April 2, 2020

PHASE 4 of COVID-19 ECONOMIC STIMULUS / DRAFT 2020 CWCC PRIORITIES

As predicted, COVID-19 has greatly impacted the congressional legislative process. Within the constraints / limitation we face, Key Advocates has been able to engage and ascertain information summarized in the attached report. We know that infrastructure (including water) is a bipartisan priority that is likely to be part of the 4th Phase of Federal COVID-19. We expect that a bill will start moving as early as April 20th. Sante has advised that the best way to push CWCC priorities is to engage and extend our priorities directly. UTCA of NJ has an online advocacy tool called Voter Voice that is set up already for this purpose. We plan to repurpose this tool to the needs of the CWCC. More to follow on those mechanics.

The message we plan to send is that any infrastructure package as part of Phase 4 of the coronavirus economic stimulus efforts should include the following CWC Priorities:

- Clean Water SRF - reauthorize with corresponding appropriations of at least $40B, per the Jan. 28 House Democratic leadership mega infrastructure press conference
- Safe Drinking Water SRF - reauthorize with corresponding appropriations of at least $25.4B, per the press conference
- Alternative Water Source program - reauthorize with corresponding appropriations of at least $600M, per the press conference
- WINN Grant Program - reauthorize with corresponding appropriations of at least $500M, per H.R. 1162, the “Water Recycling Investment and Improvement Act”
- Clean Water and Safe Drinking Water SRF’s Loan Repayment Term - strike the existing 30-year loan term repayment limit and allow states to make repayments up 40 years for larger projects with useful life of 40+ years
- Make permanent the transfer of funds between the CW and SDW SRF’s at the states’ option
- Direct EPA to require State SRFs to streamline review / approval process for the replacement / improvement of existing water infrastructure assets past their useful life as a condition of these funds

We ask that you consider these DRAFT priorities. We are asking for feedback on these priorities by EOB Monday April 6th. If necessary, we can set up a call at the request of any CWCC member to discuss. Please just ask. These goals are roughly consistent with those accepted for the previous CWCC DC Fly-In. Once we have these priorities set, we will set up our Voter Voice system and provide direction on how CWCC members can work through their own networks to advance these priorities to the targeted recipients. These priorities will be used for any advocacy around Water Week at the end of April but we do not have the luxury to wait.
TRACKING IMPACTS OF COVID-19 TO THE CONSTRUCTION INDUSTRY – UPDATE #3

CWCC organizations and their members are experiencing unprecedented conditions and challenges related to continuity of operations in light of the coronavirus (COVID-19) outbreak. We recognize every state is addressing this matter differently. This update focuses on federal response and some materials from UTCA-NJ that may be helpful.

MEMBER ASSISTANCE - FINANCIAL ACTION STEPS TO BE CONSIDERED

UTCA has asked member firm CohnReznick to provide the Association with an analysis of the new federal financial programs that are available to individuals and businesses. While the federal regulations are still being developed by the various federal governing agencies, it is important that your members be prepared to act when all of the procedures and application processes are finalized.

We have attached this analysis to this report. UTCA of NJ suggests that you consider sharing this type of assistance to your members but recommend to them that they work very closely with their trusted advisors regarding the new assistance programs.

CARES ACT HIGHLIGHTS

President Trump signed the bi-partisan Coronavirus Aid, Relief, and Economic Security (CARES) Act, a $2.2 trillion relief package to bolster the economy during the COVID-19 pandemic.

A summary document of this Act is attached courtesy of Key Advocates. It must be noted, however, that for each highlighted issue there are many underlying specific requirements for which you are recommended to refer to the text of the law. It is suggested that share the text with your advisors (legal, finance and human resources) for their review.

U.S. DOL GUIDANCE FORTHCOMING – MODEL EMPLOYEE POSTER NOW AVAILABLE

All CWCC Members should stay on the lookout for a Guidance document from the U.S. DOL regarding clarifications/questions that the construction industry has raised related to the Family First Coronavirus Response Act. We will send that out to the CWCC as soon as it becomes available.
U.S. DOL just released the official model notice poster notifying employees of their rights under the (FFCRA). All employers covered by the FFCRA are required to give employees notice. This poster will satisfy the FFCRA notice requirements.

Here is a link for the poster:


FMCSA – WAIVER FOR CDL RELIEF

Our national transportation partner ARTBA has notified us that the FMCSA has granted some limited relief in the area of CDLs. The attached waiver and enforcement order were issued by the agency last night. The waiver is valid through June 30, 2020 and suspends CDL renewals and renewals of tests and medical certifications associated with CDL renewals.

OPEN INVITATION FOR DIALOGUE

We invite any CWCC Member to “reply all” to this message and advise:

- Any issues not addressed in the 3rd Federal Response Bill that needs to be put on the table for future legislation?

- How are you experiencing the Covid-19 situation? How has it changed the way you and your organization are going about your work? What challenges are you having that peers in the CWCC may be able to help problem solve? What questions do you have for each other?

- How is your trade association responding? How are your states and communities responding and what might we do together to educate the public and policy makers?

VIRTUAL CWCC FLY IN DETAILS

The organizers of Water Week have cancelled the in-person meetings and will holding “virtual” events. CWCC is in communication with our national partners and will be announcing plans soon for CWCC to have access to those virtual events and materials. We continue to work on those plans and plan to announce a schedule next week for the remote CWCC Business Meeting. On the same schedule, we will be distributing drafts of our CWCC advocacy materials (using final CWCC priorities) and asking for feedback before making those materials final.
KEY ADVOCATES REPORT

Included with this notice is Key Advocates recent report which is current to the end of March.
April 2020 Insights

Note: Covid-19 has greatly impacted the congressional legislative process. As of this writing, all Hill buildings have been closed except for members and staff and credentialed press. Members’ offices and committees are functioning via email and phones. The situation is challenging for everyone. With these constraints, we have learned the following.

Infrastructure

Four developments this month:

1. Post the CARES Act – There is already talk about a Phase 4 coronavirus economic stimulus bill, possibly for May. Items being discussed for inclusion are regulatory reform, corporate tax relief, sick leave benefits, health care worker and pension protections, funds for state and local governments, executive compensation, stock buybacks, and infrastructure. Regarding infrastructure, the Republicans say they support putting the government and the private sector together to improve transportation and other core infrastructure needs while the Democrats are talking about direct government spending on roads, transit, rail, clean energy, water education, hospitals, broadband, and housing, among other priorities. Senator Barrasso, Chair of the Environment and Public Works Committee, has already said that he wants the Committee’s bipartisan FAST Act reauthorization bill included in any infrastructure package.

2. Pre “shutdown” - Democratic staff from the T&I Committee met with legislative assistants of Committee members to discuss their infrastructure priorities. No details disclosed.

3. Majority Leader Hoyer continued to work on the Democratic leadership $2B infrastructure proposal. They’ve apparently settled on how to allocate $1.5B so far, but beyond what was revealed at the press conference and what DeFazio and Pallone put on table, no other details have been disclosed.

4. The National Association of Counties held its annual conference recently and T&I Committee members appeared on a panel. They said all infrastructure funding ideas are on the table including P3, fuel taxes, tolling, battery taxes, etc.

