<u>SUMMARY OF RELEVANT PROVISIONS OF CARES 2</u>

The following is a summary of certain provisions of H.R. 6800, the House CARES 2 Bill, including the Manager's Amendments

MULTIEMPLOYER PENSION RELIEF

Division D – Retirement Provisions

Title I – Relief for Multiemployer Pension Plans

<u>Section 40101: Special Partition Program</u>

- Sets up a new special partition program run by PBGC available to plans that are or become eligible from 2020 to 2024 (four-year window)
- Program sets up a new fund at the PBGC, separate from multiemployer fund
- Funds are appropriated from the general fund to pay for the program in "such amounts as are necessary"
- These two items together mean that partitions are not paid for by premiums
- Plans that satisfy any of the following criteria are eligible for the special partition program:
    - Plans in Critical and Declining status
    - Plans in Critical status with less than 40% funded percentage (current liability basis) and worse than 2:3 active to inactive ratio. (More plans will be eligible)
    - Plans that have implemented MPRA suspensions
- PBGC will issue guidance for partition applications, but must accept plan actuary assumptions unless they are "clearly erroneous."(This is a much tighter restriction on PBGC to accept plan's applications than the prior version.)
- Partitioned liabilities would be determined without regard to the PBGC guarantee level with the goals of ensuring that:
    - Partitioned plan is solvent for 30 years with no benefit reductions
    - Funded percentage at the end of the 30-year period is at least 80%
    - In every year of the 30 year-period the ratio of the plan's available resources to the scheduled benefit payments is at least 1.0
    - In each of the last 10 years of the 30-year period, neither the plan's solvency ratio nor its available resources is projected to decrease.

- PBGC can impose only “reasonable” conditions on the following for partitioned plans: accrual rates, asset allocations, contribution rates, diversion of contributions to another retirement plan, or withdrawal liability. The corporation may not impose conditions on reductions in benefits, plan governance including selection of, removal of, or terms of contracts with trustees, actuaries, investment managers, or other service providers, or any funding rules.
- Substantial Congressional and Administration oversight of the PBGC partition process is added. PBGC must annually report to relevant Senate and House Committees on status of program. GAO is directed to report to Congress on the actions of the Corporation. PBGC is directed to create a public website as a portal to information on the program for Trustees. The Inspector General is allocated funding to audit the implementation and administration of the program.
- MPRA is repealed prospectively

Sections 40102-40105: Relief for All Other Multiemployer Plans

- Allows for 2-year freeze of Zone status, similar to what was done under WRERA immediately after 2008.
- Extends funding improvement and rehabilitation periods to 15 years (from 10)
- Allows for 30-year amortization of investment losses in the next two years in the Funding Standard Account
- Adds 10 year smoothing of investment losses in the next two years in the development of the Actuarial Value of Assets.
- Partitioned plans are not eligible for these types of smoothing relief.

Section 401016: PBGC Premiums and Guarantees

- Multiemployer fund is separate from the special partition program.
- PBGC guarantee is increased to 100% of the first $15 plus 75% of the next $70 of accrual per year of service ($24,300 per year for 30 years of service)
- Guarantee is indexed to increase with wages each year – currently, the guarantee is fixed at $12,870 per year for 30 years of service, and requires an act of Congress to increase.
- Premiums are unchanged.

COBRA SUBSIDIES

Division C – Health Services

Title III – Private Insurance

<u>Section 30311-12: Worker Health Coverage Protection Act</u>

- Provides 100% federal subsidy of COBRA premiums for March 1, 2020-January 31, 2021

- Triggers for coverage eligibility are loss of coverage due to a reduction in hours and an <u>involuntary</u> termination of employment. Most important for multiemployer plans is the reduction in hours, but "involuntary" termination makes it much harder to establish a COBRA qualifying event.

- Furlough subsidies are included. This is typically not applicable for multiemployer plans. But for those to whom it is applicable, bill provides payment of employee portion of premiums. This is often zero for multiemployer plans. The language is still not perfectly clear that multiemployer plans are eligible – more clarity in drafting would be helpful.

- Subsidy is payable as a payroll tax offset, and is fully refundable. Subsidy is payable in advance.

