

TO: NAW Direct Members

FROM: NAW Government Relations Team

DATE: April 3, 2020

1. Update on Economic Stabilization Fund

While the SBA Paycheck Protection Program was launched today – to very mixed reviews – details on the Economic Stabilization Act program to provide loans to companies with 500-10,000 employees have still not been released. It is not yet clear whether this program will entail a direct lending program or the creation of a program within the Fed to purchase loans issued by banks, or perhaps both. And in an April 1st interview with Bloomberg television, Boston Fed President Eric Rosengren said that “the roll-out of a new lending program for small-and-medium-sized U.S. companies may still be ‘another couple’ of weeks away ... It’s a complicated facility to appropriately scope ... still in the design phase.”

We have been in constant discussions with both the Administration and allies on Capitol Hill to urge that final guidelines on these programs be released as soon as possible. And we learned this afternoon that there might be some preliminary guidance from Treasury or the Federal Reserve on how this program will work within the next few days, but that it will be the end of next week at the earliest before anything concrete is released.

In advance of release of the details, companies interested in participating in this loan program should review the conditions that the CARES Act placed on borrowers. These conditions are laid out very clearly in an analysis of the entire CARES Act prepared by the Mintz law firm. Click here to read the analysis: <https://www.mintz.com/insights-center/viewpoints/2226/2020-03-27-summary-cares-act-employers>. The relevant sections are toward the end of the report.

Click here to see a lengthy FAQ prepared by the Latham & Watkins law firm which is also of interest: <https://www.lw.com/thoughtLeadership/FAQs-Loan-Programs-for-Larger-Businesses-Under-Title-IV-of-the-CARES-Act>.

Finally, while the conditions to be imposed on borrowers in this loan program are clearly set out, the Secretary of the Treasury is given the authority in the statute to waive those requirements. The statute reads: “(iii) *WAIVER.*—*The Secretary may waive the*

requirement under clause (ii) with respect to any program or facility upon a determination that such waiver is necessary to protect the interests of the Federal Government.”

Adding confusion, the statute also separately gives the Federal Reserve the authority to establish a Main Street Lending Program that – at least on a basic reading of the legislative language – does not have to comply with the conditions previously spelled out in the bill:

“(ii) MAIN STREET LENDING PROGRAM.—Nothing in this subparagraph shall limit the discretion of the Board of 8 Governors of the Federal Reserve System to establish a Main Street Lending Program or other similar program or facility that supports lending to small and mid-sized businesses on such terms and conditions as the Board may set consistent with section 13(3) of the Federal Reserve Act 15 (12 U.S.C. 343(3)), including any such program in which the Secretary makes a loan, loan guarantee, or other investment under subsection (b)(4).”

We will continue to push for clarity on these programs and will of course keep you advised as we learn more.

2. Update: DOL Issues New Guidance on Paid Sick Leave and Expanded Family and Medical Leave Implementation

Today, the U.S. Department of Labor announced more guidance to provide information to employees and employers about how each will be able to take advantage of the protections and relief offered by the Families First Coronavirus Response Act (FFCRA), which went into effect April 1, 2020.

Since FFCRA was signed into law, NAW and our coalition partners have been actively engaged with the Department of Labor to ensure that our member’s concerns are addressed and that they are provided with the most up-to-date information on the requirements for employee eligibility, paid leave calculations and exemptions.

FFCRA requires that businesses with fewer than 500 employees must offer workers who are quarantined or experiencing Covid-19 symptoms two weeks paid sick leave under the Families First Coronavirus Response Act.

But according to the updated guidance issued today by DOL, employees who do not receive a medical diagnosis or advice from a health care provider won't be

eligible. Employees who seek newly mandated sick leave must be able to cite medical advice to do so.

The updated guidance announced today adds to a growing list of compliance assistance materials published by WHD, including:

- Fact Sheet for Employees - <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>
- Fact Sheet for Employers - <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>
- Questions and Answers about posting requirements - <https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>
- A Field Assistance Bulletin describing WHD's 30-day non-enforcement policy - <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1>

DOL provides additional information on common issues employers and employees face when responding to COVID-19 and its effects on wages and hours worked under the Fair Labor Standards Act and on job-protected leave under the Family and Medical Leave Act at:

<https://www.dol.gov/agencies/whd/pandemic>

For more information about the laws enforced by WHD, call 866-4US-WAGE, or visit: www.dol.gov/agencies/whd

3. U.S. Department of Labor Webinar

Today, the U.S. Department of Labor posted a pre-recorded webinar to provide interested parties a more in-depth description and help them learn more about the Families First Corona Response Act (FFCRA).

To view the webinar visit:

- Webinar: The Families First Coronavirus Response Act (FFCRA) - <https://dolwhd.cosocloud.com/pawkgwfawza0/?proto=true>
- Webinar Slides (PDF) - https://www.dol.gov/sites/dolgov/files/WHD/Pandemic/FFCRA_webinar.pdf

4. NAW Webinar on Economic Outlook

We are partnering with NAW senior economic advisor Alan Beaulieu to produce a critical economic forecast Webinar. This webinar, "Distribution Industry: Navigating the Crisis," will run next Thursday, April 9th, from 3:00 to 4:30 p.m., EDT.

Seats are limited, so if you are interested please purchase your seat today at: <https://www.naw.org/navigating-the-crisis/>

5. State and Local Building/Construction Code Inspections

As previously reported the Cybersecurity and Infrastructure Security Agency (CISA) has issued their *Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response* where they determined that workers supporting the construction industry and construction-related activities are essential workers.

