

COVID-19: US Developments – Implementation and Oversight of CARES Act – June 10, 2020

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The United States has experienced a [sharp increase](#) in the number of new reported cases of coronavirus over the past week, but Beltway media coverage and the policy debate in Washington this week are largely centered on the potential for action in both chambers of the US Congress on police reform legislation. Republicans, emboldened by recent national employment data indicating the nation's economy may be on the mend as a result of the March 27 [CARES Act](#) and the phased reopening of many states and territories, have successfully pushed off the start of bipartisan negotiations over the next major federal COVID-19 response package until late June or early July. Federal Reserve Board Chairman Jerome Powell will be pressed to comment on the advisability of the GOP timetable when he addresses reporters [later today](#) on the state of the American economy after weeks of public fury over race relations and months of damage from the pandemic.

POLITICO's Dan Diamond [reports](#) on the approach being taken by President Donald Trump and his administration to COVID-19:

It's been more than a month since the White House halted its daily coronavirus task force briefings. Top officials like infectious disease expert Anthony Fauci have largely disappeared from national television — with Fauci making just four cable TV appearances in May after being a near fixture on Sunday shows across March and April — and are frequently restricted from testifying before Congress. Meanwhile, President [Trump] is preparing to resume his campaign rallies after a three-month hiatus, an attempted signal to voters that normalcy is returning ahead of November's election, and that he's all but put the pandemic behind him.

Meanwhile, officials in at least 19 states have recorded two-week trends of increasing coronavirus cases, including spikes of more than 200 percent in Arizona and more than 180 percent in Kentucky. Two months after the White House issued so-called gating criteria that it recommended states hit before resuming business and social activities, only a handful of states — like Connecticut, New Jersey, New York and South Dakota — currently meet all of those benchmarks, according to CovidExitStrategy.org.”

Topics covered in today's report include: tax and economic development, health, international trade, government oversight and state level developments.

Work continues in Congress on oversight of COVID-19 programs and other pandemic-related topics. The director of the nonpartisan Congressional Budget Office (CBO), Phillip Swagel, spoke Tuesday at an [online forum](#) during which he predicted the road to economic recovery in the aftermath of the pandemic will be more difficult than it was after the 2008 recession caused by a meltdown in the financial system. Treasury Secretary Steven Mnuchin and US Small Business Administration (SBA) administrator Jovita Carranza will appear today before the [Senate Committee on Small Business & Entrepreneurship](#) to discuss the implementation of the CARES Act's Paycheck Protection Program (PPP).

The virus, however, has not been the focal point of discussion on Capitol Hill this week for the leadership of either party. House Speaker Nancy Pelosi (D-CA) and other senior congressional Democrats held a [press conference](#) Monday in Washington to unveil new legislation, the Justice in Policing Act, during which COVID-19 was scarcely mentioned by legislators or reporters. Senate Republicans under the leadership of Senate Majority Leader Mitch McConnell (R-KY) are reported to be working with the White House this week on police reform legislation as well. The brother of George Floyd, the black US citizen slain in the custody of white police officers last month on the streets of Minneapolis, will appear [today](#) before the House Committee on the Judiciary in testimony that is expected to receive widespread media attention. An [autopsy](#) showed Mr. Floyd had coronavirus at the time of his passing, but that it was not a factor in his death.

Tax and Economic Development Updates

Amidst the Federal Reserve's week of policy meetings, Federal Reserve Chairman Powell is set today to hold a press conference, during which *Politico* predicts "the Fed chief will likely keep up his persistent advice to Congress to spend more to spur a meaningful recovery, as he highlights the limits of the central bank's own power... The forecasts will also provide the basis for Powell to nudge Congress to do more, even as the central bank itself continues to roll out emergency lending programs designed to aid businesses and municipalities." With regard to those 13(3) liquidity facilities, as we continue to wait for the Main Street Lending Program (MSLP) to officially launch, our financial services team has [published](#) an overview of key updates to the MSLP provided by the Federal Reserve over the past two weeks, along with a summary of the program forms released by Federal Reserve Bank of Boston. The alert also calls attention to aspects of the MSLP that potential borrowers and lenders should consider when participating in the MSLP, and highlights some ambiguities that might affect their analysis of the program and its terms. Separately, note that the Federal Reserve yesterday [announced](#) that results from both its Dodd-Frank Act stress tests and the related Comprehensive Capital Analysis and Review (CCAR) will be released on June 25, 2020, and will include "additional analyses that explore how plausible risks to the economy stemming from the coronavirus response could affect bank capital."

