First Coronavirus Supplemental Package

The Coronavirus Preparedness and Response Supplemental Appropriations Act of 2020 was signed into law by the President on March 6, 2020. The bill provides $8.3 billion in emergency funding for federal agencies to respond to the coronavirus outbreak. Specifically, the bill provided:

- $6.2 billion for the Department of Health and Human Services (HHS) including:
  o $3.4 billion for the Office of the Secretary – Public Health and Social Services Emergency Fund (PHSSEF), which includes more than $2 billion for the Biomedical Advanced Research and Development Authority (BARDA), $300 million in contingency funding for the purchase of vaccines, therapeutics, and diagnostics to be used if deemed necessary by the Secretary of HHS, and $100 million for the Health Resources and Services Administration (HRSA) for grants under the Health Center Program.
  o $1.9 billion for the Centers for Disease Control and Prevention (CDC), which includes $950 million for state and local response efforts, of which $475 million must be allocated within 30 days of the enactment of the bill, and $300 million for the replenishment of the Infectious Diseases Rapid Response Reserve Fund.
  o $836 million for the National Institute of Allergy and Infectious Diseases (NIAID) at the National Institutes of Health (NIH).
  o $61 million for the Food and Drug Administration (FDA) for the development and review of vaccines, therapeutics, medical devices and countermeasures, to address potential supply chain interruptions, and support enforcement of counterfeit products.
- The bill also includes $20 million for the Small Business Administration (SBA) disaster loans program to support SBA’s administration of loan subsidies that will be made available to entities financially impacted as a result of the coronavirus.
- The bill also includes a waiver removing restrictions on Medicare providers allowing them to offer telehealth services to beneficiaries regardless of whether the beneficiary is in a rural community, at an estimated cost of $500 million.
- The bill also provides $1.6 billion designated for the international response, the majority of which ($986 million), is provided to the United States Agency for International Development (USAID) including funding provided through:
  o $435 million for the Global Health Programs (GHP) account.
  o $300 million for the International Disaster Assistance (IDA) account.
  o $250 million for the Economic Support Fund (ESF) account.
  o $1 million for the Office of the Inspector General (OIG) for oversight of coronavirus response activities.
- The international section also provides the State Department with $264 million to support consular operations, emergency evacuations, and other needs at U.S. embassies.
- It also provides $300 million to the CDC to support global disease detection and emergency response efforts.

Second Coronavirus Response Package
On March 14, the House passed H.R. 6201 (The Families First Coronavirus Response Act) by a vote of 363-40. The House subsequently approved a technical correction to the bill on March 16 by unanimous consent. The Senate is expected to act on the bill shortly.

Key provisions of the bill include:

- **Emergency Leave:** The original version of the package proposed by House Democrats would have implemented the Emergency Family and Medical Leave Expansion Act, which would create an emergency paid leave program administered by the Social Security Administration (SSA). However, following negotiations with Republicans, much of this section of the bill was removed. The revised version strikes most of the language on emergency paid family and medical leave, while leaving in the expansion of the underlying Family and Medical Leave Act (FMLA). The bill allows the first 14 days of such leave to be unpaid, and after 14 days requires paid leave at a 66 percent pay rate. The revised version includes rules to determine normal working hours in such cases.

Notably, the revised version amends FMLA language on public health emergencies to apply for the one year after the bill is enacted, meaning it is not a permanent change.

- **Sick Leave:** This section requires employers with fewer than 500 employees and government employers to provide employees two weeks of paid sick leave, paid at the employee's regular rate, to quarantine or seek a diagnosis or preventive care for coronavirus; or paid at two-thirds the employee’s regular rate to care for a family member for such purposes or to care for a child whose school has closed, or child care provider is unavailable, due to the coronavirus.

Full-time employees are entitled to 2 weeks (80 hours) and part-time employees are entitled to the typical number of hours that they work in a typical two-week period. The bill ensures employees who work under a multiemployer collective agreement and whose employers pay into a multiemployer plan are provided with leave.

- **Tax Credits:** The revised version of the bill adds a Division G, which creates a Qualified Sick Leave Tax Credit against payroll taxes for employers with less than 500 employees for 100 percent of qualified sick leave wages paid to employees, capped at $511/day and $7,156 per quarter (annual wages would be $28,624), and is refundable to the extent it exceeds the payroll taxes owed by the employer.

The credit will apply for the 1 year after the effective date, which would be 15 days after the date of enactment.

Funds will be transferred to the Trust Funds to make them whole. The credit will apply for self-employed individuals. Division G also creates a similar refundable payroll tax credit against Required Paid Family Leave, capped at $200/day and $10,000/ quarter.

