

The chairman of the Federal Reserve Board said Wednesday that trillions of dollars in additional spending by the US Congress is needed in the weeks ahead to prevent the American economy from further cratering. Two influential committee chairmen in the Democratic-controlled US House of Representatives revealed details about plans by House Speaker Nancy Pelosi (D-CA) to ensure Congress heeds the Fed chairman's call.

Via the [Wall Street Journal](#): "Federal Reserve Chairman Jerome Powell delivered an uncharacteristically blunt call on Wednesday for Congress and the White House to spend more money to prevent deeper economic damage from the coronavirus pandemic... Mr. Powell said policy makers should focus their efforts on protecting workers, businesses and households from 'avoidable insolvency.' Those policies, he added, 'will come with a hefty price tag, but we would come out of this eventually with a stronger economy.'"

"This is the time to use the great fiscal power of the United States to do what we can to support the economy and try to get through this with as little damage to the longer run, productive capacity, the economy as possible," [said](#) Powell, nominated by President Donald Trump in 2017 to lead the Fed. "The time will come again and reasonably soon I think where we can think about a long-term way to get our fiscal house in order. . . and we absolutely need to do that. . . [but] is not the time to let that concern, which is very serious, [to] let that get in the way of us winning this battle."

Powell's statements came a day after Senate Majority Leader Mitch McConnell (R-KY) pushed back against bipartisan aspirations of quickly assembling a COVID-19 response bill with a soaring price tag that features investments in national infrastructure and significant new money for states, territories and municipalities. House Speaker Pelosi, who is in the process of crafting such a measure, dispatched two of her top committee chairmen Wednesday to challenge the Senate leader's brake pumping.

House Committee on Ways and Means Chairman Richard Neal (D-MA) told the [US Conference of Mayors](#) that congressional Democrats are putting the finishing touches on legislation that "will include tax-advantaged borrowing programs, known as private activity bonds and Build America Bonds" to help local governments in the crisis, according to *POLITICO*, and indicated the specifics would be released this week or early next week as

part of Speaker Pelosi's promised "CARES 2" proposal.

Representative Peter DeFazio (D-OR), the chairman of the House Committee on Transportation and Infrastructure, issued a [statement](#) pledging that CARES 2 will feature "a massive investment in the kind of infrastructure that will help future generations succeed-- from better bridges and roads, to robust transit and passenger rail service, to fully-functioning ports and harbors, to modernized waste and drinking water systems, and widely available broadband internet." The measure will also "[support] US manufacturing with the strongest Buy America requirements in the entire Federal government," DeFazio declared.

President Trump has called for Congress to enact an infrastructure measure of more than US\$2 trillion in the coming weeks as part of the effort to help the nation's economy recovery from the effect of the pandemic. Treasury Secretary Steven Mnuchin has said the Trump Administration also supports giving additional aid to state and local government; creating new programs to aid the beleaguered restaurant, sports and entertainment sectors; and providing payroll tax relief in the next coronavirus response bill.

Tax and Economic Development Updates

As small businesses around the country continue to seek loans through the Paycheck Protection Program (PPP), so, too, does the Small Business Administration (SBA) continue to issue guidance about the program. Yesterday, SBA Administrator Jovita Carranza and Treasury Secretary Mnuchin issued a [joint statement](#) providing that, "[i]n order to ensure special access to the PPP loan program for the smallest lenders and their small business customers, the SBA is only accepting loans from lending institutions with asset sizes less than US\$1 billion from 4:00 p.m. EDT until 11:59 p.m. EDT on April 29, 2020." According to SBA, this move is intended to ensure that all eligible small businesses have access to the PPP. The SBA also updated Question 38 in its [Frequently Asked Questions](#), which addresses whether a change in ownership of a business could impact its eligibility for a PPP loan. Additionally, Senate Committee on Small Business Chairman Marco Rubio (R-FL) yesterday suggested that the SBA "is eventually going to have to release" information about the loans provided through the PPP and, "if they don't, we'll make them do it."

