



## **BULLETIN #87/2020 JUNE 11, 2020**

### **\_CORONAVIRUS UPDATE #73**

#### **NADA UPDATES PPP ANALYSIS**

#### **COVID-19 LAWSUITS AGAINST BUSINESSES CONTINUE TO GROW**

#### **ARB WEBINAR ON PPP LOAN LAW CHANGES – JUNE 16, 2PM**

#### **BBJ: NEW PPP RULES MEAN MORE LOAN FORGIVENESS**

#### **MASS. SENATE PASSES TRANSPORTATION BOND BILL**

#### **NADA COVID-19 RESOURCES**

#### **NADA DEALERSHIP LIFELINE WEBINARS FOR FRIDAY**

#### **MASSACHUSETTS COVID-19 DAILY TRACKER**

*[This bulletin supplements our previous bulletins #11 and #16 through #86 on this subject matter. These bulletins are intended to be cumulative so we can avoid repeating the same information.]*

#### **NADA Updates PPP Analysis**

NADA has updated its [Analysis of PPP Loans: Use of Proceeds and Forgiveness](#) to reflect new Small Business Administration [revisions](#) to the Paycheck Protection Program's Interim Final Rule. The revisions to SBA's interim rule, which was first posted on April 2 and has undergone substantial amending, address key provisions such as loan maturity, deferral of loan payments, and forgiveness elements.

#### **Number of Lawsuits Against Businesses Continues to Grow**

The number of [COVID-19 related lawsuits against employers](#) continues to grow. Litigation includes allegations of failure to protect workers, customers, and vendors. Allegations of Coronavirus exposure have steadily increased. The U.S. Chamber of Commerce reports that allegations related to COVID-19 occur in more traditional types of claims, such as employment discrimination wherein plaintiffs claim the pandemic was used as a pretext for wrongful termination and securities fraud.

#### **ARB Webinar on PPP Loan Law Changes – Tuesday, June 16, 2:00 p.m.**

The accountant firm Albin Randall & Bennett, an MSADA associate member, will conduct a webinar on the new changes to the Paycheck Protection Program loan law – the [Paycheck Protection Program Flexibility Act of 2020](#) – on Tuesday, June 16, at 2:00 p.m. ET. Click [here](#) to register for the webinar.



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*NOTE: ARB is actively working to incorporate the new law changes into its [PPP Loan Forgiveness Workbook](#). As with the original version, the updated workbook will be a useful planning tool to do "if, then" analysis regarding your headcount and payroll costs.*

### **New PPP Rules Mean More Loan Forgiveness But Leave Banks on the Hook**

[From *Boston Business Journal*]

Recent changes to the Small Business Administration's Paycheck Protection Program will help more small businesses get their loans forgiven — but it also leaves banks on the hook for longer, unforgiven loans, meaning extra costs and a growing administrative burden, banks say.

The Paycheck Protection Program Flexibility Act [signed into law June 5](#) extended the period in which small businesses have to spend their loan money from eight weeks to 24 weeks and raised the cap on nonpayroll expenses from 25% to 40%. It also extended unforgiven portions of the loan from a two-year payback period at 1% interest to five years.

That will make banks much more hesitant about issuing new PPP loans, said [Paul Merski](#), executive vice president of congressional relations and strategy at the Independent Community Bankers Association. The processing fees for loans haven't changed, making smaller loans harder for banks to manage over the long run.

"I think that's going to really flatline the program," Merski said. "It's really going to be challenging for lenders to extend a loan for five years at 1%. It's too interest-rate risky. No one knows where interest rates and funding costs will be five years from now.

"I can't imagine a lot of new loans being able to be extended at a five-year term," he added.

Merski stressed the new changes in the law would mean more loans would be forgiven, and banks would not have to carry and service as many loans. But banks that signed onto the program and lent money early on have gradually seen the administrative burdens become more onerous, with a quick eight-week period followed by forgiveness evolving into a multiyear forgiveness process and more complicated forgiveness applications and details.

The new law also gives existing PPP loan recipients and banks the option of renegotiating those PPP loans to extend them, though it's unclear if they can be extended for fewer than the five years delineated in the law. Some of the largest PPP loan providers have not yet decided whether they are open to renegotiating existing loans.

