SUMMARY OF CARES ACT PROVISIONS

Note: This document briefly summarizes provisions in the Coronavirus Aid, Relief, and Economic Security Act ("the CARES Act") that could possibly be of interest to church plans, ministries and plan members. This summary reflects those CARES Act provisions as they are currently understood on March 29, 2020, without any agency guidance. As guidance is issued that may be applicable, we plan to provide information to you on that guidance or to refer you to that guidance, but may not be able to update the summary with that information. This summary may be used by Church Alliance members as a basis for communications to ministries and plan members.

PROVISIONS DESCRIBED IN SUMMARY

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A. Paycheck Protection Program ("PPP")

Executive Summary
PPP loan program is designed to keep small businesses, including qualifying non-profit organizations, afloat during mandated Coronavirus Disease 2019 ("COVID-19") related closures.

This new loan program is based on the existing general business loan program of the Small Business Association ("SBA") and will make potentially forgivable loans available to qualifying small businesses. The loan program is known as the "7(a)" program and not based on the SBA disaster loan program.

Additional detail will be provided as the SBA drafts implementing regulations, which the CARES Act requires to occur within 15 days.

Eligibility
Most non-profit organizations, that generally have less than 500 employees, are eligible to apply. Select non-profit organizations with more than 500 employees may qualify if the organization has an employee headcount less than the employee size standard, if any, under the applicable NAICS Code.

In evaluating eligibility for such loans, lenders are to consider: (1) whether the borrower was operational on February 15th, and (2) whether the borrower was paying salaries and payroll taxes on independent contractors at that time.

The SBA affiliation rules will be applied to non-profit organizations in the same way as they are applied to small businesses. Under these rules, generally the SBA considers whether organizations control or are controlled by another organization.

Borrowing Limits
The CARES Act appropriated $349 billion for loans under this program. The maximum PPP loan available to any company is $10 million or, if less, 2.5 times the average monthly payroll costs of the company over the year prior to the making of the loan, excluding any annual compensation above $100,000 for any person, prorated for February 15 through June 30, 2020.

Note: Under the CARES Act, "payroll costs" include payments for vacation, parental, family, medical, and sick leave; allowances for dismissal or separation; group health care benefits (including insurance premiums); retirement benefits; and State or local tax assessed on the compensation of employees, as well as payments of any compensation to an independent contractor that are wages, income, earnings from self-employment or similar compensation.

Use of Proceeds
PPP loan proceeds may be used for:
- Payroll costs, excluding the prorated portion of any compensation above $100,000 per year for any person
- Mortgage interest and rent payments
- Utilities
- Interest on debt that existed as of February 15, 2020

Terms
PPP loans bear interest at a maximum rate of 4% and mature no later than 10 years after determination of the amount, if any, to be forgiven. Payments under PPP loans may be deferred for 6–12 months, and the SBA is directed to issue guidance on the terms of this deferral. PPP loans have no collateral or personal-guarantee requirements.

Loan Forgiveness
PPP loans can be forgiven to the extent that the loan proceeds have been used for the following costs incurred and payments made during the eight-week period after the loan is made:

- Payroll costs, excluding the prorated portion of any compensation above $100,000 per year for any person
- Mortgage interest (but not prepayments or principal payments) and rent payments, on mortgages and leases in existence before February 15, 2020
- Certain utilities, including electricity, gas, water, transportation, and phone and Internet access for service that began before February 15, 2020

Caveats:

- The amount forgiven is reduced based on failure to maintain the average number of full-time equivalent employees versus the period from either February 15, 2019, through June 30, 2019, or January 1, 2020, through February 29, 2020, as selected by the borrower.
- The amount forgiven is also reduced to the extent that compensation for any individual making less than $100,000 per year is reduced by more than 25% measured against the most recent full quarter.
- Reductions in the number of employees or compensation occurring between February 15, 2020, and 30 days after enactment of the CARES Act will generally be ignored to the extent reversed by June 30, 2020.
- Under the language of the CARES Act, there is no exclusion for churches and other religious organizations (collectively referred to herein as "religious organizations"). According to information from Sen. James Lankford's office, religious organizations may participate in this loan program. It is unclear at this time whether participation in this program may result in the borrower being considered a recipient of federal funds, which may cause the borrower to be subject to federal laws to which it would otherwise not be subject. The Church Alliance will be advocating with the SBA to make this program as beneficial as possible for religious organizations.

