

## ***Policy Resolution Group COVID-19 Legislative Update***

***March 20, 2020***

### **Phase Three Begins**

- **Phase Three has a name.** Majority Leader Mitch McConnell (R-KY) on Thursday rolled out the Senate Republicans' "Phase Three" COVID-19 response proposal, *The Coronavirus Aid, Relief, and Economic Security (CARES) Act*, an opening proffer in what will now turn to bipartisan negotiations to arrive at a final package.
- **Key Parts of CARES Act.** As we laid out yesterday, the [CARES Act](#) is chiefly meant to put money immediately in the hands of individuals and families trying to make rent, small businesses trying to make payroll, and affected industries just trying to keep the lights on.
  - Its components reflect these priorities: [\\$1200 checks](#) to most taxpayers, a [\\$300 billion infusion](#) to small businesses, [\\$208 billion in relief](#) to sectors hardest hit, including airlines, and broad-based [business tax measures](#) meant to accelerate cash flow and loosen strictures on borrowing.
- **Democrats react to CARES Act.** The ball is now in the Democrats' court. While McConnell and his members formally begin negotiations today with the Senate minority, the decision of Speaker Nancy Pelosi (D-CA) and Leader Chuck Schumer (D-NY) to release a joint statement in response to the GOP proposal is a reflection of their intention to speak with one voice.

With no time to ping-pong between the chambers, the Senate is the last best opportunity to secure any changes House Democrats might desire. Those priorities stood out as the unmistakable refrain in responses by leading Democrats.

- Schumer and Pelosi [called for](#) "increasing unemployment insurance and Medicaid...[and] expanding paid sick and family leave."
- Finance Committee ranking member Ron Wyden (D-OR) [slammed the GOP bill](#) as "do[ing] nothing to expand unemployment assistance for those who have lost their jobs overnight."
- Ways and Means Chairman Richard Neal (D-MA) [called the package "inadequate"](#), chiding that "scores of recently unemployed Americans... are counting on expanded unemployment benefits... to save them from financial ruin."
- On the bill's business related provisions, the message was equally clear. Pelosi and Schumer called for "new, strong and strict provisions" on buybacks, executive compensation, and layoffs for corporate beneficiaries, effectively calling for policy strings to be placed on any bailouts a la 2008. Wyden laid out a similar vision in [his priorities](#).

- **Negotiations start now.** Now that the parties have touched gloves, the real legislative work begins. McConnell has deputized his committee leaders and other trusted colleagues to negotiate their respective pieces of the bill with their counterparts across the aisle, with Senators Mike Crapo (R-ID) and Pat Toomey (R-PA) helming the banking jurisdiction, Lamar Alexander (R-TN) on the HELP sections, Chuck Grassley (R-IA) and Portman on tax provisions, Marco Rubio (R-FL) and Susan Collins (R-ME) on the small business liquidity, and Roger Wicker (R-MS) leading on targeted industry relief, with Majority Whip John Thune (R-SD) providing an additional leadership perspective. The White House has sent over its head of legislative affairs, Eric Ueland, Treasury Secretary Steve Mnuchin, and staff from the National Economic Council.
  
- **What to expect going forward**
  - **A deal can happen.** Despite the frosty initial posturing from Democrats, the policy chasm should be manageable. As the contents of the GOP package might indicate, all ideological pretensions are out the window, and any reasonable asks will be entertained.
  
  - **Timing.** McConnell has committed to an ambitious schedule—an agreement in principle by midnight tonight, drafting of legislation tomorrow, cloture filed tomorrow, and vote on passage on Monday. Given how the components were drafted and stitched together in the past 24 hours, members and staff are clearly motivated to get the deal done.
  
  - **What about Phase Four and appropriations? (Thoughts from PRG’s appropriations team)**
    - As part of Phase 4 negotiations, the White House sent appropriators in both chambers a \$45 billion supplemental request for Fiscal Year 2020. This request is being termed as further stimulus activity as part of COVID-19 emergency response and the precedents marshaling of government resources. Per the Constitution, any further funding bill will need to originate in the House of Representatives, meaning the House Democrats will have the drafting pen.
  
