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COVID-19 Legislative Update

September 21, 2020

Please see below for updates on legislation related to COVID-19. As progress on another COVID package in Congress has dwindled, **after today, this update will no longer be published until bipartisan negotiations resume.** It has been a pleasure writing these for the past six months – hopefully, these will be in your inbox again soon. For past updates, click [here](#). For updates before May 8, click [here](#). If you believe you have been accidentally unsubscribed, you can re-subscribe [here](#).

9.21.2020. COVID-19 Legislative Update

Legislation

Supplemental IV

Timeline/Process/Politics: As Supreme Court Justice Ruth Bader Ginsberg's death on Friday injected a new burst of partisanship into Congress, **the likelihood of reaching a bipartisan deal before Election Day has decreased substantially.** Parties' capacity for bipartisanship will likely be dedicated to passing a continuing resolution (CR) to keep the government open through December, rather than negotiating a COVID bill where both sides remain far apart. The CR will remain separate from any COVID-related package.

Policy: As negotiations remain stalled, there's little consensus between Democrats and Republicans over what would be included in a package. Senate Republicans have pushed back at a high price tag, requiring offsets in the most recent Republican proposal. Democrats passed their bid for COVID 4 back in May with the Heroes Act, but their priorities have, for the most part, remained steady. See below for highlights and information on the various proposals.

Problem Solvers Caucus – Last week, the Problems Solvers Caucus released a proposal. Proposal [here](#). Highlights below:

- \$120 billion in **for Unemployment Insurance** (\$450 a week for eight-week transition, then up to \$600/week but not to exceed 100 percent previous wages for five weeks, ends January 2021);
- \$500.3 billion for support for **State/Local/Tribal/Territorial governments**;
- \$100 billion for **testing** and healthcare, including provider support, testing, contact tracing
- \$316 billion for **assistance for individuals/families**, including stimulus checks, rental assistance/eviction moratorium, student loan forbearance, SNAP/WIC;
- Liability protections for organizations that follow OSHA guidelines, with increased OSHA enforcement.
- \$145 billion for **education**: (childcare, K-12, higher ed);
- \$52 billion for other appropriations, including **broadband, agriculture support, USPS, the Census**;
- \$400 million in **election support**; AND
- **Based on COVID hospitalizations and vaccine development**, there could be the below additions
 - \$400 billion in Automatic Boosters (additional UI, stimulus checks), and
 - (-)\$200 billion in Automatic Reducers (from PPP, state/local/tribal/territorial funding, rental support).

Senate R Skinny Bill – Earlier this month, Senate Republicans released and voted on another COVID proposal. While it did not pass the Senate, it can be seen as a marker for the priorities Republicans will focus on in negotiations. Text [here](#). Summary [here](#). The bill clocks in at \$300 billion, after offsets. There were many similarities between the bill and the one Republicans [released](#) mid-August. See below for the highlights.

- **Offsets** from \$204 billion from funding allocated to Federal Reserve programs in CARES, sets the 13(3) facilities to expire in January, rescinds \$146 billion in unspent small business funding from CARES Act.
- **Liability protections** for businesses and healthcare providers;
- \$300 per week in enhanced **unemployment insurance** through the end of the year;
- Small Business policies including:
 - Allows small businesses to take out a **second Paycheck Protection Program (PPP) loan** if they have revenue loss of 35 percent or more (HEALS set the threshold at 50 percent or more);
 - Provides \$257.7 billion for PPP, which includes \$100 billion in unused funds;
 - Simplification of the loan process (Sen. Cramer’s Paycheck Protection Small Business Forgiveness Act);
 - Additional reporting required for businesses receiving loan forgiveness;
 - Funding for audits.
- \$10 billion for the **U.S. Postal Service** – the bill would convert a \$10 billion loan to the USPS into a grant if the USPS falls below \$8 billion in cash on hand.
- Education policies including:
 - Funding for scholarship-granting organizations for expenses like private school tuition and home-schooling expenses; Also, provides tax credits for

