

The chairman of the Federal Reserve Board, Jay Powell, warned Wednesday that the US economy could sustain “lasting damage” if allowed to slide into a deep recession as a result of COVID-19, and said Congress must consider providing significant additional “stimulus” spending in the days and weeks ahead. Democrats in the US House of Representatives are preparing for a vote Friday on massive legislation, the Health and Economic Recovery Omnibus Emergency Solutions ([HEROES](#)) Act, that would provide US\$3 trillion in emergency aid.

“The record shows that deeper and longer recessions can leave behind lasting damage to the productive capacity of the economy,” warned Powell, who was appointed to his position by President Donald Trump. “Additional fiscal support could be costly, but worth it if it helps avoid long-term economic damage and leaves us with a stronger recovery.”

“This trade-off is one for our elected representatives, who wield powers of taxation and spending,” added Powell. The Federal Reserve has the power to loan money, but not to spend money, and a top Fed official warned Congress earlier in the week that two key lending programs authorized by the March 27 [CARES Act](#) are likely still “[weeks](#)” away from being operational.

The HEROES Act, historic and breathtaking in its ambition, scope and cost, was written exclusively by congressional Democrats without input from Republicans, who control the US Senate and White House. A one-page summary of the bill can be seen [here](#). A more detailed, 90-page summary can be seen [here](#).

House Minority Leader Kevin McCarthy (R-CA) has [dismissed](#) the HEROES Act as a “liberal wishlist that has no chance at becoming law,” and House Democrats concede many of the bill’s features will not survive the bipartisan negotiations that will have to take place after the HEROES Act is sent to the Senate. But the

HEROES measure also includes a number of key elements with a history of previous bipartisan support that could be the basis for an eventual consensus agreement between Republicans and Democrats.

Some congressional Republicans have joined Democrats in calling for hundreds of billions of dollars in additional support for state and local governments, the centerpiece of the HEROES Act. An extension of tax incentives for companies that keep workers on their payrolls, an idea with strong support from legislators in both parties, is also featured in the bill.

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## Tax and Economic Development Updates

As we have reported, the Small Business Administration (SBA) previously posted an interim final rule providing that any borrower who applies for and repays a PPP loan in full by May 14, 2020, would be deemed by SBA to have made the required certification concerning the necessity of the loan request in good faith. Last night, the SBA updated its [Frequently Asked Questions](#) (FAQs) in order to extend the repayment date for this safe harbor to May 18, 2020, “to give borrowers an opportunity to review and consider FAQ #46.” According to SBA, borrowers do not need to apply for this extension, and the extension “will be promptly implemented through a revision to the SBA’s interim final rule providing the safe harbor.” Notably, the SBA also updated FAQ #46 yesterday, confirming that “[a]ny borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith.” According to the SBA, this “is appropriate because borrowers with loans below this threshold are generally less likely to have had access to adequate sources of liquidity in the current economic environment than borrowers that obtained larger loans.” According to some [estimates](#), about half of the approximately 400

PPP loans approved for publicly traded companies were for less than US\$2 million. The SBA also last night released an [Interim Final Rule on Loan Increases](#). Specifically, the SBA recognizes that “[s]ome PPP loans were approved to partnerships or seasonal employers before [] additional guidance was issued and, as a result, those businesses may not have received PPP loans in the maximum amount for which they are eligible. This interim final rule authorizes all PPP lenders to increase existing PPP loans to partnerships or seasonal employers to include [these] appropriate amounts.”

Separately, the Treasury Department yesterday announced new transparency measures related to its Payroll Support Program for US airlines and contractors, and has [published information](#) detailing the amounts of financial assistance received and, where applicable, the financial instruments provided to the Treasury Department as appropriate compensation in exchange for the financial assistance. The Treasury also indicated that it will continue to work closely with approved applicants to execute the necessary agreements and update this information as additional funds are disbursed. According to Treasury Secretary Steven Mnuchin, “[t]he Payroll Support Program is successfully supporting American workers and preserving our vital aviation industry...[and] Treasury is committed to the highest standards of public transparency as we provide this critical relief.” According to its [most-recent estimates](#), the Treasury Department thus far has approved over US\$25 billion in assistance to 352 applicants – including all of the major passenger air carriers, more than 260 smaller passenger air carriers, and a significant number of cargo air carriers and contractors – to support hundreds of thousands of US jobs

