

TO: NAW Direct Members

FROM: NAW Government Relations Team

RE: NAW Critical Update Number 47 – May 12 at 5:15 PM

1. Latest on the Main Street Lending Program

As of today – yet again – no MSLP launch date has been announced. We will continue to monitor the Federal Reserve for information and provide you with any relevant and timely updates.

While there is still no official word from the Fed on when the MSLP will be operational, comments made during a virtual Senate Banking Committee hearing this afternoon are not encouraging. In exchanges with Banking Committee members, Fed Vice Chairman and head of the Banking operations Randal Quarles suggested the program will not likely be operational for several weeks. As Politico reported:

'It's important that we do the complicated technical work to ensure they can be rolled out effectively, as well as quickly,' Fed Vice Chairman of Supervision Randal Quarles told Senate Banking Chairman Mike Crapo at a virtual committee hearing ... 'I don't think we're looking at months, but it would be premature for me to say exactly how many weeks it would be before they're operational,' Quarles said.

To read the Politico story, go to:

<https://www.naw.org/wp-content/uploads/2020/05/Politico-May-12.pdf>

The Fed did release a new document, a report to Congress, on May 7th. Unfortunately, this report contains links to the April 30th term sheets, and no encouraging information on a likely date for the program to open. Of note in the report:

*Under the MSPLF, the Reserve Bank will commit to lend, on a recourse basis, to the SPV, which will purchase 85 percent participations in eligible loans from eligible lenders. Eligible lenders would retain 15 percent of each eligible loan. The Reserve Bank will be secured by all the assets of the SPV. **The MSPLF is not yet operational.***

The term sheet for the MSPLF is available to the public on the Board’s website, and more detailed terms and conditions will be available when finalized.¹ *The discussion below summarizes the terms and conditions for the MSPLF approved by the Board on April 30, 2020. These terms and conditions may be modified as the Board and the Department of the Treasury determine appropriate (emphasis added)*

To read their report to Congress. Go to:

<https://www.federalreserve.gov/monetarypolicy/files/main-street-priority-loan-facility-5-8-20.pdf>

2. Latest on the Paycheck Protection Program

The new House Select Subcommittee on the Coronavirus Crisis created to provide oversight on the PPP has begun working – in a partisan manner, not surprisingly. House Democrats on the subcommittee issued a press statement and sent letters to five companies demanding that they either return loans or provide the subcommittee with the documentation they provided the SBA in their loan application. This action is consistent with the move of the Treasury Department in adding the controversial “Question 31” to its FAQ, effectively changing the qualification for PPP loans, urging larger companies that obtained loans under the original CARES Act terms to return those loans, and providing a safe harbor until May 14th for them to do so with no questions asked.

The select subcommittee Democrats announced their letters to the five companies as the subcommittee’s “first official action since being established by the House of Representatives.” However, the letters they sent were signed only by the Democrats on the panel and the GOP members had apparently not been consulted. As a result, the Republicans sent a strongly worded letter to House Democrat Oversight Chairman Jim Clyburn, objecting to the letters being sent “... one day after Republican members were appointed to the select subcommittee and without substantive bipartisan consultation.”

The GOP letter sharply criticized both the motives and the accuracy of the Democrats’ letter: *“It is now clear that your letters to these businesses were misinformed, irresponsible, and reliant on deeply flawed factual and legal assumptions. We can only assume that you sent these letters—without careful examination of these particular companies and the situations they face—to bully and shame the companies into returning the loan money.”*

We are likely to see more aggressive oversight from the House Select Subcommittee on the Coronavirus Crisis, with likely partisan divisions continuing.

To read the Democrat press release, and access links to the five letters they sent, go to: <https://oversight.house.gov/news/press-releases/in-first-official-action-house-coronavirus-panel-demands-that-large-public>

To read the GOP letter in response, go to: <https://www.republicanwhip.gov/wp-content/uploads/2020/05/Letter-to-Chairman-Clyburn-re-five-companies-051120.pdf>

Of interest and related: The Wall Street Journal reported today on the ongoing issue with businesses which have received PPP loans continuing to struggle with the ever-changing rules on the program.

To read the story, go to: <https://www.naw.org/wp-content/uploads/2020/05/PPP-Changes.pdf>

3. Latest Congressional Action on the Next Coronavirus Relief Package “HEROES Act,” formally billed as “CARES 2”

This morning, House Majority Leader Hoyer told reporters that he is still confident that the House will vote this Friday on the next coronavirus bill along with another bill to allow lawmakers to vote by proxy on future legislation. When asked about the next round of votes in the House, Leader Hoyer said, “I would prefer to be able to do this virtually ... they are going to go home after they leave ... I don’t want them to be a risk for anyone else.”

As expected, House Democrats unveiled the “HEROES Act,” formally called “CARES 2,” early this afternoon. Republicans rejected the legislation even before they saw it as a liberal wish list that would go nowhere in the Republican-led Senate, where Majority Leader Mitch McConnell said he was at work on crafting liability protections for businesses instead.

