

Tuesday, April 28, 2020 was a day of setbacks for proponents of quick action by the US Congress on another massive economic recovery package.

A revolt in the House Democratic Caucus, fueled by warnings from the official House physician, forced House Speaker Nancy Pelosi (D-CA) and Majority Leader Steny Hoyer (D-MD) to abruptly cancel plans to bring their chamber back next week for votes. Speaker Pelosi and Majority Leader Hoyer had intended to use their majority power to push through a rules change that would have temporarily allowed Members of Congress to cast future votes without being physically present in the US Capitol.

Speaker Pelosi and her lieutenants are in the process of writing a “CARES 2” bill that includes a host of Democratic priorities for the nation’s response to COVID-19, but the measure has not yet been unveiled, prompting some House Democrats to question why they were being brought back to town against local health protocols for potentially a single vote on an internal rules change. The proxy voting measure, if adopted, would strengthen Speaker Pelosi’s hand in the weeks ahead as she seeks to leverage the Democrats’ majority in the House to shape the pandemic response measure.

On the other side of the Capitol, Senate Majority Leader Mitch McConnell (R-KY) continued to rein in expectations among both Democrats and Republicans in Washington about the potential size and scope of the next coronavirus bill. During a Tuesday conference call with fellow Republican senators, Majority Leader McConnell reportedly expressed deep reservations about the idea of attaching an ambitious national infrastructure investment package to the upcoming COVID-19 measure.

President Donald Trump has called on Congress to pass an infrastructure overhaul of more than US\$2 trillion in the weeks ahead as part of the economic stabilization effort. The White House has been rumored to be preparing to roll out a formal proposal in the days ahead for the next phase of the legislative response to the pandemic, a proposal Treasury Secretary Steven Mnuchin has indicated will feature a large infrastructure initiative.

Speaker Pelosi, too, has called for significant action on infrastructure to help drive the national economic recovery, but has appeared in recent days to be dialing back on what can be accomplished in the infrastructure space via “CARES 2.”

Also Tuesday, citing the need to protect the country’s food supply, President Trump used his executive power to order the nation’s meatpacking plants to continue operating amid a rash of coronavirus-related closures. President Trump praised the governor of Texas for taking steps to reopen his state’s economy, in comments that contrast sharply with the criticism the president

leveled at Georgia’s governor last week for having taken similar actions in his state.

On May 5, the Senate Committee on Banking, Housing and Urban Development will hold a hearing on the nomination of Brian D. Miller to serve as Special Inspector General for Pandemic Recovery at the Department of the Treasury.

Tax and Economic Development Updates

Though House Majority Leader Hoyer last night announced that the House would not be ready to move forward with “CARES 2” next week, lawmakers are nevertheless continuing to press forward with consideration of additional stimulus measures as part of that package. In addition to reports of discussions surrounding additional direct payments to individual taxpayers, President Trump yesterday also reaffirmed that he “like[s] the idea of payroll tax cuts.” Another idea on the radar of Democrats: automatic triggers to preserve the extension of unemployment insurance benefits. Specifically, yesterday, Senate Committee on Finance Ranking Member Ron Wyden (D-OR) suggested that “[t]he next COVID-19 relief bill needs to make sure our unemployment insurance system continues to support workers and the economy throughout this crisis, not just the next few months. That means triggering extensions of benefits based on specific rates of unemployment instead of arbitrary timelines, bringing gig workers and others into the system permanently, and increasing traditional unemployment benefits to an appropriate level.” Along the same lines, a bipartisan group of over 100 House Members – led by Representatives Brad Schneider (D-IL), John Katko (R-NY) and Peter King (R-NY) – are proposing legislation to allow public employers to access the same payroll tax credits as private employers when offering emergency paid leave as called for in the Families First Coronavirus Response Act.

On the small business front, the Small Business Administration (SBA) yesterday issued an [Interim Final Rule on Disbursements](#) and also updated Question 37 in its [Frequently Asked Questions](#) regarding the Paycheck Protection Program (PPP). SBA Administrator Jovita Carranza and Treasury Secretary Mnuchin yesterday also issued a [joint statement](#) in which they make clear that the PPP “was not a program designed for public companies,” adding that any loan over US\$2 million will be reviewed before becoming eligible for forgiveness. Additionally, the SBA has made clear that, effective immediately, lenders are prohibited from using Robotic Processing Automation (RBA) in making submissions through its E-Tran system, thus necessitating that information be entered manually. Lawmakers are also calling for additional guidance on the PPP. Senate Small Business Committee Chairman Marco Rubio (R-FL) earlier this week sent a [letter](#) to Administrator Carranza and Secretary Mnuchin urging

them to provide “immediate guidance and expedite approvals to ensure Community Development Financial Institutions (CDFI) and minority depository institutions serving underserved communities have access to the second round of funding for the Paycheck Protection Program.”

