

COVID-19 Insights Week In Review — April 10, 2020

April 10, 2020 | |

As we enter a critical stage of the coronavirus pandemic, your team at ML Strategies continues to monitor **federal** and **state** legislative and regulatory responses to the public health and economic crisis. Each week, ML Strategies will provide updates from Massachusetts and Washington, DC to keep you informed and aware of relief opportunities and guidance for your businesses.

FEDERAL UPDATE

Federal Reserve Launches Main Street Lending Program

On April 9, the Federal Reserve announced the initial CARES Act Main Street Lending Program for small and mid-sized businesses, stating in a release:

The Main Street Lending Program will enhance support for small and mid-sized businesses that were in good financial standing before the crisis by offering 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 percent share, selling the remaining 95 percent to the Main Street facility, which will purchase up to \$600 billion of loans. 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. Firms that have taken advantage of the PPP may also take out Main Street loans.

[Read more details, including term sheets here...](#)

Congress Continues To Work Toward Next Step of COVID-19 Response

Following passage of the CARES Act, there was immediate discussion on Capitol Hill and elsewhere about the next phase of the federal response, generally referred to as “Phase 4,” with Speaker Pelosi (D-CA) and President Trump both suggesting that we may see a massive infrastructure investment to support economic recovery. However, as the CARES Act has been rolled out over the past week, there has been bipartisan agreement that additional funding will be needed as well as support for standing up the various programs created by the legislation.

On April 7, President Trump called on Congress to immediately provide an additional \$250 billion in funding for the Small Business Administration’s Paycheck Protection Program (PPP), which was funded at \$349 billion in the CARES Act.

Senate Majority Leader McConnell (R-KY) and Senator Rubio (R-FL), Chairman of the Senate Committee on Small Business and Entrepreneurship, sought to move a bill this week to provide the requested \$250 billion in additional funding for the PPP. Senate Democrats, aligned with Speaker Pelosi, are looking to add additional funding, including \$100 billion for hospitals and health systems and \$150 billion for state and local governments. Of the \$250 billion in additional funding for the PPP, which Democrats support, they want to ensure that half of it goes to community banks and rural areas and to very small businesses

that are minority-, women-, or veteran-owned. Democrats are also seeking to ensure that some of the funding is designated for very small businesses with fewer than 25 employees. With a vote to pass the Republican proposal by Unanimous Consent failing on Thursday, the Senate has adjourned until Monday as negotiations continue.

At some later, to-be-determined date, there will almost certainly be yet another COVID-19 relief measure that focuses on economic recovery for industry, likely including an infrastructure component. ML Strategies anticipates that the next economic recovery legislation will be taken up by Congress sooner rather than later, and encourages business sectors seeking relief to immediately engage with their elected officials.

SBA Issues Guidance On Paycheck Protection Program

On April 2, the SBA issued an interim final rule on implementation of the CARES Act Paycheck Protection Program (PPP). The rule clarifies how SBA's affiliation rules affect eligibility for the PPP, stating:

An entity generally is eligible for the PPP if it, combined with its affiliates, is a small business as defined in section 3 of the Small Business Act (15 U.S.C. 632), or (1) has 500 or fewer employees whose principal place of residence is in the United States or is a business that operates in a certain industry and meets applicable SBA employee-based size standards for that industry, and (2) is a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC), a tax-exempt veterans organization described in section 501(c)(19) of the IRC, a Tribal business concern described in section 31(b)(2)(C) of the Small Business Act, or any other business concern. Prior to the Act, the nonprofit organizations listed above were not eligible for SBA Business Loan Programs under section 7(a) of the Small Business Act; only for-profit small business concerns were eligible. The Act made such nonprofit organizations not only eligible for the PPP, but also subjected them to SBA's affiliation rules. Specifically, section 1102 of the Act provides that the provisions applicable to affiliations under 13 CFR 121.103 apply with respect to nonprofit organizations and veterans organizations in the same manner as with respect to small business concerns. However, the detailed affiliation standards contained in section 121.103 currently do not apply to PPP borrowers, because section 121.103(a)(8) provides that applicants in SBA's Business Loan Programs (which include the PPP) are subject to the affiliation rule contained in 13 CFR 121.301.