The SBA has released an updated [report](#) on Paycheck Protection Program (PPP) loans approved through June 6, 2020. Notably, the report now includes the names of the top 15 lenders based upon the dollar amount of loans approved. Interestingly, the top 15 lenders include some of the nations' largest banks, such as JPMorgan Chase and Bank of America, as well as regional banks like Zions Bank and other, smaller lenders such as Cross River Bank that partnered with financial technology companies to issue loans. According to the report, there is currently just shy of US\$131 billion remaining for PPP lending. Notably, the release of this updated report comes as SBA Administrator

Carranza and Treasury Secretary Mnuchin are set to testify today about the PPP before an oversight hearing in the Senate Committee on Small Business. In addition to expected pushback from lawmakers about the program's rollout and ongoing administrative issues, we may also see additional calls for changes to the program. One such change, which we have highlighted before: a proposal by Senate Committee on Finance Member John Cornyn (R-TX), which would allow PPP loan recipients to deduct expenses paid with PPP loans that are forgiven. In speaking with *Tax Notes*, Senator Cornyn noted that [S.3612](#), the Small Business Expense Protection Act of 2020, "appears to have broad support" – including support from Senate Finance Committee Chuck Grassley (R-IA) and Ranking Member Ron Wyden (D-OR) – and that he is "slowly chipping away at [] holds" on the legislation. You will recall that Treasury Secretary Mnuchin previously referred to this approach as "double dipping" and suggested it should not be allowed. There may also be discussion about the interplay between the PPP and the employer retention tax credit (ERTC), including a provision in the HEROES Act that would expand the tax incentive and make clear that PPP loan recipients are also eligible for the ERTC

Finally, yesterday, Congressional Budget Office (CBO) Director Phillip Swagel sent a [letter](#) to House Speaker Nancy Pelosi responding to questions regarding the worsening of the economic outlook since the start of the 2020 COVID-19 pandemic. The letter specifically compares two projections of gross domestic product (GDP): the interim projections for 2020 and 2021 that the Congressional Budget Office published in May 2020, and the projections that the agency published in January 2020. According to the CBO:

CBO estimates that each additional dollar that was used to fund state and local governments by increasing the federal deficit would increase economic output over the next few years by about as much as would a dollar used to fund some policies recently enacted in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, such as the funding provided to state governments for pandemic-related expenses. Other provisions of the CARES Act, such as increases in federal spending on Medicare, are expected to have larger effects on the economy. Still other provisions, such as business tax provisions and refundable tax credits, are expected to have smaller effects – although the size of the effects would depend on the specifics of the provisions.

Health Updates

After recent criticism from stakeholders and high-ranking lawmakers, the Department of Health and Human Services (HHS) announced [further details](#) on the distribution of the Provider Relief Fund (PRF) on Tuesday. US\$15 billion in funding will be issued to Medicaid and Children's Health Insurance (CHIP) providers who have not yet received an allocation from the PRF. Another US\$10 billion will go to safety-net hospitals. The funding comes on the heels of a [letter](#) sent last week to HHS from the Senate Committee on Finance and House Committee on Energy and Commerce requesting the agency move quickly to assist this category of providers. The portal will open Wednesday, and the payment for Medicaid providers will be at least 2% of gross revenue from patient care. HHS intends to issue the funding 10 days after providers have submitted the required information. Safety net providers are eligible for a minimum of US\$5 million and a maximum of US\$50 million in payments, which are to be disbursed this week.

