

Federal Stimulus Law: Resources for State and Local Governments in Funding COVID-19 Response Costs

H.R. 748, the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) was signed into law on March 27, 2020. The CARES Act provides emergency assistance for individuals, families and businesses affected by the novel coronavirus pandemic (“COVID-19”).

The CARES Act also includes provisions that provide financial assistance to State and local governments. In addition, the CARES Act provides targeted relief for housing, transit, airports, hospitals and medical centers, and education, among others. The following provides an initial overview of these provisions.

Direct Assistance to State and Local Government (Sec. 5001, the Coronavirus Relief Fund)

The CARES Act creates the Coronavirus Relief Fund to provide \$150 billion for payments to states, tribal governments, and units of local government for fiscal year 2020. The payments are directed to be made within 30 days.

The CARES Act includes a specific allocation formula, generally based on population,¹ to determine how much each state will receive. Large local governments² (population over 500,000) can receive a direct distribution of a portion of their state’s share by submitting a certification from the Chief Executive of the local government to the Treasury Secretary that the proposed uses are consistent with the permitted uses of funds. The portion available for direct distribution to large local governments is determined by formula (in shorthand, 45% of the state’s overall payment, multiplied by the local government population divided by the total state population).

Funds may be used by a state, tribal government, or local government to cover only those costs that:

- are necessary expenditures incurred due to the COVID-19 public health emergency;
- were not accounted for in the state or local government budget most recently approved as of March 27, 2020; and
- were incurred between March 1, 2020 and December 30, 2020.

Note the requirement that the expenditures be unbudgeted as of March 27, 2020. States and local governments have already incurred significant COVID-19 expenses and may have begun taking budget

¹ “For purposes of this subsection, the population of States and units of local governments shall be determined based on the most recent year for which data are available from the Bureau of the Census.”

² “Local Government means a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level with a population that exceeds 500,000.”

actions for the expenses. Accordingly, it will be helpful to press for guidance on this requirement that provides maximum flexibility.

The Inspector General of the Treasury Department is authorized to monitor and oversee the receipt, disbursement, and use of funds made available; a failure to comply triggers recoupment of the funds used in violation.

Next steps: Local governments will need to coordinate with the state to determine what portion of the distribution to the state will be made available to local governments (including to any large local governments eligible to receive a portion by direct distribution). Large local governments that qualify for direct distribution should review whether to submit the certification to receive a direct distribution and/or rely on a share of the state's payment.

Financial Market Liquidity Support (Sec. 4003, the Coronavirus Economic Stabilization Act)

The CARES Act also authorizes the Treasury Secretary to make up to \$500 billion in loans, loan guarantees, and other investments in support of eligible businesses, states, and municipalities³ to provide liquidity to eligible businesses, states, and municipalities related to losses incurred as a result of COVID-19.

Of this amount, approximately \$454 billion is available to “make loans and loan guarantees to, and other investments in, programs or facilities established by the [Federal Reserve] for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, States, or municipalities by—

- purchasing obligations or other interests directly from issuers of such obligations or other interests;
- purchasing obligations or other interests in secondary markets or otherwise; or
- making loans, including loans or other advances secured by collateral.”

This provision is intended to provide liquidity, including by purchasing state and municipal obligations on the secondary market, to stabilize the financial markets.

The CARES Act also directs the Treasury Secretary to endeavor to seek the implementation of a program or facility in accordance with the above quoted provision that provides liquidity to the financial system that supports lending to states and municipalities.

³ The term municipality includes (A) a political subdivision of a state, and (B) an instrumentality of a municipality, a State, or a political subdivision of a state.

Next steps: This provision should help provide liquidity to states and municipalities by stabilizing the financial market for their obligations, and may also include other tools for states and municipalities depending on the program or facility to be implemented by the Treasury Secretary.

