



# COVID-19

[ciab.com/covid19](https://ciab.com/covid19)







# 2020 Congressional Calendar

■ House only
 ■ Senate only
 ■ Both in session

January						
Su	Mo	Tu	We	Th	Fr	Sa
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December						
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# Key Legislative Dates to Watch in 2020

Date	What to watch
June 8	Senate Armed Services Committee begins NDAA markups
June 30	Paycheck Protection Program for small businesses ends
End of June	House Armed Services Committee begins NDAA markups
July 23	Chemical Facility Anti-Terrorism Standards program expires
Sept. 30	Fiscal 2020 funding expires, as well as other major programs (see slide 5)
Nov. 30	Several Health and Human Services programs expire, including: <ul style="list-style-type: none"><li>• Temporary Assistance for Needy Families</li><li>• Community health centers</li><li>• Medicare programs</li></ul>
Dec. 31	Tax extenders, many pandemic response programs expire (see slide 6)

# Sept. 30 Program Expirations

Program/law	Fiscal 2020 authorizations
National Defense Authorization Act	\$735.8 billion
Surface transportation authorization (FAST Act)	\$64.1 billion
National Flood Insurance Program (NFIP)	\$30.4 billion
National Institutes of Health authorization	\$36.5 billion
Every Student Succeeds Act	\$26.1 billion
Workforce Innovation and Opportunity Act	\$10 billion
Child care and development block grants	\$2.7 billion
Federal Communications Commission authorization	\$339.6 million
America's Water Infrastructure Act sewer overflow and other grants	\$240 million
Runaway and homeless youth programs	\$127.4 million
Veterans Affairs authorities, including health care, homelessness	\$69 million
Immigration programs, including E-Verify and EB-5 investor visas	N/A

Notes: Fiscal 2020 figures don't include "such sums as may be necessary" authorizations. NFIP authorization allows the Federal Emergency Management Agency to borrow as much as \$30.4 billion from the Treasury to pay claims. Education authorizations are automatically extended for one year under the General Education Provisions Act if Congress doesn't act.

Sources: Congressional Budget Office [report](#), fiscal 2020 spending measure ([Public Law 116-94](#))

# Pandemic Response Programs and Authorities

End date	Program
June 30, 2020	Paycheck Protection Program for small businesses
July 31, 2020	Additional \$600 per week federal pandemic unemployment benefit
Sept. 30, 2020	Student loan repayment and interest accrual suspension
Dec. 31, 2020	Treasury Department/Federal Reserve business, state & local government loan authority
	Various temporary tax breaks
	Emergency sick and family leave programs
	Pandemic unemployment assistance
	Medicare sequestration suspension
	Changes to banking and accounting rules*
March 27, 2025	Special Inspector General for Pandemic Recovery
Sept. 30, 2025	Pandemic Response Accountability Committee, Congressional Oversight Commission

\*Some changes to banking and accounting rules could expire sooner if the coronavirus emergency ends.

Source: CARES Act ([Public Law 116-136](#))

# Congress has passed three PPP measures

- The CARES Act ([Public Law 116-136](#)) established the Paycheck Protection Program
  - Provided \$349 billion for the Small Business Administration to guarantee loans
  - Set the initial terms for loans, forgiveness, use of funds, and borrower eligibility
- Lending authority increased to \$659 billion under [Public Law 116-139](#)
  - Initial tranche of first-come, first-served funds was exhausted in less than two weeks
  - Measure also required the SBA to guarantee at least \$60 billion in loans issued by smaller lenders
- Borrower restrictions relaxed in PPP Flexibility Act of 2020 ([H.R. 7010/Public Law 116-142](#))
  - Businesses will have more time to spend funds, qualify for full loan forgiveness, rehire workers, defer loan payments, and (for some) repay unforgiven loan amounts
    - Lawmakers [clarified their intent](#) that the cutoff date for loan applications will remain June 30
  - Loans can be forgiven if borrowers spend at least 60% of funds on payroll costs, instead of 75%
    - Remaining forgivable funds can be spent on mortgage interest, rent, and utility payments

