

Friday came and went without the unveiling of new COVID-19 legislative proposals by the Democratic leadership in the House or the White House, an indication that both Republicans and Democrats in Washington were still working to determine their next moves in the process of shaping the next pandemic response package.

The US Senate will convene in person Monday to begin a week of work on “policy and nominees in the COVID-19, national security, oversight, and judicial areas,” according to the office of Senate Majority Leader Mitch McConnell (R-KY).

The US House of Representatives is tentatively aiming for a return to Washington on May 11. House Majority Leader Steny Hoyer (D-MD) sent a [letter](#) Friday to his chamber’s chief administrative officer and attending physician requesting that they provide guidance on “how best the House and Capitol complex might reopen” as soon as possible. House Speaker Nancy Pelosi (D-CA) has been working to craft a “CARES 2” package that the House would advance once a vote is possible.

[Bloomberg](#) reports that “the outlook for a big infrastructure bill has dimmed, at least for now” in the House due to Speaker Pelosi’s desire to focus on aid to states, territories and municipalities in CARES 2. House Committee on Transportation Infrastructure Chairman Peter DeFazio (D-OR) has advocated for inclusion of “massive” infrastructure investments in the package.

The [CARES Act](#) provided US\$150 billion in relief funds for states, territories and municipalities. Senators Bill Cassidy (R-LA) and Bob Menendez (D-NJ) are promoting a bill that would provide an additional US\$500 billion in such funding. The bipartisan National Governors Association (NGA) has requested a similar amount from Congress. Speaker Pelosi this week said her forthcoming CARES 2 proposal may include nearly US\$1 trillion for state, territorial and municipal relief.

Treasury Secretary Steven Mnuchin has indicated the Trump Administration supports providing additional money for state and local governments, but the White House has yet to put forth a specific proposal for the next phase of coronavirus relief.

Senate Majority Leader McConnell and House Minority Leader Kevin McCarthy (R-CA) have said Republicans will insist that any new money for state and local governments be accompanied by measures limiting legal liability for enterprises and individuals as the economy reopens. Some Senate Republicans have

expressed support for giving states greater flexibility in the use of federal COVID-19 relief funds, while others have called for tighter restrictions on how the money can be used. Forging a unified approach on the issue is likely to be a focus for GOP senators in party meetings next week.

Tax and Economic Development Updates

With further legislative responses to address the economic fallout from the COVID-19 pandemic underway, we are continuing to see lawmakers float proposals on a wide range of issues. For example, Senator Mitt Romney (R-UT) is [promoting](#) a tax credit that would support bonus wages for those employees deemed essential that are working during the ongoing public health crisis. Specifically, essential workers – as determined by Congress and the Department of Labor – with less than US\$50,000 in annual income would be eligible for up to US\$12 per hour in “[Patriot Pay](#).” Employers providing this extra pay would be eligible for a 75% refundable payroll tax credit, with the tax credit phasing out by US\$24 for every additional US\$500 in income until annual income reaches US\$90,000. Senator Romney’s proposal would cap the credit at US\$1,440 per month, per employee, which translates to a more than US\$1,900 monthly bonus. According to reports, Senator Romney plans to pursue his proposal as part of the forthcoming stimulus package.

Small business issues also continue to be at the forefront of the COVID-19 response. Earlier this week, the Small Business Administration (SBA) Inspector General sent a [letter](#) in reply to an inquiry from House Small Business Committee Chair Nydia Velazquez (D-NY) and Senator Elizabeth Warren (D-MA) requesting that he investigate, among other things, whether the Paycheck Protection Program (PPP) and Emergency Injury Disaster Loan (EIDL) program favored larger business over smaller businesses. In his reply, SBA Inspector General Ware noted: “I want to assure you my office will perform our work to the highest standards to promote transparency of this vital stimulus program and make recommendations for corrective action to ensure the funds are used efficiently, effectively and in accordance with the law.” This comes as the Department of Justice is reported to have begun its own review of the PPP to investigate potential fraud. Notably, House Committee on Ways and Means Chairman Richard Neal (D-MA) has made clear that House Democrats are “planning to fix [certain issues] in the next response legislation.”

