Treasury Has Yet to Release Guidance on Payroll Tax Holiday

Key Point:
- The U.S. Department of Treasury has yet to follow up on a Presidential Memorandum directing the Department to allow businesses to defer payroll tax obligations for the remainder of the year.

Earlier this month President Trump issued a memorandum directing Treasury Secretary Mnuchin to allow businesses to defer their payroll tax obligations for the period from September 1 through December 31, 2020. However, the Department of Treasury has yet to issue any guidance on implementation, which will make it very difficult for businesses to participate by September 1. Rumors suggest a draft notice has been prepared, but the Administration is struggling with whether it can somehow forgive the obligation, which appears to be beyond statutory authority. Payroll providers have indicated that the delay will make it very difficult to change payroll systems to comply. The National Payroll Reporting Consortium (NPRC) expressed similar concerns in a press release on August 20. Without guidance it remains unclear for many businesses if their firm should engage in delaying payroll taxes. To meet the guidance, payroll companies would have to recalculate payroll tax obligations in the
middle of a quarter and have it apply to certain workers, not other workers, as well as adjusting for workers laid off during the COVID-19 pandemic.

The U.S Chamber of Commerce and a number of other trade associations also expressed concern in a letter sent to Senate Majority Leader McConnell (R-KY), Speaker of the House Pelosi (D-CA) and Secretary Mnuchin. In the letter the Chamber of Commerce stated “[m]any of our members consider it unfair to employees to make a decision that would force a big tax bill on them next year. It would also be unworkable to implement a system where employees make this decision. Therefore, many of our members will likely decline to implement deferral, choosing instead to continue to withhold and remit to the government the payroll taxes required by law.” Many of the nation’s largest employers have expressed hesitation to move forward without additional guidance from the Department of Treasury. Additionally, many firms have expressed concern over how long to make the payback period for the deferred tax obligations while certain organizations have advocated for making the obligations forgivable which many have argued is beyond the authority of the Department of Treasury and Internal Revenue Service. Treasury Secretary Mnuchin has said he does not have the authority to force companies to delay paying payroll tax obligations, but he expressed hope many companies would participate.

GOP Set to Proposed a Slimmed Down Fourth COVID-19 Relief Package, Meadows-Pelosi Talks Yield Very Little

Key Points:

-Republicans are expected to release a new, slimmer version of a fourth COVID-19 relief package as early as next week.
- The proposal may gain traction in the Senate, but House Democrats remain firm that any deal must meet their positions halfway and include key aspects like $600 per week federal unemployment benefits.
- White House COS Meadows and House Speaker Pelosi spoke, but comments following talks suggest no progress was made.

Senate Republicans have announced they are working on a narrower COVID-19 relief package which could be released as early as next week. The proposal, reported to be a $500 billion package, is set to address areas of bipartisan agreement such as; (1) funding for schools; (2) expanded unemployment insurance; (3) additional funding for COVID-19 testing; and (4) another round of funding for small businesses. The proposal reportedly would increase enhanced unemployment insurance to an additional $300 to $400 a week, a drop from the recent increase to $600 a week which expired at the end of July. President Trump created a $300/week program via executive order, and as of today 35 states have been approved for the lost wage assistance. Republicans have stated this package would not include another round of direct Economic Impact Payments to Americans. While this proposal may gain traction in the Republican-held Senate, it is unlikely to gain support in the House. It does not appear tax measures will be included, at this point, but they could be added later in the process.

House Speaker Pelosi and White House Chief of Staff Meadows met yesterday via a 25-minute phone conversation to discuss the negotiations. Following the meeting, Speaker Pelosi suggested Republicans should meet the House in the middle, by adding about $1 trillion to the Senate package for a total of about $2.2 trillion. The Speaker stated “[t]he Administration’s continued failure to acknowledge the funding levels that experts, scientists and the American people know is needed leaves our nation at a
tragic impasse;” and argued Republicans are not taking the process seriously. The tone and content of her remarks make it clear the conversation yielded little progress.

At this point, the issue is likely to be reconsidered in September, and could merge with legislation (a continuing resolution) to fund the government by the end of September.

*For more information about tax issues you may email* [email]([email]) [or call Christopher Hatcher at 202-659-8201. Josh Hansma contributed to this section.*

**FINANCIAL SERVICES**

**SEC Issues Proposed Amendments to the NMS Plan Governing the CAT**

*Key Points:*
- The SEC issued proposed amendments to enhance the data security of the Consolidated Audit Trail.
- Commissioner Peirce issued a statement noting that she supported the proposal, but arguing that it does not go far enough.

