

## ***Policy Resolution Group COVID-19 Legislative Update***

***July 6, 2020***

Our update covers three tangible developments in what has otherwise been a period filled with significant noise, but little signal, about a potential fourth phase of congressional COVID-19 relief.

- **PPP Surprise Extension:** The President signed an extension of the Paycheck Protection Program (PPP) into law on Saturday.
- **PPP Disclosure:** Today the Treasury Department released information on recipients of PPP loans, which is sure to set off a firestorm of reporting about the borrowers.
- **MSLP Activation:** The Federal Reserve announced today that the Main Street Lending Program (MSLP) is fully operational and ready to purchase qualifying loans.

In the regulatory sphere, you can find the latest information on how Federal agencies are managing their operations and oversight obligations in response to COVID-19 in our [Agency Report](#).

### **PPP Surprise Extension**

**PPP Extension Signed.** President Trump on Saturday signed a bill to keep the PPP from going dormant, allowing the Small Business Administration (SBA) to continue processing loans through August 8th. The SBA portal is back online and able to process loans as of this morning. The timing syncs up the program's lapse with the end of the upcoming Senate work period, which serves as the effective deadline for Phase Four negotiations.

- Why was this necessary?
  - The PPP was originally slated to end on June 30th, but the recent passage of the *PPP Flexibility Act* (PPPFA) extended the forgiveness period through the end of the year.
  - However, in the course of winning unanimous consent for the PPPFA, the bill's authors were forced to clarify for the record that their intent was not to authorize the program itself to continue beyond its original statutory expiration:

Our intent and understanding of the law is that, consistent with the *CARES Act* as amended by H.R. 7010, when the authorization of funds to guarantee new PPP loans expires on June 30, 2020, the SBA and participating lenders will stop accepting and approving applications for PPP loans, regardless of whether the commitment level enacted by the *Paycheck Protection Program and Health Care Enhancement Act* has been reached.

- The clarification was forced by Sen. Ron Johnson (R-WI), a PPP critic who has long advocated for changes to the program to make its requirements more stringent.
- The concession meant that despite having more than \$130 billion left to lend under the program's current authorization, the SBA could not make any new PPP loans after June 30th.
- What just happened?
  - On the eve of the June 30th expiration, and with Congress poised to leave for the July 4th holiday, Senate Small Business Committee Ranking Member Ben Cardin (D-MD) unexpectedly asked unanimous consent that the program be allowed to continue to make loans through August 8th.
    - While it is unclear if this measure was intended to succeed or merely act as a political gambit, the maneuver caught the chamber off guard and was passed without objection.
  - The confusion carried over in the House where Small Business Chairwoman Rep. Nydia Velázquez (D-NY) initially expressed misgivings, but the House approved the bill by unanimous consent just before leaving town.
- How much does this matter?
  - While the reprieve is a positive, it should be noted that most banks had shut down their PPP application process well in advance of the statutory deadline, and with demand limited to a handful of industries for whom the program was not accessible or useful under its original incarnation (e.g. restaurants, hospitality, agriculture), an additional month of new loans is unlikely to make a significant dent in the remaining balance.
  - Perhaps most importantly, the move keeps the SBA machinery intact and operational while Congress determines what should come next.
- What's next?
  - Republicans and Democrats have offered dueling plans for the future of PPP, but their contours have only begun to converge.
    - **Democrats:** [One Pager](#), [Section-by-Section](#)
    - **Republicans:** While Republicans have not yet released their plan for the PPP moving forward, it is anticipated to include the following elements:
      - Extend the scope of allowable and forgivable uses for PPP funds to include investments to comply with federal health and safety guidelines;
      - Create a lender safe harbor;

- Expand PPP loan eligibility to certain 501(c)(6) organizations, such as those not engaged in lobbying, with fewer than 50 employees, among other limitations;
- Allow borrowers to elect to use a covered period ending at the point of the borrower's choosing between 8 weeks from loan origination and December 31, 2020;
- Simplify the application for borrowers;
- Clarify that payroll costs include group insurance payments;
- Create a PPP Recovery Draw Program with:
  - Short-term loans that resemble the standard PPP loans;
  - Long-term loans for recovery sector businesses that demonstrate at least a 10 percent reduction in gross revenue in a 2020 quarter relative to the 2019 quarter, in addition to being a seasonal employer and having a principal place of business in a low-income community or Opportunity Zone; and,
- Provide a definition of "seasonal employer" to be an eligible recipient as a business that operates for no more than 7 months in a year and earned no more than 1/3<sup>rd</sup> of its receipts in any six months in the prior year.

#### **PPP Disclosure**

Today the Treasury Department released PPP [Loan Level Data](#), naming recipients who borrowed more than \$150,000. For those receiving less than \$150,000, Treasury simultaneously released non-identifying data, relying instead on NAICS codes among other broad indicators.

- The release comes on the heels of the initial refusal by Treasury Secretary Mnuchin and SBA Administrator Carranza to publically release company-specific loan information and instead disclose broad categories and confidentially transmit the entire data set to relevant members of Congress for purposes of oversight.
- The public release of names, addresses, employment, and financial insights into more than 600,000 businesses is bound to set off a new wave of media frenzy over who received loans and whether they were "deserving."
- The renewed scrutiny is likely to nudge Congress in the direction of requiring businesses to demonstrate significant revenue loss or other measures of distress related to the pandemic in order to qualify for further relief, such as a second round of PPP funds.

#### **MSLP Activation**

The Federal Reserve Bank of Boston [on Monday announced](#) that the long-awaited Main Street Lending Program (MSLP) is fully operational and ready to purchase qualifying loans.

- The program spent the past two weeks signing up lenders, with reports indicating more than 200 participants, a small fraction of the more than 10,000 banks and credit unions that would be eligible. Now the test will be whether companies seek these loans out under the current terms.
- More than three months since the program was funded through the *CARES Act*, most businesses with alternative sources of liquidity have found better options. Policymakers have signaled concerns that the Main Street facilities will not yield significant uptake as currently constituted.
- The launch of the MSLP, and the market response, will help to inform the fourth phase of congressional COVID-19 response. With the vast majority of the \$454 billion set aside in CARES to invest in the Fed's 13(3) facilities still untapped, Congress has been reluctant to appropriate more business relief funds, but as in the case with the PPP, additional policy prescriptions may be in order.