To review, on January 28, the House Democratic leadership along with the chairs of the key congressional committees of jurisdiction (T&I, Energy and Commerce, and Ways and Means) rolled out a mega infrastructure framework – with more details and legislative language to follow – that focuses on surface transportation issues, broadband, 911 updates, brownfields, safe drinking water, with mention of housing, education and natural resources. See the following: https://transportation.house.gov/imo/media/doc/Moving%20Forward%20Framework.pdf. Water
highlights of interest (note: these do not include water programs from other committees such as the Natural Resource Committee not yet available but to be included in the package) –

- **Clean Water & Wastewater Infrastructure — $50.5 Billion**
  - Funds building new, modern clean water and wastewater infrastructure by investing $40 billion in the Clean Water State Revolving Fund (CWSRF), to address local water quality challenges, with dedicated funds for urban and rural communities with affordability concerns.
  - Encourages the use of energy-efficient and water-efficient technologies.
  - Helps communities affordably address local sewer overflow and storm water infrastructure needs, preventing pollution in local rivers and waterways, and disruptions to service.
  - Establishes a new EPA program to detect, prevent, and treat discharge of industrial chemicals, including PFAS.

- **Water Infrastructure (Flood protection, navigation, etc.) — $10 Billion**
  - Addresses the impact of severe weather events by tackling the backlog of Army Corps’ projects designed to protect communities at risk of flooding, to enhance community resiliency, and to enhance national, regional, and local economic growth.

- **Safe Drinking Water — $25.4 Billion**
  - Protects Americans’ drinking water – particularly for vulnerable communities – by investing in the Drinking Water State Revolving Fund and programs to ensure clean drinking water in schools, day care centers and on Native American Reservations.
  - Provides funding to local communities dealing with PFAS contamination in the drinking water and requires EPA identify and assist these and other communities with effective decontamination techniques.

- **Alternative Water Source Project - $600 Million** Reauthorizes Federal investments in alternative water source projects to address critical water supply needs, especially in arid areas of the Nation.

**President’s FY21 Infrastructure Budget**

To review, the President’s FY21 Budget has two major infrastructure components. The first is a $810 billion, 10-year reauthorization of surface transportation programs. The second is a $190 billion in investments across a range of infrastructure, as follows:

- **$60 Billion for a new Building Infrastructure Great grants program**: This “mega-projects” program will focus on delivery of such projects across a range of sectors: surface transportation road, bridge, rail, transit, pipeline, landside port, and intermodal connection capital investments; lock, dam, and canal investments; drinking water and waste treatment capital investments; and energy and broadband capital investments.

- **$50 billion for a new Moving America’s Freight Safely and Efficiently program**. This program will support projects with significant economic, mobility, and safety benefits on our strategic highway, rail, port, and waterway freight networks.

- **$35 billion for a new Bridge Rebuilding program**. This program will make targeted
investments in critical bridge infrastructure to restore them to good condition. $12 billion will be provided for “off-system” bridges allocated via formula, and $23 billion will be provided for larger bridges via a competitive process.

- **$25 billion for a new Revitalizing Rural America program.** This program focuses on the needs and contributions to our economy made by rural communities and helps them deliver broadband, transportation, water and other infrastructure projects.

- **$20 billion for a Transit State of Good Repair Sprint program.** The program will focus exclusively on rehabilitating existing transit assets (no new capacity projects).

- **$6.5 billion for a Public Lands Infrastructure Fund.** This program would address the deferred maintenance backlog in our national parks, forests, wildlife refuges and other public lands, along with Bureau of Indian Education school.

### Water Resources Development Act

**Status:** Hearings and drafting continue with goal of enactment this year. No details.

Current law expires Sept. 30 of this year. Goal is to re-authorize the program this year to keep it on a two-year cycle. The focus is on the Corps of Engineers – projects and process – although in the past WRDA has been the vehicle for inclusion of other “water” issues of interest.

### S. 1932, “Drought Resiliency and Water Supply Infrastructure Act”

**Status:** Still trying to reach agreement on the compromise bill. Hearing and markup to follow. The essence of the compromise is that the Republicans got “more” on the water storage issue in return for the Dems getting “more” on the recycled water issue ($160M over 5 years).

To review, introduced on June 20 by Senator Cory Gardner (R-CO) with cosponsors Senators Feinstein, McSally (R-AZ), Sinema (D-AZ) and Rosen (D-NV). The bill was referred to the Energy and Natural Resources Committee. McSally is the Chair of its Water and Power Subcommittee. Gardner is a member of the Subcommittee. Feinstein and Sinema are not on the Committee. The bill would authorize for FY19-24 $670M for surface and groundwater storage projects, $100M for water recycling projects, and $60M for desalination projects. It would also create a new loan program at 30-year Treasury rates for water supply projects known as the Reclamation Infrastructure Finance and Innovation Act (RIFIA). The $150M authorized for the program would make available $8 to $12B in lending authority for the low interest loans. The loans would use existing criteria under the WIFIA program, with projects for funding to be recommended by the Bureau of Reclamation, and with the loans to be administered by EPA. The bill would also authorize $140M for restoration and environmental compliance projects. The bill provides offsets, one of which is a process to de-authorize inactive water recycling projects – projects for which no Federal or sponsor funds were spent on construction in the past 10 years, with an allowance of two and one-half years to spend funds to prevent de-authorization.

### H.R. 1162, the “Water Recycling Investment and Improvement Act”

**Status:** Bill marked up by House Natural Resources Full Committee on March 11. Floor schedule not yet determined.

To review, on Feb.13, Congresswoman Napolitano introduced the bill (with 17 cosponsors, now
27– all Dems) which the Coalition supports. The Coalition supported her bill last Congress. Two changes were made from last year’s version: the EPA grant program was dropped so the focus could be on Title XVI; and, the cap on the Federal share for individual projects was increased from $20M to $30M. Per the Congresswoman’s office, the following summary was provided:

- Increases the WIIN Act authorization for Title XVI from $50 million to $500 million
- Makes the WIIN Act Title XVI program permanent as it currently expires in 2021.
- Strikes the requirement that projects must be in drought or disaster areas
- Strikes the requirement that the projects need to be designated in an appropriations legislation
- Increase the limitation on the federal share of individual Title XVI projects from the current $20 million in October 1996 prices to $30 million in January 2019 prices.

*Does not change the 25% federal cost share.*

On June 13, the Subcommittee on Water, Oceans, and Wildlife (WOW) of the Natural Resources Committee held a hearing on the bill.


**Status:** Bill marked up by House Natural Resources Full Committee on March 11. Floor schedule not yet determined.

To review, introduced on May 2 by Congressman Josh Harder (D-CA-10) with 7 cosponsors. The bill provides $100M for Title XVI WIIN grants from deposits made to the Reclamation Fund; authorizes $150M for a reclamation infrastructure finance and innovation pilot program; increases the current Title XVI WIIN grant authorization from $50M to $500M (the same increase as in Cong. Napolitano’s H.R. 1162) and raises the Federal share cap from $20M to $30M; and, establishes a water technology investment program to expand use of technology for improving the availability and resiliency of water supplies and power delivers, and authorizes $5M per fiscal year for the program. On June 13, the Subcommittee on Water, Oceans, and Wildlife (WOW) of the Natural Resources Committee held a hearing on the bill.

