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# Hughes Hubbard & Reed

## CARES Act Developments and Newly Proposed Fiscal Stimulus Legislation as of June 19, 2020

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**June 19, 2020** - This week the Small Business Administration issued guidance for the Paycheck Protection Program implementing recent changes made by Congress that give borrowers significantly more flexibility in how and when they use PPP funds and make it easier for them to obtain loan forgiveness. The Federal Reserve launched the Main Street Lending Program for small and medium-sized businesses and sought public comment on extending that program to non-profits. The Federal Reserve also started purchasing corporate bonds through its Secondary Market Corporate Credit Facility.

### CARES Act Developments

#### IRS Issues Guidance on Employer Leave-Based Donation Program

On June 11, the Internal Revenue Service published guidance for employers who make cash payments to charitable organizations that provide relief to coronavirus pandemic victims when their employees forgo sick, vacation or personal leave. The guidance provides that such cash payments will not be treated as compensation. It also provides that the employees will not be treated as receiving the value of the leave as income and cannot claim a deduction for the leave that they donated to their employers. Employers, however, may deduct these cash payments as a business expense or as a charitable contribution if the employer otherwise meets applicable requirements.

- Press release: <https://www.irs.gov/newsroom/irs-provides-guidance-on-employer-leave-based-donation-programs-that-aid-victims-of-the-covid-19-pandemic>
- Notice 2020-46: <https://www.irs.gov/pub/irs-drop/n-20-46.pdf>

#### USPTO Announces Relief to Restore Priority or Benefit Rights for Patent Applicants

On June 12, pursuant to § 12004(a) of the CARES Act, the US Patent and Trademark Office extended the time period for petitioning for certain rights of priority or benefit in a patent application and waived the associated petition fee. The relief extends the two-month time-period for restoring the right of priority to or benefit of a foreign or provisional application for any nonprovisional application due to be filed between March 27, 2020 and July 30, 2020.

- Press release: <https://www.uspto.gov/about-us/news-updates/uspto-announces-relief-restore-priority-or-benefit-rights-patent-applicants>
- USPTO Notice: <https://www.uspto.gov/sites/default/files/documents/restoration-relief-2020-06.pdf>

### **SBA Published Guidance Implementing PPPFA**

On June 12, the Small Business Administration (SBA) issued new and revised guidance for the Paycheck Protection Program (PPP). This guidance implements the Paycheck Protection Program Flexibility Act (PPPFA), which was signed into law on June 5, 2020. It also expands eligibility for businesses with owners who have past felony convictions. The SBA released a revised forgiveness application and instructions form that is substantially shorter than the original form. It also released an EZ loan forgiveness application and instruction form for certain borrowers.

- PPPFA press release: <https://home.treasury.gov/news/press-releases/sm1030>
  - First IFR Implementing PPPFA: <https://www.sba.gov/sites/default/files/2020-06/PPP-IFR-Revisions-to-First-Interim-Final-Rule.pdf>
  - Second IFR Implementing PPPFA: <https://content.sba.gov/sites/default/files/2020-06/PPP%20IFR%203%20and%206%20revisions%20%286.16.2020%29%20signed.pdf>
  - IFR Revising Eligibility: <https://home.treasury.gov/system/files/136/PPP-IFR--Additional-Revisions-to-First-Interim-Final-Rule.pdf>
- Forgiveness application press release: <https://home.treasury.gov/news/press-releases/sm1036>
  - Revised Forgiveness Application: <https://www.sba.gov/sites/default/files/2020-06/PPP%20Loan%20Forgiveness%20Application%20%28Revised%206.16.2020%29.pdf>
  - EZ Forgiveness Application: <https://www.sba.gov/sites/default/files/2020-06/PPP%20Forgiveness%20Application%203508EZ%20%28%20Revised%2006.16.2020%29.pdf>

### **Federal Reserve Launches Main Street Lending Program**

On June 15, the Federal Reserve Bank of Boston announced that it had opened the Main Street Lending Program Lender Portal. The portal enables eligible lenders to register in order to provide loans to eligible borrowers. The CARES Act program will provide up to \$600 billion in economic stimulus and relief loans to small and medium-sized businesses.

### **Federal Reserve Updates Secondary Market Corporate Credit Facility**

On June 15, the Federal Reserve announced updates to the Secondary Market Corporate Credit Facility (SMCCF). The Federal Reserve said that the facility will begin purchasing corporate bonds to create a corporate bond portfolio based on a diversified market index of U.S. corporate bonds. The facility currently purchases only exchange-traded funds. The index will be made up of all the bonds in the secondary market that have been issued by U.S. companies that satisfy the facility's minimum rating, maximum maturity, and other criteria.

