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COVID-19 Legislative Update *May 8, 2020*

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

5.8.2020. COVID-19 Legislative Update/

Legislation

Supplemental IV – CARES 2.0. / Phase 4

Timeline/Process/Politics: While Majority Whip Clyburn has told Members that votes next week are "unlikely", it is still not out of the realm of possibility. There is still a good amount to be worked out between House and Senate Democrats on what CARES 2.0. will include. Once Democrats form a consensus, negotiations with Republicans will begin, though **there's a wide gap between Democrats and Republicans on the big issues. It could be June/July before the parties come to an agreement and pass it.**

While Republicans have publicly stated they intend to wait and see what needs funding/fixing before moving forward with another package, various factors—PPP running out of funding, needs of states/local/tribal governments, bad economic data and pressure from the White House—could pressure them to move quicker.

Policy: The bill currently is in the range of \$1.5-2 trillion. With the caveat that the bill is still being drafted, no bipartisan negotiations have occurred, and many pieces will change in the coming days, the bill will likely include significant funding for state, local, and tribal governments, hazard pay for frontline workers, extension for unemployment insurance, housing relief and rental assistance, additional PPP funding, expansion of the employee retention tax credit, additional stimulus checks, additional funding for Medicaid providers, and funding for a national testing plan.

Leader McConnell has marked liability shield provisions as a “red line” issue that must be included in the next Coronavirus package. The Senate Judiciary Committee is already involved in negotiations. Leader McConnell's office they are making headway in drafting language. Leader McConnell has insisted that it must be included in the next package and not as a separate bill. See below for some provisions that could be included.

- A federal shield from state personal injury claims for those following federal/state/local guidelines.
- Gross negligence and willful misconduct claims would not be shielded.
- A broader medical malpractice shield (virtually no liability for any type of claim if they can show a connection to COVID-19) but would not shield gross negligence or willful misconduct claims.
- Heightened standard for plaintiffs to prove that business/facility violated COVID-19 safety standards and prove that harm was caused by COVID-19.
- Mandate the court could not move to discovery phase until after ruling on a motion to dismiss.

Today during House pro forma Reps. Stephanie Murphy (D), John Katko (R), Suzan

DelBene (D), Brian Fitzpatrick (R), and Chris Pappas (D) introduced a bill aimed at **expansion of the employee retention tax credit**. This is a proposal that has been championed by the New Democrat Coalition. Text [here](#). One pager [here](#). Highlights from the bill below:

- Increasing credit percentage to 80 percent of qualified wages;
- Increasing the per-employee limitation to \$15,000 per calendar quarter;
- Altering the large employer treatment threshold to employers having more than 1,500 employees or having gross receipts above \$41.5 million in 2019;
- Phasing in the credit, so employers who have experienced more than a 20 percent decline in gross receipts can claim a portion of the credit;
- Clarifying that “qualified wages” include qualified health benefits and employers who continue providing such benefits qualify even if they do not continue paying qualifying wages;
- Allowing state, territory, and tribal governmental employers (including subdivision/agencies of these entities) to claim the credit if these employers retain employees; and
- Allow employers to be eligible for both ERTC and PPP but put guardrails in place to prevent “double dipping.”

Passed Legislation

New Implementation Information and Guidance

- 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](#).
- 5/8 – On a White House call yesterday, the next payments to tribes will come in approximately a month. Treasury still has a remaining \$3.2 billion to distribute among tribes. **Treasury plans to submit a new data request soon, with a portal open as early as next week**. Tribes will likely have a few weeks to respond to the request and then Treasury will take a couple of weeks to process the data and determine a formula. The next round of funding will be based on employment and expenditure data of Tribes and tribally-owned entities.
- 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.
- 5/7 – 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)
 - o Nydia Velázquez (D-NY)
 - o Bill Foster (D-IL)
 - o Jamie Raskin (D-MD)
 - o Andy Kim (D-NJ)
 - o Steve Scalise (R-LA) – Ranking Member
 - o Rep. Jim Jordan (R-OH)
 - o Rep Blaine Luetkemeyer (R-MO)
 - o Rep. Jackie Walorski (R-IN)
 - o Rep. Mark Green (R-TN)
- Note for providers: CMS is interpreting language in FFCRA and CARES as requiring providers to cover testing and treatment of uninsured COVID patients.

