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# Hughes Hubbard & Reed

## The CARES Act Implementation and Newly Proposed Legislation: What You Need to Know Now

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**April 10, 2020** - This week the implementation of the extensive CARES Act began, impacting federal programs ranging from unemployment benefits to FMLA to mortgage forbearance to patent filing deadlines, and more. Below is a summary of those changes in chronological order as well as additional proposed legislation.

### **DOL Guidance on Unemployment Insurance**

On April 2, the Department of Labor published Unemployment Insurance Program Letter 14-20 addressing provisions of the CARES Act that expand eligibility requirements and increase benefits of certain state unemployment insurance programs. One program, the Pandemic Unemployment Assistance program, provides benefits for individuals who are self-employed, seeking part-time employment, or otherwise would not qualify for unemployment insurance benefits under state or federal law (such as gig workers). Under the Federal Pandemic Unemployment Compensation program, individuals who are collecting certain unemployment insurance benefits, including regular unemployment compensation, will receive an additional \$600 in federal benefits per week for weeks of unemployment ending on or before July 31, 2020. The program also allows those who have exhausted benefits under regular unemployment compensation or other programs to receive up to 13 weeks of additional benefits.

### **DOL Implementation of FFCRA Paid Sick Leave and Expanded Family and Medical Leave**

On April 3, the Department of Labor [announced more guidance](#) about how employers and employees will be able to take advantage of the protections and relief offered by the Families First Coronavirus Response Act (FFCRA), which went into effect April 1, 2020. The guidance addresses which employers are covered by the new law, which workers are eligible, and what benefits and protections the law provides. The Department of Labor has posted related FAQs to its website; it has also posted multi-lingual workplace posters to assist employers in fulfilling their employee notice requirements regarding employee rights under FFCRA.

## **SBA Launches PPP with Interest Rate Set at One Percent**

On April 3, the Small Business Administration announced that Paycheck Protection Program loans would have an interest rate of 1%. Originally, the Small Business Administration had indicated in its guidance that the PPP loans would be at 0.5%. The new guidance also defines eligible and ineligible entities and expenses, terms, maturity date, and other key features of the loans, and outlines the records and documentation that must be provided to establish eligibility. The Treasury Department also announced that the loan funds would be issued on the “same day” that the loan is approved and that lenders are responsible for verifying that: (1) a borrower was in operation on February 15, 2020; (2) a borrower had employees for whom the borrower paid salaries and payroll taxes; and (3) the dollar amount of average monthly payroll costs.

## **Faith-Based Organizations May Participate in PPP**

On April 3, the Small Business Administration issued guidance that faith-based organizations are eligible for CARES Act Paycheck Protection Programs loans as charitable organizations.

## **Veterans Administration Extends Financial, Benefits and Claims Relief to Veterans**

On April 3, the Veterans Administration announced that to help veterans during the coronavirus crisis, it was suspending all actions on veteran debts under the jurisdiction of the Treasury Department and suspending collection action, or extending repayment terms, on preexisting veteran debt.

## **DOL Guidance on Pandemic Unemployment Compensation**

On April 4, the Department of Labor published Unemployment Insurance Guidance Letter 15-20 providing guidance to states regarding federal pandemic unemployment compensation. Under CARES Act Section 2104, states may provide an additional \$600 per week benefit to individuals who are collecting regular unemployment compensation. The benefit payments may begin as soon as the week after the execution of a signed agreement between the department and states, although the timeline for these payments will vary by state. The benefit will end after payments for the last week of unemployment before July 31, 2020.

## **DOL Guidance on Pandemic Unemployment Assistance**

On April 5, the Department of Labor published Unemployment Insurance Program Letter 16-20 providing guidance to states for implementation of the Pandemic Unemployment Assistance program. Section 2102 of the CARES Act provides unemployment benefits to individuals not eligible for regular unemployment compensation or extended benefits under state or federal law or other pandemic emergency unemployment compensation programs.

