

**AUGUST 10, 2020**

# **LEGISLATIVE INSIGHTS**

**What We’re Watching on Capitol Hill This Week**

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## Last Week's Highlights

### Congressional Recess Begins

Expanded weekly benefits expired last week and now State unemployment agencies are expecting and bracing for a processing nightmare, placing tremendous pressure on Congress to broker a deal on a new virus-relief package. The White House negotiators and Democratic Congressional Leadership remain far apart in developing a final product on the next COVID-response bill, particularly on the amount of funding to state and local communities, enhanced unemployment insurance, SNAP funding and a host of other issues. Both the Senate and the House of Representatives are in session, but Senators and Members have gone home. Should a deal be reached they will be provided 24 hours' notice before any vote would occur.

### Executive Orders

Over the weekend, President Trump signed a series of Executive Orders due to the inability to reach an agreement with Congressional Democrats that will (1) Extend Unemployment Insurance (UI) through the end of the year; (2) Provide protections from evictions through the end of the year, (3) Provide a payroll tax holiday through the end of the year, and (4) Defer student loan interest and payments until further notice. There are numerous uncertainties about the funding and ability to enact these measures, so the future of the actual implementation of the Orders remains uncertain.

### Economic News

Last week, the employment picture in the United States changed as total nonfarm payroll employment rose by 1.8 million in July, and the unemployment rate fell to 10.2 percent. The Department's Bureau of Labor Statistics (BLS) stated that the improvements in the labor market reflected the continued resumption of economic activity that had been curtailed due to the coronavirus (COVID-19) pandemic and efforts to contain it. In July, notable job gains occurred in leisure and hospitality, government, retail trade, professional and business services, other services, and health care.

### Tax Revenues Increase

According to the Congressional Budget Office, the federal government collected \$563 billion in July, setting a new monthly record for federal income and helping slow the growth of the record-shattering deficit that's built up during the coronavirus pandemic. CBO noted that half of that money comes from the IRS's delayed tax deadlines. The agency moved its largest annual payment deadline from April to July this year, to give taxpayers a chance to get their affairs in order amid the pandemic.

### COVID-Related News Round-Up

**California** had its second-deadliest day in the pandemic and Florida's case count topped 500,000. Texas's test positivity rate reached a three-week high. New York City is setting up checkpoints at key entry areas to enforce state quarantine rules for travelers.

Joe Biden will accept the **Democratic Party's nomination** from Delaware rather than risk traveling to Milwaukee. Chicago, the country's third-largest school district, will have remote learning for public schools when classes resume next month.

Johnson & Johnson will supply **100 million doses of its experimental Covid-19 vaccine** to the U.S. The U.K. agreed to invest \$18 million in a Scottish vaccine-manufacturing plant, while Moderna, Inc. said it has received \$400 million of deposits for its potential Covid-19 shot.

### Paycheck Protection Program Issues New Guidance

More than 4.33 million people in the United States have been infected with the coronavirus and at least 150,000 have died. Case numbers continue to surge throughout most of the United States, including in many states that were among the first to reopen.

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***All HBS COVID-19 Federal Response Updates can be found by [clicking here](#).***

## What to Watch This Week

### Stimulus Talks Continue

The two sides on the COVID-Relief measure remain far apart in their negotiations; however, Treasury Secretary Steven Mnuchin says he thinks Democrats want to compromise, making a deal on the next pandemic relief package possible, stating on CNBC this weekend that a demand for \$1 trillion in aid for state and local governments is “absurd,” but Congress should pass legislation to provide relief where there is agreement.

### A Deeper Dive: COVID Negotiation Standoff

Although Congress has left town, House and Senate Leadership stand ready to call Members back to Washington to consider and pass the next COVID-19 Relief/Stimulus Package if a deal is reached between all parties.

As of today, Republicans and Democrats remain far apart on numerous issues and are far from reaching agreement on any final measures. President Trump’s weekend orders, designed to encourage further negotiations, have not jolted significant progress on Capitol Hill. Democratic lawmakers and the administration still seem weeks away from reaching any compromise.

