



March 17, 2020

Coronavirus Economic Stimulus Package

Lawmakers are now negotiating two legislative packages—the Families First Coronavirus Response Act (H.R.6201) and a third stimulus bill that remains in the drafting phase—aimed at spurring the U.S. economy and helping industries most affected by the coronavirus pandemic. On March 16, the House passed technical corrections to H.R. 6201—the bill now moves to the Senate for consideration. A summary of the bill is included below. This memo outlines the latest developments in Washington, and is updated daily with the most recent news up top.

What to Watch Today

- The Senate will begin consideration of the Families First Coronavirus Response Act.
- Trump administration could release an outline of its plan to provide aid to targeted industries, which is expected to total \$850 billion.
- Congressional lawmakers and administration officials will continue negotiations on a third stimulus package. Treasury Secretary Steven Mnuchin reportedly wants to attach the third package to the House-passed legislation.
- Treasury Secretary Mnuchin will attend the Senate Republican lunch.
- White House coronavirus meetings:
 - 9:30 a.m. – President Trump call with restaurant executives.
 - 10:30 a.m. – Coronavirus Task Force press conference.
 - 2:00 p.m. – President Trump meets with tourism industry.
 - 3:30 p.m. – President Trump call with supply retailers and wholesalers.

Latest Developments

Congress

- Treasury Secretary Steven Mnuchin and Speaker Nancy Pelosi (D-CA) finalized deliberations on technical corrections to the Families First Coronavirus Response Act (H.R.6201), which passed the House under unanimous consent.
 - Objections from House Republican lawmakers initially caused the measure to stall.
- Senate Minority Leader Chuck Schumer (D-NY) will issue a legislative proposal today for a third stimulus package to address the economic effects of the coronavirus.
- Sen. Mitt Romney (R-UT) issued a coronavirus proposal.

- Sen. Tom Cotton (R-AK) is building opposition against the Families First Coronavirus Response Act.
- Sen. Marco Rubio (R-FL) plans to attach legislation to the House-passed package to expand Small Business Administration loans.
- Senate Finance Committee Chair Chuck Grassley (R-IA) indicated committees of jurisdiction are already drafting legislation that goes beyond the House-passed bill.
- The House may extend its district work period beyond March 23. Members are no longer expected back in Washington on March 23, unless legislation is up for consideration. Members will receive a scheduling update on Thursday, March 19.

Trump Administration

- The Trump administration is willing to spend up to \$800 billion in economic response spending.
- Phase Three discussions have been focused on airline relief.

Private Sector

- U.S. Chamber of Congress outlined principles for Congress and the administration.
- Airlines for America issued proposal.

Congress

The *Families First Coronavirus Response Act* (H.R.6201)

Technical Corrections Passes House

On March 16, the House adopted by unanimous consent, H.Res.904—a measure to make technical corrections to the *Families First Coronavirus Response Act* (H.R.6201). The 87-page package of corrective language contains substantive changes to the underlying 108-page. The bill now moves to the Senate for consideration.

A summary of the technical corrections package is forthcoming.

At a high-level, the House-passed bill would offer free testing, paid sick leave, and paid time off, while ensuring that low-income workers and small, medium, and large businesses have support. Specifically, the legislation includes 10 paid sick days for employees, 12 weeks of paid leave through an expansion of the *Family and Medical Leave Act* (FMLA), and tax credits to partially reimburse employers who are required to offer sick leave and paid leave to employees affected by the outbreak. The emergency leave provisions expire at the end of the year. The 12 weeks of paid leave through FMLA compensate employees at two-thirds of their regular rate of compensation—the first two weeks of the program run concurrently with the paid sick leave program.

