

The \$2 Trillion Federal CARES Act: Key Legislative Changes

Friday, March 27, 2020

The Coronavirus Aid, Relief, and Economic Security Act ("[CARES Act](#)") is a comprehensive economic relief plan designed to stabilize and uplift the American economy during the COVID-19 pandemic. It is unique not only because of the total amount of funding made available (over \$2 trillion), but also because of the breadth of industries, sectors, and individuals eligible to receive some form of federal grant aid or federally-backed loan assistance through the stimulus legislation.

This alert summarizes the key legislative changes of the Act.

Key Legislative Changes

In addition to making available billions of dollars in grant and loan funding to mitigate the impacts of COVID-19 on various sectors of the economy, the Act also makes numerous, significant legislative changes that will better equip distressed sectors, including healthcare, education, real estate and transportation, to rebound in the coming months. The Act also includes certain consumer protection measures that aim to protect the public during this national emergency. Below are some notable examples of the key legislative changes included in the Act, categorized by affected sector can be found below:

Healthcare

Unsurprisingly, a plurality, if not majority, of the legislative changes included in the Act are directed at buoying the nation's healthcare system, which has been threatened most acutely by the COVID-19 epidemic.

Encouraging Telehealth: The Act reduces barriers to the provision of healthcare services through telehealth (providing healthcare services remotely). The Act expressly encourages the use of telecommunications systems or home health services furnished during emergency period. In that regard, the Secretary of Health and Human Services is authorized to revise or clarify existing guidance for telehealth provided to Medicare beneficiaries and conduct any outreach necessary to advance the utilization of telehealth in the US. This is no doubt intended to relieve the some of the existing strain on the hospital system and also reduce the need for vulnerable patients to travel to medical facilities where they could be at greater risk of exposure to COVID-19. The Act also waives the requirement of face-to-face visits between

home dialysis patients and physicians. Reimbursement for telehealth services is also at the heart of these significant legislative changes.

Coverage for COVID-19-related Healthcare Services: With an eye towards expanded COVID-19 testing and, eventually, treatments for combating the virus, the Act includes provisions governing the coverage of and reimbursement for COVID-19 diagnostic testing and vaccines. In the private healthcare market, a group health plan or health insurer providing for coverage of a COVID-19 diagnostic test must reimburse the provider as follows: 1) according to the negotiated rate before the public health emergency; 2) if such rate did not exist, an amount that equals the cash value for the diagnostic test as listed by the provider on a public internet website. Regarding potential vaccinations, once a COVID-19 vaccine is licensed under section 351 of the Public Health Services Act, the vaccine will be covered under Medicare Part B without any cost sharing. The Act also increases Medicare payments to inpatient hospitals treating COVID-19 patients.

Prescription Drug Refills: Recognizing the travel limitations caused by recommended social distancing and the relative vulnerability of the population enrolled in Medicare Part D, the Acts requires Medicare prescription drug plans to allow for 3-month fills and/or refills of covered part D drugs during the COVID-19 emergency, notwithstanding existing utilization management requirements.

Enhancing Emergency Preparedness: Attempting to avoid in the future the current dire shortage of critical healthcare equipment, the Act requires that the strategic national stockpile include personal protective equipment (“PPE”), ancillary medical supplies and other applicable supplies required for the administration of drugs, vaccines and other biological products, medical devices and diagnostic tests. Likewise, the Act increases reporting requirements for drug manufacturers in response to certain drug shortages. Manufacturers of certain drugs or active pharmaceutical ingredients or any associated medical device used for preparation or administration included in the drug, are required to develop, maintain, and implement, as appropriate, a redundancy risk management plan that identifies and evaluates risks to the supply of the drug. Such manufacturers make those plans available to the Federal government.

Relaxing Privacy Rules: Because contact tracing is key to preventing or restricting the spread of the virus, the Act also includes provisions impacting HIPAA and the restrictions on disseminating personal health information. Notably, the Secretary of Health and Human Services is required to, within 180 days of enactment of the Act, issue guidance on the sharing of protected health information during the COVID-19 emergency.

Education

Student Loans: Perhaps most critically for college students and their families, the Act provides for certain student loan repayment and Federal grant forgiveness. For example, the Act suspends all payments for student loans due under Part D and Part B of Title IV of the Higher Education Act of 1965 through September 30, 2020 and interest shall not accrue on such loans during the deferral period. The Act also waives the amounts that a student is required to return

with respect to Pell Grants or other federal grant assistance if the student withdraws from an institution of higher education as a result of a qualifying emergency. In addition, the Act cancels a borrower's obligation to repay certain loans associated with a payment period for a loan recipient if the recipient withdraws from the institution of higher education during the payment period as a result of a qualifying emergency.

Assisting Students with Grant Funding and Work-Study: With students across the nation being asked to leave college campuses to reduce the risk of community spread of COVID-19, the Act permits institutions of higher education to make payments to affected work-study students during a qualifying emergency for the period of time the students could not work (not to exceed one academic year). The Act also excludes from the Federal Pell Grant duration limit, any semester that a student does not complete due to a "qualifying emergency" such as COVID-19.

Non-Federal Share Waivers: At the institutional level, the Act allows for institutions of higher education to seek waivers of institutional matching requirements for the years 2019-20 and 2020-21, but such waivers are not available to private, for-profit institutions.

Real Estate

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.

Transportation

Airline Requirements and Relief: Air carriers have no doubt struggled since the outbreak of the COVID-19 emergency in the US with demand dropping sharply in the last two months. In response, air carriers have slashed schedules and begun to lay off employees. The Act conditionally expands Federal authority over the operations of these carriers, while simultaneously attempting to support the long-term financial viability of the industry. The Act 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 excise taxes until January 21, 2021.

Consumer Protection

Temporary Assistance Measures: The Act extends temporary assistance for needy families and related programs extended through November 30, 2020 in the manner that such programs were authorized for fiscal year 2019. The Act also authorizes the Federal Deposit Insurance Corporation to establish a debt guarantee program during the COVID-19 crisis, provided that any such program and any such guarantee must terminate not later than December 31, 2020.

Bolstering Federal Oversight: The Department of Housing and Urban Development, the Securities and Exchange Commission and the Commodity Futures Trading Commission are now authorized to hire and make appointments to unfilled positions on an expedited basis upon a determination that those expedited procedures are necessary and appropriate to enable the agencies to prevent, prepare for, or respond to COVID-19. The Act also includes certain consumer credit protections during the COVID-19 emergency.

With over 3 million American workers having filed for unemployment benefits this week alone and employers in all industries facing difficult decisions regarding operations and staffing, the Act includes numerous provisions to address the concerns of employers and employees.

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 issues, please contact Tad Heuer, Colin Zick, or Christopher Feudo.