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Memorandum

Senate Passes the Coronavirus Aid, Relief, and Economic Security Act

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Last night, the Senate passed a $2 trillion economic relief package, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), to aid businesses and workers affected by the coronavirus disease 2019 ("COVID-19"). The House of Representatives is expected to vote on the legislation on Friday, and President Trump is expected to sign it into law immediately.

Title I of Division A of the CARES Act provides protections for workers including paycheck protection, loan forgiveness and subsidies, and emergency Economic Injury Disaster Loan grants. Title II includes provisions for unemployment insurance and emergency unemployment relief, recovery rebates for certain individuals, and tax relief measures for businesses such as delaying payment of employer payroll taxes and modifications of credit for prior year minimum tax liability of corporations. Title III increases Medicare payments to hospitals and providers and addresses shortages of medical products, access to testing and health care for COVID-19 patients, telehealth services, student loans, and emergency paid sick leave. Title IV provides economic relief measures in the form of Treasury funding for the aviation industry and businesses critical to national security and various Federal Reserve liquidity programs under its under its emergency lending authority, as well as certain regulatory relief provisions for community banks and residential mortgage borrowers. Title V creates a $150 billion Coronavirus Relief Fund for state, local, and tribal governments. Title VI provides emergency borrowing authority to the United States Postal Service, requires the Postal Service to prioritize delivery of products for medical purposes, and designates the amounts provided for in the legislation as an "emergency requirement" that exempts them from the pay-as-you-go rule, which would otherwise apply to legislation that would increase the deficit and would require offsets.

Division B provides emergency appropriations for the coronavirus health response and agency operations.

Here are some of the key provisions of the legislation:

- **Federal Loans**
  - Authorizes $349 billion in commitments for general business loans authorized under section 7(a) of the Small Business Act.
  - Authorizes the Treasury Department to make up to $500 billion in loans, loan guarantees and other investments in support of eligible businesses and state and local governments, including $46 billion earmarked for the airline and national security industries and the remaining amount available to

support Federal Reserve liquidity programs. Aspects of these programs are described in a separate memorandum available here.

- Creates a Treasury Department Special Inspector General for Pandemic Recovery to provide oversight of Treasury loans, loan guarantees and other investments and a Pandemic Response Accountability Committee.
- Creates real-time public reporting of Treasury transactions under the Act, including terms of loans, investments or other assistance to corporations.
- Adds a retention tax credit for employers to encourage businesses to keep workers on payroll during the crisis.
- Requires businesses receiving certain categories of federal funding assistance to freeze compensation at 2019 levels for employees who received total compensation of more than $425,000 in 2019, reduce compensation for employees who received more than $3 million in 2019 to the sum of (i) $3 million and (ii) 50% of the excess of 2019 compensation over $3 million, and cap severance pay at two times 2019 compensation for employees who received more than $425,000 in 2019.
- Creates worker protections for certain businesses receiving federal funding assistance, including requiring that the business (i) retain at least 90% of its workforce, at full compensation and benefits, until September 30, 2020 and (ii) restore at least 90% of its workforce that existed as of February 1, 2020 and restore all compensation and benefits to workers no later than four months after the termination of the COVID-19 public health emergency.
- Prohibits businesses controlled by the President, Vice President, Members of Congress, and heads of Executive Departments, and certain of their family members from receiving loans or investments from Treasury programs.

- **Foreclosure and Eviction Moratorium**
  - Provides for a foreclosure moratorium for certain borrowers under federally backed mortgage loans who are experiencing financial hardship, and an eviction moratorium for certain tenants.
- **Expansion of Unemployment Insurance Benefits**
  - Provides significant additional unemployment benefits, both for workers who are presently eligible to receive such benefits and those who are not traditionally covered by unemployment insurance programs.
    - Creates, through December 31, 2020, a Pandemic Unemployment Assistance program. While state unemployment insurance programs typically only provide benefits to employees who have worked for a threshold period of time before being laid off and who are able and willing to return to work, this program provides for unemployment benefits to individuals who are self-employed, are independent contractors, have more limited work histories, who have had to resign from their

employment as a direct result of the COVID-19 public health emergency or who cannot work as a direct result of the COVID-19 public health emergency.

- As presently written, all individuals who now qualify for unemployment insurance benefits will receive an additional $600 per week on top of their current benefits for any period of benefits through July 31, 2020.
- While most states typically have a one week waiting period for the receipt of unemployment insurance benefits, the federal government will fund the cost of the first week of unemployment benefits through December 31, 2020 for those states that waive this waiting period. Therefore, employees who have been temporarily laid off or furloughed can receive benefits for the period immediately after such lay off/furlough begins.
- Individuals are eligible for an additional 13 weeks of unemployment benefits, through December 31, 2020, if they remain unemployed after maximum period for their state's unemployment benefits has expired.
- The federal government will fund, up to $100 million, the cost of "short-time compensation" programs, where employers reduce employee hours instead of laying off workers and the employees with reduced hours receive a pro-rated unemployment benefit.

