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CARES Act Summary

A SHIPMAN & GOODWIN® ALERT

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CARES Act Provides $2.2 Trillion Stimulus Package for Relief During COVID-19 Emergency

On Friday March 27, 2020, the President signed into law the bipartisan proposal for Coronavirus Aid, Relief, and Economic Security Act (known as the "CARES Act"). The CARES Act is a massive $2.2 trillion dollar stimulus package that contains a number of provisions to assist the United States economy combat the impact of COVID-19. This alert will summarize some of the relief provisions contained in the CARES Act. If you are reading this pdf electronically, you may click on a bullet below to be taken directly to that section. We will summarize:

RELIEF FOR EMPLOYERS

Unemployment Benefits and Programs

Expansion of Who May Receive Benefits

The CARES Act (Section 2102) authorizes payment of unemployment compensation benefits for individuals who were not previously eligible under federal or state law (such as self-employed individuals or employees with insufficient work histories). Individuals who can telework or who are receiving other paid leave (such as EFMLA leave under the FFCRA) are not eligible for such benefits. An individual will qualify for such benefits, however, if they are unemployed or underemployed for 1 of 11 COVID-related reasons, including:

- They have been diagnosed with COVID-19, or they are experiencing symptoms of COVID-19 and are seeking a medical diagnosis;
- A member of their household has been diagnosed with COVID-19, they are caring for a family member with COVID-19, or their child's school or daycare is closed because of COVID-19; and
- "the individual has to quit his or her job as a direct result of COVID-19," which potentially could be read as covering things such as an individual quitting his or her job due to a fear of contracting COVID-19.

Employees will get the weekly benefit rate in the state where they are employed (subject to certain minimum levels of payment), plus the $600 extra Federal Pandemic Unemployment Compensation payment discussed below. Such benefits are available for the period between January 27, 2020, and December 31, 2020, and may be awarded retroactively. An employee's total receipt of benefits under this section shall not exceed 39 weeks, which includes any weeks in which the employee received benefits under another state or federal law.

Additional Benefits for Individuals Who Exhaust Their Unemployment

The CARES Act (section 2107) provides individuals who exhaust their unemployment compensation benefits with a 13-week extension of benefits, which will be fully reimbursed by the federal government. Employees will get the weekly benefit rate in the state where they are employed (subject to certain minimum levels of payment), plus the $600 extra Federal Pandemic Unemployment Compensation payment discussed below.

Supplemental Pandemic Payment

The CARES Act (section 2013) provides any individual receiving unemployment compensation benefits with an additional $600 Federal Pandemic Unemployment Compensation payment per week. This $600 payment is available to public and private sector employees and it is not dependent on the amount of benefits received. Thus, if someone is receiving any level of benefits, they will get the $600 supplemental payment. These supplemental payments extend through July 31, 2020, and will be fully reimbursed by the federal government.

Faster Claim Acceptance

The CARES Act (section 2105) also requires that each state agree to pay unemployment compensation benefits without any waiting period.

Relief for Nonprofit and Government Employers

Nonprofit organizations and governmental entities normally reimburse state governments for 100% of their unemployment claims rather than paying unemployment taxes on an ongoing, prospective basis. In a situation like this, where there are mass layoffs, such a situation can cause such entities and organizations to incur significant bills from the state. The CARES Act (section 2104) provides relief to such entities and organizations in two ways:

- First, the CARES Act provides that the federal government will provide states with money to reimburse governmental entities and nonprofit organizations for 50% of their unemployment claims. This money will be for all unemployment claims for the period March 13, 2020 through December 31, 2020, without regard to the reason for the unemployment claim.
    - At this time, the Connecticut Department of Labor has not determined whether the State will only bill such entities and organizations for half of the money paid out for their former/furloughed employees, and then keep the federal reimbursement money, or (2) whether the State will bill such entities and nonprofits the full cost of their employees' claims and then reimburse the entities and nonprofits 50% of their costs after the State receives the federal money.
- Second, the CARES Act authorizes the Secretary of Labor to issue guidance for states to interpret their unemployment laws in a manner that would provide "maximum" flexibility for reimbursing employers as it relates to timely payments and assessment of penalties and interest. The Connecticut Department of Labor has not issued any such guidance yet, so it remains unclear what additional relief may be provided under this provision of the CARES Act.

- Employees from governmental agencies and non-profit organizations are eligible for the supplemental $600 per week payment through July 31, 2020. Because such payments will be fully reimbursed by the federal government, at this time the cost of those weekly payments is not expected to be passed on to such entities or organizations. Instead, we expect the State to make those payments and then keep the reimbursement it receives from the federal government. The Connecticut Department of Labor is expected to clarify this issue soon.

Payments for Reductions in Hours

Employees whose hours or pay have been reduced may be eligible for unemployment benefits depending on the rules in each state. Connecticut, for example, considers such matters on a case-by-case basis. The CT Department of Labor also maintains the Shared Work Program, which offers an alternative to layoffs by allowing employers to temporarily reduce an employee's hours between 10 and 60% and supplement lost wages with the help of partial unemployment benefits. With such a program already in place, the CARES Act provides that Connecticut can be reimbursed for 100% of the short-time compensation paid under the Shared Work Program [https://www.ctdol.state.ct.us/progsupt/bussrvce/shared_work/index.htm]. This provision should cover Shared Work benefits paid to employees for private sector employers, as well as reimbursing employers such as governmental entities and nonprofit organizations.

The Paycheck Protection Program

Under the CARES Act, employers with 500 or fewer employees (with certain exceptions) can benefit from the $349 billion Paycheck Protection Program, [https://www.sba.gov/funding-programs/loans/paycheck-protection-program] which is designed to keep businesses operational during this COVID emergency. There are several key aspects of this loan program which are summarized as follows:

- **Who can receive them:** Loans are available of up to $10 million per business through qualified SBA lenders, banks, and other financial institutions for employers with up to 500 employees. The amount a company can borrow is based on its average monthly payroll for 2.5 months, and some additional considerations.