As we await potential additional information regarding the Federal Reserve’s 13(3) liquidity facilities following the conclusion of its Federal Open Markets Committee meeting later today, there are additional policy proposals of interest to the business community that are also making news. For example, as reported earlier this week, there appears to be growing interest by progressive Democrats in prohibiting large mergers during the ongoing economic crisis stemming from the COVID-19 pandemic. To that end, yesterday, we learned that Senator Elizabeth Warren (D-MA) and Representative Alexandria Ocasio-Cortez (D-NY) are expected to move forward with a legislative proposal that would prohibit mergers related to private equity firms, hedge funds or companies with more than US\$100 million in revenue until the Federal Trade Commission (FTC) has made a determination that the merger would not put small businesses and consumers “under severe financial distress.” Separately, we have also heard from sources about ongoing discussions by the House Committee on Ways and Means related to a tax package that could potentially be included as part of a forthcoming COVID-19 measure. There is some speculation that this package could also include various pension-related proposals, including one aimed at addressing the multiemployer pension plan crisis.

Health Updates

The American Medical Association (AMA) [wrote](#) to Department of Health and Human Services (HHS) Assistant Secretary for Health Admiral Brett Giroir, MD, addressing issues with the state of COVID-19 diagnostic and serological (antibody) testing, including access, performance, use by the general public and laboratory preparedness. AMA urged the administration to pursue a national strategy for testing during the pandemic, receive consultation from all sectors of the laboratory community on testing (including the hospital, academic and community laboratory sectors), ensure laboratories are adequately resourced to meet ongoing demand and provide additional guidance and education to physicians and the public on serological testing. As we reported yesterday, the White House released a new [testing overview](#) and [testing blueprint](#). The overview provides a three-stage, eight-part plan for the federal government, state governments and the private sector to scale up the testing regime during the pandemic. Senate Committee on Health, Education, Labor and Pensions (HELP) Ranking Member Patty Murray (D-WA) [panned](#) the administration’s testing strategy, stating that the blueprint “does nothing new and will accomplish nothing new.” On the other side of the Capitol, House Committee on Oversight and Reform Chairman Carolyn Maloney (D-NY) [disclosed](#) that officials from HHS and the Federal Emergency Management Agency acknowledged in congressional briefings that states continue to face shortages of testing supplies, as well as personal protective equipment.

With concerns about the [CARES Act Provider Relief Fund](#), the National Association of Medicaid Directors (NAMD) [wrote](#) to HHS Secretary Alex Azar, requesting “immediate engagement with Medicaid Directors to facilitate expeditious distribution of Congressionally appropriated funds to critical Medicaid providers. This distribution must occur within the next two weeks.” NAMD also asked for “[g]reater transparency from HHS on the specific funding amounts awarded to specific providers which in turn will inform state decisions on additional fiscal relief.” HHS provided new allocations for the Fund last week; the funds are to be distributed in a general manner, as well as toward COVID-19 treatments for the uninsured, COVID-19 high impact areas, rural providers, the Indian Health Service and to-be-announced additional allocations. Yesterday, HHS [announced](#) that eligible providers can submit information to receive additional provider relief fund payments through the general allocation.

A large group of health and insurance trade associations – including the American Hospital Association, Association of American Medical Colleges, Children’s Hospital Association, America’s Health Insurance Plans, the Blue Cross Blue Shield Association and US Chamber of Commerce – [wrote](#) to House and Senate leadership to encourage “support [for] employers and workers by protecting and expanding high quality, affordable health coverage.” Specifically, the groups requested Congress provide employers with temporary subsidies to preserve health benefits, cover the cost of coverage through the Consolidated Omnibus Budget Reconciliation Act (COBRA), expand use of health savings accounts, open a special enrollment period for Health Insurance Marketplaces and increase eligibility for federal subsidies for the Health Insurance Marketplaces. As we reported earlier this month, the administration chose not to relaunch HealthCare.gov for a special enrollment period, which would have allowed uninsured individuals to obtain insurance coverage. Reports indicated the decision was made on political grounds, as the President does not want to confuse the public on his position against the Affordable Care Act. Instead, the administration announced the CARES Act Provider Relief Fund would have an [allocation](#) for COVID-19 care for the uninsured. The trade associations that signed the letter disagree with this approach, explaining that it “will quickly deplete the Emergency Fund and not provide the benefits of comprehensive coverage, which include protections against preexisting conditions and establishing a regular connection between patients and care providers.”

