



FEROX STRATEGIES  
*fierce*

**TO: FEROX CLIENTS**

**FROM: FEROX STRATEGIES**

**DATE: MARCH 22, 2020**

**RE: CONGRESSIONAL RESPONSE TO CORONAVIRUS: March 22, 2020, 10 AM**

As the spread of novel coronavirus (COVID-19) renders worldwide economic damage drawing comparisons to the 2008 financial crisis, federal policymakers have embarked on a series of executive and legislative remedies.

President Trump on March 18 signed into law H.R. 6201, dealing with COVID-19 paid leave, food security, and COVID-19 testing. [CLICK HERE FOR SUMMARY OF HR 6201](#).

President Trump also issued on March 18 an executive order invoking the Defense Production Act (DPA) that could allow federal agencies to intervene in manufacturing and supply chains of medical equipment, but later said he would only invoke the authority in a “worst case scenario.” [On March 20, the U.S. limited non-essential travel to Mexico, mirroring similar action with Canada](#). The Administration also announced March 20 that U.S. tax filing and payments would be due on July 15, rather than April 15.

The Senate has turned to a draft economic stimulus bill ([CLICK HERE FOR SUMMARY](#)) proposing billions in direct payments to Americans as well as rescue packages for the small business sector and severely distressed industries like airlines. **Today, March 22, Senate and House leaders will meet in hopes of reaching a final agreement, and the Senate will hold a key procedural vote using still-developing text.**

Yet another stimulus is still on the horizon. On March 18, the Administration submitted a separate request for another \$45.8 billion for federal agencies to deal with COVID-19. House Democrats have promised to expand on this proposal to deliver agencies as much as \$150 billion in extra funding to deal with COVID-19, potentially layering this package with the Senate’s economic proposal. [On March 21, Senate Appropriations Chairman Shelby \(R-AL\) appeared to say the Senate would accept the House’s request to stack federal appropriations supplemental funding with the stimulus, though it’s not clear how much.](#)

***Congress: New Stimulus package***

Both chambers have begun work on a new COVID-19 related stimulus package. The Senate Republicans [released their draft proposal](#) the evening of March 19 and negotiated with Democrats through March 20, with the aim to release updated text by March 21 and vote on the measure by March 23. House Democrats, meanwhile, are developing their own stimulus proposal based on the White House’s \$46



## FEROX STRATEGIES

fierce

billion supplemental request, suggesting the supplemental could be layered onto the Senate's completed proposal.

**Senate stimulus:** Senate Republicans released their opening proposal on the evening of March 19. [CLICK HERE FOR BILL SUMMARY](#) Leader McConnell as well as Finance Chairman Chuck Grassley (R-IA), Banking Chairman Crapo (R-ID), HELP Chairman Alexander (R-TN), Small Business Chairman Rubio (R-FL) and Majority Whip Thune (R-SD), and other committee chairs, are negotiating with Senate Democratic counterparts, with House Speaker Pelosi (D-CA) advising Senate Minority Leader Schumer (D-NY).

**TIMING:** McConnell will hold a procedural vote around 3 PM on Sunday, March 22 (requiring 60 votes) on a vehicle for the new agreement, setting up a final passage vote by Monday, March 23. After negotiating all weekend, Leader Mitch McConnell, Treasury Secretary Mnuchin, Senate Minority Leader Chuck Schumer (D-NY), Speaker Nancy Pelosi (D-CA) and House Minority Leader Kevin McCarthy (R-CA) will meet at 11 AM March 22 in hopes of reaching an agreement in principle ahead of a Senate vote; a House vote could follow within 24 hours of Senate passage. Sen. McConnell has instructed committees to develop legislative text piecemeal; therefore, several sections could be released or leak separately today.

**PROSPECTS:** Even before McConnell proceeded to negotiations with Democrats, Sen. Lindsey Graham (R-SC) raised concerns about the proposal's direct payments to Americans. He noted that he and new White House Chief of Staff Mark Meadows are lobbying President Trump against the proposal. Sen. Josh Hawley (R-MO) and Sen. Mitt Romney (R-UT) objected to the proposed payment's regressive structure. McConnell appears to be hedging against Republican dissent by courting Senate Democrats.

Areas of agreement:

- Sen. Thune (R-SD) said March 21 that the parties had reached an agreement on direct payments to Americans; WaPo reports proposed payments would be \$1,000 per American without a regressive phase-in;
- Small Business Leaders Marco Rubio (R-FL) and Ben Cardin (D-MD), Susan Collins (R-ME) and Jeanne Shaheen (D-NH) have agreed on the small business package. Per Rubio, their deal will amount to \$350 billion, covering 58 million American workers and more than 30 million small businesses.
- Democrats are claiming a victory on expanded UI, with \$250 billion expected to be allocated. Schumer had said on March 21 that Democrats wanted "UI on steroids," up to six months of coverage at workers' full pay.
- Still unresolved:



## FEROX STRATEGIES

*fierce*

- A proposed emergency credit / stability fund for businesses over 500 employees (under 133 Authority but it will take the Fed some time to get the funds up and functioning).
  - Sen. Pat Toomey (R-PA) says this category will actually be two sub-categories: One allocated to Treasury Secretary for direct lending, aimed at “seriously distressed and essential” companies to protect national security. On the second, "The vast majority of this is going to be and has to be, under law, a broad base credit facility that will be available across categories, across sectors and industries....None of this is grant money.”
  - A Democratic Hill source says this “bailout” fund has grown to \$500 billion, but Democrats object to so much being left up to Treasury’s discretion. Democrats have wanted to add further conditions to aid, such as prohibiting stock buybacks and placing further restrictions on employee layoffs (retain at least 90% of workforce) plus executive compensation (keep a longer limit on their compensation).
- An unclear amount, about \$110 billion, will go to hospitals to deal with COVID-19. Schumer has called for a “Marshall Plan” for hospitals.
- White House officials and Democrats are still negotiating on a proposed payroll tax holiday. Senate Democrats led by Senate Finance ranker Ron Wyden (D-OR) are instead pushing for a job retention tax credit. [More here from Roll Call.](#)
- Sen. Chris Murphy (D-CT) reported that Republicans had agreed to create a “State Stabilization Fund” supporting state and local governments, though the exact amount and structure of the fund remain unclear.
- Airlines, a severely impacted sector, have asked both Republicans (who offered loan-only aid) and Democrats are being pushed by unions to change at least some of the bill’s proposed billions in aid to direct grants.

