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Supplemental funds for Paycheck Protection Program plus new money for hospitals, coronavirus testing signed into law

Congress approved an additional \$484 billion in coronavirus relief funding this week, replenishing the Payroll Protection Program (PPP) for small businesses and the hospitality industry, providing more money for hospitals, and allocating funds for COVID-19 testing. The timing and content of the next round of economic recovery legislation in response to the coronavirus pandemic – which most stakeholders agree will be necessary – remain unclear, however, with congressional Democrats and Republicans and President Trump all advancing differing views on how and when to move forward.

The president signed the Paycheck Protection Program and Health Care Enhancement Act (H.R. 266) into law on April 24, a day after it cleared the House by a vote of 388-5. (The House had been in recess and does not plan to come resume its regular legislative session until May 4, at the earliest, but lawmakers returned to Capitol Hill for the day to vote on the legislation.)

URL: <https://www.congress.gov/bill/116th-congress/house-bill/266>

The Senate passed H.R. 266 by voice vote on April 21.

Stalemate resolved

Senate Majority Leader Mitch McConnell, R-Ky., originally proposed legislation April 9 – informally dubbed “PPP-plus” or “phase 3.5” relief – to add \$251 billion to the PPP, after it became clear that the \$349 billion originally allocated in March’s Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) would quickly be exhausted. PPP loans are available to most businesses with fewer than 500 employees. (Special affiliation rules apply to the hospitality industry businesses with fewer than 500 employees per location.) The loans are intended to be used largely for payroll, along with rent, utilities, and certain other expenses, but are generally forgivable if the business maintains its staff and payroll numbers through June 30. The program has proven immensely popular, and the Small Business Administration announced April 16 that all the original funding had been allocated, with many businesses still in line for loans.

Democrats countered McConnell’s proposed plus-up of the PPP with their own version of legislation that would ensure some of the new PPP funds were set aside for community-based financial institutions that are more likely to serve businesses owned by farmers, families, women, minorities, and veterans, and would clarify that farms are eligible for PPP loans. They also wanted money for hospitals and for cash-strapped state and local governments. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 21, Apr. 10, 2020, and *Tax News & Views*, Vol. 21, No. 22, Apr. 17, 2020.)

[URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200410_1.html](https://newsletters.usdbriefs.com/2020/Tax/TNV/200410_1.html)

[URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200417_1.html](https://newsletters.usdbriefs.com/2020/Tax/TNV/200417_1.html)

The compromise legislation passed this week – which was negotiated largely by House Speaker Nancy Pelosi, D-Calif., Senate Majority Leader Mitch McConnell, R-Ky., Senate Minority Leader Charles Schumer, D-N.Y., and Treasury Secretary Steven Mnuchin – includes many of the Democrats’ proposals, but does not provide money for states and localities. It adds an unrestricted \$250 billion to the PPP and sets aside another \$60 billion for smaller financial institutions such as credit unions and community banks – \$30 billion for those with assets less than \$10 billion, and another \$30 billion for those with assets between \$10 billion and \$50 billion. It also allocates \$60 billion to the Economic Injury Disaster Loan (EIDL) program (another small business program separate from the PPP), \$10 billion of which is in the form of advance grants that do not have to be repaid. The EIDL program received \$10 billion in funding in the CARES Act, but that was also quickly depleted and closed to new applications.

This week’s bill includes an additional \$75 billion for hospitals and \$25 billion for coronavirus testing, including \$11 billion to be distributed to states and \$14 billion to agencies such as the Centers for Disease Control and the National Institutes of Health that are engaged in R&D and deployment of tests.

Phase 4: No clear direction yet

Democrats and some Republicans, including President Trump, have already begun talking about another round of relief that would include aid to state and local governments left out of this week’s bill, as well as other potential stimulus measures.

Ahead of the Senate’s vote on April 21, the president laid out his ideas on Twitter: “After I sign this Bill, we will begin discussions on the next Legislative Initiative with fiscal relief [...] to State/Local Governments for lost revenues from COVID 19, much needed Infrastructure Investments for Bridges, Tunnels, Broadband, Tax Incentives for Restaurants, Entertainment, Sports, and Payroll Tax Cuts to increase Economic Growth.”

House Democrats began a renewed push for infrastructure investment right after the passage of the CARES Act last month, and they welcomed comments from President Trump that he could support a \$2 trillion package. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 20, Apr. 3, 2020.) However, Speaker Pelosi subsequently appeared to put infrastructure on hold and instead began making the case that the next stimulus package should build on the provisions in the CARES Act. (For prior coverage, see *Tax News & Views*, Vol. 21, No. 21, Apr. 10, 2020.) Infrastructure investment has long been something both parties advocate, but the funding mechanism is a significant sticking point, and talks over the past several years have repeatedly broken down.

[URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200403_2.html](https://newsletters.usdbriefs.com/2020/Tax/TNV/200403_2.html)

[URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/200410_1.html](https://newsletters.usdbriefs.com/2020/Tax/TNV/200410_1.html)

In his opening floor statement ahead of the April 23 House vote on H.R. 266, Ways and Means Committee Chairman Richard Neal, D-Mass., said that House committee chairs “have already begun working on COVID 4.” Neal said that in

addition to aid for state and local governments, the next measure should include more funding for hospitals, assistance for frontline workers, an extension of federal unemployment insurance into the fall, and another round of direct checks to individuals. House Majority Leader Steny Hoyer, D-Md., told reporters April 23 that a proposal could be ready as soon as May 4, with a floor vote following soon thereafter.

At a press conference April 21 with Speaker Pelosi, Senate Democratic Leader Charles Schumer previewed a “big, broad, bold” proposal, adding to the mix funding for the US Postal Service, a requirement that states be prepared to administer voting by mail, and hazard pay for certain frontline workers.

However, Senate Majority Leader Mitch McConnell has been more circumspect about the outlook for another piece of stimulus legislation in the near term, speaking for a group of Republicans concerned about the massive additions to the federal debt over the past two months and arguing that Congress should assess the impact of the nearly \$3 trillion in funding already allocated before rushing to do more. He also said that he does not expect to bring any more significant bills up for a vote in the Senate until the chamber is back in regular session. (Like the House, the Senate is not scheduled to return to Capitol Hill for regular sessions until May 4 at the earliest, though there will be frequent pro forma sessions – during which no legislative business is expected to be conducted – until then.)

“My view is we ought to bring everybody back, have full participation to begin to think about the implications to the country’s future for this level of national debt,” McConnell said.

JCT releases description, updated revenue estimate for CARES Act tax provisions

In other developments, the nonpartisan Joint Committee on Taxation (JCT) staff on April 23 released a report describing tax provisions in the CARES Act, including the tax impact of nontax provisions, such as the Paycheck Protection Program. For each provision, the report includes a summary of the law in effect immediately prior to the CARES Act change, an explanation of the new provision, and the effective date.

URL: <https://www.jct.gov/publications.html?func=startdown&id=5256>

The report includes a revised revenue estimate for the CARES Act’s tax title, which corrects an error in calculating the cost of the provision modifying the limitation on losses for taxpayers other than corporations (CARES Act section 2304) in the estimate the JCT originally published on March 26. According to the revised estimate, which was released April 23, the provision would reduce federal receipts by just over \$135 billion between 2020 and 2030, down from the original estimate of \$169.6 billion over the 10-year budget window. That change reduces the total cost of the tax title to \$556.5 billion between 2020 and 2030, down from \$591 billion over the same period in the March 26 estimate.

URL: <https://www.jct.gov/publications.html?func=startdown&id=5255>

Additional coronavirus resources available

Also this week, the Treasury Department and IRS released new guidance items addressing CARES Act’s net operating loss (NOL) carryback provisions and cross-border tax issues arising from pandemic-related travel disruptions; meanwhile Treasury and the Small Business Administration released updated guidance on the Paycheck Protection Program.

NOL carrybacks: Rev. Rul. 2020-08, released on April 17, suspends Rev. Rul. 71-533, 1971-2 C.B. 413, pending reconsideration by the Treasury Department and IRS of whether the 10-year limitations period provided by section 6511(d)(3)(A) applies to claims for refund or credit of an overpayment resulting from a foreign tax credit carryback arising as a result of a net operating loss carryback from a subsequent year.

URL: <https://www.irs.gov/pub/irs-drop/rr-20-08.pdf>

In addition, an FAQ document released on April 23 discusses NOL carryback issues for taxpayers who have section 965 inclusions.

URL: <https://www.irs.gov/newsroom/frequently-asked-questions-about-carrybacks-of-nols-for-taxpayers-who-have-had-section-965-inclusions>

Pandemic-related travel disruptions: Guidance released on April 21 provides relief to individuals and businesses affected by travel disruptions related to the COVID-19 emergency.

- Rev. Proc. 2020-20 provides that, under certain circumstances, up to 60 consecutive calendar days of US presence that are presumed to arise from travel disruptions caused by the coronavirus emergency will not be counted for purposes of determining (1) US tax residency and (2) whether an individual qualifies for tax treaty benefits for income from personal services performed in the United States.
[URL: https://www.irs.gov/pub/irs-drop/rp-20-20.pdf](https://www.irs.gov/pub/irs-drop/rp-20-20.pdf)
- Rev. Proc. 2020-27 provides that qualification for exclusions from gross income under section 911 will not be impacted as a result of days spent away from a foreign country due to the coronavirus emergency based on certain departure dates.
[URL: https://www.irs.gov/pub/irs-drop/rp-20-27.pdf](https://www.irs.gov/pub/irs-drop/rp-20-27.pdf)
- An FAQ document provides that certain US business activities conducted by a nonresident alien or foreign corporation will not be counted for up to 60 consecutive calendar days in determining whether the individual or entity is engaged in a US trade or business or has a US permanent establishment, but only if those activities would not have been conducted in the United States but for travel disruptions arising from the coronavirus emergency.
[URL: https://www.irs.gov/newsroom/information-for-nonresident-aliens-and-foreign-businesses-impacted-by-covid-19-travel-disruptions](https://www.irs.gov/newsroom/information-for-nonresident-aliens-and-foreign-businesses-impacted-by-covid-19-travel-disruptions)

Paycheck Protection Program: An updated FAQ document from the Small Business Administration in consultation with the Treasury Department includes guidance on borrower and lender questions related to the implementation of the PPP – specifically whether businesses owned by large companies with adequate sources of liquidity to support the business’s ongoing operations qualify for a PPP loan (Question 31).

