

# What's New in Washington

**Akin Gump**  
STRAUSS HAUER & FELD LLP

July 2020

SHARE THIS



The legislative calendar continues to march forward as members of Congress adapt to their new work environments and routines. With the House and Senate both in session this week, Senate Republicans plan to roll out their Phase 4 proposal, which is expected to serve as the starting point for negotiations on additional COVID-19 relief. Senate Majority Leader Mitch McConnell (R-KY) has said the package will focus on liability protection, children, jobs and health care. The initial Republican offer will be substantially smaller in size and scope than the \$3 trillion House-passed Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, which passed the House on May 15 by a vote of 208 to 199 (H.R. 6800) and reflects the House Democrats' Phase 4 priorities. Phase 4 negotiations are expected to dominate Congressional activity for the work period concluding August 7, when the Senate plans to adjourn for the August recess scheduled to run through Labor Day (September 7). The House, meanwhile, is set to adjourn Friday, July 31 for the August recess, but may end up extending by an extra week if Phase 4 negotiations are not complete.

Upon return this week, the Senate will continue debate and votes on a handful of amendments and then final passage of the National Defense Authorization Act (NDAA). On July 1, the House Armed Services Committee unanimously approved its version of the NDAA, voting 56-0 to approve the \$740.5 measure after a nearly 14-hour markup. Both the House and Senate included provisions in their NDAA legislation to address security concerns related to U.S. dependence on the China supply chain to combat COVID-19. After the two chambers adopt their respective NDAA bills, they will then enter a reconciliation process, with Senate Armed Services Committee Chairman Jim Inhofe (R-OK) indicating that it could be November before the Senate adopts a final bill.

Following the Fourth of July recess, the House Appropriations Committee began considering the fiscal year (FY) 2021 funding bills. The Committee approved all 12 of its funding bills, which will now head to the House floor where they may be further amended. Beginning this week, the House is expected to consider the first minibus of FY 2021 appropriations bills, H.R. 7608, which includes: State-Foreign Operations, Agriculture-Rural Development-FDA, Interior-Environment, and Military Construction and Veterans Affairs. The Senate appropriations schedule remains stalled due to a partisan dispute regarding potential amendments related to COVID-19 and police reform.

Outside of Phase 4 negotiations and appropriations, outstanding items on the congressional agenda prior to the November elections include the federal highway bill (the "FAST Act"), water infrastructure legislation (WRDA) and flood insurance.

With the FAST Act set to expire at the end of September, House Democrats unveiled their \$1.5 trillion infrastructure proposal, H.R. 2, the Moving America Forward Act. The House approved the measure on July 1. The path forward in the Senate is not clear. While the Senate Environment & Public Works Committee approved the highway title of the bill (S.2302, the America's Transportation Infrastructure Act of 2019) on July 30 of last year, the other Senate Committees with jurisdiction over surface transportation legislation (Banking (transit), Commerce (rail, intermodal and motor carrier) and Finance (funding)) have yet to act on their titles. With policy and funding issues unresolved, Congress may extend existing law until after the elections.

In addition, the House Transportation and Infrastructure Committee on July 15 favorably reported a WRDA bill, which now heads to the House floor for a vote. Congress has successfully enacted three consecutive bipartisan WRDA bills in 2014, 2016 and 2018, a track-record the House will seek to continue in 2020. In the Senate, one of the two water infrastructure bills the Senate Environment and Public Works Committee approved on May 6 contains WRDA provisions.

IN THIS ISSUE

- [Financial Services Update](#)
- [Congress, Administration Examine Medical Supply Chains](#)
- [National Defense Authorization Act](#)
- [Privacy Update](#)
- [Tax Update](#)
- [Telecom Update](#)
- [Trade Policy Update](#)

