

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

***May 6, 2020***

Today's note provides an update on the Democratic agenda for Phase Four/CARES 2 stimulus; Paycheck Protection Program (PPP) developments, including an alert from Bracewell's COVID-19 task force on recent Small Business Administration (SBA) clarifications to the PPP; and a new library of PPP guidance materials.

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 agencies:

- Cybersecurity and Infrastructure Security Agency,
- Department of Labor,
- Department of Treasury,
- Export-Import Bank,
- Federal Reserve, and
- Small Business Administration.

### **Phase Four Update**

**Democratic Phase Four agenda.** While House Democrats may have delayed their return to Capitol Hill, they are hard at work putting together their proposal for the next phase of COVID-19 relief.

- House Speaker Nancy Pelosi (D-CA) on Monday asked for committee chairs to submit their portions of the package ASAP with the hopes of finalizing a package by the end of the week. The most ambitious timetable would open the door to votes as soon as next week.
- While the package is expected to be large in scale, with estimates pegged at more than a trillion dollars, its scope remains limited to the sorts of emergency relief measures that can be directly tied to the public health crisis and its fallout.
  - The bill is likely to include elements of the CARES 2 laundry list we have covered in recent weeks:
    - State and local funding as unequivocal chief priority, at least \$500 billion
    - Healthcare infrastructure
    - Money for elections, including vote by mail
    - Fix for DC treatment in funding formula
    - Funds for US Postal Service

- PPE, testing, and tracing
- Individuals: direct payments; unemployment; hazard pay for essential workers; homeowner/renter assistance, etc.
- Business: changes to employee retention credit; PPP extension/reforms
- Large-scale infrastructure funding and renewable energy tax credits remain in play for future, recovery-oriented phases.
- **Fossil fuel ban.** Led by Representative Nanette Diaz Barragán (D-CA) [in the House](#) and Senator Jeff Merkley (D-OR) [in the Senate](#), Democratic lawmakers on Tuesday introduced the *Resources for Workforce Investments, not Drilling (ReWIND) Act*. This [bill](#) would prevent certain companies that derive revenue from extraction, transport, storage, export, or refining of fossil fuels from receiving *CARES Act* funds.
  - **Fine print.** Businesses would lose eligibility for *CARES Act* funds if they earn more than 15 percent of their revenue from the “extraction, transport, storage, export, or refining of oil, natural gas, and coal.”
  - **Political context.** The legislation comes amid increasing concerns among progressive Democrats that *CARES Act* funds may “bail out” fossil fuel companies. This is due to the sector-neutral approach of the Federal Reserve 13(3) lending facilities, a long-standing policy that pre-dates the *CARES Act*.
    - **Messaging.** Democrats likely intend to use the bill as a messaging tool to draw a contrast between their party’s approach to COVID-19 stimulus that aims to usher in a clean energy economy versus a Republican approach that Democrats claim seeks to simply return to the pre-COVID energy status quo.
  - **Prospects.** The bill is unlikely to pass, given almost certain opposition from both President Donald Trump and the GOP-controlled Senate.

### **PPP Developments**

**PPP Deductibility.** Top tax-writers penned a [bipartisan, bicameral letter](#) to Treasury Secretary Steven Mnuchin regarding the IRS recent Notice 2020-32, reiterating that the new guidance runs contrary to congressional intent, disagreeing with the service’s legal interpretation, and urging them to reconsider.

- “Providing assistance to small businesses, only to disallow their business deductions as provided in Notice 2020-32, reverses the benefit that Congress specifically granted by exempting PPP loan forgiveness from income.”
- “We urge you to reconsider this determination in light of congressional intent and the importance of maximizing liquidity for businesses receiving PPP loans to survive and recover from the ongoing health crisis.”

As we reported in Monday’s update, Secretary Mnuchin has been dismissive of congressional concerns, and barring a sudden change of heart, such a shift will likely require a legislative change.

- To that end, a bipartisan group of senators including Finance Committee Chairman Chuck Grassley (R-IA), Ranking Member Ron Wyden (D-OR), and Small Business Committee Chairman Marco Rubio (R-FL) introduced the *Small Business Expenses Protection Act of 2020* ([S. 3612](#)), which would overturn the IRS notice, and clarify that PPP-related payments may be deducted as normal business expenses.
  - Ways and Means Chairman Richard Neal (D-MA) has indicated that he will introduce similar legislation in the House.

**Safe Harbor Extension.** In an [FAQ update](#), Treasury and SBA announced that they would provide a one week extension of the current safe harbor for PPP certification, moving the deadline for returning PPP funds to May 14. The extension allows Treasury and SBA time to issue additional guidance on how it will review the PPP certification as companies weigh their options and potential exposure.

**PPP Reform Efforts.** As Congress weighs its approach to the next phase of the COVID-19 response, members are considering changes to the PPP program in addition to replenishing its funding.

- **Bennet-Young.** Senators Michael Bennet (D-CO) and Todd Young (R-IN) have [proposed changes](#) to PPP while transitioning to a RESTART Program that would serve a similar purpose.
  - The bill would extend the 8 week covered period under PPP to 16 weeks for non-publicly traded businesses with fewer than 500 employees.
    - Many recipients and would-be recipients have complained about the program’s lack of flexibility as the shutdown orders have extended indefinitely. This bill would seek to assuage those concerns while limiting eligibility to the smallest of businesses.
  - It would also create a new RESTART Program that would cover the next six months of payroll, benefits, and certain operating expenses for companies experiencing at least 25 percent revenue loss. The loan would be forgiven proportional to lost revenue, and the balance would be paid off over 7 years, with no payments do for two years.
  - The basics:
    - 7-year loan, capped at 45% of 2019 gross receipts up to \$10 million
    - 100% federal guarantee for life of the loan
    - Employment cap of 5,000, with streamlined procedures for <500 employee firms
    - No cap on loan size based on multiple of payrolls
    - Self-certify a revenue loss (25% year-over-year, for at least three-month period)
    - Interest Rates/Payment Schedule:
      - No principal payments required for 2 years
      - Fixed interest rate for first 2 years with a maximum rate of 4%

- No interest payments due for first 12 months
  - Payments of interest only for next 12 months
- Interest rate for years 3 to 7 is the Applicable Federal Rate (AFR) plus a spread of 250 – 450 bps, based on revenue decline
  - Restrictions on dividends/share buybacks/executive compensation for duration of loan with special rules for pass-thru entities.
- [Politico detailed](#) this and other congressional ideas for reforming PPP, including nascent efforts from a pair of Ways and Means members:
  - Rep. Jimmy Pannetta (D-CA) “is leading work on a bill that would clarify and ease rules on loan forgiveness and payroll requirements” while Rep. Brad Wenstrup (R-OH) is leading a congressional letter geared toward “lengthening the forgiveness period and allowing businesses to use more of the loan to pay rent and suppliers.”
    - Both members seek to address the non-statutory 75 percent payroll ratio required for forgiveness that has flummoxed borrowers.
- A bipartisan group of senators, including Robert Menendez (D-NJ), John Cornyn (R-TX), and others [asked](#) Secretary Steven Mnuchin and Administrator Carranza to raise the PPP’s non-payroll forgiveness cap from 25% to 50%.
  - “The 25 percent threshold is problematic for several business sectors, especially those whose mortgage, rent, or utility payments constitute a large portion of fixed monthly expenses.”

**Bracewell’s COVID-19 Task Force PPP Alert**

Our colleagues on Bracewell’s COVID-19 task force have prepared an informative alert on recent SBA clarifications to the PPP, notably the guidance that foreign employees must be counted for the PPP. Here is the full alert:

The Small Business Administration has clarified through [newly-issued guidance](#) that employees of foreign affiliates must be counted when determining the size of a business for eligibility under the Paycheck Protection Program. This new guidance, which is part of a steady stream of recent updates to the PPP rules, puts to rest some debate as to whether the SBA’s prior rules and guidance could be interpreted to permit the exclusion of foreign employees from the calculation.

As described in [prior alerts](#), PPP loan eligibility generally requires that a business have 500 or fewer employees, with some exceptions based on the SBA’s alternative size standards for certain industries, as well as different rules for restaurants and hotels. In determining the number of employees, the PPP rules require that the employees of all affiliated entities – whether such affiliation arises by virtue of common ownership or control – be counted together when determining an entity’s size. Today’s guidance confirms that “an applicant must count all of its employees and the employees of U.S. and foreign affiliates, absent a waiver of or an exception to the affiliation rules.”

This guidance follows a series of new or updated rules and guidance recently issued by the SBA that, among other things:

- Extends the “safe harbor” related to the PPP’s necessity certification until May 14, 2020 ([FAQ 43](#));
- Treats nonprofit hospitals exempt from taxation under section 115 of the Internal Revenue Code as meeting the definition of “nonprofit organization” under section 1102 of the CARES Act, so long as the hospital determines, in writing, that it is an organization described in section 501(c)(3) of the Internal Revenue Code ([FAQ 42](#));
- Modifies a rule related to loan forgiveness to provide that where a borrower offers to rehire an employee, but the employee declines the offer, the loan forgiveness amount will not be reduced based on that employee reduction ([FAQ 40](#));
- Clarifies through a supplemental [Interim Final Rule](#) that a corporate group, defined as businesses majority owned by a common parent, shall not receive more than an aggregate of \$20 million of PPP loans; and that
- If a business had a change in ownership after February 15, 2020 it could still be eligible for a PPP loan, despite the CARES Act’s provision that PPP loans are available only to business in operation on February 15, 2020 ([FAQ 38](#)).

Bracewell has established a task force to help firms navigate the uncertainty surrounding the impact of COVID-19, including helping to ensure that clients have access to the benefits that Congress has provided. Your Bracewell point of contact can help you learn more.

### **PPP Library**

The following materials represent an aggregation of formal and informal guidance on the PPP.

#### **Program Overview**

- [Top-line Overview of PPP](#)
- [SBA Paycheck Protection Program Loan Report](#)
- [SBA Paycheck Protection Program Loan Report Round 2 – Updated 5/3](#)
- [Summary of Paycheck Protection Program Round 2 Data – Updated 5/5](#)

#### **For Borrowers**

- [More information](#)
- [Search Tool: Find an Eligible Lender](#)
- [Borrower Application Form](#)

- [Applicable Affiliation Rules](#)
- [How to Calculate Loan Amounts](#)

#### **For Lenders**

- [More information](#)
- [Lender Application Form](#)
- [Lender Application Form for Federally Insured Depository Institutions, Federally Insured Credit Unions, and Farm Credit System Institutions](#)
- [Lender Application Form for Non-Bank and Non-Insured Depository Institution Lenders](#)
- [SBA Procedural Guidance on Participation Sales](#)

#### **Program Rules**

- [Frequently Asked Questions](#) – *Updated 5/5*
  - [Interim Final Rule 1](#)
  - [Interim Final Rule on Applicable Affiliation Rules](#)
  - [Interim Final Rule on Additional Eligibility Criteria and Requirements for Certain Pledges of Loans](#)
  - [Interim Final Rule on Requirements for Promissory Notes, Authorizations, Affiliation, and Eligibility](#)
  - [Interim Final Rule on Additional Criterion for Seasonal Employers](#)
  - [Interim Final Rule on Disbursements](#)
  - [Interim Final Rule on Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders](#)
  - [Interim Final Rule on Nondiscrimination and Additional Eligibility Criteria](#) – *Updated 5/5*
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## ***Policy Resolution Group COVID-19 Legislative Update***

***May 4, 2020***

Today's note discusses the Senate's return and expected agenda; the potential timeline for the House's reconvention; President Donald Trump's new marker of a payroll tax cut for Phase 4/CARES 2; and Paycheck Protection Program (PPP) developments.

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

- Department of Labor,
- Federal Reserve,
- Food and Drug Administration,
- Occupational Safety and Health Administration,
- Pipeline and Hazardous Materials Safety Administration, and
- Small Business Administration.

### ***The Senate Is Back***

**Back in session.** Senators returned to work today, while the rest of the District of Columbia remains under a stay-at-home order. Lawmakers and their staff will continue to grapple with new health protocols while proceeding with their day-to-day work.

**Criticism.** The move to reconvene the Senate has not gone without criticism:

- Senator Dianne Feinstein (D-CA) urged Leader McConnell to cancel his plans:
  - "I ask the majority leader to reconsider his plan to reconvene the Senate. He would bring 100 senators and many more staff members and reporters into close proximity while Washington itself remains under a stay-at-home order. There is no way to do this without increased risk. This is the wrong example for the country"
- Senator Chris Van Hollen (D-MD) echoed Feinstein's criticism, saying
  - "Without effective safeguards in place [the Majority Leader is] endangering the lives of the staff who work there."
- For his part Leader McConnell said:
  - "All across our nation, American workers in essential sectors are following expert advice and taking new precautions while they continue reporting for duty and performing irreplaceable work their country needs. Starting Monday, the Senate will do the same"

**Agenda items.** Senators are expected to begin work on the following agenda items:

- **COVID-19 stimulus.** Senators will begin work on the Phase Four, or CARES 2, stimulus package, although significant distance exists between the parties.
- **Hearings.**
  - **Testing.** The Senate HELP Committee will hold a [Thursday hearing on COVID-19 testing](#) with the Director of the National Institutes of Health, Francis Collins, and the acting director of HHS' Biomedical Advanced Research and Development Authority, Gary Disbrow.
  - **Aviation.** The Senate Commerce, Science, and Transportation Committee will hold a [Wednesday hearing on the status of the airline industry](#), including implementation of aid under the *CARES Act*.
  - **Nominations.** Leader McConnell continues to prioritize nominations as part of his "[leave no vacancy behind](#)" push, with a focus on safety and oversight posts. Multiple nominations will be considered on the floor, while work will continue at the committee level. The Senate Banking Committee will hold a [Tuesday hearing on Brian Miller's nomination](#) to serve as special inspector general (IG) for pandemic recovery at the Treasury Department. And as noted last week, Democrats have keyed on a [Judiciary hearing for McConnell ally Justin Walker](#) who has been nominated for a seat on the DC Circuit.
  - **Calls for more oversight.** Minority Leader Chuck Schumer (D-NY) issued a [May 1 statement](#) criticizing the Senate's lack of oversight of the Trump administration's COVID-19 pandemic response.
    - Senate Democrats released a [list of oversight hearings](#) that they believe the Senate should pursue.
    - In Sunday papers across the country, Vice President (and presumptive Democratic nominee) Joe Biden joined one-time primary rival Senator Elizabeth Warren (D-MA) to [call for increased oversight](#) of the administration's COVID-19 response.
      - In addition to echoing the party's message, the co-byline raised eyebrows as the Biden campaign team ramps up its [running mate search](#).
- **FISA.** GOP leadership aides have said that the Senate might consider legislation that would reauthorize certain expired surveillance provisions of the *USA Freedom Act*, but sending the reauthorization bill to the President's desk would require House action, which is currently not possible given its recess.

### **Return of the House**

**Timing is fluid.** After a last-second reversal, the House decided to delay its return due to public health concerns. At the earliest, the House could return next week, but there is reason to expect further delays.

- **The latest.** Today, Majority Leader Steny Hoyer (D-MD) made the following announcement:

“Members are advised that due to ongoing bipartisan conversations surrounding additional CARES legislation and a Rule change related to remote work, and in continued consultation with

Members and the House Attending Physician, the House is not expected to be in session this week.

“Members are further advised that they will be given sufficient notice of when they would need to return to Washington, DC.

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

- **Tentative return the week of May 18?** During a Friday pro forma session, the House passed an [amendment](#) to the resolution it has been operating under since March, extending the current rules through May 18.
- **But potentially longer.** The Capitol physician notified lawmakers of the House Administration Committee last Friday that COVID-19 cases may not peak in the DC region until mid- or late-May.
  - Whatever may happen in committee or pro forma floor activity, the entire House is unlikely to return until they are prepared to vote on the next phase.

**Alternative options.** House Minority Leader Kevin McCarthy (R-CA) [released four strategies](#) to potentially reopen Congress safely. Leader McCarthy, along with other GOP members, hope to have the House reopen for business as soon as possible.

**Rare moment of bipartisan agreement.** One important component in the move to reopen Congress is the capacity to test lawmakers and staff for COVID-19. In this respect, Speaker Pelosi and Leader McConnell found a rare sliver of common ground over the weekend; both leaders declined special testing treatment for Congress until the general public had the same types of tests.

- President Trump [responded](#) to Leader McConnell’s announcement on Twitter, criticizing the move: “No reason to turn it down, except politics. We have plenty of testing. Maybe you need a new Doctor over there. Crazy Nancy will use it as an excuse not to show up to work!”
- Leader McCarthy also disagreed with McConnell’s temporary alignment with Pelosi, saying “I do believe it would be critical to have the testing here because there will be a flare-up. Remember how many people from other parts of the country come to this location.”