# Agencies set other rules for loans and borrower eligibility

- The Small Business Administration and the Treasury Department made other changes to the Paycheck Protection Program through [regulations and guidance](#)
- Additional borrowers approved, including:
  - Affiliated churches and religious groups
  - Casinos, which were previously barred if more than one-third of their revenue came from gambling
  - Hospitals owned by state or local governments that receive at least half of their funding elsewhere
  - Agricultural producers, farmers, and ranchers, including cooperatives
  - Electric and telephone cooperatives
- Agencies also set loan interest rates, maturity period, and permissible loan uses and forgiveness requirements; and created safe harbors and presumptions around “need” certifications

# Agencies set other rules – continued

- Allows SBA to provide federally-backed loans until June 30, 2020 to eligible businesses to cover operational costs, including payroll, rent, health benefits (and insurance premiums), etc.
- No collateral, personal guarantees, or subsidy recoupment fees required; and interest rate fixed at 1%
- Eligible businesses = 500 or fewer employees (or otherwise SBA loan-eligible entities)
  - Leeway for businesses with multiple “small” locations that provide accommodation and food services
  - Sole proprietors, independent contractors, and self-employed individuals are eligible
  - Some relief from SBA affiliation rules for certain businesses
- Other criteria = good-faith certifications on need for the loan (safe harbor for loans under \$2M), borrower eligibility, uses of loan dollars
- The maximum loan amount is a multiplier (2.5x) of average monthly payroll costs up to \$10M cap
- Businesses can use loans for almost all operating costs (except, e.g., individual comp above \$100K, comp for non-U.S. workers, and “double dipping” for Families First paid leave wages already receiving credit)
- Debt forgiveness up to the principal loan amount for certain costs incurred and paid during the forgiveness period
  - Forgivable amounts = payroll costs (60%); interest payments on mortgage obligations; rent; and utilities
  - Forgiveness amounts reduced for firing employees or cutting wages from pre-crisis levels

# Main Street Lending Program

	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Loan Term	5 years		
Principal Payments	Principal deferred for two years. Years 3-5: 15%, 15%, 70%		
Interest Payments	Deferred for one year		
Interest Rate	Adjustable rate of LIBOR (1 or 3 mo.) plus 300 basis points.		
Loan Size	\$250,000 to \$35 million	\$250,000 to \$50 million	\$10 million to \$300 million
Maximum Combined Debt to Adjusted 2019 EBITDA	4 times	6 times	6 times
Lender Participation Rate	5%		
Fed Participation Rate	95%		
Prepayment Allowed	Yes, without penalty		
Business Size Limits	15,000 employees or fewer, or 2019 revenues of \$5 billion or less		
Fees	Origination and transaction fees may apply		

# The HEROES Act

*(Passed U.S. House of Representatives on May 15, 2020)*

- Approx. \$1 trillion in funds for state and local governments, including \$500 billion directly to states and \$375 billion to local governments, among other allocations of grant money
- Federal subsidies to cover 100% of COBRA policies for individuals laid off or furloughed due to COVID closures
- An additional \$100 billion into the provider relief fund to support hospitals and other health care providers
- Strengthens the PPP, and enhances the Employee Retention Tax Credit to encourage employers to maintain their workforce
- \$100 billion for colleges and K-12 schools, and it extends student loan protections created in the CARES Act through September 2021
- Up to \$10,000 in debt relief for borrowers of federal and private student loans
- \$75 billion in grants to state, local, Tribal, and territorial health departments to support a testing and contact tracing infrastructure
- Establishes a \$200 billion Heroes' fund to ensure that essential workers who have continued working during the pandemic receive hazard pay
- Requires workplaces to develop and implement infection control plans
- \$175 billion for renters and homeowners in need to support rent, mortgage, utility payments, and other housing-related costs

