

## ***Policy Resolution Group COVID-19 Legislative Update***

***September 4, 2020***

Despite some initial developments that made it look like we might head into the holiday weekend with good prospects for the next round of COVID-19 relief, it appears that the ongoing congressional response effort is actually on less certain footing than ever.

### **The “Slim” Relief Package**

According to reports, Senate Republicans intend to consider a slimmed-down version of a Phase 4 COVID-19 relief package after weeks of false starts. The vote is expected to come as soon as Wednesday, as Congress returns from recess. While the procedural vote is expected to fail thanks to the 60 vote threshold, this exercise serves several purposes:

First (and at this juncture, most importantly), it gives vulnerable Republican Senators cover to say they voted to provide further relief to the unemployed, small businesses, schools, and other institutions hit hard by the pandemic. Second, it sets a marker for what Republicans would be willing to support, albeit a lowball figure that would have to be balanced against the Democrats' multi-trillion dollar target. And third, it stands to put moderate Democrats (and their leaders) on the defensive for the first time, forcing them to affirmatively reject a half loaf rather than simply watching Republicans argue among themselves.

As we've said from the beginning, any fruitful negotiation is conditioned on Republicans presenting a united front on a proposal from which a compromise can proceed. In this sense, the apparent likelihood of the GOP marshaling 51 or more votes should be a positive step. But it was difficult enough to see the gap closed between the original trillion dollar Republican baseline and the \$3.4 trillion HEROES Act passed by the Democratic House. By moving the negotiating goalposts even further out, you're left with a veritable fiscal chasm.

So what's likely to be in this skinny package? The scope tracks with what we outlined in our last update, even as the exact scale remains in flux. Recent media reports suggest something on the order of a \$500 billion bill, though specifics are fluid as the conference seeks consensus on smaller bore issues.

Overall, this revised version of the previous “skinny” bill is likely to include:

- Enhanced Unemployment: \$300/week federal pandemic unemployment compensation (FPUC) extended through December 27, 2020
- Liability Shield
- Education Funding: \$105B total—\$70 billion for K-12 and \$29 billion for postsecondary education, maintaining formula based on the number of FTE students. Another \$6B for state and tribal accounts.

- Paycheck Protection Program: PPP replenishment and reforms, including new "second draw" loans for qualifying businesses that experience a 35 percent decline in gross receipts. (Up to \$160B in new funding on top of remaining \$100B+.)
- Funding for Testing and Vaccine Preparation
  - \$29B to prepare for and respond to COVID, including development of countermeasures and vaccines, therapeutics and diagnostics, purchase of vaccines,
  - \$16B for testing, contact tracing, mitigation and surveillance to monitor COVID

As a refresher on the liability portion, which according to one [recent survey](#) is the issue most important to Main Street Businesses, the Senate proposal is expected to incorporate the previously released shield language from the HEALS Act, including:

- Federal Cause of Action: Creates a federal cause of action for coronavirus exposure claims that is the exclusive remedy for all claims against a defendant for personal injury caused by an actual, alleged, feared or potential exposure to coronavirus.
- Requirements for Liability: A plaintiff must satisfy the safe harbor and gross negligence or willful misconduct requirements of the claim by clear and convincing evidence.
- Healthcare Protections: Creates an exclusive federal cause of action for coronavirus medical liability claims.
- Labor and Employment: Protects employers from liability under federal labor and employment laws (OSHA, FLSA, ADEA, WARN, GINA, and ADA) for actions taken to comply with coronavirus-related publichealth guidance and regulations
- Protections for Products: Limits liability for additional products, such as types of PPE and hand sanitizer, if they meet certain FDA requirements

You may say to yourself, "This is not the \$1.4 trillion package that GOP negotiators Mark Meadows and Steve Mnuchin have reportedly offered. Where is that large package?" Think of \$500B as the initial offer, with the figure floated by the Administration something closer to "best and final." The delta would likely be closed by adding back the conspicuous omissions--another round of stimulus checks, state and local funding, and various other concessions that might allow Democrats to save face and get to yes.

### **Will Congress Be Able to Pass Anything?**

While the micro-package is a mixed bag for the Phase Four outlook, the recent news of an agreement between Treasury Secretary Steve Mnuchin and Speaker Nancy Pelosi to keep the upcoming continuing resolution (CR) clean of any COVID-19 relief takes away the most obvious vehicle, and this week's surprisingly good jobs report does little to pressure lawmakers to intercede. While each development has merit in its own right, their sudden confluence makes it much harder to imagine a relief package being signed into law before the election.

Congress is notoriously bad at doing virtually anything unless and until they are faced with a hard deadline or other forcing mechanism. With enhanced unemployment insurance expired, PPP authorization lapsed, and an assortment of executive actions designed to insulate the administration from the political implications of Congress' failure to act, there is no imminent policy "cliff" to speak of.

The only truly must-pass legislative vehicle that can be expected before the election is the short-term government funding package in question. Whatever dwindling hopes we have maintained through the August recess hinged

on these negotiations being rebooted and infused with a renewed urgency in the context of avoiding a government shutdown and clearing the legislative decks before the election. Evidently both parties have determined that shutdown fears--and the prospect of a high stakes game of chicken on the precipice of, outweigh the economic risk of failing to act.

The bull case for Phase Four would be that the show of good faith between Mnuchin and Pelosi on a clean CR could provide space for a stand-alone deal. But with Republicans on the verge of laying down a marker that actually moves the two sides farther apart, and just three legislative weeks remaining until both parties begin their all-out sprint to the November election, it seems hard to believe that the incentives line up to get this done.

What's more, this morning's jobs report came in way ahead of expectations, adding 1.4 million jobs in the month of August. Perhaps most importantly, the topline unemployment rate fell to 8.4 percent, far lower than analysts had anticipated, and well ahead of official government estimates that unemployment would remain above 9 percent at year's end.

Such strong figures, especially coming immediately on the heels of the much-hyped expiration of the federal unemployment supplement, is certain to embolden the stingiest elements of the Senate GOP conference, and make it even less likely that Republicans will be willing to come up significantly from what they have already put on the table.