

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

***March 27, 2020***

This will be our last update on the COVID-19 Phase Three legislative deliberations. The House commenced its debate over the *CARES Act* this morning, and after a threatened delay, passed the bill by a voice vote. Now the relief efforts turn to implementation of Phase Three and drafting of Phase Four legislation.

In this note, you will find an updated edition of our library that includes a variety of new analytical materials about the COVID-19 legislation. As Congress moves to Phase Four and beyond, we will continue to produce updates to keep you informed.

### ***The House's Turn***

- Speaker Nancy Pelosi (D-CA) called House members back to Washington to debate and vote on the *CARES Act* today. As she entered the Capitol this morning, she was unequivocal: “We’re going to pass it today.”
- After a failed effort by Representative Thomas Massie (R-KY) to object to the absence of quorum (his objection did not receive a sufficient second under the rules), the House passed the legislation by a voice vote.
- Following the vote, Speaker Pelosi adjourned the House until the morning of 3/30/2020, which will be a pro forma session.
- The *CARES Act* now heads to President Donald Trump to be signed into law, which will likely occur as soon as possible.
- Speaker Pelosi has stated that work has already begun on a Phase Four relief program, so stay tuned.

### ***How Do These Programs Work?***

- Companies across all sectors are trying to determine what assistance they could receive from the Phase Three legislation. As of now, there are far more questions than answers. Agencies, trade associations, and others are scrambling to develop guidance.
- The *CARES Act* itself does very little to differentiate between industry sectors. Outside of certain sectors, such as airlines or health care, most relief in Phase Three is not organized by business activity or industry sector.

- Bracewell LLP has organized a COVID-19 relief task force that includes practitioners from multiple offices and practice areas. The task force is designed to help our clients understand their options and effectively advocate for their interests in the context of COVID-19 relief. Your point of contact at Bracewell can help you learn more, if you have questions.
- Also, PRG has started tracking how Federal agencies are managing their operations and oversight obligations in the face of widespread COVID-19 responses, including managing enforcement and compliance obligations. Visit our [website](#) to find more.
- For companies that interface with the US Environmental Protection Agency (EPA), [this blog post](#) by Bracewell's Kevin Collins on EPA's recent policy memorandum on the exercise of enforcement discretion may be of interest.

### **The Library**

#### **Phase Three**

##### *Coronavirus Aid, Relief, and Economic Security (CARES) Act*

- Final legislative [text](#).
- Senate Summaries
  - Senate Majority Leader section-by-section [summary](#).
  - Senate Committee on Appropriations [summary](#) of the supplemental appropriations division.
  - Senate Committee on Finance [summary](#) of unemployment insurance and tax provisions.
  - Senate Committee on Finance [summary](#) of health provisions.
  - Senate HELP Committee [one-pager](#) on its provisions.
  - Senate Small Business & Entrepreneurship Committee section-by-section [summary](#) and [one-pager](#) of small business provisions.
  - Senate Committee on Banking, Housing, and Urban Affairs [summary](#) on its provisions.
- House Summaries
  - House GOP Conference [one-pager](#).
  - House GOP Conference topline [summary](#).
  - House Minority Leader topline [summary](#).
  - Schumer Dear Colleague [letter](#).

- Joint Committee on Taxation [estimated revenue effects](#) of the CARES Act.
- Third Party Summaries
  - Congressional Research Service [summary](#) of certain tax relief provisions.
  - National Association of Manufacturers (NAM) [summary](#) of employer provisions.
  - Solar Energy Industries Association [summary](#).
  - Tax Foundation [summary](#).
  - Bloomberg Government [summary](#).
  - National Public Radio [summary](#).
  - CNBC [summary](#).

### **Previous Stimulus Packages**

#### Phase One: Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020

- Public Law No: 116-123 [text](#).
- Congressional Research Service [summary](#).

#### Phase Two: Families First Coronavirus Response Act

- Public Law No: 116-127 [text](#).
- House Appropriations Committee [summary](#).
- Policy Resolution Group [summary](#).
- Congressional Research Service [summary](#) of the tax credit for paid leave.
- Department of Labor [summary](#) of employer paid leave requirements (Note: These will be impacted by the CARES Act that is likely to pass the House imminently).
- Department of Treasury [news release](#) about the new law.
- Kaiser Family Foundation [summary](#).

## ***March 26, 2020***

After Senate passage of the *CARES Act* last night, the \$2 trillion legislation will likely become law before the end of the week. Now agencies must promulgate the wide range of guidance necessary to implement the vast array of new assistance programs, while lawmakers have already begun to consider what is necessary for Phase Four of the legislative response to the COVID-19 crisis.

### **Finally, Senate Passage**

- **Senate passage.** After last-minute tweaks and threatened delays, late Wednesday evening the Senate passed the *CARES Act* by a margin of 96-0. After the vote, Majority Leader Mitch McConnell (R-KY) adjourned the Senate until April 20, 2020, although Senators can be called back with 24-hour notice.
- **House returning.** Without a guarantee that the legislation could pass without any objections, House Majority Leader Steny Hoyer (D-MD) announced last night that the House will convene at 9:00 am on Friday to debate and conduct a voice vote on the *CARES Act*.

### **What to Expect Moving Forward**

- **The end of the beginning.** We expect that the *CARES Act* will pass the House by an overwhelming majority on Friday, and it will be signed into law by the President soon thereafter. However, becoming law is just the beginning of the Phase Three relief process, not the end.
- **How can I get Phase Three help?** Individuals and companies are desperate for guidance about how and when they can access assistance, and federal agencies are scrambling to develop the guidance necessary for everyone to understand how the new lending programs will operate.
  - Right now, the only guidance available comes in the form of legislative language and the summaries provided in “The Library” below. These are short on details and do not address common sector-specific concerns.
  - As details about implementation become available, we will share them through our regular updates. Bracewell has attorneys across multiple offices and practices preparing to help clients understand and engage the Phase Three assistance programs.
- **An eye towards Phase Four.** As we mentioned in past reports, the White House and Congress understand that more economic assistance will likely be necessary in the coming weeks and months. Lawmakers have already begun to place markers for future COVID-19 relief efforts, and some of the proposals that we expect to be included in those debates are:
  - **Renewable energy issues.** Renewable energy groups will continue to seek changes to start construction and safe harbor deadlines in response to COVID-19, for expanded use of renewable credits for monetization, and for the creation of a tax credit to support stand-alone energy storage.
  - **Democratic proposals.** Speaker Nancy Pelosi (D-CA) and former Vice President Joe Biden have made clear that they intend to advocate for a range of issues to be included in Phase Four

legislation, including expanded OSHA protections for health care workers, additional food stamp funding, further election resources for voting-by-mail, and financial aid for pension funds.