Support for Transit and Airports (pp. 839 and 832)

The CARES Act makes \$25 billion available for transit grants – to be apportioned within seven days of March 27, 2020 – via the Federal Transit Administration, including for operating expenses of transit agencies related to the COVID-19 response. Costs to be covered may include, for example, “reimbursement for operating costs to maintain service and lost revenue due to the coronavirus public health emergency, including the purchase of personal protective equipment, and paying the administrative leave of operations personnel due to reductions in service.” The federal share of these costs may be up to 100 percent. This allocation should help provide relief in the face of lost fare box revenues and excise taxes for public transportation.

\$10 billion is made available to the Federal Aviation Administration for grants in aid to airport sponsors. A portion of the relief is to increase the federal share of grant-funded projects, a portion for other purposes for which airport revenues can be lawfully used, and a portion for general aviation airports.

Support for Public Health, Hospitals and Medical Centers (p. 743)

The CARES Act makes emergency appropriations for COVID-19 health response and agency operations, including increasing funding for the Public Health and Social Services Emergency Fund by \$127 billion.

Most of the increased funding (\$100 billion) is appropriated to reimburse, through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to COVID-19. “Eligible health care providers” are defined as public entities, Medicare- or Medicaid-enrolled suppliers and providers, and other for-profit and non-profit entities as specified by the Health and Human Services (“HHS”) Secretary, that provide diagnoses, testing, or care for individuals with possible or actual cases of COVID-19. Eligible health care providers desiring funding must submit an application to the HHS Secretary that includes a statement justifying the need of the provider for the payment. Funding will be on a rolling basis.

\$27 billion is appropriated for the development of necessary countermeasures and vaccines, prioritizing platform-based technologies with U.S.-based manufacturing capabilities, the purchase of vaccines, therapeutics, diagnostics, necessary medical supplies, as well as medical surge capacity, addressing blood supply chain, workforce modernization, telehealth access and infrastructure, initial advanced manufacturing, novel dispensing, enhancements to the U.S. Commissioned Corps, and other preparedness and response activities. A portion of this appropriation may be used for grants for the

construction, alteration, or renovation of non-federally owned facilities to improve preparedness and response capability at the state and local level. These funds are available through September 30, 2024.

An additional \$275 million is appropriated primarily for services administered by the Health Resources and Services Administration (“HRSA”), including \$180 million for telehealth and rural health activities, with \$15 million allocated to tribes, tribal organizations, urban Indian health organizations, or health service providers to tribes. These funds are to remain available until September 30, 2022.

Support for Education (p. 752)

The CARES Act includes \$30.750 billion in new appropriations for an Education Stabilization Fund, available through September 30, 2021. The funds are available to state governors (\$3 billion), local educational agencies (\$13.5 billion) and higher education institutions (\$14.25 billion) to prevent, prepare for and respond to COVID-19 domestically and internationally.

The emergency relief grants to state governors will be made by formula based on population numbers within certain age groups in each state. Funds can be sub-granted to local education agencies, to higher education institutions and to other education-related entities.

State educational agencies are eligible for grants upon submission of an application to the Education Secretary. Such grants will be allocated to states and sub-granted to local educational agencies in the same proportion as Elementary and Secondary Education Act Title IA funds. Funds can be used broadly for responding to the needs of disadvantaged populations, training, purchasing supplies, planning, purchasing educational technology, mental health services, and for maintaining operations and continuity of services.

The Higher Education Emergency Relief Fund will be allocated primarily on a formula basis based on Pell and non-Pell grant students. The funds may be used to cover costs associated with changes to the delivery of instruction due to COVID-19, provided that at least half of the funds must be used for emergency financial aid grants to students for expenses related to food, housing, course materials, technology, health care and child care.

In addition to financial supports, the CARES Act includes a number of relief provisions for both higher education institutions and local educational agencies.