    - It’s important to recognize this stimulus money is meant for agencies to directly respond to COVID-19, and should be viewed entirely separately from Congress’s Fiscal Year 2021 appropriations process which is still underway.
  
    - Efforts are being made to address energy and infrastructure priorities on a Phase Four vehicle, but it is unclear how successful these efforts will be.

**Detailed Summary of The Coronavirus Aid, Relief, and Economic Security (CARES) Act**

In introducing the *CARES Act*, Majority Leader Mitch McConnell (R-KY) stated:

“I am officially introducing the *Coronavirus Aid, Relief, and Economic Security Act*. This legislation takes bold action on four major priorities that are extremely urgent and extremely necessary:

1. Direct financial help for the American people;
2. Rapid relief for small businesses and their employees;

3. Significant steps to stabilize our economy and protect jobs;
4. And, of course, more support for the brave healthcare professionals and the patients who are fighting the coronavirus on the front lines....

I look forward to working with our Democratic colleagues and the Administration to complete this important work and deliver for the country.

Here are the next steps. A group of my Republican colleagues are standing by to explain this legislation and talk with their counterparts: Chairman Crapo and Senator Toomey from the Banking Committee; Chairman Alexander from the HELP Committee; Chairman Grassley and Senator Portman from the Finance Committee; Chairman Rubio from the Small Business Committee, as well as Senator Collins; Chairman Wicker from the Commerce Committee; And Senator Thune, our Majority Whip.

These will be our point people. I invite all of their Democratic counterparts to join us at the table right away.”

### **CARES Act Provisions**

- **Small Business Interruption Loans**

- **Loan Program.** The bill would appropriate approximately \$300 billion to the Small Business Administration (SBA) to offer loans to businesses with fewer than 500 employees to be used for payroll support, including paid sick, medical, or family leave, and costs related to the continuation of group health care benefits; employee salaries; mortgage payments; rent; utilities; and any other debt obligations. The program would extend through December 31, 2020.
- **Entrepreneurial Development.** The bill would appropriate \$275 million for grants to small businesses impacted by COVID-19 to provide education, training, and advising on topics such as applying for federal resources, hazards and prevention of COVID-19, management and practice of telework, among others.
- **Loan Forgiveness.** The bill would allow small businesses to receive loan forgiveness in an amount equal to the cost of maintaining payroll continuity from March 1, 2020 through June 30, 2020. The bill includes a calculation to adjust for seasonal employees. The amount of loan forgiveness is capped at payroll costs of \$33,333 per employee and does not include qualified sick or family leave wages. There is an exception for tipped workers; those businesses may receive forgiveness for additional wages paid to those employees.

- **Relief for Individuals, Families, and Businesses**

- **Recovery Rebates for Individuals.** Eligible individuals would receive checks of \$1,200 (\$2,400 in the case of a joint return). The amount increases by \$500 per child. The rebate check is reduced by five percent of a taxpayer’s adjusted gross income as exceeds \$75,000 (\$150,000 in the case of a joint return). Taxpayers with little or no income tax liability, but at least \$2,500 of qualifying income, would receive a minimum rebate check of \$600 (\$1,200 in the case of a joint return).

