



# The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) Is Enacted Into Law

**Frank S. Murray Jr, Jared B. Rifis, Leah R. Imbrogno, Jamie N. Class, Matthew E. Sierawski, Julia Di Vito, Kaitlyn M. Foley**  
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## *Coronavirus Resource Center*

As the coronavirus outbreak continues to wreak havoc on markets and industries in the United States and around the world, businesses are now confronting significant and unique challenges. Successful navigation of these challenges will require thoughtful and comprehensive planning. Foley has created a multi-disciplinary and multi-jurisdictional team, which has prepared a wealth of topical client resources (see Foley’s [Coronavirus Resource Center](#)) and is prepared to help our clients meet the legal and business challenges that the coronavirus outbreak is creating for stakeholders across a range of industries, including manufacturing, technology, solar, hospitality and travel, healthcare, food, fashion and apparel, and sports and entertainment.

## **The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) – Summary of Bill Language and Key Takeaways**

On March 25, 2020, the Senate unanimously passed (96-0) the [Coronavirus Aid, Relief, and Economic Security Act](#) (“CARES Act”), commonly known as “Phase Three” of coronavirus economic relief. The CARES Act provides much needed stimulus to individuals, businesses, and hospitals in response to the economic distress caused by the coronavirus (COVID-19) pandemic. On March 27, 2020, the House of Representatives passed the CARES Act by voice vote. President Trump signed the bill into law that same day.

Additional information, updates, and analysis regarding the CARES Act will be posted on Foley’s [Coronavirus Resource Center](#). Please check back frequently for updates. Foley is available to assist in interpretation of the CARES Act for your business and can help you find ways to claim and/or use available funding for your company.

## **The CARES Act**

### **Top 10 Takeaways:**

1. Provides stimulus to individuals, businesses, and hospitals in response to the economic distress caused by the coronavirus (COVID-19) pandemic.
2. Creates a \$349 billion loan program for small businesses, including 501(c)(3) non-profits and physician practices. These loans can be forgiven through a process that incentivizes companies to retain employees.
3. Allocates \$500 billion for assistance to businesses, states, and municipalities, with no more than \$46 billion to support passenger air carriers, air cargo carriers, and businesses important to maintaining national security. The remaining \$454 billion may be used to support lending to eligible businesses, states, and municipalities.
4. Allocates \$130 billion in relief to the medical and hospital industries, including for medical supplies and drug and device shortages.
5. Expands telehealth services in Medicare, including services unrelated to COVID-19 treatments.
6. Provides \$1,200 to Americans making \$75,000 or less (\$150,000 in the case of joint returns and \$112,500 for head of household) and \$500 for each child, to be paid “as rapidly as possible.”
7. Expands eligibility for unemployment insurance and provides people with an additional \$600 per week on top of the unemployment amount determined by each state.
8. Expands the Defense Production Act, allowing for a period of two years when the government may correct any shortfall in resources without regard to the current expenditure limit of \$50 million.
9. Provides the Secretary of the Treasury with the authority to make loans or loan guarantees to states, municipalities, and eligible businesses and loosens a variety of regulations prior legislation imposed through the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Economic Stabilization Act of 2008, and others.
10. Accompanied by supplemental appropriations to help the government respond to this pandemic.

**Summary of the CARES Act:**

A. Division A - Keeping American Workers Paid and Employed, Healthcare System Enhancements, and Economic Stabilization

1. Title I – Keeping American Workers Paid and Employed Act

Foley Title I Contacts: [Jamie Class](#), [Erin Toomey](#), [Jessica Glatzer Mason](#), and [Frank Murray](#)

#### i. Paycheck Protection Program

- The Paycheck Protection Loan Program, at a price tag of \$349 billion, covers the period February 15, 2020 through June 30, 2020 and greatly expands SBA loan eligibility. The loan program will allow businesses suffering due to the coronavirus outbreak to borrow money for a variety of qualified costs related to employee compensation and benefits, including (i) payroll costs, (ii) continuation of health care benefits, (iii) employee compensation (of those making less than \$100K), (iv) mortgage interest obligations, (v) rent, (vi) utilities and (vii) interest on debt incurred before the covered period.
- The legislation greatly expands the number of businesses (including non-profits) that are eligible for SBA loans and raises the maximum amount for such a loan by 2.5 x the average total monthly payroll costs, or up to \$10 million. The interest rate may not to exceed 4%.
- Companies that employ no more than 500 employees are (or a greater number based on the size standard applicable to the industry) may be eligible. Certain companies in the Accommodation and Food Services Industry (NAICS Code 72) may be eligible if they have no more than 500 employees per physical location. In most cases, the number of employees is counted together with all affiliates.
- Waives affiliation rules under 13 C.F.R. 121.103 for any business with less than 500 employees in the Accommodation and Food Services Industry, certain franchise businesses and small businesses that receive financing through the Small Business Investment Company Act. Affiliation rules otherwise apply to determine eligibility.
- Waives the credit available elsewhere, personal guaranty and collateral requirements.
- For eligibility purposes, requires lenders to determine whether a business was operational on February 15, 2020, and had employees for whom it paid salaries and payroll taxes, or a paid independent contractor. (This is likely to be interpreted to replace the determination of repayment ability which is not possible during the crisis.)
- All or a portion of the loan may be forgivable and debt service payments may be deferred for up to 1 year.

#### ii. Entrepreneurial Development

- Provides funding to educate small businesses and their employees regarding (i) Federal resources available during this time, (ii) Hazards of COVID-19 and (iii) best practices around teleworking to prevent the spread of COVID-19.

iii. State Trade Expansion Program

- Allows for federal grant funds appropriated to support the State Trade Expansion Program (STEP) in FY 2018 and FY 2019 to remain available for use through FY 2021.

iv. Waiver of Matching Funds Requirement under the Women's Business Center Program

- Eliminates the non-federal match requirement for Women's Business Centers for a period of three months.

v. Loan Forgiveness

- Establishes that the borrower under the Paycheck Protection Program shall be eligible for loan forgiveness equal to the amount spent by the borrower during an 8-week period after the origination date on (i) rent, (ii) payroll costs for workers making less than \$100K, (iii) interest on a mortgage, and (iv) utility payments. The amount forgiven may not exceed the principal of the loan.
- Incentivizes companies to retain employees by reducing the amount forgiven proportionally by any reduction in employees retained compared to the prior year.
- To encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.

vi. Minority Business Development Agency

- Empowers the Department of Commerce, through the Minority Business Development Agency, to provide grants to minority business centers and minority chambers of commerce to provide education, training and advising related to accessing federal resources.

vii. United States Treasury Program Management Authority

- The Department of the Treasury, consulting with the Small Business Administration and the Chairman of the Farm Credit Administration shall establish criteria to allow other lenders to participate in the Paycheck Protection Program, so long as such participation does not threaten the safety and soundness of the lender, as determined in consultation with the relevant federal banking agencies.

viii. Emergency Economic Injury Disaster Loans ("EIDLs")

- For the period between January 31, 2020 and December 31, 2020 (the "covered period") EIDL eligibility is greatly expanded to include any business with not more than 500

employees operating under a sole proprietorship or as an independent contractor, and any cooperative, ESOP and tribal small business concern with not more than 500 employees. The number of employees is determined together with affiliates.

