

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

July 9, 2020

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: July 14, 2020 “Promoting Economic Recovery: Examining Capital Markets and Worker Protections in the COVID-19 Era”

The Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets will hold a virtual hearing entitled, “Promoting Economic Recovery: Examining Capital Markets and Worker Protections in the COVID-19 Era,” on Tuesday, July 14, 2020 at 12:00 p.m., on the virtual meeting platform Cisco Webex. Witnesses for the hearing are:

- **Hon. Dr. William E. Spriggs**, Chief Economist, AFL-CIO; Professor of Economics, Howard University
- **Anne Simpson**, Director of Board Governance and Strategy, California Public Employees' Retirement System
- **Camille Busette, PhD**, Senior Fellow and Director of the Race, Prosperity, and Inclusion Initiative, The Brookings Institution
- **Neil L. Bradley**, Executive Vice President and Chief Policy Officer, Chamber of Commerce of the United States of America

Overview

Since the start of the COVID-19 pandemic, millions of American workers have faced severe economic hardship due to lost jobs and wages. According to the Federal Reserve, more than 20 million Americans have lost their jobs due to COVID-19,¹ 19.8 million of whom were private sector workers.² Federal Reserve Chair Jerome Powell testified that “the rise in joblessness has been especially severe for lower-wage workers, for women, and for African Americans and Hispanics.”³ As of July 2, the national unemployment rate stands at 11.1 percent.⁴ According to the most recent outlook from the Congressional Budget Office, the unemployment rate is expected to peak at over 14 percent in the third quarter of 2020 before declining through 2021.⁵ Further, the latest Monetary Policy Report by the Federal Reserve indicates that the longer the crisis lasts, the greater the impact may be on workers because those who find a new employer after a temporary layoff, as opposed to returning to a previous employer, tend to experience long-term wage decline.⁶ Despite this economic turmoil among workers, the stock market has

¹ Jerome H. Powell, “Testimony Before the Committee on Financial Services,” June 30, 2020. <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-powellj-20200630.pdf>

² Bureau of Labor Statistics, “The Employment Situation - June 2020,” July 2, 2020. <https://www.bls.gov/news.release/pdf/empst.pdf>

³ *Supra* note 1.

⁴ *Supra* note 2.

⁵ Congressional Budget Office, “An Update to the Economic Outlook: 2020 to 2030,” July, 2020. <https://www.cbo.gov/system/files/2020-07/56442-CBO-update-economic-outlook.pdf>

⁶ Board of Governors of the Federal Reserve, “Monetary Policy Report,” June 12, 2020, https://www.federalreserve.gov/monetarypolicy/mpr_default.htm.

generally recovered from the losses that resulted from the shock of the COVID-19 pandemic. As of July 6, the S&P 500 and Dow Jones have both climbed over 40% from the market lows seen in late March.⁷

Many of the job losses experienced since the start of the pandemic have taken place at large, public companies. As a result of either bankruptcies or workforce reductions, major companies including AT&T, Macy's, Chevron, Boeing, Uber, United Airlines, Hertz, Disney, and GE have each announced layoffs of 2,500 or more employees since March.⁸ These companies are reducing their workforces to cut costs throughout the crisis, but earlier in the year many of the same companies spent billions in aggressive stock buyback programs to distribute capital to shareholders by repurchasing their own stock. In 2018 alone, S&P 500 companies spent a total of \$830 billion on stock buybacks.⁹

For healthcare workers and other essential workers who have continued to work, the pandemic has taken a unique toll. Hundreds of healthcare workers have died, and thousands have tested positive for the coronavirus.¹⁰ As states reopen and cases continue to increase, concerns are growing about impending protective equipment shortages.¹¹ Meanwhile, grocery store workers are struggling to access information and testing necessary to protect themselves.¹² Workers have reported being expected to work alongside people with symptoms, and many businesses are failing to provide their employees with proper protections or compensation for working during a health crisis.¹³

CARES Act and Worker Protections

On March 27, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which made available over \$500 billion in financial assistance for U.S. businesses through a variety of programs. The law generally mandates that companies benefiting from this assistance be required to temporarily suspended stock buybacks, dividend payments, and increases in executive compensation above certain thresholds.¹⁴ The law further requires that certain companies, including commercial airlines, which receive direct assistance from the Treasury Department maintain 90 percent of their workforce.

The CARES Act also encouraged the Treasury Department to work with the Federal Reserve to establish a facility for mid-size companies, with between 500 and 10,000 employees, and included conditions that recipients must remain neutral in any union organizing effort, and are prohibited from outsourcing any jobs or abrogating any existing collective bargaining agreement. However, the Treasury Department has not implemented this specific provision, and instead worked with the Federal Reserve to establish the Main Street Lending Program for businesses with as many as 15,000 employees to receive support with less stringent conditions applied.

