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Subject: COVID-19 Legislative Update 5.4.2020.
Date: Monday, May 4, 2020 9:43:01 PM
Attachments: [image001.png](#)

Good evening,

Please see below for updates on legislation related to COVID-19. Updates are sent every Monday, Wednesday, and Friday evening.

5.4.2020. COVID-19 Legislative Update

Legislation

Supplemental IV – CARES 2.0. / Phase 4

Timeline: We could see a bill released as soon as later this week or sometime next week. **Speaker Pelosi has indicated that she would like to get a House vote done by May 15**, which shortens the window for introduction. Even if the House passes a bill by Pelosi's deadline, it will likely be a while before the Senate moves, as Republicans are waiting to see how things play out. It will likely take some time for a deal to be struck and Republicans could require another trigger like SBA PPP funding running out again. Passage is at least a couple more weeks away, with the **final passage coming in late May/early June**.

Process/Politics: All reports indicate that House Democrats will move first– there doesn't seem to be a lot of drafting going on in the Senate currently, though it is entirely possible Republicans release their own draft after seeing what House Dems introduce. Senate Democrats have been working closely with House Democrats on sharing priorities. This process may be more grinding than past supplementals as **the divide between Republicans and Democrats seems to be growing**.

Policy: We're back in the liminal space between bills, where a bill has yet to be introduced, a deal has yet to be reached, and there is a fluid and wide-ranging debate occurring on what should be included. Committees have drafted their pieces and passed them along to leadership. The bill will likely be broader than 3.5 and more tailored to COVID-19 than the bill Speaker Pelosi introduced before Senate passage of CARES.

One of the main debates has been on **funding for state, local, and tribal governments**, including the overall funding level and how it will be distributed. In a press conference last week, Speaker Pelosi **seemed to open the door a little bit in terms of acknowledging that money should be focused on COVID response** as opposed to blanket funding.

The other heated debates occurring is over **liability protections**. Leader McConnell and Leader McCarthy have [indicated](#) that any bill that goes forward must have liability protections for employers. What Republicans' vision of what that entails exactly remains murky, but the **U.S. Chamber of Commerce released a [liability plan](#) that may offer some insights**. Highlights include:

- Safe-harbor from certain **health privacy requirements** to allow reopening/contact tracing;
- Protection from **anti-discrimination rules**, as employers may use age or underlying health

- conditions to make reopening decisions;
- Clarify scope of **OSHA requirements** on providing PPE to all employees;
- Safe-harbor for temporary **workplace policy changes**, limit application of the WARN Act;
- Protection against **exposure claims** (i.e. if a customer/employee is exposed to COVID-19 at business facility and as a result of the business's action (or lack of), the individual becomes sick);
- Expansion of products covered under the PREP Act for **product liability** purposes;
- Expand CARES Act **medical liability** to all healthcare providers/facilities;
- Automatic stay of **securities litigation** related to COVID-19 pandemic until President's public emergency declaration is rescinded;
- MOU between DOJ and SBA on hold harmless language for **financial services** providers helping to distribute PPP loans.

Democrats have pushed back on inclusion of a liability shield, pointing out that lawsuits serve as a deterrent to companies from taking actions that risk harm. Some Democrats have pointed out that there are concerns around federalism as torts and contract laws are generally under the domain of states. There is also the concern that **a blanket liability shield could incentivize risky behavior and force employees to return to work environments that are unsafe**. Notably, the CARES Act included two minor liability provisions: one related to volunteer health care workers and another related to respiratory devices. **Democrats have indicated that they would oppose a broad liability shield, as proposed by the U.S. Chamber of Commerce**. More moderate Democrats have indicated that they are open to negotiation on this, with some form of a liability shield being included, but targeted in scope.

Other Democratic priorities include rural broadband (there's some bipartisan acknowledgement and support for investing in broadband, as schools try to figure out distance learning), housing relief, small business funding, hospital support, healthcare and frontline worker support (Heroes Fund), another round of individual payments, SNAP, student debt relief. A standalone infrastructure bill will likely come later this year, though **broadband infrastructure may be the exception to this rule and be included in Phase 4, as distance learning and telemedicine become more essential and has bipartisan appeal**.

