

Greetings ABC Policy Committee,

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Best,
George



**ABC's Weekly Federal Legislative Update
April 13, 2020**

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Introduction

The House is out of session until April 20. The Senate is holding proforma sessions. Both chambers are trying to hammer out the next round of stimulus measures.

Administration

10th Circuit Rejects Request to Rehear Case Rejecting Refinery Exemptions

The following story provides an update on the recent 10th Circuit Court of Appeals holding that EPA had overstepped its authority in granting Small Refinery Waivers.

Marc Heller of Greenwire wrote on April 8, "Petroleum refiners won't get a second chance to convince a federal court to save EPA's small-refinery exemptions under biofuel blending mandates.

"The 10th U.S. Circuit Court of Appeals yesterday rejected refiners' request to rehear a case that threw out exemptions for three refineries in Oklahoma, Texas and Utah, increasing the chances that few refineries will be able to seek waivers in the future.

“Biofuel industry groups cheered the decision and said refiners should drop the case rather than ask the Supreme Court to consider it — a long shot, industry sources in both biofuels and petroleum say.

“At issue are the exemptions EPA has granted dozens of refineries under the renewable fuel standard when companies can show that meeting biofuel blending rules would impose an economic hardship. Biofuel and petroleum groups disagree about how stringent the agency should be in awarding exemptions, based on interpretations of the Clean Air Act.

“A three-judge panel of the court found in January that EPA overstepped its authority in awarding three exemptions to HollyFrontier Corp., Wynnewood Refining Co. and Cheyenne Refining LLC. While the ruling applied only to those refineries, the court said EPA can only extend existing exemptions, not grant new ones — a reasoning that would sharply curtail the program if applied nationally.

"There was absolutely no need to revisit the court's clear and unambiguous ruling that EPA vastly exceeded its authority by granting illegal small refinery exemptions," said Geoff Cooper, president and CEO of the Renewable Fuels Association, in a statement. "Now, EPA and the refiners need to accept the facts and move on."

“EPA has said it won't act on the ruling until the legal case is settled. The Trump administration declined to appeal the January decision, but officials haven't said exactly how they plan to apply the court's reasoning.

“The administration is under pressure from two industries — biofuel and petroleum — with each saying the coronavirus crisis is wreaking economic damage. That's played into the refinery exemption issue, as well, as biofuel groups call on EPA to quickly follow the court's ruling and refiners say to hold off. Both industries have seen declining demand due to the sharp drop-off in transportation.”

Congress

Stimulus Discussions

The following two stories discuss the latest proposals for the next round of stimulus measures.

On April 13, Geof Koss and Maxine Joselow of E&E Daily submitted, “Energy advocates and their congressional allies are highlighting the mounting economic fallout from COVID-19 as negotiations on another limited round of stimulus appeared to struggle over the weekend.

“House and Senate Republican leaders said Saturday that they remain united in trying to pass a \$250 billion increase for the recently enacted Paycheck Protection Program (PPP), which loans federal funds to small businesses and is expected to run out of funding in the coming days.

"We will continue to seek a clean PPP funding increase," Senate Majority Leader Mitch McConnell (R-KY) and House Minority Leader Kevin McCarthy (R-CA) said in a joint statement.

"We hope our Democratic colleagues familiarize themselves with the facts and the data before the program runs dry."

"Senate Democrats on Thursday blocked an attempt to pass the PPP increase by unanimous consent, arguing that hospitals and state and local governments also need additional federal relief to cope with the pandemic's fallout.

"McConnell did not indicate when he would try again to pass another round of stimulus, but the chamber gavels in at 10 a.m. today for a pro forma session.

"Despite the GOP unity on the next interim round of COVID-19 stimulus, Senate Minority Leader Chuck Schumer (D-NY) said on Friday that he had a "constructive" phone call with Treasury Secretary Steven Mnuchin, who had agreed to pursue bipartisan talks with the House and Senate.

"There's no reason why we can't come to a bipartisan agreement," Schumer said in a statement.