- **Delay of Tax Filing Deadline to July 15.** The bill would allow all individuals to postpone estimated tax payments due from the date of enactment until October 15, 2020.
- **Special Rules for Use of Retirement Funds.** The bill would create an exception for tax-favored withdrawals from retirement funds to pay for coronavirus-related disruption as long as the withdrawal does not exceed \$100,000.
- **Charitable contributions.** The bill would allow partial above the line deductions for charitable contributions up to \$300 and increase the limits on deductions for charitable contributions during 2020, suspending the 50 percent adjusted gross income limitation for individuals and increasing the corporate limitation to 25 percent of taxable income.
- **Delay of Tax Payments for Corporations.** The bill would allow corporations to postpone all estimated tax payments due after the date of enactment until October 15, 2020. Employers and self-employed individuals would also be able to defer payment of the employer share of the Social Security tax. The deferred tax would be paid over the following two years.
- **Technical Corrections.**
  - **Net Operating Losses (NOL).** The bill would allow that a loss from 2018, 2019, or 2020 be carried back five years, in addition to temporarily removing the taxable income limitation to allow an NOL to fully offset income. The bill also modifies the loss limitation applicable to pass-through businesses and sole proprietors, so they benefit from the NOL reform.
  - **Credit for Prior Year Minimum Tax Liability of Corporations.** The bill would allow companies to claim a refund now for AMT credits.
  - **Limitation on Business Interest.** The bill would increase the 30 percent limitation to 50 percent of taxable income for 2019 and 2020.
  - **Qualified Improvement Property (QIP).** The bill would allow businesses to immediately write off costs associated with improving facilities.
  - **Installments Not to Prevent Credit or Refund of Overpayment or Increase Estimated Taxes.** This provision corrects for an error in the *Tax Cuts and Jobs Act (TCJA)* by allowing companies to recover overpayment of taxes when they repatriated earnings in 2017.
  - **Restoration of Limitation on Downward Attribution of Stock Ownership in Applying Constructive Ownership Rules.** The bill would clarify that certain foreign subsidiaries should not be subject to requirements for foreign entities in the TCJA.
- **Assistance to Severely Distressed Sectors of the United States Economy**
  - **Emergency Relief through Loans and Loan Guarantees.** The bill would authorize \$208 billion in loan guarantees. The government would participate in the gains of the business through the use of instruments such as warrants, stock options, common or preferred stock, or other equity instruments.

- **Airlines.** \$50 billion of the authorized loan guarantees would go to passenger air carriers and \$8 billion to cargo air carriers. The Secretary of Transportation is authorized to require air carriers receiving loans to maintain scheduled air transportation services.
- **Other Businesses.** \$150 billion of loan guarantees would go to other eligible businesses defined as those that have incurred “losses, direct or incremental, incurred as a result of coronavirus...such that the continued operations of the business are jeopardized, as determined by the [Treasury] Secretary, and that has not otherwise applied for or received economic relief in the form of loans or loan guarantees.”
- **Employee Compensation Caps.** For a business to receive a loan, it must not increase the compensation of highly compensated officers or employees from March 1, 2020 through March 1, 2022. Highly compensated officers and employees are those who made more than \$425,000 in 2019.
- **Aviation Excise Taxes.** The bill would suspend a variety of aviation excise taxes through January 1, 2021.
- **Health Care Response**
  - **Health Provisions—Addressing Supply Shortages.**
    - **Strategic National Stockpile Management.** The bill would move control of the Strategic National Stockpile to the Assistant Secretary for Preparedness and Responses from the Director of the Centers for Disease Control and Prevention.
    - **Report.** The bill would commission a National Academies report on America’s medical product supply chain security.
    - **Stockpile Requirements.** The bill would require the stockpile to have personal protective equipment, ancillary medical supplies, and other testing and diagnostic equipment. The bill would also require respiratory protective devices to qualify as countermeasures.
    - **Prioritize Review of Drug Applications.** The bill would expedite Food and Drug Administration (FDA) review of drugs to treat and prevent COVID-19.
    - **Preventing Essential Medical Device Shortages.** The bill would allow the federal government to require manufacturers of devices critical to public health provide notification of permanent discontinuance or interruption in manufacturing. The federal government would also be able to expedite review if it determines there is likely to be, or is, a shortage of a device.
    - **Emergency Use of Laboratory Developed Tests.** The bill would allow for greater laboratory testing to diagnose COVID-19 by removing regulations.
  - **Health Provisions--Access to Health Care for COVID-19 Patients**