Previously Reported Implementation Information and Guidance

Small Business Loans & Treasury Main Street Lending

- 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 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](#)

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](#)
- 4/29 – Treasury FAQ on Employee Retention Tax Credit [here](#)

Public Health Systems, Education, and Healthcare

- 5/1 – As part of the \$100 billion dedicated to hospitals and health providers in CARES, HHS has distributed funding to “hotspot” hospitals and providers. HHS distributed \$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 was distributed based on low-income/uninsured data (Medicare and Medicaid disproportionate share and uncompensated care payments). Money went out on Tuesday and 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. 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:
 - 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. 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 Governments

- 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.

- 5/5 – Treasury released an updated FAQ regarding distribution of CARES Act state/local funds. FAQ [here](#).
- 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.

Oversight

- 5/7 – Leadership announced the remaining members of the House Select Committee on the Coronavirus Crisis. Speaker Pelosi had [announced](#) earlier the Democratic members of the Committee Members of the Committee are listed 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. Jim Jordan (R-OH)
 - Rep Blaine Luetkemeyer (R-MO)
 - Rep. Jackie Walorski (R-IN)
 - Rep. Mark Green (R-TN)

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: While the Senate returned earlier this week, the House has yet to confirm when it will return. Whip Clyburn indicated on a call earlier this week that the House will likely return the week of May 18.

Hearings and Meetings: The Senate held the first in-person hearings this week, with limited attendance and required social distancing protocols.

Appropriations: While specific timing continues to be unclear, HAC will likely stick to the original subcommittee order of markups, just shifting everything back. Staff is continuing to work through FY21 and many subcommittees are in the final stages of wrapping up their bills. Chairwoman Lowey intends to have subcommittees ready to markup mid-May. The expected order is the following: LHHS; AG; CJS; SFOPs; E&W; DOD; MilCon; FSGG; Interior; THUD; Homeland; and Leg Branch. HAC-D will be limited in marking up the classified portion of the bill, as staff cannot do so remotely and will need to complete it upon return to their offices. The Senate is scheduled to markup their bills the last week of June.

NDAA: HASC [intends](#) to schedule the markup once the House schedule is 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.

Remote voting/virtual protocols: With regard to efforts to develop rules for remote voting

and a "virtual Congress," negotiations in the House have yielded little progress. Yesterday Leader McCarthy sent a letter to Democratic leaders with the Republican proposal for reopening the House. It offered four strategies outlined below. Today, Leader Hoyer replied in a [statement](#) that the proposal "falls woefully short." Leaders Hoyer and McCarthy continue to head the panel charged with crafting a bipartisan solution (the group includes Reps. McGovern, Lofgren, Cole and Davis). Reaching consensus remains difficult.

McCarthy Proposal

- "Strategy 1: Modify Existing Practices and Structures" – Essentially use existing House rules and practices but take steps to reduce congestion in offices/Capitol, install barriers, etc.
- "Strategy 2: Employ a Phased Return with Committees" – Each committee would present an outline to the Majority Leader detailing their projected business meetings for the month ahead, along with estimated attendance levels. This information would be used to generate a staggered business calendar, with rotating use of larger committee hearing rooms where necessary. Precedence would be given to bipartisan COVID-19 response measures and other high-priority legislative items.
- "Strategy 3: Deploy Technology in a 'Crawl, Walk, Run' Progression" – Would require that rigorous testing standards be met, ample feedback be provided, and bipartisan rules of the road be agreed upon and made public to truly safeguard minority rights before widely adopting technology.
- "Strategy 4: Accelerate Active Risk Mitigation Practices" – Continue ongoing efforts to distribute Personal Protective Equipment (PPE) kits—including gloves, facemasks, and alcohol-based hand sanitizers—with additional supplies available on demand. Ensure hand sanitizing stations are ubiquitous around the Capitol campus and enhanced cleaning procedures adopted. Keep staffing to a minimum through continued use of teleworking procedures, while the Capitol remains open to only members, required staff, and credentialed press.

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

Note: It has been exactly a month since a member of Congress has tested positive for COVID-19.

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 Luján (D-NM), Rep. Gwen Moore (D-WI), Rep. Stephanie Murphy (D-FL), Rep. John Yarmuth (D-KY), Rep. Adam Schiff (D-CA), Rep. Vicente 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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