October 5, 2020

Below is our COVID-19 Update for October 5, 2020:

**The Senate will be in recess until October 19. The House will meet in pro forma session tomorrow; however, no votes are currently scheduled in the House until after the election.**

**COVID-19 Relief**

* There is currently no indication yet that Senate Majority Leader Mitch McConnell (R-KY) will allow a vote on any COVID-19 relief package unless he has support from the majority of his caucus, 27 Republican Senators. Though conversations continue between House Speaker Nancy Pelosi (D-CA) and Treasury Secretary Steven Mnuchin, it is unclear how involved Senate Republicans have been in recent conversations.
  + There is some indication that both McConnell and House Minority Whip Steve Scalise (R-LA) were in contact with President Trump today, which could indicate that the President is urging Republicans to continue negotiating.
* Standalone relief extending the Payroll Support Program (PSP) for airlines appears to be increasingly unlikely.
* House Speaker Nancy Pelosi (D-CA) and Treasury Secretary Steven Mnuchin continued negotiations on additional COVID-19 relief through the weekend. Among other points of contention, state and local aid and federal unemployment insurance continue to be the two biggest. To that end, published reports indicated that Speaker Pelosi and Secretary Mnuchin had a phone conversation with Federal Reserve Chair Jerome Powell on Thursday to discuss state and local relief.
  + Again, while Congress is in recess, they could likely be called into session to vote on a COVID-19 relief deal, if one is reached.

**Congress**

**Senate**

* Due to the change in schedule as a result of positive COVID-19 tests among Senators, all Senate hearings were postponed this week. This includes a Senate Commerce, Science, and Transportation Committee Hearing on oversight of freight rail and related issues.
* The Senate Judiciary Committee has officially noticed the confirmation hearing for Amy Coney Barrett to fill the vacant Supreme Court seat to begin at 9:00 AM on October 12. The hearing is scheduled to continue through October 15.
  + As a reminder, the hearing is moving forward despite the full Senate being recessed due to multiple Senators testing positive for COVID-19.
* At the same press conference during which Sen. Pat Toomey (R-PA) announced his plan not to seek reelection in 2022, he also outlined what his top priority would be if he were chosen as Chairman of the Senate Banking, Housing, and Urban Affairs Committee if Republicans maintain the majority in the Senate. His top priority would be addressing the government-run conservatorship of mortgage financiers Fannie Mae and Freddie Mac.
* Senate Majority Leader Mitch McConnell (R-KY) decided not to convene the full Senate this week after Sens. Mike Lee (R-UT), Thom Tillis (R-NC) and Ron Johnson (R-WI) tested positive for COVID-19. The Senate will instead recess until October 19. Though the full Senate will not meet, the Judiciary Committee is still expected to meet next week to begin the confirmation process for Amy Coney Barrett.
  + Both Sens. Lee and Tillis serve on the Judiciary Committee, while Sen. Johnson is the Chairman of the Homeland Security and Governmental Affairs Committee.
* The CEOs of Facebook, Google, and Twitter agreed to testify before the Senate Commerce, Science, and Transportation Committee on October 28. As a reminder, the Committee voted to authorize subpoenas of the CEOs last week.
* Sen. Lisa Murkowski (R-AK) on Friday announced her support for President Trump’s recent [Executive Order](https://www.whitehouse.gov/presidential-actions/executive-order-addressing-threat-domestic-supply-chain-reliance-critical-minerals-foreign-adversaries/) regarding rare earth minerals. Murkowski applauded the President’s step to end U.S. reliance on foreign nations for rare earth minerals.
  + As a reminder, the Executive Order declared a national emergency and authorized the use of the Defense Production Act to speed the development of mines for rare earth minerals.
* Sen. Pat Toomey (R-PA) reportedly does not plan to run for reelection when his term ends in 2022.