- Allow students to use 529 plan funds for relevant expenses for two years (Student Empowerment Act);
- **Childcare program** included in HEALS (see [here](#) for HEALS education text)
- Health policies and funding, including:
 - **Pandemic preparedness** program (supply chain, SNS) in HEALS (see [here](#) for HEALS education text)
- Extends when states/local/tribal governments must spend CARES Act funding until September 30, 2021 (extended from December 31, 2020).
- Increases **tax incentives for charity** from \$300 above-the-line deduction (as implemented in the CARES Act) to \$600 for individuals and \$1,200 for those filing a joint return.
- Appropriations title, including:
 - \$105 billion for **Education Stabilization Fund** (66 percent for K-12 and 29 percent for higher education and 5 percent to governors to use for either higher education or K-12);
 - \$16 billion for **testing/contact tracing**;
 - \$31 billion for **vaccine and treatment** development and distribution (the mid-August skinny bill allocated \$29 billion for these purposes);
 - \$20 billion for farm assistance,
 - \$500 million for fisheries, and
 - \$15 billion for child care (\$5 billion for Child Care Development Block Grant and \$10 billion for the program authorized above “Back to Work Child Care Grants”).

The HEALS Act – Senate Republicans released an eight-bill package, known as the **Health, Economic Assistance, Liability Protection, and Schools (HEALS) Act**. Its provisions **represent the first step in a multi-step process**. The bill is around \$1 trillion, with a third dedicated to appropriations, a majority of which is under the Labor-HHS subcommittee. **Expect significant changes from this draft to the final bill**, as text has yet to be negotiated with Democrats. The bill was released in sections by various senators. See below for text and summaries of the sections below.

- *American Workers, Families, and Employers Assistance Act* (Senate Finance Committee provisions) – text [here](#), section by section [here](#)
 - Extension of enhanced **unemployment insurance**. After July 31, would provide \$200 a week until October, when benefits would then be capped (when combined with state contribution) at 70 percent of an individual’s lost wages.
 - *Note: One Democratic (House) option was advanced in the HEROES Act (extension of the full \$600 per-week expansion into Jan/March 2021), while another option gaining increasing momentum would be to tie UI extension to underlying economic metrics to eliminate the need for Congress to act to see future extensions and increases.*
 - Another round of **direct payments to individuals**. Those eligible make less than \$75k, are not dependents, and those with a work eligible social security

- Tax provisions, including:
 - Enhanced **employee retention tax credit** (from 50 percent of wages to 65 percent);
 - Adds COVID-19 unemployment recipients as a targeted group to the **work opportunity tax credit (WOTC)**, which provides a tax credit to employers that hire individuals from certain groups;
 - **PPE tax credit** (refundable payroll tax credit equal to 50 percent of what an employer spends on “employee protection”);
 - Mandates that through 2024, employees performing work in multiple states will only be subject to income tax in their state of residence; and
- Health provisions, including:
 - Part B premium freeze until 2022;
 - Extension of telemedicine reimbursement either through 2021 or the end of the public health emergency; and,
 - Extended timeline for providers to repay Medicare Accelerated and Advance payment loans.
- Certain **flexibilities and limitations on Coronavirus Relief Fund payments** to state, local, and tribal governments (no additional funding for state/local/tribal governments):
 - Extends the timeline for spending the funds to 90 days after the last day of FY21,
 - Allows states to use the funding to make up lost revenues, and
 - Prohibits the use of funding for pensions/rainy-day funds.
- *Continuing Small Business Recovery and Paycheck Protection Program Act* (Small Business provisions) – Press release [here](#), text [here](#), section by section [here](#), one pager [here](#)
 - Extends the **Paycheck Protection Program**.
 - Allows businesses with fewer than 300 employees that had seen revenue decline by 50 percent or more in Q1/Q2 to **receive a second PPP loan**. Includes a set aside within the program for those with 10 or fewer employees and \$10 billion set aside for community lenders.
 - **Expands eligibility to 501(c)(6) organizations** that either:
 - have fewer than 50 employees and limited lobbying activity, OR
 - are Chambers of Commerce or Destination Marketing Organizations with 300 or fewer employees.
 - Forgiveness to include other costs like PPE, safety supplies, and other expenses.
 - Streamlined forgiveness for loans under \$150k.
 - Creation of working capital loan for businesses with fewer than 500 workers and have seen revenue decline by 50 percent or more (as an alternative to PPP second round).
- *Coronavirus Response Additional Supplemental Appropriations Act* (Appropriations provisions) –text [here](#), summary [here](#)
 - \$118 for HHS, including:

- **\$26 billion for vaccines** development distribution (BARDA and CDC),
- **\$25 billion for provider relief fund**,
- **\$15 billion for child care** (“Back to Work Child Care Grants” one pager [here](#)),
- \$15.5 billion for NIH,
- \$4.5 billion for SAMHSA,
- \$3.4 billion to CDC, and
- \$7.6 billion for Community Health Centers.
- \$105 billion for Department of Education
 - \$70 billion for K-12, though **two-thirds of it will be reserved for aiding schools in reopening** and will be rewarded based on certain reopening requirements.
 - **\$29 billion for higher education**, though institutions that paid endowment taxes in 2019 can only use the funding for student aid.
 - \$5 billion for the Governors Emergency Education Relief Fund;
 - \$1 billion for BIE.
- \$20 billion for Agriculture-FDA,
- \$29 billion for Defense,
- \$3 billion for Homeland,
- \$13 billion for THUD, and
- \$4.4 billion for SFOPS.
- *Restoring Critical Supply Chains and Intellectual Property Act* (Supply Chain and Research provisions) – text [here](#), section by section [here](#)
 - Requires certain products within the Strategic National Stockpile to be produced in the U.S. (U.S. MADE Act),
 - Creates a tax credit for 30 percent of the equipment costs for manufacturing personal protective equipment,
 - Creates a federal council focused on oversight of federal grants, national security, and the misappropriation of research and data,
 - Authorizes restrictions on certain non-citizens’ access to research, conferences, and academics,
 - Creates a semiconductor grant program and other onshoring incentives (CHIPS for America Act), and,
 - Includes provisions relating to securing the critical mineral and rare earth supply chains.
- *SAFE TO WORK Act* (Liability Relief) – Text [here](#), section by section [here](#)
 - Creates liability for a broad range of organizations that mandate plaintiffs show defendants were grossly negligent/engaged in willful misconduct AND violated public health guidelines.
- *Safely Back to School and Back to Work Act* (Health, Education, and Labor Provisions) – text [here](#), section by section [here](#)
 - Includes onshoring manufacturing and stockpile-related provisions,

- Changes student loan repayment options to either be 10-year or income-based (one pager [here](#)),
- Creates \$15 billion childcare grant programs (one pager [here](#)), and
- Creates scholarship program for emergency student expenses (one pager [here](#)).
- *Supporting America's Restaurant Workers Act* – text [here](#)
 - Business meals deduction increased to 100 percent from 50 percent.
- *TRUST Act* – text [here](#), section by section [here](#), one pager [here](#)
 - Establishes various committees to address the long-term fiscal sustainability of various mandatory spending programs.

The Heroes Act – House Democrats passed the Heroes Act in May. The bill as it stands totals around \$3 trillion. See text [here](#). Section by section [here](#). One pager [here](#). State and Local one pager [here](#). NCAI's summary on tribal provisions [here](#). Highlights of the bill below.

- Support for State, local, Tribal governments
 - \$500 billion for **State** governments,
 - \$375 billion for **local** governments,
 - \$20 billion for **Tribal** governments,
 - \$20 billion for **Territories**, and
 - \$755 million for the **District of Columbia**.
- Health providers and insurance coverage
 - **\$100 billion for hospitals/health care providers**.
 - Special **two-month open enrollment** period, **elimination of cost sharing** for COVID-19 treatments, and full **COBRA subsidies** for those who lost employer-provided health care coverage.
 - Increases in FMAP and DSH payments, extends Medicare Accelerated payments and lowers the interest rate.
- Public Health strategy and capacity-building
 - \$75 billion for **testing, contact tracing, monitoring** capabilities (CONTACT Initiative);
 - Establishes **supply chain czar** to coordinate health care officials, supply chain officials, and states; and,
 - Requires expansion of manufacturing capacity of vaccines and potential vaccines.
- Support for Small Businesses
 - **Expands PPP eligibility** to all 501(c) organizations, extends date to rehire to 12/31/2020,
 - Appropriates \$10 billion for the **Economic Injury Disaster Loan (EIDL)** program.
 - Expands eligibility of Main Street Lending Program to nonprofits.
- Support for Individuals