- **Extension of Unemployment Insurance:** H.R. 6201 would provide up to $1 billion in emergency transfers to states in fiscal 2020 to process and pay unemployment benefits.
Each state would receive a proportional amount based on the share of federal
unemployment taxes paid by its employers.

- **Coverage for Coronavirus Testing:** The package would require all insurers, including
private insurers, Medicare, Medicaid, CHIP, veterans’ and active duty military health care
programs, and the Indian Health Service, to cover coronavirus tests and related services
without cost-sharing or prior authorization requirements.

- **Medicaid Funding:** Under the bill, states would be eligible for a 6.2 percentage point
increase in their federal medical assistance percentages (FMAP). In order to receive this
increase, they would have to provide coverage of coronavirus testing without cost
sharing and meet other criteria, such as not imposing more stringent eligibility standards
or additional premiums.

- **Nutrition Assistance:** The bill would provide: (1) $500 million for the Special
Supplemental Nutrition Program for Women, Infants and Children (WIC); (2) $400
million for the Commodity Assistance Program; (3) $100 million for grants to the
Northern Mariana Islands, Puerto Rico, and American Samoa for nutrition assistance
provided in response to the virus; (4) $160 million for home-delivered nutrition services;
(5) $80 million for congregate nutrition services that provide food in group settings, such
as adult day care centers and meal sites; and (6) $10 million for nutrition services for
American Indians.

The bill would allow states to adjust their Supplemental Nutrition Assistance Programs
(SNAP) to provide additional aid to households with children eligible for free or
reduced-price school meals, if a school is closed for at least five consecutive days
because of a coronavirus-related public health emergency. The bill would also waive
federal work requirements for SNAP eligibility.

- **Mask Liability:** The bill would make personal respiratory protective devices a covered
countermeasure under the Public Readiness and Emergency Preparedness Act. The bill
would allow HHS to provide liability protections for certain emergency response
products.

**Additional Actions**

Congress is expected to take pass additional legislation to stabilize the economy and support
the response to the coronavirus. The Administration will also take additional actions on both
fronts. While the first two packages were largely focused on the public health response to
the virus, the next package is expected to focus more significantly on providing economic
stимulus. Speaker Pelosi has indicated that Congress will consider a third emergency
supplemental bill in the weeks ahead as the broader economic impacts of this public health
crisis become more clear.

President Trump has repeatedly called for Congress to pass payroll tax cuts since the
coronavirus crisis began. While this proposal initially received a mixed reception and was not
included in the second coronavirus package, it could be enacted in a later bill.

Senate Minority Leader Chuck Schumer (D-NY) is expected to unveil a $750 billion
coronavirus response proposal on March 17. The package reportedly includes funding to:

- Address hospital and treatment capacity issues;
• Expand unemployment insurance and increase Medicaid funding;
• Ensure affordability of all COVID-19 treatments;
• Provide immediate loan payment forbearance for all federal loans and moratoriums on evictions/foreclosures;
• Deliver immediate help to small businesses;
• Fund emergency child care, especially for health care workers and first responders;
• Help schools with remote learning;
• Ensure senior citizen medicine and food delivery;
• Provide assistance to keep public transportation running;
• Utilize the Defense Department to provide personnel, supplies, and critical response capabilities to support the nationwide response; and
• Address public health and economic needs in Indian Country.

On March 16, the U.S. Chamber of Commerce sent a letter to Congress and the White House detailing their recommendations, which included:

• Enact legislation cancelling the payment of all payroll taxes typically paid by employers for the months of March, April, and May.
• Enact legislation expanding and streamlining loan programs for small businesses with fewer than 500 employees experiencing revenue loss as a result of the coronavirus.
• Enact legislation enabling the creation of credit facilities to provide loans and loan guarantees to employers with more than 500 employees experiencing significant revenue loss as a result of the Coronavirus. Specifically, legislation should expand the use of the Federal Reserve Discount Window through the liberalization of the restrictions of Section 13-3 of the Federal Reserve Act. Then the U.S. Treasury, Federal Reserve, Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) should work in combination with banks to establish a system of credit facilities, to provide loans and loan guarantees that can be accessed by businesses with more than 500 employees to address disruptions created by the Coronavirus emergency. Banking regulators should temporarily suspend and review requirements such as the Liquidity Coverage Ratio and provide flexibility in their supervisory expectations for banks extending credit to businesses. These actions should allow for an orderly operation of a program of loans and loan guarantees.

