

COVID-19 NATIONAL EMERGENCY FEDERAL RESPONSE FRAMEWORK

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FELDESMAN TUCKER LEIFER FIDELL LLP

Founded in 1970, Feldesman Tucker Leifer Fidell LLP (FTLF) has been advising federal grant recipients for 50 years. One of the few practices in the U.S. devoted to federal grant law, the firm works with a variety of recipients of federal funds: for-profit and not-for-profit organizations, local governments, colleges and universities, research institutions, health care and education entities, and other health and human service-focused organizations. Providing a full range of legal, consulting, and professional education services, our attorneys counsel clients on all aspects of federal grant management.

This paper is intended to assist our clients and industry partners in better understanding the federal response framework that has rapidly evolved over the past several weeks. While it does not address every aspect of the complex national response, we are happy to assist our colleagues across state and federal programs with any questions they may have. Please do not hesitate to contact your regular point of contact at FTLF or the attorneys listed below.

AUTHORS

Edward (“Ted”) Waters, *Managing Partner*

Federal Grants

ewaters@ftlf.com

Scott S. Sheffler, *Partner*

Federal Grants, Contracts, AmeriCorps/National Service

ssheffler@ftlf.com

Phillip A. Escoriza, *Senior Counsel*

Federal Grants, Disaster Response/FEMA, Higher Education

pescoriza@ftlf.com

Kristen M. Schwendinger, *Senior Counsel*

Federal Grants, Research, Higher Education

kschwendinger@ftlf.com

Joseph P. Loman, *Senior Associate*

Federal Grants, Contracts, Small Business

jloman@ftlf.com

CONTRIBUTORS

Carrie B. Riley, *Partner*

Healthcare (Community Health Center Program/FQHCs)

criley@ftlf.com

Susannah V. Gopalan, *Partner*

Healthcare (Medicare/Medicaid)

sgopalan@ftlf.com

Dianne K. Pledgie, *Partner*

Healthcare (Health Privacy)

dpledgie@ftlf.com

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INTRODUCTION AND OVERVIEW

This industry update is provided to help explain the various moving pieces of the federal response to the coronavirus pandemic. It is intended to address the key mechanisms affecting our clients and industry partners who have roles within the response framework, are federally funded, or both. It does not address all aspects of the response, but rather focuses on the federal grant framework and related activities and authorities.

To date, federal initiatives have been implemented primarily through five mechanisms:

- A declaration of a public health emergency by the Secretary of the Department of Health and Human Services (“HHS”);
- Presidential declaration under the National Emergencies Act;
- A nationwide Presidential emergency declaration, coupled with state-specific major disaster declarations, under the Stafford Act;
- Congressional action in the form of supplemental appropriations and amendments to certain laws to establish new assistance programs and increase flexibilities for certain affected entities; and,
- For federal grant recipients, actions by the Office of Management and Budget (“OMB”) and funding agencies to provide administrative relief.

Overviews of each are provided below.

As of drafting (April 8, 2020), there is discussion in Washington of further Congressional action. We recommend that federal grantees and other entities involved in, or impacted by, the coronavirus response follow those developments closely. For questions, please feel free to contact any of the authors of this paper listed above, or your regular point of contact at Feldesman Tucker Leifer Fidell LLP (FTLF).

I. EMERGENCY DECLARATIONS

A. Public Health Emergency

On January 31, 2020, the Secretary of HHS declared a public health emergency (“PHE”) for the coronavirus pandemic.¹

Section 319 of the Public Health Service Act (“PHSA”)² authorizes the Secretary of HHS to declare PHEs, with such declarations triggering certain powers and potential resources. Among other things, such declarations enable use of a special Public Health Emergency Fund³ and the Centers for Disease Control and Prevention (“CDC”)-managed Infectious Diseases Rapid Response Fund.⁴ The first fund is generally available for: (i) coordination efforts between the federal government and affected state and local governmental and private healthcare entities, (ii) the award of grants and contracts support study and response efforts, and (iii) support emergency efforts including biosurveillance.⁵ The second fund is generally for carrying out infectious disease response activities, and CDC may transfer amounts within it to other HHS accounts for such purposes.⁶

Further, a PHE declaration enables HHS to: (i) authorize flexible voluntary reassignment, upon request, of state and local healthcare personnel who are funded through PHSA-supported programs;⁷ (ii) waive certain Paperwork Reduction Act⁸ barriers to mandatory information reporting;⁹ and (iii) deploy assets from a medical supply and equipment Strategic National Stockpile (“SNS”).¹⁰

¹ DEP’T OF HEALTH & HUMAN SERVS. (“HHS”), DETERMINATION THAT A PUBLIC HEALTH EMERGENCY EXISTS (Jan. 31, 2020), *available at*: <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>, (last visited Mar. 24, 2020). The PHE is retroactive to January 27, 2020.

² 42 U.S.C. § 247d. These funds are intended to supplement and not supplant local resources. *Id.* § 247d(c).

³ *Id.* § 247d(b).

⁴ *Id.* § 247d-4a.

⁵ *Id.* § 247d(b)(2).

⁶ *Id.* § 247d-4a.

⁷ *Id.* § 247d(e).

⁸ 44 U.S.C. § 3501 *et seq.*

⁹ 42 U.S.C. § 247d(f).

¹⁰*Id.* § 247d-6b(a)(3)(G). Technically, the Strategic National Stockpile may be deployed prior to declaration of a PHE for a “potential PHE.” *Id.*

Finally, the waiver of certain healthcare laws is authorized by the combined declaration of a PHE and Presidential emergency or disaster declaration.¹¹ As discussed further below, such authority has been invoked for the coronavirus pandemic through a Presidential National Emergencies Act declaration.

B. National Emergencies Act

The National Emergencies Act¹² authorizes the President to declare a national emergency, in turn activating emergency powers contained in other federal statutes.¹³ When the President employs such authority, he must specifically state in his declaration the emergency powers that he is invoking.¹⁴

In response to the coronavirus pandemic, on March 13, 2020, the President issued a proclamation¹⁵ under the National Emergencies Act expressly authorizing the Secretary of HHS to issue temporary waivers, under Section 1135 of the Social Security Act, of certain Medicare, Medicaid, and State Children's Health Insurance Program ("CHIP") requirements as well as certain Health Insurance Portability and Accountability Act ("HIPAA") requirements (commonly referred to as "1135 waivers").¹⁶

Under this authority, the Secretary of HHS has issued numerous "blanket" 1135 waivers for Medicare and Medicaid requirements, a list of which can be found on the Centers for Medicare and Medicaid Services' ("CMS") website at <https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers>. Similarly, CMS has issued numerous 1135 waivers to states at their request, in relation to their federally supported Medicaid and CHIP programs. A state-by-state list can be found through the same CMS website.

¹¹ Further discussion of Secretarial authorities under a PHE declaration is available on the HHS website, <https://www.phe.gov/Preparedness/support/secauthority/Pages/default.aspx> (last visited Apr. 4, 2020).

¹² Pub. L. No. 94-412 (Sep. 14, 1976), *codified at*: 50 U.S.C., Ch. 34, §§ 1601-1651.

¹³ 50 U.S.C. § 1621; *see also* CONG. RESEARCH SERV. ("CRS") REPORT THE 2009 INFLUENZA PANDEMIC: SELECTED LEGAL ISSUES, R40560 (Oct. 29, 2009); CRS REPORT, THE 2009 INFLUENZA PANDEMIC: AN OVERVIEW, R40554 (Nov. 16, 2009), *available at*: <https://crsreports.congress.gov/product/pdf/R/R40554> (last visited Apr. 5, 2020).

¹⁴ 50 U.S.C. § 1631.

¹⁵ PROCLAMATION ON DECLARING A NATIONAL EMERGENCY CONCERNING THE NOVEL CORONAVIRUS DISEASE (COVID-19) OUTBREAK ("NEA PROCLAMATION") (Mar. 13, 2020), *available at*: <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> (last visited Apr. 3, 2020).

¹⁶ NEA PROCLAMATION, § 1; 42 U.S.C. § 1320b-5(b).

With respect to HIPAA, under 1135 waiver authority, the Secretary of HHS has waived penalties for covered hospitals, that have instituted disaster protocols, for failures to: (i) obtain patient consent to speak with family members; (ii) honor a patient’s election to opt out of a directory; (iii) distribute privacy practice notices; (iv) comply with a patient’s right to request privacy restrictions; and (v) comply with a patient’s right to request confidential communications.¹⁷ This limited waiver applies only in the 72 hours after the hospital institutes its disaster protocol.¹⁸

Though not specifically accomplished under 1135 waiver authority, HHS has also issued two “Notifications of Enforcement Discretion” relaxing certain HIPAA requirements during the COVID-19 public health emergency, stating: that (i) covered entities will not be subject to penalties for HIPAA violations that occur in the course of good faith provision of telehealth services through non-public facing remote communications products;¹⁹ and (ii) business associates of covered entities can, under certain circumstances, disclose protected health information to state and federal health authorities.²⁰

Additional FTLF resources on 1135 waivers, telehealth, and modifications to the normal health privacy framework are available at:

<https://www.feldesmantucker.com/tag/covid-19/>.

The National Emergencies Act has been invoked at least once previously for a health-related emergency. In 2009, a National Emergencies Act declaration was issued invoking 1135 waiver authority during the H1N1 influenza pandemic.²¹ As with the

¹⁷ HHS COVID-19 & HIPAA BULLETIN: LIMITED WAIVER OF HIPAA SANCTIONS AND PENALTIES DURING A NATIONWIDE PUBLIC HEALTH EMERGENCY (March 2020), *available at*: <https://www.hhs.gov/sites/default/files/hipaa-and-covid-19-limited-hipaa-waiver-bulletin-508.pdf> (last visited Apr. 5, 2020).

¹⁸ *Id.*

¹⁹ HHS, OFFICE OF CIVIL RIGHTS (“OCR”), NOTIFICATION OF ENFORCEMENT DISCRETION FOR TELEHEALTH REMOTE COMMUNICATIONS DURING THE COVID-19 NATIONWIDE PUBLIC HEALTH EMERGENCY, *available at*: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>. Note that the Substance Abuse and Mental Health Services Administration (“SAMHSA”) has issued guidance with respect to disclosing certain substance use disorder treatment information covered by 42 C.F.R. Part 2 to medical personnel without patient consent to the extent necessary to meet a bona fide medical emergency. See SAMHSA, COVID-19 PUBLIC HEALTH EMERGENCY RESPONSE AND 42 CFR PART 2 GUIDANCE, *available at*: <https://www.samhsa.gov/sites/default/files/covid-19-42-cfr-part-2-guidance-03192020.pdf>.