**DeFazio H.R.1497, the “Water Quality Protection and Job Creation Act of 2019.”**

**Status:** Still waiting official reporting of bill per CBO scorekeeping.

To review, on March 10 Chair DeFazio, Subcommittee Chair Napolitano, and Representatives Don Young and John Katko introduced the above bill (now with 56 cosponsors) which was amended in markup to authorize $14B over the next five fiscal years for the CWSRF, $1.125B for overflow and sewer grants, $1.295B for state water pollution control programs, $110M for innovative water grants, and $150M for alternative water source projects. A Coalition support letter was submitted.

**Huffman Omnibus Water Bill**

**Status:** Still working through stakeholders’ comments on draft. No specifics on introduction, hearing or markup.

On January 10, Congressman Jared Huffman (D-CA-2), Chair of the Water, Oceans, and
Wildlife Subcommittee of the Natural Resources Committee, unveiled a draft for comment of his omnibus water bill, the “FUTURE Drought Resiliency Act,” that includes Cong. Napolitano’s HR. 1162 and a section from Cong Harder’s HR. 2473 (both also included in this monthly report). The Coalition worked with both Members on these two efforts and with the Natural Resources Committee and Cong. Huffman’s personal staff on the omnibus bill.

The included Napolitano language increases from $50M to $500M the authorization for Title XVI WIIN grants and from $20M to $30M the Federal share.

The included Harder language authorizes $300M per year for a new "Water Infrastructure and Drought Solutions Fund," of which $100M is for ground water storage projects, $100M for water reclamation and reuse projects, and $100M for WaterSMART grants. Because it will take years for revenues (they would come from the existing reclamation fund) to reach the $300M level, the authorizations are for FY2030-2060.

Other provisions in the omnibus -

- $750M for storage projects
- $240 for desalination projects
- $100M for disadvantaged communities without adequate drinking water
- Various technology provisions
- Various ecosystem protection provisions

H.R. 2741, the “Leading Infrastructure for Tomorrow’s American Act” (the “Lift America Act”)

Status: Action unclear at this time – markup, House passage, etc.

To review, the bill requires the EPA to establish a program to award grants up to $2.5 billion over five years to water systems affected by contamination. The legislation directs EPA to create a list of eligible drinking water treatment technologies. It extends and increases authorizations of $18.69 billion for essential drinking water programs including the Safe Drinking Water State Revolving Loan Fund, the Indian Reservation Drinking Water Program, School and Child Care Program Lead Testing grants, Lead Drinking Fountain Replacement, Community Water System Risk and Resilience grants, and Public Water System Supervision grants to states. This subtitle also extends Buy American requirements for drinking water projects. On May 22, the Energy and Commerce Committee held a hearing on the bill.

S.1689, “The Water Infrastructure Funding Transfer Act”

As a review, signed into law by the President on Oct. 4. Originally introduced by Senator Booker (D-NJ). The Coalition submitted a letter to the President, with copies to Mick Mulvaney, Chief of Staff, and Andrew Wheeler, Administrator, EPA, urging the President to sign the bill into law. The bill allows states for one year to transfer amounts from their clean water state revolving fund to their drinking water state revolving fund in order to address a threat to public health as a result of heightened exposure to lead in drinking water.

Senate Highway Bill

FAST Act reauthorization required by Sept. 30 when current program expires. Senate EPW has reported its version of the bill (see below). Other Senate committees that need to act include
Banking (mass transit), Commerce (trucking, rail and safety), and Finance (how to pay for the bill). Senate Banking Committee held an authorization hearing on Feb. 25. House T&I working on a draft. Other House committees that need to act include Energy and Commerce (safety) and Ways and Means (how to pay for the bill).

To review, the EPW bipartisan bill would authorize $287 billion in highway spending, 90-percent of which would be distributed to the states by formula. The bill also features a title on climate change, which would authorize $10.8 billion for various programs addressing resiliency and other climate issues over the next five fiscal years. That includes $1 billion for electric, hydrogen, and natural gas vehicle charging and fueling stations. It would also provide billions for programs aimed at curbing emissions and reducing congestion and truck idling. The legislation would also streamline infrastructure permitting and set a two-year target for environmental reviews. Lastly, the bill would authorize $12.5 million per year to fund state and regional pilot testing of user-based alternative revenue mechanisms to the gas tax.

President’s FY21 “Water” Budget

- **Clean Water SRF** - $1.119B versus $1.638 for FY20
- **Safe Drinking Water SRF** - $863.2M versus $1.126B for FY20
- **Title XVI/WINN** - $3M versus $63.6M for FY20
- **WaterSMART grants** - $7.8M versus $55M for FY20
- **WIFIA** - $28M versus $63M for FY20
- **CALFED** - $33M versus $35M for FY20

Earmarks

**Status:** No new developments. Continue to monitor in conjunction with the Office of House Majority Leader.

To review, recent reports indicate discussion, and in some cases real interest, in bringing back earmarks. Many House Democrats have voiced support for overturning the current ban on earmarks. Most noticeably is Majority Leader Hoyer who is shopping an earmark return plan that would require for every earmark the recipient be a public, not a private entity, the Member requesting the earmark be identified, the earmark project be located in the Member’s district/state, and the Member acknowledge under penalty that he or she has no vested interest in the earmark project. Transparency and accountability, Hoyer says, are the cornerstones of his proposal. To date, House Republicans are either opposed or silent on the return as are Senate republicans. Senate Democrats support overturning the ban with accompanying stringent rules.

**Bill Tracking**

*H.R.4780 — 116th Congress (2019-2020)*
**National Infrastructure Investment Corporation Act of 2019**
**Sponsor:** Rep. Carbajal, Salud O. [*D-CA-24*] (Introduced 10/22/2019) **Cosponsors:** (0)
**Committees:** House - Transportation and Infrastructure

*H.R.4687 — 116th Congress (2019-2020)*
**SMART Infrastructure Act**
**Sponsor:** Rep. Rouda, Harley [*D-CA-48*] (Introduced 10/16/2019) **Cosponsors:** (3, now 5)
**Committees:** Transportation and Infrastructure; Science, Space, and Technology; Agriculture;
Build America Act of 2019
Committees: Transportation and Infrastructure and Ways and Means
Directs the Department of Transportation (DOT) to carry out a national infrastructure investment grant program for capital investments in surface transportation infrastructure. Projects eligible for funding under the program include, at a minimum, highway and bridge projects, public transportation projects, passenger and freight rail transportation projects, and port infrastructure investments. In distributing grants under the program, DOT shall ensure an equitable geographic distribution of funds, an appropriate balance in addressing the needs of urban and rural areas, and investment in a variety of transportation modes. At least 20% of grant funds must be set aside for projects in rural areas. The bill amends the Internal Revenue Code to: (1) establish a National Infrastructure Investment Trust Fund, and (2) increase the tax on gasoline other than aviation gasoline and on diesel fuel or kerosene.