The technical corrections package made a few important changes to the *Paid Family and Medical Leave Extension Act*, including narrowing the circumstances under which leave is available to an employee. Leave is now limited to instances where an employee must care for a child under 18 years of age due to a school or child care center closure. The bill also changes the applicability criteria for both the FMLA extension provision and the *Emergency Paid Sick Leave Act*. The Secretary of Labor now has the authority to exempt small businesses with under 50 employees from providing both emergency sick leave and paid leave, if it would jeopardize the viability of the business as a going concern. The technical corrections also allow employers to choose to exclude employees who are health care providers or emergency responders from taking advantage of both emergency sick leave and paid leave.

Senate Consideration

On March 16, the Senate approved a short-term extension of the *Foreign Intelligence Surveillance Act* reauthorization.

With that work complete, it will now turn its attention to the *Families First Coronavirus Act* (H.R.6201).

On March 15, McConnell released a statement in which he said he spent the weekend speaking with the chairs of the Senate Finance; Health, Education, Labor and Pensions; Small Business; Appropriations; Banking; Homeland Security; Governmental Affairs; Aging and Commerce Committees. Following the discussions, McConnell has concluded the following pillars will guide his approach:

- Providing Americans financial assistance;
- Securing economic security, particularly for small businesses; and
- Preparing the U.S. healthcare system and medical professionals.

Looking ahead, a few Republican senators have already expressed opposition to the measure. Sen. Tom Cotton (R-AK), among the most outspoken of the critics, took to the Senate floor on March 16 to urge his colleagues to support his own measure, rather than the House bill.

Similarly, Sen. Rick Scott (R-FL) said he was “very concerned about some of the mandates in this bill that will hurt small businesses.” Scott has proposed exempting businesses with fewer than 50 employees from having to provide unemployment insurance of covering the costs of paid sick leave.

Sen. Marco Rubio (R-FL) is planning to attach legislation to the House-passed bill to increase the amount of loans provided by the Small Business Administration from \$30 billion to \$80 billion. Rubio’s bill would also waive fees for these loans and allow them to be used for payroll support, including paid sick leave.

McConnell and Senate Finance Committee Chair Chuck Grassley (R-IA) said on March 16 the proper committees of jurisdiction had already begun pulling together legislation that goes beyond the House bill, which Grassley said would provide stimulus “to relieve the strain on workers, the burdens on businesses small and large, and the capacity deficits at rural hospitals.”

The White House may play a part in Senate deliberations on the *Family First Coronavirus Response Act*. During the March 16 White House Coronavirus Task Force press conference, President Trump said the administration is looking at amending the 500-worker limit regarding companies that are compelled to provide paid sick leave. During the press conference, President Trump said the administration is thinking about working with senators to expand the size of companies affected by the provision, saying that the administration wants “fairness.”

Mnuchin is expected to attend the Senate Republicans’ weekly lunch today, where he could win additional support for the bill he helped negotiate.

The following chart contains a summary of the paid sick leave and paid family leave provisions, as well as the associated tax credits. Blue text indicates a change in the technical corrections package to this section.

Criteria	Emergency Paid Sick Leave Act (Subtitle E)	Emergency Family and Medical Leave Expansion Act (Subtitle C)
Applicability	<ul style="list-style-type: none"> • <u>Employer</u>: Private employers with less than 500 employees; and all public agencies, regardless of the number of employees. <p>For employers with existing leave policies prior to the enactment of this act, paid sick leave under this act is <i>in addition to</i> existing paid leave. The</p>	<ul style="list-style-type: none"> • <u>Employer</u>: All employers with less than 500 employees. • <u>Exclusions</u>: Secretary of labor has the authority to exempt small businesses with fewer than 50 employees if it would jeopardize the viability of their business as a going concern.

employer may not make changes to leave policy on or after the date of enactment.

- **Exclusions:** Secretary of labor has the authority to exempt small businesses with fewer than 50 employees if it would jeopardize the viability of their business as a going concern.

Employers may also choose to exclude employees who are health care providers or an emergency responders from the application of this subsection.

