

TO: NAW Direct Members

FROM: NAW Government Relations Team

**RE: NAW Critical Update Number 41 – May 4 at 4:00 PM**

## 1. Latest on the Main Street Lending Program

Last week, the Federal Reserve, in conjunction with the U.S. Department of the Treasury, released updated guidance on the MSLP program to support lending to small- and mid-sized businesses by eligible lenders. The April 30th guidance expands on and, in several areas, supersedes prior materials published on April 9th. As of today, there has been no further information from the Fed on when the lending facility will be operational.

Two law firms have now published analyses of the Fed's Main Street Lending Program announcement and term sheets:

The ReedSmith Law Firm published an article discussing how the newly updated MLSP program implicates key workplace-related considerations for U.S. employers.

To read the full article, got to:

[https://www.employmentlawwatch.com/2020/05/articles/employment-us/newly-updated-main-street-lending-program-implicates-key-workplace-related-considerations-for-u-s-employers/?utm\\_source=Reed+Smith+-+Employment+Law+Watch&utm\\_campaign=7dfab008c2-RSS\\_EMAIL\\_CAMPAIGN&utm\\_medium=email&utm\\_term=0\\_b40554bd20-7dfab008c2-78816497](https://www.employmentlawwatch.com/2020/05/articles/employment-us/newly-updated-main-street-lending-program-implicates-key-workplace-related-considerations-for-u-s-employers/?utm_source=Reed+Smith+-+Employment+Law+Watch&utm_campaign=7dfab008c2-RSS_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_b40554bd20-7dfab008c2-78816497)

And the Hogan Lovells Law Firm published an analysis on the updated Federal Reserve term sheets and FAQs that were released last week.

To read the full article, go to:

<https://www.engage.hoganlovells.com/knowledgeservices/news/covid-19-the-federal-reserve-board-revises-terms-and-issues-faqs-for-the-main-street-lending-program>

## 2. Latest on the Paycheck Protection Program

**Deductibility of business expenses:** As we reported Friday, the IRS issued guidelines making non-deductible an employer's normally tax-deductible business expenses to the extent those expenses are included in PPP loan forgiveness. This IRS action effectively reverses the CARES Act provision that any amounts forgiven by a PPP loan "*shall be excluded from gross income* (emphasis added)." Almost immediately, House Ways and Means Committee Chair Richard Neal (D-MA) and Senate Finance Committee Chair Chuck Grassley (R-IA) announced opposition to the IRS action, and Chairman Neal may introduce legislation shortly to reverse that action.

In the interim, NAW has signed onto, and will be circulating for additional signatures, a letter to the two Chairmen thanking them for their support and encouraging them to take action to restore the deductibility of the forgiven business expenses.

**New SBA FAQ:** The SBA/Treasury Department have updated their FAQ document, adding three new questions. Of note is Question 40, asking if an employer's PPP loan forgiveness will be reduced if they offer to re-hire an employee they had laid off. The answer is no, the loan forgiveness will not be reduced if the employer made a written offer to re-hire and can document the employee's rejection of the offer. The SBA will be including this in an interim final rule they "intend to issue."

The two additional new questions deal with seasonal employers and non-profit hospitals. Question/Answer 40 is included below, and you can access the entire FAQ here: <https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

*40. Question: Will a borrower's PPP loan forgiveness amount (pursuant to section 1106 of the CARES Act and SBA's implementing rules and guidance) be reduced if the borrower laid off an employee, offered to re-hire the same employee, but the employee declined the offer?*

*Answer: No. As an exercise of the Administrator's and the Secretary's authority under Section 1106(d)(6) of the CARES Act to prescribe regulations granting de minimis exemptions from the Act's limits on loan forgiveness, SBA and Treasury intend to issue an interim final rule excluding laid-off employees whom the borrower offered to re-hire (for the same salary/wages and same number of hours) from the CARES Act's loan forgiveness reduction calculation. The interim final rule will specify that, to qualify for this exception, the borrower must have made a good faith, written offer of re-hire, and the employee's rejection of that*

