This Week In Congress

**Senate** – The Senate passed an interim coronavirus response package (H.R. 266), which provides $310 billion of the Paycheck Protection Program (PPP), $60 billion for small business disaster loans, $75 billion for hospitals, and $25 billion for COVID-19 testing. The Senate also passed the Student Veteran Coronavirus Response Act (H.R. 6322) and confirmed several nominations.

**House** – The House passed the interim coronavirus response package, which was subsequently signed into law by the President. The House also adopted H.Res. 935, to establish a Select Subcommittee on the Coronavirus Crisis.

Next Week In Congress

**Senate** – The Senate will be in recess until May 4. The Senate will hold pro forma sessions on April 27 and April 30.

**House** – The House will be in recess until no sooner than May 4. The House will be holding pro forma sessions during the recess.

TAX

JCT Releases Detailed Description of the Tax Provisions of the CARES Act

**Key Points**
- The JCT released descriptions on the tax provisions in the CARES Act including revenue effects.

On April 22, the Joint Committee on Taxation (JCT) released descriptions and revenue effects of the tax provisions included in the Coronavirus Aid Relief and Economic Security Act (CARES Act). The JCT also revised down the score of one provision, noting it had made a miscalculation in its estimate. Significant provisions include:

- Economic Impact Payments of $1200, and $500 for each eligible child (Revenue loss $292.374 billion/10 years)
- Employee Retention Credits for employers forced to close due to COVID-19, which last until 12/31/20. (Revenue loss $54.572 billion/10 years)
- Delay of payments of employer OASDI payroll taxes due until 12/31/20. (Revenue loss $12.312 billion/10 years)

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Modifications for net operating losses ("NOLs") - increase taxable income limitation for net operating loss from 80 percent to 100 percent of taxable income, and allow 5 year NOL carryback (sunset 12/31/20) (Revenue loss $25.5 billion/10 years)

Modification of limitation on losses for taxpayers other than corporations (sunset 12/31/20) (Revenue loss $135.028 billion/10 years)

Modification of credit for prior year minimum tax liability for corporations. (Revenue neutral over 10 years).

Additional information of each tax provision can be found in the JCT report on the CARES Act.

Treasury Urges Social Security Recipients with Dependents to Provide Information to the IRS to Receive the Dependent Economic Impact Payment

Key Points

- IRS and Treasury urged those who receive Social Security to use the non-filer tool to receive their $500 childcare payment under the CARES Act.

The Treasury Department and Internal Revenue Service, in a press release, urged Social Security recipients who have eligible children to provide information under the IRS’s non-filer tool to receive their additional $500 per child Economic Impact Payment.

For more information about tax issues you may email or call Christopher Hatcheter at 202-659-8201. Josh Hansma contributed to this section.

FINANCIAL SERVICES

Congress Provides an Additional $310 Billion for the Paycheck Protection Program

Key Points:

- The bill sets aside $60 billion in PPP funding for smaller lenders.
- The bill also includes $75 billion for hospitals, $25 billion for testing, and $60 billion for SBA disaster loan programs.

After nearly two weeks of negotiations between the Trump Administration and Congressional leadership, Congress this week passed an interim coronavirus response package (H.R. 266), which provided an additional $310 billion for the Paycheck Protection Program (PPP) created by the CARES Act. The bill also provides an additional $10 billion for administration of the PPP, $75 billion for hospitals, $60 billion for SBA disaster loan programs, and $25 billion for COVID-19 testing. The bill sets aside $30 billion...
of the PPP funding for financial institutions between $10-50 billion in assets, and $30 billion for financial institutions with less than $10 billion in assets.

The CARES Act authorized $349 billion for the PPP, which provides forgivable loans to small businesses affected by the coronavirus. The program launched on April 3 and on April 16 the Small Business Administration (SBA) announced that the initial funding had been expended. Majority Leader Mitch McConnell (R-KY) attempted to pass a “clean” bill to provide an additional $251 billion for the PPP by unanimous consent on April 9, but it was blocked by Senator Ben Cardin (D-MD) in an effort to include $100 billion for hospitals, $150 billion for state and local governments, and additional funding for food support programs that House and Senate Democrats were demanding.