- **Employee:** All employees, regardless of how long individual has worked for the employer.
- 80 hours for full-time employees (10 days or two work-weeks, based on an 8-hour day).
- For part-time employees, the number of hours that the employee works, on average, over a two-week period.

- Employers may sequence the two weeks of paid sick leave before any paid FMLA application.

- The employee is subject to state, federal, or local quarantine;
- The employee has been advised by a provider to self-quarantine;
- The employee is experiencing coronavirus and seeking a medical diagnosis;
- The employee is caring for an individual who is subject to a quarantine or has been advised to self-quarantine;
- The employee is caring for a child due to a school or day care center or provider closure due to COVID-19

Employers may also choose to exclude employees who are health care providers or an emergency responders from the application of this subsection.

- **Employee:** Must have been employed for at least 30 calendar days.
- Earlier of date on which the qualifying need related to the public health emergency concludes; or the date that is 12 weeks after the date on which the employee's leave begins under Sec. 102(a)(1)(F).
- After the first two weeks, rate of pay is described below.
- The first two weeks of FMLA obligation may run concurrently with two weeks of paid emergency sick leave.
- Paid leave under this section is only available in the event that an employee is unable to work or telework due to a need for leave to care for a child under the age of 18 due to a school closure or child care provider closure, due to a public health emergency. A public health emergency means a state of emergency declared by a federal, state, or local authority.

Length of Leave Period

Sequencing

Eligibility Criteria

Rate of Pay

precautions; and

- Employee is experiencing a substantially similar condition specified by HHS in consultation with Treasury and Labor.
- Note: Employer of an employee who is a health care provider or an emergency responder may elect to exclude the employee from the application of this subsection.
- Rate of pay is full wages or minimum wage rate in effect under Sec. 6(a) of the FSLA or applicable state minimum wage. Paid sick time may not exceed \$511/day and \$5,110 in the aggregate
- Rate of pay for those caring for a child in event of a school closure will be paid at 2/3 their normal rate of pay. Paid sick time may not exceed \$200/day and \$2,000 in the aggregate.
- For employees with varying schedules, rate of pay is based on the average number of hours that the employee was scheduled to work per day, over the six-month period preceding the date on which the employee takes leave.

Available Tax Credits

- Payroll credit for required paid sick leave:
 - 100% refundable tax credit up to wages of \$200 a day in the event sick leave is taken to care for a child due to school closures. Otherwise, \$511/day, not to exceed 10 days of wages.
 - Credit may not exceed federal payroll taxes paid on all wages (6.2%).
- Amounts above total payroll tax liability are refundable through checks issued by the IRS.

Regulations

- Treasury Secretary may prescribe

- Rate of pay is calculated based on:
 - not less than 2/3 of the employee's regular pay rate; or
 - for employees with varying schedules, the number of hours the employee would normally be scheduled to work.

- Payroll credit required for paid family leave is:
 - 100% refundable tax credit up to wages of \$200/day or \$10,000 annually per employee on payroll tax liability.
 - Credit may not exceed federal payroll taxes paid on all wages (6.2%).
- Amounts above total payroll tax liability are refundable through checks issued by the IRS.

- Same regulatory authority, as it

regulations or other guidance as may be necessary to carry out the purposes of this section, including regulations or other guidance to:

pertains to the *Family Medical Leave Expansion Act*.

Secretary of Labor is authorized to exempt small businesses with fewer than 50 employees from the requirements of the *Emergency Paid Sick Leave Act*, if it would jeopardize the viability of their business as a going concern.

- prevent the avoidance of the purposes of the limitations under this section;
- minimize compliance and record-keeping burdens under this section;
- provide for waiver of penalties for failure to deposit amounts in anticipation of the allowance of the credit;
- recapture the benefit of credits determined under this section where there is a subsequent adjustment to the credit; and
- ensure that wages paid under this section conform with paid sick time required to be provided under the *Emergency Paid Sick Leave Act*.

