What the Transportation Sector Needs to Know About the CARES Act

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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 was 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.

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 transportation issues, please contact Jeff Mullan or Tad Heuer.

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