- **What they can be used for:** These loans can be used for expenses in the 10-week period following the loan such as payroll costs, mortgage payments, rent and utility payments, insurance premium payments, and certain other existing debt obligations. There are certain limits on what payroll expenses can be covered by the loan, such as compensation amounts over $100,000 per employee.

- **How can businesses qualify**: In order to receive a loan, a business must certify that it will be used for one of the previously stated reasons, that it is needed due to the COVID-19 emergency, and that the employer has not had other applications pending and has not already received funds under the program.

- **How can the loans be forgiven:** The debt will be forgiven if used in the 8-week period following the loan for purposes such as payroll, rent, mortgage interest, or utility payments. However, any forgiveness will be reduced in proportion to any reduction in the number employees as compared to the prior year, and any reductions in employee compensation greater than 25%. Such reductions can be offset by an employer rehiring employees or adjusting wages by June 30, 2020.

*More guidance on SBA/PPP Loans is contained in the next section "Relief for Property Owners Who Run Small Businesses" on page 5. If you have any questions about the SBA loan process, please contact Greg Muccilli, Lisa Zana, Jim Schulwolf or Kent Nevins.

Payroll Tax Relief

Deferral of Employer Portion of Social Security Tax

Section 2302 of the CARES Act allows employers to defer payments of the 6.2% employer portion of the Social Security tax due from the date of enactment through the end of 2020. Employers choosing to defer the payment are required to repay the deferred amount in two equal payments, one of which is due by December 31, 2021, and the second of which is due by December 31, 2022. Individuals paying self-employment tax are provided with equivalent relief.

Employee Retention Credit for Employers Subject to Closure Due to COVID-19

For businesses that are fully or partially suspended due to a government order limiting commerce, travel, or group meetings due to COVID-19, or that saw a 50% reduction in gross receipts for the first quarter beginning in calendar 2020 compared to the same quarter in the prior year, Section 2301 of the CARES Act creates a 50% credit for paying up to $10,000 in wages. Wages paid before the end of 2020 are potentially eligible for the credit, but are not available for any wages paid due to the new requirement for paid leave and sick pay. The credit is allowed against payroll taxes. The period for which wages are eligible for the credit ends when the business is no longer suspended or gross receipts for a quarter reach 80% of the prior year. Tax-exempt organizations may claim the credit based on a "full or partial suspension" of a trade or business.

For employers with more than 100 full-time equivalent employees, only wages paid when the employee was not providing services are eligible for the credit. Employers with 100 or fewer full-time equivalent employees are eligible to take the credit on any wages during the eligible period described above.

If you have questions about relief for employers, contact Peter J. Murphy at pjmurphy@goodwin.com.

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RELIEF FOR PROPERTY OWNERS WHO RUN SMALL BUSINESSES

Property owners and small businesses with 500 or fewer employees (with certain exceptions) should benefit greatly from the $349 billion Paycheck Protection Program which is intended to ease the impact of the COVID-19 crisis by providing forgivable loans through qualified SBA lenders, banks and other financial institutions, of up to $10 million per business depending on the company's average monthly payroll costs which is available for working capital, payroll support, payment of employees' salaries, mortgage payments, rent and utility payments, insurance premium payments and certain other existing debt obligations. Recipients of these forgivable loans must satisfy certain criteria of eligibility, and the debt forgiveness will be reduced in proportion to any reduction in the number employees as compared to the prior year and certain reductions in employee compensation, thus providing an incentive for small businesses, including property owners who operate their own building maintenance, security and management businesses, to rehire workers previously laid off in an effort to re-stimulate the economy. Importantly, the SBA generally aggregates affiliated entities for the purpose of counting employees. These loans are backed by the U.S. Small Business Administration (SBA) through its 7(a) loan program. We will provide further guidance on eligibility for SBA loans in a future alert.

In addition to the CARES Act, SBA's Economic Injury Disaster Loan (EIDL) program makes available low-interest working capital loans of up to $2 million to property owners and small businesses that incur "substantial economic injury" resulting from the COVID-19 crisis. The determination of whether or not a business is a "small business" for the purposes of obtaining EIDL financing is based on a combination of factors including the particular business industry, average revenues and/or number of employees. Other underwriting factors are also considered (e.g., credit, substantial economic injury to the business, and business location), and collateral is required for all EIDL loans over $25,000. SBA will take real estate as collateral when it is available.

Importantly, you cannot avail yourself of both a SBA 7(a) loan (as included as part of the CARES Act) and an EIDL loan for the same purpose, so you will want to look in to each carefully if you are considering either of these programs for your property or business.

These programs are not direct assistance to real estate owners, but they may be an important piece to providing relief to tenants and landlords. If you are a landlord operating a building and, perhaps like so many property owners with a mortgage loan, you are unable to abate or waive tenant rents due to lender restrictions, it may be prudent to consider these and other relief options in light of the COVID-19 crisis to bridge building maintenance, front desk and security (or other) expenses, mortgage interest payments, rent payments or other eligible operating expenses and/or payroll costs required to keep your business operational for your tenants. Similarly, if you are a small business owner leasing space and unable to make your rent payments, these and other relief programs may provide you with working capital, payroll, rent and utility payments, insurance premium payments and other monetary obligations. In the multifamily space, the direct cash to eligible taxpayers offered by the CARES Act will potentially provide an avenue for residential renters who may otherwise be unable to pay rent and whose landlords cannot (or will not) provide a rent abatement.

If you have questions about relief for property owners and businesses, contact Gregory Muccilli at gmuccilli@goodwin.com, Lisa Zana at lzana@goodwin.com, Jim Schulwolf at jschulwolf@goodwin.com, or Kent Nevins at knevins@goodwin.com.

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BANKRUPTCY RELIEF FOR SMALL BUSINESSES

Many unanswered questions remain surrounding the $2 trillion stimulus package aimed at aiding American citizens and businesses as they cope with and recover from the unprecedented public health crisis caused by COVID-19 and the corresponding economic fallout. Some of those questions relate to how the CARES Act will help sole proprietorships and small businesses that suddenly find themselves closed and unable to operate while financial obligations mount. What follows is a brief summary of the recently enacted Small Business Debtor Reorganization section of the Bankruptcy Code and the amendments made to it and other provisions of the Bankruptcy Code by the CARES Act to address this issue.

