

March 18, 2020

EMERGENCY FEDERAL MEASURES TO COMBAT CORONAVIRUS

To Our Clients and Friends:

Companies around the world are facing unprecedented challenges and market uncertainties following the coronavirus (COVID-19) public health crisis, which spiraled financial markets, restricts travel, and threatens global economic decline. Facility and store closures, a quarantined labor force, and shortages in goods and services disrupt businesses globally. Cancelled or deferred events and mounting fear threaten to slow consumer spending. Experts speculate that the major outbreak could spiral the nation – if not the world – into a recession. Indeed, Treasury Secretary Steven Mnuchin warned Republican senators that the unemployment rate could hit 20 percent without action on an economic stimulus package.^[1]

To address this economic peril, the United States government—Congress, the Executive Branch, and the Federal Reserve—have moved to respond to the crisis and restore public faith in the market. The speed at which the government is moving, especially during a bitterly divided election year, underscores how serious the threat is both to individuals and to the global market and the necessity to follow developments in real time.

I. Congressional Response to Coronavirus

As detailed below, Congress, the Executive Branch, and the Federal Reserve have taken aggressive action in recent weeks to respond to the coronavirus crisis and prevent further harm, including harm to the U.S. economic sector.

A. Emergency Supplemental Funding Package

On February 24, 2020, the Trump Administration sent a letter to Congress requesting \$1.25 billion in new funds, with additional money moved from other parts of the federal budget, for a total of \$2.25 billion. The aim of the requested funds was to combat the spread of the coronavirus, calm public anxiety, and accelerate the federal government’s response to the virus.

In early March 2020, Congress passed a \$8.3 billion appropriations measure to combat the coronavirus pandemic, which was more than three times the amount the White House originally requested. Representative Nita Lowey (D-NY-17), the Chairwoman of the House Appropriations Committee, introduced the *Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020* (P.L. No. 116-123) (“coronavirus emergency bill”), an emergency supplemental appropriations bill for the fiscal year ending September 30, 2020.

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The \$8.3 billion bill provides federal public health agencies funds for vaccines, tests, isolation and quarantine costs, sanitization of public areas, tracking the virus, and potential treatments, including:

- \$7.8 billion in discretionary appropriations for:
 - \$3.1 billion to the Secretary of Health and Human Services for research and development of vaccines and other treatments for the coronavirus, including \$100 million to community health centers for under-served areas and \$300 million for the purchase of drug treatments and eventually vaccines;
 - \$2.2 billion for the Centers for Disease Control and Prevention to respond to the coronavirus threat, of which at least \$950 million must be granted to state, tribal, and local governments to carry out surveillance, epidemiology, laboratory capacity, infection control, mitigation, communications, and other preparedness and response activities;
 - \$1.7 billion for international public health programs and humanitarian aid to protect the health of Americans living abroad and to prevent the global spread of the coronavirus;
 - \$836 million for the National Institute of Allergy and Infectious Diseases to prevent and reduce exposure of hospital employees and first-responders to coronavirus; and
 - \$20 million for the Small Business Administration and up to \$7 billion in low-interest disaster loans to help small businesses impacted by this public health crisis.
- An additional \$500 million in mandatory Medicare spending for telehealth consultations, where seniors can access telemedicine services without visiting a doctor.

The bill contains a contentiously negotiated drug price compromise that seeks to prevent price gauging by drug manufacturers for vaccines and other medicines developed with taxpayer funds. Under the compromise, the Secretary of Health and Human Services has the authority to ensure federal contracting prices are “fair and reasonable.” Democratic Members of Congress were unsuccessful in negotiating the application of the “fair and reasonable” standard to the commercial market.

On March 4, 2020, just hours after the coronavirus emergency bill was introduced, the measure passed the U.S. House of Representatives by an overwhelming margin, with a 415-2 vote. The following day, on March 5, 2020, the U.S. Senate passed the coronavirus emergency bill in a nearly unanimous vote of 96-1. On March 6, 2020, President Trump signed the coronavirus emergency bill into law at the same time as worldwide cases of the coronavirus surpassed 100,000.[2]

B. Coronavirus Stimulus/Relief Bills

On March 14, 2020, the U.S. House of Representatives passed an emergency relief package to financially support individual Americans during the public health crisis caused by COVID-19.[3] Representative Nita Lowey (D-NY-17) again introduced the legislation, known as the *Families First Coronavirus Response Act*, H.R. 6201. With the intent to bolster the safety net for workers whose livelihoods and

health are affected by the coronavirus, the bill would ensure working Americans have access to paid leave should they become infected or need to serve as caregivers. It also strengthens existing unemployment insurance and food assistance programs, and would provide free diagnostic testing for the coronavirus.