### [CLICK HERE FOR BILL SUMMARY](#)

Section by Sections:

[Keeping Workers Paid and Employed Act](#) (Small Business)

[The Coronavirus Economic Stabilization Act](#) (Industry rescue)

[Tax Policy Recommendations](#)

[Health, Education, Labor and Pensions I](#)

[Health, Education, Labor and Pensions II](#)

[Health, Education, Labor and Pensions III](#)



## FEROX STRATEGIES

*fierce*

**Mnuchin plan:** Treasury Secretary Steve Mnuchin attended the Senate GOP lunch on March 17 and presented an updated version of the Trump Administration's plan totaling \$1.2 trillion. Ferox has obtained the text of a Treasury summary of Mnuchin's plan, in full below.

### I. APPROPRIATION TO THE EXCHANGE STABILIZATION FUND FOR SPECIFIED USES

- Airline Industry Secured Lending Facility (\$50 billion)
  - This provision would appropriate an additional \$50 billion to the ESF and authorize use of those funds for secured lending to U.S. passenger and cargo air carriers
  - Treasury Department to determine appropriate interest rate and other terms and conditions
  - Secured by collateral specified by the Treasury Department
  - Requirements on borrowers would include:
    - Specified continuation of service requirements
    - Limits on increases in executive compensation until repayment of the loans
- Other Severely Distressed Sectors of the U.S. Economy (\$150 billion)
  - This provision would appropriate an additional \$150 billion and authorize use of those funds for secured lending or loan guarantees to assist other critical sectors of the U.S. economy experiencing severe financial distress due to the COVID-19 outbreak.

### II. TEMPORARILY PERMIT USE OF THE EXCHANGE STABILIZATION FUND TO GUARANTEE MONEY MARKET MUTUAL FUNDS

- Temporarily suspend the statutory limitation on the use of the Exchange Stabilization Fund (Section 131 of the Emergency Economic Stabilization Act of 2008) for guarantee programs for the United States money market mutual fund industry.
- Sunset date: Terminate authority to establish any new MMMF guarantee program upon the conclusion of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Outbreak declared by the President on March 13, 2020.

### III. ECONOMIC IMPACT PAYMENTS

- This provision would authorize and appropriate funds for two rounds of direct payments to individual taxpayers, to be administered by the IRS and Bureau of the Fiscal Service.
  - \$250 billion to be issued beginning April 6
  - \$250 billion to be issued beginning May 18
- Payment amounts would be fixed and tiered based on income level and family size. Treasury is modeling specific options.
- Each round of payments would be identical in amount.



## FEROX STRATEGIES

*fierce*

**Schumer plan:** Senate Minority Leader Chuck Schumer (D-NY) has debuted a Democratic proposal that touches on several components of society:

- \$400 billion in emergency funding for public health and medical “surge” funding
  - State and local funding through CDBG, ICDBG, Economic Development Administration funds
  - Small business “rescue” package with input from both parties and chambers to “streamline” loans and waive fees. Sen. Warner is working on a bill to create a Temporary Liquidity Facility to provide low-interest loans through banking channels.
  - Education and child care through CCDBG and student loan relief, distance education capacity grants.
  - Public transportation relief to Amtrak and the Federal Transit Administration
  - Infrastructure investment including broadband, public housing, energy
  - Tribal government support
- \$350 billion in “economic stabilizers”
  - Unemployment: raising benefits, waiving waiting weeks, expanding work share programs
  - Increasing SNAP benefits and access
  - Additional FMAP support to Medicaid
  - Student loan relief – direct assistance to borrowers in the form of Ed making student payments on borrowers’ behalf
- Policy:
  - Immediate six-month loan forbearance for federally backed mortgages, including a moratorium on evictions and foreclosures.
  - Inclusion of pro-worker provisions in industry rescue packages: mandatory paid sick leave, \$15 minimum wage, protections for collective bargaining contracts in bankruptcy, restrict executive compensation from a bail-out, clawbacks of rescue funding if workers don’t benefit
  - OSHA provisions to protect workers from COVID-19, including independent contractors and public sector employees
  - Expansion of existing unemployment changes
  - 120-day moratorium on negative credit reporting, with an option to secure a nine-month extension, with free credit reports and scoring during any future disaster or emergency
- Student loan relief: Schumer, Murray (D-WA), Brown (D-OH), and Warren (D-MA) introduced

**House Dem stimulus and appropriations:** The House is currently at recess, with members continuing to work from their districts. The House will return on or around March 23, when a third stimulus package is



## FEROX STRATEGIES

*fierce*

ready for a vote, per Leader Hoyer. Undeterred by Senate Republican plans to keep House Dems in a minimal role in developing a new stimulus, House Speaker Nancy Pelosi (D-CA) has instructed House leaders to develop their own new plan, **with the aim to stack it on the forthcoming Senate stimulus**. Each House committee will submit their own plans to Pelosi, who will compile a large-scale relief package in the coming days, with a plan to release a draft bill next week. Per Pelosi, the upcoming House Democratic proposal [centers on three priorities](#): expanding unemployment insurance, increased Medicaid funding, and further assistance to small businesses.