- **Coverage of Diagnostic Testing.** The bill would require health insurers to provide coverage for COVID-19 testing without imposing any cost-sharing requirements or prior authorization.
- **Rapid Coverage of Preventive Services and Vaccines for Coronavirus.** The bill would require health insurers to cover any qualifying coronavirus preventive service.
- **Supplemental Awards for Health Centers.** The bill would appropriate \$1.32 billion in supplemental awards for the detection of SARS-CoV-2 or the prevention, diagnosis, and treatment of COVID-19.
- **Telehealth Network and Resource Centers Grant Programs.** The bill would expand existing grants for telehealth programs and increase appropriations by \$29 million per year through 2025.
- **Rural Health Care.** The bill would expand existing grants for rural health care provision and appropriate \$79.5 million per year through 2025.
- **Public Health Service Modernization.** The bill would expand the Reserve Corps and limit liability for volunteer health care professionals during the COVID-19 emergency response.
- **Reauthorization of Healthy Start.** The bill would reauthorize the Healthy Start program and appropriate \$122.5 million per year through 2024.
- **Health Provisions—Innovation.** The bill contains provisions to expedite the development of a vaccine for SARS-CoV-2.
- **Health Provisions—Finance Committee.** The bill would reform and expand telehealth services, expand the availability of certain over the counter products, implement technical reforms for direct primary care services, provide various improvements to Medicare’s services and payment methods, encourage the development and use of DISARM anti-microbial drugs, among other health plan reforms.
- **Education Provisions.**
  - **Campus-Based Aid Waivers.** The bill would waive the non-federal share requirement to receive Federal funds.
  - **Use of Supplemental Educational Opportunity Grants for Emergency Aid.** The bill would allow higher education institutions to reserve federal grants to provide emergency financial aid in a later year.
  - **Student Loans.** The bill would exclude from a student’s period of enrollment, for purposes of federal loans, any semester during which the student was unable to remain enrolled as a result of a qualifying emergency. The Secretary may also waive amounts students are required to pay under certain circumstances. The bill would also provide temporary relief by suspending payments due for three months without interest accruing.
- **Labor Provisions.**

- **Technical Corrections to Phase 2 Stimulus.**
  - **Limitation on Paid Leave.** The bill would modify the amount of paid leave, creating a cap of \$200 per day and \$100,000 in the aggregate.
  - **Limitation on Emergency Paid Sick Leave Act.** The bill would make corrections to emergency paid sick leave, creating a limit of \$511 per day and \$5,110 in the aggregate for employees taking leave for reasons described in paragraph (1), (2), or (3) of section 5102(a) [quarantine, self-quarantine, COVID-19 symptoms], or \$200 per day and \$2,000 in the aggregate for employees taking leave for reasons describe in paragraph (4), (5) or (6) of section 5102(a) [caring for others]. The bill would also clarify that an employer’s requirement to provide paid leave expires at the time when the employer has paid that employee for paid leave for an equivalent of 80 hours of work or upon the employee’s return to work after taking paid leave.
  - **Clerical Errors.** The bill would fix minor errors of the regulatory authorities and unemployment sections of the Phase 2 bill.
  - **Authority to Exclude Certain Employees.** The bill would give the Director of the Office of Management and Budget the authority to exclude for good cause certain employers of the United States Government with respect to certain categories of Executive Branch employees from the requirements of Section 110(a)(b) [newly created “Public Health Emergency Leave”].
  - **Paid Leave for Rehired Employees.** The bill would clarify the applicability of paid leave for rehired employees.
  - **Advance Refunding of Credits.** The bill would provide for advanced payment of the credit.
- **Temporary Permit Use to Guarantee Money Market Mutual Funds.** The bill would remove the applicability of Section 131 of the *Emergency Economic Stabilization Act of 2008* during the COVID-19 outbreak.

