

Democrats in the US House of Representatives are being asked by Speaker Nancy Pelosi (D-CA) to vote today on the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, a US\$3 trillion coronavirus response package intended to serve as congressional Democrats' opening bid in negotiations with Republicans over the composition of the next federal COVID-19 relief legislation.

As the House vote nears, Speaker Pelosi and her lieutenants are scrambling to tamp down internal dissatisfaction with the contents of the bill and her leadership team's strategy in bringing it to the floor, while the White House and Senate Majority Leader Mitch McConnell (R-KY) are hinting that Republicans will soon be ready to engage in talks with Democrats about crafting a consensus measure President Donald Trump can sign into law.

A marathon day of voting lies ahead for the House as representatives return en masse to the US Capitol for the first time in many weeks. Democratic leaders are expecting to push two consequential measures through the House over the course of the day on the strength of their party's majority in the chamber: a [House rules change](#) that would allow representatives to vote by proxy on future legislation if they are unable or unwilling to be present in the Capitol, and the HEROES Act. Speaker Pelosi and her team have calculated that they can win approval of both measures without relying on Republican votes.

A small number of GOP legislators may vote in favor of the HEROES Act due to reluctance to vote against a measure that would provide billions in aid to their states. But Speaker Pelosi will lose some Democrats on the vote as well, with voices both moderate and progressive within the House Democratic Caucus openly expressing concerns about the legislation and the process by which it was crafted. If enough rank-and-file Democrats signal opposition that the ability to pass the measure is in question, the vote could be delayed or canceled.

Further complicating the equation for Speaker Pelosi and her leadership team is the fact that representatives will have to vote today in waves due to social distancing procedures, introducing an unfamiliar dynamic into the vote counting process.

The White House on Thursday night issued a [statement](#) setting forth the Trump Administration's official position on the HEROES Act. The statement declared the administration's opposition to the HEROES Act "as currently drafted," detailing several areas of significant concern about the measure. But the statement also made clear that the White House is prepared to negotiate with Congress on additional relief measures, and laid out some of President Trump's priorities for such talks with some specificity.

"The Administration remains committed to working with Congress in a bipartisan manner to address any potential additional legislation needed to respond to the coronavirus outbreak," the Statement of Administration Policy (SAP) reads. "When additional legislation is contemplated, it should include a payroll tax holiday, safe-harbor provisions to protect businesses from frivolous lawsuits, permitting reform to facilitate infrastructure projects, and other policies to spur our economic comeback."

This morning's [Washington Post](#) features comments from a source close to the Trump White House indicating the president is preparing to authorize Treasury Secretary Steven Mnuchin to begin discussions with Congress about a deal that would include billions in new federal aid for states, territories, counties and municipalities. And in a Thursday evening appearance on [Fox News](#), Majority Leader McConnell acknowledged there is a "high likelihood" that another major federal COVID-19 response bill will soon be negotiated, despite misgivings among some GOP legislators about such spending.

For additional global public policy insights related to COVID-19, please follow us on Twitter ([@SPB_Global](#)) for our daily US Executive Branch Update or COVID-19 US State Policy Report. See [here](#) for the latest editions of all our daily policy reports.

In the coming weeks, we will unveil a blog dedicated to global public policy focused content. Follow us on Twitter for the launch announcement.

Tax and Economic Development Updates

As policymakers work toward agreement on yet another federal stimulus measure, the Federal Reserve has released its [“Report on the Economic Well-Being of US Households, Featuring Supplemental Data from April 2020.”](#) According to the central bank: “Financial circumstances were generally positive for most adults at the end of 2019. However...financial conditions changed dramatically for people who experienced job loss or reduced hours during March 2020 as the spread of COVID-19 intensified in the United States.” Notably, the report contains updated data from a supplemental survey conducted in April 2020, which underscores the severity of the ongoing economic crisis and the need for a strong federal response. Referencing the data from this new report, Federal Reserve Governor Michelle Bowman suggested that “[a] clearer understanding of how families are coping with the changed economic landscape is vital as the Federal Reserve considers next steps to address fallout from the pandemic.”

