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CLIENT ALERT

Congress Approves an Interim Stimulus Package Adding Over $480 Billion in Funding for Small Businesses, Health Care Providers, and Testing

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On April 23, 2020, Congress passed the Paycheck Protection and Health Care Enhancement Act, including additional funding for small businesses, health care providers, and testing. As described in greater detail below, the new package approves over $480 billion in total additional funding for programs addressed previously in the CARES Act. Another stimulus bill addressing the COVID-19 pandemic is anticipated in May.

Small Businesses

- Increases funding for the Paycheck Protection Program (PPP) by $310 billion but does not otherwise alter eligibility for PPP loans or the terms of the loans, although applicants are cautioned to review the most recent Treasury FAQ document, which reflect significant changes as of April 23, 2020, and, in particular to verify eligibility and ability to make the required certification (see our Guidance on this recent development). This increase raises the funding level from $349 billion to $659 billion.

- Of the additional $310 billion in PPP funding, sets aside $30 billion for loans to be made by insured depository institutions and credit unions with assets between $10 billion and $50 billion as well as $30 billion for loans to be made by community financial institutions, small insured depository institutions, and credit unions with assets than $10 billion. Community Financial Institutions are defined as: minority depository institutions, certified development companies, microloan intermediaries, and State or Federal Credit Unions

- Adds funding of $10 billion for Emergency Economic Injury Disaster Loan (EIDL) grants and allows agricultural enterprises as defined by section 18(b) of the Small Business Act (15 U.S.C. §647(b)) with not more than 500 employees to receive EIDL grants and loans.

- Adds funding of $50 billion for SBA's 7(b) Disaster Loans Program, which includes EIDL, to remain available until expended.

Health Care Providers

- Adds an additional $75 billion to the Public Health and Social Services Emergency Fund for reimbursement to eligible healthcare providers, *e.g.*, Medicare or Medicaid enrolled suppliers and providers, to reimburse COVID-19 related necessary expenses and lost revenue otherwise not reimbursable from "other sources." This funding is in addition to the $100 billion provided in the CARES Act.
- The statutory conditions of this funding are identical to the $100 billion appropriation in the CARES Act. For example, even though HHS' initial distributions from this fund were automatic based on criteria determined by the agency, both

Acts require HHS to review applications and make payments on a rolling basis. Further, eligible healthcare providers must submit reports and maintain documentation as deemed by HHS as necessary to ensure compliance with the terms and conditions of the funding.

Testing

- Authorizes an additional $25 billion to the Public Health and Social Services Emergency fund for necessary expenses to research, develop, validate, manufacture, purchase, administer, and expand capacity for COVID-19 tests that both detect prior exposure and active infection. This includes support to enable academic, commercial, public health, and hospital laboratories to scale up and conduct surveillance and contact tracing among other activities related to COVID-19 testing. The funding is demarcated as follows:
    - Within 30 days, $11 billion for states, localities, territories, and tribes to develop, purchase, administer, process and analyze COVID-19 tests, scale-up laboratory capacity, trace contacts, and support employer testing must be allocated. Any State or other recipient of these funds must submit to HHS its plan for COVID-19 testing and goals for 2020;
        - $2 billion of these funds will be provided to States consistent with the Public Health Emergency Preparedness grant formula, ensuring every state receives funding. These funds shall be allocated within 30 days of the date of enactment of the Act.
        - $4.25 billion of these funds will be provided to areas based on relative number of COVID-19 cases. These funds shall be allocated within 30 days of the date of enactment of the Act.
        - $750 million of these funds will be to tribes, tribal organizations and urban Indian health organizations in coordination with the Indian Health Service.
        - $1 billion to the Centers for Disease Control and Prevention (CDC) for surveillance, epidemiology, laboratory capacity expansion, contact tracing, public health data surveillance and analytics infrastructure modernization, disseminating information about testing, and workforce support necessary to expand COVID-19 testing;
        - $1.8 billion to the National Institutes of Health (NIH) to develop, validate, improve, and implement serological testing and associated technologies; to accelerate research, development, and implementation of point-of-care and other rapid testing; and for partnerships with governmental and non-governmental entities to research, develop, and implement the activities;
        - $1 billion for Biomedical Advanced Research and Development Authority (BARDA) for advanced research, development, manufacturing, production, and purchase of diagnostic, serologic, or other COVID-19 tests or related supplies;
        - $22 million for the Food and Drug Administration (FDA) to support activities associated with diagnostic, serological, antigen, and other tests, and related administrative activities;
        - $825 million for Community Health Centers and rural health clinics; and,
        - Up to $1 billion may be used to cover costs of testing for the uninsured.
- Requires HHS to issue a report on COVID-19 testing no later than 21 days after the date of enactment of the Act, with updates provided every 30 days until the end of the COVID-19 public health emergency. The report shall include:
    - data on demographic characteristics, including in a de-identified and disaggregated manner, race, ethnicity, age, sex, geographic region and other relevant factors of individuals tested for or diagnosed with COVID-19; and,

    - information on the number of cases, hospitalization, and deaths as a result of COVID-19.
- Requires HHS to issue a report on the number of positive diagnoses, hospitalizations, and deaths as a result of COVID-19, including data disaggregated nationally by race, ethnicity, age, sex, geographic region, and other relevant factors, and, epidemiological analysis of such data.

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