

With the economic carnage caused by COVID-19 more evident than ever, illustrated in grim new detail by this morning's new US jobs report, federal policymakers in Washington, DC, are consumed by debate about the composition of the next bipartisan coronavirus response legislation. The tense deliberations are occurring not just between Republicans and Democrats, but inside the party caucuses themselves.

Beset by intraparty wrangling, House Speaker Nancy Pelosi (D-CA) has pushed off the unveiling of congressional Democrats' much-anticipated "CARES 2.0" proposal until at least next week. Senate Minority Leader Chuck Schumer (D-NY), with whom Speaker Pelosi is coordinating as the plan is being assembled, has described the forthcoming measure as being "[Rooseveltian](#)" in its vision and ambition, loaded with Democratic policy priorities for states and communities desperate for support from the federal government. But some Democrats have taken issue with their leadership's decision to craft the package without Republican input, noting a bill passed by the House solely on the power of their party's Democratic majority in the chamber is likely to be "dead on arrival" in the GOP-led Senate. Other House Democratic members continue to lobby Speaker Pelosi and her leadership team for the inclusion of their favored ideas.

POLITICO reports: "Speaker Nancy Pelosi is speeding to finalize a multi-trillion dollar coronavirus relief package, hoping to put the bill on the House floor next week — a timeline that even some senior Democrats dismiss as unlikely. Pelosi had hoped to release the draft bill — which some Democrats worry could cost upwards of [US\$2 trillion] — on Friday. But that timeline is slipping as members from all corners of the caucus pressure leadership to stuff the ballooning bill with their priorities, many of which were left out of the previous four aid packages negotiated with Republicans. Senior Democratic aides said Pelosi and the committees will be working through the weekend on the package."

President Donald Trump has taken an increasing hard line in recent days against what is expected to be the centerpiece of Speaker Pelosi's bill: hundreds of billions of dollars in new money for states, territories, counties and municipalities. But as the White House has raised the bar, a number of Senate Republicans have joined forces publicly with Democratic colleagues in support of individual legislative measures that hint at an eventual consensus approach to the issue. Senators Bill Cassidy (R-LA) and Bob Menendez (D-NJ) for weeks have championed a bipartisan measure that would provide US\$500 billion in funds to states and local governments. And on Thursday, four senators unveiled a bipartisan bill that would change the original [CARES Act](#) retroactively to allow states, territories and local governments to use some federal aid money to address revenue shortfalls.

Bipartisan consensus is likely to be harder to achieve for COVID-19 legislation sought by Republican leaders that would shield American individuals and businesses from certain legal liability as the US economy reopens. Senator John Cornyn (R-TX), a senior member of the Senate Committee on the Judiciary, is crafting legislative language to achieve this objective, in close coordination with the White House.

Treasury Secretary Steven Mnuchin announced Thursday that the US Department of the Treasury will change its interpretation of the CARES Act and allow companies that have furloughed workers but continue to pay their health benefits to receive an employee retention tax credit. Treasury's shift comes after the bipartisan leadership of the House and Senate tax-writing committees, responding to objections from US employers, notified Secretary Mnuchin that Treasury's previous interpretation of the law ran counter to congressional intent.

For additional global public policy insights related to COVID-19, please [contact us](#) to receive our daily US Executive Branch Update or COVID-19 US State Policy Report directly in your inbox. See [here](#) for the latest editions.

In the coming weeks, we will unveil a blog dedicated to global public policy focused content. Follow us on Twitter [@SPB_CapThinking](#) for the launch announcement.

