



Kevin McCarthy

REPUBLICAN LEADER

COVID-19 RESPONSE PHASE 3: FAQs

INDIVIDUALS

Q: Unemployment Insurance – are the self-employed, gig workers, and contractors eligible?

A: Yes, the bill expands unemployment benefits to cover more workers including self-employed and independent contractors, like gig workers and Uber drivers, who do not usually qualify for unemployment. Overall, the bill provides \$250 billion in funding for expansion of unemployment benefits, the largest increase ever.

SMALL BUSINESS

Q: Are non-profits, chambers, physician practices, eligible for 7(a) loans?

A: 501(c)3 non-profits are eligible. No other 501(c) organizations are eligible, including chambers structured as 501(c)6s.

Physician practices are eligible, no matter how they are structured.

Q: Can small businesses can hire back previously fired employees and still have the loans forgiven? If so, what is the hire-back date?

A: Yes. There is flexibility in the program to allow businesses to hire new, or returning employees, by June, 30, 2020, and still qualify under the headcount requirements.

Q: How quickly will business be able to access loans?

A: We are working with the SBA on capacity issues, including onboarding new lenders. The SBA is assuring the Small Business Committee that they are ready to stand up all of the requirements within the Senate bill as quickly as possible.

Q: What does this bill do to provide relief for rural communities and farmers?

A: The bill includes a number of small business provisions designed to help farmers stay in business and take care of their employees during this difficult time. These include provisions that allow farmers to work with their trusted farm credit institutions for the purposes of securing payroll tax loans, along with 1-year deferrals, 100% guarantees, and low rates.

The bill provides \$14 billion for the Commodity Credit Corporation (CCC), the funding mechanism for all major USDA programs. It also appropriates an additional \$9.5 billion to specifically respond to losses due to COVID-19.

Additional funding is provided for USDA agencies that are on the front lines of responding to COVID-19, including the Food Safety Inspection Service (FSIS), the Animal and Plant Health Inspection Service (APHIS), and the Farm Service Agency (FSA).

The bill also includes \$100 million to provide financing for rural broadband through the ReConnect program, and \$25 million for the Distance Learning and Telemedicine program to provide grants for equipment and connectivity improvements.

Q: Employee retention credit – how will this work?

A: The Employee Retention Credit provides a refundable payroll tax credit equal to 50 percent of up to \$10,000 in wages per employee (including health benefits) paid by certain employers during the coronavirus crisis.

The credit is available to employers:

- whose operations were fully or partially shut down by government order limiting commerce, travel, or group meetings due to coronavirus, or*
- whose quarterly receipts are less than 50% for the same quarter in the prior year.*

Wages paid to employees during which they are furloughed or otherwise not working (due to reduced hours) as a result of their employer's closure or economic hardship are eligible for the credit.

However, for employers with 100 or fewer employees, all employee wages qualify for the credit, regardless of whether they are furloughed or face reduced hours.

To prevent double dipping, employers that receive Small Business interruption loans are not eligible for the credit. Additionally, wages that qualify for the required paid leave credit are not eligible for the credit.

The credit is for wages paid by eligible employers from March 13, 2020 through December 31, 2020.

AIRLINES AND DISTRESSED INDUSTRIES

Q: Regional airports/airlines – what assistance are they eligible to receive?

A: Passenger airlines are eligible for \$25 billion in loan authority and \$25 billion in grants to maintain their operations, employee payroll, and contracts around the country. The bill also includes \$4 billion in loan authority and \$4 billion in grants for cargo air carriers.

The bill also provides \$10 billion in grants through the Airport Improvement Program to support projects and operations at airports around the country. It also provides \$3 billion in grants for contractors employed by the airlines, to ensure that airlines can maintain existing operations contracts. The bill also includes \$56 million for the Essential Air Service to maintain existing air service to rural communities.

Q: Within the tourism industry, who is eligible and how are the funds accessed?

A: All industries and firms are eligible to benefit from the broad financing from the Treasury fund to the extent they don't receive sufficient assistance from other programs. How to access this support will depend on the size and model of the business and the exact facility used.

Q: What does this bill do to put restrictions on the airlines accepting grants and loans?

A: The loans come with conditions including: restrictions on executive compensation; prohibition on stock buybacks and the prohibition on paying dividends for the duration of the loan plus 12 months; the airline or business must maintain its existing employment levels through September 30, 2020 to the extent practicable, and in no case reduce it by more than 10%.