**House**

* The House Oversight and Reform Subcommittee on Government Operations will hold a hearing on Wednesday to cover the disruption of Internal Revenue Service (IRS) operations during COVID-19, its current financial condition, and the state of its information technology systems. IRS Commissioner Chuck Rettig and National Taxpayer Advocate Erin Collins are scheduled to testify.
* House Transportation and Infrastructure Committee Chairman Peter DeFazio (D-OR) and Aviation Subcommittee Chairman Rick Larsen (D-WA) introduced the Payroll Support Program Extension Act ([H.R. 8504](https://www.congress.gov/bill/116th-congress/house-bill/8504?q=%7B%22search%22%3A%5B%22congressId%3A116+AND+billStatus%3A%5C%22Introduced%5C%22%22%5D%7D&s=1&r=25)) to extend the PSP to keep hundreds of thousands of workers employed, with benefits, through March 31, 2021. Chairman DeFazio’s statement on the bill can be found [here](https://transportation.house.gov/news/press-releases/chair-defazio-statement-on-bill-to-extend-critical-worker-support-program_-).
* Reps. Paul Gosar (R-AZ) and Tulsi Gabbard (D-HI) introduced a bill ([H.R. 8515](https://www.congress.gov/bill/116th-congress/house-bill/8515?q=%7B%22search%22%3A%5B%22congressId%3A116+AND+billStatus%3A%5C%22Introduced%5C%22%22%5D%7D&s=1&r=14)) to narrow the scope of the limitation on liability provided under Section 230 of the Communications Act.
* House Judiciary Committee Ranking Member Jim Jordan (R-OH) and 11 other House Judiciary Republicans introduced the Protect Speech Act ([H.R. 8517](https://www.congress.gov/bill/116th-congress/house-bill/8517?q=%7B%22search%22%3A%5B%22congressId%3A116+AND+billStatus%3A%5C%22Introduced%5C%22%22%5D%7D&s=1&r=12)) to amend Section 230 to ensure that the immunity under such section incentivizes online platforms to responsibly address illegal content while not immunizing the disparate treatment of ideological viewpoints and continuing to encourage a vibrant, open, and competitive internet.
* Rep. Jefferson Van Drew (R-NJ) introduced a bill ([H.R. 8526](https://www.congress.gov/bill/116th-congress/house-bill/8526?q=%7B%22search%22%3A%5B%22congressId%3A116+AND+billStatus%3A%5C%22Introduced%5C%22%22%5D%7D&s=1&r=3)) to direct the Secretary of Transportation to carry out a health smart air travel pilot program to improve the application of public health risk mitigation measures related to COVID-19 in airports and on passenger aircraft.
* House Administration Committee Ranking Member Rodney Davis (R-IL) sent a [letter](https://www.politico.com/f/?id=00000174-ee98-d951-a77f-ffdc80ae0000&nname=playbook&nid=0000014f-1646-d88f-a1cf-5f46b7bd0000&nrid=0000016d-8809-de98-a3ed-decbb7220000&nlid=630318) to Speaker Pelosi pushing for COVID-19 testing and health monitoring for Members of Congress. As a reminder, both Speaker Pelosi and Majority Leader McConnell have so far resisted calls to implement comprehensive testing in Congress.
  + Senate Minority Leader Chuck Schumer (D-NY) and House Minority Leader Kevin McCarthy (R-CA) have also both called on their respective Chambers’ leadership to implement testing.
  + House Majority Leader Steny Hoyer (D-MD) commented on Friday that he has spoken to Speaker Pelosi about testing, but that no decision has been made.
* The House Judiciary Antitrust Subcommittee has delayed the release of its report on potential antitrust violations by large tech companies until at least tomorrow.

**Administration**

* President Trump was discharged from Walter Reed National Military Medical Center this evening to return to the White House. It is unclear, however, what his recovery path will include once he returns to the White House, and how much work he will be able to do despite outward messaging that he is in good health and not significantly affected by COVID-19.
  + White House Press Secretary Kayleigh McEnany tested positive for COVID-19 but stated that she is not experiencing symptoms.
* Secretary of Health and Human Services (HHS) Alex Azar announced Friday that the Administration would renew its public health emergency declaration for COVID-19. The declaration allows the Administration to access additional sources of funding to boost telehealth, enable increased Medicaid funding, and allow local health departments facing revenue shortfalls to reassign federally funded personnel to respond to COVID-19.
* The Centers for Disease Control and Prevention (CDC) confirmed that COVID-19 is airborne and may be able to infect people who are more than six feet apart, especially indoors with poor ventilation. The update posted by the CDC today acknowledges that airborne transmission is possible, but says the virus is more commonly spread when people are in close contact with someone who is infected. The agency defines close contact as within six feet of a sick person for at least 15 minutes.
  + As a reminder, CDC first said last month that the virus spreads mainly through "aerosols, produced when an infected person coughs, sneezes, sings, talks, or breathes." The CDC pulled that language days later, saying it had been posted in error and required further review.
* The U.S. Census Bureau will continue the 2020 Census through October 31, after a back-and-forth with U.S. District Judge Lucy Koh. Koh had ordered the Census Bureau to extend the 2020 Census after the Bureau had planned to conclude the decennial count October 5.
* The Supreme Court has invited the Solicitor General, Jeff Wall, to file a brief expressing the Federal government’s view on the case between Wyoming, Montana, and Washington states over a coal export terminal intended to provide coal from the Powder River Basin to Asian markets. The terminal was blocked by Washington state over environmental concerns and Wyoming and Montana have argued that Washington violated the commerce clause of the Constitution by denying Millennium Bulk Terminals' application for a water quality certification under Section 401 of the Clean Water Act. The case went directly to the Supreme Court due to original jurisdiction, which allows lawsuits between states to bypass the lower courts.
* President Trump may be released from Walter Reed National Military Medical Center as soon as today. Over the weekend, the Administration and President Trump’s physician, Sean Conley, gave mixed messages concerning the President’s health.
  + Dr. Conley since confirmed that the President received supplemental oxygen on Friday and has been administered Dexamethasone, a corticosteroid typically given to patients with more severe COVID-19, in addition to Remdesivir and the experimental antibody cocktail from Regeneron pharmaceuticals.
* On Friday, the Department of Transportation (DOT) rejected a petition from the Transportation Trades Department, which represents transit workers, to require masks on commercial transportation, including buses and airplanes.
* DOT is working to quickly implement a rule to clarify hours-of-service exemptions for drivers carrying agricultural commodities. The Department issued an advanced notice of proposed rulemaking last year. DOT has since moved forward with changes, which are not yet public as they still have to be cleared by the Office of Information and Regulatory Affairs, as an interim final rule, which immediately enforces the regulation and allows public comment afterward.
* The Department of Justice and states Attorneys General are expected to file a lawsuit against Google for alleged antitrust abuses as soon as this week. However, a separate case regarding advertising technology has been delayed after officials in the Texas Attorney General’s office accused Attorney General Ken Paxton of misconduct.
* The Department of the Interior is working to approve initial seismic surveys of potential oil reserves in the Arctic National Wildlife Refuge before the end of the year. An initial application was submitted to the Department of the Interior last August and approval of the application before the end of the year would be unusual.
* The World Trade Organization (WTO) Director General race will narrow to two candidates this week as ministers complete their second round of consultations in the contest.
  + In the first-round candidates from Egypt, Moldova and Mexico were eliminated, leaving five remaining: Ngozi Okonjo-Iweala of Nigeria, Amina Mohamed of Kenya, Yoo Myung-hee of South Korea, Mohammed Al-Tuwaijri of Saudi Arabia and Liam Fox of the U.K.