## **USPTO and Register of Copyrights Extend Certain Filing and Fee Deadlines**

On April 6, the US Patent and Trademark Office published FAQs related to previously announced filing deadline extensions, which it implemented under authority established by the CARES Act. The Register of Copyrights has also exercised similar authority.

## **Changes to the Community Bank Leverage Ratio**

On April 6, the Federal Reserve, FDIC and Comptroller of the Currency issued interim final rules implementing Section 4012 of the CARES Act, which requires the agencies to temporarily lower the community bank leverage

ratio from 9 percent to 8 percent. Under the interim final rules, the community bank leverage ratio will be 8 percent beginning in the second quarter and for the remainder of calendar year 2020, 8.5 percent for calendar year 2021, and 9 percent thereafter. The interim final rules also maintain a two-quarter grace period for a qualifying community banking organization whose leverage ratio falls no more than 1 percent below the applicable community bank leverage ratio.

### **Financial Regulators Encourage Mortgage Servicers to Grant Forbearance to Homeowners**

On April 6, the Federal Reserve and other federal and state financial institution regulatory agencies issued a joint policy statement providing regulatory flexibility to facilitate mortgage servicers' ability to place consumers in short-term payment forbearance programs such as the one established the CARES Act. Under the Act, upon a debtor's request, servicers must provide forbearance deferring mortgage payments for up to 180-days and possibly longer. The policy statement clarifies that the agencies do not intend to take supervisory or enforcement action against mortgage servicers for, among other things, delays in sending certain early intervention and loss mitigation notices and taking certain actions relating to loss mitigation set out in the mortgage servicing rules, provided that servicers are making good faith efforts to provide these notices and take these actions within a reasonable time.

### **Financial Regulators Provide Further Assurances Regarding Mortgage Forbearance Program**

On April 7, the Federal Reserve and other federal and state financial institution regulatory agencies issue a revised joint policy statement encouraging financial institutions to work constructively with borrowers affected by COVID-19. The revised statement provides the agencies' views on consumer protection considerations, provides supervisory interpretations on past due and nonaccrual regulatory reporting of loan modification programs and regulatory capital, asserts that the agencies will not criticize financial institutions for working prudently with borrowers to modify loans, including troubled debt restructurings, and states the agencies will not automatically adversely risk-rate credits that are affected by COVID-19. Separately, the Federal Reserve modified the asset cap growth restriction it had placed on Wells Fargo in 2018 to enable the bank to provide additional loans to small businesses under the Paycheck Protection Program.

### **HHS Awards \$1.3 Billion to U.S. Health Centers**

On April 8, the Department of Health and Human Services awarded more than \$1.3 billion to 1,387 U.S. health centers. The funding supports health centers' ability to detect, prevent, diagnose, and treat COVID-19. The awards will also help maintain or increase health center capacity and staff.

### **Federal Reserve Rolls Out \$2.3 Trillion in Liquidity and Support Programs**

On April 9, the Federal Reserve and Treasury Department implemented programs to inject \$2.3 trillion into the U.S. economy under the CARES Act to support the flow of credit to businesses and government entities of all sizes.

- The Paycheck Protection Program Liquidity Facility (PPPLF) will extend credit to eligible financial institutions that originate PPP loans, taking the loans as collateral at face value. The PPP provides loans to small businesses so that they can keep their workers on the payroll.
- The Main Street Lending Program (MSLP) will receive \$75 billion in equity from the Treasury Department and purchase of up to \$600 billion in loans to small and mid-sized businesses. The CARES Act program will provide 4-year loans to companies employing up to 10,000 workers or with revenues of less than \$2.5 billion. Principal and interest payments will be deferred for one year. Eligible banks may originate new Main Street loans or use Main Street loans to increase the size of existing loans to businesses. Banks will retain a 5 % share, selling the remaining 95 % to the Main Street facility. Firms seeking Main Street loans must commit to make

reasonable efforts to maintain payroll and retain workers. Borrowers must also follow compensation, stock repurchase, and dividend restrictions that apply to direct loan programs under the CARES Act.