- While language on page 440 lines 8 – 27 appears to allow the amount of the subsidy received by the plan to be taxable income to the plan, NABTU has confirmed this is not the intent. This language was used in the Families First Coronavirus Response Act (FFCRA) with respect to the refundable tax credits that tax-exempt organizations receive to cover paid sick and family leave. The IRS guidance on these credits does not say anything about tax-exempt organizations having to pay taxes on them. Therefore, use of the same language in this bill should be treated the same way.

- $250 or amount of subsidy participant penalty for failure to provide notice to the plan that they are no longer eligible for premium assistance.

INFRASTRUCTURE & LABOR STANDARDS

The following is a list of federal programs under CARES II that are either exclusively for construction, or include construction as one of the many activities eligible for federal assistance.

With the exception of two tribal programs, all construction is covered by the Davis-Bacon Related Act in Sec. 11008(a). Also, the bill includes retroactive coverage for those HHS programs that were not covered in CARES I and the Intermediate Relief Bill as well as the $100 million rural broadband program from CARES I.

LABOR STANDARDS

DIVISION A – CORONAVIRUS RECOVERY SUPPLEMENT APPROPRIATIONS ACT

Title X – General Provisions

Section 11008(a): Labor Standards

- Provides Davis-Bacon coverage for all projects funded directly by, or assisted in whole or in part by, any provision of CARES 2.

Exceptions to 11008(a) Coverage

- $900 million to the Bureau of Indian Affairs to assist tribal governments, of which $120 million may be used for construction (e.g., housing, water)

- $2.1 billion to Indian Health Services to address health care needs of Native Americans, of which $140 million shall be used on broadband infrastructure, and $366 million to improve existing medical facilities

INFRASTRUCTURE

DIVISION A – Title V

- $1 billion for Dep’t of Interior Capital Improvement Project grants for hospitals and other critical infrastructure, as well as for general technical assistance in responding to Coronavirus

DIVISION A – Title VI

- $2.1 billion for various CDC programs, including a grant program for core public health infrastructure projects. Includes NABTU’s Davis-Bacon fix for CARES I

- $4.5 billion to HHS for various uses, including construction of non-federally owned facilities for improving preparedness and response, non-federally owned facilities for the production of vaccines, and construction of U.S.-based next generation manufacturing facilities (at least $500 million must go to next gen facilities). Includes NABTU's Davis-Bacon fix for CARES I.

DIVISION A – Title IX

- $15 billion to DOT for various uses, including grants for highway, bridge, and tunnel construction (see 23 U.S.C. § 133(b) for list of other eligible construction projects). Other eligible uses include operational and administrative expenses, such as paying the salaries of employees of state and tribal departments of transportation, and IT needs.

- $15.75 billion to the Federal Transit Agency's Emergency Relief Fund. While this Fund is available for various purposes including grants to public transit operators for capital projects to repair or replace damaged facilities, the bill provides that "to the maximum extent possible," funds shall be used to cover payroll, public transit service and other operating expenses.

DIVISION C – TITLE V – PUBLIC HEALTH POLICIES

SEC. 30520: Enhancing Manufacturing Capacity

- Unspecified amount in grants/awards to "expand and enhance manufacturing capacity" of vaccines. The bill appropriates "such sums as may be necessary."

SEC. 30549: Pilot Program to Improve Lab Infrastructure

- $1 billion in grants for the improvement, renovation, or modernization of infrastructure at clinical laboratories that will help to improve COVID–19 testing and response activities.

DIVISION C – TITLE VI—PUBLIC HEALTH ASSISTANCE

SEC. 30615: Grants For Schools of Medicine in Underserved Areas

- $1 billion for HHS grants to build or expand allopathic or osteopathic schools of medicine in rural or underserved communities

UNEMPLOYMENT BENEFITS

DIVISION E – CONTINUED ASSISTANCE TO UNEMPLOYED WORKERS

Note: This Division extends the unemployment compensation programs contained in CARES I through at least January 31, 2021.

Section 50001: Extension of Federal Pandemic Unemployment Compensation (PUC)

- Section 2104 of the CARES Act provided for $600/week in PUC payments to individuals otherwise entitled to unemployment compensation for all weeks of unemployment between the date on which the State entered into an agreement with the Federal government and July 31, 2020.

- This section extends payments for weeks of unemployment ending
  - January 31, 2021 or
  - For individuals who have not exhausted their benefit year for regular UC by January 31, 2021, for any additional weeks in that benefit year, up to March 31, 2021.

- Makes clear that these payments are not considered income for purposes of determining eligibility for any federal or federally-assisted program.