[URL: https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf](https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf)

A running list of resources that address significant tax issues stemming from the pandemic is available from Deloitte Tax LLP.

[URL: https://newsletters.usdbriefs.com/2020/Tax/TNV/Stimulus-Resource-Table.pdf](https://newsletters.usdbriefs.com/2020/Tax/TNV/Stimulus-Resource-Table.pdf)

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House approves coronavirus subcommittee, but rule change allowing proxy remains on hold

The House of Representatives this week voted to establish a new select subcommittee charged with overseeing implementation of coronavirus relief legislation, but Democratic leaders delayed a planned vote on a proposal that would have changed House rules to allow for remote voting by proxy.

Select Subcommittee on the Coronavirus

A resolution (H. Res. 935) formally establishing the new Select Subcommittee on the Coronavirus Crisis cleared the House on April 23 by a party-line vote of 212-182.

[URL: https://www.govinfo.gov/content/pkg/BILLS-116hres935ih/pdf/BILLS-116hres935ih.pdf](https://www.govinfo.gov/content/pkg/BILLS-116hres935ih/pdf/BILLS-116hres935ih.pdf)

In floor remarks ahead of the vote, Speaker Nancy Pelosi, D-Calif., said the new panel, which will operate as part of the House Oversight Committee, “will be laser-focused on ensuring that taxpayer money goes to workers’ paychecks and benefits and it will ensure that the federal response is based on the best possible science and guided by health experts – and that the money invested is not being exploited by profiteers and price gougers...”

[URL: https://www.speaker.gov/newsroom/42320](https://www.speaker.gov/newsroom/42320)

“We need to ensure that the historic advancement of dollars in [the coronavirus stimulus] bills [that have been enacted since March] and in future packages are spent carefully and effectively to save lives and rebuild our economy,” she said.

Republicans generally opposed the resolution, arguing, among other things, that it would duplicate oversight functions of existing House committees as well as oversight provisions in the CARES Act itself. In an April 23 letter to Pelosi, Republican Reps. Kevin Brady of Texas, Patrick McHenry of North Carolina, and Greg Walden of Oregon (respectively, the ranking members of the Ways and Means, Financial Services, and Education and Commerce committees) contended that the House “has an established framework...that govern[s] meaningful oversight and investigations by standing committees within their jurisdiction” and stated that it is “unclear what gaps exist within [that] framework that necessitate the creation of a special select committee to oversee the administration’s response to the COVID-19 pandemic.”

The subcommittee will be headed by House Majority Whip Jim Clyburn, D-S.C., and will consist of 12 members – 7 Democrats and 5 Republicans. (Members of the committee are expected to be named in the coming days.)

Proxy voting plan on hold – for now

In other developments, House Democratic leaders this week backed away from a plan to move a resolution that would have temporarily changed the chamber’s rules to allow for remote voting by proxy in order to ameliorate certain travel- and social distancing-related challenges to the traditional in-person voting process posed by the coronavirus pandemic.

The revised voting system (summarized in a “Dear Colleague” letter published April 22 by House Rules Committee Chairman Jim McGovern, D-Mass.) – which could have been implemented for renewable 60-day periods for the remainder of the 116th Congress – would have allowed members to designate a proxy both to establish a Constitutionally required “quorum” on the House floor (generally, a majority of the body, which, assuming no vacancies, would be 218 members) and to cast their votes. In so doing, it would have represented one of the most significant changes to House rules in decades.

URL: <https://rules.house.gov/news/announcement/dear-colleague-resolution-implement-temporary-remote-voting-and-virtual-committee#overlay-context=>

But on April 22, Speaker Pelosi, after a discussion with House Minority Leader Kevin McCarthy, R-Calif., decided to hold off on the rule change.

Discussions to continue: Later on April 22, however, a senior Democratic aide indicated that party leaders had agreed to convene a bipartisan task force to “review remote voting by proxy and reopening the House” with the hope of getting broader buy-in from both sides of the aisle. (The task force will reportedly consist of Rep. McCarthy, Majority Leader Steny Hoyer, D-Md., Reps. McGovern and Cole from the Rules Committee, and House Administration Committee Chairwoman Zoe Lofgren, D-Calif., and ranking Republican Rodney Davis of Illinois.)

Senate change seems even less likely: Across the Capitol, Senate Majority Leader Mitch McConnell, R-Ky., has always been reticent about instituting any kind of rule change allowing remote voting in the upper chamber – a sentiment he reinforced in comments to reporters on April 21 after the Senate’s unanimous consent passage of H.R. 266.

“...I do think that the next time we pass a coronavirus rescue bill we need to have everyone here and everyone engaged,” McConnell said.

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