

We are confident that the US House of Representatives will approve, and the President will sign into law, tomorrow the approximately US\$2.1 trillion [Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\)](#) approved by the Senate by a vote of 96-0 late Wednesday night.

By any measure, the legislation dwarfs anything ever produced by the US Congress. For example, in 1948, Congress approved the European Recovery Plan, otherwise known as the Marshall Plan, to help fund the recovery of Europe after World War II at a cost of US\$12 billion (or approximately US\$128 billion in 2020 dollars). A little over a decade ago, through the Troubled Asset Relief Program (TARP) in the aftermath of the 2008 financial crisis, Congress authorized what seemed at the time to be a staggering amount of spending: US\$700 billion to purchase toxic assets and equity from financial institutions. A year later, when Congress approved the American Recovery and Reinvestment Act of 2009 (ARRA), it provided US\$787 billion in funding. In 2010, as part of the Dodd-Frank banking reform bill, as the financial sector began to recover, Congress reduced authorized expenditures under the TARP. In the end, the TARP recovered US\$441.7 billion, generating a “profit” of US\$15.3 billion on the US\$426.4 billion invested by the federal government.

Coupled with the estimated US\$4 trillion or more being injected into the economy by the US Federal Reserve Board, policymakers hope that the CARES Act will help preserve jobs and stabilize the economy, giving small businesses and distressed industries time and money they need to address the effects of the coronavirus pandemic on the US economy. Moreover, it will underwrite a modern-day “Marshall Plan” to provide the US hospital and broader medical system with more than US\$150 billion to treat patients afflicted with the virus and the resources needed to bend the curve of infections.

Notwithstanding its size, this legislation will not likely be the last measure produced by the US Congress – if it is able to function under circumstances never envisioned by its political leaders, even in the aftermath of the 9/11 terrorist attack. More on that below, as we discuss the challenges for lawmakers and staff operating outside of the US Capitol complex and potentially moving to virtual legislating, including remote voting. But first, what’s in the bill and how can it help your company and industry, states and local government, and your employees survive the coronavirus pandemic?

Overview of the Legislation

In broad terms, these are the major components of the CARES Act:

- US\$954 billion in direct relief, including US\$250 billion in unemployment insurance benefits; US\$301 billion in direct payments to households (including checks of US\$1,200 to US citizen taxpayers living here or abroad and US resident alien taxpayers with adjusted gross income of US\$75,000 or less and couples with US\$150,000 or less, plus additional money for children in their households); US\$150 billion in direct aid to states and territories; US\$221 billion in tax deferrals with extended filing deadlines; and US\$32 billion in grants for passenger, cargo air carriers and contractor wages
- US\$849 billion in loan relief, including US\$500 billion for loans, loan guarantees or other forms of assistance (with the possibility of the federal government taking a direct stake in distressed companies) and US\$454 billion for loans and other forms of financial assistance to states and territories, tribal governments, local governments and businesses
- US\$340 billion in supplemental appropriations, including US\$117 billion for hospitals and veterans’ care, US\$48 billion to support farmers and shore up nutrition programs, and US\$25 billion to help public transit agencies

Can Congress Function Remotely?

The US Constitution does not require members of Congress to vote in person. Instead, the rules of the Senate and the House of Representatives govern the process by which bills come to the floor to be approved or rejected. To date, Senate Majority Leader Mitch McConnell (R-KY) and House Speaker Nancy Pelosi (D-CA) have resisted calls to move to virtual voting, not least out of concern about whether doing so would be practical or could be implemented in a way that would ensure the absolute security and integrity of every member’s vote.

The US Congress now faces a situation fundamentally different from what it faced in the aftermath of the 9/11 terrorist attack. Then, members could meet as a group inside the US Capitol to write and approve legislation. In fact, after gathering on the steps of the Capitol to sing “God Bless America” as a sign of solidarity for a fearful nation, they went back inside and began to deal with the challenges confronting the country. Nothing came of later efforts to figure out how to maintain an operating institution if it were to suffer a direct hit as a result of a terrorist attack. In any event, the threat posed today is of an entirely different nature – the Capitol complex is standing, but may soon be largely empty.

With one Senator, two House members and multiple staffers having already tested positive for the coronavirus, legislators (and their staff) now justifiably have a palpable fear about gathering on the floor as they have for over two centuries. Given those fears and the logistical challenge of getting members of the House back to Washington DC in order to vote, we expect the House will approve the third stimulus bill by voice vote or unanimous consent tomorrow. With the House having been in recess since the commencement of the St. Patrick's Day Recess, it made no sense to try to bring members back to Washington DC and put them at risk. Shortly after it approved the bill, the Senate adjourned until April 20. We do not expect either body to be back in the nation's capital until the disaster has abated.

So, how does Congress function in this new environment? Senators Rob Portman (R-OH) and Dick Durbin (D-IL) have introduced [S. Res. 548](#), which would revise the standing rules of the Senate to authorize Senators to vote remotely using approved technology during a national crisis. Recognizing the importance of preserving the Senate as an institution with traditional ways of doing business, the resolution if approved only would authorize remote voting for successive 30-day periods until the national crisis has ended. Nothing comparable has yet emerged in the House of Representatives, but we anticipate something similar will be put forward soon.

