COVID-19
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Missouri to Receive Rural Transit Grant Under the Federal CARES Act

Governor Mike Parson announced Tuesday that Missouri is the first state in the nation to receive a federal grant for rural transit as part of national COVID-19 relief efforts. The U.S. Department of Transportation’s Federal Transit Administration (FTA) announced a $61.7 million grant to the Missouri Department of Transportation (MoDOT) under the Federal CARES Act. This grant will be used to help protect public health and support essential services during the COVID-19 pandemic.

The health and safety of ACEC/MO’s employees and members is at the forefront of our policies and guidelines, and as such, we are continuously addressing the coronavirus outbreak. In accordance with government guidelines to mitigate the spread of COVID-19, ACEC/MO staff is working remotely. We will reassess as the situation develops. There is an abundance of COVID-19 information on the ACEC and ACEC/MO websites and they are updated daily. If you have any questions, please email Bruce Wylie or Dawn Hill.
Transportation (MoDOT) as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act signed by President Donald J. Trump on March 27, 2020.

“These funds will provide a needed boost to rural transit systems in Missouri, as many have reduced service due to the COVID-19 crisis,” Governor Parson said. “I want to thank Secretary Chao and our Missouri congressional leaders, Representative Sam Graves and Senators Josh Hawley and Roy Blunt, for their role in obtaining these important funds for our state. This relief will help keep Missouri’s vital rural transit system operating for people who have limited transportation options and need it most.”

The CARES Act provides emergency assistance and health care response for individuals, families, and businesses affected by COVID-19 and provides emergency appropriations to support Executive Branch agency operations during the pandemic. It includes $25 billion in transit assistance funding to support public transit recipients of urban and rural area funds, with $22.7 billion to large and small urban areas and $2.2 billion to rural areas.

MoDOT will use the funds for operating expenses and capital assistance for 30 Missouri rural agencies, including the Cape Girardeau County Transit Authority; the nonprofit OATS Inc., which operates in 87 Missouri counties; the City of Excelsior Springs; and the New Bourbon Regional Port Authority Ferry Boat Operator. Please see FTA’s apportionment tables for the totals apportioned to each area. Operating expenses incurred beginning on January 20 are eligible, including operating expenses to maintain transit services as well as payment for administrative leave for transit personnel due to reduced operations during an emergency.

“MoDOT will work closely with rural public transit providers to implement this critical funding. I want to thank my staff for reacting so quickly when the grant availability was announced,” MoDOT Director Patrick McKenna said. “The grant application clearly painted a picture of Missouri’s rural transit challenges as a result of the coronavirus, and we are grateful to receive this vital aid.”

Missouri to Receive $152 Million for Airports Under Federal CARES Act

On Wednesday, Governor Mike Parson announced that Missouri will receive a $152.4 million grant for 75 state airports to help respond to the COVID-19 crisis. The Federal Aviation Administration (FAA) announced the grants to states yesterday as part of the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act.

“This is welcome news for those who work in Missouri’s aviation industry. These grants will provide much needed revenue for the state’s airports at a time when revenues are declining due to a decrease in travel,” Governor Parson said. We appreciate the help of the federal government and the support of our Congressional delegation in providing for this important industry and the men and women who depend on these airports to make a living. I especially want to thank Congressman Sam Graves for his advocacy of aviation.”

Missouri airports receiving more than $1 million through this grant include Cape Girardeau Regional Airport, Columbia Regional Airport, Joplin Regional Airport, Kansas City International Airport, Springfield-Branson National Airport, and St. Louis Lambert International Airport. Grant amounts for other Missouri airports range from $1,000 to $157,000. A full list of airports receiving funding can be found on an interactive map located here. These funds can be used for any purpose for which airport revenue could otherwise be used. This means these funds are available for operating costs (salaries, utilities, etc.), and they can also be used for airport development.

The Missouri Department of Transportation (MoDOT) will administer $19.8 million of the total amount announced by the FAA, $17.4 million of which is intended for the Cape Girardeau Regional Airport. The remaining $2.4 million is available for other airports in the State Block Grant Program. The other $132.6
million of the CARES Act funds will be administered by the FAA. There is no expiration date on the use of these funds.