The Centers for Medicare and Medicaid Services (CMS) provided [additional guidance](#) on safely reopening healthcare facilities for non-emergent, non-COVID-19 healthcare. The recommendations include: separating COVID-19 patients to different floors or buildings with another entrance, when feasible; engineering areas to facilitate social distancing; minimizing the number of visitors, and screening them before entry into the facility; sanitation protocols; the use of surgical face masks by

healthcare providers, and cloth face masks for patients and visitors; and testing patients 24 hours before they are to undergo a surgery or procedure.

Officials at the World Health Organization (WHO) are clarifying a claim by a top official that “it still seems to be rare that an asymptomatic person actually transmits [coronavirus] onward to a secondary individual.” The comments were made on Monday by epidemiologist and WHO technical lead for coronavirus response Maria Van Kerkhove, and seemingly contradict the Centers for Disease Control and Prevention. During a live question-and-answer session on the WHO’s social media pages, Kerkhove said, “the majority of transmission that we know about is that people who have symptoms transmit the virus to other people through infectious droplets — but there are a subset of people who don’t develop symptoms, and to truly understand how many people don’t have symptoms, we don’t actually have that answered yet.” On May 29, President Trump announced that the US would be terminating its WHO membership and no longer providing funding for the organization.

Senate Committee on Health, Education, Labor and Pensions (HELP) Chairman Lamar Alexander (R-TN) issued a [white paper](#), titled “Preparing for the Next Pandemic,” and encouraged Congress to pass legislation this year to address future pandemics. The working document includes a recommendation to Congress to “work with federal departments and agencies, states, and the private sector to address these specific issues and newly identified gaps.” These include the acceleration of research and development of tests, treatments and vaccines; building and maintaining federal and state stockpiles; better coordination of federal agencies; and improvements in disease surveillance, medical surge capacity and state and local public health capabilities. The committee asks for stakeholder input via “comments, responses, and any additional recommendations” by June 26.

Trade Updates

Senator Maria Cantwell (D-WA), Ranking Member of the Senate Committee on Commerce, Science and Transportation, and Senator Parry Murray (D-WA) joined Washington state lawmakers in a [letter](#) to Labor Secretary Eugene Scalia urging his agency timely review a Trade Adjustment Assistance (TAA) application filed by Boeing to support 9,800 workers displaced or expected to be laid off by the end of July. TAA programs support workers displaced by shifts in international trade with retraining and reemployment programs. The letter notes that the Boeing workers “are being displaced, in part, due to trade pressures and international economic conditions.” Plummeting passenger air travel has had ripple effects across airlines and down to aerospace manufacturers like Boeing and their supply chains more broadly.

Meanwhile, the US and Canada are [reportedly](#) planning to extend limits on non-essential passenger travel across their border before they expire on June 21. The limits (which do not apply to goods trade) were first imposed in late March and have been extended several times since then, together with similar limits on the United States’ southern border with Mexico. Officials are reportedly planning to extend the restrictions to late July.

Oversight Updates

Yesterday, Senators Elizabeth Warren (D-MA), Chuck Schumer (D-NY) and Richard Blumenthal (D-CT) formally requested that the Pandemic Response Accountability Committee (PRAC), created under the CARES Act and made up of inspectors general from relevant departments, conduct an [investigation](#) of “Project Air Bridge,” the Administration’s coronavirus-related medical supply

chain management project. They also released documents and information that the six companies involved in the project provided in response to the senators' request in April. In urging PRAC to investigate, the senators characterized the project as "marked by delays, incompetence, confusion, and secrecy involving multiple Federal agencies and actors." According to [The Washington Post](#), the White House on several occasions also had overstated the amount of supplies distributed through the project. At the Senate Committee on the Judiciary hearing discussed below, Senator Blumenthal also urged the Department of Justice (DOJ) to look into Project Air Bridge, if the Department is not looking into it already. Additionally, in April, the senators [wrote](#) to the inspectors general of HHS and the Department of Homeland Security (DHS), in which they requested a joint investigation into the management and distribution of coronavirus-related medical supplies by HHS and the Federal Emergency Management Agency.