We believe that some version of a COVID-Relief package will ultimately be adopted; however, our team has no indications that there is a massive compromise deal ready to be released as of this moment. We do know that the longer negotiations drag on, there is a greater likelihood that the conversation over the size and scope of a COVID relief measure will be tied to election year politics and/or be connected to a must pass piece of legislation, like a Continuing Resolution to keep the government operating after September 30, 2020.

As the conversations in Washington continue, worst hit are the families, businesses, and state and local governments that have had a safety net pulled out from under them at a time some data suggest that recent gains in employment may be transitory as the continuing spread of COVID-19 infections forces a retrenchment. Treasury Secretary Mnuchin said Monday that there are areas where compromise is possible and a “fair deal” could be struck. But in an interview on CNBC he continued to dismiss Democrats’ insistence on \$1 trillion for aid to state and local governments as “absurd.”

The biggest driver for a deal may be the reaction of financial markets and the business community in the coming days. The S&P 500 rose for a seventh day Monday, approaching the record high set in February, while Treasury yields fell after Trump’s executive action over the weekend.

Despite a report showing the U.S. added 1.76 million jobs in July, the economic situation remains more dire than the depths of the last recession -- when unemployment reached a peak of 10%. Further job gains look increasingly difficult with large parts of the economy hobbled. High-frequency indicators show that economic and payroll activity slowed or declined in the weeks following the survey period for the government’s July jobs report. More than a million workers are filing new unemployment insurance claims every week, and more than half of unemployed Americans have now been without a job for more than 16 weeks, according to the Labor Department.

Pressure will continue to mount on elected officials as Election Day draws near. Nearly 30 million Americans said they didn’t have enough to eat in the week ended July 21, the U.S. Census reported.

The President’s weekend actions may be seen by some voters as Trump taking charge while Congress bickers. This will add additional pressure to bring Congressional leaders to the negotiating table.

### **Where Negotiations Stand This Week**

As of this morning, top Democrats clung to their \$3.4 trillion package until late in the talks, but offered to cut the topline number closer to \$2 trillion. Senate Majority Leader Mitch McConnell (R-Ky.) said Democrats want states like Texas and Florida to bail out New Jersey and New York, which he said have suffered from “mismanagement.”

Senate Minority Leader Chuck Schumer (D-N.Y.) said that he’s hoping Mnuchin and Trump’s Chief of Staff Mark Meadows will face enough pressure in their party to return to talks that broke up last week, with members of both chambers going home for an August recess with plans to return only if a deal is struck.

- Republicans and Democrats started out more than \$2 trillion apart on overall spending and on a number of key issues—including how much to transfer to state and local governments, whether to provide virus lawsuit protections for businesses that reopen and how to handle extending unemployment benefits after weekly payments of \$600 stopped last month.
- Democrats said they offered to slash their proposal by \$1 trillion if Republicans boosted theirs by a similar amount and were rebuffed. “We’re not just going to split the difference” between the Democratic plan—which totaled \$3.5 trillion in a House-passed bill in May—and the \$1 trillion plan Republicans offered at the end of July, Mnuchin said today.

- The impasse over the size of the measure sets up the potential for weeks more posturing and negotiations that may not yield real progress despite record high unemployment levels.
- Lawmakers also face a September 30th due date for the annual federal budget, setting up a hard deadline to agree on a wide array of spending or risk a partial government shutdown weeks before the election.

Earlier today, House Leadership announced plans to return to Washington on September 8th – barring a final COVID-19 Deal – but no votes are planned before September 14th. The last planned vote before the November elections is slated for October 2nd. This gives Congress only 12 legislative days to review, debate, amend and pass any COVID relief measure and pass legislation to fund the government after the fiscal year ends on September 30th.