## FINANCIAL SERVICES UPDATE

### Financial Services Update

With the House passage of the \$3 trillion HEROES Act behind them, The House Financial Services Committee has continued its oversight of the CARES Act and the Administration's response to the COVID-19 pandemic by holding 10 virtual hearings since the beginning of June. These hearings have covered the full range of the committee's jurisdiction from the delivery of the CARES Act stimulus payments to the challenges of women-and-minority-owned businesses accessing capital during the pandemic. While Senate Leader Mitch McConnell (R-KY) has signaled that the HEROES Act is a non-starter in the Senate, many of Chairwoman Maxine Waters' (D-CA) priorities will remain central features of the Democratic agenda as negotiations unfold on the next round of COVID-19 legislation. These provisions include: direct stimulus payments of up to \$6,000 per household; the creation of a \$100 billion emergency rental assistance fund and a \$75 billion homeowner assistance fund; providing \$11.5 billion for homeless assistance grants; and appropriating \$1 billion for new Section 8 vouchers to support persons experiencing homelessness. The HEROES Act also suspends negative credit reporting and debt collection, and requires forbearance and loan modifications for consumer and commercial loans. The House has also passed the \$1.5 trillion [Moving Forward Act](#) which included Chairwoman Waters' [Housing is Infrastructure Act](#), legislation that would invest over \$100 billion in affordable housing infrastructure.

While Senate Republicans continue to monitor the successes and shortcomings of CARES, Chairman Mike Crapo (R-ID) and the Senate Banking Committee held regular hearings in June examining the legislation's infusion of \$500 billion into the Federal Reserve's (the "Fed") emergency lending facilities, oversight of housing regulatory agencies, the digitization of money and payments, and oversight of the Export-Import Bank. Ranking Member Sherrod Brown (D-OH) has been critical of the Administration's handling of the pandemic and has introduced legislation such as the [Coronavirus Housing Counseling Improvement Act](#) and the [Emergency Rental Assistance and Rental Market Stabilization Act of 2020](#) that he will likely want included in the Senate's next pandemic response legislation.

Treasury has continued to implement the Paycheck Protection Program (PPP), with the application process now extended until August 8. The Paycheck Protection Program Flexibility Act, signed into law in early June, substantially amended the PPP program, extending program eligibility from 8 to 24 weeks and liberalizing the minimum required percentage of loans to be spent on payroll costs. The Treasury and the Fed finally brought the Main Street Lending Program online, but the jury is still out as to whether it will get the promised assistance to the mid-sized businesses unserved by PPP and the other

## CONGRESS, ADMINISTRATION EXAMINE MEDICAL SUPPLY CHAINS

### Congress, Administration Examine Medical Supply Chains

As new cases surge in the U.S., the COVID-19 pandemic continues to fuel discussions in Washington around medical supply chains and the need to enhance domestic manufacturing capabilities for drugs and personal protective equipment (PPE).

On July 2, the House Oversight Committee Select Subcommittee on the Coronavirus Crisis held a hearing to examine Administration efforts to procure, stockpile and distribute critical medical supplies. The hearing was contentious, with Democrats stating that current supplies of PPE and test kits are still insufficient to address recent surges in new cases. Following the hearing, Subcommittee Chairman James Clyburn (D-SC) and Full Committee Chairwoman Carolyn Maloney (D-NY) sent a letter to the Government Accountability Office (GAO) requesting a study on methods to develop and expand the domestic supply chain for PPE. Similarly, Democrats on the House Homeland Security Committee Oversight and Emergency Preparedness Subcommittees criticized the Administration's response during a July 14 hearing to examine the Federal Emergency Management Agency's (FEMA) role in procurement and distribution of PPE, highlighting how federal shortfalls have forced states to compete with each other for scarce supplies of PPE and test kits.

On June 30, Sens. Elizabeth Warren (D-MA) and Marco Rubio (R-FL) introduced legislation that would direct the Federal Trade Commission (FTC) and the Treasury Department to study U.S. dependence on foreign countries in the pharmaceutical space and the impact of foreign investment on the U.S. pharmaceutical industry. Sen. Josh Hawley (R-MO) has also introduced legislation to examine foreign production of PPE. Meanwhile, Health and Human Services (HHS) Secretary Alex Azar in recent remarks emphasized the importance of domestic manufacturing capabilities for medical supplies and stated that the Administration may need to use the Defense Production Act (DPA) or other tools "to fund and incentivize domestic manufacturing" for pharmaceuticals and PPE. Democratic leaders of the House Energy and Commerce, Financial Services, Armed Services, Foreign Affairs and Homeland Security Committees sent a letter to Health and Human Services Secretary Alex Azar and Defense Secretary Mark Esper on July 14 asking why the Administration has not used CARES Act funds to carry out additional activities under the DPA to boost production of medical supplies.

