

Policy Resolution Group COVID-19 Legislative Update

May 13, 2020

Today's note provides an update on the House Democrats' newly released *HEROES Act*; the state of play in the GOP-controlled Senate; and the status of original *CARES Act* programs.

Our [Agency Report](#) includes information on how Federal agencies are managing their operations and oversight obligations in response to COVID-19, with new updates for the following:

- Department of Labor,
- Department of the Treasury,
- Environmental Protection Agency,
- Federal Reserve,
- Occupational Safety and Health Administration.

The HEROES Act/"Pelosi's Socialist Wish List"

Summary. House Democrats released the text of their 1,815 page, \$3 trillion *HEROES Act* (H.R. 6800), an opening salvo to the fourth phase of the congressional COVID-19 response.

- **Key components.** As our previous updates have suggested, central elements of the *HEROES Act* include:
 - **State and local government aid.** \$915 billion. More details [here](#).
 - **States:** \$500 billion
 - **Local:** \$375 billion
 - **Territories:** \$20 billion
 - **Tribes:** \$20 billion
 - **Direct individual payments.** \$1,200 per family member, up to \$6,000 per household.
 - **Unemployment Insurance.** Six month extension (through January 2021) of the \$600/week federal supplement.
 - **Public Health Fund.** \$175 billion "Public Health and Social Services Emergency Fund."
 - \$100 billion in grants for hospitals and other providers to reimburse health care expenses and lost revenue due to COVID-19.

- \$75 billion for testing, contact tracing, and other monitoring activities.
- **Housing Assistance.**
 - \$100 billion in rental assistance.
 - \$75 billion in homeowner assistance, administered through the states.
- **Nutrition.** 15 percent increase in maximum SNAP benefit; additional \$10 billion for program.
- **Hazard pay.** \$200 billion “Heroes Fund” for frontline workers.
 - \$13/hour premium pay up to \$10,000 per employee (\$5,000 for high earners)
 - Essential employers apply for grants to cover entire cost, including employer payroll tax.
 - According to bill, “essential worker” means workers in the health sector, emergency response, sanitation, and those deemed essential by state and local governments.
- **Debt collection moratorium.** Temporary moratorium on consumer debt for 120 days after the public health emergency ends.
- **Paycheck Protection Program (PPP) Reforms.**
 - Extends program from June 30 statutory end date through the end of the year.
 - Expands eligibility to all non-profits, including 501(c)(6) organizations.
 - Set-asides for the smallest businesses and lending institutions.
 - Bifurcation of PPP from traditional 7(a) lending authority.
 - Extends 8-week covered period for forgiveness to 24 weeks.
 - Eliminates SBA rule requiring 75 percent of forgiveness amount to go to payroll.
 - Improves coordination between PPP and Employee Retention Tax Credit (ERTC.)
- **Employee Retention Tax Credit (ERTC) Expansion.** Changes based on Senator Chris Murphy (D-CT) *JOBS Credit Act* proposal discussed in previous updates:
 - Increases value of the credit from 50 percent of wages to 80 percent.
 - Increases quarterly cap from \$10,000 per employee to \$15,000 (\$45,000 in aggregate).
 - Modifies gross receipts threshold by allowing a phased-in partial credit for declines between 10 percent and 50 percent.

- Raises threshold for large employer treatment from 100 employees to 1500 full-time employees and greater than \$41,500,000 in 2019 gross receipts.
- **New Credit for Fixed Expenses of Employers Subject to Closure Due to COVID-19.**
 - 50 percent refundable payroll tax credit for qualified rent, mortgage, and utility costs.
 - Credit limited to 25 percent of ERTC-qualified wages or 6.25 percent of 2019 gross receipts per quarter (maxes out at \$50,000)
- **SALT Relief.** Two-year elimination of \$10,000 cap on state and local tax deductions.
- **Rollback of CARES NOL Treatment.**
 - Retroactively denies 5-year carryback for 2018 losses.
 - Restricts carryback of 2019 and 2020 losses for companies engaged in “excessive” executive compensation, stock buybacks, or dividends.
 - Reinstates loss limitation for pass-through businesses, effectively denying NOL treatment to non-corporate taxpayers.
- **Paid Leave Expansion.** Expands the Phase Two paid leave mandate to all employers and extends it through 2021.
- **Omissions.** As expected, the bill did not include the Senate GOP’s top priority of business liability protections, nor President Trump’s desired payroll tax cut.
 - More surprisingly, the bill left out the “[Paycheck Guarantee](#)” proposal championed by Rep. Primala Jayapal (D-WA), prompting the Congressional Progressive Caucus she co-chairs to publicly [call for the Friday vote to be postponed](#) while they consider the legislation:
 - "We request delaying the Friday vote to the following week. We also request a full caucus meeting and conversation when we get back to Washington and any amendments that might be needed to ensure that it truly reflects the priorities and the work of the entire caucus."
 - Leadership has not responded to the request and will press forward with a vote.
 - The bill will almost certainly advance, but the signs of inter-caucus discord threaten to undermine any negotiating leverage its passage is meant to achieve.
- **Resources.**
 - [Bill text](#)
 - [One-page summary](#)

- [Section-by-section summary](#)
- [State and local relief summary](#)

Republican Reaction.

