

TO: NAW Direct Members

FROM: NAW Government Relations Team

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1. Latest on Main Street Lending Program

NAW and our allies have been working to urge the Fed to get the Main Street Lending Program facility up and running, but the news we heard from the Federal Reserve today was somewhat confusing.

During a press conference this afternoon, Federal Reserve Chair Jerome Powell, responding to a question regarding the deployment of the MSLP facility said, “the Fed is close to issuing new term sheets on main street lending program facility in response to public comments received.” This is in contrast with what Treasury Secretary Mnuchin said yesterday suggesting that the program was still more than two weeks away.

According to a Washington Post story, “Many on Wall Street and in the business community are eager to know when the Fed will begin its “Main Street Lending Program” that’s supposed to give loans to companies with about 500 to 10,000 employees. The Fed announced the program but has not begun lending yet.”

So far, the Fed has pumped \$2.3 trillion into the economy in the past six weeks, and analysts expect the Fed to bump that up to at least \$5 trillion in aid by the end of the year. The amount is unprecedented and dwarfs the relief that Congress and the White House have provided so far.

To read the full story, go to:

<https://www.washingtonpost.com/business/2020/04/29/gdp-coronavirus/>

2. Latest on the SBA’s Paycheck Protection Program

According to a *Politico* report this afternoon, the SBA said it would temporarily restrict incoming applications for emergency small business loans to only those submitted by the country’s *finest* lenders, an unprecedented move by the agency as it triaged hundreds of thousands of incoming requests for aid.

The SBA told banks that for the rest of the day its systems would accept only so-called Paycheck Protection Program loan applications from lenders with less than \$1 billion in assets, representing the smallest in the industry.

"SBA and Treasury will evaluate whether to create a similar reserved time again in the future," the agency said.

To read the full story, go to:

<https://www.politico.com/news/2020/04/29/business-loans-coronavirus-sba-221268>

Yesterday, U.S. Treasury Secretary Mnuchin and SBA Administrator Carranza issued the following statement on the Paycheck Protection Program (PPP):

The Paycheck Protection Program is providing critical support to millions of small businesses and tens of millions of hardworking Americans.

We have noted the large number of companies that have appropriately reevaluated their need for PPP loans and promptly repaid loan funds in response to SBA guidance reminding all borrowers of an important certification required to obtain a PPP loan. To further ensure PPP loans are limited to eligible borrowers, the SBA has decided, in consultation with the Department of the Treasury, that it will review all loans in excess of \$2 million, in addition to other loans as appropriate, following the lender's submission of the borrower's loan forgiveness application. Regulatory guidance implementing this procedure will be forthcoming.

We remain fully committed to ensuring that America's workers and small businesses get the resources they need to get through this challenging time.

3. Latest on Congressional Action on the Next Coronavirus Relief Package "CARES 2.0"

As of today, the Senate is still scheduled to return on Monday, after an extended recess to prevent the spread of the coronavirus. House Leader Steny Hoyer told his Members this morning that the House will return to session to consider "CARES 2.0" legislation whenever it is ready for Floor action.

What exactly the next relief bill will include is still up for debate. In an interview yesterday, Senate Leader McConnell said he will not consider any additional coronavirus aid legislation unless it includes liability or litigation protections for

businesses and employees seeking to come back to work. "We have a red line on liability," McConnell added. "It won't pass the Senate without it."

However, today when asked about wanting to curb lawsuits due to coronavirus, House Speaker Nancy Pelosi said, "I'm not inclined to support immunity of liability." Yesterday, on a call with reporters, Senate Minority Leader Schumer asked, "How does that make sense? ... Instead of making sure businesses have PPE for their employees, McConnell wants to make it harder for workers to show up at their jobs and to hold their employers accountable for providing safe working conditions."

Senate Leader McConnell also made it clear yesterday that he does not support including an infrastructure plan in the next round of coronavirus spending and he does not believe it's appropriate to use the pandemic to pay for infrastructure.

Democrat Leaders, along with President Trump, have said repeatedly they would like to see infrastructure spending in the coming pandemic relief bill. Senate Minority Leader Schumer said last week that President Trump, Treasury Secretary Steven Mnuchin and White House Chief of Staff Mark Meadows have all communicated that they wanted infrastructure funding in the next pandemic response bill.

4. Bloomberg Law Gives Insight on How to Minimize Risk While Conducting Temperature Screening

Today, Bloomberg Law published an Insight piece entitled, "Companies Face a Fevered Pitch for Temperature Screening," where the author reviews the risks of employers conducting temperature screening. As part of President Trump's "Opening up America Again" program, the administration recommends that employers will need to implement certain precautions to minimize the spread of COVID-19.