With regard to the Federal Reserve’s next steps, we learned more this week as Federal Reserve Vice-Chairman of Supervision Randal Quarles addressed lawmakers during a Senate Committee Banking, House and Urban Affairs [hearing](#) and House Committee on Financial Services [roundtable](#). Notably, as relates to the central bank’s response to support US territories, Vice-Chairman Quarles suggested that territories were intentionally excluded from the Federal Reserve’s Municipal Liquidity Facility. According to the Vice-Chairman, “[t]he territories, their problems are really not a COVID-induced cash flow issue...If the territories were to take on a substantial amount of additional debt, that’s not going to improve their situation.” Instead, he suggested that assistance made available through the Federal Emergency Management Agency (FEMA) or through [PROMESA](#) (a law focused on oversight of and economic recovery in Puerto Rico) are “better tools to address their situation.” As for the challenges facing US cities, the National League of Cities is now projecting US\$360 billion in lost revenue through 2022 for cities across the country as a result of COVID-19 – a figure that explains why getting the Municipal Liquidity Facility up and running remains one of the Federal Reserve’s top priorities.

We have also heard [reports](#) that Senator Cory Gardner (R-CO) will support Senator Josh Hawley’s (R-MO) proposal to [“Rehire America.”](#) According to [POLITICO](#), this is a significant development, as “[t]he Colorado Republican has the toughest path to reelection of any GOP senator, and his work with Senator Hawley on his “Rehire America” plan shows that not everyone in the Republican conference is content pressing pause on the next bill.” As to [the specifics of the plan](#), Senator

Hawley’s proposal “offers immediate payroll support for the duration of this emergency with no strings attached. No loans, no bank intermediaries, no repayment.” This would include: (1) a refundable payroll tax rebate covering 80% of employer payroll costs applicable up to median wages, including support for rehired workers, with a rehiring bonus; (2) a real-time advance system for providing payroll support immediately to firms; and (3) a back to work reinvestment credit for firms to cover costs of any investment necessary to get back off the ground even stronger once this crisis subsides.

Health Updates

[The Hill reports](#) President Trump questioned whether the widespread use of testing could be an “overrated” strategy to fight the COVID-19 pandemic, telling an audience at a Pennsylvania medical equipment distribution center yesterday that the United States has “the best testing in the world” but it “could be that testing’s, frankly, overrated.” He further explained, “We have more cases than anybody in the world, but why? Because we do more testing.” President Trump made these comments while [announcing his plan](#) – “Strategic National Stockpile 2.0” – to expand the Strategic National Stockpile (SNS) to ensure there is a 90-day supply of testing supplies and essential drugs, allowing the SNS to prepare for pandemics as well as bioterror threats. Earlier this week, President Trump held a press conference to announce that the federal government would allocate US\$11 billion to states, territories and tribes for testing. He said the federal government would also send states testing supplies, including swabs and transport media. In those remarks, President Trump said his administration had “prevailed on testing.” 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.

Separately, the American Medical Association [issued guidance](#) on serological (antibody) testing yesterday, noting these tests have limitations, including potential false positive results, cross-reactivity and unclear immunity implications. The group “cautions physicians and the general public about using these tests to determine individual immunity and warns that the discontinuation of physical distancing should not be made on the basis of antibody test results.” The Food and Drug Administration (FDA) also [issued](#) an alert to the public on possible testing problems, stating that early data “suggest potential inaccurate results from using the Abbott ID NOW point-of-care test to diagnose COVID-19.” FDA stated the test could return false negative results. Yesterday’s announcements came as the Centers for Disease Control and Prevention [released](#) new guidelines, in the form of flow charts and checklists, to assist businesses, schools, bars and restaurants, mass transit systems, camps and

child care programs in the reopening process. Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases, [warned](#) that reopening the country too soon, without the proper capacity to respond to new infections, could lead to serious consequences.

