

Policy Resolution Group COVID-19 Legislative Update

July 22, 2020

After a tepid two months with little action, debate over phase four (we are going to call it “P4” until it receives a more formal name) of congressional COVID-19 relief has kicked into overdrive with the anticipated release of the GOP proposal. The Republican P4 package will cue up weeks of negotiations, as the country hurtles towards the July 31 expiration of enhanced unemployment insurance and the August 7 recess. Our note discusses what to expect in the soon-to-be-released GOP plan and outlines the path forward.

Welcome to the Matrix

Our matrix below provides an overview of the current state of play.

	House Ds/HEROES	Senate Rs	Trump Admin	Prediction
Unemployment Supplement	\$600/week through 1/21	Lower amount, likely \$200/week	70% wage replacement	\$300-400/week
State & Local Aid	\$1 trillion	\$0 (but flexibility for CARES funds)	Undefined	CARES Redux
Direct Payments	\$1200/pp (\$6,000 max); \$75k phase-out	Similar to CARES but with lower (\$40k?) phase-out threshold	Support	CARES Redux
Liability Shield	Publicly oppose	Red line for McConnell	Support	Limited liability relief
Payroll Tax Cut	Publicly oppose	Little apparent support	Red line for the President	No payroll tax cut
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GOP P4 Plan Expected This Week: Senate Majority Leader Mitch McConnell (R-KY) intends to unveil the Republican’s \$1 trillion P4 package this week, a legislative counterweight to the expansive House Democrat’s \$3 trillion *HEROES Act* released two months ago.

McConnell [took to the floor](#) on Tuesday to lay out his vision for the next phase, centered around “kids, jobs, and healthcare.”

Midway through week one of a critical three-week work period, however, negotiations remain in the intramural stage, with numerous GOP Senators expressing public doubts. Until Republicans find consensus among themselves, we're all just reading tea leaves. When the bill finally does surface, the real horse-trading can begin.

What's In?: While the specifics remain in flux, Leader McConnell's proposal is likely to include the following elements:

- **Liability Protection:** Establish temporary liability protections for employers, workers, and institutions that make a reasonable, good faith effort to follow public health guidelines. Applicable to businesses, schools, colleges, charities, associations, government agencies, and other entities. Limits liability for frontline healthcare workers. Protects employers from federal labor and employment laws. Effective through 2024.
 - **McConnell Red Line:** While Democrats have expressed strong opposition, liability protection is a red line for Leader McConnell, who stated in unequivocal terms: "We don't need an epidemic of lawsuits."
- **School Funding:** Provide schools \$105 billion to assist re-opening efforts, with \$70 billion set aside for elementary and secondary schools.
 - **Lingering Questions:** The Trump administration, along with some in the GOP, hope to explicitly tie funds to schools re-opening, but it is unclear how that might practically be done, and what would constitute "re-opening."
 - Senate Democrats immediately [cried foul](#) over re-opening conditions placed on aid.
 - The White House has said that it wants 10 percent set aside for non-public schools, which Democrats also oppose.
- **Enhanced Unemployment Insurance:** The GOP P4 proposal will not extend the full \$600 per week Federal Pandemic Unemployment Compensation (FPUC) supplement created by the *CARES Act*, and will instead propose a significantly reduced federal supplement.
 - Together with basic state unemployment benefits, the FPUC amounts to an average weekly wage (\$978) greater than what half of American workers were earning pre-pandemic (\$957).
 - Republicans have sought to cap the FPUC supplement at 100 percent wage replacement, or some portion thereof, but the practical mechanics of doing so remain difficult with a fraying 50-state patchwork of unemployment agencies already stretched to their limits.
 - The GOP proposal is likely to come in low, perhaps at \$200, with Democrats seeking to leverage it back up as much as possible for the end game.
- **Direct Payments:** Send another round of checks to Americans, likely on the order of the \$1200 per adult (\$500 per dependent) economic impact payments provided in the *CARES Act*.
 - **Senate Means Testing:** Leader McConnell previously told reporters that Republicans may phase the payments out at a lower income level, perhaps as low as \$40,000. Reports are mixed as to

whether these new limitations will show up in the bill. If so, it is likely a starting point, and a way to keep the cost of the initial package as low as possible.

