COVID-19 Webinar Series

Executive Orders and Other Updates

National Sea Grant Law Center
Informational Webinar
August 19, 2020
Webinar Overview

- Introduction & Background
- General Updates
- COVID-19 Executive Orders
- Liability Shield Laws
- State Charter Boat Safety Protocols
- SBA Updates
- CFAP Updates
- Q&A
Who We Are

- One of 34 Sea Grant Programs

- Based at the University of Mississippi School of Law

- Established to provide non-advocacy legal research, outreach, and education services to Sea Grant network.

http://nsglc.olemiss.edu/covid19
NSGLC Updates

• Don’t forget to follow us on Twitter and Facebook!
  • @SGLawCenter // facebook.com/nsglc

• New information on COVID-19 Resources webpage:
  • Quick Take Slide re: Coronavirus Food Assistance Program and Aquaculture Commodities

• New blog posts:
  • Border Restrictions Extended
  • OSHA Revises Rule Concerning Employee Medical Records
  • Businesses Reopening During COVID Have Another Concern: Legionnaires’ Disease
  • Fraud Prosecutions for Paycheck Protection Program
  • USDA Announces Aquaculture Commodities Eligible for COVID Aid Program
Interesting Story of the Week

- EPA announced in March that companies wouldn’t face penalties if they fell short of some pollution reporting and monitoring requirements due to COVID.
  - EPA claims it will sunset policy at end of August.

- Environmental NGOs filed suit alleging that non-enforcement policy violated EPA’s obligations under ESA § 7 (Riverkeeper Inc. v. Environmental Protection Agency, filed on Aug. 18, 2020 in S.D.N.Y.)
  - Similar suit by ENGOs dismissed in July because court found they lacked standing.
  - Ongoing suit by 9 state attorneys general on different basis (overly broad and lack authority) will allegedly be dropped once policy terminated.

- Plaintiffs here allege suit will survive because EPA’s indication that it will sunset the policy is not binding and need to remedy harms that occurred.
President Trump’s COVID-19 Executive Actions

On August 8, President Trump announced the following executive actions:

• Executive Order on Fighting the Spread of COVID-19 by Providing Assistance to Renters and Homeowners
• Memorandum on Continued Student Loan Payment Relief During the COVID-19 Pandemic
• Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster
• Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019
Student Loan Relief

• The CARES Act (passed in March) contained an interest-free deferral of certain Student Loans until September 30th, 2020.

• This Memorandum extends that deferral to December 31, 2020.
Eviction Relief

- Executive Order directs the following:
  - The Secretary of HHS and the Director of the CDC should consider whether a moratorium on evictions is necessary to stop the further spread of COVID.
  - The Secretaries of Treasury and HUD shall identify funds that could provide temporary rental assistance.
  - The Secretary of HUD should help renters and homeowners facing foreclosure by encouraging landlords and housing authorities to minimize evictions.
  - The Director of the Federal Housing Finance Agency should consult with the Secretary of Treasury to identify existing resources for preventing evictions and foreclosures.

- As of Aug. 18 there is no indication that these actions have been taken
Payroll Taxes

- This order would allow businesses to withhold payroll tax payments to the government in order to provide such funds to their employees who make less than $104,000 a year.

- **BUT**: This would be a deferral holiday, not a permanent cut, so those taxes would be paid by the employee at the end of the holiday, in December.
  - For employees making $50,000 a year, this could mean a $1,000 tax obligation in January.

- Many, if not most, employers may choose to do nothing.
Unemployment Insurance

- This order provides for an extension of the federal unemployment insurance (UI) benefits that expired on July 31.

- The order directs $44 billion in FEMA Disaster Relief Funds be converted to provide for $300 in Federal UI benefits.
  - This $300 is meant to unlock an additional $100 in state matching funds, but many states do not have the budget to contribute.

- State UI filers who would receive less than $100 in benefits are ineligible for the $300 federal UI benefit.

- The program is a departure from usual State UI benefits, so changes to the benefits structure takes time to implement and will result in a gap in benefits (which can be reclaimed).
FEMA has begun to approve states for the enhanced federal UI benefits.

- 9 states have received approval.
- Most states are not intending to match the $300 benefit. Only MT, NC, and WV have stated that intention to date.
- Some states are still deciding or have declined: MS, OR, SD.

Table Credit: Forbes.com
Liability Shield Laws

- **State Laws**
  - May limit liability for a broad range of businesses or for specific individuals or entities.

