

## Public Policy Briefing – August 6, 2020

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Pressure is mounting on Republican and Democratic negotiators in the US Capitol to reach an agreement on a COVID-19 response package that can pass both chambers of a divided Congress and be signed into law by President Donald Trump in the coming days. But evidence persists that the March 27 enactment of the massive [CARES Act](#) may have been the high-water mark for bipartisan collaboration in the coronavirus era.

Months after CARES, Republicans and Democrats have been driven back to the negotiating table by an array of factors. The steady march toward economic recovery that seemed to be underway in late May, when a national jobs report showed a precipitous drop in unemployment as communities began reopening, is showing signs of having possibly stalled. Emergency measures enacted by Congress in March to ease the economic blow of the coronavirus lockdown, including the enhanced unemployment benefits established by CARES, have expired. Schools across the country are set to begin their fall semesters in the coming weeks, and governments in many states, territories and local communities are reporting a critical need for a new infusion of federal cash.

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*Today's report focuses on the following US policy areas:*

- *Federal budget and appropriations for FY 2021*
- *Tax and economic development*
- *Health*
- *Trade*
- *Congressional oversight on coronavirus response and government accountability*
- *State level developments*

**Publication Note:** *Following a modified schedule, the next Public Policy Briefing will be published*

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on Tuesday, August 11.

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Republican and Democratic negotiators share a general willingness to pass legislation addressing these and other pressing questions. But they're miles apart in terms of how much they're willing to spend, and in many cases differ as well on significant policy details. Bridging the yawning chasm between the GOP and congressional Democrats on these matters will require considerable compromise – a heavy lift for political leaders who have been sent into the talks by their respective constituencies with orders to bring home not a compromise, but a “win.”

House Speaker Nancy Pelosi (D-CA) and Senate Minority Leader Chuck Schumer (D-NY) could extract hundreds of billions of dollars in concessions from the White House and congressional Republicans, yet still be viewed by their members as having capitulated to the GOP by agreeing to a deal that falls short of the \$US3.5 trillion [HEROES Act](#) passed by the House in May.

White House chief of staff Mark Meadows and Treasury Secretary Steven Mnuchin, for their part, could secure an agreement that rebuffs a host of Democratic priorities and provides needed support for the US economy at a critical moment in President Trump's re-election bid, yet still find themselves accused of having caved and betrayed conservatives (see today's lead *Wall Street Journal* [editorial](#)).

As a result of these dynamics, the chance that the talks will ultimately fail to produce a sequel to CARES is very real. Via *The Hill*:

*White House chief of staff Mark Meadows on Wednesday appeared to put a time limit on talks to reach a new deal on a congressional coronavirus relief package, saying if negotiators can't reach an agreement by Friday, they likely won't be able to do a deal.*

*'I think at this point we're either going to get serious about negotiating and get an agreement in principle or I've become extremely doubtful that we'll be able to make a deal if it goes well beyond Friday,' Meadows said. 'We've been spending so much time together that if you're not making progress, there's no sense to continue,' he added.'*

A collapse of the bipartisan COVID-19 negotiations would touch off a firestorm of partisan fingerpointing as the 2020 US presidential election season moves into its final, critical stretch. It could impact markets as well, possibly further darkening the pandemic-driven cloud looming over the American economy. Yet such a failure may be preferable in the eyes of many Washington policymakers to having to cast a vote in favor of a compromise bill that falls woefully short of the rhetorical promises made to their respective voters.

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## Appropriations Updates

Having passed 10 of its 12 annual spending bills during the month of July, the House of Representatives has largely completed its work to fund the federal government next year. The House is now well-positioned to begin negotiating final fiscal year 2021 spending bills with the Senate. To date, however, the Senate has thus far been unable to advance any of its appropriations measures as a result of partisan divisions over opposing funding and policy priorities.

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With only 54 days remaining in the current fiscal year (which ends on September 30), questions remain regarding how and when Congress will complete a federal budget for the coming year. Senate Appropriations Committee Chairman Richard Shelby (R-AL) conveyed earlier this week that it is unlikely that his subcommittees will mark up and advance any of their spending bills given the Senate Appropriations Committee's present partisan stalemate. Previously scheduled markups slated for June were abruptly canceled when Senate Democrats indicated their desire to offer funding and policy amendments addressing the COVID-19 pandemic, as well as social justice issues resulting from the May 25 killing of George Floyd.

