

# Coronavirus Relief Package: What Employers and Industries Need to Know

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On Friday, March 27, after days of intense negotiations, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law. This sweeping \$2.2 trillion emergency stimulus package was passed on a bipartisan basis to help abate the massive economic disruption caused by the coronavirus (COVID-19) pandemic.

In addition to direct payments to huge swaths of the American population, this Act provides for \$377 billion for small business loans, an expansion of unemployment insurance, and tax relief to some employers. Further, for those companies that do business directly with the federal government, there are a number of provisions that address new programs that are being made available to government contractors.

Many of these provisions will aid businesses in making difficult decisions about their workforce as the nation comes to a standstill due to the need for social distancing. In particular, employers that maintain their payroll will be eligible for forgivable loans to blunt the impact of the virus.

Below is an overview of the key provisions that companies should be aware of as they continue to find a path through the COVID-19 crisis. Summaries were authored by Wiley attorneys in numerous practice areas including Corporate; Employment & Labor; Government Contracts; Health Care; Intellectual Property; International Trade; Litigation; Telecom, Media & Technology; and White Collar Defense & Government Investigations.

## CORPORATE AND EMPLOYMENT PROVISIONS

By Thomas W. Antonucci and Jessica N. Rosenthal (Corporate Practice), and Todd A. Bromberg and Martha G. Vázquez (Employment & Labor Practice)

### KEEPING WORKERS PAID AND EMPLOYED ACT (TITLE I)

The “Keeping American Workers Paid and Employed Act” (the Act), which is Title I of the CARES Act, includes a number of provisions to help small businesses pay operating expenses and keep their workers employed during the COVID-19 pandemic. The Small Business Administration (SBA) will issue regulations within the next 15 days, which will provide additional information on how these programs will be implemented.

#### Paycheck Protection Program

The most significant aspect of the Act is the “Paycheck Protection Program” (the Program). The Program authorizes \$349 billion for federally guaranteed loans to small businesses and self-employed individuals that have been adversely impacted by COVID-19. Since the loans largely can be forgiven, these essentially are tax-free grants that companies can use to pay for payroll and other immediate needs. The loans will be administered by the SBA. The Program is scheduled to be available until June 30, 2020.

- **Who is eligible?**

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## Practice Areas

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Health Care  
Intellectual Property  
International Trade  
Litigation

- For-profit businesses with 500 or fewer employees, or that otherwise qualify as a small business under SBA standards
- 501(c)(3) organizations, 501(c)(19) veterans' organizations, and tribal businesses which have 500 or fewer employees
- Self-employed individuals and independent contractors – e.g., “gig” workers

Telecom, Media & Technology  
White Collar Defense & Government  
Investigations

To be eligible, the borrower must have been in operation on February 15, 2020 with paid personnel. There are special rules for calculating the number of employees for businesses with affiliated entities or that operate in multiple locations.

- **What are the loan terms?**

Amount: 2.5 times the employer's average monthly “payroll costs” incurred during the one-year period prior to the date the loan is made (up to a maximum of \$10 million).

- Payroll costs include, salary, wages and tips (up to an annual pay of \$100,000 per employee); separation pay; vacation, sick or other leave; group health care benefits (including insurance premiums); retirement plan contributions; and state/local taxes assessed on compensation.

**Loan Forgiveness: The loan will be forgiven (up to 100% of the principal amount) if certain conditions are met with respect to employee retention and compensation.**

Deferment: No payments of principal, interest, or fees for at least six months.

Interest Rate: Not to exceed 4%.

Maturity Date: Up to 10 years (for repayment of any amounts that are not forgiven – i.e., interest, impermissible expenses, and reductions (see below)).

Other: There are no collateral or personal guarantee requirements, no prepayment penalties, and no application fees.

- **What can the money be used for?**

- Payroll costs, including salaries and commissions, health care benefits, paid leave, and insurance premiums
- Interest (but not principal) on mortgages and on other debt incurred before February 15, 2020
- Rent
- Utilities
- **Does a business need to explain its financial situation?**

The Program is designed to provide funding quickly to as many businesses as possible. A business does not need to provide any supporting documentation or explanation of its financial need; it just needs to make a good faith certification that:

