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Bridging the Gap:

Federal Loan Programs for Small to Mid-Sized Businesses in the Wake of the COVID-19 Pandemic

As of September 9, 2020

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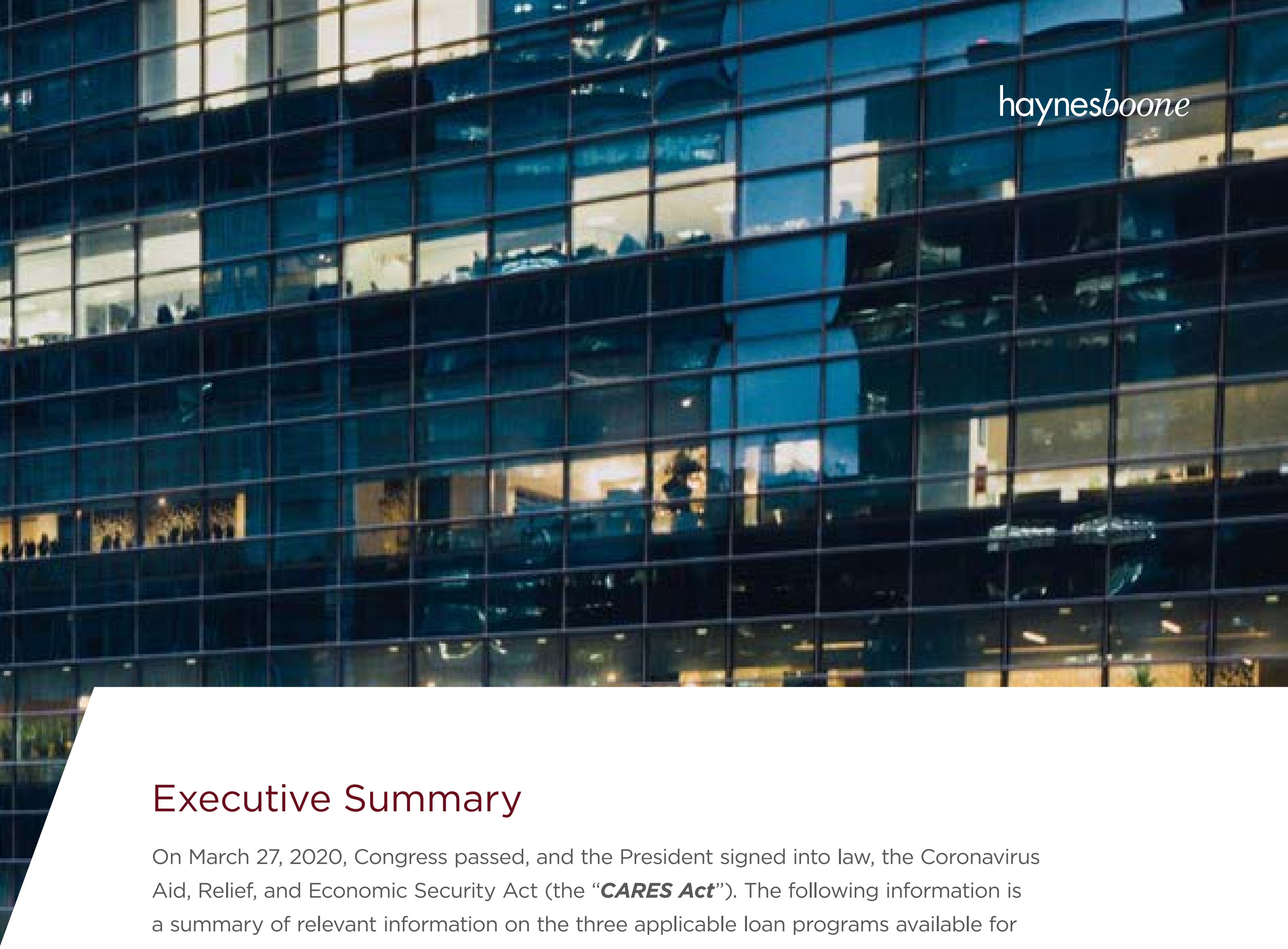


Executive Summary

On March 27, 2020, Congress passed, and the President signed into law, the Coronavirus Aid, Relief, and Economic Security Act (the "***CARES Act***"). The following information is a summary of relevant information on the three applicable loan programs available for small to mid-sized businesses to apply for COVID-19 relief: (a) the Paycheck Protection Program (the "***PPP***"), (b) the Main Street Lending Program (the "***MSLP***"), and (c) the Economic Injury Disaster Loan Program (the "***EIDL***").