To state the obvious: These measures, if adopted, only address how Congress can approve legislation that would otherwise come to the floor. But how will it produce bills when a majority of legislators and staff are no longer in Washington DC, let alone in the committee rooms that are at the heart of the legislative process, from holding hearings to reporting legislation to the floor? Each committee operates pursuant to rules adopted by the Senate and House of Representatives, respectively, at the outset of each session of Congress. Unlike the House, the Senate now operates under rules that allow for proxy voting – but even those rules assume a quorum is present in a committee room. Assuming the Senate and the House adopt changes to their respective rules to authorize remote voting, we expect they will revise the rules governing how the committees operate as well.

We are seeing the first glimpses of that potential future. For example, the Senate set a precedent earlier today when the Armed Services Committee held the first “paper only” hearing, in this instance, to assess the needs of the Army. Senators' questions and the answers provided by the Army will be posted on the committee's website. Other committees are sure to follow its lead as they seek to carry on in a world in which members and staff cannot gather in the same room safely.

What Next?

We expect the US Congress will approve at least a fourth and possibly a fifth recovery or stimulus bill, depending on the depth and duration of the crisis facing the country. House Speaker Nancy Pelosi and House Majority Leader Steny Hoyer (D-MD) began signaling to the House Democratic Caucus this week that additional economic relief and emergency supplemental funding is likely in the coming weeks after enactment of the CARES Act. “This is not going to be the last bill,” Pelosi said. Earlier today, she indicated that she foresees a fourth bill that would focus on job creation and infrastructure spending. While not ruling out the need for additional legislation, Republicans remain focused on ensuring implementation of the Phase 3 package, at least for the immediate future. House Minority Leader Kevin McCarthy (R-CA) has suggested that discussion of Phase 4 or Phase 5 legislation at this time is premature.

The CARES Act includes US\$10 billion for airports and US\$25 billion for transit authorities. Funding is 100% federal with no local match required and will be distributed by formula. The airport distribution formula takes into account debt service. The act increases airport funds already apportioned for FY 2020 to a 100% federal share. To receive funds, airports must maintain 90% of their workforce through December 31, 2020, but can apply for waivers for economic hardship or if the requirement reduces aviation safety and security. Transit funds can be used for operating expenses to “prevent, prepare for, and respond to coronavirus,” including reimbursement for operating costs to maintain service and lost revenue, purchase of personal protective equipment, and payment for administrative leave of operations personnel due to reductions in service.

To go beyond these measures, members are now talking about including major surface transportation infrastructure funding in a future stimulus bill to promote economic recovery. For example, Senate Environment and Public Works Committee Chairman John Barrasso (R-WY) is advocating for inclusion of portions of his committee's bill, the proposed America's Transportation Infrastructure Act, which funds federal-aid highway programs. The House Transportation and Infrastructure Committee is drafting its surface transportation bill to include in the House version. Until now, the major hurdle for funding a substantial infrastructure bill had been how to pay for it. That no longer seems to be the hurdle that for so long has stood in the way of prior legislative efforts.

Members of the House and Senate are beginning to identify priorities for inclusion in future appropriations measures as well. With additional emphasis on the impact of the coronavirus on small businesses, Small Business Administration loan modifications and subsidies are among the items that may be addressed. An expansion of family and medical leave is also likely to receive renewed attention in future legislation. Democratic lawmakers have also been pushing for emergency health and safety regulations to protect first responders. These efforts are likely to continue as Occupational Safety and Health Administration regulations have been omitted from the COVID-19-related legislative response to date. In addition, while the CARES Act included US\$400 million for election security grants to support vote-by-mail efforts, additional funds may be necessary to support state implementation. A jobs component may also emerge as a critical part of future legislation in the face of rising unemployment from the COVID-19 crisis.

Into the Unknown

As noted at the outset, Congress will have approved, and the President will soon have signed into law, the largest dollar-denominated bill in history. Historians will someday write about whether they did so after confronting a “black swan” (a statistically improbable event with unpredictable effects), a “gray rhino” (an obvious, visible event with a large potential impact and highly probable consequences) or some other creature, mythical or otherwise. Whatever its name, we know we have crossed its path and felt its wrath. In response, governments around the world will continue to spend previously unfathomable sums of money to alleviate the economic destruction it has wrought.

We are one of the world’s strongest, integrated law firms with a public policy practice group unmatched with our five decades of experience, the breadth of our colleagues with government service, and colleagues throughout the firm with substantive areas of expertise. In the US, our bench includes former House Speaker John Boehner, former Senators John Breaux and Trent Lott, former US Representatives Jack Kingston, Joe Crowley and Bill Shuster, and former Secretary of Transportation Rodney Slater. In addition, we are proud to have as members of our team former senior congressional staffers from the tax and trade policy committees and across Capitol Hill and the Executive Branch. With the support of colleagues in our industry groups and practice groups, we have the breadth and depth of resources to address your business objectives as additional public policy decisions are made in Washington DC, and around the world to confront the coronavirus pandemic.

As we grapple with the challenges similar to the ones you face, we will continue to share with you our insight about what is likely to happen next and how we can help you, your employees, and our fellow citizens deal with a problem not of anyone’s making.

How We Can Help

We have created a Coronavirus Task Force composed of multijurisdictional, multidisciplinary practitioners with legal, policy, regulatory, industry and sector experience and insight. Many on the team have weathered past crises on a global scale and have a deep understanding of the complexities faced by businesses navigating unforeseen, disruptive and potentially detrimental circumstances. We help clients with sound advice and guidance to overcome challenges, minimize risks and build resilience, in order to maintain business continuity or get back to normal operations as quickly as possible. We are well positioned – substantively and strategically around the world – to provide practical advice and support services. For additional information, guidelines, advisories and resources, please visit our [Coronavirus COVID-19 resource hub](#).