Title I of the CARES Act aims to keep American workers paid and employed. As part of this relief, the CARES Act amended Subchapter V of Chapter 11 of the Bankruptcy Code, which was incorporated into the Bankruptcy Code by the Small Business Reorganization Act of 2019 (the "SBRA") and became effective on February 19, 2020.

Generally, the SBRA was meant to assist financially distressed sole proprietorships and smaller businesses that were otherwise ill suited to the onerous burdens of reorganization under Chapter 11 of the Bankruptcy Code. The adoption of the SBRA made reorganization more accessible to sole proprietorships and small businesses by modifying certain parts of a Chapter 11 process to provide a more efficient and less expensive process of reorganization. Due to the SBRA's recent effective date, there is little guidance surrounding such cases. The following are the most notable features of a small business filing under the SBRA:

1. Debt Limit: Only small businesses with debts not exceeding $2,725,625 are eligible to file under this subchapter (single asset real estate cases are excluded).
2. Status Conference: Within 60 days of filing, there is a status conference with the Court.
3. Debtor's Report: The debtor must file a report outlining the efforts it has undertaken and will continue to undertake to attain a consensual plan of reorganization 14 days prior to the Status Conference.
4. Trustee: A Trustee oversees the case (but the debtor remains in control of its assets and the business), facilitates a consensual plan, and assists with making distributions in the case of a nonconsensual plan.
5. Plan of Reorganization: Within 90 days of filing, a plan of reorganization must be filed. Among other things, the Plan of Reorganization (i) can modify / strip-off mortgages on a principal residence that secures business debt, and (ii) must dedicate its disposable income to pay creditors over the 3-5 year course of the Plan, if unsecured creditors are not being paid in full.
6. Disclosure Statement: None.
7. United States Trustee Fees: None.
8. Committee of Unsecured Creditors: None, unless ordered by the Court.
9. Discharge: After all payments due under the Plan of Reorganization are made, the Debtor is granted a discharge, usually within the first 3 years, but no later than 5 years.

While the SBRA was a leap forward for small business reorganization, its effects were limited to only those businesses with liabilities below the $2,725,625 threshold. The purpose, at least in part, of the amendments to the SBRA through the CARES Act is to enable a much larger number of sole proprietorships and small businesses to access the benefits of the SBRA during the outbreak of COVID-19. To that end, the CARES Act amends the Bankruptcy Code to increase the debt limit for sole proprietorships and small businesses from $2,725,625 to $7,500,000 (excluding debts owed to an affiliate or an insider of the debtor). The debt limit amendment under the CARES ACT applies to any case commenced on or after the effective date of the CARES Act and is effective for a one-year period, which

expires on March 27, 2021, or the one-year anniversary of the effective date of the CARES Act.

The CARES Act will enable more sole proprietorships and small businesses to utilize the bankruptcy system to recover from the economic downturn caused by the COVID-19 pandemic by using simpler reorganization procedures and confirmation standards that would not otherwise have been available.

If you have questions about bankruptcy relief for small businesses, contact Katie LaManna at klamanna@goodwin.com, Eric Goldstein at egoldstein@goodwin.com, Jaime Welsh at jwelsh@goodwin.com or Jessica Signor at jsignor@goodwin.com.

RELIEF FOR HEALTH CARE PROVIDERS

Coverage of Diagnostic Testing for COVID-19 (Subpart A)

Pricing of Diagnostic Testing

Group health plans or a health insurance issuer are required to reimburse the provider of COVID-19 diagnostic testing as follows: (i) if the health plan or issuer has a negotiated rate, such rate shall apply throughout the period of this public health emergency; or (ii) if there is no negotiated rate with the provider, the health plan or issuer reimbursement shall be equal to the cash price for such service as listed on provider's internet site or the negotiated rate agreed to by the parties.

Requirement to Publicize Cash Price for Diagnostic Testing for COVID-19

During this emergency period, each provider of a diagnostic test for COVID-19 shall make public the cash price for such test on its internet page. Failure of a testing provider to do so may result in civil monetary penalties. (SEC. 3202)

Rapid Coverage of Preventive Services and Vaccines for Coronavirus

Group health plans and issuers must cover coronavirus preventive services, such as item, service, or immunization that is intended to prevent or mitigate coronavirus disease and that is evidenced based and recommended by the United States Preventive Services Task Force, or the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention. (SEC. 3203)

Support for Health Care Providers (Subpart B)

Supplemental Awards to Community Health Centers

$1,320,000,000 for fiscal year 2020 has been appropriated for the prevention, diagnosis and treatment of COVID-19. (SEC. 3211)

Limitation on Liability For Volunteer Health Care Professionals During Covid-19 Emergency Response

Health care professionals shall not be liable under Federal or State law for any harm caused by an act or omission during the public health emergency if the professional is providing health care services in response to the COVID-19 emergency as a volunteer, while acting within their license, certification or registration, and with the good faith belief that the individual being treated is in need of health care services. This limitation of liability does not apply to: (i) willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious flagrant indifference to the rights or safety of the individual harmed; or (ii) a health care professional under the influence of drugs or alcohol. This law is intended to preempt applicable state law, and only apply to acts or omissions that occur until it is declared that there is no longer a public health emergency. (SEC. 3215)

Miscellaneous Provisions (Subpart C)

Confidentiality and Disclosure of Records Relating to Substance Use Disorder

The Act provides that once a patient gives written consent to a substance use disorder program, that patient's substance use disorder records "may be used or disclosed by a covered entity, business associate, or a [Part 2 program] for purposes of treatment, payment, and health care operations as permitted by" HIPAA. The Act further provides that recipients of such information may re-disclose such records in accordance with HIPAA.

The Act aligns 42 C.F.R. Part 2 with HIPAA with respect to penalties, breach notification, notices of privacy practices, and requests for restrictions.