### **Next Phase Markers**

**Laying down legislative markers.** Lawmakers from both sides of the aisle have begun to lay down legislative markers of key priorities that they aim to include in the next phase of COVID-19 stimulus. As we noted in our last update, Speaker Pelosi staked out a position on increased state and local funding, and Leader McConnell made his preference for liability protection clear.

- **Payroll tax cut.** The White House has jumped into the fray of proposals and pitched an idea long-supported by President Trump: a payroll tax cut. Most recently on Sunday in a *Fox News* town hall, the President said he would not approve another stimulus package that did not include a payroll tax cut:
  - “We’re not doing anything unless we get a payroll tax cut... That is so important to the success of our country.”

- While a payroll tax cut has long been a conventional response to economic hardship under both parties, the current circumstances make it a less effective policy lever:
  - Under the *CARES Act*, employers are already able to defer payment of 2020 payroll taxes through next year.
    - While deferral is not available to recipients of PPP forgiveness, these companies have benefited from significant relief by definition.
  - If an employee-side cut, it would do little for the 30 million who have lost their jobs in the past month.
- Still, in an environment where the Democratic policy wish list has grown by the week, Republicans have a limited number of responses in their traditional arsenal. With much of the low-hanging policy fruit picked in *TCJA* and *CARES Act*, the payroll tax cut chatter is likely to continue.

#### **PPP Round Two Update**

**Updated PPP round 2 numbers.** The SBA [released a report](#) on the second tranche of Paycheck Protection loans. Among the week one highlights:

- 2.2 million businesses have been approved for \$175 billion, with an average loan of \$79,500.
  - This compares to 1.6 million loans for \$342 billion (\$206k on average) in round one.
  - Overall pace of funding is slowing as volume increases; smaller loans are reaching more businesses.
    - 90 percent of loans were under \$150,000; 99 percent were under \$1M.
      - Numbers buoyed by self-employed and independent contractors.
      - Larger (\$1M+) loans still make up 27 percent of funds, but down from 44 percent in round one.
  - At the current rate, the program may be flirting with its \$670 billion loan cap by week's end.

**Notable developments in guidance.** Businesses eying the PPP received good and bad news over the weekend:

- **The good news: rehires.** In an update to the program's [FAQs](#), the Secretary and Administrator invoked their statutory discretion to exclude good faith attempts to rehire laid off employees from the calculation limiting loan forgiveness:
  - "The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of rehire, and the employee's rejection of that offer must be documented by the borrower."

- The FAQ added that employees who reject offers of re-employment may forfeit eligibility for unemployment compensation.
- While the law allows an exemption for rehires made by June 30, federally supplemented unemployment insurance runs through the end of July, leading to concerns (and anecdotal evidence) that former employees may be reluctant to return, putting PPP recipients in a bind.
- **The bad news: deductibility.** IRS in recent days released [Notice 2020-32](#), disallowing deductions for expenses that have been forgiven under PPP, and preventing a “double tax benefit” according to the service:
  - “[T]his notice clarifies that no deduction is allowed under the Internal Revenue Code (Code) for an expense that is otherwise deductible if the payment of the expense results in forgiveness of a covered loan pursuant to section 1106(b) of [the CARES Act.]”
  - This had been an open question, as the law explicitly excludes forgiven loans from gross income for tax purposes, but remains silent on deductibility.
    - The *Wall Street Journal* wrote about the issue last month: “[Multi-billion Dollar Tax Muddle Hovers Behind Small Business Loan Program](#)”
  - The notice got a swift, bipartisan reaction from Capitol Hill:
    - Senate Finance Committee Chairman Chuck Grassley (R-IA) [told WSJ](#) that the move was “contrary to [Congress’] intent,” namely to “maximize small businesses’ ability to maintain liquidity, retain their employees and recover from this health crisis as quickly as possible.”
    - House Ways and Means Committee Chairman Richard Neal (D-MA) indicated similar displeasure. According to a spokesperson, Neal is “planning to fix this in the next piece of response legislation.”
      - The bipartisan agreement is significant, as is a potential legislative push from Neal.

**Mnuchin resistant to changes.** In an [appearance on Fox Business](#) this morning, Secretary Steven Mnuchin [pushed back](#) on calls from industry for Treasury and SBA to revisit some of the rules they have implemented for PPP, including limits on what expenses will be forgiven, and whether those payments will ultimately be deductible.

- **Defends 75/25 rule.** When asked if he would consider loosening the requirement that 75 percent of the loan be used for payroll in order to be forgiven, Mnuchin demurred, saying “this is the way the program was designed by Congress.” He further suggested that those businesses needing more funds to cover overhead apply for the Economic Injury Disaster Loan (EIDL) program.
  - While Mnuchin said he “[doesn’t] have the flexibility to change that,” the 75 percent rule was not in the statute and is purely an interpretation by Treasury and SBA meant to triage limited funds.

- Regarding the EIDL program, the application portal has been down since the mid-April lapse in appropriations, and with the new funds devoted to previous demand, it's not clear that they will be accepting new applications.
- **Criticizes deductibility as “double-dipping.”** When asked about the IRS notice, and congressional critiques, Mnuchin said that he reviewed this personally, and “the guidance is correct.”
  - "The money coming in the PPP is not taxable... If the money that's coming is not taxable, you can't double dip."

**Resources.** Below you will find the above mentioned, and other recent, guidance and information from Treasury Department and SBA on implementation of the PPP.

- [PPP Loan Report—Round 2](#)
  - [Frequently Asked Questions](#) – Updated 5/3 (Questions 40-42)
  - [Interim Final Rule on Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders](#) – Updated 4/30
  - [Guidance on Whole Loans Sales of PPP Loans](#)
  - [Joint Statement by Secretary Mnuchin and Administrator Carranza on the Success of the Paycheck Protection Program](#)
  - [Press Release: Federal Reserve expands access to its Paycheck Protection Program Liquidity Facility \(PPPLF\) to additional lenders, and expands the collateral that can be pledged](#)
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## ***Policy Resolution Group COVID-19 Legislative Update***

***April 30, 2020***

Today's note discusses additional Paycheck Protection Program (PPP) guidance; the push for liability protection in CARES 2/Phase Four; the Federal Reserve's expansion of the Main Street Lending Program; new guidance on which businesses are "critical to maintaining national security;" and potential oil and gas industry relief plans.

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

- Department of Labor,
- Department of Transportation,
- Environmental Protection Agency,
- Department of Health and Human Services,
- Pipeline and Hazardous Materials Safety Administration, and
- Small Business Administration.

### **PPP Round Two Update**

- **The bumpy reboot continues.** The Small Business Administration's (SBA) grand re-opening of the PPP continued to be plagued by technical and logistical difficulties, with larger lenders in particular frustrated by the ongoing backlog.
  - SBA had permitted a one-time upload of bulk applications in advance of the opening, drawing hundreds of thousands of submissions, each from the country's largest banks, but three days later only a sliver of them have been processed.
  - SBA also dedicated the hours of 4 PM until midnight on Tuesday exclusively to lenders with less than \$1 billion in assets, a move that further tweaked hundreds of larger participating institutions.
- **Current state of lending.** As of 5 PM on Wednesday, more than 5,300 lenders had processed over 960,000 loans amounting to roughly \$90 billion, for an average disbursement of \$93,000.
  - This figure is less than half of the \$206,000 average loan of Round Two, reflecting the front-loading of larger, well-connected borrowers, the delay in self-employed and 1099 applications, and a concerted effort to route the second tranche of funds through smaller institutions.
  - While the \$30 billion per day burn rate means the funds should last longer than the few days many expected, that is mostly a function of the sheer logistics of working through the existing slack.
    - A potential PPP lapse remains the most obvious trigger for the next moving legislative vehicle.
- **Negative press.** Fallout from the program's negative press continues to shape the policy response:

- Treasury formally announced its intention to scrutinize loans of \$2 million or more before authorizing forgiveness, as Secretary Steven Mnuchin had previously said publicly. The subject was addressed in a [joint statement](#) by Mnuchin and SBA Administrator Jovita Carranza, and again in an update to the program's FAQs:

"To further ensure PPP loans are limited to eligible borrowers, the SBA has decided, in consultation with the Department of the Treasury, that it will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender's submission of the borrower's loan forgiveness application."

- Senate Small Business Chairman Marco Rubio (R-FL), the program's chief author and congressional champion, added a new wrinkle, telling Florida state legislators yesterday that names of PPP recipients would eventually become public, something that was not addressed in the *CARES Act*:

"The bottom line is we're going to know one way or the other who got this money," Rubio said on a conference call. "Treasury, SBA is eventually going to have to release that. I always thought they were going to have to, and if they don't, we'll make them do it."

- **Cause for concern?** While these actions and statements are confounding to companies who pursued these loans in good faith, only to see the goalposts being moved, these steps are likely geared more toward managing the PR problems that have plagued the program in the early-going, while applying pressure for the most egregious actors to avoid further headaches by returning the funds.
- **Guidance.** Treasury and SBA have released the following additional PPP guidance since our last update:
  - [Joint Statement by Secretary Steven T. Mnuchin and Administrator Jovita Carranza on Establishing Dedicated Hours for Small Lender Submissions of PPP Applications](#)
  - [Joint Statement by Secretary Steven T. Mnuchin and Administrator Jovita Carranza on the Review Procedure for Paycheck Protection Program Loans](#)
  - [Frequently Asked Questions \(Questions 37-39\)](#)
  - [Interim Final Rule on Corporate Groups and Non-Bank and Non-Insured Depository Institution Lenders](#)
  - [Interim Final Rule on Additional Criterion for Seasonal Employers](#)
  - [Interim Final Rule on Disbursements](#)

#### **CARES 2/Phase Four**

- **Hurry up and wait.** With the House delaying its return due to health concerns, and Senate Majority Leader Mitch McConnell's (R-KY) preference for a wait-and-see approach before tackling another round of stimulus, the timeline on the next inevitable COVID-19 relief package has been thrown into flux. The most

likely near-term forcing mechanism is another lapse in PPP funding, though the appetite for reprising such a stopgap is unclear.

- This uncertainty has not stopped debate over a growing list of Phase Four priorities, from emergency items like direct payments and hazard pay to more recovery-oriented policies like infrastructure and tax.
  - Anything hoping to move in the near-term will have to have direct relevance to the current crisis, while ideally offering swift relief.
- **Senate still on track to return.** Despite criticism from [senior Democrats](#) citing safety concerns, the Senate is slated to reconvene on Monday, May 4.
  - Democrats are as frustrated by GOP intentions to [move forward](#) on judicial nominations as they are the return itself.
  - Senate Minority Leader Chuck Schumer (D-NY) in a [letter](#) pushed Leader McConnell to focus on COVID-19 response.
- **McConnell sets a marker on liability concerns.** Leader McConnell said this morning in a Fox interview that when and if Congress does craft another relief package, a top priority for the Leader is liability protections:

"We don't need an epidemic of lawsuits in the wake of the pandemic. And so if we do another rescue package, and we may, we need to take our time, do it right, and it needs to include these liability protections."
- **Pelosi pegs state and local need at \$1 trillion.** Meanwhile House Speaker Nancy Pelosi (D-CA) in a news conference [highlighted](#) the need for more state and local funding, as Democrats collectively prepare to ask for roughly \$1 trillion:
  - "We are not going to be able to cover all of it, but to the extent we can keep the states and localities sustainable, that is our goal."
  - Minority Leader Kevin McCarthy (R-CA) signaled an openness to state and local aid, but with conditions: "It has to be for COVID."
- **What does it mean?** Neither side is likely to get their full ask, but this sets the terms of the debate, provides markers for future negotiations, and establishes red lines that the parties won't cross without a fight.

### **Main Street Lending Program**

This morning, the [Federal Reserve announced](#) that it is expanding the scope and eligibility for the Main Street Lending Program—the program designed to provide credit flow to small and medium-sized businesses.

Among the changes:

- Creating a third “priority” lending facility for borrowers with greater leverage;
- Lowering the minimum loan size for new loans to \$500,000; and
- Expanding eligibility to businesses with up to 15,000 employees or up to \$5 billion in 2019 revenue

The Press Release also included a useful matrix explaining the latest terms, which we reproduce below.

Main Street Lending Program Loan Options	New Loans	Priority Loans	Expanded Loans
Term	4 years	4 years	4 years
Minimum Loan Size	\$500,000	\$500,000	\$10,000,000
Maximum Loan Size	Lesser of \$25M or 4x 2019 adjusted EBITDA	Lesser of \$25M or 6x 2019 adjusted EBITDA	Lesser of \$200M, 35% of outstanding and undrawn available debt, or 6x 2019 adjusted EBITDA
Risk Retention	5%	15%	5%
Payment (year one deferred for all)	Years 2-4: 33.33% each year	Years 2-4: 15%, 15%, 70%	Years 2-4: 15%, 15%, 70%
Rate	LIBOR + 3%	LIBOR + 3%	LIBOR + 3%

The release did not give a timeline for the Main Street Lending Program to be operational, but Secretary Mnuchin has privately indicated that it may take several weeks to come online.

### **National Security Guidance**

The Treasury Department [released new information](#) on implementing Title IV of the *CARES Act*. Importantly, Treasury provided for the first time a definition of “a business critical to maintaining national security.” From the [Q&A document](#):

“A business critical to maintaining national security is one that, unless otherwise approved as set forth below, is at the time of the business’s application:

“(1) performing under a “DX”-priority rated contract or order under the Defense Priorities and Allocations System regulations (15 CFR part 700); or

“(2) operating under a valid top secret facility security clearance under the National Industrial Security Program regulations (32 CFR part 2004).

“Applicants that do not satisfy either of these two criteria may be considered for loans if, based on a recommendation and certification by the Secretary of Defense or the Director of National Intelligence that the applicant business is critical to maintaining national security, the Secretary of the Treasury determines that the applicant business is critical to maintaining national security. Businesses that do not meet these criteria may nonetheless be eligible for assistance under other *CARES Act* programs.”

### **Potential Oil and Gas Industry Relief Plans**

According to [recent reports](#), the Trump administration may soon release a plan to assist the oil industry. The following elements have been discussed as potential components of the Administration's response:

- **Two options.** Secretary Mnuchin is reported to be considering a dual track approach of bridge loans and emergency lending authority under Section 13(3) of the *Federal Reserve Act*.
  - **Lending.** Energy Secretary Dan Brouillette mentioned that Secretary Mnuchin was considering offering bridge loans to struggling oil companies during a conference call with the North Dakota Petroleum Council on Tuesday.
    - “Mnuchin hasn’t made a final decision on this, but that’s where he’s leaning and that’s where I think he’s going to go.”
  - However, not all in the industry may receive loans. As Secretary Brouillette put it,
    - “I hope you don’t take this the wrong way, [but] there are some in the industry who are more needy or more in need of these types of resources than others.”
  - It is unclear what these “bridge loans” might look like, or under what authority they might be extended, but the *CARES Act* gives the Treasury Secretary ample resources and broad discretion to provide liquidity to distressed sectors. Roughly half of the originally \$500 billion remains untapped.
  - The Federal Reserve has already announced a number of facilities, including programs to buy [corporate bonds](#) and [loans to small- and medium-sized businesses](#) that would be accessible to many oil and gas companies. While the Federal Reserve’s authority under 13(3) requires that programs created for emergency lending must allow “broad-based eligibility,” making a sector-specific facility hard to envision, Federal Reserve Chairman Jay Powell signaled an openness to tailoring existing programs during a [Wednesday press conference](#):

“I think with Main Street, there’ll be at least a couple of different kinds of lending going on there. This is a broad area of the economy with many different kinds of credit needs, so we’re going to keep at that for some time, I think, adding in sectors and lending products.”
- **SPR.** The Administration is also exploring whether it should expand upon its original plan to open up the Strategic Petroleum Reserve (SPR), although such a move might run up against physical capacity limits of the reserve.
  - **Keep it in the ground.** If the SPR cannot accommodate more crude oil, the Administration is also considering whether it can buy undeveloped oil reserves and incorporate them into the SPR—functionally paying certain drillers to halt production.

**ICYMI**

The Internal Revenue Service (IRS) [released new guidance](#) on the Employee Retention Credit under the *CARES Act*.

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

***April 28, 2020***

Today's note discusses the growing agenda that Congress will confront when it returns, and provides an update on the freshly replenished (for now) Paycheck Protection Program (PPP).

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

- Department of Treasury,
- Federal Emergency Management Agency,
- Federal Reserve, and
- Food and Drug Administration.

### **Congress' Return and Growing Agenda**

- **Congress' return plans in flux.**
  - Senate Majority Leader Mitch McConnell (R-KY) confirmed Monday that the Senate would return on May 4, saying "[we will] honor our constitutional duty...it doesn't make sense for the Senate to sit on the sidelines while a lot of other people are going to work every day and trying to get us through this."
  - But House Majority Leader Steny Hoyer (D-MD) changed gears Tuesday, indicating that the House would no longer return on May 4 as planned, citing safety concerns on advice of the Attending Physician:

"Members are advised that due to ongoing bipartisan conversations surrounding additional CARES legislation and a Rule change related to remote work, and in continued consultation with Members and the House Attending Physician, the House is not expected to be in session the week of May 4, 2020.