On August 21, the Securities and Exchange Commission (SEC) issued proposed amendments to the national market system plan governing the Consolidated Audit Trail (CAT) aimed at enhancing the CAT's data security. The SEC issued a press release which includes a fact sheet detailing the proposed amendments. In the press release, Chairman Jay Clayton states, “The requirements outlined in the proposal, including requiring the removal of sensitive PII, are designed to both (1) significantly reduce the amount of sensitive data collected without affecting the operational effectiveness of the CAT and (2) provide market participants with greater certainty regarding how CAT data will be protected and used.”

Chairman Clayton, Director of the Division of Trading and Markets Brett Redfearn, and Senior Policy Advisor Manisha Kimmel also issued a joint statement regarding the proposal.

Commissioner Hester Peirce issued a statement on the proposal, noting that she had supported the proposal, but would have preferred that the SEC take stronger action to address “the CAT’s real and serious liberty implications.” Peirce stated, “The discomfort we feel about similar monitoring in other marketplaces is something we should also feel when the government watches our every move in the financial markets.”

The proposed amendments will be subject to a 45-day comment period.

**SEC Finalizes Rules on Accredited Investor and Qualified Institutional Buyer Definitions, Regulation S-K**

*Key Points:*
- The SEC issued a final rule to modifying the definition of an accredited investor to allow qualification based on certain credentials. The rule also expands the definition of a qualified institutional buyer.
- The Commission also finalized rules to update Regulation S-K disclosures.
- Both rules were approved by a 3-2 vote, with Commissioners Lee and Crenshaw dissenting.
On August 26, the SEC adopted a final rule making amendments to the definitions of an accredited investor and a “qualified institutional buyer (QIB). The SEC issued a press release that includes a fact sheet on the rule. The fact sheet notes the final rule makes the following modifications to the accredited investor definition:

- Add a new category to the definition that permits natural persons to qualify as accredited investors based on certain professional certifications, designations or credentials or other credentials issued by an accredited educational institution, which the Commission may designate from time to time by order.
- Include as accredited investors, with respect to investments in a private fund, natural persons who are “knowledgeable employees” of the fund;
- Clarify that limited liability companies with $5 million in assets may be accredited investors and add SEC- and state-registered investment advisers, exempt reporting advisers, and rural business investment companies (RBICs) to the list of entities that may qualify;
- Add a new category for any entity, including Indian tribes, governmental bodies, funds, and entities organized under the laws of foreign countries, that own “investments,” as defined in Rule 2a51-1(b) under the Investment Company Act, in excess of $5 million and that was not formed for the specific purpose of investing in the securities offered;
- Add “family offices” with at least $5 million in assets under management and their “family clients,” as each term is defined under the Investment Advisers Act; and
- Add the term “spousal equivalent” to the accredited investor definition, so that spousal equivalents may pool their finances for the purpose of qualifying as accredited investors.

The rule also makes the following changes to the QIB definition:

The amendments expand the definition of “qualified institutional buyer” in Rule 144A to include limited liability companies and RBICs if they meet the $100 million in securities owned and invested threshold in the definition. The amendments also add to the list any institutional investors included in the accredited investor definition that are not otherwise enumerated in the definition of “qualified institutional buyer,” provided they satisfy the $100 million threshold.

Commissioners Allison Herren Lee and Caroline Crenshaw issued a joint statement opposing the final rule, stating, “Today’s amendments purport to “update” that definition while leaving in place 38-year old wealth thresholds, declining to index the thresholds to inflation, and declining to provide economic analysis to show how the failure to index will affect American investors—the bulk of whom are seniors—going forward.”

The SEC also adopted a final rule adopting amendments “to modernize the description of business (Item 101), legal proceedings (Item 103), and risk factor disclosures (Item 105) that registrants are required to make pursuant to Regulation S-K.” In a press release, SEC Chairman Jay Clayton stated:

Today we modernized our public company business disclosure rules for essentially the first time in over 30 years. Building on our time-tested, principles-based disclosure framework, the rules we adopt today are rooted in materiality and seek to elicit information that will allow today’s investors to make more informed investment decisions. I am particularly supportive of the increased focus on human capital disclosures, which for various industries and companies can be an important driver of long-term value. I applaud the staff for their dedication and thoughtful approach to modernizing and improving these rules and adding efficiency and flexibility to our disclosure framework.
Commissioners Lee and Crenshaw voted against the final rule, arguing that it fails to adequately address climate change risk and human capital. In a statement, Commissioner Crenshaw called for the SEC to create both an internal task force and an external advisory committee to examine environment, social, and governance (ESG) issues.

