CLIENT NEWS BRIEF

CARES Act – Federal Funding for COVID-19 Prevention

April 2020
Number 24

In the midst of the emergency surrounding the novel coronavirus and its associated respiratory disease (COVID-19), the federal government passed a two trillion dollar spending bill. The bill, known as the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, includes funding assistance in the form of direct tax rebate payments to individuals and couples, increased unemployment benefits, loans for small businesses, student loan payment deferral, and the expansion of numerous federal programs and federally-supported programs administered by state and local governments. Local governments and school districts may be on the receiving end of some of these expenditures. Below are some potential areas of funding for cities, counties, and school districts under the CARES Act.

Coronavirus Relief Funds – Payments to State and Local Governments

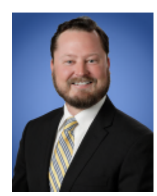
The CARES Act appropriates $150 billion to state, local, territorial, and tribal governments for necessary COVID-19 expenditures incurred between March 1, 2020 and December 31, 2020 that were not budgeted by the public entity. Most of this money is allocated to the states based on population, but direct payments can be made to "unit[s] of local government" which meet certain criteria. A "unit of local government" includes a county or municipality with a population of more than 500,000. Most local public entities, save for a handful of large California cities and counties, will not be eligible for direct payments. For California local agencies with a population of less than 500,000, it will be up to the State of California to determine how the money is distributed.

It is unclear whether state appropriation is intended to be a pass-through payment or used only by the direct recipient. There do not appear to be any express bars against disbursement down to the local level, but there is also no directive or process for states to distribute these funds. Therefore, cities, counties, and school districts *may* be eligible for disbursements from California's proportionate share, but it remains to be seen what that will look like. A separate bill, the Coronavirus Community Relief Act (H.R. 6467), was recently introduced to provide $250 billion in funding to all local governments with fewer than 500,000 residents. It is pending in the House of Representatives.

Financial Liquidity, Loans, and Bond Purchasing

Under a portion of the CARES act called the Coronavirus Economic Stabilization Act of 2020, up to half a trillion dollars will be available for loans, loan guarantees, and other investments "to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus." A "municipality" is a political subdivision of a state and appears to include cities,

Jenell Van Bindsbergen
Partner
Fresno Office
jvanbindsbergen@lozanosmith.com



Wesley L. Carlson
Associate
Fresno Office
wcarlson@lozanosmith.com

Lozano Smith
ATTORNEYS AT LAW

counties, school districts, and other special districts in California. There does not appear to be a designated amount set aside for municipalities, which means cities, counties, and school districts may be competing with private businesses and with states for the available funds.

Direct loans and loan guarantees are available to municipalities under the appropriation. There are few details in the bill as to what the loans would entail for public entities who take advantage. The Treasury Secretary is authorized to make the loans on whatever terms and conditions he determines to be appropriate. Rules establishing procedures and minimum requirements are forthcoming.

In addition to loans, the United States Department of the Treasury can use the money for "purchasing obligations or other interests" directly from issuers or in the secondary market. Municipal bonds and school bonds likely qualify as obligations that could be purchased under the program. Currently, there are no details that would suggest how this program will be implemented and operated. It is unknown at this time whether any special conditions will be required for federal purchasing of municipal bonds, or whether the federal government will simply act as a normal purchaser in the municipal bond market.

Education Stabilization Fund – Grant Money for Schools

The CAREs act establishes the Education Stabilization Fund, which consists of several grant programs and pass-through funding totaling more than $30 billion. Of the appropriations, $3 billion is for states to distribute as grants to educational entities "most significantly impacted by coronavirus" to be able to continue to provide educational services to their students. State governors have discretion in how and how much of these funds will be allocated to local educational agencies. More than $13 billion is allocated directly to local educational agencies, including charter schools, as subgrants to maintain operation and continuity of services. Such grants will be allocated in a similar manner as under the existing federal Elementary and Secondary Education Act. Finally, almost $14 billion will be distributed directly to institutions of higher education for costs associated with changes in instruction due to COVID-19. At least half of the funds must be used for emergency financial aid grants for students.