Tax and Economic Development Updates

As House Democrats are preparing to unveil CARES 2.0, House Speaker Nancy Pelosi (D-CA) has suggested that President Trump's call for a payroll tax cut is not "urgent," instead seeming to favor delaying tax issues until a later time. Though it is unclear the extent to which the forthcoming COVID-19 package will ultimately address tax issues, there remains a number of tax provisions from previous legislation still requiring policymakers' attention. Notably, in his [reply](#) to a letter from Senate Committee on Finance Chairman Chuck Grassley (R-IA), Treasury Secretary Mnuchin indicated the Treasury will be revising its guidance on the Employee Retention Tax Credit so that businesses continuing to provide health benefits to furloughed workers would be eligible for the credit. According to Senator Grassley, "[t]his decision will encourage employers to help employees keep their health insurance while temporarily furloughed due to the shutdown." Secretary Mnuchin has also [revealed](#) that the Treasury Department is currently reviewing whether to permit businesses to deduct expenses paid using Paycheck Protection Program (PPP) loans that are forgiven.

While on the topic of the PPP, we are continuing to receive reports that a growing number of lawmakers are looking to make changes to the program in conjunction with any approval of additional PPP funding. For example, Representatives Jimmy Panetta (D-CA) and Don Beyer (D-VA) have released a [proposal](#) that would provide an additional US\$660 billion in PPP funding with certain set-asides for small businesses. The proposal also includes several changes to the PPP, including: (1) a requirement that lenders make public certain details about processed loans; (2) a "sliding scale" for loan forgiveness reduction; (3) an extension of the date to rehire employees from June 30, 2020, to August 31, 2020; (4) flexibility to allow businesses to elect to pay the eight weeks of payroll over up to a 16-week period without losing loan forgiveness; and (5) an authorization for businesses to use loan disbursements for payroll expenses incurred after March 15, regardless of when the loan was disbursed. Additionally, the proposal includes a provision supported by House Committee on Small Business Chair Nydia Velázquez (D-NY), which makes clear that all non-profits – regardless of their type – are eligible for the PPP.

As we continue to await additional action by the Federal Reserve to prop up its Main Street Lending Program so that it is operational and can begin assisting the large number of businesses across the country that are in need of liquidity, it is clear that the central bank is continuing to think broadly in terms of its COVID-19 response. In fact, Philadelphia Fed President Patrick Harker has offered that "[t]he Federal Reserve is thinking carefully about setting up

facilities that can provide direct lending to colleges, universities, and nonprofit medical institutions." Separately, the Financial Stability Oversight Council (FSOC) [announced](#) that it has scheduled a meeting for next Thursday, May 14, during which it will receive an update from its Task Force on Nonbank Mortgage Liquidity, along with updates on various other market developments related to COVID-19. While Secretary Mnuchin has [previously suggested](#) that there are currently no plans to create a 13(3) facility to address the liquidity needs of the mortgage servicing industry, it will be important to pay close attention to the FSOC's readout following its meeting to assess whether that position is evolving.

Yesterday, Commerce Secretary Wilbur Ross [announced](#) that the Economic Development Administration (EDA) is now accepting applications for nearly US\$1.5 billion in grant funding made available by the CARES Act. According to the announcement, "[g]rants and cooperative agreements made under these programs are designed to leverage existing regional assets and support the implementation of economic development strategies that advance new ideas and creative approaches to advance economic prosperity in distressed communities, including those negatively impacted by changes to the coal economy and nuclear power plant closures." State and local governments, institutions of higher education and nonprofits are among those eligible to apply for this grant funding.

Health Updates

House Committee on Energy and Commerce Chairman Frank Pallone, Jr. (D-NJ) and House Committee on Ways and Means Chairman Richard Neal (D-MA) [wrote](#) to Department of Health and Human Services (HHS) Secretary Alex Azar and Centers for Medicare & Medicaid Services (CMS) Administrator Seema Verma, questioning the administration's actions regarding the [Provider Relief Fund](#) and [Accelerated and Advance Payments Program](#). They expressed concern that HHS has not provided additional transparency for the initiatives, and they probed the methodology HHS is using to distribute the US\$175 billion Congress appropriated to the Fund. Of note, the lawmakers said CMS has provided no information on the future of the Accelerated and Advance Payments Program since its announcement in April that it would suspend the Advance Payment Program for Part B providers and reevaluate new and pending applications for the Accelerated Payment Program. Chairman Pallone and Chairman Neal called the administration's efforts to distribute grants through the Fund "at best, a series of missteps, and at worst, a disregard for Congress' intent for the program." Yesterday, HHS [extended](#) the deadline for health providers to attest to the receipt of payments and accept the Terms and Conditions for the Fund to 45 days. As we reported yesterday, the administration has begun to publish a list of Fund aid recipients. The [data set](#) currently includes the list of entities that received funding from the

