SQUIRE PATTON BOGGS

COVID-19 Public Policy Group Report

April 22, 2020

The U.S. Senate gave its approval yesterday to a $500 billion interim coronavirus relief measure providing additional funding for small businesses, hospitals and health providers, and other national COVID-19 priorities (discussed further below). But the biggest news out of the chamber Tuesday may have been the comments made by Senate Majority Leader Mitch McConnell (R-KY) after passage of the measure, which have significant implications for the massive "Phase 4" stimulus legislation being discussed by the Trump Administration and members of both parties on Capitol Hill as the next major step in the federal response to the pandemic.

"We need to see how things are working, see what needs to be corrected, and I do think that the next time we pass a coronavirus rescue bill we need to have everyone here and everyone engaged," McConnell told *POLITICO*. "We've allocated a stunning amount of money – $2.2 trillion – knowing full well that that probably wouldn't be enough. . .I think it's also time to begin to think about the amount of debt that we're adding to our country and the future impact of that."

President Donald Trump weeks ago called on Congress to take action this spring or summer on a multi-trillion dollar economic stimulus measure that features an enormous (and presumably un-paid-for) investment in national infrastructure initiatives. House Speaker Nancy Pelosi (D-CA) has been thinking along the same lines, working with House Transportation & Infrastructure Committee Chairman Peter DeFazio (D-OR) and other committee leaders to lay the groundwork for eventual action on such a plan.

The president renewed his call for action on the sweeping, so-called "Phase 4" package during his daily press briefing Tuesday, suggesting work on the measure will begin immediately after the interim package clears Congress this week. Treasury Secretary Steven Mnuchin, in comments Tuesday night to *CNBC*, expanded on the president's statement, saying the Trump Administration would like to see a package that includes not only major infrastructure investments but also new relief steps for the restaurant, entertainment, and sports sectors; aid to state and territorial governments; and a reduction in the payroll tax.

McConnell's admonition Tuesday evening does not dismiss the possibility of Senate consideration of such a grand measure. But it serves as a reality check for policymakers in both parties envisioning that an economic "stimulus" bill – potentially exceeding even the scope of the CARES Act passed weeks ago – can be cobbled together quickly and advanced through Congress without legislators present to actively debate and vote.

The president is expected to sign an executive order as soon as today that will prohibit individuals from outside the country from receiving "green cards" for a period of 60 days. The White House is also considering the possibility of adding additional U.S. companies to the president's Great American Economic Revival industry task force, launched last week to provide guidance on the reopening of the nation's economy.

Tax and Economic Development Updates

Yesterday's interim legislative COVID-19 response package provided additional funding for a number of key priorities for America's struggling small businesses, including:

- $321 billion in additional PPP funding – $60 billion of which is set aside for smaller financial institutions to ensure that small businesses that do not have accounts with larger financial institutions are able to access PPP loans;
- $10 billion in additional Emergency Injury Disaster Loan (EIDL) program funding; and
- $50 billion in additional Small Business Administration (SBA) Disaster Loans Program funding

The agreement also clarifies that agricultural businesses with fewer than 500 employees are in fact eligible for an EIDL through the SBA. Notably, though, there are growing concerns that the recent focus on funding the PPP and EIDL programs may jeopardize the SBA's 7(a) loan program, which has traditionally been the SBA's primary small business lending tool. Specifically, a provision in the CARES Act combined the authorization caps for the PPP and 7(a) programs and, if not undone, the increase in the authorization cap for PPP loans would effectively result in a decrease in the authorization cap for the 7(a) loan program. That said, with many in the financial industry already estimating that the additional PPP funding will only last for a matter of days, it may be necessary to provide even more funding to the popular small business-lending program.

Even before this interim package has been passed by House and signed by the President, policymakers and industry stakeholders have already begun to push for a wide array of priorities in the forthcoming "recovery" package. For example, yesterday, the National Association of Manufacturers (NAM) released its "American Renewal Action Plan," which provides recommendations for what it views as the "response," "recovery," and "renewal" phases required to help "secure the future health, safety, and prosperity of all Americans." Among the long-term "renewal" ideas in NAM's plan are proposals such as expediting the delivery of financial assistance made available through the PPP and Federal Reserve 13(3) facilities; implementing various businesses tax relief measures; providing relief to defined benefit plan sponsors; enacting comprehensive multiemployer pension reform; and implementing a pandemic reinsurance framework for business interruptions.

As we reported yesterday, there is a growing concern about the need to provide liquidity support to the mortgage servicing industry. In response, yesterday, the Federal Housing Finance Agency (FHFA) announced that mortgage servicers will only be required to advance four months of missed payments on single-family loans to government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac. According to FHFA Director Mark Calabria, this change will provide stability in the market, as mortgage servicers "can now plan for exactly how long they will need to advance principal and interest payments on loans for which borrowers have not made their monthly payment." By way of reminder, Federal Reserve Chairman Jerome Powell has also acknowledged that the central bank is "watching carefully…[the] key market that does support households and consumer spending." To that end and as we have previously reported, Chairman Powell has made clear that as other troubled areas are identified, the Federal Reserve will not hesitate to take additional action.