On April 24, 2020, President Trump signed H.R.266, the Paycheck Protection Program and Health Care Enhancement Act (the "***PPP/HCE Act***"). The PPP/HCE Act modifies and increases funding for the PPP and the EIDL, providing an additional $310 billion in PPP loans and $60 billion in EIDL loans and grants, including loans for funding hospitals and coronavirus testing.

On June 5, 2020, President Trump signed H.R.7010, the Paycheck Protection Program Flexibility Act of 2020 (the "***PPPFA***"). The PPPFA modifies the PPP to provide additional flexibility to companies in using PPP loan proceeds and obtaining forgiveness for such loans from the Small Business Administration (the "***SBA***").

The primary purpose of the CARES Act was to provide emergency assistance and health care response for individuals, families, and businesses affected by the coronavirus pandemic. The SBA received funding and authority through the CARES Act that permits the SBA to guarantee 100% of loans made under the PPP to eligible borrowers.[1] Section 1106 of the CARES Act provides for forgiveness of up to the full amount of qualifying loans guaranteed under the PPP.[2]

Under the terms of the Coronavirus Preparedness and Response Supplemental Appropriations Act (the "***CPRSA Act***") enacted on March 6, 2020, the coronavirus pandemic was declared a disaster, thereby allowing affected businesses to apply for an EIDL loan. The CPRSA Act modified the EIDL by establishing an EIDL emergency grant of up to $10,000 to eligible EIDL applicants and provided an additional $60 billion in funding increase for the EIDL.

The MSLP is a loan program for small to mid-sized businesses that was established by the Federal Reserve and funded in part by the CARES Act. The MSLP offers three separate loan facilities to for-profit businesses: (a) the Main Street New Loan Facility (the "***MSNLF***"), (b) the Main Street Priority Loan Facility (the "***MSPLF***"), and (c) the Main Street Expanded Loan Facility (the "***MSELF***"). The MSLP also offers two loan programs for non-profit organizations which are not covered in this handbook. To administer the MSLP, the Federal Reserve Bank of Boston created a special purpose vehicle with $75 billion of committed capital for the purpose of purchasing participation interests in each MSLP loan (the "***Main Street SPV***").

This handbook contains current information (updated as of September 1, 2020) on the three programs mentioned above which have been modified by the PPP/HCE Act and the PPPFA. Please note that the U.S. Department of Treasury and the SBA may, from time to time, provide further guidance and regulations on these loan programs. Such guidance and regulations may provide further detail on the administration of these programs and may materially change the summary below. Businesses are encouraged to seek advice from qualified legal counsel before applying for a PPP, MSLP or EIDL loan.

1 https://www.sba.gov/sites/default/files/2020-06/PPP--IFR--Revisions-to-Loan-Forgiveness-Interim-Final-Rule-and-SBA-Loan-Review-Procedures-Interim-Final-Rule-508.pdf at 3.

2 Id.

Paycheck Protection Program

ELIGIBILITY

The following entities and persons are eligible to apply for PPP loans from approved lenders (as described below):

1. For-profit companies, 501(c)(3) nonprofits, and 501(c)(19) veteran's organization that:
    1. Employ 500 or fewer employees[3] (including employees of both U.S. and foreign affiliates[4]) whose principal place of residence is in the United States; or
    2. Meet the SBA size standard for their specific industry;
2. Small business concerns[5] that meet both tests in the SBA's "alternative size standard" as of March 27, 2020: (a) maximum tangible net worth of the business is not more than $15 million; and (b) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than $5 million;
3. Businesses with multiple locations, so long as (i) no single location employs more than 500 employees at any physical specific location and (ii) such businesses have a NAICS code beginning with 72 (Accommodation and Food Service); and
4. Sole-proprietors, independent contractors, and self-employed individuals (e.g., those working in the "gig economy").

The requirement to include employees of affiliates is waived for (1) businesses with a NAICS code beginning with 72 (Accommodation and Food Service), (2) businesses operating as certain franchisees on the SBA's Franchise Directory, and (3) small businesses that receive financing through the Small Business Investment Company ("***SBIC***") program.

