

Title V and Title VI of the CARES Act: Coronavirus Relief Funds and Selected Provisions including Emergency Appropriations

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On Friday, March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law.

The following is a summary of Division A, Titles V and VI and selected provisions from Division B on Emergency Appropriations.

Division A, Title V

Coronavirus Relief Fund

Section 5001 created the Coronavirus Relief Fund (Fund) and provides for the appropriation of \$150,000,000,000 for fiscal year 2020 from the U.S. Treasury. Payments from this fund shall go to the states, tribal governments and units of local governments.

- “State” is defined as: (1) the 50 States; (2) the District of Columbia; (3) The Commonwealth of Puerto Rico; (4) the United States Virgin Islands; (5) Guam; (6) the Commonwealth of the Northern Mariana Islands; and (7) the American Samoa.
- “Local Government” is defined as: (1) County; (2) Municipality; (3) Town; (4) Township; (5) Village; (6) Parish; (7) Borough; or (8) other unit of general government below the State level with a population that exceeds 500,000.
- “Indian tribe” is defined as in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(e)).

The Fund provisions can be found as a new Title VI to the Social Security Act (42 USC §301, et seq.).

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The Fund reserves \$3,000,000,000 for distribution among the District of Columbia, Commonwealth of Puerto Rico, United States Virgin Islands, Guam, Commonwealth of the Northern Mariana Islands and American Samoa. It also reserves \$8,000,000,000 for tribal governments.

No later than 30 days from enactment, the Treasury Secretary will pay each state, tribal government and unit of local government its share.

Payments will be made directly to a defined unit of local government that has submitted the required certification for direct payment. That certification must identify the necessary expenditures incurred during the public health emergency and the shortfall from the previously approved budget. However, that amount will be deducted from what that individual state will receive based on the "relative unit of local government population proportion amount described in subsection (c)(5)."

This provision creates a competition for funding between the states and their local units of government for the share allocated from the Fund.

The amounts paid to the states will be based on the relative population proportion amount determined for the 2020 fiscal year. Each state will receive a minimum payment of \$1,250,000,000. The Treasury Secretary will determine the relative state population proportion by the percentage of the state's population to that of all 50 states for the 2020 fiscal year, excluding the District of Columbia and all territories.

Similarly, any reduction to the state for any payments made to units of local government will be based on the application of a cap of 45% of what the state is to receive by the percentage of that local government unit's population to the overall state population for the 2020 fiscal year.

This provision minimizes the competition between the states and their local units of governments by guaranteeing the states at least 55% of their allocated share.

The Treasury Secretary will determine what amounts, if any, will be allocated beyond those earmarked for the District of Columbia and the territories, and based on the Secretary's determination of the overall percentage of that entity's population to the total population of the District of Columbia and the territories.

The Treasury Secretary will determine the amounts for tribal governments in consultation with the Secretary of the Interior. This determination will be based on each expenditure for each tribal government based on the overall expenditures for 2019 to ensure that all earmarked payments from the Fund are distributed.

All figures will be based on the most recent census data.

All payments from the Fund will be used for:

1. Necessary expenditures due to the public health emergency from COVID-19;
2. Expenditures not already part of an approved budget of a state or government; and

3. Expenditures incurred during the period of March 1, 2020 through December 30, 2020.

To receive payments from the Fund, units of local government must submit a certification to the Treasury Secretary signed by the Chief Executive Officer for that local government unit stating that its proposed use of the funds are consistent with these three conditions.

The Inspector General of Treasury is responsible for receipt, disbursement and use of payments from the Fund. The Inspector General will determine and recover any payments received in violation of the Fund requirements. An additional \$35,000,000 is appropriated for the Inspector General for performance of these functions.

Division A, Title VI

Miscellaneous Provisions

COVID-19 Borrowing Authority for the United States Postal Service

Section 6001 authorizes the United States Postal Service (USPS) to borrow up to \$10,000,000,000 to fund operating expenses shortfalls from the COVID-19 emergency. None of these funds may be used to pay outstanding debts.

This section also requires the USPS to prioritize delivery of postal products for medical purposes and authorizes it to establish temporary delivery points for the protection of its personnel.

Division B, Title VI

Emergency Appropriations for Coronavirus Health Response and Agency Operations

Division B provides for emergency appropriations and agency funding for the response to the coronavirus crisis, and to replenish funding for general purposes that unexpectedly had to be used for responding to the coronavirus crisis.

