

TRUE ALERT



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Prospects for a 4th Phase of Federal Stimulus & Relief in Response to the COVID-19 Crisis

Congressional Schedule and Prospects

As summarized in past True Alerts ([Tax Issues Addressed by COVID-19 Emergency Legislation](#); [Congressional Action on the COVID-19 Pandemic: The CARES Act](#)), Congress has passed several major pieces of legislation to provide economic relief to the US economy and US taxpayers from the impact of the COVID-19 crisis. Immediately after completing action on the Coronavirus Aid, Relief & Economic Security Act ("CARES Act"), the attention of Congress and the White House turned to a debate over what should be included in the 4th Phase of stimulus and relief legislation ("4th Phase Bill"), which will likely be the last major bill enacted this year related to the COVID-19 crisis.

Schedule

Congress adjourned for a 2 week recess in early July with a scheduled return to work on July 20th. When they return, **the focus of the agenda will be to negotiate and approve legislation that will represent the 4th phase of federal relief related to the health and economic impacts of the COVID-19 pandemic.** The Senate is scheduled to begin their August recess on August 10th, while the House recess is scheduled to start on August 3rd. Both chambers then plan a return to work on September 8th, when they will face a number of issues to be addressed before the November elections, including most importantly, funding the federal government by October 1st for FY 2021.

With the number and range of issues being discussed for inclusion in the new relief package, it will be a significant challenge to get final approval in just 3 weeks, but Senate Majority Leader McConnell (R-KY) has definitively stated that to be his goal, saying "I think the country needs one last boost." He has put a dollar cap on this legislation at \$1 trillion, which is far below the cost of the Democratic legislation that was approved in May at a cost of \$3.4 trillion. The White House has also expressed support for additional legislation as well as limiting the next bill to a \$1 trillion spending cap.

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Process

Senate Majority Leader McConnell has stated that the legislation will be developed in his office with consultation from the Administration and will be released when the Senate returns to work. It will then be negotiated with the Democrats. He has commented that he believes it will be harder to get the unanimous Senate support that was given to the CARES Act saying, "The atmosphere has become a bit more political than it was in March."

Prospects

There is clearly agreement in Washington that one additional piece of legislation is needed to provide stimulus and relief on a number of health and economic issues that have either not yet been addressed or need additional funding. **Reaching agreement on this legislation, however, in a three-week period will be particularly challenging, especially in this environment that is arguably more political than normal.** The momentum that came from dealing with the COVID-19 crisis earlier this year allowed a consensus to form and quickly produce legislation to deal with key issues. There continue to be critical issues that must be addressed, but also a variety of ideas this time about how to address them, and there will not be much time for negotiating the differences. **The parties have said that reaching agreement on the 4th Phase Bill by the August recess is a goal, and they are likely to achieve that goal, but the final bill ultimately may not include all of the issues that are on the table for discussion.**

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Politics & The Players

The Democrats

In May, the Democratic-controlled House approved the Health and Economic Recovery Omnibus Emergency Solutions Act (“HEROES Act”), a \$3.4 trillion package, which was intended to lay down markers on the issues the House Democrats believe should be addressed in the 4th Phase Bill. For a complete list of key issues included in the HEROES Act, please see our June 2020 Washington Tax Insight. The key areas addressed in the HEROES Act include:

- provides FY2020 emergency supplemental appropriations to federal agencies;
- provides payments and other assistance to state, local, tribal, and territorial governments;
- provides additional direct payments of up to \$1,200 per individual;
- expands paid sick days, family and medical leave, unemployment compensation, nutrition and food assistance programs, housing assistance, and payments to farmers;
- modifies and expands the Paycheck Protection Program, which provides loans and grants to small businesses and nonprofit organizations;
- establishes a fund to award grants for employers to provide pandemic premium pay for essential workers;
- expands several tax credits and deductions;
- provides funding and establishes requirements for COVID-19 testing and contact tracing;
- eliminates cost-sharing for COVID-19 treatments;
- extends and expands the moratorium on certain evictions and foreclosures; and
- requires employers to develop and implement infectious disease exposure control plans.

The Republicans

The Senate will take the lead on drafting the Republican plan for further relief, although House Republicans have actively been working over the last several months on a number of ideas to be included. Senate Majority Leader McConnell has stated that his priorities for the new legislation will be to include liability protections for “hospitals, doctors, nurses, businesses, colleges, universities, and K-12 education” to prevent an “epidemic of lawsuits” with the liability shield to run for five years retroactive to December of 2019.