- **White House Priority:** Direct individual payments are a top priority for the White House; the allure of sending money directly to the people in an election year has not been lost on the Administration.
- **COVID-19 Response:** Increased funding for COVID-19 testing, vaccine research and development (R&D), and potentially a vaccine R&D tax credit.
- **PPP 2.0:** Reboot and extend the Paycheck Protection Program (PPP), with an eye toward providing further relief to smaller and more distressed businesses. The bill will likely add funds to the remaining \$130 billion, although the amount is unclear.
 - As discussed in previous updates, Senate Democrats and Republicans each have [directionally similar proposals](#) for a second, more targeted round of PPP loans. The McConnell proposal is likely to include the core elements of the Rubio-Collins plan, which would be oriented around sectors and areas that have been hardest hit, while adding COVID-related safety costs as forgivable expenses.
 - Second round of funds available for businesses with fewer than 300 employees that have experienced a significant reduction in revenue for a given quarter (likely 50 percent, but subject to change) compared to the previous year. Terms resemble standard PPP loans, but capped at lower amount (e.g. \$2 million).
 - Larger recovery loans for seasonal employers, those in low-income areas, and certain specified industries with fewer than 300 employees that have experienced a decline in revenue. Businesses would be eligible to borrow up to 2x annual revenue with a maximum of \$10 million. Only 2.5 months payroll would be forgivable, with the balance carried as a longer term loan.
 - Perhaps the biggest sticking point with any PPP follow-on program is fatigue among lenders after the frenzied implementation of the *CARES Act*. Banks are [pushing for automatic forgiveness](#) for smaller loans as a way to turn the page on round one, and inclusion of such provisions could coax them to fully embrace the next iteration of small business relief.
- **ERTC Reform:** Reform and expand the Employee Retention Tax Credit (ERTC) created by the *CARES Act*.
 - The House-passed *HEROES Act* incorporated the [JOBS Credit Act](#), which would boost the existing credit from 50 percent of wages to 80 percent, increase the per employee limitation from \$10,000 for all quarters to \$15,000 per quarter, raise the threshold for large employer treatment from 100 to 1,500, and phase in the value of the credit for businesses with less than 50 percent revenue reduction. The bill would also allow for PPP recipients to claim ERTC for wages not forgiven under the program.
 - Republicans are likely to support a less generous expansion of the ERTC, though it is unclear what form it will take in the GOP proposal.

- **COVID-Related Business Credits:** Provide a business tax credit to alleviate the cost of dealing with COVID-19 disruptions. Republicans have not agreed upon an approach, but the most popular idea involves tax incentives for businesses to make purchases that prevent virus transmission, ranging from personal protective equipment (PPE) to safety modifications pursuant to public health guidelines.
 - This idea has administration support, with Secretary Mnuchin saying: "We'll...have tax credits for PPE for safe work environments."
 - **Existing Proposals:**
 - [S. 4214/H.R. 7615](#)- Healthy Workplace Tax Credit
 - Refundable tax credit against payroll taxes for 50 percent of the costs incurred by the business for COVID-19 testing, PPE, disinfecting, extra cleaning, and reconfiguring workspaces.
 - Limited to \$1,000 per employee for a business's first 500 employees, \$750 per employee for the next 500 employees, and \$500 for each employee thereafter.
 - The Senate companion to this bill was introduced by Finance Committee member and McConnell confidant Rob Portman (R-OH), making it the leader in the clubhouse for inclusion.
 - H.R. 7079- [Clean Start: Back to Work Tax Credit](#)
 - 50 percent tax credit of up to \$25,000, per location, up to a maximum of \$250,000 per business entity.
 - Eligible expenses include industry-recognized training and certification, cleaning services and products, tools, machinery, PPE, and other sanitary-related equipment needed to help ensure a safe and sanitary environment.
 - H.R. 7222- [Safe Reopening Tax Credit](#)
 - 30 percent tax credit up to \$15,000 on covered expenses through the end of the year.
 - Covered expenses include improvements such as plexiglass barriers, contactless point-of-sale systems, employee health education expenses, testing and virus monitoring expenses, PPE, and more.
 - Available to small businesses and nonprofits with up to 1,500 full-time-equivalent employees or who had less than \$41.5 million in gross receipts in 2019.

