

TRP SPECIAL REPORT: CONGRESSIONAL LOOK AHEAD — THE SUMMER OF COVID-19

EXECUTIVE SUMMARY

The federal response to the novel coronavirus (COVID-19) pandemic and social distancing policies implemented to slow the spread of the virus has upended the congressional schedule. After postponing legislative business for nearly a month, the Senate resumed legislative business last week. Majority Leader Mitch McConnell (R-KY) expects to follow the existing Senate calendar for the balance of 2020 — meaning their next scheduled district work period for Memorial Day will go on as scheduled. While Senate leadership will be reassessing the situation regularly, Leader McConnell feels strongly that the Senate needs to be in session for the balance of the pandemic.

Meanwhile, House lawmakers continue to distance themselves from the Capitol citing health and safety concerns raised by the Attending Physician's office. At this point, until the House is able to pass its remote operations plan (which will be tied to the timing for voting on the next CARES Package) the schedule for the next few months (and the remainder of the year, for that matter) remain in flux. This includes the possibility of coming into session during previously scheduled district work periods (such as the August recess) and convening for five-day work weeks as lawmakers look to return to something resembling "regular order." Majority Leader Steny Hoyer (D-MD) announced that Members "may" convene for legislative business no earlier than this Friday pending the introduction of their 'CARES 2.0' package, as well as a rule change that would facilitate remote work. However, with Democratic leadership announcing it would provide 72-hours' notice before any scheduled vote on the package, the text would need to be released today in order to have members in town for a Friday vote.

This memo forecasts potential Congressional activity in the coming weeks and months. While immediate action will focus on policies pertaining to COVID-19 response efforts, and remote voting and virtual hearing contingency plans that promote social distancing and flexibility among lawmakers, Congress must still work on a variety of "must-pass" items. These include the fiscal year (FY) 2021 appropriations bills and the National Defense Authorization Act (NDAA), as well as others that will require Congressional action before September 30th. Look

COVID-19 ACTIVITIES

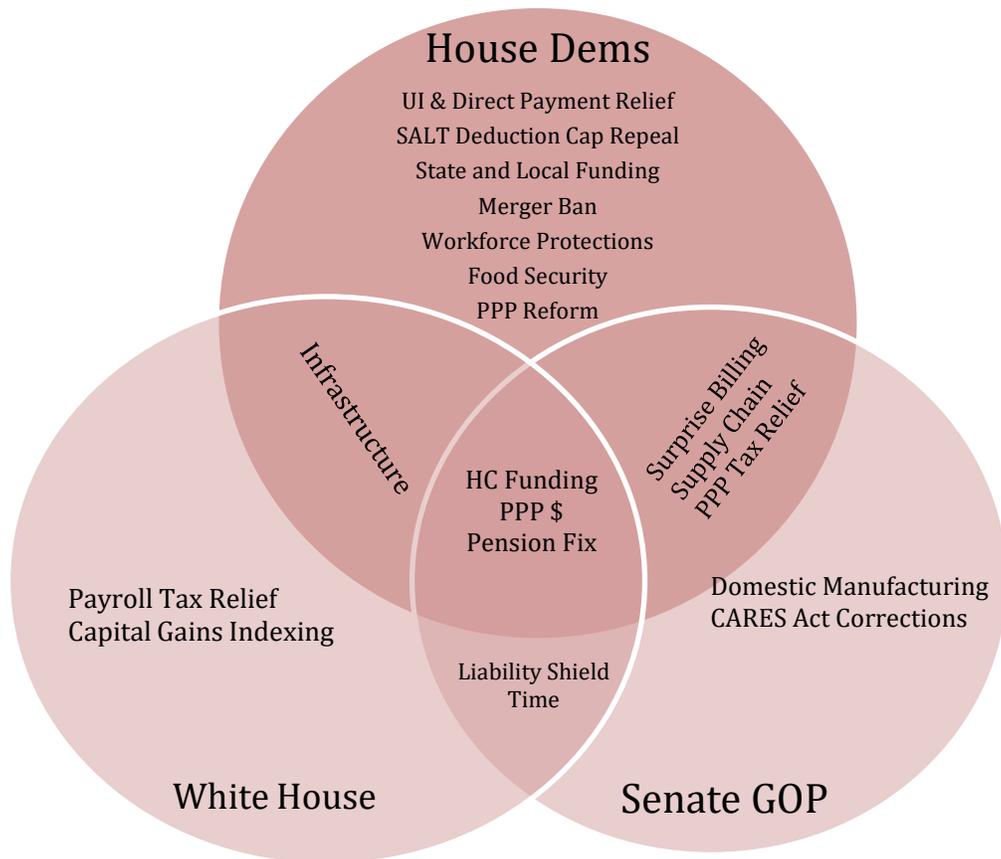
Relief Legislation

House Democratic leadership is formulating a strategy to bring another COVID-19 legislative package to the floor. Democrats have reportedly been working off of Speaker Nancy Pelosi's [counteroffer](#) to Senate Majority Leader Mitch McConnell's (R-KY) original CARES Act as a starting point for