The article lists 5 steps that an employer may want to take to minimize the risks of temperature screens. These steps are:

1. Screening for Symptom, Not Condition. *A temperature screen likely is a medical examination under the ADA. In non-binding guidance, the EEOC has taken the position that, at least during a pandemic, temperature screening is job-related and justified by business necessity. To increase the likelihood that federal, state, and local courts will follow this guidance in construing their laws, employers should make clear that the screening is not diagnostic; that is, the purpose is **not** to determine whether the individual has Covid-19 or any other*

medical condition. The employer seeks only to determine if the individual has a symptom that **may** indicate Covid-19.

2. Significance of Test. A fever does not necessarily mean an individual has Covid-19. Conversely, the fact that someone does not have a fever does not mean that he or she does not have Covid-19. These realities need to be communicated. An employer does not want to give someone a false sense of security that they do not have Covid-19. Conversely, some support should be made available immediately to an individual who is told that he or she has a fever.

3. Not Practice of Medicine. If there is a patient/health-care provider relationship, then the health-care provider has certain obligations to the individual that go beyond the taking of the temperature and communicating the results. For this reason, it is recommended that the employer make clear that temperature screening does not create a patient/health-care provider relationship. This is true even if health-care providers perform the screen.

4. Confidentiality of Information. The notification given to or authorization signed by the individual should state to whom the results will be disclosed. Be careful not to suggest 'absolute confidentiality' because that is neither possible nor required. The roster of test results should be labeled as confidential and secured as same. Nothing should go into the personnel files of employees. Reasonable efforts also should be made to prevent individuals other than the person being screened from hearing the results of the screen. There are multiple ways to configure temperature screening to increase privacy.

5. Waiting Time. There is a question whether an employer needs to pay for an employee's waiting time to be screened (and all time thereafter under the continuous day rule). At least under federal law, the answer to this question turns on whether the temperature screen would be integral to the employees' primary duties. There is no 'per se' rule.

The article goes on to detail other implementation issues that employers should consider including screening anyone who may enter the workplace.

To view the article, go to:

<https://news.bloomberglaw.com/daily-labor-report/insight-companies-face-a-fevered-pitch-for-temperature-screening>

5. U.S. Department of Labor Issues COVID-19 Relief and Guidance for Employee Benefit Plans

The U.S. Department of Labor's Employee Benefits Security Administration (EBSA) today issued deadline relief and other guidance under Title I of the Employee Retirement Income Security Act of 1974 (ERISA) to help employee benefit plans, plan participants and beneficiaries, employers and other plan sponsors, plan fiduciaries, and other service providers impacted by the coronavirus outbreak.

The notice extends certain time frames affecting participants' rights to healthcare coverage, portability and continuation of group health plan coverage under COBRA and extends the time for plan participants to file or perfect benefit claims or appeals of denied claims. These extensions provide participants and beneficiaries of employee benefit plans additional time to make important health coverage and other decisions affecting their benefits during the coronavirus outbreak.

To read the guidance, go to:

<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2020-01>

The department also issued a set of [Frequently Asked Questions](#) (FAQs) on health benefit and retirement benefit issues to help employee benefit plan participants and beneficiaries, plan sponsors and employers impacted by the coronavirus outbreak understand their rights and responsibilities under ERISA.

6. Latest on Re-Opening the Economy

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:

- **Arkansas** Governor Asa Hutchinson (R) has announced May 4 as the date that Arkansas would begin lifting some of the restrictions we have put in place since March 11. The Governor has created the Governor's Economic Recovery Task Force and appointed 27 leaders from around the state to serve on it. The group will present an initial report by May 4. All of their recommendations will be guided by the best ongoing public health information. The task force includes representatives from across all facets of life – health care, athletics and physical fitness, education, the faith community, agriculture, tourism, small business, and industry.
- **Delaware** Governor John Carney (D) announced the Delaware Division of Small Business and the Delaware Prosperity Partnership will host virtual Recovery Town Halls with members of the General Assembly, small businesses, and local Chambers of Commerce, to begin collecting feedback from small business leaders about Delaware's economic re-opening.
- **Maine** Governor Janet Mills (D) outlined her vision for a gradual and safe re-opening of Maine's economy amid the novel coronavirus (COVID-19) pandemic, emphasizing four principles that will guide the State's decision-making process and inviting Maine people to offer their ideas through a new portal launched by the Department of Economic and Community Development.

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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