

Senate Passes PHASE III of COVID-19 Economic Stimulus Package

The Senate unanimously passed – and the President is expected to sign into law following House passage later this week – the third phase (Phase III) of an unprecedented legislative effort to provide more than \$2 trillion in economic stimulus and financial assistance to address the coronavirus (COVID-19) pandemic. Following final passage, expedited rulemaking to implement the law will apply to almost every provision of the bill. The Buchanan Ingersoll & Rooney Federal Government Relations Team will provide additional guidance and be available to assist as necessary.

The largest fiscal stimulus in American history – more than double the size of the \$800 billion stimulus package enacted in 2009 to ease the Great Recession – the Coronavirus Aid, Relief, and Economic Security (CARES) Act will send direct payments to most adults and expand unemployment benefits ([Title II](#) of the bill), create a \$377 billion loan program for small businesses ([Title I](#)), establish a \$500 billion lending fund for distressed businesses ([Title IV](#)), and provide additional emergency supplemental appropriations ([Division B](#)) that will go directly to health care systems, communities and state and local governments fighting the pandemic. The bill also includes a slew of health care provisions and extensions of health care programs ([Title III](#)).

Under the economic package, each qualifying adult will receive \$1,200 in [direct payments](#) for workers with incomes up to \$75,000 per year (\$150,000 for married couples) before phasing out and ending altogether for those earning more than \$99,000 (\$198,000 for joint filers with no children). Families will receive an additional \$500 per child.

The expanded [unemployment insurance](#) program – at a cost of \$260 billion – will provide an additional \$600 per week payment to each recipient of unemployment insurance for up to four months. Funding will be provided to pay the cost of the first week of unemployment benefits through December 31, 2020 for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits. Finally, the expansion of unemployment insurance will provide an additional 13 weeks of unemployment benefits through December 31, 2020 to help those who remain unemployed after weeks of state unemployment benefits are no longer available.

Under the [small business rescue plan](#), of the \$377 billion loan program:

- \$350 billion will be for loan forgiveness grants to small businesses and non-profits to maintain existing workforce and help pay for other expenses like rent, mortgage, and utilities;
- \$10 billion will be for the Small Business Administration (SBA) emergency grants of up to \$10,000 to provide immediate relief for small business operating costs; and
- \$17 billion will be for SBA to cover 6 months of payments for small businesses with existing SBA loans.

The \$500 billion [lending fund](#) for distressed businesses will be provided through the Treasury Department's Exchange Stabilization Fund, which the Federal Reserve can then leverage to inject approximately \$4 trillion back into the marketplace in secured loans. Specifically, \$425 billion of the total will be used for loans and guarantees to support credit facilities that will be established by the Federal Reserve. Once the coronavirus pandemic has passed, the loans must be paid back – there will be no loan forgiveness. An independent Inspector General and Congressional Oversight Panel will be established to oversee Treasury loans and investments.

[Emergency supplemental appropriations](#) included in Phase III will provide almost \$340 billion for hospitals and various federal agencies on the frontlines of combatting the pandemic. Of the \$340 billion, about \$274 billion will be provided to state and local governments and communities, including:

- \$117 billion for hospitals and veterans' health care;
- \$45 billion for the Federal Emergency Management Agency (FEMA) Disaster Relief Fund;
- \$16 billion to replenish the Strategic National Stockpile supplies of pharmaceuticals, personal protective equipment, and other medical supplies, which are distributed to State and local health agencies, hospitals and other healthcare entities facing shortages during emergencies;
- \$4.3 billion for the Centers for Disease Control and Prevention (CDC) to support federal, state, and local public health agencies to prevent, prepare for, and respond to the coronavirus, including for the purchase of personal protective equipment; laboratory testing to detect positive cases; infection control and mitigation at the local level to prevent the spread of the virus; and other public health preparedness and response activities;
- \$11 billion for vaccines, therapeutics, diagnostics, and other medical needs; and
- \$1 billion for the Defense Production Act to bolster domestic supply chains, enabling industry to quickly ramp up production of personal protective equipment, ventilators, and other urgently needed medical supplies, and billions dollars more for federal, state, and local health agencies to purchase such equipment.