developing their forthcoming bill, with an official proposal expected at some point in the immediate future. Democrats have outlined numerous priorities for this next round of stimulus relief, including: (1) additional funding for state and local governments (including election assistance); (2) flexibility and loan forgiveness policies for the Paycheck Protection Program (PPP); (3) increasing the Federal Medical Assistance Percentages (FMAP) for Medicaid; (4) boosting food security programs such as the Supplemental Nutrition Assistance Program (SNAP); (5) paid sick leave and hazard pay for health care workers and emergency responders; and (6) bolstering funding for health care providers and COVID-19 testing.

Conversely, Leader McConnell and Senate Republicans have offered lukewarm support for another round of COVID-19 stimulus relief, saying Congress should “take a pause” to evaluate the implementation of the CARES Act before moving onto another relief package. GOP lawmakers have also been unreceptive to tacking on more ambitious, non-COVID related policy items supported by President Donald Trump, leaving policies such as infrastructure and payroll tax relief “dead-on-arrival.” Moreover, as an additional potential sticking point, Leader McConnell has stressed that any future COVID-19 legislation must include liability protections for health care workers, business owners, and employees from lawsuits pertaining to the outbreak — a proposal that has raised consumer protection concerns among Democratic lawmakers.

CARES 2.0: What Policies Have Been Floated?



Note: This diagram charts the policies that have been supported publicly. It does not explicitly forecast their inclusion in a final CARES 2.0 legislation.

TRP Forecast. Action on the next round of COVID-19 legislation could slip into late May or early June should lawmakers need more time to clinch a broader agreement. Given the wide array of disagreements on both the size and scope of the package, lawmakers could instead focus on smaller, less controversial policy items that enjoy bipartisan support such as additional supplemental appropriations, funding for the PPP, and addressing existing and emerging health care provider and program needs.

Remote Voting

As the COVID-19 health crisis has worsened — leading to tighter restrictions on public gatherings and travel — Congress is considering an array of unprecedented steps that would temporarily establish remote voting procedures during the emergency. There have been several options floated from both sides of the aisle that would permit members to vote without being in Washington and facilitate Committee hearings and markups to consider key legislative items. The Senate has already begun implementing its plan for virtual hearings, though with only 100 members and a process more designed for unanimous consent, it may continue to require in-person voting on the Senate floor.

On the other hand, House lawmakers have yet to coalesce behind a comprehensive approach after shelving plans to vote on an emergency remote voting resolution last month. The larger membership of the lower chamber creates more logistical challenges — for example, the House Transportation & Infrastructure and House Armed Services Committee provide the only rooms in the entire Capitol complex that are large enough to host members for a mark-up under social distancing guidelines. In the absence of an official change to House rules to allow remote hearings, House Committees have started holding unofficial “virtual” forums.

TRP Forecast. When the House returns, members will vote on temporary emergency rules changes that will allow the lower chamber to conduct legislative business virtually. It remains to be seen whether this forthcoming proposal will pass with bipartisan support as Republicans would prefer to convene in-person with bolstered social distancing and sanitation standards.

GOVERNMENT FUNDING

House

House Appropriators are continuing their work on FY 2021 spending measures behind the scenes as timing on markups and full consideration of the bills remains in flux as a result of the pandemic. Last month, House Appropriations Chairwoman Nita Lowey (D-NY) assigned the 302(b) subcommittee allocations for each of the 12 bills. As such, many of the subcommittees are in the final stages of wrapping up their bills in preparation for markups, which are currently on track to occur in late May

or early June. Additionally, Chairwoman Lowey noted that the House will not consider any FY 2021 spending legislation until lawmakers finish consideration of the next round of COVID-19 relief — a factor that could further complicate the timeline for action on government funding. The Chair and Ranking Member of the Labor, Health & Human Services, Education, and Related Agencies Appropriations Subcommittee have floated taking some public health expenditures off-budget, thus freeing them from 302(b) caps.

Senate

In the upper chamber, the Appropriations Committee met recently to discuss next steps in the Senate's process, as well as its FY 2021 allocations. While Chairman Richard Shelby (R-AL) has yet to indicate whether there is an agreement on the subcommittee top-lines, he speculated that markups could be completed during the last week of June ahead of the July 4 district work period. Should that timeline pan out, full consideration of FY 2021 spending bills would likely occur in the middle of July. Chairman Shelby also noted that he expects to move 10 of the 12 bills during this timeline, with the measures for the Department of Homeland Security and Military Construction-Veterans Affairs expected to be delayed due to gridlock over border security.