Ferox has obtained a summary of a House Democratic meeting held March 19 where committee chairs outline their priorities and explained their plan to stack an appropriations supplemental on the forthcoming Senate stimulus. **Notably, several members agreed a large infrastructure package could be part of a future stimulus:**

### *Pelosi:*

- The House will add an appropriations package on top of the Senate's forthcoming stimulus
- Any industry bailed out will need to meet certain conditions for worker protections
- The Administration has come around to idea money can be sent to those who need it most. House Dems prefer Mnuchin proposal over Senate stimulus one
- Dems will prioritize unemployment, Medicare, small business,
- Federal assistance to the states and cities must be included

### *Transportation and Infrastructure (DeFazio)*

- Trump Administration has proposed \$50 billion bailout for airlines. Much of any money we give will go to benefits and money for employees, also we will also give loans with restrictions enacting Dem priorities: barring stock buybacks, dividends; enacting employee protections
- Trucking working with states because goods must move
- DeFazio, House Dems want to fund 21st century transportation package as part this or future package

### *Economic protections for Americans (Waters)*

- Create new office in Treasury for reimbursement for lost revenue
- Prohibit debt collection, repossessions, evictions
- Ensure protections for territories like Puerto Rico, USVI
- \$5 billion in homeless assistance
- Suspend utility and rent payments for assisted renters
- Ban on all stock buybacks/dividends



## FEROX STRATEGIES

fierce

- Tax policies to help hospitals scale up operations
- Childcare for frontline healthcare workers
- Reimburse hospitals for care to uninsured and underinsured
- Replace lost wages
- Ensure non profit orgs get support for UI
- Unemployed and retired citizens should be included not millionaires
- Let employers borrow against their payroll tax
- Fully refundable employer credit

### *Appropriations (Lowey)*

- House Democrats would more than double the Trump Administration request to provide \$125-150 billion in upcoming supplemental. The White House proposal requests lacks investment in community and includes items unrelated to coronavirus.
- Their bill will stress food security, local public health agencies, hospitals, small business, schools, transportation
- Funding through the Defense Production Act so providers can access critical equipment

### *Small Business (Velazquez)*

- Velazquez's plan includes \$10,000 bridge loan while waiting the three weeks it takes for SBA to approve COVID-19 Economic Injury Disaster Loan (EIDL)
- \$1 billion to fund additional EIDL
- Loans are not enough; we are working to provide grants and debt relief
  - Debt relief: mandatory waiver of interest on SBA loans
  - Grants: provide \$100,000 for businesses to provide paid sick leave and maintain payroll to retain employees, making rent/mortgage/repaying obligations that can't be met due to revenue losses
- Guaranteed lending program important that we provide tools for small employers
- Guaranteed loans provided by private sector: \$200 billion
- Loan repayment deferred for 1 year

### *Energy and Commerce (Pallone)*

- Priority memo re: oversight of test kit process
- House E&C/Senate HELP have been in touch with HHS/emergency preparedness and providing daily report to "four corners" on progress
- ACA enrollment/ get rid of junk plans
- Providing access to broadband and lifting data caps
- Community health centers and what we included in HR 3



## FEROX STRATEGIES

*fierce*

### ***Trump Administration***

The White House on March 13 implemented a European travel ban (on March 14 adding the United Kingdom and Ireland), declared a federal state of emergency to unlock about \$50 billion new federal aid to health agencies and state/local governments, announced a new website to guide Americans to drive-through testing options, waived federal student loan interest until further notice, and announced an increase in oil purchases for the nation's Strategic Oil Reserve.

On March 18, President Trump announced the Department of Housing and Urban Development (HUD) would place a moratorium on foreclosures and evictions on HUD-backed housing and mortgages. President Trump also [issued an executive order invoking the Defense Production Act](#) to allow federal agencies to make expedited request that companies make needed medical supplies to treat COVID-19 patients.

### March 18 supplemental request

On March 18 the White House Office of Management and Budget (OMB) submitted a new supplemental funding request to Congress to support federal operations during COVID-19. [The request totals \\$45.8 billion](#). The supplemental could eventually become the vehicle for yet another stimulus package.

- Veterans Affairs (VA): \$16.6 billion
- Health and Human Services: \$11.5 billion;
  - \$5.2 billion would go toward research and development into vaccines, drug treatments and testing, and the
  - CDC would receive \$3.4 billion to build out laboratory capacity and state and local preparedness and response efforts.
- Defense: \$8.3 billion;
- Homeland Security: \$3.2 billion
  - Federal Emergency Management Agency's Disaster Relief Fund: \$2 billion
- HUD: \$400 million to support increased needs at homeless shelters
- \$40 million for student borrowing costs, including Trump's deferral of interest payments on federally backed student loans.
- \$241 million for the IRS to improve taxpayer services and handle the 90-day delay in the regular April 15 tax-filing deadline announced by the Treasury Department.

### March 13 emergency declaration and executive actions

In a March 13 press conference, President Trump announced several new actions:



## FEROX STRATEGIES

fierce

- Declaration of a federal emergency under the Stafford Act to unlock about \$50 billion new federal aid to health agencies and state/local governments ([Text of proclamation](#))
  - A disaster declaration allows the IRS to issue tax relief measures including abating penalties for failing to file or pay taxes, or postponing federal tax filing and payment deadlines without interest or penalties. The IRS has not yet issued guidance.
- Announced collaboration with Google, Walmart, and other private-sector companies to create a new website (due to be up around Sunday, March 15) to guide Americans to drive-through testing options.
- Ordered HHS to expand efforts to allow states to approve COVID-19 testing ([Text of declaration](#))
- Waived federal student loan interest until further notice. The DoEd has not yet issued guidance.
- Increase in oil purchases to fill the nation's Strategic Oil Reserve.