Members are further advised that they will be given sufficient notice of when they would need to return to Washington, DC."

    - The turnabout comes after Leader Hoyer announced on a Monday caucus call with House Democrats that he and House Speaker Nancy Pelosi (D-CA) "have decided we will come back on the 4th." The initial move from leadership drew criticism from some rank and file Democrats who found the return premature.
  - While Leader McConnell has not said whether the House's audible changes the Senate's plans, the House's delay could upend expectations regarding the timing and sequence of the next phase.
- **Proxy voting.**

- **Senate.** The Senate Committee on Homeland Security & Governmental Affairs will hold an [April 30 hearing](#) on whether to allow remote voting in times of emergency. Such a plan has bipartisan backing from Senators Rob Portman (R-OH) and Dick Durbin (D-IL) who have sponsored a resolution (S. Res. 548) to permit remote voting if Senate leaders agree an emergency exists.
- **House.** Per [tweets](#) from CNN Senior Congressional Correspondent Manu Raju, House Democratic leaders had planned to vote next week on a remote voting plan, regardless of whether they came to a deal with Republicans. It is not yet clear how the scheduling change will impact these plans.
- **Potential Phase Four agenda items.** While Leader McConnell has advocated for a wait-and-see approach, Democrats and some Republicans have already begun discussions of different elements of what could make up the fourth phase of COVID-19 response. Below are some of the priorities that both parties have floated.
  - **Liability protection.** Leader McConnell, in an [April 27 statement](#) announcing the Senate would reconvene on May 4, said Congress must pass liability protections for health care workers and businesses more broadly.
    - “The brave healthcare workers battling this virus and the entrepreneurs who will re-open our economy deserve strong protections from opportunistic lawsuits. Some such protections were included in the bipartisan *CARES Act*. We will need to expand and strengthen them.”
  - **State and local government aid.** Democrats have long sought an additional \$500 billion in funds for state and local governments. While Leader McConnell signaled in an interview on Monday that it is “highly likely” the next stimulus bill will provide support for local governments, he noted that this aid would come in the form of liability protection, discussed above.
    - “I’m open to additional assistance. It’s not just going to be a check, though, you get my point?”
    - Although, some Republicans have voiced support for greater state and local government assistance. Senator Bill Cassidy (R-LA) joined with Senator Bob Menendez (D-NJ) to [release a proposal](#) that would create a \$500 billion stabilization fund to aid state and local governments.
  - **Frontline worker tax incentives.** Speaker Pelosi has said that support for health care workers and first responders is a top Democratic priority. Leader Hoyer said that tax incentives for frontline workers would be on the table for the fourth phase of COVID-19 stimulus.
    - Tax credits represent a distinct approach from the Senate’s proposed “Heroes Fund” that would instead provide cash payments to eligible employees to raise their pay by an extra \$13 per hour, capped at \$25,000 for those earning less than \$200,000.
    - Some GOP lawmakers, notably Reps. Steen Horsford (D-NV) and Tom Suozzi (D-NY), have expressed qualified support for targeted tax incentives.

- Horsford noted that he is developing a worker-training tax credit to employers in health care and other sectors with skilled worker shortages.
  - Rep. Bill Huizenga (R-MI) proposed an income tax holiday of up to \$50,000 in income for qualified first responders.
  - Rep. Glenn Thompson (R-PA) along with Rep. Dwight Evans (D-PA) have crafted a bill that would also provide an income tax holiday, capped at \$25,000, for grocery store and convenience store workers who make less than \$75,000.
- **Individual aid.** According to White House economic adviser Kevin Hassett, the Trump administration is considering an additional direct payments to individuals beyond the *CARES Act's* \$1,200 checks.
    - Democrats have presented a variety of proposals for further direct payments to individuals, varying in check size and frequency.
  - **Infrastructure.** President Trump has thrown his support behind an increase in infrastructure spending, and some Republicans have echoed this call, notably Senators Dan Sullivan (R-AK), Richard Shelby (R-AL), and John Barrasso (R-WY).
  - **Clean energy tax credits.** As lawmakers from oil states seek a solution to the recent chaos induced by the Saudi-Russian price war and COVID-19 demand destruction, they might make a deal with advocates for clean energy tax credits. For example, Congress could authorize additional Strategic Petroleum Reserve (SPR) purchases and extend the safe harbor deadline for renewable energy projects.
  - **PPP.** Despite the recent replenishment of the PPP, the program is set to run dry again soon. In a Phase Four package, Congress may decide to re-supply the popular program, or un-cap it entirely.
  - **Vote-by-mail.** An important Democratic priority is to provide funding to assist states transition to vote-by-mail programs for the November presidential elections. The *CARES Act* provided \$400 million, but Pelosi has said that \$4 billion may be needed.

#### **PPP Update**

- **Back online.** The PPP came back online on Monday, after an infusion of \$310 billion of new funds authorized by the interim relief bill signed last Friday.
- **Hiccups.** Monday's relaunch was [marred](#) by technical and logistical difficulties out of the gate. A ten-day crimp in the funding hose led to a backlog of nearly a million applications, which the existing infrastructure was not prepared to absorb.
  - The Small Business Administration's E-Tran processing portal for lenders crashed within minutes of the 10:30 AM EDT opening.

- The pace and structure of lending was [significantly throttled](#)
  - both deliberately...
    - While lenders were permitted a [one-time bulk upload](#) in batches of up to 5,000, SBA limited each bank to 350 applications per hour.
  - and inadvertently...
    - With SBA citing "[unprecedented demand](#)," lenders reported ongoing problems throughout the day, successfully processing just a handful of loans per hour.
- SBA also put in place further restrictions to ensure that the new funding wasn't cannibalized by a handful of large banks.
  - Each institution is now limited to 10% of the broader authorization pool (\$60 billion).
- As of 3:30 PM EDT yesterday, the program processed 100,000 loans. While SBA did not indicate a total amount, the early pace is reportedly \$3 billion per hour.
  - At this rate, the funds may "last" longer than anticipated, but only thanks to stunted processing.
- **Mnuchin throws the gauntlet.** In response to a chorus of negative stories about PPP loans to large, well-capitalized companies, Mnuchin [announced on CNBC](#) that the SBA would do a "full review" of any loan over \$2 million before the company is granted full forgiveness.
  - Notably, companies deemed ineligible upon review could face criminal penalty. "It's the borrowers who have criminal liability if they made this certification and it's not true," Mnuchin told CNBC's *Squawk Box*.
    - As Mnuchin put it, "We want to make sure this money is getting to where it should be.... The purpose of this program was not social welfare for big business."
  - Mnuchin's ire has been directed primary toward large public companies that received loans, but news of the NBA's Los Angeles Lakers taking (and since returning) a \$4.6 million PPP loan [reignited the issue](#).
    - As we reported last week, SBA has instituted a safe harbor for companies who return PPP funds by May 7, 2020. More on this [here](#).
  - How many companies might this impact? According to the SBA's Loan Report, roughly 26,000 businesses received over \$2,000,000 before the original appropriations ran dry.
  - Bracewell's COVID-19 Task Force will release a [client alert](#) on this issue today:
    - "Sec. Mnuchin Warns Of Criminal Liability For PPP; Promises To Audit Large Loans"
- **New PPP guidance.**

- [SBA Procedural Guidance on Participation Sales](#) – Updated 4/24
  - [Frequently Asked Questions](#) – Updated 4/26
  - [Interim Final Rule on Requirements for Promissory Notes, Authorizations, Affiliation, and Eligibility](#) – Updated 4/24
  - [Interim Final Rule on Additional Criterion for Seasonal Employers](#) – Updated 4/27
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## ***Policy Resolution Group COVID-19 Legislative Update***

***April 24, 2020***

Today's note discusses the House's passage and the President's signing of an interim COVID-19 relief package, in addition to providing an outlook on future stimulus efforts.

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

- Department of Labor,
- Department of Treasury,
- Environmental Protection Agency,
- Federal Emergency Management Agency,
- Pipeline and Hazardous Materials Safety Administration, and
- Small Business Administration.

### ***The PPP Is Replenished For Now***

- **House passage.** Yesterday, the House passed the *Paycheck Protection Program and Health Care Enhancement Act* with overwhelming bipartisan support—[388 yeas, 5 nays, and 1 present](#).
- **President's signature.** President Donald Trump signed the bill into law during an Oval Office ceremony this afternoon.
- **Key provisions.** The final bill contained the components that we have previously reported, namely \$310 billion for additional Paycheck Protection Program (PPP) loans, \$60 billion for Economic Injury Disaster Loan (EIDL) programs, \$75 billion for hospital relief, and \$25 billion for COVID-19 testing, among other provisions.
- **Implementation.** According to PPP author Senator Marco Rubio (R-FL), the Small Business Administration (SBA) will begin processing loans Monday morning.
  - The Senator [tweeted](#) this morning, “#PPP UPDATE: PPP should be relaunching Monday morning. It will include not just the \$310 billion @potus will sign today, but also an additional significant amount of money from #PPPlans being returned by several publicly traded large companies.”
  - With President's signing of the bill this afternoon, the White House Office of Management and Budget (OMB) will be able to sign off on the funds transfer.
    - SBA will not re-open its portal until the entire amount is in the agency's account.
    - Once enacted, the law will provide an additional \$250 billion to the PPP lending pool at large, and another \$60 billion divided between two tiers of smaller institutions.

- It is not entirely clear how these separate pools will work, mechanically.
  - As currently constructed, the E-Tran loan portal makes no distinction.
  - Many community banks have been participating all along and would be able to draw from both.
- **Note.** While the law enacted today authorizes an additional \$310 billion for PPP loans, it appropriates \$321.3 billion, which has led to some confusion and inconsistent reporting.
  - The additional \$11.3 billion will go to cover origination fees and other anticipated costs, allowing the full \$659 billion (\$349 billion + \$310 billion) to cover loan guarantees and, ultimately, forgiveness.
- **New PPP guidance.** Separate from the interim relief bill, this morning Treasury released additional guidance on the PPP in the form of an [Interim Final Rule on Requirements for Promissory Notes, Authorizations, Affiliation, and Eligibility](#).
  - **Eligibility.** Notable clarifications for affiliation rules include:
    - Hedge funds and private equity firms are deemed to be ineligible.
      - This was never in doubt, based on underlying SBA rules, but recent news cycles and negative attention likely precipitated a more explicit clarification.
    - Private equity portfolio companies are to apply SBA affiliation rules “in the same manner as any other business subject to outside ownership or control.”
      - This clarification comes after weeks of [speculation](#) that such rules might be waived.
      - The IFR further states that otherwise-eligible portfolio companies should “carefully review” the required certification related to the necessity of the loan.
    - Companies who are themselves, or whose owners are, debtors in bankruptcy proceedings are ineligible.
      - “[P]roviding PPP loans to debtors in bankruptcy would present an unacceptably high risk of an unauthorized use of funds or non-repayment of unforgiven loans.”
  - **Safe Harbor.** The guidance also codifies a limited “safe harbor” for companies that return PPP loans by May 7, 2020.
    - “Any borrower that applied for a PPP loan prior to the issuance of this regulation and repays the loan in full by May 7, 2020 will be deemed by SBA to have made the required certification in good faith.”

- This safe harbor in the interim final rule ups the ante from a related [FAQ update](#) released yesterday which addressed whether larger companies were eligible for PPP loans.
- Notably, the FAQ sent an unmistakable signal to public companies to steer clear:
  - “It is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.”
  - The suggestion of potential SBA audit weeks into the program’s launch, with nothing in the statute and little in the way of other guidance, raised significant questions and concerns among larger recipients, and the safe harbor is meant to address these concerns.
- **Tick tock.** While recent guidance has been oriented around pushing back against ugly headlines, borrowers and potential-borrowers are still waiting on any guidance with respect to forgiveness.
  - The [initial IFR](#) requires 75 percent of PPP funds to be spent on payroll costs to be eligible for forgiveness, but leaves virtually everything else to future guidance.
  - With more than 1.6 million loans approved and most of the funds out the door, this guidance is needed immediately for borrowers to proceed with any certainty.

### **What The Future Holds**

- **Bill in context.** This interim relief bill represents the fourth legislative package constructed by lawmakers to respond to the economic and human toll of the unfolding COVID-19 pandemic. In broad terms:
  - **Phase One.** The first phase of stimulus provided an emergency injection of funds to Federal agencies to address what was then a nascent global health crisis.
  - **Phase Two.** The second phase established paid leave policies for certain employers and accompanying tax credits, in addition to expanding nutritional assistance and funding the medical response to COVID-19.
  - **Phase Three.** The third phase, the *CARES Act*, sought to manage an induced economic coma, providing direct cash payments to individuals, expanding unemployment insurance, throwing small businesses a lifeline via PPP and EIDL, funding lending facilities for sector- and industry-wide relief, retooling the tax code to provide businesses with a cash infusion, and providing substantial funds for government, health care, and educational institutions.
    - See: *Bloomberg’s* [reporting](#) on how the Trump Administration has distributed \$881 billion, so far, of the *CARES Act*.

- **CARES 2.** While early discussions about a Phase Four COVID-19 bill have entertained measures as varied as infrastructure spending and clean energy tax credits, the next bill is shaping up to be closer to a “CARES 2,” as House Speaker Nancy Pelosi (D-CA) dubbed it. In contrast to the passage of the first *CARES Act*, the second iteration is unlikely to be enacted in the same swift fashion. During CARES 1, lawmakers faced a perilous economic landscape amid the backdrop of a rapidly developing public health crisis that forced lawmakers to retreat from Washington, DC. While the economic situation remains fraught, with ugly jobs numbers becoming a weekly staple, the current moment lacks the same forcing mechanism to “jam” either chamber. While external forces have a way of imposing themselves with little warning, the current dynamic means the debate over a Phase Four package will likely be more partisan and drawn-out.
  - **GOP Caution.**
    - Senate Majority Leader Mitch McConnell (R-KY) has tapped on the brakes on the next phase of stimulus, indicating that he wants to wait and assess the implementation of current programs before proceeding with additional deficit spending.
    - House Minority Leader Kevin McCarthy (R-CA) echoed McConnell’s cautious approach, saying “We have not seen the effects of all this money going out... The states are going to have money coming to them already. Let’s see what’s working, what needs more help. And let’s craft a bill based upon knowledge, data.”
    - **Democrat priorities.** Speaker Pelosi and Senate Minority Leader Chuck Schumer (D-NY) have already begun working on Democrat demands for a Phase Four package. Democratic asks are likely to include at least the following elements:
      - Additional aid to state and local governments.
      - Social safety net expansion, including unemployment benefits and nutritional assistance.
      - Expanded workplace safety protections for front-line workers.
      - “Heroes Fund” to provide hazard pay to front-line workers.
      - Additional health care funds.
      - Additional direct payments to individuals.

### **Oil and Gas Relief**

As we reported in our last two updates, the Trump Administration has begun compiling plans to aid the embattled oil and gas industry. While these measures remain ambiguous, as the Administration struggles to find solutions it can implement via executive action, some elements have begun to come into focus.

Notably, Treasury Secretary Steven Mnuchin told *Bloomberg* that he is considering providing a lending facility for the industry:

- “One of the components we’re looking at is providing a lending facility for the industry....We’re looking at a lot of different options and we have not made any conclusions.”
- As mentioned yesterday, Treasury still has roughly \$250 billion in untapped funds allotted from the *CARES Act* that can be used in conjunction with the Federal Reserve to provide liquidity with the Secretary’s broad discretion.
- Some oil companies may run into trouble tapping existing lending facilities as rating agencies downgrade their credit.
  - For these companies, Mnuchin said he is discussing “alternative structures with banks.”
  - A recent [letter](#) from oil-state Senators to Mnuchin and Federal Reserve Chairman Jay Powell noted that two corporate credit facilities stood up by the Federal Reserve use March 22, 2020 as the relevant date for credit-worthiness in the initial term sheets.
    - While March 22 is the date the Federal Reserve announced the facilities, it hits oil and gas companies particularly hard, as it reflects a snapshot amid a devastating, weeks-long price war between Russia and Saudi Arabia.
    - The Senators suggest changing the date to allow companies to qualify under their prior credit rating.
- Democrats have expressed opposition to any support for the oil and gas industry.
  - Senator Ed Markey (D-MA) and Representative Nanette Barragán (D-CA) penned a [letter](#) to Chairman Powell, saying bailing out the industry “would be short-sighted misuse of taxpayer resources.”
  - Chairman of the House Energy and Commerce Committee Frank Pallone (D-NJ) said, “I refuse to put the American people on the hook for rescuing oil companies from a crisis that they themselves had a hand in creating.”
- The vast majority of *CARES Act* funding is not industry-specific.
  - With the notable exception of airlines and unspecified national security companies, the law goes out of its way to provide sector-neutral relief.
  - The most likely outcome remains allowing hard-hit energy companies to access the same liquidity facilities as everyone else, even if it means creating new ones with terms that can accommodate the industry’s circumstances.