[Read the interim final rule here...](#)

The Treasury Department has also issued a summary of the applicable affiliation tests for PPP eligibility: 1) Affiliation based on ownership; 2) Affiliation arising under stock options, convertible securities, and agreements to merge; 3) Affiliation based on management; and 4) Affiliation based on identity of interest. [Read the Treasury Dept. summary here...](#)

SBA also clarified that all faith-based organizations impacted by COVID-19 are eligible to participate in the Paycheck Protection Program and the Economic Injury Disaster Loan Program, without restrictions based on their religious identities or activities to the extent they meet the eligibility criteria outlined in the CARES Act. [More information here...](#)

IRS Guidance On Net Operating Losses

In addition to giving companies an additional six months to file Net Operating Loss (NOL) forms, the IRS this week issued guidance to taxpayers with net operating losses that are carried back under the CARES Act by providing procedures for: (1) waiving the carryback period in the case of a net operating loss arising in a taxable year beginning after Dec. 31, 2017, and before Jan. 1, 2021, (2) disregarding certain amounts of foreign income subject to transition tax that would normally have been included as income during the five-year carryback period, and (3) waiving a carryback period, reducing a carryback period, or revoking an election to waive a carryback period for a taxable year that began before Jan. 1, 2018, and ended after Dec. 31, 2017.

[Read the guidance here.](#) See [details on the six month extension here.](#)

IRS also issued guidance this week allowing eligible partnerships with NOLs to file amended partnership returns. [More details here...](#)

Vice President Leads Discussion With State Leaders On COVID-19 Response

On April 6, Vice President Pence led a video teleconference with the chief executives of approximately 50 states, territories, and Washington, DC, and their state emergency managers and health officials to provide an update on the all-of-America approach to respond to and mitigate the effects of COVID-19. The Vice President was joined by Treasury Secretary Steven Mnuchin, FEMA Administrator Pete Gaynor, CMS Administrator Seema Verma, Rear Adm. John Polowczyk with the Joint Chiefs of Staff, and all 10 FEMA Regional Administrators. They urged state, local, and tribal leaders to regularly highlight community mitigation efforts to slow the spread of the coronavirus through April 30. Other topics included emergency declarations, the CARES Act, and supply chain support for the health care sector.

Federal Support For Governors' Use of The National Guard

On April 7, President Trump issued a memorandum to the Secretary of Defense and the Secretary of Homeland Security on "Providing Federal Support for Governor's Use of the National Guard to Respond to COVID-19." The memorandum applies to the states of Arizona, Colorado, Kentucky, Mississippi, Montana, Nevada, North Carolina, Oregon, Pennsylvania, South Carolina, Virginia, Wisconsin, and West Virginia. The memorandum directs the federal government to fund, for a specified period of time, 100 percent of the emergency assistance activities associated with preventing, mitigating, and responding to the threat to public health and safety posed by the coronavirus that these states undertake using their National Guard forces. [Read the memorandum here.](#)

IRS Warns Against COVID-19 Scams

The IRS is cautioning taxpayers against phishing scams related to COVID-19. Noting that the IRS does not call taxpayers asking for sensitive personal or financial information, the agency says the public should also watch for emails, text messages, websites, and social media attempts that request money or personal information. [More details here](#) on how taxpayers can protect themselves.

