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CORNERSTONE

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COVID-19 Legislative Update

May 22, 2020

Please see below for updates on legislation related to COVID-19. Updates are sent every Monday, Wednesday, and Friday evening. **The Legislative Update will not be sent on Monday, May 25, as it is Memorial Day.** I'll be back to the normal schedule on Wednesday, May 27.

5.22.2020. COVID-19 Legislative Update

Legislation

Supplemental IV – The Heroes Act (HR 6800)

Timeline/Process/Politics: Republicans continue to assert that they will wait a few more weeks before taking up another coronavirus supplemental. **The timeline may compact as Senate Republicans get more nervous about electoral possibilities and McConnell faces pressure from more [vulnerable](#) members of his caucus.** Additionally, the impetus of negotiations may be a climbing unemployment rate and a White House that wants to win reelection – when the Senate returns in the beginning of June, McConnell may be facing a whole batch of dismal economic statistics.

Policy: The Heroes Act passed the House last Friday, May 15, but Leader McConnell has indicated that they won't be considering the bill as a base for negotiations. The bill nonetheless outlines Democratic priorities (to a certain extent). Heroes Act text (as of 5/12/2020) [here](#). Section by section [here](#). One pager [here](#). State and Local one pager [here](#). NCAI's summary on tribal provisions [here](#). Manager's amendment [here](#). House Rules Committee report [here](#).

While Senate Republicans continue to workshop liability protection provisions, Senate Democrats released a proposal outlining their health priorities for the next package. Senators Shaheen, Smith, Wyden, and Murray took the lead in assembling though it enjoys broad support from the Democratic caucus. **The proposal mainly focuses on provisions to increase access to health care coverage and reduce out-**

- Removes income cap on premium tax credits and increases the percentage of premiums credits will cover (Sen. Shaheen's Improving Health Insurance Affordability Act – press release [here](#));
- Provides temporary elimination of the repayment burden of excess advance premium tax credits (bill led by Sens. Van Hollen and Cardin – press release [here](#), one pager [here](#), text [here](#));
- Ensure coverage for all costs for COVID-19 treatment;
- Provide a two-month special federal enrollment period (Sen. Casey [proposal](#));
- Restore funding for marketplace outreach/enrollment support (Sen. Shaheen's MORE Health Education Act – press release [here](#), text [here](#));
- COBRA subsidies for those recently unemployed (Sen. Durbin is leading the effort – press release [here](#), letter [here](#));
- Increase incentives for states to expand Medicaid (Sen. Warner's SAME Act – press release [here](#), text [here](#));
- Overturn Administration rules that have promoted health care plans that do not cover essential health benefits/discriminate against those with preexisting conditions (Sen. Baldwin's No Junk Plans Act – press release [here](#), note that the House has already passed its companion legislation);
- Rescind guidance allowing states to waive ACA consumer protections (Sen. Warner's Protecting Consumers with Preexisting Conditions Act – press release [here](#), text here).

Legislation to Watch

Yesterday afternoon, the Senate hotlined a Rubio-Cardin-Collins-Shaheen bill similar to the Phillips-Roy bill the House intends to vote on next week. The bill aims at giving businesses with PPP loans flexibility on the 8-week spending deadline and proportion of loan limited for non-payroll expenses. The hotline didn't clear, but there were rumors of Sen. Gardner or another Republican attempting to move it by UC for political purposes. **As the bill is similar to the one the House expects to vote on next week, the Senate could take it up again soon.** Text [here](#). One pager [here](#). Highlights below:

- Extends the deadline to apply for a PPP from 6/30/2020, to 12/31/2020;
- Allows borrowers a full **16 weeks to use funds**, extending it from 8 weeks;
- Expand use of funds to include PPP and investments in safety for reopening;
- Clarify the lender hold harmless provision.

Highlights of the Phillips-Roy bill the House intends to vote on next week below. Press release [here](#).

- Allow loan forgiveness for expenses **beyond the 8-week covered period**.
- **Remove the limitation that restrict non-payroll expenses** (rent, utilities) to 25% of the loan.
- Eliminate limitations that restrict loan terms to 2 years.
- Allow businesses that take PPP loans to be eligible for payroll tax deferment.