The November elections are likely to bring these issues into even sharper focus. Former Vice President Joe Biden this month released a supply chain plan with the goal of expanding domestic production of critical medical supplies and equipment. The plan calls for more aggressive use of the DPA to manufacture medical supplies in the U.S.; the leveraging of federal procurement policies to prioritize U.S.-made pharmaceuticals and active pharmaceutical ingredients; and the expansion of the Strategic National Stockpile (SNS), among other proposals. The supply chain plan is part of Biden's broader "Made in America" economic agenda, which aims to create at least five million jobs in domestic manufacturing and technology.

[Back to top](#)

## NATIONAL DEFENSE AUTHORIZATION ACT

### National Defense Authorization Act

On July 1, the House Armed Services Committee (HASC) unanimously passed its version of the FY 2021 National Defense Authorization Act (NDAA). On July 2, the Senate agreed on a plan to hold a final vote on the Senate Armed Services Committee's (SASC) version of the NDAA, including a manager's package of 62 uncontroversial and bipartisan amendments. The HASC version authorizes \$731.6 billion in funding for FY2021 compared to the SASC version of \$740.5 billion to establish policy for the U.S. Department of Defense, elements of intelligence and overseas contingency operations, and additional

defense-related activities and policy proposals at other federal agencies.

Against the backdrop of the COVID-19 pandemic, both the HASC and SASC versions of the NDAA authorize funding to strengthen the country's ability to respond to potential COVID-19 resurgence and other infectious disease outbreaks in the future. Also, both versions include provisions to maintain the country's technological edge by placing an increased emphasis on advancing artificial intelligence (AI) and other emergent technologies, including 5G. As in prior fiscal years, both bills address phasing out the use per- and polyfluorinated substances (PFAS) on military installations.

House Majority Leader Steny Hoyer (D-MD) announced that the House will consider and vote on the HASC's version of the NDAA on Monday, July 20. Then, on Tuesday, July 21, the Majority Leader expects the House to vote on amendments, motions to recommit and passage stretching throughout the day. Senate Majority Leader Mitch McConnell (R-KY) intends to wrap up the SASC's version of the NDAA when the Senate returns from its recess during the week of July 20.

### **COVID-19 Pandemic**

The NDAA, as approved by the HASC, directs \$1 billion in funding to create the Pandemic Preparedness and Resilience National Security Fund, adding over \$50 million for investments and efforts in biotechnology and pandemic preparedness. Additionally, it requires the DOD to ensure a secure supply of materials critical to national security. It also creates the Small Business Industrial Base Resiliency Program, authorizing transactions to purchase goods or services from small business concerns in response to the COVID-19 pandemic. In contrast, the SASC version authorizes \$44 million for vaccine and biotechnology research supported by the Department of Defense (DOD) enhances interoperability and medical surge capability and capacity of the National Disaster Medical System to establish a framework for a well-coordinated federal response to pandemics and other future threats.

### **Emerging Technologies**

On issues related to technology, the HASC version increases funding for the procurement of emergent technologies, including AI and counter-Unmanned Aerial Systems, and provides \$150 million per year over the Future Year Defense Program. In addition, the bill adds nearly \$600 million in science and technology funding and urges the DOD to expand existing mechanisms and increase opportunities for international partnerships in the research and development of domestic efforts to advance biotechnologies compared to U.S. adversaries. The bill also emphasizes the development of AI use-cases and recommends enhancements to the Quantum Information Science research and development program.

### **5G Communications**

As expressed in its accompanying Committee report, the HASC believes that the DOD declaration of 5G information technology as a modernization priority, as well as the global proliferation of 5G technology, provides an opportunity to fully assess the security of all 5G components. Alternatively, the SASC version supports the development of 5G wireless networks by establishing a cross-functional team for 5G wireless networks and designates the DOD Chief Information Officer to lead the team and serve as the senior designated official for related policy, oversight, guidance and coordination at DOD.