Today's note discusses the recent deal on an interim COVID-19 relief package and the bill's prospects in the House, in addition to providing an update on the Trump Administration's developing plans to assist oil and gas companies and the White House's forthcoming Executive Order to curtail new immigration.

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

- Department of Labor,
- Department of Treasury,
- Environmental Protection Agency,
- Federal Emergency Management Agency,
- Federal Transit Administration,
- Food and Drug Administration, and
- Pipeline and Hazardous Materials Safety Administration.

### **We Have a Deal, And What's Next**

- **Senate passage.** Yesterday, the Senate passed the *Paycheck Protection Program and Health Care Enhancement Act* via unanimous consent.
  - See: [Bill text](#)
  - See: [Section-by-Section Summary](#)
  - See: [Hospital and testing summary](#)
- **Bill summary.** Estimates put the aid package's price tag at \$484 billion, divided among the following provisions:
  - **EIDL.** \$60 billion for Economic Injury Disaster Loan (EIDL) programs.
    - \$50 billion for traditional EIDL loans.
      - These funds will be levered up to meet overwhelming demand from small businesses (\$383 billion as of 4/9/2020).
    - \$10 billion in additional funding for \$10,000 emergency grants created under the *CARES Act*.
      - These grants had been triaged to \$1,000/employee based on oversubscription, which prompted bipartisan calls for additional funding.
    - Expands EIDL program eligibility to agricultural enterprises.
  - **PPP.** \$310 billion to replenish the PPP, allocated as follows:

- \$250 billion for the general program open to all participating lenders.
- \$60 billion reserved for lending institutions with assets less than \$50 billion, of which:
  - \$30 billion for institutions with assets between \$10-50 billion, and
  - \$30 billion for those with less than \$10 billion.
  - These “set asides” intend to provide relief to depository institutions, such as community banks.
    - While many such lenders are already participating in the program, these dedicated funds will address concerns that a limited pool of relief is being siphoned off by big banks and their top clients at the expense of smaller borrowers from underserved groups who lack the benefit of high-powered relationships.
- **SBA.** \$2.1 billion for administration of Small Business Administration (SBA) programs.
- **Health Care.**
  - **Hospitals.** \$75 billion for hospitals to offset COVID-19-related expenses and lost revenue. The language of this section mirrors the *CARES Act* funding provisions, but the Department of Health and Human Services (HHS) is expected to administer the funding more quickly to help hard-hit hospitals, particularly in rural areas.
  - **Testing.** \$25 billion for expenses related to COVID-19 testing, allocated accordingly:
    - **State and local.** \$11 billion for states, localities, territories, and tribes.
      - \$2 billion to states via the Public Health Emergency Preparedness Grant Program. Formula allocations ensure funding to all states.
      - \$4.25 billion for areas with high COVID-19 incidence and impact.
      - \$750 million for tribes.
      - Balance to be distributed at the discretion of the HHS Secretary.
    - **CDC.** \$1 billion to the Centers for Disease Control and Prevention (CDC) for COVID-19 surveillance and contact tracing.
    - **NIH.** \$1.8 billion for the National Institutes Health (NIH).
    - **BARDA.** \$1 billion for the Biomedical Advanced Research and Development Authority (BARDA).
    - **FDA.** \$22 million for the Food and Drug Administration (FDA).

- **Clinics.** \$825 million for Community Health Centers (CHC) and rural health clinics.
- **Uninsured.** \$1 billion to alleviate the cost of testing the uninsured.
- **Accountability.**
  - Includes \$6 million for HHS Inspector General oversight activities
  - Hybrid between federalistic approach preferred by the White House and congressional Democrats' demand for a "national testing strategy."
    - Requires plan from states, localities, territories, and tribes as to how resources will be used.
    - Requires strategic plan from federal government related to providing assistance to the states and increasing testing capacity.
- **Notable exclusions.** The final bill did not include additional aid to state and local governments nor an expansion of nutrition programs as Democrats initially asked.
  - In a [joint statement](#) announcing their support for the interim package, Speaker Nancy Pelosi (D-CA) and Minority Leader Chuck Schumer (D-NY) laid down a marker for including state and local funding in the next phase, pledging to "hold the Administration accountable to their promise":
    - "We are pleased that the President has committed to addressing this critical priority in CARES 2 and will work with urgency to see that this commitment is fulfilled."
  - The statement concluded with a pivot to "CARES 2":
    - "As soon as it has passed in the House, we will advance CARES 2, which must be transformative and far-reaching. CARES 2 must recognize that the key to getting Americans back to work and ensuring economic security is putting the health and safety of the American people first and defeating this terrible virus."
- **House outlook.** All eyes now turn to the House, where lawmakers are expected to vote on the interim relief bill as soon as this Thursday.
  - **Thursday.** Majority Leader Steny Hoyer (D-MD) advised members that the House would meet at 10:00 AM EDT on Thursday to consider the legislation.
  - **Proxy voting measure on hold.** The Majority Leader's original announcement said that the House would hold a recorded vote on the interim relief bill. To effectuate a recorded vote, the House had planned to unveil a Rule change related to remote voting by proxy.
    - However, this morning, Speaker Pelosi told lawmakers on a call that the House would not vote on the rules change to allow proxy voting. Instead, she and Minority Leader Kevin McCarthy (R-CA) would vote to establish a House select committee to oversee the COVID-

19 relief efforts, and in the interim, Pelosi and McCarthy would form a separate bipartisan working group to assess proxy voting.

- See: [Proxy voting resolution from House Democrats](#)
- See: [Proxy voting FAQs from House Democrats](#)
- Pelosi indicated in an interview with *Bloomberg* that the House would hold a recorded vote on the package.
- **Phase four prospects.** While Democrats hope to turn to a larger Phase Four stimulus package when Congress returns on May 4, Senate Majority Leader Mitch McConnell (R-KY) has hit the brakes, saying that the Senate would proceed “cautiously” and that lawmakers must heed concerns of rising deficits:
  - “You’ve seen the talk from both sides about acting, but my goal from the beginning of this, given the extraordinary numbers that we’re racking up to the national debt, is that we need to be as cautious as we can be.”
- **Groundhog Day for PPP.** As we have noted in previous updates, despite the interim relief bill’s replenishment of the PPP, the program is expected to quickly burn through these new funds, putting us back where we started in short order. This means that Congress will likely find itself pressured to pass another piece of legislation to inject funding into the popular program, or perhaps to uncap it entirely. A best case scenario would have the current funding act as a bridge to Congress’ tentative return on May 4.
  - **PPP Alternative?** Some Democrats, notably Rep. Pramila Jayapal (D-WA), have expressed support for an [alternative policy solution](#) to the PPP: a federal “paycheck guarantee” for 100 percent of employee salaries up to a \$100,000 cap, directionally similar to the employee retention credit created under the *CARES Act*.
    - **More in Today’s WSJ.** [Small-Business Loan Fund May Run Dry Again. Is There Another Way?](#)

### **Oil and Gas Support**

President Donald Trump’s tweet yesterday that he had instructed Treasury Secretary Steven Mnuchin and Energy Secretary Dan Brouillette to draw up plans to provide relief to the hard hit oil and gas industry invited significant speculation as to what exactly those plans would entail. While details still remain unclear, some potential actions have begun to solidify.

- **Exchange Stabilization Fund.** While some energy companies will be eligible to access certain lending facilities funding by the *CARES Act* already, Mnuchin clarified yesterday that energy companies would not qualify for the \$17 billion set aside for businesses critical to maintaining national security. The Secretary said, “obviously, the energy business is very important to us. This has national security issues, but different.”

- The Federal Reserve’s existing [primary](#) and [secondary](#) corporate credit facilities, PMCCF and SMCCF, respectively, are currently limited to investment grade credit, which some distressed oil and gas companies in need of relief may not qualify as.
- For smaller companies—those with fewer than 10,000 employees or \$2.5 billion in revenue for the year 2019—the Federal Reserve is currently standing up a [Main Street Lending Program](#) that will facilitate up to \$600 billion in loans. Details are limited, but the program could be up and running within a week.
  - From the [term sheets](#):
    - 4-year loans.
    - Principal and interest payments deferred for one year.
    - Adjustable rate of SOFR + 250-400 basis points (~2.5-4%)
    - Minimum loan size of \$1 million.
    - Maximum loan size:
      - Lesser of \$25 million or 4x EBITDA (new loans).
      - Lesser of \$150 million or 30% of undrawn debt or 6x EBITDA (“Expanded” loans).
    - *CARES Act* restrictions on executive compensation, stock buybacks, and dividends until 12 months after loan is repaid.
  - The *CARES Act* gives the Treasury Secretary broad authority to create and administer new lending facilities in conjunction with the Federal Reserve. With more than \$250 billion of these so-called Title IV funds remaining at his discretion, Mnuchin can work with the Federal Reserve to address the needs of this and any other industry sector.
- **SPR.** While the Department of Energy (DOE) aims to ramp up crude oil purchases for the Strategic Petroleum Reserve (SPR), such a move would likely require Congressional appropriation of funds.
  - In the event that Congress acts to provide relief to the oil and gas sector, Democrats will in all likelihood demand that it is paired with incentives for “green energy.”
    - A \$3 billion dollar appropriation for such purchases fell out of the final version of the *CARES Act*, as Democrats pushed for tax incentives for technologies such as wind and solar
- **Tariffs.** Some voices inside and outside the Administration have pushed for application of Section 232 tariffs on oil imports from Saudi Arabia and Russia, although such a proposal has received pushback from components of the oil and gas industry.

***Immigration Order***

President Trump provided some clarity on Tuesday about his Administration's forthcoming Executive Order to bar new immigration. While the particulars remain murky, the final action is expected to be [much more limited](#) than suggested by the President's original tweet proclaiming he would "temporarily suspend immigration into the United States." The Executive Order has been [reported](#) to contain the following elements:

- Applies to only people seeking green cards.
- Lasts for 60 days, with the possibility of renewal.
- Does not affect temporary workers.

President Trump [said on Twitter](#) that he plans to sign the order this Wednesday afternoon.

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

***April 21, 2020***

Today's note provides an update on negotiations over an interim COVID-19 relief package that would replenish the Paycheck Protection Program (PPP), among other measures. The bottom line: the Senate will likely pass the bill today, and the House may vote as soon as Thursday. We end our update with a brief discussion about fast-evolving developments in the White House to provide relief to certain oil and gas companies.

Further, today's [Agency Report](#) includes information on how Federal agencies are managing their operations and oversight obligations in response to COVID-19. In particular, our report apprises you of recent developments at the following agencies:

- Environmental Protection Agency,
- Federal Emergency Management Agency,
- Federal Transit Administration, and
- Pipeline and Hazardous Materials Safety Administration.

### ***We Have a Deal to Replenish the PPP***

- **Senate.** The Senate will meet today at 4:00 PM EDT in a pro forma session to consider a nearly \$500 billion interim relief bill to replenish the PPP, keep the Economic Injury Disaster Loan (EIDL) program afloat, provide support for hospitals, and invest in COVID-19 testing.
  - **Major sticking points resolved.** After a late night of negotiating over the phone, Senate Minority Leader Chuck Schumer (D-NY), House Speaker Nancy Pelosi (D-CA), Treasury Secretary Steven Mnuchin, and White House Chief of Staff Mark Meadows have come to an agreement on nearly every issue in the interim relief package.
    - Schumer said that while some fine details are being ironed out, he believes a deal was reached on the major issues yesterday, telling CNN: "They are still dotting the i's and crossing the t's but every major issue was resolved."
    - Pelosi said last night on CNN that negotiations are "down to the fine print."
    - At the White House COVID-19 press briefing yesterday, President Donald Trump said "hopefully tomorrow the Senate is going to be able to vote...A lot of progress has been made on that, tremendous progress."
  - **The remaining fine print.** The outstanding issues that Democrats seek to resolve include:
    - **Hospital allocations.** As we discussed in yesterday's update, Democrats and Republicans still disagree over the formula to distribute health care aid to states. Democrats prefer a formula that allocates more funds to areas with greater COVID-19 incidence and impact.

- **Testing program.** Disagreements remain over whether a “national testing strategy” is appropriate, what it should entail, and who would oversee such a regime. Democrats strongly support a federally-led approach, while President Trump and has been resistant, preferring to [leave it to states](#).
- **What’s in the deal.** As yesterday’s report foreshadowed, the general outline of a deal includes the following elements:
  - **PPP.** \$310 billion for the PPP.
    - Of this sum, \$60 billion is said to be set aside to provide access to underserved groups.
    - Note: The first \$349 billion ran out in just 13 days. Recent demand has exceeded \$200 billion/week. With 800,000 pending applications in limbo, an additional week of pent up demand, and just \$250 billion in at-large funding, we could be back in this position [within a matter of days](#).
      - To get this program through the June 30<sup>th</sup> covered period, Congress may have to consider simply uncapping it.
  - **EIDL.** \$60 billion for the Economic Injury Disaster Loan program.
    - Funds can be leveraged to meet existing demand—the program had \$383 billion in requests as of last week.
  - **Hospitals.** \$75 billion for hospitals, with a significant portion set aside to help those in rural areas.
  - **Testing.** \$25 billion for testing.
- **What’s likely not in the deal.**
  - **State and local government aid.** While Pelosi and Schumer have been under pressure from certain elements of the Democratic party to extract concessions, such as greater funding for state and local governments, Republicans have firmly rebuffed this particular ask.
    - On a Sunday call, Majority Leader Mitch McConnell (R-KY) and Mnuchin told GOP senators that the agreement would not include further aid for state and local governments.
    - Democrats did secure a commitment from the White House that cities and states could use \$150 billion allocated in the *CARES Act* to offset lost revenue in their budgets.
  - **SNAP expansion.** Democrats want a 15 percent increase in the maximum benefit under this nutrition assistance program.

- On the same call with GOP senators, Mnuchin said the SNAP increase would not make the final cut.
- **Senate vote today.** The Senate could take action on the interim relief bill as early as today at 4:00 PM EDT.
  - This vote would be done via unanimous consent during a pro forma session, otherwise Senators would have to travel back to Washington amid the pandemic.
  - Schumer expressed optimism about the bill's prospect in the Senate on CNN, saying "we have a deal and I believe we'll pass it today."
- **House.**
  - **Thursday vote at the earliest.** The House timeline has shifted to a potential Thursday vote on the interim relief bill, according to an announcement by Majority Leader Steny Hoyer (D-MD):

"If the Senate passes this legislation on Tuesday, the House could meet as early as Thursday, April 23rd at 10:00 a.m. to consider it."
  - **Proxy voting.** In the same announcement, Hoyer advised members that a recorded vote on the interim relief bill is expected. To facilitate such a vote, the House plans to vote on a yet-to-be-unveiled rule change to allow a form of proxy voting.
    - Proxy voting may prove necessary due to the risk of an objection to unanimous consent in the House, which would derail the vote.
    - The one-day delay gives members additional time to return to Washington, DC.
      - A proxy roll call would allow the vast majority of members to register their vote without a [widespread scramble](#) to meet a quorum call as we saw during passage of the *CARES Act*.

### **Oil and Gas Relief**

- President Trump [tweeted](#) this morning that the Administration plans to make relief available for the hard-hit oil and gas industry:

"We will never let the great U.S. Oil & Gas Industry down. I have instructed the Secretary of Energy and Secretary of the Treasury to formulate a plan which will make funds available so that these very important companies and jobs will be secured long into the future!"
- Precisely what this means in terms of concrete policies and actions remains unclear. However, the following actions may be under consideration:

- **SPR.** The response could include additional purchases for the Strategic Petroleum Reserve (SPR). Trump said on Monday that “We’ll ask for permission to buy it or store it [crude oil] one way or the other it will be full,” referencing the SPR.
    - Loyal readers will recall that a \$3 billion appropriation for SPR purchases had been included in early versions of the *CARES Act*, but was ultimately removed as Democrats demanded various clean energy concessions in exchange. As we have said, expect this tension between conventional and green energy priorities to persist through future phases of the congressional response.
  - **Federal loans.** Oil and gas companies can potentially tap into *CARES Act* funding via the newly created Federal Reserve facilities, and perhaps the \$17 billion reserved by the *CARES Act* for companies critical to national security.
    - Energy companies have a strong claim to make that they serve national security interests of the US, which would expand the pool of federal loans to which they have access.
    - All companies with fewer than 10,000 employees or \$2.5 billion in 2019 revenue will be eligible for stabilization loans facilitated by the Main Street Lending Program.
      - While we await further guidance, these facilities could be up and running within a week.
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## ***Policy Resolution Group COVID-19 Legislative Update***

***April 20, 2020***

Today's note provides an update on negotiations over an interim COVID-19 relief package that would provide much-needed funds to the depleted Paycheck Protection Program (PPP), among other measures. Our update concludes with analysis of the Trump administration's recent decision to suspend certain tariff payments.