“MoDOT will work closely with the FAA to implement this critical funding,” MoDOT Director Patrick McKenna said. “These grants, which require no local match, will be extremely helpful in keeping our public use airports viable at this critical time.”

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**USDOT to Provide $25B for Transportation System Response to COVID-19**

The U. S. Department of Transportation’s Federal Transit Administration (FTA) will allocate a total of $25 billion in federal funding to help the public transportation system respond to COVID-19. The funding, provided through the CARES Act, would provide grants to recipients of urbanized area and rural area formula funds to be used for capital, operating and other expenses the recipients may need. Urban areas would be allocated $22.7 billion, while rural areas would be allocated $2.2 billion. Recipients could also use the money to pay for maintaining transit services, or for administrative leave for transit personnel forced to take time off because of reduced operations during an emergency. (Funding will be provided at 100% federal share, with no local match required.)

The FTA will take several other steps to support the transit industry during the coronavirus pandemic. The agency will expand the eligibility for federal assistance available under the FTA’s Emergency Relief Program to help transit agencies in states where governors have declared a state of emergency. Transit providers can now use federal formula funds under the Urbanized Area Formula Program and the Formula Grants for Rural Areas Program for emergency-related expenses, including capital and operations. The agency also extended the deadlines for competitive grant program applications, including grants for buses and bus facilities, passenger ferry programs, increased mobility grants, and Helping Obtain Prosperity for Everyone grants.

Information about available funds can be found on the USDOT [website](#).

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**ACEC Letter of Support Sent to Congress on New PPP Guidance**

ACEC recently sent a letter to congress in support of additional funding for the Paycheck Protection Program (PPP) loans. As you may know, the original funding allocation of $349 billion under the CARES Act is close to being fully utilized, and ACEC and other business community stakeholders are ramping up outreach to Congress to move legislation quickly to recapitalize the loan fund. The letter also notes support for additional emergency funding for State DOTs, which are facing a steep decline in gas tax revenue resulting from the COVID-19 response effort. To see the letter, click [HERE](#).

Also, there are new information links that were released by the White House this week, including new updated guidance for PPP loans, which can be accessed [HERE](#). The Department of Treasury has also updated their CARES Act website to include specific sections on:

- [Assistance for American Workers and Families](#)
- [Assistance for Small Businesses](#)
- [Assistance to State and Local Governments](#)
- [Preserving Jobs for American Industry](#)
For more information and updates, you can also visit Treasury.gov/CARES and SBA.gov/PayCheckProtection.

Department of Defense Implements Section 3610 of CARES Act

The ongoing coronavirus (COVID-19) pandemic has significantly altered the ability of some government contractors to perform their contracts with the federal government. Government restrictions, including the closure or restriction to federal or contractor worksites, has disrupted performance and threatens to curtail contract payments to contractors. As a result, contractors are faced with the potential need to furlough or lay off employees or require them to use unpaid leave. On April 8, the U.S. Department of Defense (DoD) issued important guidance to its contracting officers as to how they can work with contractors to ensure their employees remain employed and in a ready state to return to work when the crisis eases.

The provision states that funds may be used to modify the terms and conditions of a contract, or other agreement, without consideration, to reimburse at the minimum applicable contract billing rates not to exceed an average of 40 hours per week any paid leave, including sick leave, a contractor provides to keep its employees or subcontractors in a ready state, including to protect the life and safety of government and contractor personnel. This will likely impact firms doing work at federal agencies on government property or supporting work being done on private property for which the federal government depends on. Updated information can be found below and also on ACEC’s Coronavirus Resource Center. As noted in this useful link, other agencies are rolling out their own guidance with a number of variations. ACEC is working with colleagues to consider requesting that OMB adopt similar guidance that DoD has offered to encourage as much uniformity and certainty as possible.

Congress Enacts the CARES Act

As we know, the recently-passed Coronavirus Aid, Relief, and Economic Security (CARES) Act contains a provision that potentially allows contractors to be paid by the government for compensating workers to be kept in a ready state if they are unable to work due to the pandemic.

