

Policy Resolution Group COVID-19 Legislative Update

July 28, 2020

At long last, Senate Republicans yesterday released their suite of proposals for the fourth phase of COVID-19 stimulus, entitled the *HEALS Act* (Health, Education, Economic Assistance, Liability, and Schools). Intra-party and inter-branch squabbles had delayed the planned rollout last week. Our note provides an updated negotiations matrix, political analysis of what comes next, a summary of the legislation, and a library of resources.

Negotiation Matrix

The strikethrough denotes the payroll tax cut proposal being taken off the negotiating table.

	HEROES Act (Dems)	HEALS Act (GOP)	Prediction
Unemployment Supplement	\$600/week through 1/21	\$200/week through 9/30, then payment equal to 70% of wages, capped at \$500; waivers for states unable to make calculation	\$300-400/week
State & Local Aid	\$1 trillion	\$0, but expands allowable uses of CARES funds	CARES Redux
Direct Payments	\$1200/pp (\$6,000 max); \$75k phase-out	Same level as CARES; additional support for dependents	CARES Redux
Liability Shield	Publicly oppose	Creates a single federal cause of action for COVID exposure with a broad safe harbor, preempting all state claims	Limited liability relief
Payroll Tax Cut	Publicly oppose	None	No payroll tax cut

Updated July 28, 2020 www.policyresolutiongroup.com

Things to Remember as We Move Forward

- **This is the beginning of the beginning:**
 - As we said in the last update, the single most critical element to getting a deal is Republicans presenting a united front. With the GOP conference—and the President himself—now bought in on the process, they are that much more likely to go along with the ultimate product, grumbles and all.
 - While the ensuing talks may seem to produce more drama, the real risk was a failure to launch, which seems to have been averted, at least for now. After a week of false starts, wheel-spinning, and intramural wrangling, Republicans now have their opening bid, albeit in an unwieldy form.
 - The lost week means that the horizon for a deal may slip into the second week of August, though the imminent lapse in federal unemployment benefits is sure to turn up the pressure.

- **Things will change:**
 - These positions merely help set the parameters for the real negotiation—nothing is even close to set in stone.
 - In some cases, inclusion of a provision was a courtesy meant to quiet squeaky wheels at both ends of Pennsylvania Avenue—don't expect these oddball provisions or partisan flourishes to make the final bill.
 - Further, unlike the *HEROES Act*, the Senate GOP proposal is not a something they will hold a vote on; it merely serves as the opening bid in a series of negotiations with Democrats.

- **These are the pieces of HEALS that appear to be most ready for prime time:**
 - The economic impact payments, a slightly modified reprise of the CARES checks, are the easiest to put to bed.
 - The tax provisions put forward by the Senate Finance Committee are all serious proposals that Democrats will be open to in their current form. The employee retention tax credit (ERTC) enhancement bears a close resemblance to the more generous version passed by the House in its *HEROES Act*.
 - The reform and replenishment of the Paycheck Protection Program (PPP) is directionally similar to what Senate Democrats have already proposed in their P4 act.

- **What about the issues where there is disagreement?**
 - Other key elements remain far apart, but the distance is deliberate—every dollar amount is meant to reinforce GOP negotiating power, nudging the eventual number ever so slightly in their direction.

- This proffer is designed to give Republicans space to make concessions, and Democrats, in turn, room to score face-saving wins as they drag things back to the middle.
- While the package is likely to end up closer to \$1 trillion than the \$3.5 trillion sought by Democrats, splitting the difference on the fiscal side is fairly easy.
- Perhaps the biggest remaining stumbling block is the one issue where you can't simply split the baby—the liability shield.

Democratic Reaction

- **Speaker Pelosi:**

- In anticipation of the GOP's reveal of its proposal, House Speaker Nancy Pelosi (D-CA) put out a [statement](#) yesterday morning criticizing the speed of the Republican effort:

“Ten weeks ago, Democrats passed The Heroes Act, which contains the solution to defeating the virus and safely reopening the country: supporting our heroes, crushing the virus and putting money in Americans’ pockets.