B. Provisions to Help Employers with Payroll Taxes

The CARES Act includes two provisions related to employment (payroll) taxes, which are intended to encourage employers to retain employees and to smooth cash flow concerns related to remission of payroll taxes to the Internal Revenue Service ("IRS").

a. Payroll Taxes Delay

The CARES Act creates a "payroll tax deferral period" running from March 27, 2020 through the end of 2020. Employers (and self-employed individuals as explained below) may defer payment of the "employer share" of the Social Security tax they otherwise are responsible for paying to the federal government with respect to their employees. Employers generally are responsible for paying a 6.2%

Social Security tax on employee wages. For religious organization employers this is generally limited to Social Security taxes on the wages of lay (non-clergy) employees.

It is important to understand that this is not a payroll tax holiday, but a postponement; the 2020 taxes deferred must be paid in the following two years (2021 and 2022). This is intended to allow employers to spread these payroll tax costs over time, which may free up existing cash and other assets to continue to fund essential operations, pay wages, and provide employee benefits. The deferred payroll taxes must be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

Please note, this payroll tax deferral program will not be available to any organization that has had a PPP loan forgiven. Until guidance is issued, the safest course would be to refrain from deferring payroll taxes, if the organization will be seeking to obtain a PPP loan and have it forgiven.

The CARES Act also allows self-employed individuals to defer payment of part of the Social Security taxes they would otherwise owe the IRS. By statute, clergy are considered self-employed for employment tax purposes, generally paying self-employment ("SECA") taxes instead of sharing the payment of Social Security taxes with their employers. This provision in the CARES Act would allow clergy to defer paying the employer portion of Social Security taxes (6.2%) but they would still have to timely pay the employee share (also 6.2%) of Social Security taxes as part of their SECA tax payments. The deferred Social Security self-employment taxes must be paid over the following two years, with half of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022.

b. Employee Retention Credit for Employers Subject to Closure Due to COVID-19

Summary
Employers can receive a refundable credit against applicable employment taxes of up to $5,000 per employee in 2020.

> Employers with 100 or fewer full-time employees (measured by average employment in 2019) – this credit applies if the employer fully or partially suspends operations due to an order from a government authority or if the employer experiences a decline in revenue for any calendar quarter in 2020 of 50% or more compared to the same calendar quarter in 2019. All qualifying wages count towards this credit, whether employees are working or not.
>
> Employers with more than 100 full-time employees (measured by average employment in 2019) – the same conditions apply as for employers with 100 or fewer employees described above, but the credit only applies to qualifying wages paid to employees who are not working.

Credit Amount
50% of qualified wages (see bullets below) paid to an employee on or after March 13, 2020 (and before January 1, 2021) in each calendar quarter, up to a total of $10,000 per employee for all quarters. (50% of $10,000 = maximum credit of $5,000/employee for the year)

The credit is against an employer's applicable employment taxes (see bullets below) for each calendar quarter, with any excess refunded to the employer.

Qualified Wages

- Employers with more than 100 full-time employees on average during 2019 = wages paid to employees not providing services due to a COVID-19-related suspension of operations or significant decline in gross receipts
- Employers with 100 or fewer full-time employees on average during 2019 = wages paid to any employee, whether working or not
- Wages are only included if paid during the period from March 13, 2020 through December 31, 2020.
- Does not include payments made under section 7001 or 7003 of the Families First Coronavirus Response Act ("FFCRA") (required paid sick leave or required paid family leave)
- Includes pro-rata portion of employer's qualified health plan expenses to the extent such amounts are excluded from an employee's gross income and properly allocated to those employees with qualified wages
- Wages included are those defined in Internal Revenue Code ("Code") section 3121(a) and compensation defined in Code section 3231(e)
    - **Note:** service performed by ministers in the exercise of their ministry is excluded from the definition of employment in Code section 3121

Applicable Employment Taxes

These employment taxes include the employer portion of Social Security taxes (Code Section 3111(a)), which generally is 6.2% of an employee's wages, reduced by any of the following credits received by an employer:

- employment of qualified veterans under Code section 3111(e)
- research expenditures of qualified small businesses under Code section 3111(f)
- required paid sick leave under section 7001 of the FFCRA
- required paid family leave under section 7003 of the FFCRA

