

The legislative process in the US Congress is beginning to take on a more familiar look as policymakers work to shape the next steps in the federal response to COVID-19 and the resulting economic crisis. The US House of Representatives will be back in session again next week, albeit with temporary proxy voting measures in place that allow some Members of Congress to cast votes without being physically present in the US Capitol.

Legislators on both sides of the aisle are publicly floating proposals, many of them bipartisan, in hopes they will gain the support of colleagues and become candidates for inclusion when the next coronavirus response package is eventually negotiated by Democratic and Republican leaders. Committee leaders are also leaning forward with their ideas for the next package, sensing an opportunity in the coming weeks to address national priorities that have long been stalled due to partisan gridlock.

The aforementioned movement is particularly evident this week in the area of infrastructure policy. Senate Majority Leader Mitch McConnell (R-KY) has discouraged his GOP colleagues from indulging President Donald Trump’s vision of helping to rescue the economy through enactment of a US\$2 trillion national investment in transportation and infrastructure construction initiatives. House Speaker Nancy Pelosi (D-CA), who earlier this spring articulated ambitions similar to those of the president, conspicuously declined to include any major infrastructure components in House Democrats’ US\$3 trillion Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act. Yet the idea of seizing the moment and harnessing the pandemic crisis to “go big” on long-delayed national infrastructure objectives remains alive.

In the House, a bipartisan group of 135 Members of Congress – more than one-quarter of the chamber’s membership – sent a [letter](#) this week to Speaker Pelosi and House Minority Leader Kevin McCarthy (R-CA) urging that nearly US\$50 billion be included in the next COVID-19 response measure. House Committee on Transportation & Infrastructure Chairman Peter DeFazio (D-OR) has been

gearing up for early June committee action on a significant infrastructure overhaul and reauthorization package. The White House last week identified infrastructure reform as one of the president’s priorities for a future economic stabilization and recovery bill. And [CNN](#) reports several Senate Republican committee leaders are publicly pressing Leader McConnell to put aside his misgivings and give Congress a chance to work in a bipartisan way to support economic recovery by passing a long-awaited large-scale national infrastructure bill.

Congress also appears to be moving quickly toward potential passage of targeted legislation that would change the March 27 CARES Act’s Paycheck Protection Program (PPP). Speaker Pelosi has announced the House will vote next week on a bipartisan bill by Representatives Dean Phillips (D-MN) and Chip Roy (R-TX) that would provide greater flexibility in the program so that PPP loans can be more effectively accessed by restaurants, hotels and enterprises in the hospitality industry. Senator Marco Rubio (R-FL), the chairman of the Senate Committee on Small Business, has called for similar changes. This strong bipartisan support has raised the possibility that a targeted PPP fix could be quickly passed as a stand-alone bill and signed into law by President Trump in the coming days, while Congress continues partisan deliberations over the composition of another major COVID-19 omnibus bill. It could also establish a template for focused action on other pandemic-related consensus priorities as the two parties remain far apart on their broad visions for future coronavirus response legislation.

Tax and Economic Development Updates

The Federal Reserve yesterday released the [minutes](#) from its April 28-29 Federal Open Market Committee meeting. A review of the minutes shows that Federal Reserve officials are concerned about the “substantial likelihood” of additional COVID-19 outbreaks in the United States, which “could lead to a protracted period of severely reduced economic activity.” Likely stemming from these concerns, the Federal Reserve is continuing to play a leading role in implementing various economic stimulus measures. In fact, just yesterday, the New York Federal Reserve Bank announced that its Term Asset-Backed Securities Loan Facility (TALF) will be operational and begin receiving loan applications on June 17, with the first loans expected to close on June 25.

Another key program receiving attention from policymakers – including from members of the Congressional Oversight Commission – is the Main Street Lending Program (MSLP). While Federal Reserve Chairman Jay Powell and Treasury Secretary Steven Mnuchin have suggested that the MSLP will be operational by June, a growing number of lawmakers and other key stakeholders are expressing concern that the 13(3) facility is not already up and running. There are also concerns about the MSLP requirement that borrowers make “commercially reasonable” efforts to not lay off employees. According to Representative French Hill (R-AR), who serves on the Congressional Oversight Commission and is seeking clarity as to the meaning of “commercially reasonable,” “[t]he principal mission of the Main Street Lending Program is to bridge companies cash-flow needs across this coronavirus impact on the economy and keep as many Americans employed as possible.”

As reported yesterday, the House is expected as early as next week to vote on and pass bipartisan legislation to make a number of improvements to the PPP. Specifically, it appears that the House will consider [H.R. 6886](#), the Paycheck Protection Flexibility Act, which is the result of efforts by Representatives Phillips and Roy to allow businesses receiving forgivable PPP loans additional flexibility in using their loan proceeds. According to sources referencing a recent Dear Colleague, the House is focused on making changes to the PPP that would:

- Allow forgiveness for expenses beyond the 8-week covered period;
- Eliminate restrictions limiting non-payroll expenses to 25% of loan proceeds;
- Eliminate restrictions that limits loan terms to 2 years;
- Ensure full access to payroll tax deferment for businesses that take PPP loans; and
- Provide a rehiring safe harbor for businesses unable to rehire employees due to the effects of enhanced Unemployment Insurance

Given that Senate Republicans – including Senate Committee on Small Business Chairman Rubio – and the Trump Administration have gone on record in support of similar changes to the PPP, it seems increasingly likely that the PPP will be revised in the not-too-distant future.