“But for ten weeks, the Senate GOP has said just ‘pause.’ Once again, they have delayed releasing their plan. Children are hungry, families cannot pay the rent, unemployment is expiring and the Republicans want to pause again and go piecemeal.

“We have stood ready to negotiate for more than two months. Unfortunately, it still remains unclear if Republicans will produce a proposal today. I call upon the Republican leadership of the House and Senate and representatives of the President to come to the Speaker’s Office and join Leader Schumer and me within a half an hour of releasing their plan today to negotiate and get the job done. If Republicans care about working families, this won’t take long. Time is running out. Congress cannot go home without an agreement.”

- Upon seeing the details of the *HEALS Act*, and following a meeting with Treasury Secretary Steven Mnuchin and White House Chief of Staff Mark Meadows, Speaker Pelosi’s disdain for the bill was clear: “No. Forget it. Forget it. Forget it.” Although, Meadows for his part struck a more optimistic tone: “It was a good meeting. We’ll be back tomorrow.”

- **Leader Schumer:**

- In a choreographed effort, Minority Leader Chuck Schumer (D-NY) responded to Speaker Pelosi’s tweeted statement yesterday afternoon, [saying](#) “I’ll be there. The American people have been waiting 10 weeks for the Republicans to get their act together!”
- Prior to the bill’s release, Leader Schumer also re-iterated Democratic criticism of the proposal for its lack of rental assistance, hazard pay, state and local aid, and support for communities of color, [saying](#) “From what has been reported, the GOP is drafting a woefully inadequate COVID proposal with nothing on rental assistance, hazard pay for essential workers, aid to state, local, and tribal governments, or investments in communities of color.”

- Leader Schumer following the meeting with Secretary Mnuchin and Meadows was also critical of the Republican effort, saying: “We are somewhat frustrated. We had hoped there would be a bill, and instead in the Senate they’ve put little pieces here and there and everywhere. It’s pretty clear they don’t have 51 votes in the Senate for a proposal.... We hope they can get their act together. We very much want to get something done for the needs of the people and the needs of the country.”

Proposal Summary

Overview: Senate Majority Leader Mitch McConnell (R-KY) called for a “tailored and targeted” package on the Senate floor yesterday, noting that we have “one foot in the pandemic and one foot in the recovery, so our economic policies have to recognize both sides of the coin.” The Senate GOP plan is organized around the pillars of “getting kids back in school,” “getting workers back to work,” and “winning the healthcare fight against the virus.”

Healthcare:

- **Public Health:** Provisions to improve access to diagnostic tests, re-shore manufacturing capacity for public health emergencies, improve and sustain state stockpiles, strengthen the Strategic National Stockpile, modernize infectious disease data collection, authorize a network of regional Centers for Public Health Preparedness, allow employers to offer telehealth plans, among other measures.
- **Medicare:** A variety of Medicare provisions, including protections for beneficiaries from price spikes in the Part B premium, improvements to hospital accelerated and advanced payment programs, authority to extend telehealth waivers, and more.
- **Nursing Homes:** Establish COVID-19 strike teams for nursing facilities, promote testing and infection control in nursing facilities, improve transparency in COVID-19 reporting by nursing facilities.

Economic Assistance:

- **PPP:**
 - **7(a) Loans to Recovery Sector Businesses:** \$100 billion in long-term, low-cost loans to recovery sector businesses.
 - Includes seasonal businesses and businesses located in low-income census tracts that meet the revenue standard, have fewer than 500 employees, and demonstrate at least a 50 percent gross revenue reduction.
 - Recipients can receive loans 2x annual revenue, capped at \$10 million.
 - Loans have a 100% SBA guarantee and maturity of up to 20 years with a one percent fixed interest rate.
 - Allowable uses include working capital, acquisition of fixed assets, and refinancing existing indebtedness.