Specifically, the legislation includes the following provisions:

- **Free coronavirus testing:** The legislation would make coronavirus testing free by requiring private health insurers (and Medicare and Medicaid) to cover the cost of testing, including emergency room visits and doctor fees. This provision also covers uninsured people.
- **Emergency paid leave:** The legislation would require employers to provide certain workers with 14 days of sick leave paid at their usual pay rate and up to three months of paid family and medical leave equal to no less than two-thirds of their pay (capped at \$4,000). Employers would recover this amount through a refundable tax credit. Self-employed individuals (such as those in the gig economy) are eligible for a refundable tax credit of up to \$4,000. The benefits apply to employees of businesses with fewer than 500 employees^[4] or the government who are unable to work because they are infected by coronavirus, quarantined, or care for a sick family member or a child due to coronavirus-related school or day-care center closings. Only employees caring for a child whose school or day care has been closed are eligible for the additional 10 weeks of paid leave.^[5] ^[6] The bill's mandated sick leave program expires at the end of 2020.
- **Unemployment insurance access:** The legislation would provide \$1 billion in 2020 for emergency grants to states for processing and paying unemployment insurance, including:
 - \$500 million for administrative costs for states who require employers to provide laid-off workers notice of unemployment insurance eligibility during the crisis; and
 - \$500 million for emergency grants to states that experience at least a 10 percent increase in unemployment during the crisis.
- **Food and Nutrition Service:** The legislation would direct \$1.15 billion to expand access to domestic nutrition assistance programs during the coronavirus pandemic, including for:
 - **The Special Supplemental Nutrition Program for Women Infants and Children (“WIC”):** The bill provides \$500 million for access to nutrition funds to low-income pregnant women or mothers with young children who lose their jobs due to the COVID-19 crisis.
 - **Emergency Food Assistance Program (“TEFAP”):** The bill provides \$400 million to assist local food banks to meet increased demand for low-income Americans during the COVID-19 crisis.
 - **Supplemental Nutrition Assistance Program (“SNAP”):** If a child's school has been closed for at least five consecutive days, then the bill allows the Department of

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Agriculture (“USDA”) to approve state plans to provide emergency SNAP assistance to children who would otherwise receive free or reduced-price meals if their schools were not closed due to the COVID-19 crisis. In addition, the bill suspends the work and work training requirements for SNAP during the crisis.

- **Nutrition Assistance for U.S. Territories:** The bill provides \$100 million for USDA to provide nutrition assistance grants to Puerto Rico, American Samoa, and the Northern Mariana Islands in response to the COVID-19 public health crisis.
- **Senior Nutrition Programs:** The bill provides \$250 million for the Senior Nutrition program in the Administration for Community Living (“ACL”), which would allow 25 million additional home-delivered meals to low-income seniors. Seniors who qualify must be home-bound, have disabilities, have multiple chronic illnesses, or be caregivers for home-bound seniors.

Republicans objected to a proposal by House Democrats to create a permanent paid sick leave benefit for workers. House Democrats rejected President Trump’s advocacy for a payroll tax cut. Following negotiations between House Speaker Nancy Pelosi and Treasury Secretary Steven Mnuchin, legislation was introduced in its final form on March 12, 2020.

On March 14, 2020, the *Families First Coronavirus Response Act* passed the House on a bipartisan 363-40 vote, and the Senate passed the bill on March 18, 2020, by a vote of 90-8. The bill now heads to the President for final approval.

American companies have been harmed by the coronavirus pandemic, with most facing reduced profits and many struggling to keep their operations going. If companies are unable to finance their activities, workers may be laid off and some business may end up bankrupt.

To prevent these harms, the White House and Congress are currently considering an economic stimulus package (“stimulus package”). President Trump has requested more than \$1 trillion in economic stimulus aid, including two rounds of direct payments to individual taxpayers totaling \$500 billion, a \$50 billion secured lending facility for the airline industry, \$150 billion for secured lending or loan guarantees to assist other severely distressed sectors of the economy, and \$300 billion in loans for small businesses. However, Senate Republicans have not yet found consensus on how to structure a stimulus package. For example, Senators Susan Collins (R-ME) and Marco Rubio (R-FL) have proposed a \$300 billion small business emergency economic relief plan.