The Act adds a new provision that prohibits entities from discriminating against an individual for the following purposes on the basis of information received from substance use disorder records: (i) admission, access to, or treatment for health care; (ii) hiring, firing, or terms of employment, or receipt of worker's compensation; (iii) the sale, rental, or continued rental of housing; (iv) access to federal, state, or local courts; and (v) access to, approval of, or maintenance of social services and benefits provided or funded by federal, state, or local government. Additionally, entities that receive federal funds are prohibited from discriminating against individuals with respect to access to services provided with such federal funds. (SEC. 3221)

Guidance on Protected Health Information

Since the start of the COVID-19 crisis, HHS has issued numerous waivers and guidance documents on how covered entities and business associates should apply HIPAA in the current moment. The Act calls upon HHS to further advise the health care community on how to share patient health information during emergencies. (SEC. 3224)

Reauthorization of Health Professions Workforce Programs

$23,711,000 has been appropriated for each fiscal years 2021 through 2025 which shall be appropriated for Health Professions Workforce programs with priority given to qualified applicants that train residents in rural areas and Tribes or Tribal Organizations in such areas. (SEC. 3401)

Enhancing Medicare Telehealth Services For Federally Qualified Health Centers And Rural Health Clinics During Emergency Period

During the emergency period, the Secretary shall pay for telehealth services that are furnished via a telecommunications system by a Federally Qualified Health Center or a rural health clinic to an eligible telehealth individual. Payment rates shall be based on payment rates that are similar to the national average payment rates for comparable telehealth services under the physician fee schedule. Costs associated with telehealth services shall not be used to determine the amount of payment for Federally Qualified Health Centers under the Prospective Payment System. (SEC. 3704)

Use of Telehealth To Conduct Face-To-Face Encounter Prior To Recertification Of Eligibility For Hospice Care During Emergency Period

During the emergency period, a hospice physician or nurse practitioner many conduct a face-to-face encounter via telehealth. (SEC. 3706)

Encouraging Use of Telecommunications Systems For Home Health Services Furnished During Emergency Period

The Secretary of HHS will consider ways to encourage the use of telecommunications systems, including remote patient monitoring consistent with the patient's plan of care. See 42 CFR section 409.46(e). (SEC. 3707)

Improving Care Planning For Medicare Home Health Services

Allowing certification and recertification to be conducted by a physician, nurse practitioner, clinical nurse specialist or physician assistant. This change applies equally to Medicare and Medicaid. (SEC. 3708)

Adjustment to Sequestration

As of May 1, 2020 through December 31, 2020, Medicare will be exempt from reduction under any sequestration order issued before or after the Act. (SEC. 3709)

Medicare Hospital Inpatient Prospective Payment System Add-On Payment for Covid-19 Patients During Emergency Period

Discharges beginning as of the emergency period of an individual diagnosed with COVID-19, the weighting factor that would be assigned to the DRG shall be increased by 20% without regard to any budget neutrality provisions. Identification of these patients will be by diagnosis code, condition codes and other means determined by the Secretary. States who have section 1115A waivers shall not be precluded from enacting similar provisions. (SEC. 3710)

Increasing Access to Post-Acute Care During Emergency Period

CMS is waiving the IRF 3 Hour Rule and the requirement that patients of an inpatient rehabilitation facility receive at least 15 hours of therapy per week. CMS is waiving the LTCH 50% rule for long-term care hospitals that do not have a discharge payment percentage for the period that is at least 50%. In addition, the site-neutral IPPS payment rules shall not apply for a discharge if the admission occurs during such emergency period and is in response to the public health emergency. (SEC. 3711)

Revising Payment Rates for Durable Medical Equipment Under The Medicare Program Through Duration Of Emergency Period

For rural areas and non-contiguous areas, the transition rule set forth in 42 CFR 414.210(g)(9)(iii) shall apply for payment for DME through the emergency period. For non-rural and noncontiguous areas, items and services furnished on or after the date that is 30 days after the enactment of the Act, the Secretary will reimburse at a rate that is equal to 75% of the adjusted payment amount and 25% of the unadjusted payment amount set for in 414.210(g)(9)(iv) for the remainder of the public health emergency. (SEC. 3712)

Coverage of The Covid-19 Vaccine Under Part B Of The Medicare Program Without Any Cost-Sharing

There shall be no deductible with respect to COVID-19 vaccine and its administration for Medicare and the same shall apply for Medicare Advantage plans. (SEC. 3713)

Requiring Medicare Prescription Drug Plans And MA-PD Plans To Allow During The Covid-19 Emergency Period For Fills And Refills Of Covered Part D Drugs For Up To A 3-Month Supply

A prescription drug plan or MA-PD plan may permit a part D eligible individual to obtain a single fill or refill up to 90 days. A prescription drug plan or MA-PD many not permit a part D eligible individual to obtain a single fill or refill if it is inconsistent with a safety edit (e.g., opioid). (SEC. 3714)

Expansion of The Medicare Hospital Accelerated Payment Program

The Secretary is activating the Accelerated Payment Program for Acute Care Hospitals, Children's Hospitals and Critical Access Hospitals are able to receive advance payments and have such advance payments which can be reconciled and repaid over time. *See*, https://www.shipmangoodwin.com/covid-19-cms-advances-payments-to-providers-and-suppliers. (SEC. 3719)

Health and Human Services Extenders; PART I - Medicare Provisions (Subpart E)

Delay of DSH Reductions

DSH payment reductions pursuant to 42 U.S.C. 1396r-4(f)(7)(A) is amended to delay DSH reductions through to September 30, 2021. (SEC. 3813)

Extension and Expansion of Community Mental Health Services Demonstration Program

42 U.S.C. 1396a was amended to expand 2 more states in a 2-year demonstration program relating to community behavioral health, provided the states meet certain specified qualifications set forth in the amendment pursuant to the Act. (SEC. 3814)

Extension for Community Health Centers, The National Health Service Corps, And Teaching Health Centers That Operate GME Programs