The bill does not include funding to aid state and local governments, which had been demanded by Democratic leadership. Such funding could be included in the next phase of the Congressional response.

The bill passed the Senate on April 21 by voice vote. It subsequently passed the House on April 23 by a vote of 388-5 and was signed into law by President Trump.

SEC Delays Consolidated Audit Trail Compliance Dates Due to COVID-19

On April 20, the Securities and Exchange Commission (SEC) announced it was issuing two orders to adjust the compliance timeline for the Consolidated Audit Trail (CAT) in response to COVID-19. An SEC press release noted that the orders were focused on: (1) establishing a phased CAT reporting timeline for broker-dealers, and (2) permitting introducing brokers that meet certain requirements to follow the small broker-dealer reporting timeline. The press release noted that with the orders in place, the milestones for broker-dealer reporting to the CAT are:

- June 22, 2020: Initial equities reporting for large broker-dealers and small broker-dealers that currently report to FINRA's Order Audit Trail System (OATS);
- July 20, 2020: Initial options reporting for large broker-dealers; and
- Dec. 13, 2021: Full equities and options reporting for large and small broker-dealers; and
- July 11, 2022: Full customer and account reporting for large and small broker-dealers.

SEC Proposes Rule on Fund Valuation Practices

Key Point:
- The SEC issued a proposed rule to establish a framework for fund valuation practices.

On Tuesday, the SEC issued a proposed rule to “establish a framework for fund valuation practices.” As described in an SEC press release, “The rule is designed to clarify how fund boards can satisfy their valuation obligations in light of market developments, including an increase in the variety of asset classes held by funds and an increase in both the volume and type of data used in valuation determinations.”

SEC Commissioner Hester Peirce released a statement urging market participants to provide comments on the proposed rule, particularly on what effect the rule would have during times of market instability, such as the current coronavirus pandemic.

The comment period on the proposed rule will be open until July 21, 2020.
Regulators Take Additional Actions in Response to COVID-19

Key Points:
- The Federal Reserve will publish the names and terms of borrowers under its CARES Act facilities.
- The CFTC provided regulatory relief to allow eligible FCMs and brokers to access PPP loans.

On April 23, the Federal Reserve announced that it will disclose the names and terms of borrowers from its emergency lending facilities created under the CARES Act. Specifically, the Federal Reserve will disclose:

- Names and details of participants in each facility;
- Amounts borrowed and interest rate charged; and
- Overall costs, revenues, and fees for each facility.

The Board will publish reports on its CARES Act 13(3) facilities on its website at least every 30 days and without redactions.

The Federal Reserve also announced that it is working to expand access to its Paycheck Protection Program Liquidity Facility (PPPLF) for additional SBA-qualified lenders as soon as possible. Currently only depository institutions are eligible for the PPPLF, but some SBA-qualified PPP lenders are non-depository institutions like Community Development Financial Institutions.

Additionally, the Federal Reserve announced temporary actions aimed at increasing the availability of intraday credit extended by Federal Reserve Banks on both a collateralized and uncollateralized basis.

The Commodity Future Trading Commission (CFTC) announced that its Division of Swap Dealer and Intermediary Oversight (DSIO) was granting targeted no-action relief to permit eligible futures commission merchants (FCMs) and introducing brokers (IBs) to access loans under the PPP.

SEC, PCAOB Release Statement on Emerging Market Investments

On April 21, SEC Chairman Jay Clayton, Public Company Accounting Oversight Board (PCAOB) Chairman William Duhnke, SEC Chief Accountant Sagar Teotia, Division of Corporation Finance Director William Hinman, and Division of Investment Management Director Dalia Blass issued a statement regarding the disclosure, financial reporting and other risks of emerging market investments.

The statement warns about the challenges resulting from the SEC and the PCAOB’s inability to inspect audit work papers from Chinese companies. Specifically, it states:

Our ability to promote and enforce these standards in emerging markets is limited and is significantly dependent on the actions of local authorities—which, in turn, are constrained by national policy considerations in those countries. As a result, in many emerging markets, including China, there is substantially greater risk that disclosures will be incomplete or misleading and, in the event of investor harm, substantially less access to recourse, in comparison to U.S. domestic companies.