### COVID-19 Testing Availability

Multiple lawmakers and public health agencies have criticized the Trump Administration for what they argue is a severe shortage of reliable and speedy testing for COVID-19 that has likely produced an undercount of U.S. infections and deaths. Per CDC guidelines, testing is prioritized to high-risk populations and the press has reported many complaints of suspected patients unable to secure testing. House and Senate lawmakers, from both parties, spoke out March 12 about the problem following what they viewed as disappointing briefings from the Administration.

Dr. Anthony Fauci, head of the National Institute of Allergy and Infectious Diseases at the National Institutes of Health, acknowledged that on-demand tests should be available in a March 12 hearing of House Oversight and Reform's Health Subcommittee. At the same hearing CDC Director Robert Redfield appeared to give conflicting answers on future availability and costs for testing. In the meantime, he advised that the uninsured and under-insured visit local community health centers.

On March 13, the FDA took [two actions to bring new COVID-19 tests to market](#): emergency approval of a new test from the company Roche, and allowing the state of New York to authorize certain labs to conduct COVID-19 tests.

President Trump also announced on March 13 the forthcoming creation of a new government website directing Americans to drive-through testing sites. Trump highlighted that Google is building the site, as well as private sector partnerships with Walmart, Target, CVS, Walgreens, LabCorp, Quest Diagnostics and Roche Diagnostics to set up these drive-throughs. Trump said the website would be up by Sunday night (March 15).



## FEROX STRATEGIES

fierce

### March 11 Oval Office address

President Trump rolled out a series of executive actions on coronavirus in a March 11 Oval office address. Highlights:

- *European travel ban:* In a March 11 Oval Office address, President Trump announced new travel restrictions from Europe to take effect at 12 AM on Friday, March 13. The Department of Homeland Security (DHS) has confirmed the travel ban will apply to foreign nationals (rather than all persons as President Trump appeared to announce in his oral remarks) who have been in the Schengen Area, described by the White House as “26 countries in Europe with open borders agreements,” in the last 14 days. [DHS released implementing guidance on March 13.](#) On March 14, [the AP reported the White House may add the United Kingdom and Ireland to the travel ban.](#)
- *Europe trade and cargo:* Despite initial confusion over President Trump’s oral remarks on March 11, the Administration and a later tweet from President Trump clarified that cargo and imports from Europe will NOT be halted during the 30-day travel ban.
- *Tax filing relief:* Per the White House, “The President will be instructing the Department of the Treasury to defer tax payments for certain individuals and businesses negatively impacted by the coronavirus,” without interest or penalty. Treasury and the IRS have yet to issue further instructions.
- *COVID-19 testing co-pays:* President Trump’s Oval Office address appeared to indicate that private health insurers had agreed to waive co-pays on COVID-19 treatments. However, America’s Health Insurance Plan (AHIP) clarified that they have told the Trump Administration they would waive co-pays for COVID-19 testing, not for treatments.
- *Payroll tax relief:* President Trump also called for “payroll tax relief,” but Congress has not yet introduced an aligning measure.
- *SBA bridge loans:* President Trump has instructed the U.S. Small Business Administration to provide bridge loans to businesses affected by the coronavirus. The President is calling on Congress to increase funding for this program by an additional \$50 billion. [More info from the SBA here.](#)

[White House Suspension of Entry Document:](#) Europe travel ban

[White House Press Release \(March 11, 2020\)](#)

[Text of President Trump Oval Office Address \(March 11, 2020\)](#)

[Bloomberg recap of development of Oval Office address \(March 12\)](#)

### ***Other developments***

- Vice President Mike Pence’s office announced an aide had contracted COVID-19.



## FEROX STRATEGIES

— fierce —

- Rep. Mario Diaz Balart (R-FL) and Rep. Ben McAdams (D-UT) both announced on March 18 they have contracted COVID-19.
- House Democrats have postponed their annual policy retreat in Philadelphia scheduled for April 1-3.

### Capitol access and operations

The U.S. Capitol has moved to limited access. The Capitol Visitor Center and Capitol itself will be closed to all tours, including Member and staff led tours. The Capitol will remain open only to Members, Congressional staff and credentialed press. Official business visitors to the Senate wing of the Capitol must be met by Senate staff at the North Door Appointment Desk and escorted to their destination. Visitors must always be escorted by staff. Staff may only escort a maximum of 15 visitors at a time.

House and Senate office buildings are closed to visitors who are not members, staff, credentialed press, or “official business” visitors. Official business visitors must be met by staff at entrances and escorted to their destination.



## FEROX STRATEGIES

fierce

### ***Senate GOP Stimulus Proposal Summary (as of March 20, 2020)***

#### Industry rescue:

The bill authorizes loans of \$208 billion to companies facing existential threats of COVID-19, including:

- \$50 billion for passenger air carriers.
- \$8 billion for cargo air carriers.
- \$150 billion for other eligible businesses. The measure doesn't limit those funds to a particular industry, making this section target of heavy lobbying.

Additionally, the bills suspend the 7.5% passenger ticket tax and 6.25% cargo tax until Jan. 1, 2021.

The bill affords a great deal of latitude for Treasury to determine eligibility and issue loans. The only restrictions:

- Loans could be provided to businesses that can't reasonably obtain credit elsewhere. Loans would have to be sufficiently secured. (as Treasury determines)
- Loan interest rates would be at least the current average yield of U.S. debt of comparable maturity.
- The Treasury Department could only enter contracts that would ensure the federal government benefits from company or stockholder gains. Contracts could include warrants, stock options, common or preferred stock, or other equity instruments.
- Until March 1, 2022, companies that receive aid couldn't increase compensation for executives and other employees who made more than \$425,000 in 2019. Any severance pay or other termination benefits paid to those employees during that period couldn't exceed twice their 2019 compensation.
- DOT could require air carriers getting these loans to ensure continued operation in places they flew from before March 1, 2020.