Health Updates

The interim relief package passed by the Senate yesterday, and expected to pass the House as early as Thursday, includes an additional $100 billion for the Department of Health and Human Services (HHS) Public Health and Social Services Emergency Fund. Of this $100 billion, the bill provides $75 billion to eligible healthcare providers for expenses or lost revenues that are attributable to the coronavirus. This additional $75 billion, allocated with the same discretion to HHS as the first round of funding provided in the CARES Act, leads to a total of $145 billion currently in the Fund for hospitals and other entities dealing with lost reimbursements due to COVID-19. By continuing to give discretion to HHS for disbursement, we expect continued advocacy – by lawmakers, trade associations, and other entities – on how and when Fund dollars should be allocated to various healthcare entities across the country.

The bill also provides $25 billion to the Fund for testing, $5 billion shy of the original Democratic ask. The funds are to be used to research, develop, validate, manufacture, purchase, administer, and expand capacity for COVID-19 tests, including tests for both active infection and prior exposure. The bill provides specific funding in certain areas:

- $11 billion for states, localities, territories, and tribes for necessary expenses to develop, purchase, administer, process, and analyze COVID-19 tests; increase laboratory capacity; trace contacts; and support employer testing.
    - $2 billion provided to states consistent with the Public Health Emergency Preparedness grant formula (to ensure every states receives funding).
    - $4.25 billion provided to areas based on relative number of COVID-19 cases.
    - $750 million provided for tribes, tribal organizations, and urban Indian health organizations.
- $1 billion for the Centers for Disease Control and Prevention for surveillance, epidemiology, laboratory capacity expansion, contact tracing, public health data surveillance and analytics infrastructure modernization, disseminating information about testing, and workforce support necessary to expand coronavirus testing.
- $1.8 billion for the National Institutes of Health (NIH), allocated in the following manner:
    - $306 million provided to the National Cancer Institute to develop, validate, improve, and implement serological testing and associated technologies;
    - $500 million provided to the National Institute of Biomedical Imaging and Bioengineering to accelerate research, development, and implementation of point of care and other rapid coronavirus-related testing; and
    - $1 billion provided to the Office of the Director to develop, validate, improve, and implement testing and associate technologies; accelerate research, development, and implementation of point of care and other rapid testing; and for partnerships with governmental and non-governmental entities.
- $1 billion for the Biomedical Advanced Research and Development Authority for research, development, manufacturing, production, and purchase of diagnostic, serologic, or other COVID-19 tests or related supplies.
- $22 million for the Food and Drug Administration (FDA) to support activities associated with diagnostic, serological, antigen, and other tests, as well as related administrative activities.
- $825 million for Community Health Centers and rural health clinics.

- Up to $1 billion for the cost of testing for the uninsured.

The bill also provides $6 million for the HHS Office of Inspector General (OIG) for oversight activities. Earlier this month, HHS OIG released a report that found hospitals in crisis as COVID-19 diagnoses were increasing. As we previously reported, President Trump called the report "just wrong" and accused Christi Grimm, Principal Deputy Inspector General, of having political motives for releasing it. The American Hospital Association praised the report, and House Majority Leader Steny Hoyer (D-MD) said it is "a damning indictment of the Trump Administration's failure to do its job."

Yesterday, FDA announced that it has given emergency authorization to the first diagnostic test for COVID-19 with a home collection option. The molecular test, made by Laboratory Corporation of America (LabCorp), "permits testing of a sample collected from the patient's nose using a designated self-collection kit that contains nasal swabs and saline." With this kit, patients can collect their sample and mail it in an insulated package to a LabCorp laboratory for testing. LabCorp intends to make the home collection kits available to consumers in most states in the coming weeks, though the kits will require a doctor's order.

NIH announced that a panel of U.S. physicians, statisticians, and other experts has developed treatment guidelines for COVID-19. The guidelines – published at covid19treatmentguidelines.nih.gov – are based on published and preliminary data, as well as the clinical expertise of the panelists. The guidelines are to be updated as new data and "other authoritative information emerges." The guidelines currently state, "At present, no drug has been proven to be safe and effective for treating COVID-19. There are insufficient data to recommend either for or against the use of any antiviral or immunomodulatory therapy in patients with COVID-19 who have mild, moderate, severe, or critical illness."

HHS's Office of the National Coordinator for Health IT and Centers for Medicare & Medicaid Services, in conjunction with the HHS OIG, announced they would institute a policy of enforcement discretion in implementing the interoperability final rules, which were announced on March 9, 2020. The announcement was made to allow compliance flexibilities during the COVID-19 public health emergency. Further details are available here.