Q: How does it support airports and affiliated contractors?

A: The bill provides \$10 billion in grants to airports to help them maintain employment, continue operations, clean and sanitize to prevent the spread of coronavirus, and service airport construction debt.

The bill also provides \$3 billion in payroll support grants to airline contractors, including baggage handlers, wheelchair pushers, and caterers. These grants can only be used for paying employees and contractors that receive grants must maintain current employment levels through September 2020.

HEALTH CARE

Q: How does bill address the PPE and COVID-19 testing shortage?

A: The bill provides \$16 billion explicitly for the National stockpile. This funding can purchase medical supplies, equipment, and medicine to be distributed to states.

Q: How does the bill help individuals with mental health needs?

A: EXPANDS TELEHEALTH SERVICES: Opens up expanded telehealth services in the Medicare program, allowing seniors across the nation to receive any current telehealth approved service (not just COVID related services), including mental health and substance abuse services. This will allow seniors to receive critically important mental health and substance use disorder services in their homes without having to forgo care or risk infection by entering the community.

IMPROVED CARE COORDINATION FOR PATIENTS WITH SUBSTANCE USE DISORDER: Ensures that health care providers can more effectively care for patients with substance use disorders (especially those with comorbid mental illness and other chronic diseases) by better aligning the treatment of substance use disorder medical records subject to 42 CFR Part 2 with HIPAA.

REAUTHORIZES THE EXCELLENCE IN MENTAL HEALTH DEMONSTRATION PROGRAM:

Reauthorizes and expands Certified Community Behavioral Health Clinics, which provide critical services both in person and via telemedicine to tens of thousands of vulnerable Americans with suffering with mental health or addiction issues.

PROVIDES ADDITIONAL FUNDING TO THE SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES

ADMINISTRATION (SAMHSA): Provides a total of \$425 million for SAMHSA to be used to support grants to address suicide prevention, mental and behavioral health priorities for tribes and tribal

organizations, Certified Community Behavioral Health Clinics, and other emergency substance use disorder or mental health needs in local communities.

Specifically:

- *Certified Community Behavioral Health Clinics: \$250 million to increase access to mental health care services.*
- *Suicide Prevention: \$50 million to provide increased support for those most in need of intervention.*
- *SAMHSA Emergency Response Grants: \$100 million in flexible funding to address mental health, substance use disorders, and provide resources and support to youth and the homeless during the pandemic.*

Q: Will emergency service providers be eligible for telehealth provisions?

A: Emergency service providers are still required to respond to the scene if they are dispatched through a 911 emergency call. However, emergency service providers will be able to use funds from the Public Health and Social Services Emergency Fund in order to authorize treatment in place and alternative destinations of care besides the hospital for ground ambulance responders. These emergency service providers should be able to use telehealth tools and capabilities in order to treat patients on site or determine if they require care at an alternative site. These concepts of treatment in place and alternative destinations of care for emergency responders are found in the Administration’s Emergency Triage, Treat, and Transport (ET3) Model released last year aimed at providing greater flexibility for first responders and patients.

Q: Why aren’t phone calls – which are low-tech and easier than video conferencing – eligible for telehealth reimbursement?

A: We understand that seniors may have issues with video conferencing for telehealth purposes, particularly in areas where there is a lack of broadband, especially rural areas. The limitation on telemedicine was originally included as a guardrail by House Democrats in package 2 to ensure unscrupulous providers didn’t start reaching out to beneficiaries they had no relationship with to bill for unneeded or non provided services. But we all realize how important keeping our vulnerable seniors out of the community setting is during this public health emergency. We can only assume the Senate did not include phone calls to be eligible for telehealth reimbursement because doctors already complete many regular calls with seniors that are currently not billable. Without a clear delineation between those standard calls and new COVID authority related telehealth calls, there is not a good way to cover audio-only telehealth without a massive expansion in costs, even without patients receiving new services.

APPROPRIATIONS

Q: Are state and local governments are eligible for relief funds?