### **PFAS**

Finally, the HASC version builds upon previous efforts to address PFAS contamination around military installations, including funding that supports the development of PFAS remediation and cleanup, disposal technologies and firefighting agent replacement. While similar in intent, the SASC bill adopts a different approach by increasing funding for the nationwide human health assessment related to contaminated sources of drinking water from PFAS and requires the DOD to survey available firefighting technologies or substances to phase out of fluorinated aqueous film-forming foam

[Back to top](#)



## Privacy Update

Several members have introduced their own measures over the past few weeks to strengthen privacy protections for consumers. On June 18, Sen. Sherrod Brown (D-OH), Ranking Member of the Senate Banking Committee, released a draft privacy bill, the [Data Accountability and Transparency Act of 2020](#). The bill would ban the collection, use or sharing of personal data unless specifically allowed by law, as well as the use of facial recognition technology and the use of personal data to discriminate in housing, employment, credit, insurance and public accommodations. The measure would also create a new agency dedicated to protecting individuals' privacy. The new agency would have rulemaking, supervisory and enforcement authority, as well as the ability to issue civil penalties for violations of the Act. Finally, the proposal empowers individuals and state attorneys general to enforce privacy protections, and it would not preempt more stringent state laws.

Sens. Ed Markey (D-MA) and Jeff Merkley (D-OR) and Reps. Pramila Jayapal (D-WA) and Ayanna Pressley (D-MA) have also announced they will introduce the [Facial Recognition and Biometric Technology Moratorium Act](#) to stop government use of biometric technology, including facial recognition tools. The measure would place a prohibition on the use of facial recognition technology by federal entities, as well as the use of other biometric technologies. It would condition federal grant funding to state and local entities, including law enforcement, on those entities enacting their own moratoria on the use of facial recognition and biometric technology. The measure includes a private right of action for individuals whose biometric data is used in violation of the Act and allows for enforcement by state attorneys general.

Members of Congress have continued to voice concerns about the growing number of privacy and surveillance concerns as industry develops their own standards for how they will conduct contact tracing and other efforts to slow the spread of the virus, and the partisan divide on how to best ensure consumer privacy protections has carried over into July. On July 8, the House Financial Services Task Force on Artificial Intelligence held a hearing on contact tracing. During the hearing, Ranking Member Barry Loudermilk (R-GA) expressed concern that contact tracing is operating under a patchwork of state laws, noting that Committee Republicans have been working to develop a preemptive consumer data privacy proposal. However, Congressional Democrats continue to emphasize the need for a standard which avoids preempting more stringent state laws such as the California Consumer Privacy Act (CCPA).

Congress has yet to reconcile partisan differences as the privacy debate resurfaces amidst the pandemic. At a [hearing](#) on July 9 convened by the House Energy and Commerce (E&C) Committee, Rep. Cathy McMorris Rodgers (R-WA), Ranking Member of the House E&C Subcommittee on Consumer Protection and Commerce, expressed concerns about her Democratic colleagues doing "serious harm" to their negotiations by stepping away from privacy talks and introducing separate legislation. In response, Subcommittee Chair Jan Schakowsky (D-IL) indicated that she intends to continue to meet with Ranking Member Rodgers to talk about both short-term and long-term privacy proposals.

[Back to top](#)

## TAX UPDATE

### Tax Update

With the House-passed HEROES Act remaining the Democrats' marker for tax provisions in Phase 4 stimulus legislation, Chairman Richard Neal (D-MA) of the Ways and Means Committee has moved to holding hearings on examining the effects of the pandemic and how the tax code can aid citizens. The most recent hearing was entitled, "The Impact of COVID-19 on Social Security and its Beneficiaries" (update closer to hearing). The caucus remains in strong favor of the provisions included in the HEROES Act, including major expansions of the Earned Income Tax Credit (EITC) and Child Tax Credit (CTC), elimination of the cap on State and Local Taxes (SALT) deductions, and the reinstatement

of a limit on the ability of pass-through business owners to deduct business net operation losses over \$250,000 (\$500,000 for joint filers). Ranking Member Kevin Brady (R-TX) and the Republican members of the Committee [unveiled](#) their own collection of legislation to develop more rapid response options to health crises in the future. The package includes legislation that creates bonus research and development (R&D) incentives for companies to engage in infectious disease research, strengthens the R&D tax credit and provides special tax treatment of start-up costs for new developers. Ranking Member Brady also [introduced](#) the Reopening America by Supporting Workers and Businesses Act of 2020 in response to the soon to be expiring unemployment benefits established by the CARES Act. The legislation calls for individuals who return to work before July 31, 2020 to be able to collect two weeks of the increased unemployment benefits, equaling a sum of \$1,200.