FHFA Delays Adverse Market Refinance Fee Implementation

**Key Points:**
- The FHFA delayed the implementation of a new 50 basis point refinance fee by Fannie Mae and Freddie Mac until December 1.
- The fee had been criticized by some industry and consumer groups, as well as Members of Congress.

On Tuesday, the Federal Housing Finance Agency (FHFA) directed Fannie Mae and Freddie Mac to delay the implementation date of their Adverse Market Refinance Fee until December 1, 2020. The fee was previously scheduled to take effect September 1, 2020. The FHFA also announced that Fannie Mae and Freddie Mac will “exempt refinance loans with loan balances below $125,000, nearly half of which are comprised of lower income borrowers at or below 80% of area median income.”

The new 50 basis point fee was announced by Fannie Mae and Freddie Mac on August 12.

A range of organizations, including the Center for Responsible Lending and the Mortgage Bankers Association, had heavily criticized the fee. Senate Banking Committee Chairman Mike Crapo (R-ID) sent a letter to the FHFA raising concerns with the fee, stating:

> Many housing market stakeholders have highlighted the potential negative impact the announced pricing increase will have on consumers seeking to access this benefit by increasing the average cost of refinancing. Additionally, these stakeholders have highlighted that the relatively short period before the effective date could complicate the origination process for refinance applicants who have not yet locked in their interest rate, as well as impose multimillion dollar balance sheet hits to community lenders who have sizeable pipelines of closed loans that cannot be delivered to Fannie Mae or Freddie Mac prior to September 1st.

Democratic Members of Congress also expressed strong opposition to the new fee. House Financial Services Committee Chairwoman Maxine Waters (D-CA) issued a statement “urging the FHFA to reverse course immediately and allow homeowners a fighting chance.” Senate Banking Committee Ranking Member Sherrod Brown (D-OH) issued a statement asserting:

> FHFA and the GSEs’ decision to raise costs on homeowners will hurt families across the country. In the middle of the worst economic downturn since the Great Depression, the GSEs and their regulator should be fulfilling their mission to support homeowners and the housing market. Instead, they’re doing just the opposite.

Additionally, on August 26, the FHFA announced Fannie Mae and Freddie Mac will extend buying qualified loans in forbearance and several loan origination flexibilities until September 30, 2020. The changes are to ensure continued support for borrowers during the COVID-19 national emergency. The flexibilities were set to expire on August 31, 2020.
Congressional Oversight Council Releases Report on the Main Street Lending Program

Key Point:
- The report criticized the delays in implementing the Main Street Lending Program.

The Congressional Oversight Commission, which was created by the CARES Act, released its fourth report, which focused on the Federal Reserve’s Main Street Lending Program. The report notes that the program has seen “modest initial activity” thus far. The report was critical of the delays in implementing the Main Street Lending Program, stating:

It took three months for the Main Street Lending Program to become operational for for-profit businesses, and the facilities for nonprofits have yet to open. The Federal Reserve has cited as the cause of the delay the complexity of implementing a loan buying program that must serve heterogeneous borrowers, along with the fact that the program must rely on private third-party lenders’ onboarding of borrowers and those lenders’ existing underwriting processes—all time-consuming steps. Any delay in implementing the program constrains the effectiveness of any relief that the program could provide to viable businesses and nonprofits. The Commissioners’ views differed regarding whether further modifications to the program’s structure and terms would succeed in serving more businesses and their employees, and whether such changes would be prudent, but the Commission does agree that time is of the essence. The Commission recommends that the Federal Reserve and the Treasury expedite their processes for considering (and, if appropriate, implementing) modifications and hasten the rollout of the nonprofit facilities. The Commission also recommends that the Treasury and the Federal Reserve consider the appropriateness of enlisting other Federal Reserve Banks to help expand administrative capacity, as well as to help innovate and experiment with changes or expansions to the Main Street Lending Program.

The report notes that the Commission intends to hold a hearing on the Municipal Liquidity Facility at a date to be determined.


Key Point:
- The report urged federal financial regulators to require additional disclosure on climate risk and incorporate climate risk into stress testing and risk assessment methodologies.