- Furthermore, EIDLs may be approved solely on the bases of an applicant's credit score or by use of alternative methods to gauge the applicant's ability to repay. Additionally, applicants may request an advance of up to \$10,000 within three days after the Administrator receives the application, subject to verification that the entity is eligible under this program. The advance may be used for any allowable purposes under §7(b)(2) of the Small Business Act and is not subject to repayment, even if the loan request is ultimately denied.
- Importantly, the CARES Act waives: (1) the requirement of personal guarantees for loans up to \$200,000, (2) the requirement that the applicant must be in business for a year (but must be in operation on January 31, 2020), and (3) the credit elsewhere test.
- Establishes that an emergency involving Federal primary responsibility determined to exist by the President under Section 501(b) of the Stafford Disaster Relief and Emergency Assistance Act qualifies as a new trigger for EIDLs.
- Importantly, the CARES Act waives: (1) the requirement of personal guarantees for loans up to \$200,000, (2) the requirement that the applicant must be in business for a year (but must be in operation on January 31, 2020), and (3) the credit elsewhere test.

ix. Subsidy for Certain Loan Payments

- For loans under §7(a) of the Small Business Act, Title V of the Small Business Investment Act, and for loans made by an intermediary using §7(m) loans or grants, the Administrator shall pay the principal, interest, and fees owed for loans in regular servicing status for any such loans, whether on deferment or not, that were made before the enactment of the Act for the following 6-month period, and for any such loans that were made between the date of enactment of the Act and six months from such date. This does not apply to Payroll Protection loans or EIDL loans which have separate subsidy and repayment requirements.
- The payments shall be made not later than 30 days from when the first payment is due and shall be applied such that the borrower is relieved of any obligation to pay that amount. The Administrator shall coordinate with relevant banking agencies to request that lenders not be required to increase reserves because of these payments.
- The Administrator will waive limits on the maximum loan maturities for loans given

deferral and extended maturity during the year following enactment. The Administrator will extend lender site visit requirement timelines as necessary because of COVID-19, to within 60 days of a non-default adverse event, and 90 days of a default. \$17 billion is appropriated for the foregoing.

x. Bankruptcy

- Section 1182(1) of Title 11 is amended to define “debtor” as persons engaged in commercial or business activities and their affiliates (excluding persons who primarily own single asset real estate) that have aggregate, noncontingent, liquidated secured and unsecured debts (at the date of petition filing or the order for relief) of \$7,500,000 or less (excluding debts owed to affiliates or insiders), half or more of which arose from those activities.
- Exempt from this new definition are any members of a group of affiliated debtors that has aggregate, noncontingent, liquidated secured and unsecured debts over \$7,500,000 (excluding debt owed to affiliates or insiders); corporations subject to 1934 Act reporting requirements; and affiliates of an issuer under the 1934 Act.
- National Emergency Act payments for COVID-19 by the President are exempted from “current monthly income” and “disposable income” when determining the power of courts to approve debtor plans rejected by trustees or claim holders.
- Debtors that have experienced material financial hardship due to COVID-19 can modify a plan confirmed prior to this Act’s enactment date if approved after notice and hearing, but only if that plan doesn’t provide payments more than seven years after the first payment was due under the original plan, and follows requirements of 1322(a)-(c) and 1325(a). This modification terminates one year after the enactment of this Act.

2. Title II – Assistance for American Workers, Families, and Businesses

Foley Title II Contacts: [Gregg Dooge](#), [Julie Lutfi](#), [Ashley May](#), and [Dick Riley](#)

i. Subtitle A: Unemployment Insurance Provisions

- Eligibility
  - The law expands the scope of individuals who are eligible for unemployment benefits, including those who are furloughed or out of work as a direct result of COVID-19, self-employed or gig workers, and those who have exhausted existing state and federal unemployment benefit provisions.
    - The only individuals expressly excluded from coverage are those who have the ability to telework with pay and those who are receiving paid sick leave

or other paid benefits (even if they otherwise satisfy the criteria for unemployment under the new law).

- Administration of Benefit
  - The benefits are administered by each state and upon the state's written agreement with the Secretary of Labor to provide the specific benefits. States that enter into such an agreement with the Secretary of Labor will be reimbursed in whole or in part for the cost of the benefits plus administrative expenses
- Types of Benefits Provide
  - The law provides an increase of \$600 per week in the amounts customarily available for unemployment under state law. This increase applies for unemployment payments made from the date of the law's enactment through July 31, 2020 (approximately four months).
  - States can agree to provide pandemic emergency unemployment compensation to individuals who have either exhausted all of the benefits available to them under existing state and federal law or who are not otherwise eligible for benefits under existing state and federal law. Individuals must be able and available to work and actively seeking work, unless they are unable to do so as a result of COVID-19 illness, quarantine, or movement restriction.
  - States can agree to waive the waiting period for receipt of benefits so that individuals do not experience gaps in income.
  - The federal government will temporarily fund short-time compensation under existing state plans. States that do not yet have short-time compensation plans in place may agree to implement a plan, provided that employers who enter into short-time compensation plans must be required to pay to the state half of the short-time compensation paid under the plan
- Time Periods for Expanded Benefits
  - The law provides unemployment benefit assistance to covered individuals who are not otherwise entitled to benefits under existing state or federal law for weeks of unemployment, partial unemployment, or inability to work caused by COVID-19 during the period January 27, 2020 through December 31, 2020. This includes any waiting periods for benefits under applicable state law.
  - The total benefit may not extend beyond 39 weeks (including any unemployment benefits or extended benefits received under existing state or federal law), unless, after the law is enacted, the duration of extended benefits is extended, in which

case the total benefit may extend beyond 39 weeks by that same additional period of extended benefits.

- The \$600 weekly benefit increase will be applicable to weekly payments made through the end of July 2020.
- Protections Against Fraud and Overpayment
  - Any fraudulent intent or misrepresentations to obtain payments to which an individual is not entitled will result in ineligibility for any other unemployment compensation benefits under the new law as well as criminal prosecution. Overpayments may be clawed back by the state agencies.
- Social Security Treatment
  - The additional unemployment compensation provided is not considered “income” for purposes of Medicaid and CHIP.

ii. Subtitle B: Rebates and Other Individual Provisions

- Tax Credits
  - Beginning in 2020, "eligible individual" taxpayers can benefit from a tax credit equal to the sum of: (i) \$1,200 for single filers (\$2,400 for those filing a joint return) plus (ii) an amount equal to the product of (a) \$500 multiplied by (b) the number of qualifying children. However, the aforementioned tax credits will be “phased-out” by 5% of the amount by which such eligible taxpayer’s adjusted gross income exceeds: (i) \$150,000 for joint-filers, (ii) \$112,500 for heads of household, and (iii) \$75,000 for all other types of filers.
  - This means, for example, the tax credit will phase out entirely at \$198,000 for joint-filers with no children.
- “Coronavirus-Related Distribution”
  - A “coronavirus-related distribution,” as defined under the CARES Act, is generally defined as any distribution from an eligible retirement plan made: (i) on or after January 1, 2020 and before December 31, 2020, (ii) to an individual (a) who is diagnosed with COVID-19, (b) whose spouse or dependent is diagnosed with COVID-19, or (c) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, had hours reduced, or other factors as determined by the Secretary of the Treasury during the COVID-19 pandemic.
- Tax Treatment of Coronavirus-Related Distributions
  - Qualified employer plans may permit individuals who elect to receive a

“coronavirus-related distribution” will not be subject to the traditional 10% tax penalty imposed under the Internal Revenue Code of 1986, as amended (the “Code”) for early withdrawals from eligible retirement accounts, unless the aggregate amount of such distributions from all plans maintained by the employer (and any member of any “controlled group” which includes the employer) to such individual exceeds \$100,000.