A group of 115 bipartisan House lawmakers [wrote](#) to House and Senate leadership, requesting a focus on pharmacy needs in the next legislative package. Concerned about financial strains and potential closures for these entities during the pandemic, the lawmakers advocated for pharmacy direct and indirect remuneration (DIR) clawback reform. The lawmakers noted, “DIR clawback fees continue to be assessed against [pharmacies] right now, even during this period of intense strain. [The Centers for Medicare & Medicaid Services (CMS)] states that DIR fees grew by 45,000 percent between 2010 and 2017, and now, during this financial crisis in which pharmacies are already struggling, DIR fees threaten to cause more pharmacies to close their doors.”

Trade Updates

On Tuesday, President Trump signed an [Executive Order](#) invoking the Defense Production Act against meat and poultry supply chains. In it, he delegated authority to the Secretary of Agriculture to implement the Act accordingly, including to ensure that these businesses can continue operations consistent with guidance on safe operations issued by the Centers for Disease Control and Prevention and the Occupational Safety and Health Administration earlier this week. President Trump's actions come as major food processing facilities across the US have been forced to close in response to localized coronavirus outbreaks, putting severe pressure on domestic meat and poultry supply chains and raising significant health and safety concerns among workers. Though President Trump tweeted earlier that day saying he would act to shield these companies from liability, the Executive Order does not provide any further details. Also on Tuesday, Senator Joni Ernst (R-IA) [wrote](#) to Senate Committee on Small Business Chairman Rubio urging expansion of the PPP small business eligibility to include agricultural and food supply businesses, to further secure US food supply.

Our global Public Policy Practice meets several times a week to examine the profound and transformative effect of COVID-19. We bring a sharp focus to how our multidisciplinary team can counsel our clients in responding to the pandemic. During a recent call, we asked our colleague and former US Ambassador Frank G. Wisner to comment on the geopolitical consequences of COVID-19. With a diplomatic career spanning four decades and eight US presidents, Ambassador Wisner's response was sobering and impactful. His attention on the pandemic's acceleration of four pre-existing trends is instructive to governments and multinational companies alike. Download the expert soundbite [here](#).

European Policy Updates

On Tuesday, the European Commission adopted a COVID-19 banking package aimed at providing flexibility in bank lending to businesses and households and guidance to mitigate clinical trial disruption in the EU. The banking package consists of a [proposal for a Regulation](#), which provides adjustments to maximize the capacity of credit institutions to lend and to absorb losses linked to the COVID-19 pandemic, and an [interpretative Communication](#) explaining the proposed to the EU's accounting and prudential frameworks. More information can be found [here](#).

With respect to the [guidance](#) for clinical trials, the European Commission recommends measures that can help mitigate the disruption of clinical trials, without compromising the quality and safety of patients participating in ongoing clinical trials. The guidance is centered on three main recommendations: distribution of medicines to patients in clinical trials, remote source data verification and immediate communication to authorities in case of disruption or hazard.

As the COVID-19 crisis continues to develop, clients with a presence in Germany have been increasingly asking what organizations should be doing to mitigate the impact of the virus on their business, staff and supply chains. Our teams in Berlin, Frankfurt and Böblingen have provided practical steps for businesses to take in [this overview](#). In particular, the update

outlines a new a duty of care on companies to protect against infection, the recent tightening of investment controls and the potential effects of the virus on acquisition agreements.

Further to these practical guidelines, our colleagues across Europe have prepared other useful guides, particularly on the role of directors in response to the COVID-19 crisis. Indeed, countries frame the exact description of the role of directors of a company in different terms. One feature common to all, is the obligation not to continue trading if a company is insolvent. Whether you are a supplier, creditor, shareholder, customer or employee, you rely on the directors of the company you are dealing with to discharge this duty diligently. Due to the COVID-19 outbreak, this fundamental obligation has been put under severe strain. Governments have responded to the crisis in different ways. How directors exercise their responsibility is one key factor in determining how strong and fast economies will recover. This [set of short guides](#) gives pointers on how directors should think about their duties in Europe during the COVID-19 crisis.