3 Under the Act, "***Employees***" includes all persons employed on a full-time, part-time or other basis. In calculating the number of employees for purposes of determining PPP eligibility, borrowers may use their average employment numbers over the same time period used to determine their average monthly payroll. Options: (A) for non-seasonal businesses, either 12-month period preceding loan application or calendar year 2019, (B) for seasonal businesses, the period from February 15, 2019 or March 1, 2019 to June 30, 2019 and (C) for businesses that were not in business for the periods described in (A) or (B), the period from January 1, 2020 to February 29, 2020. Alternatively, borrowers may elect to use SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).

4 The term "***affiliates***" has been broadly construed by the SBA in the past to include more than just equity holders with controlling voting stock. This is a fact-intensive inquiry that should be done in coordination with qualified legal counsel. Note that subsequent regulations may change this traditional interpretation.

5 Please note that according to the Affiliation Rule, existing SBA affiliate rules continue to apply to such size standard determinations. Additionally, even if your business meets one of the size standards listed here, we recommend consulting with your counsel to confirm whether your company is otherwise eligible to qualify as a "small business concern" under 15 U.S.C. 632 and applicable SBA regulations.

LOAN AMOUNTS

Eligible borrowers are permitted to seek loans for an amount equal to the lesser of:

1. 250% of the employer's average monthly payroll costs,5 measured over the prior twelve months; or
2. $10 million.
3. A single corporate group (i.e., an eligible borrower and its affiliates that are also eligible borrowers) may not receive more than $20 million of PPP loans in the aggregate.

IMPORTANT DATES

According to the Initial Rule:

1. Small businesses and sole proprietorships can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders as soon as April 3, 2020;
2. Independent contractors and self-employed individuals can apply for and receive loans to cover their payroll and other certain expenses through existing SBA lenders beginning on April 10, 2020; and
3. Other regulated lenders will be permitted to make PPP loans as soon as they are approved and enrolled in the program.

The deadline for applying for PPP loans is August 8, 2020.

The lender must make the first disbursement of the loan no later than ten calendar days from the date of loan approval.

Main Street Lending Program

ELIGIBILITY

A borrower must meet the following criteria:

- The borrower is a for profit entity that was established prior to March 13, 2020.
- The borrower must be a business which, together with its affiliates, **either** has (a) no more than 15,000 employees or (b) no more than $5 billion in 2019 annual revenues.
- The borrower must have been created or organized in the U.S. or under the laws of the U.S. with significant operations in and a majority of its employees based in the U.S.
- The borrower has not received specific support pursuant to Title IV of the CARES Act (PPP loan is permitted).

- The borrower cannot be a “covered entity” that would run afoul of the conflicts of interest provisions in the CARES Act.
- The borrower must not be an “ineligible business”, which includes financial businesses, passive businesses or private equity firms.
- A borrower may participate in only one of the three Main Street Facilities and may not also participate in the Fed’s Primary Market Corporate Credit Facility

LOAN AMOUNTS

Minimum Loan Size:

- $250,000 for both the Main Street New Loan Facility (“***MSNLF***”) and the Main Street Priority Loan Facility (“***MSPLF***”)
- $10 Million for the Main Street Loan Facility (“***MSELF***”)

Maximum Loan Size:

- MSNLF: (i) $35MM or (ii) leverage not exceeding 4x 2019 adjusted EBITDA (taking into account existing outstanding and undrawn debt)
- MSPLF: (i) $50MM or (ii) leverage not exceeding 4x 2019 adjusted EBITDA (taking into account existing outstanding and undrawn debt)
- MSELF: (i) $300MM or (ii) leverage not exceeding 4x 2019 adjusted EBITDA (taking into account existing outstanding and undrawn debt)

IMPORTANT DATES

The Program is authorized to purchase participations in MSNLF Loans, MSPLF Loans, and MSELF Upsized Tranches until December 31, 2020. The Main Street SPV will cease purchasing loan participations on December 31, 2020, unless the program is extended by the Board and the Treasury Department. The Federal Reserve Bank of Boston will continue to operate the Main Street SPV after such date until the Main Street SPV’s assets mature or are sold.[6]

6 https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/information-for-lenders/docs.aspx.

