This Week In Congress

**Senate** – The Senate confirmed the nominations of Robert Feitel to be Inspector General of the Nuclear Regulatory Commission, and William Evanina to be Director of the National Counterintelligence and Security Center. The Senate failed to override the President’s veto of S.J. Res. 68, a resolution to direct the removal of United States Armed Forces from hostilities against the Islamic Republic of Iran that have not been authorized by Congress.

**House** – The House met in pro forma session.

Next Week In Congress

**Senate** – The Senate is expected to vote on amendments and passage of the USA FREEDOM Reauthorization Act (H.R. 6172), which passed the House in March. H.R. 6172 would extend the Foreign Intelligence Surveillance Act through the end of 2023. The Senate will resume consideration of the nomination of Brian Montgomery to be Deputy Secretary of Housing and Urban Development, and may also consider other nominations.

**House** – The House may reconvene the week of May 11. House Democratic leadership has suggested that the House could vote on a Phase 4 coronavirus response package as soon as next week. If the House reconvenes it may vote on a resolution to allow for remote voting via proxy during the pandemic.

TAX

Bipartisan Group of Senators Introduce Bill to Clarify Small Business Expense Deductions Under PPP

**Key Points:**

- Senators from both parties introduced the “Small Business Expense Protection Act.”
- The effort was spearheaded by Senate Finance Committee Chairman Grassley (R-IA) and Ranking Member Wyden (D-OR).

On Thursday May 6, a bipartisan group of senators including Senate Finance Committee Chairman Grassley (R-IA), Senate Finance Committee Ranking Member Wyden (D-OR), Senator Rubio (R-FL), Senator Cornyn (R-TX), and Senator Carper (D-DE) introduced the “Small Business Expense Protection Act.” This bill seeks to clarify small business expense deductions under the Paycheck Protection Program (PPP), allowing small businesses to deduct expenses paid with forgiven PPP funds.
from their taxes. Senator Grassley stated “[w]hen we developed and passed the Paycheck Protection Program, our intent was clearly to make sure small businesses had the liquidity and the help they needed to get through these difficult times. Unfortunately, Treasury and the IRS interpreted the law in a way that’s preventing businesses from deducting expenses associated with PPP loans. That’s just the opposite of what we intended and should be fixed. This bill will do just that.”

Last Thursday, April 30 the Internal Revenue (IRS) issued a notice which stated small businesses were unable to deduct expenses paid with PPP funds from their taxes. Since the inception of the PPP the Small Business Administration (SBA) has issued over 3.8 million loans which have been vital to small businesses nationwide. This bill seeks to live up to the original intent of the PPP and clarify the notice to ensure expenses paid with PPP can be deducted from small businesses’ taxes.

House Democrats Close in on New Coronavirus Stimulus Plans

Key Points

- **House Democrats are inching closer to developing their proposal for an additional coronavirus stimulus package.**
- **The legislation includes significant aid to state and local governments as well as funding for vote by mail and postal services.**

House Democrats are preparing a new stimulus package to provide coronavirus relief. This new package reportedly includes over $750 billion in aid to state and local governments as well as increased funding for testing, vote by mail, and postal services. On tax issues, it is expected to include enhanced worker benefits for low- and moderate-income workers, such as an enhanced Earned Income Tax Credit (EITC); as well as boosts to income via child credits and possible expansion of the worker retention tax credit.

House Majority Leader Hoyer (D-MD) said negotiators were preparing for talks with Republicans and the Administration, but first needed to reach an agreement on the Democratic stance. Senate Republicans have been taking a wait-and-see approach after Congress approved over $3 trillion. Senate Republicans are seeking liability protection for businesses while the White House is seeking payroll tax cuts, and other tax relief programs promulgated by members of Congress from both sides of the aisle. House Speaker Pelosi (D-CA) is compiling the Democratic bill and has promised to notify the Congressional leadership once the bill is finished. House Democrats have been taking comments from committees to form this legislation and the comment period remains open until week’s end. Meanwhile, the House remains out of session and Democrats have been unable to reach an agreement with Congressional Republicans on remote voting practices. The list of asks by the House Democrats includes progressive proposals, such as guaranteed income up to $100,000 per worker proposed by Representative Jayapal (D-WA). These proposals are unlikely to garner significant Republican support; however, some Congressional Republicans have signaled support for ideas such as assistance to state and local governments. Senator Rubio (R-FL) expressed support for revenue replacement for local government to support essential services such as police and firefighters. The Democratic bill is expected to include federal subsidies for local governments to use to cover interest on taxable bonds. Speaker Pelosi has also signaled support for an additional round of direct payments to American citizens similar to the Economic Relief Payments in previous coronavirus relief legislation.
The House Democratic bill is likely to proceed through the House on a more partisan basis, and then be negotiated with the Senate. Alternatively, the House Democrats could unveil it and use it as a basis for talks. The legislative leverage is usually stronger when the one body has passed a bill with a vote they can point to in negotiations, though these COVID-19 responses have not followed typical legislative processes.