# Debate over liability protection largely follows partisan lines

- **Business groups and Republicans say liability protections will help the reopening economy by limiting “frivolous” lawsuits**
- **Several different contexts for possible liability related to the spread of Covid-19**
  - Employer and business liability if employees or customers contract the disease
  - Educational institution liability related to students’ exposure
  - Medical malpractice liability in connection with Covid-19 cases
- **A group of 21 GOP state attorneys general asked Congress to enact liability protections**
  - They wrote that criminal and regulatory enforcement would be sufficient in most cases
  - Civil liability protection wouldn’t apply in cases of reckless or intentional harms
- **Opponents say that liability limits aren’t necessary and would weaken protections for workers, customers, students, and patients**

# Liability protections could take several forms

- **Congress could make it easier for defendants to push cases from state to federal court**
  - The Class Action Fairness Act contains an analogous “removal” provision
  - State courts are generally considered more friendly to local plaintiffs than federal courts, so easing removal to federal court could help businesses that are sued
- **Several states have damages caps in other contexts that limit the amount of money plaintiffs can recover for personal injury or medical malpractice**
  - Congress could establish a nationwide cap on damages available in suits related to Covid-19
    - If they were to establish a federal cap, they could choose to preempt all state-law caps in relevant cases, or they could leave some in place, such as caps that are more stringent
  - Republicans have long pushed for damages caps in medical malpractice cases, among other changes
    - Most recent vote was in 2017 ([H.R. 1215 in the 115<sup>th</sup> Congress](#))

# Additional legislative options to limit COVID-19 liability

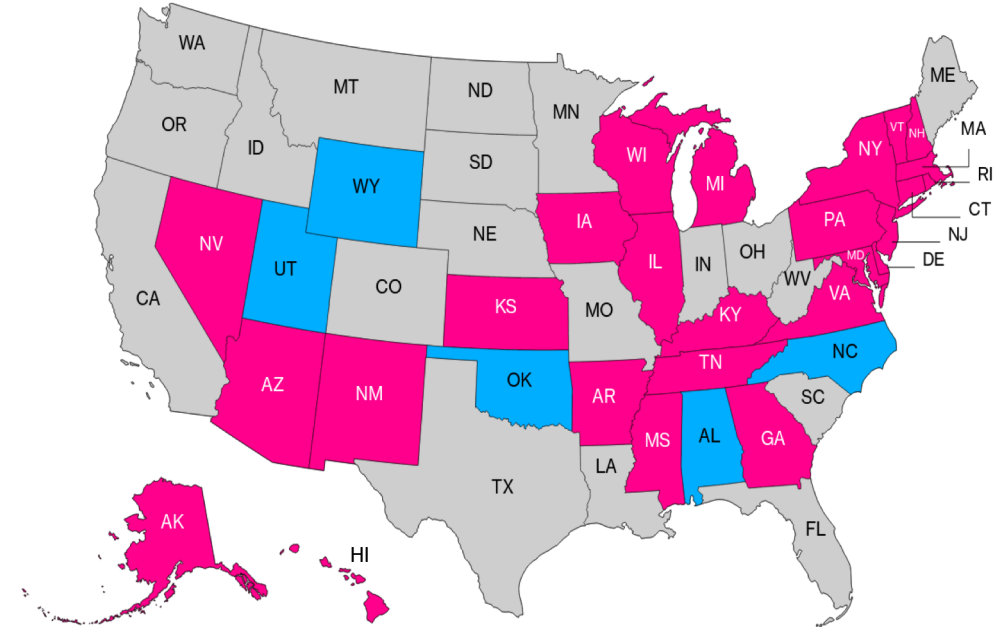
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# Some states have already provided COVID-19 specific immunity

- **Five states provided broad business liability protections**
  - Alabama was via executive order
  - North Carolina law includes “essential businesses”
- **27 states have shielded certain health-care entities from liability**
  - 20 were via executive order
  - Some states’ emergency declarations automatically triggered protections
- **Protections generally include exceptions for negligence, misconduct**

**State Covid-19 Liability Protections**

■ General ■ Health care ■ None



Source: American Tort Reform Association

Notes: Data as of June 4. Includes changes enacted through state legislation and executive orders. Protections vary in scope and entities covered.

# Retroactive Business Interruption Coverage



# Pandemic Risk Insurance Program (PRIA)

[DISCUSSION DRAFT]

116TH CONGRESS  
2D SESSION

**H. R.** \_\_\_\_\_

To establish a Pandemic Risk Reinsurance Program, and for other purposes.