Oversight Updates

In [interviews](#) with CNBC and Fox News yesterday, Treasury Secretary Mnuchin said that all PPP loans above US\$2 million will be subject to full audits. He went on to say that companies that do not meet the PPP requirements will not have their loans forgiven and could be subject to "criminal liability" if they do not repay the money. To receive a PPP loan, companies must certify that "current economic uncertainty" makes the loans "necessary to support the ongoing operations." Through a safe harbor in place through May 7, this certification is deemed to have been made in good faith for companies that return the loans. Several entities have already returned their loans, including Nathan's Famous, the LA Lakers, Potbelly, Ruth's Chris Steakhouse, Shake Shack, Sweetgreen, Kura Sushi, AutoNation and Manning & Napier. Yesterday, Senator Josh Hawley (R-MO) [sent](#) a letter to Treasury Secretary Mnuchin and SBA Administrator Carranza asking them "to be vigilant against unfair practices by the biggest banks in the disbursement of [PPP] forgivable loans." Last week, Senator Elizabeth Warren (D-MA) and Representative Nydia M. Velázquez (D-NY) sent a [letter](#) to the SBA's and Treasury's IGs raising similar concerns and asking for an investigation.

Also yesterday, the Inspectors General (IGs) of the SBA and the Departments of Justice and Treasury [briefed](#) members of the House Committee on Oversight and Reform on their oversight efforts in response to the pandemic and proposals to strengthen the independence of all IGs. Among other things, the IGs relayed the following developments: Treasury's IG is conducting two audits related to the air carrier worker support provisions and will be undertaking more audits; the SBA's IG will review the PPP's implementation; and, to ensure speed and transparency, the IGs will publish "flash reports" on their ongoing audits. Michael E. Horowitz, the chair of the Council of Inspectors General on Integrity and Efficiency's (CIGIE) and the DOJ's IG, assured the Committee that the IGs will continue their work despite the President's recent firings and demotions of IGs and will work with the Committee on legislation that would give Senate-confirmed and Acting IGs the protections they need to exercise independent and aggressive oversight without fear of firing or demotion. Earlier this month, Committee Chairman Maloney, along with

Representatives Gerald Connolly (D-VA) and Stephen Lynch (D-MA), introduced a [bill](#) that would expand the roster of officials eligible to chair the Pandemic Response Accountability Committee (PRAC) to include principal deputy IGs or other senior officials in IG offices. If this bill were law when President Trump removed PRAC's chair Glenn Fine from his position as the Pentagon's Acting IG, Fine, who remains principal deputy IG at the Pentagon, would have been able to continue to serve as PRAC's chair. For now, Horowitz is the Acting Chair, having named himself to the position, at least for the time being.

Several Republican Senators have [expressed](#) their support for the IGs' work, work that is increasingly more important as the government pours trillions of dollars into the economy. These Senators include Chuck Grassley (R-IA), who is a longtime champion of Inspectors General; James Lankford (R-OK); and Rob Portman (R-OH). In addition to their public comments, the Senators have penned letters to the President. Similar to their Democratic counterparts, the GOP Senators emphasized they "want inspectors general to have the freedom to be able to make decisions and to not fear that they're going to be released from their jobs at any point" (Senator Lankford).

Senate Democratic leaders, including Senate Minority Leader Chuck Schumer (D-NY), Senate Democratic Whip Dick Durbin (D-IL) and Assistant Democratic Leader Patty Murray (D-WA), sent a [letter](#) to Senate Majority Leader Mitch McConnell (R-KY) urging him to focus the Senate on oversight over the pandemic response. The Senators requested a number of hearings to be scheduled next week, including ones on the nation's testing capabilities, implementation of the PPP and the Treasury/Federal Reserve's Lending Facilities and confirmation of appointees to the Congressional Oversight Commission.

Contacts

David B. Stewart

Principal, Washington DC

T +1 202 457 6054

E david.stewart@squirepb.com

David Schnittger

Principal, Washington DC

T +1 202 457 6514

E david.schnittger@squirepb.com

Beth L. Goldstein

Senior Associate, Washington DC

T +1 202 457 5129

E beth.goldstein@squirepb.com

Brandon C. Roman

Senior Associate, Washington DC

T +1 202 457 5330

E brandon.roman@squirepb.com

Ludmilla L. Kasulke

Senior Associate, Washington DC

T +1 202 457 5125

E ludmilla.kasulke@squirepb.com

Kristina V. Arianina

Senior Associate, Washington DC

T +1 202 457 5139

E kristina.arianina@squirepb.com