

## COVID-19 Public Policy Group Report

April 17, 2020

The federal Paycheck Protection Program (PPP), established weeks ago under the bipartisan [CARES Act](#) to provide a lifeline to small enterprises slammed by the economic shock wave of COVID-19, ran out of money Thursday. With a divided Congress at odds over whether funds to replenish the PPP's coffers should be accompanied by additional funds for hospitals, state and local governments and other Democratic priorities, and both the House and Senate adjourned until next week, it could be a week or more before legislation is approved to restart the program. POLITICO has more:

*“Congressional Democrats continued their talks with President Donald Trump’s administration on Thursday on whether there’s a deal that can pass Congress unanimously. But Senate Majority Leader Mitch McConnell said there’s been ‘absolutely no progress,’ and the Senate quickly adjourned until Monday. The House will next be in on Friday.*

*“Without additional funding, banks and the Small Business Administration will be unable to approve more of the Paycheck Protection Program loans designed to avert layoffs during the coronavirus pandemic, which can be forgiven if businesses agree to maintain their payrolls.”*

A number of states – including Maryland, which has a Republican governor – and U.S. territories have requested additional relief money from the federal government for their COVID-19 response efforts.

“America’s hospitals and health systems urgently need an additional infusion of resources to support the nurses, doctors, and staff on the front lines of the battle against COVID-19,” the American Hospital Association said earlier this week.

As the partisan clash over additional pandemic relief continued Thursday, President Donald Trump and the White House Coronavirus Task Force released [Guidelines for Opening Up America Again](#), a blueprint for the nation’s governors as they begin to contemplate reopening the nation’s economy state-by-state. The guidelines, which do not carry the force of law, establish gating criteria – on the number of people reporting COVID-19 symptoms, of confirmed cases, and of hospital capabilities – and list core state preparedness responsibilities for testing and contact tracing, healthcare system capacity, and planning.

The White House guidelines set out a three-phased approach for reopening, setting out best practices for individuals and employers under each. They take a more cautious approach for so-called vulnerable individuals, urging they continue to shelter in place through Phases One and Two and exercise continued caution and physical distancing even in Phase Three, but outline gradual reopening of mainstays of normal life in America, including schools, stadiums, and bars and restaurants, over all three stages. Employers are advised to continue encouraging telework and to limit in-person congregation through Phase Two, but are advised to begin planning for return to work in phases, while hospitals would be able to begin scheduling outpatient elective surgeries under the guidance in Phase One, opening up key income that has dried up during the pandemic’s spread. States are advised to move from one phase to the next as health and safety benchmarks are met.

## *Tax and Economic Development Updates*

Despite ongoing negotiations to provide an additional \$250 billion to the PPP, lawmakers have thus far been unable to reach an agreement. This impasse comes as PPP funding has officially been exhausted and many small businesses are desperately seeking financial assistance from the program. While it remains unclear how quickly lawmakers will be able to come to an agreement on various sticking points – including whether to impose certain restrictions on how the funding is used – it is clear that lawmakers will begin to feel significant pressure from distressed businesses in need of financial assistance. As such, with an eye toward reaching agreement to provide funding for the program, Senate Majority Leader Mitch McConnell (R-KY) has scheduled several pro forma sessions so that the Senate can move an agreement to fund the PPP once one is reached.

Notably, though PPP funding may have lapsed, the Federal Reserve yesterday [announced](#) that its Paycheck Protection Program Liquidity Facility (PPPLF) is now operational and available to provide liquidity to eligible financial institutions in support of lending to small businesses through the PPP. Specifically, the PPPLF will use PPP loans as collateral to support its efforts to extend credit to financial institutions that make PPP loans. The PPPLF will be managed by the Federal Reserve Bank of Minneapolis on behalf of the Federal Reserve. Additional information about the PPPLF can be found [here](#).

