

House Democratic leaders lifted the veil Tuesday afternoon on the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, a US\$3 trillion package loaded with Democratic priorities to position the party for negotiations with the Republican-controlled US Senate and White House over the next phase in the federal government's response to COVID-19. House Speaker Nancy Pelosi (D-CA) and Majority Leader Steny Hoyer (D-MD) have scheduled a vote in their chamber for this Friday on the measure.

A one-page summary of the HEROES Act can be seen [here](#). A more detailed, 90-page summary can be seen [here](#). A summary of the HEROES Act's provisions for state, territorial and local governments can be seen [here](#).

The HEROES Act is likely to pass the House late Friday with little to no support from the chamber's Republicans, who were excluded from the process of drafting the bill and will likely vote "nay" on the legislation en masse to bolster the leverage of Senate Majority Leader Mitch McConnell (R-KY) in the bipartisan talks that will eventually have to occur to produce a consensus measure that can be signed into law by President Donald Trump.

The House Rules Committee will meet Thursday at 11:00am EST to set the ground rules for Friday's HEROES vote series, which will begin with consideration of a House rules change that would allow Members of Congress to vote by proxy on future legislation, without being physically present in the House chamber. Some members of the House Democratic Caucus' progressive wing are asking for Friday's vote to be delayed so that representatives have more time to understand the bill and potentially make changes or additions.

The Senate is in session working on hearings and nominations related to the coronavirus crisis and other issues. Majority Leader McConnell has not established a timetable for Senate action on future COVID-19 response legislation, reflecting the reluctance of many Republicans to approve additional spending without limitations on

potential lawsuits as the American economy is reopened, amid other concerns.

On May 12, the Senate Committee on the Judiciary held a hearing to examine liability issues related to the pandemic. Lawmakers remain deeply divided on this issue, as Republicans generally advocated for a limited liability shield while Democrats argued that additional immunity is unnecessary and harmful to workers. President Trump has expressed the view that the next COVID-19 response package should include both limitations on liability and significant tax relief measures to support swift economic recovery.

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Tax and Economic Development Updates

Though the HEROES Act is merely the House Democrats' opening salvo and will not become law as currently drafted, it nevertheless provides important clues as to specific policy areas on which lawmakers can be expected to focus their efforts to provide further support to struggling taxpayers, businesses and governmental entities. Not surprisingly, a key component of the legislation would make several important changes to the Paycheck Protection Program (PPP), which has been the subject of growing scrutiny from businesses and lawmakers due to various issues with its rollout and implementation. Among its key PPP-related proposals, the HEROES Act would: (1) extend the covered period and related loan terms from June 30 to December 31, 2020; (2) extend the 8-week period to 24 weeks for purposes of using PPP loan proceeds for purposes of loan forgiveness; (3) eliminates the 75/25 rule on use of loan proceeds, which requires at least 75-percent of a loan be used for payroll costs; and (4) creates a safe harbor for borrowers who cannot rehire their employees in the prescribed timeframe. Notably, the legislation would also specifically make certain entities eligible for PPP loans, including all nonprofits – regardless of size – along with certain local news broadcast entities and

hospitals facing bankruptcy. Additionally, the HEROES Act “enhances” the Employee Retention Tax Credit (ERTC) to encourage more employers to keep their employees on payroll and clarifies the interaction between the ERTC and PPP loans “to ensure borrowers can take advantage of both types of assistance.” While the HEROES Act does not provide additional funding for the PPP (though it does provide US\$10 billion for Economic Injury Disaster Loan grants), it would provide certain funding carve outs based on size for the smallest of businesses eligible to receive PPP loans. All in all, the proposed PPP changes seem likely to garner bipartisan support and largely appear to be well-positioned for inclusion in the next COVID-19 package that may ultimately be enacted.

House Democrats are also clearly focused on providing financial assistance to families and individuals – though some proposals are likely to receive pushback from businesses, as well as their Republican counterparts. Namely, the HEROES Act would extend through January 2021 the US\$600 per week federal unemployment payments; however, many employers have continued to express concerns that this expanded benefit has resulted in difficulties hiring back/finding new employees, as there are instances where employees are making more by collecting unemployment payments than if they were to return to work. The HEROES Act also includes: (1) a second round of economic impact payments (up to US\$1,200 per person/US\$6,000 per family); (2) US\$75 billion in housing assistance to assist renters and homeowners in making housing and utility payments; and (3) a US\$200 billion Heroes’ Fund to provide hazard pay to frontline workers. Moreover, in addition to providing more than US\$30 billion in additional funding for airlines and contractors to use in paying workers, the legislation also requires companies receiving such funding to forego involuntarily furloughing employees until “the date on which such financial assistance is fully exhausted,” thus extending the date from September 30 as provided under current law. Notably, the HEROES Act requires the Treasury Department to publish information about its agreements with airlines and contractors – including the amount of payroll assistance received.