"House Speaker Nancy Pelosi (D-CA) defended Democrats' asks in an appearance on CNBC on Thursday after her Senate colleagues had objected to moving the PPP increase sought by the GOP. "Plenty room for negotiation here," Pelosi said.

Energy woes

"While energy issues have been absent from the current stimulus talks, interest groups are pressing their cases to Capitol Hill in the hopes of eventually landing their desired policies in a future round of COVID-19 relief.

"The pandemic is creating new challenges for a host of energy sectors, including the National Rural Electric Cooperative Association, whose nonprofit members are seeking federal funds to help cover shortfalls caused by the dozens of states that have imposed moratoriums on disconnections during the health crisis.

"When you have this big uptick in nonpayment and you have a big drop-off in load, clearly that starts to create some financial strain," Louis Finkel, NRECA's senior vice president for government relations, told E&E News on Friday.

"And so we are hopeful that as Congress is looking to protect people from the economic downturn, as well as the health crisis, that they'll provide resources to ensure that we can cover this nonpayment so that our members can do what they do every day, which is ensure affordable, reliable power and keep the lights on in these communities."

"In addition to funds for nonpayment, NRECA is also asking Congress to lean on the Federal Emergency Management Agency to release previously appropriated disaster funds to its members. "Additionally, the group is arguing that its members should qualify for the PPP.

"We believe that the congressional intent, as they reflected to us, was that they wanted us to be eligible for the PPP program," Finkel said, adding that there's discussions about adding clarifying

language to future legislation if the administration does not agree that co-ops should qualify for the small-business aid.

"Other energy interest groups are weighing in, as well. In a letter sent to congressional leaders Friday, advocates detailed a number of consequences for the clean energy sector from the pandemic, including sector-specific impacts for wind, solar, efficiency

and electric, and industrywide woes such as layoffs, supply chain disruptions and trouble claiming tax credits due to the lack of tax equity liability.

"Your attention to protection of public health, our communities and workers has been an essential top priority," wrote the Sierra Club, the League of Conservation Voters, the American Wind Energy Association, the American Council on Renewable Energy, the Solar Energy Industries Association and others.

"While we hope the entire economy is able to make a swift recovery, we wanted to highlight specific damage to the clean energy economy, which we know best, and what that will mean for the roughly 3.4 million Americans who work in a sector whose jobs are in serious peril due to the economic downturn caused by COVID-19," said the letter.

"The energy efficiency sector — home to more energy jobs than any other but currently experiencing mass layoffs — made its own plea to congressional leaders.

"In addition to putting people back to work, our economic response to this crisis should also prioritize investments that pave the way for a healthier, more sustainable and more resilient future for American families and businesses," wrote the Alliance to Save Energy last week.

The BlueGreen Alliance, a coalition of environmental and labor groups, outlined its own request to congressional leaders last week, as well, urging that relief funds be tied to environmental standards and enhanced resilience.

"Dozens of House Democrats echoed the theme in a letter to congressional leaders last week that called for a future broad stimulus to include a "down payment on a regenerative economy, while preventing future crises."

"That push, led by Representatives Debbie Dingell (D-MI), Pramila Jayapal (D-WA) and Alexandria Ocasio-Cortez (D-NY), calls for investments in infrastructure, the replacement of lead pipes, expanded renewable energy production, public transit, restoring wetlands and forests, and other steps to boost climate resilience.

"The letter also calls for federal assistance to distressed industry sectors to be tied to reducing carbon emissions and other pollution.

"The response to one existential crisis must not fuel another," the members wrote.

Infrastructure

“Despite bipartisan interest, infrastructure appears poised to be left out of the phase 4 stimulus.

“Both President Trump and congressional Democrats voiced support for addressing infrastructure in recent weeks, raising hopes among advocates.

But Pelosi recently backtracked on her push to include infrastructure in a phase 4 stimulus, saying it could end up in another coronavirus relief package down the road.

“Trump has mentioned the issue sporadically during his near-daily briefings with reporters from the White House but is not saying it has to be in the next package.