Charlotte-based Truist Financial Corp., parent company of Truist Bank, one of the largest PPP lenders with \$12.8 billion in loans, said in a statement it was continuing to evaluate new guidance and couldn't provide an answer on whether it intends to allow earlier



borrowers to renegotiate.

San Francisco-based Wells Fargo & Co., with about \$10.2 billion in PPP loans, said it was, at least at this time, not making changes to the terms of funded loans, but is reviewing the legislation and awaiting additional guidance from the SBA.

With about \$13 billion in PPP loans, Pittsburgh-based PNC Bank said it was reviewing changes to the rules. “Recognizing that our existing PPP customers may have different objectives and preferences, we will work with them to assess what is appropriate for their individual circumstances,” it said.

Some banks more explicitly supported the idea of renegotiating the loan times.

Atlantic Union Bank CEO [John Asbury](#) said that the Richmond, Virginia-based bank’s current thinking is that if PPP borrowers request the longer term, the bank will grant it, though it expects a much higher number of loans will be forgiven under the new law.

“It is difficult to know how many will be termed out — not forgiven — and how meaningful the difference in repayment would be to the borrower’s repayment capacity. We will work with the borrower on what best meets their needs,” Asbury said.

D.C.-based National Capital Bank, which has about \$500 million in assets, said it would renegotiate existing PPP loans based on the needs of individual borrowers, according to CEO [Randy Anderson](#). But he stressed much of what the bank can do will be dependent on upcoming SBA guidance.

“The extension terms will be dependent upon what flexibility the SBA gives us when the details of the interim final rule of the PPP Flexibility Act are released,” Anderson said. “For example, extending the maturity for an additional three years at 1% may not be in the bank’s best interests depending upon market rates and the availability of funding support. The CARES Act allows for an interest rate of up to 4%. However, it is currently unclear what changes to terms are allowed.”

The new rules come as interest in the loan program has seemed to die down. The SBA reported that total dollars loaned through the program peaked at \$531 billion through May 8, but then decreased as some businesses returned the loans and the agency scrubbed duplicate entries from its system. The program has loaned out about \$511 billion nationally through June 6, according to the latest SBA data.

### **Senate, House Now In Agreement on \$300 Mil Road Program - Branches Take Differing Approaches to New T Board**

[Courtesy of *State House News Service*]

The Senate approved legislation Thursday that would allocate \$300 million to a municipal road and bridge maintenance program and create a new, larger board of directors to oversee the MBTA, teeing up a potentially crunched negotiation process with the House after several months of inaction.



In the first formal session since senators agreed this week to new rules for remote debate and roll call voting, the Senate approved the bill (S 2746) on an unrecorded voice vote with no debate.

The legislation directs \$300 million to the Chapter 90 program that reimburses cities and towns for road and bridge repairs and projects. The vote means both branches are now on record supporting \$100 million more than previous years to the annual authorization that cities and towns look for each year in early spring.

The bill [also creates](#) a brand-new MBTA Board of Directors with seven members, up from the current five, including the secretary of transportation and someone chosen by the MBTA Advisory Board group that represents cities and towns within the T's service area.

Sen. Joseph Boncore, co-chair of the Legislature's Transportation Committee, said during Thursday's session that the bill is "a first step."

"Prior to this pandemic, our transportation system was in desperate need of investment, modernization and reform," he said. "Now, the global pandemic and the cause for civil rights have only underscored the need to improve transportation."

All four amendments to the legislation, including one from Boston Sen. Nick Collins that would have given the city a designated seat on the board, were withdrawn without any discussion. The Senate passed the bill following introductory in-person remarks from Boncore and Minority Leader Bruce Tarr.

The two issues in the Senate bill were tackled by the House in March -- about a week before Gov. Charlie Baker declared the COVID-19 state of emergency -- as part of larger bills [creating new taxes and fees](#) to fund transportation and [authorizing \\$18 billion](#) in long-term borrowing to fund transit and infrastructure projects.