- Press release: <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200615a.htm>
- FAQ: <https://www.newyorkfed.org/markets/primary-and-secondary-market-faq/corporate-credit-facility-faq>
- Updated term sheet: <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200615a1.pdf>

## **Public Comment Period on Opening Main Street Lending Program to Nonprofits**

On June 15, the Federal Reserve announced it will seek public comment on expanding its Main Street Lending Program (MSLP) to small and medium-sized nonprofit organizations. The Federal Reserve proposes that terms such as interest rate, deferral of principal and interest payments, five-year term, \$250,000 minimum loan size and \$300 million maximum loan size will be the same as for MSLP loans taken by for-profit businesses. Principal payments would be fully deferred for the first two years of the loan, and interest payments would be deferred for one year. Loan options for new and expanded loans would be offered under the proposal. Borrower eligibility requirements for the proposed nonprofit facilities would be modified from the for-profit facilities to reflect the operational and accounting practices of the nonprofit sector and include: minimum of 50 and maximum of 15,000 employees; financial thresholds based on operating performance, liquidity, and ability to repay debt; an operational history of at least five years; endowments of no more than \$3 billion; and 501(c)(3) or 501(c)(19) tax-exempt status. The comment period closes June 22.

- Press release: <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200615b.htm>
- Term sheet (new loans): <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200615b2.pdf>
- Term sheet (expansion of existing loans): <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200615b1.pdf>
- Program home page with link to FAQ: <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>

## **USPTO Announces COVID-19 Prioritized Examination Program**

On June 15, the United States Patent and Trademark Office (USPTO) announced a new COVID-19 prioritized examination program for certain trademark and service mark applications. Under the program, the USPTO will accept petitions to advance the initial examination of applications for marks used to identify qualifying COVID-19 medical products and services. The USPTO will waive the fee for such petitions. To qualify, the application must cover a product that is subject to U.S. Food and Drug Administration approval for use in the prevention or treatment of COVID-19 or cover a medical or medical research service for the prevention or treatment of COVID-19.

- Press release: <https://www.uspto.gov/about-us/news-updates/uspto-announces-covid-19-prioritized-examination-program-certain-trademark>
- Notice: <https://www.uspto.gov/sites/default/files/documents/TM-COVID-19-Prioritized-Examination.pdf>

## **Debate Over Releasing Identifies of PPP Loan Recipients**

On June 15, Treasury Secretary Steven Mnuchin said he will discuss with the Senate Small Business Committee whether the Treasury Department would release the identities of Paycheck Protection Program loan recipients. Last week, while testifying before the committee, he said that the Treasury Department would not release such proprietary business information. Democrats have raised the issue of the program's transparency and Congress's ability to oversee it.

- Press coverage: <https://thehill.com/policy/finance/502750-mnuchin-says-hell-have-bipartisan-discussions-on-oversight-of-ppp-loans>

## **Legislative Proposals**

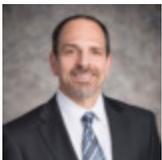
### **S. 3963 and H.R. 7227: COVID-19 Whistleblower Protection Act**

On June 15, Senator Kamala Harris (D-CA) and Representatives Jackie Speier (D-MD) and Jamie Raskin (D-MD) introduced legislation that would establish whistleblower protections for people who expose the misuse of government funds intended for COVID-19 relief. The legislation would also protect whistleblower confidentiality and would create a legal framework to allow the Department of Labor to investigate whistleblower retaliation claims by non-federal employees.

- Press releases:
  - <https://www.harris.senate.gov/news/press-releases/harris-speier-raskin-introduce-legislation-ensuring-protection-for-those-who-expose-waste-fraud-abuse-in-federal-covid-19-relief-effort->
  - <https://speier.house.gov/press-releases?ID=CF01AEB9-29E4-4707-BB05-A4D15931986E>
- Text of bill:
  - <https://www.harris.senate.gov/imo/media/doc/Final%20Bill%20-%20COVID-19%20Whistleblower%20Protection%20Act%20225%20pm.pdf>
  - [https://speier.house.gov/\\_cache/files/c/4/c4fa23b2-804d-4733-b385-a6402bcebe37/B33CCC8EED89EFAEE3B61FDBDA7F4323.2020-06-15-speier-whistleblower-protection-covid-19.pdf](https://speier.house.gov/_cache/files/c/4/c4fa23b2-804d-4733-b385-a6402bcebe37/B33CCC8EED89EFAEE3B61FDBDA7F4323.2020-06-15-speier-whistleblower-protection-covid-19.pdf)

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