

## **Kellen Applauds Congress for Passing COVID-19 Recovery Legislation** *Looking Ahead from Here*

We celebrate the passage of a roughly \$900 billion coronavirus stimulus package combined with a \$1.4 trillion spending package to fund government programs through fiscal year 2021. There is no doubt that this will benefit all our clients and the country as a whole. Let's take a closer look at the agreement in three ways – (1) what does it represent, (2) what does it do, and (3) what could it mean?

### **What does it represent?**

In spite of this deal coming at the last possible moment and requiring three temporary funding resolutions to avert a partial government shutdown, it does represent a bipartisan breakthrough and the second largest stimulus package in history. The coronavirus stimulus provides a substantial infusion of aid. At the same time, however, it comes awfully late and offers only short-term relief. Clearly, the need is still so much greater.

### An Historic Need

As the negative impacts of the pandemic are so extensive, allow me to focus just on one aspect in greater detail.

Before the coronavirus pandemic, more than 35 million people struggled with hunger in the United States, including more than 10 million children, according to Feeding America. In 2020, we are looking at more than 54 million people, including 17 million children who could experience food insecurity. Feeding America has seen a 60 percent increase in food assistance needs since March. About 40 percent of these people have never had to rely on charitable food assistance before now.

### Biden's Plans for the Health Crisis

Returning to the gap between what was passed and current needs, the incoming Biden administration will be under immediate pressure to propose more assistance, and then try to work that proposal through Congress. President-elect Joe Biden last week called the emerging deal an "important down payment on what's going to have to be done at the end of January." This week Biden laid out four priorities for another stimulus package once he takes office. Measures that he indicated support for include:

- Stimulus checks of an undetermined amount
- Aid to state and local governments
- Funds for virus testing and vaccine distribution
- Extension of enhanced unemployment insurance

### Congressional Landscape

Senate Majority Leader McConnell anticipates another relief proposal from Biden, but he has not retreated from his opposition to direct relief to states and localities, nor his insistence that employers be protected from COVID-19-related lawsuits. No matter the result of the two Georgia Senate runoffs on

January 5, the Senate will not be easy for a Biden administration. If one or both seats go to the Republicans, then that slim majority will keep Mitch McConnell as Majority Leader and the stage is potentially set for continued contentiousness and gridlock. If both seats go to the Democrats, then we have a 50-50 split Senate in which Democrats are in formal control but not in power. Senators Schumer and McConnell will have to negotiate an agreement for how the Senate will operate. Yes, Vice President-elect Kamala Harris can break ties once things come to the floor for votes, but legislation must get there first. In a 50-50 split Senate, individual Senators are empowered greatly making it difficult for the party of the president to do everything that they may want to do.

In looking at the House of Representatives, Speaker Pelosi has the smallest majority in 18 years, and indications are she faces a significant challenge to keeping it headed into the midterm elections in 2022. After the poorer than expected 2020 electoral results and the fallout around them, it also looks like the Speaker will have more difficulty in building consensus amongst her members. So, no matter what, the Biden administration will encounter a challenging Congress when it comes to getting things accomplished.

## What does it do?

Here is a selective summary of what was included in the final package:

### Direct relief for individuals (\$286 billion)

- \$300/week in Federal Pandemic Unemployment Compensation (FPUC) through March 14, 2021 and extension of the Pandemic Unemployment Assistance (PUA) and Pandemic Emergency Unemployment Compensation (PEUC) programs.
- Direct checks of \$600 for individuals making up to \$75,000, checks of \$1,200 for couples making up to \$150,000, and \$600 for each child dependent.

### Small business support (\$325 billion)

- Extends and expands the Paycheck Protection Program (PPP) for small businesses by providing an additional \$284 billion for forgivable loans:
- **Provides “second draw” for small businesses and non-profits with 300 or fewer employees that can demonstrate a loss of 25% of gross receipts in any quarter during 2020 when compared to the same quarter in 2019 totaling 2.5 times the average monthly payroll up to \$2 million.**
  - Allows for small businesses in the restaurant and hospitality industries to receive larger awards of 3.5 times average total monthly payroll, rather than 2.5 times.
  - **Expands PPP eligibility for more critical access hospitals, local newspapers and TV and radio broadcasters, housing cooperatives, and 501(c)(6) nonprofits, including tourism promotion organizations and local chambers of commerce (eligible only if federal lobbying comprises less than 15% of activities).**
  - **PPP loans will not be included in taxable income, and deductions are allowed for expenses paid with proceeds of a forgiven PPP loan with no restrictions.**
  - \$20 billion is included for new Economic Injury Disaster Loan (EIDL) Grants for businesses in low-income communities.

- \$15 billion in funding for community development financial institutions (CDFIs) and the creation of a new Neighborhood Capital Investment program.
- \$15 billion in funding for entertainment venues, movie theaters, and museums that are experiencing significant revenue loss.
- \$3.5 billion for continued SBA debt relief payments and \$2 billion for enhancements to SBA lending.
- Rescinds \$429 billion in unused funds provided by the CARES Act for the Federal Reserve's emergency lending facilities and terminates these facilities.

### **Healthcare (\$63 billion)**

- Vaccine funding, including \$20 billion to BARDA for procurement of vaccines and therapeutics, \$9 billion to the CDC and states for vaccine distribution and \$3 billion for the strategic national stockpile, including \$300 million specifically directed to high risk and underserved areas for distribution.
- \$22 billion, all sent directly to states, for testing, tracing and COVID mitigation programs.
- Additional healthcare funding – \$4.5 billion in mental health funding, \$9 billion in support for health care providers, \$1 billion for NIH to research COVID-19, and \$1 billion in direct funds to the Indian Health Service.