- Coronavirus-related distributions made from both eligible employer sponsored retirement plans and individual retirement accounts (“IRAs”) are exempt from the 10% early distribution penalty tax.
- These distributions are subject to regular income tax, although it may be spread over three years.
- Repayments of Coronavirus-Related Distributions
  - Any individual who receives a coronavirus-related distribution may generally, at any time during the three (3) year period beginning on the day after the date such coronavirus-related distribution was received, make one (1) or more contributions in an aggregate amount not to exceed the amount of such distribution to an eligible retirement plan of which such individual is a beneficiary . The aforementioned repayments of coronavirus-related distributions for eligible retirement plans, will, to the extent of the amount of the contribution, be treated as having received the coronavirus-related distribution in an eligible rollover distribution,” and as having transferred the amount to the eligible retirement plan in a direct trustee to trustee transfer within sixty (60) days of distribution.
- Effects on the Limits on Loans from Qualified Employer Plans
  - The limitation on loans from any qualified employer plan made to qualified individuals during the 180-day period beginning on the date of enactment will be increased from \$50,000 to \$100,000 (or, if less, the qualified individual’s nonforfeitable benefit under the plan). In addition, should the due date of any loan occur between the date of enactment of the CARES Act and December 31, 2020, it will be delayed for one (1) year.
- Required Minimum Distributions Threshold
  - The CARES Act temporarily waives the minimum distribution requirements for: (i) most defined contribution plans (e.g., 401(k) plan), (ii) Section 457(b) deferred compensation plans that are maintained by an eligible employer, or (iii) IRAs. This applies for all required minimum distributions that otherwise would have been required to be made in 2020.

- A plan will not fail to be treated as being operated in accordance with the terms of the plan during such period, solely because the plan operates in accordance with the CARES Act, so long as the plan is retroactively amended to incorporate the new rules by the last day of the first plan year beginning on or after January 1, 2022.
- Tax Treatment of Charitable Donation
  - The CARES Act allows taxpayers to take an above-the-line tax deduction for charitable contributions of up to \$300 for the tax year beginning in 2020.
  - Additionally, except for certain exclusions specified below, the percentage and excess carryover restrictions on charitable and other “qualified contributions” (e.g. a contribution to a corporation, trust, a state, or an organization of war veterans, etc.) are disregarded.
- Exceptions to the CARES Act General Disregard of the Percentage and Excess Carryover Restrictions on Qualified Contributions
  - The CARES Act treats individuals and corporations differently regarding the aforementioned exceptions, and such different treatments are described below.
  - Qualified contributions for individuals will be allowed as deductions to the extent that the combined contributions do not exceed (i) the excess of the taxpayer’s adjusted gross income over (ii) the amount of the charitable contributions made by the individual under certain other provisions of the CARES Act (e.g., donations to a church, educational organization, private foundation, etc.). If such contributions exceed the foregoing limitation, they will be added to the qualified contribution excess, which is eligible to be treated as charitable deductions for up to the next five (5) successive tax years.
  - Any qualified contributions made by corporations will be allowed as deductions only if these contributions do not exceed 25% of the taxable income of the corporation over the amount of all other charitable contributions allowed under the CARES Act. To the extent a corporation exceeds this limit, it will carry over the excess which will be eligible to be applied as charitable contribution deductions for the subsequent five tax years. This is provided that the excess qualified contribution amounts in question meet certain other restrictions, specifically, they must not exceed the lesser of: (i) 10% of the corporation’s taxable income or the total charitable deductions taken by the corporation during the taxable year over the sum of the contributions made in such year plus the aggregate of the excess contributions which were made in taxable years before the

contribution year and which are deductible under this subparagraph for such succeeding taxable year; or (ii) in the case of the first succeeding taxable year, the amount of such excess contribution, and in the case of the second, third, fourth, or fifth succeeding taxable year, the portion of such excess contribution not deductible under this subparagraph for any taxable year intervening between the contribution year and such succeeding taxable year.

iii. Subtitle C: Business Provisions

- Employee Retention Credit for Employer Subject to Closure Due to COVID-19
  - Eligible employers will receive a credit against applicable employment taxes for each calendar quarter in an amount equal to 50% of the qualified wages with respect to each employee. The amount of qualified wages taken into account for each eligible employee, however, will not exceed \$10,000 per calendar quarter and the credit will not exceed the applicable employment taxes owed for such calendar quarter. The aforementioned credit is not applicable if the employer is also taking advantage of the small business interruption loan.
  - An eligible employer is defined as any employer: (i) which was carrying on a trade or business during calendar year 2020, and (ii) with respect to any calendar quarter for which, (a) the operation of their trade or business was fully or partially suspended due to governmental order as a result of COVID-19, or (b) the calendar quarter is within the period beginning with (1) the calendar quarter after December 31, 2019 for which gross receipts for the calendar quarter are less than 50% of the gross receipts for the same calendar quarter of the prior year and the ending with (2) the calendar quarter following the first calendar quarter beginning after the calendar quarter described in (1) for which gross receipts of the employer are greater than 80% gross receipts for the same calendar quarter in the prior year.
- Delay of Payment of Employer Payroll Taxes
  - The CARES Act will allow for most employers to defer paying their share of applicable employment taxes from the time the CARES Act is signed into law through December 31, 2020. Half of this deferred amount would be due on December 31, 2021 and the other half by December 31, 2022.
- Modifications for Net Operating Losses (“NOL”)
  - There will generally be a temporary repeal of taxable income limitation including (i) in the case of a taxable year beginning before January 1, 2021, the aggregate of the net operating loss (“NOL”) carryovers to such year, plus the NOL carrybacks to such year, and (ii) in the case of a taxable year beginning after December 31,

- 2020, the sum of (a) the aggregate amount of NOLs arising in taxable years beginning before January 1, 2018, carried to such taxable year, plus (b) the lesser of (1) the aggregate amount of NOLs beginning after December 31, 2017, carried to such taxable year, or (2) 80% of the excess of certain taxable income.
- In the case of any NOL arising in a taxable year beginning after December 31, 2017, and before January 1, 2021, whereby (i) such NOL will be a net operating loss carryback to each of the five (5) taxable years preceding the taxable year of such loss and (ii) certain rules applicable to farming losses and insurance companies shall not apply. There are additional rules that apply specifically to “real estate investment trusts” and life insurance companies.
  - **Modification of Limitation on Losses for Taxpayers Other Than Corporations**
    - For any taxpayer other than a corporation:
      - i. For a taxable year beginning after December 31, 2017 and before January 1, 2026, subsection (j) (relating to a limitation on excess farm losses of certain taxpayers) would not apply; and
      - ii. For any taxable year beginning after December 31, 2020 and before January 1, 2026, any excess business loss of the taxpayer for the taxable year will not be allowed.
    - In regard to treatment of capital gains and losses for purposes of calculating “excess business losses”:
      - i. Deductions for losses from sales or exchanges of capital assets will not be taken into account.
      - ii. The amount of gains from sales or exchanges of capital assets taken into account will not exceed the lesser of (1) the capital gain net income determined by taking into account only gains and losses attributable to a trade or business, or (2) the capital gain net income.
    - The amendments made in the aforementioned section shall apply to taxable years beginning after December 31, 2017.
  - **Modification of Credit for Prior Year Minimum Tax Liability of Corporations**
    - The corporate alternative minimum tax (AMT) was repealed as part of the Tax Cuts and Jobs Act, but corporate AMT credits were made available as refundable credits over several years, ending in 2021.

- The CARE Act accelerates the ability of companies to recover those AMT credits, permitting companies to claim a refund now and obtain additional cash flow during the COVID-19 emergency.
- Modification of Limitation on Business Interest
  - The CARES Act temporarily increases the amount of interest expense businesses are allowed to deduct on their tax returns, by increasing the 30-percent limitation (as imposed under the Tax Cuts and Jobs Act) to 50 percent of taxable income (with adjustments) for 2019 and 2020. As businesses look to weather the storm of the current crisis, this provision will allow them to increase liquidity with a reduced cost of capital, so that they are able to continue operations and keep employees on payroll.
- Qualified Improvement Property
  - The CARES Act enables businesses, especially in the hospitality industry, to write off immediately costs associated with improving facilities instead of having to depreciate those improvements over the 39-year life of the building. The provision, which corrects an error in the Tax Cuts and Jobs Act, not only increases companies' access to cash flow by allowing them to amend a prior year return, but also incentivizes them to continue to invest in improvements as the country recovers from the COVID-19 emergency.
- Temporary Exception from Excise Tax for Alcohol Used to Produce Hand Sanitizer
  - For distilled spirits removed after December 31, 2019 and before January 1, 2021, such distilled spirits will be free of tax for use in or contained in hand sanitizer produced and distributed in a manner consistent with any guidance issued by the FDA related to the outbreak of COVID-19.