Recent ML Strategies Federal Insights on COVID-19

Read more of what ML Strategies and Mintz are saying in our COVID-19 Insights Centers:

Federal Government Provides Liability Immunity to Manufacturers and Distributors in Fight Against COVID-19: What Companies Need to Know – Hear from our colleagues at Mintz on manufacturing or selling test kits, respirators, masks, and other PPE in response to the COVID-19 pandemic, and potential liability risks associated with such activities. [Read more here...](#)

Upcoming Webinar



On Tuesday, April 14, ML Strategies Senior Director Aaron Josephson and the Mintz FDA team will conduct a webinar about how the FDA has responded to the COVID-19 pandemic, including a discussion of various policies and programs intended to make the regulatory process more flexible and what's ahead for the agency. [Learn more and register here...](#)

MASSACHUSETTS UPDATE

Massachusetts COVID-19 Relief Fund

On Monday, April 6, Governor Baker and First Lady Lauren Baker announced the launch of the Massachusetts COVID-19 Relief Fund, a statewide fund to support vulnerable communities and frontline

workers across the Commonwealth. Massachusetts will partner with a network of nonprofit community organizations across the state that serve populations who have been hit the hardest and are most at risk of being infected by the virus. These communities include, but are not limited to, the homeless community, health care professionals, low-income families, people with disabilities, and immigrant communities. The fund has already received \$13 million from donors, including \$1.8 million from the One8 Foundation, and it will be administered by Eastern Bank. For more information on fund criteria, [visit the Relief Fund's website](#).

\$800 Million MassHealth Financial Package

On Tuesday, April 7, the Baker Administration announced a new \$800 million critical stabilization funding package for health care providers. This new package is in addition to the \$840 million in assistance announced last month to provide immediate cash relief and accelerated payments to providers. The distribution of funds is set to begin this month and continue through July.

Where did the \$800 million come from?

Due to the anticipated pressures COVID-19 will place on the health care community and capacity, the state's Department of Public Health ("DPH"), led by Commissioner Monica Bharel, directed all hospitals and ambulatory surgical centers licensed by DPH to postpone or cancel any non-essential, elective invasive procedures until the Governor ends the State of Emergency. The result of this measure is an increase in funds within the MassHealth budget that would have otherwise been paid to providers for those services. Factoring in savings achieved within MassHealth and the federal government's higher reimbursement rate under the stimulus package, the state has at its fingertips monies to support the \$800 million stabilization funds. The Baker Administration, in consultation with the Executive Office of Health and Human Services, will use those funds to distribute aid to providers without the need for a supplemental budget.

[Access Commissioner Bharel's order here.](#)

Where will the \$800 million be distributed?

Secretary of the Executive Office of Health and Human Services Marylou Sudders outlined the purpose of the fund during Governor Baker's press conference on Monday and noted those receiving aid would be hospitals, nursing facilities, primary care providers, behavioral health providers, and certain long-term services and supports providers. Secretary Sudders provided the following build-up to the \$800 million package:

- \$400 million dedicated to 28 safety net and high-Medicaid hospitals to address lost revenue and increased costs for frontline hospitals
 - This includes a 20% rate increase for COVID-19 care and a 7.5% across-the-board increase for all other hospital services
- More than \$50 million in dedicated funding for all nursing facilities across the state
- \$30 million dedicated to support units within nursing facilities designated as COVID-19 sites of care
- \$30 million for other health care providers delivering medical care for COVID-19 patients and services to keep residents in their homes and out of hospitals
- \$50 million for community health centers
- \$30 million for personal care attendants
- Funding for ambulance providers, community behavioral health providers, and Home Health Agencies
- Funding for certain long-term care services and support day programs such as Adult Day Health and Day Habilitation programs that have converted from group programs to actively serving members via alternative means

COVID-19 Symptom Tracking

Doctors and scientists at Massachusetts General Hospital, Harvard's T.H. Chan School of Public Health, King's College London, and Stanford University School of Medicine have teamed up with health science company **ZOE** to develop a smartphone app to study COVID-19 symptoms and track the virus's spread. In logging the health status of app participants, data can be collected to understand where hotspots may be, note any new symptoms, target quarantines, and identify the need for ventilators in particular outbreak hotspots.