- **PPP Second Draw Loans:** \$190 billion to support PPP and PPP Second Draw Loans.
 - Eligible businesses must meet the SBA revenue size standard, have fewer than 300 employees, and demonstrate at least a 50 percent gross revenue reduction.
 - \$25 billion set-aside for entities with fewer than 10 employees, and \$10 billion for community lenders.
 - Maximum loan size is 2.5x average total monthly payroll costs, capped at \$2 million.
 - Businesses that already received a PPP loan may not receive another loan that aggregates to more than \$10 million.
 - 60/40 payroll allocation still applies.
- **PPP Improvements:**
 - Expands forgivable expenses to cover PPE and other expenses.
 - Allows borrowers to select a preferred 8-week period through 2020 to use the forgivable loan proceeds.
 - Simplifies the forgiveness application process for smaller loans.
 - Expands eligibility to certain 501(c)(6) organizations.
 - Establishes agriculture specific provisions.
- **Small Business Growth and Domestic Production Investment Facility:** \$10 billion in long-term debt with equity features to registered SBICs that invest in small businesses with significant COVID-19 revenue losses, manufacturing startups in the domestic supply chain, and low-income communities.
- **Unemployment:**
 - **FPUC:** Continue Federal Pandemic Unemployment Compensation (FPUC) at a reduced rate of \$200 per week through September 30, 2020, then switch to a 70 percent of wages replacement capped at \$500 when combined with state unemployment insurance; states unable to make the wage replacement calculation may apply for waivers for up to two months.
 - **Notification:** Requires states to notify recipients of UI and employers about state law regarding return to work and suitable work requirements.
 - **Nonprofits:** Increases CARES payments to states to reimburse nonprofits, government agencies, and Indian tribes for costs to pay unemployment benefits from 50 to 75 percent of costs.

- **Pandemic Unemployment Assistance:** Specify that only those who have lost their principal source of income are eligible for the program; allow states to handle appeals in the same way they handle appeals for state UI benefits.
- **State UI Assistance:** \$2 billion to assist states in upgrading their state UI systems.
- **TANF Coronavirus Emergency Fund:** Reimburses states for 80 percent of increased costs of providing assistance through the TANF program, up to a cap of \$2 billion.
- **Recovery Rebates:** Same level of direct payments as CARES, with additional support for families with dependents. As a CARES refresher, this means \$1,200/pp checks for AGI up to \$75,000 and \$500/dependent rebate. Unlike CARES, the additional \$500 will be provided to taxpayers with dependents of any age.
- **Tax Credits:**
 - **ERTC:**
 - Increases the applicable percentage of qualified wages reimbursed through the ERTC to 65 percent.
 - Lowers the amount of the reduction in gross receipts required to qualify as an eligible employer from a 50-percent decline to a 25-percent decline compared to the same calendar quarter in the previous year.
 - For determining eligibility in the third quarter or fourth quarter of calendar year 2020, an employer may also satisfy the reduction-in-gross-receipts test if the preceding quarter's gross receipts declined by at least 25 percent when compared to the same calendar quarter in the previous year.
 - Increases the limitation on qualified wages taken into account per employee to \$10,000 per quarter (limited to \$30,000 for the calendar year).
 - Increases the 100-employee threshold to 500 employees.
 - Allows employers to be eligible for the PPP and ERTC with certain clarifications.
 - Clarifies that group health plan expenses are considered qualified wages.
 - Provisions that modify the treatment of health plan expenses and the definition of gross receipts for tax-exempt organizations apply retroactively.
 - **WOTC:** Adds 2020 qualified COVID-19 unemployment recipient as a work opportunity tax credit (WOTC) as a WOTC targeted group; increases the credit amount applicable to the new targeted group to 50 percent of the first \$10,000 of qualified first-year wages; removes the limitation on rehires for 2020 qualified COVID-19 unemployment recipients.