- The uncertainty of current economic conditions makes the loan request necessary to support ongoing operations.
- Funds will be used to retain workers and maintain payroll or make mortgage, lease and utility payments.
- The business has not applied for or received duplicative SBA loan funding.
- **What are the loan forgiveness terms?**
  - Loan proceeds that are used for permitted expenses (payroll costs, mortgage interest, rent, and utilities) over the 8-week period after the loan origination date are eligible to be forgiven.
  - The maximum forgiveness amount is the loan principal.
  - The forgiveness amount will be reduced on a proportionate basis if the number of the borrower's employees, or any employee's compensation, is reduced. This is based on:
    - Average number of full-time equivalent (FTE) employees during the 8-week "covered period" vs the average number of FTE employees during either (i) February 15, 2019 – June 30, 2019 or (ii) January 1, 2020 – February 29, 2020.
    - Any employee whose salary is reduced by more than 25% (excluding employees with an annual salary of more than \$100,000).
    - *Rehire incentive*: If an employer terminated employees after February 15, 2020, but rehires at least the same number of employees by June 30, 2020, then the temporary reduction in FTE employees will not be factored in the calculation.
  - It is important that businesses taking out these loans retain all documentation (employee roster, payroll costs, and mortgage/rent and utility payments), since the Act prohibits any loan forgiveness without proper documentation.
  - The amount of loan forgiveness will be excluded from the borrower's gross income.

### **Other Programs**

- SBA Express Loans

The cap on SBA express loans – revolving lines of credit for businesses to use for working capital – is increased from \$350,000 to \$1 million. This increase will expire on December 31, 2020.

- SBA EIDL Loans and Emergency Grant

The SBA provides loans of up to \$2 million to small businesses, self-employed individuals, nonprofit organizations, and others that can establish that they have been adversely affected by COVID-19. The SBA provides these funds under the its Economic Injury Disaster Loan (EIDL) program. (See Wiley's March 26 client alert.) The Act expanded eligibility for the EIDL program and enacted provisions to expedite the application review process – the requirement for a personal guarantee has been removed for loans up to \$200,000, and creditworthiness standards have been relaxed. In addition, all EIDL applicants now will receive an automatic \$10,000 grant within three days after submitting an application, which does not need to be repaid. EIDL funds may be used for payroll costs, increased costs to obtain materials due to supply chain disruptions, rent or mortgage payments, and other debt obligations.

Unlike for loans under the Paycheck Protection Program – which can be forgiven – the EIDL loans need to be repaid. However, payments may be deferred for up to a year, the interest rate is low – 3.75% (for small businesses) or 2.75% (for nonprofits) – and the loan term can be up to 30 years (determined on a case-by-case basis). The EIDL program will be available so long as the SBA has declared a disaster – which it currently has done for all fifty states, D.C., and all U.S. territories – however, the \$10,000 grant is available only until December 31, 2020.

- Entrepreneurial Education and Training

The Act authorizes \$275 million for small business development centers, women's business centers, and minority business centers to educate, train, and advise small businesses affected by COVID-19.

- General SBA Debt Relief

The Act allocates \$17 billion to provide further debt relief to existing borrowers. The SBA will pay principal, interest and fees on covered existing SBA loans for 6 months.

## **ECONOMIC STABILIZATION AND ASSISTANCE (TITLE IV)**

The "Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy," which is Title IV of the CARES Act, provides relief to larger companies in industries that have been particularly distressed as a result of the COVID-19 pandemic.

**Are there loans available to businesses that are not small or who have not received adequate relief under the above provisions?**

- Yes. The CARES Act provides for \$454 billion to the Treasury's Exchange Stabilization Fund to provide direct loans, loan guarantees, and investments to businesses that meet the following criteria:
  - Alternative financing is not reasonably available to the business;
  - The loan is sufficiently secured or made at an interest rate that reflects the risk of the loan and, if possible, not less than an interest rate based on market conditions for comparable obligations before the coronavirus outbreak;
  - The duration of the loan shall be as short as possible and shall not exceed 5 years;
  - Borrowers and their affiliates cannot engage in stock buybacks, unless contractually obligated, or pay dividends until the loan is no longer outstanding or one year after the date of the loan;
  - Borrowers must, until September 30, 2020, maintain its payroll as of March 24, 2020, to the extent practicable, and retain no less than 90 percent of its employees as of that date;
  - A borrower must certify that it is a U.S.-domiciled business and its employees are predominantly located in the U.S.;
  - The loan cannot be forgiven; and
  - In the case of borrowers critical to national security, their operations are jeopardized by losses related to the coronavirus pandemic.
- These direct loans come with strings attached: any company receiving a government loan would be subject to limitations on employee and executive compensation for highly compensated individuals (salaries above \$425,000), including severance pay, until one year after the loan is repaid.