Finally, though the HEROES Act as currently drafted will not be enacted, the legislation nevertheless serves as the basis for House Democrats’ negotiations with Senate Republicans and the White House. As such, it is important to be aware of its numerous tax and other economic development provisions to the extent some may be included in a final package that actually becomes law. One provision of interest would prohibit federal banking regulators from penalizing a depository institution for providing banking services to a legitimate marijuana-related business. According to Sec. 110606 of the HEROES Act – which is based on the [SAFE Banking Act](#) passed by the House last fall – the provision would “increase public safety by ensuring access to financial services to cannabis-related legitimate businesses and service providers and reducing the amount of cash at such businesses.” While it is unclear whether Senate Republicans would be amenable to this policy change, the strong bipartisan support the SAFE Banking Act received in the House (321 Yeas to 103 Nays) suggests that this is one provision in the HEROES Act that could

potentially be enacted as part of the ongoing federal stimulus efforts.

## Health Updates

The Federal Bureau of Investigation (FBI) and the Cybersecurity and Infrastructure Security Agency (CISA) released a [public service announcement](#) warning organizations researching the coronavirus of potential targeting and network compromise by the People’s Republic of China (PRC). The FBI stated that PRC-affiliated cyber actors and non-traditional collectors “have been observed attempting to identify and illicitly obtain valuable intellectual property (IP) and public health data related to vaccines, treatments, and testing from networks and personnel affiliated with COVID-19-related research.” The FBI and CISA recommend organizations assume media coverage of their COVID-19 research will lead to increased interest and cyber activity focused on their organizations and urged these organizations to “maintain dedicated cybersecurity and insider threat practices to prevent surreptitious review or theft of COVID-19-related material.” President Trump addressed this issue on Fox Business this morning, stating that the PRC has been stealing intellectual property regularly: “They’ve always been doing it and they were never called. Now they’re being called out all the time with me.”

The Centers for Medicare & Medicaid Services (CMS) issued a [“Toolkit on State Actions to Mitigate COVID-19 Prevalence in Nursing Homes.”](#) CMS received input from health care providers, state governments, government employees, state organizations and leading trade associations to catalog various solutions designed at the state level to protect residents in nursing homes during the COVID-19 pandemic. The toolkit provides information on telehealth, cleaning/disinfection, reporting/guidance/mandated reporting, testing, workforce and staffing, infection control, communications, access and utilization of personal protective equipment and transportation needs, among other topics. CMS will update the document as needed, but cautioned readers not to view the compendium as guidance from the agency. As we reported yesterday, the House Democrats’ HEROES Act includes several sections focused 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. 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 Food and Drug Administration (FDA) will hold a [virtual Town Hall](#) for clinical laboratories and commercial manufacturers to help answer questions on guidance regarding COVID-19 diagnostic tests. FDA will hold the meeting on May 20 and will address the May 4 guidance

titled [“Policy for Diagnostic Tests for Coronavirus Disease-2019 During the Public Health Emergency \(Revised\).”](#)

House Democrats made testing a focus of their HEROES Act legislation, and Senate Democrats—[led by](#) Committee on Health, Education, Labor and Pensions (HELP) Ranking Member Patty Murray (D-WA)—have called consistently for a national plan and more money for testing. At his press conference earlier this week, 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.

The Government Accountability Office (GAO) released a Science and Technology Spotlight report on [“The Science of Social Distancing During Pandemics.”](#) In its report, GAO explains the practice of social distancing, research on the effectiveness of the practice, opportunities the practice offers in mitigating the spread of infectious disease and challenges in implementing the practice. GAO also raises several policy questions for social distancing, including how long social distancing can be implemented and enforced broadly and effectively, how key complementary practices like testing can be used to inform social distancing practices and what research is needed to understand disease transmission so practices like social distancing can be devised and promulgated.

## Trade Updates

On May 13, Mexican Minister of Economy Graciela Márquez Colín [announced](#) plans to restart the Mexican economy – including authorizing operations in construction, mining and automotive manufacturing –in three stages following nationwide COVID-19 lockdowns on nonessential business operations.