\_\_\_\_\_  
IN THE HOUSE OF REPRESENTATIVES

M\_\_\_\_\_. \_\_\_\_\_ introduced the following bill; which was referred  
to the Committee on \_\_\_\_\_

\_\_\_\_\_  
**A BILL**

To establish a Pandemic Risk Reinsurance Program, and  
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Pandemic Risk Insur-  
5 ance Act of 2020”.



## The COVID-19 Business and Employee Continuity and Recovery Fund (the “Recovery Fund”)

- An expedited and streamlined relief program run by a special administrator within Treasury, and leveraged through private sector servicers
- Targeted to help businesses retain and rehire employees, maintain worker benefits, and resume or continue economic activity
- Includes strong anti-abuse provisions, including audits and a Special Inspector General oversight
- Would contract with third parties that agree to assist with application filing and review – third parties would be shielded from any liability except for gross negligence, willful misconduct, or fraud
- Funded through advanced authorization of appropriations and the creation of an obligation of the federal government

## America's Recovery Fund Policy Side-by-Side

<i>Issue</i>	<i>ARF</i>	<i>Current Program</i>	<i>House Proposals</i>		<i>Senate Proposals</i>	
	<b>America's Recovery Fund</b>	<b>PPP</b>	<b>Paycheck Guarantee Act H.R.6918</b>	<b>RESTAURANTS Act (not yet introduced)</b>	<b>RESTART Act S.3814</b>	<b>Paycheck Security Program S.3793</b>
<b>Need a fast, effective application and distribution process for quick recovery</b>	Administered by the Department of the Treasury  Businesses would apply with an automated and simple application; fast, automated calculations and expedited review will get liquidity to businesses quickly	Confusing, opaque application process	Uses existing payroll tax infrastructure to facilitate the delivery of payments	Administered by the Department of the Treasury	Loan decisions made within 30 days of application; funds disbursed within 15 days of approval	Administered by the Department of the Treasury  Grants will be based on previous tax filings
<b>American businesses need both more funding and more flexibility</b>	Funds would help cover essential operating expenses including rent, and other debt obligations, utilities, payroll, and state and local taxes  Intended to help businesses reopen and stay open over the long-term recovery trajectory  Funds available on an ongoing basis to help businesses to recover	Require businesses to spend 75% of loan on payroll – doesn't work for businesses unable to open or in still-closed states  One-time loan  Limited scope and duration not intended for the next phase of recovery	Several efforts on direct cash support for employees including covering 100% of paychecks under \$100k  Covers limited essential business expenses like rent  3-month lifetime	Calls for a \$120 billion restaurant stabilization grant program designed to help independent restaurants deal with the long-term structural challenges facing the industry due to COVID-19 to ensure they can re-employ 11 million workers  Eligible expenses include payroll, benefits, rent, and utilities	Extends the 8-week period for PPP funds deployment/loan forgiveness to 16 weeks for businesses that have experienced revenue declines of 25%  Loan can be repaid over 7 years  Covers payroll, benefits, and fixed operating expenses for up to 6 months	Establish a grant program to cover wages up to \$90k for furloughed or laid off employees at firms that have experienced a 25% drop in revenue plus an additional 20% of revenue to cover rent/utilities and certain fixed expenses  Businesses who have received PPP loan are ineligible  6-month lifetime
<b>Congressional recovery programs need strong oversight and transparency</b>	Congressionally appointed Special Administrator will oversee Recovery Fund  Application and disbursement designed for easy auditing  Congressional Oversight Board and Special Inspector General add further oversight		Includes worker protection and fraud prevention measures			Treasury will create a Special Purpose Vehicle to transfer funds through payroll processors and the IRS  Oversight through IRS systems and penalty authority

# Policyholders Support an Alternative



# What's Happening in the States?

*Hundreds of state orders, rules, notices, and guidance issued*

1. Workers Compensation
2. Business Interruption
3. Premium Payment grace period
  - a. Agency Billing Arrangements
  - b. Eligibility
  - c. Delayed Compensation
4. Governors' orders closing – and now re-opening – the states