- **Labor and Unions**
  - Adds a requirement that neither the Secretary of the Treasury nor any federal department or agency can condition any loan or loan guarantee to air carriers, cargo air carriers or businesses critical to maintaining national security on those business entering into a negotiation with unions representing employees of those businesses with respect to pay or other terms and conditions of employment. This requirement continues through the one year period following the term of such loan or loan guarantee.
  - With respect to the direct payments to air carriers and contractors, the Treasury cannot condition financial assistance on recipient's entering into negotiations with a union regarding pay/other terms and conditions of employment.
  - For any direct loans from the Department of Treasury to non-profits and companies with between 500-10,000 employees, the recipient must agree not to abrogate the existing CBAs for the term of the loan plus two years and must remain neutral in any union organizing efforts for the term of the loan. This is in addition to a requirement to retain 90% of the workforce with full compensation and benefits through September 30, 2020 and not to outsource/offshore workers for the term of the loan plus two years.
- **Health Care**
  - Boosts Medicare payments to health care providers and hospitals by temporarily suspending the Medicare sequester, which reduced Medicare reimbursement to providers by 2%, and increasing Medicare payments for hospitals treating admitted COVID-19 patients.

- Mandates coverage for more in vitro diagnostic tests for the detection of SARS-CoV-2 (the virus that causes COVID-19) by private health insurance plans without any cost sharing (including deductibles, copayments, and coinsurance), including tests that have not been authorized by the Food and Drug Administration under an emergency use authorization.
- Sets reimbursement rates for coverage of such tests at either the contracted rate that was negotiated prior to the COVID-19 public health emergency, a publicly-listed cash price posted by the health care provider or a negotiated rate that is less than the cash price.
- Expands access to telehealth in numerous provisions, including provisions that provide grants to promote the use of telehealth, enable additional Medicare beneficiaries to access telehealth from new providers that have not treated the beneficiary in person in the past three years, and encourage the use of telehealth for Medicare home health services consistent with the beneficiary's care plan.
- Limits liability for volunteer health care professionals providing health care services related to the diagnosis, prevention or treatment of COVID-19 or assessments or care related to an actual or suspected case of COVID-19, except in limited cases such as willful or criminal misconduct.
- Provides manufacturers and distributors of certain respiratory protective devices with immunity from suits and liability under federal and state laws for all claims of loss caused by, arising out of, relating to, or resulting from the use of such devices in the event of a public health emergency.

- **Tax Relief**
  - Allows net operating losses earned in 2018, 2019, or 2020 to be carried back five years. The 80% limit on offsetting taxable income is also suspended, allowing net operating losses to fully offset taxable income.
  - Temporarily repeals the limitation on utilization of excess business losses taken by non-corporate taxpayers for 2018 through December 31, 2020.
  - Alters the Section 163(j) limitation on deductions for business interest expense. For tax years 2019 and 2020, the bill increases the limitation on deductions of business interest expense in excess of the sum of a taxpayer's business interest income to 50% of adjusted taxable income (from 30%). In addition, for taxable years beginning in 2020, the bill allows taxpayers to elect to determine their limitation using their adjusted taxable income from 2019 rather than 2020. Special rules also apply to partnerships.
  - Accelerates the ability to recover credits earned under previously repealed corporate Alternative Minimum Tax regime to the current tax year.
  - Adds a technical correction to the definition of qualified improvement property, allowing immediate expensing for improving facilities related to the hospitality industry.
  - Excludes cancellation of debt income from gross income for the small business taxpayer who has certain loans forgiven under the CARES Act.

- Allows employers to defer their portion of certain payroll taxes due between the date of enactment and January 1, 2021 to December 31, 2021 and December 31, 2022.
- Adds a quarterly refundable tax credit for 50% of qualified wages paid by employers from March 13th through December 31, 2020, to encourage businesses to keep workers on payroll during the crisis. The bill contains stricter qualified wage eligibility requirements for businesses with more than 100 employees.
- Increases the limit on deductibility of charitable contributions for corporations (to 25% of taxable income) and itemizing individual taxpayers (suspending the limitation to 50% of taxable income) and allows up to $300 in charitable deductions to individual non-itemizing taxpayers, in each case, for 2020.
- Suspends collection of excise taxes on airline tickets, transportation of cargo, and aviation fuel through December 31, 2020.
- Excludes from income payments made by employers on a taxpayer's student loans.
- Suspends excise taxes on alcohol used in hand sanitizer.
- Some of the foregoing provisions are not available to those with loan forgiveness under the bill and are subject to various eligibility restrictions.

- **Coronavirus Relief Fund**
  - Creates a $150 billion FY2020 fund for state, local, and tribal governments to use to cover costs incurred between March and December of 2020 that are necessary expenditures due to the COVID-19 public health emergency and that were not accounted for in the government's most recent budget.
- **Retirement Plans**
  - Provides tax relief for "coronavirus-related distributions" in 2020 from eligible retirement plans, including 401(k) plans, profit sharing plans and individual retirement accounts ("IRAs").
    - Waives the 10% early distribution penalty on coronavirus-related distributions of up to $100,000 and generally provides for income inclusion over a three-year period.
    - Allows repayment of a coronavirus-related distribution within three years.
  - Temporarily increases the maximum retirement plan loan amount to $100,000 or 100% of the individual's vested account value (up from $50,000 or 50% of the account value) and extends the time to repay a retirement plan loan by one year if the due date of the loan occurs in 2020.
  - Permits defined contribution retirement plans and IRAs to suspend required minimum distributions in 2020.
  - Extends the due date for minimum funding contributions to single-employer defined benefit plans due during 2020 until January 1, 2021 (with interest).

- **Other Employee Benefits**
  - Temporarily expands the income exclusion provision for educational assistance programs to allow employees to exclude up $5,250 per year of an employer's student loan repayment (for payments made before January 1, 2021).

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