- **Safe and Healthy Workplace Tax Credit:** Establishes a refundable payroll tax credit equal to 50 percent of an employer’s qualified employee protection, workplace reconfiguration, and workplace technology expenses.
 - Qualified employee protection expenses include testing for COVID-19, PPE, cleaning supplies.
 - Qualified workplace reconfiguration expenses include modifications to workspaces for the purpose of protecting employees and customers from the spread of COVID-19.
 - Qualified workplace technology expenses include contactless point-of-sale systems and other technology to track employee interactions with customers.
 - Qualified expenses are limited based on the employer’s average number of employees.
 - Self-employed individuals, including sole proprietors, independent contractors, and farmers may claim a refundable credit against income taxes for the same types of expenses.
 - The credit applies to amounts paid or incurred for qualified employee protection expenses after March 12, 2020 and before January 1, 2021.
- **Independent Contractors:** Establishes a safe harbor allowing marketplace platform companies to provide certain COVID-19 related assistance to service providers without jeopardizing the service provider’s independent contractor status under the IRC.
- **State and Local Government Aid:**
 - Expands the end date for allowable necessary expenditures from December 30, 2020 to 90 days after the last day of a government’s fiscal year 2021.
 - Expands allowable uses of relief payments to states and local and other governments to also include revenue shortfalls.
 - Prohibits CARES funds from Title V from being used to rebuild state “rainy day” funds, among other restrictions.
- **State Tax Certainty:** Creates uniform procedures for assessing state and local income taxes on remote and mobile workers affected by government shutdown orders due to the COVID-19 pandemic and changing work conditions.
- **CARES Act Corrections:** A variety of technical fixes to the *CARES Act*.
- **Trust Fund:** Requires a report to identify Trust Fund programs at risk of insolvency, then establishes a Rescue Committee to identify solutions and propose legislative language.
- **Supply Chains/China:**

- Sen. Lindsey Graham's (R-SC) *US MADE Act*
 - PPE domestic purchasing requirement.
 - Investment credit for qualifying medical PPE manufacturing projects.
 - Permits taxpayers that receive the Section 48D credit to bring intangible property used in connection with production of PPE back to the United States without taxable gain.
- Sen. Rob Portman's (R-OH) *Safeguarding American Innovation Act*
 - Establish a Federal Research Security Council in OMB to standardize and secure the federal grant-making process.
 - Criminalizes federal grant application fraud.
 - Denies visas to certain known bad actors traveling to the United States to access export controlled technologies.
 - Places limits on educational and cultural exchange programs.
 - Lowers the reporting threshold for foreign gifts and contracts made to universities.
- Sen. John Cornyn's (R-TX) *CHIPS for America Act*
 - Establishes semiconductor incentive grants for constructing, expanding, or modernizing commercial semiconductor fabrication, assembly, testing, packaging, and advanced R&D facilities in the United States; grants are capped at \$3 billion per project.
 - Directs the DoD to create a partnership program with the private sector to encourage the development of advanced, measurably secure microelectronics for national security applications.
 - Requires the Department of Commerce to commence a review within 120 days assessing the state of the U.S. semiconductor industrial base.
 - Establishes a Multilateral Microelectronics Security Fund to harmonize microelectronics policy with allies and partners.
 - Directs the president to establish a subcommittee on semiconductor technology and innovation within the National Science and Technology Council, which will develop a national strategy on semiconductor research, development, manufacturing, and supply chain.
- Sen. Lisa Murkowski's (R-AK) *American Mineral Security Act*
 - Updates the Congressional declaration of policy on mineral security.

- Requires the executive branch to designate a list of critical minerals and to update that list every three years.
- Requires the U.S. Geological Survey to conduct domestic resource assessments of critical minerals and to make that information publicly available.
- Provides a Sense of Congress that critical minerals are fundamental to the economic and national security of the United States and should be produced domestically to the maximum extent practicable.
- Encourages the Departments of the Interior and Agriculture to complete federal permits efficiently, without compromising environmental review, and requiring a report to Congress identifying improvements that could be made.
- Reduces delays in *Federal Register* notices by requiring their publication within 45 days of being finalized.
- Directs the Secretary of Energy to conduct R&D to facilitate the recycling of critical minerals and the development of alternatives to them.
- Directs the Secretary of Energy and the Administrator of the Energy Information Administration to develop analytical and forecasting tools to evaluate critical minerals markets.
- Requires the Secretary of Labor and the Director of the National Science Foundation to develop curriculum and a program for institutions of higher education to build a strong critical minerals workforce.
- Reauthorizes the National Geological and Geophysical Data Preservation Program through FY 2030.
- Requires the Secretary of Energy to carry out a program to develop advanced separation technologies for the extraction and recovery of rare earth elements and other minerals from coal and coal byproducts.