Higher Education (Secs. 3503-3510, 3512, 3513)

The CARES Act provides relief to higher education institutions by waiving the non-federal matching requirement for access to federal funds (Sec. 3503), allowing the use of supplemental educational opportunity grants for emergency aid (Sec. 3504), and allowing federal work study payments to be made

to students who are unable to fulfill their work-study obligations due to the COVID-19 emergency (Sec. 3505). The bill also provides relief to both students and higher education institutions during the COVID-19 emergency by: waiving enrollment and duration limits to students who are unable to complete a semester due to the COVID-19 emergency (Sec. 3506 and 3507), waiving the requirement that higher education institutions must return grant and loan assistance if a recipient withdraws from school during the COVID-19 emergency (Sec. 3508(a)), waiving amounts student recipients of Federal Pell Grants and other grant assistance must repay if they withdraw from school (Sec. 3508(b)), cancelling certain student borrower loan obligations if the student withdraws (Sec. 3508(c)), and providing leaves of absences for students receiving federal assistance (Sec. 3508(d)). In addition, the CARES Act allows higher education institutions to exclude attempted credits by students without the necessity of an appeal when determining satisfactory academic progress for purposes of Title IV of the Higher Education Act of 1965 (Sec. 3509). The bill further includes provisions applicable to study abroad programs at foreign institutions (Sec. 3510). In addition, historically black colleges and universities are provided a deferment on federal loans made under 20 U.S.C. 1066 et seq. (Sec. 3512).

The CARES Act suspends payments of federal student loans with no accrual of interest through September 30, 2020. The suspension provisions include protections from involuntary collections, wage garnishment, credit reporting and reduction of other Federal benefit payments (Sec. 3513).

K-12 (Sec. 3511)

The CARES Act includes a number of statutory and regulatory waivers for state educational agencies and tribes related to assessments, accountability and reporting requirements. Waivers must be submitted to the Education Secretary and must include an assurance that the requesting entity will work to mitigate any negative effects resulting from the waiver. If granted, the waivers will apply to the 2019-2020 academic year, unless needed to carry out full implementation of any maintenance of effort waivers.

Housing Provisions

The CARES Act includes \$12.4 billion in new appropriations for U.S. Department of Housing and Urban Development programs, provides forbearances to homeowners and owners of multifamily housing and prohibits evictions.

Consumer Forbearance (Sec. 4022)

The CARES Act provides that homeowners of a 1-4 unit home who have a “federally backed mortgage loan” may request a forbearance, regardless of delinquency status, based upon an attestation of financial hardship caused by COVID-19. The forbearance would last up to 180 days and may be extended for another 180 days. No fees, penalties or interest beyond that already scheduled may be imposed. In

addition, the bill prohibits servicers of federally backed loans from foreclosing or evicting based on a foreclosure for a 60 day period starting March 18, 2020. “Federally backed mortgage loans” include FHA-insured forward and reverse mortgages, USDA- and VA-guaranteed or insured mortgages, loans sold to or securitized by Fannie Mae or Freddie Mac, and Section 184 and 184A guaranteed mortgages.

Multifamily Property Forbearance (Sec. 4023)

Owners who have a federally backed residential mortgage loan secured by a property with more than five units may request a forbearance if they are current on loan payments as of February 1, 2020. Requests are made to the servicer and must affirm financial hardship due to COVID-19. The forbearance is for 30 days with two additional 30 day extensions. If the owner receives a forbearance, they are prohibited from evicting tenants or charging late fees during the forbearance period. *This forbearance option appears to apply to projects financed with 4% or 9% low income housing tax credits.*

Moratorium on Evictions (Sec. 4024)

The CARES Act includes a general moratorium on evictions in any building that has a federally backed mortgage loan or participates in a “covered housing program” (as defined in 34 USC 12491(a)) or the rural voucher program. The moratorium begins on the date of enactment and runs for 120 days. *The Low Income Housing Tax Credit Program is a covered housing program and evictions are prohibited in tax credit financed properties for 120 days.*

Tenant Based Rental Assistance (p. 845)

The CARES Act provides \$1.25 billion for public housing agencies to maintain normal operations and take necessary actions during the time the program is impacted by COVID-19. Of this amount, \$850 million is available for administrative expenses and expenses of Section 8 programs, including Mainstream vouchers. Other eligible uses are activities to maintain the health of assisted families and to retain and support participating owners. In addition, \$400 million can be used in calendar year 2020 to adjust Section 8 renewal funding allocations either due to increases in voucher per unit costs or to prevent a termination of rental assistance for lack of funds. Such amounts will be allocated by the Secretary based on need. Other than fair housing, nondiscrimination, labor standards and environmental requirements, the Secretary may waive or provide alternative requirements in connection with use of the funds in order to expedite using the funds.