Community Health Center funding under the ACA was extended 6 months through to November 20, 2020 and increased to $4,000,000,000 for fiscal year 2020 and $668,493,151 for the period beginning on October 1, 2020 and ending on November 30, 2020. Funding extended 6 months through to November 30, 2020 by $21,141,096. (SEC. 3831)

Department of Health And Human Services Funding Authority

The Act authorizes appropriations of $100,000,000,000 to prevent, prepare for, and respond to COVID-19, through grants or other mechanisms, eligible health care providers for health care related expense or lost revenues that are attributable to coronavirus, provided that it does not result in duplicate payments. Reports will need to be submitted and documentation as determined by the Secretary for compliance. Eligible health care providers are public entities, Medicare or Medicaid enrolled suppliers and providers, and for-profit and not-for-profit entities not otherwise described above that provide diagnoses, testing or care of individuals with possible or actual cases of COVID-19. Funds shall also be available for building or construction of temporary structures, leasing of properties, medical supplies and equipment including PPE and testing supplies, training, emergency operation centers, retrofitting facilities and surge capacity. (SEC. 5001)

Division B—Emergency Appropriations for Coronavirus Health Response and Agency Operations

Every laboratory that performs or analyzes a test that is intended to detect COVID-19 must report the results from each test to the Secretary of HHS as directed. The Secretary will prescribe what laboratories are subject to this reporting requirement, but expect it to apply to hospitals.

If you have questions about relief for healthcare providers, contact Joan Feldman at jfeldman@goodwin.com, Vincenzo Carannante at vcarannante@goodwin.com or Bill Roberts at wroberts@goodwin.com.

RELIEF FOR SCHOOLS AND EDUCATIONAL INSTITUTIONS

The CARES Act creates a $30.75 billion Education Stabilization Fund (the "ESF") to be administered in part by the United States Department of Education and in part by states. The ESF is composed primarily of three funds: the Governor's Emergency Education Relief Fund (approximately $2.95 billion); the Elementary and Secondary School Emergency Relief Fund (approximately $13.23 billion); and the Higher Education Emergency Relief Fund (approximately $13.95 billion).

Governor's Emergency Education Relief Fund

The Congressional Research Service ("CRS"), estimates that Connecticut will receive $27.9 million in grant funds under the Governor's Emergency Education Relief Fund. The CARES Act grants considerable discretion to governors in determining how to distribute these funds within the state. Grant funds awarded under this section may be used to: (1) provide emergency support through grants to local educational agencies that the state educational agency deems have been most significantly impacted by coronavirus; (2) provide emergency support through grants to institutions of higher education serving students within the state that the Governor determines have been most significantly impacted by coronavirus; and (3) provide support to any other education or education-related entity within the state that the Governor deems essential for carrying out emergency educational services, child care and early childhood education, social and emotional support, and the protection of education-related jobs.

Elementary and Secondary School Emergency Relief Fund

The CRS estimates that Connecticut will receive $111.1 million pursuant to the Elementary and Secondary School Emergency Relief Fund. States must allocate at least 90 percent of the monies received pursuant to this fund as subgrants to local educational agencies (including charter schools that are local educational agencies) in the state in proportion to the amount of funds they received under part A of title I of the ESEA of 1965 in the most recent fiscal year. A local educational agency that receives funds pursuant to a subgrant may use the monies for a wide variety of purposes, including coordinating coronavirus-related preparedness and response efforts; providing principals and school leaders with resources to address individual school needs; funding activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth; planning for and coordinating during long-term closures; purchasing educational technology; providing mental health services and supports; and other activities necessary to maintain the operation and continuity of services and employment of existing staff.

Higher Education Emergency Relief Fund

The CARES Act directs the Secretary of Education to allocate funding specifically to institutions of higher education. Ninety percent of funding awarded under this section shall be used to prevent, prepare for, and respond to the coronavirus emergency. Funds used for such purposes will be apportioned as follows: seventy-five percent according to the relative share of full-time equivalent enrollment of Federal Pell Grant recipients who were not exclusively enrolled in distance learning education courses prior to the coronavirus emergency and twenty-five percent according to the relative share of full-time equivalent enrollment of students who were not Federal Pell Grant recipients who were not exclusively enrolled in distance education courses prior to the coronavirus emergency. The remaining ten percent of the Higher Education Emergency Relief Fund will be available for awards to qualifying institutions of higher education pursuant to various provisions pf the Higher Education Act and the Further Consolidated Appropriations Act.

Continued Payment of Employees

The CARES Act provides: "A local educational agency, State, institution of higher education, or other entity that receives funds under 'Education Stabilization Fund,' shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus." To date, neither the federal government nor the state has provided binding guidance regarding the meaning and implication of the term "to the greatest extent practicable."

National Emergency Educational Waivers

The CARES Act requires that the Secretary of Education ("Secretary") create a streamlined waiver process for states and Indian tribes to apply for waivers from certain statutory or regulatory requirements related to assessments and accountability (in addition to the reporting requirements related to assessments and accountability) under the Elementary and Secondary Education Act of 1965 ("ESEA") if the Secretary determines that such a waiver is necessary and appropriate.

Additionally, state and local educational agencies that receive funds under a program authorized by the ESEA may request a waiver from certain statutory and regulatory requirements of the ESEA. For example:

- State or local educational agencies can seek waivers from ESEA's maintenance of efforts requirements.
- With respect to Title I funds, districts can now seek to carry over more than 15% of its funding from this academic year to the next. They may also seek a waiver to make it easier to run school-wide Title I programs regardless of the share of low-income students.
- With respect to Title IV funds, districts can now seek a waiver that would allow them to spend more than 15% of their Title IV funds on purchasing technology infrastructure.

The process for state and local requests for waivers is set forth in Section 3511 (c) of the CARES Act. Generally, the Secretary must approve or disapprove a waiver request within 30 days of the date of which the request is submitted.

No later than 30 days after the date of enactment of the CARES Act, the Secretary is also required to prepare and submit a report to Congress with recommendations on any additional waivers under the Individuals with Disabilities Education Act, the Rehabilitation Act of 1973, the Elementary and Secondary Education Act of 1965, and the Carl D. Perkins Career and Technical Education Act of 2006 that the Secretary believes are necessary to be enacted into law to provide limited flexibility to states and local educational agencies to meet the needs of students during the emergency.