Passed Legislation

New Implementation Information and Guidance

- **5/21** – There is still \$100 billion remaining to be disbursed to health providers. The next batch of funding will likely focus on Medicaid providers who have not received any funding to date (many of which may be pediatric and dental practices) and potentially high Medicaid DSH hospitals. Subsequent tranches may focus on safety net (serve high number of uninsured) hospitals.

Previously Reported Implementation Information and Guidance

Small Business Loans & Treasury Main Street Lending

- 5/20 – In reviewing the PPP loan forgiveness application, our team has found some information that may prove useful to organizations receiving PPP loans. Information below:
 - In determining the forgiveness amount, the SBA will forgive the **LESSER** of three things:
 - **The total of the following:**
 - Payroll costs incurred or paid during the Covered Period or Alternative Payroll Covered Period **PLUS**
 - Amount of mortgage interest payments paid during Covered Period on real or personal property on an obligation incurred prior to 2/15/20 **PLUS**
 - Amount of business rent or lease payments for real or personal property paid during covered period pursuant to agreements in place prior to 2/15/20 **PLUS**
 - Amount of business utility payments paid during the covered period for business utilities for which service began before 2/15/20 **MINUS**
 - Any salary/hourly wage reduction amount required (this calculation is spelled out in the application) **MULTIPLIED BY**
 - FTE Reduction quotient (this calculation is spelled out in the application).
 - **The PPP loan amount.**
 - **Total Payroll costs divided by 0.75.**
 - The covered period **begins on the date the loan proceeds are disbursed** to the borrower.
 - In some portion of the loan forgiveness calculation, the application requires the borrower to use the Covered Period. In other portions of the loan forgiveness calculation, **certain borrowers can choose the Covered Period of the Alternative Payroll Covered Period**. Those borrowers with a biweekly (or more frequent) payroll schedule can elect to calculate eligible payroll costs using the 8-week period that begins on the first day of their first pay period following the PPP loan disbursement date. Those **borrowers who choose the Alternative Payroll Covered Period for payroll calculation MUST**

throughout the loan forgiveness calculation.

- 5/16 – SBA released updated information on PPP and EIDL loans from both CARES and COVID 3.5 rounds of lending. EIDL COVID-19 Loan data [here](#). PPP Data [here](#).
- 5/15 – Treasury released the loan forgiveness application for businesses that have received loans under the Paycheck Protection Program. Application [here](#).
- 5/11 – SBA released updated PPP statistics, including recent state by state information [here](#).
- 5/8 – SBA's Inspector General released a report on the implementation of the Paycheck Protection Program. The report found the Administration's administration of the program did not align with the law in four ways: prioritization of underserved/rural markets, loan proceeds eligibility for forgiveness, guidance on loan deferment, and registration of loans. Report [here](#).
- 5/7 -- The Washington Post [reported](#) that the SBA has imposed a new loan limit on the department's Economic Injury Disaster Loans (EIDL), moving the loan limit from \$2 million to \$150,000. The department also [announced](#) that it would only be accepting applications from agricultural businesses onward.
- 5/6 – Treasury released an updated FAQ for the Paycheck Protection Program. FAQ [here](#).
- 5/3 – Treasury and SBA released a data set for the most recent tranche of P3 funds. Data [here](#).
- 4/30 – The IRS issued [guidance](#) that most expenses funded by *forgiven* Paycheck Protection Program (PPP) loans are non-deductible for federal income tax purposes.
- 4/30 – The Federal Reserve released the term sheets and other information relating to its expansion of scope and eligibility of the Main Street Lending Program. Term sheets and other information [here](#). Other information on other facilities and programs [here](#).
- 4/29 – SBA announced that from 4:00-11:49pm on 4/29, SBA systems [would](#) only accept loans from lending institutions with asset sizes less than \$1 billion dollars. The move was aimed at ensuring access to the PPP loan program for smaller lenders and their customers.
- 4/28 – SBA announced it would no longer accept PPP loan applications submitted by robotic processing systems.
- Treasury released an interim final rule for the Paycheck Protection Program on how lenders will calculate loan amounts for employers with seasonal employees. Rule [here](#).
- 4/24 – SBA issued a procedural guidance on participation sales [here](#).
- 4/24 – SBA released an interim final rule on requirements for Promissory Notes, Authorizations, Affiliation, and Eligibility. Interim Final Rule [here](#). Additional eligibility criteria and requirements for certain loans [here](#).
- 4/24 – Data on Economic Injury Disaster Loans [here](#), EIDL Advance [here](#).
- 4/23 – The Treasury Department [asked](#) all publicly traded companies that received funds under the program to return the funds within two weeks.
- The Treasury Department released an [interim final rule](#) on the small business provisions in the bill. See [here](#) for a memo Cornerstone put together on the interim