Further, today's [Agency Report](#) includes information on how Federal agencies are managing their operations and oversight obligations in response to COVID-19. In particular, our report apprises you of recent developments at the following agencies:

- Cybersecurity and Infrastructure Security Agency,
- Department of Agriculture,
- Department of Treasury,
- Environmental Protection Agency,
- Federal Communications Commission, and
- Department of Health and Human Services.

### ***PPP: A Deal Is Near, But It's Only A Band-Aid***

- **A deal is near.** A deal on an interim emergency COVID-19 relief package is near.
  - Over the weekend, House Speaker Nancy Pelosi (D-CA), Treasury Secretary Steven Mnuchin, and Senate Minority Leader Chuck Schumer (D-NY) said negotiations were proceeding well and that a deal is imminent.
  - House Majority Leader Steny Hoyer (D-MD) notified House members on Sunday evening that the House could meet as early as 10:00 AM EDT on Wednesday of this week to consider the PPP legislation.
    - The Senate is expected to act first, perhaps as early as today—more on timing below.
- **Deal contents.** While reported numbers have fluctuated, the final package is expected to include:
  - **PPP.** \$310 billion for the PPP.
    - Of this sum, \$60 billion is said to be set aside to provide access to underserved groups.
  - **EIDL.** \$60 billion for the Economic Injury Disaster Loan program.
    - Funds can be leveraged, so this sum is intended to address the existing demand.
  - **Hospitals.** \$75 billion for hospitals.

- **Testing.** \$25 billion for testing.
- **Sticking points.** Key sticking points that remain are Democratic asks for the following provisions:
  - **COVID Testing Strategy.** Democrats want the final package to include a requirement that the government establish a COVID-19 testing strategy, and further disagreements remain over how the \$25 billion should be used.
  - **Hospital Allocations.** While the deal is expected to provide an additional \$75 billion to hospitals, Democrats remain unsatisfied with the existing *CARES Act* allocation formula, and want assurances that relief money will follow COVID-19 impact and incidence.
  - **State and Local Government Aid.** Democrats seek additional funding for state and local governments.
    - The GOP has firmly rebuffed Democratic demands for additional funding for state and local governments, with President Donald Trump telling reporters “that will be in our next negotiation.”
  - **SNAP.** Democrats want a 15 percent increase in the maximum benefit under this nutrition assistance program.
    - Treasury Secretary Mnuchin has said that these SNAP demand will not make the cut for the interim package.
- **Deal timing and process.** Senate leaders aim to approve a deal during a procedural pro forma session early this week.
  - The chamber is set to meet for a pro forma session this afternoon at 2:00 PM EDT. It is anticipated that the GOP will use this session to take procedural action to set up another pro forma session for Tuesday afternoon. This would buy time to finish hammering out a PPP deal that could be passed by the Senate on Tuesday.
    - Otherwise, the next meeting is scheduled for Thursday, April 24.
  - If the Senate passes the measure, the ball moves to the House, where lawmakers must pass the bill via voice vote. The package could pass on Wednesday, and it would then head to the President’s desk, where it would in all likelihood be signed into law.
- **What happens now for PPP?** With roughly 800,000 pending applications left in limbo over the lapse, systematic changes required to account for new set-asides, and demand growing every day, bringing the program back online will not be without challenges.
  - Senator Marco Rubio (R-FL) [tweeted](#) his concerns this morning:

If Senate can pass #PPP \$ today & House acts on Wednesday we should have another \$300b in funds for #PPPlans this week.

Let's not waste the next 3 days.

Will ask @SBAgov [Small Business Administration] to allow lenders to begin processing loans "Subject To Funding" to avoid overwhelming the system again.

- **Phase Four.** Given that the PPP funding in this interim emergency relief package will likely run dry quickly, a Phase Four stimulus package is a question of when, not if. Elements of a potential Phase Four bill, that could bring the total stimulus price tag across all phases to a whopping \$4 trillion, include:
  - **Direct cash payments to individuals.**
  - **Safety net program extensions.**
  - **Additional small business loan funding.**
  - **Additional hospital funding.**
  - **Additional state and local government aid.**
  - **Hazard pay for essential workers.**

#### **COVID-19 Tariff Payment Postponement**

- Sunday, the President issued an [executive order](#) directing the Secretary of Treasury to take action to extend estimate duty payment deadlines for importers pursuant to 19 USC 1318(a).
- The tariff relief described by the President's order is very narrow, and the [interim rule](#) released by Treasury on Sunday night in response to the Executive Order provides for the delayed payment of a limited universe of tariffs by a limited number of importers.
- Treasury's [temporary interim final rule](#) will, effective immediately:

[T]emporarily postpone the deadline for importers of record...to pay as of the date of entry... for merchandise entered in March or April 2020, for a period of 90 days from the date that the deposit would otherwise have been due but for this emergency action. In addition, no interest that would otherwise accrue upon such estimated duties, taxes, and fees will accrue during the 90-day postponement period.
- This postponement is very limited, and does not cover:
  - Any duties or fees already paid;
  - Antidumping duties;
  - Countervailing duties;
  - Section 232 duties (national security—used for aluminum and steel); or

- Section 301 duties (e.g. recent China duties)
- To qualify for this postponement, the importer will request the postponement when submitting entries for imports with CBP.
  - An importer is not required to submit any additional paperwork or documentation with the request, but the interim rule requires that the importer maintain the documentation establishing “it meets the requirements for relief” in its books and records.
- The standard that an importer must meet is “significant financial hardship.” The Treasury interim rule explains that this means:

An eligible importer’s operation must be fully or partially suspended during March or April 2020 due to orders from a competent governmental authority limiting commerce, travel, or group meetings because of COVID-19, and as a result of such suspension, the gross receipts of such importer for March 13-31, 2020 or April 2020 are less than 60 percent of the gross receipts for the comparable period in 2019. An eligible importer need not file additional documentation with CBP to be eligible for this relief but must maintain documentation as part of its books and records establishing that it meets the requirements for relief.

- The rule also waives any requirement to submit estimated duties, taxes and fees to establish a date on entry, which means that importers can establish their date of entry notwithstanding the postponement of payment.
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## ***Policy Resolution Group COVID-19 Legislative Update***

***April 17, 2020***

Today's note provides an update on the state of play of negotiations over additional funding for the Paycheck Protection Program (PPP), in addition to supplying a brief summary of economic reopening developments at the state and federal levels.

Further, today's [Agency Report](#) includes information on how Federal agencies are managing their operations and oversight obligations in response to COVID-19. In particular, our report apprises you of recent developments at the following agencies:

- Department of Energy,
- Department of Labor,
- Federal Reserve,
- Occupational Safety and Health Administration, and
- National Highway Traffic Safety Administration

### ***The PPP Standoff Continues***

- **Standoff Continues.** Despite the lapse in PPP funds yesterday, neither side has budged from their respective positions, leaving the program in limbo.
  - House Speaker Nancy Pelosi (D-CA) continues to hold her hardline stance on sticking points that we have discussed in our previous updates, such as health care, state and local governments, and SNAP.
  - Messaging from Senate Democrats has revolved more around small business relief, with a particular focus on PPP and Economic Injury Disaster Loans (EIDL) access for underserved and underbanked groups.
  - Republicans have expressed openness to a deal brokered by Treasury Secretary Steven Mnuchin, but remain wary of concessions, especially with regard to increased state and local government funding.
- **Weekend Negotiations.** Negotiations will likely continue through the weekend, per [comments](#) from Senate Minority Leader Chuck Schumer (D-NY).
- **Deal by April 20 at Earliest.** The next opportunity to move a deal would be Monday, April 20, when the Senate meets for a pro forma session.
- **Pressure on Senate Democrats.** Cracks have begun to emerge in the Senate Caucus:
  - Yesterday, Senators [Kyrsten Sinema \(D-AZ\)](#) and [Tina Smith \(D-MN\)](#) came out in support of immediately funding the PPP.

- The Senate is under more pressure, and what can get consent in the chamber will ultimately be what drives the deal; the House will accept what the Senate sends them.
- **This Is Only Act One.** The \$251 billion of additional funding being discussed in this interim package is not enough to keep the PPP solvent in the long-run.
  - A striking statistic that underscores the current dilemma is that it only took 13 days to deplete the \$349 billion originally allocated to the PPP in the *CARES Act*.
  - If lending continues at that rate, then the Senate will find themselves in the same position within weeks.
- **More Interim Support Needed.** As a clean funding bill turns to horse-trading, the interim package needs to get bigger, the PPP included.

### **Economic Reopening Plans**

#### **1. State Efforts**

##### **A. Midwest Partnership**

States: Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio, Wisconsin

Summary: On April 16, 2020, Governors Gretchen Whitmer (MI), Mike DeWine (OH), Tony Evers (WI), Tim Walz (MN), JB Pritzker (IL), Eric Holcomb (IN), and Andy Beshear (KY) announced that their states would coordinate as they reopen the economy in the Midwest region.

While the announcement did not identify a universal reopening date for all participating states, the governors said they would make such a decision by “working with experts and taking a fact-based, data-driven approach to reopening our economy in a way that protect families from the spread of COVID-19.”

The governors specifically identified four factors that will drive their decision-making:

- Sustained control of the rate of new infections and hospitalizations.
- Enhanced ability to test and trace.
- Sufficient health care capacity to handle resurgence.
- Best practices for social distancing in the workplace.

Additionally, the governors noted that the states would phase in sectors of the economy. Importantly, the press release announcing the Midwest Partnership says “this doesn’t mean our economy will reopen all at once, or that every state will take the same steps at the same time. But close coordination will ensure we get this right.”

##### **B. Northeast Partnership**

States: New York, New Jersey, Pennsylvania, Delaware, Rhode Island, Massachusetts and Connecticut

Summary: On April 13, 2020, Governor Andrew Cuomo (NY) and a coalition of other northeastern states announced the formation of a partnership to coordinate the reopening of their economies.

The coalition does not appear to have settled on a target date or specifics.

Governor Cuomo outlined part of the process of coordination, identifying that each state will select a public health official and an economic official who, in coordinating with each governor's chief of staff, would work to create reopening plans that account for the actions of fellow coalition members.

### **C. Western States Pact**

States: California, Oregon, Washington

Summary: On April 13, 2020, California, Oregon, and Washington announced the formation of a Western States Pact that would orchestrate a coordinated reopening of their economies based on data about COVID-19 health outcomes.

While each state will create its own plan, all states in the pact agree to follow the following principles:

- Prioritize resident health.
- Utilize science- and data-based decision-making, including measures of the direct impact of the disease on the community and health care system's ability to ensure care.
- Coordination with local leaders and communities across the region.

At the announcement, the Western States Pact did not identify a target date at which to reopen the economy.

### **2. Federal guidelines**

On April 16, 2020, the White House [released a plan titled "Opening Up America."](#) This document details a recommend three-phase plan to reopen states. The phases are detailed below, and focus on individuals, employers broadly, and specific types of employers. Note that these are guidelines, not directives, so they have no binding effect on states.

Before a state proceeds to the phased opening process, the federal guidelines recommend the following conditions be met:

- Symptoms: Downward trajectory of influenza-like illness *and* COVID-like syndromic cases reported within a 14-day period.
- Cases: Downward trajectory of documented COVID cases within a 14-day period *or* downward trajectory of positive tests as a percent of total tests within a 14-day period.
- Hospitals: Treat all patients without crisis care *and* a robust testing program is in place for at-risk healthcare workers, including antibody testing.

The federal guidelines also outline "Core State Preparedness Responsibilities," which include:

- Testing and contact tracing;
- Healthcare system capacity, such as independent supply of sufficient Personal Protective Equipment (PPE) and medical equipment and ability to surge ICU capacity;
- Plans for protection of workers in critical industries; protection of employees and users of mass transit; social distancing and face coverings; COVID monitoring; among others.

All Phases:

- Individuals should continue to practice good hygiene and people who feel sick should stay home.
- Employers:
  - Should develop and implement policies, in accordance with Federal, State, and local regulation and guidance, regarding:
    - Social distancing and protective equipment;
    - Temperature checks;
    - Testing, isolating, and contact tracing;
    - Sanitation;
    - Use and disinfection of common and high-traffic areas; and
    - Business travel.
  - Monitor workforce for symptoms and not allow symptomatic people to return to work until cleared by a medical provider.
  - Develop and implement procedures for workforce contract tracing following a positive COVID test of an employee.

Phase One:

- Individuals
  - All vulnerable individuals should continue to shelter in place, including members of households with vulnerable individuals.
  - All individuals when in public should maximize physical distance.
  - Avoid socializing in groups of more than 10 people.
  - Minimize non-essential travel and adhere to CDC guidelines regarding isolation following travel.

- Employers Broadly
  - Encourage employers to telework.
  - Return to work in phases, if possible.
  - Close common areas and enforce strict social distancing protocols.
  - Minimize non-essential travel and adhere to CDC guidelines regarding isolation following travel.
  - Consider special accommodations for personnel who are members of a vulnerable population.
- Specific Types of Employers
  - Schools and other organized youth activities that are currently closed should remain closed.
  - Prohibit visits to senior living facilities and hospitals.
  - Allow operation of large venues under strict physical distancing protocols.
  - Resume elective surgeries on an out-patient basis.
  - Reopen gyms under strict physical distancing protocols.
  - Keep bars closed.

Phase Two:

- Individuals
  - All vulnerable individuals should continue to shelter in place, including members of households with vulnerable individuals.
  - All individuals when in public should maximize physical distance.
  - Social settings of more than 50 people, where appropriate distancing is not practical, should be avoided unless precautionary measures are observed.
  - Non-essential travel can resume.
- Employers Broadly
  - Encourage employers to telework.
  - Close common areas and enforce strict social distancing protocols.
  - Non-essential travel can resume.
  - Consider special accommodations for personnel who are members of a vulnerable population.

- Specific Types of Employers
  - Reopen schools and other organized youth activities.
  - Prohibit visits to senior living facilities and hospitals.
  - Allow operation of large venues under moderate physical distancing protocols.
  - Resume elective surgeries on an out-patient and in-patient basis.
  - Reopen gyms under strict physical distancing protocols.
  - Reopen bars with diminished standing-room occupancy.

Phase Three:

- Individuals
    - Vulnerable individuals can resume public interactions, but practice physical distancing.
    - Low-risk populations should minimize time in crowded environments.
  - Employers Broadly
    - Resume unrestricted staffing of worksites.
  - Specific Types of Employers
    - Resume visits to senior care facilities and hospitals.
    - Allow operation of large venues under limited physical distancing protocols.
    - Reopen gyms if they adhere to standard sanitation protocols.
    - Reopen bars with increased standing room occupancy.
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## ***Policy Resolution Group COVID-19 Legislative Update***

***April 16, 2020***

Today's update discusses the current negotiations over an interim emergency COVID-19 funding package intended to provide additional funding for the Paycheck Protection Program (PPP) which officially ran out of money yesterday. We also have further insight into Democratic demands for a Phase Four COVID-19 stimulus package.

Additionally, today's [Agency Report](#) includes information on how Federal agencies are managing their operations and oversight obligations in response to COVID-19. In particular, our report apprises you of recent developments at the following agencies:

- Department of Agriculture;
- Department of Energy;
- Department of Labor;
- Environmental Protection Agency;
- Export-Import Bank of the United States;
- Federal Motor Carrier Safety Administration;
- Nuclear Regulatory Commission;
- Occupational Safety and Health Administration; and
- Small Business Administration.

### ***The Cap is Hit: PPP Funding Fights***

- **PPP runs out of money.** The Small Business Administration (SBA) formally served notice this morning of a lapse in PPP funding. A note on the SBA's PPP website says: "The SBA is currently unable to accept new applications for the Paycheck Protection Program based on available appropriations funding."



- **What happens during this lapse?** The answer from the SBA:
  - "This will mean that lenders will no longer be able to load PPP applications into the Capital Access Financial System (CAFS or E-Tran) [the Lender Gateway]. SBA is unable to maintain

a queue for PPP applications. Further, PPP loan amounts may not be adjusted by lenders within the CAFS system.”