# Preserving Employer Sponsored Insurance

Cover the Cost of Coverage through the Consolidated Omnibus Budget Reconciliation Act (COBRA)

- The COVID-19 crisis has already triggered significant job loss. Many individuals may have the option to maintain their job based health coverage through COBRA but find the costs to be prohibitive, especially if they are facing a significant reduction in income. **Congress could offset the full cost of coverage through COBRA to former employees through a direct subsidy.**

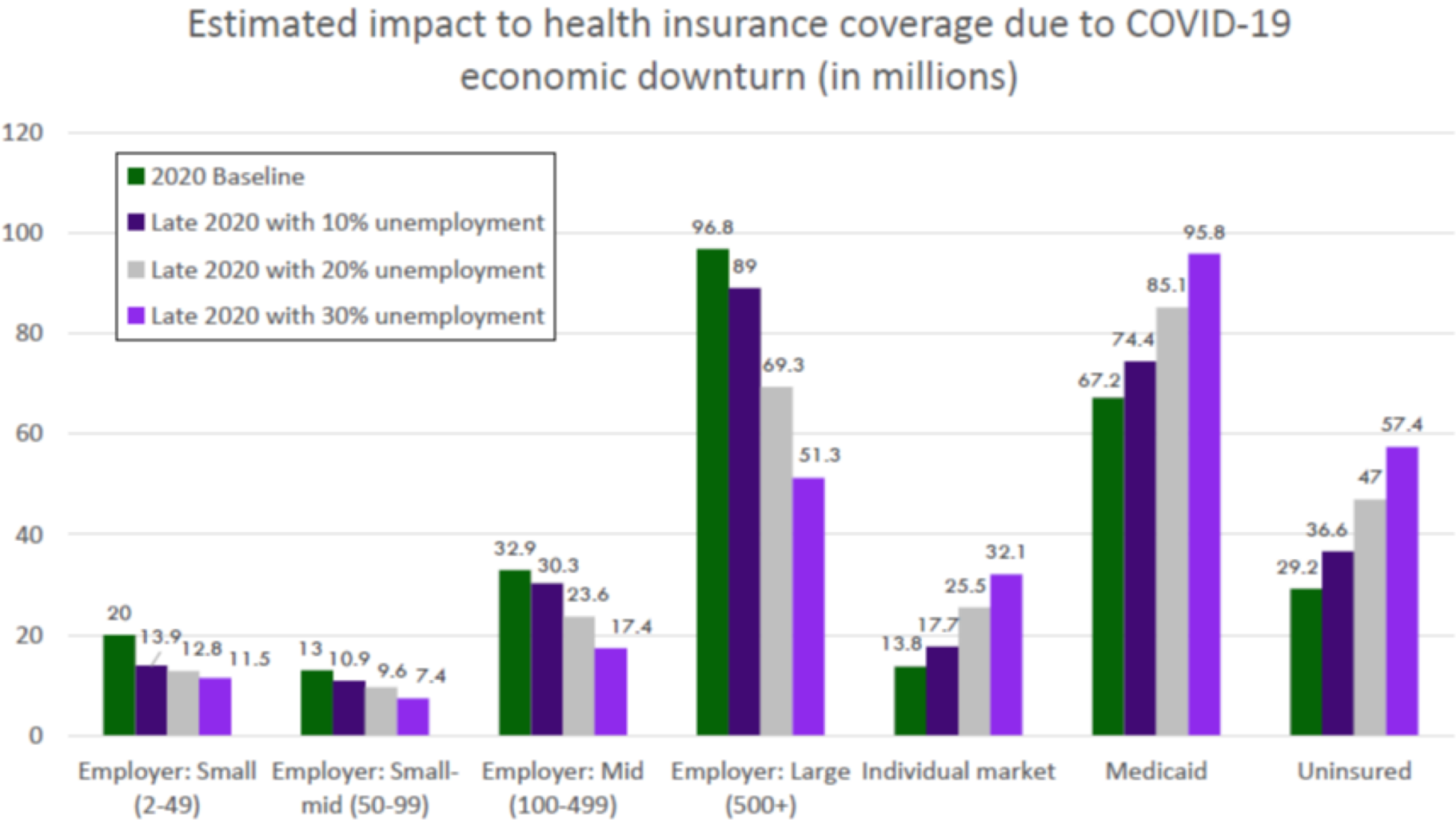
Provide Employers with Temporary Subsidies to Preserve Health Benefits