Economic Injury Disaster Loan Program

ELIGIBILITY

- Small business owners and qualified agricultural businesses in all U.S. states and territories are currently eligible to apply for a low-interest loan due to the COVID-19 pandemic.
- Agricultural businesses with 500 or fewer employees are now eligible as a result of new authority granted by Congress in response to the COVID-19 pandemic.
- Agricultural businesses include those businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries (as defined by section 18(b) of the Small Business Act (15 U.S.C. 647(b)).

LOAN AMOUNTS

- The CARES Act modified the program by establishing an EIDL Emergency Grant to provide a loan advance of up to $10,000 to EIDL applicants. The advance will not need to be repaid, even if the qualifying business is denied an EIDL.[7]
- Loans under the EIDL are capped at $2 million.

IMPORTANT DATES

The SBA resumed accepting new EIDL applications on June 15, 2020 to all qualified small businesses, including U.S. agricultural businesses.

7 https://www.haynesboone.com/alerts/looking-for-an-alternative-to-the-ppp.

The Paycheck Protection Program (the "PPP")

The PPP is a $659 billion program that seeks to provide short-term cash flow through federally guaranteed loans for small businesses impacted by the COVID-19 pandemic. The PPP provided federally guaranteed loans for small businesses to be used for payroll, healthcare benefits, rent, utilities, mortgage interest, and certain other allowable expenses. The deadline to apply for a PPP loan was August 8, 2020[8]. Loans under the PPP are administered by the SBA through its Section 7(a) loan program. Eligible borrowers were permitted to seek loans for an amount equal to the lesser of: (a) 250% of the employer's average monthly payroll costs (measured over the prior twelve months); or (b) $10 million.[9]

I. Eligibility

The businesses eligible to apply for a PPP loan were as follows: (a) any small business that met the SBA's size standards (either the industry-based size standard or the alternative size standard), (b) sole proprietors, independent contractors and self-employed persons and any business with a NAICS Code that begins with 72 (accommodations and Food Services) that had more than one physical location and had less than 500 employees per location[10], and (c) any business, 501(c)(3) non-profit organization, 501(c)(19) veterans organization, or a Tribal business concern with 500 or fewer employees or that met the SBA's industry size standard if it had more than 500

8 https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program.

9 CARES Act Guide to Legal and Business Issues-HB-COVID-Alerts at 7.

10 https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program

employees.[11] Businesses that were not eligible for PPP loans are identified in 13 CFR 120.110.[12] Ineligible businesses included:

(a) financial businesses engaged primarily in lending,

(b) investment companies,

(c) mortgage companies primarily in the business of making loans,

(d) REITs and other passive businesses,

(e) businesses that are majority owned by individuals other than U.S. citizens or legal permanent residents,

(f) most private clubs, and

(g) businesses primarily involved in gambling, life insurance, or speculation. Additionally, businesses were ineligible (i) in cases where an owner of 20% or more of the equity of such business was either presently incarcerated, on probation or parole, subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction or (ii) if, within the last five years, for any felony, such equity owner had been convicted, pleaded guilty or nolo contendere, been placed on pretrial diversion or been placed on any form of parole or probation (including probation before judgment).

II. Limitation on Loans to Corporate Groups

Businesses that are part of a single corporate group may not receive more than $20 million of PPP loans in the aggregate. For purposes of this limit, businesses are part of a single corporate group if they are majority owned, directly or indirectly, by a common parent. The SBA's affiliation rules, and any waiver of those rules under the CARES Act, continue to apply independent of this limitation.

This $20 million limitation applies immediately to any PPP loan that has not yet been fully disbursed as of April 30, 2020. For PPP loans that have only been partially disbursed by such date, this limitation applies to any further disbursement that would cause the total PPP loans to such single corporate group to exceed the limit.

It is the responsibility of an applicant for, or borrower of, a PPP loan to (a) notify the lender if such applicant or borrower has already applied for or received PPP loans in excess of $20 million, and (b) withdraw or request cancellation of any pending PPP loan application or approved PPP loan

11 Id.

12 See https://www.federalregister.gov/documents/2020/04/15/2020-07672/business-loan-program-temporary-changes-paycheck-protection-program.

not in compliance with this limitation. Failure to do so will be regarded as a use of PPP funds for unauthorized purposes, and the PPP loan will not be eligible for forgiveness. A lender may rely on an applicant's representation concerning compliance with this limitation.

