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BUSINESS LAW ALERT: THE CARES ACT
Phase 3 of the Coronavirus Stimulus Package

Businesses have been anxiously awaiting Congressional action addressing economic fallout from the novel coronavirus (the "Coronavirus" or "COVID-19"), amid a number of prior legislative and regulatory actions. After several days of negotiations, on March 27, 2020, Congress passed and President Trump signed the newest installment of the Coronavirus stimulus package, a more than $2 trillion economic investment, the largest in modern American history.

The "Coronavirus Aid, Relief, and Economic Security (CARES) Act" (the "Act"), is Phase 3 of a multi-parceled stimulus approach to the economic challenges presented by the Coronavirus. The Act has the following components:

Small Business Loan Assistance

- $349 Billion appropriated for Small Business Association ("SBA") Business Loans Program Account to cover guaranteed loans.
- SBA Loans obtained under the Act may be used for payroll—including paid sick, medical, or family leave, continuation of health care benefits, interest payments on mortgage obligations, rent, utilities, interest on pre-existing debt obligations and certain other expenses and obligations for the remainder of 2020.
- Loans under the Act must be made on or before June 30, 2020.
- There will be no prepayment penalty on payments made before year end
- Loan administrators are to collect little or no fees.
- Payments owed under loans may be deferred in almost all circumstances for up to 1 year.
- Loans administered under the Act may qualify for partial or full forgiveness
- Maximum loan amount is the lesser of (1) $10 million or (2) 2.5 times the average monthly payroll cost during the year prior to the loan.
- Generally, qualifying employers must have 500 or less employees and cannot have already received assistance under section 7(b)(2) of the Small Business Act for payroll expenses related to COVID-19; the Act specifically includes self-employed, sole proprietors, and independent contractors.
- Includes Emergency Economic Injury Disaster Loan ("EDIL") grants up to $10,000 for payroll, sick leave, and other expenses and obligations. For businesses who receive an Emergency EIDL grant and later receive a Section 7(a) loan, the amount of loan forgiveness is reduced by the amount of the Emergency EIDL grant.

Additionally, at the state level, Nebraska small business owners affected by COVID-19 since the beginning of January, 2020 can apply for a low-interest EDIL. The annual interest rate for small business is 3.75% and for nonprofits is 2.75%. No payments are

due on these loans for the first year. The SBA will loan out up to $2 million for up to 30 years.
Small businesses may apply for these SBA loans here: https://www.sba.gov/funding-programs/disaster-assistance. That said, we urge small business owners to first inquire with their current banker and/or lender about short-term funding options; in many instances traditional financing, if available, provides a better option for both banks and borrowers.

An Important Note: while the proposed SBA loan provisions are friendly to borrowers, banks may think twice about participating in the program. Among other issues created by the Act's loan framework, nearly automatic payment deferral for up to a year could create liquidity issues for participating banks. Further, the maximum interest rate for such loans is 4%, further de-incentivizing bank participation. While a 100% government guaranty is a sizeable carrot, capping interest rates and removing the bank's ability to enforce its loan rights for a year will undoubtedly chill participation from some lenders.

Banking Regulatory Changes

The Act directs a number of regulatory changes aimed at assisting financial institutions including:

- Additional FDIC guaranties of solvent, insured depository institutions.
- Suspension of certain requirements under U.S. Generally Accepted Accounting Principles for loan modifications related to Coronavirus that would otherwise be categorized as a troubled debt restructuring.
- Temporary reduction of the Community Bank Leverage Ratio for certain community banks to 8%.

Business Tax Assistance

- Delay of estimated tax payments for corporations to October 15, 2020.
- Delay all or a portion of payroll taxes until December 31, 2021 or 2022 depending on the circumstances.