- **Federal “Safe to Work Act” (S. 4317)**
  - Would limit liability for:
    - Employers
    - Schools, colleges, nonprofits, churches, or businesses
    - Health care providers
      - Willful misconduct or gross negligence standard
  - Would cover claims from Dec. 2019-Oct. 2024
Charter Boat Safety Protocols

Common guidelines:

- Limit the number of people onboard;
- Require social distancing at 6 foot intervals;
- Require crew and passengers to wear masks;
- Require frequent disinfections;
- Prohibit sharing of equipment.
PPP Loan Forgiveness

• July 22 Webinar on Loan Forgiveness and Tip Sheet at: http://nsglc.olemiss.edu/covid19/index.html

• Have 10 months from end of covered period to apply for forgiveness.
  • If miss the deadline, will have to repay entire loan.
  • May be reasons to wait. Congress may take action and some banks waiting to see what happens.

• SBA has released PPP Loan Forgiveness FAQs: https://bit.ly/3g8wEul
PPP Loan Forgiveness

• FAQs clarified:
  • Sole proprietors, self-employed individuals, and independent contractors that did not report employees should use the EZ application.
  • Ok to send scanned copies of signed loan forgiveness application and documents.
  • No payments required while loan forgiveness application is under review but interest will accrue. *If entire loan forgiven, not required to pay the interest.*
  • Clarification about the FTE and salary reduction safe harbors.
Loan Forgiveness Review Process

A lender has 60 days to review loan forgiveness application and submit to SBA for review. **3 possible outcomes:**

- Approval in whole or part;
- Denial; or
- Denial without prejudice due to a pending SBA review of the loan.
**Loan Forgiveness Review Process, cont.**

*What steps can a borrower take after this initial review?*

- Within 30 days of notice from lender that application has been submitted to SBA, a borrower can ask the SBA to review the lender’s decision.
- For denial without prejudice, borrower can ask the lender to reconsider its application, unless the SBA already decided borrower is ineligible for a PPP loan.

*What happens next? - SBA has 90 days to review the application.*

*What happens after the loan forgiveness review process is completed?*

- If not all of the loan is forgiven, the borrower needs to start repaying the loan.
- Borrower has option to appeal the SBA’s decision to the SBA Office of Hearings and Appeals (OHA).
Loan Forgiveness Appeal Process

To challenge the SBA’s decision in court, a borrower must first go through the OHA’s administrative appeals process.

- Only final SBA decisions can be appealed.
- A borrower can be represented by an attorney in this process.

How does a borrower initiate the appeals process?

- Appeal petition must be filed within 30 calendar days of receiving the final SBA loan review decision or notification from the lender of the SBA’s decision, whichever is earlier.
- Certain documentation will be required with the petition.
Loan Forgiveness Appeal Process, cont.

What is the decision process?
• Administrative Judge will take steps to establish the administrative record.
• Generally will not include an oral hearing.
• Will decide if SBA made a clear error of law or fact within 45 days if practicable.

What happens after a decision is made?
• Can ask for judge to reconsider within 10 calendar days or SBA Administrator to review within 30 calendar days.
• Must ask for SBA Administrator review to be able to challenge in court.
USDA has announced which aquaculture commodities/producers are eligible for aid:

<table>
<thead>
<tr>
<th>Catfish</th>
<th>Crawfish</th>
<th>Largemouth bass and carp sold live as foodfish</th>
<th>Hybrid striped bass</th>
</tr>
</thead>
<tbody>
<tr>
<td>Red Drum</td>
<td>Salmon</td>
<td>Sturgeon</td>
<td>Tilapia</td>
</tr>
<tr>
<td>Trout</td>
<td>Ornamental/Tropical fish</td>
<td>Recreational Sportfish</td>
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Refresher:

- Decline in price of ≥5% between 1/15/20 and 4/15/20 (CFAP-wide requirement from CARES Act).
- Eligible only if products grown and harvested in controlled environment (e.g., pond, tank, or recirculating system) – USDA rule.
- Determinations based on data submitted by producers and industry during NOFA comment period (5/22 - 6/21).
CFAP Updates, cont.

• Application deadline extended from August 28 to September 11.

• Applicants will now receive 100% of their total payment once applications are approved (previously received 80%).

• USDA’s Farm Service Agency (FSA), which is administering CFAP, has created a hotline to help applicants begin the application process - (877) 508-8364.

Other updates:

• Keeping an eye out for more CFAP funding in next stimulus bill.

• USDA CFAP webinar on all newly eligible commodities immediately after ours (3:00 ET/2:00 CT). Anyone interested can register at the link shared in the chat box.
Questions?

Please type your question into the Chat window.

Contact Us

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