Section 50002: Extension and Benefit Phaseout Rule for Pandemic Unemployment Assistance (PUA)

- Section 2102 of the CARES Act created PUA for unemployed individuals who were not otherwise eligible for UC under their state's system, and provided benefits for up to 39 weeks of unemployment between January 27 and December 31, 2020.

- This section extends payments for weeks of unemployment ending
  - January 31, 2021 or
  - For individuals who have not exhausted the 39 weeks of benefits by January 31, 2021, for additional weeks for which they are eligible, up to March 31, 2021.

Section 50003: Extension and Benefit Phaseout Rule for Pandemic Emergency Unemployment Compensation (PEUC)

- Section 2107 of the CARES Act provided individuals otherwise entitled to regular UC under their state program with an additional 13 weeks of benefits, for weeks of unemployment ending before December 31, 2020.

- This section extends these payments for weeks of unemployment ending January 31, 2021 or, for individuals who have not exhausted their rights to these payments on that date, for their additional weeks of entitlement, up to March 31, 2021.

Section 50004: Extension of Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week

- Section 2105 of the CARES Act provided Federal funding for the first week of UC to any state that paid individuals for their first week of unemployment without a waiting week.

- This section extends the program from December 31, 2020 to January 31, 2021.

Section 50005: Extension of Emergency Relief for Governmental and Nonprofit Organizations

- Although governmental and 501(c)(3) organizations do not have to pay federal unemployment insurance (FUTA), they do have to either pay into the state plans, either by making regular payments or reimbursing the state for any claims made by their employees. CARES Act § 2103 provides that the Federal government will pay amounts equal to one-half of the unemployment compensation the states pay to the employees of governmental or 501(c)(3) organizations between March 13 and December 31, 2020, and the states are then to use that money to reimburse these organizations for the amounts they paid into the fund during that period.

- This section clarifies that the federal payments are to be used to reduce the amounts governmental and non-profits organizations have to pay into the funds, and extends the program until January 31, 2021.

Section 50007: Extension of Temporary Assistance for States with Advances

- The Families First Coronavirus Relief Act (FFCRA) provided the states with interest-free loans to finance their UC systems.

- This section extends the duration of the loans to June 30, 2021.

Section 50008 – Extension of Full Federal Funding of Extended Unemployment Compensation

- The FFCRA increased federal reimbursement for extended UC from 50 percent to 100 percent through December 31, 2020. This section extends the federal reimbursement through June 30, 2021.

Sections 50009 – 50011: Various provisions dealing with Short-term Compensation Programs

- For states with "short-term compensation programs" – *i.e.,* reduced UC for employees whose employers reduce their hours rather than laying them off – the CARES Act provided 100% of funding for existing or newly created programs, and

50% of funding for states without programs that entered into agreements with the federal government to temporarily create them.

- These sections extended the federal government's funding through January 31, 2021.

- Note that under the CARES Act, these programs are not available to individuals employed on a "seasonal, temporary or intermittent basis."

Division S – Other Matters

Title VI – Amtrak and Other Rail Employees

Section 190602 – Extension of Enhanced RR Unemployment Benefit

- The CARES Act increased the maximum bi-weekly RR unemployment benefit to $1200 (from current $780) for unemployment that began on or before April 1, 2020 but before July 1, 2020. Under the CARES Act, railroad workers with less than 10 years of service are eligible for up to 65 days of extended benefits within 7 consecutive 2-week registration periods. Workers with 10 or more years of railroad service, are eligible for up to 130 days within 13 consecutive 2-week registration periods. No extended benefit period could begin after December 31, 2020.

- This new provision extends the eligibility for the increased benefit to any unemployment which began on or before December 31, 2020, and the extended benefit period can run to July 1, 2020.

PAID SICK LEAVE AND EMERGENCY FAMILY AND MEDICAL LEAVE

DIVISION L – FAMILIES, WORKERS, AND COMMUNITY SUPPORT PROVISIONS

Title 1 – Amendments to Emergency Family and Medical Leave Expansion Act and Emergency Paid Leave Act

As a general matter, the amendments conform these two programs to provide a broader group of employees with two weeks of paid leave under the Emergency Paid Leave Act ("EPLA"), followed by up to 10 weeks of paid leave, for the same employees and for the same reasons, under the Emergency Family and Medical Leave Expansion Act ("EFMLEA"). In particular,

