

TO: NAW Direct Members

FROM: NAW Government Relations Team

RE: NAW Critical Update Number 39 – April 30 at 4:30 PM

1. Latest on the Main Street Lending Program:

We will report further tomorrow on the FAQ and term sheets the Fed released this morning. In the interim, Fed Chairman Powell made comments yesterday that provide more insight into the Fed's plans for this and other loan programs. As Capital Alpha reported after the Chairman's press conference, the Chairman said (among other comments):

- Fed facilities will expand and the MSLP will grow
- He is not focused on the deficit at this point in time
- The Fed received a "couple thousand" comments on the initial MSLP announcement and term sheets
- "This is a broad area of the economy with many different kinds of credit needs, so we're going to keep at that for some time, I think in adding sectors and lending products. So I think we'll probably be continuing to work and expand Main Street for some time. But it won't be done quite as quickly ..."
- The Fed's facilities will be operating "fairly soon"
- "Our credit policies are not subject to a specific dollar limit ..."

To read Capital Alpha's full story on Chairman Powell's press conference, go to:

<https://www.naw.org/wp-content/uploads/2020/04/Powell-Opening-Vault.pdf>

2. Latest on the Paycheck Protection Program:

Of interest: As of yesterday evening, the second tranche of PPP funding had processed 960,000 loans totaling about \$90 billion. There are reportedly hundreds of thousands of loans somewhere in the queue.

A new FAQ was released yesterday on the PPP program, with a new Question 39 asking if the SBA will review "individual PPP loan files." This is obviously a follow-up to the Treasury Secretary's statement yesterday that the SBA would be auditing loans over

\$2 million, and to the previous question/answer setting a May 7th deadline for return of loans by companies which they argue should have not received them. Q&A 39 are included below, and to access the entire document go to:

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

39. Question: Will SBA review individual PPP loan files?

Answer: Yes. In FAQ #31, SBA reminded all borrowers of an important certification required to obtain a PPP loan. To further ensure PPP loans are limited to eligible borrowers in need, 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. Additional guidance implementing this procedure will be forthcoming.

The outcome of SBA's review of loan files will not affect SBA's guarantee of any loan for which the lender complied with the lender obligations set forth in paragraphs III.3.b(i)-(iii) of the Paycheck Protection Program Rule (April 2, 2020) and further explained in FAQ #1.15

Also, in response to the debate on whether the PPP loans are actually going to the businesses for which they were intended, Senate Small Business Committee Chair Marco Rubio (R-FL) said in a phone call/virtual townhall yesterday that all of the loans will eventually become public. In the call, which was reported by *Politico* and *NBC Miami*, Senator Rubio said: "The bottom line is we're going to know one way or the other who got this money ... Treasury, SBA is eventually going to have to release that. I always thought they were going to have to, and if they don't, we'll make them do it."

Politico further reported: "Rubio said his committee plans to hold hearings to investigate whether banks that actually handled the lending favored certain recipients. 'Whether lenders submitting favored some clients over others is really the question,' he said. 'That's something we are always going to have to look at.'"

Links to coverage of Senator Rubio's comments can be found here:

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

and here:

<https://www.nbcmiami.com/news/local/rubio-vows-public-will-learn-all-recipients-of-ppp-loans/2226635/>

While most of the public debate has focused on the larger and public companies receiving PPP loans, other businesses which have received or applied for loans are beginning to raise concerns about the public disclosure of even the smaller loans. In some cases, companies worry that they will be put at a competitive disadvantage if their loans are disclosed, revealing that they received the funds, the amount of their loan, and possibly the monthly payroll used to calculate the loan amount.

We expect continued debate on this as the PPP proceeds.

3. Latest on Employee Retention Tax Credit:

We have reported on this tax credit previously, but there have been no recent updates. Yesterday the IRS finally released an FAQ document on the program which you can access here:

<https://www.irs.gov/newsroom/faqs-employee-retention-credit-under-the-cares-act>.

Please note that, while this is an IRS document, it contains a very clear disclaimer that it may not be relied upon as legal authority: *“This FAQ is not included in the Internal Revenue Bulletin, and therefore may not be relied upon as legal authority. This means that the information cannot be used to support a legal argument in a court case.”*

It should also be noted that, not only does the answer to Question 33 on the issue of what constitutes “suspension of operations” for a nonessential company lack legal authority, it adds confusion. The IRS example in the answer is limited to a non-essential employer (software company) where “... **all** employees at the company teleworked once or twice per week.” This is obviously a limited/narrow example.

33. If a governmental order requires an employer to close its workplace, but the employer is able to continue operations comparable to its operations prior to the closure by requiring employees to telework, is the employer considered to have a suspension of operations?

No. If an employer’s workplace is closed by a governmental order, but the employer is able to continue operations comparable to its operations prior to the closure by requiring its employees to telework, the employer’s operations are not considered to have been fully or partially suspended as a consequence of a governmental order. The employer may be considered an Eligible Employer and may be eligible for the Employee Retention Credit if it experiences a significant decline in gross receipts. For more information on what constitutes a significant decline in gross receipts, see:

[Determining When an Employer is Considered to have a Significant Decline in Gross Receipts.](#)

Example: Employer C, a software development company maintains an office in a city where the mayor has ordered that only essential businesses may operate. Employer C's business is not essential under the mayor's order and must close its office. Prior to the order, all employees at the company teleworked once or twice per week, and business meetings were held at various locations. Following the order, the company ordered mandatory telework for all employees and limited client meetings to telephone or video conferences. Employer C's business operations are not considered to be fully or partially suspended by the governmental order because its employees may continue to conduct its business operations by teleworking

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.

Checklist for safely and successfully re-opening retail businesses

From Nixon Peabody: "We know everyone is anxious to re-open their stores with the relaxing of the various stay at home orders. But before doing so, we urge you to review our checklist of considerations, which will help you weigh the pros and cons, as well as determine the financial impact of the required changes."

To view the full article on the Nixon Peabody website, go to:

https://www.nixonpeabody.com/en/ideas/articles/2020/04/29/reopening-guidelines-for-retail-in-age-of-coronavirus-covid-19?utm_medium=alert&utm_source=interaction&utm_campaign=retail

If you missed the webinar yesterday, McGuireWoods' labor and employment team provided a look ahead at re-opening businesses amid the COVID-19 pandemic and discussed best practices as employees return to the workplace.

Topics included:

- 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

To replay the webinar, go to:

<https://www.mcguirewoods.com/events/firm-events/2020/4/reopening-a-business-without-opening-liability>

To view the presentation materials, go to:

<https://media.mcguirewoods.com/events/2020/Reopening-Businesses-Without-Opening-Liability.pdf>

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 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:

- **California** Governor Gavin Newsom (D) and members of the Task force on Business and Jobs Recovery kick off a listening tour with workers, small businesses and employers impacted by COVID-19.
- **Iowa** Governor Reynolds (R) announced restaurants, fitness centers, malls and retail stores in 77 of Iowa's 99 counties will be permitted to re-open on Friday, May 1.
- **Nebraska** Governor Pete Ricketts (R) outlined the new guidelines for restaurants as the state re-opens dine-in options beginning on May 4. These guidelines require that (i) seated be limited to 50% of maximum occupancy, (ii) each dining party must maintain at least 6 feet of distance between other parties, (iii) each dining party be limited to six people, (iv) self-serve buffets and bars, along with bar and counter seating, are prohibited, and (v) patrons may only consume alcohol if also consuming a meal. Dine-in options will be opened on a regional basis, not statewide.

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

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