If you have questions about relief for schools or educational institutions, contact Tyler Bischoff at tbischoff@goodwin.com or Dori Antonetti at dantonetti@goodwin.com.

CORPORATE AND GENERAL BUSINESS TAX RELIEF

Modification of the Net Operating Loss Provisions

Section 2303 of the CARES Act gives companies a 5-year carryback period for net operating losses ("NOLs") arising in tax years beginning after Dec. 31, 2017, and ending before Jan. 1, 2021. The limitation in the Internal Revenue Code that allows NOLs arising in tax years beginning after 2017 to offset only 80% of taxable income is temporarily suspended for tax years beginning before 2021. When the suspension is lifted, the 80 percent limitation is amended such that it applies before taking into account certain deductions contained in the Internal Revenue Code and after taking into account the NOL deductions for NOL carryovers arising in taxable years beginning before January 1, 2018, and carried to such taxable year. The legislation includes special NOL carryback rules for real estate investment trusts (REITs). The NOL carrybacks are not allowed to offset the section 965 inclusion for the one-time repatriation tax.

Modification of Limitations on Losses for Taxpayers Other Than Corporations

Section 2304 of the CARES Act provides that the excess business losses limitation under Code Section 461(l) ($250,000 for individuals and $500,000 for joint) will be temporarily repealed back to 2018, and will not take effect until tax years beginning after December 31, 2020. Taxpayers who had losses that were limited in 2018 by this provision should consider filing amended returns. In addition, the CARES Act provides some technical corrections to the NOL provisions, including providing that NOLs are not considered excess business losses and that wage income is not includable in the business income calculation. The CARES Act also provides that capital losses from sales or exchanges of capital assets are not included in the excess business loss calculation. Furthermore, the amount of capital gains from the sale or exchange of capital assets are only included in the excess business loss calculation to the extent of the lesser of (1) the net capital gain attributable to a trade or business or (2) capital gain net income.

Modification of Credit for Prior Year Alternative Minimum Tax Liability of Corporations

The Tax Cuts and Jobs Act of 2017 (TJCA) repealed the corporate alternative minimum tax (AMT) effective for taxable years beginning after December 31, 2017. Section 2305 of the CARES Act allows corporations to immediately claim unused AMT credits. The CARES Act accelerates the refundable credit so that corporations can take the entire amount in 2018 and 2019. There is also a provision that allows corporations to make an election to take the entire amount in 2018.

Modification of Limitation on Business Interest

Section 2306 of the CARES Act allows taxpayers to make an election to limit their deduction for net business interest under Internal Revenue Code section 163(j) to 50% of adjusted taxable income instead of 30% for tax years beginning in 2019 and 2020. In addition, it allows taxpayers to elect to use their 2019 adjusted taxable income as their adjusted taxable income in 2020. There are also special rules that apply to partnerships.

Technical Correction Regarding Qualified Improvement Property

The TCJA inadvertently omitted "qualified improvement property" ("QIP") from the 15-year property classification. As such, QIP did not qualify for bonus depreciation and had to be depreciated over 39 years. This error is now corrected by Section 2307 of the CARES Act. The CARES Act added QIP to the 15-year property list and such property is now eligible for 100% bonus depreciation. The change is retroactive to the effective date of the TCJA and applicable to property placed in service after December 31, 2017.

Increased Limitation for Charitable Contributions

The CARES Act also provides for an increased deduction for "qualified contributions" made by C corporations. Under prior law, a C corporation's charitable contribution deduction generally was limited to 10% of its taxable income. Under the CARES Act, a C corporation is now entitled, for the 2020 calendar year, to deduct "qualified contributions" of up to 25% of its taxable income, reduced by the amount of any other charitable contributions for which a charitable deduction is allowed.

If you have questions about corporate and general business tax relief, contact Louis Schatz at lschatz@goodwin.com, Robert Day at rday@goodwin.com or Elva Saltzman at esaltzman@goodwin.com.

RETIREMENT PLAN RELIEF

Penalty-free Coronavirus-Related Plan Withdrawals Up to $100,000 (Permissive)
Section 2202(a) of the CARES Act permits sponsors and administrators of qualified retirement plans, section 403(b) plans, governmental section 457(b) plans, and IRAs to provide for eligible individuals to receive "coronavirus-related distributions" up to $100,000 (in aggregate, on a controlled-group basis) in the 2020 calendar year, without regard to current plan distribution requirements. Such distributions will not be subject to the 10% early withdrawal penalty that would otherwise be imposed by Code section 72(t). A coronavirus-related distribution is one made to an individual who:

- Is diagnosed with COVID-19 (or the underlying virus) by a CDC-approved test;
- Has a spouse or dependent that is so diagnosed; or
- Experiences adverse financial consequences as a result of a furlough, lay off, business closure, hours reduction or inability to work for lack of child care "due to" COVID-19 (or the underlying virus), or other conditions set forth in future guidance.

The plan administrator may rely on the employee's certification that he or she satisfies one of these conditions for a coronavirus-related distribution. Such distribution may be repaid to the plan (or other eligible plan or IRA that accepts rollovers) within three years from the date distributed, and such repayment will be treated as a direct trustee-to-trustee transfer, so that it will not affect various Code limits on annual contributions, including the amount the participant can otherwise contribute under Code section 402(g) in the year(s) of repayment. Coronavirus-related distributions that normally would be included in taxable income in 2020 are instead included in income ratably over three years (unless the individual elects otherwise) with future guidance to provide for accelerated inclusion in certain cases, in a manner similar to the Roth IRA conversion rules.

Temporary Coronavirus-Related Plan Loans (Permissive)
Section 2202(b) of the CARES Act provides a 180-day window from March 27, 2020 (the date of enactment) for sponsors and administrators of qualified retirement plans, section 403(b) plans, or any retirement plan (qualified or not) sponsored by a governmental entity, to permit plan loans up to $100,000 (capped at 100% of the present value of the participant's vested accrued benefit under the plan or $10,000, if less), to individuals who satisfy one of the eligibility conditions for a "coronavirus-related distribution" described in the preceding section of this Alert.