- Top-line overview of the program [here](#)
- Lender information [here](#), Borrower information [here](#), borrower application [here](#)

State, Local, and Tribal Government Funding

- 5/20 – Tribes have begun to receive instructions for responding to Treasury’s second data request last night. An email from Treasury should have gone to whomever at the Tribe submitted Treasury’s first data request. **The portal closes at 11:59 p.m. Alaskan time on Tuesday, May 26.**
- 5/15 – In a court document filed Friday, Treasury indicated that it will open a portal this week for tribes to submit information outlined in last week’s data request. Tribes will have five business days to submit the data (expected submission deadline is May 26). Treasury expects to process the data and determine allocations within a week of the submission deadline (by June 4). Treasury will disburse payments one business day after Treasury has finished computing amounts. In a call today, Treasury indicated that they will hold back funding for Alaskan Native Corporations (ANCs). Treasury also explained that the data request for employees should include both government employees and tribal-entity employees, while the expenditure data should only include government expenditures.
- 5/14 – Treasury issued a data request to disburse the second round of funding for tribes in the Coronavirus Relief Fund. The data request includes information on employees and expenditures. Portal will likely open sometime next week. More information [here](#).
- 5/12 – Treasury released its list of payments to states and qualifying localities for the Coronavirus Relief Fund. List [here](#).
- 5/8 – Treasury still has a remaining \$3.2 billion to distribute among tribes and plans to submit a new data request soon, with a portal open soon after. The next round of funding will be based on employment and expenditure data of Tribes and tribally-owned entities.
- 5/5 – Treasury released distribution details regarding the tribal portion of the Coronavirus Release Fund. The first **60% of the fund will be distributed to tribes based on population** used in the Indian Housing Block Grant (IHBG) and will include a floor of \$100,000. The **remaining 40% will be distributed based on the number of individuals employed by the Tribe**, including employees of tribally owned entities. Treasury still needs to collect and verify employment data before distributing the second round of funding. Amounts for ANCs will not be distributed, as litigation is still pending. Press release [here](#). Details [here](#).
 - More than a dozen tribes have sued the Treasury Department over its guidance identifying Alaska Native Corporations (ANCs) as eligible entities for the fund. Last Wednesday, Secretary Mnuchin said that the department would not be releasing funding until Tuesday, April 28 – two days after the deadline outlined in the CARES Act. The court on Monday preliminarily [enjoined](#) Treasury from disbursing funds to ANCs.

- 4/27 – USDA announced that Kansas and Virginia have been approved to operate Pandemic Electronic Benefit Transfer (EBT), authorized by the Families First Coronavirus Response Act (FFCRA), which provides assistance to families of children eligible for free or reduced-price meals dealing with school closures.
- 4/22 – Treasury issued guidance on the state/local/tribal governments fund [here](#). The guidance further defines what expenses qualify as “necessary expenditures” and provides examples as well as examples of ineligible expenses.
- 4/13 – Treasury launched its [web portal](#) for payments to state, local, and tribal governments. Treasury announced that eligible government entities must provide required information by Friday, April 17 to receive payment within the 30-day window allowed under CARES and those that miss that deadline may not receive funding. Submission page [here](#). Some highlights from the announcement below:
 - Funds are only allowed to be used for expenses which
 - Are necessary expenses during the coronavirus emergency,
 - Were not accounted in the most recent budget (as of March 27, 2020), and
 - Were incurred between 3/1/2020 – 12/30/2020.
 - Eligible local governments are those below the state level (county, municipality etc.) with a population higher than 500,000. See [here](#) for data sources and the distribution methodology. See [here](#) for a list of eligible local government units.
 - Amounts paid to governments will be based on population and the amounts allocated to states will be reduced by the total amount provided to local governments in the state.