"We're going to do — perhaps — infrastructure, which you wouldn't have gotten approved before. And now people are looking to do it," the president said last week.

"And the beauty is we're paying zero interest or very close to zero interest," he said. "In some cases, we're paying actually zero. And the dollar is very strong, and people are investing in the dollar."

“Environmental groups are gearing up to advocate for a climate-friendly infrastructure bill in a future coronavirus relief package.

“Dan Lashof, U.S. director of the World Resources Institute, said on a call with reporters last week that any infrastructure bill should "lay the groundwork for the clean energy transition that we must make to avoid the worst consequences of climate change."

Lashof drew a parallel with the American Recovery and Reinvestment Act of 2009, which provided \$90 billion in clean energy investments.

"That remains the single largest clean energy investment in American history," he said. "And while by no means perfect, it was a great success. ... These sectors have importantly continued to grow since the spending from the Recovery Act ended."

Stimulus Discussions

Greenwire reporters George Cahlink and Kellie Lunney published on April 9, “A partisan Senate clash today over competing proposals for emergency pandemic legislation left uncertainty over how and when Congress will next respond to the virus that is wreaking havoc on the nation's economy.

“Senate Democrats today blocked a Republican bill to expand by \$250 billion a popular program that helps small companies make payroll and cover other expenses. The GOP was looking to clear the expansion by unanimous consent.

“In turn, Republicans blocked a Democratic counteroffer that would have added aid to state and local communities and hospitals.

“Neither proposal offered specific relief for the energy industry, which has been hit hard by the pandemic, as well as the global oil price war.

“Senate Majority Leader Mitch McConnell (R-KY), in a pro forma session this morning, implored the Senate to pass the small business extension, saying the program created by a broader \$2.2 billion stimulus package is running low on funds.

“He said other programs pushed by Democrats need to be negotiated and, in many cases, have enough funds in the near term.

"My colleagues must not treat working Americans as hostages. This should not have to be, nor should be, contentious. We don't have to divide along the usual lines so soon after we came together for this country," said McConnell.

Senator Chris Van Hollen (D-MD), speaking from the floor, blasted the move as a "political stunt" and a way for the GOP to avoid negotiations with Democrats over broader legislation.

Van Hollen requested unanimous consent for a bill backed by House and Senate Democratic leaders to approve the small business aid, but also \$100 billion for hospitals and community health centers and \$150 billion for state and local governments, along with extra low-income food assistance. Senator Ben Cardin (D-Md.) was also on the floor pushing that alternative.

McConnell opposed the Democrats' counteroffer, leaving the parties in a stalemate. The Senate's next chance to move legislation could come during a pro forma session set for Monday afternoon.

The full Senate is not due back until April 20, although the chamber is seen as unlikely to convene then, with much of the nation under stay-at-home orders.

House back-and-forth

House Speaker Nancy Pelosi (D-Calif.) criticized McConnell for rejecting a "good-faith effort" from Democrats to disburse money where it's needed "most urgently" and to help small businesses that are struggling to obtain aid from the banks.

She said Treasury Secretary Steven Mnuchin called her on Tuesday and "asked for a quarter of a trillion dollars in 48 hours, with no data."

Pelosi said Democrats wanted to ensure that financial assistance "is done in the best way for the most people," adding that proper oversight of funds remains critical.

Citing the holy season this month for Christians, Jews and Muslims, Pelosi said, "We pray for all who are weathering this threat to their lives and livelihoods."

Reporters pressed Pelosi on remote voting and other ways of allowing lawmakers to participate remotely. She spoke about the Rules Committee and others looking into the

issue, but stressed the need to change House rules. And she said she did not want to call members back to Washington during the pandemic.

House Minority Leader Kevin McCarthy (R-Calif.) accused Democrats of "playing politics" with small business aid after holding it up in the Senate this morning.

He also repeatedly rejected various Democratic policy proposals floating around in aid talks, including relief for clean energy companies and a push to reform elections to allow voting by mail.

"I thought they would have learned their lesson from last time they held up the CARES Act," said McCarthy, referring to items Democrats sought to add during negotiations over the earlier stimulus.