Move America Act of 2019
Sponsor: Sen. Hoeven, John [R-ND] (Introduced 01/16/2019) Cosponsors: (1)
Committees: Finance
Allows tax exempt Move America bonds and Move America tax credits to be used for certain infrastructure projects. A Move America bond is treated as a tax-exempt private facility bond with certain exceptions. At least 95% of the net proceeds from the issuance of the bond must be used for infrastructure projects. The bill specifies exceptions and modifications to existing rules for bonds regarding land acquisition, government ownership, rehabilitation expenditures, and the alternative minimum tax. The bonds are subject to a volume cap equal to 50% of a state's current private activity bond volume cap. States may exchange all or a portion of the volume cap for Move America tax credits to be allocated to taxpayers. The credits include (1) an equity credit for a portion of the basis of each qualified facility; and (2) an infrastructure fund credit for investments in qualified infrastructure funds, including a state infrastructure bank, a water pollution control revolving fund, or a drinking water treatment revolving loan fund.

National Infrastructure Development Bank Act of 2019
Committees: Energy and Commerce, Transportation and Infrastructure, Financial Services and Ways and Means

RAPID Act
Sponsor: Sen. Cornyn, John [R-TX] (Introduced 02/06/2019) Cosponsors: (1)
Committees: Environment and Public Works
This bill revises the transportation infrastructure finance and innovation (TIFIA) program to (1) require program applicants to obtain investment grade ratings from at least two credit rating agencies, unless the federal credit instrument is less than $150 million (currently, less than $75 million), in which case one rating will suffice; (2)
require the Department of Transportation (DOT) to implement an expedited decision timeline for public agency borrowers seeking secured loans; and (3) require DOT to publish status reports on program applications on the TIFIA website.

S.403 — 116th Congress (2019-2020)
IMAGINE Act

H.R.228 — 116th Congress (2019-2020)
Increase Transportation Alternatives Investment Act of 2019
Sponsor: Rep. Velazquez, Nydia M. [D-NY-7] (Introduced 01/03/2019) Cosponsors: (2) Committees: Transportation and Infrastructure Directs the Department of Transportation (DOT) to ensure that states give preference under the Surface Transportation Block Grant Program to eligible projects that (1) are located in areas that are undergoing extensive repair or reconstruction of transportation infrastructure, including federal-aid highways, federally owned roads open for public travel, passenger rail facilities, and public transportation facilities; and (2) will provide transportation alternatives related to the closure of transportation infrastructure in such areas. DOT shall (1) carry out a competitive grant program to support community efforts to invest in transportation alternatives; and (2) give preference in awarding grants to projects located in such areas. Entities eligible for grants include state and local governments, metropolitan planning organizations, and rural planning organizations.

Surface Transportation Investment Act of 2019
Sponsor: Rep. Brownley, Julia [D-CA-26] (Introduced 01/30/2019) Cosponsors: (1) Committees: Ways and Means and Transportation and Infrastructure. This bill limits or repeals certain tax benefits for major integrated oil companies, including (1) the foreign tax credit for companies that are dual capacity taxpayers, (2) the tax deduction for intangible drilling and development costs, (3) the percentage depletion allowance for oil and gas wells, and (4) the tax deduction for qualified tertiary injectant expenses. The bill modifies the definition of "major integrated oil company" to include certain successors in interest that control more than 50% of the crude oil production or natural gas production of the company. The bill establishes a Transportation Block Grant Fund and appropriates to the fund amounts equal to the increase in revenues as a result of this bill. The funds must be used for making grants under the Surface Transportation Block Grant Program.

Sponsor: Sen. Sullivan, Dan [R-AK] (Introduced 05/16/2019) Cosponsors: (4) Committees: Environment and Public Works. To improve the processes by which environmental documents are prepared and permits and applications are processed and regulated by Federal departments and agencies, and for other purposes.

H.R.3134 — 116th Congress (2019-2020) To direct the Secretary of Transportation to assist States to rehabilitate or replace certain bridges, and for other purposes. Sponsor: Rep. Langevin, James R. [D-RI-2] (Introduced 06/05/2019) Cosponsors: (2) Committees: Transportation and Infrastructure. To direct the Secretary of Transportation to assist States to rehabilitate or replace certain bridges, and for other purposes.
S.611 — 116th Congress (2019-2020)
Water Affordability, Transparency, Equity, Reliability Act of 2019
Committees: Environment and Public Works

H.R.1764 — 116th Congress (2019-2020)
The Federal Water Pollution Control Act with respect to permitting terms, and for other purposes.
Committees: House - Transportation and Infrastructure

Clean Water Allotment Modernization Act
Committees: House - Transportation and Infrastructure

S.3211 — 116th Congress (2019-2020)
Clean Water Allotment Modernization Act
Sponsor: Sen. Rubio, Marco [R-FL] (Introduced 01/16/2020) Cosponsors: (1)
Committees: Senate - Environment and Public Works

S.3160 — 116th Congress (2019-2020)
Affordable Safe Drinking Water Act of 2020
Sponsor: Sen. Warren, Elizabeth [D-MA] (Introduced 01/08/2020) Cosponsors: (1)
Committees: Senate - Environment and Public Works

Clean Water Standards for PFAS Act of 2020
Sponsor: Rep. Pappas, Chris [D-NH-1] (Introduced 01/03/2020) Cosponsors: (13)
Committees: House - Transportation and Infrastructure

Affordable Safe Drinking Water Act of 2019
Committees: House - Energy and Commerce; Transportation and Infrastructure

Critical Infrastructure Act of 2019
Committees: House - Natural Resources

Safe Drinking Water Assistance Act of 2019
Committees: House - Energy and Commerce; Science, Space, and Technology
NOTICE OF ENFORCEMENT POLICY
REGARDING EXPIRING DRIVER’S LICENSES
AND MEDICAL EXAMINER’S CERTIFICATES
DURING COVID-19 NATIONAL EMERGENCY

The President has declared a national emergency under 42 U.S.C. § 5191(b) related to Coronavirus Disease 2019 (COVID-19). This Notice is in response to COVID-19 outbreaks and their effects on people and the immediate risk they present to public health, safety, and welfare in the fifty States and the District of Columbia. Many States are experiencing greater than normal employee absences or have closed offices of their State Driver Licensing Agencies in response to the guidance from the U.S. Center for Disease Control to use social distancing to reduce the spread of COVID-19. Because of these actions, many commercial motor vehicle (CMV) drivers are unable to renew their driver’s license and are unable to provide medical certificates to their State Driver Licensing Agencies.

In addition, many medical providers nationwide have canceled regularly scheduled appointments to dedicate resources to the COVID-19 response or for related reasons, and drivers are unable to obtain appointments for physical examinations with medical examiners to comply with the Federal Motor Carrier Safety Regulations (FMCSRs). Given the national emergency, there is a public need for immediate transportation of essential supplies, equipment, and persons, which requires an adequate and sustained supply of CMV drivers including Commercial Learner’s Permit (CLP) holders, Commercial Driver’s License (CDL) holders, and non-CDL commercial drivers. Ensuring that drivers are available to operate CMVs during the national emergency declaration is critical to continued operation of the transportation and energy supply networks and the safety and economic stability of our Nation.

