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# Hughes Hubbard & Reed

## CARES Act Developments, Deadlines and Newly Proposed Fiscal Stimulus Legislation as of April 23, 2020

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**April 23, 2020** - Implementation of the extensive CARES Act continued this week, with payroll support agreements concluded with major airlines and additional guidance from federal agencies. The U.S. Senate approved legislation to provide \$480 billion in additional fiscal stimulus, mainly to small businesses, and it is expected to pass the House of Representatives and be signed into law this week. Numerous other legislative proposals have also been made.

### **Rule Change Allows PPP Additional Loans to Small Businesses Owned by Bank Directors and Shareholders**

On April 17, the Federal Reserve announced modifications to the Paycheck Protection Program rules that allow certain bank directors and shareholders to apply for PPP loans for their small businesses. To prevent favoritism, Board rules limit the types and quantity of loans that bank directors, shareholders, officers, and businesses owned by these persons can receive from their related banks. These requirements have prevented some small business owners from accessing PPP loans, especially in rural areas. The modifications liberalize this policy.

### **Payroll Support Program Agreements Concluded with Major Airlines**

On April 20, the Treasury Department announced that it had concluded Payroll Support Program agreements with six major U.S. airlines and anticipated concluding agreements with five others. The Payroll Support Program, which was created under Division A, Title IV, Subtitle B of the CARES Act, provides payroll support for American workers employed by passenger air carriers, cargo air carriers, and related contractors.

### **CARES Act PPP Requirement of "Necessity" Clarified**

On April 23, the Small Business Administration updated its CARES Act Paycheck Protection Program FAQ with the clarification that although the CARES Act suspends the ordinary SBA requirement that borrowers must be unable to obtain credit elsewhere, borrowers still must certify in good faith that their PPP loan request is "necessary to support the ongoing operations of the Applicant." Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to its business. The SBA indicated that it would be unlikely that a public company with substantial market value and access to capital markets would meet this standard. The SBA also stated that any borrower that applied for a PPP loan prior to April 23 and repays the loan in full by May 7, 2020 would be deemed by SBA to have made the required certification in good faith.

## **Upcoming Deadlines**

April 26 - SBA must publish (a) guidance to SBA section 7A lenders on the borrower payment deferment process (CARES Act Sec. 1102); and (b) guidance and regulations on CARES Act SBA loan forgiveness provisions (CARES Act Sec. 1106).

September 23 - HHS must publish guidance on the sharing of patients' protected health information pursuant to 45 CFR § 160.103 during the coronavirus crisis (CARES Act Sec. 3224).

## **Legislative Proposals**

### **Senate Passes Additional \$480 Billion Stimulus Bill to Aid Small Businesses**

On April 21, the Senate [passed the Paycheck Protection Program and Health Care Enhancement Act \(H.R. 266\)](#), which if enacted would provide an additional \$320 billion in funding to the CARES Act Paycheck Protection Program, \$60 billion of which would be set aside for small and mid-sized community-based lenders to aid smaller businesses, minority-owned firms and rural areas. The bill also appropriates \$60 billion in loans and grants for the Small Business Administration's Economic Injury Disaster Loan Fund (including \$10 billion in administrative fees), \$75 billion for health care providers to help them pay for the enormous costs of responding to the coronavirus, and \$25 billion for coronavirus testing programs. The House of Representatives is expected to vote on and pass the bill on April 23, and President Trump has tweeted that he would sign the bill into law.

### **H.R. 6569: The Rural Health Relief Act**

On April 21, 2020, Reps. Adrian Smith (R-NE), Terri Sewell (D-AL), and Jodey Arrington (R-TX) [introduced](#) legislation to allow rural county and municipal hospitals to participate in the Paycheck Protection Program (PPP), citing their vulnerability to closing as a result of lost revenue and the large numbers of people they employ in rural areas.

### **H.R. 6529: The COVID-19-Impacted Small Business Opportunity Zone Act**

On April 21, Reps. John Curtis (R-UT) and Henry Cuellar (D-TX) [introduced](#) legislation incentivizing private investment in small businesses impacted by COVID-19 by temporarily qualifying them as Opportunity Zones Businesses under the 2017 Tax Cuts and Jobs Act, which would provide their investors with certain investment tax incentives.

## **Senators Call for Small Business Assistance to Local Media Outlets**

In a [letter](#) to Senate leadership on April 19, Senate Republicans John Kennedy (R-LA) and John Boozman (R-AK) joined Senate Democrats Amy Klobuchar (D-MN) and Maria Cantell (D-WA) to call for local newspapers and broadcasters to be eligible for small business assistance under the CARES Act Paycheck Protection Program (PPP). Most are affiliated with larger entities, which disqualifies them under the current program. The Senators asserted that since many people rely on local newspapers and broadcasters "to cover school and business closures, to widely communicate public health guidance, and to combat life-threatening misinformation," providing funding for local media outlets "is not only a matter of fairness, but [it] is essential to public health." The CARES Act already waives the affiliation prohibition for hotels and restaurants, allowing them to benefit from small business assistance despite being owned by larger entities.

### **H.R. 6594: The Equal Access to COVID-19 Relief Act**

On April 17, Representative Dina Titus (D-NV) [introduced](#) legislation that would allow small gaming entities to obtain grants and loans through the CARES Act Paycheck Protection Program.

### **H.R. 6522: Expansion of the PPP to Include Labor Organizations and Trade Associations**

On April 17, Reps. Donald Norcross (D-NJ) and Chris Smith (R-NJ) [introduced](#) legislation that would allow labor organizations and trade associations to obtain grants and loans through the CARES Act Paycheck Protection Program. The PPP expansion would allow both of these types of organizations to keep their employees on the payroll, despite the sudden reduction in membership dues.

### **H.R. 6553: The Automatic BOOST to Communities (ABC) Act**

On April 17, Reps. Rashida Tlaib (D-MI) and Pramila Jayapal (D-WA) [introduced](#) legislation that would provide to every person in America, regardless of immigration status, a one-time \$2,000 payment and monthly \$1,000 payments from enactment of the bill through one year after the end of the crisis. The payments would be made using BOOST debit cards to help unbanked and underbanked individuals. The payments would be funded by the Treasury Department, which would mint two \$1 trillion coins rather than incur additional debt.

### **H.R. 6515: The Rent and Mortgage Cancellation Act**

On April 17, Representative Ilhan Omar (D-MN) [introduced](#) legislation that would forgive rent and home mortgage payments nationwide through the duration of the coronavirus pandemic. The bill would establish a relief fund for landlords and mortgage holders to cover their lost income. Additionally, in order to increase the availability of affordable housing during the pandemic, the bill would create an optional fund that would finance purchases of private rental properties by non-profits, public housing authorities, cooperatives, community land trusts, and state and local governments.

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