Items of Note for Employers

- The Act amends the Families First Coronavirus Response Act ("FFCRA") to: (a) expand eligibility for paid leave for certain rehired employees and (b) aid private employers in meeting their paid leave requirements under the FFCRA by providing advances of FFCRA payroll credits. Further instructions and forms are expected from the Department of Labor on the credits.
- The Act creates a new "employee retention tax credit," under which eligible employers may receive a refundable payroll tax credit for certain wages paid by employers during the COVID-19 crisis (subject to caps per employee and time restraints). *See* Section 2301. The tax credit is limited to those employers (a) whose operations were fully or partially suspended because of a governmental order "limiting commerce, travel, or group meetings" due to COVID-19; or (b) whose quarterly gross receipts have declined by more than 50% when compared to the

same quarter in the previous year. Employers who receive loans under the Paycheck Protection Program (Section 1102) are not eligible for this credit.
- The Act creates the Pandemic Unemployment Assistance program, which runs through December 31, 2020 and substantially expands available unemployment benefits for employees who have been laid off or furloughed.

Hospital, Health Care Provider, and Patient Assistance

During the emergency period, the Act:

- Creates a $100 billion fund for hospitals and providers to support expenses related to COVID-19 treatment and lost revenue. It is unclear how the money will be allocated.
- Increases Medicaid reimbursements for treatment of COVID-19 by 20%.
- Temporarily removes the 2% cut for treating Medicare patients through December 2020, which became effective in 2013 under sequestration.
- Expands the Medicare hospital accelerated payment program to critical access hospitals. Eligible providers are able to request accelerated payments for inpatient services.
- Permits facilities to maintain their designations as long-term care hospitals in the event that over 50% of cases are less intensive and allows HHS to waive the site-neutral payment policy.
- Relaxes Medicare requirements for post-acute care providers by waiving the "three-hour rule," which required inpatient rehab patients to receive a daily minimum of three hours of therapy.
- Relaxes telehealth requirements by giving HHS the authority to waive restrictions on the "qualified provider" definition and permitting rural health clinics to provide telehealth services to Medicare patients in their homes.
- Takes steps to increase the availability and distribution of health care supplies and devices.
- Expands coverage for COVID-19 testing, including tests that have been approved by the applicable state but not the FDA.
- Directs COVID-19 test providers to post the cash price for the test on a public website and provides monetary penalties for noncompliance.
- Expands grants to rural health care entities.

Assistance to Individual Taxpayers:

- Credit against income tax based on taxpayer's 2019 (or 2018 for those who have yet to file their 2019 returns) adjusted gross income ("AGI").
- For individuals reporting less than $75,000 AGI (or for joint filers reporting less than $150,000 AGI), each taxpayer will receive $1,200.
- For individuals reporting between $75,000 and $99,000 AGI (or for joint filers reporting between $150,000 and $198,000 AGI), the amount received will be subject to phase outs at different intermittent income levels.
- For individuals reporting more than $99,000 AGI (or for joint filers reporting more than $198,000 AGI), there will be no credit received.
- $500 rebate added for every dependent child.

- An individual may, in certain Coronavirus related circumstances, receive up to $100,000 in distributions from a qualified retirement plan without penalty provided it is repaid within 3 years.
- Limits on loans from qualified retirement plans increased from $50,000 to $100,000 and loan amount may be up to 100% of the vested balance of the plan.

Appropriations to the Exchange Stabilization Fund for Certain Uses:

- $58 billion allocated to the airline and air cargo industries in the form of secured lending for borrowers meeting specific criteria.
- $150 billion secured lending or loan guarantees to critical sectors of the U.S. economy under severe financial distress.

Phase 1 of the stimulus package, "The Coronavirus Preparedness and Response Supplemental Appropriations Act" (H.R. 6074), and Phase 2, "The Families First Coronavirus Response Act" (H.R. 6201), have previously become law. Effective on March 6, Phase 1 provided $8.3 billion of emergency funding aimed at treating COVID-19 patients and slowing the spread of the virus. Most of this funding went to the Department of Health and Human Services. Phase 2 was the subject of our e-Alert linked here.

This Business Law Alert was prepared by Cline Williams' multi-disciplinary COVID-19 Task Force. Cline Williams will continue to provide updates on these issues as they evolve, including the potential Phase 4 stimulus legislation. In the meantime, if you have any questions related to the coronavirus stimulus legislation or the impact of COVID-19, please follow the links below to our several relevant practice areas for contact information on individual lawyers.

- Business Organization
- Banking and Financial Institutions
- Lending and Finance
- Health Care
- Labor and Employment