The International Code Council (ICC) recently surveyed building and fire departments across all 50 states and the District of Columbia to learn how these professionals are coping with the COVID-19 pandemic. The survey of over 1,150 respondents found that 93% of departments are still performing inspections, both remotely and in-person. This survey provided a snapshot of how jurisdictions are modifying their inspection process to comply with social distancing measures and other challenges relating to the COVID-19 crisis.

Click here to view the executive summary of the survey: <https://www.iccsafe.org/wp-content/uploads/Code-Official-Survey-White-Paper.pdf>

Click here for an infographic of the results: <https://www.iccsafe.org/wp-content/uploads/Code-Official-Survey-Info.pdf>

The ICC has stated that they plan to continue the survey on an ongoing basis and will release a best practices document for code enforcement officials in the near future.

6. What We Might Expect in the Next Congressional Relief Package

The article below by Politico Pro reporter, Heather Caygle, gives us a glimpse of what lawmakers on the Hill are contemplating for the next relief package.

NAW has been working closely with our allies on Capitol Hill and the business community to push for any new COVID-19 legislation to focus on measures that will directly benefit the economy and help to spur the nation's economic recovery. As the following article shows, it appears (at least for now) that Congress is listening to reason and is moving away from making the next COVID-19 bill a wish list for potentially unrelated legislative items. A timeline for any legislative action remains uncertain. Both the House and Senate are out of session until April 20th and that could be extended even longer if congressional leaders feel it isn't safe for Members to travel to and work in the Capitol.

Consensus Starts to Grow on 'Phase 4' Coronavirus Relief

Congress is finally beginning to sketch the outlines of its next big coronavirus response.

Speaker Nancy Pelosi shifted her tone on Friday, calling for a much more focused "phase four" relief package to address immediate needs related to the coronavirus pandemic, a departure from the sprawling legislation she and other top Democrats were pushing earlier this week.

The move puts Pelosi more on track to cut a deal with Republicans in the coming weeks, after numerous GOP officials panned her efforts to broaden the next phase of coronavirus legislation.

Both in a television appearance and talking with reporters Friday, Pelosi said it's clear the next tranche of relief funds should be an expansion of the massive \$2 trillion package the president signed into law last week — more money to aid states, cities and small businesses, expand unemployment benefits and another round of direct cash payments for Americans.

"Let's do the same bill we just did, make some changes to make it current," Pelosi told reporters in the Capitol Friday.

"While I'm very much in favor of doing some things we need to do to meet the needs — clean water, more broadband, the rest of that — that may have to be for a bill beyond that right now," she added during an appearance on CNBC.

The California Democrat said she would still push for some top Democratic priorities, including adjusting the classification for Washington, D.C., allowing it to receive an amount of federal aid in line with what states are eligible for and pushing for additional federal worker protections for first responders and emergency personnel.

Earlier this week, Pelosi and top House Democrats were making a very different pitch — saying now was the time to think big and take a broad brush approach to addressing the economic downturn, pushing ideas like a massive infrastructure package to help jump-start the economy.

“This is so essential because of the historic nature of the health and economic emergency that we are confronting,” Pelosi said on a call with reporters Wednesday, pitching Democrats’ ideas for the phase four bill.

“We must take bold action to renew America’s infrastructure,” she added, ticking off a list of proposals including clean water provisions, expansion of rural broadband and more funding for community health centers.

But while President Donald Trump also backed the idea of a multi-trillion dollar infrastructure package, Pelosi’s pitch was met with staunch opposition from other senior Republicans, including Senate Majority Leader Mitch McConnell.

Republicans have been almost uniformly pushing a go-slow philosophy given the sheer magnitude of the bill they just approved.

"After you pass a \$2.2 trillion piece of legislation you probably ought to take a deep breath and see what works and needs to be changed and spend some time making it work," said Sen. Lamar Alexander (R-Tenn.), who chairs a key health and education committee.

Yet Republicans are also increasingly acknowledging they will need to act again, mostly in terms of extending the benefits for small businesses to pay employees and cover expenses for beyond eight weeks. Alexander said current policy could conflict with local officials ordering workers to stay at home.

"All the pieces in the puzzle don't fit together when we encourage: Pay your employees for eight weeks. And the state shuts down the restaurant," Alexander said. "And then the second one is: I think it's going to run out of money. One big bank told me that it expects a million applications."

"We are already working on ideas for phase four and we're collecting those ideas from constituents in Colorado, we've got some adjustments to the CARES Act that I think would be appropriate for phase four," added Sen. Cory Gardner (R-Colo.). "I'd like to see an infrastructure bill more forward. Maybe that's phase four, maybe that's 'phase 5.' But there's going to be additional action required."

And privately, some Democrats have expressed concerns that such a broad plan risked alienating voters, especially if Republicans were able to convincingly claim Democrats were more focused on liberal priorities than addressing immediate coronavirus-related needs.

Pelosi's pivot comes after startling new unemployment numbers were released showing a record 10 million Americans applying for jobless benefits in the last two weeks. The numbers are expected to rise dramatically in the coming weeks as federal agencies process claims that have been filed in the past few weeks, as the coronavirus pandemic started shuttering the U.S. economy.

"How much longer might we extend the [small business loan program], from two months to three months or three months to four months? Might we extend the unemployment insurance? Might we send a second check out?" said Sen. Chris Coons (D-Del.), discussing the possibilities Congress may need to confront by the end of the month.

A source close to Pelosi said the alarming unemployment numbers have influenced her thinking on the need to limit the focus of the next legislative package but cautioned that nothing is set in stone as Democrats have yet to even draft a bill.

Many thanks—

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