### 3. Title III – Supporting America's Health Care System in the Fight Against the Coronavirus

Foley Title III Contacts: [Rachel O'Neil](#), [Erin Horton](#), [Anil Shankar](#), and [Paul Joseph](#)

#### i. Subtitle A, Part I: Addressing Supply Shortages

- Provides for the National Academies to examine and report on the security of the U.S. medical product supply chain in order to assess U.S. dependence on critical drugs and devices sourced outside of the U.S., and to develop recommendations to improve resiliency of the U.S. supply chain for critical drug and devices.
- Requires the Strategic National Stockpile to include certain types of medical supplies, including personal protective equipment (PPEs), and identifies respiratory protective devices as covered countermeasures for use during a public health emergency.

- Prioritizes the review of drug applications to mitigate emergency drug shortages.
- Creates additional reporting requirements for drug manufacturers to report a discontinuation and disruption of the sourcing of active pharmaceutical ingredients.
- Requires manufacturers of certain drugs and medical devices critical to public health during a public emergency to develop, maintain, and implement risk management plans related to shortages, creating an annual notification requirement of the same. Such manufacturers are also subject to shortage-related inspections by the Secretary of Health and Human Services (HHS).

ii. Subtitle A, Part II: Access to Health Care for COVID-19 Patients

- Permits group health plans and insurers to cover and reimburse providers of diagnostic testing relating to COVID-19 at pre-emergency-period negotiated rates, and sets reimbursement rates in instances without previously negotiated rates equal to the cash price for services listed on a publicly-available website or the plan or insurer can negotiate with a provider for a rate lower than such cash price. All providers of a diagnostic test for COVID-19 are required to publicize cash price for such tests. Failure to comply with these requirements could result in HHS assessing a civil monetary penalty of up to \$300 per day.
- Requires health plans and issuers to provide for rapid coverage of “qualifying coronavirus preventative services” – an item, service, or immunization intended to prevent or mitigate coronavirus—and vaccines for coronavirus.
- Appropriates \$1.3 billion for FY 2020 for supplemental awards to health care centers for the prevention, diagnosis, and treatment of COVID-19.
- Amends Section 330I of the Public Health Service Act, relating to Telehealth Network and Telehealth Resource Centers Grant Programs, and Section 330A of the Public Health Service Act, relating to the Rural Health Care Services Outreach, Rural Health Network Development, and Small Healthcare Provider Quality Improvement Grant Programs—an individual or entity affected by these grant programs should seek out an attorney to examine the effect of such amendments.
- Limits potential state and federal liability for volunteer health care professionals—who provide services without compensation or other thing of value—for harm caused to patients relating to the diagnosis, prevention, or treatment of COVID-19. This provision expressly preempts more restrictive state or local law.

- Amends certain federal regulations governing the confidentiality and disclosure of substance use disorder patient records (Part 2), including allowing certain re-disclosures to covered entities, business associates, or other programs subject to HIPAA after obtaining the patient's prior written consent.
- Permits a state agency or area agency on aging to transfer, without prior approval, not more than 100% of the funds received by the agency to meet the needs of the state or area served, and provides that the same meaning shall be given to an individual unable to obtain nutrition due to social distancing as one who is homebound due to illness.
- Provides that within 180 days of the passage of the Act, the Secretary of HHS shall issue guidance on the sharing of patients' protected health information (PHI) related to COVID-19, including guidance on compliance with HIPAA regulations and applicable policies.
- Provides that the Secretary of HHS shall carry out a national awareness campaign relating to the importance and safety of blood donation, and the need of for donations for the blood supply during a public health emergency.

#### iii. Subtitle A, Part III: Innovation

- Provides for using competitive procedures to enter into transactions to carry out public-health emergency health related projects and prohibits canceling those contracts solely because the emergency ends.
- Includes new provisions to expedite the development and approval of drugs to prevent or treat diseases in animals that are could have significant adverse consequences for humans.

#### iv. Subtitle A, Part IV: Health Care Workforce

- Approves appropriations for a variety of health professions-related programs, with particular focus on programs serving medically underserved populations (rural and geriatric).

#### v. Subtitle B: Education Provisions

- Waives requirement for certain higher education institutions to match federal funding and allows certain institutions to transfer unexpended allotment.
- Permits certain higher education institutions to use their allocations of Supplemental Educational Opportunity Grants for emergency financial aid for students.

- Permits certain higher education loan borrowers flexibility in repaying loans or returning grants during a qualified emergency.
- Permits certain students to complete distance education and certain students of foreign institutions to take classes in the United States.
- Allows the Secretary of Education to issue waivers upon request relating to assessments, accountability, and related reporting requirements, and requirements for state and local educational agencies and Indian Tribes to receive funding.
- Allows the Secretary of Education to grant a deferment to an institution that received a loan under Part D of Title III of the Higher Education Act.
- Payments on student loans held by the Department of Education are suspended for 6 months, and the Secretary of Education shall suspend all involuntary collection activities during the period of payment suspension.
- The Corporation for National and Community Service can allow individuals to accrue service hours and may permit certain grants funds.
- Not more than 20% of the total amount allocated to a local area under 29 U.S.C. 3151 et seq. may be used for administrative costs.
- For the program year 2019, not more than 20% of the total amount allocated to a local area under 29 U.S.C. 3151 et seq., may be used for administrative costs of carrying out certain local workforce investment activities, if the portion of the total amount that exceeds 10% of the total amount is used to respond to qualifying emergency. For the program year 2019, certain unobligated funds reserved by a governor for statewide activities under the Workforce Innovation Opportunity Act may be used for statewide rapid response activities, or in certain circumstances, released to local boards impacted by the coronavirus.
- Gives the Secretary of Education authority to waive certain eligibility requirements, wait periods, and allotment requirements under the Higher Education Act for a period of time.
- Authorizes the Secretary of Education to modify the required and allowable uses of funds for grants and to modify any federal share or other financial matching requirement for a grant awarded under certain provisions of the Higher Education Act to an institution of higher education or other grant recipient (not including an individual recipient of Federal

student financial assistance) as a result of a qualifying emergency.

- Allows the Secretary of Education to modify the categories of extenuating circumstances under which a grant recipient may be excused from fulfilling a portion of a service obligation under title IV of the Higher Education Act and must consider teaching service that is part-time or temporarily interrupted due to the emergency to be full-time service. Requires the Secretary of Education to waive certain years of teaching service requirements under the Higher Education Act in certain circumstances.

vi. Subtitle C: Labor Provisions

- Paid Public Health Emergency Leave Minimums
  - Employers may, but are not required to, pay any more than \$200 per day and \$10,000 in the aggregate for each employee for public health emergency leave under section 110(b)(2)(B) of the Family & Medical Leave Act of 1993 as amended by the Emergency Family and Medical Leave Expansion Act.
- Rehire Eligibility for Paid Public Health Emergency Leave Employers
  - For purposes of public health emergency leave under the Emergency Family and Medical Leave Expansion Act, an eligible employee is an employee who has been employed for at least 30 calendar days by an employer with respect to whom leave is requested. The employee must be employed for at least 30 calendar days, which includes an employee who was laid off by that employer on or after March 1, 2020, had worked for employer for not less than 30 of the last 60 calendar days prior to the employees layoff, and was rehired by the employer.
- Emergency Paid Sick Leave Minimums
  - Employers may, but are not required to, pay any more than:
    - i. \$511 per day or \$5,110 in the aggregate for each employee when taking emergency paid sick leave if the employee is subject to a federal, state or local quarantine or isolation order related to COVID-19, the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19, or the employee is experiencing symptoms of COVID-19 and seeking medical diagnosis; or
    - ii. \$200 per day or \$2,000 in the aggregate for each employee when taking emergency paid sick leave if the employee is caring for an individual who is subject to a federal, state or local quarantine order, or is caring for an individual who has been advised to self-quarantine due to concerns related to COVID-19, the employee is caring for the

employee's son or daughter, if the child's school or childcare facility has been closed or the child's care provider is unavailable due to COVID-19 precautions, or the employee is experiencing any other substantially similar condition specified by HHS in consultation with the Department of the Treasury and the Department of Labor.