The CARES Act is Phase III of the extensive legislative effort over the past month to address the devastating impact of the COVID-19 pandemic on the U.S. economy and health systems. Earlier this month, Congress passed – and the President signed into law – two other legislative packages: the Coronavirus Preparedness and Response Supplemental Appropriations Act 2020 (Phase I), an \$8.3 billion emergency aid package to help contain and treat the novel coronavirus-caused respiratory illness; and the Families First Coronavirus Response Act (Phase II), legislation guaranteeing free coronavirus testing, providing paid emergency leave, enhancing unemployment insurance, strengthening food security initiatives, and increasing Federal Medicaid funding to states. Discussions are also underway – particularly amongst House Democrats – for a potential fourth phase to deal with expanded family and medical leave, stronger Occupational Safety and Health Administration (OSHA) regulations to protect first-responders, and a federal mandate to provide remote voting options by November's elections.

Regulatory Implementation of the CARES ACT

Many provisions of the Phase III economic stimulus package raise numerous additional questions that are not answered by the legislative summaries or the legislative text of the bill. Typically, the answers are provided through a lengthy rulemaking process by federal agencies. However, due to the emergent nature of providing immediate, critical relief, federal agencies – upon enactment of the CARES ACT – will engage in an expedited/accelerated rulemaking process that will determine eligibility for the various programs and relief, the duration of eligibility, and what constitutes compliance with the requirements of the various programs.

The **Buchanan Ingersoll & Rooney Federal Government Relations Team** is uniquely positioned to help guide you through the rulemaking process as the CARES Act is implemented.

For now, the Federal Government Relations Team provides the following additional details on the economic package relevant to each industry.

HEALTH CARE

A number of provisions in the Phase III final bill aim to identify and respond to challenges in the initial health system response to the COVID-19 pandemic crisis:

- HHS is directed to conduct a report on medical supply chain security to determine U.S. dependence on drugs and medical equipment sourced overseas;
- items such as personal protective equipment are to be added to the Strategic National Stockpile;
- makers of respiratory devices are shielded from liability in the event of a public emergency; and
- the FDA is directed to expedite the review of certain drug applications.

For patients, Phase III adds language clarifying that testing and eventually services related to vaccines are to be covered, without cost-sharing, by private health plans.

Hospitals will receive a \$100 billion infusion. This includes expansion of the Medicare accelerated payment program, a temporary pause on the 2 percent sequester cut from May 1st until Dec. 31st of 2020, and a 20 percent add-on payment for hospitals treating COVID-19 patients.

The bill offers support to community health centers and rural health in a number of ways. Community health centers will receive \$1.32 billion in supplemental funding while HRSA grants for rural community health will be reauthorized. Health extenders that include community health centers will be funded through November 30th and scheduled cuts to Disproportionate Share Hospitals are delayed until November 30th. Federally-qualified health centers (FQHCs) and Rural Health Clinics (RHCs) will now be able to act as “distant sites” for the purposes of telehealth services.

The final bill will continue to loosen existing restrictions on telehealth allowing for its use in a wider array of care settings by a broader set of practitioners. For instance, telehealth will now be permitted to fulfill hospice face-to-face encounters and to conduct dialysis evaluations so that patients won't have to leave their homes. High-deductible health plans with health savings accounts (HSAs) will now be able to cover telehealth services as well.

Most broadly this bill will clarify some confusion caused by the first COVID-19 supplemental by eliminating the preexisting relationship requirement between a provider and patient. Similar to the Phase I COVID-19 package, most of these updates to telehealth policy will last only as long as the current health emergency. The bill will also encourage the inclusion of other health technologies such as remote patient monitoring into patients' care.

Exchange of substance use data has long been strictly regulated by 42 CFR Part 2. Part 2 will now be reformed to align with HIPAA. Part 2's restrictions predate the advent of HIPAA by decades and a variety of diverse stakeholders from behavioral health providers to health technology groups have advocated its reform for years. An unsuccessful bid to include Part 2 reform in the SUPPORT Act of 2018 was thwarted by groups citing privacy concerns. Since then lawmakers on both sides of the aisle and in both chambers have championed reform. While substance use data will now be treated more like HIPAA data, there will be an initial consent requirement and additional prohibitions on the use of this data by criminal or civil courts.

Finally, lawmakers included a long-debated update to over-the-counter (OTC) drugs, creating an OTC user fee and allowing the FDA to approve OTC drugs without going through a full notice and comment period.

TRANSPORTATION

Within the \$500 billion to Treasury's Exchange Stabilization Fund for loans, loan guarantees, and other investments, direct loans will be made available to several transportation sectors, including:

- \$25 billion for passenger air carriers and other eligible businesses
- \$4 billion for cargo air carriers; and
- \$17 billion for businesses important to maintaining national security.