Mnuchin, Pelosi Drafting Third Package

Despite the second stimulus package—the *Families First Coronavirus Response Act* (H.R.62010)—not yet being finalized, recognizing industry needs, Treasury Secretary Steven Mnuchin and Speaker Nancy Pelosi (D-CA) have already begun discussions on a third measure.

Unlike the first stimulus package, which was designed to help the federal government assist states in their response to the coronavirus outbreak, and the second, which was aimed at providing relief for workers and small businesses affected by the pandemic, the third proposal is expected to provide federal assistance to targeted industries that have been hit hardest by the coronavirus. Appearing on a number of talk shows on March 15, Mnuchin announced that he and Pelosi have already begun discussing the details of the forthcoming proposal. He specifically highlighted that the airline, cruise ship and other travel industries, in addition to hotels, have been particularly damaged as a result of the

outbreak. He said the administration will work with Congress to do everything it can, including receiving new authorities from Congress, to provide targeted relief for these industries.

According to reports, Mnuchin wants the Senate to attach the third package to the House-passed package, creating one massive bill. If the Senate proceeds with this option and passes the measure, it will have to be approved by the House before being sent to President Trump.

Other Congressional Proposals

As the Senate readies to consider the **Families First Coronavirus Response Act** (H.R.62010), senators released proposals of their own on March 16. Below is an overview of the most recent plans, in addition to other proposals that have been circulating for a bit longer.

- **Cotton Builds Opposition, Suggests His Own Bill.** Sen. Tom Cotton (R-AK) called on the Senate to coalesce around the three key elements of his plan:
 - Tax rebates;
 - Expanded and loosened criteria and funding for welfare programs “like UI and TANF”; and
 - Expanded low-interest loans for businesses.
- **Romney Issues Proposal.** Sen. Mitt Romney (R-UT) released a proposal on March 16 that would provide \$1,000 to every American adult, helping families meet short-term financial obligations while encouraging economic activity. The plan also calls for the following provisions:
 - **Small Business Grants.** The Small Business Administration would provide bridge grants to small businesses that do not receive Economic Injury Disaster Loans. In order to be eligible, businesses would have to show they have endured revenue loss greater than 50% over the past year.
 - **Pell Grant Changes.** The plan would alter the Higher Education Act’s “Cost of Attendance” provision to take into account the travel, housing and storage expenses by students affected by the outbreak.
 - **Loan Deferment for Recent Graduates.** Romney’s plan would temporarily delay loan repayments for recent graduates.
 - **Telehealth Coverage.** The plan would require private insurance companies to cover telehealth services.
- **Schumer to Unveil Coronavirus Legislation.** Senate Minority Leader Chuck Schumer (D-NY) announced he would be introducing legislation he, with the input of Senate committee ranking members, has drafted in response to the coronavirus outbreak. According to a statement from Schumer’s office, the package will provide at least \$750 billion to:
 - Assist with hospital treatment;
 - Expand unemployment insurance and increase Medicaid funding;
 - Ensure treatment is affordable;
 - Provide loan payment relief for all federal loans;
 - Provide moratoriums on evictions and foreclosures;
 - Help small businesses and schools;
 - Support medicine and food delivery for senior citizens;
 - Allow for the continuation of public transportation; and
 - Provide assistance to Indian Country.

Below are additional proposals being considered by lawmakers:

- **Small Business Loans.**
- **Green Card Waivers.**
- **Tariff Relief.**

- **Temporary Employee Retention Tax Credit.**
- **Qualified Improvement Property.**
- **Allow NOL to be Carried Back Two Years.**
- **Infrastructure.**
- **The *Coronavirus Worker Relief Act*.**
- **The *Supporting Students in Response to Coronavirus Act*.**

For more details on these proposals, [click here](#).