- **Parties restate positions.** The response from party leaders and administration officials to the lapse in PPP funding was swift:
  - Treasury Secretary Steven Mnuchin and SBA Administrator Jovita Carranza released a [joint statement](#), urging Congress to appropriate additional funds for the PPP and the Economic Injury Disaster Loan (EIDL) program.
  - Senate Majority Leader Mitch McConnell (R-KY) and House Minority Leader Kevin McCarthy (R-CA) released a [joint statement](#) of their own, underscoring the gravity of the lapse, and laying it squarely at the feet of Democrats.
    - Theme: “This did not have to happen.”
  - House Speaker Nancy Pelosi (D-CA) [continued to tie PPP funds](#) to concessions for other stated priorities, including:
    - Support for underbanked small businesses and others who are struggling to access the PPP;
    - Funding for state and local governments; and
    - Resources for hospitals on the front lines of the epidemic.
  - Senate Majority Leader Chuck Schumer (D-NY) [tweeted](#) that “we all agree” the PPP needs more money, but he also expressed concern about access to the program “for all who need it.”
  - The Senate will meet for a pro forma session at 3 PM EDT this afternoon, while the House will meet tomorrow.
    - If no deal materializes, and unanimous consent is once again blocked, settle in.
    - With three weeks until Congress returns, the lapse isn’t sustainable, but somebody has to blink.
- **Can Congress find a deal?** While it’s still unclear how this stalemate will be resolved, the lapse draws significant media attention, and with it, pressure on all sides to get a deal done. Two things are certain, and they simultaneously offer promise and peril for the path forward:
  - Both sides feel that they head into this lapse with the most leverage; and
  - Both sides ultimately need to save face.
- **Elements of potential deal.** The two sides are now at least talking, with Secretary Mnuchin again acting as the GOP proxy. Negotiations center around the following three main areas:

- **State and local funding.**
  - The new \$500 billion Federal Reserve facility is just coming online, but this is debt, not grants, and uses are limited.
    - Allowable uses could easily be broadened through administration action.
  - The *CARES Act* also included a \$150 billion “Coronavirus Relief Fund” for state and local governments.
    - Democrats want allowable uses broadened to lost revenue which would require legislation.
    - Additional grants will probably have to wait for Phase Four.
- **Health care funding.**
  - Democrats want more money for testing and personal protective equipment (PPE).
    - This is an easy concession for Republicans, as a robust testing regime is critical to reopening the economy in the near future.
  - Significant gripes remain over the formula for allocating *CARES Act* funds to hospitals.
    - This again could be easily fixed through administrative action.
- **Small business loans.**
  - Everybody agrees the PPP needs more money, at least \$251 billion.
    - Democrats want special considerations to ensure access to underserved groups.
      - This can be handled through guidance, and was [explicitly mentioned](#) in the *CARES Act*.
  - Both sides have come around to addressing the needs of an overwhelmed disaster relief loan (EIDL) program.
    - Democrats added additional EIDL funding to their list of asks in a Monday joint statement.
    - The aforementioned Mnuchin-Carranza statement also stressed importance of funding program.
- *Bottom Line: None of this is insurmountable if either side is willing to take the win.*

**Recent PPP Guidance**

- [Frequently Asked Questions](#) (4/15/2020)
- IFRs Published in *Federal Register* (4/15/2020)
  - [PPP Interim Final Rule](#)
    - [Public comment docket](#)
  - [PPP Interim Final Rule on Affiliation](#)
    - [Public comment docket](#)

#### ***Title IV Lending Facilities***

- Public comments for the new \$600 billion [Main Street Lending Program](#) for small and mid-sized businesses are due today. Submissions can be made through the [Federal Reserve portal](#) (1500 character limit), or via email at [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov) (be sure to include "Main Street Lending" in the subject line of the message).

#### ***Phase Four Outlook***

- Speaker Pelosi fired a political warning shot with a scathing [“Dear Colleague” letter](#) this week that laid much of the blame for the crisis at the feet of President Donald Trump.
  - While this can be best understood as public posturing for the benefit of her members, this can’t help the outlook for already-fraught negotiations.
    - The difficulty in merely replenishing the widely supported, bipartisan PPP tells you everything you need to know about the difficulties ahead for Phase Four.
- In his weekly pen-and-pad session with reporters yesterday, House Majority Leader Steny Hoyer (D-MD) discussed Democratic priorities for the federal coronavirus response. In addition to reiterating the party’s asks in an interim bill, Hoyer [outlined](#) some provisions that Democrats aim to include in a Phase Four package. The measures include:
  - **Unemployment Insurance.** Additional UI funding.
  - **Direct Individual Payments.** Additional economic impact payments.
  - **Elections.** Additional funding for elections.
  - **Health Care Infrastructure.** Additional funds for health care infrastructure.
  - **Oversight.** Increased oversight of pandemic funds, including Inspectors General protections.
  - **Postal Service.** Additional funding to secure the solvency of the Postal Service.

- **District of Columbia Fix.** Ensure that Washington, DC receives equitable COVID-19 relief funding on par with states.
  - **Technological Modernization.** Increased focus on technology modernization.
  - **Minority Health.** Ensure the health care response bridges the gap in minority health services.
  - **Paid Family Leave for Federal Workers.**
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## ***Policy Resolution Group COVID-19 Legislative Update***

***April 13, 2020***

Our note today briefs you on the status of ongoing negotiations, or the lack thereof, over an interim emergency COVID-19 funding package intended to expand resources for the oversubscribed Paycheck Protection Program (PPP).

We also have a new [agency report](#) that includes information on how Federal agencies are managing their operations and oversight obligations in response to COVID-19. In particular, today's report appraises you of recent developments at the following agencies:

- Cybersecurity and Infrastructure Security Agency
- Department of Treasury
- Environmental Protection Agency
- Federal Motor Carrier Safety Administration
- Federal Reserve
- Food and Drug Administration
- Health and Human Services
- Nuclear Regulatory Commission
- Occupational Safety and Health Administration
- Pipeline and Hazardous Materials Safety Administration

### ***A \$250 Billion "Game of Chicken"***

- The bicameral game of partisan chicken continues, as House Speaker Nancy Pelosi (D-CA) and Senate Minority Leader Chuck Schumer (D-NY) released a [joint statement today](#) in response to Senate Majority Leader Mitch McConnell (R-KY) and House Minority Leader Kevin McCarthy's (R-CA) [Saturday release](#).
  - Republican leaders are seeking a "clean" bill, focused exclusively on expanding PPP funding by \$251 billion, whereas Democratic leaders aim to also include comparable resources for other priorities:
    - **States and Local Governments.** \$150 billion in additional funding for states and localities.
    - **Healthcare Sector.** \$100 billion in additional funding for hospitals and frontline workers.
    - **EIDL.** As we predicted in last week's update, Democratic leaders also requested more funding for the Economic Injury Disaster Loans (EIDL) and grants.
      - As of Friday, four million businesses had applied for \$383 billion in EIDL, but Congress has thus far allocated just \$17 billion to the program, leading to effective caps far below the statutory \$2 million limit under the CARES Act.
    - **SNAP.** Fifteen percent increase in the maximum benefit under the federal nutrition assistance program.

- **Testing and PPE.** Adequate funding for the production and distribution of national rapid testing and Personal Protective Equipment (PPE).
  - The Democratic leaders' joint statement concluded by saying, "We have real problems facing this country, and it's time for the Republicans to quit the political posturing by proposing bills they know will not pass either chamber and get serious and work with us towards a solution."
    - This is a near mirror image of Saturday's GOP statement, which accused Democrats of using American workers as "political hostages."
      - Both sides are doubling down.
  - This week begins with no apparent progress in—or signs of—bipartisan talks or negotiations.
    - This morning, the Senate gavelled out of its pro forma session until Thursday, April 16, at 3PM.
    - The House is set for similar procedural meetings tomorrow (Tuesday) and Friday.
  - The clock is ticking, with PPP at risk of running out of funds within a week.
    - An approximately \$30 billion daily burn rate would put the program on the path to insolvency by next Monday.
  - The other programs are "not in similar peril," according to Republican leaders, who note that the [terms of the new Federal Reserve facility](#) to provide liquidity to state and local governments was [announced](#) on Thursday, while the first \$30 billion tranche of hospital funds from the CARES Act was [just released](#) in recent days.
  - How the coming days play out will depend in a large part on how the media coverage unfolds, which in turn will inform the pressure either side feels to compromise—and how or whether the White House chooses to enter the fray.
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## ***Policy Resolution Group COVID-19 Legislative Update***

***April 10, 2020***

Our note today briefs you on the continued implementation of the Paycheck Protection Program (PPP) and ongoing struggles with Economic Injury Disaster Loans (EIDL), in addition to providing an update from Bracewell's labor and employment lawyers on significant new CDC interim guidance.

We also have a new [agency update](#) that includes information on how Federal agencies are managing their operations and oversight obligations in response to COVID-19.

### **PPP Status**

#### ***PPP Week One: By the Numbers***

- More than \$140 billion processed.
- Over 550,000 loans.
- More than 4,100 lenders.

#### ***Of note:***

- We are finally hearing reports of PPP applicants actually receiving their loans.
- The average loan amount is slowly coming down, a dynamic that is likely to continue as independent contractors and self-employed individuals begin to apply for the program today, see [here](#).
  - This is a positive sign, both as an indication that smaller businesses are being accommodated, and for what it portends in terms of how far the existing funds will go.
- Nonetheless, with more than 40% of PPP funds spoken for in the first week alone, additional funds will inevitably be needed in the near future.
- The precise timing will depend on how Congress resolves the current stalemate between Republicans, who want a quick, clean increase in PPP funds, and Democrats, who want an equivalent increase for their priorities, hospitals and state and local governments, respectively, while ensuring that half of the additional PPP funds are reserved for underserved groups and institutions.
  - On Friday, Senate Minority Leader Chuck Schumer (D-NY) struck an optimistic tone, saying that he had spoken to Treasury Secretary Steven Mnuchin, who agreed to bipartisan, bicameral talks over an "interim" coronavirus relief bill: *"There's no reason why we can't come to a bipartisan agreement by early next week."* – Schumer

### **EIDL Program Running Idle**

- For all the relatively positive movement on the PPP front, another program meant to help smaller companies through the pandemic—Economic Injury Disaster Loans (EIDL)—is drawing ire from business owners and members of congress alike.
- [CNBC: Frustration mounts on Main Street as entrepreneurs wait on banks and SBA for much-needed funding](#)

"On Thursday evening, a senior administration official told CNBC that nearly 4 million businesses had applied for EIDL funding for a total of \$383 billion, adding that Congress has allocated \$17 billion for the program."

- [NYT: Small Businesses Wait for Cash as Disaster Loan Program Unravels](#)

"The program is supposed to offer loans of up to \$2 million, but many recent applicants said the SBA. help line had told them that loans would be capped at \$15,000 per borrower." [...]

Senator Ben Cardin, Democrat of Maryland, who pushed for the additional funding through the *CARES Act*, said the program simply had to have more money.

"The fact that SBA is limiting Economic Injury Disaster Loans to an initial disbursement of \$15,000 shows that there is a clear need for more resources for this program," he said.

- Look for EIDL funding to be a factor in negotiations over a future package.

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

The CDC released significant interim guidance Wednesday regarding implementing safety practices for critical infrastructure workers that may have been exposed to someone with (or suspected to have) COVID-19. Specifically, in order to ensure the operations of essential functions, the CDC advises that certain workers be permitted to continue working following potential exposure. These workers, however, must remain asymptomatic and additional precautions must be implemented to protect them and the community. The full guidance can be found [here](#).

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

***April 9, 2020***

Our update today contains fast-evolving information on the new “Main Street” lending facility and the status of negotiations over additional funding for the Paycheck Protection Program (PPP). While the Federal Reserve’s announcement today brought some answers, many questions remain about how the new lending programs will operate. New guidance is expected next week, and we will report on it as soon as it becomes available.

We also have a new [agency update](#) that includes information on how Federal agencies are managing their operations and oversight obligations in response to COVID-19. Today’s update contains new materials on the following entities:

- Cybersecurity and Infrastructure Security Agency,
- FEMA,
- Federal Reserve,
- Food and Drug Administration,
- Health and Human Services, and
- Small Business Administration.

### ***New Federal Reserve Actions***

The Federal Reserve today [announced](#) new actions meant to extend \$2.3 trillion in loans across the economy. While the announcement left many important details unaddressed, we expect further guidance in the coming days. The programs unveiled this morning include:

- **Paycheck Protection Program (PPP) Liquidity Facility.** Bolsters the effectiveness of the PPP by supplying liquidity to participating financial institutions through term financing backed by PPP loans to small businesses.
- **Main Street Lending Program.** Ensures credit flows to small and mid-sized businesses by purchasing up to \$600 billion in loans through two new facilities backed by \$75 billion from the *CARES Act*.
  - Main Street New Loan Facility (MSNLF) for new loans.
  - Main Street Expanded Loan Facility (MSELF) for increasing size of existing loans.
- **Expansion of existing Fed facilities (PMCCF/SMCCF/TALF).** Expands the size and scope of the Primary and Secondary Market Corporate Credit Facilities (PMCCF and SMCCF) as well as the Term Asset-Backed Securities Loan Facility (TALF). These three programs will now support up to \$850 billion in credit backed by \$85 billion in credit protection provided by the Treasury.
- **Municipal Liquidity Facility.** Helps state and local governments manage the pandemic cash crunch by lending up to \$500 billion backed by \$35 billion from the *CARES Act*.

### ***Main Street Lending Program Overview:***

- **Eligibility.** Fewer than 10,000 employees or 2019 revenues less than \$2.5 billion.
- **Mechanism.** Lending via FDIC-insured institutions, bank holding companies, and savings & loan holding companies. Lenders retain 5% of loan; Fed funds special purpose vehicle to purchase the remaining 95%.
- **Terms.**
  - 4-year loans
  - Principal and interest payments deferred for one year
  - Adjustable rate of SOFR + 250-400 basis points (~2.5-4%)
  - Minimum loan size of \$1 million
  - Maximum loan size:
    - For new loans (MSNLF), the lesser of:
      - \$25 million, or
      - Four times the Eligible Borrower's 2019 earnings before interest, taxes, depreciation, and amortization (EBITDA).
    - For the expansion of existing loans (MSELF), the lesser of:
      - \$150 million, or
      - 30% of the Eligible Borrower's existing outstanding and committed but undrawn bank debt, or
      - An amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed six times the Eligible Borrower's 2019 EBITDA.
  - Prepayment permitted without penalty
  - Requirements:
    - Reasonable efforts to maintain payroll and retain workers
    - Compensation, stock buyback, and dividend restrictions under the *CARES Act*.
    - **More stringent rules in the *CARES Act* on employee retention and labor neutrality are not applicable.**
- **Note.** Firms may take out PPP and Main Street loans

***Federal Reserve Resources:***

[Press Release \(Webpage\)](#)

[Term Sheet: Term Asset-Backed Securities Loan Facility \(PDF\)](#)

[Term Sheet: Primary Market Corporate Credit Facility \(PDF\)](#)

[Term Sheet: Secondary Market Corporate Credit Facility \(PDF\)](#)

[Term Sheet: Municipal Liquidity Facility \(PDF\)](#)

[Term Sheet: Paycheck Protection Program Lending Facility \(PDF\)](#)

[Term Sheet: Main Street New Loan Facility \(PDF\)](#)

[Term Sheet: Main Street Expanded Loan Facility \(PDF\)](#)

***False Start on Phase 3.5***

- Senate GOP efforts to unanimously pass a narrow, \$251 billion increase in PPP funding authorization were thwarted this morning, as Senator Ben Cardin (D-MD) objected and offered a Democratic alternative (details below).
- Majority Leader Mitch McConnell's (R-KY) subsequent objection to the Democratic plan means the stalemate will continue, with the path forward unclear.
- **One thing is certain.** With \$118 billion in loans processed as of the morning, representing more than one-third of the CARES-allotted funds, an increase will be needed in a matter of weeks, if not days.

***Democrats' PPP Alternative***

***Topline:***

The interim emergency relief bill has five key components:

- Expansion of small businesses loans in the CARES Act, including the PPP and EIDL,
- Expansion of grants to health care facilities for COVID-19 expenses,
- Additional funds for state, local, and tribal governments to account for lost revenue,
- SNAP benefit increase and requirement waivers, and
- Technical fixes to Election Assistance funding in the CARES Act.

