SENATE RPC
Senator Roy Blunt, Chairman
July 28, 2020

UPDATE ON CORONAVIRUS RESPONSE: HEALS ACT

KEY TAKEAWAYS

- Congress and President Trump have provided unprecedented support to American families, workers, businesses, and health care providers affected by the coronavirus.
- Over the last five months, Congress has passed multiple bills to help respond to the coronavirus.
- This week, Senate Republicans introduced a package of eight additional bills to take the next step in coronavirus response.

On March 13, President Trump declared the coronavirus to be a national emergency. He has used funds allocated by Congress over the last five months to respond to the public health emergency and assist state and local governments.

Since March, the administration has implemented policies and distributed funds to support state governments and health care providers on the front lines of the virus response. COVID-19 testing capacity has increased significantly and researchers have made significant progress developing vaccines and treatments. Following stay-at-home orders and school closures across the country, Congress enacted policies to help struggling business, families, and workers. The economy created 7.5 million jobs in May and June as states reopened, about one third of the 22 million lost between February and April.

However, there is still work to be done to increase testing capacity and produce faster tests, to develop safe and effective vaccines and treatments, to support the health care system, support businesses, families, and workers, and to help the economy reopen and recover.

In early March, Congress provided $7.8 billion in discretionary supplemental funds to target research and development of vaccines and treatments, and to support state and local public health departments. The funding also helped to strengthen the national stockpile of medical supplies and health system preparedness and increased access to telehealth services.

Later that month, Congress also passed the Families First Coronavirus Response Act, H.R.6201, which set up emergency paid sick leave and family leave requirements for certain employers, offset by refundable tax credits. It increased funds for food aid and unemployment benefits. The law requires insurers to provide coverage for certain coronavirus testing.

At the end of March, Congress passed the Coronavirus Aid, Relief, and Economic Security Act. The CARES Act increased payments to hospitals and health care providers, expanded telehealth access, and created a new Paycheck Protection Program to help businesses stay open and pay their employees. The law sent most American adults economic impact payments of up to $1,200, along with $500 per child. Congress also provided up to $500 billion for the Treasury and Federal Reserve to leverage as loans to give liquidity to businesses, states, and cities. It set up a $150 billion relief fund to help states, the District of Columbia, territories, and tribes pay for coronavirus response costs.

On April 24, President Trump signed the Paycheck Protection Program and Health Care Enhancement Act. The law provided about $484 billion in total funding. It added $310 billion in lending authority and $321.3 billion in appropriations for the Paycheck Protection Program; $60 billion for small business disaster loans and emergency advance grants; $2.1 billion for SBA administrative costs; $75 billion for hospitals and health care providers; and $25 billion for COVID-19 testing.

This week, Republicans introduced a package of bills known together as the Health, Economic Assistance, Liability Protection, and Schools Act. The HEALS Act includes:

SAFE TO WORK ACT

- Creates a temporary exclusive federal cause of action for personal injury and medical liability claims arising from actual, alleged, feared, or potential exposure to the coronavirus. This cause of action, which would govern all cases, including those pending on the date of enactment, would be available to plaintiffs for claims arising between December 2019 and October 2024 or the end of the coronavirus emergency declaration, whichever comes later. It would govern any claim against nearly any defendant, including people, schools, colleges, government agencies, and businesses, as long as they are engaging in conduct subject to congressional regulation under the interstate or foreign commerce clauses of the Constitution.

- Preempts state laws, including common law, that more easily allow claims arising from coronavirus exposure. State laws with broader liability limitations would not be preempted.

- Requires that plaintiffs satisfy each element of their claim by clear and convincing evidence. Plaintiffs must establish that the defendant acted with gross negligence or willful misconduct that caused the plaintiff's coronavirus injuries. Defendants are not liable if they undertook reasonable efforts to comply with applicable mandatory coronavirus standards and regulations in effect at the time of the alleged exposure. If the defendant was not subject to mandatory standards, the defendant need only show it followed some set of applicable public health guidelines. If the entity is subject to multiple guidelines, it need only follow one.

- Allows plaintiffs to file coronavirus-related lawsuits in state or federal court, but gives defendants the right to move their cases to federal court.

- Forbids joint and several liability, instead requiring proportionate damages from each defendant. Under joint and several liability, if several defendants caused the harm, the plaintiff can collect the full judgment from any of them. Limits damages to economic losses, excluding punitive damages except in cases of intentional misconduct. Preempts state laws allowing higher damages.

- Exempts employers from liability under federal labor and employment laws for actions taken to comply with public health guidelines. Exempts businesses and employers from liability under federal accommodations law if they cannot offer requested accommodations because of coronavirus risk.