Additionally, the legislation would create [State and Local Coronavirus Relief Funds](#) through the Department of the Treasury to help first responders, frontline health workers, transit employees, teachers and other workers providing essential services. According to the proposal, “funds can be used for COVID-related expenses, to replace foregone revenues not projected on January 31, 2020, or to respond to negative economic impacts of COVID.” As proposed, the following funds would be available until expended in order to provide flexibility over the next several years: (1) US\$500 billion for states and the District of Columbia; (2) US\$375 billion for local

governments; (3) US\$20 billion for territories; and (4) US\$20 billion for tribes. The legislation would also provide critical relief for multiple and single employer pension plans, along with various retirement savings incentives.

The HEROES Act is also notable for certain issues that it does not address. For example, while Senate Majority Leader McConnell has stated that any next package the Senate may consider must contain liability protections for businesses that reopen during the pandemic – a proposal that a wide array of industries [support](#) – the House Democrats’ proposal is silent on the matter. Note, too, the HEROES Act is also silent on another issue being pushed by a number of Democrats on the House Committee on Financial Services: the treatment of business interruption claims resulting from the COVID-19 pandemic. Though Committee Chair Maxine Waters (D-CA) included in her comprehensive fiscal stimulus [plan](#) in response to COVID-19 a proposal to establish a reinsurance program similar for pandemics, the issue is not addressed in the HEROES Act. That said, Representative Carolyn Maloney (D-NY) – who appears to be running point on the issue for the committee – is reported to have shared with key stakeholders [draft legislation](#) that is aimed at making business interruption insurance more widely available in the face of potential future pandemics. Specifically, the legislation would create the Pandemic Risk Reinsurance Program – similar to the Terrorism Risk Insurance Program – within the Treasury Department, which would allow insurers to sign up for the program and be eligible for federal reimbursement for a portion of losses resulting from coverage of pandemics. For their part, Republicans – both in Congress and the Administration – have expressed concerns about the proposal and appear skeptical about the potential financial risk to taxpayers.

Republicans – and, in fact, some moderate Democrats, are also skeptical of another proposal that did not make it in to the HEROES Act: a ban on corporate mergers. As you will recall, House Committee on the Judiciary Antitrust, Commercial and Administrative Law Subcommittee Chairman David Cicilline (D-RI) had suggested that he would like to include a provision to prohibit mergers during the pandemic except in the case of businesses that are “truly failing or in bankruptcy”; Senator Elizabeth Warren (D-MA) and Representative Alexandria Ocasio-Cortez (D-NY) have proposed taking that a step further by prohibiting mergers related to private equity firms, hedge funds or companies with more than US\$100 million in revenue until the Federal Trade Commission has made a determination that the merger would not put small businesses and consumers “under severe financial distress.” Though Republicans are reported to have called the merger ban “latent socialism,” it will be important to keep an eye out for such proposals – or, at a minimum, Congressional

overtures to regulators encouraging scrutiny and vigorous oversight of merger activity – as the economic fallout from the current health crisis subsidies and merger activity again begins to heat up.

While President Trump's call for a payroll and capital gains tax cut were also not included in the HEROES Act, House Democrats did include a limited number of other tax priorities, including a provision that would eliminate for two years the cap on the state and local tax (SALT) imposed as part of the 2017 tax reform law. However, Senate Republicans – led by Senate Committee on Finance Chuck Grassley (R-IA) – have suggested that this is a nonstarter as they move forward with negotiations over this next package. Notably, though, not all Democratic tax priorities were included either, as renewable energy tax incentives are also absent from the bill. This comes as Senate Majority Leader Chuck Schumer (D-NY), Senate Finance Committee Ranking Member Ron Wyden (D-OR) and a large number of their colleagues sent a [letter](#) to Chairman Grassley suggesting that the Committee “has failed to take action on the dozens of [pending] energy tax proposals” and urging that the Committee “fulfill its role in examining members’ energy tax proposals and...swiftly schedule Committee action to address these proposals and ensure our nation’s energy tax policies keep up with the changing energy and climate landscape.” As for House Committee on Ways and Means Republicans, Ranking Member Kevin Brady (R-TX) also has tax policy proposals of his own for consideration as part of the ongoing federal COVID-19 response and yesterday proposed creating tax credits to assist in offsetting the cost as business make necessary changes to their physical workspaces, as well as to increase the domestic supply of medical supplies and pharmaceuticals and their components.