As reported yesterday, Treasury Secretary Mnuchin has already made clear that he does not anticipate additional federal funding for the airline industry. That said, it has been suggested that additional support may be needed. Specifically, American Airlines CEO Doug Parker recently stated that, at least from his perspective, while “CARES provides the industry the breathing

room we need to manage through the worst parts of the crisis,” it “doesn’t solve everything” for airlines.” This comes at the same time of reports that Boeing has been able to raise US\$25 billion and will not be seeking federal funding.

Additionally, the Internal Revenue Service (IRS) has issued [Notice 2020-32](#), which provides that inasmuch as income resulting from loan forgiveness through the PPP is excluded from income, it will be treated as “class of exempt income.” In response to this action by the IRS, Senate Committee on Finance Chairman Chuck Grassley (R-IA) has suggested that the notice is contrary to legislative intent, which “was to maximize small businesses’ ability to maintain liquidity, retain their employees, and recover from this health crisis as quickly as possible.” Moreover, according to reports, IRS officials appear to have issued guidance that is not fully consistent with the Joint Committee on Taxation’s position. As [discussed](#) by TaxNotes, “the IRS FAQs on the employee retention credit include only full-time employees in determining if an employer has 100 workers for purposes of the ‘qualified wages’ definition. But the JCT’s description ([JCX-12R-20](#)) discusses ‘full-time and full-time-equivalent employees.’”

Health Updates

On Friday, the Department of Health and Human Services (HHS) [announced](#) it is distributing payments from the [CARES Act’s Provider Relief Fund](#) to hospitals with high COVID-19 inpatient admissions through April 10, 2020, and to rural providers. HHS is allocating US\$12 billion to 395 hospitals in COVID-19 hot spots, US\$2 billion of which will be paid to these hospitals based on their Medicare and Medicaid disproportionate share and uncompensated care payments. HHS notes, “These 395 hospitals accounted for 71 percent of COVID-19 inpatient admissions reported to HHS from nearly 6,000 hospitals around the country.” Rural acute care general hospitals, Critical Access Hospitals, Rural Health Clinics and Community Health Centers located in rural areas will be allocated US\$10 billion total. Geographic breakdowns for these new distributions are available [here](#).

On Friday evening, President Trump [announced](#) his intent to nominate Jason Weida to be Inspector General of HHS. Weida has been serving as an Assistant United States Attorney in Boston since 2016 and previously served in the Office of Legal Policy at the Department of Justice. Earlier this month, the HHS Office of Inspector General (OIG) released a [report](#) that found hospitals in crisis as COVID-19 diagnoses were increasing. As we previously reported, President Trump called the report “just wrong” and accused Christi Grimm, Principal Deputy Inspector General, of having political motives for releasing it. The American Hospital Association praised the report, and House Majority Leader Hoyer said it is “a damning indictment of the Trump Administration’s failure to do its job.” The Paycheck Protection Program and Health Care Enhancement Act, passed late last month, provided US\$6 million for HHS OIG oversight activities.

The Food and Drug Administration (FDA) issued an [emergency use authorization](#) for remdesivir, an investigative antiviral drug, for the treatment of suspected or laboratory-confirmed COVID-19 in hospitalized patients with severe disease. As we reported on Thursday, the National Institutes of Health (NIH) [announced](#) its

clinical trial of 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 (NIAID) 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. Separately, a [study](#) conducted in China, published in *The Lancet* this week, found “remdesivir was not associated with statistically significant clinical benefits.” Representatives Lloyd Doggett (D-TX) and Rosa DeLauro (D-CT) [wrote](#) to HHS Secretary Azar, seeking to ensure remdesivir “is available and affordable to all and to obtain appropriate accounting of the taxpayers’ investments.”

