Wednesday, June 3, 2020

Turmoil on America’s streets has become the primary focus of attention for the White House in recent days, marking a pivot away from the around-the-clock pandemic response posture that characterized the Trump Administration’s activity this spring. President Donald Trump and his top advisors are reportedly set to meet in the coming days to begin the process of determining their priorities for the next federal COVID-19 response package, but White House officials caution that “the timing of the meeting could change. . . noting that the White House is increasingly focused on the unrest around the country over racial inequality and police brutality.”

The Wall Street Journal (WSJ) on Tuesday quoted a senior administration official as saying the White House views the nation as having emerged from the COVID-19 “rescue phase,” and is likely to focus on economic growth measures in laying out the president’s objectives for the next pandemic response legislation. “The president’s
team has assembled a set of proposals meant to encourage the public to return to work and resume normal life, including going out to restaurants and taking vacations, in an effort to jump-start the ailing economy as quickly as possible,” the WSJ reports.

Congressional Democrats are signaling that additional unemployment relief measures and funding for state and local governments are likely to be among their top demands in the bipartisan negotiations that are expected to begin later this month. The party’s quest for such relief may take precedence over some of the other prominent features of the US$3 trillion Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act passed by House Democrats last month to establish a marker for the eventual talks, such as additional direct “stimulus” payments of up to US$1,200 from the federal government to qualifying American households. The Hill reports some Senate Democrats are uncertain about the approach taken to direct payments in the HEROES Act, and are open to alternative ways of putting money into the hands of individuals and families.

Senate Majority Leader Mitch McConnell (R-KY) has privately told the White House the price tag of the next COVID-19 package, which is likely to be enacted in July, should not exceed US$1 trillion, according to the WSJ report. Keeping the aggregate cost of the yet-to-be-negotiated measure under such a cap will likely prove a difficult exercise for Republican and Democratic policymakers, given the scope of the House-passed COVID-19 bill and President Trump’s expressed desire for the inclusion of tax relief components that will almost certainly be scored by the federal government’s nonpartisan budget scorekeepers as having a significant cost to the US Treasury. Many Republicans and Democrats in Congress, along with President Trump and some of his top economic advisors, have also expressed enthusiasm for the inclusion of significant infrastructure spending in the upcoming coronavirus relief package.

Leader McConnell’s reported trillion-dollar redline may in part be an effort to quash hopes for such an investment, which the Senate leader has previously discouraged colleagues from pursuing. Some of President Trump’s political advisors are said to be cool to enacting major infrastructure spending as well, believing it could boost congressional Democrats in their re-election bids this November.

Details have begun to emerge about the surface transportation bill set to be unveiled this week by Democrats in the US House of Representatives, a measure that was in large part crafted before COVID-19 shut down the nation’s economy. The bill, championed by House Committee on Transportation and Infrastructure Chairman Peter DeFazio (D-OR), will be “a $494 billion, five-year effort that hews closely to [a] framework released in January and contains a hefty focus on climate mitigation,” POLITICO’s Tanya Snider reports. “The bill will contain $319 billion for highways, $105 billion for transit and $60 billion for rail, according to a source familiar with the committee’s plans.”

The Senate Committee on Environment and Public Works, chaired by Senator John Barrasso (R-WY), approved a bipartisan surface transportation bill last summer. Components of the House and Senate committee measures, along with other infrastructure-related initiatives that enjoy bipartisan support in Congress, could become factors in the eventual bipartisan talks to determine the composition of the
next federal coronavirus response package.

**Tax and Economic Development Updates**

With Congress largely now turning its focus to the next COVID-19 relief package, there continue to be concerns from a variety of stakeholders regarding implementation of those economic stimulus measures that have already been enacted. For example, though we expect the Main Street Lending Program (MSLP) to launch any day now, *POLITICO* is reporting that the interest rates; limitations on stock buybacks, dividends and executive compensation; and, indeed, delay in making the loans available, suggest the MSLP “is heading for trouble before it even gets under way.” For example, the National Retail Federation has suggested that the financial assistance program for small-to-mid-sized businesses may be “too late and not enough.”