#### Individual Tax Relief

*Cash payments:* The bill would provide "recovery rebates" (cash payments) of as much as \$1,200 per individual or \$2,400 for couples who file joint tax returns. An additional \$500 would be provided for each child. Taxpayers would be eligible if they had qualifying income on their 2018 tax returns — including earned income and certain retirement benefits — of at least \$2,500, or net income tax liability greater than zero and gross income greater than the basic standard deduction. The minimum credit would be \$600, or \$1,200 for joint filers. The credit would be reduced by \$5 for each \$100 that a taxpayer's income exceeds \$75,000, or \$150,000 for joint filers. It would completely phase out for individual incomes greater than \$99,000 or joint incomes greater than \$198,000. A Social Security number would be required to claim the credit, screening out taxpayers who use an ITIN.



## FEROX STRATEGIES

fierce

*Tax filing:* The tax filing deadline for the 2019 tax year would be moved to July 15, 2020, from April 15. (Note – the White House has already enacted this change through executive action). The deadline for any individual installment payments or corporate estimated payments currently due after the bill's enactment would be delayed until Oct. 15, 2020.

*Payroll tax:* The bill defers employer payroll, railroad retirement, and self-employed Social Security tax payments through the end of 2020. Deferred funds would be paid over two years in 2021 and 2022. Deferral wouldn't apply to employers with 7(a) small business loan debt forgiven under the bill (see the small business provisions)

*Retirement Plans:* Individuals could withdraw as much as \$100,000 from their retirement accounts through the end of 2020. Funds would be treated as a tax-exempt rollover contribution if repaid in the next three years. If funds weren't repaid, they would be taxed as income over three years. Individuals would be eligible to make withdrawals if they or their spouse are diagnosed with Covid-19, or if the pandemic hurts their finances, such as through layoffs or reduced hours.

Eligible individuals could receive loans for the lesser of \$100,000 or the present value of their vested benefits in their employer retirement accounts in the 180 days after the bill's enactment. The limit is currently \$50,000 or half the account's value.

Individuals affected by the coronavirus with retirement plan loans due by Dec. 31, 2020, would have an extra year to repay them.

*Charitable Contributions:* The bill would create a permanent \$300 above-the-line individual charitable contribution allowance, beginning in 2020, for individuals who don't itemize their returns. The measure also would suspend for 2020 the limit on the individual charitable deduction, which is available to filers who itemize. The deduction is limited to 60% of individual taxpayers' adjusted gross incomes through 2025. The corporate charitable deduction limit would be increased in 2020 to 25% of taxable income, from 10%. A deduction for food inventory contributions would be increased to 25%, from 15%.

### Business Tax Relief

The bill will allow business losses from tax years after Dec. 31, 2017, and before Jan. 1, 2020, to be carried back five years. Net operating loss (NOL) carrybacks were previously eliminated for most businesses by the 2017 tax overhaul. (Separate rules would apply to real estate investment trusts.)



*NOL*: The measure would allow the full amount of NOL carryovers and carrybacks to be used for tax years beginning before Jan. 1, 2021. The deduction was limited to 80% of taxable income under the 2017 tax overhaul. A separate deduction limit would be established for tax years beginning after Dec. 31, 2020.

The measure would modify the effective date of changes to the NOL deduction included in the 2017 tax overhaul. Republicans have previously sought changes to the date language, which they say doesn't reflect congressional intent.

The measure would also modify NOL limits for pass-through businesses and sole proprietorships.

*Technical corrections to TCJA:*

- Allow companies to more quickly use their remaining alternative minimum tax credits. The 2017 tax overhaul eliminated the corporate AMT but made remaining AMT credits refundable over several years, ending in 2021.
- Allow businesses to deduct 50% of their interest expenses in 2019 and 2020, instead of 30%.
- Fix the "retail glitch" from the 2017 tax overhaul. The bill would classify qualified improvement property (QIP) as 15-year property, or 20-year property under an alternative depreciation system. The classification would make the property eligible for temporary "bonus depreciation" established by the 2017 tax law, which would allow it to be written off immediately.
- Address one-time repatriation tax on foreign earnings error from 2017. The measure would allow companies to recover overpayments.
- Modify ownership rules related to controlled foreign corporations to address a provision from the 2017 tax overhaul that "had the unintended consequence of subjecting some foreign entities to excessive tax and reporting requirements," according to the Senate Finance Committee summary.

Small business rescue

*7(a) Loans*: The bill would make several changes to the 7(a) loan program, the SBA's primary program for providing financial assistance to small businesses. Between March 1 and Dec. 31, the measure would:

- Eliminate the program's loan limit (currently \$30 billion)
- Allow any business or private or public nonprofit with 500 or fewer employees to access the 7(a) loan program. (Nonprofits that receive Medicaid payments would be excluded.)
- Increase the loan limit to as much as \$10 million (total loan based on size of applying business)
- Expand eligible uses to include salaries and paid sick leave, expenses related to supply chain disruptions, and mortgage or rent payments.
- Guarantee 100% of the loan, instead of 75% or 85% currently depending on size.



Lenders would be required to provide at least one year of payment deferrals on some 7(a) loans. Businesses could receive loan forgiveness for their payroll costs and debt payments between March 1 and June 30. Forgiven amounts couldn't include paid leave under the second coronavirus response law (Public Law 116-127) or compensation of an individual greater than \$33,333 in that period. Forgiveness amounts would be adjusted based on employee compensation and whether the employer makes layoffs.

Lenders would have authority to make loans based on whether borrowers were in operation as of March 1, 2020, and had salaried employees, rather than business' ability to repay a loan.

Bill also ups the limit for SBA Aexpress loans, which have a 36-hour turnaround, to \$1 million, from \$350,000, through the end of 2020.

The bill also provides funding for recovery technical assistance to business development center: \$265 million for Small Business Development Centers and Women's Business Development Centers, and \$10 million for the Commerce Department's Minority Business Development Agency minority business centers.