The HEROES Act also proposes certain changes to the Federal Reserve's Main Street Lending Program, including by expressly providing that non-profit organizations are considered eligible borrowers under the program and requiring that the program offer at least one low-cost loan option for small businesses and non-profits that does not have a minimum loan size, overriding the current US\$500,000 minimum loan size. Additionally, in light of the debt collection moratorium and forbearance provided by the proposed legislation, creditors would in turn have access to a Federal Reserve facility providing low-interest, long-term loans with payments to be deferred until borrowers resume making payments. The proposed changes come on the heels of comments yesterday during a Senate Committee on Banking, Housing and Urban Affairs hearing by Federal Reserve Vice-Chairman of Supervision Randal Quarles, which made clear that the Federal Reserve's top priority is setting up the Main Street Lending Program and Municipal Liquidity Facility.

However, Vice-Chairman Quarles also suggested that “[i]t’s important that we do the complicated technical work to ensure they can be rolled out effectively, as well as quickly...I don’t think we’re looking at months, but it would be premature for me to say exactly how many weeks it would be before they’re operational.” During the hearing, senators urged the central bank to work expeditiously to get the two programs up and running, with Democrats also pressing the Federal Reserve to take action to prohibit big banks from paying dividends and instead conserve capital. According to Vice-Chairman Quarles, “[i]t’s fair to say that we are doing the analysis...[and] we’re open-minded to what the data will show, but our regulatory framework requires us to do that analysis [before the end of June], and that will determine the need of banks to conserve capital.” We are likely to learn more from Vice-Chairman Quarles and other banking regulators following today’s House Financial Services Committee [virtual roundtable](#).

The Federal Reserve yesterday also [announced](#) additional information regarding borrower and collateral eligibility criteria for the Term Asset-Backed Securities Loan Facility (TALF), which initially will make up to US\$100 billion of loans available. Specific details are available in the TALF [term sheet](#) and [frequently asked questions](#). Notably, certain stakeholder are [arguing](#) that TALF should be expanded to include installment loan, while the Main Street Lending Program should be expanded to include non-bank lenders that supply credit to consumers. Additionally, the Federal Reserve indicated that it will disclose the following information each month with regard to TALF and the Paycheck Protection Program Liquidity Facility: the name of each participant; the amounts borrowed, interest rate charged and value of pledged collateral; and the overall costs, revenues and fees. According to Federal Reserve Chairman Powell, “[t]he Federal Reserve remains committed to providing the public and Congress with detailed information about our efforts to support households and businesses during this unprecedented time.”

Health Updates

The health-related provisions of the House Democrats’ HEROES Act are broad and include provisions previously discussed and debated during the COVID-19 pandemic.

With many hospitals and healthcare providers across the United States now struggling with financial issues, the House Democrats’ bill provides an additional US\$100 billion in grants to these entities for healthcare-related expenses or lost revenue directly attributable to the COVID-19 pandemic. After lawmakers in both chambers, as well as other diverse stakeholders and trade associations, questioned and advocated for changes in how the Department of Health and Human Services (HHS) has been allocating and distributing previous grants

totaling US\$175 billion, the bill codifies the [Provider Relief Fund](#). The bill requires the HHS Secretary to review and distribute awards on a quarterly basis; the Secretary is to provide funds based on cost reports submitted by hospitals and other providers. Entities would be eligible to receive 60% of lost revenues compared to the previous year, as well as full reimbursement for COVID-19-related expenses, including construction of temporary structures, medical supplies and personal protective equipment, tests, increased workforce and trainings and surge capacity initiatives. Any funds hospitals or providers previously received from the Fund would be subtracted from amounts provided under this new structured process. Hospitals and providers accepting funds in this manner would be prohibited from balance billing or charging uninsured patients for their coronavirus care during the pandemic. The bill also requires a public listing of awards.