As for the Paycheck Protection Program (PPP), we have learned that the Senate was unable to reach agreement to consider the House-passed Paycheck Protection Program Flexibility Act via unanimous consent due to the objections of Senators Mike Lee (R-UT) and Ron Johnson (R-WI), thus necessitating that the Upper Chamber take floor time to pass the bill. Even with these changes to the program’s expiration date and aspects of its loan forgiveness provisions still pending, however, some are still seeking yet even further changes. For example, the Consumer Bankers Association and the Bank Policy Institute have sent a [letter](#) to Congress urging enactment of legislation that would provide for automatic forgiveness of loans less than US$150,000 – covering an estimated 85% of loans – as the loan forgiveness process places a “significant burden” on small businesses. That said, the Internal Revenue Service Criminal Investigation Division has made clear that PPP “fraudsters are on high alert and [are ramping up] all of the efforts they possibly can to get money from the government.”

On May 29, the Office of the Comptroller of the Currency (OCC) finalized a [rule](#) clarifying that when a “national bank or savings association sells, assigns, or otherwise transfers a loan, interest permissible before the transfer continues to be permissible after the transfer.” According to the OCC, loan transfers help support the orderly function of markets and credit by providing liquidity and alternative funding sources and allowing banks to manage concentrations, improve financial performance ratios and more efficiently meet customer needs. In response to that rule, House Committee on Financial Services Chair Maxine Waters (D-CA) issued a statement noting “[i]t is shameful that [the OCC is] working to undermine consumer protections during a pandemic.” Instead, Chair Waters urged the OCC to “ensure banks are helping consumers during this time of crisis, not promoting the exploitation of the banking system by predatory lenders to get around consumer safeguards.”

Finally, according to *Bloomberg*, President Trump is reportedly set to meet with advisors to develop the administration’s position on the next round of COVID-19 relief legislation. As we have previously reported, we expect that this will include support for a number of tax policies, such as a payroll tax cut and potentially changes to the tax treatment of capital gains, among others. To that end, there appears to be growing support for tax policy changes to support increased charitable
giving in the face of the current public health crisis. For example, yesterday, a number of Senators – including Senate Committee on Finance Members Tim Scott (R-SC) and James Lankford (R-OK) – spoke to the National Council of Nonprofits regarding a provision under the CARES Act that provides a US$300 charitable deduction for those taxpayers claiming the standard deduction and the need to increase the amount of that deduction. By way of reminder, the 2017 tax reform law doubled the standard deduction, which largely reduced the incentive for many taxpayers to itemize their deductions.

Health Updates

This morning, the North Atlantic Council of the North Atlantic Treaty Organization (NATO) issued a statement condemning cyberattacks on healthcare entities, including hospitals and research institutions. The statement reads, in part, “Reaffirming NATO’s defensive mandate, we are determined to employ the full range of capabilities, including cyber, to deter, defend against and counter the full spectrum of cyber threats. NATO will continue to adapt to the evolving cyber threat landscape, which is affected by both state and non-state actors, including state-sponsored.” As we reported in mid-May, the Federal Bureau of Investigation (FBI) and the Cybersecurity and Infrastructure Security Agency (CISA) released a public service announcement warning organizations researching the coronavirus of potential targeting and network compromise by the People’s Republic of China (PRC). The FBI stated that PRC-affiliated cyber actors and non-traditional collectors “have been observed attempting to identify and illicitly obtain valuable intellectual property (IP) and public health data related to vaccines, treatments, and testing from networks and personnel affiliated with COVID-19-related research.” The FBI and CISA recommended organizations assume media coverage of their COVID-19 research will lead to increased interest and cyber activity focused on their organizations and urged these organizations to “maintain dedicated cybersecurity and insider threat practices to prevent surreptitious review or theft of COVID-19-related material.”