- \$175 billion for **renter/homeowner assistance** for renters and homeowners to make rent, mortgage, and utility payments.
- Suspends negative consumer credit reporting, bans consumer debt collection.
- Paid Leave and Worker Protections
 - **Eliminates certain paid leave employer exemptions** (500+ employee exemption, health care provider and emergency responders, small business self-exemption), expands uses of and ability to use paid sick days and paid leave.
 - Requires OSHA to issue an emergency temporary standard (ETS) for worker safety/those at risk of exposure to COVID-19. Standard would be enforceable by OSHA.
 - **\$190 billion for a Heroes Fund** for essential workers to be administered by Treasury. Eligible employers will be given grants from this fund to **provide hazard pay to their essential workers** (\$13 per hour on top of regular pay, \$10,000 per worker).
- Education
 - **\$100 billion for ED** (\$90 billion for State Fiscal Stabilization Fund [K-12], \$10 billion for universities/students).
 - Continues **suspension of student loan payments** and accrual of interest to 9/30/2021 and extends to include FFEL and Perkins loans.
 - Clarifies that emergency financial aid grants (broad definition) will not be considered as income/assets for calculation of student's eligibility for federal financial aid.
 - Prohibits the Secretary from placing limits on what types of students may receive funds under the CARES Act's Higher Education Emergency Relief Fund.
- Other key provisions
 - \$5 billion for **broadband** (E-Rate), creation of broadband subsidy for households with a member laid off/furloughed and **bans providers from discontinuing service**/adding late fees due to customer's inability to pay related to COVID-19.
 - \$3.6 billion for grants to states for **election preparedness and security**.
 - \$25 billion for the **U.S. Postal Service**.

Details of the [tax and Unemployment Insurance \(UI\)](#) provisions below.

- **Narrowing of CARES Act tax provisions:** The draft contains two provisions narrowing tax benefits from CARES, which would likely raise significant revenue relative to current law:
 - **Net Operating Losses / NOLs** (Sec. 20302): CARES allowed NOLs arising in tax years 2018, 2019, and 2020 to be carried back up to five years. The proposed provision would narrow that benefit, allowing NOLs arising in 2019 or 2020 to be carried back only to 2018 and 2019. This would prevent using a post-TCJA NOL against the pre-TCJA 35% rate, which CARES allows.

owners of pass-through businesses from TCJA that CARES suspended for 2018, 2019, and 2020.

- **Elimination of the SALT Deduction Cap for 2020 and 2021** (Sec. 20161);
- Employer retention and expenses payroll tax benefits:
 - **Employee retention tax credit** (Sec. 20211): The proposal enhances the CARES employee retention credit to 80% of wages (from 50%) and increases the cap from \$10,000 overall to \$45,000 and \$15,000 quarterly. Large employer threshold generally increased from 100 employees to 1,500 employees.
 - **Fixed expenses refundable payroll tax credit** (Sec. 20212) for up to 50% of rent, mortgage, and utility payments, maximum of the lesser of (1) \$50,000, (2) fixed expenses same quarter in 2019, (3) 25% of payroll, (4) 6.25% of gross receipts;
 - **Employee benefit expense refundable payroll tax credit** (Sec. 20204) for benefit payments by employers, up to \$5,000 per employee, 50% credit (for COVID benefits) or 30% credit (for non-COVID benefits); and
 - **Business interruption credit for self-employed businesses** (Sec. 20213).
- Modifications and enhancements to other CARES and FFCRA tax provisions:
 - **Payroll tax deferral for two years from CARES** would be allowed to businesses that have received loan forgiveness under SBA PPP, reversing a limitation from CARES (Sec. 20231);
 - **Expenses related to SBA PPP loans would be deductible**, reversing an IRS ruling (Notice 2020-32) to the contrary (Sec. 20235);
 - **Phase II FFCRA Leave Mandate Credits extended** through 2021 (Sec. 20221);
 - Certain CARES loan forgiveness, including EIDL and emergency financial aid, not included in income (Secs. 20232 and 20233).
- Individual Stimulus / Cash Grant Tax Rebates Modifications
 - CARES stimulus payments enhanced in several ways, including expanding dependent definition to include those over 17 and full-time students 24 or younger (Sec. 20101); SSN requirement eliminated (Sec. 20102); past-due support payments no longer disqualifying (Sec. 20103);
 - **Second round of stimulus payments** of \$1,200 (\$2,400 joint) per taxpayer plus \$1,200 per dependent (limited to 3, up from \$500 per child in CARES); same income limitations as CARES; and
 - **Prohibits the use of POTUS' signature on future distributions** (Sec. 20111(e), p186).
- Additional tax relief for individuals and families largely following H.R. 3300, which W&M marked up in June of last year. Includes:
 - **Earned Income Tax Credit (EITC) expansions** for 2020 for childless workers, tracking prior legislation by Chairman Neal (Sec. 20121); SSN requirement eliminated (Sec. 20122); rules on separated spouses (Sec. 20123); Elimination of investment income test (Sec. 20124);