White House economic advisor Larry Kudlow and Treasury Secretary Steven Mnuchin have also indicated that certain industries, such as airlines, cruise lines, and hotels may receive aid and loan guarantees, stressing that these are not bailouts. Reuters and other sources have reported that the Administration is working on a financial assistance package for the airlines, which is expected to include direct assistance, loans and tax relief. Kudlow said on Fox Business that Mnuchin and Speaker Pelosi are holding talks on airline assistance. Bloomberg has reported that Republicans on the House Transportation and Infrastructure Committee are considering a federal loan program to help airlines buy jet fuel and are discussing unspecified “tax relief” for the industry. Under the proposal, an existing stream of grants, the Airport Improvement Program, could be used to funnel money to the nation’s airports for operational costs including sanitation and janitorial work.
On March 16, Airlines for America called on Congress to provide airlines with more than $50 billion in grants, loans, and tax relief. Specifically, they requested:

- As an immediate step, $25 billion in grants should be provided to passenger air carriers to compensate for reduced liquidity for the current year.
- Cargo air carriers should get $4 billion.
- $25 billion to provide medium to long-term liquidity for the industry.

Airlines for America also requested that tax relief be provided through a rebate to air carriers. They also called for federal excise taxes on air carriers, including taxes on tickets, cargo, and fuel to be repealed through end of 2021.

White House officials have also discussed allowing airlines to keep some taxes and fees they collect from passengers.

Mnuchin has also called for Congress to pass legislation to allow the Administration to greatly expand SBA lending. He also indicated that Treasury would act administratively to allow certain taxpayers and small businesses to receive extensions on their taxes.

Senate Small Business Committee Ranking Member Ben Cardin (D-MD) has said that Democrats and Republicans are working on a small-business relief package that will be broken up into two parts. He suggested that H.R. 6201 will eventually be expanded to include a $50 billion expansion in loan capacity for small businesses. He suggested that the second part could include tax measures and a grant program to aid small businesses.

The American Medical Association (AMA), the American Hospital Association, and the American Nurses association have asked to be included in any stimulus package, to offset their increased costs.

The Consumer Brands Association sent a letter to President Trump requesting that the upcoming supplemental include funds to mitigate supply chain disruptions and manage food, personal care, hygiene, cleaning, disinfecting, and sterilization input shortages.

Thus far, the Federal Reserve has announced that it was reducing rates to near-zero and was restarting asset purchases. The Federal Reserve also has additional tools under Section 13(3) of the Federal Reserve Act:

- The Commercial Paper Funding Facility (CPFF), which gives the Federal Reserve the opportunity to provide direct relief to businesses in all types of industries.
- A Term Asset-Backed Securities Loan Facility, which would support loan issuance by supporting the market for asset-backed securities.

The Federal Reserve would be required to consult with Treasury before taking utilizing either tool.

Senator Mitt Romney (R-UT) has proposed that the federal government should provide every American $1,000 per month during the coronavirus crisis, in order to help them meet their short-term obligations.
Politico has reported that two dozen trade groups, including the National Retail Federation, have pushed President Trump to scrap his tariffs on imports from China as a way “to offset the grave economic damage” caused by coronavirus.

Politico also reports that “The oil and gas industry is pushing the administration for [Strategic Petroleum Reserves] purchases, faster drilling permits on federal lands, royalty relief and increased deductions for drilling expenses.”

The National Pork Producers Council has asked for foreign worker visas to be expedited in response to crisis, in order to address chronic labor shortages, which could be exacerbated by the crisis.

The Defense Production Act gives the President broad authorities to influence domestic industries in the interest of “national defense.” National defense refers to not only military preparedness but also domestic response to national hazards, terrorist attacks, and other national emergencies. The statute gives this authority to the President who has delegated the responsibility to department and agency heads under an Executive Order 13063 issued in 2012. The Secretary for the Department of Health and Human Services has been delegated the authority over health resources which includes drugs, biologics, medical devices, material, facilities, health supplies, services, and equipment. The Act has been reauthorized a number of times and is currently set to expire September 30, 2025.

Under Title III of the Act, the President can provide appropriate financial incentives to develop, maintain, modernize, restore, and expand the production capacity of domestic sources of critical components, technology items, materials, and industrial resources for the execution of the national security strategy. This financial help can occur in the form of loan guarantees, direct loans, purchase and purchase commitments, and installation of equipment. To exercise this authority, there must be a finding of a “domestic industrial base shortfall” and that the industry cannot be reasonably expected to provide the capability for the good in a timely matter. Projects that cumulatively cost more than $50 million must be authorized by an act of Congress. For FY 2020, $64.4 million has been appropriated for Title III activities.