

TO: NAW Direct Members

FROM: NAW Government Relations Team

DATE: April 27, 2020

1. Latest on the SBA's Paycheck Protection Program

The SBA's Paycheck Protection Program resumed lending today after \$310 billion in loan authority was provided under legislation signed last Friday by President Trump. However, SBA's electronic filing system crashed within minutes of the program re-opening as a week-plus of backlogged applications poured through, raising concerns about how long the second round of funding may last.

According to a Wall Street Journal story, the electronic loan portal was overwhelmed by demand, according to banking industry groups, who say the process was also stymied by last-minute changes in guidance on how to submit applications.

"The SBA's systems were not designed to and are not capable of handling the volume of loans banks processed over the last several weeks for small businesses," said Richard Hunt, chief executive of the Consumer Bankers Association, which represents national and regional banks. "It is critically important for the SBA to be transparent and forthright about these limitations with the millions of men and women waiting for assistance."

The SBA asked banks to submit applications in batches of up to 15,000 loans to begin the process Monday morning, but lowered the number to 5,000 around mid-day after problems were reported with the new submission system.

To read the full story, go to:

<https://www.naw.org/wp-content/uploads/2020/04/Article-WSJ-April27.pdf>

The first round of \$349 billion provided under the CARES Act was exhausted within two weeks, as businesses raced to secure the first-come, first-served funds. On Friday, the Small Business Administration announced that hedge funds and private equity firms are ineligible for PPP rescue loans, following reports that major brands like Shake Shack and Potbelly had received them. Meanwhile, the SBA said today that more than \$2 billion in small-business loans that went to companies during the first round of funding have been returned.

2. Latest on Congressional Action on the Next Coronavirus Relief Package “CARES 2.0”

Today, Senate Majority Leader Mitch McConnell confirmed in a statement that the next coronavirus relief legislation must include liability protections for business owners who re-open.

As he reaffirmed the Senate will return May 4th, Leader McConnell said that without protection from lawsuits, business owners could end up with years of legal claims over their efforts to restart the economy.

“Our response must not be slowed, weakened or exploited to set up the biggest trial lawyer bonanza in history,” he said in a statement.

The declaration is the latest marker put down by Leader McConnell before the next and possibly last relief package before the November election. He also warned Democrats against adding liberal “wish lists” to the bill.

You can read Leader’s McConnell’s full statement below:

“Senators will return to Washington D.C. one week from today. We will modify routines in ways that are smart and safe, but we will honor our constitutional duty to the American people and conduct critical business in person. If it is essential for doctors, nurses, healthcare workers, truck drivers, grocery-store workers, and many other brave Americans to keep carefully manning their own duty stations, then it is essential for Senators to carefully man ours and support them.

“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.

“Here is just one example of an urgent need. While our nation is asking everyone from front-line healthcare professionals to essential small-business owners to major employers to adapt in new ways and keep serving, a massive tangle of federal and state laws could easily mean their heroic efforts are met with years of endless lawsuits.

“We cannot let that happen. Our nation is facing the worst pandemic in over a century and potentially the worst economic shock since the Great Depression. Our response

must not be slowed, weakened, or exploited to set up the biggest trial lawyer bonanza in history.

“The brave healthcare workers battling this virus and the entrepreneurs who will re-open our economy deserves strong protections from opportunistic lawsuits. Some such protections were included in the bipartisan CARES Act. We will need to expand and strengthen them.

“Republicans will proudly insist on these and other strong, pro-certainty, pro-growth reforms throughout any and all future discussions. The American people do not need tangential left-wing daydreams. They need commonsense steps that move us toward the response, recovery, and future readiness that Americans need and deserve.

“This crisis has every part of our society in dire need of stability, clarity, and certainty. The Senate has already stepped up, but our work is not over. I look forward to seeing all my colleagues next Monday.”

Just a few minutes ago, House Majority Leader Steny Hoyer announced that the House will also return to Washington next Monday, with at least one vote that evening.