Public Housing Operating Fund (p. 848)

The CARES Act provides \$685 million through September 30, 2021 for public housing agencies to maintain normal operations and take necessary actions during the time the program is impacted by COVID-19.

Funds will be combined with other appropriated amounts for the same purpose and distributed to public housing agencies per the Operating Fund formula at part 990 of title 24, CFR. The bill allows such amounts to be used for eligible activities under (d)(1) and (e)(1) of Section 9, to support or maintain the health and safety of assisted individuals and families, and to support education and child care for impacted families. Other than fair housing, nondiscrimination, labor standards and environmental requirements, the Secretary may waive or provide alternative requirements in connection with use of the funds in order to expedite using the funds.

Native American Programs (p. 851)

The CARES Act also includes \$300 million through September 30, 2024 for Native American Programs, including \$200 million for Native American Housing Block Grants to be distributed using the fiscal year 2020 funding formula and to be used to maintain normal operations and to fund eligible affordable housing activities under NAHASDA during the time the program is impacted by COVID-19. Up to \$100 million will be available as grants to Indian tribes under the Community Development Block Grant Program for emergencies that constitute imminent threats to health and safety. Such amounts will be prioritized for activities and projects designed to prevent, prepare for and respond to COVID-19. Except for fair housing, nondiscrimination, labor standards and environmental requirements, the Secretary may waive or provide alternative requirements in connection with use of the funds in order to expedite the use of the funds.

Housing Opportunities for People with AIDS (p. 855)

To carry out the Housing Opportunities to People with AIDS Program, the bill provides \$65 million through September 30, 2022 to maintain operations, for rental assistance and to provide supportive services in order to prevent, prepare for and respond to COVID-19. At least \$50 million must be allocated using the fiscal year 2020 formula in the AIDS Housing Opportunity Act (42 U.S.C. 12901 et seq.). Up to \$10 million can be used for one-time awards to grantees who currently administer existing contracts for permanent supportive housing that were initially funded under section 854(c)(5) of the AIDS Housing Opportunity Act in fiscal year 2010 and earlier. Those awards will be made proportionately to existing grants and do not have to be spent on permanent supportive housing, but can be used for rent, mortgage, and utility payments for up to 24 months, for assistance with isolating, quarantining or providing coronavirus infection control services for household members who do not have HIV/AIDS, or for relocation services, including paying for lodging at hotels and motels, both for people living with HIV/AIDS and household members without HIV/AIDS.

Community Development Fund (p. 857)

The CARES Act provides \$5 billion, available until September 30, 2022, for the Community Development Fund. Of this amount \$2 billion must be distributed within 30 days of enactment to grantees who received allocations in fiscal year 2020 under section 106 of the Housing and Community Development Act of 1974. An additional \$1 billion will be allocated within 45 days directly to states and “insular areas” (defined by 42 U.S.C. 5302(a)) to prevent, prepare for and respond to COVID-19. The allocation will be based on public health needs, risk of transmission, number of cases, economic and housing market disruptions and other factors as determined by the Secretary. All remaining amounts will be allocated on a rolling basis directly to states and local governments by the Secretary based on formulas that prioritize risk of transmission, number of cases, economic and housing market disruptions and other factors. The bill also extends the deadline for grantees to submit final statements of activities and comprehensive housing affordability strategies for fiscal years 2019 and 2020 to August 16, 2021. In order to increase capacity building and technical assistance to support the funds provided by this section of the bill, up to \$10 million of these funds may also be used for new awards or to increase prior awards to technical assistance providers.