### Health

*Sequestration:* The measure would suspend automatic Medicare payment cuts to hospitals and doctors, known as sequestration, from May 1 through Dec. 31. The Medicare sequester reduces payments by 2% and was \$15.3 billion for fiscal 2020. The measure would also extend for one year, through 2030, the broader sequestration of mandatory funding, including Medicare payments.

*Medicare Payments:* Hospitals would receive a 15% increase in their Medicare payments for treating a patient with Covid-19 during the coronavirus emergency.

The measure would prevent a scheduled decrease in Medicare payments for durable medical equipment, such as wheelchairs or other equipment used at home, for the duration of the emergency.

It would create an additional payment for treatments that involve a "DISARM antimicrobial drug" that's an infectious disease product or an antibacterial or antifungal biological product. Payments could be made only to hospitals participating in the CDC's Antimicrobial Use and Resistance Module and that have an antimicrobial stewardship program. It would apply from Oct. 1, 2021, until Oct. 1, 2026.



The measure also would create a process for Medicare to expedite coding and payment determinations for novel drugs and devices.

*Telehealth:* The measure would remove a requirement enacted under the first coronavirus response measure (PL 116-123) that a doctor had to have treated a patient within the last three years to use expanded telehealth authorities under Medicare.

Federally qualified health centers and rural health clinics could furnish telehealth service to beneficiaries in another location during the coronavirus emergency and be reimbursed at a rate that is similar to payment for comparable services under the Medicare physician fee schedule.

Individuals receiving home dialysis wouldn't need to have periodic in-person assessments to qualify for telehealth services during the coronavirus emergency.

**Other Provisions:**

- Allow physician assistants and nurse practitioners to order home health services for Medicare beneficiaries.
- Allow state Medicaid programs to cover home and community-based services that are provided in acute care hospitals.
- Allow Medicaid to cover distance education programs where specialists train other health professionals to respond to emergencies.

*Medical Supplies:* The bill would expand the Strategic National Stockpile to include personal protective equipment and supplies such as swabs used for Covid-19 testing. It would also extend liability immunity to manufacturers of respiratory protective devices, such as masks and ventilators, that HHS designates for use during a declared public health emergency.

*Drug & Device Shortages:* Manufacturers of drugs that are critical to public health during an emergency would have to notify the FDA of supply chain interruptions for active pharmaceutical ingredients. Device manufacturers would have to make similar disclosures. Makers of covered drugs, active ingredients, and related devices would have to maintain contingency plans for facilities to mitigate interruptions. The FDA would be required to prioritize application reviews and inspections for drugs and devices that could mitigate shortages; and publish a list of device shortages, though the agency is allowed to withhold such information to prevent hoarding.

*Emergency Uses:* The FDA can authorize unapproved medical products or unapproved uses of products during a declared public health emergency. Under the bill, drug and device manufacturers couldn't be held liable for misbranding violations if they provide evidence-based information about a product



covered by an emergency use authorization. COVID-19 tests made in approved labs could be marketed for use before receiving an emergency authorization while the declared coronavirus emergency remains in effect.

The measure would make the FDA's priority review voucher program permanent for medical countermeasures that address national security threats.

The FDA would have to expedite the review of animal drugs at the request of a sponsor if it has the potential to prevent animal-to-human transmission of life-threatening diseases.

#### *Health Coverage*

- **Testing:** Health insurers would have to reimburse providers for all coronavirus testing and related visits based on the cash price that the provider lists online, unless they have a negotiated rate. Testing providers that don't list their prices online could be penalized a maximum of \$300 per day. The measure also would expand the types of coronavirus lab tests that would have to be fully covered by insurance, including tests that haven't yet received an emergency use authorization from the FDA.
- **Vaccines:** Health insurers would have to cover vaccines and other services intended to prevent Covid-19 without any cost-sharing. The requirement would take effect 15 business days after a recommendation from the U.S. Preventive Services Task Force or CDC Advisory Committee on Immunization Practices.
- **High-Deductible Health Plans:** The measure would make several changes to high-deductible health plans and their tax-advantaged health savings accounts, including:
- Allowing telehealth services to be covered before a patient reaches the deductible for plan years beginning on or before Dec. 31, 2021.
- Allowing HSAs to be used for medicine without a prescription and for menstrual products. The provisions would also apply to other spending accounts such as flexible spending arrangements.
- Allowing HSAs to pay for direct primary care service arrangements and excluding such arrangements, when they cost \$150 per month or less, from types of plans that make an individual ineligible for an HSA.

#### *Provider Support*

- **Health Centers:** The measure would provide an additional \$1.32 billion for fiscal 2020 for supplemental awards to community health centers to prevent and treat COVID-19. Hyde amendment restrictions apply.
- **Health Records:** The measure would allow patient records related to substance use disorders to be disclosed to health-care providers and other entities in accordance with the HIPAA after a



## FEROX STRATEGIES

fierce

patient gives initial consent. The information generally couldn't be used in legal proceedings, or to discriminate against individuals seeking access to health care, employment, housing, courts, or public benefits. Separately, the measure would direct HHS to issue guidance on sharing protected patient health information during the coronavirus emergency.

### Other Provisions:

- Make permanent the National Disaster Medical System's direct hiring authority when there is insufficient personnel to address a public health emergency. It's scheduled to expire on Sept. 30, 2021.
- Modify a previous authorization for a Ready Reserve Corps that hasn't been implemented.
- Exempting health-care professionals from liability for providing volunteer services during the coronavirus emergency.
- Waive nutrition requirements for meal programs under the Older Americans Act during the coronavirus emergency
- The measure would reauthorize several health programs, including:
  - \$122.5 million annually from fiscal 2020 through 2024 for the Healthy Start program related to infant mortality.
  - \$79.5 million annually from fiscal 2021 through 2025 for grant programs related to rural health care.
  - \$29 million annually from fiscal 2021 through 2025 for telehealth network and resource centers grant programs.