In addition, the emergency supplemental appropriations will provide the following for aviation:

- **Federal Aviation Administration, Airport Improvement Program (AIP)** – \$10 billion to maintain airport operations. AIP funds will be distributed by formula.
- **Essential Air Service (EAS)** – \$56 million provided to maintain existing air service to rural communities.
- **Continuation of Certain Air Service** – Authorizes the Secretary of Transportation to require air carriers receiving loans to maintain scheduled air transportation service where deemed necessary by the Secretary of Transportation.

- **Suspension of Aviation Excise Taxes** – Repeals Federal Excise Taxes collected in relation to commercial aviation. Excise taxes are applied to the transportation of persons (i.e., ticket tax), the transportation of property (i.e., cargo tax), and aviation fuel.
- **Air Carrier Worker Support** – Provides financial assistance for the exclusive use of employee wages, salaries, and benefits, including \$25 billion for passenger air carriers, \$4 billion for cargo air carriers, and \$3 billion for airline contractors.

Under the bill, contractor is defined as a person or entity that contractually performs airport ground support or catering services for the air carrier industry; while “employee” is defined as an individual, other than a corporate officer, employed by an air carrier or a contractor.

Within the jurisdiction of the **Federal Highway Administration**, the bill clarifies that states can issue special permits for overweight vehicles and loads to allow for the free flow of critical relief supplies during the current coronavirus epidemic for the duration of the fiscal year.

In addition, transit providers will receive \$25 billion for operating and capital expenses, which will be distributed using existing FTA formulas. Amtrak will receive more than \$1 billion for operating assistance to cover revenue losses related to coronavirus. Funding can also help states pay for their share of the cost of state supported routes.

TAX

In addition to direct payments to individuals and families, the economic stimulus package includes many tax provisions, including a 50 percent employee retention payroll tax credit for wages paid to employees during the COVID-19 emergency. The fully-refundable credit would be available to any business or non-profit that has a furloughed or reduced workforce as a result of a forced closure due to a federal, state or local government directive or as a result of quarantining of employees. The credit – limited to \$10,000 per employee and is refundable against payroll tax – will also be available to any business that has seen a 50 percent drop in gross receipts.

Further, the final bill will:

- allow employers to delay the payment of their 2020 payroll taxes until 2021 and 2022, leading to approximately \$300 billion of extra cash flow for businesses;
- allow businesses to carry back losses from 2018, 2019, and 2020 to the previous 5 years, which will allow businesses access to immediate tax refunds; and
- fix cost recovery for investments in Qualified Improvement Properties, which will allow businesses that made these investments in 2018 and 2019 and receive tax refunds now. This provision will correct an error contained in the 2017 Tax Cuts and Jobs Act.

Finally, the final bill will loosen rules on retirement accounts by allowing older Americans – who are subjected to mandatory minimum distributions from their retirement accounts – to keep their capital invested instead of being forced to cash out to draw on that capital without penalty, which would be suspended for 2020. The bill also waives the 10% penalty on coronavirus-

related early distributions from 401(k) and IRA accounts, which applies to distributions made at any time during 2020.

MANUFACTURING

The stimulus package includes \$3.079 billion in funding to support economic development, to invest in basic science and to provide resources for Federal, state and local law enforcement and prisons to respond to the COVID-19 public health crisis.

Specifically, the final bill will provide \$1.5 billion in economic adjustment assistance to help revitalize local communities after the pandemic. Financial assistance from the Economic Development Administration (EDA) can 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. Based on the impact of prior funding packages, EDA disaster assistance will leverage an additional \$20 billion in local and private investment and support more than 100,000 American jobs.

In addition, the final bill will provide \$50 million for the Hollings Manufacturing Extension Partnership (MEP) to help small and medium-sized manufacturers recover by finding value within the supply chain and expanding markets. For every one dollar of federal investment, MEP generates \$27.20 in new sales growth for manufacturers. The bill also includes an additional \$10 million for the National Institute for Innovation in Manufacturing Biopharmaceuticals to support the development and manufacture of new medical countermeasures and biomedical supplies to combat the coronavirus.

DEFENSE

The bill includes \$10.5 billion for the Department of Defense, primarily for the protection of members of the Armed Forces, their families, and military retirees from coronavirus. The bill also includes funding for specific efforts which leverage unique capabilities of the DoD to contribute to a whole-of-government response to the pandemic, including:

- \$1.4 billion for the National Guard to sustain up to 20,000 members – under the direction of the governors of each state – for the next six months in order to support state and local response efforts;
- as mentioned previously, \$1 billion for the Defense Production Act to allow the Department of Defense to invest in manufacturing capabilities that are key to increasing the production rate of personal protective equipment and medical equipment to meet the demand of healthcare workers all across the nation;
- \$415 million for DOD's medical research programs for research and development of vaccines and anti-viral pharmaceuticals; and

To alleviate the anticipated strain on both the military and civilian healthcare systems, DoD will receive \$1.5 billion for the expansion of military hospitals and expeditionary hospital packages. These funds will nearly triple the 4,300 beds available in military treatment facilities today.