- Advance Refunding of Payroll Credits for Required Paid Sick Leave and Required Paid Family Leave
  - Employers can apply a credit in the amount calculated under subsection (a) of section 7001 or 7003 of the Family First Coronavirus Response Act, subject to the limitations placed by subsection (b) of section 7001 and 7003, both calculated through the end of the most recent payroll period in the quarter. In anticipation of a credit, the credit may be advanced according to forms and instructions to be provided by the Secretary of Labor. The Act ensures employers that the Secretary of Treasury shall waive any penalty under section 6656 of the Internal Revenue Code of 1986 for failure to make a deposit of the tax imposed under section 3111 (a) or 3221(a) of such Code if failure was due to anticipation of credit allowed.

vii. Subtitle D: Finance Committee

- An additional safe harbor provision is added to section 223(c)(2) of the Internal Revenue Code, providing that a plan shall not fail to be treated as a high deductible health plan (HDHP) by reason of failing to have a deductible for telehealth and other remote care services. Section 223(c)(1)(B) of the Internal Revenue Code is adjusted to include “telehealth and other remote care.” This addition allows an individual to have an insurance plan (for plan years beginning on or before December 31, 2021) that includes telehealth and other remote care without disqualifying the individual from owning an HDHP.
- Inclusion of Certain Over-the-Counter Medical Products as Qualified Medical Expenses
  - Menstrual care products are now included under the term “qualified medical expenses.”
- Increasing Medicare Telehealth Flexibilities During Emergency Period
  - The amendment removes some limiting qualifications to section 1320b-5(b)(8), which allows for the Secretary of HHS to temporarily waive or modify the application of portions of the Social Security Act in the case of a telehealth service furnished in any emergency area during an emergency period. The provision that sets out the defined term “qualified provider,” which limited 1320b-5(b)(8), is removed in its entirety.

- Enhancing Medicare Telehealth Services for Federally Qualified Health Centers and Rural Health Clinics During Emergency Period
  - A new provision is added under Section 1834(m) of the Social Security Act (42 USC 1395m(m)), enhancing payment for telehealth services furnished via a telecommunications system by a federally qualified health center (FQHC) or rural health clinic (RHC) during an “emergency period” notwithstanding that the FQHC or the RHC providing the telehealth service is not at the same location as the beneficiary. Payment methods for FQHCs or RHCs that serve as distant sites shall be based on payment rates similar to the national average payment rates for comparable telehealth services under the physician fee schedule under section 1848.
  
- Temporary Waiver of Requirement for Face-to-Face Visits Between Home Dialysis Patients and Physicians
  - Amended section 1395rr(b)(3)(B) to allow the Secretary of HHS to waive the requirement that individuals with end stage renal disease receiving home dialysis must receive certain periodic face-to-face (non-telehealth) clinical assessments in order to be eligible to receive end stage disease-related clinical assessments via telehealth.
  
- Use of Telehealth to Conduct Face-to-Face Encounter Prior to Recertification of Eligibility for Hospice Care During Emergency Period
  - Section 1395f(a)(7)(D)(i) is amended to allow a hospice physician or hospice nurse practitioner during an “emergency period” to conduct a face-to-face encounter via telehealth to determine recertification for continued eligibility for hospice care.
  
- Encouraging Use of Telecommunications Systems for Home Health Services Furnished During Emergency Period
  - During an emergency period, the Secretary of HHS shall consider ways to encourage the use of telecommunications systems.
  
- Improving Care Planning for Medicare Home Health Services
  - Certain Medicare sections are expanded from being limited to the services of a physician to include services of nurse practitioners, clinical nurse specialists, and physician assistants that provide home health services.
  
- Adjustment of Sequestration
  - A temporary suspension of Medicare sequestration put into effect during the period of May 1, 2020 through December 31, 2020. The Medicare programs under title XVIII of the Social Security Act shall be exempt from reduction under

any sequestration order during the period.

- Medicare Hospital Inpatient Prospective Payment System Add-On Payment for COVID-19 Patients During Emergency Period
  - The Secretary of HHS will increase the weighting factor for coronavirus-diagnosed patients discharged during the emergency period. The weighting factor is used by the Secretary of HHS to reflect the relative hospital resources used with respect to discharges for a particular group compared to discharges within other groups.
- Increasing Access to Post-Acute Care During Emergency Period
  - During the emergency period, the Secretary of HHS will waive the requirement that patients of inpatient rehabilitation facilities receive at least 15 hours of therapy per week. For long-term care hospitals furnishing services during the emergency period, the Secretary of HHS will further waive discharge percent requirements and the general application of site neutral payment rates.
- Revising Payment Rates for Durable Medical Equipment Under the Medicare Program Through Duration of Emergency Period
  - The Secretary of HHS shall apply the transition rule, described in 42 C.F.R. § 414.210(g)(9)(iii), to items and services furnished in rural areas and noncontiguous areas as planned through December 31, 2020, and through the duration of the emergency period. For areas other than rural and noncontiguous areas, the Secretary of HHS shall apply the transition rule described in 42 C.F.R. § 414.210(g)(9)(iv) through the remainder of the emergency period.
- Coverage of the COVID-19 Vaccine Under Part B of the Medicare Program Without Any Cost-Sharing
  - The term “medical and other health services” is expanded to include “COVID-19 vaccine and administration.” The deductible described in section 1395l(b) shall not apply with respect to a COVID-19 vaccine and its administration.
- Requiring Medicare Prescription Drug Plans and MA-PD Plans to Allow for Fills and Refills of Covered Part D Drugs for up to a 3-Month Supply
  - During the emergency period, a prescription drug plan or MA-PD plan shall permit a part D eligible individual reenrolled in such plan to obtain a single fill or refill the total day supply prescribed for such individual for a covered part D drug.
- Providing Home and Community-Based Services in Acute Care Hospitals
  - The prohibition that nothing in section 1395a allows the Secretary of HHS authorization to limit the amount of payment that may be made under a plan for home-and-community care is expanded to include home and community-based

services, self-directed personal assistance services, or home and community-based attendant services. The provision is also expanded to clarify that the section shall not be construed to prohibit receipt of any care or services specified in paragraph (1) in an acute care hospital, provided certain requirements are met.