²⁰ HHS, OCR, NOTIFICATION OF ENFORCEMENT DISCRETION UNDER HIPAA TO ALLOW USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATES FOR PUBLIC HEALTH AND HEALTH OVERSIGHT ACTIVITIES, *available at*: <https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html>.

²¹ DECLARATION OF A NATIONAL EMERGENCY WITH RESPECT TO THE 2009 H1N1 INFLUENZA PANDEMIC (Oct. 24, 2009), *available at*: <https://obamawhitehouse.archives.gov/realitycheck/the-press-office/declaration-a-national-emergency-with-respect-2009-h1n1-influenza-pandemic-0> (last visited Apr. 3, 2020).

ongoing coronavirus event, during the H1N1 pandemic, the Secretary of HHS issued a PHE declaration and the President followed with a declaration under the National Emergencies Act.²²

C. Stafford Act

The Robert T. Stafford Disaster Relief and Emergency Assistance Act grants the President authority to issue two types of declarations in response to a disaster: emergency declarations and major disaster declarations.²³ The Federal Emergency Management Agency (“FEMA”) leads the federal government’s response to disasters caused by hurricanes, tornadoes, earthquakes, flooding, and wildfires. Once the President issues a declaration under the Stafford Act, FEMA has legal authority to activate its resources and programs to assist states and local communities in responding.²⁴

When states, territorial governments, and tribal authorities estimate that an incident exceeds their response capability, they may request from FEMA a joint Preliminary Damage Assessment (“PDA”) to estimate and document the incident’s impact.²⁵ Based on the PDA, the Governor must generally request an emergency or disaster declaration within 30 days from the date of the incident.²⁶ FEMA will have authority to provide assistance if the President declares that an emergency or a major disaster exists. The declaration will generally set forth: (i) type of incident; (ii) incident period; (iii) designated disaster areas eligible to receive federal assistance; (iv) types of federal assistance authorized; (v) the designated Federal Coordinating Officer (“FCO”);²⁷ and (vi) federal cost share at no less than 75 percent and up to 90 percent of costs.²⁸ The

²² *Id.*

²³ See 42 U.S.C. §§ 5121-5207; see also FEMA, FACT SHEET: DISASTER DECLARATION PROCESS (May 2011), available at: https://www.fema.gov/pdf/media/factsheets/dad_disaster_declaration.pdf (last visited Apr. 1, 2020); CRS, FEMA’S DISASTER DECLARATION PROCESS: A PRIMER, R43784 (Nov. 12, 2014), available at: <https://fas.org/sqp/crs/homesecc/R43784.pdf/> (last visited Mar. 25, 2020).

²⁴ See, generally, Assoc. of State and Territorial Health Officials, *Emergency Declarations and Authorities – Fact Sheet*, available at: <https://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/Emergency-Declarations-and-Authorities-Fact-Sheet/> (last visited Apr. 1, 2020).

²⁵ 44 C.F.R. § 206.33(a); see FEMA, PRELIMINARY DAMAGE ASSESSMENTS, available at: <https://www.fema.gov/preliminary-damage-assessments> (last visited Mar. 24, 2020).

²⁶ Stafford Act, §§ 102(5), 102(12), 401, 501; 42 U.S.C. §§ 5122, 5170, 5191; 44 C.F.R. §§ 206.2(12), 206.35, 206.36.

²⁷ FEMA, PUBLIC ASSISTANCE PROGRAM AND POLICY GUIDE FP 104-009-2 (“PA POLICY GUIDE”) (Apr. 2018), at 1-2, available at: https://www.fema.gov/media-library-data/1525468328389-4a038bbef9081cd7dfe7538e7751aa9c/PAPPG_3.1_508_FINAL_5-4-2018.pdf (last visited Apr. 1, 2020) (“PA Policy Guide”).

²⁸ Stafford Act, § 503; 44 C.F.R. § 206.47 (Cost-share adjustments). Additionally, in certain cases, Congress may enact legislation waiving state cost sharing for specific disasters. See CRS, FEMA

President may authorize assistance to individuals, households, states, territorial, tribal and local governments, and eligible private not-for-profit entities (“PNPs”). FEMA provides assistance to individuals and households via its Individual Assistance Program; while it provides assistance to states, local and tribal governments and PNPs through its Public Assistance (“PA”) Program and Hazard Mitigation Program.²⁹

What type of disaster declaration the President issues under the Act matters, as emergency declarations and major disaster declarations trigger different degrees of potential federal assistance. FEMA regulations direct that only PA Categories A (debris removal) and B (emergency protective measures)³⁰ are available under an emergency declaration, while PA Categories A, B, and C-G³¹ (work required to restore facilities to pre-disaster design capacity and function), Hazard Mitigation Assistance,³² and Individual Assistance,³³ are available under major disaster declarations. Once a declaration issues, the state, territorial or tribal government must sign an agreement with FEMA laying out the understanding, commitments and conditions under which

DISASTER COST-SHARES: EVOLUTION AND ANALYSIS (Apr. 4, 2013), *available at*: <https://fas.org/sqp/crs/homesecc/R41101.pdf> (last visited Apr. 2, 2020). Note also that disaster assistance through FEMA may not duplicate assistance provided by HHS or other federal agencies. 42 U.S.C. § 5155(b)(3); *see, e.g.*, HUD, *Updates to Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant Disaster Recovery Grantees*, 84 Fed. Reg. 28836 (Jun. 20, 2019), *available at*: <https://www.federalregister.gov/documents/2019/06/20/2019-13147/updates-to-duplication-of-benefits-requirements-under-the-stafford-act-for-community-development> (last visited Mar. 24, 2020). Moreover, federal disaster assistance cannot duplicate insurance coverage. 42 U.S.C. § 5155; 44 C.F.R. § 206.48(b)(5). *See also* FEMA OFFICE OF RESPONSE AND RECOVERY, FACT SHEET FP 104-009-001: INFECTIOUS DISEASE EVENT, *available at*: <https://www.fema.gov/media-library-data/1464717519589-ba4712cb1eab5dfb47636b8a2a108676/InfectiousDiseaseFactSheetORR05132016.pdf> (last visited Apr. 2, 2020). *See, e.g.*, In the Matter of Gulf Coast Community Action Agency, CBCA 3282-FEMA (May 5, 2014) (the Civilian Board of Contract Appeals found that the Gulf Coast Community Action Agency duplicated \$2.7 million in funding from FEMA for Hurricane Katrina for repairs that had been charged to the Head Start program and had failed to disclose properly to FEMA that HHS funding).

²⁹ The Public Assistance Program generally does not provide relief from increased operating expenses or revenue lost as a result of the incident, from reduced fees (such as suspension of tolls) or for costs of tax reassessments conducted after a disaster. *See* PA POLICY GUIDE, *supra* note 27 at 42, 204. In 2001, FEMA denied a request from Green Memorial Hospital, Inc. to reimburse the Hospital for \$24,016 in expenses incurred providing medical treatment to tornado victims, stating that FEMA does not reimburse PNPs for increased operating costs associated with providing services, even if these costs are increased by the disaster event. FEMA PA ID# 057-UGWJP; Green Memorial Hospital, Inc. (2001), *available at*: https://www.fema.gov/appeal/218815?appeal_page=letter (last visited Apr. 2, 2020).

³⁰ 44 C.F.R. § 206.225(a)(3); PA POLICY GUIDE, *supra* note 27 at 57-83.

³¹ PA POLICY GUIDE, *supra* note 27 at 115-28.

³² Stafford Act, § 404, 42 U.S.C. § 5170c.

³³ Stafford Act, § 408, 42 U.S.C. § 5174; 44 C.F.R. § 206.119. Additional Individual Assistance of up to \$25,000 per person may also be available in certain circumstances. *See* FEMA, INDIVIDUAL ASSISTANCE PROGRAM & POLICY GUIDE FP104-009-03 (Mar. 2019) at 46 (describing “Other Needs Assistance”), *available at*: <https://www.fema.gov/media-library-data/1551713430046-1abf12182d2d5e622d16accb37c4d163/IAPPG.pdf> (last visited Apr. 7, 2020).

FEMA will provide assistance.³⁴ The assisted governmental entity must also submit a formal application for federal assistance.³⁵ The FCO coordinates federal resources and disaster assistance programs with a designated State Coordinating Officer and the Governor’s Authorized Representative.³⁶ In turn, eligible PNP’s generally apply to (and through) their state for FEMA assistance as potential subgrantees.³⁷

On March 13, 2020, the President declared a national emergency under the Stafford Act in response to the coronavirus pandemic.³⁸ Whereas FEMA normally plays a central role in emergency response and assistance dispensing, this emergency’s unique public health character has led to a different approach. HHS has remained the lead agency with FEMA in a supporting role.³⁹ The March 13 emergency declaration authorized reimbursement, under Category B Public Assistance, of eligible emergency protective measures taken at the direction or guidance of public health officials, such as the activation of state emergency operations centers, support for National Guard costs, support for law enforcement, and other measures necessary to protect public health and safety.⁴⁰

State, territorial, and tribal governments may further determine that responding to the challenges stemming from the coronavirus pandemic requires a level of resources greater than available under the national emergency declaration. They may apply individually to the President for a “major disaster” declaration.⁴¹ Generally, the

³⁴ 44 C.F.R. § 206.44(a).

³⁵ PA POLICY GUIDE, *supra* note 27 at 3.

³⁶ Stafford Act, § 302(b), 42 U.S.C. § 5143; 44 CFR §§ 206.2(a)(13), 206.41(d), 206.42.

³⁷ See, e.g., Maryland Emergency Management Agency, *Public Assistance Program Admin. Plan* (2018), at 17-21 (describing PA application process for eligible PNP’s), *available at*: <https://mem.maryland.gov/community/Pages/Public-Assistance-Program.aspx>. See also FEMA, STATE-LED PUBLIC ASSISTANCE GUIDE, *available at*: https://www.fema.gov/media-library-data/1558538652426-d4165531878c8c8795551d3a7665d03e/State-Led_PA_Guide_2-1-2019.pdf (last visited Apr. 2, 2020).

³⁸ LETTER FROM PRESIDENT DONALD J. TRUMP ON EMERGENCY DETERMINATION UNDER THE STAFFORD ACT (Mar. 13, 2020), *available at*: <https://www.whitehouse.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/> (last visited Mar. 24, 2020).

³⁹ FEMA, PRESIDENT DONALD J. TRUMP DIRECTS FEMA SUPPORT UNDER EMERGENCY DECLARATION FOR COVID-19 (Release HQ-20-017, Mar. 13, 2020), *available at*: <https://www.fema.gov/news-release/2020/03/13/president-donald-j-trump-directs-fema-support-under-emergency-declaration> (last visited Apr. 2, 2020).