An inclusive review of every provision is beyond the scope of this Alert, however, select portions are discussed below that might be of interest to individuals, state and local government entities.

Title I: Agricultural Programs

Office of the Secretary

This section makes \$9,500,000,000 available to provide support for agricultural producers adversely impacted by the COVID-19 crisis, including producers of specialty crops, producers that supply local food systems, farmers markets, restaurants, schools and livestock producers including dairy farmers. Arguably, this also encompasses funding to address disruption to school lunch programs arising from the COVID-19 crisis.

Office of the Inspector General

This section makes \$750,000 available until September 30, 2021 for audits and investigations relating to the Department of Agriculture in response to the COVID-19 crisis.

Animal and Plant Health Inspection Service: Salaries and Expenses

This section makes an additional \$55,000,000 available until September 30, 2021 for salaries and other related expenses associated with the Agricultural Quarantine and Inspection Program in response to the COVID-19 crisis.

Agricultural Marketing Service: Marketing Services

This section makes an additional \$45,000,000 available until September 30, 2021 for salary and other expenses associated with commodity grading, inspection and audit activities domestically and internationally in response to the COVID-19 crisis.

Food Safety and Inspection Service

This section makes an additional \$33,000,000 available until September 30, 2021 to provide for costs and expenses of temporary and intermittent workers and relocation of inspectors relating to food and agricultural inspections under various federal acts necessitated in response to the COVID-19 crisis.

Title I: Farm Production and Conservation Programs

Farm Service Agency

This section makes an additional \$3,000,000 available until September 30, 2021 for salaries and expenses incurred by the Farm Service Agency in response to the COVID-19 crisis.

Title I: Rural Development Programs

Rural Business-Cooperative Service; Rural Business Program Account

This section makes an additional \$20,500,000 available until September 30, 2021 for the cost of loans for rural business development programs in response to the COVID-19 crisis.

Rural Utilities Service: Distance Learning, Telemedicine and Broadband Program

This section makes an additional \$25,000,000 available to prevent, prepare for or respond to the COVID-19 crisis domestically or internationally, for telemedicine and distance learning services in rural areas.

Title I: Domestic Food Programs

Food and Nutrition Service; Child Nutrition Programs

This section makes an additional \$8,800,000,000 available until September 30, 2021 for Child Nutrition Programs to respond to the COVID-19 crisis domestically and internationally.

Supplemental Nutritional Assistance Program

This section makes an additional \$15,810,000,000 available until September 30, 2021 for the Supplemental Nutrition Assistance Program in response to the COVID-19 crisis.

Of that amount, \$15,510,000,000 will be placed in a contingency reserve to be allocated as the Treasury Secretary sees fit, to support participation should cost or participation exceed budget estimates. Attributable to the Coronavirus.

Of that amount, \$100,000,000 will be for the food distribution program on Indian reservations to prevent, prepare for, and respond to the COVID-19 crisis. \$50,000,000 of that amount will be for facility improvements and equipment upgrades and \$50,000,000 will be for the costs related to additional food purchases.

Commodity Assistance Program

This section makes an additional \$450,000,000 available until September 30, 2021 for the response to the COVID-19 crisis associated with the emergency food assistance program. The Treasury Secretary may use up to \$150,000,000 of that amount for costs associated with the distribution of commodities.

Title I: Foreign Assistance and Related Programs

Foreign Agricultural Services; Salaries and Expenses

This section makes an additional \$4,000,000 available until September 30, 2021 for salaries and expenses relating to the COVID-19 response domestically and internationally, including the relocation of employees and dependents from overseas posts.

Title I: Related Agencies and Food and Drug Administration

Department of Health and Human Services – Food and Drug Administration; Salaries and Expenses

This section makes an additional \$80,000,000 available for salaries and expenses for the development of necessary medical countermeasures and vaccines, advanced manufacturing for medical products, the monitoring of medical product supply chains, and related administrative activities.

Title II: State and Local Law Enforcement Activities; Office of Justice Programs

State and Local Law Enforcement

This section makes an additional \$850,000,000 available until expended for response to the COVID-19 crisis by state and local law enforcement.

The allocation formula (adjusted in proportion to the relative amounts statutorily designated) is that used in the 2019 fiscal year for the Edward Byrne Memorial Justice Assistance Grant program authorized by subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Acts of 1968.