general distribution allocation; those listed have attested payments and agreed to the Fund's Terms and Conditions as of May 4, 2020.

Lawmakers continue to evaluate efforts to promote and increase testing, contact tracing and surveillance of COVID-19 cases. Speaker Pelosi stated that one of three major components of the next relief bill will be funds for testing, and the House Committee on Energy and Commerce [announced](#) it would host a teleconference forum today at noon on COVID-19 testing, contact tracing and surveillance. Yesterday, during a Senate Committee on Health, Education, Labor and Pensions (HELP) Committee hearing on testing, Chairman Lamar Alexander (R-TN) said current diagnostic testing capacities are "impressive, but not nearly enough." He explained, "[T]here is no path forward to combat the novel coronavirus without adequate testing." Ranking Member Patty Murray (D-WA) was harsher in her comments, opining that the White House's testing strategy is inadequate. She noted, "The problem isn't a lack of innovation – it's a lack of national leadership and a plan from the White House. You can innovate the fastest care in the world – it still won't get you where you're going without a good driver and good directions." Separately, a group of nine Democratic senators [wrote](#) to Centers for Disease Control and Prevention (CDC) Director Robert Redfield and CDC Foundation President Judy Monroe, requesting the CDC reconsider and broaden the criteria required for those applying to contact tracer positions. The current criteria requires a bachelor's degree, and the senators believe this requirement "excludes individuals who would be well-equipped to excel in such a position and may slow down the agency's efforts to scale up its contact tracing force to the levels that are desperately needed."

The National Institutes of Health-supported Rare Diseases Clinical Research Network (RDCRN) has [launched](#) a [new online survey](#), which seeks to find out how the coronavirus pandemic is affecting individuals with rare diseases. RDCRN says the "[r]esults will help the rare disease research community shed light on the needs of people with rare diseases during the COVID-19 pandemic and other potential health crises, in addition to informing future research efforts." The survey is seeking responses from at least 5,000 individuals with a rare disease or caregivers for those with a rare disease, and RDCRN will distribute the survey online to participants.

Prominent hospital organizations – including America's Essential Hospitals, the American Hospital Association, the Association of American Medical Colleges and the Federation of American Hospitals – [asked](#) House and Senate leadership to take a federal approach "to shield front-line providers from the legal exposure that results from actions and decisions undertaken in responding to an unprecedented public health emergency." The groups note some state leaders have issued Executive Orders or

enacted legislation on this issue, but not all have done so – leading to a patchwork of liability protection for health care facilities and professionals. They clarified that the protection should "not apply to situations in which there is gross negligence or other misconduct."

Trade Updates

On Thursday, House Minority Leader Kevin McCarthy (R-CA) announced the creation of a China task force with fifteen Republican lawmakers from fourteen different congressional committees. House Democrats previously planned to join the task force, but reportedly withdrew from the proposal in February. The task force plans to adopt a holistic approach to addressing China, merging traditional national security concerns with healthcare, education and economic issues. The task force will serve as a (so far, only GOP) clearinghouse to consider Congressional responses to China on a variety of issues, including: the origin of COVID-19 and China's response; China's alleged influence activities in the US, including through educational institutions; US export control and foreign investment policy; China's involvement in international organizations; and China's international economic policy.