*offer must be documented by the borrower. Employees and employers should be aware that employees who reject offers of re-employment may forfeit eligibility for continued unemployment compensation.*

**Payroll-expense 75-25 ratio:** Despite considerable business objection to the SBA's decision to require PPP loans be expended in a 75-25 percent ratio of payroll to expenses in order to be forgiven, there is little indication so far that either the SBA or Treasury is responding to those objections. In an interview today, the Treasury Secretary said that the Administration lacked the authority to change that 75-25 requirement, even though it was the Administration and not Congress that imposed the ratio. He also indicated no support for modifying the requirement that the loan be spent in an 8-week period despite pressure from the restaurant industry, which argues that the 8-week window does not work for them given the mandatory shut-down of their establishments.

NAW is preparing and will submit comments to the SBA in response to their Interim Final Rule, and would welcome any feedback from NAW members on how the 75-25 percent ratio would work for you, or the requirement that the loan be expended in 8 weeks, or any other PPP provisions of concern.

On Sunday, the Treasury Department announced that the United States has made over \$500 billion in loans to small businesses hit hard by the coronavirus pandemic, and about \$145 billion remains in the congressionally approved fund.

According to a Reuters article, "The SBA has processed about 2.2 million loans worth more than \$175 billion since Congress last month authorized more funding for the Paycheck Protection Program, part of almost \$3 trillion in spending to fight the heavy economic toll of the pandemic, which has thrown about 30 million Americans out of work."

To read the Joint Statement by Treasury Secretary Steven T. Mnuchin and SBA Administrator Jovita Carranza, go to:

<https://home.treasury.gov/news/secretary-statements-remarks/joint-statement-by-treasury-secretary-steven-t-mnuchin-and-sba-administrator-jovita-carranza-on-the-success-of-the-paycheck-protection-program>

### **3. Latest Congressional Action on the Next Coronavirus Relief Package “CARES 2.0”**

The Senate returned to work today for the first time in more than five weeks. The House is currently scheduled to return to work next week to consider new coronavirus relief legislation. House Democratic leaders are holding off on calling all Members back to Washington until the next relief bill is ready for a vote, citing advice from the Capitol physician that it's not yet safe to have the chamber back in session amid a rising number of COVID-19 cases in the nation's capital.

No coronavirus relief legislation is expected to be voted on in the Senate this week, but the Senate is expected to hold several coronavirus-related hearings. Senate committees will hold confirmation hearings on the nominations of Brian Miller to be inspector general for pandemic recovery at the Treasury Department and Rep. John Ratcliffe to be director of national intelligence. The Senate may also consider legislation to reauthorize expired provisions in the Foreign Intelligence Surveillance Act.

As for the ongoing negotiations for “CARES 2.0,” Senate Majority Leader Mitch McConnell and House Minority Leader Kevin McCarthy have called liability protections for businesses a must-have “red line” for Republicans, saying they won't support Democrats' call for further state and local aid without it. Democratic leaders have declared they will oppose such blanket protections.

NAW has been participating in a working group with fellow association colleagues urging the White House and Congress to include liability protections for essential and nonessential industries in the next round of coronavirus relief aid. NAW has also been in conversations with Sen. John Cornyn's office who is reportedly working on legislation that would shield businesses from liability over coronavirus-related claims as long as they comply with government guidelines.

### **4. DOL Issues Additional Guidance About Short-Time Compensation Program Provisions**

The U.S. Department of Labor today issued additional guidance regarding Title II, Subtitle A of the Coronavirus Aid, Relief and Economic Security (CARES) Act. This guidance concerns 100 percent federal reimbursement of certain state Short-Term Compensation (STC) payments, as well as other changes to STC programs.