The allocation provisions under sections 505 (a)-(e) and the special rules for Puerto Rico under 505(g) and 1001(c) in that Act do not apply. Awards under this provision will not be subject to restrictions or special conditions that are the same or substantially similar to those imposed under the same law for fiscal year 2018.

Title V: Independent Agencies; Election Assistance Commission – Election Security Grants

This section makes an additional \$400,000,000 available for Election Security Grants needed to respond to the COVID-19 crisis as related to the 2020 election cycle. States may have access to these funds but must report and account for same to the Election Assistance Commission, that then forwards the reports to the Committee on Appropriations, Committee on House Administration, Senate Committee on Appropriations and the Senate Committee on Rules and Administration. State entitlement to funds is not later than 30 days from enactment.

Title V: Small Business Administration; Disaster Loans Program Account (Including Transfers of Funds)

This section makes an additional \$562,000,000 available for the Disaster Loans Program Account to remain available until expended. These funds are for the costs of direct loans authorized under Section 7(b) of the Small Business Act and for administrative expenses. The amounts under this section may be transferred to and merged with Small Business Administration – Salaries and Expenses under the CARES Act.

Title V: General Provisions, Pandemic Response Accountability Committee

Section 15010 creates the Pandemic Response Accountability Committee, to be formed from within the Council of Inspectors General for Integrity and Efficiency created under section 11 of the Inspectors Generals Act of 1978 (5 USC App.).

This Committee is charged with general oversight of the distribution of any funds or government response under the CARES Act. It will be made up of the Inspectors General of the Departments of Defense, Health and Human Services, Homeland Security, Justice Labor and the Treasury, Small Business Administration, Tax Administration. The Chair will be selected from among these Inspectors General and must have experience in managing oversight of large organizations and expenditures.

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The Chair will name to the Committee any other Inspector General for any Agency that expends or obligates funds under the Act or is involved in the COVID-19 response.

Within thirty days of enactment, the Chair will appoint an Executive Director for the Committee in consultation with the House and Senate majority and minority leaders. Within ninety days of enactment, a Deputy Executive Director will be similarly appointed. The Executive and Deputy Executive Directors will be full time members of the Committee and in addition to having similar qualifications as the Chair, will have a demonstrated ability in accounting, auditing and financial analysis. The Executive Director will report directly to the Chair and will appoint all staff subject to approval of the Chair.

President Trump has indicated he is not subject to the CARES Act congressional oversight provisions. His comments were made in a “signing statement” and have been widely reported by the media.

A presidential line item veto does not exist in the Constitution, and in 1998 the US Supreme Court ruled that an act giving the president such power was unconstitutional. *Clinton v. City of New York*, 424 US 417 (1998). There is no pending Constitutional challenge to this oversight provision.

Title VI: Federal Emergency Management Agency; Disaster Relief Fund

This section provides that an additional \$45,000,000,000 will remain available until expended for a Disaster Relief Fund and is not restricted to the COVID-19 crisis. Of that sum, \$25,000,000,000 will be set aside for major disasters declared under the Stafford Act (42 U.S.C. 5121 et seq.) and \$15,000,000,000 will be set aside for all purposes authorized under that Act in addition to amounts authorized by Congress for disaster relief under the Balanced Budget and Emergency Deficit Control Act of 1985.

Title VI: Federal Assistance

This section provides that an additional \$400,000,000 will remain available until September 30, 2021 for the COVID-19 crisis response. This sum includes \$100,000,000 for protective gear for firefighters, \$100,000,000 for Emergency Management Performance Grants, and \$200,000,000 for the Emergency Food and Shelter Program.

Title VI: Department of Homeland Security

Section 16005 addressing Homeland Security provisions provides that during the term of the Emergency declared by the President on March 20, 2020 and any subsequent declaration, a licensed healthcare provider employed by the Department of Homeland Security may practice at any location within the United States or location designated by the Secretary of Homeland Security so long as that practice is within the scope of federal authorized duties. This is without regard to where that licensed was issued.

Section 16006 authorizes the Secretary of Homeland Security to extend to no earlier than September 30, 2021 the deadline by which states have to meet the driver license and identification card issuance requirements under section 202(a)(1) of Real ID Act of 2005 (49 U.S.C. 30301).

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Please contact the author of this Alert, **Robert B. Hille** rhille@greenbaumlaw.com | 973.577.1808 with questions or to discuss specific circumstances related to the provisions of the CARES Act. Mr. Hille is a partner in the firm's **Healthcare Department** and **Litigation Department**.