The statement also focuses on “Passive Investing; Index Construction” as well as the “Considerations for Investment Advisers and Funds.” Regarding passive investing, it warns investors that an index fund tracking an emerging market index “generally does not consider or weigh investor protection considerations when investing in a particular security.”
The statement also explains that investment advisers have a fiduciary duty to their clients, “including a duty of loyalty and a duty of care.” The statement further explains:

The duty of care includes a duty to provide investment advice that is in the best interest of the client. In order to provide such advice, an adviser must have a reasonable belief that the advice is in the client’s best interest based on the client’s objectives. For example, an adviser should consider whether investments are recommended only to those clients who can and are willing to tolerate the risks, and should conduct a reasonable investigation into the investment sufficient not to base its advice on materially inaccurate or incomplete information. Accordingly, investment advisers that are recommending investments in emerging markets may want to consider, as part of their due diligence, whether there are limitations on the quality or availability of financial information with respect to these investments, as well as possible limitations on investors’ legal remedies along the lines of those discussed above. Investment advisers should also consider the effect of market closures on their clients’ investments and ability to gain access to their assets.

In addition, mutual funds, exchange-traded funds and other registered investment companies are required to disclose their principal risks in the fund’s prospectus and summary prospectus. These risks will depend on the fund’s investment objective(s), holdings, investment strategies and structure. Private fund advisers also must state all material facts necessary to make the statements made to any investor or prospective investor in the fund not misleading. If a fund invests or may consider investing a significant portion of its assets in emerging markets, it should disclose those principal risks related to the quality or availability of the financial information of such investments, impact of any potential market closures and other related risks.

The statement concludes that it “should not be viewed as an effort to restrict access to emerging market investments”, but is instead a commitment to “full and fair disclosure”, “meaningful… oversight”, and “broad investor choice”.

Upcoming Meetings and Events

**May 1**

**CFPB Advisory Committees:** The Consumer Financial Protection Bureau (CFPB) will hold a joint meeting of its Consumer Advisory Board, Community Bank Advisory Council, Credit Union Advisory Council, and Academic Research Council to discuss the impact of COVID-19 on consumers

**May 7**

**CFTC Energy and Environmental Markets Advisory Committee:** The Commodity Futures Trading Commission (CFTC) will hold a meeting of its Energy and Environmental Markets Advisory Committee (EEMAC) via conference call. The meeting will include discussions of: (1) the proposed position limits for spot months, single month, and all-months-combined, and (2) the proposed bona fide hedge exemptions from such position limits and related procedures.

For more information about financial services issues you may email Joel Oswald or Alex Barcham.
HEALTH

HHS Announces Allocation of CARES Act Funds; Congress Provides Additional Funds

Key Points:

- The Department of Health and Human Services announced the allocation of $70 billion in funds for providers in the CARES Act.
- This week, Congress passed a supplemental coronavirus package which includes an additional $75 billion to assist health care providers.

On April 22, the Department of Health and Human Services (HHS) announced the allocation of additional funds from the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The legislation had provided $100 billion for providers to address costs associated with COVID-19. HHS allocated the first $30 billion mid-April to Medicare fee-for-service providers based on 2019 reimbursements.

HHS announced it will be providing an additional $20 billion in general allocations to providers based on 2018 net revenues. Beginning April 24, HHS will make some payments automatically based on data already submitted on cost reports. Other providers with insufficient data will need to submit revenue information to receive funds. All providers will need to sign an attestation confirming receipt of funds and agreement with the terms and conditions. All providers accepting these funds must agree to not collect out-of-pocket payments from a presumptive or actual COVID-19 patient that are greater than what the patient would pay if care had been provided by in-network providers.

HHS also announced additional targeted allocations: $10 billion to hospitals in COVID-19 high-impact areas; $10 billion for rural health clinics and hospitals; $400 million for the Indian Health Services; and an allocation for providers for COVID-related treatment of the uninsured. HHS acknowledged some providers will receive separate funding including skilled nursing facilities, dentists, and providers that solely take Medicaid. Information on provider relief is available here.