## **ASSISTANCE FOR WORKERS, FAMILIES AND BUSINESS (TITLE II)**

The "Assistance for Worker, Families and Businesses," which is Title II of the CARES Act, provides relief in the forms of expanded unemployment insurance, and relief and incentives to businesses. This section also provides for cash payments to qualifying individual taxpayers (\$1,200 per adult and \$500 per child), which are phased-out for higher-income individuals.

### **Expansion of Unemployment Insurance Coverage**

In addition to providing for stimulus loans directly to employers, the CARE Act provides for an expansion of unemployment insurance to help workers who have lost their jobs or have been furloughed directly. This section of the Act is known as the Relief for Workers Affected by Coronavirus Act.

- **What does the expansion of unemployment insurance mean for my employees?**
  - The CARE Act creates a temporary Pandemic Unemployment Assistance program through December 31, 2020 to provide payment to those not traditionally eligible for unemployment benefits (self-employed, independent contractors, those with limited work history, and others) who are unable to work as a direct result of the coronavirus public health emergency.

- The CARES Act also would increase unemployment insurance by \$600 per week for four months. This money is in addition to what states pay as a base unemployment salary. This benefit would extend to gig economy workers, freelancers, and furloughed workers who are still getting health insurance from their employers but are not receiving a paycheck.
- Finally, the Act provides for an additional thirteen (13) weeks of unemployment benefits through December 31, 2020, for those who remain unemployed. These benefits would be paid by the federal government after state unemployment benefits have been exhausted.
- **How does this section of the CARES Act affect employers?**
  - The Act also provides funding to support “short-time compensation” programs, where employers reduce employees’ hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit. This provision would pay 100 percent of the costs the employer incurs in providing short-time compensation through December 31, 2020.

### **Tax Relief for Businesses**

Employers will also receive some tax relief under the CARES Act.

- First, the Act provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis, up to \$10,000 per employee. The credit is available to employers whose (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year. The credit is provided for wages paid or incurred from March 13, 2020 through December 31, 2020.
- Second, a provision has been included that will allow some employers (and self-employed individuals) defer payment of the employer share of the Social Security tax that they would otherwise pay to the federal government. Instead, the employer could elect to defer that payment, but it must then be paid over the following two years.
- Third, the Act relaxes limitations on some companies use of losses. A qualifying business will be able to carry back a loss from 2018, 2019, or 2020 five years. The provision also temporarily removes the taxable income limitation to allow a net operating loss to fully offset income. These changes will allow companies to utilize losses and amend prior years returns to get access to critical cashflow.

## **GOVERNMENT CONTRACTS**

By Kevin J. Maynard and Tracie Winfrey Howard

In addition to increasing the funding under various small business programs and the Stafford Act, which we discussed above and in our previous alert, the CARES Act includes the following provisions that are of particular relevance to government contractors:

- **Reimbursement of Government Contractors for Personnel Standby Costs**

Section 3610 authorizes agencies to reimburse contractors for the cost of any paid leave incurred to keep contractor or subcontractor personnel in a “ready state” through September 30, 2020. The Government may reimburse these costs only to the extent the contractor or subcontractor personnel were (i) unable to access a government facility or site and (ii) were unable to telework because their job duties could not be performed remotely during the COVID-19 pandemic. Any reimbursement of standby costs pursuant to this provision is subject to reduction for any tax credits taken by the contractor or subcontractor under the Families First Coronavirus Response Act, Pub. L. 116-127. Contractors and subcontractors should carefully document any such costs and the reason why employees were not able to work remotely so that they can support future requests for equitable adjustment under their contracts.

- **Temporary Elimination of Limits on Amount of Funds Used for Defense Production Act Assistance**

Section 4017 of the Act expands the President’s authority to use the Defense Production Act (DPA) to procure materials necessary for national security or pandemic recovery by (i) temporarily eliminating the requirement to obtain congressional approval before awarding contracts or making loans in excess of \$50 million under the DPA, and (ii) temporarily eliminating the statutory limit on the amount of funds in the “Defense Production Act Fund,” which otherwise would be limited to \$750 million per year.

In addition, of the \$10.5 billion appropriated to the U.S. Department of Defense (DOD), the Act provides \$1 billion for DOD to invest under the DPA in manufacturing capabilities that are critical to increasing the production rate of personal protective equipment and medical equipment to meet the demand of health care providers nationwide.