In the Senate, Chairman Chuck Grassley (R-IA) of the Senate Finance Committee has been in communication with the Republican members of his committee gathering what their priorities would be in a Senate Phase 4 package. Ranking Member Ron Wyden (D-OR) has stated that he has informally been doing the same, but it is expected that most of their priorities will align with the HEROES Act. Senator Rob Portman (R-OH) is working to introduce his own proposal to address the expiring unemployment benefits that would allow employees to receive a \$450 weekly bonus for six-weeks or until the end of July if they return to work. The \$600 a week in additional unemployment benefits would also continue through July 31, 2020. Senator Wyden (D-OR) has [proposed](#) extending the Pandemic Emergency Unemployment Compensation (PEUC) benefits implemented by the CARES Act past the intended expiration date. After July 31, 2020, the amount of benefits would remain at \$600 a week until a state's three-month average total unemployment rate falls below 11 percent. Unemployment benefits would decrease by \$100 increments as the three-month average unemployment rate drops. The HEROES Act would extend and expand the CARES Act unemployment benefits measures, including the extra \$600 weekly federal unemployment benefit, through January 2021. Senate Republican Leader Mitch McConnell (R-KY) has stated that this expansion has little chance of moving in the Senate response legislation.

As Treasury continues to implement programs established by the CARES Act, the agency also carries on the implementation of the Tax Cuts and Jobs Act. Nearly three years after passage of the legislation, IRS [finalized](#) guidance on deduction for foreign-derived intangible income and global intangible low-taxed income allowed to domestic corporations under the Internal Revenue Code.

[Back to top](#)

## TELECOM UPDATE

### FCC Seeks Comment on Simplifying Filing Obligations for Pro Forma Transactions

An area in which businesses have repeatedly and inadvertently run afoul of the rules of the Federal Communications Commissions (FCC) is determining when a corporate transaction or restructuring involves changes in the ownership chain or voting control of entities holding FCC licenses such that prior FCC approval is required. Failure to obtain the necessary approval can result in FCC enforcement actions against the parties to these transactions and monetary penalties in the hundreds of thousands of dollars to settle these actions, as was the case [just last week](#).

[Read more](#)

[Back to top](#)

## TRADE POLICY UPDATE

### Trade Policy Update

With less than four months remaining before November's general election, new trade policy activity continues apace. The trade relationship between the United States and

China continues to deteriorate; the U.S.-Mexico-Canada Agreement (USMCA), the signature trade agreement of President Trump's tenure, has entered into force; the international tax treatment of digital services continues to vex governments and cause trade tensions; and potential new U.S. tariffs loom on EU imports and Canadian aluminum.

**China.** The Phase One agreement signed in January of this year remains in place despite the deteriorating relationship more broadly between the United States and China. In a [statement](#) at the beginning of June, subsequently repeated later in the month in Congressional testimony, U.S. Trade Representative Robert Lighthizer said that he felt “very good” about the progress of the Phase One agreement. He affirmed that China was meeting its purchasing commitments under the deal. While [trade data](#) shows that China has fallen significantly behind in key purchasing commitments, China continues to make large purchases of U.S. agriculture products and recently made a record purchase of U.S. corn. In a recent [interview](#), President Trump stated that he is no longer interested in talking to China about a Phase Two agreement because he blames China for the coronavirus. Meanwhile, U.S. policymakers continue to focus on supply chains and propose measures to “re-shore” those supply chains from China. On June 17, President Trump signed the [Uyghur Human Rights Policy Act](#) into law, placing visa and asset sanctions on several Chinese officials and immediately drawing criticism from the Chinese government, starting a series of sanctions and retaliatory sanctions for activity in both the Xinjiang region and Hong Kong. In July, in response to a restrictive national security law imposed on Hong Kong by the Chinese government, President Trump signed the [Hong Kong Autonomy Act](#), approving further sanctions on Chinese officials and banks, and issued an Executive Order formally ending Hong Kong's special status under U.S. law.