- **Cap Constraints.** Appropriators are working within a narrow window for discretionary nondefense programs for FY 2021, which are in line for just 0.4 percent (\$2.5 billion) more overall than the previous year. Democrats and Republicans have begun to coalesce around the idea of establishing an emergency Health Defense Operations budget designation to cover nearly \$11 billion in veterans' health care program spending established under the 2018 VA MISSION Act. Much like the Overseas Contingency Operations (OCO) account, this designation would exempt these veterans' health care programs from Budget Control Act caps and provide lawmakers with greater flexibility to stay within the budget caps. Despite this flash of bipartisan cooperation, it remains to be seen whether the Trump administration will support this maneuver as President Trump opposed a cap adjustment for these programs during last year's budget deal negotiations.

TRP Forecast. The looming presidential election could inflame existing debates for FY 2021 on "poison pill" issues such as border security, immigration, health care, and more as both sides jostle for positioning in 2020. If the appropriations process drags out past the Sept. 30 deadline, Congress is likely to punt unfinished bills past the Sept. 30 deadline and potentially into early 2021 through a continuing resolution (CR).

NDAA

Meanwhile, lawmakers on the Armed Services Committees have been working on bill text for the annual National Defense Authorization Act (NDAA). While timing on officially kicking off the NDAA process remains in flux due to the uncertainty in the Congressional schedule, House lawmakers could begin the markup process as soon as next week if the lower chamber resumes legislative business.

The House Armed Services Committee was originally scheduled to markup the bill on Apr. 30. A new date has yet to be announced as lawmakers await further details on the schedule. Meanwhile, the Senate Armed Services Committee is eyeing a markup for its version of the NDAA during the week of Jun. 8 after originally scheduling it for May 18. As is the case with the FY 2021 spending bills, the Senate is eyeing passage of the massive defense authorization bill prior to the July 4 district work period.

KEY EXPIRING POLICIES

Highway Trust Fund

Congress faces a hard deadline of Sept. 30 to address funding for the Highway Trust Fund, providing lawmakers with a potential legislative vehicle to address other pressing infrastructure needs. Senate Environment and Public Works Chairman John Barrasso (R-WY) introduced a five-year, \$287 billion highway-only portion of a Surface Transportation Reauthorization [measure](#) last July, but the bill has yet to advance beyond the Committee for full consideration in the upper chamber despite unanimous support from within the Committee. Conversely, House Transportation and Infrastructure Chairman Peter DeFazio (D-OR) and other House Democrats have focused on supporting a comprehensive infrastructure bill that would address broader programs in addition to the surface transportation funding.

TRP Forecast. Despite bipartisan sentiment that more investment in the nation's infrastructure is needed, a number of challenges have stalled progress on clinching comprehensive infrastructure reform. Therefore, it's possible that an extension of existing surface transportation programs will be passed with other legislative in the fall, although hope will remain for a broader infrastructure package this summer.

National Flood Insurance Program

The National Flood Insurance Program (NFIP) is currently funded through Sept. 30 and has seen 15 short-term reauthorizations since the end of FY 2017. Lawmakers have yet to coalesce behind an approach as House Financial Services Chairwoman Maxine Waters (D-CA), Energy and Commerce Chairman Frank Pallone (D-NJ), and Sen. Bob Menendez (D-NJ) have offered dueling proposals for long-term NFIP reauthorization and reform.

TRP Forecast. With the likelihood of clinching a long-term authorization shrinking due to the compressed 2020 legislative calendar, it's likely that another short-term reauthorization for the NFIP will be needed by the Sept. 30 deadline.

Health Extenders

As part of the CARES Act, Congress reauthorized a variety of expiring health care-related programs through the end of November to avoid the programs lapsing after May 22, 2020. The mid-May deadline was originally put in place at the end of 2019 to spur possible action on key health priorities such as prescription drug pricing and surprise billing reforms. However, lawmakers' decision to preempt the previous extenders deadline — coupled with the impact of COVID-19 on Congressional bandwidth — strongly decreased the likelihood of these “big ticket” health priorities getting addressed during the balance of the 116th Congress.

TRP Forecast. Congress has until Nov. 30 to address these expiring programs. If the appropriations process drags beyond the Sept. 30 deadline, it's highly likely that lawmakers could use future stopgap funding measures as a vehicle for addressing health extenders — similar to what happened twice in 2019.

Additional Expiring Deadlines for FY 2020	
Policy	Deadline
CARES Act Unemployment Provisions	July 31
Paycheck Protection Program	December 31
CARES Act Interest Deductibility & NOL	December 31
CARES Act Pandemic Unemployment Assistance	December 31
TCJA Medical Expense Tax Deduction	December 31
TCJA Alcohol Tax Rates	December 31
TCJA Paid Family Leave Credit	December 31
Tax Extenders	December 31