Trade Updates

In his White House briefing Tuesday evening, President Trump provided some details on his forthcoming Executive Order (EO) on immigration, confirming that it would only affect green card cases, not nonimmigrants (including those coming temporarily for work). The president explained that the order would suspend immigration into the United States, suggesting it would not impact those already in the U.S. applying for green cards by adjusting their status. The so-called "pause" will be in effect for at least 60 days, but will be reevaluated at that point and could be expanded not only in duration, but also in scope. President Trump suggested that a second order could expand the scope, potentially to include nonimmigrant employment visas – while not confirmed, we note that expansion is under active consideration.

European Policy Updates

On April 20, the European Commission launched a data-sharing platform that aims to enable the rapid collection and sharing of research data related to COVID-19. The European COVID-19 Data Platform would provide open, trusted, and scalable European and global data such as DNA sequences, protein structures, and epidemiological data that can help accelerate the research and discovery.

Further COVID-19 focused funding and other actions, such as coordinating large EU-wide clinical trials, are part of the broader European Research Area's response to fight against the COVID-19 pandemic. More information on these actions can be found here.

In light of the ongoing COVID-19 crisis, France recently introduced emergency legislation in relation to corporate law matters, particularly on the approval of accounts and meetings of corporate bodies. Though the new measures do not specifically cover the distribution of dividends, French government guidance indicates that any company benefiting from the state's financial support measures should not proceed with dividends for the remainder of 2020. SPB has analyzed the effect this will have on companies in this overview, noting the potential consequences of failing to adhere to the guidance.

A summary of the measures introduced by the Italian government to support the continued operation of the healthcare sector is discussed in another recent SPB client alert (available here). Italy has been one of the countries in Europe hit hardest by the virus. Among other responses, the government has introduced financial measures to expand the production of medical devices and personal protective equipment (PPE), implemented a fast track authorization system for surgical masks and PPE, enacted legislative provisions to requisition medical and surgical devices, and introduced a simplified procedure for the collection and processing of health data of COVID-19 patients.

The COVID-19 pandemic has driven many businesses to consider adapting their production capability away from their usual products and activities. Looking in particular to the manufacturing or production of PPE, a recent SPB analysis is examining how businesses react to excess capacity and/or production lines, towards helping to deal with the effect of the pandemic.

Oversight Updates

Representative French Hill (R-AR), a newly appointed member of the Congressional Oversight Commission, appears to have a narrower view of the Commission's role than Bharat Ramamurti, the Commission's first and most outspoken member to date. In an interview on April 21, Hill indicated that his vision of the Commission's work is narrower in scope than the oversight under the Troubled Asset Relief Program (TARP). Representative Hill reasoned that, since the misconduct of financial firms did not contribute to the current crisis, the Commission's primary concern should not be rooting out fraud or determining who should be ineligible to receive relief funds due to past misconduct. Instead, in Hill's view, the Commission's main questions should be "Are you leveraging the fund in such a way that you can rapidly stabilize the economy, employment and pivot back to a growing economy?"

By contrast, Ramamurti, a former aide to Senator Elizabeth Warren (D-MA), appears to be very much focused on who gets the relief funds and whether recipients are entitled to them. Last week, Ramamurti requested "detailed and timely information about each individual transaction" under the CARES Act from

Federal Reserve Chair Jerome Powell. He has also posted several pointed tweets, demanding prompt disclosure of "who th[e] companies are and what deal they got." Yesterday, following President Trump's announcement that he would make sure funds are available to U.S. oil and gas industry, Ramamurti tweeted: "If this plan ends up using some of the $500 billion Congress allocated to the Treasury Department in the CARES Act," the Commission "has oversight authority and should scrutinize the plan very carefully."

The Commissions other two newly appointed members, Senator Pat Toomey (R-PA) and Representative Donna Shalala (D-FL), have not issued statements or given press interviews on this topic since their appointment last Friday. Senator Toomey was appointed to the Commission by Senate Majority Leader McConnell, and Representative Shalala was appointed by House Speaker Pelosi. How these two members view the Commission's mandate remains to be seen.

Contacts

David B. Stewart
Principal, Washington DC
T +1 202 457 6054
E david.stewart@squirepb.com

Wolfgang A. Maschek
Partner, Brussels
T +322 627 11 04
E wolfgang.mascheck@squirepb.com

Brandon C. Roman
Senior Associate, Washington DC
T +1 202 457 5330
E brandon.roman@squirepb.com

Kristina V. Arianina
Senior Associate, Washington DC
T +202 457 5139
E kristina.arianina@squirepb.com

David Schnittger
Principal, Washington DC
T +1 202 457 6514
E david.schnittger@squirepb.com

Beth L. Goldstein
Senior Associate, Washington DC
T +1 202 457 5129
E beth.goldstein@squirepb.com

Ludmilla L. Kasulke
Senior Associate, Washington DC
T +1 202 457 5125
E ludmilla.kasulke@squirepb.com