Other provisions he has prioritized include:

- Aid to states for education;
- Stabilizing funding for unemployment benefits (with restrictions to prevent benefits from exceeding current income levels); and
- Another round of direct payments to taxpayers (with tighter means testing).

The White House

The White House also supports additional COVID-19 crisis legislation. The President and other representatives of the Administration have discussed and proposed a number of ideas including direct payments to taxpayers, immediate business expensing, tax incentives for travel and entertainment, a payroll tax cut, liability protections, and lower capital gains taxes. Although President Trump has signaled support for cutting capital gains taxes, the Treasury Secretary has in recent comments at a Senate Small Business Committee hearing said this would not be the best relief the government could provide to employers and workers.

The Key Issues

Additional aid for businesses and the unemployed Paycheck Protection Program (“PPP”)

There has been bipartisan support expressed for providing a second round of loans under the PPP with key Democrats supporting a bill called the Prioritized Paycheck Protection Program Act. Senator Cardin (D-MD) is working on legislation that would provide loans for borrowers with fewer than 100 employees that have lost at least half their revenue due to the COVID-19 crisis with a cap of \$2 million and stricter eligibility requirements. Treasury Secretary Mnuchin expressed a willingness to discuss a second round of loans, although he has not specifically endorsed the Democratic plan.

The disclosure of recipients of loans from the PPP have revealed that many businesses who benefited were not the small businesses who were the intended beneficiaries, and this fact will most likely lead to changes in the program going forward should there be additional funding included in the 4th Phase Bill.

With the current PPP, the loan application does not require borrowers to prove hardship outside of a self-certification that “current economic uncertainty” made the loan necessary to support ongoing operations. In the next iteration of the program, there will likely be a revenue loss standard in place of the self-certification rule.

Senate Small Business Committee Chairman Rubio (R-FL) has been working on a plan that would expand the use of the PPP funds, including allowing chambers of commerce to apply. Senator Rubio, who was a key architect of the program, has suggested a new type of loan that would be exclusively available to businesses that employ 300 or fewer employees and can prove that they suffered significant revenue losses. It would also set aside \$25 billion for businesses with fewer than 10 employees as well as adding money for minority-owned businesses.

Prior to leaving on their July recess, Congress approved legislation that extended the deadline for applications to the PPP to August 8th (from June 30th). At the time of the original

expiration date, the program had more than \$134 billion still available for lending. There is some question about whether the remaining funding will be used, in part because of the revised terms of the program after initial approval, which allows for a loan maturity period of 5 years at 1% interest rate and makes the loans less attractive to banks. The funds may be utilized, however, by smaller lenders that service un-banked or under-banked clients and clients who do not have access to traditional banks.

Treasury Secretary Mnuchin has said he will work with Congress to “repurpose” the \$130 billion remaining in the PPP fund and target those businesses who have been the most impacted by the COVID-19 crisis.

One issue that has bipartisan support in the Senate relates to Notice 2020-32 and the deductibility of business expenses.

Senator Cornyn (R-TX) is pushing to get S.3612 approved in order to allow companies to deduct expenses paid for by PPP loans. Both SFC Chair Grassley (R-IA) and Ranking Democrat Wyden (D-OR) are sponsors of the legislation based on the position that the intent of Congress was to allow businesses to benefit from both the loans and the expense deduction. Treasury Secretary Mnuchin has agreed with the IRS position that allowing companies to write off expenses paid for with PPP loans would be double dipping, and, therefore, they have disallowed them as set forth in Notice 2020-32.

Unemployment Benefits

One of the most challenging issues for the negotiators on this bill will be whether to extend the \$600 per week increase in unemployment benefits that expires July 31st. One Democratic idea is to extend the extra payments into 2021 with possible phase-outs that are tied to state economic data. A proposal from Senate Minority Leader Schumer (D-NY) and SFC Ranking Democrat Wyden (D-OR) is to provide the \$600 payment until a state’s 3-month average total unemployment rate falls below 11%. The benefit amount would reduce by \$100 for every percentage point decrease in the state’s unemployment rate until the rate falls below 6%.

