulting with the minority leaders in their chambers. It may hire staff, and executive agency personnel may be detailed to the commission.

The commission may hold sworn proceedings and obtain information from agencies. The commission will terminate September 30, 2025.

The legislation authorizes such sums as may be necessary for the commission. Expenses will have to be reimbursed by the Treasury Department and the Federal Reserve.

AID TO STATES & TERRITORIES

The legislation provides $150 billion in fiscal 2020 to help states and territories respond to COVID-19.

Of the total, $8 billion will be set aside for tribal governments, and $3 billion would be reserved for the District of Columbia and U.S. territories.

The rest will be distributed to states based on population, with no state receiving less than $1.25 billion in fiscal 2020.

Funds may be used for unbudgeted COVID-19 expenditures from March through December 2020.

Funding will be subject to Hyde amendment restrictions that prevent the use of federal funds for abortions, except in cases of rape or incest or if the mother's life is in danger.

BANKING RULES

The legislation waives several banking and accounting rules, most of which will be reinstated in 2021 or when the coronavirus public health emergency ends.

Accounting Rules

Banks and credit unions will be temporarily exempt from a 2016 accounting rule on credit losses issued by the Financial Accounting Standards Board.

The rule includes a methodology for current expected credit losses (CECL) opposed by banks that requires them to set aside reserves to cover potential losses over the life of a loan.

Financial institutions may also exempt themselves from accounting rules that will otherwise categorize certain loan modifications related to COVID-19, such as payment deferrals, as troubled debt restructurings (TDRs). Agencies will have to defer to the financial institutions.

Loan modifications that qualify as TDRs typically result in stricter accounting and disclosure requirements.

The TDR waiver period will run from March 1 through December 31, 2020 or 60 days after the coronavirus public health emergency ends, whichever is sooner.

Money Market Funds

The Treasury Department may use its Exchange Stabilization Fund (ESF) to backstop money market funds, a key source of short-term liquidity for businesses and households. The legislation will provide “such sums as may be necessary” to reimburse the ESF for any claims payments that exceed collected fees.

The department used the ESF during the 2008 financial crisis to guarantee more than $3 trillion of money market fund holdings amid an investor run. The use of the ESF for such guarantees was subsequently barred.

Capital Rules

Federal banking agencies will have to set an optional capital-to-asset ratio of 8% for community banks with less than $10 billion in assets, instead of the current 9%.

Eligible banks that exceed the ratio will be automatically deemed to have met other leverage and risk-based capital rules set by the banking agencies.

Lending Limits

Lending limits imposed on national banks will be lifted for loans they issue to nonbank financial institutions, similar to a waiver for loans issued to regular financial institutions and approved by the Office of the Comptroller of the Currency (OCC).

The OCC may waive any other transaction from the lending limits, if it finds an exemption is in the public interest.

FDIC Guarantees

The Federal Deposit Insurance Corporation (FDIC) is authorized to guarantee additional types of deposits, including on accounts that don’t accrue interest.

It may also establish an emergency program to guarantee the debt of solvent insured banks up to a maximum level without further congressional approval. The National Credit Union Administration is authorized to increase insurance coverage levels for non-interest-bearing accounts held at federally backed credit unions.

EDUCATION

Financial Aid

The legislation allows the Education Department to waive requirements related to institutions' eligibility for and allotment of federal financial aid, as well as certain reporting requirements. The department will also have broad authority to waive provisions to ensure that schools receiving federal aid aren't adversely affected by formula-based calculations during the coronavirus emergency.

The legislation directs the department to waive requirements that higher education institutions match a portion of federal student aid for two school years. When calculating eligibility against lifetime usage limits, the department may not count a student's enrollment in subsidized loan or Pell Grant programs during any semester the student did not complete because of the emergency.

The department will waive repayment of grants and loans by students who received support and are forced to withdraw from school.

The department may allow institutions to keep unused grant or loan assistance if students are unable to use the funding due to the emergency. It may modify the required and allowable uses of funds provided to institutions, as well as nonfederal matching requirements, upon the request of an institution or other grant recipient.