⁷ MarketWatch, "S&P 500 Index," July 6, 2020, <https://www.marketwatch.com/investing/index/spx>.

⁸ Business Insider, "List of Major Company Layoffs Due to the Coronavirus," July 1, 2020, <https://www.businessinsider.com/coronavirus-layoffs-furloughs-hospitality-service-travel-unemployment-2020>.

⁹ CNBC Opinion, "Stock buybacks: We need a new litmus test after the bailouts," Keohane Williamson, Sarah, April 13, 2020. <https://www.cnbc.com/2020/04/13/stock-buybacks-the-new-litmus-test-we-need-after-the-bailouts.html>

¹⁰ Washington Post, "Hundreds of Healthcare Workers Lost Their Lives Battling the Coronavirus," June 17, 2020, <https://www.washingtonpost.com/graphics/2020/health/healthcare-workers-death-coronavirus/>.

¹¹ Washington Post, "With Protective Equipment Shortages Lingering, Health Facilities Turn to Mask-Cleaning System," Christine Condon, July 6, 2020, https://www.washingtonpost.com/local/with-protective-equipment-shortages-lingering-health-facilities-turn-to-mask-cleaning-system/2020/07/06/52cd7314-bc9b-11ea-8cf5-9c1b8d7f84c6_story.html

¹² Washington Post, "Grocery Workers are in the Dark About Coronavirus Risks," May 24, 2020, <https://www.washingtonpost.com/investigations/2020/05/24/grocery-workers-coronavirus-risks/?arc404=true>

¹³ National Public Radio, "When Essential Workers Earn Less Than The Jobless: 'We Put The Country On Our Back'," Selyukh, Alina, July 1, 2020. <https://www.npr.org/2020/07/01/882957793/when-essential-workers-earn-less-than-the-jobless-we-put-the-country-on-our-back>

¹⁴ See H.R.748 Sec. 4003, Sec. 4004

In addition, the CARES Act also created the Paycheck Protection Program, which provides up to \$10 million as a forgivable loan to small businesses to cover payroll for up to 24 weeks and other expenses, such as rent. However, according to a report from the National Federation of Independent Businesses, “about 14% of PPP loan borrowers anticipate having to lay off employees after using the loan.”¹⁵

Corporate Governance

Stock Buybacks and Dividends

Many public companies including Caterpillar and Stanley Black & Decker have continued to issue dividends while laying off workers.¹⁶ Even for companies that have suspended dividends, many have spent their profits repurchasing shares to help investors profit.¹⁷ Over the past three years, companies in the S&P 500 have spent more than \$2 trillion buying back their own stocks.¹⁸ Until 1982 when the SEC created a safe harbor for stock buybacks,¹⁹ a company purchasing its own stock was an illegal market manipulation because such repurchases artificially and temporarily drive up the company’s stock price. Similarly, research from former SEC Commissioner Rob Jackson suggests that stock buybacks often directly benefit senior executives at the company, who typically receive a large portion of their compensation in equity.²⁰ The current crisis also demonstrates the potential for stock buybacks to leave firms undercapitalized during a downturn. According to economist William Lazonick, Boeing spent \$43.1 billion on stock buybacks from 2013 to 2019.²¹ Since the start of the crisis, Boeing has announced over 12,000 layoffs.²² Airlines, which have received large amounts of assistance during the pandemic previously used 96% of their cash flows over the past decade on stock buybacks.²³

Employee Compensation

As essential workers risk their lives to keep the economy moving, some large companies have provided hazard pay or bonuses to recognize front-line workers. For example, Amazon, Target, and Kroger provided \$2 raises to workers, and Walmart has provided several rounds of cash bonuses for employees working through the pandemic. However, when the economy began reopening in certain parts of the U.S., many of these programs were terminated. Kroger, Target, and Amazon ended their hazard pay programs in June.²⁴ Amazon also ended a program that allowed employees to take unlimited amounts of unpaid time off without being penalized.²⁵ Stop & Shop ended its hazard pay, citing the governments’ reopening as a signal that it was no longer needed.²⁶

¹⁵ National Federation of Independent Businesses, "COVID-19 Small Business Survey (8)," accessed July 6, 2020. <https://assets.nfib.com/nfibcom/Covid-19-8-Write-up-and-Questionnaire-6-16-2020-FINAL.pdf>

¹⁶ Washington Post, "U.S. Companies Cut Thousands of Workers While Continuing to Reward Shareholders During Pandemic," May 5, 2020. <https://www.washingtonpost.com/business/2020/05/05/dividends-layoffs-coronavirus/>

¹⁷ New York Times, "The Stock Buyback Binge May be Over. For Now," March 24, 2020, <https://www.nytimes.com/2020/03/24/business/coronavirus-stock-buybacks.html>.