- Forecloses lawsuits for injuries caused by workplace coronavirus testing unless the injuries resulted from gross negligence or intentional misconduct.

AMERICAN WORKERS, FAMILIES, AND EMPLOYERS ASSISTANCE ACT

- Provides a federal payment of $200 per week through September under the federal pandemic unemployment compensation program, which would be on top of state benefits. In October, people would receive a payment that, when added to the state unemployment insurance payment, replaces 70% of their prior wages, with the additional payment limited to no more than $500. States could apply for a two-month waiver to keep paying a flat dollar amount, if they cannot yet provide the second payment based on lost wages. Also requires states to tell people receiving jobless benefits about their return to work rules.

- Requires independent contractors and other types of workers receiving UI benefits in the pandemic unemployment assistance program to provide documentation showing that they were employed or self-employed, rather than just self-certify that they lost income.

- Increases from 50% to 75% the share of unemployment benefits that the federal government would reimburse nonprofits, Indian tribes, and government agencies.

- Provides $2 billion to help states upgrade their UI systems, including to be better able to process large numbers of claims and more quickly change formulas for benefits.

- Reimburses states for 80% of increases in their Temporary Assistance for Needy Families costs, up to $2 billion.

- Using the same income thresholds as the CARES Act, the bill provides the same $1,200 rebate for U.S. citizens and U.S. residents – $2,400 for married couples filing jointly – plus $500 per dependent. The $500 per dependent would be provided to those with dependents of any age, not just dependents under 17 as in the CARES Act. People who receive income through SSI benefits and other non-taxable, means-tested benefits remain eligible for the full amount. It explicitly prohibits people who died before January 1, 2020, from receiving these rebates. People who are in prison at the time Treasury sends the payments cannot receive one, and people in prison for all of 2020 cannot receive the payment as a 2020 tax credit.

- Allows employers to claim a credit for 65% of employee wages under the employee retention credit, up from 50% in the CARES Act. Under the CARES Act, eligible businesses had to close down under a COVID-19 order or lose at least 50% of their quarterly gross receipts, year-over-year, but this bill reduces the revenue loss threshold to 25%. Under the CARES Act, the credit applied to up to $10,000 in wages per employee. This bill increases it to $10,000 per quarter, up to $30,000 for the year. Under the CARES Act, businesses with more than 100 employees could claim the credit only for wages paid to an employee on payroll but not working, a situation less likely as businesses reopen. This bill sets the threshold at 500 employees, allowing more businesses to base the credit on the full wages paid to an employee.

- Extends the work opportunity tax credit to include hiring people who lost jobs due to the pandemic. It adds a new "target group" of workers consisting of people who received jobless benefits for the week before they were hired. Under the WOTC, employers claim a tax credit of 40% of the first $6,000 of wages paid to an employee who is in one of 10 groups facing barriers to finding work. The bill increases the credit to 50% of the first $10,000 in wages.

- Sets up a payroll tax credit for 50% of expenses employers incur, from March 13, 2020, to January 1, 2021, on personal protective equipment, cleaning supplies, and other things to make the workplace safer. The limits are $1,000 per employee for the first 500 employees; $750 for each employee between 500 and 1,000; and $500 for each employee above 1,000. Provides a similar credit for sole proprietors, farmers, and certain other self-employed people.

- Helps gig-economy workers by allowing marketplace platform companies to provide certain COVID-related benefits tax free.

- The CARES Act provided $150 billion to state, local, territorial, and tribal governments to cover unexpected COVID-19 response costs they incur through December 30, 2020. This bill extends this timeframe to 90 days after that government's fiscal year 2021 ends. It does not provide new money. Allows governments to use up to 25% of their funds to cover revenue shortfalls between March 1, 2020, and 90 days after their fiscal year 2021 ends, if they have certified they sent 25% of their funds to their smaller governments. Governments cannot spend their money on pensions and similar benefits for former government employees, or to fill rainy day funds.

- Gives certainty to employees and employers through uniform procedures for assessing state and local income taxes on remote and mobile workers affected by COVID-related government shutdown orders and changing work conditions during the economic recovery.

- For 2021 Medicare Part B plans, the bill maintains the 2020 Part B premium rate of $144 for the standard premium and higher amounts for enrollees paying income-related premiums.

- Delays the repayment of loans to hospitals and providers in the Centers for Medicare and Medicaid's Accelerated and Advanced Payments Program until January 1, 2021. This provision would offer additional time for Medicare providers and suppliers to repay these loans.