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### **Update from Bracewell's Labor and Employment Lawyers**

As mentioned in yesterday's update, the Families First Coronavirus Response Act (FFCRA) requires that covered employers post a notice that is "prepared or approved by the Secretary of Labor" in "conspicuous places . . . where notices to employees are customarily posted." The Secretary of Labor has published the compliant notice poster to be used by employers. The notice should be posted on or before April 1, 2020, which is the effective date of the Act. The notice, along with several Department of Labor "compliance assistance" resources, can be found [here](#).

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

***March 25, 2020***

### ***We Have A Deal***

Late Tuesday night, an agreement was reached on a Phase Three deal to provide significant financial relief to individuals and businesses. We expect the legislation will pass in the next 48 hours, depending on how the House decides to proceed. The proposed \$2 trillion legislation is vast in scope, and many important implementation details still need to be developed before companies and individuals will know how and when to access relief.

### ***The 30,000-Foot Take***

- Phase Three is upon us in the form of the CARES Act, and it amounts to a massive pool of money meant to backfill a seemingly instantaneous economic black hole.
  - Note: While the final language of the legislation was being tinkered with as this update was written, most of the key details have been released. If the final version of the legislation changes any of these details, we will update you.
    - Senators Lindsey Graham (R-SC), Ben Sasse (R-NE), and Rick Scott (R-SC) recently identified a "drafting error" in the bill that, if enacted as currently drafted, would arguably

provide unemployment insurance greater than an employee's current rate of compensation.

- Here's how we framed it in our initial Phase Three update: "If it doesn't go straight to pocketbooks, payrolls, or social safety net programs, it probably does not fit the bill for inclusion at this juncture."
- The package remained faithful to these imperatives, but that does not mean that there's not a great deal here of interest to all businesses:
  - There may be a tendency to dismiss the bill's contents if it doesn't address a given industry's specific concerns or angles, but this would overlook the broad nature of the package.
- Between the "Paycheck Protection Program" for smaller businesses and the \$454 billion set aside for larger companies, this bill intends to throw an economic lifeline to all employers, regardless of size, scale, or sector.
  - Of note: Treasury Secretary Mnuchin signaled his intention to leverage this injection of \$454 billion into \$4 trillion with the help of the Federal Reserve.
- Now that we have this giant pool of money, attention turns toward how to deploy and administer it, while maintaining proper oversight.

### **What Comes Next?**

- **Overall.** Expect future iterations of COVID-19 aid to be more targeted—and the ensuing battles to be even more partisan.
- **Details come next.** As discussed yesterday, the single most important aspect of Phase Three might not be the legislation itself, but the efficiency and effectiveness of its implementation. The coming days and weeks are absolutely critical as guidance is issued about how to access the loans and grants created by the legislation.
- **Time to leave.** Congress will now take a lengthy break as the disproportionately older, more at-risk members of the Senate head home to self-quarantine. They endeavored to add enough liquidity to this bill (up to \$5 trillion in some estimations) to avoid having to come immediately back to address any inadequacies. In the meantime they will wait, watch, and assess the country's needs based on how this crisis unfolds.
- **Items for the next phase.** The following items were conspicuously absent from Phase Three, but are very likely to be considered and debated in future iterations:
  - Energy tax credits, such as those put forward by House Democrats in the *GREEN Act*.
    - Section 45Q carbon sequestration date extensions (and possibly substantive changes).
    - Section 48 investment tax credit (ITC) safe harbors for facility construction.
    - Offshore wind tax credits for eligible property upon beginning construction and possible wind energy inclusion in the Section 48 ITC regime.

- Increase in manufacturers' electric vehicle credit allocation.
- Enhanced tax incentives for alternative/renewable vehicle fueling infrastructure.
- Section 25C reform for energy efficient property purchases.
- Infrastructure
  - Surface transportation reauthorization.
    - Must be reauthorized by 9/20/2020, but funding was thought to be ok through 2021.
    - Note: Highway Trust Fund revenue outlook will be impacted by COVID-19 economic shock.
    - Urgent public infrastructure needs that can be tied to COVID-19 response.
    - Broader multi-modal transportation and infrastructure package?
- **Oversight is coming.** Business that seek and accept COVID-19 assistance will be subject to a range of conditions on that aid, and should expect that oversight of the funds by agencies, inspectors general, and Congress will be rigorous and extend far into the future.

#### **What Changed in the Phase Three Legislation**

- **Overall.** The Democrats ended up getting most, but not all, of their demands for more funding and oversight, but ended up with very few of the demands that Republicans have been criticizing over recent days (e.g. Green New Deal provisions). A few issues we call particular attention to:
  - The \$3 billion authorization to purchase oil for the Strategic Petroleum Reserve (SPR) was removed from the bill. This concession seems to be an easy way to head off Democratic demands for "Green New Deal" provisions in the House bill, such as aviation emissions restrictions, and a late push for renewable energy tax credits.
  - The paid emergency leave and sick time provisions of H.R. 6201 were not expanded to apply to companies with more than 500 employees.
  - Language related to insurance coverage for COVID-19 testing remained the same from the initial version of the *CARES Act* offered by Majority Leader Mitch McConnell (R-KY)
- Minority Leader Charles Schumer (D-NY) is asking Democrats to evaluate the Phase Three deal in comparison to the version of the *CARES Act* that McConnell offered on Sunday. Schumer's office highlighted a number of changes to the *CARES Act* that show how the legislation grew in size to \$2 trillion. These changes include:
  - Provisions Schumer is claiming they forced out of the *CARES Act* include:
    - \$3 billion to purchase oil for the SPR.