**USMCA.** The U.S.-Mexico-Canada Agreement entered into force on July 1. For President Trump, it fulfills a longtime campaign promise to replace the North American Free Trade Agreement (NAFTA) while establishing new economic and structural ties among the three countries. President Trump held a White House ceremony with Mexican President Andrés Manuel López Obrador, where the two signed a [joint statement](#) celebrating the historic moment. Canadian Prime Minister Justin Trudeau did not attend, [commenting](#) to reporters days before the meeting that he was concerned about the Americans potentially re-imposing the Section 232 10 percent tariff on Canadian aluminum and the continuing COVID-19 pandemic. On July 1, Prime Minister Trudeau released a [statement](#) supporting the agreement and tied it to the current crisis, saying it would “help ensure that North America emerges strong from the COVID-19 pandemic.” Challenges in implementation still remain for the USMCA. Lawmakers and industry representatives have repeatedly [stated](#) that enforcement of the agreement is crucial to its success. A key concern is the adoption of new labor laws and strict protections for workers in Mexico required by the trade agreement. The arrest of a labor rights lawyer in June raised concerns that Mexico may struggle to comply fully with the new labor provisions, prompting enforcement action.

**EU.** In June, the Office of the U.S. Trade Representative [announced](#) new Section 301 investigations on digital services taxes (DSTs) in the European Union and several other countries, including Brazil, India and Turkey. The digital services taxes aim to tax selected revenue streams of major digital services companies largely based in the United States. In response, the United States has issued warnings to countries pursuing digital services taxes of trade retaliation. On July 10, one year after opening a Section 301 investigation into France's DST, the United States [announced](#) that it has determined to levy 25 percent tariffs on approximately \$1.3 billion of French products. The list targets primarily handbags and cosmetics, although interestingly not wine as has been widely expected. The Office of the United States Trade Representative (USTR) will delay the collection of those tariffs until France begins collecting the DST at the start of 2021. Ambassador Lighthizer and Secretary Mnuchin in June [paused](#) talks in the OECD on updating the international tax regime after negotiations stalled over a dispute about the scope of the talks.

**WTO.** In May, current World Trade Organization (WTO) Director General Roberto Azevedo announced he would leave his position at the end of August, a year before his term would naturally conclude. In July [comments](#) at Chatham House, Ambassador Lighthizer shared that the Trump Administration is looking for a candidate who “understands that we have a fundamental need for reform” at the WTO. Ambassador Lighthizer has long faulted the WTO Appellate Body for “increasing its own power” and “failing to follow basic WTO rules,” a set of critiques that USTR expanded on in a [report](#) issued in February. The candidate selection process for the next Director General is

ongoing, although most observers believe many WTO countries would prefer to await the outcome of the U.S. election in November before making their selection. The likely result will be that one of the four current Deputy Directors will end up serving for some period in an interim capacity as Acting Director General.

[Back to top](#)

For more information, please contact your regular Akin Gump lawyer or advisor, or:

[G. Hunter Bates](#)

[Brian A. Pomper](#)

[Hal S. Shapiro](#)

[akingump.com](http://akingump.com)



© 2020 Akin Gump Strauss Hauer & Feld LLP. All rights reserved. Attorney advertising. This document is distributed for informational use only; it does not constitute legal advice and should not be used as such. Prior results do not guarantee a similar outcome. Akin Gump Strauss Hauer & Feld is the practicing name of Akin Gump LLP, a New York limited liability partnership authorized and regulated by the Solicitors Regulation Authority under number 267321. A list of the partners is available for inspection at Eighth Floor, Ten Bishops Square, London E1 6EG. For more information about Akin Gump LLP, Akin Gump Strauss Hauer & Feld LLP and other associated entities under which the Akin Gump network operates worldwide, please see our [Legal Notices page](#).

[Update your preferences](#) | [Subscribe](#) | [Unsubscribe](#) | [Forward to a friend](#) | [Legal Notices](#) | [Akin Gump Website](#)

This email was sent by: 2001 K Street, N.W., Washington, DC 20006-1037