- Clarification Regarding Uninsured Individuals
  - The Families First Coronavirus Response Act, enacted last week, added subsection (ss) to section 1396a, which defined “uninsured individual” as those not described in section 1396a(a)(10)(A)(i) and not enrolled in certain health care programs. The CARES Act amends this definition to exclude subsection VIII if the individual is a resident of a state that does not furnish medical assistance as described.
- Clarification Regarding Coverage of COVID-19 Testing Products
  - The Families First Coronavirus Response Act, enacted last week, added COVID-19 testing to section 1396d, which provides medical assistance payments under certain conditions. The CARES Act amends this section by removing the requirement that the in-vitro diagnostic products administered are approved, cleared, or authorized under sections 510(k), 513, 514, or 564 of the Federal Food, Drug, and Cosmetic Act.
- Amendment Relating to Reporting Requirements with Respect to Clinical Diagnostic Laboratory Tests
  - The CARES Act extends the dates by one year for the reporting periods in section 1395m-1(a)(1)(B). The applicable prohibition that payment amounts determined under section 1395m-1 shall not result in a reduction in payments, as defined by the subsection, for a clinical diagnostic laboratory test is expanded to 2017 through 2024. The applicable percentages used to determine the limits on reductions in payment defined in 1395m-1(b)(3)(A) are adjusted to include a new clause for 2021, which makes the new applicable percentage zero (0) for 2021.
- Expansion of Medicare Hospital Accelerated Payment Program During the COVID-19 Public Health Emergency
  - Mandates that the Secretary of HHS expand the accelerated payment program to hospitals experiencing significant cash flow problems during the “emergency period.”
- Exception for Certain States from Enhanced FMAP Requirements
  - Provides that states may receive the temporary increase of Medicaid Federal Medical Assistance Percentage (FMAP) (authorized under the Families First Act enacted last week) notwithstanding the requirement to not impose premiums on

beneficiaries, for a period of 30 days.

viii. Subtitle E, Part I: Medicare Provisions

- Extension of Funding for Quality Measure Endorsement, Input, and Selection
  - The Social Security Act is amended to increase the amount allotted for this fiscal year ending on October 1, 2020 from \$4,830,000 to \$20,000,000 and for the period beginning on October 1, 2020 and ending on November 30, 2020, the amount equal to the pro rata portion of \$20,000,000.
- Extension of Funding Outreach and Assistance for Low-Income Programs
  - The amount allocated for state health insurance programs shall be \$13,000,000 for this fiscal year. For the period beginning on October 1, 2020 and ending on November 30, 2020, the amount available will be equal to the pro rata portion of \$13,000,000.
  - The amount allocated for area agencies on aging shall be \$7,500,000 for the fiscal year of 2020. For the period beginning on October 1, 2020 and ending on November 30, 2020, the amount available will be equal to the pro rata portion of \$7,500,000.
  - The amount allocated for aging and disability resource centers shall be \$5,000,000 for fiscal year 2020. For the period beginning on October 1, 2020 and ending on November 30, 2020, the amount available will be equal to the pro rata portion of \$5,000,000.
  - The amount allocated for grant or contract with national center for benefits and outreach enrollment is now \$12,000,000 for the 2020 fiscal year ending on October 1, 2020. For the period beginning on October 1, 2020 and ending on November 30, 2020, the amount available will be equal to the pro rata portion of \$12,000,000.

ix. Subtitle E, Part II: Medicaid Provisions

- Extension of the Money Follows the Person Rebalancing Demonstration Program
  - The Deficit Reduction Act of 2005 section 6071(h)(1)(G) is amended to allocate \$337,500,000 for the period beginning on January 1, 2020 and ending on September 30, 2020. For the period beginning on October 1, 2020 and ending on November 30, 2020, the amount available will be equal to the pro rata portion of \$337,500,000.
- Extension of Spousal Impoverishment Protections

- Extends the protections through November 30, 2020.
- Allows the State to disregard the income of a spouse and conduct an analysis solely on an individual's eligibility for medical assistance on the basis of reduction of income.
- Delay of DSH Reductions
  - This section removes the \$4 billion DSH reductions for federal fiscal year 2020 and delays the cuts from taking effect December 1, 2020.
- Extension and Expansion of Community Mental Health Services Demonstration Program
  - Expands the Protecting Access to Medicare Act of 2014.
  - According to this section not later than 6 months after the date of enactment, the Secretary shall select two states, in addition to the eight States already listed, to participate in two-year demonstration programs that meet the requirements of this subsection.
  - The requirements are states that:
    - i. Were awarded planning grants,
    - ii. Applied to participate in the demonstration programs under this subsection but were not selected
  - The Secretary shall use the results of its evaluation of the state's original application and shall not require the submission of any additional application.
  - If a state is selected it is required to:
    - i. Submit a plan to monitor certified community behavioral health clinics under the demonstration program to ensure compliance with certified community behavioral health criteria during the demonstration period; and
    - ii. Commit to collecting data, notifying the Secretary of any planned changes that would deviate from the prospective payment system methodology outlined in the state's demonstration application, and obtaining approval from the Secretary of any such change before implementing change.
  - The Federal matching percentage applicable to amounts expended by states participating in the demonstration program under this subsection shall apply to

amounts expended by the state during the fiscal period that begins on January 1, 2020 if the state was participating in the demonstration program as of January 1, 2020 and shall apply to amount expended by the state during the first fiscal period the state participates if the state was selected pursuant to the expansion.

x. Subtitle E, Part III: Human Services and Other Health Programs

- Extension of Sexual Risk Avoidance Education Program
  - Section 510 of the Social Security Act is amended to extend the time through 2020 instead of ending in May 22, 2020 and to change the fiscal year to 2021.
- Extension of Demonstration Projects to Address Health Professions Work-Force Needs
  - Activities authorized by section 2008 of the Social Security Act shall continue through November 30, 2020.
- Extension of the Temporary Assistance for Needy Families Program and Related Programs
  - Activities authorized by part 1 of title IV and section 1108(b) of the Social Security Act shall continue through November 30, 2020.

xi. Subtitle E, Part IV: Public Health Provisions

- Extension for Community Health Centers, the National Health Service Corps, and Teaching Health Centers that Operate GME Programs
  - The amount allocated for community health centers under the Patient Protection and Affordable Care Act is increased to \$4,000,000,000 for fiscal year 2020 and \$668,493,151 for the period beginning on October 1, 2020 and ending on November 30, 2020.
  - The amount allocated for the National Health Service Corps is now \$310,000,000 for fiscal year 2020 and \$51,808,219 for the period beginning on October 1, 2020 and ending in November 30, 2020.
  - The amount allocated for teaching health centers that operate graduate medical education programs now extends through fiscal year 2020 and \$21,141,096 is allocated for the period beginning on October 1, 2020 and ending on November 30, 2020.
- Diabetes Programs
  - The amount allocated under the Public Health Service Act for Type I will extend through the fiscal year of 2020 and \$25,068,493 will be allocated for the period beginning on October 1, 2020 and ending on November 30, 2020.

- The amount allocated under the Public Health Services Act for Indians will extend through the 2020 fiscal year and \$25,068,493 will be allocated for the period beginning on October 1, 2020 and ending on November 30, 2020.

xii. Subtitle F, Part I: Over-the-Counter Drugs

- Amends Chapter V of the Federal Food, Drug, and Cosmetic Act (FD&C Act) to insert a new section regulating certain nonprescription drugs that are marketed without an approved drug application under section 505 of the FD&C Act. This new section primarily achieves two goals: (1) reforms the regulatory process for over-the-counter (OTC) drug approvals permitting the FDA more flexibility to make changes administratively, rather than through the time-consuming full notice and comment rulemaking process; and (2) incentivizes pharmaceutical companies to research and manufacture innovative drug products by providing an 18-month market-exclusivity period to reward investments for new OTC drugs.
- Amends Section 502 of the FD&C Act, to clarify that an OTC drug which does not comply with the requirements of its OTC monograph, which is essentially an approved recipe for a drug product, is considered misbranded. The FD&C Act prohibits the introduction of misbranded drugs into interstate commerce.
- Clarifies that nothing in the CARES Act will apply to drugs previously excluded by the FDA from the Over-the-Counter Drug Review under the original 1972 Federal Register document.
- Clarifies that sponsors of sunscreen ingredients with pending orders have the option to see review in accordance with the Sunscreen Innovation Act (SIA) or to see review under the new monograph review process. The election must be made within 180 calendar days of the date of enactment of the CARES Act.
- Provides an annual procedure to update Congress on the appropriate pediatric indication for certain OTC cough and cold drugs for children under the age of six. The evaluation consists of conditions under which nonprescription drugs are generally recognized as safe and effective.
- Makes technical corrections to the FDA Reauthorization Act of 2017 (Public Law 115-52).

xiii. Subtitle F, Part II: User Fees

- Declares that the fees paid pursuant to this section will be dedicated to FDA review of over-the-counter monograph drugs as set forth in the goals section and in letters from the Secretary of HHS to certain congressional committees.
- Establishes a new FDA user fee to allow the agency to hire additional staff members to ensure there is adequate agency oversight to approve changes to OTC drugs.