Homeless Assistance Grants (p. 862)

The CARES Act includes \$4 billion in homeless assistance grants through September 30, 2022 to prevent, prepare for and respond to COVID-19 among homeless families and individuals and to support assistance and prevention activities, including for temporary emergency shelters (including leasing property and temporary structures), infectious disease prevention and mitigation training, and hazard pay. Of that amount, \$2 billion will be distributed to certain grantees who received allocations in fiscal year 2020 and such allocations will be made within 30 days of enactment. The remaining \$2 billion must be distributed to state or local governments pursuant to a formula developed by the Secretary within 90 days of enactment of the bill. In developing the formula, the Secretary must allocate amounts to geographical areas with the greatest need based on factors to be determined by the Secretary, such as transmission risk, high rates of sheltered and unsheltered homeless, and economic and market conditions. Families who meet the very low income limits for their area are considered at risk of homelessness. The bill also provides relief from otherwise required provisions, such as usual procurement standards, match requirements, and citizen participation, in order to accelerate use of the funds. Other than fair housing, nondiscrimination, labor standards and environmental requirements, the Secretary may waive or provide alternative requirements in connection with use of the funds in order to expedite using the funds.

Housing Programs (p. 867)

The bill includes \$1 billion in additional Project Based Rental Assistance. The funds are available until expended to owners or sponsors of properties receiving Section 8 project based assistance to prevent, prepare for and respond to COVID-19. The funds may be used to maintain normal operations and take other necessary response actions during the time the program is impacted by COVID-19. Except for fair housing, nondiscrimination, labor standards and environmental requirements, the Secretary may waive or provide alternative requirements in connection with use of the funds in order to expedite the use of the funds.

Housing for the Elderly (p. 869)

The bill includes \$50 million for assistance to owners or sponsors of properties receiving project based assistance under Section 202 of the Housing Act of 1959. The funds are available through September 30, 2023. Of this amount, \$10 million must be used for service coordinators and to continue existing congregate service grants to residents of assisted living facilities. Except for fair housing, nondiscrimination, labor standards and environmental requirements, the Secretary may waive or provide alternative requirements in connection with use of the funds in order to expedite using the funds.

Housing for Persons with Disabilities (p. 870)

The bill includes \$15 million for assistance to owners or sponsors of properties receiving project based assistance under Section 811 of the Cranston-Gonzales National Affordable Housing Act. The funds are available through September 30, 2023. Except for fair housing, nondiscrimination, labor standards and environmental requirements, the Secretary may waive or provide alternative requirements in connection with use of the funds in order to expedite the use of the funds.

Fair Housing Activities (p. 872)

The bill provides for \$2.5 million for fair housing activities, to be available until September 30, 2021. The funds can be used for contracts, grants and other assistance to prevent, prepare for and respond to COVID-19. Of this amount, \$1.5 million must be used for the Fair Housing Assistance Program Partnership for special enforcement grants to address fair housing issues related to COVID-19 and \$1 million must be used for the Fair Housing Initiatives Program for education and outreach to the public about fair housing issues related to COVID-19.

Next Steps

The CARES Act is complex and far reaching. A number of the provisions are subject to interpretation, and will require further review. Several provisions will be the subject of additional guidance, whether from

the applicable federal Secretary or from the state. We expect to provide updated information as additional guidance is provided.

If you have any questions regarding this information, please contact us. Additional COVID-19 resources are available on our website at <https://www.pacificallawgroup.com/>.

| | | |
|-----------------|--|--------------|
| Alison Bengel | Alison.Bengel@pacificallawgroup.com | 206.602.1210 |
| Deanna Gregory | Deanna.Gregory@pacificallawgroup.com | 206.245.1716 |
| Stacey Lewis | Stacey.Lewis@pacificallawgroup.com | 206.245.1714 |
| Jon Jurich | Jon.Jurich@pacificallawgroup.com | 206.245.1717 |
| Faith Li Pettis | Faith.Pettis@pacificallawgroup.com | 206.245.1715 |
| Will Singer | Will.Singer@pacificallawgroup.com | 206.602.1216 |

Dated: March 27, 2020

A Note: This publication is for informational purposes and does not provide legal advice. It is not intended to be used or relied upon as legal advice in connection with any particular situation or facts. The information herein is provided as of the date it is written.

Copyright © 2020 Pacifica Law Group LLP. All rights reserved.

To subscribe to our mailing list, please contact Mia Wiltse at Mia.Wiltse@pacificallawgroup.com.