[Learn more about the COVID-19 Symptom Tracker here.](#)

Department of Unemployment Assistance Guidance On CARES Act

The Department of Unemployment Assistance is working to implement three new benefit programs expanding unemployment eligibility, temporarily increasing weekly benefits for claimants and allowing

additional categories of people to claim unemployment benefits.

The Federal Pandemic Unemployment Compensation (“FPUC”) program will provide an additional \$600 per week to individuals already collecting Unemployment Compensation (“UC”), Pandemic Emergency Unemployment Compensation (“PEUC”), Pandemic Unemployment Assistance (“PUA”), Extended Benefits (“EB”), Trade Readjustment Act (“TRA”), and Disaster Unemployment Assistance (“DA”). This program has already been implemented for individuals currently receiving UC, allowing for the additional \$600 per week to be added to eligible weekly benefit payments retroactive to March 29, 2020 until July 31, 2020. Those receiving PEUC, PUA and EB will receive the additional \$600 benefit payment retroactive to March 29, 2020 once their claim is processed and determined eligible. Claimants who are already in the unemployment insurance system will not need to file any additional paperwork to receive the additional benefit payment.

The Pandemic Unemployment Assistance (“PUA”) program provides up to 39 weeks of unemployment benefits to individuals who are not working due to COVID-19 and are self-employed, independent contractors, gig economy workers, and others who would otherwise not qualify for UC or EB. The Commonwealth has contracted with a vendor to build the platform to accept such claims, which is expected to be operational by April 30, 2020. Eligible claimants under PUA will receive retroactive compensation of this benefit to February 2, 2020, or the first week the individual was unable to work due to COVID-19, whichever date is later. The last week the benefit will be payable is the week ending December 26, 2020.

The Pandemic Emergency Unemployment Compensation (“PEUC”) program provides up to 13 weeks of unemployment insurance to individuals who have exhausted previous unemployment benefits. The first week an individual can be compensated is the week beginning March 29, 2020, with the last payable week ending December 26, 2020. At this time, the Department of Unemployment Assistance is awaiting additional guidance from the federal government on how to implement and administer this program.

[More guidance from the Department of Unemployment Assistance here.](#)

Massachusetts COVID-19 Pending Legislation

On Wednesday, April 8, the Baker Administration filed legislation to protect health care workers and facilities from civil liability while battling COVID-19 on the front lines. The legislation would also provide liability and lawsuit protections for health care workers in Field Medical Stations at the DCU Center, the Boston Convention and Exhibition Center, and others anticipated to come online at the end of this week. Along with this legislation, the Governor issued a directive maximizing protections for health care workers under the federal Public Readiness and Emergency Preparedness (“PREP”) Act during the Commonwealth’s State of Emergency. The directive ensures workers and facilities distributing and administering drugs and medical devices for diagnosis and treatment for COVID-19 are protected to the maximum extent possible from lawsuits and liability under the PREP Act. You can find the Governor’s [Liability Protection Legislation here](#), along with his [PREP Act directive here](#).

The Massachusetts Legislature continues to be very active during the COVID-19 crisis. Specifically, last week the House and Senate sent legislation to Governor Baker’s desk, which was signed Friday, April 3 relative to addressing challenges faced by municipalities and state authorities resulting from COVID-19 ([Chapter 53 of the Acts of 2020](#)). This law includes extending the state income tax deadline from April 15, 2020 to July 15, 2020, which aligns Massachusetts with federal tax adjustments due to the COVID-19 pandemic.

Several other bills pending before the Legislature seek to address a plethora of issues, including relief for businesses and individuals, housing, unemployment insurance, public health, student loans, elections, education, and municipal and local government. With certainty, the COVID-19 crisis will impact the fiscal health of the state and force legislative leaders to reconsider typical budget timelines for fiscal year 2021. Next Tuesday, April 14, the House and Senate Committees on Ways and Means, along with the Executive Office of Administration and Finance and various other economic experts plan to hold a virtual roundtable with the goal of understanding what the COVID-19 pandemic will mean for the upcoming state budget. [Access the virtual roundtable, next Tuesday, here.](#)

Authors