### *Higher Education*

The bill proposes several changes in recognition that many higher-ed institutions have closed for long periods. The bill will direct the Department of Education to waive requirements that higher education institutions match a portion of federal student aid for two school years. When calculating eligibility against lifetime usage limits, the department couldn't count a student's enrollment in subsidized loan or Pell Grant programs during a semester if the student was forced to withdraw from school by the emergency.

The department could allow institutions to keep unused grant or loan assistance if students were unable to use the funding due to the emergency. The department could also waive repayment of grants and loans by students who received support and were forced to withdraw from school.

### Institutions could:

- Make work-study payments to participating students who were unable to fulfill their work requirements due to closed workplaces.



## FEROX STRATEGIES

fierce

- Treat any unspent work-study funds as grants to support access and persistence for low-income students.
- Use supplemental educational opportunity grants to provide emergency aid to students facing unexpected expenses and unmet needs.
- Provide students with leaves of absence that don't require them to pick up where they left off if they return the same semester.
- Exclude credits for classes a student began but didn't finish, due to the emergency, when determining the student's progress for financial aid eligibility purposes.

Foreign institutions could offer distance learning without jeopardizing their eligibility for U.S. financial aid during a declared public health emergency or similar emergency in the relevant country. The provision would be effective retroactively to March 1.

- **Loan Repayment:** The measure would suspend student loan payments and interest accrual for three months. The department could extend the suspension for an additional three months. Each month for which payments are suspended would be treated as if on-time payments were made for purposes of federal loan forgiveness programs.
- **General Waivers:** The Education Department would have broad authority during the coronavirus emergency to waive virtually any obligation under the suite of federal education statutes and regulations. State and local governments, school systems, American Indian tribes, and institutions of higher education could request waivers related to allocating and accounting for federal education funding, as well as certain reporting requirements. Civil rights laws couldn't be waived.
- **HBCU Capital Loans:** The department could cover the principal on capital loans to historically black colleges and universities. After the original loan is repaid the institutions would have to repay any amounts covered by the department.
- **AmeriCorps Service:** The Corporation for National and Community Service, which administers AmeriCorps and the Senior Corps, would have to allow participants who are eligible for educational awards and whose service has been limited due to Covid-19 to perform other activities to accrue necessary service hours. The corporation could provide the full value of an education award for service to participants forced to exit the program early as a result of the coronavirus emergency.

### Leave Program Modifications

The measure proposes further changes to the just-passed paid sick leave program enacted under the second coronavirus response measure (H.R. 6201, PL 116-127)



## FEROX STRATEGIES

— fierce —

Paid sick leave requirements for employers would expire after a worker has been paid for 80 hours of leave or returned to work after taking leave, whichever is earlier.

Certain workers laid off on or after March 1, 2020, would be eligible to receive family leave benefits if they're rehired.

The measure would expand the Labor Department's authority to issue regulations to exempt businesses with fewer than 50 workers from paid sick leave requirements related to caregiving for another quarantined individual or child whose school or day care has closed.

The measure would apply the same caps on the amount employers would be required to pay per employee for the leave programs, which are:

- \$200 per day, or \$10,000 total, for family leave related to care for a child whose school or day care has closed because of the coronavirus.
- \$511 per day, or \$5,100 total, for sick leave related to a worker's quarantine or diagnosis.
- \$200 per day, or \$2,000 total, for sick leave related to caregiving for another quarantined individual or child whose school or day care has closed.

### Money Market Funds

The bill would temporarily let the Treasury Department use its Exchange Stabilization Fund (ESF) to backstop money market funds, a key source of short-term liquidity for businesses and households. The department used the ESF during the 2008 financial crisis to guarantee more than \$3 trillion of money market fund holdings amid an investor run. The 2008 Emergency Economic Stabilization Act (Public Law 110-343) subsequently barred such guarantees. The bill would waive the ban during the declared national emergency for the coronavirus, as the department requested. Separately, the Treasury Department announced in March that it would use the ESF to provide credit protection for liquidity facilities that the Federal Reserve established to support money market funds and the commercial paper short-term funding market.



## FEROX STRATEGIES

*fierce*

### ***Summary of updated version of the Families First Coronavirus Response Act (H.R. 6201, enacted March 18, 2020)***

#### Testing insurance coverage

The bill would require private health plans to provide coverage for COVID-19 diagnostic testing, including the cost of a provider, urgent care center and emergency room visits in order to receive testing. Coverage must be provided at no cost to the consumer. The co-pay prohibition would also apply to Medicare and Medicaid, CHIP, TRICARE, veterans' health programs, the Indian Health Service, and coverage provided to federal civilian employees. The bill would also provide states with the option to extend Medicaid eligibility to uninsured populations for the purposes of COVID-19 diagnostic testing.

The bill would appropriate \$1 billion to allow the National Disaster Medical System to reimburse for costs associated with testing uninsured individuals.

#### Emergency paid leave

The bill would create an emergency leave program specific to COVID-19. **The updated version of the bill exempts employers with more than 500 employees from the program; AND allows the Department of Labor to issue regulations that also exempts small businesses with fewer than 50 employees as well as certain first responders and health care personnel.**

*Emergency paid sick leave:* Private sector employers with fewer than 500 workers and government entities would have to provide employees who are unable to work or telework with immediate paid sick time off to:

- Comply with a federal, state, or local quarantine or isolation order.
- Self-quarantine per a health-care provider's advice.
- Obtain a medical diagnosis for coronavirus.
- Care for an individual who is in quarantine or for a child whose school or day care has closed due to coronavirus.

Full-time employees would receive 80 hours of sick leave under the new emergency leave program and part-time workers would be granted time off that's equivalent to their scheduled or normal work hours in a two-week period. Paid sick time would NOT carry over from year to year.