With lawmakers now largely turning their full time and attention to the next COVID-19 stimulus package, House Committee on Ways and Means Chairman Neal yesterday spoke with the US Conference of Mayors and assured the group that "[w]e are going to insist on our side that this [next] package include direct assistance to all of you." According to reports, such

assistance could include private activity bonds and Build America Bonds, as well as potentially some form of revenue-sharing program. This announcement comes as the Federal Reserve Bank of New York has released [updated requirements](#) related to the Federal Reserve's Municipal Liquidity Facility. According to the updated guidance, the program should be pursued by states and municipalities only after they can certify that they have been unable to obtain funding through some other mechanism.

Additionally, the Federal Reserve yesterday concluded the second day of a meeting of its Federal Open Market Committee (FOMC), which resulted in a decision by the central bank to keep the benchmark interest rate near zero. The FOMC also unanimously agreed that it "will use its tools and act as appropriate to support the economy," though it stopped short of releasing additional guidance and regulations surrounding the Federal Reserve's Main Street Lending Program (MSLP). Nevertheless, while we await these details, we have learned that those who submitted comments to the central bank about the program are beginning to receive responses acknowledging receipt of their comments. This could suggest that further action on the MSLP may be imminent. Interestingly, even before the program has officially launched, Secretary Mnuchin yesterday suggested that he might be amenable to providing additional funding to support the MSLP if there is significant interest in the financial assistance it will make available to mid-sized businesses.

There are also continued efforts underway by lawmakers and other stakeholders to support a number of specific industries in forthcoming stimulus measures. For example, a coalition of companies, local governments, and nonprofit organizations sent a [letter](#) to Congressional leadership requesting that they "support access to affordable broadband internet in forthcoming COVID-19 stimulus package(s)." The bus industry is also seeking financial assistance from Congress, having lost an estimated US\$14 billion and 82,000 jobs due to the ongoing public health crisis. It appears that there is support for such aid on Capitol Hill, as nearly 100 Members of the House sent a [letter](#) to Congressional leadership requesting, at a minimum, US\$11 billion in grants and US\$5 billion in loan guarantees for the industry. Notably, this letter is in addition to a [letter](#) from two key lawmakers with jurisdiction over the issue – Chairman Neal and House Committee on Transportation and Infrastructure Chairman Peter DeFazio (D-OR) – to the Treasury Department and Federal Reserve urging that they "consider providing at least US\$5 billion in loans to over-the-road bus carriers under a program recently enacted by the CARES Act." While it does not appear that the lawmakers have yet received a response to their request, it is notable that Secretary Mnuchin has suggested that he does not foresee additional funding being made available to the airline industry.

Finally, yesterday, the Department of Labor (DOL) issued [guidance](#) to provide relief for employee benefit plans due to COVID-19. In issuing this guidance, DOL "recognizes that the COVID-19 outbreak may temporarily impede efforts to comply with various requirements and deadlines under the Employee Retirement Income Security Act of 1974, as amended (ERISA)." The guidance generally applies to employee benefit

plans, employers, labor organizations, and other plan sponsors, plan fiduciaries, participants and beneficiaries, and service providers subject to ERISA from March 1, 2020, until 60 days after the end of the COVID-19 National Emergency or a date to be determined by DOL. DOL also made clear in its announcement that it will issue additional guidance as needed.

Health Updates

The National Institutes of Health (NIH) [announced](#) its clinical trial of experimental drug remdesivir showed preliminary data that "[h]ospitalized patients with advanced COVID-19 and lung involvement who received [the drug] recovered faster than similar patients who received placebo." National Institute of Allergy and Infectious Diseases Director Anthony Fauci explained the study proves "that a drug can block this virus," though he said the drug was not a total "knock out." Gilead Sciences, Inc., the company that developed remdesivir, issued an optimistic [open letter](#) about the findings, but cautioned that more studies need to be completed, and the drug has not yet been approved. Separately, a [study](#) conducted in China, published in *The Lancet* yesterday, found "remdesivir was not associated with statistically significant clinical benefits."