Today, the Financial Services Committee released its priorities for CARES 2. Text [here](#). Highlights include:

- Monthly **direct payments** to adults (\$2,000) and children (\$1,000);
- Rental and Mortgage relief through:
 - \$100 billion to establish an Emergency Rental Assistance Fund and \$75 billion Homeowner Assistance Fund,
 - Extending **eviction/foreclosure moratorium to renters/borrowers**;
 - Creation of liquidity facility for mortgage services and landlords until payments resume;
- Direct the Federal Reserve to **purchase bonds from tribes, territories, multi-state agencies, cities of 50,000+, and counties with 100,000+ population**;
- Creation of liquidity facility to support nonprofits;
- Requirements of corporations that receive government assistance (provide paid sick leave, eliminate Treasury's ability to waive conditions, ban stock buybacks);

- **Forgiveness of \$10,000 in student debt** for six million private student loan borrowers;
- \$1 billion to the Community Development Financial Institutions (CDFI) Fund;
- Prohibiting debt collection during the pandemic.

Last week we saw priorities and proposals from the [Congressional Black Caucus](#), the [Rural Broadband Task Force](#), and the [Republican Study Committee](#).

Other Legislation to Watch:

Last week, Chairman Wicker (Commerce) and others [announced](#) plans to introduce a **privacy bill specifically focused on privacy issues related to COVID-19**. The Committee plans to formally file the bill early this week and is still receiving feedback before moving forward. No plans for a hearing currently.

Passed Legislation

Implementation Information and Guidance

New information/guidance:

- 5/4 – Treasury released an updated FAQ on 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](#).
- 5/1 – Treasury updated the Coronavirus Relief Fund FAQ to clarify permissible uses. FAQ [here](#).

Previously Reported Implementation Information and Guidance

Small Business Loans & Treasury Main Street Lending

- 5/4 – Treasury released updated FAQ on the Paycheck Protection Program. FAQ [here](#).
- 4/30 – IRS issued [guidance](#) that most expenses funded by *forgiven* Paycheck Protection Program (PPP) loans are non-deductible for federal income tax purposes.
- 4/30 – 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 [will](#) 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 final rule.
- Treasury FAQs on the Paycheck Protection Program
 - Top-line overview of the program [here](#)

- Lender information [here](#), Borrower information [here](#), borrower application [here](#)
- PPP FAQ [here](#) (as of 4/23)

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)

Public Health Systems, Education, and Healthcare

- 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 early next week.** 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). Money will go out Tuesday or Wednesday of next week.
 - These 395 hospitals accounted for 71 percent of COVID-19 inpatient admissions reported to HHS from nearly 6,000 hospitals around the country.
 - A \$10 billion rural distribution will include, rural acute care general hospitals and Critical Access Hospitals (CAHs), Rural Health Clinics (RHCs), and Community Health Centers located in rural areas.
 - Hospitals and RHCs will each receive a minimum base payment plus a percent of their annual expenses. This expense-based method accounts for operating cost and lost revenue incurred by rural hospitals for both inpatient and outpatient services. The base payment will account for RHCs with no reported Medicare claims, such as pediatric RHCs, and CHCs lacking expense data, by ensuring that all clinical, non-hospital sites receive a minimum level of support no less than \$100,000, with additional payment based on operating expenses. Rural acute care general hospitals and CAHs will receive a minimum level of support of no less than \$1,000,000, with additional payment based on operating expenses. Money also expected to be sent via wire Tuesday/Wednesday.
- 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. Since expanding the AAP programs on March 28th, CMS approved over 21,000 applications totaling \$59.6 billion in payments to Part A providers, which includes hospitals. For Part B suppliers, including doctors, non-physician practitioners, and durable medical equipment suppliers, CMS approved almost 24,000 applications advancing \$40.4 billion in payments. For providers who have already applied for the program, the announcement doesn't affect them. 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. That funding will be distributed as follows:

- \$10 billion for hotspots, which will be for the **top 100 counties with Covid-19 cases** to date. Payments are expected to be **distributed by Wednesday, April 29**. The funding will be based on total ICU beds and Covid-19 patient admissions, cumulatively for the period from January 1 to April 10. An additional weighting factor, using Medicaid DSH status, will provide a greater proportion of this funding to those that treat underserved patients.
- \$10 billion in additional hotspot funding, expected to go out in the next 45 days.
- \$10 billion for **rural health care**.
- \$400 million for **Native American health care systems**. Payments are expected to be distributed on Friday, April 24.
- \$20 billion to reconcile the inequities from the initial \$30 billion, which was based on Medicare fee-for-service payments and left out providers that rely heavily on non-FFS payers. When combined with the initial \$30 billion, this **total will be calculated based on the provider's portion of 2018 net patient revenue**. Of this total, \$9.3 billion will be released by Friday, and the remaining \$10.7 billion **will require providers to submit an application attesting to their revenue**. Those payments will go out weekly on a rolling basis.
- \$10 billion to cover the **cost of providing treatment for the uninsured. Applications will be accepted within 10 days**, with payments going out within 30 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:
 - Use their administrative authority to **reduce the interest rate** down from what is currently 10.25 percent to a rate that is more in line with a traditional federal 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. The Department did not issue guidance on how colleges are to structure the program, but colleges will be required to sign a form certifying that the funds were used in accordance with the law. See [here](#) for the specific allocations for each college.