POLITICO reported last night on the delay many healthcare providers are experiencing in obtaining emergency funding from the Department of Health and Human Services (HHS). The CARES Act appropriated US$100 billion to the Provider Relief Fund, with the interim relief bill adding US$75 billion to the Fund; HHS has only distributed about US$77 billion of total aid from the Fund. While Democrats have been vocal in calling out the administration on the need to disburse funds faster, the article notes, “Republicans led by Senate Finance Chair Chuck Grassley [(R-IA)] have similarly pressured health officials in private over the past few weeks, at one point threatening to make their criticisms public too if the administration failed to pick up the pace.” After lawmakers on the Capitol Hill, trade associations and other stakeholders condemned the manner in which funds were initially distributed, reports indicate HHS officials have been debating how to balance the needs of a diverse set of providers to ensure fair and transparent allocations. HHS has not provided an estimate of when it will distribute the next round of funds. HHS issued an updated Frequently Asked Questions guidance document on May 29, which included significant changes from the prior version – and it updated the document again yesterday. Taking matters into their own hands, the House Democrats’ HEROES Act removed HHS discretion in the allocations through codifying the Fund, but it remains to be seen how Senate Republicans will or will not agree to address
the Fund in the next relief package.

Separately, Bloomberg reported on loans made by HHS through the Medicare Accelerated and Advance Payment Program, which Congress temporarily expanded through the CARES Act “to increase cash flow to providers of services and suppliers impacted by the 2019 Novel Coronavirus (COVID-19) pandemic.” While the Centers for Medicare and Medicaid Services recently reevaluated the expansion in light of the appropriations to the Provider Relief Fund, Bloomberg explains that entities owned by well-funded private equity firms utilized the program to secure interest-free loans: “Shut out from many coronavirus relief programs, private equity companies have found a back door at HHS, where they have borrowed at least $1.5 billion, according to a Bloomberg News analysis of more than 40,000 loans disclosed by the department. That money, from two programs intended to provide emergency funding to financially strapped health-care companies, went instead to hospitals, clinics and treatment centers controlled by the richest investment firms as they seek to take advantage of an economic downturn caused by the pandemic to buy ailing businesses.” Last week, the New York Times called attention to grants made by the Provider Relief Fund, reporting that hospitals with larger financial reserves received more federal aid than smaller, poorer hospitals.

HHS announced it is providing US$250 million to hospitals and other healthcare entities “to train workforces, expand telemedicine and the use of virtual healthcare, procure supplies and equipment, and coordinate effectively across regional, state and jurisdictional, and local health care facilities to respond to COVID-19.” The funding, authorized by the CARES Act and provided through the Office of the Assistant Secretary for Preparedness and Response, will support the National Special Pathogen System. House Committee on Energy and Commerce Republicans applauded the announcement, noting they are working to develop recommendations for a government response to a potential second wave of COVID-19 infections.

**Trade Updates**

On Tuesday, the Office of the US Trade Representative (USTR) announced that it would be initiating new Section 301 investigations examining digital services taxes (DSTs) adopted or under consideration by Austria, Brazil, the Czech Republic, the European Union, India, Indonesia, Italy, Spain, Turkey and the United Kingdom. USTR is requesting comments to inform their investigations into the various DSTs and their impacts on US-based technology companies. Comments are due by July 15. Stakeholders impacted by the DSTs should submit comments to help guide the USTR investigations, but companies engaged in bilateral goods trade must also prepare for potential retaliatory tariffs to follow. While multilateral talks on DST policies are ongoing, world leaders are under increasing pressure to find new revenue streams to support COVID-19 economic relief measures.

Also on Tuesday, the Centers for Disease Control and Prevention (CDC) and the Occupational Safety and Health Administration (OSHA) released interim guidance to protect agricultural workers from exposure to the coronavirus. The guidelines, which follow on previous policies for meat processing facilities, aim to prevent and control the spread of COVID-19 among these populations, especially given considerations
such as joint transportation and worker housing.

Our immigration team is continuing to monitor the impacts of travel restrictions on the movement of people in the age of COVID-19. For further information on President Trump’s recent proclamation suspending the entry of certain students and researchers from the PRC, see our update [here](#). For background on US Citizenship and Immigration Services resuming premium processing fees for certain petitions in different stages, see our update [here](#).