⁴⁰ *Id.* See also FEMA, COVID-19 EMERGENCY DECLARATION (HQ-20-017 Fact Sheet), *available at*: <https://www.fema.gov/news-release/2020/03/13/covid-19-emergency-declaration> (last visited Apr. 2, 2020); FEMA, CORONAVIRUS (COVID-19) PANDEMIC: ELIGIBLE EMERGENCY PROTECTIVE MEASURES (Mar. 19, 2020), *available at*: <https://www.fema.gov/news-release/2020/03/19/coronavirus-covid-19-pandemic-eligible-emergency-protective-measures> (last visited Mar. 24, 2020).

⁴¹ Stafford Act, § 401; 42 U.S.C. § 5170; see also 44 C.F.R. § 206.33 – Preliminary Damage Assessments; CRS, PRELIMINARY DAMAGE ASSESSMENTS FOR MAJOR DISASTERS: OVERVIEW, ANALYSIS, & POLICY OBSERVATIONS

requesting official will describe the specific nature of FEMA assistance desired in the request.⁴² If the request is approved, the declaration will specify what FEMA programs will be available—all or some of Public Assistance Program categories, Individual Assistance, and/or Hazard Mitigation Assistance.⁴³ Under this system, each State's COVID-19 agreement with FEMA may authorize different costs and projects.⁴⁴

At the time of this paper's drafting, at least 55 governmental entities (states and territories) have applied for major disaster declarations, and of those the President has approved 51.⁴⁵

The President's major disaster declaration for New York illustrates this framework.⁴⁶ Representing the first time that a President has declared a major disaster over a public health threat, the New York declaration authorized FEMA to send personnel and resources to the state to: (i) help establish COVID-19 testing sites; (ii) disinfect public facilities; (iii) provide state authorities with medical supplies and devices in high demand such as protective gear (e.g., face masks, gloves, surgical gowns), ventilators, and drugs; (iv) set up temporary shelters; (v) facilitate additional food and nutrition assistance;⁴⁷ (vi) deploy hundreds of ambulances and emergency medical service

(Oct. 4, 2017), available at: <https://crsreports.congress.gov/product/pdf/R/R44977> (last visited Apr. 2, 2020).

⁴² FEMA, FACT SHEET: DISASTER DECLARATION PROCESS, *supra* note 23 at 2. In past major disasters, hospitals, health centers, and other non-profit health care organizations have received Public Assistance funding for the extraordinary costs associated with providing temporary facilities for emergency medical care of disaster victims when existing facilities are overwhelmed. See Yale New Haven Health System, Center for Emergency Preparedness and Disaster Response, *A Quick Guide: FEMA Reimbursement for Acute Care Hospitals* (2012), available at: <https://asprtracie.hhs.gov/technical-resources/resource/2053/a-quick-guide-fema-reimbursement-for-acute-care-hospitals> (last visited Apr. 2, 2020); FEMA, HEALTH & SOCIAL SERVS. RECOVERY SUPPORT FUNCTION (Release No. IRC-SF-4, Mar. 1, 2018), available at: <https://www.fema.gov/news-release/2018/03/01/health-and-social-services-recovery-support-function>.

⁴³ PA POLICY GUIDE, *supra* note 27 at 2.

⁴⁴ 44 C.F.R. § 206.44 (FEMA-State Agreements).

⁴⁵ See FEMA, TOTAL NUMBER OF DECLARED DISASTERS: BY STATE/TRIBAL GOVERNMENT AND BY YEAR, available at: <https://www.fema.gov/disasters/> (last visited Apr. 2, 2020); see FEMA, CORONAVIRUS (COVID-19) RESPONSE, available at <https://www.fema.gov/coronavirus/> (last visited Apr. 6, 2020).

⁴⁶ PRESIDENT DONALD J. TRUMP APPROVES NEW YORK DISASTER DECLARATION (Mar. 20, 2020), available at: <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-approves-new-york-disaster-declaration-5/> (last visited Apr. 2, 2020). See FEMA, NEW YORK COVID-19 PANDEMIC (DR-4480), available at: <https://www.fema.gov/disaster/4480> (last visited Apr. 1, 2020). As of this writing, the New York State application for major disaster declaration or any COVID-19 agreements with FEMA were not accessible on line.

⁴⁷ See Michael Greenlar, *Coronavirus: President Trump declares New York state major disaster area* (Mar. 20, 2020), available at: <https://www.syracuse.com/coronavirus/2020/03/coronavirus-president-trump-declares-new-york-a-disaster-area.html> (last visited Apr. 1, 2020).

(“EMS”) personnel;⁴⁸ and (vii) convert space to add hospital capacity in coordination with the U.S. Army Corps of Engineers and other federal agencies.⁴⁹ Numerous state agencies and PNPs have a role in the response, each supported in different ways.⁵⁰

The COVID-19 national emergency and major disaster declarations will test the Stafford Act’s capacity to marshal federal resources in response to the extraordinary public health threat and the capacity of state, territorial, and tribal governments to demonstrate the accountability and transparency that FEMA will expect over the long term.

⁴⁸ Laura French, *AMR deployed to New York metro area on FEMA request* (Mar. 31, 2020), available at: <https://www.ems1.com/coronavirus-covid-19/articles/amr-deployed-to-new-york-metro-area-on-fema-request-8eF9lTD6GBpRrPzl/> (last visited Apr. 2, 2020).

⁴⁹ C. Todd Lopez, *Corps of Engineers Converts NYC’s Javits Center into Hospital*, DOD News (Apr. 1, 2020), available at: <https://www.defense.gov/Explore/News/Article/Article/2133514/corps-of-engineers-converts-nycs-javits-center-into-hospital/> (last visited Apr. 7, 2020).

⁵⁰ Guidance from the New York State Department of Homeland Security and Emergency Services explains that the major disaster declaration permits Public Assistance, on a reimbursement basis, for costs incurred for response and recovery activities as a result of the COVID-19 emergency, for state agencies, local governments, “critical” PNPs such as nursing homes, laboratories, rehabilitation centers, hospitals and emergency care facilities, fire/rescue emergency services, as well as educational facilities, and “essential/noncritical” PNPs (which are eligible for PA Category B only) such as community centers, child care facilities, food assistance programs, performing arts facilities, senior citizen centers, homeless shelters and houses of worship. See New York State Homeland Security and Emergency Services, *DR-4480 (COVID-19) Applicants Briefing Pertinent Information* (Mar. 20, 2020) at 6-11, available at: <http://www.dhSES.ny.gov/recovery/public/documents/DR4480-Applicants-Briefing-Pertinent-Info.pdf> (last visited Apr. 2, 2020); see also New York State PNP Public Assistance eligibility guidelines and Request for Assistance form, available at: <http://www.dhSES.ny.gov/recovery/public/documents/DR4480-RPA-Packet.pdf> (last visited Apr. 2, 2020).

II. CONGRESSIONAL ACTION

SUPPLEMENTAL APPROPRIATIONS AND SPECIAL AUTHORITIES

In March 2020, Congress enacted a series of three statutes, each with increasing levels of funding and implementing increasingly complex response measures. Those statutes are discussed below. Additionally, key appropriations in the recent legislation are listed in table form in an Appendix to this paper.

A. The Coronavirus Preparedness and Response Supplemental Appropriations Act

On March 6, 2020, the President signed into law the Coronavirus Preparedness and Response Supplemental Appropriations Act, Pub. L. No. 116-123, providing \$8.3 billion to various federal agencies to fund domestic and international efforts in response to the coronavirus.⁵¹

Most notably, the Act appropriated (i) \$3.4 billion to capitalize the Public Health and Social Services Emergency Fund (to be used for, among other things, the research, development and purchase of vaccines, therapeutics, diagnostics, and necessary medical supplies, and “grants for the construction, alteration, or renovation of non-Federally owned facilities to improve preparedness and response capability at the state and local level,” and \$100 million in HRSA grants under the Community Health Centers Program, “to prevent, prepare for, and respond to coronavirus”⁵²);⁵³ (ii) \$2.2 billion to the CDC (to be used for, among other things, nearly \$1 billion in grant and cooperative agreement funding for states, local and tribal governments, and health service providers, as well as \$300 million to capitalize the Infectious Disease Rapid Response Reserve Fund); (iii) \$61 million to the Food and Drug Administration for, among other things, development of necessary medical countermeasures and vaccines; (iv) \$10 million to the National Institute of Environmental Health Sciences for worker-based training to prevent and reduce exposure of hospital employees, emergency first responders, and other workers who are at risk of exposure to coronavirus through their work duties; (v) \$20 million to the SBA for economic injury

⁵¹ Coronavirus Preparedness and Response Supplemental Appropriations Act, Pub. L. 116-123, *available at*: <https://www.congress.gov/116/bills/hr6074/BILLS-116hr6074enr.pdf>.

⁵² On March 24, 2020, HRSA awarded \$100,000,000 to 1,381 health centers across the country to address screening and testing needs, acquire medical supplies, and boost telehealth capacity in response to the COVID-19 pandemic. See FY2020 CORONAVIRUS (COVID-19) AWARDS, *available at*: <https://www.hhs.gov/about/news/2020/03/24/hhs-awards-100-million-to-health-centers-for-covid-19-response.html>.

⁵³ Pub. L. 116-123, Div. A, Tit. III.

disaster loans in response to the coronavirus; and (vi) over \$1 billion to the Department of State and USAID for international assistance to support global response efforts.

More detail on how this money will be obligated is likely forthcoming. Within 30 days after the enactment of this Act, the Secretary of HHS is required to submit a detailed spend plan of anticipated uses of funds made available to HHS by this appropriation, including estimated personnel and administrative costs, to the Committee on Appropriations of the House and the Senate.⁵⁴

Additionally, the Act broadened the Secretary of HHS's express 1135 waiver authority with respect to services furnished through telehealth to Medicare beneficiaries in areas affected by the coronavirus emergency.⁵⁵

B. The Families First Coronavirus Response Act (“FFCRA”)

On March 18, 2020, the President signed into law the Families First Coronavirus Response Act (“FFCRA”), Pub. L. No. 116-127, which took effect on April 2, 2020.⁵⁶ Key provisions directly affecting federal programs are described below.

i. Emergency Paid Sick Leave Act

Under the Emergency Paid Sick Leave Act, Division E, §§ 5101-5111 of the FFCRA, employers with fewer than 500 employees are required to provide each employee two weeks of paid sick leave when the employee is unable to work or telework because of the COVID-19 public health emergency.