On August 25, Senate Democrats’ Special Committee on the Climate Crisis released a report entitled “The Case for Climate Action: Building a Clean Economy for the American People.” In addition to sections on the electric sector, the industrial sector, the transportation industry, agriculture, and others, the report offers the following recommendations for financial regulators:

- The Federal Reserve and other U.S. regulators should immediately join their international counterparts, who are already engaged in an effort to understand climate financial risks.
The Securities and Exchange Commission (SEC) should issue updated rules on how public companies must disclose climate risks and take enforcement actions against companies that fail to do so. The Federal Reserve and other agencies should take the lead in developing climate scenario analysis tools and conduct stress tests on individual financial firms to measure their resilience to climate risks. The Financial Stability Oversight Council (FSOC) should assess risks to the financial system as a whole. The SEC should require rating agencies to incorporate climate financial risk into their core rating methodologies. The Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) should improve their supervisory practices to incorporate climate risks. The Federal Insurance Office (FIO) should assess the insurance industry’s vulnerability to climate risks and make recommendations to state commissioners. All federal financial regulators should include explicit discussion of climate risks in their annual reports and other relevant publications.

The report also includes recommendations for mitigating climate risk in communities, including updating the National Flood Insurance Program (NFIP) framework. It states the NFIP “subsidizes risk for too many wealthier owners of water-front property,” and it calls for incentivizing action at the community level, including “creating new incentive programs for cities that adopt more resilient zoning codes”.

Federal Reserve Issues Three Final Rules

Key Point:

- The Federal Reserve issued final rules regarding the community bank leverage ratio, bank capital requirements, and the Current Expected Credit Loss methodology.

On August 26, the Federal Reserve issued three final rules:
- A final rule that temporarily modifies the community bank leverage ratio, as required by the CARES Act;
- A final rule that makes more gradual, as intended, the automatic restrictions on distributions if a banking organization’s capital levels decline below certain levels; and
- A final rule that allows institutions that adopt the current expected credit losses or “CECL” accounting standard in 2020 to mitigate the estimated effects of CECL on regulatory capital for two years.

A Federal Reserve press release noted that all three rules were identical or substantially similar to interim final rules currently in effect which were issued earlier in the year.

Upcoming Hearings and Meetings

September 1

Coronavirus Response: The House Select Subcommittee on the Coronavirus Crisis will hold a hearing on the Trump administration’s response to the economic crisis. Treasury Secretary Steven Mnuchin will testify at the hearing.
September 2
SEC Open Meeting: The SEC will hold an open meeting to consider “whether to adopt amendments to the Commission’s rules implementing its whistleblower program that would enhance claim processing efficiency, and clarify and bring greater transparency to the framework used by the Commission in exercising its discretion in determining award amounts, as well as otherwise address specific issues that have developed during the whistleblower program’s history.”

September 10
FHFA Re-proposed Capital Rule: The Federal Housing Finance Agency (FHFA) will host a listening session on credit risk transfers and the re-proposed capital rule for Fannie Mae and Freddie Mac.

September 14
FHFA Re-proposed Capital Rule: The Federal Housing Finance Agency (FHFA) will host a listening session on affordable housing access related to the re-proposed capital rule for Fannie Mae and Freddie Mac.

September 16
SEC Open Meeting: The SEC will hold an open meeting to consider whether to “modernize and enhance the efficiency of the shareholder-proposal process for the benefit of all shareholders by adopting amendments to certain procedural requirements for the submission of shareholder proposals and the provision relating to resubmitted proposals under Rule 14a-8.”

September 24
Lab CFTC: The Commodity Futures Trading Commission’s (CFTC) LabCFTC will hold the first segment of “Empower Innovation 2020, “a three-part series of interactive virtual events designed to facilitate a dialogue among innovators, regulators, market participants, and the public around cutting-edge fintech innovation.”

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

ENERGY AND ENVIRONMENT

Upcoming Hearing and Events

August 31

September 17
FERC Meeting: The Federal Energy Regulatory Commission (FERC) will hold its monthly open meeting.
September 21-25
**Clean Energy Week:** A group of energy organizations and associations will host the annual “National Clean Energy Week”, a virtual public policy forum. The event will examine “the world’s most pressing challenges in nuclear, solar, wind, wave, hydropower, geothermal, natural gas, biomass, carbon capture, storage, and waste-to-energy technologies.” Participants will “hear directly from Republican and Democratic policymakers and top speakers in clean energy investment and innovation.”

September 22
**Appliance Standards:** The Department of Energy’s Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) will hold a meeting via webinar. The meeting will include a discussion and prioritization of topic areas on which ASRAC can assist the Appliance and Equipment Standards Program.”

September 30
**Carbon Pricing:** The Federal Energy Regulatory Commission (FERC) will hold a technical conference on “Carbon Pricing in Organized Wholesale Electricity Markets”. The conference is expected to “discuss considerations related to state adoption of mechanisms to price carbon dioxide emissions, commonly referred to as carbon pricing, in regions with Commission-jurisdictional organized wholesale electricity markets.”

October 4-5

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.