- Extends CMS-issued Medicare telehealth waivers for the duration of the public health emergency or until the end of 2021, whichever is later. This provision would also require the Medicare Payment and Advisory Commission to report on the impact of these telehealth flexibilities and HHS to post data on telehealth use during the pandemic.

- Allows 2020 plan year contributions to flexible spending accounts and dependent care flexible spending accounts to be rolled over to the 2021 plan year. Patients would be able to use their funds that went unspent in 2020 due to COVID-19 related closures and cancellations.

- For high-deductible health plans, provides enrollee coverage for care at on-site employee health clinics below the deductible until December 31, 2021.

- Authorizes the establishment of federal "strike teams" for Medicare- and Medicaid-enrolled nursing facilities to help respond to COVID-19, including testing, implementing infection control practices, and medical examinations.

- Requires that the HHS secretary provide state governors with a list of all Medicare- and Medicaid-enrolled nursing facilities reporting increased COVID-19 cases during the previous week. This requirement takes effect 10 days after enactment of this act and is to be maintained for the duration of the national emergency.

CONTINUING SMALL BUSINESS RECOVERY AND PAYCHECK PROTECTION PROGRAM ACT

- Expands what borrowers can spend PPP loans on to include certain operations costs; property damage costs from 2020 public demonstrations that insurance does not cover; payments to suppliers for goods already under contract that the business needs; and costs for complying with COVID-19 health guidelines such as buying PPE.

- Provides a safe harbor from enforcement actions for lenders who in good faith issued loans based on borrowers' certifications. Simplifies the loan forgiveness application by allowing borrowers with loans under $150,000 to give a good faith attestation that they complied with the rules. They must retain records for three years. Borrowers with loans between $150,000 and $2 million do not have to give their lender documentation on payroll and other expenses as in the CARES Act, but they do have to certify this information is correct and keep these documents on record for three years.

- Provides $190 billion of committed and appropriated funds for the PPP and new "PPP Second Draw Loans." Allows certain entities to take a second draw PPP loan at 2.5 times their average monthly payroll, with a limit of $2 million. The second draw loan aims to assist smaller firms disrupted the most by the pandemic. To be eligible, businesses must have 300 or fewer workers and show they lost 50% or more in revenue in one of the first two quarters of 2020 compared to 2019. To qualify for forgiveness, they must spend 60% of the loan on payroll, leaving 40% for eligible non-payroll costs. Reserves $25 billion for businesses with fewer than 10 employees and sets aside $10 billion for community lenders to access second draw loan funds. Rescinds $100 billion in unspent PPP funds from prior response legislation and instead appropriates it for new program costs.

- Provides $100 billion for recovery sector loans through the Small Business Administration's 7(a) loan program. Recovery Sector Businesses can receive two times their annual revenue, with a limit of $10 million. The loan has a 1% interest rate and a 20-year maturity, and borrowers can defer payments for up to two years. Businesses generally must have 500 or fewer workers and meet SBA's size standards, and they must have lost 50% of their revenue compared to the prior year. They must be in specified low-income census tracts or a seasonal business.

- Provides $10 billion for an equity investment facility through the SBA's Small Business Investment Company program. Allows the SBA to provide grants to SBICs that invest in small businesses in low-income areas, those with large revenue losses due to the pandemic, and small manufacturers important to U.S. supply chains.

SAFELY BACK TO SCHOOL AND BACK TO WORK ACT

- Enhances sustained manufacturing surge capacity and capabilities necessary for medical countermeasure production in responding to public health threats.

- Establishes state stockpiles of medical products and supplies. Requires states to submit plans for their stockpiles to the HHS secretary for maintenance and preparedness.

- Requires the Department of Health and Human Services to issue guidance on state and tribe access to resources from the Strategic National Stockpile.

- Incorporates laboratory testing and epidemiology system into existing surveillance programs. Updates information exchange capabilities between public health departments and health care providers enabling them to identify infectious diseases and notify public health preparedness and response.

- Authorizes 10 regional Centers for Public Health Preparedness to help state and local health departments, health care coalitions, and the public in preparation for and during a public health emergency.

- Improves coordination between the Food and Drug Administration and the Centers for Disease Control and Prevention to pinpoint and prioritize testing supply and component needs for tests that detect COVID-19. The provision would also help provide clear processes to encourage the development of commercial lab tests and help mitigate testing material and supply shortages in advance of a public health emergency.