IRS Issues Release for Businesses Impacted by COVID-19 Regarding Employee Retention Credits and Paid Sick Leave Credits

Thursday, the Internal Revenue Services (IRS) issued a [reminder](#) to businesses affected by COVID-19 regarding their Employee Retention Credit and Paid Sick Leave Credits. The employee retention credit is designed to encourage businesses to keep employees on their payroll. The refundable tax credit is 50% of up to $10,000 in wages paid by an eligible employer whose business has been financially impacted by COVID-19.

Additionally, the IRS issued guidance on the Paid Sick Leave Credit and the Family Leave Credit. The paid sick leave credit is designed to allow business to get a credit for an employee who is unable to work (including telework) because of coronavirus quarantine, self-quarantine or because they have coronavirus symptoms and are seeking a medical diagnosis.

Representative Stephanie Murphy (D-FL) Introduces the “Jumpstarting Our Businesses Success” Credit Act of 2020 (JOBS Act)

Representative Stephanie Murphy (D-FL) and a bipartisan group of members of the House have introduced the “[Jumpstarting Our Business Success Credit Act of 2020](#).” This bill would extend the employee retention credit introduced in the CARES Act. Representative Murphy introduced the bill alongside Reps. Katko (R-NY), DelBene (D-WA), Brian Fitzpatrick (R-PA), and Pappas (D-NH). The Members are seeking to include the bill in the next package Congress crafts to combat COVID-19. This bill proposes:

- Increasing the credit percentage from 50 percent to 80 percent of qualified wages;
- Increasing the per-employee limitation from $10,000 for all calendar quarters to $15,000 per calendar quarter (and an aggregate of $45,000 for all calendar quarters);
- Changing the threshold for treatment as a large employer from employers having more than 100 employees to employers having more than 1,500 employees (based on the average number of full-time employees in 2019) or having gross receipts above $41.5 million in 2019;
- Improving coordination between the ERTC and the Paycheck Protection Program so employers can be eligible for both programs, but with guardrails in place to prevent “double dipping.”

A one page fact sheet on the legislation which can be found [here](#).

For more information about tax issues you may [email](mailto:christopher.hatcher@williamsandjensen.com) or [call](tel:202-659-8201) Christopher Hatcher at 202-659-8201. Josh Hansma contributed to this section.
FINANCIAL SERVICES

SEC Approves Final Order on a New Consolidated Equity Market Data Plan

Key Points:

- The SEC approved an order requiring the exchange SROs and FINRA to create a single consolidated equity market data plan.
- The order consolidates the three existing data plans and includes governance reforms.

On May 6, the Securities and Exchange Commission (SEC) approved an order directing the registered equities exchanges and the Financial Industry Regulatory Authority (FINRA) to create a new national market system (NMS) plan regarding consolidated equity market data. The order was approved by a unanimous 4-0 vote. This new plan will replace the three existing NMS plans that govern the public dissemination of real-time, consolidated equity market data for NMS stocks.

Chairman Jay Clayton, in a statement, stated there is currently a tiered system of market data access in the U.S. equity markets. He stated that over the past decade a wide array of proprietary data products have been introduced, noting that many of these products are sold by the same self-regulatory organizations (SROs) which govern the NMS plans. He asserted that there are significant conflicts and potential conflicts between the exchanges’ business interests in proprietary data offerings and their obligations as self-regulatory organizations to ensure prompt, accurate, reliable, and fair dissemination of consolidated market data through the jointly administered Equity Data Plans. He said the order being considered would address these conflicts by modernizing the governance structure for the NMS plans. Clayton stressed that this order and the SEC’s proposal on market data infrastructure are separate and address distinct aspects related to the provision of consolidated equity market data. He noted that the infrastructure effort focuses on the securities information processors (SIPs), including the content of SIP data products and the method by which NMS stock information is collected, consolidated, and disseminated.