Eligible Employer

- An employer (including a tax-exempt employer) carrying on trade or business during calendar year 2020 that experiences a full or partial suspension of operations due to orders from a government authority limiting commerce due to COVID-19, or that experiences a significant decline (more than 50%) in gross receipts when compared to the same quarter in the previous year
- All persons treated as a single employer under Code section 52(a) or (b), or Code section 414(m) or (o) are treated as one employer
    - **Note:** organizations eligible to participate in a church plan are treated as a single employer only under Code section 414(c), so this rule should not apply to such organizations
- Employers receiving a PPP loan (described in section A of this summary) are not eligible for this credit.

The credit no longer may be claimed when the full $10,000 per employee qualified wage maximum is reached, or when an employer's gross receipts for a quarter in 2020 are greater than 80% of the gross receipts for the same calendar quarter in 2019.

C. Economic Stabilization Loans

The CARES Act created a loan and loan guarantee program aimed at economic stabilization. This program will provide loans to the airlines and other named industries, but also specifies that the Treasury Department will seek to implement a program through the Federal Reserve that provides financing to banks and other lenders to make direct loans to nonprofit organizations "to the extent practicable".

The loans under this Federal Reserve program will be available to mid-sized businesses and non-profit organizations, with between 500 and 10,000 employees. Although there is no loan forgiveness, the interest rate on these loans can no higher than two percent and would not accrue interest or require payments for at least the first six months.

These loans will be subject to certain loan criteria and obligations, including:

- The funds received must be used to retain at least 90 percent of the recipient's workforce, with full compensation and benefits, through September 30, 2020;
- The recipient will not abrogate existing collective bargaining agreements for the term of the loan plus an additional two years; and
- The recipient must remain neutral in any union organizing effort for the term of the loan.

D. Pandemic Unemployment Assistance Program

The CARES Act creates a temporary Pandemic Unemployment Assistance program ("PUAP") to provide payment to those not traditionally eligible for unemployment benefits and who are unable to work as a direct result of COVID-19. The Act also provides enhanced benefits for ***all*** workers eligible for unemployment. Unlike the FFCRA, which only applies to private employers with fewer than 500 employees, the CARES Act applies to all employers regardless of size.

Unemployment benefits are State-based programs and the eligibility criteria, amount of benefits and funding (taxes or premiums) for the coverage depend on the State involved. Generally, unemployment compensation benefits replace about one-third to one-half of wages. A list of the State programs and benefits can be found at https://oui.doleta.gov/unemploy/content/sigpros/2020-2029/January2020.pdf.

The CARES Act expands and enhances the unemployment benefits available under State programs by

- expanding the availability of benefits to individuals who are not covered by a State program;
- extending the time period for State benefits to make them available for up to 39 weeks in total, expiring December 31, 2020,
- providing for an additional $600 weekly payment available for up to four months (expiring July 31, 2020), allowing temporarily for a higher rate for low-wage workers, and
- adding a short term compensation benefit for workers who have not been laid off but whose employment and wages have been reduced due to COVID-19.

Eligibility of Workers for Non-Profits and Religious Organizations

The Act extends coverage to workers who are self-employed, seeking part-time employment (if permitted under state law), do not have sufficient work history, ***or otherwise would not qualify for***

regular unemployment under state or federal law and become unemployed or cannot find work due to COVID-19. The program is intended to cover independent contractors too.

In an Unemployment Insurance Explainer on the CARES Act prepared by the House Ways and Means Republicans on March 20, 2020, it states:

> **"Are self-employed and independent contractors eligible?**
> Yes. Self-employed and independent contractors, like gig workers and Uber drivers, are eligible for Pandemic Unemployment Assistance. *This also covers workers laid off from churches and religious institutions who may not be eligible under the State's program."* (Emphasis added.)

In many States, non-profit organizations, including religious organizations, may elect to participate in the State program and pay the unemployment compensation taxes or to be self-insured for unemployment benefits (typically making contributions through the State system once an employee is eligible for benefits). In some States, religious organization are exempt from the State program. While the CARES Act provides coverage for unemployed workers of such organizations, how the States will administer the benefits for these workers will depend on each State. To determine how to apply for benefits in a State, the U.S. Department of Labor maintains a website with information on each State at https://www.careeronestop.org/WorkerReEmployment/UnemploymentBenefits/unemployment-benefits.aspx.