#### 4. Title IV – Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy

Foley Title IV Contact: [Christopher Swift](#), [Rob Slovak](#), [Michael Thomas](#), and [Andrew Howell](#)

i. Title IV of the Coronavirus Aid, Relief, and Economic Securities Act provides the Secretary of the Treasury with the authority to make loans or loan guarantees to states, municipalities, and eligible businesses and loosens a variety of regulations created in the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Economic Stabilization Act of 2008, and others.

##### ii. Subtitle A – Coronavirus Stabilization Act of 2020

- Emergency Relief and Taxpayer Protections
  - The Act authorizes the Treasury Secretary to make up to \$500 billion worth of loans and loan guarantees to eligible businesses, states, and municipalities. No more than \$25 billion can be loaned to passenger air carriers, no more than \$4 billion to air cargo carriers, and no more than \$17 billion to businesses important to maintaining national security. The remainder is to be used to support lending to eligible businesses, states, and municipalities. The term “eligible business” includes passenger air carriers or any other business that has not already received adequate economic relief in the form of loans or loan guarantees under other provisions of the Act.
  - Businesses that receive loans through these Federal Reserve programs are prohibited from paying dividends or repurchasing stock (or other outstanding equity interests) while the loan or loan guarantee is outstanding, as well as for the 12 months following repayment. These businesses are subject to the same employee compensation restrictions as listed for air carriers, air cargo carriers, and businesses deemed important to maintaining national security (summarized below and found in Section 4004). Although the Treasury Secretary can waive these restrictions, he must identify and explain the rationale for such waivers in testimony before Congress.
  - Businesses that receive loans or loan guarantees through these Federal Reserve programs can only make loans (or other advances) to business that are created or

organized and have the majority of their employees based in the United States. Transfers to subsidiaries and affiliates incorporated outside the United States are prohibited.

- The Act directs the Treasury Secretary to establish a program to provide low-interest loans for eligible businesses (including nonprofit organizations) with between 500 and 10,000 employees. Although these loans will require no repayment for at least six months, businesses and non-profit organizations seeking this support must provide a good-faith certification that they meet the following criteria:

- The company intends to maintain at least 90 percent of their current workforce;
- The company will not pay dividends or repurchase stock (or other equity securities);
- The company will not outsource or offshore jobs during the loan period or two years thereafter;
- The company will not abrogate existing collective bargaining agreements with labor unions; and
- The company will remain neutral regarding current or future union organizing activity.

- Limitation on Certain Employee Compensation

- The Act also imposes certain compensation caps for officers and employees at companies receiving loans or loan guarantees. Under these caps, officers or employees that received \$425,000 or more in total compensation in 2019 will have their future compensation capped at the amount they received that year. This cap applies while the loan or loan guarantee is in effect, as well as to the 12 consecutive months after the loan or loan guarantee is no longer outstanding. The same restriction also applies to severance payments or other compensation received upon termination from businesses participating on the loan and loan guarantee programs.
- Additional caps apply for officers and employees whose total compensation exceeded \$3,000,000 in 2019. Under the Act, these individuals may receive compensation up to \$3,000,000 plus 50 percent of the excess over \$3,000,000 of the total compensation received by the officer or employee in 2019.

- Continuation of Certain Air Services

- The Secretary of Transportation may require any air carrier receiving loans or loan guarantees under Section 4003 to maintain scheduled air transportation

services as the Secretary deems necessary to maintain service to any destination the carrier served before March 1, 2020. The needs of “small and remote communities” and “health care and pharmaceutical supply chains” are to be considered.

- Suspension of Certain Aviation Excise Taxes
  - The Act suspends the imposition of aviation excise taxes as otherwise required under the Internal Revenue Code through December 31, 2020.
- Debt Guarantee Authority
  - In order to backstop solvent depository institutions, the Act amends the Dodd-Frank Wall Street Reform and Consumer Protection Act to allow the FDIC to establish a program to insure these institutions without regard to a maximum amount. All such guarantees must terminate on or before December 31, 2020.
- Temporary Government in the Sunshine Act Relief
  - In the event that unusual and exigent circumstances continue to exist, the Board of Governors of the Federal Reserve System may conduct meetings with less restrictive and formal meeting notification and record-keeping requirements until December 31, 2020.
- Temporary Hiring Flexibility
  - Without regard to certain statutory hiring requirements, the Secretary of Housing and Urban Development and the Securities Exchange Commission are given flexibility to recruit and appoint candidates for temporary and term appointments as necessary to prevent, prepare for, or respond to COVID-19 during the “covered period” of the Act until the sooner of (1) termination of the national emergency declaration or (2) December 31, 2020.
- Temporary Lending Limit Waiver
  - The Comptroller of Currency may exempt any transaction or series of transactions from the total maximum amount of loans and extensions of credit upon a finding by the Comptroller that the exemption is in the public interest and consistent with the purposes of 12 U.S.C. 84.
- Temporary Relief for Community Banks
  - The federal banking agencies shall issue an interim final rule that sets the Community Bank Leverage Ratio (as defined in Section 201(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act) to 8% and provides qualifying community banks falling below this threshold a reasonable grace period to satisfy the leverage requirement.

- Temporary Relief from Troubled Debt Restructurings
  - The Act allows financial institutions to suspend GAAP requirements and loan determinations related to loan modifications that would be categorized as a troubled debt restructuring, if such loan modifications are related to COVID-19. Such suspensions cannot be applied to loans that were more than 30 days past due as of December 31, 2019.
  
- Optional Temporary Relief from Current Credit Losses
  - The Act suspends the requirement to comply with the Financial Accounting Standards Board's rules regarding the "Measurement of Credit Losses on Financial Instruments" during the covered period.
  
- Non-applicability of Restrictions on ESF During National Emergency
  - The Act removes certain restrictions on the Exchange Stabilization Fund (ESF) until December 31, 2020, namely, the requirement the Treasury reimburse the ESF for any funds that are used for the Treasury Money Market Funds Guaranty Program and the prohibition of the establishment of any future guaranty program for the money market mutual fund industry. It further makes an appropriation to reimburse the ESF for any losses it incurs from the Treasury Money Market Funds Guaranty Program.
  
- Temporary Credit Union Provisions
  - The Act broadens the definition of the kinds of credit unions to beyond only those primarily serving "natural persons" and the eligibility requirements for those institutions to receive assistance from the National Credit Union Central Liquidity Facility. Specifically, a credit union may access liquidity if the obligation does not exceed 16 times the subscribed capital stock and surplus of the facility itself. The present restriction is 12 times the capital stock and surplus. These loosened restrictions will expire December 31, 2020.
  
- Increasing Access to Materials Necessary for National Security and Pandemic Recovery
  - The Act loosens the limitations of the Defense Production Act of 1950. For a period of two years from the enactment of the Act, the government may take any action to correct a "shortfall" in "industrial resources" without regard to the current expenditure limit of \$50 million.
  
  - Similarly, the Defense Production Act currently limits the amount of money that may exist in the "fund" the law authorizes to \$750,000,000. This limitation is similarly waived for a period of two years from enactment of the Act. For a period of one year from the enactment of the Act, the \$50 million limit on government loans to correct industrial shortfalls is waived.