**Breakdown:**

- **Small Business Plus.**
  - **\$250 Billion in Additional Funding.**
    - \$125 billion in additional PPP funding
    - \$45 billion for small community-based lenders, and small banks and credit unions with less than \$10 billion in consolidated assets
    - \$15 billion for community banks and credit unions with less than \$50 billion in consolidated assets, and also for community-based lenders
    - \$50 billion for SBA's Economic Injury Disaster Loan
    - \$15 billion for SBA's Emergency Economic Disaster Grant Program
  - **PPP Streamlining.**
    - Requires banks to gather, in the application stage, documentation that aligns with federal know-your-customer regulations.
    - Directs Treasury to update its guidance to non-bank CDFI lenders dispensing with re-verifying know-your-customer information if the borrower has a banking relationship that dates back two years.
  - **Expands PPP Loan Forgiveness.** Makes the payroll forgivable amount calculation more generous for PPP.
  - **Expands PPP Scope.** Makes farms eligible for EIDL loans and grants and for PPP.
- **Health Provider Relief.**
  - **Grants.** Provides \$100 billion for grants to hospitals, public entities, not for profit entities, and Medicare and Medicaid enrolled suppliers and institutional providers to cover unreimbursed health care related expenses or lost revenues attributable to the public health emergency resulting from the coronavirus.
  - **Report.** Requires HHS, FEMA, and other agencies report to Congress every 30 days about allocation of testing and supplies throughout the US.
- **State, Local, and Tribal Governments.** Provides \$150 billion of fund to be used for lost revenue, and allows supplemental appropriations in the *CARES Act* available to be used for lost revenue. Funding is allocated as follows:

- **CDBG Formula.** \$53.55 billion is allocated to localities based on the Community Development Block Grant (CDBG formula).
  - **Infection Rate Formula.** \$20 billion is allocated based on a State's share of the national infection rate according to the most recent CDC tracking data.
  - **Tribes.** \$8 billion is set aside for Tribes.
  - **Territories.** \$3 billion is set aside for territories.
  - **SNAP Benefit Increase.** Increases SNAP maximum benefits to 115% of the thrifty food plan; waives certain requirements, such as time limits, work, reporting and administrative requirements; bars implementation of certain SNAP rules proposed by the Trump Administration.
  - **Technical Fixes to Election Assistance Funding.**
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## ***Policy Resolution Group COVID-19 Legislative Update***

***April 8, 2020***

Today's note provides a succinct update of the state of play for "Phase 3.5" COVID-19 stimulus and the status of the Federal Reserve's exchange stabilization fund (ESF).

Our [agency update](#) for today, which tracks how Federal agencies are managing their operations and oversight obligations in response to COVID-19, includes new information on actions taken by:

- Department of Transportation,
- Federal Energy Regulatory Commission,
- Food and Drug Administration,
- Pipeline and Hazardous Materials Safety Administration, and
- Small Business Administration

### **Lightning Round Update**

- **Democratic Demands for Phase 3.5.** Upon yesterday's news that the Treasury Department would be [seeking an additional \\$250 billion](#) to replenish funding for the Paycheck Protection Program (PPP) for small businesses, and Senate Majority Leader Mitch McConnell's (R-KY) [announcement](#) that he would move to approve such funding legislation this week via voice vote, we pondered what Congressional Democrats might ask for in exchange. We now have our answer.
  - In a [joint statement](#), Speaker Nancy Pelosi (D-CA) and Leader Chuck Schumer (D-NY) put forward a unified Democratic ask for what they termed an "interim emergency coronavirus package."
  - The Democratic proposal includes \$250 billion of additional PPP funding, but it would set aside half of that sum for financial institutions serving disadvantaged groups, including minority-, women-, and veteran-owned businesses, as well as non-profits in certain underserved communities.
    - Senate Small Business Committee Ranking Member Ben Cardin (D-MD) [sent a letter](#) to Treasury Secretary Steven Mnuchin and Small Business Administration Administrator Jovita Carranza yesterday advocating for special consideration for these groups.
    - House Majority Leader Steny Hoyer (D-MD) expanded on this priority as a condition of PPP funding yesterday in an [interview with Roll Call](#).
  - The proposal would match these funds with an additional \$250 billion for other Democratic priorities:
    - \$100 billion for frontline health care response to hospitals and community health centers,
    - \$150 billion for state and local governments, and
    - 15 percent increase in the SNAP benefit cap.

- If Leader McConnell moves forward with his original \$250 billion proposal as planned, it's not yet clear whether Senate Democrats are prepared to return to the chamber to object, or how Speaker Pelosi would proceed in the House should the measure be sent over.
  - Republicans seem unlikely to accede to the Democrats' new demands without a fight, and with more than \$70 billion (20%) of the PPP loans already committed in less than a week online, holding up this funding may not be a tenable political strategy, however reasonable the counter-offer.
  - **There is more to CARES than PPP.** We've talked a great deal since the signing of the *CARES Act* about the PPP and the relief the law offers to small businesses. The PPP was designed to piggyback off of the existing SBA 7(a) loan program and its built-in lender network, allowing the money to flow as promptly as possible. To that end, the program has dominated Treasury's public-facing effort. But what about mid-sized and larger businesses that aren't eligible for the PPP or other SBA relief programs?
    - In addition to funds dedicated to specific industries, such as air carriers and national security, the *CARES Act* provided \$454 billion to back stabilization loans for all other distressed businesses.
    - We still don't know much about how these programs will be administered and accessed in practice, and they probably won't be ready for at least another week.
    - Secretary Mnuchin [indicated today](#) that the Federal Reserve will release some information on the mid-sized lending facility in the coming days: "We've been actively working on this for the last week, having daily calls with the Fed," Mnuchin told CNBC. "We hope to have an announcement this week with the details on that and get it up and running as soon as we can."
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## ***Policy Resolution Group COVID-19 Legislative Update***

***April 7, 2020***

Today's update focuses on the two fastest moving elements of the COVID-19 relief effort: the Paycheck Protection Program (PPP) and the efforts to craft Phase Four legislation. Specifically, this brief discusses the overwhelming demand for PPP loans, and the plans under development to strengthen the program. Then, we provide new details on Phase Four legislative proposals that Democrats released over the past 48 hours.

As a reminder, PRG continues to track how Federal agencies are managing their operations and oversight obligations in the face of widespread COVID-19 responses, including managing enforcement and compliance obligations. The agency update for today, available on our [website](#), includes new information on actions taken by:

- Environmental Protection Agency,
- Federal Transit Administration,
- Food and Drug Administration,
- Health and Human Services,
- Nuclear Regulatory Commission,
- Occupational Safety and Health Administration, and
- Small Business Administration.

### ***PPP Developments***

As yesterday's update noted, there is broad bipartisan support for the PPP loan program, and acute sensitivity to fears that current funding levels are insufficient to accommodate small business demand. Movement has accelerated in the past twenty-four hours, both in the pace of lending—Bank of America and Wells Fargo alone have committed more than \$42 billion—and in the government response. The [Washington Post reports](#) that the Treasury Department is preparing to ask Congress for an additional \$200 billion in PPP funds as soon as today. The report comes on the heels of tweets from Senate Small Business Committee Chairman and PPP author Marco Rubio (R-FL) indicating that such a request is [in the works](#), and that Senate Majority Leader Mitch McConnell (R-KY) is [working with Minority Leader Chuck Schumer](#) (D-NY) to approve the additional funding by voice vote during the Senate's Thursday pro forma session.

Senate Majority Leader Mitch McConnell (R-KY) echoed the timetable, [saying in a statement](#):

“Congress needs to act with speed and total focus to provide more money for this uncontroversial bipartisan program. I will work with Secretary Mnuchin and Leader Schumer and hope to approve further funding for the Paycheck Protection Program by unanimous consent or voice vote during the next scheduled Senate session on Thursday.”

House Minority Leader Kevin McCarthy (R-CA) mirrored Leader McConnell's sentiment, [tweeting](#):

“The demand for the Paycheck Protection Program has been overwhelming. I spoke with [Treasury Secretary Steven Mnuchin] this morning and support his request for more money for America's small businesses. Following the Senate's approval, the House should move swiftly to do the same.”

However, the GOP push for a targeted bill that only increases funding for the PPP could face opposition from Democrats, who may resist piecemeal extensions, hoping to instead leverage the urgent demand for small business relief to extract concessions, such as additional money for state and local governments and an expansion of unemployment benefits.

In a signal that a standalone measure to provide additional PPP funding is not a done deal, a Schumer spokesperson, Justin Goodman, said, "Senator Schumer has not heard from Senator McConnell, and Senator Cardin [Small Business Committee ranking member] has not heard from Senator Rubio."

In addition to funding concerns, Treasury and SBA continue to issue guidance amid persistent confusion over some of the program's eligibility rules. Late Monday, the Treasury Department posted an authoritative new [PPP FAQ document](#) on its [CARES Act resource page](#). Language contained in the Q&A portion indicates that tweaks to the Interim Final Rule (IFR) may be forthcoming before the IFR is published in the *Federal Register*.

### ***New Phase Four Proposals***

Beyond reinforcements for the PPP, a range of proposals for the fourth phase of coronavirus relief have been proffered in recent days, including a "Heroes Fund" introduced by Senate Democrats, and a larger set of stimulus proposals from House Financial Services Committee (FSC) Democrats. The following sections identify the key components of each plan.

### ***Senate Democrats' Heroes Fund***

The Senate Democrats' Heroes Fund consists of two essential parts:

- **Pandemic Premium Pay.** Provides each essential frontline worker a \$13/hour premium pay increase, capped at \$25,000/worker earning less than \$200,000/year, and at \$5,000/worker earning over \$200,000/year. The premium pay would last from the start of the public health emergency through 12/31/2020.
- **Recruitment Incentive.** Provides a one-time \$15,000 premium for individuals who sign up to do essential work, such as health and home care workers and first responders.

See media coverage of the Heroes Fund [here](#).

### ***FSC Democrats Proposal***

The Democrat majority staff on the FSC released a memorandum, on April 6, outlining its proposed package for Phase Four.

- **Housing.**
  - **Ban Evictions.** Ban evictions for all renters during the public health crisis.
  - **Emergency Rental Assistance Fund.** Establish an Emergency Rental Assistance Fund to provide \$100 billion to help struggling renters meet rent and utility payments.
  - **Suspend Requirements.** Suspend work and other requirements for federally assisted renters.

- **Homeless Support.**
  - Direct Treasury to use Section 4003(d) authority to support hotels and motels that make available at least 10 percent of their rooms for persons experiencing homelessness or who have contracted COVID-19, including partial loan forgiveness for certain hotels and motels.
  - Authorize \$11.5 billion for Homeless Assistance Grants.
  - Authorize \$3 billion for Targeted Section 8 Vouchers.
- **Foreclosure Moratorium.** Expand the scope of foreclosure and forbearance relief in the *CARES Act* to include all homeowners and multifamily property owners. Multifamily property owners receiving forbearance must extend rent relief to all tenants in need of assistance.
- **Liquidity for Mortgage Services.** Grant mortgage services access to programs/facilities established by the Federal Reserve as authorized by the *CARES Act*.
- **Homeowner Assistance Fund.** Establish a \$35 billion Homeowner Assistance Fund to support lower income homeowners who need assistance with utility payments, homeowners' association fees, property taxes, and principal reductions.
- **Housing is Infrastructure Act (H.R. 5187).** Pass H.R. 5187, which would authorize approximately \$100 billion to invest in housing infrastructure to provide affordable homes.
- **Infrastructure Bank.** Create a National Infrastructure Development Bank to issue loans, loan guarantees, and tax-exempt bonds to support transportation, housing, energy, environmental, and telecommunications projects.
- **Reinstate the FHA-FFB Partnership.**
- **Neighborhood Revitalization and Affordable Homeownership Inventory.** Provide homeowners or mission-focused single-family developers with a "first look" opportunity to purchase lower-value foreclosed homes in HUD and GSE sales. Provide \$5 billion for a grant program for localities struggling with vacant properties and deferred maintenance needs.
- **Extend GSE Qualified Mortgage (QM) Patch.** Extend the GSE QM patch expiration date from January 2021 to January 2022.
- **Fair Housing Enforcement.** Authorize \$297.5 million for Fair Housing Enforcement.
- **Housing Counseling.** Authorize \$700 million for HUD's housing counseling program.
- **Senior and Disability Support.** Authorize \$300 million to support seniors and people with disabilities.
- **CARES Act technical fixes.**

- Clarify that any financial benefits derived from COVID-19 related legislation cannot be counted as income for the purposes of calculating rent for HUD and USDA-assisted renters.
  - Provide funding for USDA's Rural Housing Service to absorb loss of rent contributions from tenants experiencing income losses.
  - Ensure that the District of Columbia is eligible to receive CDBG funds.
  - Ensure that mortgage servicers who have pledged collateral to Ginnie Mae will not face barriers to accessing the Federal Reserve facility.
  - Ensure that the foreclosure moratorium applies to foreclosures already in progress.
  - Ensure consistency in terminology.
- **Family and Consumers.**
    - **Monthly Direct Payments.** Require \$2,000 payments for most adults and \$1,000 for children, paid monthly until the economy shows consistent job growth and the unemployment rate has at least returned to within 2 percentage points from the start of the present recession.
    - **Free Check Cashing.** Require insured depository institutions to cash federal stimulus checks for free.
    - **Credit Reporting.**
      - Suspend negative credit reporting during the COVID-19 pandemic.
      - Eliminate a provision of the *CARES Act* that preempts state consumer protections related to credit reporting.
    - **Prohibit Debt Collection.** Prohibit debt collectors from taking any adverse action (i.e. filing litigation or garnishing wages) during the pandemic period and for the following 120 days.
    - **Student Loan Protections.** Extend protections for federal student loan borrowers in the *CARES Act* to private student loan borrowers.
    - **Private Student Loan Forgiveness.** Forgive the lesser of \$10,000 or the balance of private student loans.
    - **Waive Bank Fees.** Prohibit overdraft fees during the crisis on bank transactions.
    - **Consumer and Investor Fraud Working Group.** Direct the CFPB and SEC to form a Consumer and Investor Fraud Working Group to coordinate and provide resources information for consumers and investors on assistance available to them, as well as steps to protect from fraud.

- **Financial Literacy Education Commission Emergency Response.** Provide financial literacy education, including information on access to banking services and other financial products, for individuals.
- **Disclosures and Protections for Student Borrowers.** Amend the *Truth in Lending Act* to require student loan servicers to provide accurate repayment options and resources, set minimum industry standards, among other measures.
- **Small Business.**
  - **Reauthorization of the State Small Business Credit Initiative (SSBCI).** Reauthorize \$10 billion to the SSBCI program.
  - **Expand ESF Scope.** Mandate that Treasury work with the Federal Reserve to establish a lending program for nonprofits and mid-size companies (between 500 to 10,000 employees).
  - **Prohibition of Confessions of Judgment During Crisis.** Prohibit lenders from including confessions of judgement clauses in the terms and conditions of loans provided during and up to one year after the pandemic.
  - **Existing Loan Arrangements for Small Businesses.** Prevent lenders from accelerating arrangements on existing loans as a result of a business' participation in a program under the *CARES Act*.
  - **Growth Equity Funds for Minority Businesses.** Provide \$3 billion in grants through the Minority Business Development Agency.
  - **Minority Depository Institutions (MDIs).** Establish a new technical assistance facility for MDIs and Impact Banks to support investments into technology and branch expansion.
  - **Utilizing Diverse Asset Managers.** Creates a reporting requirement for Treasury and the Federal Reserve to provide data to Congress about asset managers and other third-party companies contracted to manage or advise on the loans, loan guarantees and other investments made under the *CARES Act*.
  - **Pandemic Risk Insurance.** Create a federal reinsurance program similar to the Terrorism Risk Insurance Program for pandemic risks.
- **Community Financial Institutions**
  - **Community Development Financial Institutions (CDFI) Fund.** Authorize \$1 billion for the CDFI Fund, and waive matching funds and limitations on awards.
  - **Zero-Interest Loans for Community Financial Institutions to Support Small Businesses.** Direct the Federal Reserve to provide zero-percent interest rate loans to community financial institutions participating in the Paycheck Protection Program (PPP).
  - **Community Bank and Credit Union Support.**

- Require at least 25 percent of loans made by insured depository institutions through Federal Reserve programs or facilities that support small businesses be conducted by banks and credit unions with less than \$50 billion in total assets.
- Allow credit unions to exclude loans made pursuant to a CARES Act small business lending program from the Member Business Loan cap provided they are well-rated and well-capitalized.
- **Enhanced Authority for Federal Home Loan Banks.** Provide enhanced authorities for the Federal Home Loan Banks.
- **State, Territory, Tribal, and Local Governments**
  - **Municipal Government Financing.** Clarify the Federal Reserve’s authority created by the *CARES Act* to explicitly require the Federal Reserve to support state, territory, tribal, and local debt issuance.
  - **Investments in Persistent Poverty Areas.** Direct the Treasury Secretary to ensure that at least 10 percent of the \$500 billion worth of loans, loan guarantees, and other investments are used to support counties with a poverty rate of at least 20 percent over the last 30 years.
  - **Waiver of Matching Requirements.** Waive requirements that state, territory, tribal, or local governments first obtain matching funds prior to receiving certain federal grants.
  - **Community Development Block Grant Program.** Authorize an additional \$10 billion in funding for CDBG.
- **Financial Markets/Broader Reforms**
  - **New ESF Conditions.**
    - Eliminate the Treasury Secretary’s authority to waive stock buyback, dividend, and executive compensation conditions in the CARES Act.
    - Require large public companies receiving assistance to protect workers during the pandemic.
    - Create new disclosure requirements for companies receiving assistance:
      - Human capital
      - Environmental
      - Country-by-country tax
      - Social and governance
      - Diversity and inclusion accountability

- Political campaign contribution
    - Establish worker representation on their corporate boards
    - Condition government assistance by requiring recipients provide common stock to workers in addition to their full traditional cash compensation.
  - **Temporary Halt to Financial Rulemakings Unrelated to COVID-19.**
  - **Temporary Ban on Stock Buybacks.** Impose a temporary ban on corporate stock repurchase activities until the impacts of COVID-19 have ended.
  - **Supply Chain Disruption Risk Disclosures.** Require the SEC to implement a rulemaking that would require public companies to identify and disclose risks in their global supply chains and their contingency plans.
  - **Global Pandemic Risk Disclosures.** Mandate the SEC implement a rulemaking that would require public companies to publicly disclose their risks and exposures to pandemics.
  - **IMF Catastrophic Containment and Relief Fund.** Authorize a \$100 million U.S. contribution to the IMF Catastrophic Containment and Relief Fund.
  - **Debt Relief for Developing Countries.** Direct the Treasury Secretary to negotiate the suspension of debt service payments by low-income countries through 2021.
  - **Regulatory Guidance for Pandemics.** Require agencies to automatically issue guidance when a pandemic and/or national disaster is declared.
  - **Future Planning for Pandemics.** Revise pandemic and disaster plans to include potential economic actions.
  - **North American Development Bank.** Technical corrections to the North American Development Bank.
- **Financial Assistance Oversight.**
    - **Additional Reporting Requirements.**
      - Make reporting for Treasury programs the same as Federal Reserve programs under the *CARES Act*.
      - Require quarterly summaries of *CARES Act* and related lending and purchasing activities to include the following information:
        - Description of the categories of financing
        - Listing of the eligible businesses receiving financing

- Disclosure of diversity data and commitment to maintain investments in diversity polices and with diverse vendors
  - Explanation of the reasons the Secretary or Federal Reserve determined it to be appropriate to provide financing.
- **Technical Changes.**
    - Adds the Committee on Financial Services to the list of committees that receive updates.
    - Authorizes the Oversight Committee to share information with the Financial Services Committee, so the FSC may issue a subpoena on the Oversight Committee's behalf.
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## ***Policy Resolution Group COVID-19 Legislative Update***

***April 6, 2020***

Today's note provides an update on the status of negotiations over the fourth phase of COVID-19 stimulus, in addition to connecting you with new analytical materials on the federal legislative response to COVID-19.