According to the minister, the first stage of Mexico’s reopening will begin on May 18 in those 269 municipalities that have not registered COVID-19 cases, accounting for roughly 10% of the country; work and school restrictions will be lifted in these areas. Construction, mining and auto manufacturing operations will also be added to the list of essential activities and therefore authorized to resume operations nationwide, but with strict worker protection protocols, as part of stage two efforts running through the end of May aimed at preparing for broader loosening of restrictions. The third stage will begin on June 1, when companies in other industries may be authorized to reopen (subject to region-specific conditions). Municipalities and states will be assigned a color each week designating the degree to which sectors of the economy – including businesses, schools and public recreational areas – can operate. Mexico placed nation-wide restrictions on the operation of businesses as part of its response to the COVID-19 pandemic, impacting North American supply

chains. As both countries reopen, the flow of goods is certainly expected to increase, even as limits on non-essential passenger travel between the two countries continue.

## Oversight Updates

Yesterday, the SBA and Treasury Department issued new [guidance](#) for the Payment Protection Program, under which borrowers that accepted loans of less than US\$2 million will be deemed to have done so in good faith because they are less likely to have access to other resources. SBA reasoned that this safe harbor will help promote economic certainty for PPP borrowers with more limited resources and will allow SBA “to conserve its finite audit resources” and focus on larger loans, where SBA’s compliance review “may yield higher returns.” Also, the deadline for borrowers to repay their loans in full for their certifications of economic necessity to be deemed to have been made in good faith has been extended from May 14 to May 18.

Additionally, SBA reiterated that it will review all PPP loans in excess of US\$2 million, “in addition to other loans as appropriate.” If SBA determines a loan request was not necessary to sustain a borrower’s operations, the PPP loan will not be forgiven, and SBA will seek repayment of the outstanding balance. If the borrower repays the loan at that time, SBA will not pursue administrative enforcement or make referrals to other agencies based on its determination of the validity of the borrower’s certification.

Two people were charged with fraud related to PPP loans yesterday: (1) an [engineer](#) who allegedly sought more than US\$10 million in PPP loans, claiming 250 employees who did not exist; and (2) an Atlanta reality TV [personality](#), who allegedly used more than US\$1.5 million of his PPP loan to buy jewelry and pay child support. In announcing the charges, US Attorneys, the FBI, SBA IG and FDIC IG warned all PPP loan applicants and recipients that representations made in connection with loan applications are subject to the penalty of perjury, and “people who lie and try to cheat the system are going to be caught and prosecuted.”

Also yesterday:

- President Trump [told](#) reporters that companies that took PPP loans to which they were not entitled will have “big problems” and “we’ll go after them very seriously.”
- To protect small businesses, Senators Elizabeth Warren (D-MA) and Amy Klobuchar (D-MN), and House Committee on the Judiciary Antitrust Subcommittee Chairman David Cicilline (D-RI) [urged](#) the Federal Reserve and Treasury to use their authority under the CARES Act to restrict large corporations that receive relief funds from

engaging in potentially harmful mergers and acquisitions.

- Representative Steve Scalise (R-LA), Ranking Member of the House Select Subcommittee on the Coronavirus Crisis, sent a [letter](#) to Subcommittee Chair James Clyburn (D-SC), calling for a “firm commitment” that the panel will not be used for “any partisan political ends” and requesting ten “procedural and substantive safeguards.” The substantive safeguards Scalise requested are that the panel examine: (1) the actions and inactions of the World Health Organization and the PRC related to the pandemic, and (2) the actions the US House of Representatives could have taken between December 2018 and today to prepare for the pandemic.
- The FBI seized the cell phone of Senator Richard Burr (R-NC), Chairman of the Senate Intelligence Committee, last night as part of the DOJ’s investigation into the stock trades Senator Burr made as COVID-19 first struck the US and as his Committee was receiving daily COVID-19 briefings. [The Los Angeles Times](#) reports that the FBI earlier served a warrant on Apple to obtain information from Senator Burr’s iCloud account, from which information was then used as part of the evidence in support of the warrant for Burr’s phone.

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