Chairman Shelby and Senate Majority Leader Mitch McConnell (R-KY) have remained outspoken, consistently arguing that the adoption of additional spending and partisan policy provisions would be a violation of the Bipartisan Budget Act of 2019 (Public Law 116-37). That statute set an overall US\$1.375 trillion ceiling for discretionary spending for the House and Senate Appropriations Committees to complete their fiscal year 2020 and 2021 funding bills. The agreement also established an understanding – in principle but not in statute – that controversial amendments would not be included in base bill text or offered as committee amendments.

Two recently passed House proposals ([H.R. 7608](#) and [H.R. 7617](#)) received harsh critiques from House Republicans, Senate Republicans, and the Trump Administration over House Democrats including more than US\$245 billion in emergency spending across their bills. Republicans also criticized the inclusion of dozens of policy provisions taking aim at Trump Administration policies addressing climate change, community policing and law enforcement, second amendment rights, foreign policy and COVID-19 related issues, among many others. In Statements of Administration Policy for each of the funding measures, the Office of Management and Budget identified the Bipartisan Budget Act of 2019 as “absolutely essential to the completion of all 12 (fiscal year 2020) appropriations bills in December 2019.” The White House further indicated that if the House-passed funding proposals were presented to the President in their current form, his advisors would recommend that he veto them.

Senate Appropriations Committee Ranking Member Patrick Leahy (D-VT) has countered that offering funding and policy amendments regarding COVID-19 and social justice concerns is not only appropriate, it is the responsibility of duly-elected senators charged with addressing issues of vital national interest and importance. However, Chairman Shelby is loath to put vulnerable members from the Appropriations Committee in the position of voting for amendments that could be used against them in November.

For the present time, and likely through November 3, the Senate GOP remains acutely concerned about giving Senate Democrats any opportunity to use the appropriations process to their political advantage. In the midst of this volatile political environment, Senate Republicans will continue to work mightily to defend a three-seat majority, with only 89 days remaining until a consequential national election that will determine – and potentially redefine – the balance of power in Washington DC.

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## **Tax and Economic Development Updates**

Despite this morning's Department of Labor reports that initial claims for unemployment benefits dropped last week to 1.19 million – bringing the total number of Americans receiving such benefits to 31.3 million – pressure remains on Congress to negotiate and compromise on another COVID-19 relief package, which can be passed by both the House and Senate, as well as signed into law by the White House. Reports, however, suggest that there remains a wide gap between the parties in the negotiations on a number of issues, including the amount and duration of expanded unemployment

benefits. However, according the White House Chief of Staff Mark Meadows, President Trump may be prepared to take executive action to extend unemployment benefits and the eviction moratorium if Congress does not reach agreement by this Friday.

Notably, as Senate negotiations continue, various amendments have been submitted in an attempt to improve certain economic recovery provisions included in the CARES Act. For example, Senators Marco Rubio (R-FL) and Susan Collins (R-ME) submitted amendments to the pending economic stimulus package that would make certain changes to the Paycheck Protection Program (PPP), including a proposal to extend the program – currently set to expire this Saturday – through the end of the year, as well as allow businesses with 300 or fewer employees that can show a 35% revenue decline to apply for a second PPP. Additionally, Senator Mike Crapo (R-ID) has submitted an amendment that would provide the Treasury Department and Federal Reserve with authority to approve financial assistance even if it “may incur losses.” The Federal Reserve would also be provided with temporary authority under “unusual and exigent circumstances” to ease bank capital requirements for up to one year with a 180-day extension to allow banks to transition back to compliance with current capital requirements.

Other developments of note since our last report include:

- The Federal Reserve Bank of New York has released a [study](#), which shows that 30 counties account for 40% of receipts from Black-owned businesses, and 19 of those areas — roughly two-thirds — have the highest number of coronavirus cases in the country, making clear that the Black community has been disproportionately impacted by COVID-19.
- Relatedly, House Financial Services Committee Chair Maxine Waters (D-CA) and Senator Elizabeth Warren (D-MA) have introduced [legislation](#) that would require the Federal Reserve to carry out its functions in a way that “minimizes and eliminates racial disparities in employment, wages, wealth, and access to affordable credit.”
- The Senate Banking Committee yesterday voted to advance nominees Hester Peirce and Caroline Crenshaw for commissioner positions at the Securities and Exchange Commission (SEC), and Kyle Hauptman for a board position at the National Credit Union Administration.
- Notably, the SEC on Wednesday unanimously agreed to make [comprehensive modifications](#) to the mutual fund and exchange-traded fund disclosure framework to “better serve the needs of retail investors.”