The rate at which an employee is paid, to include maximum daily and total amounts, varies depending on the circumstances surrounding the emergency paid sick leave. If an employee is unable to work or telework because he or she: (i) is subject to a COVID-19 federal, state, or local quarantine or isolation order, (ii) has been advised by a health care provider to self-quarantine; or (iii) is experiencing COVID-19 symptoms and seeking medical diagnosis, he or she will be entitled to pay at their full rate of pay, subject to an overall cap of \$511 per day and \$5,110 in the aggregate.

⁵⁴ *Id.* at Div. A, Tit. III, § 305. In addition, the Secretary must update the spending plan every 60 days until September 30, 2024. *Id.*

⁵⁵ *Id.* at Div. B, § 102 (amending section 1135 of the SSA, 42 U.S.C. § 1320(b)-5). A clarifying amendment was further accomplished via the Families First Coronavirus Response Act (“FFCRA”), Pub. L. 116-127, § 6010.

⁵⁶ Families First Coronavirus Response Act (“FFCRA”), Pub. L. 116-127, *available at*: <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>.

If an employee is unable to work or telework because he or she: (i) must care for an individual who is subject to a COVID-19 federal, state, or local quarantine isolation order, or is caring for someone who has been advised by a health care provider to self-quarantine; (ii) must care for his or her son or daughter because the son or daughter's school or place of care is unavailable due to COVID-19 precautions; or (iii) is experiencing any other substantially similar condition specified by the Secretary of HHS, he or she will be entitled to two-thirds of his or her regular rate of pay, capped at \$200 per day and \$2,000 in the aggregate.

The Department of Labor has issued a temporary final rule implementing these requirements and those of the Emergency Family and Medical Leave Expansion Act described below.⁵⁷

ii. Emergency Family and Medical Leave Expansion Act

In addition to the emergency sick leave discussed above, under the Emergency Family and Medical Leave Expansion Act, Division C, §§ 3101-3106 of the FFCRA, employers with fewer than 500 employees are required to provide up to 12 weeks of paid leave – again subject to certain daily and aggregate caps and with the first 10 days potentially unpaid – to employees who are unable to work or telework because they have to care for a son or daughter whose school or place of care is unavailable due to the COVID-19 public health emergency.

iii. Notable Provision Impacting Food/Nutrition Assistance

The FFCRA contains a number of provisions that impact child and adult nutrition assistance. Of particular note, the FFCRA (i) allows the Secretary of Agriculture to establish a national waiver of certain requirements and regulations under the National School Lunch Act;⁵⁸ (ii) allows the Secretary to grant a waiver to allow non-congregate feeding under child and adult care food programs;⁵⁹ (iii) allows the Secretary to waive certain standards regarding nutritional content of meals for certain child and adult

⁵⁷ 85 Fed. Reg. 19326 (Apr. 6, 2020).

⁵⁸ FFCRA, §§ 1101, 2102 and 2202. FNS has granted a number of waivers on either a nationwide or state-by-state basis since the enactment of this Act and continues to issue waivers. For more information on particular nationwide waivers or state specific waivers, please visit <https://www.fns.usda.gov/disaster/pandemic/covid-19>.

⁵⁹ *Id.* § 2202(b). On March 20, 2020, FNS issued a nationwide waiver to allow for non-congregate feeding for the National School Lunch Program, School Breakfast Program, Summer Food Service Program and the Child and Adult Care Food Program due to the COVID-19 Public Health Emergency. For more information visit <https://www.fns.usda.gov/resource/cn-covid-19-non-congregate-feeding-nationwide-waiver>.

food programs under certain circumstances;⁶⁰ and (iv) allows states to request waivers to permit individuals seeking certification or recertification in the Special Supplemental Nutrition Program for Women, Infants, and Children (commonly referred to as the “WIC program”) during the COVID-19 pandemic not to be physically present for eligibility certifications and recertifications.⁶¹

In addition, during the COVID-19 pandemic the FFCRA: (i) waives certain eligibility requirements to receive benefits under the Supplemental Nutrition Assistance Program (“SNAP”) such as minimum work requirements; and (ii) provides, at the request of the cognizant state agency, for emergency allotments to households participating in SNAP to address temporary food needs.⁶²

iv. Notable Provisions Affecting Health Care Programs

There are number of provisions in the FFCRA that affect existing health care laws. Of particular note, the FFCRA: (i) requires certain health insurers to provide coverage with no cost share for certain in vitro diagnostic services related to COVID-19,⁶³ and expands HHS-funded access to such services for individuals receiving services through the Indian Health Service;⁶⁴ (ii) waives certain cost sharing and prior authorization requirements for beneficiaries of the Medicare,⁶⁵ Medicare Advantage,⁶⁶ Medicaid, and CHIP⁶⁷ programs for certain in vitro COVID-19-testing services; and (iii) temporarily increases the federal medical assistance percentage (“FMAP”) for each state Medicaid agency by 6.2 percentage points for quarters that begin during the PHE period and requiring that, to receive such increased FMAP, a state (i) cannot implement more restrictive eligibility standards or higher premiums than it had in place on January 2, 2020⁶⁸ and (ii) must cover COVID-19 testing and treatment without imposing

⁶⁰ *Id.* § 2202(c).

⁶¹ *Id.* §§ 2201-2204. Since the enactment of this Act, many states have been approved by the Secretary of Agriculture to waive certain WIC requirements. For more information please visit <https://www.fns.usda.gov/disaster/pandemic/covid-19>.

⁶² FFCRA, §§ 2301-2302. Some states have already requested, and have been approved, to issue emergency allotments under SNAP. For more information please visit <https://www.fns.usda.gov/disaster/pandemic/covid-19>.

⁶³ *Id.* §§ 6001, 6006.

⁶⁴ *Id.* § 6007.

⁶⁵ *Id.* § 6002 (addressing Medicare).

⁶⁶ *Id.* § 6003 (addressing Medicare Advantage).

⁶⁷ *Id.* § 6004 (addressing Medicaid and CHIP).

⁶⁸ Note that § 3720 of the CARES Act subsequently created a 30-day grace period for adjustment of non-compliant premiums in effect prior to the new legislation.

beneficiary cost sharing.⁶⁹

v. Notable Appropriations Under the FFCRA

Under the FFCRA, there were a number of notable appropriations to various federal departments and agencies⁷⁰ to fund the domestic and international response to the coronavirus. Notable items include: (i) another \$1 billion to the Public Health and Social Services Emergency Fund to pay for the in vitro COVID-19 testing authorized by the FFCRA (discussed above);⁷¹ (ii) \$500 million to the Department of Agriculture's Food and Nutrition Service ("FNS") for the WIC program;⁷² (iii) \$400 million to FNS for The Emergency Food Assistance Program ("TEFAP");⁷³ (iv) \$100 million to FNS to provide grants to the Commonwealth of the Northern Mariana Islands, Puerto Rico, and American Samoa for nutrition assistance in response to the COVID-19 public health emergency;⁷⁴ and (v) \$250 million to HHS's Administration for Community Living's ("ACL") Aging and Disability Services Programs for congregate nutrition services, home delivered nutrition services, and nutrition services for Native Americans.⁷⁵

The head of each executive agency which receives funding under the FFCRA must provide a report detailing the anticipated uses of all of the funding to the Committees on Appropriations of the House of Representatives and the Senate not later than 30 days after the enactment of the FFCRA.⁷⁶

⁶⁹ FFCRA, § 6008.

⁷⁰ The head of each executive agency which receives funding under the FFCRA must provide a report detailing the anticipated uses of all of the funding to the Committees on Appropriations of the House of Representatives and the Senate not later than 30 days after the enactment of this Act. Further, each plan is required to be updated and submitted to the Committees every 60 days until all funds are expended or expired.

⁷¹ FFCRA, Div. A, Tit. V.

⁷² *Id.* Div. A, Tit. I.

⁷³ *Id.*

⁷⁴ *Id.* § 1102. Nutrition assistance is provided to the Commonwealth of the Northern Mariana Islands, Puerto Rico, and American Samoa through block grants issued by FNS for the Nutrition Assistance Program ("NAP") which is similar in some, but not all respects to the Supplemental Nutrition Assistance Program ("SNAP").

⁷⁵ *Id.* Div. A., Tit. V.

⁷⁶ *Id.* Div. A., Tit. VII, § 1701. Additionally, each plan is required to be updated and submitted to the Committees every 60 days until all funds are expended or expired. *Id.*

C. The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”)

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act.⁷⁷ The 335-page statute impacted numerous areas of federal law, not all of which are addressed herein. Brief discussions of key provisions directly affecting federal programs are provided below.

i. Financial Relief for Businesses and Non-Profits

The CARES Act implemented a new Small Business Administration (“SBA”) loan program entitled the “Paycheck Protection Program” and authorized funding for the program of \$349 billion.⁷⁸ Under this loan program, eligible small business concerns, as well as non-profits, veterans organizations, or tribal concerns with not more than 500 employees may qualify for a loan from the SBA to pay for certain costs incurred under the present economic slowdown and social distancing environment.⁷⁹ Loans may generally be used for: (i) payroll costs (including salaries/wages and fringe benefit costs, with at least the salary/wage component of such costs capped at an annualized rate of \$100,000 per employee); (ii) mortgage interest; (iii) rent; and (iv) utilities.⁸⁰ Loan amounts will be calculated at 2.5 times a borrower’s monthly payroll costs, capped at a \$10 million maximum. Perhaps most importantly, if borrowers use the loan to pay for the specified costs above, the loan principal is eligible for forgiveness, with eligible forgiveness amounts reduced proportionately to layoffs or if the borrower cuts salaries/wages of employees beyond certain thresholds.⁸¹

⁷⁷ The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, Pub. L. 116-136 (Mar. 27, 2020), available at: <https://www.congress.gov/bill/116th-congress/house-bill/748/text?q=%7B%22search%22%3A%5B%22actionDateChamber%3A%5C%22116%7C%7C2020-03-27%5C%22+AND+%28billsReserved%3A%5C%22N%5C%22+OR+type%3A%5C%22AMENDMENT%5C%22%29%22%5D%7D&r=1&s=2>.

⁷⁸ CARES Act, § 1102.

⁷⁹ *Id.* Individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals are also eligible to apply for Paycheck Protection Program loans.

⁸⁰ *Id.* Interest on obligations incurred prior to obtaining the Paycheck Protection Program loan are also listed as eligible expenses, but such costs are not included in the amount potentially forgiven. Current federal guidance indicates that the interest rate on these loans will be 1 percent. See <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses> (last visited Apr. 4, 2020).

⁸¹ CARES Act, § 1106. In addition, the Paycheck Protection Program waives otherwise applicable fees, the requirement that applicants first try to obtain credit elsewhere, waives personal guarantee and collateral requirements, and allows deferment of loan payments for 6 months (though interest will accrue during deferment periods). *Id.* § 1102.

