

TO: NAW Direct Members

FROM: NAW Government Relations Team

RE: NAW Critical Update Number 46 – May 11 at 3:00 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.

2. Latest on the Paycheck Protection Program

As we have reported several times, there has been significant controversy on the implementation of the PPP, with the frequently changing rules and FAQs. Among the most controversial issues was the SBA Administrator's decision to require borrowers to spend at least 75 percent of their PPP loan on payroll and only 25 percent on other forgivable expenses.

As we are keenly aware, the PPP program is critically important to NAW member companies—to those who qualify for and/or have obtained loans and to those whose customers are PPP-qualified.

NAW has prepared comments on the SBA's Interim Final Rule, commenting on the 75/25 ratio, loan maturity term, payment deferment, and definition of what constitutes "payroll." Our comments were submitted to the agency today. To view our comments, go to:

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

Of note, the SBA's Inspector General issued a report on PPP last week, and the IG was surprisingly critical of the Administrator's imposition of the 75/25 ratio, noting that "tens of thousands" of businesses were likely harmed by the decision. NAW quoted the IG report in our comments. To read the full IG report go to:

https://www.sba.gov/sites/default/files/2020-05/SBA_OIG_Report_20-14_508.pdf

On Friday, the *Wall Street Journal* also reported on the IG Report, noting its criticism of the SBA requirement that borrowers use 75% of the funding on payroll costs to receive

full forgiveness of their loan, even though the CARES Act passed by Congress didn't mandate any specific amount be dedicated for payroll expenses.

To read the full story, go to:

<https://www.naw.org/wp-content/uploads/2020/05/WSJ-SBA-Veered.pdf>

Despite his earlier comments, Treasury Secretary Steven Mnuchin said in an interview on CNBC this morning that he is now open to changing the terms of the Paycheck Protection Program (PPP) amid growing concerns from lawmakers and business advocates about the terms of the loans offered.

Last week, the Department of Justice announced its first criminal charges against two New England men for seeking hundreds of thousands of dollars in government-backed Payroll Protection Program (PPP) loans under false pretenses. The case provides a critical first look into what is sure to be a prolonged effort by government agencies to investigate and prosecute alleged CARES Act fraud.

All CARES Act beneficiaries should be prepared for heightened government scrutiny, and numerous aspects of the first PPP fraud prosecution are instructive. As we've previously reported, the Treasury Department, in its controversial FAQs with respect to loan qualifications, has provided a "safe harbor" period until May 14th by which companies can return PPP loans with no questions asked if they choose to do so.

The *Nixon Peabody Law Firm* has released an analysis of this first prosecution and provides a preview of government scrutiny for which all CARES Act beneficiaries must prepare.

To read the full article go to:

https://www.nixonpeabody.com/en/ideas/articles/2020/05/08/ppp-fraud-prosecutions?utm_medium=alert&utm_source=interaction&utm_campaign=government-investigations

3. Latest Congressional Action on the Next Coronavirus Relief Package "CARES 2"

According to Majority Leader Steny Hoyer's office, the House could reconvene this Friday as talks continue on the next virus relief package. The House Democrat's coronavirus bill is not yet finished, but it is possible they could release the text of their bill later today. The package is expected to include food assistance, additional direct

payments to workers, hundreds of billions of dollars for the Postal Service, additional unemployment benefits and hundreds of billions of dollars for states.

However, their efforts could run into a roadblock in the Senate and White House. The flood of spending early in the pandemic has rekindled deficit concerns among Republican lawmakers. After backing almost \$3 trillion to offset the economic impact of the coronavirus, Senate Majority Leader Mitch McConnell and other Republicans have begun raising alarms about the growing deficit and are hesitant to move quickly on a new relief bill. President Trump is also tapping the brakes on the idea of swift action on any new aid package, saying he's in "no rush" for a new stimulus.

4. Latest on Liability Protections for Businesses

The Senate Judiciary Committee will meet tomorrow to discuss liability during the pandemic, an emerging issue in stimulus talks as Republicans seek to shield companies from lawsuits.

We will provide you with more details when we learn more.

To visit the hearing webpage for reference, go to:

<https://www.judiciary.senate.gov/meetings/examining-liability-during-the-covid-19-pandemic>

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.

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:

- **Florida** Governor Ron DeSantis (R) has ordered the suspension of vacation rentals and prohibited new bookings for the duration of the order.
- **Michigan** Governor Gretchen Whitmer (D) has issued an order amending and extending the Stay at Home Order until May 28.

- **California:** The Los Angeles Board of Supervisors will meet May 12 to hear the introductions of two ordinances amending Title 8 of the County Code concerning Business and Wage regulations, establishing a right of recall for janitorial, maintenance, security service and hospitality workers who are laid off as a result of the COVID-19 public health emergency, and establishing legal protections for those workers to be retained when specified businesses change ownership or control. The Senate Labor, Public Employment and Retirement Committee will hold a hearing May 14 regarding SB 893, which makes changes to workers' compensation provisions for hospital employees, specifically defining "injury" for a hospital employee who provides direct patient care in an acute care hospital, to include infectious diseases, musculoskeletal injuries and respiratory illnesses such as COVID-19.
- **Louisiana:** The Senate Judiciary Committee will hold a hearing May 12 regarding SB 435, which adds liability immunities for actions taken by employees of the state, political subdivision, other state agencies or employees or representatives of any of them during declared states of emergency.
- **New Jersey:** The Department of Labor and Workforce Development will accept comments until May 15 regarding a proposed new rule concerning complainant or witness confidentiality when reporting violations of wage and labor rules or statutes.
- **Wisconsin:** The Division of Medicaid Services will accept comments until May 11 regarding a proposed guidance document which expands presumptive Medicaid eligibility for BadgerCare Plus Express Enrollment during the COVID-19 State of Emergency.

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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