As senators prepare to return to Capitol Hill on May 4, congressional committees are scheduling hearings to consider the country's response to the pandemic. The Senate Committee on Health, Education, Labor and Pensions (HELP) has noticed a [hearing](#) titled "Shark Tank: New Tests for COVID-19" for May 7, 2020. The Committee will hear testimony from Francis Collins, MD, PhD, Director of the NIH, as well as Gary Disbrow, PhD, Acting Director of the Biomedical Advanced Research and Development Authority of the Department of Health and Human Services (HHS). The hearing is expected to review efforts to create new technologies to produce COVID-19 tests in large quantities; it follows the White House's release of a new [testing overview](#) and [testing blueprint](#). While House legislators are not expected to return to Washington next week, the House Committee on Appropriations Subcommittee on the Departments of Labor, Health and Human Services, Education, and Related Agencies has scheduled a [hearing](#) on "COVID-19 Response" for May 6, 2020. The Subcommittee has not yet announced the witness panel.

POLITICO reports this morning that some organizations that received funds from HHS earlier this month, via the US\$30 billion distributed through the [CARES Act's Provider Relief Fund](#), did not want the money. As we noted in prior updates, awards through the initial allocation were automatic and unsolicited, proportionate to providers' share of Medicare fee-for-service reimbursements in 2019. Walmart reportedly received US\$12.6 million, which it returned to HHS; the company also requested to be excluded from future disbursements. *POLITICO* notes HHS has referenced "built-in protections – like attestation and providers' ability to say no – to ensure the money is going to the right place."

A group of 37 bipartisan senators [wrote](#) to HHS Secretary Alex Azar and Centers for Medicare & Medicaid Services (CMS) Administrator Seema Verma, requesting HHS address Medicare payment differences that exist between audio-visual telehealth services and audio-only services. With social distancing measures in place and [HHS offering regulatory flexibilities](#), many

providers have shifted to offering care utilizing audio-visual telehealth technologies during the pandemic; however, not all patients have access to internet, broadband, or other relevant services, leaving providers to furnish some consultations through audio-only formats. The lawmakers requested Secretary Azar and Administrator Verma increase Medicare payment rates for telephone-based evaluation and management codes to bring payments for those codes equal to Medicare's established in-person visit codes. They also pressed HHS to provide immediate guidance to Medicare Administrative Contractors to ensure CMS guidance and rules are followed appropriately, and they requested a briefing on these efforts by May 8, 2020.

Seventy-six lawmakers on both sides of the aisle [wrote](#) to congressional leadership yesterday, advocating for at least US\$38.5 billion in emergency funding for mental health disorder and addiction treatment providers to be included in the next piece of pandemic response legislation. The legislators explained, "The numbers of Americans struggling with mental illness will only continue to grow as families and individuals face the emotional and economic repercussions of the pandemic." They recommended a significant portion of the requested funds be steered specifically to behavioral health organizations that are "enrolled in Medicaid and provide care to underserved groups, or those who otherwise lack coverage for needed behavioral and mental health care."

A group of over 40 public health and medical associations – including the American Academy of Pediatrics, American College of Emergency Physicians, and American Public Health Association – released a [statement](#) urging government authorities to prioritize safety when assessing social distancing guidelines. The groups "call on federal, state and local authorities to adhere to evidence and public health expertise in making decisions on when to lift measures that include shelter-in-place orders and closures of non-essential businesses."

Trade Updates

On Wednesday, a group of eleven senators sent a [letter](#) to Secretary of State Mike Pompeo urging his agency coordinate closely with the Mexican government to clarify the latter's definition of essential businesses, to help avoid US supply chain disruptions. They called on Secretary Pompeo to especially press the Mexican government to incorporate the following industries into its guidance, to increase transparency for businesses in these sectors: food, medical, transportation, infrastructure, aerospace, automotive and defense. The letter was signed by Senators John Cornyn (R-TX), Dianne Feinstein (D-CA), Martha McSally (R-AZ), Kelly Loeffler (R-GA), David Perdue (R-GA), Joni Ernst (R-IA), Ted Cruz (R-TX), Richard Blumenthal (D-CT), Kyrsten Sinema (D-AZ), James Lankford (R-OK) and Jeff Merkley (D-OR).