- Both Acts will apply to all employers, regardless of size. (Secs. 120104(b) and 120117(2)(I).)
    - The EPLA is amended to clarify that nonprofits and public agencies are covered. (Sec. 120117(a).)
    - Nonprofits and federal, state and local governments of whatever size will be entitled to the tax credits; private employers with more than 500 employees will not. (Secs. 20225 and 20227.)
- Rather than restricting EFMLEA benefits to employees who need to care for children, both Acts will provide benefits to employees who need leave:
    - To self-isolate because the employee is diagnosed with COVID-19;
    - To obtain a medical diagnosis or care if such employee is experiencing symptoms of COVID-19;
    - To comply with a recommendation or order by an authorized public official or a health care provider to self-isolate, regardless whether the recommendation or order is specific to the employee, on the basis that the physical presence of the employee on the job would jeopardize the employee's health, the health of other employees, or the health of an individual in the household of the employee because the employee --
        - May have been exposed to COVID-19; or
        - Is exhibiting symptoms of COVID-19.
    - To care for or assist a family member of the employee, regardless whether someone else is available to care for or assist the family member, because the family member is subject to any of the conditions listed above (*i.e.,* self-isolating or obtaining a medical diagnosis);
    - To care for a son or daughter whose school or day care provider is closed or unavailable;
    - To care for a family member who is incapable of self-care, regardless whether someone else is available to provide that care, because the

family member's place of care or direct care provider is closed or unavailable because of COVID-19. (Secs. 120104(d) and 120115(a).)

- *NOTE: The amendments still do not address the situation in which an <u>employer</u> sends a group of employees home to self-isolate because of possible workplace exposure.*

- Amount of pay:

  - The EPLA will provide up to 2 weeks of paid leave in any 12 month period, at a rate of up to $511 per day/$5110 in the aggregate for any of the enumerated purposes (Secs. 120115(a) and 120117(c).)
    - The EPLA leave is in addition to any paid leave the employer otherwise provides. (Sec. 120115(a).)

  - The EFMLEA will provide 2 weeks of unpaid leave and up to 10 weeks of paid leave, at the greater of (a) the federal minimum wage, (b) the local minimum wage or (c) two-thirds of the employee's regular rate of pay, up to a maximum of $12,000. (Sec. 120107.)
    - The EFMLEA is in addition to the 12-weeks of regular FMLA leave. (Sec. 120106.)
    - The employer cannot require the employee to substitute other available forms of paid leave. (Sec. 120106.)

- A failure to pay under the EPLA will be treated as a failure to pay overtime compensation under the FLSA. (Sec. 120115(h)(2).)

- Both Acts will be amended to eliminate the Secretary of Labor's authority to exempt health care providers, emergency responders and small businesses and to strike DOL regulations providing those exemptions; to eliminate the authority of employers of health care providers and emergency responders to exempt themselves; and to eliminate the authority of the Director of OMB to exempt certain federal employees. (Secs. 120105, 120113, 120111, 120119, and 120120.)

- Employees can take advantage of both programs by taking intermittent leave or a reduced work schedule, regardless whether their employers agree. (Sec. 120109 and 120115(d).)

- The EPLA will be amended to provide employees with the same rights to reinstatement to the same or an equivalent position that is provided under the FMLA. (Sec. 12015(h)(1).)

- Both Acts, and the tax credits for employers with up to 500 employees providing the pay, will be extended until December 31, 2021. (Secs. 20221, 120103, 120116.)

WORKFORCE DEVELOPMENT

DIVISION A – CORONAVIRUS RECOVERY SUPPLEMENTAL APPROPRIATONS ACT, 2020

Title VI – Employment and Training Administration, Training and Employment Services

Appropriates $2.040 billion for programs under WIOA, including $485 million for adult employment and training activities with priority given to individuals negatively impacted by COVID-19, $518 million for youth activities, $597 million for dislocated worker employment and training activities, $400 million for national dislocated worker reserve, and $25 million for migrant and seasonal workers.

DIVISION C – HEALTH PROVISIONS

Title V – Public Health

Section 30566: Grants to State and Tribal Workforce Agencies

The definition of Apprenticeship Program, as well as Special Rule, appears to block funding from any IRAP, defining the program as a program registered under the National Apprenticeship Act, including any requirement, standard, or rule promulgated under such Act, as such requirement, standard, or rule was in effect on December 30, 2019, and any funding that may be used for apprenticeship under the section can only go to those programs as they are defined under the section.