Senate Democrats have proposed their own options for a stimulus package. For example, Senate Minority Leader Chuck Schumer (D-NY) has proposed a \$750 billion spending package, including \$400 billion in emergency appropriations and \$350 billion in benefit increases and changes to federal safety net programs. The bill would fund medical care and equipment, child care costs, small business loans, federal housing assistance, broadband connectivity, public transportation relief, and food assistance for seniors and students who are out of school. Senator Schumer’s proposal would also increase unemployment, Medicaid and food stamp benefits, cancel monthly student loan payments, and defer federally backed mortgage payments for six months.

Senator Sherrod Brown (D-OH) has introduced legislation that would halt foreclosures for six months, offer borrowers at least six months forbearance on their loan payments, extend loans by the length of the forbearance without fees or accrued interest, and require servicers to evaluate homeowners for a loan modification at no cost and with no penalties for the borrower. House Democrats also have their own demands for a stimulus package, with Speaker Pelosi calling for an expansion of paid family and medical leave.

President Trump has also sent lawmakers a \$45.8 billion emergency funding request (“emergency funding package”) to ensure that federal agencies maintain full operational capacity and meet resource needs created by the pandemic response. The request includes more than \$11.5 billion for the Department of Health and Human Services, \$2 billion for the Federal Emergency Management Agency, \$8.3 billion for the Department of Defense, \$150 million for the Department of Education, \$21 million for the Department of Energy, and \$17 million for the Department of the Interior.

A stimulus package and an emergency funding package could pass the Senate this week. It is currently anticipated that the Senate will pass some combination of a stimulus package and an emergency funding package. However, the situation remains fluid as Congress acts in a remarkably tight time frame. Additionally, the ultimate path to passage is unclear. Even if the Senate were to pass some combination of a stimulus package and an emergency funding package, the House would have to come back into town (it is in recess currently) to pass the same bill and send it to the President. While the Senate is controlled by Republicans, passage of any bill would have to be bipartisan because it will need at least 60 votes to overcome a filibuster and pass the Senate.

II. Executive Branch and Federal Reserve Response

The Executive Branch has taken aggressive action to restore public confidence in our financial markets during the crisis and prevent an economic downturn. On March 15, 2020, the Federal Reserve (“Fed”) took the unusual step of cutting interest rates to nearly zero. The Fed also announced it would buy at least \$500 billion in Treasury bonds and \$200 billion in mortgage-backed securities to stimulate the economy.^[7] On March 17, 2020, the Fed invoked its emergency authorities to establish a lending facility to extend credit and support short-term commercial debt markets. The Commercial Paper Funding Facility aims to encourage investors to reengage in commercial paper lending amid the coronavirus crisis.

On March 17, 2020, the Fed announced the establishment of a Primary Dealer Credit Facility (the “PDCF”), which will provide overnight and term funding with maturities up to 90 days to primary dealers. Credit extended to primary dealers under the PDCF can be collateralized by a broad range of investment grade debt securities and equity securities. The PDCF will be available on March 20, 2020.

In another unprecedented step, President Trump asked for \$50 billion in loans from the Small Business Administration (“SBA”). The White House’s intent behind the massive funding request is to help small businesses stay afloat during this economic downturn caused by the coronavirus crisis. To put that request in context, the SBA’s annual average disaster-relief authorizations from Congress do not reach

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near \$1 billion. From 2005 to 2015, the average annual appropriation to the SBA Disaster Loan Program was \$120 million and the average supplemental appropriation for the same time period was \$623 million.

The SBA typically issues loans in emergency situations such as hurricanes, fires, or tornadoes, not economic emergencies driven by public health crises. While SBA loans offer low interest rates, the application process can often be lengthy and unpredictable. In addition, the SBA loans are usually term loans, which means interest on the full balance is due immediately.

On March 17, 2020, Treasury Secretary Steven Mnuchin announced that individuals will be able to defer up to \$1 million in tax payments to the IRS for 90 days. Note the Internal Revenue Code allows the Treasury Secretary the authority to delay such taxpaying deadlines up to one year in the event of a federally declared national disaster like the coronavirus. Corporate filers will be able to defer up to \$10 million in tax payments. During this three-month deferral period, taxpayers will not be subject to interest and penalties, but filing obligations remain the same.