- Many employers experiencing loss of revenue as a result of the economic downturn are compelled reluctantly to reduce benefits as one way to manage expenses. **Congress could help employers by providing subsidies to offset the cost of preserving health coverage during this crisis.**

Expand Use of Health Savings Accounts (HSA)

- Currently, HSAs may only be used for certain qualifying expenses, which do not include premiums. **Congress could temporarily lift this limit to provide individuals and families with access to additional resources to cover the cost of coverage.**

# What if healthcare coverage shifted away from commercial markets?



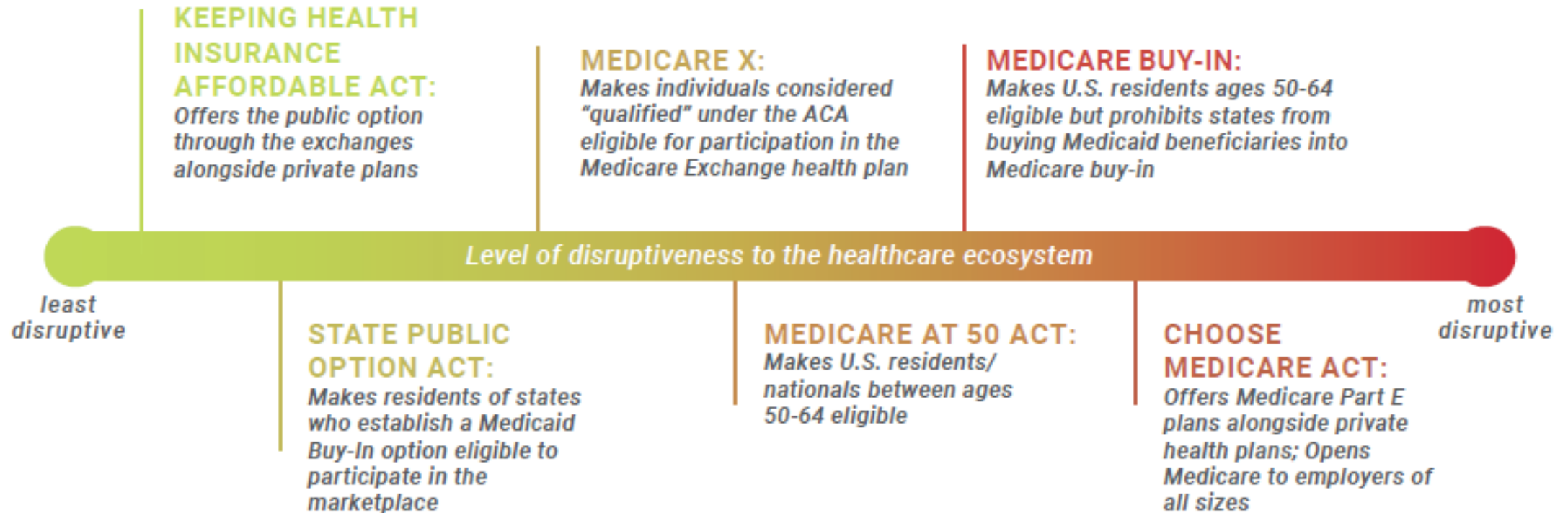
*If the unemployment rate reaches 20% ...*

In the large employer group market, the number of insureds would **drop by about 28 million, or 29%**