- Unsurprisingly, and indicative how seriously they intend to treat the proposal, Republicans in the House quickly branded the bill as “Pelosi’s Socialist Wish List.”
 - GOP Leader Kevin McCarthy (R-CA) [tweeted](#): “This spectacle has **no chance** of becoming law. What a waste of taxpayer time.”
- The White House condemned the bill, with spokeswoman Kayleigh McEnany [tweeting](#):

President @realDonaldTrump has been clear that any future coronavirus aid package must prioritize Americans’ health and the nation’s economic prosperity.

House Democrats are once again using this crisis to play politics and push their partisan agenda.
- Senate Majority Leader Mitch McConnell (R-KY) declined to even release a statement on the bill, an illustration of the dismissive reception in the upper chamber.

Process.

- **Proxy voting.** Democrats on the House Rules Committee this morning unveiled a measure to allow proxy voting and virtual committee work. The full House is expected to vote on the rule change on Friday when the chamber also takes up the *HEROES Act*.
- **Friday vote.** House Majority Leader Steny Hoyer (D-MD) announced that the House will meet at 9:00 AM this Friday to consider the *HEROES Act*, with votes beginning as soon as 10:00 AM.
 - **Public health delays.** Voting will happen in waves, out of public concerns, so it could last into the evening.
 - **Expect a party-line vote.** In a note to GOP lawmakers, Republican Whip Steve Scalise (R-LA) characterized the *HEROES Act* as “Pelosi’s Socialist Wish List Act,” a sentiment many GOP representatives share. The vote on Friday will unsurprisingly split along sharp partisan lines.
 - Senate Majority Leader Mitch McConnell (R-KY) similarly weighed in, calling the Democratic proposal “aspirational.”

Outlook. While the *HEROES Act* as currently written has zero chance of clearing the GOP-controlled Senate and avoiding President Donald Trump’s certain veto, a pared down Phase Four/CARES 2 bill is likely.

- **Timing.** A Phase Four/CARES 2 bill that could actually become law will likely coalesce by the end of end of June or early July.

- **PPP funding no longer a driver.** While expiration of PPP funds was originally anticipated to drive lawmakers to pass the next phase of stimulus, the rate of lending has declined to sustainable levels. While the pace of funding has slowed, neither side will want to see the program lapse at the end of June.
- **New drivers.** While Leader McConnell and the President have made clear that they are perfectly content waiting to see how existing stimulus programs play out before rushing into another round of stimulus, the following drivers could force legislative action on the next phase of COVID-19 stimulus relief:
 - **State budgets.** July 1 marks the new fiscal year for states, whose ravaged budgets are a central concern of congressional Democrats.
 - **Jobs reports.** Continued bleak economic numbers could compel Congress to act sooner on another phase of stimulus. The next two jobs reports come on June 5 (May report) and July 2 (June report).
 - **Unemployment Insurance.** The UI expansion from the *CARES Act* expires on July 31. If the public health and economic situation has not recovered, Congress may be pressed to extend this benefit for the unemployed. However, some GOP lawmakers voiced strong opposition to the initial expansion of UI, concerned the generous benefit could encourage workers to take unemployment.
- **Final contents.** As mentioned above, the Phase Four/*CARES 2* bill that actually becomes law is unlikely to resemble the *HEROES Act*. This House draft will likely be ignored, and the Senate will create its own version to serve as the ultimate vehicle. The 60-vote threshold in the Senate means that this chamber's version will be bipartisan, similar to the original *CARES Act*. The House may find itself forced to pass the Senate version, a prospect progressive Democratic lawmakers may balk at, even if some ultimately swallow the bitter pill.
 - Even if the bill fails, its contents matter. While Democratic Leadership will likely back off from certain provisions in the *HEROES Act* in negotiations with the Senate and White House, they will likely stand firm on at least the following items:
 - Increased state and local government aid (albeit at a lower number than the initial \$1 trillion salvo),
 - Additional direct checks to individuals,
 - Extension of Unemployment Insurance (expect strong GOP opposition),
 - Hazard pay for frontline workers, and
 - Public health funds for testing and hospitals,
 - Republicans in the Senate will insist on liability protections for businesses (more below). Without much else on the GOP must-have list, the White House demand for payroll tax relief, deductions for meals, and policies geared toward reopening the economy will loom large.