- Note: This provision gives plans the option to allow larger plan loans for the next six months. The normal maximum loan under section 72(p) is $50,000 (capped at 50% of the present value of the participant's vested accrued benefit or $10,000, if less).
- Note: In addition, payments on new or existing loans that would be due on or after March 27, 2020 and before December 31, 2020 are delayed for one year.

    - **Plan Amendments** – Sponsors and administrators that choose to provide coronavirus-related distributions or loans have until the last day of the plan year beginning on or after January 1, 2022 (2024 for governmental plans) to adopt a written plan amendment, provided the plan is in operational compliance throughout the applicable period, and the amendment is retroactive.

Waiver of 2020 Required Minimum Distributions (RMDs) for Certain Retirement Plans and IRAs (Required)

Section 2203 of the CARES Act provides a temporary waiver of the required minimum distribution (RMD) rules for the 2020 calendar year. This elimination of the RMD for 2020 applies to all defined contribution section 401(a) plans such as 401(k) plans, as well as 403(b) plans, IRAs and 457(b) plans sponsored by governmental entities (but not 457(b) plans sponsored by non-governmental tax-exempt entities).

This RMD waiver for 2020 applies to all persons who would otherwise be required to receive an RMD in 2020, even if a person is neither ill with COVID-19 nor experiencing coronavirus-related adverse financial consequences. The 2020 RMD waiver, in much the same way as the 2009 RMD waiver enacted by Congress for the 2009 calendar year after the 2008 financial crisis, eliminates the financially harsh effect of having to calculate a 2020 RMD based on a participant's account balance on December 31, 2019, which was in all likelihood significantly higher than its current balance, given the pandemic-related stock market losses. Without this 2020 RMD waiver, persons would experience a disproportionate shrinkage of their retirement plan and IRAs, and a disproportionate amount of taxable income for 2020.

Section 2203 of the CARES Act amends Code section 401(a)(9) to add a new subparagraph 401(a)(9)(I), which contains the 2020 RMD waiver rules. In particular:

- In addition to persons who have already been receiving RMDs prior to 2020, the RMD waiver also applies to persons for whom 2019 would be their first RMD distribution year, in the event those persons were waiting until their required beginning date of April 1, 2020, to receive their first RMD.
- The 2020 RMD has no effect on the resumption of the RMD rules for 2021, or how the RMD is calculated for years after 2020. In other words, a person will not have to "catch up" later to make up for no RMD for 2020.
- In cases where a person dies before starting RMDs, in applying the general rule that requires that the account balance be fully distributed within the 5-year period after death, the 2020 calendar year does not count for determining the 5-year period.
- Should a person choose to receive a distribution during 2020, then the portion of the distribution that would have been the RMD amount but for the 2020 waiver shall not be eligible for direct rollover into another retirement plan account or IRA (an indirect 60-day rollover of that amount is still permitted), nor shall that amount be subject to the mandatory 20% withholding that would otherwise apply for non-RMD distributions from retirement plans other than IRAs. (This is the same type of rule that Congress added in 2009 for the 2009 RMD waiver.)

    - **Plan Amendments** – The 2020 RMD waiver is a required change that applies to plan years after December 31, 2019. Provided the plan complies with the change in operation from the date of enactment, the written conforming plan amendment need not be adopted until the end of the first plan year beginning on or after January 1, 2022 (2024 for governmental plans).

Temporary Defined Benefit Plan Funding Relief

The CARES Act contains several pension plan provisions aimed to help plan sponsors concerned about their own cash flow and the funded status of their plans given the market volatility associated with the coronavirus crisis. Some of the Act's provisions are only applicable to very specific circumstances or plan situations, but the ones of the broadest applicability to single-employer defined benefit pension plans are covered in Section 3608.

The Act delays the due date for minimum required contributions (as defined in Code section

430(a)) that are otherwise due in 2020 to January 1, 2021, at which time the contributions plus interest (accrued at the plan's effective rate of interest for the plan year when payment is made) will be due. Contributions other than minimum required contributions, such as those required under the terms of an agreement with the PBGC, are not extended by this change.

Additionally, the Act permits plan sponsors to use their plan's adjusted funding target attainment percentage ("AFTAP") for the last plan year ending before January 1, 2020 for purposes of determining the funding-based benefit limitations under Code section 436 for 2020. As a result, if a plan's AFTAP has fallen because of the recent market downturn, the plan sponsor may elect to use the higher AFTAP that the plan had in the last plan year to avoid the required restrictions on future benefit accruals and distributions in optional forms that would otherwise be imposed by Code section 436.

If you have questions about retirement plan relief, contact Richard Cohen at rcohen@goodwin.com, Kelly Hathorn at khathorn@goodwin.com or Joe Indelicato at jindelicato@goodwin.com.

HEALTH AND WELFARE PLAN RELIEF

Safe Harbor for Pre-Deductible Telehealth Services Under HDHPs

Section 3701 of the CARES Act expands on the theme of IRS Notice 2020-15 (which provided that a plan's coverage of COVID-19 testing before the HDHP deductible is met does not jeopardize its status as an HDHP for purposes of pairing with participant health savings accounts (HSAs)) by amending Code section 223 to provide that a plan's provision of telehealth services pre-deductible does not cause it to fail to be an HDHP. This temporary safe harbor applies to plan years beginning on or before December 31, 2021, and takes effect upon enactment.

- Note: This provision ensures that HDHP participants using telehealth services in the safe harbor period will be able to continue to make tax-favored HSA contributions even if those services are offered before the applicable HDHP deductible is met.

Purchases of OTC Medicine With Tax-Favored Savings Accounts

Provisions in the Affordable Care Act effective January 1, 2011 made over-the-counter (OTC) medicines (excepting insulin) only available for reimbursement from tax-favored accounts (health flexible spending arrangements (health FSAs), health reimbursement arrangements (HRAs), health savings accounts (HSAs) and Archer Medical Savings Accounts (Archer MSAs)) with a prescription. Section 3702 of the CARES Act eliminates this rule and makes OTC drugs reimbursable from these accounts without a prescription, for purchases after December 31, 2019. It also makes expenses for menstrual care products reimbursable from these accounts.