The legislation allows institutions to:

- Roll over unused funds from the previous five years for use during the next five-year period.
- Make work-study payments to participating students who are unable to fulfill their work requirements due to closed workplaces.
- Treat any unspent work-study funds as grants to support the ability of low-income students to access and complete higher education.
- Use supplemental educational opportunity grants to provide emergency aid to students facing unexpected expenses and unmet needs.
- Provide students with leaves of absence that do not require them to pick up where they left off if they return the same semester.
- Exclude credits for classes a student began but did not finish due to the emergency when determining the student's academic progress for financial aid eligibility purposes.

The department may amend the types of extenuating circumstances that can excuse a Teach Grant recipient from fulfilling teaching service obligations. It will have to consider service that is part-time or interrupted due to the COVID-19 crisis to have been full-time.

It will also have to waive teacher student loan forgiveness requirements related to consecutive years of service if an interruption is caused by the emergency and the borrower completes a combined five years or more of qualifying teaching service.

Other Education Provisions

Loan Repayment: The legislation suspends student loan payments and interest accrual through September 30, 2020 which will cover six months for most borrowers. Each month for which payments are suspended will be treated as if on-time payments were made for purposes of federal loan forgiveness programs. Involuntary collections related to student loans, such as wage garnishments or tax refund reductions, as well as negative credit reporting will also be suspended for the same period.

General Waivers

The Education Department will have broad authority during the coronavirus emergency to waive obligations at the request of state or local governments, school systems, or the Bureau of Indian Education. Waivers may address academic assessments, institutional support for schools, professional development, allocation and accounting for federal education funding, and reporting requirements, among other things. They will generally be limited to the current academic year. Civil rights laws may not be waived.

HBCU Capital Loans

The legislation appropriates $62 million for the Education Department to defer and cover the principal and interest on capital loans to historically black colleges and universities due during the emergency. After the original loan is repaid, the institutions will have to repay any amounts covered by the department.

CONSUMER PROTECTIONS

Mortgage Payments, Foreclosures & Evictions

Borrowers with federally backed mortgages -- including those that are insured by the Federal Housing Administration, guaranteed by the Veterans Affairs Department, or purchased by Fannie Mae and Freddie Mac -- who attest that they are experiencing financial hardship due to COVID-19 may suspend their payments for 180 days, with a possible 180-day extension. Additional interest or fees will not accrue during that period.

The legislation prohibits foreclosures on homes with federally backed mortgages for at least 60 days starting March 18, 2020.

Landlords with federally backed mortgages on multifamily properties may suspend their payments for as long as 30 days, with as many as two 30-day extensions. Landlords are prohibited from evicting tenants or charging fees during that period.

The legislation suspends evictions for 120 days following its enactment date of March 27, 2020 on properties that have a federally backed mortgage or participate in a covered federal housing program.

Credit Reports

Lenders and other businesses may allow consumers affected by COVID-19 to defer or suspend their debt payments or to make partial payments from January 31 through 120 days after the March 27, 2020 enactment date, or the date the coronavirus emergency ends.

They will have to report positive information about those accounts to credit reporting companies, or give consumers with delinquent accounts a chance to resolve the negative information in their credit reports by the end of the covered period.

Delinquent borrowers will continue to be reported as delinquent during the period, unless they make payments to bring their account current.

OTHER PROVISIONS

Pension Provisions

The legislation extends the deadline for minimum contributions to single-employer pension plans to January 1, 2021. Such contributions will include accrued interest.

The legislation amends the definition of Cooperative and Small Employer Charity plans to include a medical research organization that focuses on mothers and children and has been in existence since 1938.

The Labor Department may postpone filing deadlines under the Employee Retirement Income Security Act for as long as one year for a public health emergency.
Workforce Development

The legislation allows 2019 workforce development funds to be used for administrative costs and rapid response activities related to the coronavirus emergency.

CONCLUSION

The CARES Act is complicated and wide-reaching, but provides significant stimulus relief for businesses, individuals and state and local governments. It is a comprehensive plan designed to ensure business continuity, continued employment and economic revival.

For more information regarding the Act, please feel free to contact your relationship attorney at Farrell Fritz or Lou Vlahos, Tax Partner, directly at (516) 227-0639 or via e-mail at lvlahos@farrellfritz.com.

If you have any questions regarding any other business challenges related to the COVID-19 crisis, please reach out to your Farrell Fritz relationship attorney.

For additional resources, please visit our COVID-19 Crisis Response and Help page: https://www.farrellfritz.com/covid-19-update/.