- Expands access to telehealth by permitting employers to offer telehealth as an "excepted benefit" to employees who are not working full time or do not qualify for employer coverage. The expanded benefit for telehealth would be made allowable until December 31, 2021, or for the duration of the public health emergency, whichever is longer. This provision builds upon the previous expansion of telehealth access HHS and Congress have provided – through the Families First Coronavirus and Response Act and CARES Act – to ensure patients maintain access to care while mitigating the spread of the coronavirus.

- Protects human genetic information collected during COVID-19 testing by prohibiting patient information from being used for anything other than diagnostic and serologic testing purposes, unless the patient consents.

- Provides additional flexibility to the National Institutes of Health and the FDA to transfer more than their current funding cap to public-private partnerships. The increased funding flexibility would support drug development research related to COVID-19.

- Simplifies the student loan repayment system by reducing the current nine repayment options to two options. One is the standard 10-year plan with fixed monthly payments. The other option limits payments to 10% of a borrower's income, after accounting for living expenses. Any balance remaining after 20 years of payments, or 25 years for graduate borrowers, would be forgiven. Applies to loans entering repayment on or after October 1, 2020, as well as to borrowers that change to a new repayment plan on or after October 1, 2020.

- Authorizes emergency education freedom scholarship grants to help K-12 students and their families affected by the pandemic. Funds from the grants would support scholarship-granting organizations in each state to help families pay for education expenses.

- Authorizes grants to states to provide time-limited assistance to help child care centers, providers, and operators safely reopen and stay open, so that parents have access to safe child care and can return to work.

- Authorizes formula grant funding that states can use for job training activities, such as those included in the Workforce Innovation and Opportunity Act.

- Permits school districts to use their last year's student counts for Impact Aid applications in the coming year, to reduce inaccuracies in their student counts because of school closures and distance learning.

TRUST ACT

- Creates congressional "rescue committees" to address America's endangered federal trust funds, including the Social Security, Highway, and Medicare trust funds.

- In January 2021, the Department of Treasury would provide a report to Congress on major, endangered federal trust funds. With this information, congressional leadership would assemble one bicameral rescue committee per endangered trust fund, which would be charged with creating legislation to preserve the fund. Reporting out the legislation would require support from a majority of the committee, including two committee members from each party.

- A rescue committee-reported bill would be subject to fast track procedures in Congress and only require a simple majority to pass a motion to proceed in the Senate, although 60 votes would be required to invoke cloture on final passage.

RESTORING CRITICAL SUPPLY CHAINS AND INTELLECTUAL PROPERTY ACT

U.S. MADE Act

- Requires purchases made by HHS for the Strategic National Stockpile to be manufactured in the U.S. The requirement is for personal protective equipment and clothing, sanitizing and ancillary medical supplies, and other textile medical supplies and equipment. Permits the HHS secretary to exempt certain items should it be determined there is insufficient quantity or unsatisfactory quality available domestically.

- Directs Treasury, working with HHS, to set up a qualified medical PPE manufacturing project program. Provides a 30% qualified investment tax credit to U.S. manufacturers. The total limit on the tax credit program is $7.5 billion. The Treasury would disclose who receives the credits and the amounts.

- For taxpayers receiving the credit, it allows tax-free repatriation of intangible property, such as patents and design, used for making qualifying PPE.

Safeguarding American Innovation

- Creates a Federal Research Security Council at the Office of Management and Budget to oversee federal grant making processes. The FRSC would develop requirements for a uniform grant application process; information sharing on research security risks; combating conflicts of interest among recipients; adopting best practices to reduce misappropriation of research and data; and issuing warnings about foreign government exploitation of U.S. research.

- Creates a new criminal prohibition against people knowingly preparing, submitting, or falsifying a federal grant application that fails to disclose outside compensation. Violations could be penalized by fines and imprisonment for up to five years.

- Enhances the State Department's ability to deny visas to those affiliated with foreign governments or institutions seeking to obtain or undermine U.S. research or export controlled technologies.

- Requires sponsors of exchange visa recipients to provide basic information about export-controlled technology the recipient would access while in the United States. Sponsors of these "J visas" must also provide a plan to restrict unauthorized access to export-controlled technologies.

- Lowers, from $250,000 to $50,000, the threshold for foreign gifts and contracts to colleges and universities that triggers a reporting requirement. Directs the Education Department to develop a rule on reporting such gifts and contracts. The department would be authorized to impose fines on schools that repeatedly do not file reports on foreign gifts.

CHIPS for America Act

- Directs the secretary of commerce to create a grant program for the purpose of constructing, expanding, or modernizing commercial semiconductor fabrication, assembly, testing, packaging, and advanced research and development facilities in the U.S. No grant can exceed $3 billion.