Brett Redfearn (Director, Division of Trading and Markets) explained that the order would create a new consolidated NMS data plan, which would replace the three existing data plans. He stated that the order was meant to respond to changes in the market over the past few decades, including technological advances and the demutualization of the exchanges. He said the three existing equity data plans remain distinct in spite of sharing one operating committee and advisory committee. Redfearn said the order is meant to address conflicts between exchanges’ commercial interests and their regulatory role as SROs, as well as the inefficiency of having three plans. He said the order would require the SROs to replace the three existing plans with a new single NMS plan for equity market data. He noted that it includes changes to the operating committee, including allocating votes to non-SRO representatives, including an institutional investor, a retail broker, an institutional broker, a data vendor, an issuer, and a representative of retail investors. He said the non-SRO members would be allocated one third of the voting power on the operating committee. Coe stated under the order the administrator cannot be owned or controlled by an entity which offers a market data product for NMS stocks. He noted that the order requires the
Regulators Take Additional Actions in Response to the Coronavirus

**Key Points:**
- The SEC issued an interim rule to provide expedited access to crowdfunding.
- The banking regulators modified the Liquidity Coverage Ratio to support bank participation in Federal Reserve liquidity and lending facilities.

On May 4, the SEC issued an interim final rule “providing temporary, conditional relief for established smaller companies affected by COVID-19 that may look to meet their urgent funding needs through a Regulation Crowdfunding offering.” The rule is intended to expedite the offering process for eligible companies by providing relief from certain rules with respect to the timing of a company’s offering and the financial statements required. The interim rule will be effective from May 4, 2020, through March 1, 2021.

On May 6, the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve announced that they were extending the resolution plan deadlines for Barclays, Credit Suisse, Deutsche Bank, and UBS by 90 days, to September 29, 2020. The agencies also extended the submission date by 90 days, to September 29, 2021, for the targeted resolution plans from the large foreign and domestic banks in Category II and Category III of the agencies’ large bank regulatory framework.

Additionally, the Federal Reserve, the FDIC, and the Office of the Comptroller of the Currency (OCC), issued an interim final rule modifying the Liquidity Coverage Ratio (LCR) rule to support banking organizations’ participation in the Federal Reserve’s Money Market Mutual Fund Liquidity Facility and the Paycheck Protection Program Liquidity Facility. The interim final rule is effective immediately.

**Upcoming Meetings and Events**

**May 11**
*Advisory Committee on Risk-Sharing Mechanisms:* The Treasury Department’s Federal Insurance Office (FIO) will hold a meeting of its Advisory Committee on Risk-Sharing Mechanisms. The Advisory Committee will discuss and vote on a draft report making recommendations to the FIO.

**May 12**
*Financial Regulators:* The Senate Banking Committee will hold a hearing entitled “Oversight of Financial Regulators.” The Committee will receive testimony from Federal Reserve Vice Chairman for Supervision Randal Quarles, Comptroller of the Currency Joseph Otting, Federal Deposit Insurance Corporation (FDIC) Chair Jelena McWilliams, and National Credit Union Administration (NCUA) Chairman Rodney Hood.

**May 14**
*Financial Stability Oversight Council:* The Financial Stability Oversight Council (FSOC) will hold an executive meeting via telephone. The agenda for the meeting includes an update from the Council’s Task Force on Nonbank Mortgage Liquidity and an update on market developments related to COVID-19.

**May 19**
*Global Markets Advisory Committee:* The Commodity Futures Trading Commission (CFTC) will hold a meeting of its Global Markets Advisory Committee (GMAC). The meeting will include presentations from (1) CFTC Office of International Affairs Director Suyash Paliwal, on international coordination efforts in the time of COVID-19, and (2) the
GMAC Subcommittee on Margin Requirements for Non-Cleared Swaps on its report and recommendations regarding the implementation of initial margin requirements for non-cleared swaps.

**May 21**

**Investor Advisory Committee:** The SEC will hold a meeting of its Investor Advisory Committee (IAC). The event will include panels on: (1) index funds; and (2) credit rating agencies. The IAC will also consider: (1) Recommendation of Investor as Owner Subcommittee Regarding Accounting and Financial Disclosure; (2) Recommendation of Investor as Owner Subcommittee Regarding Sustainability Disclosure; and (3) Recommendation of Investor as Purchaser Subcommittee Regarding Disclosure Effectiveness.

