Monday, June 22, 2020

With summer officially underway in America and the number of new coronavirus cases in the US continuing to rise, President Donald Trump is doubling down on immigration restrictions imposed during the nation’s COVID-19 lockdown. Proponents of increased federal aid to states, territories and municipalities are gaining an important new ally as policymakers look ahead to formal talks after Independence Day that will begin the process of shaping the next major federal coronavirus response measure. Both chambers of the US Congress are gearing up for legislative action this week on police reform bills in response to national anger over the killing of citizen George Floyd.

Topics covered today include: tax and economic development, health, government oversight and US states developments.

Via POLITICO:
President [Trump] is expected to extend through the end of the year foreign-worker restrictions that were initially enacted in April because of the coronavirus pandemic, according to two people familiar with the discussions.

[Trump’s action will block] most people from receiving a permanent residency visa, or green card, by including most guest workers who come to the United States for temporary or seasonal work. That will encompass skilled workers in specialty occupations, executives, and seasonal workers who work in industries such as landscaping, housekeeping and construction, according to the two people, as well as a Department of Homeland Security official. Agricultural workers and students will not be included.”

The new [policy] is expected to continue to have broad exemptions, including for health care professionals and those entering for law enforcement or national security reasons, which will be expanded to include those with economic interests. New exemptions will probably include au pairs.”

Business organizations have warned that excessively tightening visa restrictions could have a harmful effect on the American economy as it struggles to recover from the damage inflicted by the pandemic. The US Chamber of Commerce, joined by a number of congressional Republicans and other stakeholders, has urged the White House to exempt workers deemed essential under the guidance provided to states and communities by the Cybersecurity & Infrastructure Security Agency (CISA).

The US Chamber is also throwing its weight behind efforts to ensure that the next federal COVID-19 response package includes robust new aid for states, territories, cities and counties, POLITICO reports. Congressional Democrats, led by House Speaker Nancy Pelosi (D-CA), have made state and local relief a top priority for the next package. The Democratic-led House of Representatives in May approved the US$3 trillion HEROES Act, which featured nearly US$1 trillion in new state and local funds. A number of congressional Republicans have also called for approval of hundreds of billions of dollars in such aid.

The House will convene in Washington toward the end of this week for a legislative session highlighted by consideration of the George Floyd Justice in Policing Act, authored by Representative Karen Bass (D-CA). The Republican-controlled Senate is expected to take up an alternative police reform measure, the JUSTICE Act, penned by Senator Tim Scott (R-SC).

**Tax and Economic Development Updates**

Over the weekend, the Federal Reserve issued updates to its FAQs and template commitment letter for the Main Street Lending Program (MSLP) since the last updates were issued on June 8, 2020. Changes include: (1) new C.6: Clarification that in the case of Priority Loans that refinance existing debt, the debt being refinanced does not need to be included in the leverage calculation; (2) revision to H.3: Update to match FAQ language for the safe harbor in the Borrower Certification
Instructions regarding the refinancing of debt maturing within 90 days of the refinancing; (3) new H.10: Clarification regarding the diligence required for the conflicts certification, including in circumstances when beneficial owners hold through financial intermediaries and there are no Exchange Act section 13(d) or 13(g) disclosures; (4) new K.5: Clarification of the intended impact of Main Street Loans on lending limits (depending on whether the Special Purpose Vehicle (SPV) Commitment Letter is a condition to funding); and (5) revision to L.5: Some refinements to the mechanics of how the SPV funding will occur if the lender is requiring an SPV Commitment Letter.

Additionally, the Federal Reserve this week will release the results of its annual stress tests on the nation’s largest banks. Notably, though, Federal Reserve Vice Chairman for Supervision Randal Quarles last Friday noted that “[w]e simply would not have been doing our jobs if we had just run the test using a scenario framed before the economy began to deteriorate in March.” Thus, given that the stress tests results will provide details on how banks might fare under a wide range of potential outcomes – including, in part, taking into account the impact of COVID-19 – there is an expectation that stress test adjustments may impact banks’ dividends. As such, Vice Chairman Quarles confirmed that the Federal Reserve has asked banks to wait until markets close next Monday, June 29, 2020, before discussing the specific impact of the results in order “to provide for a more orderly dissemination of information to the public.”

Last Friday, the Small Business Administration (SBA) and Department of the Treasury announced that they have reached a bipartisan agreement with Senate Committee on Small Business leaders to make certain data regarding Paycheck Protection Program (PPP) loans public. Specifically, the SBA will disclose the business names, addresses, NAICS codes, zip codes, business type, demographic data, non-profit information, jobs supported and loan amount ranges as follows: US$150,000-US$350,000; US$350,000-US$1 million; US$1 million-US$2 million; US$2 million-US$5 million; and US$5 million-US$10 million. According to the SBA and Treasury, “[t]hese categories account for nearly 75 percent of the loan dollars approved. For loans below $150,000, totals will be released, aggregated by zip code, by industry, by business type, and by various demographic categories.”

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**Health Updates**

As news comes out of coronavirus cases continuing to climb, President Trump is receiving criticism for comments made about testing at his first public rally since the pandemic began. During the Saturday gathering in Tulsa, Oklahoma, the President said, “when you do testing to that extent, you’re going to find more people, you’re going to find more cases. So I said to my people, slow the testing down please.” White House trade advisor Peter Navarro told CNN’s Jake Tapper that the comments were “tongue in cheek.” In response, Speaker Pelosi released a statement that said, “the President’s efforts to slow down desperately needed testing to hide the true extent of the virus mean more Americans will lose their lives.” Concurrently, Senate Minority Leader Chuck Schumer (D-NY) and Senate Committee on Health, Education, Labor, and Pensions (HELP) Ranking Member Patty Murray (D-WA) sent a letter to Health and Human Services Secretary Alex Azar.
requesting further disbursement of US$25 billion appropriated for COVID-19 testing and contact tracing. The correspondence also calls for efforts “to make sure providers are aware of and able to easily access the $2 billion that Congress appropriated to provide testing for the uninsured.”