- Provisions that would have allowed publication of Exchange Stabilization Fund (ESF) loans to corporations to be delayed for 6 months.
- Provisions Schumer is claiming credit for include:
  - Increase in unemployment payments and extension of unemployment insurance benefits from 3 months to 4 months.
  - \$55 billion in funds for hospitals and health care providers.
  - \$150 billion for in relief funds for State, local, and tribal governments.
  - Enhancements to the small business relief program, including:
    - \$10 billion for emergency grants of up to \$10,000 for small business operating costs.
    - \$17 billion to cover 6 months of payments for small businesses with existing SBA loans.
  - Provisions making rent, mortgage and utility costs eligible for SBA loan forgiveness.
  - \$55 billion in funding for educational institutions and transit systems.
  - \$30 billion in emergency education funding and \$25 billion in emergency transit funding.
  - \$30 billion for the Disaster Relief Fund.
  - More than \$10 billion for the Indian Health Services, and other tribal programs.
  - New restrictions on the use of Phase Three funds, including:
    - A prohibition on businesses controlled by the President, Vice President, Members of Congress, and heads of Executive Departments from receiving loans or investments from Treasury programs.
    - A ban on stock buybacks or dividends for the term of the government assistance plus 1 year on any company receiving a government loan from the bill.
    - “Robust worker protections” attached to Phase Three business loans federal loans.
    - Enhanced public reporting of Treasury transactions under the Act, including terms of loans, investments or other assistance to corporations.
    - Creation of a Treasury Department Special Inspector General for Pandemic Recovery and a Pandemic Response Accountability Committee.
- Tax provisions:

- Creation of a retention tax credit for employers to encourage businesses to keep workers on payroll during the crisis.
- Provide income tax exclusion for individuals who are receiving student loan repayment assistance from their employer.

**Overall Summary of the Phase Three Deal**

- **Estimated Cost: \$2 Trillion.**
- **Direct Payments.** \$1,200 in direct payments to individuals, with a phase out for those with incomes greater than \$75,000 and no benefit for those earning more than \$99,000. Families receive an additional \$500 per child.
- **Unemployment Insurance (UC).** Extension of UC for four months; increase in benefits by \$600 per week; and eligibility expansion to cover more workers, such as the self-employed or those in the gig economy.
- **Exchange Stabilization Fund (ESF).** \$500 billion fund for the Federal Reserve to leverage loans to assist distressed businesses, as well as state and local governments, of which \$454 billion is allocated to companies economy-wide and \$46 billion for industry-specific loans with airlines receiving \$29 billion.
  - **Oversight Requirements.**
    - Creation of a new Inspector General.
    - Five-person panel appointed by Congress.
    - Limits on executive compensation.
    - Limits on stock buybacks and payment of dividends on common stock for the length of assistance plus an additional year.
    - Prohibits businesses controlled by the President, Vice President, Members of Congress, and heads of Executive Departments from receiving loans or investments.
    - Reporting requirements, including mandated disclosure of the terms of assistance by Treasury, and periodic reports by Treasury and GAO.
    - Requirements to maintain a workforce at 90% or more the size it was on 3/24/2020.
- **States and Local Governments.** \$150 billion for state and local stimulus funds.
- **Small Business Assistance.** \$367 billion “Paycheck Protection Program” for small businesses.
  - Conditions loans on keeping steady payrolls throughout the public health emergency.
  - Small businesses that commit to retain workers also receive cash-flow assistance in the form of federally-guaranteed loans that would be forgiven if the employer continued to pay workers during the public health emergency.

- \$17 billion for SBA to cover 6 months of payments for small businesses with existing SBA loans.
- Makes rent, mortgage, and utility costs eligible for SBA loan forgiveness.
- \$10 billion for SBA emergency grants of up to \$10,000 to provide immediate relief for small business operating costs.
- **Education.** \$30 billion in emergency education funding.
  - Student loan borrowers get a 6-month delay on payments
- **Business Tax Provisions.**
  - **Retention Tax Credit.** Creates a refundable payroll tax credit for 50 percent of wages paid by employers to employees during the COVID-19 crisis.
    - Qualifying Employers are those whose (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order, or (2) gross receipts declined by more than 50 percent when compared to the same quarter in the prior year.
    - For employers with greater than 100 full-time employees, qualified wages are wages paid to employees when they are not providing services due to the COVID-19-related circumstances described above.
    - For eligible employers with 100 or fewer full-time employees, all employee wages qualify for the credit, whether the employer is open for business or subject to a shut-down order.
    - The credit is capped at \$10,000/quarter per employee, including health benefits paid.
    - The credit is provided for wages paid or incurred from 3/13/2020 through 12/31/2020.
  - **Delay of payment of employer payroll taxes.** Payment would be due over the course of two years with half due 12/31/2021 and the balance due 12/31/2022.
  - **Modification for net operating losses (NOL).** This provision would allow five-year carryback for 2018, 2019, and 2020 tax years, respectively.
  - **Modification of limitation on losses for taxpayers other than corporations.** The 80 percent carryback limitation would be lifted for pass-through entities to harmonize with corporate NOL treatment for 2018, 2019, and 2020.
  - **Modification of credit for prior year minimum tax liability of corporations.** This would accelerate the ability of companies to recover AMT credits in the form of refunds.
  - **Modification of limitation on business interest.** This would loosen the limitation on interest deduction to 50 percent of EBITDA for 2019 and 2020.

- **Technical amendments regarding qualified improvement property (QIP).** This fix to the so-called “retail glitch” would unlock \$15 billion in liquidity for QIP expenses incurred by hard-hit sectors like restaurants, hotels, and retail, among others.

- **Supplemental Appropriations.**

- **Health Care Providers.** \$100 billion for a new program to provide direct aid to health care institutions to cover costs related to the public health emergency.
- **Strategic National Stockpile (SNS).** \$16 billion to replenish supplies of pharmaceuticals, personal protective equipment, and other medical supplies.
- **Biomedical Advanced Research and Development Authority (BARDA).** \$3.5 billion to expand the production of vaccines, therapeutics, and diagnostics.
- **Hospital Preparedness Program.** \$250 million to support emergency preparedness.
- **Defense Production Act.** \$1 billion to bolster domestic supply chains.
- **Public Health Agencies.** \$4.3 billion to support federal, state, and local public health agencies to prevent, prepare for, and respond to COVID-19.
- **Nursing Homes.** \$200 million for CMS to assist nursing homes with infection control and support states.
- **FEMA.** \$45 billion for FEMA’s Disaster Relief Fund; \$400 million for FEMA grants.
- **Military.**
  - **Navy.** \$260 million for Navy operations and maintenance, including the deployment of the *USNS Comfort* and the *USNS Mercy*.
  - **National Guard.** \$1.5 billion for National Guard support to States and territories to support Title 32 operations.
- **Child Care Development Block Grants.** \$3.5 billion in additional funding to provide child care assistance to health care sector employees, emergency responders, sanitation workers, and other workers deemed essential.
- **Housing.** \$7 billion for affordable housing and homelessness assistance programs.
- **Transit.** \$25 billion to aid transit systems.
- **Airports.** \$10 billion in grants to airports.
- **Grants.** \$6.5 billion in Federal funding for CDBG, the Economic Development Administration, and the Manufacturing Extension Partnership.
- **Tribes.** Over \$1 billion to tribal communities.