A: Yes, Eighty percent of funding provided by Division B, the appropriations section, goes out through existing grants to support state, local, tribal, and community grantees. Funding is provided to numerous programs within the Agriculture; Labor-Health-Education; Interior; Homeland Security; Commerce-Justice-Science; and Transportation and Housing subcommittees. For additional questions on Division B, please contact the Appropriations Committee. Some programs included within the appropriations division are:

- *Community Development Block Grants – \$5 billion*
- *Homelessness Grants – \$4 billion*
- *Transit Agencies – \$24 billion*
- *Airports – \$10 billion*

- *Assistance to Tribal Communities (Indian Health Service, Bureaus of Indian Education/Affairs, and Food Distribution) – \$1.7 billion*
- *Disaster Relief Fund – \$45 billion*
- *Emergency Food and Shelter Grants – \$200 million*
- *First Responder (FIRE) Grants – \$100 million*
- *Emergency Management Program Grants – \$100 million*
- *Byrne Justice Assistance Grants – \$850 million*
- *Economic Assistance Development Grants – \$1.5 billion*
- *Manufacturing Extension Partnership Grants – \$50 million*
- *Child nutrition – \$8.8 billion*
- *Supplemental Nutrition Assistance Program – \$15.8 billion*
- *Community Services Block Grant – \$1 billion*
- *Low Income Home Energy Assistance Program – \$900 million*
- *Child Care and Development Block Grant – \$3.5 billion*
- *CDC Funding for State Public Health Departments – \$1.5 billion*

Q: Are the DOD and VA eligible for relief funds?

A: The bill provides a total of \$10.5 billion for DOD functions and programs, including \$1 billion to expand availability of necessary supplies through the Defense Production Act, \$3.4 billion for defense health care programs, and \$1.5 billion to support the deployment of the National Guard.

The bill provides a total of \$19.6 billion for the Department of Veterans Affairs and veterans programs. In addition, if VA is called upon by the federal emergency coordination council to care for non-Veterans, it will be reimbursed through the Public Health and Social Security Emergency Fund. Funding provided in the bill for the PHSSEF assumes VA will be reimbursed approximately \$4 billion.

Q: How will funds be distributed to hospitals, including rural hospitals?

A: The bill appropriates \$100 billion to hospitals and other health care providers. We believe HHS will hire a third-party claims processor, similar to a Medicare Administrative Contractor. This processor will use criteria, outlined by HHS, to determine (1) eligibility of provider, (2) justifiability of amount, (3) amount of claim, (4) payment, and any other information determined by HHS. We also assume there will be an administrative appeals process. We do not know specifics yet as this is a new program. The bill provides wide latitude to the Administration to determine program parameters.

Additionally, the bill provides money for providers through Medicare:

- *Allows for accelerated Medicare payments. This will help hospitals, especially those facilities in rural and frontier areas, get the reliable and stable cash flow they need to help them maintain an adequate workforce, buy essential supplies, create additional infrastructure, and keep their doors open to care for patients.*
- *Creates a 20 percent add on payment for inpatient treatment*
- *Delays the sequester until the end of this calendar year, which gives providers both money and certainty*

Q: Will nursing homes be able to access the same account as hospitals?

A: Nursing homes may be eligible, but that remains an open issue. Significant parameters will need to be issued by HHS on the process, information, and eligibility.



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COVID-19 RESPONSE PHASE 3: FAQs (Part 2)

INDIVIDUALS

Q: Does this bill provide individuals more compensation on Unemployment Insurance than they receive via employment?

A: The enhanced UI is designed to keep as many as whole as possible. Some may temporarily receive more benefit than previous payment – though that number is very small relative to the number of people who will be filing UI claims in next few weeks.

Right now, states pay between \$250-500/week in unemployment and they base it on a percentage of a worker's paycheck, usually between 1/3 to 1/2 of prior earnings. An additional \$600 will put some workers at or just above their usual paycheck – this increase only lasts until July 31st. Additionally, the worker must have been laid off by their employer, so they can not voluntarily "opt-in" by quitting. The main point of the overall bill is to provide a lifeline to small businesses, so they don't have to lay people off in the first place. Without this bill, the UI problem will be magnitudes worse.

SMALL BUSINESS

Q: Is Planned Parenthood eligible for SBA loans and grants?

A: No, Planned Parenthood is not eligible for SBA grants or loans. Originally, the Senate bill contained a clause that excluded nonprofits that received Medicaid (i.e. Planned Parenthood) from participating in the Paycheck Protection Program. This exclusion clause was ultimately removed from the final bill.