¹⁸ *Id.*; A stock buyback is a corporate capital allocation decision that occurs when a company purchases its own stock, typically in the open market.

¹⁹ See 17 C.F.R. § 240.10b-18.

²⁰ Commissioner R Jackson, "Speech on Stock Buybacks and Corporate Cashouts," June 11, 2018. <https://www.sec.gov/news/speech/speech-jackson-061118>

²¹ Dr. Lenore Palladino, "Testimony before the House Financial Services Committee Subcommittee on Investor Protection, Entrepreneurship, and Capital Markets," October 17, 2019. Available at: <https://financialservices.house.gov/uploadedfiles/hrg-116-ba16-wstate-palladinol-20191017.pdf>

²² Seattle Times, "Boeing to cut nearly 10,000 jobs in Washington, more than 12,000 overall," May 27, 2020.

<https://www.seattletimes.com/business/boeing-aerospace/boeing-to-cut-nearly-10000-jobs-in-washington-more-than-12000-overall/>

²³ Bloomberg Business, "American Gets Most as Biggest Airlines Win Bulk of U.S. Aid," May 12, 2020. <https://www.bloomberg.com/news/articles/2020-05-12/american-gets-most-as-biggest-airlines-claim-bulk-of-u-s-aid>; Bloomberg Business, "U.S. Airlines Spent 96% of Free Cash Flow on Buybacks,"

Brandon Kochkodin, March 16, 2020. <https://www.bloomberg.com/news/articles/2020-03-16/u-s-airlines-spent-96-of-free-cash-flow-on-buybacks-chart>

²⁴ TIME, "Essential Workers Are Losing Their 'Hazard Pay' Even As the Pandemic Rages On," May 14, 2020. <https://time.com/5836736/essential-workers-hazard-pay/>

²⁵ Business Insider, "Amazon drops \$2 coronavirus pay rise for warehouse workers as CEO Jeff Bezos' fortune nears \$150 billion," Isobel Asher Hamilton, June 3, 2020. <https://www.businessinsider.com/amazon-cuts-2-dollar-hazard-pay-bezos-150-billion-2020-6>

²⁶ Progressive Grocer, "Stop & Shop Phases Out COVID-19 Pay," July 7, 2020. <https://progressivegrocer.com/stop-shop-phases-out-covid-19-pay>

Worker Board Representation

The reliance of many companies on their workers during the pandemic has highlighted the lack of worker representation on corporate boards. Although there is not a requirement in the United States, a number of European countries require some portion of corporate board seats be allocated to individuals representing the company's workers.²⁷ According to a recent analysis by MIT economist Simon Jäger, firms that provide employees with board seats have lower rates of outsourcing and an increase in labor productivity of 16-21% value added per employee.²⁸

Regulations

Workforce Disclosures

On March 28, 2019 the SEC's Investor Advisory Committee recommended that the Commission update public company disclosure requirements to include human capital management data.²⁹ According to a recent survey of 2019 proxy statements of Fortune 100 U.S. companies, only 11 percent disclosed specific pay equity performance data that goes further than the required CEO pay.³⁰ The recommendations called for more detailed disclosures on workforce composition, stability, safety, training, diversity, and satisfaction. The Committee cited a 2018 petition from coalition of large public pension funds, asset managers, law professors, and non-profit organizations calling for a rulemaking on environmental, social, and governance (ESG) disclosures, specifically including human capital management.³¹ The petition called on the SEC to develop a comprehensive ESG disclosure framework, and identified seven specific issues that the SEC could act on including, among other topics, gender pay ratios, human capital management, human rights, political spending, and tax disclosure.³² On August 8, 2019, the SEC released proposed revisions to Regulation S-K, which dictates many of the primary investor disclosures that public companies are required to make. The proposal included a new requirement that companies make disclosures regarding "human capital resources" and "measures or objectives that management focuses on in managing the business."³³

Recovery and Reopening Protections

As economies reopen, more workers are being required to put their health at risk. Older workers, who are at higher risk of complications related to COVID-19, are more likely to have jobs that cannot be done remotely.³⁴ On June 15, the Occupational Safety & Health Administration reiterated that "worker safety remains a priority" and that employers should account for the additional stress the pandemic may put on employees.³⁵ However, some states, including Alabama, North Carolina, Oklahoma, and Utah, have passed measures to protect businesses from being held liable if workers or customers get sick.³⁶

²⁷ Massachusetts Institute of Technology, "Is there a seat for employees in U.S. boardrooms?," December, 23, 2019, <https://mitsloan.mit.edu/ideas-made-to-matter/there-a-seat-employees-u-s-boardrooms> <https://mitsloan.mit.edu/ideas-made-to-matter/there-a-seat-employees-u-s-boardrooms>.