### **Executive Orders**

A lack of action by Congress has frustrated the White House and led the President to execute four executive orders over the weekend. The reality is that Trump's attempt to skirt Congress is highly likely to fail on most levels and while the Executive Orders are toothless, they may be intended to help bring the parties to the negotiating table to continue to work through their differences with greater urgency as a result of the President's actions.

#### **Executive Order on Deferring Payroll Tax Obligations**

This executive order delays payroll tax collection for those making under \$104,000. The President, under this order, instructs the Secretary of the Treasury to halt collection of payroll taxes from Sept. 1 through Dec. 31 for workers who earn less than \$4,000 every two weeks (or about \$104,000 a year). While this will feel like a tax cut for a few weeks because workers will end up with larger paychecks while the tax is not collected, under the order, it is technically a tax deferral, meaning the taxes will still be due at a later date.

#### **Executive Order on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019**

This executive order attempts to extend expired unemployment benefits; however, the order is probably unimplementable in a timely fashion. The EO requires states – who have already noted that they are facing huge budget shortfalls – to somehow find the money to pay for one-quarter of his proposed extra \$400-per-week benefits (down from the \$600 enhanced weekly benefit that expired at the end of July).

The other 75 percent comes from repurposing disaster relief money from the Federal Emergency Management Agency (FEMA). Critics of this move have expressed concern that taking money from FEMA during what is predicted to be a busier than usual hurricane season, complicates FEMA's ability to effectively execute their core mission. The order directs FEMA to use as much as \$44 billion from the Disaster Relief Fund for "lost wage assistance" to those receiving unemployment or other short-term benefits.

With more than 16 million people relying on unemployment benefits, nearly a dozen states -- including New York, California, and Texas -- have already exhausted their trust funds and borrowed almost \$20 billion from the U.S. Treasury to cover their share of the checks. States with insufficient unemployment reserves will likely need to raise taxes on businesses or reduce benefit levels to repay the debt, which would exert an additional drag on the economy.

An additional concern is that this action could take months to set up, and state legislatures have to decide to agree to the plan. Even if they do, the amount in question would last only for about a month.

However, this afternoon, the Department of Labor stated that the presidential action Trump signed on Saturday after virus-relief talks stalled would provide unemployed individuals with \$400 in “lost wages assistance” on top of their regular state unemployment insurance benefits. The Department clarified that the federal government would cover \$300 of that total through disaster relief funds administered by the Federal Emergency Management Agency. States are encouraged to bankroll the remaining \$100 from their own budgets to meet a “cost-share requirement,” **but they’re not obligated to do so, the Labor Department said in an advisory email to state unemployment agencies on Monday.**

An alternative option would allow states to satisfy the cost-sharing requirement through their existing unemployment insurance weekly benefit payments, meaning the individual would receive only \$300 in extra assistance on top of their weekly state-funded benefit.

“This option requires no new expenditures of state funds beyond what the state would already be paying out from state funds in regular unemployment compensation benefits,” stated John Pallasch, DOL’s assistant secretary for employment and training. The new plan would cover weeks of unemployment insurance from August 1 through December 27, or when FEMA’s disaster relief fund balance drops to \$25 billion, whichever happens first.

### **Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners**

This executive order does not ban evictions, instead, it calls for Health and Human Services Secretary Alex Azar and Centers for Disease Control and Prevention Director Robert Redfield to “consider” whether an eviction ban is needed. The United States has about 110 million renters, and many have been hit hard by the layoffs in retail, restaurants and hospitality during the pandemic. The executive order does not provide any resources for renters. The federal government owns the vast majority of mortgages in the nation through Fannie Mae, Freddie Mac and other entities. Back in March, Congress passed a federal moratorium preventing many evictions, but it expired on July 24. That moratorium covered all renters living in places that had a federally owned mortgage. While many thought the President might have the authority to extend that eviction ban, this order does not call for that.