This Notice of Enforcement Policy, effective from March 24, 2020 to June 30, 2020, provides needed relief from specified FMCSRs for CLP holders, CDL holders, and non-CDL drivers and motor carriers using those drivers. This Notice of Enforcement Policy applies to all CLP holders, CDL holders, and non-CDL drivers whose license was issued for less than the maximum period established by 49 CFR 383.25 and 383.73 and was valid on February 29, 2020 and expired on or after March 1, 2020.

FMCSA will exercise its enforcement discretion to not take enforcement action for the following:

1. 49 CFR 383.23(a)(2) – a CLP or CDL holder operating a CMV with an expired license, but only if the CLP or CDL was valid on February 29, 2020, and expired on or after March 1, 2020.

2. 49 CFR 383.37(a) – a motor carrier that allows a CLP or CDL driver to operate a CMV during a period in which the driver does not have a current CLP or CDL, but only if the CLP or CDL was valid on February 29, 2020, and expired on or after March 1, 2020.
3. 49 CFR 391.11(b)(5) – a CMV driver (i.e., CLP, CDL, or non-CDL license holder) or motor carrier that allows a CMV driver to operate a CMV during a period in which the driver’s operator license has expired, but only if the driver’s license was valid on February 29, 2020, and expired on or after March 1, 2020, and the driver is otherwise qualified to drive under 391.11.

4. 49 CFR 391.45(b) – a CMV driver or motor carrier that allows a CMV driver to operate a CMV during a period in which the driver does not have the current medical certificate as required by 49 CFR 391.45(b), but only if the driver has evidence of a medical certification that was valid on February 29, 2020 and expired on or after March 1, 2020.

All CLP and CDL drivers are required to comply with all other applicable obligations under the FMCSRs and other applicable laws.

This Notice creates no individual rights of action and establishes no precedent for future determinations.

This Notice is effective from March 24, 2020, through June 30, 2020.

Issued: March 24, 2020

Joseph P. DeLorenzo
Acting Associate Administrator for Enforcement
CARES Act: Highlights

President Trump signed the bi-partisan Coronavirus Aid, Relief, and Economic Security (CARES) Act, a $2.2 trillion relief package to bolster the economy during the COVID-19 pandemic.

Here are some highlights. It must be noted, however, that for each highlighted issue there are many underlying specific requirements for which we would refer you to the text of the law. We would also suggest that you share the text with your legal, finance and human resources divisions for their review.

Small Business Lending Programs

The law creates a new $349 billion small business lending program modeled on the existing Small Business Administration (SBA) 7(a) program. These loans will be available with a 100% Federal guarantee. Application for loans can be made through the SBA, banks or other lending institutions like credit unions.

Who is Eligible for These Loans?
- Companies with less than 500 employees and sole proprietors, self-employed, and independent contractors that paid wages and payroll taxes.

How Much Can Be Borrowed?
- The loan amount is 2.5 times the average total monthly payroll costs incurred in the one-year period before the loan is made not to exceed $10 million.
- For businesses that were not in existence during the period from February 15, 2019 to June 30, 2019, upon request, the loan amount is 2.5 times the average total monthly payroll payments from January 1, 2020 to February 29, 2020.

What are the Requirements to Get Approved?
- Borrowers have to provide a good-faith certification that:
  - The loan is needed to continue operations during the pandemic;
  - Funds will be used to retain workers and maintain payroll or make business mortgage, lease, and utility payments;
  - The applicant does not have any other application pending under this program for the same purpose; and
  - From February 15, 2020 until December 31, 2020, the applicant has not received duplicative amounts under this program.
- Borrowers will not have to put up collateral or personal guarantees.
- Borrowers will not be subject to a credit analysis.

What Can the Loan Funds be Used For?
- Businesses may use the loans for:
Payroll costs, which includes compensation to employees, such as salary, wage, commissions, cash, etc. (up to an annual pay rate of $100,000 per employee);
Group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;
Payments of interest on business mortgage obligations; rent/lease agreement payments; utilities; and interest on any other debt obligations incurred before February 15, 2020.

What are the Loan Terms?
- The maximum interest rate is 4%.
- Payments will automatically be deferred for 6 months and could be deferred up to 12 months.

Can These Loans be Forgiven?
- Yes, borrowers can have a portion of their loan forgiven in the amount equal to the amount spent by the borrower during an 8-week period after the origination date of the loan on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020.
- Loan forgiveness will be decreased if the borrower reduces employees retained compared to the prior year, and by the reduction in pay of any employee in excess of 25% of the employee’s prior-year compensation. Borrowers that rehire previously laid-off workers by June 30, 2020, will still qualify and not be penalized for having a reduced payroll during the loan period.

What Happens to Any Loan Amount Not Forgiven?
- Any loan amounts not forgiven at the end of one year will be carried forward as an ongoing loan with terms of a maximum of 10 years at 4% interest or less.


Will Businesses Get a Tax Credit for Retaining Employees?
- Businesses forced to close due to a government ordered shutdown or who experience a year-over-year reduction in gross receipts of at least 50% will be eligible for a fully refundable 50% tax credit applicable to the employer’s share of payroll taxes.

Can Businesses Postpone Payment of Employer Payroll Taxes?
- The law postpones the due date for depositing employer payroll taxes and 50% of self-employment taxes related to Social Security. The deferred amounts would be payable over the next two years – half due December 31, 2021, and half due December 31, 2022.

Can Businesses Carryback Net Operating Losses?
- Businesses can offset losses experienced in 2018, 2019 and 2020 against profits from the prior five years – a modification from the recent change in the Tax Cuts and Jobs
Act (TCJA) in 2017. The bill also suspends the TCJA's 80% of taxable income limit on net operating loss carryovers for three years, so that the limit would not apply to tax years beginning in 2018, 2019, and 2020.

**What About Interest Deductibility?**
The law temporarily increases the limitation on interest deductions from 30% of adjusted taxable income to 50%.

### Relief Provisions for Individuals

#### What Changes Are Made to the Paid Leave Provisions in FFCRA?
- Paid sick leave granted under the FFCRA is capped at $511 per day and $5,110 in the aggregate. $200 per day and $2,000 in aggregate for sick leave taken to care for a family member or because of a school closure. Workers who are laid off after March 1, 2020 but then rehired are eligible for paid FMLA leave.

#### What is the Amount of Direct Payments to Individuals?
- $1200 for single filers whose adjusted gross income is under $75,000, reduced by 5% for income above $75,000; $2,400 for joint filers whose adjusted income is under $150,000, reduced by 5% for income above $150,000; payments “as rapidly as possible;” electronically to account payee authorized on or after Jan. 1, 2018 for a tax refund; $112,500 for head of household.

#### What are the Unemployment Provisions?
- Unemployment insurance is extended by 13 weeks – not to exceed 39 weeks and includes a four-month enhancement of benefits up to $600 per week.