Section 3610 of the CARES Act provides, in part, that government funds: may be used by such agency to modify the terms and conditions of a contract, or other agreement, without consideration, to reimburse at the minimum applicable contract billing rates not to exceed an average of 40 hours per week any paid leave, including sick leave, a contractor provides to keep its employees or subcontractors in a ready state, including to protect the life and safety of Government and contractor personnel.

While this provision is helpful, it does contain some limitations. First, it expires on September 30, 2020. Second, it only applies to situations where contractor (and subcontractor) employees cannot perform work due to restrictions at a site and cannot convert to telework. Third, it is not mandatory and is subject to the availability of funds. The provision also presents several implicit questions, particularly as to how it relates to other types of relief available under the CARES Act. In particular, it speaks to how receiving Paycheck Protection Program (PPP) small business loans impacts the availability of relief under Section 3610.

DoD Issues a Class Deviation Implementing the CARES Act

The DoD has released a class deviation implementing Section 3610 of the CARES Act, including a new clause in the Defense Federal Acquisition Regulation Supplement (DFARS; § 231.205-79). The class deviation largely mirrors the language in Section 3610, including its limitations.

While the class deviation acknowledges that Section 3610 relief is not mandatory, the DoD emphasizes the importance that DoD contractor workforces be kept intact so they can be activated once the pandemic sufficiently passes. DoD underscores this point: "[i]t is imperative that we support affected contractors, using the acquisition tools available to us, to ensure that, together, we remain a healthy,
resilient, and responsive total force." Further, DoD also asks contracting officers to consider the immediacy of the harm to contractors when prioritizing requests.

For example, the impact of COVID-19 on a contractor providing labor services will differ from the impact on a contractor that develops information systems. Some contractors may be unable to conduct any business during the COVID-19 pandemic. As a result, such contractors would generate no new revenue and may have difficulties making payroll, retaining employees, and meeting other financial obligations. In contrast, other contractors may still have incoming revenue, and be able to conduct work remotely. While impacts will certainly be experienced by many contractors, some will have a more immediate need for relief than others.

The relative harm aside, (like the CARES Act) the class deviation permits the cost of paid leave (including sick leave): 1) to be allowable for "up to an average of 40 hours per week" and 2) be charged as a direct cost notwithstanding contrary Federal Acquisition Regulation (FAR) and DFARS clauses. Though not explicitly stated, it appears that payments to contractors can include the fully burdened rates typically charged. DFARS § 231.205-79(b)(1) provides that "costs of paid leave (including sick leave), are allowable at the appropriate rates under the contract."

There are restrictions, however, to this relief. Such costs can only be recoverable under this class deviation if it is for the purpose of keeping contractor and subcontractor employees in a ready state or "protecting the life and safety of Government and contractor personnel against risks arising from the COVID-19 public health emergency." Costs for paid leave must be incurred as a result of the COVID-19 national emergency and would not have otherwise been incurred by the contractor. The COVID-19-related costs must be segregated by the contractor so that compliance "can be reasonably ascertained." DoD does not suggest any particular method and, in fact, states that "any reasonable method [is acceptable] as long as the results provide a sufficient audit trail."

The paid leave must be provided to workers who would have otherwise been on a government-approved site but the work cannot be performed because "such facilities have been closed or made practically inaccessible or inoperable, or other restrictions prevent the performance of work at the facility or site as a result of the COVID-19 national emergency" and they are unable to telework. Though not explicitly stated in the DFARS clause, the class deviation elsewhere alludes to the fact that those compensable restrictions may also be due to recommended social distancing. The contractor cannot also receive compensation under any other relief bill passed by Congress that would cover the payroll expenses provided for by the class deviation (more on this below).

Importantly, federal worksites, as well as contractor, contractor-leased and federally approved worksites that are inaccessible because of laws or temporary restrictions imposed by federal, state or local governments, are included.

The class deviation contains important direction as to how contracting officers should factor in other relief a contractor receives under the CARES Act, including PPP small business forgivable loans. The purpose of these provisions and Section 3610 are fundamentally the same: to continue the flow of funds through business concerns to cover employee's payroll and related costs. As we've expected would be the case, the class deviation states that a contractor cannot double-dip by receiving a PPP loan to cover payroll costs for a contract employee and then seek reimbursement for those costs through its contract under Section 3610. Other CARES Act relief, including tax credits, will also have to be factored in when calculating Section 3610 payments. In negotiating relief under Section 3610, contractors should proactively assess and account for such costs.