DIVISION O – EDUCATION PROVISIONS AND OTHER PROGRAMS

Title II, Subtitle A - Carl D. Perkins Career and Technical Education and Literacy COVID-19 National Emergency Response

Section 150201: Definitions

Appears to block funding from any IRAP, defining the program as a program registered under the National Apprenticeship Act, including any requirement, standard, or rule promulgated under such Act, as such requirement, standard, or rule was in effect on December 30, 2019.

DIVISION L – FAMILIES, WORKERS, AND COMMUNITY SUPPORT PROVISIONS

Title 2 – COVID-19 Workforce Development Response Activities

Section 120201: Definitions and Special Rule

Appears to block funding from any IRAP, defining the program as a program registered under the National Apprenticeship Act, including any requirement, standard, or rule promulgated under such Act, as such requirement, standard, or rule was in effect on

December 30, 2019, and any funding that may be used for apprenticeship under the section can only go to those programs as they are defined under the section.

Section 120202: Job Corps Response to the COVID-19 National Emergency

Provides additional programmatic flexibilities, including for eligibility, enrollment length, advanced career training programs, counseling, job placement and assessments, and transition support for Job Corps participants.

Section 120206: Apprenticeship Support During the COVID-19 National Emergency

The Secretary of Labor shall identify and disseminate strategies and tools to support virtual and online learning and training in apprenticeship programs no later than 30 days after enactment of the bill.

TAX RELIEF PROVISIONS APPLICABLE TO CONTRACTORS AND UNIONS

Division A – Coronavirus Relief Supplemental Appropriations
Title III – Financial Services & General Government

Economic Injury Disaster Loan ("EIDL") Program

- CARES I amended the SBA's existing EIDL program by expanding the list of entities eligible for such loans and waiving certain requirements (see NABTU summary). Eligible borrowers include certain for-profit businesses and private nonprofit organizations, including labor unions.
- CARES I allocated $10 billion, which was exhausted on April 17, 2020. The Interim Relief Bill allocated an additional $10 billion to EIDL.
- CARES II allocates an additional $10 billion to EIDL.

Division B – Revenue Provisions
Title II – Additional Relief for Workers

Section 20211: Improvements to Employee Retention Credit

CARES I created employee retention tax credits which are quarterly refundable payroll tax credits intended to encourage employers to retain employees. Eligible employers include labor organizations. To qualify, an employer's business must (i) experience a full or partial suspension due to a COVID-19-related governmental order, or (ii) the business's gross receipts for the calendar quarter must be less than 50% of the gross receipts for the same quarter in the prior year. CARES II proposes the following amendments the program:

- The credits currently equal 50% of up to $10,000 in wages that an employer pays in a calendar quarter. CARES II would increase the amount of the credits to 80% of up to $15,000 in wages per quarter with a new annual cap of $45,000 in wages.
- An employer's eligibility is triggered if either of two economic hardships arise within a calendar quarter for 2020. The second of these economic hardships is a decline in gross receipts of more than 50% as compared to the same quarter in 2019. CARES II increases the threshold to 90% of gross receipts.
- CARES II allows state and local governments to claim the credit in the event they are paying wages to employees while their operations are fully or partially shut down.

- Clarifies that group health plan expenses can be considered qualified wages even when no other wages are paid to the employee, consistent with recent revisions to IRS guidance on this issue.

- What constitutes "wages" for which the employee retention credits can be claimed depends on the size of the employer's full-time workforce, with more stringent criteria for larger businesses. CARES II would allow more employers to be considered small employers thereby allowing them to claim the credits on all wages paid to employees.

Section 20212: Payroll credit for certain fixed expenses of employers subject to closure by reason of COVID-19

CARES II establishes new payroll tax credits for fixed costs, such as mortgage payments, rent, and utilities. Eligible employers include unions.

- The credits equal 50% of the above-referenced fixed costs that an employer pays in a calendar quarter.

- For each quarter, expenses eligible for this credit are limited to 25% of qualified wages (as defined in the employee retention credit) or 6.25% of 2019 gross receipts (which annualizes to 25%), with a maximum of $50,000.

- This credit is limited to employers with no more than 1,500 full-time employees or no more than $41,500,000 in gross receipts in 2019. Additionally, employers must be subject to a full or partial suspension due to a COVID-19 government order, or have a decline in gross receipts compared to the same calendar quarter of the preceding year.