#### What Mortgage Protections are Included?
- Forbearance of Federally-backed mortgages of up to 180 days, which can be extended another 180 days, with no charge for fees, penalties or additional interest as a result of delayed payments. Also, forbearance for those with multifamily Federally-backed mortgage loans. Tenants of Federally-backed mortgage premises could not be evicted for failure to pay rent for a 120-day period, and they may not be responsible for fees or penalties for failing to pay rent.

#### What Student Loan Protections are Included?
- Student loan payments are suspended through Sept. 30, 2020, without interest charged. Also, students are allowed to keep unspent Pell grants funds, to maintain future Pell Grant eligibility if they have to leave school due to the virus, and to continue being paid for work-study programs even if they are unable to work.

### Distressed Entities
What is Included for the health care system?
- $16B for the strategic national stockpile to secure medical supplies; $117B for hospitals; $100B for health care providers; funding for rural health care services, telehealth networks and resource centers; and waivers for home-delivered nutrition services and dietary guidelines.

What is Included for States, Cities and Businesses?
- $500B in loans with the restrictions that businesses that receive loans may not issue dividends for up to a year after the loan is no longer outstanding; that they must retain 90% of employment levels as of March 24 “to the extent practicable” through Sept. 30; and that loans cannot last longer than 5 years. Also, $150B in emergency relief funds for states, tribes and local governments to help boost budgets given the drop-off in tax revenues.

What are the Loan Oversight and Safeguard Requirements that are Included?
- For companies that receive government assistance, limit on executive and employee compensation for those earning at least $425,000 last year; stock buyback prohibition for companies until a year after the loan is paid back; prohibit businesses owned or partly owned – with 20% or greater stake in the business – by the President, VP, members of Congress, heads of Executive Departments, their spouses, children and in-laws, from receiving loans or investments from Treasury programs; and inspector general and 5-member bipartisan congressional oversight commission for audits and investigations of loans, loan guarantees and other investments approved by Treasury.

What about Other Distressed Entities?
- Numerous, including airlines ($25B in grants and $25B in loans), unspecified businesses to maintain national security ($17B), Amtrak ($1B), State Dept. to evacuate American citizens overseas ($324M), the CDC, child nutrition and Federal health care-related programs, etc. No funds for cruise lines.

Phases 4 and 5

What is the Latest Regarding Possible Additional Legislative Action?
- There is already talk in Congress about Phases 4 and 5, possibly May for Phase 4 and July for Phase 5. Items being discussed for inclusion are regulatory reform, corporate tax relief, additional sick leave benefit changes, health care worker and pension protections, increased funds for state and local governments, modifications to executive compensation and stock buybacks, and mega structural policy initiatives such as infrastructure.
Waiver in Response to the COVID-19 Emergency –
For States, CDL Holders, CLP Holders, and Interstate Drivers Operating
Commercial Motor Vehicles

March 24, 2020

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Grant of waiver.

SUMMARY: FMCSA grants, until June 30, 2020, a waiver from certain regulations applicable to interstate and intrastate commercial driver’s license (CDL) and commercial learner’s permit (CLP) holders and to other interstate drivers operating commercial motor vehicles (CMVs). The Agency has initiated this action in response to the President’s declaration of a national emergency under 42 U.S.C. § 5191(b) related to Coronavirus Disease 2019 (COVID-19).

DATES: This waiver is effective March 20, 2020 and expires on June 30, 2020.


Legal Basis
The Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107, June 9, 1998) provides the Secretary of Transportation (the Secretary) authority to grant waivers from any of the Federal Motor Carrier Safety Regulations issued under Chapter 313 of Title 49 of the United States Code or 49 U.S.C. § 31136, to a person(s) seeking regulatory relief (49 U.S.C. §§ 31136(e), 31315(a)). The Secretary must make a determination that the waiver is in the public interest and that it is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver. Individual waivers may be granted only for a specific unique event for a period up to three months. TEA-21 authorizes the Secretary to grant waivers without requesting public comment, and without providing public notice.

The Administrator of FMCSA has been delegated authority under 49 CFR 1.87(e) and (f) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 313, relating to commercial motor vehicle operators, and 49 U.S.C. chapter 311, subchapter I and III, relating to commercial motor vehicle programs and safety regulations.

Background
The President has declared a national emergency under 42 U.S.C. § 5191(b) related to Coronavirus Disease 2019 (COVID-19). This waiver is in response to COVID-19 outbreaks and
their effects on people and the immediate risk they present to public health, safety, and welfare in the fifty States and the District of Columbia. Several States are experiencing greater than normal employee absences or have closed offices of their State Driver Licensing Agencies in response to the guidance from the U.S. Center for Disease Control to use social distancing to reduce the spread of COVID-19. As a result, many CDL and CLP holders are unable to renew their CDLs and CLPs and are unable to provide medical certificates to their State Driver Licensing Agencies. In addition, many medical providers nationwide have canceled regularly scheduled appointments to dedicate resources to the COVID-19 response. As a result, drivers are unable to obtain appointments for physical examinations with medical examiners to comply with the Federal Motor Carrier Safety Regulations (FMCSRs). Given the national emergency, there is a public need for immediate transportation of essential supplies, equipment, and persons, which requires an adequate and sustained supply of CDL holders, CLP holders, and drivers operating CMVs (non-CDL drivers). This waiver provides needed relief from specified FMCSRs for CDL holders, CLP holders, and non-CDL drivers.

**FMCSA’s Determination and Regulatory Provisions Waived**

Consistent with the statutory requirements for waivers, FMCSA has determined that it is in the public interest to issue a waiver, limited in scope and circumstances, that is likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver until June 30, 2020.

To respond to this unique event and to continue the ability of intrastate and interstate CDL and CLP holders and interstate non-CDL drivers to transport goods in response to the COVID-19 emergency, this waiver:

- Extends until June 30, 2020 the maximum period of CDL validity by waiving 49 CFR 383.73(b)(9) and 383.73(d)(6) for CDLs due for renewal on or after March 1, 2020.

- Extends until June 30, 2020 the maximum period of CLP validity by waiving 49 CFR 383.73(a)(2)(iii) and 383.25(c) for CLPs that are due for renewal on or after March 1, 2020, without requiring the CLP holders to retake the general and endorsement knowledge tests.

- Waives the requirement under 49 CFR 383.25(e) that CLP holders wait 14 days to take the CDL skills test.

- Waives the requirement under 49 CFR 391.45 that CDL holders, CLP holders, and non-CDL drivers have a medical examination and certification, provided that they have proof of a valid medical certification that was issued for a period of 90 days or longer and that expired on or after March 1, 2020. e.

- Waives the requirement under 49 CFR 383.71(h)(3) that, in order to maintain the medical certification status of “certified,” CDL or CLP holders provide the State Driver Licensing Agency with an original or copy of a subsequently issued medical examiner’s certificate, provided that they have proof of a valid medical certification that expired on or after March 1, 2020.
- Waives the requirement under 49 CFR 383.73(o)(2) that the State Driver Licensing Agency change the CDL or CLP holder’s medical certification status to “not certified” upon the expiration of the medical examiner’s certificate or medical variance, provided that the CDL or CLP holders have proof of a valid medical certification that expired on or after March 1, 2020.