The Act also provides \$454 billion to the Department of the Treasury for loans to mid-sized businesses, non-profits, states, and municipalities that do not qualify for certain other loans or loan guarantees under the CARES Act, in particular those with 500 to 10,000 employees.⁸² While these loans have potentially lower interest rates (not to exceed 2 percent), unlike the Paycheck Protection Program loans, they are not eligible for forgiveness.

For more information on the Paycheck Protection Program and Department of the Treasury loans, please refer to FTLF's recent Client Alert on the topic: Financial Relief for Health Centers, Other Non-Profits, and Businesses During the COVID-19 Public Health Emergency, available at: <https://www.feldesmantucker.com/tag/covid-19/>.

ii. The Relief for Workers Affected by Coronavirus Act (“RWACA”)

RWACA, which appears at Division A, Title II, Subtitle A, §§ 2101-2116 of the CARES Act, provides for (i) up to 39 weeks of unemployment assistance for individuals who are affected by COVID-19 and not otherwise eligible for unemployment benefits;⁸³ (ii) authorizes additional funding to states for expanded unemployment benefits;⁸⁴ and (iii) authorizes states to increase unemployment benefits by \$600 per week with federal reimbursement therefor.⁸⁵

iii. Special Tax Provisions Related to Employment Expenses

The CARES Act establishes (i) certain individual income tax credits for 2020;⁸⁶ and (ii) certain employment tax credits for businesses that fully or partially suspend operations pursuant to governmental orders and, as a result, suffer a decrease in gross receipts of at least 50 percent for a calendar quarter as compared to 2019.⁸⁷ Additionally, the CARES Act permits deferred payment of 2020 employer payroll taxes.⁸⁸ Business entity taxes are impacted in other ways not specifically addressed herein.⁸⁹

⁸² *Id.* § 4003.

⁸³ *Id.* § 2102. Individuals who have “the ability to telework with pay” or who “receive paid sick leave or other paid leave benefits” are not eligible.

⁸⁴ *Id.*

⁸⁵ *Id.* § 2104.

⁸⁶ *Id.* § 2201.

⁸⁷ *Id.* § 2301. Once commenced, the entity remains qualified until gross receipts exceed 80 percent, for a calendar quarter, of gross receipts for the same quarter in 2019. Also note that entities that obtain Paycheck Protection Program loans are not eligible for this credit.

⁸⁸ *Id.* § 2302.

⁸⁹ See *generally id.* Div. A, Tit. II, Subtitle C (Business Provisions).

iv. Major Provisions Impacting Health Care Laws and Operations

The CARES Act provides health care providers with new regulatory authority and flexibilities to address the coronavirus emergency. Among other things, the CARES Act: (i) allows for FQHCs and Rural Health Clinics to serve as “distant sites” for telehealth services under Medicare during the coronavirus emergency period, paid through a new method separate from FQHC prospective payment system rates and RHC all-inclusive-rates;⁹⁰ (ii) encourages HHS to support the use of telehealth technologies for home health services;⁹¹ (iii) enhances Medicare payment rates for hospitals for patients with COVID-19;⁹² and (iv) adds administration of COVID-19 vaccines as a covered Medicare Part B and Medicare Advantage service once a vaccine is developed and released.⁹³

In addition, the CARES Act amended 42 U.S.C. § 290dd-2 to more closely align with HIPAA standards, among other things, (i) permitting a single written consent for certain disclosures and redisclosures, (ii) adopting HIPAA breach notification requirements, and (iii) amending the “penalties” section of the statute to authorize direct HHS enforcement for violations.⁹⁴ HHS is to issue implementing regulations within 12 months.⁹⁵ The Act further directs HHS to issue guidance within 180 days “on the sharing of patients’ protected health information . . . during the [COVID-19] public health emergency.”⁹⁶ As noted above, HHS’s OCR has already issued some HIPAA flexibility guidance on its webpage at: <https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-covid19/index.html>.

For more information on provisions affecting health centers, and health care privacy law, and health care payment, please refer to FTLF client alerts at: <https://www.feldesmantucker.com/tag/covid-19/>.

v. Major Provisions Impacting Institutions of Higher Education

The CARES Act appropriates \$30 billion in education stabilization funds, \$14 billion of which is earmarked for higher education,⁹⁷ and enacts temporary waivers and flexibilities for work-study programs, Pell grants, and student loans.

⁹⁰ *Id.* § 3704.

⁹¹ *Id.* § 3707.

⁹² *Id.* § 3710.

⁹³ *Id.* § 3713.

⁹⁴ *Id.* § 3221.

⁹⁵ *Id.*

⁹⁶ *Id.* § 3224.

⁹⁷ Inside Higher Ed, *Governors Call for Quick Distribution of Stimulus* (Apr. 4, 2020), available at: <https://www.insidehighered.com/news/2020/04/05/live-updates-latest-news-coronavirus-and-higher-education> (last visited Apr. 5, 2020).

Provisions of particular note include: (i) waiver of the non-federal share requirement for campus-based aid programs for award years 2019-2020 and 2020-2021 under Title IV of the Higher Education Act of 1965 (“HEA”),⁹⁸ except that private for-profit organizations are not afforded this flexibility;⁹⁹ (ii) authorization for institutions of higher education (“IHEs”) to award undergraduate and graduate students emergency financial aid through supplemental grants;¹⁰⁰ (iii) authorization for IHEs to issue students work-study payments for the period of time in which the public health emergency prevents them from fulfilling their work-study obligations, during one academic year;¹⁰¹ (iv) requiring the Secretary of Education to exclude from a student’s enrollment period limit any semester or qualifying period that the student could not complete due to the public health emergency for (a) purposes of subsidized loan usage limits under the federal Direct Student Loan program established through Part D of Title IV of the HEA¹⁰² and (b) Pell grants awarded under § 401(c)(5) of the HEA;¹⁰³ (v) relaxing requirements for IHEs and students regarding the return of grant or loan assistance in instances in which a student withdraws due to the public health emergency;¹⁰⁴ and (vi) permitting IHEs to exclude any attempted credits a student fails to complete due to the public health emergency from the quantitative component of mandated federal academic progress reporting requirements.¹⁰⁵

vi. Flexibilities for AmeriCorps Programs

Congress directed the Corporation for National and Community Service (“CNCS”) to allow individuals serving in AmeriCorps programs who are affected by the COVID-19 national emergency special flexibility in accruing service hours that will qualify for their educational awards.¹⁰⁶ In particular, (i) where an individual is performing limited service, or has been suspended or placed on hold, due to COVID-19, CNCS is to permit them to count “other service hours” toward the hours needed to earn their education award; and (ii) where CNCS directs the “early exit” of individuals from their programs, CNCS is authorized to treat their service term as sufficient for a full educational award.¹⁰⁷

⁹⁸ 20 U.S.C. §§ 1070b-2(a)(2), 1087-53(b)(5).

⁹⁹ CARES Act, § 3503.

¹⁰⁰ *Id.* § 3504.

¹⁰¹ *Id.* § 3505.

¹⁰² *Id.* § 3506.

¹⁰³ *Id.* § 3507; 2 U.S.C. § 1070a(c)(5).

¹⁰⁴ CARES Act, § 3508.

¹⁰⁵ *Id.* § 3509.

¹⁰⁶ *Id.* § 3514.

¹⁰⁷ *Id.*

Additionally, Congress has authorized CNCS to (i) permit AmeriCorps programs managing fixed-amount awards to retain funding under those awards to support operations notwithstanding the early exit or limited service capacity of participants,¹⁰⁸ and (ii) extend participants' terms of service for up to one year after the end of the national emergency (and waive upper age limits as necessary) to minimize COVID-19 disruptions to AmeriCorps programs.¹⁰⁹

CNCS has issued guidance at <https://www.nationalservice.gov/coronavirus>.

vii. Notable Appropriations Under the CARES Act

The CARES Act provides \$2.2 trillion in appropriations to various federal, state, and local agencies to fund the ongoing domestic and international response to the coronavirus.

Notable health care industry provisions include: (i) \$100 billion into the Public Health and Social Services Emergency Fund, which will remain available until expended and which is for “expenses to reimburse through grants or other mechanisms, eligible health care providers [*i.e.*, Medicare and Medicaid enrolled providers and supplies and certain others designated by HHS] for health care related expenses or lost revenues that are attributable to the coronavirus”;¹¹⁰ (ii) extension of additional funding amounts for the Community Health Center Program originally authorized by the Patient Protection and Affordable Care Act through November 30, 2020 at an annual rate of \$4 billion;¹¹¹ (iii) \$1.32 billion in additional funding to health centers for fiscal year 2020 for “prevention, diagnosis and treatment of COVID-19;”¹¹² (iv) expansion of the scope of certain HRSA Federal Office of Rural Health Policy (“FORHP”) grant programs for rural services in terms of both eligible recipients and supported activities;¹¹³ (v) reauthorization of the Healthy Start for Infants program of HRSA’s Maternal and Child Health Bureau, with authorization for \$125 million in funding for each fiscal year from 2021 through 2025;¹¹⁴ (vi) expansion of nursing workforce development programs authorized and funded under the PHSA;¹¹⁵ (vii) \$955 million to the Administration for

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.* Div. B, Tit. VIII.

¹¹¹ *Id.* § 3831.

¹¹² *Id.* § 3211.

¹¹³ *Id.* § 3213.

¹¹⁴ *Id.* § 3225.

¹¹⁵ *Id.* § 3404.

Community Living’s (“ACL”) Aging and Disability Services Programs to “prevent, prepare for, and respond to coronavirus”;¹¹⁶ (viii) another \$275 million into the Public Health and Social Services Emergency Fund, \$90 million of which is designated for transfer to HRSA’s Ryan White HIV/AIDS Program (“RWHAP”) to supplement existing grants and cooperative agreements, and \$180 million of which is designated for HRSA-administered rural telehealth programs;¹¹⁷ and, (ix) \$425 million to SAMHSA for supplementation of various grant programs for activities related to coronavirus prevention and response.¹¹⁸

Notable provisions for local government and community-based organizations providing critical social services include: (i) another approximately \$15.8 billion to FNS for SNAP;¹¹⁹ (ii) \$8.8 billion to FNS’s Child Nutrition Programs;¹²⁰ (iii) \$1 billion to the Administration for Children and Families (“ACF”) Children and Families Services Programs for Community Services Block Grants;¹²¹ (iv) \$750 million to ACF for the Head Start Program;¹²² (v) \$900 million to ACF for the Low Income Home Energy Assistance Program (“LIHEAP”);¹²³ (vi) \$5 billion to the Department of Housing Urban Development (“HUD”) for the Community Development Block Grant (“CDBG”) program;¹²⁴ (vii) \$4 billion to HUD, which is to remain available through September 2022, for Homeless Assistance Grants;¹²⁵ and (viii) \$685 million to HUD for the Public Housing Operating Fund to support normal operations of public housing agencies during the COVID-19 public health emergency.¹²⁶

Finally, notable provisions directly supporting the COVID-19 containment and response effort include: (i) \$45 billion to FEMA’s Disaster Relief Fund (\$25 billion of which is designated for declared major disasters and \$15 billion of which may be used for “all purposes authorized under [the Stafford Act]”);¹²⁷ (ii) another \$400 million to

¹¹⁶ *Id.* Div. B, Tit. VIII.