Both bills sat pending in the Senate for more than three months as attention shifted to pandemic response, and it remains unclear whether or how the Senate plans to address the remainder of their contents.

Legislative leaders have also not outlined plans to settle their policy and procedural differences on road funding and the T board, but they have a narrow window in which to do so if they want to outline the future of MBTA oversight before the existing Fiscal and Management Control Board expires on June 30.

If no successor or extension is in place, control would revert to the Department of Transportation Board of Directors, a step that Transportation Committee Co-chair Sen. Joseph Boncore [said this week](#) would have "huge" impacts.

Baker and the Legislature created the FMCB in the wake of the disastrous winter of 2015 that brought repeated shutdowns on the T, empowering it to reform what many critics deemed a bloated, inefficient and indebted agency. He then extended the board another two years in 2018, but it will expire at the end of the month and another extension is not



possible without legislation.

In his fiscal 2021 budget proposal, Baker also proposed creating a new seven-member board including the transportation secretary and an MBTA Advisory Board appointee, though his board would oversee both the MBTA and the Department of Transportation.

The Senate bill would empower the new board to hire the T's general manager, a responsibility that currently rests with the transportation secretary. The House bill did not include that provision.

Asked about that language during an unrelated Thursday press conference, Baker said he believes the governor should maintain a role in appointing the MBTA's top leader. He also said one of the key funding mechanisms for the T is dedicated revenue from the state's sales tax, which means many Massachusetts residents effectively pay into a system they do not use.

"The executive branch, the administration, me, the lieutenant governor, the secretary of transportation -- (we) own a big piece of the accountability for what happens there, and that translates into a far more transparent agency that I believe is a lot more accountable to the public," Baker said. "Going forward, the more accountable that the T can be and the operation and leadership of the T can be to the executive branch and, by definition, to the governor and lieutenant governor, the better off we're all going to be."

Boncore said the Chapter 90 authorization, which won't be settled until the House and Senate agree to a final vehicle, will be the latest the Legislature has resolved that matter in recent memory.

Cities and towns look to Beacon Hill every year for passage of the bill as early as possible, often arguing that although it authorizes funding reimbursement for the next fiscal year, they need the certainty early to help secure projects in the current construction season.

This year's season has been unusual, with some construction projects shut down to limit the spread of COVID-19 and traffic at a fraction of typical levels in April and May.

Both branches have now approved language increasing the annual funding to \$300 million after years of holding it at \$200 million despite pleas from municipalities for more money. The state's revenue outlook is dire because of the pandemic, with fiscal year 2020 tax revenues lagging projections \$2.25 billion and fiscal year 2021 projections also pointing toward revenues declining by billions of dollars from pre-pandemic estimates.

### **NADA Dealership Lifeline Webinar for Tomorrow**

NADA will conduct the following webinars this week:

- **Friday, June 12, 1pm-2pm ET:** [\*The Best Ideas from NADA 20 Groups, Part 7: In Times of COVID-19 Pandemic\*](#). Tom Carny, NADA 20 Group consultant, will review new best ideas NADA 20 Groups have shared during these unprecedented times.



Recordings of [all webinars in NADA's Lifeline Series](#) are available to NADA and ATD members 24/7, free of charge. Click [here](#).

### **[NADA COVID-19 Resources for Dealers](#)**

NADA has produced a tremendous amount of resources to help dealers and their operations during the Coronavirus pandemic. A prolific source of information has been the NADA regulatory affairs team, by way of guidance, analysis, interpretation and explanation. The regulatory affairs group has recently worked with the NADA public affairs team to reorganize all of the regulatory compliance materials on the NADA Coronavirus Hub. The trove of materials is now organized by “Information” and by “Key Documents.” Hot links lead you to every individual item/resource. The site and the links will be updated continuously. Bookmark the address, and click on the links as you need them for the latest versions of everything, such as CARES Act, SBA, PPP, Tax Relief, and more. Please check it out here: <https://www.nada.org/coronavirus/regulatory/>.

### **[Daily Massachusetts COVID-19 Tracker](#)**

The state’s COVID-19 Dashboard with up-to-the-date data can be found [here](#).