On March 18, 2020, President Trump announced that he will invoke the *Defense Production Act*, which will provide the President with authority to expedite and expand the production of medical supplies like masks and ventilators. President Trump also announced other federal agency action, including the Department of Housing and Urban Development will suspend all foreclosures and evictions until the end of April, and the Department of Health and Human Services will issue a regulation to allow medical professionals to practice across state lines. The President also announced that the border between Canada and the United States will be closed for non-essential travel.

III. Opportunities to Shape Assistance

The federal government is still in the early stages in responding to the crisis, and opportunities exist to seek assistance, both from Congress and the Executive Branch. If the House and Senate coalesce around family relief and economic stimulus packages, it will not happen overnight. And if they do, chances are good that there will be other legislative vehicles relating to COVID-19 to follow.

Gibson Dunn's COVID 19 Task Force and its Public Policy Practice Group stands ready to assist companies promote and protect their interests before Congress or the Executive Branch during the coronavirus crisis. We can help clients receive timely, in-depth information on potential government action that may affect their business. We can advocate for your interests before the legislative and executive branches of government, on both substantive legislation and appropriations. Our services include:

- Assistance with general legislative, committee, and floor strategy;
- Analysis and drafting of legislation, including legislative amendments;
- Advocacy with agencies and branches (like the IRS) to craft regulatory or administrative relief;
- Establishment and running of coalitions to amplify advocacy efforts;

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- Preparation prior to congressional testimony;
- Representation in congressional and Executive Branch investigations;
- Assistance in securing appropriations and other government benefits;
- Assistance with products and capabilities marketing to federal government agencies; and
- Ongoing regulatory counsel.

[1] See Jeremy Diamond, “Mnuchin warns senators lack of action could result in 20% unemployment rate, source says” at CNN (Mar. 17, 2010), *available at* <https://www.cnn.com/2020/03/17/politics/steven-mnuchin-unemployment-warning-coronavirus/index.html>.

[2] According to data compiled by Johns Hopkins University, at the time that coronavirus emergency bill became law there were at least 101,587 infected persons and 3,460 deaths globally and at least 245 infected persons and at least 14 deaths in the United States. See William Feuer and Berkley Lovelace, Jr., “NY Coronavirus cases quadruple in 48 hours,” at CNBC (Mar. 6, 2020), *available at* <https://www.cnbc.com/2020/03/06/coronavirus-latest-updates-outbreak.html>, citing Johns Hopkins University of Medicine, Coronavirus Resource Center, *available at* <https://coronavirus.jhu.edu/>.

[3] On March 16, 2020, the House passed by unanimous consent a revised coronavirus emergency bill with technical corrections.

[4] Employers with more than 500 employees are excluded from the bill. In addition, the Department of Labor has discretion to exempt workers of companies with fewer than 50 employees, if the company finds that providing paid leave would jeopardize the viability of the business.

[5] The Secretary of Labor has discretion to exclude health-care workers from the initial 14 days of paid sick leave and to determine if health-care workers are eligible for the additional 10 weeks of paid leave.

[6] Approximately 19.3 million workers could be ineligible for paid leave under the legislation. An additional 2.5 million workers would be ineligible for paid leave if health-care workers are exempted. See Heather Long, “Paid sick leave: Who gets it during the coronavirus outbreak” at The Washington Post (Mar. 17, 2020) *available at* <https://www.washingtonpost.com/business/2020/03/16/paid-sick-leave-coronavirus-house-bill/>.

[7] That same day, the United States Chamber of Commerce sent a letter to President Trump and congressional leaders seeking substantial changes at the Federal Reserve to allow businesses with more than 500 employees to borrow directly from the Federal Reserve’s discount window, a lending facility

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open only to banks. If implemented, the change would ease a credit burden for companies that rely on borrowing to function.



*Gibson Dunn's lawyers are available to assist with any questions you may have regarding developments related to the COVID-19 outbreak. For additional information, please contact any member of the firm's **Coronavirus (COVID-19) Response Team**.*

*Gibson Dunn lawyers regularly counsel clients on issues raised by this pandemic, and we are working with many of our clients on their response to COVID-19. Please also feel free to contact the Gibson Dunn lawyers with whom you usually work in the firm's **Public Policy Group**, or the authors:*

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