The STC program, also known as “work-sharing” or “shared work,” is a layoff aversion program in which an employer, under a state-approved plan, reduces the hours for a group of workers. These workers in turn receive a reduced unemployment benefit payment. This important program preserves employees’ jobs and employers’ workforces during disruption to regular business activity by reducing hours of work for an entire group of affected employees rather than laying off some employees while others continue to work full time.

Section 2108 of the CARES Act provides for temporary 100 percent federal financing of STC payments in a state with a STC program, whether that program is new or pre-existing. Section 2109 provides for a state without a qualifying STC program to enter into an agreement with the Secretary of Labor to operate a temporary federal STC program. Section 2110 provides \$100 million in grants to support states in implementing and administering STC programs. Section 2111 provides that the department will give technical assistance and guidance to states implementing STC programs.

To read the full guidance, go to:

[https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=9622](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9622)

## **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.

### **U.S. Department of Labor Invites the Public to Participate in National Online Dialogue on Opening America’s Workplaces Again**

As the U.S. Department of Labor continues its efforts to support American workers and position the economy for a strong rebound, the department is hosting a national online dialogue on “Opening America’s Workplaces Again,” to solicit ideas from the public on how best to help employers and workers re-open America’s workplaces safely.

The dialogue will run from Thursday, April 30 through Thursday, May 7, 2020, and will include a one-hour Twitter chat on Friday, May 1, 2020, at 2:00 p.m. EDT.

The public – including employers, workers, local authorities and advocacy groups – is invited to share ideas on six topics:

1. Re-opening businesses;
2. Commuting safely;
3. Working safely;
4. Accommodating members of vulnerable populations;
5. Supporting America's families; and
6. Reducing regulatory burdens.

To register, go to:

<https://OpeningWorkplaces.ideascale.com>.

*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:

**Alabama Governor Kay Ivey** (R) announced a Safer at Home Order. The order requires a person who has tested positive to quarantine for 14 days. The order bans mass gatherings of more than 10 people. The order requires employers to maintain 6 feet of separation between employees and customers, facilitate teleworking, encourage hand washing, regularly disinfect surfaces, and prevent employees who are sick from coming into contact with others. The order requires retailers to operate at 50% capacity and comply with CDC and DPH sanitation guidelines. The order keeps entertainment venues, athletic facilities, and close-contact facilities closed. The order keeps private and public schools, post-secondary, technical, and higher ed schools closed. Restaurants may still only do takeout and delivery. Dental and medical procedures may proceed following the Center for Medicare and Medicaid Services and the CDC's guidelines.

**Arizona Governor Doug Ducey** (R) has issued an order allowing non-essential retailers to sell goods via delivery, walk-up, or drive through as announced in his press release. The order also allows these businesses to operate and re-open May 8 if safety protocols are met including facilitating 6 feet of distancing between individuals. Retailers located in shopping malls or buildings or areas whose only entrance is through a shopping mall may only operate via delivery or curbside.

**New Jersey Governor Phil Murphy** (D) issued an order allowing electronic petition submission and signature collection for Initiatives and Referenda.

**Georgia:** The Department of Natural Resources will accept comments until May 6 regarding proposed amendments to rules concerning emissions and air quality standards.

**Massachusetts:** The Joint Committee on Judiciary will hold a live-streamed hearing May 5 regarding HB 4664, which provides that no service provider, manufacturer, supplier, wholesaler, distributor or retail seller of such goods, services and supplies shall sell or offer for sale any such consumer goods, services or supplies for an unconscionably excessive price during a Public Health Emergency. A price is not an “unconscionably excessive price” if it is fifteen percent or less above the price charged by the seller for such goods, services or supplies immediately prior to the Public Health Emergency.

**New York:** The New York City Committee on Civil Service and Labor will meet May 5 to hear the introduction of an ordinance prohibiting employers from discharging essential workers without just cause.

**North Carolina:** The Board of Pharmacy will accept comments until May 1 regarding an adopted emergency rule and a proposed identical rule updating requirements for pharmacists when filling or refilling a prescription for select drugs. This rule is in response to the COVID-19 Pandemic.

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](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](http://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*

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