- **Child Tax Credit (CTC) expansions** for 2020, eliminating refundability cap of credit (Sec. 20131);
- EITC and CTC for Possessions and Puerto Rico (Secs. 20125 and 20132);
- **Child and Dependent Care Assistance Credit** refundable for 2020 (sec. 20141);
- Dependent care assistance expansions (Sec. 20142);
- Increase in carryovers for Health FSAs and Dependent Care FSAs (Secs. 20151 and 20152);
- Other tax provisions
 - Above-the-line deduction for educator expenses up to \$500 from \$250 (Sec. 20201);
 - Above-the-line deduction for first responders and supplies (Secs. 20202 and 20203);
- **Unemployment Insurance (UI) Expansions from CARES extended to 3/31/2021** (Division E, Sec. 50001).

Details of the **PPP provisions** outlined below:

- Amendments to Paycheck Protection Program (Sec. 90001)
 - **Extends the covered period** of the PPP until 12/31/2020, **expands eligibility** to tribal businesses, critical access hospitals, and all 501(c) category organizations.
 - Adds news organizations to the restaurant/hospitality NAICS code employee count exemption from CARES Act.
 - Increases minimum loan maturity to 5 years.
 - 25% set aside for organizations with 10 or fewer employees.
 - 25% set aside for **nonprofits**, caps PPP funds at 12.5% for nonprofits with over 500 employees.
 - \$10 billion **set aside for community financial institutions**.
 - Bars eligibility of organizations owned 20% or greater by an individual who has been convicted of financial fraud in the last 5 years.
 - \$1 billion for technical assistance grants to community financial institutions.
- Amendments to Paycheck Protection Program Loan Forgiveness (Sec. 90004)
 - Extends maximum covered period for loan forgiveness period to 24 weeks or 12/31/2020, whichever is first.
 - Clarifies that PPP funds can be used for interest on any debt obligation incurred before 2/15/2020.
 - Adds exemption to rehiring requirement for forgiveness if a business can show that it was unable to rehire employees and can demonstrate an inability to find similarly qualified employees before 12/31/2020.
- Clarifies that PPP payments and loan forgiveness will not be considered taxable income (Sec. 90006).
- Clarifies that **expenses covered by PPP loan forgiveness would be deductible**, reversing an IRS ruling (Notice 2020-32) (Sec. 20235).

Passed Legislation

Moving forward, this section will only include new information and guidance. For past information and guidance and passed legislation, please refer to the [archives](#). For a summary of all supplementals, please see [here](#).

New Implementation Information and Guidance

- 9/21 – HHS released updated guidance on the information recipients of the Provider Relief Fund will need to report to HHS beginning on October 1, 2020. The requirements narrowed providers ability to use the funds for certain expenses and lost revenues. Additionally, the double-dipping prohibition appears to have been extended to cover payments from insurance and amounts received from federal, state, local, or tribal governments. *Memo on the guidance available by request.* Guidance [here](#)

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

Tested Positive (1): **Rep. Jahana Hayes (D-CT)**

Currently Self-Quarantined (2): Sen. Ron Johnson (R-WI), **Sen. Shelley Moore Capito (R-WV)**

Recovered (15): 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), Rep. Tom Rice (R-SC), Rep. Morgan Griffith (R-VA), Rep. Louie Gohmert (R-TX), Rep. Raúl Grijalva (D-AZ), Rep. Rodney Davis (R-IL), Sen. Bill Cassidy (R-LA), Rep. Jenniffer Gonzalez-Colon (R-Puerto Rico at large), Rep. Dan Meuser (R-PA)

Completed Quarantine (45): 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), Sen. Lamar Alexander (R-TN), Rep. Randy Weber (R-TX), Rep. Kay Granger (R-TX), Rep. Mike Johnson (R-LA), Rep. Jody Hice (R-GA), Rep. Guy Reschenthaler (R-PA)

*Mark Meadows quarantined March 9 - 12 after coming in contact with a CPAC attendee



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