Oversight

- 5/18 – The Congressional Oversight Commission (COC) issued its first report. The Commission was created by the CARES Act to conduct oversight of the Treasury Department and the Federal Reserve’s implementation of Division A , Title IV , Subtitle A of the CARES Act, which provided \$500 billion for Treasury and the Federal Reserve for loans and loan guarantees to the airline industry, businesses critical to national security, and medium-sized businesses through lending facilities. Report [here](#). Cover letter [here](#).
- 5/7 – The remaining members of the House Select Committee on Coronavirus Crisis were named. Minority Whip Scalise’s priorities for the committee [here](#). Full Committee membership below:
 - Chair Jim Clyburn (D-SC) – Chair
 - Maxine Waters (D-CA)
 - Carolyn Maloney (D-NY)
 - Nydia Velázquez (D-NY)
 - Bill Foster (D-IL)
 - Jamie Raskin (D-MD)
 - Andy Kim (D-NJ)
 - Steve Scalise (R-LA) – Ranking Member

- Rep. Jackie Walorski (R-IN)
- Rep. Mark Green (R-TN)
- 4/29 – Speaker Pelosi [announced](#) the Democratic members of the House Select Committee on the Coronavirus Crisis, to be chaired by Majority Whip Jim Clyburn.

Public Health Systems, Education, and Healthcare

- 5/20 – HHS announced that the Health Resources and Services Administration (HRSA) has provided \$225 million to Rural Health Clinics (RHCs) for COVID-19 testing. The funding came from COVID 3.5 (formally titled “Paycheck Protection Program and Health Care Enhancement Act”). Press release [here](#).
- 5/18 – The Department of Housing and Urban Development (HUD) announced nearly \$77 million in a fourth wave of CARES Act funding, supporting up to 8,300 additional vouchers. Provided through HUD’s Section 811 Mainstream Housing Choice Voucher Program, this wave of relief funds will provide affordable housing to non-elderly people living with disabilities. Press release [here](#).
- 5/13 – HRSA announced the winners of \$15 million in telehealth grants that were authorized through the CARES Act. Press release [here](#). Awards [here](#).
- 5/1 – As part of the \$100 billion dedicated to hospitals and health providers in CARES, **HHS is distributing funding to “hotspot” hospitals and providers**. HHS will be distributing \$12 billion to 395 hospitals who provided inpatient care for 100 or more COVID-19 patients through April 10, 2020. **\$2 billion of the funding will be distributed based on low-income/uninsured data** (Medicare and Medicaid disproportionate share and uncompensated care payments).
- 4/27 – Outline of the Provider Relief Fund with additions from COVID 3.5 [here](#).
- 4/27 – Education Sec. Betsy DeVos [announced](#) that more than \$300 million in discretionary grant funds will be available for states to use to create adaptable, innovative learning opportunities for K-12 and postsecondary learners in response to COVID-19. The grants will be funded through the Education Stabilization Fund (ESF), authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.
- 4/26 – CMS announced that it is reevaluating the amounts that will be paid under its Accelerated Payment Program (AAP) and suspending its Advance Payment Program to Part B suppliers effective immediately. Press release [here](#).
 - The announcement came as a surprise to Democrats, who were actively negotiating with the department officials on modifying the program.
- 4/23 – As part of negotiations on 3.5, the Administration made [commitments](#) on **how the next \$60 billion in the health relief fund will be distributed**. HHS has committed that it will send out an additional \$60 billion dollars in the coming weeks, much of it coming within the next 10 days.
- 4/23 – As part of negotiations on 3.5, the Administration made [commitments](#) on changes to **Medicare advance payment policies**. The administration committed that, by the end of this week, Secretary Mnuchin and Chief of Staff Meadows will release a letter stating that they will:

interest rate.