After an announcement earlier this week that the House Committee on Appropriations Subcommittee on Labor, Health and Human Services, Education, and Related Agencies had scheduled a [hearing](#) on “COVID-19 Response” for May 6, 2020, the White House blocked NIAID Director Fauci from testifying in front of the panel. A White House spokesperson stated that it would be “counter-productive to have the very individuals involved in [government response] efforts appearing at congressional hearings.” The spokesperson explained that Dr. Fauci would offer testimony “at the appropriate time”; reports indicate Dr. Fauci is expected to testify in the Senate, where Republicans are in the majority, during the week of May 11, 2020. Dr. Tom Frieden, President and Chief Executive Officer of Resolve to Save Lives and former Director of the Centers for Disease Control and Prevention, will serve as a witness during the House hearing.

House Committee on Energy and Commerce Chairman Frank Pallone, Jr. (D-NJ) has outlined key legislative policies within the jurisdiction of the committee that are necessary to reopen America. He notes, “It is clear that Congress must put in place a clear, national strategy to focus our efforts to reopen the economy in a way that will optimize public health and hold this Administration accountable.” His suggested policies include a national testing plan, adequate supply chain, coordinated contact tracing and surveillance, preparation for treatments or vaccines, free COVID-19 health coverage for all Americans and robust investments in data collection and infrastructure.

Trade Updates

As previously reported, earlier this week, President Trump signed an [Executive Order](#) invoking the Defense Production Act (DPA) 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 (CDC) and the Occupational Safety and Health Administration (OSHA).

On Friday, a group of Democratic senators wrote to President Trump urging he amend his Executive Order to ensure that meat processing facilities that have closed only reopen after they have met the CDC/OSHA safety and health guidelines. In their [letter](#), the lawmakers argue that the government should issue

enforceable safety standards for these facilities, and that by invoking the DPA as he has, President Trump has “effectively signaled to the meat processing industry that they can continue business as usual, without taking further action to protect their workers or public health.” The letter was signed by Senators Sherrod Brown (D-OH), Patty Murray (D-WA), Tammy Baldwin (D-WI), Michael Bennet (D-CO), Bob Casey (D-PA), Sheldon Whitehouse (D-RI), Mazie Hirono (D-HI), Richard Blumenthal (D-CT), Chris Van Hollen (D-MD), Catherine Cortez Masto (D-NV), Bernie Sanders (I-VT), Jack Reed (D-RI), Kamala Harris (D-CA), Ron Wyden (D-OR), Richard Durbin (D-IL), Cory Booker (D-NJ), Elizabeth Warren (D-MA) and Patrick Leahy (D-VT).

Oversight Updates

Yesterday, Treasury Secretary Mnuchin tweeted criticism of private secondary schools with large endowments that applied for and received PPP loans. “They should return them,” Mnuchin said. [The New York Times](#) reports that these schools include St. Andrew’s Episcopal (MD) (whose students include President Trump’s youngest son, Barron), Sidwell Friends (Wash., DC) and The Pingry School (NJ), which—despite negative publicity and new guidance by the Treasury Department and the SBA—have decided to keep the money. Another school that received the money is the Brentwood School in Los Angeles, which some of Secretary Mnuchin’s children attend. Some schools, including The Latin School of Chicago, the Middlesex boarding school outside Boston and Episcopal High School in Alexandria, VA, have announced that they would withdraw from the application process or return the funds. Earlier this month, bowing to mounting political pressure, Harvard, Princeton and Stanford similarly decided to forego money to which they were legally entitled under a separate CARES Act program to help colleges that have a significant number of students on financial aid. Over a dozen large companies have also returned the loans. 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 will be deemed to have been made in good faith for companies that return the loans.

House Minority Leader McCarthy [reiterated](#) his skepticism over the need for yet another investigative panel focused on the government’s response to the pandemic. One week ago, the House voted to establish a new investigative 12-member panel within the Committee on Oversight and Reform, called the “Select Subcommittee on the Coronavirus Crisis.” This week, Speaker Pelosi appointed six subcommittee members; the panel will be chaired by Representative James Clyburn (D-SC). The responsibility for appointing the five remaining members falls on Minority Leader McCarthy, who said that he would decide next week whether Republicans will participate in what he views as a “purely political” undertaking.

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