On Friday, the Centers for Medicare and Medicaid Services (CMS) sent a memorandum to Medicare Advantage Organizations outlining coverage of testing and testing-related services, clarifying that the plans may not charge cost sharing, such as copays and deductibles. Additionally, CMS announced the 25 members of an independent commission that will examine the COVID-19 response in nursing homes and make recommendations on immediate and long-term responses and improvements.

**Oversight Updates**

The Congressional Oversight Commission – one of the bodies established by the CARES Act to oversee implementation of the law - released its second report last Thursday. Like the commission’s first report, issued on May 18, the second one points out that the majority of the Treasury and Federal Reserve lending facilities are “not operational” even though more than 11 weeks have passed since the CARES Act became law. Further, the commission concluded that the Treasury Department and the Federal Reserve have done more to aid large corporations than small businesses. The Federal Reserve’s “mere announcement” that lending facilities would be forthcoming has helped larger businesses access credit at lower rates. The commission’s second report comes at a time when it remains without a chair.

Following backlash and lawmaker demands for transparency, the administration changed course and announced on Thursday that it will disclose details about companies that received PPP loans of more than US$150,000. On Saturday, Representative James Clyburn (D-SC), chair of Select Subcommittee on the Coronavirus Crisis of the House Committee on Oversight and Reform, released a statement in response to the administration’s announcement. While Chairman Clyburn is “pleased” the Administration has agreed to release details of a portion of PPP loan recipients, he said “this is far from the full transparency that American taxpayers deserve.” This is so because, even with the release of this partial information, “Treasury and SBA will still be withholding the identity of nearly 4 million PPP recipients—that is more than 85% of all recipients, who collectively received more than $100 billion in taxpayer money.”

Last week, Chairman Clyburn called on the administration to release unemployment and economic projections. The letter noted that, while the White House has claimed that the economy “is now in the recovery stage,” it has withheld internal projections that all other modern presidents have released. “Concealing economic forecasts from the American people during a jobs crisis is counterproductive, in conflict with bipartisan precedent, and contrary to the intent of Congress,” Chairman Clyburn emphasized.

Additionally:

- *The Harford Courant* reports that FuelCell Energy is facing scrutiny by the
Securities and Exchange Commission (SEC) in relation to the company’s US$6.5-million PPP loan. In particular, the SEC is looking into how the company’s certifications in its PPP loan application square with representations in its SEC filings.

- The House Committee on Oversight and Reform Chair Carolyn Maloney (D-NY), Select Subcommittee on the Coronavirus Crisis Chairman Clyburn and Subcommittee on Economic and Consumer Policy Chairman Raja Krishnamoorthi (D-IL) wrote to the Food and Drug Administration (FDA) Commissioner, requesting a briefing on the development, review, and deployment of COVID-19 vaccines. The lawmakers pointed out that, with the rush to develop the vaccine, “the public has questions about whether corners are being cut.” They therefore also urged the FDA to set clear rules and ensure transparency.

- Senator Elizabeth Warren (D-MA) and two colleagues have requested that the Government Accountability Office (GAO) investigate for-profit Institutional Review Boards (IRBs), which review clinical research proposals to ensure that participant rights are protected and the research is conducted ethically. While the senators’ concern over the IRBs’ practices is not new, they expressed concern that the “urgency of the COVID-19 pandemic may further increase pressure for IRBs to provide rapid approvals that may be inadequate or incomplete.”

- POLITICO reports that consulting firm McKinsey, which has been contracted by the Department of Health and Human Services (HHS) to help manage and audit billions of dollars in coronavirus relief for hospitals, has worked for at least 10 hospitals and chains that have received federal recovery funds. An HHS spokesperson said that HHS is aware that McKinsey’s past work “could potentially give rise to an organizational conflict of interest,” but added that the firm’s contract with HHS includes conflicts guidance.

State Updates

As the governors of Texas (R), Arizona (R), California (D) and Florida (R) maintain their promise to keep businesses open, the COVID-19 pandemic continues to remain rampant across the southern and western US.

American cases increased by 31,489 over 24 hours through last Friday afternoon, to 2.21 million, according to data collected by Johns Hopkins University and Bloomberg News. Friday also brought record numbers in Florida and California. While the increase in the national case count from Friday could be an anomaly, the pace of COVID-19 revitalization in the US has been swift and startling over the last week.

Continued controversy on mandatory mask-wearing erupted last week in Nebraska as Governor Pete Ricketts (R) said he will withhold millions of dollars in coronavirus relief funds from counties that require people to wear masks. The order contradicts advice from the state’s health officials and even the governor himself, who has regularly told the public to wear masks. A spokesperson for the governor said “the governor encourages people to wear a mask, but does not believe that failure to wear a mask should be the basis for denying taxpayers’ services.”
CARES Act gave Nebraska close to US$1 billion in relief funds, including US$100 million for counties, cities and utilities. The governor is in charge of distributing those funds. As of yesterday, Nebraska has confirmed more than 17,700 coronavirus cases, and 244 deaths, according to the state’s health department.

This post features contributions from Meg Gilley.

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