However, the final bill binds nonprofits to the SBA's affiliation rules. The bill permits nonprofits to participate in SBA's loan programs, provided they have 500 employees or less. Planned Parenthood is a nonprofit and is subject to the 500 employee cap and the affiliation rule. Therefore, Planned Parenthood and their affiliates are not eligible for SBA grants or loans, as they have more than the allowable 500 employees.

Q: Are businesses that employ more than 500 employees across multiple locations eligible for the Paycheck Protection Program at each individual location?

A: A business is generally eligible for the Paycheck Protection Program if it is a for-profit business, 501c3, or 501c19 (veterans organization) nonprofit with fewer than 500 employees. There are a few exceptions. Businesses in the accommodation and food service industry (assigned a North American Industry Classification System code beginning with 72) with more than one location, a business could also be eligible at the store and location level if the store employs fewer than 500 workers. In other words, each store location could be eligible.

Previous Senate drafts required the accommodation and food service industry business to have less than \$500 million in gross receipts to be eligible. This \$500 million requirement has been removed from the Senate's final bill. Lastly, if franchisors that appear in the SBA's National Franchise Directory, assistance will extend down to the franchisee at the store or location level.

AIRLINES and DISTRESSED INDUSTRIES

Q: How does the "conflict of interest" prohibition for the president and members of Congress apply?

A: Conflicts of Interest

- *Applies only to the \$500B allocated to Treasury – not the SBA lending provisions.*
- *Applies to President, Vice President, head of any executive department, any Member of Congress, and their immediate family members (spouse, children, son-in-law, daughter-in-law).*
- *If Member (or President/Vice President/head of executive department) combined with that individual's family members controls or owns more than 20% of any class of equity security of a company (by voting rights or value), that means that company is ineligible for lending under the \$500B allocated to Treasury.*
- *Applies not just to public companies but also private companies (LLCs, S corps, etc.).*
- *Principal executive officer and financial officer of each company seeking funding under Treasury lending must certify that the conflict of interest section does not apply to their company (i.e., they are not controlled by a Member/President/VP/head of executive department or those people's family).*

Q: Does the bill provide assistance to cruise lines, the owners and operators of small passenger vessels, or port facilities?

A: In general, the CARES Act provides \$454 billion to provide loans, loan guarantees, and other investments to assist eligible businesses. Eligible businesses are U.S. businesses whose losses result from the coronavirus, and U.S.-owned cruise lines, owners and operators of small passenger vessels, and port facilities are expected to qualify.

Q: Does the bill provide any regulatory relief to the trucking industry?

A: The CARES Act includes language requested by the Department of Transportation (DOT) to clarify state authority to issue special permits for increased truck weight. Under either a "major disaster" or "emergency," states can issue special permits for heavier trucks to deliver relief supplies. This ensures the validity of state-issued special permits.

Q: What are the labor provisions related to the Federal Reserve loan facility and how do they apply?

A: **Topline:** *There are no mandatory union provisions for the \$454 billion in emergency funding. The Secretary has wide authority to establish the best programs needed to support the economy.*

What are the union provisions in the bill?

- *There is a section in the bill instructing the Secretary to “endeavor to seek” to establish a mid-size business lending facility for direct lending as one of several facilities funded with that \$454 billion.*
- *Two of the requirements for direct loan recipients under solely the mid-size business lending facility impose union-related restrictions. Those include not abrogating existing Collective Bargaining Agreements (CBAs), and an agreement that the business will stay neutral in union organizing.*

What do they do?

- *The provisions restrict the business from abrogating an existing collective bargaining agreement and agreeing to stay neutral in any labor union formation.*

Will businesses have to agree to these restrictions?

- *The section only requires the Secretary to “endeavor to seek” to establish a direct loan program. The Secretary does not have to establish one.*
- *The bill text only requires a good faith certification by a business that it is meeting the requirements of the union provisions if one is established.*
- *There is no enforcement mechanism.*
- *It is also important to remember these provisions apply to only one option for how the \$454 billion in funding will be distributed.*
- *The bill provides several ways for the Treasury to work with the Fed to get money to businesses outside of the union provisions.*

What flexibility does the Secretary have to waive the provisions?

