

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 apprises 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 gaveled 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](#).

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.**

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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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.

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](#), [TCJA-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.

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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](#).