Liability:

- **Liability Relief:**

- **Federal Cause of Action:** Creates a federal cause of action for coronavirus exposure claims that is the exclusive remedy for all claims against a defendant for personal injury caused by an actual, alleged, feared or potential exposure to coronavirus.
 - Covers all alleged injuries between December 1, 2019 and the later of either the end of the coronavirus emergency declaration or October 1, 2024.
 - Preempts all state laws, including common law; imposes a floor on liability, but makes clear that states are free to further limit liability.

- One-year statute of limitations.
- **Requirements for Liability and Safe Harbor:** A plaintiff must satisfy each element of the claim by clear and convincing evidence.
 - **Safe Harbor:** A defendant is not liable for coronavirus exposure so long as the defendant undertook reasonable efforts in light of all the circumstances to comply with the applicable mandatory coronavirus standards and regulations in effect at the time of the alleged exposure.
 - **Gross negligence or willful misconduct:** If a plaintiff can establish that the defendant did not take reasonable steps to comply with the applicable standards and regulations, the plaintiff must further show that the defendant's gross negligence or willful misconduct caused the plaintiff's coronavirus injuries.
- **Healthcare Protections:** Creates an exclusive federal cause of action for coronavirus medical liability claims.
 - Applies to health care providers, including doctors, nurses, facilities, administrators and volunteers.
 - Covers all alleged injuries that arise from conduct taking place between December 1, 2019 and the later of either the end of the coronavirus emergency declaration or October 1, 2024.
 - State laws are preempted, but courts must apply state laws that impose further liability limitations alongside the provisions of this statute.
 - To recover for personal injuries caused by coronavirus medical care, the plaintiff must show that injuries were caused by the defendant's gross negligence or willful misconduct.
- **Procedural and Substantive Provisions for Suit:**
 - Authorizes plaintiffs to file coronavirus-related lawsuits in either federal or state court.
 - Authorizes defendants in state court to remove their cases to federal court.
 - Forecloses joint and several liability (except in cases of fraud or intentional injury) and instead requires defendants to pay their proportionate share of damages owed to a plaintiff.
 - Limits compensatory damages to economic losses and prohibits punitive damages, except in cases involving intentional misconduct.
 - Preempts state laws that permit liability on broader grounds, or authorize higher damages, than those contained in this section.
- **Labor and Employment:** Protects employers from liability under federal labor and employment laws (OSHA, FLSA, ADEA, WARN, GINA, and ADA) for actions taken to comply with coronavirus-related public-health guidance and regulations.

- **Workplace Testing:** Forecloses lawsuits for injuries caused by workplace coronavirus testing unless the injuries were caused by gross negligence or intentional misconduct.
- **Joint Employment and Independent Contracting:** Clarifies that providing coronavirus-related assistance to an independent contractor or to the employee of another employer does not create an employment relationship.
- **WARN Act Modifications:** Creates an exception to employer notification laws that normally require a notice period for employment decisions made due to the coronavirus emergency.
- **Protections for Products:** Limits liability for additional products, such as types of PPE and hand sanitizer, if they meet certain FDA requirements.

Schools:

- **Student Loans:** Provisions to simplify student loan repayment.
- **Emergency Education Freedom Grants:** Authorizes one-time, emergency appropriations funding for scholarship-granting organizations to use towards qualified educational expenses.
- **Back to Work Child Care Grants:** Authorizes short-term assistance to help child care providers reopen and stay open with flexibility for states.
- **Waiver Authority:** Provides the Education Secretary with waiver authority for certain laws.
- **Additional Workforce Activities:** Provides flexibilities for local school boards to use funds, among other labor employment training, apprenticeships, and grants.
- **Workforce Recovery and Training Services:** Authorizes funding for a formula grant to States to support job training.
- **Impact Aid Provisions:** Allows school districts to use their FY21 student counts for the purposes of Impact Aid applications in the coming year.
- **Fixes to CARES:** A variety of technical fixes to education provisions in the *CARES Act*.