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## Health Updates

Oversight of the administration’s plans for vaccine distribution continues on Capitol Hill. On Wednesday, House Energy and Commerce Committee Chairman Frank Pallone (D-NJ) and Oversight and Investigations Subcommittee Chair Diana DeGette (D-CO) sent [a letter](#) to Health and Human Services (HHS) Secretary Azar and White House Coronavirus Task Force Coordinator Dr. Deborah Birx requesting details on the development of a national COVID-19 vaccine plan. The letter was critical of the lack of public stakeholder input and the absence of “consideration for the existing infrastructure the nation has long relied upon for the allocation, distribution, and tracking of vaccines.” Pallone and DeGette sent a similar letter on May 21, and have not yet received a response. The committee leaders restated their request for answers to a series of questions, as well as a briefing on the full scope of Operation Warp Speed, by August 19.

As numerous vaccine developments are underway, [promising news](#) about the treatment of COVID-19 came out of the National Institutes of Health (NIH) on Wednesday. An NIH-backed study found that there are 21 existing drugs on the market that could be repurposed to help treat the disease. When

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taken in tandem with remdesivir, four of those drugs may also be used to block the virus itself. According to the study, Apilimod, an autoimmune therapy, and Clofazimine, used to treat leprosy, showed the most promise.

The NIH has also begun a [Phase 2 clinical trial](#) evaluating the use of new therapeutics to treat COVID-19. The study will focus on those who have been diagnosed with the coronavirus and have mild to moderate symptoms that do not require hospitalization. According to the press release, “the primary goals of the Phase 2 trial are to evaluate safety, to see if the investigational therapeutic can reduce the duration of symptoms through study day 28, and to see if the investigational therapeutic can increase the proportion of participants with undetectable virus in nasopharyngeal swabs at specific time points.”

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## Trade Updates

As first reported by [USA Today](#), President Trump will sign a new executive order today invoking the Defense Production Act to require the federal government to buy certain drugs from US manufacturers. The “Buy American” measure will reportedly direct the creation of a new list of “essential medicines”; the government will be required to purchase these drugs and other medical supplies from manufacturers in the US rather than overseas. The measure will also expedite permitting for domestic manufacturers of pharmaceutical ingredients and essential medicines, directing the Food and Drug Administration and the Environmental Protection Agency to prioritize them during regulatory review. Finally, the measure will reportedly also target the trafficking of counterfeit drugs by third-party sellers online as part of government procurement efforts.

Senior White House trade advisor Peter Navarro said that the measure “establishes Buy American rules for our government agencies, strips away regulatory barriers to domestic pharmaceutical manufacturing” and will incentivize new technologies for pharmaceutical manufacturing to keep drug prices low and reshore production of medicine. President Trump is expected to sign the measure during a tour of Whirlpool Corp.’s Clyde, OH, washing machine factory, where he will also highlight his administration’s efforts to support US manufacturing and will likely discuss the Section 201 tariff action that established tariffs on washing machine imports.

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## Oversight Updates

Yesterday, the chairs of three House committees sent a [letter](#) to the Eastman Kodak Company, requesting documents regarding the company’s US\$765 million federal loan to support the production of ingredients for generic drugs and the company executives’ trading activity before the loan was publicly announced. The chairs are Representatives James Clyburn (D-SC), Chairman of the House Committee on Oversight and Reform’s Select Subcommittee on the Coronavirus Crisis; Maxine Waters (D-CA), Chairwoman of the Committee on Financial Services; and Carolyn Maloney (D-NY), Chairwoman of the Committee on Oversight and Reform. The chairs, along with Chairman Eliot Engel (D-NY) of the Foreign Affairs Committee and Chairman Al Green (D-TX) of the Financial Services Committee Subcommittee on Oversight and Investigations, also sent a letter to the US International Development Finance Corporation (DFC), seeking documents related to this loan. The chairs are looking into the circumstances of the DFC’s award of the loan, despite Kodak’s lack of pharmaceutical experience, and the “windfall gained” by the company’s executives. Separately, Senator Elizabeth Warren (D-MA) has [called on](#) the Securities and Exchange Commission to investigate potential insider trading that occurred prior to the administration’s public announcement of a Defense Production Act deal with Kodak.



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Also yesterday, Chairman Clyburn [announced](#) that Ensign Group, Inc. returned approximately US\$109 million it had received from the Provider Relief Fund. The company's decision to return the funds comes after the Select Subcommittee on the Coronavirus Crisis opened an inquiry into the nursing homes' handling of the pandemic and their use of coronavirus relief funds. In making the announcement, Chairman Clyburn "urge[d] all health care providers that received taxpayer dollars from the Provider Relief Fund to allocate them toward their lawful purposes—caring for patients or replenishing revenues lost as a result of the pandemic—or return the funds immediately."