- Waives the requirements under 49 CFR 383.73(o)(4) that the State Driver Licensing Agency initiate a CDL or CLP downgrade upon the expiration of the medical examiner’s certificate or medical variance, provided that the CDL or CLP holders have proof of a valid medical certification or medical variance that expired on or after March 1, 2020.

- In accordance with 49 CFR 383.23(a)(1) and 391.41(a)(1)(i), FMCSA continues to recognize the validity of commercial driver’s licenses issued by Canadian Provinces and Territories and Licencias Federales de Conductor issued by the United Mexican States, in accordance with 49 CFR part 383, when such jurisdictions issue a similar notice or declaration extending the validity date of the medical examination and certification and/or validity of the corresponding commercial driver’s license due to interruption to government service resulting from COVID-19.

States, CDL holders, CLP holders, and interstate non-CDL CMV drivers are covered under this waiver without further action.

FMCSA will not issue a finding of noncompliance under 49 CFR part 384 against States for action or inaction consistent with this waiver.

FMCSA’s legal authorities extend to waiver of the maximum period under the FMCSRs for State issuance of CDLs (8-years). While many States have adopted the maximum 8-year renewal period, other States have adopted shorter periods, and waiving the 8-year limit would provide no relief to drivers with CDLs issued by those States. In the interest of effectively providing automatic CDL renewal relief for as many drivers with recently expired CDLs as possible, FMCSA is therefore issuing a separate Notice of Enforcement Policy stating that, through June 30, 2020, the Agency will not take enforcement against drivers for operation of a CMV if the driver held a valid CDL on February 29, 2020, or against motor carriers for use of such a driver. Most States have adopted the full 1-year maximum period of CLP validity, but FMCSA is similarly including its Enforcement Policy a comparable provision on non-enforcement of recently expired CLPs.

**Public Interest**

FMCSA finds that the granting of this waiver is in the public interest, given interstate and intrastate CDL and CLP holders’ and interstate non-CDL drivers’ critical role in delivering necessary property and passengers, including, but not limited to, shipments of essential supplies and persons to respond to the COVID-19 outbreaks. This waiver is in the public interest because it would allow drivers covered under this waiver to deliver essential supplies and persons across State lines to address the national emergency. This waiver will also reduce the administrative burden on State Driver Licensing Agencies and CDL, CLP, and interstate non-CDL drivers during this national emergency.
Safety Equivalence  Due to the limited scope of this waiver, the short duration, and the ample precautions that remain in place, FMCSA has determined that the waiver is likely to achieve a level of safety that is equivalent to the level of safety that would be obtained absent the waiver.

The waiver of a particular regulation should not be looked at in isolation but rather as part of the whole of all regulations governing the safety of drivers. Waiver determinations are made holistically, taking all relevant factors into account. See International Bhd of Teamsters v. DOT, 724 F.3d 206 (D.C. Cir. 2013). Notably, although the maximum period of time for CDL and CLP expiration is set by regulation, it is not one of the core of regulations that FMCSA evaluates to determine whether a State program is in “substantial compliance.” See 49 CFR 384.301. This waiver also enhances safety by not requiring or incentivizing State offices to remain open during the pandemic and CDC recommendations to social distance.

The waiver does not alter any of the knowledge and skills testing requirements for obtaining either a CDL, a CLP, or a necessary endorsement. It does not allow CDL or CLP holders to extend their licenses if they expired prior to March 1, 2020. It does not apply to a CDL or CLP holder if the driver’s privileges have been suspended or withdrawn for traffic offenses. This waiver does not cover CDL holders, CLP holders, or non-CDL drivers whose medical certifications expired prior to March 1, 2020.

In this case, FMCSA believes that the measures listed below under Terms, Conditions, and Restrictions of the Waiver, including proof of a recently expired valid CDL, CLP or medical certificate, the inapplicability of the waiver to expired medical certificates issued for less than 90 days, and the requirement to notify FMCSA in the event of accidents involving drivers operating under the waiver, taken collectively, provide the assurance needed to meet the legal standard that granting the waiver is likely to achieve an “equivalent level of safety.”

As such, FMCSA has determined that a waiver from the regulations noted above during the period of the waiver will achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver.

Unique Circumstances
COVID-19 outbreaks have led to widespread closures of State and Federal government offices, reduction of government and medical services, and disruption of transportation systems, including driver shortages and related interruption of supply chains, which are heavily dependent on continued CMV operations. FMCSA finds that the circumstances surrounding this waiver are unique because such government and medical operations are not providing their usual level of service.

For the reasons above, FMCSA grants, until June 30, 2020, a waiver as provided above, subject to the terms and conditions below.

Terms, Conditions, and Restrictions of the Waiver
This waiver covers States, CDL holders, CLP holders and interstate non-CDL CMV drivers for the period beginning at 12:01 a.m. (ET) on March 20, 2020, continuing through 11:59 p.m. on June 30, 2020.
(1) This waiver does not apply to a CDL or CLP holder if the driver’s license expired before March 1, 2020.

(2) This waiver does not apply to a CDL or CLP holder if the driver’s privileges have been suspended or withdrawn for traffic offenses.

(3) Drivers claiming relief under this waiver from the requirement for a valid medical certificate must have proof of a valid medical certificate that expired on or after March 1, 2020, and carry a paper copy of their expired medical certificates.

(4) Drivers who cannot produce evidence of a prior medical certification that expired on or after March 1, 2020, are not covered under this waiver, including new drivers who have never obtained a medical certification.

(5) Drivers who, since their last medical certificate was issued, have been diagnosed with a medical condition that would disqualify the driver from operating in interstate commerce, or who, since their last medical certificate was issued, have developed a condition that requires an exemption or Skill Performance Evaluation from FMCSA are not covered under this waiver.

(6) This waiver does not apply to medical examiner’s certificates originally issued for less than 90 days.

(7) Notification to FMCSA of Accidents. Each motor carrier must notify FMCSA within 5 business days of an accident (as defined in 49 CFR 390.5), involving any CDL holder, CLP holder, or non-CDL driver operating under the terms of this waiver. See 49 CFR 390.15(b) (requiring maintenance of accident registry.) Notification shall be by email to MCPSD@DOT.GOV. The notification must include the following information:
   i. Date of the accident;
   ii. City or town, and State in which the accident occurred, or closest to the accident scene;
   iii. Driver's name and license number;
   iv. Vehicle number and State license number;
   v. Number of individuals suffering physical injury;
   vi. Number of fatalities;
   vii. The police-reported cause of the accident (if available at time of the report); and
   viii. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations.

(8) FMCSA reserves the right to revoke this waiver for drivers’ involvement in accidents, motor carriers’ failure to report accidents, and drivers’ failure to comply with the restrictions of this waiver.

Jim Mullen
Acting Administrator
April 1, 2020

For UTCA Members: Covid-19 Financial Action Steps
By Jack Callahan, CPA, CohnReznick Construction Practice Industry Leader

First and foremost, I hope that this correspondence reaches when all your families, personal and business are safe and healthy. The UTCA has asked that I communicate with its members, both contractor and associates, and provide an update on the various action steps that you should be discussing with your team of trusted advisors to address your company’s response to the various actions that the Congress has enacted in the past three weeks. Talk about March Madness.

