

The US\$3 trillion Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act passed the US House of Representatives on Friday. The next moves in shaping the future of the federal legislative response to COVID-19 will be up to the White House and congressional Republicans, who control the US Senate and have expressed a desire to move cautiously with additional aid measures as states gingerly begin to reopen.

Senate Majority Leader Mitch McConnell (R-KY) is unlikely to play his hand until pressure for further legislative action reaches critical mass inside the Senate Republican Conference. Majority Leader McConnell has conceded that another significant COVID-19 package is likely to be negotiated and signed into law, but has not articulated a timetable for passage of such a measure. Nor, the Senate Republican leader notes, has Federal Reserve Board chairman Jay Powell, who has warned the American economy faces the prospect of “lasting damage” if allowed to slide into a deep recession. Powell has called on Congress to take further action through its powers to tax and spend, but has not specified how quickly such action must occur.

Powell discussed the challenges ahead Sunday in an appearance on the CBS program “60 Minutes,” warning that the national unemployment rate could ultimately reach 25% as a result of the economic hit from the pandemic. Chairman Powell will testify, along with Treasury Secretary Steven Mnuchin, before the Senate Committee on Banking, Housing and Urban Affairs on Tuesday as part of a congressional review of the implementation and performance of the CARES Act, the US\$2.2 trillion bipartisan COVID-19 measure enacted in late March.

The White House may put forth a proposal or proposals of its own in the coming days as President Donald Trump seeks to provide a GOP counterpoint to the bargaining position staked out Friday by House Speaker Nancy Pelosi (D-CA) with House passage of the HEROES Act. The likely contours of the forthcoming White House response, which include tax relief measures to help ease the burden on distressed workers and businesses, were previewed last week in a [Statement of Administration Policy](#).

Much of the HEROES Act is “dead on arrival” in the Republican-led Senate, but some key elements of the massive Democratic bill are candidates for inclusion in the bipartisan package that will eventually be negotiated between Congress’ two chambers. These elements include new money for states, territories, counties and municipalities, and an expansion of employee retention tax credits for US businesses. *POLITICO* reports that House Committee on Ways and Means Ranking Member Kevin Brady (R-TX), House Republicans’ lead voice on tax policy, said the House GOP “is open to it” when asked about the HEROES Act’s proposals for the latter.

The Senate is in session this week to conduct legislative business on other matters. The House, having passed HEROES and adopted remote voting procedures that can be employed on future committee and floor votes, is adjourned.

Tax and Economic Development Updates

Late Friday night, after having already extended for a second time its “safe harbor” deadline for Paycheck Protection Program (PPP) borrowers to return their loans to avoid a potential review of the appropriateness of their borrower certifications, the Small Business Administration (SBA) – in consultation with the Treasury Department – released its long-awaited [Loan Forgiveness Application](#), along with detailed instructions. The form and instructions include “several measures to reduce compliance burdens and simplify the process for borrowers,” including: (1) options for borrowers to calculate payroll costs using an “alternative payroll covered period” that aligns with their regular payroll cycles; (2) flexibility to include eligible payroll and non-payroll expenses incurred during the eight-week period after receiving their loan; (3) instructions on how to perform the required calculations to confirm eligibility for loan forgiveness; (4) statutory exemptions from loan forgiveness reduction based on rehiring by June 30; and (5) a new exemption from the loan forgiveness reduction for borrowers who have made a good-faith, written offer to rehire workers that was declined. According to the SBA, it will also “soon issue regulations and guidance to further assist borrowers as they complete their applications, and to provide lenders with guidance on their responsibilities.” Many interested parties likely will welcome this additional guidance, as groups such as the American Institute for Certified Public Accountants were

quick to [suggest](#) that the recently-released loan forgiveness application leaves many questions unanswered – especially as relates to the need for flexibility as to when the eight-week period should begin or the need for the covered period to be extended.

We may also learn more this week about the PPP implementation and other federal stimulus measures as Treasury Secretary Mnuchin and Federal Reserve Chairman Powell are among the regulators set to testify before the Senate Banking Committee on their CARES Act implementation efforts. Over the weekend, Chairman Powell reaffirmed the need for continued federal stimulus measures and confirmed that unemployment could reach as high as 25% as a result of the economic downturn from COVID-19. His remarks are consistent with the findings of the Federal Reserve's [semimanual Financial Stability Report](#) released on Friday, which provides an assessment of the resilience of the US financial system. As the report notes, "[w]hile the financial regulatory reforms adopted since 2008 have substantially increased the resilience of the financial sector, the financial system nonetheless amplified the shock [of COVID-19], and financial sector vulnerabilities are likely to be significant in the near term." As such, to provide additional flexibility to the financial sector in expanding their balance sheets in order to continue providing credit to households and businesses, the Federal Reserve, along with the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, have announced an [interim final rule](#) that permits depository institutions to choose to exclude US Treasury securities and deposits at Federal Reserve Banks from the calculation of the supplementary leverage ratio.