**Other News**

* The Business Roundtable [responded](https://www.politico.com/f/?id=00000174-f9f3-db77-abfe-fdfb6d750000) to Sen. Elizabeth Warren (D-MA) who had [criticized](https://www.warren.senate.gov/imo/media/doc/2020.09.17%20Letter%20to%20the%20Business%20Roundtable%20re%20one-year%20anniversary%20of%20their%20Statement%20of%20Principles.pdf) the organization for not living up to the commitments outlined in a statement signed by 181 CEOs last year, led by Amazon, JPMorgan Chase and Walmart, among others. In their response Doug McMillon of Walmart and Business Roundtable’s President and CEO Joshua Bolten cited Walmart’s program to help employees earn college degrees, Bank of America’s move to raise its minimum wage and other initiatives from companies such as Chipotle, Home Depot, Union Pacific, JPMorgan Chase, Best Buy, and Accenture as examples of efforts by the organization to live up to the commitments.
* In the week ending September 26, travel spending totaled $12.3B. That amount was a slight improvement but still lagged behind the preceding six weeks. Overall, travel was 44% below the same week last year, a $9.8B loss in revenue.
* The Supreme Court will hear oral arguments Wednesday in the decade-old copyright case between Google and Oracle. The dispute centers on Google using the Oracle-owned programming language Java as the backbone of its widely used Android operating system. Google has argued the language is considered "fair use" and thus exempted from certain copyright protections.
  + Oracle contends the opposite and wants Google to pay for using technology it owns. A Federal appeals court ruled in Oracle's favor last year. Oracle is asking for $9B in damages.
* The Supreme Court will hear an appeal from oil companies on a lawsuit brought by the City of Baltimore seeking compensation for damages from climate change. The case, which is one of many similar cases, saw the city cite Maryland public nuisance laws to seek monetary damages from the companies for selling products that release greenhouse gases. Three appellate courts have ruled so far that the case should be sent back to state courts where the case could proceed.
  + The court is not expected to hear the case until January at the earliest, with a ruling expected by next June.