3. Five Issues Congress is Considering for Next Relief Package

Lawmakers on Capitol Hill are continuing to talk about a potential fifth coronavirus bill to offer another round of relief for the American people. However, as The Hill is reporting there are already several potential speed bumps that lawmakers must overcome first. The first hurdle is how to find common ground on helping state and local governments. Senate Majority Leader Mitch McConnell has started a bit of a firestorm by throwing cold water on the idea of bailing out states for “problems that they created for themselves over the years with their pension programs.” Congressional Democrats on the other hand have continued to say that funding state and local governments is their top priority.

Should Congress add more funds to the Paycheck Protection Plan (PPP), lawmakers will be attempting to add additional restrictions on who may be eligible. This comes after several large chain restaurants qualified for millions of dollars in loans during the last round of funding. Senator Ron Johnson recently stated that the current PPP loans have been given to companies that don’t “truly need them.” To counter this, Senator Johnson is looking to modify the program’s loan forgiveness by not allowing the loans to be forgiven if a business’ 2020 taxable income is greater than its 2019 income.

Other issues of note are Democrats looking to fund states ability to vote by mail, which has been largely resisted by Republicans who are concerned about the likelihood of vote fraud. Democrats are also arguing for another increase in the Supplemental Nutrition Assistance Program (SNAP) by 30%.

Finally, there is bipartisan interest on finding a way to include some sort of infrastructure package into the mix. As you may remember, infrastructure has been talked about by President Trump and lawmakers for several years. But the issue that has plagued the recent infrastructure proposals is funding. Again, Senator McConnell has tried to manage expectations on including infrastructure into the next relief package when he stated that, "it would take a lot of convincing to convince me that we should do transportation in a way that is not credibly paid [for]."

As Congress returns to Washington next week, NAW will continue to monitor any developments on the next Coronavirus Virus relief bill and work for the inclusion of provisions important to wholesaler-distributors.

4. 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.

According to a Washington Post story today, "White House officials are finalizing expanded guidelines to allow the phased re-opening of childcare programs, schools and day camps, communities of faith, employers with vulnerable workers, restaurants and bars, and mass transit administrators. The guidance under review, drafted by the Centers for Disease Control and Prevention, is considerably more detailed. Changes could be made, but the guidance is likely to be released within the next seven days."

The 17-page guidance lists recommendations for each of six settings. It says all decisions should be made locally in collaboration with local health officials. An accompanying set of documents provides one-page checklists to help state and local health officials make decisions. The Washington Post obtained copies of the guidance and checklists.

To read the documents, go to:

https://www.washingtonpost.com/context/white-house-is-reviewing-detailed-guidance-for-gradual-reopening/f263df1b-f48c-4ede-affa-76803d94ff2f/?itid=lk_interstitial_manual_20

To read the full story, go to:

<https://www.washingtonpost.com/health/2020/04/28/white-house-is-reviewing-expanded-guidance-reopening-society/>

Complimentary Webinar: Re-Opening a Business Without Opening Liability

McGuireWoods' labor and employment team is offering a free webinar for a look ahead at re-opening businesses amid the COVID-19 pandemic and a discussion of best practices as employees return to the workplace.

Topics:

- Best practices for bringing employees back to work
- How to ensure a workplace is ready for employees to return
- How to manage COVID-19-related risks after re-opening
- COVID-19-related claims employers may face after they re-open
- Policies employers can put in place now to prevent or defeat such claims

Host: McGuireWoods

Date: Wednesday, April 29th

Time: 12:00 pm EST

Place: Webinar (access instructions e-mailed upon registration)

RSVP: To register online, go to:

<https://news.mcguirewoods.net/12/1682/landing-pages/rsvp---cle.asp?sid=f08a59ad-4291-4c47-8bdd-c87e3612a98d>

Covington & Burling LLP has published a five-part series report, the final part of which was recently released, examining the most challenging issues faced by employers who are planning to re-open or continue productive operations. The report addresses key employer considerations, including:

1. Navigating the Legal Risk of Return
2. Potential Screening Measures for Employees Returning to Work
3. General Workplace Safety Precautions
4. Accommodating Special Circumstances
5. International Employment Considerations (Recently Released)

To read the report, go to:

<https://covcommunicate.com/25/3097/uploads/opening-the-doors---return-to-workplace-considerations-during-covid-19---part-five--international-employment-considerations.pdf>

Additionally, The Wall Street Journal consulted a panel of employment lawyers and other experts to help answer some common questions that reflect best practices.