- **Authority to Enter into Contracts for Specific Pandemic Recovery Efforts**

Several provisions authorize agencies to enter into contracts to support various initiatives related to the COVID-19 response, including:

- Blood Donation Awareness Campaign. Section 3226 authorizes Department of Health and Human Services (HHS) to enter into contracts with public or private non-profit entities to conduct a national campaign to improve awareness of, and support outreach to, the public and health care providers about the importance and safety of blood donation and the need for donations for the blood supply during the COVID-19 crisis.
- Geriatrics Workforce Enhancement. Section 3403 authorizes HHS to enter into contracts with health professions schools or programs for the establishment or operation of Geriatrics Workforce Enhancement Programs, to support the training of health professionals in geriatrics.
- Nursing Workforce Development. Section 3404 authorizes HHS to enter into contracts to support Nursing Workforce Development efforts.

- **Oversight**

The Act includes several provisions to enhance congressional and executive branch oversight of the Act’s implementation and the use of the funds authorized, including the establishment of an Office of the Special



Inspector General for Pandemic Recovery and a Congressional Oversight Commission. For details on these oversight provisions, see the White Collar Defense and Government Investigations portion of this alert.

## HEALTH CARE

By Rachel A. Alexander and Taylor Robert Daily

The CARES Act includes the following provisions that are of relevance to health plans and other payers:

- **Commercial Health Plan/Insurers Implications**

The Act has directed commercial health plans and payers to extend coverage for certain COVID-19 related services. Under Section 3201 of the Act, private insurers must cover diagnostic testing for COVID-19 (including such testing as authorized by an FDA Emergency Use Authorization) without cost sharing. Health plans are required to pay providers of such tests in accordance with any negotiated rates between the plan and provider, or if there are no such negotiated rates, the plan must pay the “cash price” charged by the provider pursuant to Section 3202. Furthermore, under Section 3203, plans must provide coverage – without cost sharing – for “qualifying coronavirus preventive services,” defined as those items and services intended to prevent or mitigate COVID-19 as recommended by the United States Preventative Services Task Force, as well as any COVID-19 immunizations(s) that may become available.

- **Medicare Implications**

The CARES Act continues to expand coverage for Medicare beneficiaries in an effort to leverage comprehensive and innovative solutions to providing medical services in the midst of a highly contagious pandemic. Section 3703 continues to ease prior restrictions on coverage for telehealth services during the COVID-19 emergency period by eliminating the requirement that the telehealth provider and patient had an existing relationship in the past three years. Section 3713 makes any future approved COVID-19 vaccine(s) covered under Medicare Part B (similar to the influenza vaccination) without any beneficiary cost sharing. Finally, the Act speaks directly to Part D (PDP) and Medicare Advantage Part D (MA-PD) plans, directing that during the COVID-19 emergency period such plans, upon beneficiary request, waive dispensing limitations (e.g., refill-too-soon) and provide extended supplies of prescription drugs (i.e., up to a 90-day supply), provided that such extended fill is permissible under the prescription and utilization management and other clinical programs.

- **Medicaid Implications**

The Act, and in particular Part II, encourages states to expand Medicaid coverage in ways that could be important to the treatment and spread of COVID-19 by allowing Medicaid funds to be used to provide testing to uninsured individuals (Section 3716) and to allow states to extend existing Medicaid expansion programs (Part II).

## INTELLECTUAL PROPERTY AND DRUG & DEVICE REGULATION

By Wesley E. Weeks

The CARES Act includes the following provisions related to intellectual property:

- **United States Patent and Trademark Office**

The CARES Act provides direct authority to the Director of the USPTO to waive or adjust statutory deadlines during the COVID-19 emergency. The Director had previously waived regulatory deadlines and is expected to use this authority to waive statutory deadlines where the USPTO previously lacked authority to do so. See [https://www.uspto.gov/sites/default/files/documents/coronavirus\\_relief\\_notice\\_03162020.pdf](https://www.uspto.gov/sites/default/files/documents/coronavirus_relief_notice_03162020.pdf). These deadlines affect substantive rights in intellectual property, so it seems reasonably likely that future litigants will eventually challenge this authority when sued for infringement of intellectual property rights that would have lapsed but for the USPTO's waiver of the statutory deadlines.

- **U.S. Food and Drug Administration**

The CARES Act makes significant changes to the Food Drug & Cosmetics Act (FDCA) that will have far-reaching effects beyond the scope of the current COVID-19 emergency. Under 21 U.S.C. § 356c, FDA has had the authority to expedite review of applications to market drugs experiencing a shortage. The CARES Act modifies this Section of the FDCA, making it mandatory for FDA to expedite drug applications in those circumstances, "where appropriate."