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

**ENERGY & ENVIRONMENT**

Committee Advances Water Infrastructure and Safe Drinking Water Act Legislation

**Key Points:**

- The Senate Environment and Public Works Committee unanimously approved two water infrastructure bills in a markup held on Wednesday.
- The bills reauthorize Water Resources Development Act and Safe Drinking Water Act programs.

On May 6, the Senate Environment and Public Works Committee voted to favorably report the “America’s Water Infrastructure Act (AWIA) of 2020” and the “Drinking Water Infrastructure Act of 2020”. The Committee passed both bills unanimously.

The AWIA reauthorizes the Water Resources Development Act (WRDA) and includes about $17 billion in funding authority of water infrastructure and development projects. The Drinking Water Infrastructure Act of 2020 reauthorizes Safe Drinking Water Act programs.

Before voting to report the legislation, the Committee adopted:

- An amendment in the nature of a substitute to the AWIA;
- An amendment to the amendment in the nature of the substitute, offered by Chairman John Barrasso (R-WY) and Ranking Member Tom Carper (D-DE);
- An amendment in the nature of a substitute to the Drinking Water Infrastructure Act; and
- An amendment to the amendment in the nature of a substitute, offered by Chairman Barrasso and Ranking Member Carper.

In his opening statement at the markup, Barrasso said the AWIA “will help deepen nationally significant ports, maintain the navigability of inland waterways, will fix aging dams and irrigation systems, and upgrade waste water systems across the country.” He added that the legislation “will increase water storage in the West and help build new flood management infrastructure in the Midwest.”

In his opening statement, Carper favorably noted the bipartisanship reflected in the two bills being considered. He remarked that most Americans rely on waterways much more than they realize in their everyday lives. Carper also noted that many low income communities are experiencing troubles with drinking water quality, and proper waste water disposal. He said the Drinking Water Infrastructure Act would work to address these issues along with PFAS cleanup.
A Committee press release quoted Chairman Barrasso calling for the two bills, “along with our bipartisan highway infrastructure legislation, [to] be considered by the full Senate, after the immediate health crisis is behind us.”

House Legislation Targets Oil and Gas Sector

Key Points

- Democrats in the House and Senate introduced legislation that would bar the oil and gas sector from financial support under the “Coronavirus Aid, Relief, and Economic Security (CARES) Act”.
- It would also prevent the Administration from leasing storage space in the Strategic Petroleum Reserve (SPR) and from providing royalty relief to drillers.

Representative Nanette Barragan (D-CA), along with 29 original cosponsors, introduced the “Resources for Workforce Investments, not Drilling Act (ReWIND Act)” (H.R. 6707), which would “amend the Mineral Leasing Act and the Outer Continental Shelf Lands Act to limit the authority of the Secretary of the Interior to reduce certain royalties, to amend the CARES Act to limit the provision of assistance to certain businesses, to impose a moratorium on certain oil and natural gas lease sales, the issuance of coal leases, and modifications to certain regulations, [and] to extend certain public comment periods…” Senator Jeff Merkley (D-OR), along with 8 Democratic cosponsors, introduced the companion bill (S. 3611) in the Senate.

The legislation seeks to broadly block and prohibit the actions taken, or contemplated, by the Administration to assist the oil and gas sector in the wake of the oil price collapse and the COVID-19 pandemic. It would also place restrictions on extending aid and assistance under the [CARES] Act.

As described in Representative Barragan’s press release, the bill:

- “Precludes loans, loan guarantees and other financial instruments from the Main Street Lending Programs of the CARES Act from going to fossil fuel companies;”
- “Puts a two-year prohibition on banks and other solvent financial institutions who avail themselves of Title IV CARES Act provisions such as debt guarantees, additional borrowing authority or loans or loan guarantees from operating, or making new equity investments in fossil fuel companies.”
- “Puts a moratorium on new federal fossil fuel leases until after the COVID-19 National Emergency is over.”
- “Caps the Strategic Petroleum Reserve (SPR) at its current physical limit of 713,500,000 barrels and reiterates that private oil cannot be stored in the SPR.”
- “Repeals the statutory authority for Department of the Interior to institute a royalty-in-kind program that would accept oil and natural gas from producers in lieu of cash royalties. The royalty-in-kind program was shuttered in 2009 after it was ensnared in a wide-ranging ethics scandal.”
- “Takes away the authority under to use title III of the Defense Production Act to provide loans or loan guarantees to fossil fuel companies.”
- “Repeals the authority of the Secretary of the Interior to lower royalty rates for fossil fuel leases on federal lands and waters.”
- “Eliminates the authority of the Secretary to eliminate or reduce royalty rates for Deep Water leases on the Outer Continental shelf. This cleans up the existing code, as this authority had expired.”
“Ensures that the public can participate in rulemakings by extending public comment periods that were already under way until after the COVID-19 national emergency is over. It also suspends new rulemakings that are not specifically in response to the COVID-19 crisis, until after the national emergency is over.”

The bill’s wide-ranging subject matter resulted in its referral to the following House committees: Natural Resources; Energy and Commerce; Financial Services; and Judiciary.

Pipeline Safety Regulatory Activity Continues

Key Point:

- PHMSA, the federal pipeline regulator, continues its work on pending rulemakings and other regulatory activity.

The Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) has continued its work on a series of regulatory initiatives, even as it takes other actions to modify regulatory enforcement during the COVID-19 emergency.

Recent PHMSA regulatory activity includes:

- **Valve Installation and Minimum Rupture Detection Standards:** On February 6, 2020, PHMSA published the Notice of Proposed Rulemaking (NPRM) titled “Pipeline Safety: Valve Installation and Minimum Rupture Detection Standards”. The NPRM would require “the installation of remote-control valves (RCV), automatic shutoff valves (ASV), or equivalent technology, on all newly constructed and fully replaced gas transmission and hazardous liquid lines” while accommodating “locations where it is not economically, technically, or operationally feasible to install RCVs, ASVs, or equivalent technology.” Section 4 of the “Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011” (P.L. 112-90) mandated that PHMSA, “if appropriate,” promulgate rules to “require…the use of automatic or remote-controlled shut-off valves, or equivalent technology, where economically, technically, and operationally feasible…” PHMSA collected public comments on the NPRM through April 6, 2020, and now turns to drafting a final rule.

- **Farm Taps:** On April 20, PHMSA published an Announcement of Frequently Asked Questions; Request for Comments titled “Pipeline Safety: Farm Taps Frequently Asked Questions”. PHMSA states that the FAQs are “intended to clarify, explain, and promote better understanding and implementation of the requirements in Parts 191 and 192 with respect to individual service pipelines that are directly connected to transmission, gathering, or production pipelines”. PHMSA also notes that the FAQs include guidance on the Announcement of Enforcement Discretion titled “Pipeline Safety: Exercise of Enforcement Discretion Regarding Farm Taps” published on March 26, 2019. PHMSA separately posted the FAQs themselves, as they are not included in the text of the Federal Register announcement. Public comments on the FAQs are due by June 19, 2020.

- **Liquid Pipeline Regulatory Reform:** On April 16, 2020, PHMSA published an NPRM titled “Pipeline Safety: Regulatory Reform for Hazardous Liquid Pipelines”. The proposal would
amend PHMSA’s hazardous liquid pipeline safety regulations and is intended to “reduce regulatory burdens and improve regulatory clarity without compromising safety and environmental protection.” The NPRM would: (1) “[C]larify the requirements for producing records during an inspection or investigation and reduce the burden required to submit confidential commercial information under most circumstances;” (2) “[S]trict the spill response plan requirements and clarify or eliminate requirements that may be confusing or redundant; and” (3) “[R]elieve accident reporting burdens, allow remote monitoring of rectifier stations, and clarify integrity management (IM) guidance.” Public comments are due by June 15, 2020.

### Safety of Gas Transmission Pipelines Rule Enforcement Discretion

On April 22, 2020 PHMSA issued the “Notice of Enforcement Discretion to Gas Pipeline Operators Affected by the Coronavirus (COVID-19) Outbreak”, which extends the compliance date for some provisions of the “Safety of Gas Transmission Pipelines” final rule to from July 1, 2020 to December 31, 2020. PHMSA states that “enforcement discretion will allow operators additional time to fully incorporate the new procedures required pursuant to the Final Rule through a management of change process that may be slowed by the challenges of competing resource demands caused by the National Emergency.”