- **LIHEAP.** \$900 million to help lower income households heat and cool their homes.
- **Veterans.** \$15.85 billion for treatment and testing of veterans.
- **Law Enforcement.** \$850 million in Byrne-JAG grants for state and local law enforcement and jails to purchase PPE, medical supplies, and overtime.
- **SB Administration.** \$562 million for SBA administration of Economic Injury Disaster Loans.
- **Food Banks.** \$450 million for The Emergency Food Assistance Program.
- **Mental Health.** \$425 million for mental health services.
- **Elections.** \$400 million in election assistance for states.
- **Nutrition.** Over \$24 billion to programs such as SNAP, among others.

**Special Update from Bracewell's Labor and Employment Lawyers**

The *Families First Coronavirus Response Act* (FFCRA), signed into law last week, mandates that certain employers provide certain paid leave benefits to their employees based on specified reasons relating to COVID-19. These reasons range from employees taking leave due to COVID-19 symptoms or required quarantine to caring for children that are without school or daycare due to the public health emergency.

Yesterday, the U.S. Department of Labor's Wage and Hour Division (WHD) published guidance for both employers and employees, which seeks to provide further explanation of the paid sick time and expanded family and medical leave requirements mandated under the FFCRA, set to take effect on April 1, 2020. The WHD guidance addresses several critical topics and questions, such as counting employees for coverage purposes, the potential for small business exemptions, counting hours for part-time employees, and calculation of wages under the new law.

The guidance can be found in the following documents: [Fact Sheet for Employees](#), [Fact Sheet for Employers](#) and [Questions and Answers](#).

Also, employers should keep an eye out for a workplace poster to be published later this week, as many employers will be required to post this poster at their place(s) of operation.

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

***March 24, 2020***

***The Red Zone***

Tuesday looks to be a make or break day for the current iterations of a Phase Three deal. Right now all signs indicate the Senate will move swiftly and the House follow suit. However, at the time of this update, a few points remain under negotiation and the text of any legislation needs to be finalized.

- **Signs of a Deal.**

- **Schumer.** Following the sixth meeting with Treasury Secretary Steven Mnuchin at midnight, Senator Chuck Schumer (D-NY) [said](#) “we expect to have an agreement tomorrow morning. There are still a few little differences. Neither of us think they are in any way going to get in the way of a final agreement.”
- **Mnuchin.** Mnuchin similarly expressed optimism, [saying](#) on Monday night, “I think we've made a lot of progress...There's still a couple of open issues, but I think we're very hopeful that this can be closed out" in the next day.”
- **Pelosi.** This morning House Speaker Nancy Pelosi (D-CA) signaled satisfaction with the direction of the package [saying](#), “we think the bill has moved sufficiently to the side of workers.” The Speaker took credit for securing oversight on the “\$500 billion slush fund,” asserting that the Senate adopted language from her bill.
  - This is Pelosi signaling surrender, but with a triumphant flourish.
- **Trump.** President Donald Trump this morning added urgency to negotiations by [tweeting](#), “Congress must approve the deal, without all of the nonsense, today. The longer it takes, the harder it will be to start up our economy. Our workers will be hurt!”
  - This is a notable reversal from a [late night Trump tweet](#) reacting to the House alternative Phase Three package. Progressive provisions in the Pelosi bill make for a useful foil, and their inevitable omission allows Trump and Republicans to claim victory.

- **McConnell Draws a Line.**

- Majority Leader Mitch McConnell (R-KY) gave a blistering speech on the floor of the Senate last night, saying that time is up and that Congress must pass the bill as soon as possible.
- This morning, McConnell [expressed optimism](#) on the floor of the Senate, “It's taken a lot of noise and a lot of rhetoric to get us here,” but it is possible we have reached “the 5-yard line.” McConnell has scheduled time on Wednesday to vote on the Senate bill, but would hold a vote today if a deal is reached.

- **Deal Imminent.** Given the confluence of these factors – finalization of Schumer-Mnuchin negotiations, Pelosi’s optimism, McConnell’s urgency, and President Trump’s pressure – we expect a deal to be announced in the coming hours.

**What to Expect for Remainder of the Day**

- The broad strokes of the deal are well in focus, but a number of smaller issues are still percolating beneath the surface.

- Mnuchin is likely in a more giving mood than McConnell.
- Senate Republicans continue to defend their “red lines.”
- The concessions that allow Democrats their face-saving victories have largely already been established.
- Once a deal is in hand, and it may well be imminent, text will have to be carefully scrubbed.
- With drafting occurring in real time, the move from deal to a vote should be swift.
  - We could easily see this passed tonight, but if there is no deal, another procedural vote is set for 1 pm Wednesday.
  - If they reach a deal, the Senate could (and likely would) use unanimous consent to skip the procedural tedium and move directly to final passage. This would be the easiest way to pass the bill tonight.

**A Deal Is Important, But What Happens Next is What Matters**

- This deal – and its unprecedented scale – is critical for pulling the economy out of its sudden, COVID-induced slide; but what comes next, in the coming days and weeks, is perhaps even more important.
- Normally for large-scale changes of this nature, a lengthy and iterative inter-agency process would provide opportunities for stakeholders to provide feedback on proposed regulations.
  - With the entire US economy on the brink, such a deliberative process will not be possible for the vast majority of this law-in-waiting.
  - Instead, we will have to rely on rapidly drafted and released informal guidance, notices, FAQs and other sub-regulatory materials from a whole host of sources across the federal government.