**HEALTH**

**FDA Grants EUA for Convalescent Plasma for COVID-19**

**Key Points:**
- The Food and Drug Administration issues an emergency use authorization for investigational convalescent plasma
- The Department of Health and Human Services also issued amended guidance on how covered health care providers and health plans can contact patients and inform them about donating plasma.

On August 23, the Food and Drug Administration (FDA) announced it issued an emergency use authorization (EUA) for investigational convalescent plasma to treat COVID-19. The FDA found, after a review of the science and data, that the potential benefits of convalescent plasma outweigh the known and potential risks.
Department of Health and Human Services (HHS) Secretary Alex Azar called the authorization “a milestone achievement in President Trump’s efforts to save lives from COVID-19” and asserted “work on convalescent plasma has delivered broader access to the product than is available in any other country.” FDA Commissioner Stephen Hahn emphasized the FDA will “continue to work with researchers to continue randomized clinical trials to study the safety and effectiveness of convalescent plasma in treating patients infected with the novel coronavirus.”

In addition, HHS announced updated guidance on how the Health Insurance Portability and Accountability Act permits contact with patients who have recovered from COVID-19 to inform them about donating convalescent plasma. The new guidance adds health plans to previous guidance that focused only on providers. Under the guidance, providers and plans may not receive any payment from or on behalf of a plasma donation center in exchange for communications with recovered individuals.

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

TRADE

E.U. Trade Commissioner Phil Hogan Resigns

Key Point:

- E.U. Trade Commissioner Phil Hogan Resigned on Wednesday after attending a golf dinner with over 80 people in attendance.
- Ireland will nominate two candidates for possible replacements as permanent Trade Commissioner for the EU.

E.U. Trade Commissioner Phil Hogan resigned on Wednesday after a scandal deemed by many as “GolfGate.” Hogan, a former member of the Irish Parliament, became E.U. Trade Commissioner in 2019 and was an influential figure in the E.U.’s Brexit negotiations with the U.K. Commissioner Hogan was criticized for attending a golf dinner of more than 80 people on August 19 in Galway, Ireland. Additionally, he was criticized for not complying with Irish quarantine guidelines when arriving in Ireland from Brussels, mistakenly believing a negative COVID test meant he no longer needed to quarantine. In a statement Mr. Hogan said he “should have been more rigorous” in adherence to the COVID-19 guidelines.

With the Trade Commissioner’s exit, many in Ireland worry the country will lose their grip on the influential post within the regime in Brussels. Many in Ireland are worried they are losing a key ally in Brussels with regards to Brexit as the negotiations move forward. There is no official word on who will succeed Hogan as Commissioner at this time, however; the Irish Times has reported David O’Sullivan, former E.U. Ambassador to the U.S. or Catherine Day, the Former Secretary General of the European Commission are being considered to replace Hogan. In the midst of Hogan’s resignation, the latest round of trade talks between the the United Kingdom and European Union have concluded this past week without any signs of a deal. This failure to reach a deal puts the two parties one step closer to the upcoming two-month deadline when the two parties must agree on a deal or risk hurting businesses already under stress from COVID-19.
U.S. and China Hold Phase One Deal Review Talks

Key Point

- Trade negotiators from U.S. and China met by phone Tuesday to continue discussions and review progress on the Phase I trade deal between the two nations.

On Tuesday, top level officials from the U.S. (including Treasury Secretary Mnuchin and USTR Lighthizer) and China (including Vice Premier Liu He) spoke over the phone to review progress on Phase I of the trade deal. Last week, President Donald Trump said he delayed the talks, which were scheduled for August 15, over his broader frustrations with China and publicly questioned whether the two sides would continue to engage in trade negotiations at all. The Office of the United States Trade Representative issued a readout statement that indicated the talks included a discussion of “significant increases” in Chinese purchases of U.S. products; as well as steps that China has taken to make structural changes called for by the Agreement that will “ensure greater protection for intellectual property rights, remove impediments to American companies in the areas of financial services and agriculture, and eliminate forced technology transfer.”

China has imported roughly 47% of its year-to-date phase one targets, according to an estimate by Chad Bown of Peterson Institute for International Economics. In a related development, China is expected to purchase a record number of American soybeans this year. According to Bloomberg, China will purchase nearly 40 million tons of American soybeans in 2020, which is 25% more than China purchased from the U.S. in 2017.

Despite the COVID-19 pandemic and tensions at higher political levels over Hong Kong, tech companies, and the Uighurs, the U.S. and China both seem to be taking steps toward furthering trade relations and meeting their goals. Many experts familiar with the issue have touted these talks as a promising sign for future negotiations after the pandemic has run its course.

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 Bareham.