The Senate Judiciary Committee held a public [hearing](#) on "COVID-19 Fraud: Law Enforcement's Response to Those Exploiting the Pandemic," at which representatives from the DOJ, the Federal Bureau of Investigation, the US Attorney's Office for the District of New Jersey and DHS testified. They spoke about their collaboration with state attorneys general and inspectors general, including that of the SBA, in investigating COVID-19-related crimes, including illegal hoarding and price gouging, misbranding, PPP fraud, healthcare fraud, unemployment insurance fraud and cybercrimes. With regard to PPP fraud specifically, 116 investigations have been initiated and over US\$126 million of potential fraud has been identified. However, several Democratic and Republican senators expressed frustration with the slow pace of prosecutions of fraud related to the trillions of dollars in government relief money. With regard to unemployment insurance fraud, Senator Dianne Feinstein (D-CA) said that, in her 26 years in the Senate, she has "never seen anything like this. It's a program riddled with fraud." Senator Dick Durbin (D-IL) said it is "laughable" that only a handful of PPP prosecutions are underway, considering the number of PPP loans and how unsophisticated many of the fraudulent schemes are. More generally, Senator Sheldon Whitehouse (D-RI) said he is "sick of" the DOJ's "persistent failure of response to oversight" because of its failure to answer the committee's questions for the record and its letters. Committee Chairman Lindsey Graham (R-SC) expressed frustration over the general nature of the witnesses' answers.

The first criminal securities fraud [charges](#) related to the pandemic were unsealed yesterday. The president of a California-based medical technology company was charged in connection with his alleged participation in schemes to mislead investors, to manipulate the company's stock price and to conspire to commit health care fraud. The health care fraud stems from the company's alleged submission of over US\$69 million in false and fraudulent claims for allergy and COVID-19 testing. The executive is charged with one count of securities fraud and one count of conspiracy to commit health care fraud.

Senators Grassley and Wyden, chair and ranking member, respectively, of the Senate Committee on Finance, [wrote](#) to the HHS Acting IG Chisti Grimm requesting that her office look into reports that nursing home residents across the country covered under Medicaid were instructed to hand over their Economic Impact Payments to the nursing home or assisted living facility in which they reside. Such practices are "improper and contrary to congressional intent," the senators wrote. In addition to investigating these reports, the senators requested that the HHS issue alerts to ensure the Economic Impact Payments are not confiscated.

On Thursday, June 11, the House Committee on Oversight and Reform Select Subcommittee on the Coronavirus Crisis will hold a video [briefing](#) with experts and affected Americans to examine the impact of the pandemic on nursing home residents and workers. This hearing comes as new reporting shows that approximately 40,000 nursing home residents and more than 600 employees

have died from COVID-19.

State Updates

Throughout the COVID-19 crisis, state attorneys general have dealt with myriad fraud schemes and conspiracies. But **California** Attorney General Xavier Becerra (D) said the latest scam “[sickens the soul](#).” Attorney General Becerra put citizens on guard against anyone claiming they are a contact tracer. He reported con artists are using phones, email and texts to trick people into giving them important and sensitive information – such as social security numbers – under the guise that the targeted person had been in contact with a COVID-19 infected individual. Attorney General Becerra said legitimate contact tracers will never ask for financial or other sensitive information and his office is attempting to trace the fraudulent “tracers.”

Wyoming Governor Mark Gordon (R), [along with five governors](#) from oil-producing states have called on the Environmental Protection Agency (EPA) to waive the standard or extend economic relief opportunities to struggling refineries. To lessen the financial burden on smaller operations, in the past, the EPA has extended hardship relief or waivers to some refineries unable to meet the requirements. In January, a panel of judges in the [10th US Circuit Court of Appeals](#) ruled the agency was overextending relief. The federal court ruling placed small oil refineries, including those in Wyoming, in a financial crunch, which has worsened due to the COVID-19 pandemic. Now these state leaders have an unlikely new ally: the National Wildlife Federation, who joined the governors from **Louisiana** (D), **Oklahoma** (R), **Pennsylvania** (D), **Texas** (R) and **Utah** (R) in advocating for a waiver. The conservation group recently called on the EPA to also waive the renewable fuel standard requirements but for a different reason, claiming the mandate increases harm to the environment and climate. While the EPA declined to file an appeal after the federal court ruling in January, the agency is in ongoing discussions on how it will interpret the ruling going forward.

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