One of the arguments against extending the increased payment is that it has encouraged workers not to go back to their jobs if they are making more from the increased unemployment benefits than they were when they were working. Other options include decreasing the amount of the extra payment, e.g., to \$200. Senate Majority Leader McConnell has expressed opposition to the extension of this benefit as has the White House.

Return to Work Bonus

Senator Portman (R-OH) has proposed a \$450 weekly bonus to individuals who return to work. Ways & Means Committee Ranking Republican Brady (R-TX) has endorsed a similar idea that would give workers \$1200, or an extra two weeks of the extra unemployment insurance, to return to their jobs. Democrats have expressed skepticism about this being an adequate substitute for the increased unemployment benefits assistance.

Employee Retention Tax Credit (“ERTC”) Expansion

There is bipartisan support for expanding the ERTC, which is a refundable credit against the 6.2 percent employer-side Social Security payroll tax that is available to certain employers that either fully or partially suspended operations due to a government order or that sustained a significant decline in gross receipts because of the pandemic. The House proposed expanding the ERTC in the HEROES Act. Several lawmakers in the Senate have also expressed interest in expanding the credit including SFC Chair Grassley (R-IA)

Relief for Workers and Their Families

Ways & Means Committee Chair Neal (D-MA) has two

priorities from the HEROES Act. First, in 2020, he wants to **increase the child tax credit** to \$3,000 for children between the ages of 6 and 18. He also supports **expanding the refundable earned income tax credit for workers without children.**

In addition, he introduced the Child Care for Economic Recovery Act, which he hopes to include in the 4th Phase Bill. It is aimed at making child care more affordable for middle and lower-income individuals and providing targeted relief to child care providers.

Refundable tax credits for individuals and families will be a part of the discussion on the 4th Phase Bill. Democrats have stated that they are willing to consider the Republican-favored refundable business tax credits (see discussion below) in return for consideration of these issues.

Travel and Entertainment

The President has proposed restoring the full deduction for meals and entertainment expenses.

Some members of Congress have suggested eliminating the restriction enacted in the Tax Cuts & Jobs Act (“TCJA”) on deducting the cost of business meals, which provided that there would be no deduction for business entertainment and only 50% deduction for business meals.

Another Round of Checks to Individuals

Senate Majority Leader McConnell has publicly expressed support for additional stimulus checks, but has suggested that the income limits be lowered in order to target the relief to those who have been most affected by the impact on the economy, e.g., to \$40,000. Note that he did not specify if that would apply to single taxpayers, and, if so, what the proposed limit would be for married couples.

Democrats included in the HEROES Act a proposal to repeat the \$1,200 payment to individuals making less than \$75,000 per year with a maximum possible payment of \$6,000 to a family.

Both the President and Treasury Secretary Mnuchin have expressed support for an additional round of payments to taxpayers without being specific as to the amount that they would propose.

Liability Limits for Employers

Senate Majority Leader McConnell has stated that he will not support the 4th Phase Bill unless it includes employer liability protection, but this will likely prove to be a contentious issue to negotiate with the Democrats. Senator Cornyn (R-TX) is drafting the Senate version of this proposal, which he has said will allow employers to choose which government coronavirus safety guidelines to follow in order to be shielded from lawsuits if their customers or workers contract the virus, since there are conflicts among the safe-practices guidelines available to employers.

The White House also supports liability limits, and the Treasury Secretary has said that this issue is a priority. Democrats have said they will not accept lawsuit immunity language that is drafted too broadly, and they have urged the Administration to issue detail COVID-19 guidance to employers on how to protect their workers and customers.

Health Care and Infrastructure Funding

Financing efforts on fighting virus

The HEROES Act includes \$75 billion targeted to fund an expansion of testing and contact tracing. Senator Blunt (R-MO) is drafting the Senate version of this assistance to address vaccines and testing.

Infrastructure

The House has approved a major infrastructure bill, and the White House is reportedly working on its own version of infrastructure legislation. **Administration representatives have expressed interest in including this issue, but reaching agreement between the parties will be very challenging**, and many Congressional Republicans are skeptical of adding this issue to the negotiations with SFC Chair Grassley saying that he doubts this issue will be included in the 4th Phase Bill.