¹¹⁷ *Id.* Div. B, Tit. VIII. This amount is to remain available through September 30, 2022. \$65 million in additional funding is also provided to HUD for the Housing Opportunities for Persons with AIDS (“HOPWA”) program. *Id.* Div. B, Tit. XII.

¹¹⁸ *Id.* Div. B, Tit. VIII.

¹¹⁹ *Id.* Div. B, Tit. I.

¹²⁰ *Id.*

¹²¹ *Id.* Div. B, Tit. VIII.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.* Div. B, Tit. XII.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* Div. B, Tit. VI.

FEMA for federal assistance, remaining available through September 2021, to “prevent, prepare for, and respond to coronavirus, domestically or internationally” (\$100 million of which is designated for grants to firefighters for the purchase of personal protective equipment and related supplies, \$100 million of which is designated for Emergency Management Performance Grants; and \$200 million of which is designated for the Emergency Food and Shelter Program);¹²⁸ (iii) approximately \$27 billion into the Public Health and Social Services Emergency Fund, which will remain available through September 2024, primarily for development of countermeasures, vaccines, and related technologies;¹²⁹ (iv) \$1 billion to the Department of Defense for Defense Production Act Purchases;¹³⁰ and (v) \$4.3 billion to the CDC (of which \$1.5 billion is designated for grants and cooperative agreements with states, localities, territories, tribal governments and organizations, urban Indian health organizations, or health service providers, to tribes to carry out certain activities to combat COVID-19; not less than \$500 million of which is for global disease detection and emergency response; and, not less than \$500 million of which is for public health data surveillance and analytics infrastructure modernization).¹³¹

¹²⁸ *Id.*

¹²⁹ *Id.* Div. B, Tit. VIII.

¹³⁰ *Id.* Div. B, Tit. III.

¹³¹ *Id.* Div. B, Tit. VIII.

III. ADMINISTRATIVE GRANT MANAGEMENT RELIEF FOR FEDERAL AWARD RECIPIENTS

A. OMB-Supported Flexibilities

On March 9, 2020, the Office of Management and Budget (“OMB”) issued OMB Memorandum 20-11, “Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19).”¹³² The memorandum allowed awarding agencies to grant flexibility in ten different grant administration areas. This first memorandum applied to recipients that conducted or provided research or services necessary to the coronavirus emergency response.¹³³

On March 19, 2020, OMB issued a second memorandum, OMB Memorandum 20-17, “Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) due to Loss of Operations.”¹³⁴ It added three additional areas of flexibility to those stated in Memorandum 20-11, and authorized agencies to offer those flexibilities more broadly, to any “recipients affected by the loss of operational capacity and increased costs due to the COVID-19 crisis.”¹³⁵

The thirteen areas of potential flexibility are described below. While some are new flexibilities, many reflect existing funding agency authorities under the Uniform Guidance¹³⁶ and therefore could be more accurately described as representing an expression of OMB policy that funding agencies should be flexible under current circumstances.

¹³² OFFICE OF MGMT. & BUDGET, MEMORANDUM, ADMIN. RELIEF FOR RECIPIENTS & APPLICANTS OF FEDERAL FINANCIAL ASSISTANCE DIRECTLY IMPACTED BY THE NOVEL CORONAVIRUS (COVID-19), EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MGMT. AND BUDGET (Mar. 9, 2020), *available at*: <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-11.pdf>.

¹³³ *Id.*

¹³⁴ OFFICE OF MGMT. & BUDGET, ADMIN. RELIEF FOR RECIPIENTS & APPLICANTS OF FEDERAL FINANCIAL ASSISTANCE DIRECTLY IMPACTED BY THE NOVEL CORONAVIRUS (COVID-19) DUE TO LOSS OF OPERATIONS (Mar. 19, 2020), *available at*: <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-17.pdf>.

¹³⁵ OMB MEMORANDUM 20-17 at 1. The first memorandum includes exceptions that “are time limited and are only applicable for those awards that support the continued research and services necessary to carry out the emergency response related to COVID-19 during the period formally declared by the Department of Health and Human Services through the 90 Day Public Health Emergency Declaration.” The second memorandum is time limited by within 90 days of the memo (Mar. 19, 2020 to June 17, 2020).

¹³⁶ 2 C.F.R. Part 200.

The flexibilities are:

1. System for Award Management (“SAM”) Registration Flexibility. Permitting relaxation of the requirement for active SAM registration at the time of award.
2. Waiver of Notice of Funding Opportunity Announcement Requirements. Permitting publication for less than the typical thirty-day minimum.
3. Pre-Award Cost Authorization. Permitting authorization of pre-award costs incurred between January 20, 2020 and the award date.
4. No-Cost Extensions. Permitting authorization of no-cost extensions for awards ending between March 31, 2020 and December 31, 2020.
5. Simplified Continuation Award Applications/Requests. Permitting abbreviated statements and submissions from grantees seeking continuation funding for subsequent budget periods within ongoing project periods.
6. Acknowledgement of Ongoing Salary/Wage and Fringe Costs and Potential Project Resumption Costs. Permitting agencies to liberally construe federal grant management regulations to allow (i) ongoing grantee salary and fringe costs during the public health emergency and (ii) project resumption costs upon cessation of the national health emergency.
7. Expanding Allowability for Costs of Cancelled Activities. Permitting allowability of costs incurred due to cancellation of events.
8. Waiver of Prior Approval Requirements. Permitting waiver of any prior approval requirements “as necessary to effectively address the response.”
9. Waiver of Certain Procurement Requirements. Permitting waiver of the prohibition against administrative state and local geographic preferences and small business contracting preferences.
10. Delayed Submission of Financial, Performance and Other Reports. Permitting extension of up to three months beyond normal due dates for reports.
11. Extension of Currently Approved Indirect Cost Rates. Permitting the extension of current indirect cost rates for up to one year without submission of a rate proposal, as well as extension of deadlines to submit final rate

proposals for prior periods.

12. Delayed Submission of Closeout Reports. Permitting delayed submission of final reports for up to one year after the end of performance.
13. Delayed Submission of Single Audit Act Audit Reports. Permitting, and, in fact, encouraging agencies to permit,¹³⁷ an extension of Single Audit Act Audit Report submissions for twelve months.

Individual federal awarding agencies have issued much guidance to recipients over the past several weeks, implementing the above-described authorities to varying degrees. The Council on Government Relations (“COGR”) has published a useful list with hyperlinks to the guidance of many individual agencies¹³⁸ on its website at: <https://www.cogr.edu/institutional-and-agency-responses-covid-19-and-additional-resources>.

B. Agency Implementation of OMB-Supported Flexibilities

One of the key questions faced by federal recipients under the circumstances is whether they may charge salary/wage and fringe benefit costs to their awards for staff who are not physically present at their facility during the crisis. This is particularly relevant in states where governors have prohibited individuals from gathering in workplaces as a measure to combat the spread of the coronavirus.

The clarity of guidance provided on this issue varies by agency. For example, frequently asked questions (“FAQ”) issued by HRSA provide that such costs would generally be allowable, subject to certain administrative prerequisites:

Can we use grant funds to pay salaries for staff on the budget who are not in the office due to closures because of COVID-19?

Yes. Per guidance issued by Office of Management and Budget (OMB) Memo M-20-11 and M-20-17, HRSA recipients may continue to charge salaries and benefits to currently active awards consistent with their organization’s policy of paying salaries under unexpected or extraordinary circumstances) from all funding sources, federal and non-federal.

¹³⁷ OMB MEMORANDUM 20-11 at 3 (stating that agencies “should” permit such extensions).

¹³⁸ The COGR’s list is focused on agencies that fund research awards. Other agencies have also issued guidance and each recipient should examine recent issuances from their funders for pertinent guidance. For example, Administration for Children and Families guidance is available at <https://www.acf.hhs.gov/grants-funding/acf-grant-recipient-covid-19>.

If recipients do not have such policies in place for paying salaries under unexpected or emergency circumstances, they should immediately develop and officially adopt these new policies.¹³⁹

SAMHSA and the National Institutes of Health (“NIH”) have each provided similar guidance. SAMHSA has instructed:

Question: Our organization has employees whose salaries and benefits are funded in whole, or in part, by SAMHSA grants. Many of these employees perform direct, person-to-person, client-based services. However, direct person-to-person interaction has discontinued due to the COVID-19 crisis. As a result, employees are unable to work on grants and therefore have been placed on administrative leave. Is our organization allowed to use SAMHSA grant funds to pay the salaries and benefits of employees on administrative leave?

Answer: Yes, SAMHSA understands that many individuals may be unable to work as a result of or related to the effects of COVID-19. If a recipient organization’s policy allows for the charging of salaries and benefits during periods when no work is performed due to the effect of COVID-19, regardless of the funding source, including Federal and non-Federal, then such charges to SAMHSA grant awards will be allowable.¹⁴⁰

According to NIH guidance:

Charging salaries to NIH grants when no work is being performed is allowable if your organization’s policy allows for the charging of salaries and benefits to currently active awards (under unexpected or extraordinary circumstances) from all funding sources, Federal and non-Federal. If you have such a policy, and anticipate a need to charge personnel costs, please notify the funding IC. NIH may request documentation to confirm the requirements of the institutional policy.¹⁴¹

¹³⁹ HRSA COVID-19 GRANTEE FREQUENTLY ASKED QUESTIONS, *available at*: <https://www.hrsa.gov/grants/manage-your-grant/COVID-19-frequently-asked-questions> (last visited Apr. 1, 2020).

¹⁴⁰ SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., FAQs RELATED TO COVID-19 FOR SAMHSA GRANT RECIPIENTS, *available at*: <https://www.samhsa.gov/sites/default/files/covid-19-faqs-samhsa-discretionary-grant-recipients.pdf> (last visited Apr. 1, 2020).