### Upcoming Hearings and Events

#### May 21

**FERC Open Meeting:** The Federal Energy Regulatory Commission (FERC) is scheduled to hold its monthly open meeting.

#### June 25

**Reliability:** The Federal Energy Regulatory Commission (FERC) will hold a technical conference on “Reliability of the Bulk Power System”. The conference “will focus on reliability-related issues for the bulk power system, including: (1) the changing resource mix; (2) inverter-based resources and inverter-connected distributed energy resources; and (3) cybersecurity.”

For more information about energy and environment issues you may email or call Frank Vlossak at 202-659-8201. Updates on energy and environment issues are also available on twitter. Josh Hansma contributed to this report.

### HEALTH

**HHS Releases Data on CARES Act Funding**

#### Key Points:

- The Department of Health and Human Services has created a database tracking funds distributed to health care providers under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.
- Members of Congress are also increasing calls for the Department to provide more data to Congress on how funds are being distributed and how funds will be distributed to non-Medicare providers.

This week, the Department of Health and Human Services (HHS) released data collected by the Health Resources and Services Administration tracking money distributed under the general allocation from the
Coronavirus Aid, Relief, and Economic Security (CARES) Act. The data is based on providers who have completed the necessary attestation. The data reports payments to over 142,000 providers ranging from sole providers to large hospital systems. This data should continue to be updated as more attestations are completed. HHS has extended the deadline for completing the attestations from 30 days to 45 days for payments made on April 10. Read the full data set here.

Additionally, HHS released information on funding provided for certain targeted allocations under the CARES Act. HHS has directed $12 billion to hospitals in high-impact areas to address costs associated with COVID-19. To be eligible, hospitals had to have provided inpatient care for 100 or more COVID-19 patients through April 10, 2020. HHS will be distributing funds by direct deposit to 395 hospitals which represent 71 percent of inpatient admissions. The payment level will be based on a fixed amount per inpatient admissions plus an additional amount that takes into account their Medicare and Medicaid disproportionate share and uncompensated care payments. HHS is also distributing $10 billion to rural acute care general hospitals, critical access hospitals, rural health clinics, and community health centers located in rural areas. Providers will receive a base payment plus a percent of annual expenses accounted for both operating costs and lost revenues incurred. View a state-by-state breakdown for both allocations here.

Congress has increased calls for greater transparency on allocations made by HHS under the CARES Act. This week, House Energy and Commerce Chairman Frank Pallone (D-NJ) and House Ways and Means Chairman Richard Neal (D-MA) sent a letter to HHS Secretary Alex Azar and Centers for Medicare and Medicaid Administrator Seema Verma seeking further data on how funds are being distributed. The letter expresses concern the agencies have ignored Congress’ intent for the funding by failing to ensure funds will be used for costs incurred due to COVID-19. The letter requests additional data from HHS to help inform future legislative action. Pallone and Senate Finance Committee Ranking Member Ron Wyden (D-OR) also sent a letter to HHS expressing concern about the lack of funding for Medicaid providers noting these providers already operating on thin margins. The letter requests further data from HHS on how it will account for the needs of Medicaid providers in the further distribution of CARES Act funds.

CMS Releases Final Rule on Payment Parameters for 2021

Key Points:
- The Centers for Medicare and Medicaid Services released the final Notice of Benefit and Payment Parameters for the 2021 benefit year.
- The rule contains provisions to allow issuers to create innovative health care plans that increase consumer choice and increase value.

On May 7, the Centers for Medicare and Medicaid Services (CMS) released the final rule for 2021 Payment Notice. CMS Administrator Seema Verma said the final rule continues the Administration’s policy to prioritize competition in the individual market and increase flexibility. She stressed “American consumers will continue to reap the benefits.”

To lower premiums, the helps promote the adoption of value-based insurance designs by providing more flexibility for issuers. The rule also finalizes changes to how direct drug manufacturers support such as coupons are calculated for the purpose of annual limitations on beneficiary cost-sharing. Issuers will be permitted to exclude drug manufacturer support from counting towards a beneficiary’s out-of-pocket limit. It also finalizes amendments to the Medical Loss Ratio regulations to ensure
premiums reflect the full benefit of prescription
drug rebates.