To help stay on track of all the updates, newly released information and analysis stemming from COVID-19, please bookmark CohnReznick’s Coronavirus Resource Center. UTCA also has a resource center on their web site.

Please keep in mind that, while the President has signed these Acts into law, the regulations are still being written and will be for days now. What I will be providing is an overview and cannot be relied upon as tax advice. I will provide links to various websites where more detailed and authoritative support can be found.

UTCA has provided guidance on the safety and legal action steps you need to address. The focus here is on just the financial matters.

1) The first actions that Congress took to provide relief was the extension of both tax filing deadlines and delaying payments of first quarter estimated taxes. Most Federal tax returns due to be filed on April 15, 2020 have now been extended and will be due to be filed by July 15, 2020. Additionally, the first quarter estimated taxes due to be paid April 15, 2020, have been extended and are due to be paid July 15, 2020. It is important to note the June 15, 2020, estimated payments have not, as of now, been extended. You will have two payments due in quick succession so be aware. Details on tax extensions from the IRS are here. CohnReznick has additional information here.

2) The second major action was the passing of the Families First Coronavirus Response Act. This act applies to employers with less than 500 employees. Those employers with over 500 employees are exempt and they follow their regular leave time provisions. Additionally, those employers with less than 50 employees can elect out of these provisions. For those companies in the 51-500 employees range, they must comply with The Emergency Family and Medical Leave provisions and the Emergency Paid Sick leave provisions. The actual provisions are too detailed to be set forth here but the details are available here. It is critical to know that these provisions, including the posting of notifications, are required to be implemented tomorrow April 2, 2020.

3) The third major provision is included in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. A full detailed summary of the CARES Act is here. What I will set out are items that are identified as most critical to UTCA member companies and their employees. I have broken down the critical provisions into “business provisions” and “personal provisions,” though, in a few cases, they overlap.
A) BUSINESS PROVISIONS:

i) The most critical and timely issue will be the Paycheck Protection Plan (PPP) Loan program. These loans will be administered by the Small Business Administration but will be processed at local banks. Generally, these loans are available to businesses with less than 500 employees. There are a lot of nuances to this so, if you are uncertain or appear to qualify, please reach out to your trusted advisors. These loans are also available to nonprofits as well. The PPP loans are powerful and are available for amounts equal to 2.5 times monthly payroll (up to a maximum of $10 million dollars). There should be no surprise that in an 800-page bill, there are a lot of technicalities and understanding the loan amount your company can be eligible for will take some calculations. It is critical you get these correct. Most relevant is that in calculating gross payroll, only wages up to $100,000 annually per employee are allowable. The SBA made an application form available last night and it can be found [here](#).

The banks do not yet have forms but our discussions indicate they will this week and may begin taking applications no sooner that this Friday April 3, 2020.

This loan can only be used to pay payroll costs, employee benefits, commissions, mortgage payments (interest only), rent for existing leases, utilities and interest on any existing debt obligations. The loan will cover costs from February 15, 2020 through June 30, 2020. There have been promises made to process and distribute these funds quickly. We will see. These loans will be unsecured and will require no personal guarantees. Principal and interest payments on these loans are deferred six months and the rates will be historically low. The most financially rewarding item is that these loans will be FORGIVEN, should the borrower meet required steps. In general, again subject to modifications, those loan proceeds used for payroll costs, interest on mortgage, rent and utilities will be subject to forgiveness. Real incentives are being given here to allow an employer to maintain their workforce. Details for borrowers for PPP loans is found [here](#).

ii) For employers that will not qualify for PPP loans, Congress has provided some relief in the form of an Employee Retention Credit. This credit provides for a refundable credit for up to $5,000 per employee for those employers that continue to pay workers through December 31, 2020. There are provisions here also as to which businesses qualify but, in general, if your business has been impacted and do not receive a PPP loan, the business can meet certain impact levels depending on employee headcounts. This credit applies to the employer’s share of quarterly payroll taxes and any excess credit is fully refundable. Forms have already been generated to expedite these refunds.

iii) The Act has also provided economic relief in the way of an Employer Payroll Tax Deferral. This will be available to those employers that do not receive a PPP loan. Under these provisions employers can defer paying the employer share of Social
Security payroll taxes (6.2%) from March 27, 2020 until the end of 2022. The deferred amount must be repaid 50% on 12/31/2021 and the balance on 12/31/2022. This is a powerful cash savings tool for larger employers.

iv) Recognizing the severe impact the Coronavirus will have on business cash flows, certain provisions in the Tax Cuts and Jobs Act (TCJA) have been repealed. Net Operating Losses from 2018, 2019 and 2020 can be carried back for five years and the Act temporarily removes the 80% loss offset limitations.

v) The Act corrects a technical error in the TCJA and now allows the immediate expensing or acceleration of depreciation on interior improvements to nonresidential property including leasehold improvements. This adjustment can be reflected either in a refiling of a prior year’s tax return or the current adjustment of the depreciable lives.

vi) The Act provides for the liberalization of the deductibility of business interest in 2019 and 2020. The limitation amount has been raised from 30% to 50%.

vii) The Act provides that any debt cancellation through the PPP loans will be excluded from taxable income.

viii) The Act increases the limits on charitable contributions from 15% to 25%.

B) INDIVIDUAL PROVISIONS: For your individual employees impacted by this act, there have also been several improvements.

i) Recovery Checks will be made available to most employees with income below $99,000.
   The Act provides checks up to $1,200 ($2,400 for those married filing jointly). These amounts will be increased by $500 for each qualifying child. Commitments have been made to get these payments out within weeks.

ii) Penalties have been waived for early withdrawal from retirement funds. Individuals can withdraw up to $100,000 from their retirement funds and not be subject to the 10% penalty and the income tax due on those distributions will be spread over three years.

iii) Taxpayers are relieved of taking required minimum distributions from certain plans and accounts through the end of 2020.

iv) Charitable contributions of up to $300 will be allowed even for those taxpayers taking the standard deduction.

v) Exclusion of Certain Employer Payments of Student Loans. Employers may contribute up to $2,250 toward an employee’s student loans in 2020 and those contributions will be excluded from the employees’ wages.

vi) Expanded Unemployment. The Act provides employees an additional $600 a week on top of what they currently will receive through July 31, 2020 and the Act further provides a $600-week benefit for 13 weeks after the employee’s state unemployment benefits expire. This means eligible workers will be able to receive benefits for 39 weeks, up from the current 26 week cap in most states.

vii) Employees will be able to take loans from eligible plans for up to $100,000 and will have three years to repay those loans.
While there is a lot to explain, I hope this overview helps shed light on where help exists. Everything here is subject to much more discussion which can be found if you follow the referenced links.

The urgency for employers that qualify is to reach out to local bankers and inquire about the PPP loans. Let them know you intend to file and get your information ready to be prepared to file. These loans will be processed on a first-come, first-serve basis so there urgency exists.

We wish you all the best as you navigate through these challenging times and we want you to know we are here to assist.