- Special Inspector General for Pandemic Recovery
  - The Act establishes within the Department of the Treasury the Office of the Special Inspector General for Pandemic Recovery. The Special Inspector General shall be appointed by the President, with the advice and consent of the Senate, and shall conduct, supervise, and coordinate audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments made by the Treasury Secretary under this Title.
  - The Special Inspector General shall give Congress quarterly reports providing the details of all such loans, loan guarantees, or other investments.
- Conflicts of Interest
  - Any company in which the President, Vice President, an Executive Department head, Member of Congress, or any of such individual's spouse, child, son-in-law, or daughter-in-law own over 20% of the outstanding voting stock shall not be eligible for loans, loan guarantees, or other investments provided under this Title.
- Congressional Oversight Commission
  - The Act establishes a Congressional Oversight Commission charged with overseeing the implementation of this Title by the Department of the Treasury and the Board of Governors of the Federal Reserve System, including efforts of the Department and the Board to provide economic stability as a result of coronavirus.
  - The Oversight Commission shall consist of five members as follows: one member appointed by the Speaker of the House of Representatives; one member appointed by the House Majority Leader; one member appointed by the Senate Majority Leader; one member appointed by the Senate Minority Leader; one member appointed by the Speaker of the House and Senate Majority Leader, after consultation with the Senate Minority Leader and House Minority Leader.
- Credit Protection During COVID-19
  - The Act requires that furnishers who agree to account forbearance, or agree to modified payments with respect to an obligation or account of a consumer that has been impacted by COVID-19, report such obligation or account as "current" or as the status reported prior to the accommodation during the period of accommodation (unless the consumer becomes current) if the consumer complies with the modified agreement.
  - Such credit protection is available beginning January 31, 2020 and ends 120 days

after the date the national emergency declaration related to the coronavirus is terminated.

- Foreclosure Moratorium and Consumer Right to Request Forbearance
  - The Act prohibits foreclosures on all federally-backed mortgage loans for a 60-day period beginning on March 18, 2020 and provides up to 180 days of forbearance for borrowers who have experienced a financial hardship related to the COVID-19 emergency.
  
  - Applicable mortgages include those purchased by Fannie Mae and Freddie Mac, insured by HUD, VA, or USDA, or directly made by USDA.
  
- Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans
  - The Act provides up to 90 days of forbearance for multifamily borrowers with a federally backed multifamily mortgage loan who have experienced a financial hardship.
  
  - Borrowers receiving forbearance may not evict or charge late fees to tenants for the duration of the forbearance period.
  
  - Applicable mortgages include loans to real property designed for five or more families that are purchased, insured, or assisted by Fannie Mae, Freddie Mac, or HUD.
  
- Temporary Moratorium on Eviction Filings
  - For 120 days beginning on the date of enactment, landlords are prohibited from initiating legal action to recover possession of a rental unit or to charge fees, penalties, or other charges to the tenant related to such nonpayment of rent where the landlord's mortgage on that property is insured, guaranteed, supplemented, protected, or assisted in any way by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program, or the Violence Against Women Act of 1994.
  
- Reports
  - The Act requires the Secretary of the Treasury to publish on the Department of the Treasury's website detailed information about each transaction authorized by this Act, within 72 hours of the time such transaction is executed.
  
  - The Comptroller General shall conduct a study of the loans and loan guarantees and report the same no later than nine months after enactment of the Act to various congressional committees. The Comptroller General shall continue

making such reports annually through the year succeeding the last year for which loans or loan guarantees remain outstanding.

iii. Subtitle B – Air Carrier Worker Support

- Pandemic Relief for Aviation Workers
  - The Act provides financial assistance for the exclusive use of employee wages, salaries, and benefits in the amounts of up to \$25 billion for passenger air carriers, up to \$4 billion for cargo air carriers, and up to \$3 billion for airline contractors up to \$100 million of those funds may be used for administrative fees associated with providing the financial assistance.
- Procedures for Providing Payroll Support
  - The Act provides the formula by which the Secretary will allocate financial assistance for aviation workers. The formula is based on the salaries and benefits reported by an air carrier pursuant to part 241 of Title 14, Code of Federal Regulations, for the period from April 1, 2019, through September 30, 2019 be used as the basis of support.
  - Smaller air carriers and contractors that do not file reports under part 241 must document wages, salaries and benefits for the same time period.
- Required Assurances
  - To be eligible for a financial assistance, recipients enter into an agreement with the Secretary of the Treasury that it will not, until September 30, 2020, conduct furloughs, reduce pay rates, buy back stock, pay dividends, and must meet requirements of Sections 4115 and 4117.
- Protection for Collective Bargaining
  - The Act restricts the Secretary from conditioning financial assistance on a carrier's implementation of measures to enter into negotiations with the certified bargaining representative of a class of employees regarding pay.
- Limitation on Certain Employee Compensation
  - Under the Act, financial assistance is dependent upon compensation limits:
    - i. Pay above \$425,000 is frozen for two years.
    - ii. No retirement or severance packages can exceed twice the maximum total compensation during 2019. Further, no officer or employee whose total compensation exceeded \$3,000,000 in 2019 may receive in excess of \$3,000,000 and 50% of the excess over \$3,000,000 of the total compensation received in 2019. "Total compensation" includes salary, bonuses, awards of

stock, and other financial benefits.

- Tax Payer Protections
  - The Act allows the Secretary of Treasury to receive warrants, options, stock and other financial instruments to provide appropriate compensation for the government for the assistance.

## 5. Title V – Coronavirus Relief Funds

### i. Coronavirus Relief Fund

- Provides \$150 billion to states, territories, and tribal governments to use for expenditures incurred due to the public health emergency with respect to COVID-19 in the face of revenue declines, allocated by population proportions, with a minimum of \$1.25 billion for states with relatively small populations.

## 6. Title VI – Miscellaneous Provisions

### i. COVID-19 Borrowing Authority for the United States Postal Service

- The Secretary of the Treasury may lend the U.S. Postal Service up to \$10 billion for current operating expenses but not to pay any existing debt obligations. The postal service shall prioritize delivery of products for medical purposes and may establish temporary delivery points in order to protect employees or individuals receiving the deliveries.

\* \* \*

## Appropriations

In addition to the above stimulus provisions, the Senate passed supplemental appropriations to help the government respond to the COVID-19 pandemic. Below is a quick summary of the appropriations provisions that are most likely to impact your business:

- USDA/Food and Nutrition Service – \$25.06 billion. Child Nutrition Programs – \$8.8 billion. The bill provides additional funding for food purchases and demonstration projects to increase flexibility for schools. Supplemental Nutrition Assistance Program (“SNAP”) – \$15.51 billion. The bill provides additional funding for SNAP to cover waiver authorities granted in H.R. 6201 and anticipated increases in participation as a result of coronavirus.
- U.S. Department of Agriculture (USDA)/Office of the Secretary – \$9.5 billion. The bill provides \$9.5 billion in emergency COVID-19 response funding to support agricultural producers impacted

by COVID-19, including producers of specialty crops, producers that supply local food systems, and livestock producers.

- Commodity Credit Corporation (“CCC”) – The bill includes language that replenishes the CCC borrowing authority by \$14 billion.
- Rural Business Cooperative Service – \$20.5 million. The bill provides the necessary subsidy to make \$1 billion in lending authority available for the Business and Industry Loan Guarantee Program, which provides much-needed financing to business owners who might not be able to qualify for a loan on their own.
- Food and Drug Administration – \$80 million. The bill provides additional funding to support the development of necessary medical countermeasures and vaccines, advance domestic manufacturing for medical products, and monitor medical product supply chains.
- Distance Learning, Telemedicine (DLT) and Broadband Program – \$25 million. The bill provides additional funding for the DLT grant program, which supports rural communities’ access to telecommunications-enabled information, audio, and video equipment, as well as related advanced technologies for students, teachers, and medical professionals.

\* \* \*

For more information about recommended steps, please contact your Foley relationship partner. For additional web-based resources available to assist you in monitoring the spread of the coronavirus on a global basis, you may wish to visit the [CDC](#) and the [World Health Organization](#).

Foley will continue to monitor and keep you apprised of relevant developments. Foley’s [Coronavirus Resource Center](#) provides continuous and updated insights and resources to support your business during this challenging time.

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