The Centers for Medicare & Medicaid Services (CMS) is [calling](#) for nominations for the [Coronavirus Commission on Safety and Quality in Nursing Homes](#). The Commission is charged with conducting “a comprehensive assessment of the nursing home response to the COVID-19 pandemic[,] which will inform efforts to safeguard the health and quality of life of vulnerable Americans as CMS continues to battle COVID-19, as well as prepare for future threats to resident safety and public health.” The Commission will be composed of a diverse panel of individuals, potentially including “industry experts, clinicians, resident/patient advocates, family members of individuals residing in nursing homes, medical ethicists, nursing home administrators, academics, infection control and prevention professionals, state and local authorities and other stakeholders whose expertise can contribute” to the Commission’s work. Individuals can submit nominations via the contractor’s [website](#) through May 22. Previously, CMS Administrator Seema Verma proposed a [five-part plan](#) to ensure safety and quality in nursing homes, which focuses on strengthening oversight, enhancing enforcement, increasing transparency, improving quality and removing regulations that providers identify as costly, challenging and not providing significant benefit. House Democrats’ HEROES Act includes several sections aimed at 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 National Institutes of Health (NIH) [announced](#) it is beginning a clinical trial to determine whether a treatment of hydroxychloroquine and azithromycin, an antibiotic, can prevent hospitalization and death from COVID-19. The National Institute of Allergy and Infectious Diseases is enrolling adults with mild to moderate COVID-19 for the study. As we previously reported, FDA [issued a Drug Safety Communication](#) cautioning against the use of hydroxychloroquine or chloroquine as a treatment for the coronavirus outside of a hospital setting or clinical trial, as there is a risk of serious and potentially life-threatening heart rhythm problems in patients when the drugs are administered. Members of President Trump’s team have disagreed over the use of hydroxychloroquine as a treatment for the coronavirus. President Trump had repeatedly expressed enthusiasm for hydroxychloroquine during press briefings earlier this year, and FDA posted chloroquine phosphate and hydroxychloroquine sulfate tablets to its drug shortages website, attributing the action to a surge in demand. The International Society of Antimicrobial Chemotherapy has now [questioned](#) a French study published in a society-run journal that suggested the drug could be beneficial for COVID-19 patients.

Multiple [reports](#) indicate Moncef Slaoui, the former head of GlaxoSmithKline’s vaccine division, was chosen as the administration’s “therapeutics czar.” Sources expect Slaoui will work to accelerate the development of COVID-19 vaccines and treatments, coordinating between the Departments of Health and Human Services (HHS) and of Defense.

Trade Updates

Early Thursday, President Trump appeared on FOX Business Network, where he said he expected to see signs of economic recovery starting in the third quarter, which he characterized as a “transition quarter,” as more states reopen their economies in the coming weeks. While he lauded the zero interest rate set by the Federal Reserve, President Trump reiterated he preferred negative interest rates, similar to Japan and Germany. President Trump added, “If they’re going to have the advantage of negative rates, we should too.”

President Trump also called for a strong US dollar to accompany the economic recovery, while acknowledging the US unemployment rate will likely be over 10% on Election Day. He further expressed disappointment with China, saying: “I’m very disappointed in China, I will tell you, right now.” President Trump noted several options available for responding to China’s alleged withholding of information on the COVID-19 outbreak, including severing the relationship. “You’d save US\$500 billion if you cut off the whole relationship,” he said.

During a visit to a medical supply distribution center in Pennsylvania on Thursday, President Trump unveiled efforts to expand the stock of medical supplies in the US SNS to support US needs as domestic manufacturing capabilities grow. He also signed a new executive order giving the head of the US International Development Finance Corporation new authorities to issue loans in support of companies’ production of supplies supporting the COVID-19 effort.