Emergency Appropriations: Total discretionary appropriations of \$306 billion.

- **Agriculture, Rural Development, FDA, and Related Agencies:** \$20.457 billion
 - Includes \$20 billion to support agricultural producers, growers, and processors.
- **Commerce, Justice, Science, and Related Agencies:** \$4.747 billion
 - Includes \$500 million to direct financial assistance to all manner of fishers, fishery participants, and communities.

- Includes \$1.963 billion to the FBI, for personal protective equipment, cleaning supplies, testing capacity, the Criminal Justice Information Services (CJIS), and construction.
- **Defense:** \$29.400 billion
- **Energy and Water Development:** \$307 million
- **Financial Services and General Government:** \$2.469 billion
- **Homeland Security:** \$3.014 billion
 - Includes \$930 million for emergency grant programs, including \$365,000,000 for Assistance to Firefighter Grants, \$365,000,000 for Staffing for Adequate Fire and Emergency Response Grants, and \$200,000,000 for the Emergency Food and Shelter Program.
- **Interior, Environment, and Related Agencies:** \$1.605 billion
- **Legislative Branch:** \$78 million
- **Labor, HHS, Education, and Related Agencies:** \$226.202 billion
- **Military Construction and Veterans Affairs:** No new funding
- **State, Foreign Operations, and Related Programs:** \$4.435 billion
- **Transportation, HUD, and Related Agencies:** \$13.351 billion

Resource Library

Overall:

- [Senate Republicans press release](#)
- [Leader McConnell 7/27 remarks](#)

HELP provisions:

- [Sen. Alexander floor remarks](#)
- [Press release](#) (Sen. Blunt Labor/HHS provisions)
- [Press release](#) (Sen. Alexander Education provisions)
- [Section-by-section](#) (Sen. Blunt Labor/HHS provisions)
- [Section-by-section](#) (Sen. Alexander Education provisions)
- [Student loans one pager](#)
- [School choice one pager](#)
- [Child care one pager](#)
- [Bill text](#)

Appropriations provisions:

- [Press release](#)
- [Section-by-section](#)
- [Bill text](#)

Finance provisions:

- [Press release](#)
- [Section-by-section](#)
- [Bill text](#)

Liability provisions:

- [Press release](#)
- Publicly available section-by-section pending
- [Bill text](#)

Small business provisions:

- [Press release](#)
- [Section-by-section](#)
- [One pager](#)
- [Bill text](#)

Restaurant aid:

- [Press release](#)
- [Bill text](#)
- No section-by-section; the bill is two pages

Supply chain/China provisions:

- [Press release](#) (Sen. Graham PPE provisions)
- [Press release](#) (Sen. Murkowski mineral provisions)
- [Section-by-section](#)
- [Bill text](#)

Trust Fund provisions:

- [Press release](#) (for original bill release on 10/29/2019)
- [Press release](#) (for HEALS)
- [Section-by-section](#)
- [One pager](#)
- [Bill text](#)

Policy Resolution Group COVID-19 Legislative Update

July 23, 2020

While GOP leaders had originally intended to roll out their phase four (P4) plan today, lingering disagreements between the White House and Republican senators have pushed back the timeline until Monday at the earliest. In a procedural audible, the eventual GOP product will actually be a suite of proposals released by jurisdiction, a way to empower committee chairmen and soothe rank and file concerns over a top-down package. Notwithstanding the delay and considerable noise, certain elements of the package have come into focus, and our note discusses those provisions, the political context, and what to expect moving forward. We also have updated our matrix of negotiating positions.

The Matrix Reloaded

	House Ds/HEROES	Senate Rs	Trump Admin	Prediction
Unemployment Supplement	\$600/week through 1/21	Lower amount, likely \$100/week	70% wage replacement	\$300-400/week
State & Local Aid	\$1 trillion	\$0 (but flexibility for CARES funds)	No bailout for "mismanaged" states	CARES Redux
Direct Payments	\$1200/pp (\$6,000 max); \$75k phase-out	Consensus on payments identical to CARES		CARES Redux
Liability Shield	Publicly oppose	Red line for McConnell	Support	Limited liability relief
Payroll Tax Cut	Publicly oppose	Likely out	Red line for the President	No payroll tax cut
<i>Updated July 23, 2020</i>		<i>www.policyresolutiongroup.com</i>		

Where Negotiations Stand

Final Details: While Majority Leader Mitch McConnell (R-KY) had intended to preview the Republicans' P4 proposal during his 9:30 AM remarks on the Senate floor today, lingering intra-party disagreements put a hold to those plans.