- The section applies to qualified fixed expenses paid or accrued from March 12, 2020 until December 31, 2020.

Section 20231: Payroll tax deferral allowed for recipients of loan forgiveness under the Paycheck Protection Program

- CARES I allows businesses and nonprofit organizations, including unions and labor management training committees, to delay paying certain 2020 payroll taxes (see NABTU summary). Under CARES I, however, the deferral was not available to organizations receiving PPP loan forgiveness. CARES II reverses that and allows PPP borrowers to defer payment of payroll taxes.

Section 20233: Certain loan forgiveness and other business financial assistance under CARES Act not includable in gross income

- For purposes of federal tax liability, excludes PPP loan forgiveness, emergency EIDL grants, and SBA loan payment subsidies from the gross income of the recipient.

Division I – Small Business Provisions

Sections 90001 - 90005: Amendments to the Payroll Protection Program

CARES I established SBA's PPP loan program which is currently available to certain for-profit businesses and 501(c)(3)s, including labor management training committees. PPP borrowers may be eligible for loan forgiveness (see NABTU summary). CARES II does not provide additional funding to PPP. It does, however, make some significant changes to the program:

- **Extends eligibility to all nonprofits, including labor unions. CARES II extends eligibility to all nonprofits.** 501(c)(4)s, however, are only eligible for PPP if they have not made and will not make political contributions or engage in electioneering communication with respect to federal, state and local elections.

- Repeals the requirement that 75% of loans be spent on payroll in order to qualify for forgiveness.

- Provides a 25% set aside of PPP loan funds for nonprofit borrowers.

- Provides a 25% set aside of PPP loan funds for borrowers with 10 or fewer employees.

- Allows borrowers to use loan proceeds to provide PPE or other equipment or supplies necessary to protect the health and safety of employees.

- PPP loans may not be used to cover "any compensation of an employee who is a registered lobbyist." Such compensation shall also be excluded from the calculation used to determine maximum loan amount.

Sections 90008 – 90018: Amendments to SBA's Core Programs

CARES II temporarily amends SBA's core loan programs by:

- Requiring lenders of all SBA 7(a) loan programs to provide full payment deferment relief for a period of not less than 1 year.

- Waiving fees associated with SBA 7(a) loan programs and the 504 loan program for borrowers and lenders.

- Increasing the federal guarantee to 90% under certain loan programs.

- Increasing the amount each lender can loan under SBA's microloan program from $6 million to $10 million.

Division K – COVID-19 HERO Act
Title VI – Standing Up for Small Businesses & Non-profits

Section 110604: Main Street Lending Program

- CARES I directed the Federal Reserve to help establish a lending program to help "small and mid-sized businesses." Eligible borrowers include companies employing up to 10,000 workers or with revenues of less than $2.5 billion in 2019. Loans range from $1 to $25 million.

- CARES II extends eligibility to all nonprofits. 501(c)(4)s, however, are only eligible for a Main Street loan if they have not made and will not make political contributions or engage in electioneering communication with respect to federal, state and local elections.

- CARES II clarifies that nonprofit organizations are eligible for such loans.

- CARS II requires that the program provide at least one low-cost loan option for which small businesses and small nonprofits are eligible.

HEALTH AND SAFETY

DIVISION L – FAMILIES, WORKERS, AND COMMUNITY SUPPORT PROVISIONS

Title III – COVID-19 Every Worker Protection Act of 2020

Section 120302: Emergency Temporary and Permanent Standards

- Requires OSHA to issue an emergency temporary standard (ETS) within 7 days of enactment to protect employees at risk of exposure to SARS-CoV-2. The ETS must:
    - Require employers to develop and implement comprehensive infectious disease exposure control plans, in consultation with their employees and employee representatives;
    - Require employers to record and report every work-related COVID-19 infection and death;
    - Be no less protective than precautions mandated by state plan states;
    - Incorporate appropriate CDC, NIOSH and OSHA guidance and relevant scientific research.

- Requires state plan states to adopt an ETS that is at least as effective within 14 days after enactment of this Act.

- Permits OSHA to exercise enforcement discretion only if the employer demonstrates that it is using due diligence to comply and is implementing alternative measures to protect its employees.

- Makes inapplicable various statutes and executive orders that impose additional procedural requirements on OSHA's rulemaking authority.