For non-profits that would normally be self-insured for unemployment benefits (typically making contributions through the State system once an employee is eligible for benefits), they would only be responsible for paying 50% of the unemployment benefits their employees collect as opposed to 100%. The CARES Act provides that the federal government will reimburse the State for the remaining 50% of those benefits. Employees at these organizations will also be eligible for the additional $600 per week benefit under the PUAP. After the first 26 weeks of the employee's benefits expire under regular State unemployment laws, an employee of these non-profits would become eligible for the expanded benefits under the PUAP, which would grant an additional 13 weeks of benefits.

While employees of other non-profit organizations and religious organizations, which may normally be exempt from state unemployment requirements, are immediately covered by the PUAP under the CARES Act, it is yet to be seen how States will administer those provisions for those unemployed workers or how long it will take to process the claims of such workers.

Eligible Individuals

In addition to the above-mentioned requirements, covered individuals are those who are unemployed, partially unemployed, or unable to work because:

- They have tested positive for COVID-19 or are experiencing symptoms of COVID-19 and are seeking a medical diagnosis;
- A member of their household has been diagnosed with COVID-19;
- They are providing care for a family or household member who has been diagnosed with COVID-19;
- A child or other person in the household for whom they have primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of COVID-19, and such school or facility care is required for the individual to work;

- They cannot reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- They cannot reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- They were scheduled to commence employment and do not have a job or are unable to reach the job as a direct result of the COVID-19 public health emergency;
- They have become the breadwinner for a household because the head of the household has died as a direct result of COVID-19;
- They had to quit their job as a direct result of COVID-19;
- Their place of employment is closed as a direct result of the COVID-19 public health emergency; or
- They meet any additional criterial established by the Secretary for unemployment assistance.

Employees who are able to telework with pay and those who are receiving Emergency Paid Sick Leave ("EPSL") or Family and Medical Leave Act-Public Health Emergency Leave under the FFCRA, or are receiving paid leave under an employer plan or state or local law, cannot simultaneously receive unemployment benefits under the CARES Act.

Workers who voluntarily quit are not eligible for these benefits.

Eligibility Period
Covered individuals will receive benefits for weeks of unemployment, partial unemployment, or inability to work caused by COVID-19 beginning on or after January 27, 2020 and ending on or before December 31, 2020, for as long as the unemployment, partial unemployment or inability to work caused by COVID-19 continues.

Benefit Amount
Under the Act, the weekly benefit amount for most workers is equal to the amount authorized under the State law where the covered individual was employed. As noted above, for workers not covered by a State law, or for self-employed individuals, the weekly benefit is calculated under 20 C.F.R. § 625.6, which is the Disaster Unemployment Assistance ("DUA") program already in place under Federal law. DUA benefits are administered by the State but funded by the Federal government. The minimum weekly benefit amount is the average benefit amount of the State.

The Act also enhances unemployment compensation benefits for all eligible individuals – whether eligible under the expansion in the CARES Act or under applicable state law. The enhanced benefits include an additional $600 per week (even if this takes the employee above their pre-unemployment earnings level), the elimination of waiting periods (a measure many states already have taken), and an additional 13 weeks of eligibility for benefits (39 weeks in total). It is anticipated that these benefits will be carried out through agreements between each state and the federal government.

Short-Term Compensation Program
The Act provides funding to support states that develop a "short-time compensation" program for employers that reduce hours in lieu of a layoff (but not for seasonal, temporary or intermittent employees). Many states already have so-called "work share" programs that provide for partial unemployment benefits when employers do hours reductions, or partial furloughs, in lieu of layoffs.

Under such a program, employees whose hours have been reduced would receive pro-rated unemployment benefits, and the federal government would fund 100% of the costs employers incur by retaining employees at reduced hours through December 31, 2020. This is intended to provide an incentive for employers to reduce employee hours in lieu of laying off employees.

E. Charitable Contribution Incentives

Allowance of Partial Above the Line Deduction for Charitable Contributions

The provision encourages individuals to contribute to religious, charitable and educational organizations by creating a new "above the line" deduction (i.e. for taxpayers who take the standard deduction). This deduction will permit them to deduct up to $300 of annual monetary contributions. This is applicable for tax years beginning after 2019, and does not sunset after 2020 like the increased limits described below.