- H.R. 7216- [Small Business PPE Tax Credit Act](#)
 - Credit of up to \$25,000 for purchases of qualified PPE, including gloves, medical masks, N-95 respirators, eye protection, gowns and aprons, boots or closed-toe work shoes, cleaning detergents, hand sanitizers, and cleaning products or tools.
 - Eligible entities include small businesses, 501(c)(3) non-profits, veterans' organizations, independent contractors, farmers, sole proprietors, and others.

The Maybe Column:

- **Payroll Tax Cut:** Suspend the 6.2 percent employee share of the payroll tax through the end of 2020.
 - **White House Red Line:** While Democratic lawmakers, and many Republicans, have questioned the efficacy of a payroll tax cut as an economic stimulus for the millions of unemployed individuals not on payrolls while diverting funds from an already-underfunded social safety net. President Trump has made clear that it is a top priority: "The payroll tax to me is very important."
 - **Ambiguity:** Reporting is mixed as to whether a payroll tax cut has made, or will make, the final version of the GOP package, but given ambivalence on GOP side and outright hostility among Democrats, it is unlikely to make the final bill.
 - The *CARES Act* already allowed businesses to defer their payroll tax obligation, though the law requires full re-payment by the end of 2022. Some reporting has suggested that an employee side payroll tax "cut" could take a similar form, with the possibility that lawmakers waive re-payment entirely. As a practical matter this would be a mess and we don't expect it to make the final bill.
- **Back-to-Work Bonus:** Return to work incentive for those forgoing unemployment aid to go back to their jobs. (This could also be structured as a tax credit for the hiring business that is then passed-on to employees who return to work.)
 - **Details:** While the particulars of such a bonus are [unclear](#), and the administrative hurdles leave technical questions unanswered, most of the attention revolves around the plan by Senator Rob Portman (R-OH) discussed in previous updates.
 - **Context:** Republicans see a back-to-work bonus as an immediate counterbalance and ultimately a bridge to phase out the enhanced unemployment benefits they argue are incentivizing workers to stay home.
 - The Trump administration supports such a credit. In the words of Secretary Mnuchin, "We're going to make sure that we don't pay people more money to stay at home than go to work, we want to make sure that people who can go to work safely can do so."
- **Tax monetization:** Just as the *CARES Act* used the tax code to accelerate cash flow by providing various deferrals of tax payments and easing of carryback limitations on net operating losses (NOLs), some industry groups have been pushing to immediately "monetize" existing tax items ranging from [the general business credit \(GBC\)](#) to NOLs themselves. While the post-CARES experience of partisan recriminations

has made GOP tax-writers wary of doing much more in this space, public support from Democrats could make this a viable option.

What's Not In It?:

- **New Funds for State and Local Governments:** The GOP proposal will not include additional funds for state and local governments, but it will ease previous guidelines for how states can spend the \$150 billion allocated by the *CARES Act*.
 - **Democrat Sticking Point:** Expect state and local government funding to be a major sticking point in negotiations between Democrats and Republicans in the coming weeks, as Democrats have made additional aid a top priority. The *HEROES Act*, the House passed P4 proposal, called for over \$1 trillion in additional funds for states and localities. The GOP move to not include state and local funds is best seen as negotiating tactic to shift the bargaining range and end up with an ultimate package that includes some aid to satisfy Democrats, but a smaller amount than they would have otherwise received if they gave away the farm in round one of negotiations. The dollar amount they ultimately arrive at is likely to operate on a sliding scale with the restrictions placed on the funds' use.

Necessary Caveats: A final bill has not been written, and any proposal will only serve as the launching off point, not the end point, of negotiations with Democratic lawmakers.

P4 Timing and Outlook

Meetings, Meetings, Meetings: This week, Leader McConnell and his fellow Republicans kicked off a tour of meetings with relevant parties, queuing up what will be an intensive round of negotiations.

- **Monday—Administration:** President Trump sat down with Leader McConnell and House Minority Leader Kevin McCarthy (R-CA) on Monday to build consensus on Republican P4 priorities, so they can present a unified front when negotiations with Democrats begin.
- **Tuesday—Republican Senate Conference:** Yesterday Leader McConnell, along with White House Chief of Staff Mark Meadows, briefed the full Senate Republican conference on the P4 package at their weekly policy lunch to go over the developing proposal. Those hoping that this meeting would provide clarity and consensus will be disappointed by the [ensuing headlines](#).
- **Wednesday—Republicans and Democrats:** Secretary Mnuchin and Meadows will meet with Senate Minority Leader Chuck Schumer (D-NY) and House Speaker Nancy Pelosi (D-CA) today to discuss P4.