As reported yesterday, there are a number of legislative proposals seeking to address ongoing concerns related to how business interruption insurance policies treat pandemics. Since our [analysis](#) of the various legislative proposals to address these concerns was published yesterday, we have learned of yet another proposal that has been introduced and could be considered as lawmakers move forward with any potential “recovery” package. Specifically, Representative Brian Fitzpatrick (R-PA) has introduced [H.R. 6497](#), which would make available insurance coverage for business interruption losses due to national emergencies. Importantly, though, the legislation appears only to be effective once the Secretary of the Treasury has certified that there is a federal backstop in place to reinsure “excessive losses under coverage made available pursuant to . . . this Act.” H.R. 6497 currently has three additional co-sponsors and has been referred to the House Financial Services Committee for further consideration.

## *Health Updates*

Officials at the Department of Health and Human Services (HHS) appear not to be aligned on the timeline of the next disbursement from the CARES Act’s \$100 billion Public Health and Social Services Emergency Fund – and the distribution of funds to assist hospitals and healthcare providers [could be delayed](#). On Wednesday, Centers for Medicare & Medicaid Services (CMS) Administrator Seema Verma told reporters the next tranche of funds would be distributed by the end of this week, with “a specific portion of funds that are for providers in hot spots.” However, HHS Secretary Alex Azar has informed Members of Congress that the Department needs additional time to finalize distribution amounts. Representative Rosa DeLauro (D-CT) – Chair of the House Committee on Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies – wrote a letter to Secretary Azar yesterday, stating “[w]hen I spoke with Assistant Secretary Hargan on Monday, April 6, 2020, he stated the formulas and timeline for the next tranches of funding would be ready in seven to ten days. However, you stated today, HHS will need a week to a week-and-a-half to finalize the formulas and timeline.” This is not the first time Secretary Azar and Administrator Verma have stepped on one another’s toes regarding the Fund: [POLITICO](#) reported that Administrator Verma announced the first tranche of funding while Secretary Azar was out of town due to the death of his father, and Secretary Azar was intending to make

the announcement later in the week. Secretary Azar and Administrator Verma reportedly have strong animosity towards one another, which the media has described as [“the feud that’s rocked the White House’s health care agenda.”](#)

In the wake of this uncertainty surrounding the distribution formulas and timeline for the Fund, lawmakers and stakeholders have been fiercely advocating their positions. Last week, HHS distributed the funds based on each eligible entity’s share of total Medicare fee-for-service (FFS) reimbursements in 2019, and – as we previously reported – some lawmakers and other stakeholders have called for a more targeted approach to the disbursement. Most recently, nine Democratic senators [wrote](#) to Secretary Azar, requesting the formula used for the \$70 billion left in the Fund “better reflect the unique contributions of children’s hospitals, hospitals that serve a disproportionate share of Medicaid and uninsured patients, and rural hospitals, as well as hospitals that serve communities with higher volumes of COVID-19 cases.” The American Hospital Association [requested](#) HHS “release substantial additional emergency funds to *all* hospitals in an expedited manner,” while urging “HHS to make *additional* funds available to targeted groups of hospitals that either have a disproportionately high need or received proportionally less funds because the prior wave was distributed based on Medicare FFS payments.” Congressional Democrats have continued to press for an additional \$100 billion to be added to the Fund in the next legislative relief bill; if this additional funding is included with similar disbursement discretion to HHS, we expect the high-volume debate over payouts to continue.

Lawmakers are also advocating for better terms and conditions for providers under Medicare’s [Accelerated and Advance Payments Program](#), the loan program available to Part A providers, including hospitals, and Part B suppliers, including doctors, other practitioners, and durable medical equipment suppliers. Representatives Brad Wenstrup, DPM (R-OH), Ron Kind (D-WI), Mike Kelly (R-PA), and Bradley Schneider (D-IL) [wrote](#) to Secretary Azar and Administrator Verma to express concern over the program’s 10.25 percent interest rate. They urged HHS to utilize its authority “to either extend the repayment period before interest will accrue or reduce or eliminate the interest rate altogether.” As we noted in a previous update, several senators wrote a [letter](#) to HHS and CMS on the same topic earlier this month. HHS and CMS state they do not have the authority to adjust Medicare debt interest rates, though the American Hospital Association also [disagrees](#).

HHS [announced](#) a new contract with General Electric, in partnership with Ford, for ventilator production rated under the Defense Production Act. HHS stated that, combined with other contracts announced previously, 187,000 ventilators will be produced or acquired by the end of the year.