Today, the Select Subcommittee on the Coronavirus Crisis is holding a remote [hearing](#) with former Secretary of Education Arne Duncan and education and public health professionals to examine the challenges to safely reopening K-12 schools.

Tomorrow, the Congressional Oversight Commission will hold its first public [hearing](#). It will hear testimony on the Main Street Lending Program established by the Treasury Department and Federal Reserve pursuant to the CARES Act. Established under the CARES Act, the Commission's members are Bharat Ramamurti, former aide to Senator Warren; Senator Pat Toomey (R-PA); Representative Donna Shalala (D-FL); and Representative French Hill (R-AR). Senate Majority Leader Mitch McConnell and House Speaker Nancy Pelosi still have not named the Commission's chair. Yesterday, Senators Chris Van Hollen (D-MD), Kamala Harris (D-CA), Robert Menendez (D-NJ), and Cory Booker (D-NJ) [introduced](#) the CARES Congressional Oversight Commission Diversity Act, which seeks to ensure that the communities that have been hit hardest by the coronavirus pandemic are represented on the Congressional Oversight Commission. While the senators acknowledged the current Commissioners "are all committed, well-qualified public servants," they pointed out that "none of them are from the Black, Latinx, Pacific Islander or Native American communities, all of which have been disproportionately hard hit by the COVID-19 pandemic." The proposed legislation would increase the number of non-chair commission members to eight and require half of the total members to be from groups disproportionately affected by COVID-19 and the resulting economic recession.

Additionally:

- [The Washington Post](#) reports more than a dozen of for-profit nursing homes that received coronavirus relief funds had previously settled civil lawsuits with the Justice Department, which alleged improper Medicare billing, forged documents, substandard care and other abuses.
- Senators Warren and Brian Schatz (D-HI) sent a [letter](#) to Charles Schaft, Chief Executive Officer and President of Wells Fargo, following reports about the bank placing non-delinquent borrowers in mortgage forbearance programs without their consent. As part of the CARES Act, Wells Fargo provided a forbearance option that allows borrowers experiencing financial hardship to delay payments on their mortgages. Recent reports show, however, that some mortgages were put in forbearance simply because the borrowers sought information on the forbearance options during the pandemic.
- A Texas man has been [charged](#) with fraud related to PPP loans. After receiving more than US\$1.6 million in PPP funds on behalf of two different companies, the complaint alleges the defendant did not use the funds for payroll expenses. Rather, he allegedly spent the money on lavish personal purchases, such as a Lamborghini, a Rolex watch and real estate transactions. He also allegedly spent thousands at strip clubs and other Houston night clubs.

With the current absence of a national plan, a bipartisan group of [seven governors](#) this week teamed up with the Rockefeller Foundation to help create the nation's first coordinated testing strategy. Governors from **Maryland (R)**, **Massachusetts (R)**, **Ohio (R)**, **North Carolina (D)**, **Michigan (D)**, **Louisiana (D)** and **Virginia (D)** are pursuing a deal for 3.5 million coronavirus antigen tests.

Instead of detecting the virus's genetic material, the antigen tests identify a protein on the virus's surface — a process cheaper and faster than the more complex and more precise polymerase chain reaction tests currently being used across the country.

**Maryland Governor Larry Hogan**, in the final days of his chairmanship of the National Governors Association (**New York Governor Andrew Cuomo** was [voted in](#) as the new chairman of NGA yesterday), negotiated the deal with the Rockefeller Foundation as the first interstate testing compact of its kind among governors during the COVID-19 pandemic.

Each of the seven states would request 500,000 rapid tests, for a total of 3.5 million that could be sent out to address outbreaks. Access to that amount of rapid tests would cut down significantly on a state's need to rely on traditional testing infrastructure, which primarily involves private labs that have recently [incurred long delays](#).

Some [test results](#) are taking an average of four to six days for the general population and even up to three weeks in states like **Arizona**. The [governors say](#) that other states and cities may join them as talks have already begun with one of the two companies approved by the Food and Drug Administration to sell point-of-care antigen tests that can detect the virus in less than 30 minutes.

Private sector and philanthropic groups, including the Rockefeller Foundation, have written [detailed proposals](#) about how to launch a national testing strategy. The foundation suggested to governors they form a compact to encourage private companies to ramp up new tests.

This is not the first time states have banded together in their response to the coronavirus pandemic. Some states had previously formed [regional pacts](#) to collaboratively reopen from their stay-at-home orders to limit the spread of the virus.

This post was also written by **Mara Sheldon**, **Meg Gilley** and **Genevieve Bresnahan**.

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