Similarly, Section 356c requires drug manufacturers to notify FDA of any impending shortages of key drugs and the reasons for such interruptions. The CARES Act expands the reporting requirement to manufacturers of drugs deemed critical to the public health during a public health emergency, as well as shortages of the active ingredients in key drugs. It also mandates that drug manufacturers develop redundancy risk management plans that identify and evaluate risks to the supply of these drugs, as well as reports on the available volume of such drugs. The Act also extends similar reporting requirements to medical device manufacturers and establishes an expedited review process for medical devices facing a shortage.

The new requirements for drug manufacturers are effective in 180 days, meaning that drug manufacturers need to begin assessing which of their approved products are subject to the new reporting requirements and developing redundancy risk management plans now. The requirements for device manufacturers to notify FDA of impending shortages appears to go into effect immediately.

In addition to the amendments directed toward alleviating drug and device shortages during an emergency, the Act also overhauls the approval process for over-the-counter drugs and creates a new 18-month marketing exclusivity for companies that obtain new OTC approvals. This will serve as a potentially powerful incentive to investment in the OTC space, and is a significant development worth watching closely. The Act requires FDA to issue guidance on the new procedures for OTC drug approvals, and industry participants will want to be closely involved in that process.

## INTERNATIONAL TRADE

By Timothy C. Brightbill, Laura El-Sabaawi, and Maureen E. Thorson

The following provisions in the CARES Act may be of interest and assistance to the International Trade group's manufacturer clients.

- **Manufacturing Extension Partnership**

The Act includes \$50 million for the Manufacturing Extension Partnership (MEP), administered by the U.S. Department of Commerce, to assist manufacturers in preventing, preparing for, and responding to COVID-19. The MEP is a public-private partnership with Centers in all 50 states and Puerto Rico dedicated to assisting manufacturers with developing new products and customers, expanding and diversifying markets, adopting new technology, and enhancing value within supply chains. The CARES Act funds will be distributed among the 51 MEP centers to help small- and medium-sized manufacturers recover from the economic impacts of COVID-19. The Act also waives the statutory cost-match requirements for applicants for FY2020 funding.

- **Defense Production Act**

The Defense Production Act (DPA), 50 U.S.C. § 2061 et seq., allows the federal government to direct private companies to produce goods to meet national security needs. President Trump has invoked the DPA, in part, authorizing certain government agencies to issue orders prioritizing government purchases over commercial production. For details on the DPA-related aspects of the CARES Act, see the Government Contracts portion of this client alert.

- **State Trade Expansion Program**

The Act includes a provision allowing 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. STEP, a program administered by the U.S. Small Business Administration, provides financial awards to state and territory governments to assist small businesses with export development. STEP is designed to increase the number of small businesses that export, to increase the value of exports for small businesses, and to increase the number of small businesses that explore significant new trade opportunities. The relevant CARES Act provision also allows for any recipient of STEP assistance to be reimbursed for financial losses relating to a foreign trade mission or a trade show exhibition that was cancelled solely due to a public health emergency declared due to COVID-19 if the reimbursement does not exceed a recipient's grant funding.

- **Economic Development Administration**

The Act provides \$1.5 billion to the U.S. Economic Development Administration, a bureau within the Department of Commerce, to support economic development grants for states and communities suffering economic injury as a result of the COVID-19 pandemic. EDA assistance may be used to help rebuild impacted industries such as tourism or manufacturing supply chains, capitalize local funds to provide low-interest loans to businesses of all sizes, and support other locally identified priorities for economic recovery.

- **Comments to USTR on Section 301 Tariffs**

While not directly related to the CARES Act, we note also that the Office of the U.S. Trade Representative (USTR) is collecting comments from stakeholders on the degree to which modifications of existing Section 301 tariffs on goods from China may be necessary to assist in the national fight against COVID-19. For more information, see our recent client alert on this issue [here](#).

As always, Wiley's International Trade team is here to advise and assist on any matter described above, and any other International Trade-related issue that companies may be facing in these challenging times.

