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Republicans Bind Virus Aid to Limit on Fed Lending, Risking Bill.

- **Democrats warn move would handicap Fed crisis fighting tools**
- **Dispute could derail virus relief talks as clock ticks down**

A bid by Republicans to constrain the Federal Reserve's crisis lending programs is threatening to derail negotiations on a pandemic relief plan and has drawn the incoming administration of President-elect Joe Biden into the 11th hour fight.

Senator Pat Toomey, a Republican from Pennsylvania, wants a provision in the relief bill that would bar the Fed from restarting five programs that expire at the end of the year, or create similar ones going forward. The roughly $900 billion proposal being debated by Congress, would, among other things, extend support to out-of-work Americans and thousands of small businesses.

While Toomey said the language only would affect a "narrow universe" of Fed facilities, Democrats in Congress have accused Republicans of trying to hamstring the incoming Biden administration.

Brian Deese, whom Biden has picked to be director of his National Economic Council, said in a statement that the relief package "should not include unnecessary provisions that would hamper the Treasury Department and the Federal Reserve's ability to fight economic crises."

Democratic aides said the dispute over Fed lending powers is the biggest issue impeding final negotiations on coronavirus relief. Lawmakers are aiming to attach the aid to a bill funding the government, and a delay risks triggering a partial government shutdown after midnight Friday when current spending authority expires. Congressional leaders are trying to extend the deadline with another stopgap spending measure, but that too has become entangled in the wider debate on relief.

The Fed's aggressive action to provide liquidity and back-stop corporate America helped stem panic among investors that threatened to seize up financial markets as the pandemic took hold in March. The central bank opposed the Trump administration's Nov. 19 instruction to wind up several of those facilities but said it will comply with the request.

Fed Chair Jerome Powell and his colleagues have made plain their opposition to any measures that limit their emergency lending powers. They have repeatedly and publicly stressed the facilities played an important backstop role in supporting the economy during the pandemic.

A Fed spokesman declined to comment.

Legal exports said the prohibition on the Fed creating similar facilities could inhibit its response to future financial emergencies.

'Significant Change'

Jeremy Kress, an assistant professor of business law at the University of Michigan and a former Fed attorney, said this would be a “very significant change” in the Fed’s emergency lending powers.

“I am concerned that this provision would tie the Fed’s hands not in the short term during the coronavirus pandemic, but also handcuff the Fed in the long-term when responding to unforeseen crisis in the future,” he said.

The language isn’t clear about how much any future lending facilities would have to differ from the Cares Act programs to not be considered “similar,” Kress said.

Toomey said the language will only apply to the five programs set to expire soon and wouldn’t change the Fed’s current powers.

“The language Senate Republicans are advocating for affects a very narrow universe of lending facilities and is emphatically not a broad overhaul of the Federal Reserve’s emergency lending authority,” he said in a statement.

Unusual and Exigent

Section 13(3) of the Federal Reserve Act allows the central bank to create emergency lending programs during “unusual and exigent circumstances” and with approval from the Treasury Department. It was invoked by Fed Chair Jerome Powell and his colleagues to launch a barrage of programs over the spring to shore up markets for everything from U.S. government bonds to the debt of corporates and cash-strapped municipalities.

The unprecedented scale and scope of their move was decisive in restoring order to markets that had been on the verge of seizing up.

Several of those facilities were backed with funds appropriated by Congress in the Cares Act, including support for small and medium-sized Main Street borrowers.

Democrats say that including the new language in the bill would fundamentally change the Fed’s ability to respond to the pandemic and future economic crises. Republicans say this would prevent the unused money — some $455 billion — from being used for unintended reasons.

“It would just force accountability and consensus rather than allow unilateral action,” Senator John Cornyn, a Texas Republican, said in a tweet Friday. “Shouldn’t leave it lying around so it could be used for unapproved purposes, like a back door to more state and local aid.”

The central bank has already seen its 13(3) powers narrowed after the 2008 financial crisis, when it was criticized for overstepping its authority and venturing into fiscal policy terrain. The Fed now has to seek Treasury approval before launching an emergency facility. Adding Congress to that mix might make it too cumbersome for the Fed to respond in a swift manner during a crisis, said Stephen Stanley, chief economist at Amherst Pierpont Securities.

“I don’t know that I like the notion of Congress actually stipulating when these facilities can or can’t be created or used,” Stanley said. “If it’s written in a way that makes it hard or impossible for the Fed to have the ability to engage in 13(3) lending without congressional action then I think it makes it more difficult in future crises to prompt a response.”

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