- The bill also includes a number of provisions that have broad, bipartisan support, and could plausibly make it into a bipartisan compromise bill, including PPP reforms, expansions to the employee retention tax credit (ERTC), and a new credit to offset fixed costs for companies forced to close due to the pandemic.

Senate

Liability protections. Leader McConnell and Senator John Cornyn (R-TX) have begun work on a bill to expand liability protections. On the Senate floor on Tuesday, Leader McConnell said,

- "Senate Republicans are preparing a major package of COVID-related liability reforms. ... Our legislation is going to create a legal safe harbor for businesses, nonprofits, governments and workers and schools who are following public health guidelines to the best of their ability."
 - The bill would also look to "expand existing protections" for manufacturers who create COVID-19 therapeutics or vaccines, in addition to creating new protections for medical equipment manufacturers.
- Business groups have come out in support of liability protections, such as the [US Chamber of Commerce](#) and [National Association of Manufacturers](#).

GOP divided on state bailouts.

- Some in the GOP have come out strongly against providing additional aid to states, which they view as a bailout.
 - Kevin Hassett, an economic adviser to the President, said on CNN, "I think President Trump has signaled that while he doesn't want to bail out the states, he's willing to help cover some of the unexpected COVID expenses that might come their way."
 - The President himself [tweeted](#) last month, "Why should the people and taxpayers of America be bailing out poorly run states (like Illinois, as example) and cities, in all cases Democrat run and managed, when most of the other states are not looking for bailout help? I am open to discussing anything, but just asking?"
 - Leader McConnell at the end of April said in an interview with Hugh Hewitt, "I think this whole business of additional assistance for state and local governments needs to be thoroughly evaluated. ...There's not going to be any desire on the Republican side to bail out state pensions by borrowing money from future generations."
- However, there are notable exceptions, such as Senator Mitt Romney (R-UT) who noted at a Republican lunch that "Blue states aren't the only ones who are screwed."

CARES Act Programs

Main Street delays. In a Senate Banking Committee hearing yesterday, Federal Reserve regulatory chief Randy Quarles said that the Main Street and municipal lending programs would not be ready soon. Quarles did not think

it would take months, but did not have an immediate timeline to provide lawmakers and businesses. He did, however, say that launching those facilities is the Federal Reserve's top priority.

PPP developments. Treasury/SBA [recently updated its PPP FAQ](#), providing new information on how the SBA will review borrower's required good-faith certification concerning the necessity of their loan requests.

- The new guidance provides an automatic pass for loans less than \$2 million and allows repayment for everyone else, in the event that the loan is found to be improperly certified.
 - This clarification comes as quite a surprise, as Treasury and SBA have led borrowers to believe for weeks that they could face serious (potentially criminal) consequences if they incorrectly certify, which has caused some borrowers to forgo loans altogether.
 - The looming uncertainty over certification and forgiveness has slowed the pace of the program to a trickle, with just \$16 billion approved since May 2, less than half of what had been the daily burn rate up to that point.
 - The safe harbor deadline for returning PPP funds remains tomorrow, May 14, but the new guidance lowers the stakes significantly. Larger recipients can return the funds preemptively, or participate with the knowledge that, at worst, they may have to pay the loan back at a later date.
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Policy Resolution Group COVID-19 Legislative Update

May 11, 2020

Today's note provides an update on the House Democrats' coalescing Phase Four/CARES 2 package. The key take away: no House vote is likely this week, although we should get a first glimpse at the legislative text.

Our [Agency Report](#) includes information on how Federal agencies are managing their operations and oversight obligations in response to COVID-19, with new updates for the following:

- Department of Labor,
- Department of Health and Human Services,
- Department of the Treasury,
- Federal Energy Regulatory Commission, and
- Pipeline and Hazardous Materials Safety Administration.

Phase Four/CARES 2 State of Play

- **The House homes in on a bill.** House Democrats are currently assembling and fine-tuning their version of a Phase Four/CARES 2 disaster relief bill, with hopes of releasing legislative details in the coming days. Given what we know about the nascent proposal, it will be received coolly in the White House and the Senate. Why then are Democrats crafting legislation that will surely be dismissed by Republicans as a nonstarter? Here are some likely explanations.
 - **Rank and file pressure.** After earlier phases of stimulus emerged from a leadership-centric process, rank and file House democratic lawmakers want their voices heard and reflected in this next phase of relief.
 - The *CARES Act* in particular left a bad taste in the mouth of House Democrats, as the Speaker and the chamber was largely absent from the process, forcing them to swallow whatever the Senate sent over. Consequently, the Phase Four/CARES 2 bill is likely to read as an enumeration of stalwart progressive policy ideas.
 - **Messaging.** Democrats want to lay down a marker of their priorities, and use that to draw a contrast with the Republican COVID-19 response. With less than six months until the November election, this tension is likely to be a central aspect of the campaign at both the Presidential and Congressional level.
 - **Negotiating posture.** With no legislative forcing mechanism on the immediate horizon, unlike previous phases, CARES 2 will be an iterative process, with neither side willing to be jammed. The House bill will serve as an opening bid, and in staking out the left flank, even a partisan wish list serves to establish the center of gravity for a broader deal moving forward.
- **Pelosi's Message: "Think Big" for the People.** In a [Dear Colleague letter](#) to House Democrats late Sunday, House Speaker Nancy Pelosi (D-CA) laid out her vision:

