

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 program 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 program, 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](#).
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