## LITIGATION

By Attison L. Barnes, III and Richard W. Smith

The CARES Act includes the following litigation-related provisions.<sup>1</sup>

- **Federal Judiciary Funding**

- Federal courts nationwide have issued standing orders continuing cases, and partially closing aspects of the court for COVID-19-related issues.
- The legislation appropriates an additional \$7.5 million for the federal judiciary.
  - The Act provides \$500,000 for the U.S. Supreme Court to expand its capacity for staff to work remotely and continue mission-critical activities.
  - The Act provides \$6 million for increased costs for pretrial and probation services, including substance abuse treatment and drug testing, and to expand capacity for Judiciary staff to work remotely.
  - The Act includes an administrative provision to allow federal courts that would be materially impacted by COVID-19 to use video conferencing for certain criminal proceedings.
  - The Act provides \$1 million for the Judiciary to expand its capacity for Defender Services staff to work remotely and continue representing clients without disruption.

- **Limitations on Liability for Volunteer Health Care Professionals**

Section 3215 of the legislation provides for a **limitation on liability** for volunteer health care professionals who volunteer to provide healthcare related services due to COVID-19.

- **Exceptions** include instances where a person engages in willful or criminal misconduct, gross negligence, reckless misconduct, conscious flagrant indifference, or works under the influence of alcohol or drugs.
- This limitation on liability expressly preempts state law.

- **Protections over Confidentiality of Patient Records**

- Section 3221 governs confidentiality and disclosure of patient records related to substance abuse disorders.
  - The section includes a prohibition on using such patient records in criminal, civil, or administrative contexts absent a court order or patient consent.
  - The section also includes an anti-discrimination provision, which prohibits discrimination on the basis of information disclosed through such records for health care treatment/denial, hiring/firing of employees or determining workers' compensation eligibility, housing eligibility, access to courts, or access to social benefits.

## TELECOM, MEDIA & TECHNOLOGY

By David A. Gross and Kathleen A. Kirby

The CARES Act provides funding relevant to telecommunications, media, and technology companies in two main areas: direct technology funding through support for broadband deployment, telehealth/telemedicine, broadcast, and technology resilience/infrastructure reinforcement; and indirect technology funding through support for telework and distance learning.

- **Funding for Telehealth, Telemedicine, and Broadband**

A number of provisions in the Act provide funding for telehealth and telemedicine response to COVID-19, including the following:

- Federal Communications Commission (FCC). Title V provides \$200 million to the FCC for COVID-19 response, including supporting telehealth and telemedicine.
- Rural Utilities Service (RUS). Title I provides \$25 million to the Department of Agriculture to support the RUS Distance Learning and Telemedicine program. It also provides \$100 million to the ReConnect program to support rural access to broadband.
- Indian Health Service (IHS). Title VII provides \$1.032 billion for IHS to respond to the pandemic, including investments for telehealth services and electronic health record modernization.
- The Department of Veterans Affairs. Title X provides \$2.15 billion for information technology systems, \$14.432 billion for medical services, \$2.1 billion for medical community care, and \$100 million for medical support and compliance. It allows the VA to enter into agreements with telecommunications companies to provide broadband for veterans in support of providing telehealth mental health care; and broadens the capability for telehealth visits.
- Public Health and Social Services Emergency Fund. Title VIII provides \$27 billion for medical response efforts, including increased telehealth access and infrastructure to increase access to digital healthcare delivery.

- Health Resources and Services Administration—Rural Health. Title VIII provides \$185 million to support rural health initiatives, including tribal health and telehealth programs.
- **Funding for Critical Infrastructure, Technology Reinforcement, or Fiscal Reinforcement**

The CARES Act also provides direct technology support outside of telehealth and telemedicine avenues in the following provisions:

- Cybersecurity and Infrastructure Security Agency. Title VI provides \$9 million for support of interagency critical infrastructure coordination.
- Institute for Museum and Library Services. Title VIII includes \$50 million for the Institute of Museum and Library Services to expand digital network access, purchase internet-enable devices, and provide for technical support services.
- Corporation for Public Broadcasting. Title VIII includes \$75 million for the Corporation for Public Broadcasting to make fiscal stabilization grants to public television and radio stations. These grants will help maintain programming and preserve small and rural stations threatened by declines in non-Federal revenues.
- Centers for Disease Control and Prevention (CDC). Title VIII provides that at least \$500 million of the CDC's funding under the CARES Act must be used for public health data surveillance and analytics infrastructure modernization.
- **Funding for Teleworking and Distance Education**

The following entities will receive funding that by the terms of the statute may be used in part to increase or strengthen teleworking or distance education capacity:

- Bureau of Indian Affairs. Title VII, \$453 million.
- Institutions of higher education. Title VIII, \$14.250 billion.
- Institutions of elementary and secondary education. Title VIII, \$13.5 billion available through the states.
- United States Agency for International Development. Title XI, \$95 million for operational needs.
- Coast Guard. Title VI, \$141 million.
- Forest Service. Title VII, \$70 million.
- Environmental Protection Agency. Title VII, \$7.2 million.
- Department of the Interior, Office of the Secretary. Title VII: \$158.4 million (funding includes other bureaus).
- Social Security Administration. Title VIII, \$300 million.
- United States Senate. Title IX, \$10 million.
- United States House of Representatives. Title IX, \$25 million.