Federal officials are continuing to target individuals alleged to have engaged in price gouging and hoarding of personal protective equipment (PPE). On Tuesday, federal prosecutors in New York filed charges against a California attorney and a businessman in Arizona for seeking to resell one million KN95 masks in New York City at a 50% markup. According to *Law360*, the two were charged with conspiracy to violate the Defense Production Act, while two California suppliers allegedly connected

to the scheme face wire fraud conspiracy charges.

Oversight Updates

Yesterday, Speaker Pelosi [appointed](#) six members to the Select Subcommittee on the Coronavirus Crisis, which was established last week as a new investigative panel under the Committee on Oversight and Reform. Chaired by Representative James E. Clyburn (D-SC), the subcommittee's additional Democratic members are Representatives Maxine Waters (CA), Carolyn Maloney (NY), Nydia Velázquez (NY), Bill Foster (IL), Jamie Raskin (MD) and Andy Kim (NJ). The remaining five members of this 12-member subcommittee will be appointed by House Minority Leader Kevin McCarthy (R-CA), although there is speculation that he may refuse to participate. In an interview, Minority Leader McCarthy characterized the new subcommittee as "partisan and unnecessary" and amounting to "impeachment 2.0." For an analysis of this new subcommittee, see our Client Alert, [What to Expect From the New Congressional Coronavirus Subcommittee](#).

Next Tuesday, May 5, the Senate Committee on Banking, Housing and Urban Development will hold a [hearing](#) on the nomination of White House lawyer Brian D. Miller to serve as Special Inspector General for Pandemic Recovery at the Department of the Treasury. President Trump nominated Miller to conduct oversight over the CARES Act funds administered by the Treasury on April 3. Many Democrats, including Speaker Pelosi, [reacted](#) negatively to Miller's nomination, emphasizing that the CARES Act's IG "must be independent from politics," and the President's "nomination of one of his own lawyers clearly fails that test." Although Miller had spent nearly 10 years as the General Services Administration's IG, where he demonstrated independence and aggressiveness by leading a number of high-profile investigations, the Senate confirmation process is likely to be contentious, with Democrats questioning where his loyalties will lie.

There are [reports](#) that Sheila Bair, the former chair of the Federal Deposit Insurance Corporation, a lifelong Republican and a supporter of Senator Warren's presidential bid, may be one of the top candidates for the Chair of the Congressional Oversight Commission established by the CARES Act. The five-member Commission already has four members (Bharat Ramamurti, former aide to Senator Warren; Senator Pat Toomey (R-PA); Representative Donna Shalala (D-FL); and Representative French Hill (R-AR)). The chair is to be selected jointly by Speaker Pelosi and Senate Majority Leader McConnell.

Ramamurti, the Commission's first member and who was appointed by Senate Minority Leader Chuck Schumer (D-NY), continued with his "oversight by tweets" yesterday as he reemphasized the importance of "attach[ing] strings" to the Treasury/Federal Reserve lending facilities to large corporations, including by imposing restrictions on executive bonuses and stock buybacks. In Ramamurti's view, large corporations "will put their shareholders and executives ahead of their workers if given the choice." Earlier this week, another Commission member, Senator Toomey, disagreed with Ramamurti's position, reasoning that, "[i]f Congress had wanted those restrictions to be in place, it would've been in the statute."

For a more in-depth discussion of the CARES Act oversight, join our leading investigations, compliance and public policy team partners Margaret Daum (former Staff Director on the US Senate Homeland Security & Governmental Affairs Committee), Clark Ervin (former Inspector General of the Department of Homeland Security and the Department of State) and Kevin McCart (Government Investigations and White Collar Practice) for a webinar today, at 1 EDT. Register [here](#).

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