- *The Secretary has maximum flexibility: Remember, the point of the emergency lending is to give the Secretary maximum flexibility for helping our most distressed sectors of our economy.*
- *In the bill text, you will see that the Treasury Secretary has a great deal of discretion and waiver authority.*
- *For example, the bill preserves the Secretary’s right to waive certain restrictions for the loan if it’s to “protect the interest of the Federal government.”*
- *And the bill only requires a good faith effort for the Treasury Secretary to try to follow the terms and conditions, but it’s not a requirement.*
- *Treasury Secretary may not be able to follow it or might decide to structure midsize business support differently.*

Are there other provisions in the bill that impact unions or union activity?

- *Yes. Section 4025 of the bill prevents the government from requiring an air carrier to enter into collective bargaining agreement (CBA) negotiations to get a loan. It does not prevent an air carrier from entering CBA negotiations on its own.*
- *The airline industry does not oppose this provision.*

APPROPRIATIONS and MISCELLANEOUS PROVISIONS

Q: Why is there a \$25 million appropriation for “Congressional Salary and Expenses” in the bill?

A: \$25 million is provided to the Chief Administrative Officer, which is appropriated under the Salaries and Expenses account for the House of Representatives. Before funds can be spent, a spend plan is to be provided to and approved by the Committee on Appropriations. These funds are intended for computer purchases for teleworking, technology for video town halls, equipment for computer imaging, expansion of IT Customer support, and emergency expenses to support the Sergeant at Arms. These funds are not intended to be used to increase salaries of Members or staff.

Q: How will the \$150 billion Coronavirus Relief Fund for states and local government be allocated?

*A: **Coronavirus Relief Fund** (Sec. 5001) – A program created under the Department of the Treasury to provide funding to States, Tribes, and localities to offset lost revenue as a result of the coronavirus public health emergency. The bill provides an appropriation of \$150 billion to be distributed by formula based on population. Eligible local governments may apply directly to the Treasury for funding and amounts paid to a state will be reduced accordingly.*

Who is eligible to apply and receive funding?

- *States, eligible local government, Tribal governments, DC, and the territories.*

How is funding distributed?

- *Funding is paid based on a state share of the total population, subtracting any amounts paid to local governments.*
- *No state can receive less than \$1.25 billion.*
- *\$3 billion is reserved for the District of Columbia, Puerto Rico, Virgin Islands, Guam, Northern Mariana Islands, and American Samoa. The amount for each is based on population.*
- *\$8 billion is reserved for Tribal governments after consultation.*

What is the timing for distributing funds to states?

- *Funds must be paid within 30 days of enactment.*

How is funding allocated to states?

- *State receive an amount equal to their relative population, deducting any amount that may have been paid to units of local government within the state who applied for funding independent of the state.*

What criteria is used to determine if local governments can apply?

- *A local government means any county, municipality, town, or other unit of general government with a population greater than 500,000.*
- *Smaller units of local government will need to work with their states to access funding.*

How much can local governments receive if they apply directly?

- *In no event will the total amount allocated directly to local units of government exceed 45% of the state’s allocation.*

- A local government may receive 45 percent of the amount provided to the state times its relative population to the state
 Ex:
$$\frac{\text{Town Population}}{\text{State Population}} \times 45\% \text{*(total amount for state)}$$

How is population determined?

- The most recent year for which data are available from the Bureau of the Census.

What can funds be used for?

- Funds may only be used to cover the costs associated with necessary expenses incurred as a result of the coronavirus diseases 2019 public health emergency, not accounted for in the most recently approved state budget, for calendar year 2020. The fungibility of certain aspects of public budgeting and the general sorts of revenue shortfalls that are expected in the current economic climate makes it unclear how restrictive those limitations will be in practice.
- Covered by protections and restrictions that apply to annual LHHS appropriations, including Hyde.

Q: What funding is provided to the Federal Emergency Management Agency (FEMA) to support state and local response efforts?

A: The CARES Act infuses \$45 billion into FEMA's Disaster Relief Fund (DRF), which will be added to the existing amounts in the DRF (approximately \$40 billion). This funding will help response efforts in states with approved major disaster declarations. The bill also includes \$100 million for FEMA's Emergency Management Performance Grants (EMPG), which support state and local emergency management capacity; \$100 million for Assistance to Firefighter Grants to support the acquisition of personal protective equipment; and \$200 million for FEMA's emergency food and shelter program.