**The Bottom Line:** How the federal agencies – and the lending networks they are leaning on to make this new regime work – proceed in the days and hours *after* a deal will have a profound impact in determining whether the Phase Three effort achieves its aims of keeping individuals, families, businesses, and health providers afloat in the wake of an acute shock to the world economic system.

**Chaser:**

**Kayla Tausche**

Even before a stimulus deal is reached, I'm hearing from many small- and medium-sized business owners, asking, "How do I get this money???" The last time my inbox looked like this was during the process to get excluded from tariffs, which took months to get answers.

8:28 AM · Mar 24, 2020

**Federal Agencies Announce Operational Changes in Response to COVID-19**

Last week the White House Office of Management and Budget (“OMB”) released a [memorandum](#) for heads of departments and agencies intended to provide guidance on managing agency resources and operations in a way that aligns with the goal of slowing the transmission of COVID-19. The memorandum instructs agencies to take “appropriate steps to prioritize all resources to slow the transmission of COVID-19, while ensuring mission-critical activities continue.”

- Agencies are to immediately adjust operations and services to minimize face-to-face interactions. Non-mission critical functions that cannot be performed remotely or that require in-person interactions may be postponed or significantly curtailed. **Agencies are to consider streamlining regulations and approval processes for critical services, including issuing general waivers policies and delegating decision-making where appropriate.**
  - Several Federal agencies have begun to announce COVID-19 response plans that include both internal agency operations, as well as how the agency intends to address regulatory and enforcement obligations during the COVID-19 response. Highlights of these actions can be found [here](#).
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***Policy Resolution Group COVID-19 Legislative Update***

***March 23, 2020***

***Manic Monday***

- **Walking to the edge of the cliff.**
  - Today began with a stark contrast in messaging from the Senate party leaders.
    - Majority Leader McConnell (R-KY) accused Democrats of exploiting the crisis to try to secure policy wins that are not relevant to the COVID-19 pandemic, and said a deal absolutely needs to be reached today.
      - One notable mention in McConnell’s floor diatribe related to renewable energy credits he says Democrats are demanding in exchange for the bill’s \$3 billion to the Strategic Petroleum Reserve.
        - With no sign of energy tax provisions in the base bill or any existing Democratic alternatives, we expect this debate to be reprised at a later “phase.”
          - There are a few items, such as the need to address supply chain problems or delay start construction dates for projects eligible to

receive various renewable energy tax credits that could plausibly be tied to the COVID-19 emergency. If anything could slip into this round as a face-saving victory for Democrats, it would be these types of provisions.

- Minority Leader Charles Schumer (D-NY) countered by saying that he is continuing negotiations with the White House and Treasury Department, indicating that they are “very close,” and that he expects a deal on Phase Three soon.
- The subtext of this frustration, and the source of the disconnect, lies in the fact that Schumer continues to negotiate directly with Treasury Secretary Mnuchin and White House Legislative Affairs staffer Eric Ueland, a longtime Senate hand, leaving McConnell effectively sidelined.
- This [quote](#) from a Senior Administration Official sums up the dynamic: “It's hot on the floor but cool in the back room.”
- After a second vote on cloture failed today by a tally of 49-46, Senate Democrats have now twice blocked a procedural motion to continue to the bill that would carry the Senate's Phase Three CARES Act legislation.
  - McConnell pointed out after the second cloture vote that the Senate will now depend on unanimous consent to consider any legislation prior to Friday of this week. Every Senator now has a functional veto over ongoing negotiations.
    - Schumer preemptively indicated that the procedural vote was “irrelevant,” pledging to accelerate movement of the package once they had a formal deal.
  - Of note: After Schumer held his caucus together on the initial vote, Doug Jones (D-AL) broke ranks to join Republicans in support of the motion to proceed.
- **What Comes Next?**
  - **More negotiations.** This process is not going to end with the failed cloture vote, and Schumer is engaged on ongoing discussions with House Speaker Nancy Pelosi (D-CA) and the White House to find an agreement. Reports from today indicate that deal may be imminent. If those leaders end up on the same page, McConnell will likely be forced to join them.
  - **Time is relative.** Don't read too much into the cloture vote, because once a deal is cut between the parties, it is likely that legislation can move with a consent agreement, allowing the process to accelerate.
  - **We think a deal may be completed today in the Senate.** A review of the issues separating Democrats and Republicans (see previous update), leads us to believe that a deal can be cut allowing both parties to claim victories for their supporters.

- As laid out in yesterday's update, the deal is likely to be sealed by what has conspicuously been left out of the current bill.
- Remember: USMCA seemingly died a dozen political deaths, with a great deal of theater right down to the wire.
  - Democrats are reprising this choreography now, with Schumer cast in the Pelosi role.
- The path to a Democratic "win" runs through putting restrictions on what they term a "corporate slush fund," and doing more for workers via pensions, health benefits, and wellness issues.
  - Irony: Schumer is negotiating the terms of the "slush fund" with its ostensible purveyor, Secretary Mnuchin.
- **The House is Next.**
  - After throwing a wrench in the works yesterday, Pelosi reinforced her intention to leave her mark on the Phase Three legislation. Today she released the House Democrats' version of Phase Three legislation, the *Take Responsibility for Workers and Families Act*.
    - Pelosi's mammoth 1,432 page bill is mostly a non sequitur, heavy on progressive priorities but seemingly detached from the state of the Senate negotiations.
      - Notable exception: Keep an eye on policy strings attached to corporate aid discussed below.
    - This is not a package that will be considered, merely a marker for her caucus and a political lever to wield on the Senate process. Little (if any) of it will show up in the final bill.
      - In the context of Phase Three negotiations, this may seem like a curious tactical maneuver; however, Pelosi is likely setting up these priorities for consideration in the inevitable, if not imminent, Phase Four.
    - Remaining variable: How and when does the House intend to consider the Senate package?
      - Unanimous consent seems hard to fathom and remote voting would require a rule change.
  - We are still reviewing the details of the draft legislation, but some highlights include:
    - **Employee Benefit Expansion.** Significant expansions of the employee benefits created by H.R. 6201, including extending the mandates to every business with more than one employee.