The task force will be chaired by House Committee on Foreign Affairs Ranking Member Michael McCaul (R-TX) and will include senior members of House Republican Leadership, including House Minority Whip Steve Scalise (R-LA) and House Republican Conference Chair Liz Cheney (R-WY), as well as Representatives Mike Gallagher (R-WI), Jim Banks (R-IN), Adam Kinzinger (R-IL), Elise Stefanik (R-NY), Andy Barr (R-KY), John Curtis (R-UT), Denver Riggleman (R-VA), Michael Waltz (R-FL), Chris Stewart (R-UT), Anthony Gonzalez (R-OH), Darin LaHood (R-IL), Jim Jordan (R-OH), Blaine Luetkemeyer (R-MO), Jackie Walorski (R-IN), and Mark Green (R-TN).

Also on Thursday, Senate Majority Leader Mitch McConnell (R-KY) said during a floor speech that the Senate would soon take up legislation implementing targeted sanctions on Chinese officials responsible for alleged human rights abuses against the Uighur ethnic minority in Xinjiang Province. The legislation, the Uighur Intervention and Global Humanitarian Unified Response Act of 2019, or the UIGHUR Act of 2019, would also target the export of goods that facilitate such abuses. The House advanced a version of the UIGHUR Act in late 2019, but it remains to be seen whether the Senate will take up the House-passed bill or advance a measure with further changes.

Oversight Updates

After saying initially that Republican lawmakers might not participate in such a "purely political" undertaking, House Minority Leader McCarthy relented and [appointed](#) five members to the Select Subcommittee on the Coronavirus Crisis. The House voted on April 23 to establish this new investigative 12-member panel within the Committee on

Oversight and Reform. House Speaker Pelosi appointed Democratic members on April 29. After yesterday's announcement, the subcommittee's members are Representatives James Clyburn (D-SC) (Chair), Maxine Waters (D-CA), Carolyn Maloney (D-NY), Nydia Velázquez (D-NY), Bill Foster (D-IL), Jamie Raskin (D-MD), Andy Kim (D-NJ), Steve Scalise (R-LA), Jim Jordan (R-OH), Blaine Luetkemeyer (R-MO), Jackie Walorski (R-IN) and Mark Green (R-TN). For an analysis of this new subcommittee, see our Client Alert, [What to Expect From the New Congressional Coronavirus Subcommittee](#).

[Reuters](#) reports that 41 large public companies that received PPP loans had enough cash to sustain their operations for months, even if their revenues dropped to zero. Several companies were upbeat in their public statements about their prospects at the time they certified in their PPP applications that "current economic uncertainty" made the loans "necessary to support the ongoing operations." Some of these companies have since returned the loans or are planning to do so in light of Treasury/Small Business Administration updated guidance and in reliance on the [safe harbor](#) provision in place through [May 14](#), under which companies that return their PPP loans will be deemed to have made the required certifications in good faith. Per Treasury Secretary Mnuchin, all loans of US\$2 million or more will be subject to full audits before they are forgiven.

Also:

- Earlier this week, Sandra D. Bruce, the Department of Education's Acting Inspector General, [announced](#) her priorities for CARES Act oversight, including auditing the Department's and grantees' management and spending of the funds; examining the effectiveness of the relief programs; and investigating misuse, theft, and other criminal activity related to these funds. Under the CARES Act, the IG has an allocated US\$7 million to do this work. The Act also designated the IG as a member of the Pandemic Response Accountability Committee (PRAC), the Council of existing IGs charged with oversight that cuts across agency and program boundaries.
- Yesterday, Senator Elizabeth Warren (D-MA) and eight other Senators [asked](#) Amazon to provide information on its whistleblower policies and practices, following reports of its firing employees after they publicly raised concerns about safety conditions at Amazon warehouses.
- Maryland is [imposing](#) a daily US\$10,000 penalty on a nursing home for health and safety-related violations. The penalty will continue to accrue until the facility is in substantial compliance with state regulations.

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