Workers would have to be paid at least their normal wage or the federal, state, or local minimum wage, whichever is greater. They would be paid, however, at two-thirds of wages for providing caregiving to another individual or child. Leave assistance would be capped at \$5,110 for a worker's quarantine or diagnosis and at \$2,000 to provide care for another individual or child.



An employer couldn't require a worker to use any other available paid leave before using the sick time. Employers would be prohibited from:

- Requiring a worker to find a replacement to cover their hours during time off.
- Discharging or discriminating against workers for requesting paid sick leave or filing a complaint against the employer.

An employer could be subject to civil penalties for a violation of paid sick leave requirements. The Labor Department would be authorized to issue regulations to:

- Exclude certain health-care providers and emergency responders from the paid leave benefits, including by allowing their employers to opt out of the requirements.
- Exempt small businesses with fewer than 50 employees from the paid leave requirements.

*Emergency family leave:* Private sector employers with fewer than 500 workers and government entities would have to provide as many as 12 weeks of job-protected leave under the Family and Medical Leave Act (FMLA) for employees who are unable to work or telework because they have to care for a child younger than 18 whose school or day care has closed because of the coronavirus.

The first 10 days of leave could be unpaid, though a worker could choose to use accrued vacation days, personal leave, or other available paid leave for unpaid time off. Following the 10-day period, workers would receive a benefit from their employers that will be at least two-thirds of their normal pay rate. Leave assistance to workers would be capped at \$200 per day or \$10,000 total.

In an earlier version of the bill, the measure would have allowed leave to be taken to comply with recommendations for self-quarantine or to care for a sick family member. The FMLA provisions would run through Dec. 31, 2020.

The Labor Department would be authorized to issue regulations to:

- Exclude certain health-care providers and emergency responders from paid leave benefits.
- Exempt small businesses with fewer than 50 employees from the paid leave requirements.

Employers could also choose to exempt health-care providers and emergency responders from the paid leave benefits.

Finally, the measure would exempt employers with fewer than 25 workers from requirements to restore an employee's original position if it no longer exists because of economic conditions or changes to operations due to the public health emergency. The employer would have to have made reasonable efforts to restore the employee to an equivalent position.



### Employer Tax Credits for sick and family leave

*Employer tax credit:* The measure would provide refundable tax credits to employers to cover wages paid to employees while they are taking time off under the bill's sick leave and family leave programs. Credits would be against employers' payroll or railroad retirement tax payments.

The sick leave credit for each employee would be for wages of as much as \$511 per day while the employee is receiving paid sick leave because they are quarantined, or \$200 if they are caring for someone else who is quarantined or their child's school is closed. The limit would be the excess of 10 days over the aggregate number of days taken into account for all preceding calendar quarters.

The family leave credit for each employee would be for wages of as much as \$200 per day while the employee is receiving paid leave, or an aggregate of \$10,000.

Beyond the wage limits set out in the bill, both the paid sick leave and family leave credits would be increased to include amounts employers pay for the employee's health plan coverage while they are on leave.

Wages paid under the paid sick leave and family leave programs wouldn't be subject to the employer payroll tax or railroad retirement tax. The credits would also be increased to cover employers' 1.45% Medicare tax.

Employers couldn't receive the credit if they're also receiving a credit for the employee's wages under the paid family and medical leave program established by the 2017 tax overhaul (Public Law 115-97).

They would have to include the credit in their gross income.

Government entities couldn't receive the credit.

The credit would be in effect for wages through the end of 2020.

The Treasury Department would have to issue regulations or guidance to ensure employers don't manipulate the credit, to minimize compliance and record-keeping burdens, to waive penalties for underpayments in anticipation of the credit, and to establish a process to recapture credits when there's an adjustment.



## FEROX STRATEGIES

fierce

*Self-Employed Tax Credit:* The sick leave credit would be for the lesser of \$511 per day or an individual's average daily self-employment income if quarantining themselves. It would be for the lesser of 67% of their average daily self-employment income or \$200 if they were caring for someone else.

The credit would be available for 10 days over the number of days considered in preceding years.

Self-employed individuals could receive a family leave credit for as many as 50 days for the lesser of \$200 or 67% of their average daily self-employment income.

The measure would establish alternate requirements for self-employed individuals who also receive sick-leave pay from an employer. It would also establish rules for the credits to be provided in U.S. territories.

### Unemployment extension

Eligible laid-off workers can receive regular unemployment benefits for as long as 26 weeks in most states. After exhausting those benefits, individuals in states with rising unemployment can qualify for an additional 13 weeks of benefits — or 20 weeks in some states — through the Extended Benefits (EB) program.

The bill would waive a state matching requirement and provide full federal funding for the EB program for the rest of 2020. To qualify, states would need to experience a 10% spike in unemployment claims over the past year and qualify for a full emergency funding transfer under the measure.

### Other provisions

Other highlights the bill include:

- A waiver of federal work requirements for Supplemental Nutrition Assistance Program (SNAP) eligibility: the waiver would begin the first full month after the bill is enacted and terminate at the end of the first full month after a federal coronavirus-related emergency declaration is lifted. State-imposed work requirements wouldn't be changed, but a person's participation in SNAP during the emergency couldn't be counted for determining compliance with work requirements.
- Waivers for several USDA food assistance programs to ensure meals offered under school lunch/breakfast, child and adult care programs, etc may still offer meals during school closures.
- A 6.2 percentage point increase to Medicaid federal medical assistance percentages (FMAP), provided they meet copay-free COVID-19 testing requirement, and don't raise eligibility standards or premiums.
- \$250 million for senior-serving HHS nutrition programs



FEROX STRATEGIES  
*fierce*

- \$500 million in emergency funding for WIC, with a waiver for state requirements that recipients certify in person and provide certain biometric/bloodwork requirements
- 400 million for the Commodity Assistance Program for the emergency food assistance program (TEFAP), \$100 million of which could be used for costs related to the distribution of goods.