The final rule also takes steps to improve
program integrity such as finalizing
enhancements to the Periodic Data Matching
process to reduce the risk of incorrect premium
tax credit to enrollees determined to be deceases
or already enrolled in Medicare. The rule
strengthens annual reporting requirements of
state-mandated benefits that are in addition to
the essential health benefits. States are required
to defray the cost of any new state-mandated
insurance benefits.

Read the final rule here and a fact sheet on the
rule here.

Former CDC Director Proposes Special
Budget Designation for Public Health
Programs

Key Points:

- Former senators and public health officials sent
  a letter to Congress this week which
  recommended creating a special budget
designation for critical public health programs.
- Members of the House Appropriations
  Committee expressed support for the proposal
during a Wednesday hearing.

On Wednesday, a group of former senators and
health officials circulated a letter to
congressional leadership which advocated for
creating a Health Defense Operations (HDO)
budget designation that would exempt critical
public health programs from the Budget Control
Act spending caps. The designation is intended
to replicate the design of the Overseas
Contingency Operations (OCO) account, which
exempts certain defense funding from budget
caps and sequestration. The purpose of the new
designation is to create a firewall between critical
public health programs and annual budget
deliberations in order to maintain consistent and
adequate funding for public health priorities,
including programs that would be used to
respond to public health emergencies like the
COVID-19 outbreak. HDO programs would be
required to submit an annual budget justification
to Congress and would be subject to ongoing
congressional oversight.

Dr. Thomas Frieden, former Director of the
Centers for Disease Control and Prevention
(CDC) and signatory to the letter, testified about
the proposal before the House Appropriations
Committee’s Labor, Health and Human
Services, Education, and Related Agencies
Subcommittee this week. During testimony,
Frieden explained the problems of funding
public health programs on an annual basis by
noting “from the viewpoint of someone running
an agency, you can’t hire staff, you can’t enter
into partnerships with countries and
organizations where you can keep up your end
of the bargain, and you can’t hold contractors
accountable for an ongoing contract.” The
recommendation was favorably received during
the hearing, particularly by Subcommittee
Ranking Member Tom Cole (R-OK) who
contended that creating an HDO account
 amounted to “spending billions to save
trillions.” Cole also indicated that he and
Subcommittee Chairwoman Rosa DeLauro (D-
CT) had previously worked on a similar
proposal, and he expressed interest in revisiting
the idea for the Fiscal Year 2021 Budget.

Upcoming Hearings and Meetings

May 12
COVID-19: The Senate Health, Education,
Labor and Pensions Committee will hold a
hearing on “COVID-19: Safely Getting Back to
Work and Back to School.”

May 14
COVID-19: The House Energy and Commerce
Committee will hold a hearing on “Protecting
Scientific Integrity in the COVID-19 Response.”

For more information about healthcare issues you may email or call Nicole Ruzinski Bertsch or George Olsen at 202-659-8201. Thomas McGrath contributed to this section.

TRADE

USTR Sees No Basis for EU Retaliation in Airbus-Boeing Dispute, EU Disagrees

Key Points:
- U.S. trade officials asserted the European Union no longer has any legal basis to threaten retaliation against U.S. exports in a long-running dispute over government support for aircraft rivals Boeing and Airbus.
- The European Commission said it still has the right to retaliate with tariffs against subsidies for Boeing, arguing the U.S. has not completely removed its subsidies for the aircraft maker.
- European Union Trade Commissioner Phil Hogan called for U.S.-EU economic cooperation in a letter to U.S. Trade Representative Robert Lighthizer.

On Wednesday, the U.S. notified the World Trade Organization (WTO) that, because Washington State has terminated illegal subsidies it was providing to Boeing, the European Union has no justification to retaliate against the U.S. The U.S. compliance notice is the latest action in a long-running set of WTO disputes between the U.S. and EU over aerospace subsidies. Both the U.S. and EU have been found to be breaking WTO rules, but the U.S. now claims it is no longer in violation. “With Washington State’s repeal of this relatively minor tax reduction, the United States has fully implemented the WTO’s recommendation, ending this dispute,” USTR Lighthizer said in a statement on Wednesday. “This step ensures that there is no valid basis for the EU to retaliate against any U.S. goods. For more than 15 years, the United States has called on European governments to end their illegal aircraft subsidies. We will continue to press the EU to negotiate a resolution that respects the WTO’s findings.”