- Requires the secretary of commerce to commence a review within 120 days assessing the state of the U.S. semiconductor industrial base.

- Directs the secretary of defense to work with the private sector to develop secure microelectronics for use in the national security.

- Establishes a multilateral fund for the U.S. and its allies to develop consistency and transparency on semiconductor supply chain and export control policies.

- Directs the president to establish a subcommittee on semiconductor technology and innovation within the National Science and Technology Council.

- Directs the Commerce Department to establish a national semiconductor technology center to conduct research, fund startups and a Manufacturing USA Institute, create a national advanced packaging manufacturing program, and develop workforce training programs.

- Ensures none of the funds authorized in this section would go to companies controlled, owned, or influenced by China or other foreign adversary.

Critical Minerals

- Requires the executive branch to designate critical minerals and update the list every three years. Mandates that the U.S. Geological Survey conduct and release an assessment of domestic availability of critical minerals. Encourages the Departments of the Interior and Agriculture to efficiently review federal permit applications without compromising environmental review. Directs the secretary of energy to conduct research on recycling critical minerals and developing alternatives.

- Directs the secretary of energy to develop advanced separation technologies for the extraction and recovery of rare earth elements and other minerals from coal and coal byproducts.

SUPPORTING AMERICA'S RESTAURANT WORKERS ACT

- Temporarily increases the business meal deduction from 50% to 100%, for expenses for food and beverages provided by a restaurant, through December 31, 2020.

ADDITIONAL EMERGENCY APPROPRIATIONS FOR CORONAVIRUS HEALTH RESPONSE AND AGENCY OPERATIONS

- Funds agencies across the federal government with a total of $306 billion, the majority of which – $226.2 billion – goes to labor, health and human services, and education appropriations.

- Of the remaining $80 billion, $30 billion is for defense, $20 billion is for agriculture, and the balance is for coronavirus relief at various federal agencies.

- Of the funding provided for general agency operations, a significant amount would cover shortfalls in fees that fund some agency operations. These fee shortfalls are a direct result of the pandemic.

Labor, Health and Human Services, and Education – $226.2 Billion

- $25 billion for testing, contact tracing, and surveillance in states, which includes $16 billion in new funds and approximately $9 billion from the Paycheck Protection Program and Health Care Enhancement Act that remains unallocated.
- $2.5 billion to the Department of Labor, including $1.15 billion for state unemployment system operations, $950 million for WIOA grants, and $350 million for the employment service.
- $15 billion to help child care providers safely remain open or reopen.
- $20 billion to the Biomedical Advanced Research and Development Authority for vaccine, treatment, and diagnostic development and manufacturing.
- $6 billion to develop and execute a new COVID-19 vaccine distribution campaign coordinated through CDC.
- $15.5 billion for NIH lab reopening, COVID-19 research, and vaccine and therapeutic development.
- $25 billion to the Provider Relief Fund created in the CARES Act.
- $4.5 billion for mental and behavioral health, substance use treatment, and suicide prevention.
- $225 million to rural health clinics.
- $7.6 billion for Community Health Centers.
- $105 billion to the Education Stabilization Fund created in the CARES Act.
    - Elementary and secondary schools would receive $70 billion, including proportional funds for private schools. Of the funds allocated to school districts and private schools, one-third would be available right away to all K-12 schools. The other two-thirds would be available for implementing school districts' reopening plans. These funds would be distributed based on meeting certain opening requirements and other criteria.
    - Institutions of higher education would receive $29 billion, including $2.9 billion reserved for historically black colleges and universities and for minority-serving institutions. Schools can use their funds for COVID-19 related institutional costs and additional student financial aid.
    - Schools that paid an endowment tax in 2019 would receive a smaller allocation and could only spend the funds on student aid.

- Governors receive $5 billion in flexible funding they can use for early childhood, K-12, or higher education.
- The Bureau of Indian Education and outlying areas receive $1 billion.

Department of Defense – $29.4 billion

- $10.8 billion to support payments made to contractors to cover sick and paid leave.
- $8.05 billion to support the defense industrial base through procurement and acquisition.
- $5.3 billion to support Defense Production Act purchases.
- $2.6 billion to support operation impacts due to COVID-19.

Agriculture, Rural Development, Food and Drug Administration – $20.46 billion

- $20 billion to support agricultural producers, growers, and processors affected by COVID-19.

Transportation and Housing and Urban Development – $13.35 billion

- $10 billion to the Airport Improvement Program.
- $2.2 billion for tenant-based rental assistance.
- $1 billion to public housing agencies.