"Despite speculation that Representative Thomas Massie (R-KY) could again hold up any relief package in the House by demanding a quorum, McCarthy said the chamber would have been able to quickly pass the funding boost that McConnell proposed today.

'Self evident'

"Pelosi, who said the Republican bill would not have passed the House by unanimous consent, did not directly address whether Democrats and Republicans would cut a deal over the weekend. But she reiterated the Democrats' position to aid individuals and small businesses with the greatest need right now.

"There is a disparity in access to capital in our country," the speaker said, adding that she doesn't want this public health crisis to "ossify" and "solidify" that inequity.

"Pelosi, a Catholic who often invokes her faith, said Easter Sunday is the "essence" and the "gift" of that faith.

"I don't have any intention of spending any one second on Sunday trying to convince anybody that it is necessary to address the needs of everyone in our society," said Pelosi, who noted she had not spoken with Mnuchin today.

"If they don't know that, if we don't share that value, they aren't going to get it on Easter Sunday or Passover or Ramadan. It's self-evident that we should be doing this."

Reporter Nick Sobczyk contributed.

Farm State Senators Seek Price Support for Ethanol Plants

Ethanol plants are cutting production due to decreased demand for gasoline. Last week, farm state Senators asked the Agriculture Department to assist the industry.

Marc Heller of Greenwire wrote on April 7, "Senate biofuel advocates are asking the Agriculture Department to help the industry weather low prices and plant closures amid the coronavirus pandemic.

"In a conference call today with agriculture reporters, Senator Chuck Grassley (R-IA) said he and other senators are writing to Agriculture Secretary Sonny Perdue, asking for help through USDA's Commodity Credit Corp. — which runs price support programs that help stabilize the farm economy.

"Grassley was short on specifics, saying the Agriculture secretary has a range of options at his disposal. But broadly, the CCC could use its financing and borrowing authority to help stem losses for biofuels.

"Ethanol is a major part of the U.S. corn market, and the CCC could reimburse ethanol plants for a share of their feedstock purchases in the first quarter of this year as a form of assistance, said Geoff Cooper, president and CEO of the Renewable Fuels Association, a biofuel industry group.

"Grassley, whose state leads the country in biofuel production, said he's asking for help for the industry — and, in turn, farmers — in light of the assistance the Trump administration is lending the oil industry amid fallen consumption of fuel for transportation.

"There ought to be parity for all liquid fuels," Grassley said. He said he's planning to speak with Perdue today on USDA's response to the crisis, including impacts on the beef industry and other agricultural issues.

"Responding to plummeting oil prices, the Energy Department said last week it would seek to expand the nation's Strategic Petroleum Reserve by buying 30 million barrels of oil now, then an additional 47 million barrels to fill the reserve to its maximum capacity. That's an approach the industry has discussed with political leaders, although it was left out of the most recently enacted coronavirus aid package in Congress.

"The dip in oil prices is partly due to the coronavirus pandemic, which has clobbered the transportation industry as people stop traveling. The ongoing price war between Russia and Saudi Arabia has also taken a toll, and talks have been slow to yield a truce.

"In the ethanol industry, Poet LLC and other producers have taken plants offline as demand crumbles. Growth Energy, an industry group, said the lost business accounts for as much as 8 billion gallons of ethanol, or as much as 2.7 billion bushels of corn.

"The list of plants that have cut or halted production continues to grow, with examples across the United States, including California, Iowa, Idaho, Illinois, Indiana, Kansas, Michigan, Minnesota, Nebraska, Ohio, Oregon, and South Dakota," the group said. "At this rate, nearly half of America's biofuel production could soon be offline."

"The RFA, Growth Energy and other groups last week asked the Trump administration to consider letting the Commodity Credit Corp. reimburse some of the biofuel plants' feedstock

purchasing costs, a measure they said would be in keeping with Congress' decision to add money to the corporation in the latest aid package.

“Or, they said, the CCC could provide direct assistance to biofuel producers to help them keep employees and prepare to ramp up production when the crisis eases.

Other