Americans also agree that we owe our heroes in the fight against coronavirus an enormous debt of gratitude – our health care, first responders, teachers, transit, food and other essential workers who risk their lives to save lives and who could now lose their jobs. To do that, **we must act boldly to support state and local entities to address coronavirus-related outlays and lost revenue.**

We all agree that we must put more money in the pockets of the American people. This is not only necessary for their survival but also is a stimulus to the economy. **Direct payments, unemployment insurance, rental and mortgage help and student loan assistance are essential to relieve the fear that many families are facing.**

The Chair of the Federal Reserve Bank has told us to “Think Big” because interest rates are so low. **We must “Think Big” For The People now, because if we don’t, it will cost more later.** Not acting is the most expensive course.

- **Top Democratic priorities for Phase Four/CARES 2.** Our update from last week provides more granular analysis of these and other Democratic priorities, but it is worth reiterating that Speaker Pelosi and other Democratic leaders have homed in on the following elements as essential in any relief package:
 - increased aid for state and local governments,
 - money for hospitals and COVID-19 testing,
 - expanded SNAP benefits, Medicaid funding, and Unemployment Insurance,
 - funding for the Postal Service,
 - money to expand broadband access,
 - paid sick leave expansion,
 - hazard pay for health care workers, and
 - direct individual payments (in lieu of the bi-cameral push for a federal program to pay the salaries of certain workers).
 - **Notable absences.** The House bill will not include liability protections for businesses, a top priority for Senate Leader Mitch McConnell (R-KY) and his fellow Republicans.
 - The package will also leave aside recovery-oriented priorities sought by various industries, from tax breaks to broad-based infrastructure funding.
 - President Donald Trump has made taxes a red line, telling *Fox News*, “We’re not doing anything without a payroll tax cut.”
- **Bill timing.** While text of the Democratic initiative could be released as early as tonight, it is more likely to materialize on Tuesday.

- **Any text is not final.** Given the large number of Democratic lawmakers seeking to fold their priorities into this bill, it is subject to change even upon release.
- **Hurry up and wait (on the Senate).** Leader McConnell, as we have noted in previous updates, intends to hold steadfast to his wait-and-see approach, hesitant to proceed with another round of stimulus before assessing the efficacy of the previous phases.
 - **PPP funding no longer a forcing mechanism.** When Paycheck Protection Program (PPP) loans were being doled out at a torrid pace, a third round of funding was seen as a plausible forcing mechanism for the Senate to consider another relief bill. However, recent reports from the Small Business Administration show that this is no longer the case; the rate of PPP lending has slowed to a trickle, pending clearer guidance, looser rules, and certainty on audit exposure. Absent legislative changes, this is unlikely to pick back up in the immediate future, opening the possibility that current levels will sustain the PPP through its statutory terminus. This development makes immediate term action unlikely, and removes a key point of leverage for Democrats seeking to lure Republicans to the negotiating table.
 - **New legislative horizon: July 1.** While recent months have shown that events have a way of interceding, the default deadline will be the end of June, which marks both the close of the PPP program and the fiscal year for most states. This provides a convenient intersection of partisan priorities, while allowing the White House and Senate Republicans to get beyond their current posture of taking account of *CARES Act* spending and its effects. The White House this weekend indicated a break in talks, saying they won't engage in formal negotiations until late May or early June.
 - "We're kind of paused as far as formal negotiations go," Larry Kudlow, the director of the White House's National Economic Council, [told reporters](#) on Friday.
- **What to expect moving forward.**
 - **Votes likely slip to next week.** This morning, House Majority Leader Steny Hoyer (D-MD) announced that the House would not return until Friday at the earliest. Given that Leader Hoyer has indicated that members would have 72 hours' notice to return to DC, this timeline allows a narrow window for introduction on Tuesday. Given safety concerns within the caucus and broader lack of urgency, coming back to vote on a Friday seems like a stretch. We expect introduction by mid-week, with votes to follow the next.
 - **From the Majority Leader:**

Members are advised that conversations surrounding additional CARES legislation and a Rule change related to remote work are ongoing.

Members are further advised that pending introduction of legislation, it is possible that the House may meet this week, no earlier than Friday, May 15, 2020.

Members will be given 72-hours' notice of when they would need to return to Washington, DC.

Further information will be provided as soon as it becomes available.