The Food and Drug Administration (FDA) has released [guidance](#) titled “Temporary Policy for Compounding of Certain Drugs for Hospitalized Patients by Outsourcing Facilities During the COVID-19 Public Health Emergency.” FDA released this guidance, for immediate implementation, to allow COVID-19 patients to access certain treatments even when hospitals may have trouble accessing FDA-approved drugs. The agency also published a new [webpage](#) to assist recovered coronavirus patients in donating plasma to assist those currently fighting COVID-19.

### *Trade Updates*

On April 16, the Federal Aviation Administration (FAA) issued guidance to commercial airline companies on how their planes can be used to temporarily haul cargo instead of passengers. The [Safety Alert for Operators](#) (SAFO) provides directions to conduct safety risks assessment that includes preparing an accurate load manifest that accounts for weight and balance needs, mitigating potential fire hazards due

to lack of smoke detection systems on passenger airlines, and seeking FAA approval ahead of properly securing any hazardous material in cargo loads. This guidance will allow struggling commercial airline companies to turn these planes into cargo-only flights that not only may allow airlines to increase flights but also may help address shipping challenges that have complicated supply chains during the pandemic.

### *Oversight Updates*

“There isn’t time to waste,” Bharat Ramamurti wrote in concluding his New York Times [op-ed](#) on April 16. The CARES Act—with its robust oversight provisions—was signed into law on March 27. Twenty days later, there is no oversight to speak of. President Trump has nominated White House lawyer Brian Miller to serve as the Special Inspector General for Pandemic Recovery within the Treasury Department, but his nomination has not been confirmed by the Senate. Michael E. Horowitz, the chair of the Council of Inspectors General on Integrity and Efficiency’s (CIGIE) and the U.S. Department of Justice IG, appointed Glenn Fine to serve as the chair of the Pandemic Response Accountability Committee (PRAC), but Fine became ineligible for that role after the President removed him from his position as the Pentagon’s Acting Inspector General. While PRAC has 20 other members, it has been silent [since April 1](#), which was when Horowitz and then-Chair Fine announced the appointment of 11 new PRAC members.

This leaves Ramamurti, the lone member of the Congressional Oversight Commission. Since his appointment on April 6, Ramamurti has been tweeting, he has made information and document requests to the Federal Reserve, and he has published an op-ed—all to get attention and to demand action. Arguing that, of the three oversight bodies under the CARES Act, the Commission is “the only body that can investigate the decisions made by the Treasury and the Fed without interference from President Trump,” Ramamurti demanded that Congress “quickly appoint the other four commissioners and let us get to work on the behalf of taxpayers, tracking the more than \$2 trillion in lending that is already in the pipeline.”

Ramamurti was appointed by the Senate Democratic Leader Chuck Schumer (D-NY). Four additional Commission members are to be appointed by (1) House Speaker Nancy Pelosi (D-CA); (2) House Minority Leader Kevin McCarthy (R-CA); (3) Senate Majority Leader McConnell; and (4) jointly by Pelosi and McConnell. [Bloomberg](#) reports that Pelosi told reporters yesterday that she and McConnell are “submitting names to each other” for the Commission’s chairman, and that she would make her pick “soon.” Likewise, McCarthy told reporters yesterday that he is “talking to individuals now” and will announce his appointment “soon.” Bloomberg reports McConnell’s spokesman had no comment on the status of his picks.

Independently of the CARES Act’s oversight provisions, on April 16, the Federal Reserve and Treasury were reminded of their disclosure obligations by Senator Mike Crapo (R-ID), Chairman of the Senate Committee on Banking, Housing, and Urban Affairs. The Washington Post [reports](#) Crapo sent a letter to the two agencies, encouraging them to “begin to collect and track the necessary data sets” to make sure they meet the disclosure deadlines under the CARES Act. Similar to Ramamurti’s requests to the Federal Reserve on April 15, Crapo also requested details about the Federal Reserve’s lending facilities. According to the Post, Crapo also promised to hold Miller’s confirmation hearing “as soon as can be safely done.”

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