The additional provider relief grants may stretch farther when paired with the provision that provides for a two-month special enrollment period for Affordable Care Act (ACA) health plans. As we previously reported, the administration chose not to relaunch HealthCare.gov for a special enrollment period during the pandemic, which would have allowed uninsured individuals to obtain insurance coverage. Reports indicated the decision was made on political grounds, as the President did not want to confuse the public on his position against the ACA. Instead, the administration announced the Provider Relief Fund would have an [allocation](#) for COVID-19 care for the uninsured. Many stakeholders were against this decision, with a group of trade associations [stating](#) this would “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.” On release of the HEROES Act, the House Committee on Ways and Means Republicans called out this special enrollment provision, noting: “Despite POTUS having already rejected the expansion of Obamacare, Democrats are seeking to push through a new Special Enrollment Period—despite the availability of current law special enrollment periods for newly unemployed workers when they lose their job-based coverage.” Of note, yesterday, UnitedHealthcare announced it is returning to Maryland’s Obamacare exchange. *POLITICO* analyzed, “The health care industry has spent heavily to kill ‘Medicare for All’ and other big government expansions into the market. As the Covid-19 recession eats into the employer market, Obamacare is looking more important than ever in their efforts to stave off single payer.”

Lawmakers in both the House and Senate have questioned the financial burdens placed on the provider entities that received loans via the expanded Accelerated and Advance Payment Program. The House Democrats’ bill addresses the program, lowering the interest rate for loans, reducing the per-claim recoupment percentage and

extending the period before repayment would set in. Just yesterday, a group of Senate lawmakers entered the policy discussion on this Program, releasing [draft bill text](#) and signaling continued interest in both chambers in modifying the Program. The [senators](#), led by Michael Bennet (D-CO) and Jeanne Shaheen (D-NH), [state](#) their discussion draft is supported by the American Medical Association and Federation of American Hospitals.

House Democrats appropriate US\$75 billion for testing, contact tracing and other actions needed to monitor and suppress the virus in their bill, as well as US\$130 million for public health data surveillance and analytics infrastructure modernization. Following remarks in recent days from House Democratic leadership that testing would be a pillar of the HEROES Act, the bill includes significant testing and testing infrastructure improvements, including additional requirements for an HHS COVID-19 testing strategy, centralized testing information website and other reporting mechanisms. House Democrats spell out a COVID-19 National Testing and Contact Tracing (CONTACT) Initiative, which provides for a national system for COVID-19 testing, contact tracing, surveillance, containment and mitigation, including grants to states, local governments, tribes and territorial health departments to carry out systems to monitor and suppress COVID-19 cases. As we previously reported, President Trump held a press conference on Monday to announce that the federal government will allocate US\$11 billion to states, territories and tribes for testing. The federal government will also send states testing supplies, including swabs and transport media. In his remarks, President Trump said his administration had “prevailed on testing.” The administration has made some strides in testing over the past few weeks, though some public health experts stress the United States should establish increased capacity and achieve additional scientific advancements before social distancing guidelines are relaxed further. Lawmakers on both sides of the aisle are expected to continue discussing the needs for testing, contact tracing and surveillance, especially as economies reopen, workers return to their jobs and children return to daycare facilities, summer camps and schools.

The House Democrats’ bill includes several sections focusing on nursing homes, including protections to manage safety and quality care for patients, as well as manage outbreaks and allow for infection control as needed. The legislation requires HHS to collect data on the coronavirus in nursing homes and publicly report demographic data on COVID-19 cases in the institutions. As we previously reported, Democratic lawmakers in the House and Senate have focused on legislation involving nursing homes and the pandemic. Representative Jan Schakowsky (D-IL) [introduced H.R. 6698, the Quality Care for Nursing Home Residents and Workers During COVID-19 Act of 2020](#); Senators Cory Booker (D-NJ) and Richard Blumenthal (D-CT) [announced](#) their companion legislation

in the Senate. The comprehensive bill addresses issues nursing homes have faced as they care for individuals during the pandemic, including: care quality, worker safety, testing, transparency, strike teams, infection control, resident rights and congregate living. President Trump previously announced the [Coronavirus Commission for Safety and Quality in Nursing Homes](#), which is to be composed of industry experts, doctors, scientists, resident and patient advocates, family members, infection and prevention control specialists and state and local authorities. The Commission will issue recommendations on additional steps the government can take to protect seniors.