For additional details:

- [Background on small business provisions from Senator Marco Rubio \(R-FL\)](#)
- [Background on appropriations provisions from Senate Appropriations Committee](#)
- [Background on tax provisions from Senate Finance Committee](#)
- [Section-by-section descriptions of health supplies provisions from Senate HELP Committee](#)
- [Section-by-section descriptions of heath care provider and system provisions from Senate HELP Committee](#)

**Democratic Alternative Proposals**

- **Senate Democrats \$750 Billion Package.** Senate Democrats unveiled on March 17, 2020, a legislative package that would provide \$400 billion for pandemic response and \$350 billion for the social safety net, along with a series of policy reforms, such as six months of forbearance for all federally backed mortgages, moratoriums on all evictions and foreclosures, expanded unemployment insurance, requirements on businesses receiving federal aid, among others. See the proposal [here](#).
- **House Financial Services Committee Stimulus Plan.** Financial Services Chairwoman Maxine Waters (D-CA) released a stimulus plan on March 18, 2020, that would provide direct payments of at least \$2,000/month to all adults; establish consumer and small business debt protections; provide \$5 billion in emergency homeless assistance; ban all evictions, foreclosures, and repossessions; provide \$100 billion to help non-assisted renters cover rent and utility payments; suspend commercial rental payments; provide \$50 billion in new grants for the Small Business Administration; rebate 100% of payroll taxes paid by small businesses this year and 200% of payroll taxes paid by small businesses in “hotspots”; fund the mobilization of essential health and safety supplies; create new SEC requirements to require public companies to identify and disclose pandemic risks; implement a temporary ban on stock buybacks and dividends; forgive a minimum of \$10,000 of student loan debt; among other measures. See the proposal [here](#).
- **Student Loan Cancellation.** Senators Chuck Schumer (D-NY), Patty Murray (D-WA), Sherrod Brown (D-OH), and Elizabeth Warren’s (D-MA) March 19, 2020 proposal would cancel monthly student loan payments for the duration of the national emergency and pay down a minimum of \$10,000 for all federal student loan borrowers. See the proposal [here](#).
- **Direct Checks.** Senators Michael Bennet (D-CO), Cory Booker (D-NJ), and Sherrod Brown (D-OH), proposed on March 17, 2020, sending a total of \$4,500 to nearly every adult and child in the U.S., beginning with an immediate payment of \$2,000 and subsequent payments conditioned on economic conditions. See the proposal [here](#).
- **Pelosi Package.** Speaker Nancy Pelosi (D-CA) has said that Congress should consider refundable tax credits, expanded unemployment insurance, and direct payments. See news coverage [here](#).
- **Clean Energy Tax Credits.** Reps. Gerry Connolly (D-VA), Paul Tonko (D-NY), and Doris Matsui (D-CA) have pushed for the inclusion of clean energy tax credits, such as the electric vehicle (EV) consumer credit and extension of the investment credit for solar and other renewable technologies, in COVID-19 stimulus legislation. Speaker Nancy Pelosi (D-CA) appears lukewarm to the proposal. See news coverage [here](#).
- **Small Business Relief.** Senators Chris Coons (D-DE) along with eight other Democratic senators on March 19, 2020, introduced the *COVID-19 RELIEF for Small Businesses Act of 2020*, which would expand and reform the tools available at the Small Business Administration, including provision of recovery grants, small business debt relief, direct lending, among others. See the bill summary [here](#).
- **Other Bills.**
  - **H.R. 6292.** Rep. Sheila Jackson Lee (D-TX) introduced a bill that would establish an Office of Coronavirus COVID-19 Small Business Recovery Grants in the Small Business Administration. See the bill [here](#).

- **H.R. 6310 / S. 3507.** Rep. Mark Pocan (D-WI) and Senator Tammy Baldwin (D-WI) introduced bills that would require the Secretary of Defense to make testing for COVID-19 available to all members of the Armed Forces. See the bill [here](#).
- **S. 3517.** Senator Amy Klobuchar (D-MN) introduced a bill to increase the ability of nursing facilities to access telehealth services. See the bill [here](#).
- **S. 3525.** Senator Jeanne Shaheen (D-NH) introduced a bill to allow a tax credit for certain COVID-19-related charitable contributions for FY 2020. See the bill [here](#).
- **S. 3505.** Senator Doug Jones (D-AL) introduced a bill that would require private health insurance to cover all preventive services and vaccines related to COVID-19. See the bill [here](#).