
Hughes Hubbard & Reed

CARES Act Developments and Newly Proposed Fiscal Stimulus Legislation as of June 26, 2020

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June 26, 2020 - Regulatory developments this week include issuance by the Small Business Administration (SBA) of regulatory revisions implementing changes to the Paycheck Protection Program (PPP) made by the Paycheck Protection Program Flexibility Act. The SBA also announced that it would identify businesses that borrowed more than \$150,000 in PPP funds and publish certain information about them, including the general size of their PPP loans.

Regulatory Developments Relating to the Pandemic

OSHA Issues Guidance to Businesses that are Reopening

On June 18, the Occupational Safety and Health Administration (OSHA) issued guidance to assist employers who are reopening non-essential businesses and employees who are returning to work during the coronavirus pandemic. The guidance focuses on the need for employers to develop and implement strategies for basic hygiene (e.g., hand hygiene, cleaning and disinfection), social distancing, identification and isolation of sick employees, workplace controls and flexibilities, and employee training.

- [Press release](#)
- [Guidance](#)

SEC Extends Suspension of In-Person Voting Requirements for Fund Boards

On June 19, the Securities and Exchange Commission (SEC) announced that it is extending conditional relief from the in-person voting requirements for fund boards that it originally provided in March 2020. It extended the relief through at least December 31, 2020. The extension is designed to provide flexibility to boards of registered funds

and business development companies that may continue to face challenges meeting in person. The SEC initially provided in-person board meeting relief in March as part of broader exemptive orders providing temporary relief from several requirements of the Investment Company Act and Investment Advisers Act.

- [Press release](#)
- [SEC Order](#)

SBA Will Publicly Identify PPP Loan Recipients

On June 19, the Small Business Administration (SBA) announced that it had agreed with the U.S. Senate Small Business Committee that it would publish information regarding Paycheck Protection Program loan recipients who received more than \$150,000. The information will include business names, business addresses, NAICS codes, zip codes, business types, demographic data, non-profit information, jobs supported, and loan amounts (within ranges). The agreement resolves a public debate regarding whether the SBA would publish such information.

- [Press release](#)

SBA Publishes Regulatory Revisions Implementing PPPFA

On June 22, the Small Business Administration (SBA) published revisions to the Loan Forgiveness Interim Final Rule and the SBA Loan Review Procedures Interim Final Rule. The revisions implement certain changes to the Paycheck Protection Program made by the Paycheck Protection Program Flexibility Act, enacted by Congress on June 5, 2020. Most of these changes are already well-known, such as the extension of the covered period to 24 weeks. The revisions also provide new information regarding the processes borrowers and lenders must use to obtain PPP loan forgiveness, the documentation that must accompany loan forgiveness applications, and the eligibility for forgiveness of certain payroll and non-payroll costs. Further, the regulatory revisions confirm that borrowers do not have to wait until the end of the 24-week covered period to apply for PPP loan forgiveness if they have spent a sufficient amount of the funds borrowed. They confirm that businesses that reduce employee headcount because of state and local government shutdown orders can avoid loan forgiveness reductions. They also confirm certain dollar caps on loan forgiveness. On June 23, the SBA also published revisions to the First PPP Interim Final Rule clarifying PPP loan eligibility for businesses with owners who have prior felony convictions.

- [Interim final rule](#)
- [Interim final rule](#)

PPP and MMLF Participation Will Not Increase Lenders' Deposit Insurance Assessments

On June 22, the Federal Deposit Insurance Corporation (FDIC) approved a final rule that mitigates the deposit insurance assessment effects of participating in the Paycheck Protection Program (PPP), the Paycheck Protection Program Liquidity Facility (PPPLF), and the Money Market Mutual Fund Liquidity Facility (MMLF) established by the Federal Reserve under the CARES Act. PPP loans are fully guaranteed by the SBA, and transactions made with the PPPLF and MMLF are conducted with the Federal Reserve on a non-recourse basis. The FDIC's rule ensures that banks will not be subject to higher deposit insurance assessments for participating in these programs.

- [Press release](#)
- [Final Rule](#)
- [FDIC Chairman statement](#)

Legislative Proposals

S. 4041: The SAVE Jobs Act

On June 23, Senator John Cornyn (R-TX) introduced legislation that would provide fiscal relief to energy companies during the pandemic. The act would allow energy companies to build liquidity by suspending certain capitalization rules, reducing the required deposit of certain motor fuel excise taxes from 95% to 25%, and allowing 100% of the intangible drilling costs to be expensed for tax purposes in 2020.

- [Press release](#)

S. 4014: Prioritized Paycheck Protection Program (P4) Act

On June 18, Senators Chris Coons (D-DE), Ben Cardin (D-MD), and Jeanne Shaheen (D-NH) introduced legislation that would authorize new lending under the Paycheck Protection Program (PPP) to small businesses with 100 employees or less. Businesses would be eligible under the act only if they had already expended an initial PPP loan or if they were on pace to exhaust the funding. They must also show a revenue loss of 50 percent or more due to the pandemic.

- [Press release](#)

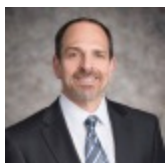
S. 4012: Real Economic Support That Acknowledges Unique Restaurant Assistance Needed to Survive (RESTAURANTS) Act of 2020

On June 18, Senators Roger Wicker (R-MS), Kyrsten Sinema (D-AZ), Earl Blumenauer (D-OR), and Brian Fitzpatrick (R-PA), with the support of the Independent Restaurant Coalition, introduced legislation that would establish a \$120 billion revitalization fund for independent restaurants adversely affected by the COVID-19 pandemic.

- [Press release](#)

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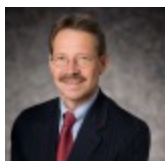
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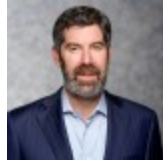
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