With all of these mission critical funds made available to the Department of Defense, Congress included a general provision to prevent these dedicated funds from being diverted to build a wall on the southern border.

ENERGY

While the economic stimulus package will provide additional funding for energy-related departments, the final bill notably excludes several House Democrats' green initiatives, including mandating emissions reductions in carbon footprint for airlines in exchange for receiving aid from the government. Several tax breaks for the renewable energy sector was also left off the bill, as well as funding of \$100 million over five years for research and development of more sustainable aviation fuels, as House Democrats had sought.

While the bill increases the Low Income Home Energy Assistance Program (LIHEAP) – which helps individuals pay for heat and air conditioning – the final bill does include a House Democratic effort to protect customers from having their residential water and power utility disconnected for unpaid bills.

In addition, a White House effort to provide \$3 billion for the Energy Department to fill up the Strategic Petroleum Reserve was also not included.

EDUCATION

The final bill will suspend monthly payments on federally-held student loans through September, with no interest accruing during that suspension, but continue to count these months towards requirements for federal loan forgiveness programs. In addition, the final bill will:

- allow students to defer student loan payments for 6 months and to keep their Pell grants;
- prevent students who have to leave school as a result of COVID-19 from losing eligibility for future Pell grants;
- allow students to keep unspent money from Pell grants or student loans; and
- allow colleges and universities to continue to pay students for work-study programs even if they are unable to work due to closures.

The bill will also provide \$14.3 billion for direct grants to higher education institutions – with priority given to schools with high number of Pell Grant recipients and that were not enrolled in distance education before the outbreak.

Overall, the Education Department will receive \$30.9 billion, including an Education Stabilization Fund, with specific allocations to support elementary and secondary schools as well as higher education institutions. Under the stabilization fund:

- \$3 billion will be set aside for emergency relief funds that governors could use for schools most severely affected by the coronavirus outbreak;

- \$13.5 billion will go towards elementary and secondary school relief funding, most of which would be designated in the form of subgrants to individual schools.

The final bill will provide broad waiver authority to the Education Department to waive requirements under various federal elementary and secondary education laws related to assessments, accountability, and reporting requirements.

Finally, Head Start will receive an infusion of \$750 million for additional staffing, while \$3.5 billion will be directed to the Child Care Development Block Grant program to help support working health care providers and first responders.

HOUSING

The final bill will prohibit foreclosures on all federally-backed mortgage loans for a 60-day period and provides up to 180 days of forbearance for federally-backed borrowers who have experienced a financial hardship related to the COVID-19 emergency. The bill also will also provide up to 90 days of forbearance for 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.

Further, for 120 days, landlords will be prohibited from initiating legal action to evict or charge fees and penalties to the tenant if the landlord's mortgage on the property is in any way assisted by Housing and Urban Development (HUD), Fannie Mae, Freddie Mac, the rural housing voucher program, or the Violence Against Women Act of 1994.

Tenant-Based Rental Assistance program will receive \$1.25 billion to preserve Section 8 voucher rental assistance for seniors, the disabled, and low-income working families, who will experience loss of income from the coronavirus. Further, the Public Housing Operating Fund will receive \$685 million to provide Public Housing Agencies with additional operating assistance to make up for reduced tenant rent payments.

The Project-Based Rental Assistance will receive \$1 billion, which will make up for reduced tenant payments as a result of coronavirus. Preserving this critical housing assistance will prevent low-income families and individuals from being at risk of homelessness.

Finally, \$50 million will be made available for housing for the Elderly; another \$15 million for the disabled; and, state and local governments will receive \$4 billion in Homeless Assistance Grants.

EMERGENCY MANAGEMENT

State and local governments will be eligible for \$45 billion through the Federal Emergency Management Agency's (FEMA) **Disaster Relief Fund** to reimburse for COVID-19 related medical responses, personal protective equipment, National Guard deployment, coordination of logistics, safety measures, and other activities. The bill will also provide \$400 million for other FEMA grants, including:

- \$100 million for the Assistance to Firefighter Grants to provide personal protective equipment, supplies, and reimbursements;
- \$100 million for Emergency Management Performance Grants to focus on emergency preparedness;
- \$200 million for the Emergency Food and Shelter Program which provides shelter, food, and supportive services through local service organizations.