On July 1st, the House approved the INVEST in America Act by a vote of 223-188. The bill is a \$500 billion, five-year reauthorization of highway and mass transit spending, but it also includes spending for a number of other programs including affordable housing, broadband Internet access, wastewater infrastructure, and health care upgrades. The legislation includes nearly 70 tax provisions that, if enacted, would reduce federal revenues by nearly \$350 billion over 10 years. There are no significant revenue offsets in the bill to cover the cost of the spending and tax incentives.

Aid to State and Local Governments

Democrats have made the issue of aid to state and local governments one of their priorities, arguing that \$1 trillion of aid is needed to help ensure that thousands of employees do not lose their jobs due to decreased state and local revenues. Senate Majority Leader McConnell (R-KY) has thus far not said he would support this kind of assistance, but the White House has signaled a willingness to support some aid to state and local governments.

Business Tax Credits & Business Loss Treatment

NOL provision from the CARES Act

An issue that House Democrats plan to raise in discussions about the 4th Phase Bill relates to the “excess business loss” rule changes under §461(I) in the CARES Act. The “excess business loss rule”, as enacted in the TCJA, generally limits certain current losses attributable to trades or businesses for noncorporate taxpayers to \$250,000 (\$500,000 in the case of joint filers), indexed for inflation. The CARES Act provision suspends the limitation for taxable years beginning in 2018, 2019, and 2020. The HEROES Act includes a reversal of these changes by reinstating 461(I) and making the excess business loss limitation permanent (rather than reverting to the rule in the TCJA which had it sunset in 2025). There will likely be opposition to this effort from Republicans.

100% Immediate Expensing & Tax Credits for Costs

Related to Complying with COVID-19 Guidelines

Ways & Means Committee Ranking Republican Brady (R-TX)

is proposing immediate expensing on a temporary basis for the costs of updating workplaces and providing protective equipment to workers that is needed for businesses to open safely. In fact, he would like to make the general 100% expensing rule a permanent part of the tax code instead of allowing it to begin to phase out by 20% per year beginning in taxable years after 2022 with it expiring in 2027 (as set forth in the TCJA). Ways & Means Committee Chair Neal (D-MA) has said that he would consider the proposal in the context of the 4th Phase Bill. In the Senate, the full expensing proposal is being championed by Senator Toomey (R-Pa), and he has stated that this issue will be a priority for Senate Republicans.

Refundable Investment Tax Credit for Qualified

Semiconductor Equipment

A bipartisan group of members of Congress led by Senator Cornyn (R-TX) are supporting a proposal that would create a new refundable investment tax credit designed to spur domestic semiconductor manufacturing, which they would like to include in the 4th Phase Bill. Senator Cornyn’s bill, the Creating Helpful Incentives to Produce Semiconductors (“CHIPS Act”) would create a 40% refundable investment tax credit for qualified semiconductor equipment and manufacturing facility expenditures through 2024, followed by reduced tax credit rates of 30% and 20%, respectively, in 2025 and 2026. SFC Chair Grassley (R-IA) has expressed general support for the proposal, but no decision has been made as to whether to include it in the 4th Phase Bill.

Ways & Means Committee Chair Neal (D-MA) has said that he is open to business tax incentives aimed at promoting domestic manufacturing, but he has not taken a position on this specific proposal. Ways & Means Committee Ranking Republican Brady (R-TX) has included the proposal in his package of proposals to encourage

companies to bring manufacturing onshore in the US. Some House Democrats have expressed concern that business tax incentives might divert resources away from their ideas to provide refundable tax incentives for families, but they have not yet opposed this idea.

General Business Tax Credit

Senator Portman (R-OH), a senior member of the Senate Finance Committee, is working with other Republicans on the idea of allowing a business to receive a refund, or cash payment, that is equal to the so-called general business credit, which represents the cumulative value of various tax credits (including the tax credit for research and development), which currently can be carried back for one year or carried forward over 20 years under §39. An alternative idea is

to ease restrictions on business tax credits, for example, by changing the rule that allows a company to use the general business credit to offset the first \$25,000 of its tax liability and no more than 75% of its remaining tax liability under §38(c).

Research & Development (“R&D”) Tax Credit

Ways & Means Committee Republicans are also considering doubling the size of the R&D tax credit and permanently eliminating the provision in the TCJA that requires businesses to amortize their research costs over five years. They are also discussing a proposal that would provide a targeted tax incentive to accelerate the creation of US production lines for crucial but hard-to-obtain medicine and supplies for patients.