- Includes states and political subdivisions as "employers" covered by the standard (other than those already covered under state plan programs), even though they are otherwise exempt from the OSH Act.

- Requires OSHA to promulgate a final standard protecting employees from exposure to infectious pathogens, including novel pathogens, within 24 months of enactment of this Act.
    - Makes the ETS effective until the final standard is in effect.

- Both the ETS and final standard must prohibit retaliation against employees for reporting violations of the standard or exposure control plan or their concerns about workplace exposures, to either their employers, a government agency or the press; for voluntarily using PPE that is more protective than that provided by the employer; or exercising other rights under the OSH Act.

    - Violations of the anti-retaliation provisions are to be enforced like any other requirement in a standard, rather than through the process for handling § 11(c) anti-retaliation claims.

<u>Section 120303: Surveillance, Tracking, and Investigation of Work-Related Cases of COVID-19</u>

- Requires CDC and NIOSH to:
    - Collect and analyze case reports to identify and evaluate the extent, nature and source of COVID-19 among workers, and to investigate individual cases, to evaluate the adequacy of infection and exposure control programs;
    - Provide the public with regular reports on COVID-19 among employees; and
    - Make recommendations on needed actions or guidance to protect workers.

RECOVERY REBATES

DIVISION B—Retirement Provisions

Subtitle A – 2020 Recovery Rebate Improvements

<u>Section 20101: Dependents Taken Into Account in Determining Credit and Rebates</u>

- Expands the individuals for whom a household can receive the $500 rebate from children younger than 17 to all “dependents” under the tax code, which include full-time students younger than 24 and adult family members.
- Provision is retroactive to the CARES Act’s date of enactment.

<u>Sections 20103 – 20104: Protection against offsets or assignments.</u>

- These provisions exempt the recovery rebates from being reduced by past-due child support obligations or from being subject to any sort of legal process (including garnishment or assignment) or bankruptcy law.

Subtitle B – Additional Recovery Rebates to Individuals

<u>Section 20111: Additional Recovery Rebates to Individuals</u>

- Provides another round of direct payments to individuals and their dependents, along the same lines as the CARES Act recovery rebates.
- Individuals are eligible for “additional rebate amounts” of $1,200 ($2,400 for a joint return), plus $1,200 for each of up to 3 dependents.
    - The payments begin to phase out starting at $75,000 of adjusted gross income ($112,500 for heads of households or $150,000 for joint filers), at a rate of $5 per $100 of income.
- As with the first recovery rebates, these payments are available to U.S. citizens and residents with incomes below the cap, even those who have no income or whose income comes entirely from non-taxable benefit programs, such as Social Security, railroad retirement or veterans disability benefits, as long as no other taxpayer is claiming them as a dependent.

MISCELLANEOUS

HEROES FUND

DIVISION Q

TITLE I - Heroes Fund

Establishes a fund to be administered by the Treasury to provide hazard pay to individuals for essential work.

<u>Section 170101(5) – Definition of Essential Work</u>

- That which (1) is performed during the COVID–19 Public Health Emergency, (2) is not performed while teleworking, (3) involves regular interaction with others or items handled by others, and (4) is work in any of the 33 enumerated areas of work in the bill.
- By in large, construction workers would not qualify. Possible exceptions may include individuals working for a department of public works or carrying out building maintenance and repair. In addition, work installing or repairing a telecommunications line or equipment, is included.

<u>Sections 170102-107104 – Pay, Fund and Grants</u>

- Workers that do qualify would be paid by their employer who would apply for a grant from the fund.
- The grant would cover both wages and payroll taxes of the individual. Payment would be $13 per hour on top of regular wages.
- A cap is included; no individual could earn more than $10,000 ($5,000 if you make $200,000 or more) for work performed from January 27, 2020 until 60 days after the last day of the COVID–19 Public Health Emergency.
- If an essential worker dies of COVID-19, their next of kin receives the remaining wages in a lump sum.

MONEY PURCHASE PENSION PLAN CLARIFICATION

Division D – Retirement Provisions

Title III – Other Retirement Related Provisions – Money Purchase Pension Plans

<u>Section 40305 – Application of Special Rules to Money Purchase Pension Plans</u>

- The CARES Act eliminated the additional 10% tax on early distributions from certain eligible retirement plans for withdrawals for any coronavirus-related distribution. The aggregate amount from all qualified plans is $100,000.
- "Coronavirus-related distributions" under the CARES Act mean distributions from an eligible retirement plan:
  - made on or after January 1, 2020 and before December 31, 2020;
  - to an individual:
    - who is diagnosed with COVID-19 by a CDC-approved test;
    - whose spouse or dependent is diagnosed with COVID-19 by such a test; or
    - who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, or having work hours reduced due to COVID-19; being unable to work due to lack of child care, closing or reducing hours of a business, or other reasons related to COVID-19.