Treasury Secretary Steven Mnuchin met with White House Chief of Staff Mark Meadows this morning to go over some "final details." Secretary Mnuchin made a show of confidence, saying that the White House and Senate Republicans have a "fundamental agreement" on a stimulus bill, but the lack of an announcement today reinforces the fraught dynamic. Indeed, just hours before Leader McConnell strode to the floor to announce next week's roll out, the Administration was publicly floating the idea of forcing a vote on a skinny (liability/partial unemployment insurance/school funding) package. Leader McConnell's eventual floor speech reinforced most of what we already know about the plan, while leaving the thornier questions to be committed to paper in the interim.

GOP P4 Provisions Coming Into Focus: While Leader McConnell has not yet unveiled the complete GOP P4 package, the following provisions have come into focus as likely components. We mentioned these in our previous update, and here we note new details that have emerged.

- **Direct Payments:** Same structure as in the original *CARES Act*, per Secretary Mnuchin: “We’re talking about the same provision as last time. Our proposal is the exact same provision as last time.”
 - **What this means:** \$1,200 per adult, \$500 per child, phased out beginning at \$75,000 AGI (\$150k MFJ)
- **Unemployment Supplement (FPUC):** Secretary Mnuchin said the GOP plan will include federal pandemic unemployment insurance compensation pegged to a wage replacement rate of 70 percent.
 - **What this means:** Rickety state UI systems mean this proportion will still be a flat figure, presumably pegged to average wage. The math would put this somewhere around \$175-200 per week. This lines up with our previous update, although with reports of Senate Republicans floating \$100 per week, it’s not entirely clear where this lands.
- **State and Local Aid:** The Trump administration has laid down a marker that, in the words of Secretary Mnuchin “the president is not going to bail out Chicago and New York and other states that prior to the coronavirus were mismanaged.” Practically, this suggests that funds for states and localities, if any, will come with strings attached. The opening bid from Senate Republicans remains \$0, but with flexibility for funds previously appropriated under the *CARES Act*.
 - **What this means:** The posturing against a blue state bailout lines up with what we have been saying—while the final number will end up somewhere between \$0 and Democrats \$1 trillion ask, it will be a sliding scale depending on the attached conditions.
- **Education:** Senate HELP Chairman Lamar Alexander (R-TN) this afternoon shared that GOP senators had reached agreement on \$105 billion in funds for schools, which according to Alexander works out to roughly \$1,200 per student for public and private schools nationwide.
 - **What this means:** As reported yesterday, \$70 billion will go toward K-12 education, with half tied to re-opening, a non-starter for Democrats. The \$30 billion balance will go toward colleges and universities.
- **Child Care:** Senator Roy Blunt (R-MO) says the P4 bill will include \$15 billion in grants for child centers to reopen.
- **Student Loans:** Senator Lamar Alexander (R-TN) said the GOP stimulus plan would extend student loan forgiveness until individuals have an income and cap payments at 10 percent of income minus the cost of living.

What to Expect Monday: Leader McConnell indicated in his floor remarks the members with ownership over key pieces of the package:

- **Appropriations—Shelby/Blunt:** The funding side of the GOP proposal has been buttoned up, and we expect \$300 billion in funding, with most of that going to education, health care, and the broader COVID-related medical response.
- **HELP—Alexander:** Alexander’s committee has domain over health care and education matters, the two biggest pots of funding in the bill.
- **Finance—Grassley:** A narrow list of business provisions are expected to be in play, as mentioned yesterday. Inclusion likely for employee retention tax credit (ERTC) expansion, incentives for PPE and other COVID-safety related expenses, and restoration of 100 percent deduction for business meals, a priority of President Trump. The tax-writing committee also handles unemployment insurance, the thorniest remaining issue for Republicans, and health care related revenue matters.
- **Small Business—Rubio/Collins:** We previewed the next iteration of the PPP program in yesterday’s update, including a second round of loans for smaller, distressed businesses, larger and longer term loans for certain industries, simplified/streamlined forgiveness for smaller loans, expansion of forgivable expenses to include PPE and other COVID/protest-related costs, and clarification of deductibility for forgiven PPP expenses.
- **Liability—Cornyn:** The details of the GOP’s liability proposal have been widely reported, as well as previewed in yesterday’s update, but the real issue will be what (if anything) skeptical Democrats are willing to accept.
- **Entitlements—Romney:** Romney has been [publicly pushing](#) to get his Social Security and Medicare reform bill, the *TRUST Act*, into the next COVID package. A courtesy inclusion is likely as far as it gets in this process.

Clean Energy Push: A group of seven Senate Republicans – Thom Tillis (R-NC), Cory Gardner (R-CO), Susan Collins (R-ME), Richard Burr (R-NC), Lindsey Graham (R-SC), Martha McSally (R-AZ), and Lisa Murkowski (R-AK) – penned a letter to Majority Leader Mitch McConnell (R-KY), urging the leader to add clean energy incentives to the P4 bill. However, do not expect such tax credits to gain traction because they will likely not be included in the initial GOP offer and would have to be a top Democratic to stand a chance in the ultimate negotiations.

Reactions:

- **White House:** President Trump took to [Twitter](#) today to express his strong support for a payroll tax cut, despite the tacit agreement between Senate Republicans and Secretary Mnuchin to not include it in a deal. This, perhaps, may be one of the sticking points that delayed the release of the GOP P4 proposal today.
 - “The Democrats have stated strongly that they won’t approve a Payroll Tax Cut (too bad!). It would be great for workers. The Republicans, therefore, didn’t want to ask for it. Dems, as usual, are hurting the working men and women of our Country!”
 - Trump economic advisor Stephen Moore also chimed in, [telling the Washington Post](#), “We’re not giving up on the payroll tax cut. We’re going to pound the pavement to get this back in the bill... It’s premature to say this is dead.”

- **Democrats:**

- **Leader Schumer:** Senate Minority Leader Chuck Schumer (D-NY) [tweeted](#) out a list of Democratic priorities today, providing a preview of negotiations to come, and items that might be included in the final compromise bill:

“From what we know, the GOP COVID relief proposal won’t include: Food assistance for hungry kids[,] Rental assistance[,] Hazard pay for essential workers[,] New funding for state and local governments[,] Investments in communities of color[.] It won't get the job done.”

- **Leader Hoyer:** House Majority Leader Steny Hoyer (D-MD), for his part, [criticized](#) Republicans for supposed inaction:

- “Due to their own internal divisions, Republicans still don’t have a coronavirus relief proposal. The House passed the #HeroesAct 2 months ago. Instead of acting, Senator McConnell & the Trump Administration waited. They chose to take a pause. Their inaction was intentional...”

The Upshot: While time runs short, especially with regard to the \$600 weekly federal pandemic unemployment compensation (FPUC), the real key is getting the GOP on the same page. If Republicans can roll out their package and maintain a united front beginning Monday, the rest of the negotiations—largely kabuki theater—can proceed fairly quickly, even with a lost week. Don’t read anything into the dollar amount chasms or maximalist posturing. Ignore the conspicuous omissions and the indignant rhetoric. This is all a part of the legislative dance, albeit a frustrating and increasingly hapless one. Democrats came in high with HEROES; Republicans are now coming in low. Provided the GOP can speak with a united voice, it’s fairly easy to see how they split the difference on the core components of a deal—look no further than our handy matrix. In the meantime, the important thing is for members to get this out of their system, save face, allow both sides to fight the good fight, and meet somewhere in the middle to get to a package everyone knows needs to get done. Cross your fingers for a productive weekend.

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
<i>July 22, 2020</i>		<i>www.policyresolutiongroup.com</i>		

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.”