- Department of Justice. Title II, \$55 million across the Department of Justice, including the FBI, DEA, U.S. Marshals Service, and U.S. Attorneys.
- U.S. Capitol Police. Title IX, \$12 million.
- Bureau of Indian Education. Title VII, \$69 million for response needs at BIE-funded schools.
- U.S. Army Corps of Engineers. Title IV, \$70 million.
- Bureau of Reclamation. Title IV, \$20.6 million.
- Internal Revenue Service. Title V, \$250 million.
- State, local, territorial, and tribal governments. Title VI, \$100 million in Emergency Management Performance Grants.
- Federal Emergency Management Agency. Title VI, \$45 million.
- Department of Housing and Urban Development. Title XII, \$35 million.

## WHITE COLLAR DEFENSE & GOVERNMENT INVESTIGATIONS

By Peter S. Hyun

The CARES Act includes the following provisions related to white collar defense and government investigations:

### U.S. Department of Justice Funding – \$1 billion

- **Federal Bureau of Investigation: \$20 million** for the safe return of law enforcement stationed abroad due to coronavirus global impacts; personal protective equipment and necessary supplies; clean work environments; and enhanced telework capabilities.
- **Drug Enforcement of Administration: \$15 million** for the safe return of law enforcement stationed abroad due to coronavirus global impacts; personal protective equipment and necessary supplies; clean work environments; and enhanced telework capabilities.
- **United States Marshals Service: \$15 million** for the safe return of law enforcement stationed abroad due to coronavirus global impacts; personal protective equipment and necessary supplies; clean work environments; and enhanced telework capabilities.
- **United States Attorneys: \$3 million** for enhanced telework capabilities.
- **Bureau of Prisons, Salaries and Expenses: \$100 million** for Correctional Officer overtime; personal protective equipment and supplies related to COVID-19; clean work and living environments; and inmate medical care and supplies related to COVID-19.
- **Justice Information Sharing Technology: \$2 million** for enhanced departmental telework capabilities.
- **Office of the Inspector General: \$2 million** to audit funds appropriated for coronavirus, and for enhanced telework capabilities.

## Conflict of Interest Prohibition on Title IV Funds

- Section 4019 expressly prohibits loans, loan guarantees, or other investments provided for under Title IV of the Act to:
  - 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.

## New Congressional Oversight Bodies Established

- **Pandemic Response Accountability Committee:** Title V provides \$80 million for a Pandemic Response Accountability Committee that would oversee loans and other funds provided to nonfederal entities under the Act and other COVID-19 response laws.
  - The committee would be established within the Council of Inspectors General on Integrity and Efficiency. It would include inspectors general of relevant departments and an executive director selected with congressional input.
  - The committee would detect and prevent fraud, waste, abuse, and mismanagement, and identify major risks. Its tasks would include conducting audits, and reviewing grant and contract reporting and program administration. It could issue subpoenas to compel testimony.
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  - Information on how the funds are used would have to be posted to a public website. Federal agencies would have to report monthly on any use of COVID-19 funds that exceeds \$150,000.
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- **Congressional Oversight Commission:** Section 4020 establishes a Congressional Oversight Commission charged with oversight implementation of Title IV by the Department of the Treasury and the Board of Governors of the Federal Reserve System.
  - The Oversight Commission shall consist of 5 members as follows:
    - 1 member appointed by the Speaker of the House of Representatives;
    - 1 member appointed by the House Majority Leader;
    - 1 member appointed by the Senate Majority Leader;
    - 1 member appointed by the Senate Minority Leader; and
    - 1 member appointed by the Speaker of the House and Senate Majority Leader, after consultation with the Senate Minority Leader and House Minority Leader.
  - The Panel would be authorized to hold hearings, take testimony, and secure from any federal department or agency information it deems necessary to carry out its responsibility. The Panel



would submit reports to Congress every 30 days.

- The Oversight Commission would terminate on September 30, 2025.