To read the article, go to:

<https://www.wsj.com/articles/going-back-to-work-tips-on-what-your-boss-canand-cantmake-you-do-11587682455>

As we have previously reported, more state governors are beginning to explore the logistics of how to re-open their states economies. NAW has been monitoring the reports of states re-opening and we are working to identify a central resource for NAW members to utilize in tracking the flow of information. Once NAW identifies a resource that will provide sufficient resources and information we will highlight the location.

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:

- **Idaho Governor Brad Little (R)** has announced new plans to help Idaho rebound from the economic impacts of coronavirus.
- **Kansas Governor Laura Kelly (D)** has allowed the sale of alcoholic beverages for carryout consumption and permits the sale of liquor in a container that is not the original container for any establishment holding a class A club license, class B club license or drinking establishment license.
- **Kentucky Governor Andy Beshear (D)** announced that the phased restart of Kentucky's economy will begin April 27, with a segment of the health care services industry. The easing of restrictions will allow for diagnostic and radiology testing, as well as non-urgent, emergent, in-person office and ambulatory visits. The Governor said the phased health care services re-opening is the first under the Healthy at Work initiative he introduced to help businesses re-open safely when the time is right.
- **California:** The Los Angeles the Board of Supervisors will meet April 28 to vote to approve an interim urgency ordinance requiring employers with over 500

employees nationally and locally within the unincorporated areas of the County to provide 80 hours of paid, supplemental sick leave for full-time employees and an amount no greater than two weeks pay for part-time employees for COVID-19 related reasons for the duration of the public health emergency.

- **Maryland:** The Annapolis City Council will meet on April 27th to consider an Ordinance relating to comprehensive bag reduction.
- **Massachusetts:** The Cambridge City Council will meet April 27 to discuss an emergency order to make wearing a cloth face covering in public mandatory for all persons in the City of Cambridge, and that such a covering must be worn outdoors, inside essential businesses, and when entering and exiting residential buildings.
- **Michigan:** The Department of Health and Human Services will accept comments until April 30 regarding an adopted emergency policy, and a proposed permanent identical policy, regarding temporary changes to the home delivery of durable medical equipment and medical supplies during the COVID-19 state of emergency.
- **Ohio:** The Board of Pharmacy will accept comments until April 28 regarding a drafted new rule updating the prescription requirements for chloroquine or hydroxychloroquine.

And, several media outlets are reporting that **Texas** Governor Greg Abbott (R) is allowing the Texas stay-at-home order to expire on April 30, and retailers, restaurants, movie theaters, museums, libraries and malls can re-open on May 1 at 25% capacity.

Last week, the National Governors Association released a “Roadmap to Recovery: A Public Health Guide for Governors” to aid state governors in re-opening their states and economies. The roadmap focuses mainly on two aspects: 1) how to build an effective public health infrastructure and 2) Creating a successful plan on gradually re-opening their states economy. Although this document is merely a guide for state governors, it may give you an insight into what states may be looking at as they move towards re-opening. To view the Roadmap to Recovery, go to:

<https://www.nga.org/wp-content/uploads/2020/04/NGA-Report.pdf>

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—

*Jade West, Chief Government Relations Officer
Blake Adami, Vice President-Government Relations
Seth Waugh, Associate Vice President-Government Relations
National Association of Wholesaler-Distributors*

The above information and links to other information has been prepared by NAW for the general information of NAW members. It is not intended to, and does not, provide tax, legal or professional advice concerning any specific matter. You should not act on the information without first obtaining professional advice and counsel.