Trump Administration

The Administration's Plan

Response Spending

On March 16, National Economic Council Director Larry Kudlow announced that the actions taken thus far by the Trump administration—including the extension of tax deadlines and providing relief on student loan interest—have already amounted to \$400 billion. Kudlow added that the administration stands ready to commit more than double this amount in response to the coronavirus to \$850 billion, half of which would come from a payroll tax holiday.

Among the proposals that could be included in the package will be tax deferments, loans and direct payments to the targeted industries most heavily affected by the virus—airlines, hospitality and small businesses. Administration officials indicated an outline of the plan could be released as soon as March 17.

Phase Three Discussions Focus on Airlines

With lawmakers rushing to craft Phase Three of the coronavirus economic response, top economic advisers to the president have indicated the airline industry is among their top concerns. The administration is reportedly floating ideas of tax relief, loans and grants for the industry, which has been heavily affected by lower bookings and flight cancellations. According to reports, the industry, which has been in close contact with the White House, is seeking \$58 billion in grants and loans in temporary relief from the government. Some proposals being explored by the White House include temporarily allowing airlines to retain the taxes and fees they collect from passengers.

House Transportation and Infrastructure Committee Republicans are looking to establish a federal loan program that would make it easier for airlines to buy fuel. The proposal would direct Airport Improvement Program funds to airports for operating costs.

Senate Commerce Committee Chair Roger Wicker (R-MS) said on March 16 that in addition to loans, lawmakers should consider providing a “cash infusion” to help the industry. When asked about specific numbers, Wicker said it is “hard to quantify.”

Private Sector

U.S. Chamber of Commerce

On March 16, Tom Donohue, the CEO of the U.S. Chamber of Commerce, sent a [letter](#) to President Trump, Pelosi and McConnell, urging the lawmakers to enact certain policy measures in response to the coronavirus. The Chamber explained that because businesses have been forced to cease operations due to health concerns, revenue has swiftly and dramatically declined. The letter suggests three specific policies:

- **Payroll Tax Holiday.** The Chamber urged lawmakers to eliminate the payroll tax obligations of employers from March through May 2020. In addition, the letter urges for the cancellation of taxes and providing refunds for paid sick and family leave for employers with fewer than 500 workers.
- **Streamline Loan Guarantees.** The letter calls for an expansion and streamlining of loan programs for employers with fewer than 500 workers. In order to streamline the Small Business Administration disaster loan program, the Chamber suggested the agency eliminate the patchwork certification process. In addition, it suggested loans below \$350,000 be distributed by removing requirements that small businesses must prove they cannot obtain credit elsewhere.
- **Create Credit Facilities.** For employers with more than 500 workers, the Chamber advocated for legislation that would expand the use of the Federal Reserve Discount Window, which would allow bank regulators to work with private industry to establish credit facilities, provide loans and loan guarantees to businesses with over 500 employees.

The letter indicated the Chamber will be offering additional recommendations in the coming days.

Airlines for America

Airlines for America proposed [recommendations](#) to lawmakers as they consider further legislative actions to respond to the coronavirus:

- **Grants.** \$25 billion in grants to passenger air carriers and \$4 billion to cargo air carriers.
- **Loans.** \$25 billion for a voluntary liquidity facility program, through which the Federal Reserve would acquire financial instruments or provide loans or loan guarantees with 0% interest for passenger carriers and up to \$4 billion for cargo carriers.
- **Tax Relief.** Provide a rebate to carriers equal to what they paid in federal excise taxes dedicated to the Airport and Airway Trust Fund from Jan. 1, 2020 through March 31, 2020. Additionally, institute a temporary repeal of all excise taxes imposed on air carriers, including those on tickets, cargo and fuel through Dec. 31, 2021.

Airports Council International—North America

According to the group's spokesperson, American airports are requesting \$10 billion in federal assistance to offset the \$8.7 billion endured in losses.

For additional information or assistance with a particular issue, please contact a member of the Brownstein Tax Policy Group.

[Click here](#) to read more Brownstein alerts on the legal issues the coronavirus threat raises for businesses.

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