Democratic Response: In anticipation of a Republican proposal that excludes Democratic priorities, such as increased funding for state and local governments, Leader Schumer penned a strongly worded [Dear Colleague letter](#) on Monday criticizing the following elements of the yet-to-be-unveiled GOP effort:

- Liability protections;
- Lack of enhanced unemployment benefits;

- No funding for rental assistance;
- No hazard premium pay for frontline workers;
- Lack of a national testing strategy; and
- Lack of a PPE strategy.

Expect the P4 Package to Grow: As Democrats and Republicans begin negotiating in earnest, expect the package to grow significantly with each new horse trade. Leader McConnell wants to keep the price tag under \$1 trillion, which is a far distance from the \$3 trillion *HEROES Act* the House passed in May.

Closing Window of Opportunity:

- **Calendar:** The House and Senate have a short window of time to reach a compromise before they break for the August recess, August 7 for the Senate and July 31 for the House. While lawmakers could theoretically work into the recess, that's a prospect that many staff loathe.
 - House Majority Leader Steny Hoyer (D-MD) said: "I've told members not to schedule anything for the first week in August, even though we're not scheduled to be in. We're going to be in as long as it takes us to get something done."
 - **FPUC Cliff:** The closest thing to a forcing mechanism is the expiration of the federal unemployment supplement. The \$600/week benefit lapses on July 31, but practically speaking will not be paid out by many states after July 26. The media firestorm and potential economic fallout, should a deal not be close at hand by the end of the month, will put significant pressure on lawmakers to get it done.
- **Competing Priorities:** Any P4 package will have to compete with other "must pass" priorities, such as the fiscal 2021 *National Defense Authorization Act*, and the appropriations bills that fund the government.

Political Dynamics at Play:

- **GOP Senators Under Pressure:** With the President's poll numbers looking far less than rosy, endangered GOP senators are increasingly worried about their potential to be dragged down with Trump, and consequently they're searching for opportunities to deliver for their constituents. This creates a positive pressure that increases the likelihood of a compromise because those vulnerable Senators cannot afford to walk away from the table empty handed.
- **Trump's Reelection:** Several states important to President Trump's reelection strategy have experienced a rapid increase in COVID-19 cases, such as Florida, Arizona, and Texas, and may face the prospect of shuttering their economies or slowing their re-openings. Providing needed aid could help bolster President Trump's re-election prospects.
- **Shaping the Debate:** An important voice who chimed in recently via [Twitter](#) is Maryland Governor Larry Hogan (R), who is the Chair of the National Governors Association and likely challenger for POTUS in 2024. Governor Hogan outlined five urgent priorities that he hopes the White House acts upon:

- **Extend the Public Health Emergency:** “First, we continue to call on the administration to extend the public health emergency, which is set to expire this Saturday.”
- **Extend Title 32 Authorization:** “Second, more than half of governors have already requested an extension of Title 32 authorization past the current expiration date of August 21. The National Guard remains a critical part of our public health response.”
- **Delay the Change in Hospital Reporting Requirements:** “Third, we are pressing for a 30-day delay of any changes to new hospital reporting requirements. To demand these changes be made in a matter of 48 hours is unreasonable, and threatening to jeopardize life-saving supplies of remdesivir for not complying is unconscionable.”
- **Do Not Place Conditions on Education Funds:** “Fourth, governors and education leaders have appealed to Congress for education funding that prioritizes both learning and safety. We are specifically calling on Congress to prohibit any conditions being placed on relief funding that would mandate specific models of reopening.”
- **Increase Funds for State and Local Governments:** “Lastly, and most importantly, we continue to stress the need for Congress to pass a coronavirus relief package that provides the funding desperately needed by state and local governments. Millions of state and local government jobs depend on this aid... ...The president, vice president, and Secretary Mnuchin have all previously committed to support this funding, but there are growing indications that it is no longer a priority. It is crunch time now, and we are ready to work with leaders in both parties to get this done.”