Modification of Limitations on Charitable Contributions during 2020

The provision increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. Such cash contributions must be made during 2020, and this provision does not extend the due date of the 2020 tax return.

For individuals, the 50-percent of adjusted gross income limitation is suspended for cash contributions made in 2020. For corporations, the 10-percent limitation is increased to 25 percent of taxable income for cash contributions made in 2020. This provision also increases the limitation on deductions from 15- percent to 25-percent of net income for corporate food donations made during 2020.

F. Recovery Rebates for Individuals

All U.S. residents with adjusted gross income of up to certain limits are entitled to receive rebates under the CARES Act. For the vast majority of Americans, no action on their part will be required in order to receive a rebate, because the IRS will use a taxpayer's 2019 tax return if filed, or in the alternative their 2018 return. The Secretary of the Treasury has stated that there will be a web-based application for those who don't receive direct deposit to give the IRS the necessary information. Below are some of the details:

- A rebate of $1,200 ($2,400 for joint filers) is available to U.S. residents who are not a dependent of another taxpayer and who have a work-eligible social security number, if their adjusted gross income is no more than: (i) $75,000 for single filers, (ii) $112,500 for head of household filers, and (iii) $150,000 for joint filers.
- An additional $500 per qualifying child under the age of 17 also will be provided.
- The full rebate is available to individuals who have little to no income or who have non-taxable income from means-tested entitlement programs (e.g., Supplemental Security Income, the Earned Income Tax Credit, and the Child Tax Credit).
- The total rebate is reduced by $5 for each $100 that a taxpayer's income exceeds the income thresholds above and is completely phased out for single filers with incomes exceeding $99,000, $146,500 for head of household filers with one child, and $198,000 for joint filers with no children.
- The rebate may be electronically deposited into any account authorized by the taxpayer, on or after January 1, 2018, to receive a federal income tax refund or other federal payment.

- A letter is to be mailed to a taxpayer's last known address within 15 days after a rebate has been paid describing the amount and method of the payment and a phone number at the IRS to call in case the payment is not received.

G. Student Loan Relief

Exclusion for Certain Employer payments of student loans
The provision expands tax-free educational assistance to include student loan repayments for employees. It enables employers to provide a student loan repayment benefit to employees on a tax-free basis.

Under the provision, an employer may contribute up to $5,250 annually toward an employee's student loans, and such payment would be excluded from the employee's income. The $5,250 cap applies to both the 2020 student loan repayment benefit as well as other educational assistance (e.g., tuition, fees, books) provided by the employer under current law. The provision applies to any student loan payments made by an employer to the employee or directly to the lender on behalf of an employee after March 27, 2020 and before January 1, 2021.

Temporary Relief for Federal Student Loan Borrowers
Principal and interest payments are deferred without penalty on federal student loans through September 30, 2020. No interest will accrue during this period and the borrower will be treated as if payments were made for purposes of loan forgiveness and loan rehabilitation programs. Collection activity on such loans also must cease during the period ending September 30, 2020. Borrowers have the option to continue to pay principal on their student loans during this period.

The CARES Act requires notices to be provided to borrowers about the deferral period. It also requires notices to be issued beginning on August 1, 2020 about resumption of payment obligations and options with respect to such obligations.

Service Obligation to Teachers
For teachers who could not finish their year of teaching service as a result of COVID-19, their partial year of service will be counted as a full year of service toward TEACH grant obligations or Teacher Loan Forgiveness. The CARES Act waives a requirement that teachers must serve consecutive years of teaching service for Teacher Loan Forgiveness eligibility, if a teacher's service is not consecutive as a result of COVID-19.