**Oversight Updates**

Yesterday, the Senate [confirmed](#) (51-40) President Trump’s pick for Special Inspector General for Pandemic Recovery at Treasury, Brian Miller, a White House lawyer. Although Miller had spent nearly ten years as the General Services Administration’s Inspector General (IG), where he demonstrated independence and aggressiveness by leading a number of high-profile investigations, Democratic lawmakers have questioned where his loyalties will lie and some have argued that Miller should be disqualified from serving as an IG altogether as a result of his present position. At his confirmation hearing, Miller said that he plans to begin working with a team of 75-100 people, although he added that he could not determine at that time how many staff members he will ultimately need.

Another oversight body established under the CARES Act, the Pandemic Response Accountability Committee (PRAC), [announced](#) the speakers for its YouTube “listening event,” which will be held at 2:00pm EDT today. The “Stakeholder Perspectives on Oversight of the Federal COVID-19 Spending and Response” event will feature four panels focusing on: (1) state and local governments; (2) business, financial, and nonprofit organizations; (3) healthcare; and (4) government spending oversight and transparency. Following opening remarks by Michael Horowitz, PRAC’s Acting Chair, IG at the Department of Justice and Chair of the Council of Inspectors General on Integrity and Efficiency (CIGIE), the discussion, moderated by Sandra Bruce, Acting IG at the Department of Education, will include: Hannibal “Mike” Ware, SBA IG; Christi Grimm, HHS Principal Deputy IG; Paul Martin, PRAC’s Vice Chair and IG of the National Aeronautics and Space Administration, among the twelve scheduled speakers.

Yesterday, Representative Carolyn Maloney (D-NY), Chair of the House Committee on Oversight and Reform and James Clyburn (D-SC), Chairman of the House Select Subcommittee on the Coronavirus Crisis, sent a [letter](#) to HHS Secretary Alex Azar requesting copies of the department’s coronavirus research contracts with the private sector. The letter refers to “dozens” of such agreements and highlights contracts with seven companies in particular: AstraZeneca, Emergent BioSolutions, Johnson & Johnson, Moderna Therapeutics, Regeneron Pharmaceuticals, Sanofi and Genentech.

**State Updates**

In what must be concerning to businesses everywhere, [Illinois](#) Attorney General Kwame Raoul was joined by 11 Democratic Colleagues in issuing a [warning letter and information request](#) to Walmart over its compliance with COVID-19 health orders.
and also alleged the company has insufficient sick leave policies, failed to inform customers and employees of potential exposure to COVID-19 and that it pressed employees to return to work while exhibiting symptoms of COVID-19. The letter is apparently in response to media coverage and employee complaints from the height of the pandemic.

**Louisiana** Governor John Bel Edwards (R) announced following continued improvement in Louisiana’s COVID-19 outlook, and a significant increase in testing capacity and contact tracing, the state will be ready to move to Phase 2 of the White House’s reopening strategy on June 5. The official order for Phase 2 of a Resilient Louisiana will be signed by tomorrow evening with guidance issued to individual industries and businesses via the [OpenSafely.la.gov](http://Opensafely.la.gov) website throughout the week. Louisiana has seen decreasing reports of COVID-like illness, decreasing new case counts especially as a percentage of tests administered and decreasing hospitalizations in almost every area of the state. Phase 2 will last at least 21 days.

**North Carolina** Governor Roy Cooper (D) in a [letter to Republican National Committee (RNC) leaders](https://www.natlawreview.com/article/covid-19-us-developments-implementation-and-oversight-cares-act-june-3-2020) yesterday said it was a “necessity” to plan for a “scaled-down convention with fewer people, social distancing and face coverings. “With the Nation, the State of North Carolina and the City of Charlotte still under states of emergency it’s important to conduct the RNC convention accordingly,” Cooper wrote.

A traditional GOP convention brings together roughly 2,500 delegates, the same number of alternate delegates and many times more guests, journalists and security personnel. Officials from both parties have been preparing contingency plans for months given the uncertainty and dangers posed by the virus and evolving restrictions on large gatherings meant to slow the spread of COVID-19. Last night [President Trump](https://www.natlawreview.com/article/covid-19-us-developments-implementation-and-oversight-cares-act-june-3-2020) called for the GOP to scout other locations for the August 24-27 convention.

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