### **Education, childcare, and broadband (\$99 billion)**

- \$82 billion in funding for schools and universities.
- \$10 billion for grants to childcare centers to help providers safely reopen.
- \$7 billion in broadband funding that includes.

### **Housing and nutrition (\$51 billion)**

- \$13 billion to increase SNAP benefits by 15% for six months, including \$614 million for nutrition assistance for Puerto Rico and the territories
- \$25 billion in temporary and targeted rental assistance extension of the eviction moratorium until January 31, 2021
- Provides funding for the Commodity Supplemental Food Program, a program that serves over 700,000 older Americans monthly
- \$13 billion to support our farmers and agriculture sector.

### **Transportation (\$45 billion)**

- **\$45 billion in transportation funding, including \$15 billion for airline payroll support, \$1 billion for airline contractor payrolls, \$14 billion for transit, \$10 billion for state highways, \$2 billion for airports and airport concessionaires, \$2 billion for the private motor coach, school bus, and ferry industries, and \$1 billion for Amtrak.**

### **Tax (\$30 billion)**

- Extends and expands the refundable Employee Retention Tax Credit (ERTC) through July 1, 2021.
- Reinstates 100% business meals deduction through 2022.

- “Lookback” provision allowing lower-income individuals to use their earned income from tax year 2019 to determine the Earned Income Tax Credit and the refundable portion of the Child Tax Credit.
- Extends the refundable payroll tax credits for paid sick and family leave, including allowing self-employed individuals to use their average daily self-employment income from 2019, rather than 2020, for purposes of computing these credits.
- One-year extension of the \$300 above-the-line-deduction for charitable giving and increasing the amount for 2021 that married couples filing jointly can deduct from \$300 to \$600.

## **What could it mean?**

As mentioned at the beginning, this coronavirus stimulus package represented a bipartisan breakthrough. This is no small accomplishment indeed given how polarized our country is, and how partisan Congress has become. There are no other explanations for why this deal took since May when the Heroes Act was passed in House to get done. Certainly, the needs of the country were not getting any less during this time.

### Bipartisan Success

This was the second bipartisan effort. On September 15<sup>th</sup>, the bipartisan House Problem Solvers Caucus – 25 Democrats and 25 Republicans – unveiled its “March To Common Ground” framework to help break the gridlock on the COVID-19 relief package and encourage negotiators to get back to the table. Unsuccessful then, this time around the Problem Solvers Caucus led by its Co-Chairs – Rep. Josh Gottheimer (D-NJ-05) and Rep. Tom Reed (R-NY-23) worked in tandem with a bipartisan group in the Senate. This group included Senators Bill Cassidy (R-LA), Susan Collins (R-ME), Lisa Murkowski (R-AK), Rob Portman (R-OH), Mitt Romney (R-UT), Angus King (I-ME), Dick Durbin (D-IL), Maggie Hassan (D-NH), Joe Manchin (D-WV), Jeannie Shaheen (D-NH), and Mark Warner (D-VA).

Over the past month, this bipartisan group worked behind the scenes finding common ground, hammering out a framework, building momentum and gaining more support, then managed the drafting of a final legislative package able to pass. This effort shows a path begun by centrists from both parties motivated to reach across the aisle to take action and find a solution. At any time, but especially during a crisis, health or otherwise, the absence of good governance and effective leadership harms everyone. In this instance, with time running out, the focus shifted away from partisanship and more towards compromise and finding a solution to meet the needs of society.

### Bipartisan Compromise or Partisan Gridlock

Given the current state of play, and the incoming Biden administration, there is an opportunity to see more of these kinds of successes in Congress albeit on a smaller scale in the beginning perhaps. Congress used to be more bipartisan and more functional even during challenging times.

Take the possible 50-50 split Senate as an historic example. The Senate has only been evenly divided three times in the past: 1881, 1953, and 2000. The parties’ leaders at the time, Republican Trent Lott and Democrat Tom Daschle, agreed to a power-sharing agreement that actually led to a reasonably

productive Senate early in 2001. Lott and Daschle agreed to split each committee roster evenly and divide staff resources in half, while Republicans technically retained the chairmanships and the ability to convene hearings and markups. Lott was given the power to proceed to legislation that had received a tie vote in a committee. To be clear, this Senate differed notably from the intense partisanship we have witnessed over the past decade or so, but it does show that no institutional imperative exists saying we must continue on such a hyper-partisan trajectory.

### Biden-McConnell Relationship

If McConnell remains the Senate Majority Leader, then a final consideration here favoring a possibly more productive future is that Biden and McConnell have a real relationship from their many years together in the Senate. They have a history of negotiating and getting things accomplished together. Biden and McConnell have also managed to stay friends or maintain a working relationship even in the most difficult of times. In 2015, McConnell was the only Senate Republican to attend the funeral for Biden's son Beau. During Barack Obama's presidency, Biden's propensity for cutting deals with McConnell often aggravated liberals. Just last week, McConnell said he will put all Biden's nominees on the floor for a vote, while at the same time emphasizing they will not all get confirmed. This suggests much better treatment than then Minority Leader McConnell gave President Obama. So in the end, this relationship could be what determines whether anything gets done or not.

### More of the Same

If partisanship, dysfunction, and gridlock continue in Congress, and even if all these things are reduced, a Biden administration is likely to focus a lot on executive and regulatory action. Pertaining to the latter, Biden will look to rebuild the Obama regulatory framework that President Trump has been busy trying to dismantle even during his last days in office. In a number of areas, Biden will look to expand upon the Obama administration too in areas like energy and the environment, encouraging the transition to more renewable energy production and increased environmental justice in rulemaking for example. This shift to a greater focus on executive and regulatory action is nothing new and is a direct result of legislative gridlock.

### **About Kellen**

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