¹⁴¹ NAT’L INST. OF HEALTH, FAQs, COVID-19 FLEXIBILITIES FOR APPLICANTS & RECIPIENTS, *available at*: <https://grants.nih.gov/faqs#/covid-19.htm?anchor=question55769>.

By comparison, the Administration for Children and Families (“ACF”) has issued somewhat more ambiguous guidance, instructing:

ACF will allow grantees/recipients to continue to charge salaries and benefits to their currently active awards consistent with the grantees/recipients’ policy of paying salaries (under unexpected or extraordinary circumstances) from all funding sources, Federal and non-Federal. Grantees/recipients will be permitted to amend/create emergency policies in order to put emergency contingencies in place.¹⁴²

Overall, agency policies in this area appear to be consistent in requiring that grantees (i) have policies that are consistently applied to federally funded and non-federally funded work, and (ii) continue to clearly document the costs incurred.

To the extent that some agencies have issued less clear guidance, there is some risk that, in the conduct of future audits or reviews, an auditor, agency reviewer, or Office of Inspector General representative might scrutinize the reasonableness, and therefore the allowability,¹⁴³ of particular expanded leave costs.¹⁴⁴ One tool available to grantees to seek more solid assurances of ongoing personnel cost allowability is to request “advance approval”¹⁴⁵ of their written expanded leave policies while the national emergency is ongoing.

Additionally, within the federal response framework discussed above, grantees should carefully document any additional costs incurred in relation to expanded leave obligations created by the FFCRA as well as any costs supported by SBA Paycheck Protection Program loans for which they anticipate seeking forgiveness.

With respect to the FFCRA’s expanded leave provisions, many grantees will ultimately receive tax credits to offset the costs. To the extent the expanded leave is paid in the

¹⁴² ADMIN. OF CHILDREN & FAMILIES, INFORMATION MEMORANDUM IM-ACF-OA-2020-01 (Mar. 30, 2020), *available at*: https://www.acf.hhs.gov/sites/default/files/assets/im_acf_oa_2020_01_acf_covid_flexibilities_final_march_30_2020.pdf (last visited Apr. 1, 2020).

¹⁴³ See 2 C.F.R. §§ 200.403 (Factors affecting allowability of costs) and 200.404 (Reasonable costs).

¹⁴⁴ See, e.g., Center for Employment Training, DAB No. 1337 (1992) (The Board queried whether grant was ever intended to encompass emergency disaster relief when reviewing the issue of grantee could charge as substitute allowable costs its personnel costs for employees in its overhead pool who left their regular job duties in order to assist with disaster relief after the October, 1989 San Francisco earthquake).

¹⁴⁵ See 2 C.F.R. § 200.407 (“Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the [grantee] may seek prior written approval of the . . . Federal awarding agency in advance of the incurrence of special or unusual costs.”).

first instance with federal funds, those tax credits will constitute “applicable credits” from which reimbursement to federal programs will be due.¹⁴⁶

Relatedly, to the extent a grantee obtains a forgivable loan under the SBA’s Paycheck Protection Program, such funding should be treated as a distinct payment source, avoiding duplicative charges to federal awards. Carefully documenting such a funding stream and the expenses charged against it (in most cases payroll costs) will enable a grantee to both (i) demonstrate that federal grant funds were not used for the same expenses, and (ii) support documentation that is likely to be required from the grantee’s lender during the process of seeking loan forgiveness.¹⁴⁷

C. Stafford Act Authority for Additional Federal Award Flexibilities

As touched upon above, Section 301 of the Stafford Act¹⁴⁸ provides an additional broad waiver authority specific to federal awards impacted by major disasters. Specifically, Section 301 states:

Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.¹⁴⁹

¹⁴⁶ 2 C.F.R. § 200.406 (Applicable credits).

¹⁴⁷ See U.S. Department of the Treasury and the Small Business Administration, Paycheck Protection Program Application Form and Paycheck Protection Plan Information Sheet for Borrowers (Mar. 31, 2020), *available at*: <https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>. (“The request will include documents that verify the number of full-time equivalent employees and pay rates, as well as the payments on eligible mortgage, lease, and utility obligations. You must certify that the documents are true and that you used the forgiveness amount to keep employees and make eligible mortgage interest, rent, and utility payments.”).

¹⁴⁸ 42 U.S.C. § 5141.

¹⁴⁹ *Id.* Furthermore, FEMA has relied on authority in the Uniform Guidance to advise PNP grantees that they may conduct sole-source procurements in certain circumstances in furtherance of COVID-19 emergency activities. See FEMA, MEMORANDUM TO ALL STATES, ETC. RE: PROCUREMENT UNDER GRANTS CONDUCTED UNDER EMERGENCY OR EXIGENT CIRCUMSTANCES FOR COVID-19 (Mar. 17, 2020), *available at*: https://www.fema.gov/media-library-data/1584457999950-7186ffa29ace3e6faf2ca2f764357013/Procurement_Under_EE_Circumstances_Memo_final_508AB.pdf (last visited Apr. 3, 2020); see also FEMA, FACT SHEET: PROCUREMENT UNDER GRANTS CONDUCTED UNDER EXIGENT OR EMERGENCY CIRCUMSTANCES, https://www.fema.gov/media-library-data/1584386517416-40bc24e5a2c4154c1ee44ed143e6491b/Procurement_During_EE_Circumstances_Fact_Sheet_508AB.pdf (last visited Apr. 3, 2020).

While this authority must be invoked by “State or local authorities,” under the circumstances of the national emergency, it seems likely that many state or local government bodies would entertain a request for coordination made by a grantee that provides local services and is experiencing difficulty meeting the requirements of a particular program. Though it appears that most agencies have no specific regulations implementing procedures for such waiver requests, the Department of Transportation’s Federal Transit Administration does, offering at least a basic model for such requests.¹⁵⁰

¹⁵⁰ See 49 C.F.R. Part 601, Subpart D.

APPENDIX

This Appendix provides a list of major appropriations in the three statutes recently enacted by Congress to provide resources and flexibilities to combat the coronavirus public health emergency. While this Appendix provides a robust overview for purposes of describing the federal response framework, please note that not all appropriations are listed. Each of the three enactments is listed chronologically below.

I. Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Pub. L. No. 116-123

On March 6, 2020, the President signed into law the Coronavirus Preparedness and Response Supplemental Appropriations Act, Pub. L. No. 116-123, providing \$8.3 billion to various Federal departments and agencies to fund a domestic and international response to the coronavirus.¹⁵¹ The following table illustrates the key appropriations:

I. DEPARTMENT OF HEALTH & HUMAN SERVICES		
A. Centers for Disease Control and Prevention		
<u>Total Amount of Appropriation</u>	<u>Period of Availability</u>	<u>Synopsis</u>
\$2,200,000,000	Available until September 30, 2022.	Funds are available to prevent, prepare for, and respond to coronavirus, domestically or internationally: \$950 million for grants to States, Territorial and tribal governments; not less than \$300 million for global disease detection and emergency response; \$300 million for the Infectious Diseases Rapid Response Reserve Fund (“Reserve Fund”). ¹⁵²

¹⁵¹ Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Pub.L. 116-123, available at: <https://www.congress.gov/116/bills/hr6074/BILLS-116hr6074enr.pdf>.

¹⁵² The Infectious Diseases Rapid Response Reserve Fund is a reserve fund in the Treasury and may only be used for an infectious disease emergency if the Secretary of Health and Human Services declares an infectious disease Public Health Emergency under section 319 of the PHS Act, or determines that the infectious disease Public Health Emergency has significant potential to imminently occur and potential, on occurrence, to affect national security or the health and security of United States citizens, domestically or internationally. 42 U.S.C. § 247d-4a.

B. National Institutes of Health		
<u>Total Amount of Appropriation</u>	<u>Period of Availability</u>	<u>Synopsis</u>
\$836,000,000	Available until September 30, 2024.	Funds are available to prevent, prepare for, and respond to coronavirus, domestically or internationally, with \$10 million for worker-based training to prevent and reduce exposure of hospital employees, emergency first responders, and other workers who are at risk of exposure to coronavirus through their work duties.
C. Office of the Secretary: Public Health and Social Services Emergency Fund		
<u>Total Amount of Appropriation</u>	<u>Period of Availability</u>	<u>Synopsis</u>
\$3,100,000,000	Available until September 30, 2024.	Funds are available to prevent, prepare for, and respond to coronavirus, domestically or internationally, including the development of necessary countermeasures and vaccines, prioritizing platform-based technologies with U.S.-based manufacturing capabilities, and the purchase of vaccines, therapeutics, diagnostics, necessary medical supplies, medical surge capacity, and related administrative activities. Includes \$100 million to HRSA for grants to Health Centers to prevent, prepare for, and respond to coronavirus.
\$300,000,000	Available until September 30, 2024.	Available to purchase products such as vaccines, therapeutics, and diagnostics, and only available if the Secretary of HHS makes certain certifications to both the House and Senate.
II. DEPARTMENT OF STATE		
A. Administration of Foreign Affairs: Diplomatic Programs		
<u>Total Amount of Appropriation</u>	<u>Period of Availability</u>	<u>Synopsis</u>
\$264,000,000	Available until September 30, 2022.	Funds are available for necessary expenses to prevent, prepare for, and respond to coronavirus, including maintaining consular operations, reimbursement of evacuation expenses, and emergency preparedness.

B. USAID Global Health Programs		
<u>Total Amount of Appropriation</u>	<u>Period of Availability</u>	<u>Synopsis</u>
\$435,000,000	Available until September 30, 2022.	Funds are available for necessary expenses to prevent, prepare for, and respond to coronavirus. Funds may be made available as contributions to international organizations to prevent, prepare for, and respond to coronavirus, following consultation with the Committees on Appropriations of the House of Representatives and the Senate.
C. The President: International Disaster Assistance		
<u>Total Amount of Appropriation</u>	<u>Period of Availability</u>	<u>Synopsis</u>
\$300,000,000	Available until expended.	Funds are available for necessary expenses to prevent, prepare for, and respond to coronavirus.
D. The President: Economic Support Fund		
<u>Total Amount of Appropriation</u>	<u>Period of Availability</u>	<u>Synopsis</u>
\$250,000,000	Available until September 30, 2020.	Funds are available for necessary expenses to prevent, prepare for, and respond to coronavirus, including to address related economic, security, and stabilization requirements.

II. Families First Coronavirus Response Act, Pub. L. No. 116-127

On March 18, 2020, the President signed into law the Families First Coronavirus Response Act (“FFCRA”), Pub. L. No. 116-127, which took effect on April 2, 2020.¹⁵³ The table below highlights notable appropriations set forth in the Second Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, enacted as Division A of the FFCRA.