## **Executive Order on Continued Student Loan Payment Relief During the COVID-19 Pandemic**

The final executive order issued by the President waives all interest on student loans held by the federal government through the end of 2020 and allows people to delay payments until December 31, 2020. The Department of Education does have the authority to defer or even cancel student loan payments to the federal government and the President used this authority to temporarily cancel interest payments, which helps relieve the financial burden on millions of Americans. But the debt is not canceled forever. Principal payments are due on December 31, 2020 and full payments are slated to restart on January 1, 2021.

### **Implementing these Executive Orders**

It is unclear what impact these orders will have. From our vantage point, we saw these efforts by the President as a means for him to help spark further discussions between the parties at the Congressional negotiations table. If no further actions are taken by Congress, some of the President's orders will undoubtedly begin to be implemented. The actual timeline, the ability to deliver the intended relief, and the legal ability to actually enact these orders are all variables that will impact the execution. We suspect that there will potential court challenges to these actions, further delaying their implementation.

The bottom line is that the best and most effective way to get this relief to Americans will be a final deal between Republicans and Democrats to pass a broad economic aid package that would substantially address the needs of small businesses, renters, unemployed workers and more.

## **Regulatory Actions**

### **Paycheck Protection Program - Loan Forgiveness Guidance Published**

On August 4, 2020, the Small Business Administration (SBA), in consultation with the Department of the Treasury, issued guidance to address borrower and lender questions concerning forgiveness of Paycheck Protection Program (PPP) loans, as provided for under section 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), as amended by the Paycheck Protection Program Flexibility Act (Flexibility Act).

The guidance can be found by [clicking here](#). Borrowers and lenders may rely on the guidance provided in this document as SBA's interpretation, in consultation with the Department of the Treasury, of the CARES Act, the Flexibility Act, and the Paycheck Protection Program Interim Final Rules ("PPP Interim Final Rules").

## Important COVID-19 Related Links

- For information on the **Federal Reserve Board's Main Street Lending Facility**, please visit: <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200430a.htm>
- For information on the **Department of Education's CARES Act's Higher Education Emergency Relief Fund**, please visit: <https://www2.ed.gov/about/offices/list/ope/caresact.html>
- For **Department of Treasury** resources on COVID-19 and Small Business' Assistance programs, please visit: <https://home.treasury.gov/policy-issues/top-priorities/cares-act/assistance-for-small-businesses>
- For **Department of Treasury** resources on the Coronavirus Relief Fund for payments to State, Local, and Tribal governments navigating the impact of the COVID-19 outbreak, please visit: <https://home.treasury.gov/policy-issues/cares/state-and-local-governments>
- For information on the Small Business Administration's **Paycheck Protection Program**, [click here](#).
- For information on **Unemployment Insurance Program Letter (UIPL) 16-20** providing guidance to states for implementation of the Pandemic Unemployment Assistance (PUA) program, [click here](#).
- For more information on **UIPLs** or previous guidance, please visit: <https://wdr.doleta.gov/directives/>.
- For **Department of Labor** resources on COVID-19, please visit: <https://www.dol.gov/coronavirus>.
- For **Department of Agriculture** resources on COVID-19, please visit: <https://www.usda.gov/coronavirus>
- For **Department of Homeland Security** resources on COVID-19, please visit: <https://www.dhs.gov/coronavirus>
- For **U.S. Immigration and Customs Enforcement** resources on COVID-19, please visit: <https://www.ice.gov/coronavirus>
- For **Department of State** resources on COVID-19, please visit: <https://www.state.gov/coronavirus/>
- For **United States Agency for International Development** resources on COVID-19, please visit: <https://www.usaid.gov/coronavirus>
- For more information about COVID-19 from the **Centers for Disease Control and Prevention (CDC)**, please visit: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.
- For more information about COVID-19 from the **National Institutes of Health (NIH)**, please visit: <https://www.nih.gov/health-information/coronavirus>
- For information on the **U.S. Election Assistance Commission's 2020 HAVA Coronavirus Aid, Relief and Economic Security (CARES) Act Grants**, please visit: <https://www.eac.gov/payments-and-grants/2020-cares-act-grants>