- **Stock Buyback Limits.** A broad prohibition on stock buybacks by any issuer that extends for 120 days after the end of the COVID-19 emergency.
- **SEC Reports.** New SEC reports for issuers on topics such as supply chain and worker health issues related to the COVID-19 crisis.
- **Oversight Panel.** Creation of a new oversight panel with broad powers to control federal COVID-19 aid.
  - The panel would consist of 5 members—one each appointed by the Speaker of the House, the Minority Leader of the House, the Majority Leader of the Senate, the Minority Leader of the Senate, and one jointly appointed by the Speaker of the House and the Senate Majority Leader.
  - Creation of a Special Inspector General with authority over federal COVID-19 aid.
- **New conditions on federal COVID-19 aid.**
  - Until they have repaid any aid, Corporations receiving federal COVID-19 aid MAY NOT:
    - Pay a bonus to any executive of the corporation.
    - Pay any “golden parachute” compensation to executives in connection with the termination of the employment of the executive.
    - Purchase securities of the corporation.
    - Pay dividends on the securities of the corporation.
    - Carry out any federal lobbying activity.
  - All Corporations receiving federal COVID-19 aid MUST:
    - Permanently provide at least 14 days of paid leave to workers who are unable to telework, are quarantined, or who need time off to care for family members.
    - Permanently pay a minimum wage of at least \$15/hour.
    - Permanently maintain a CEO to median worker pay ratio of no greater than 50 to 1, and no officer or employee of the corporation may receive higher compensation than the CEO.
    - Until the end of the COVID-19 emergency, maintain the same workforce levels, pay, collective bargaining right, and benefits that existed before the COVID-19 emergency.
- Accelerated tax filers receiving federal COVID-19 aid are required to:

- Have at least 1/3 of the filer's directors chosen by employees in a one-employee-one-vote election process.
  - File new disclosures on a range of topics, including detailing a wide range of political activities, independent expenditures, and trade association dues.
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## ***Policy Resolution Group COVID-19 Legislative Update***

***March 22, 2020***

### ***The State of Play***

**Senate Democrats have blocked a procedural motion to continue to the bill that would carry the Senate's Phase Three CARES Act legislation.**

- The vote failed 47-47, with all Democrats opposed.
- Majority Leader Mitch McConnell (R-KY) switched his vote to oppose the motion, allowing him to call up the vote again immediately at a time of his choosing.
- *Bottom Line: Talks will continue through the night, and the market is watching warily. There will be tremendous pressure on Congress to show progress early on Monday. The key issues dividing the parties (described below) will drive these discussions.*

**How we got here:**

- **The party leaders from the House and Senate, referred to as the “Four Corners,” emerged from their meeting in McConnell’s Capitol Hill office this morning without a deal.**
  - Deal or no deal, public rhetoric remained cordial, and by all accounts negotiations continue in good faith.
- **House Speaker Nancy Pelosi (D-CA) struck a more defiant tone, declaring the sides “apart,” and indicating her intentions for her caucus to release a COVID-19 relief package of their own, to be finalized today.**
  - In reality, the sides are very close, and this is likely sabre rattling by a savvy Speaker looking to maximize her leverage and wring every possible concession out of the Senate, knowing well that her members will have to vote for whatever the Senate sends over.
- **The procedural vote originally slated for 3pm slipped to 6pm as the chamber was thrown into chaos by the announcement that McConnell’s junior colleague, Senator Rand Paul (R-KY), tested positive for COVID-19.**

- The loss jeopardizes Republicans' ability to command a majority on their own. With Paul out, and Senators Mitt Romney (R-UT), Cory Gardner (R-CO) and Rick Scott (R-FL) self-quarantining, they can only muster 49 votes without help, requiring Democrats to pick up the 11-vote cloture slack.
- While counter-intuitive, the delay should be seen as good news. If the sides weren't so close, McConnell would have forced Senate Democrats to vote against the package and let the chips fall where they may.
  - But pushing forward with a doomed vote at 6pm shows they are nearing the end of fruitful negotiations.
- The news of Paul's diagnosis hit Capitol Hill hard. The Senator was actively working in the Senate, engaged closely with numerous members and staff, and used various facilities from the gym to the pool. The development increases the urgency for Congress to vote and get out of town for the foreseeable future.
- As discussed yesterday, today's vote was just a procedural one to proceed to the shell vehicle, H.R. 748.
  - This was not a vote on the contents of the *CARES Act* per se, but on whether to continue the process.
  - Democratic support is also required for the final procedural hurdle, cloture to end debate, by which point the final text would be added as an amendment in the nature of a substitute.
  - A deal in principle would allow haggling over the particulars while providing a bridge to a formal agreement on the final product.
- **The House remains the hidden hand.**
  - Emergence of Speaker Pelosi as a key player serves as a reminder that the House still must pass whatever the Senate comes up with.
  - The House stands in recess subject to the ruling of the chair, but it remains an open question as to whether members would even return to Washington given COVID-19 concerns and recent member-level exposure.
    - Majority Whip Steny Hoyer (D-MD) [indicated](#) that the House would be adjusting voting procedures and that "all options" would be discussed.
    - Hypothetical options include unanimous consent (a la Phase Two), or remote voting.
      - Unanimous consent is hard to envision on a ~\$2 trillion bill; remote voting is unprecedented and would require a rule change.

### **Key Issues to Watch**

- **Bottom line: What do Democrats want? What will get them to yes?**
  - Conversations continue over a number of outstanding items.

- The deal is nearly at hand, but everyone needs to save face. Think USMCA.
  - Possible areas: “bailout” fixes; dialing up unemployment benefits; token tweaks to paid leave
- **Negotiations over “bailout” restrictions and limits to Treasury discretion continue.**
  - **Notable lack of restrictions or conditions on access to the Exchange Stabilization Fund (ESF).** The current version of the bill includes mild limits on executive compensation and waivable restrictions on stock buybacks during the duration of the loan.
    - **Additional restrictions or conditions on ESF access are an easy and obvious “win” for Democrats to take and for McConnell to give.**
      - Democrats have criticized the draft as a “\$500 billion corporate slush fund.”
      - Democrats can claim credit for closing the various loopholes.
    - **Expect Democrats to demand numerous stipulations including but not limited to:**
      - Limiting executive compensation
      - Preventing stock buybacks
      - Ensuring employee retention
      - Beefing up transparency measures
      - Checking the wide discretion of Treasury Secretary
  - **Leave and Sick Time Benefits.** Expanding leave and sick time benefits are a common refrain from Democrats, and a consistent flashpoint throughout negotiations, but having just reluctantly swallowed a paid leave bill from the House, Senate Republicans do not feel the need to reopen this issue. The labor provisions from the original *CARES Act* draft remain, but could easily fall out as a token giveaway. Notably, the effort to expand the Phase Two mandate to larger (500+) employers lost steam in this round of negotiations.