I. DEPARTMENT OF AGRICULTURE		
A. Food and Nutrition Service: Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”)		
<u>Total Amount of Appropriation</u>	<u>Period of Availability</u>	<u>Synopsis</u>
\$500,000,000	Available through September 30, 2021.	Funds are available for the Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”).
B. Food and Nutrition Service: Commodity Assistance Program		
<u>Total Amount of Appropriation</u>	<u>Period of Availability</u>	<u>Synopsis</u>
\$400,000,000	Available through September 30, 2021.	Funds are available for The Emergency Food Assistance Program (“TEFAP”). The Secretary of Agriculture may use up to \$100,000,000 of the funds available for costs associated with the distribution of commodities.

¹⁵³ Families First Coronavirus Response Act, P.L. 116-127 (H.R. 6201), *available at*: <https://www.congress.gov/bill/116th-congress/house-bill/6201/text>. In addition to the appropriations summarized in this table, the FFCRA also provides for waivers to various federal nutrition assistance programs, expands family and medical leave, provides for emergency paid sick leave, emergency unemployment insurance, and certain tax credits for employers. To the extent relevant to grant management, some of these items are addressed in this table.

C. Secretary of Agriculture – Nutrition Assistance		
<u>Total Amount of Appropriation</u>	<u>Period of Availability</u>	<u>Synopsis</u>
<p>\$100,000,000</p> <p>Such amounts as are necessary to carry out this section.</p> <p>Such amounts as are necessary to carry out this section.</p>	<p>Available through September 30, 2021.</p> <p>Fiscal Year 2020.</p> <p>Fiscal Year 2020.</p>	<p>States: Funds are available for the Secretary of Agriculture to provide grants to the Commonwealth of the Northern Mariana Islands, Puerto Rico, and American Samoa for nutrition assistance in response to a COVID-19 public health emergency.</p> <p>Commodities: During fiscal year 2020, the Secretary of Agriculture may purchase commodities for emergency distribution in any area of the United States during a public health emergency designation.</p> <p>Child Nutrition: Further, during fiscal year 2020, in any case in which a school is closed for at least 5 consecutive days during a public health emergency designation during which the school would otherwise be in session, each household containing at least 1 member who is an eligible child attending the school shall be eligible to receive assistance pursuant to a state agency plan approved by the Secretary of Agriculture. Plans approved by the Secretary shall provide for supplemental allotments to households receiving benefits under the Food and Nutrition Act of 2008, and issuances to households not already receiving benefits. The term “eligible child” means a child who would normally receive free or reduced priced school meals under the National School Lunch Act.</p>
II. DEPARTMENT OF DEFENSE		
A. Defense Health Program		
<u>Total Amount of Appropriation</u>	<u>Period of Availability</u>	<u>Synopsis</u>
<p>\$82,000,000</p>	<p>Available until September 30, 2022.</p>	<p>Funds are available for certain COVID-19 related health services.</p>

III. DEPARTMENT OF HEALTH AND HUMAN SERVICES		
A. Indian Health Service: Indian Health Services		
<u>Total Amount of Appropriation</u>	<u>Period of Availability</u>	<u>Synopsis</u>
\$64,000,000	Available until September 30, 2022.	Funds are available for certain COVID-19 related health services.
B. Administration For Community Living: Aging and Disability Services Programs		
<u>Total Amount of Appropriation</u>	<u>Period of Availability</u>	<u>Synopsis</u>
\$250,000,000	Available until September 30, 2021.	Funds are available for nutrition services, home delivered nutrition services under the Older Americans Act of 1965.
C. Office of the Secretary: Public Health and Social Services Emergency Fund		
<u>Total Amount of Appropriation</u>	<u>Period of Availability</u>	<u>Synopsis</u>
\$1,000,000,000	Available until expended.	Funds are available, in coordination with the Centers for Medicare and Medicaid Services ("CMS"), to pay for claims for reimbursement from providers for certain COVID-19 related health services provided under the National Disaster Health System in section 2812 of the Public Health Service Act.

III. Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, Pub. L. No. 116-136¹⁵⁴

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, Pub. L. No. 116-136. The table that follows summarizes the most notable appropriations in the CARES Act.

I. DEPARTMENT OF THE TREASURY	
<u>Agency/Program/Fund</u>	<u>Total Amount</u>
Emergency Relief Loans	\$500,000,000,000 to provide relief to States and businesses in the form of loans, loan guarantees and other investments.
Air Carrier Worker Support	\$32,000,000,000 for air carrier payroll support and relief to aviation workers and contractors.
Coronavirus Relief Fund	\$150,000,000,000 for FY 2020 direct payments to States, DC, Territorial and Tribal Governments.
II. SMALL BUSINESS ADMINISTRATION	
<u>Agency/Program/Fund</u>	<u>Total Amount</u>
Paycheck Protection Program	\$349,000,000,000 for loans under section 7(a) of the Small Business Act.
Disasters Loan Program Account	\$562,000,000 for direct loans under section 7(b) of the Small Business Act.

¹⁵⁴ Available at: <https://www.congress.gov/bill/116th-congress/house-bill/748/text?q=%7B%22search%22%3A%5B%22actionDateChamber%3A%5C%22116%7C%7C2020-03-27%5C%22+AND+%28billsReserved%3A%5C%22N%5C%22+OR+type%3A%5C%22AMENDMENT%5C%22%29%22%5D%7D&r=1&s=2>.

III. DEPARTMENT OF AGRICULTURE	
<u>Agency/Program/Fund</u>	<u>Total Amount</u>
Office of the Secretary	\$9,500,000,000 for support for agricultural producers impacted by COVID-19.
Food and Nutrition Service (“FNS”)	\$8,800,000,000 for Child Nutrition Programs. \$15,810,000,000 for the Supplemental Nutrition Assistance Program (“SNAP”).
IV. DEPARTMENT OF HEALTH AND HUMAN SERVICES	
<u>Agency/Program/Fund</u>	<u>Total Amount</u>
Food and Drug Administration (“FDA”)	\$80,000,000 for development of necessary medical countermeasures and vaccines.
Centers for Disease Control and Prevention (“CDC”)	\$4,300,000,000 for COVID-19 response (of which \$1.5 billion is designated for grants and cooperative agreements with States, localities, territories, tribal governments and organizations, urban Indian health organizations, or health service providers, to tribes to carry out the certain activities to combat COVID-19; not less than \$500 million of which is for global disease detection and emergency response; and, not less than \$500 million of which is for public health data surveillance and analytics infrastructure modernization).
Substance Abuse and Mental Health Services Administration (“SAMHSA”)	\$425,000,000 to prevent, prepare for, and respond to coronavirus, domestically or internationally, including no less than \$250 million for clinic expansion.
Administration for Children and Families (“ACF”)	\$1,000,000,000 for Community Services Block grants. \$750,000,000 for Head Start Programs. \$900,000,000 for Low Income Home Energy Assistance Program (“LIHEAP”).
Administration for Community Living Aging	\$955,000,000 Community Living Aging and Disability Services Programs.

<p>Health Resources and Services Administration's ("HRSA")</p>	<p>\$1,320,000,000 for COVID-19 supplemental awards for health centers.</p> <p>Funding for the Health Center Program increased to \$4,000,000,000 for fiscal year 2020; and \$668,493,151 was appropriated for the period beginning on October 1, 2020 and ending on November 30, 2020.</p> <p>\$90,000,000 for the Ryan White HIV/AIDS Program for COVID-19 response (via the Public Health and Social Services Emergency Fund).</p> <p>\$180,000,000 for rural telehealth programs (via the Public Health and Social Services Emergency Fund).</p> <p>\$125,000,000 in funding for each fiscal year from 2021 through 2025 for Healthy Start for Infants program.</p>
<p>Public Health and Social Services Emergency Fund</p>	<p>\$100,000,000,000 for expenses to reimburse through grants or other mechanisms, eligible health care providers for health care related expenses or lost revenues that are attributable to the coronavirus.</p> <p>\$27,000,000,000 primarily for development of countermeasures, vaccines, and related technologies.</p> <p>\$275,000,000 to prevent, prepare for, and respond to coronavirus, domestically or internationally.</p>
<p>V. DEPARTMENT OF JUSTICE</p>	
<p><u>Agency/Program/Fund</u></p>	<p><u>Total Amount</u></p>
<p>Edward Byrne Memorial Justice Assistance Grant Program</p>	<p>\$850,000,000 for State and local law enforcement assistance during the COVID-19 health emergency.</p>
<p>VI. NATIONAL SCIENCE FOUNDATION</p>	
<p><u>Agency/Program/Fund</u></p>	<p><u>Total Amount</u></p>
<p>National Science Foundation</p>	<p>\$75,000,000 to fund research grants to prevent, prepare for, and respond to coronavirus, domestically or internationally.</p>

VII. DEPARTMENT OF DEFENSE	
<u>Agency/Program/Fund</u>	<u>Total Amount</u>
Defense Production Act Purchases	\$1,000,000,000 for Defense Production Act procurement.
VIII. DEPARTMENT OF HOMELAND SECURITY	
<u>Agency/Program/Fund</u>	<u>Total Amount</u>
Federal Emergency Management Agency (“FEMA”)	<p>\$45,000,000,000 for Disaster Relief Fund (\$25 billion of which is designated for declared major disasters and \$15 billion of which may be used for all purposes authorized under the Stafford Act”).</p> <p>\$400,000,000 for Federal Assistance related to COVID-19 (\$100 million of which is designated for grants to firefighters for the purchase of personal protective equipment and related supplies; \$100 million of which is designated for Emergency Management Performance Grants; and \$200 million of which is designated for the Emergency Food and Shelter Program).</p>
IX. DEPARTMENT OF THE INTERIOR	
<u>Agency/Program/Fund</u>	<u>Total Amount</u>
Bureau of Indian Affairs	\$453,000,000 for Operation of Indian Programs COVID-19 related costs.
X. THE DEPARTMENT OF LABOR	
<u>Agency/Program/Fund</u>	<u>Total Amount</u>
Employment and Training Administration	\$345,000,000 for dislocated workers assistance.

XI. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	
<u>Agency/Program/Fund</u>	<u>Total Amount</u>
Homeless Assistance Grants	\$4,000,000,000 for grants to mitigate the impact of coronavirus on homeless individuals or families.
Public Housing Operating Fund	\$685,000,000 to provide additional funds for public housing agencies to maintain normal operations and take other necessary actions during the COVID-19 public health emergency.
Community Development Block Grants	\$5,000,000,000 for community development grants.
XII. DEPARTMENT OF STATE	
<u>Agency/Program/Fund</u>	<u>Total Amount</u>
Migration and Refugee Assistance	\$350,000,000 to prevent, prepare for, and respond to coronavirus.