H. Retirement Plan Changes

Coronavirus-Related Distribution
The CARES Act adds a new category of in-service distribution, referred to as a "coronavirus-related distribution," available to qualified individuals regardless of whether the distribution would otherwise be permitted. A coronavirus-related distribution is a distribution of up to $100,000 for a taxable year made from a 401(a) plan, 403(b) plan, governmental 457(b) plan, or IRA on or after January 1, 2020, and before December 31, 2020, to a "qualified individual." A qualified individual is an individual who:

- is diagnosed with COVID-19 by a test approved by the Centers for Disease Control and Prevention ("CDC"), or
- has a spouse or dependent diagnosed with COVID-19 by a test approved by the CDC, or

- experiences adverse financial consequences as a result of (i) being quarantined, furloughed or laid off or having work hours reduced due to COVID-19, (ii) being unable to work due to lack of child care due to COVID-19, (iii) being unable to work due to closing or reducing hours of a business owned or operated by the individual due to COVID-19, or (iv) other factors as determined by the Secretary of the Treasury.

Importantly, the plan administrator may rely on an employee's certification that one of the above conditions is satisfied in determining whether a distribution is a coronavirus-related distribution. An employer is responsible for complying with the $100,000 distribution limit only with respect to the retirement plans it and any employer in its controlled group maintains.

A coronavirus-related distribution is not treated as an eligible rollover distribution, mandatory withholding does not apply, and a 402(f) special tax notice is not required. Additionally, the 10% early distribution penalty tax does not apply.

Unless a participant elects otherwise, a coronavirus-related distribution will be included in the participant's gross income ratably over three tax years beginning with the year of distribution. A participant who receives a coronavirus-related distribution may repay the distribution in one or more contributions to any eligible retirement plan to which a rollover contribution can be made within three years of the distribution. The repayment will be treated for tax purposes as a direct rollover (or, if made to an IRA, as a trustee-to-trustee transfer) made within 60 days of distribution.

This new distribution category appears to be optional, although the 10% early distribution tax would not apply to a distribution that qualified under another distributable event (such as severance from employment) and also met the coronavirus-related distribution definition.

Loan Rule Changes

The CARES Act increases the loan limits for any loan made from a 401(a), 403(b) or governmental 457(b) plan to a qualified individual during the 180 day period beginning on March 27, 2020. The CARES Act increases the maximum loan amount to $100,000 (currently $50,000), and permits loans up to 100% (currently 50%) of the present value of the participant's account.

The CARES Act also extends the due date for a qualified individual with an outstanding loan (on or after March 27, 2020) under a retirement plan. If the due date for any loan repayment occurs during the period from March 27, 2020 through December 31, 2020, the due date for the repayment is delayed one year. Any subsequent repayments of the loan are required to be adjusted to reflect both the delayed due date and any interest accruing during such delay, and the delay is disregarded for purposes of determining compliance with the five year term limit.

Only "qualified individuals" are eligible for this loan relief. The term qualified individual has the same meaning as described above for a coronavirus-related distribution. However, unlike with respect to the coronavirus-related distributions, there is no provision in the loan rule changes that allow the plan administrator to rely on an employee's certification that he or she is a "qualified individual."

The loan rule changes that temporarily increase the amount of available loans appear to be optional. However, the loan rule that extends the repayment date of an outstanding loan may be required.

Required Minimum Distribution Waiver
Effective January 1, 2020, the CARES Act waives required minimum distributions ("RMDs") for defined contribution 401(a) plans, 403(b) plans, governmental 457(b) plans, and IRAs for calendar year 2020. The waiver applies to RMDs required to be made in 2020 and to 2019 RMDs that are required to be made by April 1, 2020 (if not already made in 2019). For purposes of determining RMDs after 2020, an individual's required beginning date is determined without regard to this 2020 waiver.

In addition, the five year distribution period that applies to certain beneficiaries will be determined without regard to calendar year 2020.

If an eligible rollover distribution paid in 2020 would have been an RMD for 2020 but for the waiver, the distribution is not subject to the direct rollover rules, 20% mandatory withholding requirement, or the 402(f) notice.

Amendment Deadline
Plan sponsors must amend their plans for the CARES Act changes by the last day of the first plan year beginning on or after January 1, 2022, *e.g.* December 31, 2022 for calendar year plans.

I. Health Plan Changes

The CARES Act made a couple of technical amendments to the FFCRA, adding new language to the requirement that group health plans cover testing for COVID-19. The new language is designed to avoid technical issues slowing up new testing methods[1]. Self-insured church health plans may want to defer to their third-party administrators on the application of that language.

The other technical amendment deals with rates to be paid by health plans for the testing. Group health plans may pay a negotiated rate, if one was in effect prior to the public health emergency. If the plan did not have such a rate, the plan may pay the cash price (which the provider is required to list on a public internet site during the emergency period[2]), or the plan may negotiate a rate less than that price.

