

COVID-19: US Developments, Implementation and Oversight of CARES Act – May 19, 2020

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The US Senate is in session this week, focusing on oversight of the US\$2.2 trillion Coronavirus Aid, Relief and Economic Security (CARES) Act and what Senate Majority Leader Mitch McConnell (R-KY) calls America's "pivot toward reopening." Congressional Democrats will launch a national public relations campaign today in hopes of pressuring McConnell to consider the US\$3 trillion Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act approved Friday by the US House of Representatives. White House sources indicate it may be weeks or longer before the next steps in the federal legislative response to the challenges of COVID-19 begin to come into focus.

As part of the Senate's CARES Act oversight effort, the Senate Committee on Banking, Housing and Urban Affairs will hear testimony Tuesday from Treasury Secretary Steven Mnuchin and Federal Reserve Board Chairman Jerome Powell, who will focus their remarks on the implementation of the massive March 27 law. At a public event Monday with restaurant operators, President Donald Trump and Secretary Mnuchin signaled a willingness to give businesses additional flexibility in the use of loans secured via the CARES Act's Paycheck Protection Program (PPP) program.

Senate Democratic leaders will launch a messaging campaign today aimed at pushing Senate Majority Leader McConnell and other Republicans to begin negotiations immediately to shape the next coronavirus relief bill. The campaign, conceived by Senate Minority Leader Chuck Schumer (D-NY) and Senate Democratic Policy Committee Chair Debbie Stabenow (D-MI), will seek to portray McConnell's Senate as a "legislative graveyard" and highlight "Republican inaction" on COVID-19, according to [POLITICO](#).

Even as the partisan rhetoric escalates, bipartisan support is increasing from rank-and-file Members of Congress for legislation that would target US\$500 billion to state and local governments. A group of 10 House members on Monday unveiled a House companion to the bipartisan Senate bill proposed weeks ago by Senators Bill Cassidy (R-LA) and Bob Menendez (D-NJ) that would provide

the additional aid. The House bill's sponsors include Representatives Mikie Sherrill (D-NJ), Tom Reed (R-NY), Josh Gottheimer (D-NJ), Peter King (R-NY), Tom O'Halleran (D-AZ), Fred Upton (R-MI), Ted Lieu (D-CA), Brian Fitzpatrick (R-PA), Debbie Dingell (D-MI) and Elise Stefanik (R-NY). The measure as written would provide funding for Puerto Rico but not for any other US territories, an omission Congress may be compelled to correct if the legislation advances.

Senate committee leaders are quietly working to draft other potential components of an eventual Senate Republican alternative to the House-passed HEROES Act, including legislation spearheaded by Senator John Cornyn (R-TX) that would limit lawsuits against business enterprises as the economy reopens.

Tax and Economic Development Updates

[Treasury Secretary Mnuchin](#) and [Federal Reserve Chairman Powell](#) will testify before the Senate Banking Committee today to discuss their ongoing implementation efforts and answer a myriad of general and program-specific questions included in the first Congressional Oversight Commission [report](#), which was released yesterday. Secretary Mnuchin is expected to cover a number of topics, including implementation of the Small Business Administration's (SBA) PPP, which has "process[ed] more than 4.2 million loans for over US\$530 billion to keep tens of millions of hardworking Americans on the payroll." Notably, following a meeting yesterday with restaurant industry executives at the White House, both President Trump and Secretary Mnuchin expressed a willingness to examine ways to provide businesses obtaining PPP loans with additional flexibility in using their loan proceeds. Specifically, Secretary Mnuchin suggested that the Treasury Department is exploring a "technical fix" that would allow borrowers 24 weeks – instead of eight weeks as provided by the CARES Act – to use their funding for purposes of qualifying for loan forgiveness. Notably, this is the same proposed extension that House Democrats included in the HEROES Act, and it appears to be gaining strong bipartisan support, suggesting that such a change may well come to fruition.