The differing avenues of relief also present a potentially important strategic decision for contractors. The PPP program contains significant restrictions on permissible uses of funds provided, including capping compensation reimbursement to an annualized salary of $100,000. Relief under Section 3610 may be more generous. Similarly, as noted above, Section 3610 relief would appear to be at fully burdened labor rates, whereas PPP payments are limited to "payroll costs."

With these points in mind, the class deviation appears to suggest that it is the forgiveness of a PPP
loan that would render assistance under Section 3610 unavailable. This suggests that a contractor could simply elect not to seek forgiveness of the loan (and repay it at the 1 percent interest rate) and receive Section 3610 relief instead. DoD also details the new flexibilities offered to contracting officers when implementing the class deviation. They may:

- "[u]se any 'funds made available to the agency' by Congress to reimburse contractors;' this appears to include funds already obligated to the contract or program in question
- compensate contractors for lost time due to "quarantining, social distancing, or other COVID-19 related interruptions, as discussed in Office of Management and Budget Memorandum M-20-18"
- modify any contract to allow for reimbursement without additional consideration from the contractor
- do so without regard to contract type.

Finally, as noted above and in the CARES Act, reimbursement is contingent on the availability of funds. Some things still remain unclear. For instance, the class deviation does not explicitly state the method by which a contractor would seek compensation under this class deviation or whether a contractor could seek funds because of reduced staffing due to required social distancing at a worksite. That said, Section 3610 and aspects of the class deviation suggest that a modification to the contract should be issued to facilitate an adjustment in the contract price.

ow, it is more important than ever for contractors to maintain communication with their contracting officers or higher-level subcontractors. Contractors seeking compensation under this class deviation and DFARS § 231.205-79 would be wise to do so quickly, since it is not mandatory and subject to the availability of funds. Further, any request for compensation should be supported by unambiguous records.

by Dan Hilton, ACEC Director of Procurement Advocacy & International Affairs

ACEC Schedules Two New Free Programs to Help Firms Deal With COVID-19

ACEC has scheduled two free online classes next week to help member firms through the COVID-19 pandemic. Also, ACEC recently hosted a Small Firm Roundtable for firms with 50 or fewer employees. The roundtable offered an opportunity for members to ask questions, offered answers, and shared experiences. ACEC also recently hosted a Medium-Firm Roundtable for firms with 51-200 employees. A Large Firm Roundtable is being planned.

On April 22, ACEC will offer a free online class "Unprecedented Times: Navigating What's Now and What's Next." Presented by Brian Barton, CEO of Jones & DeMille Engineering, and Chandra Storrusten, CEO & Chief Value Creation Officer of Visible Value, the session will provide action-oriented best practices to implement immediately for what’s happening now and what’s coming next. To register for this class, click HERE.

The free online class "The Long Term Effect of Coronavirus on Your Firm's FAR Overhead Rate and Profitability" will be held on April 23. Wayne Owens will examine multiple scenarios focusing on a firm’s FAR overhead rate and profitability, including: Business process changes that are occurring during this lockdown; the short term and long term effects of these changes; and strategic options to maximize the FAR overhead rate and profitability. To register for this class, click HERE.
USACE Industry Webinar Video Available

Now Last week, the U.S. Army Corps of Engineers hosted an industry webinar on COVID-19. The video and slide deck (PDF) from the webinar can be accessed through the USACE website by clicking HERE. The Q&A from the webinar is being transcribed and should be available soon. Key points discussed in the webinar included:

- We are looking to marshal the support and capability of the industry to help with this crisis
- Powering Down-Districts are empowered reach out to local leaders and help them to frame options
- Alternate Care Site Documents
- Developed by USACE and HHS medical and construction experts to help States and municipalities address potential shortages in medical facilities during the 2020 COVID-19 pandemic
- Intended to assist in assessing and developing potential facilities for suitability as alternate care sites and to rapidly engage contractors to convert and prepare them for medical use.
- May not fit all circumstances
- Local & state governments must determine appropriate use of facilities.