State and local governments also remain in need of additional financial support from policymakers as they continue to try and cope with the new economic realities caused by COVID-19. According to [reports](#) this morning, Senators Bill Cassidy (R-LA) and Bob Menendez (D-NJ) will today formally introduce their proposal that would create a fund providing US\$500 billion accessible to state and local governments to aid in their COVID-19 recovery efforts. According to [Bloomberg](#), the legislation would: (1) divide funding into three tranches based on population size, infection rates and revenue losses; (2) not include a minimum population size threshold for purposes of eligibility; and (3) guarantee every state, along with Puerto Rico and the District of Columbia, at least US\$2 billion.

Health Updates

With the White House focused on reopening businesses across the country, Vice President Michael Pence [announced](#) five new members of the White House Coronavirus Task Force: Department of Agriculture Secretary Sonny Perdue, Department of Labor Secretary Eugene Scalia, National Institutes of Health Director Dr. Francis Collins, Food and Drug Administration (FDA) Center for Biologics Evaluation and Research Director Dr. Peter Marks and Health Resources and Services Administration Administrator Thomas Engels. In a statement, Vice President Pence said, "The new members of the White House Coronavirus Task Force will add expertise in the fields of vaccines and therapeutics as well as worker safety as the Task Force renews its focus on getting Americans back to work." As we previously reported, Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases and a current member of the Task Force, has [warned](#) that reopening the country too soon, without the proper capacity to respond to new infections, could lead to serious consequences.

On Friday, President Trump [introduced](#) the leadership of "Operation Warp Speed," a public-private partnership charged with accelerating the development of a COVID-19 vaccine. Moncef Slaoui, former Chairman of Global Research and Development and Chairman of Global Vaccines at GlaxoSmithKline, will be the project's chief scientist, and Army General Gustave Perna will be the Chief Operation Officer. According to the Department of Health and Human Services, Operation Warp Speed will focus on the development, manufacturing and distribution of a vaccine. Companies receiving support from Operation Warp Speed must provide a donated allocation of developed countermeasures.

On Friday evening, [Bloomberg reported](#) the White House would like Congress to include hospital price transparency provisions in the next stimulus bill. According to the article, "The White House believes writing the requirement into law would end the court battle [over the Department of Health and Human Services (HHS) regulation requiring hospitals to make their prices public]." White House spokesman Judd Deere explained, "President Trump has taken the most aggressive action on health care price transparency in history and would welcome any efforts by Congress to complement and reinforce our actions to put real process in the hands of consumers." Hospitals are facing challenges during the pandemic, with the increase of COVID-19 patients and the canceling of elective procedures causing financial difficulties. The industry argues that adding transparency measures would not reduce prices as the administration asserts. In reaction to new transparency provisions in the Centers for Medicare and Medicaid Services' (CMS) Inpatient Prospective Payment System [proposed rule](#) for 2021, released on May 11, American Hospital Association Executive Vice President Tom Nickels provided a [statement](#): "We are very

disappointed that CMS continues down the unlawful path of requiring hospitals to disclose privately negotiated contract terms. The disclosure of privately negotiated rates will not further CMS's goal of paying market rates that reflect the cost of delivering care. These rates take into account any number of unique circumstances between a private payer and a hospital and simply are not relevant for fixing Fee-for-Service Medicare reimbursement."

FDA [announced](#) it [authorized](#) the first standalone at-home sample collection kit, which can be sent to specified laboratories for COVID-19 diagnostic testing. The agency also issued an updated [At-A-Glance Summary](#) of the agency's coronavirus response efforts to date, as well as a [Consumer Update on Coronavirus Testing Basics](#).

Trade Updates

As Mexico enters the first phase of reopening following its COVID-19 lockdown efforts, key manufacturing supply chains are gearing up to restart. Originally, the government said the transportation (including auto and aerospace) manufacturing, mining and construction sectors would be able to reopen on May 18. However, early on May 14, the government announced in its federal gazette that the date had been shifted back to June 1. Then, on May 15, after push back, clarified that facilities in these sectors could restart operations before June 1 so long as health security protocol processes have been established and approved beforehand. Based on unofficial translations of the Mexican government's guidance, the period of May 18 to June 1 is considered a preparation period, during which companies are to present health and safety protocols to government officials. If companies finish their preparations and have their plans approved before June 1, then they may begin operations before that date. Companies can work to implement safety protocols in preparation for the restart of operations as they await government approval of their plans, which could help to ensure a swift return to operations. See [here](#) an official briefing document issued by the Embassy of Mexico in Washington DC summarizing Mexico's reopening strategy at this time.