As [Bloomberg](#) reported late Thursday, Trump officials are said to be preparing a new executive order that would require certain drugs and medical treatments for federal contracts be made in the United States. The measure is aimed at preventing drug and device shortages, as the COVID-19 outbreak has raised concerns of overreliance on global medical and pharmaceutical supply chains. According to [Bloomberg](#), “The executive order would limit any federal contracts for those supplies to manufacturers in the US and would require that production be divided among multiple companies to ensure price competition. The drugs and devices covered by the order include anything used to respond to a public health emergency or biohazard attack. The list of ‘essential medicines’ will be later determined, according to the executive order. The exceptions would be if US production isn’t in the public interest, the treatment or device isn’t produced in sufficient

quantities in the US, or if it raises prices by more than 25%.”

Stakeholders are concerned that major changes to these supply chains could disrupt production in the short term, as it would be difficult for these companies to shift production to the United States quickly.

As reported by [POLITICO](#), senior officials have removed the chief of the Pentagon's Defense Production Act (DPA) effort. Jennifer Santos, deputy assistant secretary of defense for industrial policy, announced on a staff call that she had been fired from that position effective Friday evening; she is reportedly being transferred to a position within the Navy. While the details of her termination are not public, sources say Santos faced challenges leveraging the DPA to expand domestic production of medical supplies critical to the COVID-19 response effort. Scott Baum principal director of industrial policy, will take over the role in an acting capacity.

Acting Secretary of Homeland Security Chad Wolf visited the US Southwest border on May 13, to view progress on the wall construction and the situation at the US-Mexico border more broadly. He noted COVID-related restrictions for non-essential travel across the border currently in place since March 21 agreement are likely to be extended beyond their current May 21 expiration. Acting Secretary Wolf also suggested restrictions could be further tightened in light of increased COVID-19 cases across the border. Currently, non-essential travel restrictions do not apply to US citizens that live in Mexico and are crossing into the United States seeking medical care. Acting Secretary Wolf stated he would consult with Dr. Alexander Eastman, the senior medical officer for operations at Homeland Security, for recommendations on addressing the COVID-19 pandemic in the border region.

On May 12, San Diego Mayor Kevin Faulconer [announced](#) the establishment of a binational, regional group responsible for monitoring the potential impacts of COVID-19 and cross-border travel between the United States and Mexico on San Diego health care and emergency resources. The announcement also reflected cooperation across the border on personal protective equipment (PPE), with the Mayor authorizing the production of face shields and other items to share with the medical community in Tijuana. The new binational, regional group is an extension of already close cooperation at the border on trade matters, predominantly via the Border Mayors Association. Notably, Tijuana is home to a number of manufacturing facilities that feed into the North American supply chains.

European Policy Updates

European Commission President, Ursula von der Leyen presented the structure of the new European Recovery Instrument to the European Parliament on May 13. The European Commission has been tasked by EU27 Leaders to construct a Recovery Fund based on the economic needs of the EU post-COVID-19. According to President von der Leyen, the short-term instrument will focus on the first years of recovery. The European Commission will borrow on capital markets to raise the funds. However, the funding will be channeled through EU budget programs and will thus be subject to parliamentary oversight.

The legal proposal for the Recovery Instrument, which will include grants, is expected to be published later this month and could front-load part of the investment already in 2020. It will be divided into three main elements: (i) public investments and reforms (which will be the biggest part of the instrument), (ii) boosting private and strategic investments, and (iii) funding for priority sectors, such as research and health.

As lockdowns phase down across the EU, the European Commission presented on May 13 a package of measures to help the transport and tourism sector resume its activities while respecting necessary health precautions. The package includes: a [strategy](#) for recovery of these industry sectors in 2020 and beyond, a [common approach](#) to restore free movement, [guidelines](#) for restoring the transport services and connectivity, a [recommendation](#) on travel reimbursement options and [guidance](#) for resuming tourism services and health protocols therein. These measures aim to guide Member States in lifting EU internal borders in a gradual and coordinated manner, as well as resuming the transport and tourism sectors, both heavily impacted by the outbreak. More concrete health safety protocols (e.g., for the aviation sector) or specific guidance will complement the package of measures as the situation evolves. More information on the measures can be found [here](#).