As a reminder, PRG continues to track how Federal agencies are managing their operations and oversight obligations in the face of widespread COVID-19 responses, including managing enforcement and compliance obligations. The agency update for today, available on our [website](#), includes new information on actions taken by the Department of Energy, Department of Labor, Environmental Protection Agency, Federal Energy Regulatory Commission, Federal Transit Administration, Health and Human Services, Pipeline and Hazardous Materials Safety Administration, and the Small Business Administration.

### ***Phase Four: State of Play***

As the United States braces for what the White House Coronavirus Task Force warns could be the worst week of the COVID-19 pandemic to date, the conversation surrounding the Congressional response has taken a dramatic turn.

- No longer is the still notional "Phase Four" package shorthand for a sweeping economic stimulus effort encompassing [infrastructure](#), [green energy incentives](#), [TJCA-casualty tax write-offs](#), and a sundry of other conventional policy priorities. Instead, the next iteration is shaping up to be "Phase 3.5," providing additional funding to *CARES Act* programs, patching up a fraying social safety net, and continuing to manage the ongoing economic disruption that has seen the unemployment rate explode at an [unprecedented pace](#).
- Congress could return as soon as April 20th. In [a Saturday letter to her House colleagues](#), House Speaker Nancy Pelosi (D-CA) indicated that she intends to promptly move forward with a "Cares 2" proposal to do just that. Senate Majority Leader Mitch McConnell (R-KY) has been more circumspect, preferring to judge the efficacy of Phase Three before indulging further legislation, but he has long held the Speaker's newfound preference for a more COVID-centric response.
- Despite the rapid convergence in scope, and mutual acknowledgement of the inevitability of further legislation, the battles over the substance and timing of the next package are sure to be even more pitched—and [more partisan](#)—than the brief showdowns over Phases Two and Three.
- Rather than phase numbers, the relevant distinction going forward will be further emergency relief bills designed to help Americans, their families, and their employers endure the crisis, versus eventual recovery measures meant to spur growth once we dare to revive the economy from its COVID-induced coma. As we dubbed it in the early stages of Phase Three, the *CARES Act* was effectively TARP for Main Street. By the same logic, the *Coronavirus Recovery Act* is surely coming, but it could be a ways away, with any number of more targeted legislative efforts in the interim. Until we are able to discern a peak in the public health crisis before us, everything else remains on the back burner, from long-term policy priorities to electoral politics.

- One thing the next legislative package is likely to do is replenish funding for the Paycheck Protection Program (PPP) for small businesses, a core element of the *CARES Act* with the most bipartisan buy-in. Despite a [bumpy initial rollout](#), complaints from banks over insufficient guidance, and frustration from would-be borrowers unable to find a willing lender, demand for the program has been considerable, and on the program's Friday launch date alone, more than 1,000 banks processed [over \\$5.4 billion](#) in short term, forgivable loans to help small businesses maintain payroll and keep the lights on. Beyond administrative hiccups, the biggest concern has been that the PPP might prove too popular—indeed, many small business owners have fretted that if they aren't among the first in line, they might be left behind.

The Trump administration and the program's congressional champions have moved quickly to tamp down such concerns:

- President himself [tweeted on Saturday](#) that he will “immediately ask Congress for more money” should the program's \$349 billion allocation run out.”
- Senate Small Business Committee Chairman and PPP chief author Marco Rubio (R-FL) estimated in a lengthy thread that the initial tranche of funds could run out [as soon as June 6th](#).
  - Rubio also pledged to work his congressional colleagues to secure additional funding for PPP in a [general update](#) on the state of the program.

In the meantime, the Federal Reserve [announced](#) that it would stand up a facility to provide financing to banks issuing loans under the PPP, providing additional certainty to lenders considering whether to participate.

- Roberto Perli, from Cornerstone Macro and a former Federal Reserve senior staff member, summarized the Federal Reserve's approach to PPP loans succinctly [on Twitter](#) today: “The Fed will free up banks' lending capacity by taking PPP loans off their books. PPP loans can be forgiven if payroll is maintained. From the point of view of banks it's as if these loans will be forgiven when the facility becomes operational instead of waiting until later.”
- This move is likely a fulfillment of the Main Street Business Lending Program [mentioned by the Board of Governors](#) in an announcement of sweeping, economy-wide actions it would be taking. The facility was further mentioned in the *CARES Act* itself, which provided that “nothing... shall limit” the creation of such a facility.

**Bottom Line:** The PPP is the most visible component of the Phase Three congressional response, and both parties are committed to its success. Just ten days after enactment, the implementation challenges are unsurprising, but dwindling funds thanks to overwhelming participation is a good problem to have, as neither Congress nor the White House is going to simply let the PPP loan program wither away.

### ***New COVID-19 Legislative Resources***

We wanted to flag the following resource from the Congressional Research Service (CRS). As some of you may know, the CRS is an independent, federally funded arbiter of public policy that effectively serves as Congress' think

tank. Their reports are indispensable for understanding the substance and legislative history behind just about everything, and they recently have put their entire library on the web. More importantly for our purposes, they now have a [devoted COVID-19 page](#), and have been cranking out up to the minute reports and analysis about congressional and executive action related to the crisis.

Here is a small selection of topics:

- [COVID-19: Potential Economic Effects](#)
- [COVID-19: Federal Economic Development Tools and Potential Responses](#)
- [SBA Economic Injury Disaster Loans for COVID-19](#)
- [COVID-19 and the Cruise Ship Industry](#)
- [Tax Cuts and Economic Stimulus: How Effective Are the Alternatives?](#)
- [Federal Assistance to Troubled Industries: Selected Examples](#)
- [COVID-19: Potential Role of Net Operating Loss \(NOL\) Carrybacks in Addressing the Economic Effects](#)
- [COVID-19 Economic Stimulus: Business Payroll Tax Cuts](#)
- [State and Local Fiscal Conditions and Economic Shocks](#)
- [Targeted Tax Relief for Industries Impacted by the Coronavirus: Selected Policy Issues](#)
- [COVID-19 and Funding for Civil Aviation](#)
- [Small Business Administration 7\(a\) Loan Guaranty Program](#)
- [COVID-19 and Corporate Debt Market Stress](#)
- [COVID-19 Stimulus Assistance to Small Businesses: Issues and Policy Options](#)
- [COVID-19: Industrial Mobilization and Defense Production Act \(DPA\) Implementation](#)
- [Treasury's Exchange Stabilization Fund and COVID-19](#)
- [Federal Reserve: Emergency Lending](#)
- [COVID-19: Response of the Oil and Gas Pipelines Sector](#)
- [COVID-19 and the Defense Industrial Base: DOD Response and Legislative Considerations](#)
- [Business Interruption Insurance and COVID-19](#)
- [Are Startups Eligible for the SBA's New Paycheck Protection Program \(PPP\) Loans?](#)

- [Small Businesses and COVID-19: Relief and Assistance Resources](#)
  - [COVID-19: Potential Impacts on the Electric Power Sector](#)
  - [COVID-19 and Stock Market Stress](#)
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## ***Policy Resolution Group COVID-19 Legislative Update***

***April 2, 2020***

Today's update continues our focus on the implementation of the Phase Three COVID-19 relief programs and the beginning of the Phase Four legislative effort.

As a reminder, PRG is also 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. The agency update for today, available on our [website](#), includes new information on actions by the Department of Labor, Department of Justice, Department of Treasury, Federal Motor Carrier Safety Administration, and Pipeline and Hazardous Materials Safety Administration.

### **Phase Three Guidance/FAQs**

#### **Small Business Provisions (<500 employees)**

- Paycheck Protection Program (PPP) for small businesses:
  - [Top-line overview](#) of the program.
  - [Information for lenders](#).
  - [Information for borrowers](#).
  - [Application for borrowers](#).
  - SBA PPP [website](#).
- [Side-by-side comparison](#) of PPP loans and EIDL from the NFIB.
- IRS [guidance](#) on COVID-19 related tax credits required for paid leave provided by small and midsize businesses.

#### **General Business Provisions**

- Department of Treasury CARES Act [website](#).
- IRS [FAQ](#) on the Employee Retention Credit.
- Department of Labor [guidance](#) on new paid leave programs.
- Department of Labor [FAQ](#) for H-2A Temporary Agricultural Labor Certification Program.

#### **Individual Provisions**

- Economic Impact Payments (a.k.a. “direct individual payments”) [FAQ](#) from the IRS.
- Unemployment Compensation (a.k.a. “unemployment insurance”) program [FAQ](#) from the Senate Committee on Finance.
- Mortgage loan forbearance [FAQs](#).

#### **Phase Four: A Tale of Two Chambers**

- House Speaker Nancy Pelosi (D-CA) has moved aggressively to set the terms of the debate over the next phase of the federal COVID-19 response, building on the 1400 page legislative marker she laid down last week, and laying the predicate for a large infrastructure package modeled on the [plan released by House Democrats back in January](#).
  - Speaker Pelosi also announced the creation of a bipartisan House Select Committee on the Coronavirus today, which will provide oversight of the government’s response to the COVID-19 outbreak. The committee will primarily serve an oversight role, rather than a policy driver in future phases of COVID-19 stimulus, but it will have subpoena power.
- Senate Majority Leader Mitch McConnell (R-KY), who has consistently advocated a wait-and-see approach, went even further on Wednesday, pouring cold water on Pelosi’s “premature” efforts in an [interview with the Washington Post](#), suggesting that she should “stand down.”
  - The different approaches are borne of their respective experiences, and their underlying agendas. Pelosi had great success in driving the Phase Two paid leave legislation and forging a deal directly with the administration, forcing McConnell’s Senate to take it or leave it. Senate Republicans promptly returned the favor, reinforcing the first-mover advantage, and the immense value of “having the pen.”
  - Despite marshaling a massive Phase Three effort (or perhaps, at some level, because of it), McConnell is concerned about further deficit spending, and would generally prefer to focus the rest of the year on burnishing conservative control of the federal judiciary, and maintaining his GOP majority.
    - Pelosi is also shrewdly seizing a media vacuum here, sensing and feeding the press’ anxiousness to know what Congress will do next. Her decision to hold a press call (audio available [here](#)) to announce Democratic infrastructure priorities in Phase Four drove the news cycle and ultimately elicited McConnell’s chilly response.

**Bottom Line:** With the expiration of the current surface transportation authorization coming up in September, Congress must do something on the infrastructure front in the near future, COVID or no COVID. And with the sudden and indefinite freeze on everything from daily commutes to family vacations, recent projections of Highway Trust Fund solvency through 2021 are likely obsolete, leaving funding gaps for Congress to plug. However, without full buy-in from the Senate Majority Leader, anything Congress does is unlikely to approach the ambitious

size and scope envisioned by some, and with the election just months away, Democrats may calculate that they'll be in a better position to achieve their infrastructure objectives come January.

#### **Phase Four Chatter (new content highlighted)**

- **Infrastructure.**
  - House Transportation Chairman Peter DeFazio (D-OR) has stated that he plans to "double down on an infrastructure package that repairs the breach left by years of neglect."
  - House Speaker Nancy Pelosi (D-CA) said she "would hope" that infrastructure can be part of the response. "In the next bill, maybe."
  - Staff for Senate Environment and Public Works Committee Chairman Barrasso (R-WY) stated that he is working to include his bipartisan highway infrastructure bill, *America's Transportation Infrastructure Act*, in Phase Four legislation.
  - The House Democrats infrastructure proposal builds upon the [framework](#) released in January, which would entail approximately \$760 billion in spending over five years. The proposal for Phase Four would add an additional \$10 billion to invest in community health centers. The top infrastructure priorities are access to clean water, expanded broadband service, and new infrastructure mobility projects. The proposal contains strong "Buy American" requirements.
- **Hazard Pay.** President Donald Trump told Fox News that hazard pay for hospital workers dealing with the coronavirus is being "looked at."
- **Clean Energy Tax Provisions.** Renewable energy groups will continue to seek changes to start construction and safe harbor deadlines in response to COVID-19; expanded use of renewable credits for monetization; and creation of a tax credit to support stand-alone energy storage.
- **Payroll Tax Holiday.** The President has been a vocal advocate of suspending the payroll tax, and Stephen Moore has reportedly been working to persuade the Administration to support suspending the payroll tax until the end of the year as part of a Phase Four package.
- **State Funding.**
  - Many Democrats, spurred on by concerns from governors such as Governor Andrew Cuomo from New York, are arguing for a substantial increase in the amount of funds available to state and local governments.
  - Speaker Pelosi said that the \$150 billion in aid for states and localities in Phase Three was "not enough," and that even the \$200 billion Democrats had proposed would not have been sufficient.
- **Expanded Food Stamps and Related Benefits.** Both Speaker Pelosi and former Vice President Biden have argued that Phase Four should include health care coverage for COVID-19 patients, more funding for

pension funds, and expanded food stamp programs. Biden has also called for student loan forgiveness and increased Social Security payments to at-risk seniors.

- **Tax Extenders.** Lawmakers have discussed the possibility of using the Phase Four package as a vehicle to extend dozens of individual and business tax provisions that would otherwise expire in 2020. These provisions include, but are not limited to, credits for craft alcoholic beverages, electric vehicles, and carbon sequestration.
  - **Recovery Fund Proposal.** The International Council of Shopping Centers called on Congress to establish a COVID-19 Business and Employee Continuity and Recovery Fund, modelled after the Recovery Fund created in response to 9/11.
  - **Raising SALT Caps.** Speaker Pelosi has proposed raising the federal cap on tax deductions for state and local taxes.
  - **More Small Business Relief.** Treasury Secretary Mnuchin said that if the initial pool of \$350 billion in loans for small business goes quickly, Congress could work to expand funding on a bipartisan basis.
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## ***Policy Resolution Group COVID-19 Legislative Update***

***March 30, 2020***

This is our first post-Phase Three update, and going forward we will send updates based on events—so some days you may receive more than one, and other days none. Today’s note focuses on early discussions about provisions that could be included in Phase Four legislation, as well as our regularly updated library of relevant documents. Finally, we encourage everyone to visit the PRG tracker of agency actions that is in the update below, and please let us know if you have questions about implementation of the Phase Three program.

### **Phase Four Chatter**

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### **Agency Guidance and Notices**

- 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.
- 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.

### **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.
    - [Guide](#) for small businesses navigating the *CARES Act*.
    - Paycheck Protection Program [FAQs](#) for small businesses.
  - 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](#).
  - Small Business & Entrepreneurship Council [summary](#) of small business provisions.

### **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](#).