²⁸ *Id.*

²⁹ SEC Investor Advisory Committee, "Recommendation of the Investor Advisory Committee Human Capital Management Disclosure," March 28, 2019, <https://www.sec.gov/spotlight/investor-advisory-committee-2012/human-capital-disclosure-recommendation.pdf>.

³⁰ Harvard Law School Forum on Corporate Governance, "How and Why Human Capital Disclosures are Evolving," November 15, 2019.

³¹ Cynthia A. Williams, et al., "Request for Rulemaking on Environmental, Social, and Governance (ESG) Disclosure," October 1, 2018, <https://www.sec.gov/rules/petitions/2018/petn4-730.pdf>.

³² *See id.* at 13-16

³³ SEC Press Release, "SEC Proposes to Modernize Disclosures of Business, Legal Proceedings, and Risk Factors Under Regulation S-K," August 8, 2019, <https://www.sec.gov/news/press-release/2019-148>.

³⁴ USA Today, "Older Americans face another pandemic risk: Most can't work remotely despite COVID-19," Picchi, Aimee, June 19, 2020, <https://www.usatoday.com/story/money/personalfinance/2020/06/19/coronavirus-reopening-older-workers-cant-telecommute-raising-risks/3210953001/>.

³⁵ DOL Occupational Safety & Health Administration News Release, "As More Businesses Reopen, Worker Safety and Health Remains U.S. Department of Labor Priority," June 15, 2020, <https://www.dol.gov/newsroom/releases/osh/osh20200615-0>.

³⁶ New York Times, "Businesses Want Virus Legal Protection. Workers Are Worried." Swanson, Ana and Rappeport, Alan, June 12, 2020, <https://www.nytimes.com/2020/06/12/business/economy/coronavirus-liability-shield.html>.

Legislation

- **H.R. 5933, Disclosure of Tax Havens and Offshoring Act (Axne):** This bill would require certain issuers of securities to annually disclose information related to the tax jurisdiction, income, employees, and assets of their constituent entities on a country-by-country basis.
- **H.R. 6339, To temporarily ban stock buybacks until the impact of COVID-19 on the American financial system has ended (Casten)**
- **H.R. 6778: To amend the Coronavirus Economic Stabilization Act of 2020 to place certain requirements on corporations receiving Federal aid related to COVID-19, (Ocasio-Cortez):** this bill prohibits corporations that receive specified federal aid related to the COVID-19 pandemic from reducing workforce levels, employee benefits, or wages; or from altering any existing collective bargaining agreements until the later of either the termination of the COVID-19 public health emergency or until the aid has been repaid.
- **H.R. 6827, Corporate Accountability Act (Ocasio-Cortez):** this bill requires corporations that receive federal aid related to COVID-19 to provide at least 14 days of fully paid leave to all workers; pay each employee a wage of not less than \$15 an hour; and limit CEO executive compensation.
- **H.R. 6851, To require major corporations receiving Federal aid related to COVID-19 to make annual payments of equity to employees of the corporation while such aid is outstanding, and for other purposes (Ocasio-Cortez):** This bill requires major corporations that receive federal aid related to COVID-19 to make an annual grant of equity to employees until such federal aid is repaid.
- **H.R. 6852: To prohibit the Secretary of the Treasury and the Board of Governors of the Federal Reserve System from waiving provisions related to COVID-19 emergency relief and taxpayer protections to such relief.**
- **H.R.____, Temporary requirements on all corporations receiving federal aid until all aid has been repaid:** this bill requires that until all aid has been repaid, corporations receiving federal aid may not pay bonuses to executives, may not pay executives in connection with their termination, may not engage in stock buybacks, and may not pay dividends to shareholders
- **H.R. ____, Permanent requirements on large accelerated filers receiving federal aid:** this bill permanently requires that large accelerated filers that receive coronavirus aid adopt worker representation on their board of directors, and begin disclosing their political spending, human capital management, environmental, social, and governance issues, federal aid, and country-by-country financial performance.
- **H.R.____, Temporary requirements on all corporations receiving federal aid:** this bill permanently requires corporations receiving federal aid to provide paid leave for workers, comply with a \$15 minimum wage, limit CEO and Executive pay, and provide equity payments to employees while receiving federal aid.
- **H.R.____, the Ensuring Shareholder Governance Act of 2020:** this bill would prohibit the Securities and Exchange Commission from restricting a shareholder's ability to have a shareholder proposal included in an issuer's proxy statement by raising resubmission thresholds; raising share ownership requirements above \$2,000 other than to adjust for inflation; prohibiting share aggregation to meet ownership requirements; and limitations on shareholders' ability to use a representative to act on the shareholder's behalf.