This week, Congress passed the Paycheck Protection Program and Health Care Enhancement Act which provided an additional $75 billion for providers. The legislative text was identical to the CARES Act and provides no additional information on priorities for allocation.

CMS Releases Reopening Plan for Health Facilities

Key Points:

- Following the roadmap released by the White House, the Centers for Medicare and Medicaid Services released an outline health providers could take for Phase I reopening.
- Providers must still meet certain gatekeeping criteria to return to performing elective procedures.

On April 19, the Centers for Medicare and Medicaid Services (CMS) released recommendations for re-opening the health care systems in areas with a low incidence of COVID-19. CMS emphasizes every state and local official will need to assess their individual conditions before taking steps to re-open.

To meet Phase I, the locality will first need to achieve certain gatekeeping measures such as a downward trajectory of influenza and COVID-like illnesses, downward trajectory of documented cases or positive tests, and be able to treat all patients without crisis care and have adequate testing in place for health care providers. Once these requirements are met, the
state or locality can continue to implement Phase I reopening plans.

The guidelines emphasize a gradual transition from limits on non-essential care and close coordination between providers and public health officials. CMS still encourages using telehealth whenever possible; however, providers may begin to provide in-person care. Providers are encouraged to still evaluate the necessity of care and prioritize surgical and high-complexity chronic disease management. Providers must have a sufficient supply of resources including personal protective equipment for all phases of care. Providers may also not resume care if there is not an adequate supply of resources to handle a surge. Masks are still recommended for all providers and patients.

Facilities should also continue procedures to ensure adequate social distancing in waiting rooms for patients and consider creating separate areas for COVID-19 and non-COVID-19 patients. Visitors should also still be prohibited unless necessary for patient care. Facilities must also ensure patients continue to be screened for COVID-19 symptoms and staff must be routine screened and tested if possible.

Read the CMS guidelines here and White House plan here.

For more information about healthcare issues you may email or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201.

TRADE

U.S. Customs and Border Protection and USTR Issue Guidance for USMCA Implementation

Key Points:
- This week, U.S. Customs and Border Protection (CBP) issued interim implementing instructions for the U.S.-Mexico-Canada Agreement (USMCA).
- Guidelines from the office of the U.S. Trade Representative (USTR) would allow North American automakers more time to comply with the deal’s novel rules of origin.
- July 1 remains the earliest the pact can enter into force, according to language in the protocol of amendment.

This week, CBP issued interim implementing instructions for the U.S.-Mexico-Canada Agreement, while the Office of the U.S. Trade Representative released guidelines for an alternative staging regime that would allow North American automakers more time to comply with the deal’s novel rules of origin.

The [document](#) from CBP “provides guidance with respect to preferential tariff claims under the USMCA.” In the document CBP identifies a verification process to determine whether a good qualifies for preferential treatment as well as “protest rights” allotted to importers or authorized parties to contest a determination.

USTR has opened a process for North American vehicle and light truck producers to request an “alternative to the standard staging regime for the rules of origin for automotive goods” under the agreement, the agency said in a [Federal Register](#) notice. USMCA allows auto producers to request an alternative staging regime for requirements that would permit an extended transition period to ensure that future production is conducted in compliance with the new rules. “The alternative staging regime differs from the standard staging regime by providing additional time and a different phase-in of the new requirements,” USTR stated.

To be “assured of consideration, vehicle producers must submit a petition with a draft alternative staging plan by July 1,” USTR stated. Final alternative staging plans must be turned in
by Aug. 31. Additionally, the number of vehicles eligible for alternative staging regime benefits is limited to “10 percent of a vehicle producer’s total passenger vehicle or light truck production during the 12 month period prior to entry into force of the Agreement, or the average of such production during the complete 36 month period prior to entry into force of this Agreement, whichever is greater,” USTR said. The regime will be valid for five years after USMCA enters into force “unless the vehicle producer requests a longer period and it is accepted by USTR and the Committee,” the Federal Register states.

July 1 remains the earliest the pact can enter into force, according to language in the protocol of amendment. USTR has until April 30 to send its notification of compliance to meet such a deadline.

For more information about trade issues you may email or call Christopher Hatcher at 202-659-8201. Ryan Sigmon contributed to this section.

This Week in Congress was written by Alex Barcham.