MoDOT / Industry COVID-19 Weekly Update

The Missouri Department of Transportation has started having weekly Industry Meetings on COVID-19. Their last meeting was held on April 15, 2020 and attendees attended from ACEC, ACPA, AGC, KC Heavy Constructors, MAPA, MLPA, MoDOT and SITE. They discussed the following: 1) MoDOT and Industry joint letter emphasizing the importance of social distancing; 2) MoDOT Director requesting associations to encourage members to support the AASHTO funding proposal; 3) comments regarding the Job Special Provision regarding COVID-19 inclusion in the project safety plans; 4) MoDOT lettings; 5) budget consideration; 6) OSHA; 7) certifications; 8) PPE availability; and 8) MoDOT communications to employees regarding COVID-19 exposure. There were handouts they discussed and those are listed below. Click on each one to review them or go to ACEC/MO's website.

- AASHTO 50B Revenue Backstop Issue Brief
- Guidance for Contact with COVID-19 Flowchart
- MoDOT COVID-19 Safety Plans
- MoDOT Letter to Congressional Delegation on COVID-19

To see the complete minutes from the April 15th meeting and the meeting on April 8th, go to ACEC/MO's COVID-19 Resources page. The next meeting is scheduled for April 22, 2020 at 10:30 a.m.

ACEC Macro-Economic Update: Week Ending April 11, 2020

Federal Reserve Unveils Main Street Lending Program, Other Steps to Shore Up Economy: The Federal Reserve announced an expansion of nine different programs that will support $2.3 trillion in lending to U.S. businesses and states, including the new Main Street Lending Program (MSLP). The MSLP facilitates four-year loans to companies with 10,000 or less employees and revenues under $2.5 billion. Many of the requirements are similar to those in the CARES Act Paycheck Protection Program (PPP) direct loan, although its aim is help larger businesses. MSLP has a minimum loan size of $1 million and the first year principal and interest payments are deferred. Firms who take advantage of the
PPP loan - which is limited to companies with less than 500 employees - may also take out Main Street loans, according the Fed. The Wall Street Journal reports that the Fed has not had a direct lending program such as this since the 1930s.

**Federal Deficit Grew 8% in First Half of Fiscal Year:** The federal budget deficit grew by eight percent in the first half of the 2020 fiscal year (October – March), reaching $743.6 billion, according to Department of Treasury numbers released Friday, April 10. The Wall Street Journal reports this is the largest budget gap for a sixth month period since 2012, when the United States was still recovering from the Great Recession. The deficit is expected to increase even more dramatically in the second half of FY2020, as federal revenue from taxes is reduced and economic rescue efforts ramp up as the economic impact of COVID-19 is realized. Goldman Sachs expects the deficit to reach $3.6 trillion for the full fiscal year. A key metric economists will watch for is the U.S. deficit as a percentage of gross domestic product (GDP). At the end of FY2019 the deficit was 4.6 percent of GDP; this ratio was highest in recent decades during FY2009, when the deficit was 9.8% of GDP, according to Brookings.

*by Erin McLaughlin, ACEC Vice President Private Market Resources*

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**Risk Management and Employee Benefits Considerations**

The global COVID-19 (coronavirus) pandemic remains both dynamic and fluid. We continue to see unprecedented disruptions at home and abroad. In this issue, EPIC takes a focused look at the below items. To read the complete bulletin, click [HERE](#).

1. Repurposing Campuses for Hospital Overflows
2. Liability Immunity for Healthcare Workers
3. Proposed Ban on Surprise Medical Bills
4. Legislation and Litigation
5. Newly Released FAQs on FFCRA and CARES Act
6. CDC Safety Guidelines for Critical Infrastructure Workers
7. DOL Guidance on Recording Coronavirus Cases
8. Requirements for Written Social Distancing Protocols
9. Complimentary Identity Theft Offering

**On-Demand COVID-19 Webinars Available:**

- [Management Risk & Cybersecurity and Privacy](#)
- [Workers’ Compensation & Employee Benefits](#)
- [P&C Questions Answered: Coverage, Claims, and Regulatory Updates](#)
- [Families First Coronavirus Response Act: Q&A with EPIC & Fisher Phillips](#)

Visit [epicbrokers.com/coronavirus](http://epicbrokers.com/coronavirus) to catch up on all our coverage.