- Use their administrative authority to **extend the repayment period** beyond 12 months.
- Work with Congress and support legislation in Corona 4 that will **place the liability for these payments in Treasury's General Revenue fund**, rather than the Medicare Hospital Insurance and Supplemental Medical Insurance Trust Funds. The expansion of these programs must not adversely affect Medicare's solvency or result in premium increases for seniors.
- 4/22 – CARES Act Provider Relief Fund overview [here](#). State by state breakdown of first payment [here](#).
- 4/9 – Secretary DeVos indicated that she would be moving to "immediately distribute" the \$6 billion in CARES for emergency financial aid grants to college students. The grants can be used by college students for technology, course materials, food, housing, and healthcare. DeVos distributed the funding to colleges, which are meant to then distribute the aid among students. See [here](#) for the specific allocations for each college.

Individual and Business Tax Relief

- IRS guidance on deferral of payroll taxes [here](#)
- House Ways and Means factsheet on Economic Impact Rebate portal [here](#)
- IRS's FAQ page on individual economic relief [here](#)
- Treasury Guidance on Employee Retention Tax Credit [here](#)
- Treasury FAQ on Employee Retention Tax Credit [here](#) (updated 4/29)

Economic Stabilization

- 4/30 – Transportation Secretary Elaine Chao announced the FAA will begin awarding the AIP and other discretionary grants funding through the CARES Act. Press release [here](#). Complete list of grants [here](#). Map of airports receiving funding [here](#).
- 4/10 – Treasury Q&A on Loans to Air Carriers and Eligible Businesses and National Security Businesses [here](#). Loan application [here](#).
- 3/30 – The Treasury Department released guidance on payroll support to airline industry employees, and on loans to the airline industry and businesses critical to national security. Guidance for payroll support [here](#). Guidance on procedures and minimum requirements for loans [here](#). Treasury press release [here](#).

Supplemental 3.5 – Interim Emergency Coronavirus Relief, formally titled “Paycheck Protection Program and Health Care Enhancement Act” (HR 266)

The President signed the bill into law on April 24. Text [here](#). Section by section [here](#). Summary of hospital and testing provisions [here](#). DPCC one pager [here](#). Senate Democrats [summary](#) of health provisions. Overview of [commitments](#) regarding health funding and Medicare advance payments the Administration made as part of negotiations.

Supplemental III – Coronavirus Aid, Relief, and Economic Security (CARES) Act

Republican section by section [here](#).

Supplemental II – *Families First Coronavirus Response Act (HR 6201)*

The Senate passed the House bill on March 18 and the President signed the bill into law that evening. Bill text [here](#). Factsheet [here](#). Bill section by section [here](#). A summary of paid leave provisions, incorporating changes made by technical correction, is [here](#).

Supplemental I – *Coronavirus Supplemental*

Signed by the President March 6. Text [here](#), summary [here](#).

Congress

Hearings/Floor Activity: The House plans to bring members back every two weeks and continue oversight of the administration. What's considered on the floor, as indicated by what's scheduled for next week, is pairing COVID-19-related bills with non-COVID-related must-pass legislation (NDAA, appropriations etc.). Look for COVID-19-related bills to be led by Democratic front liners and be bipartisan, as Speaker Pelosi will be looking to give them wins going into the November election.

Next week the House will be back May 27 and 28 to vote on the FISA bill through proxy voting. After May 28, House Members will receive 72 hours' notice to return to D.C. for additional votes.

Appropriations: HAC is still a couple of weeks away from formulating a real markup schedule. If that's the case, **we're not likely to see markups commence until mid-to-late June** at best. It will take some time to develop and implement committee guidance and procedures for the new remote latitude afforded through the House Rules change. The plan remains to **move through COVID Phase 4 before turning to FY21**. We still expect a **rapid-fire markup process**. The hope is that all 12 subcommittees can go through subcommittee markups over the course of a week – whenever the markups begin – with most of the full committee markups in the following week. HAC-D will likely go in the middle of the pack, largely due to the fact they still need to work on the classified annex which hasn't been addressed yet as staff cannot work in classified spaces.