This is a messaging bill for House Democrats, and it will not become law. As we comb through this legislation, we will highlight the provisions important to you and your business.

Highlights include:

- Net Operating Loss provisions from the CARES Act are severely limited
- The expansion/extension of the Employee Retention Tax Credit that we reported on last week is included
- Fully fund private employer insurance premiums for laid-off or furloughed workers between March and next January

To view the full 1,815-page bill, go to:

<https://docs.house.gov/billsthisweek/20200511/BILLS-116hr6800ih.pdf>

To view the full 90-page summary, go to:

<https://www.naw.org/wp-content/uploads/2020/05/Phase-4.pdf>

As *Politico* reported yesterday, hopes are fading on Capitol Hill for a deal on the next round of coronavirus relief before an approaching Memorial Day recess, raising the prospect that Congress won't reach a new spending agreement until June or beyond.

While the Democratic-controlled House is aiming to pass a multitrillion-dollar package as soon as this week without House Republican or White House input, the Senate Republican majority has no timeline for delivering its own bill. Senate Majority Leader Mitch McConnell said the party is still "assessing what we've done already," referring to the nearly \$3 trillion in aid delivered by Congress thus far.

"I'm in constant communication with the White House and if we decide to go forward, we'll go forward together," McConnell told reporters on Monday. "We have not yet felt the urgency of acting immediately. That time could develop, but I don't think it has yet."

To read the full article, go to:

<https://www.naw.org/wp-content/uploads/2020/05/Politico-May-11.pdf>

4. Latest on Liability Protections for Businesses

Speaking from the Senate floor this morning, Leader McConnell said that he and Senator John Cornyn are working on legislation to expand liability protections for businesses as they begin to re-open amid the coronavirus pandemic. Details regarding the legislation have not been released.

"Senate Republicans are preparing a major package of COVID-related liability reforms ... Our legislation is going to create a legal safe harbor for businesses, nonprofits, governments and workers and schools who are following public health guidelines to the best of their ability," said Leader McConnell.

Leader McConnell has called expanded liability protections the "red line" for Republicans on the next round of coronavirus relief legislation. The business community is pushing Congress to pass new legal protections amid concerns that they could face a myriad of lawsuits as they begin to re-open. In his statement this morning, Leader McConnell said that the bill wouldn't provide absolute immunity.

"To be clear now, we're not talking about immunity from lawsuits. There will be accountability for actual gross negligence and intentional misconduct. That will continue," he said.

5. Latest on Re-Opening the Economy

With state and local governments gearing back up to re-open the economy, many employers are seeking answers to the challenging issues they will face as they resume their business operations amidst COVID-19.

McGuireWoods Law Firm: UPDATE #12: State Governors' "Stay-at-Home" and Prohibition on Elective Procedures Orders: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Nevada, North Carolina, Pennsylvania, Rhode Island, and Vermont

To read the full report, go to:

<https://www.mcguirewoods.com/client-resources/Alerts/2020/5/state-governors-stay-at-home-prohibition-elective-procedures-orders>

Foley & Lardner Law Firm: State Workers' Compensation Systems Deal with COVID-19 Claims

Several states, including California (by executive order on May 6, 2020), have made it easier for essential workers who contract COVID-19 to obtain workers' compensation benefits by creating a rebuttable presumption that the infection occurred at work. This flips the traditional burden of proof on workers to establish that an illness or injury is work-related.

To read the full report, go to:

<https://www.foley.com/en/insights/publications/2020/05/state-workers-compensation-systems-covid-19-claims/>

Stateside Associates publishes a daily report about State and Local Government responses to the evolving situation. Some of the new developments in today's report include:

- **Alabama** Governor Kay Ivey (R) issued a proclamation extending the state of emergency for another 60 days.
- **Delaware** Governor John Carney (D) announced that June 1 shall be the target date on which Delaware shall begin Phase 1 of re-opening Delaware's economy.
- **Minnesota** Governor Tim Walz (D) has issued an order that ensures that enrollment in COVID-19 relief benefits does not disqualify an individual from receiving other state offered benefits.

We are also providing a link to a spreadsheet that includes state and local COVID-19 response information provided by **MultiState Associates**.

To view their spreadsheet, go to:

https://docs.google.com/spreadsheets/d/e/2PACX-1vRIJWZJ7OkGUW57_rdA2n3xBJ3qjW6u4Z9N6K9Y5L4bM_6H7-S308qdKmJfpVstYWf300nyujvZPFSy/pubhtml?urp=gmail_link

May 28 NAW Webinar on Economic Outlook:

We are partnering with NAW senior economic advisor Alan Beaulieu to produce a second critical economic forecast webinar. This webinar, "Distribution Post COVID-19 Outlook," will run Thursday, May 28, from 3:00 to 4:30 PM EDT. Seats are limited, so if you are interested, please purchase your seat today at:

www.naw.org/distribution-post-covid-19

[Click here](#) for links to *Critical Updates sent previously*.

Many thanks—

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