### **Additional Inspector General Authority**

- **Special Inspector General for Pandemic Recovery.** Section 4018 creates a Special Inspector General for Pandemic Recovery, established within the Department of the Treasury as the Office of the Special Inspector General for Pandemic Recovery.
  - The Special Inspector General shall be appointed by the President 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 keep Congress informed through quarterly reports that provide the details of all such loans, loan guarantees, or other investments disbursed under the Act.
- **Coronavirus Relief Fund.** Section 5001 creates a Coronavirus Relief Fund that provides \$150 billion to States, Territories, and Tribal Governments for public health emergencies with respect to COVID-19.
  - The provision also specifically authorizes the Inspector General for the Department of the Treasury to conduct oversight of the receipt and disbursement of funds from this Fund, and appropriates \$35 million to the Inspector General for that purpose.
- Other provisions in the Act specifically charge existing Inspectors General (OIG) with additional authority for overseeing waste, fraud, and abuse within programs administered under specific agencies.
  - Small Business Administration OIG has authority with respect to funding allocated under Title I for small business concerns;
  - Department of Labor OIG has authority with respect to funding allocated under the employment provisions in Title II; and
  - Department of the Treasury OIG has authority with respect to payroll support benefits for air carriers under Title IV.
- Other provisions in the bill also appropriate additional emergency money to Inspectors General (OIG) with additional authority for overseeing waste, fraud, and abuse within programs administered under specific agencies.
  - \$4 million for HHS Office of Inspector General.
  - \$7 million for the Department of Education Office of Inspector General.
  - \$12.5 million for the VA's Office of Inspector General.
  - \$5 million for the Department of Transportation Office of Inspector General.
  - \$5 million for the HUD Office of Inspector General.

- \$750,000 for the USDA Office of Inspector General.
- \$20 million for the Department of Defense Office of Inspector General.

### **Federal Agency Requirements to Send Reports to Congress (for Congressional Oversight)**

The bill also includes several requirements that federal agencies make additional reports directly to Congress (and existing committees) about funds dispensed under the authorities set forth in the legislation. These are areas that will be ripe for Congressional Oversight (and possible investigations), and include:

- Requirements that the Secretary of the Treasury provide reports to Congress regarding financial assistance provided for:
  - Air carriers and contractors;
  - Grantees for short-time compensation programs.
- Requirements for the Small Business Administration Administrator provide reports to Congress about:
  - Education and advisement grants to small business concerns;
  - Loan forgiveness to small business concerns;
  - Grants from the Minority Business Development Agency.
- Requirements for the Secretary of Health and Human Services to provide reports to Congress about:
  - Telehealth grant programs.
  - Rural health care services.
- Requirements for the Secretary for the Department of Education to provide reports to Congress about:
  - National Emergency Educational Waivers;
  - HBCU Capital Financing Loans;
  - Institutional grant programs for colleges.

The bill also includes several requirements to have the Government Accountability Office (GAO) to send reports to Congress (for oversight purposes) about the funds being allocated for certain programs, including:

- Funding for the Healthy Start program under Title III;
- Funding for Nursing Workforce Development programs;
- Funding for Community and Mental Health Services;
- Regulation of over-the-counter drugs.

### **Public Transparency by the Department of Treasury (for Public Accountability and Congressional Oversight)**

- Section 4025 requires the Secretary of the Treasury to publish on the Department's website information about each transaction authorized under the Act within 72 hours of the time the transaction is executed.

- It further requires GAO to conduct a study on the loans, loan guarantees and other investments provided under the Act and to provide a report to Congress within 9 months and annually thereafter.

Wiley will continue to monitor the rapidly changing developments in legislation, regulations and administrative actions in response to the COVID-19 pandemic.

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[1] We anticipate that other pressing issues facing businesses may arise in Phase 4 of the stimulus negotiations, which will commence immediately upon passage of Phase 3. Below are several of those pressing issues, for which our litigation team can provide counseling:

1. Fiduciary duty claims against executives
2. Claims for production delays associated with failure to timely manufacture or supplier delays
3. Claims for increased costs under contracts
4. Shareholder lawsuits/insider trading
5. Internet/IP scams tied to coronavirus
6. Due diligence in acquisitions
7. Claims that companies did not protect employees or customers (insurance angle)
8. Interpretations of *force majeure* clauses, impossibility, impracticability, and frustration of purpose
9. Privacy issues
10. Specific challenges in government contracts industry

Visit our COVID-19 Resource Center