Clarification of FFCRA Group Health Plan Cost Sharing Waiver for Coronavirus-Related Testing and Treatment

Section 6001 of the Families First Coronavirus Response Act (FFCRA) requires group health plans to cover, without cost sharing, (i) all laboratory testing approved by the FDA to detect the virus that causes COVID-19 and (ii) all expenses for provider office visits (including in-person, telehealth, urgent care and emergency room visits) that produce a COVID-19 testing order, for the duration of the national emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Section 3201 of the CARES Act expands the scope of testing required to be covered without cost sharing to "emergency use" diagnostic methods, and Section 3202 of the CARES Act requires certain disclosures regarding the cost of testing and sets the rate of reimbursement for testing payable by plans to providers. Section 3203 of the CARES Act separately requires that group health plans (and health insurance issuers) cover, without cost sharing, any "qualified coronavirus preventive service", which in general means an evidence-based item or service designed to prevent or mitigate COVID-19 that is currently recommended by the U.S. Preventive Services Task Force, or is an immunization recommended by the CDC, within 15 days after the date such recommendation is made.

Temporary Expansion of Code Section 127 Plan Rules to Cover Employer Payments of Employee Student Loan Debt Up To $5,250

Code section 127 provides a $5,250 per calendar year exclusion from employees' gross income for "educational assistance" payments from employers, providing the educational assistance program meets certain requirements. Until the CARES Act, "educational assistance" has meant payments for the cost of tuition, books, supplies, fees and the cost of classroom instruction—i.e. expenses currently being incurred by employees, as opposed to expenses previously incurred and paid for through student loans.

Effective upon enactment, Section 2206 of the CARES Act expands the scope of "educational assistance" under Code section 127 to payments by an employer to the employee (or directly to the lender servicing the employees' loans), of principal and interest on any "qualified education loan" (generally a loan incurred to pay expenses incurred by an employee, or the employee's spouse or dependents in pursuit of a degree or certificate of higher education) made before January 1, 2021. Interest on the student loan is not deductible to the employee to the extent it is paid by an employer in this manner.

If you have questions about health and welfare plan relief, contact Richard Cohen at rcohen@goodwin.com, Kelly Hathorn at khathorn@goodwin.com or Joe Indelicato at jindelicato@goodwin.com.

RELIEF FOR NONPROFIT ORGANIZATIONS

Charitable Giving Incentives

Charitable organizations other than supporting organizations and donor-advised funds may benefit from the individual charitable giving incentives applicable to individuals described above under the heading "Individual Tax Relief" In addition, for corporations, Section 2205 of the CARES Act raises the annual corporate charitable contribution limit from 10% to 25% and also raises the cap on food donations from corporations from 10% to 25%.

Employee Retention Credit for Employers Subject to Closure Due to COVID-19

Tax-exempt organizations described in Code section 501(c) (this includes all 501(c) organizations, not just 501(c)(3) charitable organizations) can apply for employee retention credits arising from certain COVID-19 related business closures as described above in the section on Payroll Tax Relief.

If you have questions about relief for nonprofits, contact Ray Casella at rcasella@goodwin.com.

*Note: The provisions for relief included in this section of the alert are tax relief measures. Other non-tax relief measures for nonprofits specified by the CARES Act are discussed elsewhere in this alert.

RELIEF FOR INDIVIDUALS

Recovery Rebates for Individuals

Perhaps the signature piece of the CARES Act is the economic relief it provides for individuals in the form of a cash payment, expected in as little as three weeks, to qualifying individuals. Funds will be deposited into individual's checking accounts if account information was included in a 2018 or 2019 personal income tax return. Pursuant to Section 6428 of the CARES Act, the payment will be up to $1,200 for each adult (therefore, $2,400 for individuals filing joint returns) who is not someone else's dependent and $500 for each qualifying child. The payment phases out by 5% of adjusted gross income over $75,000 for individuals filing separate returns, $112,500 for those filing head of household, and $150,000 for those married filing jointly, but not below zero. The Treasury Department is permitted to rely on either 2018 or 2019 returns if filed. If no return information is available for 2018 or 2019, Social Security Administration records can be relied upon to compute the appropriate amount. As an example of how the phase out would work, a married couple filing jointly with a 2018 adjusted gross income of $170,000 should expect to receive a payment of $1,400, which is calculated by multiplying $1,200 by two (joint return) and then subtracting $1,000, which is 5% of the married couples adjusted gross income over $150,000 (5% x $20,000 = $1,000).

Charitable Giving

The CARES Act adopts two significant changes to the charitable contribution deduction.

First, for tax year 2020, Section 2204 of the CARES Act allows individuals who do not itemize their deductions to take an above-the-line deduction (i.e., a deduction made to calculate adjusted gross income) for up to $300 in charitable contributions.

Second, also for 2020, Section 2205 of the CARES Act suspends the current 60% adjusted gross income limit on deductions for cash charitable contributions for those individuals that do itemize deductions. So, for example, if an individual who itemizes deductions is so inclined, the individual can take a charitable deduction for up to 100% of such individual's 2020 adjusted gross income, subject to certain limitations.

In both cases, contributions made to supporting organizations (i.e., organizations described in Internal Revenue Code Section 509(a)(3)) and donor-advised funds do not qualify.

If you have questions about corporate and general business tax relief, contact Louis Schatz at lschatz@goodwin.com, Robert Day at rday@goodwin.com or Elva Saltzman at esaltzman@goodwin.com.

Please do not hesitate to contact your Shipman & Goodwin lawyers or anyone at the firm with questions and concerns. We truly hope you are healthy and safe and we invite you to visit our Coronavirus Resource Center [https://shipmangoodwin.com/Coronavirus-COVID-19-Guidance] for updates on how to navigate this global health challenge.