**Federal Register Notices**

* The Centers for Disease Control and Prevention (CDC) extended the No Sail Order on cruise ships defined as commercial, non-cargo, passenger-carrying vessels with the capacity to carry 250 or more individuals (passengers and crew) and with an itinerary anticipating an overnight stay onboard or a 24-hour stay onboard for either passengers or crew. The notice can be found [here](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.federalregister.gov%2fdocuments%2f2020%2f10%2f05%2f2020-22030%2fno-sail-order-and-suspension-of-further-embarkation-third-modification-and-extension-of-no-sail&c=E,1,A7pdlm4OroQ9qrlcO3_HQjWlio_tp_CD263nCmc4gImY-iwZW40DtDBnKwo2PRhBc7RAVYe1MN7JuYk_yJiMfgEiaSws4ege67A5KSC2hvMqIUaOvFJT2QU,&typo=1).
* The Department of Energy announced a meeting of the National Quantum Initiative Advisory Committee (NQIAC) that will take place on October 27 from 9:00am-3:00pm ET. The notice can be found [here](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.federalregister.gov%2fdocuments%2f2020%2f10%2f05%2f2020-21934%2fnational-quantum-initiative-advisory-committee&c=E,1,JgW3gdqzbE_Lf7zmpL4eWesaaP-AUP40A8AOkFbF3ZxZuqYcjchvBzOVO4IoIJTbw-SC8b0GskxhOE9YtOkNa2bElibiVwH1sByRbexfhMZqHg,,&typo=1).
* The Federal Communications Commission (FCC) requested public comment on information collections. Comments must be submitted by December 4. The notice can be found [here](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.federalregister.gov%2fdocuments%2f2020%2f10%2f05%2f2020-21879%2finformation-collection-being-reviewed-by-the-federal-communications-commission&c=E,1,UC5PPTY58yNiti49KBa1V1B84PGueseTP-v3PDFrf7TxUhadgaKnHleCNCSVUhIe8Xzg6Qlb1pvN3pkSkGQQD9D5iyo82nAsQOqJiipJcCU,&typo=1).
* The FCC also requested public comments on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees. Comments must be submitted by November 4. The notice can be found [here](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.federalregister.gov%2fdocuments%2f2020%2f10%2f05%2f2020-21880%2finformation-collection-being-submitted-for-review-and-approval-to-office-of-management-and-budget&c=E,1,QzYGYj4wseDLh1Qa9j0KYdPHviQJsJDKUfOk54AS0spL84KyVnybXiDOETm0PPAUoDpE0nKeVGKMgw4SzA1O7zja2q41Xov8NnLVEnxidzJ7ei5eyl62&typo=1).
* The Food and Drug Administration (FDA) revoked the Emergency Use Authorizations (EUAs) issued to Autobio Diagnostics Co. Ltd. for the Anti-SARS-CoV-2 Rapid Test and to Manufacturers and Other Stakeholders for certain in vitro diagnostic SARS-CoV-2 Antibody Tests. The notice can be found [here](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.federalregister.gov%2fdocuments%2f2020%2f10%2f05%2f2020-21952%2frevocation-of-authorizations-of-emergency-use-of-in-vitro-diagnostic-devices-for-detection-of&c=E,1,Ya9vukGmunuViDTsxBGYDbQKXemvVUNGX1nj5ztl_qYdip18I_wQaKQfBuohEgC4AKKpKgJAgq1NQJhEs1I4N84HM6ykYbELIV7Q-L-AOoPTuThzDSWTGw,,&typo=1).
* President Trump issued Executive Order 13817 “Addressing the Threat to the Domestic Supply Chain From Reliance on Critical Minerals From Foreign Adversaries and Supporting the Domestic Mining and Processing Industries.” The notice can be found [here](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.federalregister.gov%2fdocuments%2f2020%2f10%2f05%2f2020-22064%2faddressing-the-threat-to-the-domestic-supply-chain-from-reliance-on-critical-minerals-from-foreign&c=E,1,Znq44ArjsN_kVWRzXzwQDkoH0UIWuXlDqCrxsDc7fYKFIhGT4B3B_YQw1hIRsp2sa6CVEzSZqJpPiHfLWdSkgZeo3aKMVoOwubIy2BPjCjCY&typo=1).
* The U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $16B as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. This extends certain exclusions through December 31. The notice can be found [here](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.federalregister.gov%2fdocuments%2f2020%2f10%2f05%2f2020-21954%2fnotice-of-product-exclusion-extensions-chinas-acts-policies-and-practices-related-to-technology&c=E,1,b7zaM1UzKjsYb0yJW1ciJD0zJwfay_hgA3ndRTFeL39fQshJXkSuhEnmeRxJB7xz2t50YbEVU2NefBcCGSUUVmiwXfUjyrm_fvvNi4aDFijfoNrXUEip&typo=1).
* The U.S. Trade Representative also imposed additional duties on goods of China with an annual trade value of approximately $34B as part of the action in the Section 301 investigation. This extends certain exclusions through December 31. The notice can be found [here](https://linkprotect.cudasvc.com/url?a=https%3a%2f%2fwww.federalregister.gov%2fdocuments%2f2020%2f10%2f05%2f2020-21958%2fnotice-of-product-exclusion-extensions-chinas-acts-policies-and-practices-related-to-technology&c=E,1,T220VjI5DfcjDbkMBEp_joBcoeyX_-pTZLy7GSolfYtkiGjLKFe3DJnrN71FZ2ppfuWzpUKzgXvmhuMACXY4cB9NThAfvqoS1qpEnoBRsUPU&typo=1).