**Notable Changes in GOP “Compromise” Product**

- **Small Business Interruption Loans.**
  - The fund has now grown to \$350 billion from the original \$300 billion.
  - Covered expenses eligible for forgiveness have expanded beyond payroll to also include rent/mortgage, debt obligations, and utilities.

- Size cap loosened to allow businesses with under 500 employees “per physical location” in certain industries.
- **Exchange Stabilization Fund.**
  - Airline assistance remains the same at \$58 billion, but funding for other affected industries has nearly tripled to \$425 billion, with an additional \$17 billion for national security and defense.
- **Business Tax Provisions.** The GOP-written “compromise” version of the *CARES Act* released on Sunday morning largely left the business tax provisions in place, with the exception of three items (detailed below). We expect the remaining changes, which would all be important means by which companies could generate immediate cash flow, to be easily incorporated into the final bill.
  - **What’s OUT.**
    - **Delay of estimated tax payments for corporations.** The impact of this provisions’ exclusion is less acute given Treasury’s decision to postpone tax filing deadline until July 15. A delay of estimated tax payments for corporations could also possibly be done through further administration action.
    - **Installments not to prevent credit or refund overpayments or increase estimated taxes.** Overpayments related to installments of repatriation toll charge under Section 965 will not be refunded. This is viewed as a technical error in TCJA, which remains a political sticking point.
    - **Downward attribution.** This is another TCJA technical correction with opposition from Ranking Member Ron Wyden (D-OR).
  - **What Remains IN.**
    - **Delay of payment of employer payroll taxes.** Payment would be due over the course of two years with half due 12/31/21 and the balance due 12/31/22.
    - **Modification for net operating losses (NOL).** This provision would allow five-year carryback for 2018, 2019, and 2020 tax years, respectively.
    - **Modification of limitation on losses for taxpayers other than corporations.** The 80 percent carryback limitation would be lifted for pass-through entities to harmonize with corporate NOL treatment for 2018, 2019, and 2020.
    - **Modification of credit for prior year minimum tax liability of corporations.** This would accelerate the ability of companies to recover AMT credits in the form of refunds.
    - **Modification of limitation on business interest.** This would loosen the limitation on interest deduction to 50 percent of EBITDA for 2019 and 2020.
    - **Technical amendments regarding qualified improvement property (QIP).** This fix to the so-called “retail glitch” would unlock \$15 billion in liquidity for QIP expenses incurred by hard-hit sectors like restaurants, hotels, and retail, among others.

- **Conspicuous omissions**
    - Despite lip service from Democrats in both chambers, and aggressive advocacy from industry groups and climate activists, there are no renewable energy tax credits in the bill.
    - Worth noting: The four Senate “task forces” deputized by Leader McConnell did not include an energy group.
      - Any real pressure for inclusion would likely have to come from the House.
      - Lone energy-related provisions include a suspension of aviation excise taxes (including jet fuel) related to the airline relief package, and a \$3 billion appropriation for the Strategic Petroleum Reserve (SPR).
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## ***Policy Resolution Group COVID-19 Legislative Update***

***March 21, 2020 (Part 2)***

### **Sunday Set-Up**

- **Closing the Deal.**
  - Senators worked all day on Saturday to reach a bipartisan deal on Phase Three legislation. Saturday night, Majority Leader McConnell (R-KY) announced that:

“The past two days of intense bipartisan talks are very close to a resolution. I believe we are poised to deliver the significant relief that Americans need with the speed that this crisis demands.

The legislation we are finalizing addresses all four of the crucial priorities that Senate Republicans laid out earlier this week. It will send direct relief to the American people, deliver historic assistance to small businesses so workers can keep getting paid, help secure our economic foundations and prevent layoffs, and surge more resources onto the front lines of our brave healthcare professionals’ fight to defend Americans and defeat the virus.

I have asked committee chairmen to draft final legislative text that reflects their compromise products and deliver that text later this evening.

This would allow all Senators to review the complete bipartisan text in advance of our first procedural vote at 3:00 pm tomorrow.”
- **Process and Timing.**

- There is still work to be done before there is an actual deal or actual legislation.
  - **Leadership Buy-in.** This sprawling bill has been negotiated by separate teams working on individual components. With support in principle from Senate Republicans and the White House, the deal still has to receive final sign-off from Democratic leaders.
    - **Note:** The "Four Corners" of Capitol Hill, McConnell, Minority Leader Schumer, Speaker Nancy Pelosi, and House GOP Leader Kevin McCarthy are set to meet tomorrow in McConnell's office.
  - **Legislative Drafting.** There are hundreds of pages of legislative text that need to be drafted, stitched together, and finalized over the next 12-15 hours, while outstanding issues remain in flux.
- The text of the legislation will become available tomorrow, and a vote on cloture is scheduled to take place at 3 p.m. eastern. We will share the text of the legislation as soon as it is available.
  - It is important to remember that the Senate can still make changes to the text of the legislation after a cloture vote on the motion to proceed ("getting onto the bill") and before the subsequent vote to end debate ("getting off of the bill") that precedes final passage. Sunday's procedural vote will proceed to H.R. 748, the shell bill being used as a vehicle for the *CARES Act*. If the cloture motion receives 60 votes, the Senate will likely vote on final passage of the Phase Three legislation on Monday.
- If the cloture motion receives 60 votes, the Senate will likely vote on final passage of the Phase Three legislation on Monday.
  - The 60-vote threshold means McConnell will need at least seven Democratic votes to move the Phase Three legislation towards a Monday vote. A deal with the likely support of both party leaders in the Senate, and presumably the President, is very likely to receive more than 60 votes. A big vote margin is key, as the House awaits, and the market watches anxiously.
  - To stick to McConnell's Monday vote timetable, he needs more than just 60 votes. He will also need to reach a consent agreement with Democrats to accelerate the process and move swiftly to final passage. If and when a deal is struck, this becomes a much easier proposition.
- **What to Expect in the Phase Three Deal.**
  - **A final cost that is closer to \$2 trillion than \$1 trillion.** It is impossible to overstate the scope of the economic emergency confronting Senators, and it appears that negotiators will err on the side of providing more aid and relief in most cases.
  - **Examples of why the Phase Three deal will grow in size.**
    - **Small Business Assistance.** Senator Marco Rubio (R-FL) announced late on Saturday an "agreement in principle" with a bipartisan group for a component of the bill that will give at least \$350 billion in assistance targeted at small businesses.