Both Secretary Mnuchin and Chairman Powell will also address a number of issues related to a "central focus" of the hearing: the Exchange Stabilization Fund, which provides the Treasury Department with authority to support Federal Reserve lending facilities with US\$454 billion to help provide liquidity to the financial system. Since March 17, the Treasury Department has agreed to support the following 13(3) facilities:

- Commercial Paper Funding Facility;
- Primary Dealer Credit Facility;
- Money Market Mutual Fund Liquidity Facility;
- Term Asset-Backed Securities Loan Facility;
- Primary Market Corporate Credit Facility;
- Secondary Market Corporate Credit Facility;
- Main Street Lending Program;
- Municipal Liquidity Facility; and

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- PPP Lending Facility.

According to Secretary Mnuchin, the Treasury Department to date has committed up to US\$195 billion in credit support to Federal Reserve 13(3) facilities and has US\$259 billion remaining “to create or expand programs as needed, as we continue to monitor a variety of economic sectors closely.” Chairman Powell is also expected to underscore the Federal Reserve’s openness to continue making adjustments to its 13(3) facilities as it learns more about the developing economic crisis and what is needed in terms of the federal response. The financial regulators will also be prepared to receive feedback from senators during the hearing on a number potential adjustments to various federal lending programs, including on issues ranging from [lowering interest rate caps](#) to [prioritizing access for small and mid-sized businesses](#) to establishing [more stringent loan eligibility certification requirements](#).

Additionally, *POLITICO* is reporting that the White House may release “as soon as this week a fuller set of ideas aimed at helping the recovery in distressed areas.” According to the report, Trump advisor Stephen Moore has suggested that the forthcoming proposal will focus on “how to get investment and capital into distressed and abandoned areas” and is likely to include, among other ideas, leveraging Opportunity Zones – a federal program established by the 2017 tax reform law that provides tax incentives for investments in new businesses and commercial projects in low-income communities. One other tax policy being floated to the Treasury Department for consideration as part of the ongoing federal stimulus response: a further delay in excise tax payments on domestic beer, wine, and distilled spirits. Leading a bipartisan group of well over 100 lawmakers, Representative Earl Blumenauer (D-OR) yesterday sent a [letter](#) to Secretary Mnuchin urging that the Treasury Department delay the due date of all such excise tax payments for the remainder of the calendar year – a date Treasury delayed by 90 days earlier this year when it extended the payment deadline from March 1 to July 1.

Health Updates

The Centers for Medicare & Medicaid Services (CMS) issued [guidance](#) for state and local officials on the safe reopening of nursing homes across the United States. CMS stresses that decisions on reopening these long-term care facilities should be made with a careful review of facility, community and state factors/orders, including a study of case status in the community and nursing home(s), staffing availability, testing availability, universal source control, personal protective equipment availability for staff and local hospital capacity. The guidance explains reopening phases, which “cross-walk to the phases of the plan for [Opening Up America Again](#), and include[] efforts to maintain rigorous infection prevention and control, as well as resident social engagements and quality of life.” CMS advises, “Nursing homes should remain in the current state of highest mitigation while the community is in Phase 1 of Opening Up America Again (in other words, a nursing home’s reopening should lag behind the general community’s reopening by 14 days).” Lawmakers on Capitol Hill continue to focus on how the pandemic affects older populations, and the Senate Special Committee on Aging will hold a [hearing](#) on the topic on Thursday, 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.

President Trump announced he has been taking hydroxychloroquine, an antimalarial drug, for “a couple of weeks,” as well as zinc and a dose of azithromycin, an antibiotic. As *POLITICO Playbook* [points out](#) this morning, it is unclear whether the President is actually taking the drug. The White House released a [letter](#) from President Trump’s physician that does not explicitly state

President Trump is taking the drug; rather, the doctor only confirms he had discussions with President Trump on hydroxychloroquine, and they “concluded the potential benefit from treatment outweighed the relative risks.” Medical experts are [concerned](#) the President’s remarks may prompt others to take the drug, which has not been proven to be an effective COVID-19 preventive treatment and can carry significant risks. As we reported previously, the Food and Drug Administration (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. President Trump 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. Earlier this month, the National Institutes of Health (NIH) [announced](#) it is beginning a clinical trial to determine whether a treatment of hydroxychloroquine and azithromycin can prevent hospitalization and death from COVID-19.