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](#).

State, Local, and Tribal Government Funding

- 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);
 - 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.
 - 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.

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Oversight

- 4/29 – Speaker Pelosi [announced](#) the members of the House Select Committee on the Coronavirus Crisis, to be chaired by Majority Whip Jim Clyburn. The Democratic members are the following:
 - Chairwoman Maxine Waters (Financial Services)
 - Chairwoman Carolyn Maloney (Oversight and Reform)
 - Chairwoman Nydia Velázquez (Small Business)
 - Chairman Bill Foster (Subcommittee on Investigations and Oversight of Science, Space, and Technology Committee)
 - Chairman Jamie Raskin (Subcommittee on Civil Rights and Civil Liberties of Oversight and Reform Committee)
 - Chairman Andy Kim (Subcommittee on Economic Growth, Tax, and Capital Access of Small Business Committee)

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

After a unanimous vote by the Senate, the House passed the bill on March 27 and the President signed the bill into law shortly after. Final text [here](#). Democratic summary [here](#). 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

Session: **The Senate returned today**, with multiple nominations and hearings set on the calendar. The House intends to come back next week. Leader McCarthy released a [memo](#) outlining a four-step plan to reopening the House. The House will not return to a normal voting schedule for quite some time. Members will continue to be called back to vote as deals are struck, but likely not a long time before. This is expected to continue over the next few months, as the House considers, in addition to COVID-related packages, appropriations, NDAA, FISA, Flood Insurance, WRDA, surface transportation reauthorization, etc. However, **some committees may call their members back even when no floor activity is scheduled**.

D.C. is currently under a stay-at-home order, and Maryland and Virginia have similar orders in place. Speaker Pelosi has advised members to keep their schedule flexible and said that the House may meet during weeks previously scheduled as District Work Periods.

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Appropriations/NDAA: While specific timing continues to be unclear, HAC will likely stick to the original subcommittee order of markups, just shifting everything back. The first markups were slated to begin April 22 but will likely now be at the end of June/beginning of July. Committee staff and members are working to find a way to move forward. When markups occur will depend on when the House returns and even then, **the overriding feeling is to focus on passing the next package and then turn to FY21 markups**. Per previous reports, once markups get underway, it will **likely be a rapid-fire process** with the committee's goal to have all 12 cleared and reported from subcommittee and full committee in a 2-3 week span.

Majority and minority staff have been discussing how to space out members appropriately during markups and using larger hearing rooms. SAC has given subcommittees direction to stick with the original plan of marking up all of the bills in June.

This year's NDAA markup has been "indefinitely postponed". Reps. Adam Smith and Thornberry (HASC Chair and RM) sent a [letter](#) to the committee members saying that they will schedule the date of the markup once the House schedule for the next few months becomes clear. **SASC is 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.

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Remote voting: A bipartisan group in the House is reviewing proposals for proxy voting and procedures to reopen the House. The group includes Majority Leader Hoyer, Minority Leader McCarthy, Chairman McGovern (Rules), Ranking Member Cole (Rules), Chairwoman Lofgren (House Admin), and Ranking Member Davis (House Admin). **There continues to be a push for [remote voting](#).** The New Democrat Coalition sent letter last week supporting remote voting. The resolution proposed by Chairman McGovern [here](#) and includes protocols for proxy floor voting, and remote committee hearings and markups. Rules Majority proxy voting FAQ [here](#). Leader McConnell, as of right now, is not supportive of any form of remote voting.

Other Floor Action: The House has issued [guidance](#) indicated that Floor materials are to be submitted through a secure email address instead of dropped off at the Speaker's Lobby or Cloakrooms. Members are still allowed to drop off materials in person. Speaker's Dear Colleague on the guidance [here](#).

Hearings and Meetings: While the House will not be in session next week, the Senate will be holding various hearings. Only the Chair and Ranking Member will be permitted to be in the room and other members will be participating virtually. Senators are being trained on how to use the technology this weekend.

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

Tested Positive (0):

Currently Self-Quarantined (0):

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 Lujan (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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