Health Updates

With one of the first major COVID-19 outbreaks in the United States occurring in a nursing home – and a rapid increase in coronavirus cases in these types of facilities since that time – lawmakers are examining current and potential laws and policies focused on these entities. Yesterday, the Government Accountability Office (GAO)

released a [report](#) titled “Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic.” GAO conducted this study at the request of Senator Ron Wyden (D-OR), Ranking Member of the Senate Committee on Finance. It found “most nursing homes were cited for infection prevention and control deficiencies (82% of those surveyed from 2013-2017) [prior to the pandemic]. About half of these homes had persistent problems and were cited across multiple years.” GAO stated future reports will review infection prevention and control and emergency preparedness in nursing homes more broadly, as well as the Centers for Medicare & Medicaid Services’s (CMS’s) response to the pandemic. Several weeks ago, President Trump announced the establishment of 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. CMS Administrator Seema Verma has also 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.

Representative Michael Burgess, MD (R-TX), Ranking Member of the House Committee on Energy and Commerce Health Subcommittee, led a [letter](#) to Department of Health and Human Services (HHS) Secretary Alex Azar, requesting HHS consider nursing homes, skilled nursing centers, senior living communities, independent living communities, assisted living communities, memory care facilities and continuing care retirement communities for additional [Provider Relief Fund](#) allocations. The lawmakers stressed the importance of these facilities in caring for seniors, explaining, “Even when our country is not facing a pandemic, these facilities face staffing difficulties, and they are particularly hard pressed as their nursing and other professionals have become infected with COVID-19. Additionally, they are having difficulty obtaining basic medical supplies, including masks, gowns, and hand sanitizer.” On the other side of the Capitol, the Senate Special Committee on Aging will hold a [hearing](#) today titled “Caring for Seniors Amid the COVID-19 Crisis.” Senators will hear from witnesses from the New York University Grossman School of Medicine, the University of Chicago and the Visiting Nurses Association Health Group.

HHS issued a [reminder](#) on the [Provider Relief Fund](#) to eligible providers yesterday, stating these providers must act by June 3, 2020, to receive additional relief funds from

the general distribution allocation. The notices explains, “[Eligible providers] have until June 3, 2020, to accept the Terms and Conditions and submit their revenue information to support receiving an additional payment from the Provider Relief Fund US\$50 billion General Distribution. All providers who automatically received an additional General Distribution payment prior to 5:00 pm, Friday, April 24th, must provide HHS with an accounting of their annual revenues by submitting tax forms or financial statements. These providers must also agree to the program Terms and Conditions if they wish to keep the funds.” HHS also states, “The submission of tax forms or financial statements to the portal will also serve as an application for additional funding for those providers that have not already received an additional General Distribution payment. If these providers do not submit their revenue information by June 3, they will no longer be eligible to receive potential additional funding from the US\$50 billion General Distribution.”

Trade Updates

On Wednesday, a bipartisan group of senators [sent a letter](#) to Treasury Secretary Mnuchin expressing concerns that companies owned or directed by the People’s Republic of China (PRC) may take advantage of the economic crisis caused by the COVID-19 pandemic to acquire distressed US companies. The letter – which included long-time China critic and acting chair of the Senate Select Committee on Intelligence, Senator Rubio – urged the administration to “ensure countering the PRC’s predatory economic behavior both at home and abroad continues to be featured in policy deliberations. It was important six months ago, remains important today, and must continue to be a US priority in the future.” They outline specific requests for actions by the administration, including “to investigate and, if appropriate, block PRC state-owned and -directed enterprises from purchasing or otherwise investing in distressed companies to include sale and leaseback agreements for high-value equipment and capital goods.”

Also on Wednesday, US Customs and Border Protection confirmed that it would be extending current limits on nonessential travel across US land borders and through ferry services until June 22. These restrictions on passenger travel from Canada and Mexico have been in place since March 21 but do not apply to goods trade.

Oversight Updates

Today, the House Select Subcommittee on the Coronavirus Crisis will [hold](#) a member briefing on the impact of the coronavirus crisis on medical staff, first responders, grocery store workers, drivers, custodians and other frontline heroes.

The Washington Post [reports](#) that next Tuesday the House Committee on Oversight and Reform will hold a member

briefing at which Christi Grimm, the HHS Principal Deputy IG, will testify. Grimm authored the report that found hospitals in crisis as COVID-19 diagnoses were increasing, which President Trump characterized as “wrong” and “Another Fake Dossier!” Shortly thereafter, the President [announced](#) his intent to nominate Jason Weida to be the HHS’s IG. If confirmed by the Senate, Weida will replace Grimm. According to a draft notice of the hearing, Grimm is expected to testify about her office’s work in response to the pandemic.

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