- This new section clarifies that a corona-virus distribution made as in-service distribution from a money purchase pension plan shall be treated as meeting the distribution rules under the IRS Code

FEDERAL CONTRACTORS

DIVISION G—Accountability and Government Operations

TITLE IV—Federal Contracting Provisions

<u>Section 70402: Guidance on the Implementation of Section 3610 of the CARES Act</u>

- CARES Act Section 3610 authorized government agencies to reimburse contractors unable to work on federal sites due to COVID-19-related restrictions for the expenses of keeping their employees and subcontractors "in a ready state." This section directs the Director of the Office of Management and Budget to issue guidance, within 15 days, to ensure the uniform implementation of this program across the government.

HEALTH CARE

DIVISION C – Health Provisions
TITLE III – Private Insurance Provisions

<u>Section 30308: Risk Corridor Program or Self-Insured Group Health Plans and Health Insurance Coverage Offered in the Large Group Market</u>

This section creates a new federal government fund to help self-insured group health plans pay for insurance costs overall due to the expected increase in claims due to the virus. If a plan's costs (other than administrative costs) exceed 105% of the "target amount," the federal government will pay the plan 75% of the excess amount. The reinsurance program is paid for through a federal appropriation (not through fees on funds). However, there are two main issues:

- Grandfathered plans are currently excluded (25-35% of multiemployer plans)

  The program currently does not apply to grandfathered health plans (approximately 25-25% of multiemployer plans) or to excepted benefits (separate vision or dental coverage – very limited applicability). The program is in effect for the 2020 and 2021 plan years.

- "Target amount" appears to be based on COBRA rates

  In summary, this would be a very high bar for plans to reach before they are able to access the reinsurance funds.

  The "target amount" for a self-insured group health plan is not clear. It appears to be the expected cost to the plan for the preceding plan year, taking into account COBRA premium for the preceding year, reduced by any administrative costs for the preceding plan year and increased by 5%. If this target amount is based on COBRA costs rather than actual plan costs, it would be difficult to reach 105% of the target amount in order to access the program.

Another issue that there is some odd language about how the payments are treated for Medical Loss Ratio (MLR) rules for self-funded plans and large group plans. Self-funded plans like multiemployer plans are not subject to the MLR rules. This seems to be a drafting error, but does not appear to subject self-funded plans to the MLR rules.

There is a separate similar reinsurance program for small group and individual market plans, as well as one for Medicare Advantage plans.

ENERGY

Division F – Assistance to Agricultural Producers and Other Matters Relating to Agriculture

Title III – Specialty Crops and Other Commodities

<u>Section 60305: Support for Processed Commodities (Ethanol)</u>

This is a direct subsidy to ethanol producers at a time when the refining industry suffers from the same economic hardships - $0.45 per gallon subsidy per gallon produced between January 1, 2020 through May 1, 2020. It creates more market instability in the refining industry and further puts at risk our members' jobs in refineries across the country. Demand is down over 30% and utilization rates are hover around 65%, typically refiners will shut down at rates below 60% utilization.

Division S – Other Matters

Title VII – Energy and Environment Provisions

<u>Section 190701: Home Energy and Water Service Continuity</u>

Requires states and utilities receiving federal emergency funds to adopt or maintain in force policies to prevent shutoffs and ensure safety and continuity of home energy and water services to residential customers during the COVID-19 public health emergency. Our friends in the utility space already made pledges not to shut off services to customers and do not feel it should be codified into law.

Division M – Consumer Protection and Telecommunications

Title IV – Suspending Negative Credit Reporting and Strengthening Consumer and Investor Protections

<u>Section 110402: Restrictions on collections of consumer debt during a national disaster or emergency</u>

Precludes energy companies from collecting payments, and debt, for 120 days after COVID is determined to be over. Debt is not forgiven, and customers will still need to pay. By applying essential service providers in the same way as other companies. The debt collection provision removes important flexibility and may make it harder, rather than easier, for electrical customers ultimately to pay off their debt.