The FY21 Senate Appropriations schedule has slipped indefinitely, and the staff are no longer saying bills will be marked up prior to July 4th recess. Chairman Shelby has publicly said that the **Homeland Security and the MilCon-VA spending bills are unlikely to move forward due to political disagreements over funding for the border wall**. The Defense bill is unlikely to go through the formal markup process and may post a Chairman's recommendation and explanatory statement online as was done in FY18. **Last week, Leader McConnell and Chairman Shelby announced that they had reached an agreement to exempt VA health programs from the budget caps by designating it as emergency spending**. This would save \$11-\$12 billion on the non-defense discretionary side and increase the odds of producing bipartisan bills. Another plan would be to agree to a budget cap adjustment similar to the Overseas Contingency Operations (OCO). If

subcommittee allocations for the 12 spending bills.

NDAAs: HASC and SASC are finalizing their bills. Both HASC and SASC are looking to **markup NDAA 2021 the week of June 8**, with the goal to have a bill to floor before the 4th of July recess. SASC plans to markup June 8-10 and HASC plans to markup June 10-12. Dates could still slip based on the availability of floor time. SASC is finishing the Subcommittee Chair and Ranking Members briefings on their bill sections. Next week will be a final review of the bill then printing the markup books the first week of June.

Remote voting/virtual protocols: Last week, **the House passed the McGovern-Lofgren resolution (H.Res 965) to allow proxy voting and remote hearings and markups**. The House passed the bill by a party line vote (217-189). House Republicans have not been enthusiastic about the prospect of remote markups and Floor action. The Senate has not moved forward with any proxy voting or remote procedures.

Members of Congress in Quarantine or Treatment (new additions in bold)

Tested Positive (0):

Currently Self-Quarantined (1): Sen. Lamar Alexander (R-TN)

Recovered (7): Sen. Rand Paul (R-KY), Rep. Joe Cunningham (D-SC), Rep. Ben McAdams (D-UT), Rep. Mario Diaz-Balart (R-FL), Rep. Mike Kelly (R-PA), Rep. Nydia Velazquez (D-NY), Rep. Neal Dunn (R-FL)

Completed Quarantine (37): Sen. Ted Cruz (R-TX), Rep. Mark Meadows (R-NC), Sen. Lindsay Graham (R-SC), Rep. Don Beyer (D-VA), Rep. Sharice Davids (D-KS), Rep. Doug Collins (R-GA), Rep. Paul Gosar (R-AZ), Sen. Cory Gardner (R-CO), Sen. Rick Scott (R-FL), Rep. Matt Gaetz (R-FL), Rep. Jason Crow (D-CO), Rep. Julia Brownley (D-CA), Rep. Ben Ray Luján (D-NM), Rep. Gwen Moore (D-WI), Rep. Stephanie Murphy (D-FL), Rep. John Yarmuth (D-KY), Rep. Adam Schiff (D-CA), Rep. Vincente Gonzalez (D-TX), Rep. Drew Ferguson (R-GA), Rep. David Schweikert (R-AZ), Rep. Anthony Brindisi (D-NY), Rep. David Price (D-NC), Rep. Ann Wagner (R-MO), Rep. Kathleen Rice (D-NY), Rep. Matt Cartwright (D-PA), Rep. Tom Cole (R-OK), Rep. Steve Scalise (R-LA), Rep. Frederica Wilson (D-FL), Rep. Andy Kim (D-NJ), Rep. Kendra Horn (D-OK), Sen. Mike Lee (R-UT), Sen. Mitt Romney (R-UT), Rep. Katie Porter (D-CA), Rep. Seth Moulton (D-MA), Rep. Lizzie Fletcher (D-TX), Rep. Josh Gottheimer (D-NJ), Rep. Ayanna Pressley (D-MA), Rep. Mikie Sherrill (D-NJ)



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