In the individual market, the number of insureds would **increase by 46%**

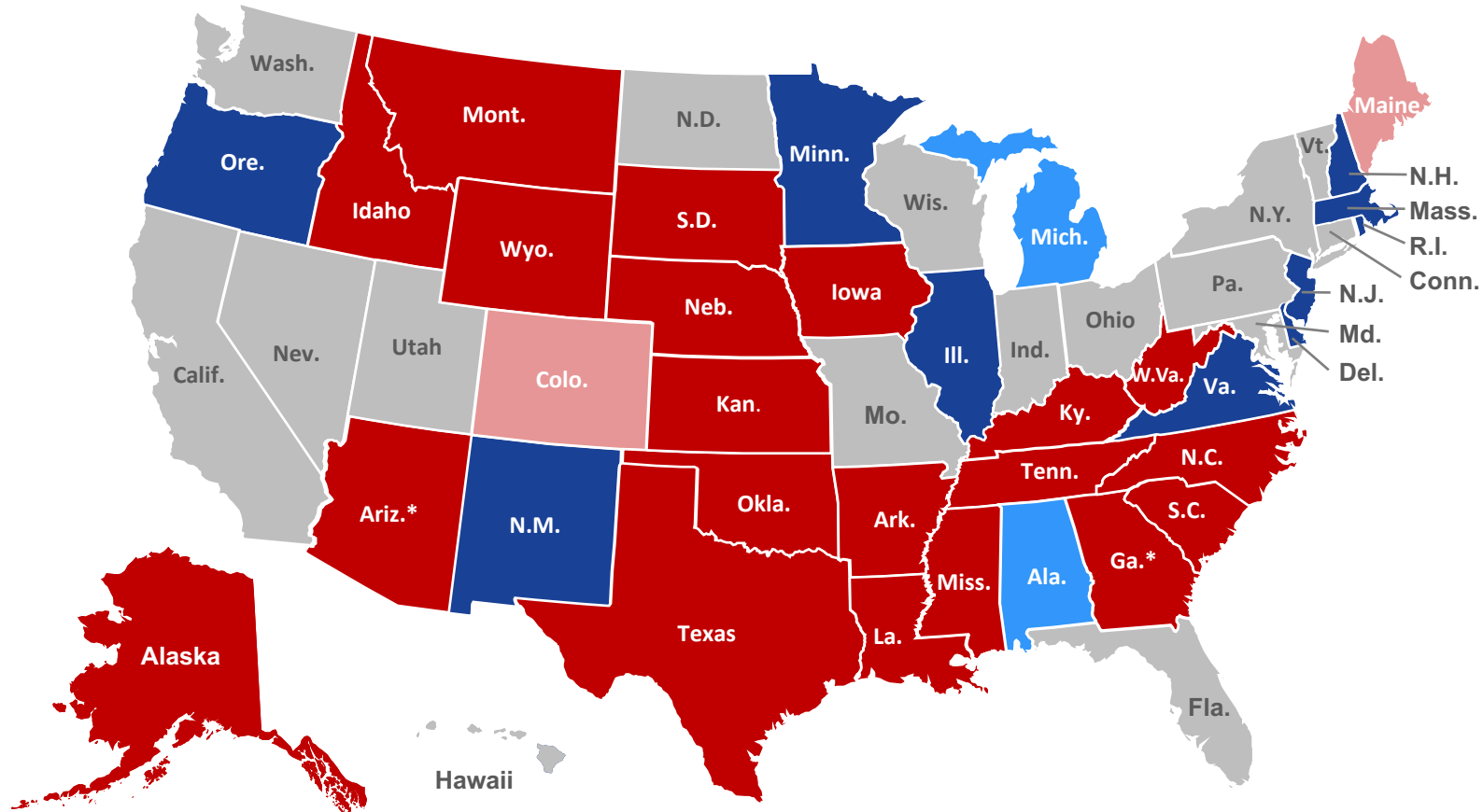
The number of uninsured would increase by **18 million**

# PUBLIC OPTION PROPOSALS



# States with Senate Races in 2020

- Democratic-held seat
- Democratic-held seat – state won by Trump in 2016
- Republican-held seat
- Republican-held seat – state won by Clinton in 2016



Source: U.S. Senate; Bloomberg Government

Note: Georgia has one regularly scheduled election and one special election; Arizona has a special election

# *United States Senator Kyrsten Sinema (AZ)*

