May 21, 2020 – This week the Chairman of the Federal Reserve, Jerome Powell, announced that the Main Street Lending Program, which will provide economic relief to medium size businesses with fewer than 15,000 employees, will become operational by the end of May. House Democrats passed the $3 trillion HEROES Act economic relief package but Senate Republicans said they would reject the bill in its current form. However, there is bipartisan support to extend the 8-week period in which borrowers must spend money obtained through the Paycheck Protection Program.

CARES Act Developments

SBA Publishes PPP Loan Forgiveness Application

On May 18, the Small Business Administration released the Paycheck Protection Program loan forgiveness application and application instructions. The application has four parts: (1) the PPP Loan Forgiveness Calculation Form; (2) PPP Schedule A; (3) the PPP Schedule A Worksheet; and (4) an optional PPP Borrower Demographic Information Form. Parts (1) and (2) are mandatory. As the application reiterates, the CARES Act reduces forgiveness if full-time headcount declines, or if salaries and wages decrease, over an 8-week period defined by the Act. In addition, the forgiveness application requires that a borrower check a box if it received a PPP loan over $2 million. Checking the box flags PPP loans that the SBA has already asserted it is likely to audit.

- Press release
- Forgiveness application and instructions

PPP Safe Harbor for Erroneous Exclusion of Foreign Employees
On May 18, the Small Business Administration established a safe harbor for Paycheck Protection Program borrowers who interpreted the program not to require the inclusion of foreign employees in determining whether their headcount met the PPP requirement that applicants must have 500 employees or fewer. Acknowledging reasonable borrower confusion regarding whether to count non-U.S. employees, later addressed by further guidance on May 5, the SBA stated that it would not find any borrower that applied for a PPP loan prior to May 5, 2020 to be ineligible based on the borrower’s exclusion of non-U.S employees from the borrower’s calculation of its employee headcount. Further, such borrowers will not be deemed to have made an inaccurate certification of eligibility solely on that basis. To obtain the benefits of the safe harbor, the borrower (together with its affiliates) must have no more than 500 employees whose principal place of residence is in the United States.

- **Interim Final Rule**

**OSHA Classifies Coronavirus as “Recordable” Illness**

On May 19, the Occupational Safety and Health Administration (OSHA) revised its enforcement policy requiring employers to record cases of coronavirus. Under OSHA’s revised recordkeeping requirements, coronavirus is a recordable illness, and employers are responsible for recording cases of the coronavirus if the case (a) is confirmed as a coronavirus illness; (b) is work-related as defined by 29 CFR 1904.5; and (c) involves one or more of the general recording criteria in 29 CFR 1904.7, such as medical treatment beyond first aid or days away from work. Because of the difficulty in determining whether a coronavirus illness is or is not work-related, the guidance emphasizes that employers must make reasonable efforts, based on the evidence available to the employer, to ascertain whether a particular case of coronavirus is work-related.

- **Press release**

**Main Street Lending Program To Launch By Month’s End**

On May 19, Federal Reserve Chairman Jerome Powell told the Senate Banking Committee that the Main Street Lending Program, which will provide economic relief to medium size businesses with fewer than 15,000 employees, will become operational by the end of May. The CARES Act program will provide 4-year loans to companies employing up to 15,000 workers or with revenues of less than $5 billion. Congress appropriated $600 billion to the program in late March.

- **Press coverage**

**Bank Regulators Issue Guidance Encouraging Lending to Small Businesses**

On May 21, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency issued the “Interagency Lending Principles for Offering Responsible Small-Dollar Loans” to encourage financial institutions to offer small-dollar loans to customers for consumer and small business purposes in response to the COVID-19 pandemic.

- **Press release**
- **Principles**

**Legislative Proposals**

**Bipartisan Support for Extension of PPP Loan Spending Period**
On May 20, several media sources reported emerging bipartisan support for an extension of the period in which borrowers must spend the money they obtain under the Paycheck Protection Program. The CARES Act requires that borrowers spend their PPP loans within 8 weeks of origination. Senators Mark Rubio (R-FL), Mitt Romney (R-UT) and Joe Manchin (D-WV), among others, supports an extension to 12 or 16 weeks, while President Trump supports an extension to 24 weeks. In addition, various members of Congress have announced that they will introduce bills extending the duration of PPP loans and expand the basis for forgiving the loans, among other things.

- Press coverage
- Press coverage
- Press coverage
- Press release
- Press release
- Press release

**H.R. 6874: Legislation to Require Reporting on the Paycheck Protection Program of the Small Business Administration**

On May 14, Representative Katie Porter (D-CA) introduced legislation that would publicize all loans under the Paycheck Protection Program in order to track and monitor the recipients of federal relief.

- Press release

**H.R. 6861: PPP Data Diversity and Accountability Act of 2020**

On May 14, Representatives Tony Cárdenas (D-CA), Judy Chu (D-CA), and Marc Veasey (D-TX) introduced legislation that would require the Small Business Administration to collect and report demographic data about how many PPP applicants were minority-, women-, or veteran-owned, and how many of those applicants had their applications approved or denied.

- Press release


On May 15, the House of Representatives passed a new $3 trillion relief package to address the economic harm caused by the COVID-19 pandemic. Senate Majority Leader Mitch McConnell (R-KY) described the 1,815 page bill as a Democratic “wish list.” Republicans also expressed concerned about the cost of the proposed stimulus and the lack of protection for companies from liability related to their response to the coronavirus.

- Press coverage
- Press coverage
- Text of bill

**H.R. 6897: Local News and Emergency Information Act of 2020**

On May 15, Representatives David Cicilline (D-RI) and F. James Sensenbrenner (R-WI) introduced legislation that would allow all local news organizations to obtain Paycheck Protection Program loans, regardless of their affiliation with larger parent companies. The bill would prevent the parent companies from obtaining PPP loans.

- Press release
H.R. 6903: Bring American Companies Home Act

On May 18, Representative Mark Green (R-TN) introduced legislation that would cover 100% of the moving costs of American companies that transfer production from China to the United States.

H.R. 6920: Keep Employee’s Earnings Protected (KEEP) Act of 2020

On May 19, Representative Ross Spano (R-FL) introduce legislation to create a temporary payroll tax abatement program that would last up to three months. The program would temporarily increase employee pay and employer savings by 6.2%.

H.R. 6914: New Jersey, New York, and Highly Impacted States COVID-19 Relief Fund Act

On May 19, Representatives Chris Smith (R-NJ) and Peter King (R-NY) introduced legislation that would appropriate $100 billion to states that are coronavirus “hot-spots,” including New Jersey and New York, and $400 billion to all states allocated by population.

Click here to go to our COVID-19 Resource Center for more advisories, articles and other content related to the coronavirus pandemic.
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