

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.

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 state and municipal issues, please contact [Tad Heuer](#) or [Jeff Mullan](#).