Department of Health and Human Services Secretary Alex Azar expressed his disagreement with comments from White House adviser Peter Navarro, who [said](#) over the weekend that the Centers for Disease Control and Prevention (CDC) had “let down the country” in its actions surrounding initial testing efforts. Secretary Azar [said](#) Navarro’s comments were “inaccurate and inappropriate,” claiming the CDC’s testing “was never going to be the backbone of testing in the United States” and stating the private sector needs to develop tests. This is not the first time Navarro has been outspoken against government actions or officials as they relate to public health. In early April, Navarro and Dr. Anthony Fauci, Director of the National Institute of Allergy and Infectious Diseases at the NIH, disagreed over how the administration should discuss the use of hydroxychloroquine as a treatment of COVID-19. Navarro was adamant that studies conducted overseas showed therapeutic efficacy, while Dr. Fauci and other public health officials believed these studies lacked appropriate controls and provided only anecdotal evidence. During a cable news interview, Navarro explained that “doctors disagree about things all the time” and urged a “second opinion” to promote his view that hydroxychloroquine should be utilized in treating coronavirus patients. Navarro has a Ph.D. in Economics; Dr. Fauci is a medical doctor.

Trade Updates

Late Monday night, President Trump released the text of a [letter](#) he sent to Dr. Tedros Adhanom Ghebreyesus, Director-General of the World Health Organization (WHO), voicing continued concern with the global health body’s response to the COVID-19 pandemic. He lists specific criticisms with the WHO’s actions in recent months, including allegations that it was notified as early as late December 2019 of the human-to-human transmission of the coronavirus. President Trump states that the US has already been in talks with the WHO about potential reform, pledging that if the body does not commit to “major substantive improvements within the next 30 days,” the US will make its temporary funding freeze permanent and consider withdrawing from the organization altogether.

Oversight Updates

Yesterday, the day after the Congressional Oversight Commission issued its first report, Commission members Senator Pat Toomey (R-PA) and Representative French Hill (R-AR) [echoed](#) the concerns expressed in the report that the Treasury Department and the Federal Reserve have been slow to disburse the US\$500 billion under the CARES Act to help businesses and local governments.

Representative Hill expressed hope that Treasury Secretary Mnuchin and Federal Reserve Chairman Powell will shed light on the CARES Act programs and the delay in their implementation of them at the Senate Banking Committee [hearing](#) today. Ahead of the hearing, the Committee's Ranking Member, Senator Sherrod Brown (D-OH), sent a [letter](#) to Secretary Mnuchin and Chairman Powell urging them to avoid the mistakes of the PPP, by focusing on small and medium-sized businesses, underserved communities, and improving data collection and transparency.

Senator Elizabeth Warren (D-MA), another member of the Senate Banking Committee, sent [letters](#) to the Federal Reserve Bank of New York and the Federal Reserve Bank of Boston regarding the certification process for the recipients of relief funds distributed through lending facilities by the Federal Reserve under the CARES Act. She called on the body to: (1) implement a comprehensive and robust set of requirements for top executives of these companies to verify eligibility before they receive any funds; (2) require businesses to reaffirm their eligibility while bonds or loans remain outstanding (through periodic due diligence); and (3) add language regarding criminal and civil penalties (including disgorgement) in the event executives provide fraudulent or misleading information or misuse funds. Secretary Mnuchin and Chairman Powell also received the letters.

House Speaker Nancy Pelosi (D-CA) wrote a [letter](#) to President Trump requesting that he provide "detailed and substantial justification" for his Friday night removal of State Department Inspector General (IG) Steve Linick. In her letter, Speaker Pelosi called "alarming" news reports that the IG had almost finished an investigation into Secretary of State Pompeo's decision to fast-track an US\$8 billion arms sale to Saudi Arabia, an allegation Pompeo has [denied](#). Senator Charles E. Grassley (R-IA) also [called on](#) the President to provide an explanation of his firing of Linick, as well as of the Intelligence Community IG Michael Atkinson. Senator Grassley called insufficient the President's stated reason for the firings, which was a loss of confidence. President Trump [said](#) in a public appearance that he does not know Linick, but he was "happy" to fire him because Secretary Pompeo "requested that I do it."

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