Congress passes $484B coronavirus relief bill

Thursday, April 23, 2020

When the Coronavirus Aid, Relief and Economic Security Act (CARES Act I) was signed into law on March 27, 2020, it became the most comprehensive recovery act in the history of the country, valued at $2.3 trillion. The CARES Act I provided historic relief for American businesses and individuals, including direct payments to Americans, an aggressive expansion of unemployment insurance, billions of dollars in new aid to large and small businesses, and a new wave of funding for healthcare and other industries. (Click here for a collection of McDonald Hopkins insights into the CARES Act I.)

As it relates to small businesses, the CARES Act I introduced a Paycheck Protection Program (PPP) and SBA Economic Injury Disaster Loan (EIDL) program, providing substantial relief in the form of $350 billion for Small Business Administration (SBA) loan guarantees and subsidies and additional funding for SBA resources. Borrowers and lenders sprang into action as soon as possible after the Treasury Department announced the date loan applications would first be accepted, and the SBA processed more than 14 years worth of loans in less than 14 days – officially running out of funds on April 16. As of that date, the SBA had approved more than 1.6 million loans through almost 5,000 lenders for a total of over $342 billion.

Now, Congress is moving forward with the Paycheck Protection Program and Health Care Enhancement Act (CARES Act II). The CARES Act II, passed Tuesday, April 21, in the Senate and Thursday, April 23, in the House, increases the total amount available under the Paycheck Protection Program to $659 billion, which is an increase of $310 billion beyond the amount originally authorized in the CARES Act I. Of that sum, $60

billion is set aside for loans to be made through small and very small community banks and credit unions. The legislative intent for the set aside is to increase the opportunities for smaller businesses to access the PPP loans, assuming that the smaller financial institutions will more likely serve those businesses. The new CARES Act II does not require any other changes to the PPP. Lenders expect that promptly after President Donald Trump signs the CARES Act II, the SBA will announce that it is resuming processing applications for PPP loan guarantees.

The CARES Act II also includes an increase of $10 billion for EIDL grants and as specifically includes small agricultural businesses as eligible recipients. These businesses include food and fiber producers, ranching, and raising of livestock, aquaculture, and other farming and agricultural-related industries. The SBA will need to announce when it expects these grants to restart once the CARES Act II has been signed into law.

Applicants and lenders both hope that the SBA clarifies procedures for restarting the funding cycle so that applicants can resume submissions. Additionally, with many EIDL grants not yet funded, the SBA will need to provide a timely update on grant applications received to communicate remaining availability effectively.

Healthcare industry to receive additional funds for eligible provider relief and expanded COVID-19 testing

The Paycheck Protection Program and Health Care Enhancement Act also includes $75 billion to help overwhelmed providers and hospitals and $25 billion for coronavirus research, development, and testing programs. These additional funds will be added to the existing Public Health and Social Services Emergency Fund.

ELIGIBLE PROVIDER RELIEF WITH TERMS AND CONDITIONS

As written, the supplemental $75 billion in funding allocated to provide relief for eligible providers and hospitals under the CARES Act II is subject to the same requirements as the $100 billion in funds allotted to providers and hospitals under the original CARES Act I; however, it appears that the terms and conditions associated with payments distributed from the Provider Relief Fund is dependent on how the money is deployed by the Department of Health and Human Services (HHS).

Out of the original $100 billion, HHS imposed certain terms on the $30 billion in automatic Provider Relief Fund payments that were distributed starting on April 10, 2020. All providers that received the automatic payments are required to certify to a specific set of terms and conditions that accompanied the automatic payment distributions. On April 22, 2020, HHS announced that additional payments will be disbursed on Friday, April 24, 2020, and providers receiving those amounts will be subject to the same terms and conditions.

Providers have 30 days from receipt of the funds to make the certification or must return the monies. The terms and conditions established by HHS for these automatic payments are the subject to some confusion because they require providers to certify that they have treated, cared for, or tested patients with COVID-19, yet the guidance issued by HHS indicates that the funds are intended for providers that have suffered financially as a result of caring for COVID-19 patients or those that have lost revenue “attributed to COVID-19.”Attempts to clarify the terms and conditions have resulted in informal guidance that a broad application of the funds is intended. However, the terms and conditions have not been updated to reflect the stance expressed informally and providers are left to make the decision on whether or not to certify to the narrowly defined terms and conditions with the hovering concern of future claims audits.

On April 22, 2020, HHS also announced that $20 billion of the remaining fund will be split between high

priority hospitals and rural hospitals, as well as a number of other targeted allocations. Disbursement of the remaining provider relief fund balance has not been announced.

Recipients of any subsequent funds will have to maintain and submit documentation to HHS to ensure appropriate use of the funds for "diagnoses, testing, or care for individuals with presumptive or actual cases of COVID-19." Eligible providers of the conditioned funds will also need to certify to certain facts before keeping the relief payments, and recipients of the other hospital and targeted category funds will need to apply and submit additional information as set forth on the HHS website; however many of these requirements remain a moving target at this time.

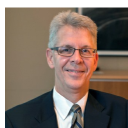
EXPANDED COVID-19 TESTING FOR STATES

The $25 billion that would be allocated for coronavirus research, development, and testing programs includes not only funds for manufacturing COVID-19 tests, testing equipment and supplies, but is also intended to include much needed personal protective equipment in order to administer such tests. This portion of funding is intended to be distributed broadly to academic, commercial, public health and hospital laboratories, in addition to community-based testing sites and other health care facilities to support widespread access to COVID-19 testing.

The testing funds allocation was one of the final pieces agreed upon by Congress. It would require the current administration to provide a national strategic testing plan, and to distribute certain reserved funds to individual states for support of COVID-19 testing after collecting information from state leaders on monthly testing needs and supplies. Within 30 days of the CARE ACT II's enactment, governors of each state are required to submit their plan for COVID-19 testing to HHS and must include an estimate of month to month tests needed, an estimate of month to month laboratory and testing capacity, tests and supplies, and a description of how that state will use its resources to administer the tests.

As currently contemplated, the $25 billion also includes set aside amounts of $1 billion for the Centers for Disease Control for purposes of continued public health data surveillance, approximately $1.8 billion for the National Institutes of Health for the development and improvement of serological testing and the continued development of point of care and rapid testing of COVID-19, and $1 billion for the Biomedical Advanced Research and Development Authority for research and development of COVID-19 tests and supplies.

These health care provisions proposed were driven directly by the current state of the health care system in response to widely reported shortages of medical equipment and testing supplies and reports of widespread lost revenue for many providers, despite the influx of patients requiring continued care.



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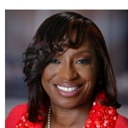

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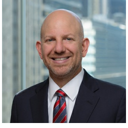

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