Trade Updates

The HEROES Act also contains a number of provisions aimed at shoring up domestic medical and pharmaceutical manufacturing supply chains. The bill would require drug manufacturers to report on foreign operations, and would also seek recommendations from experts on how to encourage domestic manufacturing of critical drugs and devices. White House officials say that they are working to finalize an executive order that would require federal agencies to increase purchases of domestically made medical and pharmaceutical supplies to encourage increased US production.

On Tuesday, House Committee on Energy and Committee Chairman Frank Pallone, Jr. (D-NJ) and Oversight and Investigations Subcommittee Chair Diana DeGette (D-CO) sent a [letter](#) to Dr. Robert Redfield, director of the Centers of Disease Control and Prevention (CDC) urging further protections for food production workers. They note the growing number of COVID-19 outbreaks at US food processing facilities, as well as reports that workers are not receiving sufficient protective supplies. They request a briefing on CDC's efforts to protect food supply chain workers safe, and posed several questions on the agency's response to COVID-19 outbreaks at these facilities. Also on Tuesday, a group of 20 Democratic attorneys general from across the United States sent a [joint letter](#) to President Trump urging that any executive action requiring meat processing facilities remain open must be accompanied by efforts to enforce health and safety standards for workers.

Lawmakers continue their close scrutiny of China in response to the COVID-19 pandemic. On Tuesday, Senator Lindsey Graham (R-SC) led a group of Senate Republicans in introducing new sanctions legislation authorizing (but not requiring) sanctions against Chinese officials, government-owned entities or individuals associated with such entities if the president is unable to certify China is (1) cooperating in efforts related to the COVID-19 outbreak, (2) has prohibited the operation of wet markets with risks to human health and (3) has released individuals detained in response to COVID-19 protests in Hong Kong. The measure also includes

provisions requiring reports on pharmaceutical products manufactured exclusively in China and promoting personal protective equipment manufacturing in the US.

Oversight Updates

President Trump's nomination of Brian Miller, a White House lawyer, to serve as Special Inspector General for Pandemic Recovery at Treasury, [advanced](#) yesterday when the Senate Committee on Banking, Housing and Urban Affairs voted 14-11 along party lines to send his nomination to the full Senate. The committee's vote came just one week after Miller's confirmation hearing, and a vote on the Senate floor may also come quickly. Despite Democrats' opposition, his confirmation is likely, given Republican control of the Senate.

The HEROES Act contains notable oversight-related provisions, including: (1) enhanced inspector general protections; (2) requirements that existing inspectors general report certain information to the three oversight bodies established under the CARES Act; (3) the expansion of those within the inspector general community who may chair the Pandemic Response Accountability Committee (PRAC); and (4) additional reporting requirements by PRAC to congressional committees. The draft bill allows the president to remove an inspector general only for specified cause, including abuse of power, "permanent incapacity," neglect of duty and "conviction of a felony or conduct involving moral turpitude."

Also yesterday, Senators Elizabeth Warren (D-MA), Richard Blumenthal (D-CT) and Chris Coons (D-DE), and Representatives Pramila Jayapal (D-WA) and John Sarbanes (D-MD) [introduced](#) a discussion draft of Coronavirus Oversight and Recovery Ethics (CORE) Act, aimed at ensuring stronger oversight, accountability and transparency in the government's response to the COVID-19 crisis. Among other things, the draft legislation would further empower inspectors general, prohibit conflicts of interest, protect whistleblowers and grant the Congressional Oversight Commission subpoena authority for testimony and documents. The lawmakers urged Congressional leadership to include these proposals in the next COVID-19 relief legislation.

Also:

- The House Committee on Energy and Commerce is opening an [investigation](#) into Blue Flame Medical's "questionable business practices." As reported last week, the Department of Justice has opened a [criminal investigation](#) into the company, which started selling medical supplies as coronavirus spread across the US and entered into contracts with Maryland and California but failed to deliver on them.
- Republican Members of House Select Subcommittee on the Coronavirus Crisis,

Representatives Steve Scalise (LA), Blaine Luetkemeyer (MO), Jackie Walorski (IN) and Mark Green (TN), sent a [letter](#) to Subcommittee Chair James Clyburn (D-SC), criticizing the panel's "hasty" request to "bully and shame" five large public companies last Friday into returning their Payment Protection Program loans.

Representative Scalise and the other lawmakers urged Chairman Clyburn to withdraw the request, citing "unique circumstances" and SBA's guidelines. One of the companies targeted by the panel, MiMedx Group, has already returned the PPP proceeds.

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