Another CARES Act provision seems designed to smooth the way for payment of vaccines when they are developed. "Any qualifying coronavirus preventive service[3]" will be treated as "preventive"[4] care that group health plans will have to cover at no cost.

High-deductible health plans will be permitted to cover telehealth and other remote care services without a deductible, for plan years beginning on or before December 31, 2021. (Coverage by a plan that pays for such services without a deductible will be disregarded for purposes of other forbidden coverage.) The provision takes effect on March 27, 2020.

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[1] For example, the amended language requires coverage of a test for which the developer has requested emergency use authorization under 21 USC Section 360bbb-3, unless the request has been denied or the developer does not submit a request under this section within a reasonable time.
[2] The emergency period is the one declared under section 319 of the Public Health Service Act, 42 USC 247d.
[3] "Qualifying" means an item intended to prevent or mitigate coronavirus that is either recommended (with an A or B grade) by the US Preventive Services Task Force or "effectively recommended" by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.
[4] Under Section 2713(a); the waiting period interval under Section 2713(b) is to be disregarded, and the coverage requirement will be effective instead 15 days after the pertinent recommendation.

There are two provisions that deal with protected health information ("PHI"). One is designed to allow for additional care coordination by aligning the confidentiality rules for substance abuse disorder treatments with the HIPAA rules generally.[5] The other directs the Secretary of HHS to issue guidance on the sharing of PHI during the various categories of public health emergency that have been declared. The guidance is due within 180 days of March 27, 2020.

The CARES Act also expands the types of expenses that can be reimbursed from consumer-driven health plans (e.g., health savings accounts, health reimbursement arrangements, healthcare flexible spending accounts etc.) to include over-the counter drugs without a prescription.

J. <u>HHS and Department of Education Funding</u>

The CARES Act appropriated funds for various other programs that may be of interest to the religious organizations we serve. We have listed the most notable on the following page:

Department of Health and Human Services-Administration for Children and Families

- Child Care and Development Block Grant- $3.5 billion was appropriated for grants to states for immediate assistance to child care providers to prevent them from going out of business and otherwise support child care for families
- Community Services Block Grant- $1 billion was appropriated in direct funding to local community-based organizations to provide a wide range of social services and emergency assistance

Department of Education

- Elementary and Secondary Education - $13.5 billion was appropriated in formula funding for states to help schools respond to coronavirus and related school closures, meet immediate needs of students and teachers, improve the use of education technology, support distance education and make up for lost learning time.
    - Religious and other private schools are eligible for funding from this program based on the following section of the CARES Act:

      "ASSISTANCE TO NON-PUBLIC SCHOOLS
      SEC. 18005.
      (a) IN GENERAL. — A local educational agency receiving funds under sections 18002 or 18003 of this title shall provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in nonpublic schools, as determined in consultation with representatives of non-public schools.
      (b) PUBLIC CONTROL OF FUNDS .— The control of funds for the services and assistance provided to a non-public school under subsection (a), and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property and shall

[5] There is a fair amount of detail in the section, but it appears to be technical material that would not be a priority for any potential efforts to change anything on behalf of the Church Alliance, so in the interest of brevity further detail is deferred.

provide such services (or may contract for the provision of such services with a public or private entity).”

- State Flexibility Funding - $3 billion was appropriated in flexible formula funding to be allocated by states based on the needs of their elementary and secondary schools and institutions of higher learning. Religious and other private schools are eligible for this funding, under section 18005, shown above. The CARES Act specifically states that the state flexibility funds may be used to “provide support to any other…education related entity within the State that the Governor deems essential for carrying out emergency educational services to students” and that such uses include “the protection of education-related jobs.”
- Project SERV [*sic*] - $100 million was appropriated in targeted funding for elementary and secondary and schools and institutions of higher learning to respond to the immediate needs of coronavirus and the effect on students.
- Higher Education - $14.2 billion was appropriated in funding to institutions of higher education to directly support students facing urgent needs related to coronavirus, and to support institutions as they cope with the immediate effects of the virus and school closures. This provides targeted formula funding to institutions of higher education, as well as funding for minority serving institutions and HBCU’s.