On Thursday, the European Commission said it still has the right to retaliate with tariffs against subsidies for Boeing, arguing the U.S. has not completely removed its subsidies for the aircraft maker. A spokesperson for the European Commission contradicted USTR Lighthizer stating, “[T]he EU does not agree with the U.S. unilateral assertion that it has fully implemented the [WTO] recommendations and rulings in this dispute.”

In a letter to USTR Lighthizer, European Union Trade Commissioner Phil Hogan advocated for U.S.-EU economic cooperation. Hogan argued that the U.S. and EU could accomplish a lot by working together. He cited WTO reform efforts, digital trade and the facilitation of trade in medical supplies as examples. Specifically, Commissioner Hogan said the two could be working together to reduce or remove tariffs on medical supplies, arguing such cooperation eventually could widen into a plurilateral agreement. Commissioner Hogan also referenced the Airbus-Boeing dispute and emphasized the EU’s desire for a negotiated resolution to the dispute.

U.S., U.K. Begin Accelerated Talks on Comprehensive Trade Agreement

Key Points:
- On Tuesday, the United States and the United Kingdom formally kicked off what they described as “accelerated” talks on a free trade agreement.
- U.S. trade officials must sign the agreement by April 1, 2021, if they want to submit it to Congress under the expedited approval process.
of the 2015 Trade Promotion Authority law, which expires three months later.

- Disputes over agriculture seem likely to be the main sticking points in the discussion.

On Tuesday, the United States and the United Kingdom formally kicked off what they described as “accelerated” talks on a free trade agreement, with combined teams of more than 200 negotiators planning to hold online meetings over the next two weeks because of the coronavirus pandemic. USTR Robert Lighthizer said the U.S. and UK plan to negotiate an “ambitious and high-standard trade agreement” that will be “consistent with U.S. priorities and the negotiating objectives established by Congress.” U.S. trade officials must sign the agreement by April 1, 2021, if they want to submit it to Congress under the expedited approval process of the 2015 Trade Promotion Authority (TPA) law, which expires three months later.

The U.K. is currently negotiating the terms of its future trade relations with the European Union, and many analysts see those negotiations as a greater priority for the U.K. While the United States is the U.K.’s biggest single-country trading partner, the 27 countries of the EU bloc are its biggest overall trading partner.

One hurdle could be the U.K.’s resistance to importing U.S. beef produced with artificial growth hormones or U.S. poultry meat cleaned with antimicrobial washes. U.K. Trade Commissioner for North America Antony Phillipson has indicated the U.K. will not lower its sanitary and phytosanitary (SPS) standards. Phillipson argued the U.K. could still offer enough new agricultural market access to win the support of Congress, which will have to approve the pact.

### Tensions Rise, China Warns Against New U.S. Tariffs

**Key Points:**

- Last Thursday, President Trump suggested that imposing more tariffs would be the best way to punish China for what he claims is their role in exacerbating the spread of the coronavirus.
- A Chinese official said that new duties on Chinese goods would only harm the U.S. when the two countries should instead be working together.
- Reports indicated that White House officials have debated several measures to offset the cost of the coronavirus outbreak.

Last Thursday, President Trump suggested imposing more tariffs would be the best way to punish China for what he claims is their role in exacerbating the spread of the coronavirus. Political pressure is also building on the Administration to take action against China, as the U.S. public’s view of the Chinese government is at an all-time low.

On Wednesday, a Chinese official responded to President Trump’s statements by saying that new duties on Chinese goods would only harm the U.S. when the two countries should instead be working together. She said the U.S. should instead be looking inward in assessing blame for the severity of the pandemic.

Tom Orlik, the chief economist at Bloomberg Economics, warned that the consequences of new tariffs on China could be more severe because of the pandemic. He noted that the dissolution of the “Phase-One” deal, new tariffs or broken supply chains could make businesses reconsider whether to rehire workers who were laid off.

U.S. news reports indicated that White House officials have debated several other measures to offset the cost of the coronavirus outbreak,
including some reports that suggest canceling some or all of the nearly U.S. $1.1 trillion debt that the United States government owes China. U.S. Treasury officials and others immediately dismissed those reports. While analysts added that the U.S. would never undermine the full faith and credit of the United States, the mere fact that the idea has been reportedly discussed could well prompt Beijing to seek to insulate itself from the risk by reducing its U.S. government debt holdings. China could cut back or stop buying new U.S. Treasury issues, or sell some holdings, both of which could raise pressure and rates on U.S. debt.

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.