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CARES Act: Municipalities - Miller Canfield

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") was enacted, authorizing up to $2 trillion in economic relief for distressed sectors of the American economy. Title IV, subtitle A of the CARES Act constitutes the Coronavirus Economic Stabilization Act of 2020 (the "Stabilization Act") and authorizes up to $500 billion for loans, loan guarantees, or other investments to support eligible businesses, States or municipalities "related to losses incurred as a result of coronavirus." Under the Stabilization Act, a "municipality" includes a political subdivision of a State, and an instrumentality of a municipality, a State or a political subdivision of a State.

Specifically, the Stabilization Act allows the Secretary of the United States Treasury to make up to $454 billion in loans and loan guarantees to, and other investments in programs or facilities established by the Federal Reserve "for the purpose of providing liquidity to the financial system that supports lending to eligible business, States, or municipalities" by:

1. Purchasing obligations or other interests directly from issuers of those obligations or interests;
2. Purchasing obligations or other interests in secondary markets or otherwise; or
3. Making loans, including loans or other advances secured by collateral.

The Treasury Secretary has broad discretion to establish the terms, conditions and forms of these investments in Federal Reserve liquidity programs. However, while the Stabilization Act prohibits the forgiveness of any principal amount of a loan to a State or municipality, it ties the interest rate on such loans to "the risk [related to such debt] and the current average yield on outstanding marketable obligations of the United States of comparable maturity." This provision could serve to calm the recent volatility in the relationship between U.S. Treasury yields and that of State and municipal debt.

Additionally, the CARES Act establishes the Coronavirus Relief Fund (the "Fund"), which provides for the direct payment of up to $150 billion from the United States Treasury to States, Tribal governments and units of local government exceeding 500,000 in population "out of money not otherwise appropriated." A local unit of government receiving a direct payment from the Fund may only use the money to cover costs that:

1. Are necessary expenditures incurred due to the public health emergency with respect to the coronavirus;
2. Were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and
3. Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Finally—in order to receive a direct payment from the Fund—the unit of local government must provide the Treasury Secretary with a certification signed by the Chief Executive of the local unit stipulating that the "local government's proposed uses of the funds are consistent" with the Fund's requirements for a municipality's use of money received via direct payment thereunder.

This is part of a series of our COVID-19 alerts providing clients with practical advice on measures they can take to navigate through these challenging times. Please contact the authors or your Miller Canfield attorney with further questions.

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