

A (cloudy) CARES 2.0 “crystal ball”

29 April 2020

With an interim relief measure, the Paycheck Protection Program (PPP) and Health Care Enhancement Act, now signed into law, the jockeying over a CARES 2.0 stimulus package has begun. What follows is a thumbnail sketch of the players, issues, and timing of a possible legislative vehicle emerging in the near term that could be signed into law at some point in the coming weeks.

There are four power players who are essential to a bipartisan compromise being enacted into law: 1) President Donald Trump; 2) Treasury Secretary Steven Mnuchin; 3) House Speaker Nancy Pelosi; and 4) Senate Majority Leader Mitch McConnell.

Players/issues

- 1) In a [tweet](#) on 21 April, **President Donald Trump** outlined the White House’s priorities for CARES 2.0 as follows: “fiscal relief to State/Local Governments for lost revenues from COVID 19, much needed Infrastructure Investments for Bridges, Tunnels, Broadband, Tax Incentives for Restaurants, Entertainment, Sports, and Payroll Tax Cuts.” On 28 April, White House officials said that President Trump had instructed them to look at the viability of insurance liability protections and regulatory relief. To be sure, these priorities could shift, as President Trump is predictably unpredictable when it comes to his agenda. That said, Congressional Democrats support a number of these concepts in principle, such as infrastructure, so it is possible that the eventual legislation will resemble the President’s broad outline.
- 2) As a practical matter, President Trump has generally deferred to **Treasury Secretary Steven Mnuchin** and Congressional leaders to negotiate the substance of recent stimulus measures. President Trump has given Secretary Mnuchin a great deal of latitude to negotiate directly with Democratic leaders, House Speaker Nancy Pelosi and Senate Minority Leader Chuck Schumer, knowing that bipartisan agreements are necessary under the current political alignment. We would expect this pattern to continue, with Secretary Mnuchin seeking to fulfill as many of the items on President Trump’s wish list as possible.

Secretary Mnuchin has the unenviable task of not only mediating between congressional leaders representing caucuses with competing demands, but also picking winners and losers in certain industries. In the CARES Act, for example, Secretary Mnuchin agreed to rescue the airline industry, but insisted that, in exchange for tens of billions of dollars in loans and grants, that the government would take an equity position in the airlines. Going

forward, the oil and gas industry is likely to press for a federal rescue package in the wake of a dramatic decrease in the price of oil resulting from insufficient demand in the market and a dispute between OPEC and non-OPEC nations over production levels.

Another of Mnuchin’s priorities has been the creation and efficacy of the PPP, which has expanded the Small Business Administration’s 7(a) loan program by over US\$650 billion to date in an effort to assist small businesses with fewer than 500 employees survive the dramatic loss of revenues resulting from ordered closures. With small businesses generating the largest number of jobs in the country, the stakes are very high, especially in an election year where the state of the economy is very likely to be the determinative factor for many voters. To date, the PPP has been plagued by insufficient and misdirected funding, possibly necessitating additional changes in the next stimulus package.

- 3) Ever conscious of her Members’ needs heading into an election year, **House Speaker Nancy Pelosi** has solicited her Conference’s input into the policy priorities that should be addressed in CARES 2.0. At this time, House Democrats are drafting legislative language to address a range of policy priorities. Speaker Pelosi has made funding for state and local governments the center piece of any future stimulus package. Democrats were unable to persuade Republicans to agree to this ask in the most recent interim relief measure. Speaker Pelosi has expressed a preference for putting state and local governments on par with the spending already provided to small businesses. Senate Majority Leader Mitch McConnell has resisted this approach. Some on Capitol Hill believe that Leader McConnell will relent on this position in exchange for certain workplace liability limitations he has said are necessary (a priority the Administration also supports).

Having recently addressed funding for small businesses, health care workers, hospitals, and virus-related testing, we expect that House Democrats will re-visit items initially addressed in CARES that they believe should be extended, especially unemployment insurance and direct payments to middle class families. We expect the progressive wing of the caucus to push for concepts like a moratorium on mergers, as has been proposed by Rep. David Cicilline (D-RI), Chairman of the House Judiciary Antitrust Subcommittee. We also expect House Democrats to pursue pre-existing priorities such as federal spending on building infrastructure, deploying rural broadband, and fighting climate change.

- 4) Since the CARES Act was enacted into law, **Senate Majority Leader McConnell** and House Republican leadership have openly questioned the need for another major stimulus package. Leader McConnell has insisted that lawmakers should first wait to see the results of how the CARES Act’s injection of US\$2 trillion-plus into the economy is working before passing another such measure. Leader McConnell has the support of most of his Conference in taking a wait-and-see approach. In a [statement](#) released on 27 April, McConnell did not rule out pursuing a CARES 2.0, but suggested that he would not support the kind of broad-based approach favored by Democrats. He said, “The Senate must focus on concrete steps to strengthen our response to this complex crisis. We cannot get distracted by pre-existing partisan wish-lists or calls to paper over decades of reckless decisions that had nothing to do with COVID-19.” Instead, he advocated for dealing with conflicting federal and state laws that could expose front-line health care professionals and small business owners to “years of endless lawsuits” in the “biggest trial lawyer bonanza in history.”

Prognosis and timing

Leader McConnell and Speaker Pelosi had previously announced that their respective chambers will return to session on 4 May. However, House Minority Leader Steny Hoyer announced on 28 April that, after consulting with the Attending Physician, the House would not return into session until the week of 11 May. Given Leader McConnell’s state reluctance to pursuing another major stimulus package, we expect that Speaker Pelosi will push her caucus to unveil and perhaps even pass a major stimulus package as soon as the week of 11 May.

Even if action occurs this rapidly, it is unlikely that House Republicans will be supportive of what is shaping up to contain elements that would be non-starters for the White House and Senate Republicans, e.g. a moratorium on mergers. Speaker Pelosi knows this as well. At this point, we assess that her strategy is to lay down a marker for what are likely to be very difficult negotiations with Senate Republicans.

Given the dire predictions by many economists of significant economic contraction and corresponding massive job losses, we expect that some form of a bi-partisan stimulus package will indeed emerge, but the timeline is quite uncertain. Similarly, with growing Republican resistance, both in Washington and among the Party base, to virtually unlimited spending to date, the size and scope of CARES 2.0 is still an open question.

We believe that much of what Washington does next will be driven by two factors. First, the pace of the economy’s recovery in response to measures by Governors to open up their states. Second, how policymakers perceive the electorate is likely to respond to the economy’s performance at the ballot box in November 2020. Despite the economic devastation and loss of life caused by the pandemic, the two sides may not be willing or able to give the other the kind of dramatic political “win” that would help electorally in a general election year. Ultimately, though, we believe that partisanship will yield at least one more time to the economic reality that has descended upon the country and that some form of CARES Act 2.0 will emerge over the next couple of months.

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