The auto manufacturing industry has been of particular importance to US stakeholders, as US operations in this area have been built around North American supply chains. In remarks to [CNBC](#) on Monday, Julie Fream, CEO and president of the Original Equipment Supplier Association, warned that the auto supplier community needs US\$20-25 billion in aid as soon as possible to avoid widespread issues, including bankruptcies. Fream cautioned that medium-sized companies – too large to qualify for PPP loans but too small to access the capital available to large companies – are at greatest risk. Auto manufacturers are already feeling the impacts of COVID-19 on their supply chains. On Friday, Daimler announced it would again suspend operations at its Alabama Mercedes-Benz SUV manufacturing facility. As reported by

[Bloomberg](#), though the plant was one of the first to reopen in the US, it has had to interrupt manufacturing temporarily again as it awaits parts from suppliers in Mexico. These shortages will certainly expand and become more severe if auto parts manufacturers across the US are unable to secure necessary COVID-19 response aid to remain in operation.

Oversight Updates

Early this morning, the Congressional Oversight Commission – one of the bodies established by the CARES Act to oversee implementation of the law – released its [first report](#). The 17-page report includes a list of questions the panel intends to consider as part of its future work, including general inquiries into the Treasury Department's and the Federal Reserve's implementation of their respective economic recovery programs, as well as questions aimed at specific aid programs authorized by the CARES Act. The report comes more than a week after the Commission's first report deadline, and at a time when the Commission remains without a chair. The five-member Commission has four members (Bharat Ramamurti, former aide to Senator Elizabeth Warren (D-MA); Senator Pat Toomey (R-PA); Representative Donna Shalala (D-FL); and Representative French Hill (R-AR)). While there have been reports Senate Majority Leader McConnell and Speaker Pelosi were close to naming a chair, one has not been appointed yet.

Citing a loss of confidence, President Trump fired State Department Inspector General Steve Linick late Friday night. Speaker Pelosi [said](#) that the move is part of the President's "dangerous pattern of retaliation" against Inspectors General (IGs). Representative Eliot L. Engel (D-NY), Chairman of the House Committee on Foreign Affairs, said that the IG had opened an investigation into Secretary of State Mike Pompeo, and that the IG's firing was an "outrageous act of a president trying to protect one of his most loyal supporters." Senator Bob Menendez (NJ), the top Democrat on the Senate Committee on Foreign Relations, [called](#) the firing "another Friday night massacre." Some Republican lawmakers also [expressed](#) concern, including Senators Mitt Romney (UT), Chuck Grassley (IA) and Susan Collins (ME). Chairman Engel and Ranking Member Menendez [launched](#) an investigation into the firing. They wrote to the White House, the State Department and the State Department's Office of Inspector General requesting information by May 22. Ambassador Stephen Akard, a trusted ally of Vice President Pence and current director of the Office of Foreign Missions at the State Department, will [serve](#) as the acting IG until a permanent IG is appointed.

Also on Friday, the White House announced that President Trump [intends](#) to nominate Eric Soskin, a Justice Department trial counsel, to serve as the Department of Transportation's (DOT) IG. The same day, the President

named Howard Elliott, the administrator of the Pipeline and Hazardous Materials Safety Administration, as the DOT's new acting IG, replacing Mitch Behm. Elliott will continue to serve as the administrator of the pipeline agency under a dual-hat arrangement. The same thing happened a little over a month ago when the President designated Sean O'Donnell, the Environmental Protection Agency's IG, to serve concurrently as the Department of Defense's acting IG, replacing Glenn Fine, who had developed a decades-long reputation for being an independent and aggressive IG at both the Departments of Defense and of Justice, and who was slated to head the Pandemic Response Accountability Committee. It is doubtful the same degree of oversight is possible when one person is tasked with overseeing two agencies.

In other news, FactSquared **estimates** that approximately one third of public companies that received PPP loans have now returned them. Under the SBA/the Treasury Department's latest guidance, today is the last day for borrowers to take advantage of the safe harbor, under which companies that return their proceeds will be deemed to have certified in good faith that "current economic uncertainty" made the loans "necessary to support ongoing operations."

Also:

- Representative James Clyburn (D-SC), Chairman of the House Select Subcommittee on the Coronavirus Crisis, **tapped** David Hickton, the founding director of the University of Pittsburgh Institute for Cyber Law, Policy and Security and former US Attorney for the Western District of Pennsylvania, to serve as the Subcommittee's staff director and senior counsel.
- In response to a **request** by Senator Warren and other lawmakers, the Government Accountability Office **agreed** to audit the Department of Veteran Affairs' oversight over nursing homes during the pandemic.

Contacts

David B. Stewart

Principal, Washington DC
T +1 202 457 6054
E david.stewart@squirepb.com

David Schnittger

Principal, Washington DC
T +1 202 457 6514
E david.schnittger@squirepb.com

Beth L. Goldstein

Senior Associate, Washington DC
T +1 202 457 5129
E beth.goldstein@squirepb.com

Brandon C. Roman

Senior Associate, Washington DC
T +1 202 457 5330
E brandon.roman@squirepb.com

Kristina V. Arianina

Senior Associate, Washington DC
T +1 202 457 5139
E kristina.arianina@squirepb.com

Ludmilla L. Kasulke

Senior Associate, Washington DC
T +1 202 457 5125
E ludmilla.kasulke@squirepb.com

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