Meanwhile, investment in research for diagnostics and treatments of COVID-19 continue. Eight large-scale research projects have been approved under the Innovative Medicines Initiative (IMI), with a total of EUR 117 million (US\$126 million) in funding. The projects involve researchers from 94 organizations across Europe including universities, research organizations, companies (including small- and medium-sized enterprises) and public bodies. Further details are accessible [here](#).

On May 5, the German Federal Constitutional Court rendered a judgment in a number of individual constitutional complaints of German citizens against the European Central Bank's (ECB) Public Sector Asset Purchase Programme of 2015. An overview of the judgment, which could impact how COVID financing is distributed by the ECB to Member States, is available

[here](#). It has led a great deal of reactions and commentary about the legitimacy of the German Federal Constitutional Court's dismissal of a European Court of Justice (ECJ) judgment, among others, by the President of the European Commission and the ECJ itself. However, the broader commentary is based on misconceptions about the very action the German Court has taken. Our [alert](#) addresses these misconceptions and analyzes the legal powers and limitations within the EU law and German Federal Constitutional law in this context.

The UK Coronavirus Job Retention Scheme (JRS) announced on 20 March went "live" on 20 April. However, we have not yet seen any legislation on this scheme, and there are no details about how it is intended to operate in line with current insolvency legislation. The SPB UK insolvency team has prepared this [alert](#) to assist administrators in (a) making the decision to furlough employees; (b) dealing with employees who have already been furloughed; and (c) understanding their responsibilities and obligations.

Oversight Updates

[Reuters](#) reports that the Securities and Exchange Commission (SEC) has asked public companies that received Paycheck Protection Program (PPP) loans to prove that they qualified for the relief and made consistent representations to investors about their economic circumstances. According to one source, these requests for information were "voluntary." Last week, [Reuters](#) reported 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 at the time they certified in their PPP applications that "current economic uncertainty" made the loans "necessary to support the ongoing operations." 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 is May 18.

Senator Elizabeth Warren (D-MA), a member of the Senate HELP Committee, and four other Democratic Committee members, [urged](#) Committee Chairman Lamar Alexander (R-TN) and Ranking Member Murray to hold a hearing with whistleblower Dr. Rick Bright, former Director of the Biomedical Advanced Research and Development Authority (BARDA). The senators expressed concern that, without an opportunity to question Bright, the Committee "would be abdicating its duty to conduct oversight over the administration's response to the worst public health crisis in over a century, risking American lives, and delaying the economic recovery." Bright was dismissed from his position and reassigned to a narrower job at the NIH last month. The Office of Special Counsel has found "reasonable grounds" for HHS to investigate whether Dr. Rick Bright was removed for his questioning the use of

hydroxychloroquine as a treatment for COVID-19. Yesterday, Bright testified before the House Committee on Energy and Commerce Health Subcommittee.

Also yesterday:

- Representatives Carolyn B. Maloney, the chair of the House Committee on Oversight and Reform, and Jamie Raskin, chair of the Subcommittee on Civil Rights and Civil Liberties, sent a [letter](#) to the Department of Homeland Security and Immigration and Customs Enforcement (ICE) regarding the agency's handling of COVID-19 spread in detention centers housing detainees. Emphasizing the agency's repeated failures to provide requested information, the lawmakers reiterated their prior requests and set out their findings to date. They concluded the letter by reminding ICE that the Committee on Oversight and Reform is the principal oversight committee of the House and it has broad authority to investigate "any matter" at "any time."
- Senator Richard Burr (R-NC) is [stepping down](#) as the chair of the Senate Select Committee on Intelligence following the Federal Bureau of Investigation's seizure of his cell phone on Tuesday night as part of the Department of Justice's (DOJ) investigation into stock trades he made as COVID-19 first struck the US and as his committee was receiving daily COVID-19 briefings. He will remain a member of the committee.
- A federal court in Oklahoma [entered](#) a temporary restraining order halting the sale of an unapproved colloidal silver product to treat COVID-19, in response to a civil complaint filed by the DOJ.

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