Recipients of Education Stabilization Fund grants are required, to the greatest extent practicable, to continue to pay their employees and contractors during any disruptions or school closures. This is similar to a California mandate to continue to pay employees and contractors during the COVID-19 emergency. In general, funds not used or distributed by the states must be returned to the U.S. Department of Education.

COVID-19 Pandemic Education Relief Act of 2020 – Various Authorizations

The COVID-19 Pandemic Education Relief Act of 2020 is another section of the CARES Act. This section includes an assortment of goodies, mostly for institutions of higher education and students. Among the types of provisions included in this part of the bill are: waivers of matching-fund requirements; transferability or reservation of existing funds; continuation of payments to federal work-study participants; temporary student loan relief and Pell Grant changes; and more.

The bill also permits the United States Secretary of Education to waive certain statutory or regulatory provisions if the waiver is necessary or appropriate due to the COVID-19 emergency. Access to this part is not limited to higher education institutions. State education agencies may request waivers related to assessments, accountability, and reporting requirements related to assessments and accountability. Local educational agencies, including public charter schools, can request waivers of certain provisions of the ESEA. The requests must describe how the COVID-19 emergency prevents or restricts the local educational agency's ability to comply with the legal requirement and provide assurance that the local educational agency will work to mitigate the negative effects of the waiver.

Unemployment Reimbursement for Local Governments

States will receive an unspecified amount of money equal to one-half of the unemployment benefits paid to employees of governmental entities in order to reimburse the governmental entities for amounts paid into the state unemployment fund in lieu of contributions. "Governmental entities" is not defined and presumably includes all public entities below the state level, such as cities, counties, school districts, and special districts.

Additional Appropriations for Existing Programs

Numerous appropriations are made to existing programs under the label "Emergency Appropriations for Coronavirus Health Response and Agency Operations." These are generally appropriations to federal programs and agencies. To the extent local public entities and school districts will benefit from these expenditures, it will most likely be through normal operation of the federal program. Here are some notable expenditures under this part:

- $25 million for broadband to support distance learning services in rural areas.
- $3.5 billion in payments to states for the Child Care and Development Block Grant for child care assistance for low-income families.
- Almost $1.9 billion for Children and Families Services Programs. This includes $750 million for programs under the Head Start Act, from which $500 million is available for operating supplemental summer programs.
- $5 billion for the Community Development Fund, including an additional $2 billion to existing grantees under the current distribution formula and $1 billion directly to states and insular areas, as defined.

There are also appropriations for the Child Nutrition and Supplemental Nutrition Assistance Programs; law enforcement and firefighter grants; funding for operations of public transit; and healthcare programs in response to the COVID-19 emergency.

In general, these are additional appropriations specifically intended to fight COVID-19, but many do not include any more specific instructions for how the funds must be spent beyond "to prevent, prepare for, and respond to coronavirus." Some appropriations specify that the money should be used for administration, salaries, supplies, equipment, or some other specific expenditure needed to continue program operations or adapt the operations in light of the COVID-19 emergency. In many cases, there is additional money available for distribution under existing grant or award mechanisms to which public entities may be eligible recipients.

Related Resources

The legal and practical realities of the current crisis are ever-changing. In our continued effort to equip public agencies with useful insights, we have compiled a suite of links to several resource and guidance documents and webpages available from the federal and state governments regarding COVID-19. You can access them here:
http://www.lozanosmith.com/covid19.php.

If you have any questions about the CARES Act or other Coronavirus relief funding, please contact the author of this Client News Brief or an attorney at one of our eight offices located statewide. You can also subscribe to our podcast, follow us on Facebook, Twitter and LinkedIn or download our mobile app.