- The Primary and Secondary Market Corporate Credit Facilities ([PMCCF](#) and [SMCCF](#)) and the Term Asset-Backed Securities Loan Facility ([TALF](#)) will be expanded. The three programs will now support up to \$850 billion in credit backed by \$85 billion in credit protection provided by the Treasury Department. TALF-eligible collateral has been expanded to include the triple-A rated tranches of both outstanding commercial mortgage-backed securities and newly issued collateralized loan obligations. The size of the facility will remain \$100 billion, and TALF will continue to support the issuance of asset-backed securities that fund a wide range of lending, including student loans, auto loans, and credit card loans.
- The Municipal Liquidity Facility ([MLF](#)) will purchase up to \$500 billion in short term notes directly from states and localities to help them manage cash flow stresses. The Treasury Department will provide \$35 billion of credit protection to the Federal Reserve for the MLF using funds appropriated by the CARES Act. To be eligible, U.S. counties must have a population of at least two million residents and U.S. cities must have a population of at least one million residents.

### **Paycheck Protection Program Interim Final Rule Announced**

On April 9, the federal bank regulators [announced an interim final rule](#) modifying the agencies' capital rules to neutralize the regulatory capital effects of participating in the Federal Reserve's PPP facility because there is no credit or market risk associated with PPP loans pledged to the facility. The interim final rule also clarifies that a zero percent risk weight applies to loans covered by the PPP for capital purposes.

### **Efforts to Introduce Additional Legislation**

#### **Lawmakers at Standoff over Emergency Stimulus for Paycheck Protection Program**

On April 7, the Trump administration requested an emergency infusion of \$250 billion to the Paycheck Protection Program to help distressed small businesses, but Democratic and Republican lawmakers are locked in debate over program priorities. On the morning of April 9, Senate Democrats blocked an effort by Senate Majority Leader Mitch McConnell (R-KY) to approve by unanimous consent the \$250 billion expansion. Then Senator McConnell blocked a counterproposal put forward by Senator Chris Van Hollen (D-MD), which asked for part of the \$250 billion to be directed to businesses owned by women, people of color, veterans, and businesses in rural areas, as well as additional funding for hospitals, state and local governments, and food assistance benefits. Republican Senator Marco Rubio (R-FL) previously objected to negotiations over the interim bill, believing that they would "slow down urgently needed funds." Republican Senator Susan Collins (R-ME) echoed that it was imperative to "act quickly." Democratic and Republican lawmakers remain at an impasse.

#### **House Democrats Introduce COVID-19 Price Gouging Prevention Bill**

On April 7, House Democratic leaders [unveiled the COVID-19 Price Gouging Prevention Act](#) during a pro forma session, which would ban price gouging for items related to the coronavirus outbreak. Rep. Jan Schakowsky (D-IL), Jerrold Nadler (D-NY), Frank Pallone Jr. (D-NJ), and David N. Cicilline (D-RI) introduced the bill. The bill would give the Federal Trade Commission and state attorneys general the tools to go after price gougers. It covers "goods and services such as hand sanitizer, personal protective equipment and other medical supplies, and many other items, . . . because every American deserves access to these essential goods at a reasonable price."

#### **Disaster and Emergency Pricing Abuse Prevention Bill Introduced**

On April 8, Rep. Emanuel Cleaver II (D-MO) introduced a bill that would establish price gouging protections to essential goods and services before, during, and after any “pandemic, natural disaster or state of emergency.” Congressman Cleaver, who worked with Senator Amy Klobuchar (D-MN) to draft the bill, explained that we “need a law that protects consumers from predatory price gougers who pop up during times of turmoil, instead of playing whack-a-mole every time a crisis emerges.” The Act would prohibit selling essential goods at an “unconscionably excessive price,” establish a national price gouging hotline, and apply potential civil penalties of up to \$10,000 per violation.

## **Upcoming Deadlines**

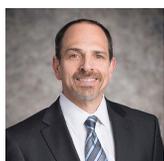
April 11 - SBA must publish regulations implementing CARES Act enhancements to the SBA loan program, without regard to notice requirements (Sec. 1114)

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

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

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