- Eligible companies would be able to receive zero interest "business interruption loans" to pay employees, rent, or mortgages that are backed by the Small Business Administration (SBA), with forgiveness contingent on keeping workers on the payroll.
- While the Democratic proposal on this issue began using the familiar SBA eligibility threshold of 500 employees, there have been efforts to get around this cap in final legislative text to account for hotel and restaurant franchisees and others whose small businesses employ more than 500 workers in the aggregate.
- **Exchange Stabilization Fund (ESF).**
  - Senate Banking Committee Chairman Mike Crapo (R-ID) stated that the final Phase Three package needs to include between \$300 and \$500 billion in ESF appropriations for the Federal Reserve that can be used to maintain liquidity in the financial markets.
    - As in the original proposal, \$58 billion would be earmarked for airlines, but the balance, up to \$450 billion, would be reserved for larger companies that do not qualify for the business interruption loan program.
  - The ESF funds will be used by the Federal Reserve to extend loans to distressed industries, such as U.S. airlines, hotel and restaurant chains, energy companies, and "other eligible businesses." The fund will be administered at the discretion of the Treasury Secretary, and leverage will likely increase the scale of the fund considerably.
- **Other Issues.**
  - **Business Tax Provisions.** There were conflicting reports on Saturday about whether the Phase Three deal would include the package of business tax provisions that Treasury requested. We expect that the strong support for the provisions from the White House and many Republicans will result in the provisions remaining in the final deal.
  - **Supplemental Appropriations.** It is likely that the administration's \$45.8 billion supplemental appropriations request will be included in the deal.
- **Last-Second Sticking Points.** There are several issues keeping staff up late into the night, including:
  - **H.R. 6201 Benefits.** The *CARES Act* draft included new limits on the leave and sick time benefits created by H.R. 6201. We expect that the H.R. 6201 benefits will not be changed substantially in the final Phase Three deal; the *CARES Act* limitations will likely be dropped by Republicans in a final deal, and the benefits are unlikely to be expanded in the way that Democrats had originally sought (e.g. extending the mandates to companies with more than 500 employees).
  - **Direct Aid to Local Governments.** There continues to be resistance to Democratic efforts to provide funds directly to states and municipalities facing budget shortfalls.

- **The Terms of ESF Aid.** There are vocal demands from voices in both parties calling for the Senate to avoid “bailouts” and prohibit the use of assistance for stock buybacks, executive bonuses, etc. Finding language that can satisfy these demands remains a challenge.
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## ***Policy Resolution Group COVID-19 Legislative Update***

***March 21, 2020***

***Saturday Quick Hit***

- **What Happened Friday?**
  - Majority Leader Mitch McConnell (R-KY) rolled out *The Coronavirus Aid, Relief, and Economic Security (CARES) Act* on Thursday, and Democrats on Friday made their initial counter-offers during closed-door negotiations.
  - Negotiators spent 12 hours trying to reach a deal, but so far have been unable to come an agreement on the more than \$1 trillion Phase Three COVID-19 relief package.
- **What is happening today?**
  - Negotiations will continue on Saturday, and McConnell appears to have no appetite for allowing them to linger into Sunday.
  - McConnell has made it clear that he intends to move forward towards a final vote on legislation by the end of this weekend, whether the Democrats want to be involved in drafting the legislation or not. This means that if a bipartisan deal is going to be struck on Phase Three, it will likely need to be agreed upon by late Saturday.
- **What are the key issues in play?**
  - As negotiations concluded on Friday, Senator Chuck Grassley (R-IA) said that despite reports of significant progress in negotiations, there were “three or four” outstanding issues between Democrats and Republicans. Those issues appear to include:
    - A push by Democrats to expand the paid leave provisions of H.R. 6201 (e.g. by expanding the mandate for paid emergency leave to companies larger than 500 employees), or at the very least, pare back new limits on the benefits proposed in the *CARES Act*.
    - Disagreements over efforts to expand unemployment insurance benefits as an alternative to direct payments to some individuals in the form of rebates issued by the Department of Treasury.

- There were late reports on Friday that a deal may have been reached by Republicans and Democrats on this issue—a deal reportedly providing \$250 billion in direct rebates to individuals and approximately \$250 billion in expanded unemployment insurance benefits.
    - Negotiations over the creation of a “State Stabilization Fund” intended to help states facing budget shortfalls as a result of the COVID-19 crisis. Democrats would like an expanded fund to account for perilous budget circumstances confronted by states such as Illinois.
    - Efforts by Democrats to significantly expand funding for hospitals and other health-care facilities treating patients with COVID-19.
  - **Outlook for Saturday.**
    - It appears that the main pieces of a deal are starting to fall into place, and one thing is for sure: the package is getting bigger, not smaller. For example, the small business liquidity provision of the legislation, which will add billions to the cost of the bill, appears to have growing support. And, by all accounts, talks are progressing on making larger direct payments to lower-income individuals.
    - A late push for supplemental appropriations? The White House has requested \$45.8 billion in supplemental appropriations related to the COVID-19 response. It is beginning to look like the Congress may fold this request into the Phase Three bill.
    - The looming deadline—the cloture vote.
      - On Friday, McConnell filed a cloture motion on a “shell bill” that he can replace with a version of Phase Three legislation he wants to try to move forward. Pursuant to Senate rules, that motion can be voted on as early as Sunday, and if the cloture motion passes (60 vote threshold), then a final vote on the legislation can be taken as early as Monday.
      - The Majority Leader is banking on the idea that the looming cloture vote will generate significant leverage in Saturday’s negotiations because Democrats know that the failure to reach a deal would force them to choose between voting for a Republican bill or filibustering Phase Three aid.
    - If negotiations are going well, look for positive news to start breaking in the afternoon on Saturday. The Senate would prefer to pass this legislation as quickly as possible and get it over to the House.
    - The House? Let’s cross that bridge when we get to it.
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## ***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.

- **Business Tax Provisions.**
  - **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.
  - **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](#).