III. Changes in Ownership

If a business was in operation on February 15, 2020, but underwent a change in ownership thereafter, such business is still eligible for a PPP loan so long as it meets all other eligibility criteria. Where such change in ownership is effectuated through a purchase of substantially all of the assets of a business that was in operation on February 15, 2020, the business acquiring the assets will be eligible to apply for a PPP loan even if (i) the change in ownership results in the assignment of a new tax ID number and (ii) the acquiring business was not in operation until after February 15, 2020. If the acquiring business has maintained the operations of the pre-sale business, the acquiring business may rely on the historic payroll costs and headcount of the pre-sale business for the purposes of its PPP loan application, except where the pre-sale business had applied for and received a PPP loan.

IV. Certification of Necessity

To qualify for a PPP loan, borrowers must certify in good faith that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." To determine whether a PPP loan is necessary, borrowers must consider their current business activity and access to "other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business" of such borrower. Although access to other funding sources is not necessarily enough to disqualify a company, the SBA has stated that "it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to the SBA, upon request, the basis for its certification."

Additionally, any borrower who previously applied for a PPP loan before April 23, 2020 and who, in light of the SBA's updated guidance as of May 5, 2020, did not feel that its eligibility certification was accurate will nevertheless be deemed to have made such certification in good faith if such PPP loan was repaid in full by May 14, 2020.[13] Lenders may rely upon a borrower's certification of necessity and have no obligation to confirm the necessity of the PPP loan.[14] An inaccurate certification may not only render a borrower's loan ineligible for forgiveness, but it could also potentially lead to liability under the False Claims Act.[15]

13 See Paycheck Protection Program Loans Frequently Asked Questions (FAQs) No. 43, https://www.sba.gov/sites/default/files/2020-08/Final%20PPP%20FAQs%20%28August%2011%2C%202020%29-508.pdf.

14 See Paycheck Protection Program Loans Frequently Asked Questions (FAQs) No. 46, https://www.sba.gov/sites/default/files/2020-08/Final%20PPP%20FAQs%20%28August%2011%2C%202020%29-508.pdf.

15 See 31 U.S.C. §§ 3729 et seq.

V. Application Process

The deadline for applying for PPP loans was August 8, 2020. Eligible applicants could apply through any existing SBA 7(a) lender or through any federally insured depository institution, federally insured credit union and Farm Credit System institution that was participating in the PPP. Small businesses and sole proprietorships could apply for and may have been eligible to receive loans to cover their payroll and other certain expenses through existing SBA lenders as soon as April 3, 2020. Independent contractors and self-employed individuals could apply for and may have been eligible to receive loans to cover their payroll and other certain expenses through existing SBA lenders beginning on April 10, 2020. Other regulated lenders were permitted to make PPP loans as soon as they were approved and enrolled in the PPP. The lenders must have made the first disbursement of the PPP loan no later than ten calendar days from the date of loan approval.

VI. Supporting Documents Required for Borrower Applications

According to the SBA's interim final rule, effective April 15, 2020, borrowers must submit all documentation as is necessary to establish eligibility such as payroll processor records, payroll tax filings, or Form 1099-MISC, or income and expenses from a sole proprietorship.[16] For borrowers that do not have any of such documentation, such borrower must provide other supporting documentation, such as bank records, sufficient to demonstrate the qualifying payroll amount.

VII. Headcount and Payroll Calculation

In calculating the number of employees for purposes of determining PPP eligibility, borrowers could use their average employment numbers over the same time period used to determine their average monthly payroll.[17] Alternatively, borrowers could elect to use the SBA's usual calculation: the average number of employees per pay period in the 12 completed calendar months prior to the date of the loan application (or the average number of employees for each of the pay periods that the business has been operational, if it has not been operational for 12 months).[18] In general, borrowers could calculate their aggregate payroll costs using data from either the previous 12 months, or calendar year 2019. For seasonal businesses, borrowers could use average monthly payroll from either (i) February 15, 2019 through June 30, 2019 or (ii) March 1, 2019 through June 30, 2019, or for a borrower that was not in business for either of those periods, January 1, 2020 through February 29, 2020.[19]

16 See Federal Register Vol. 85, No. 73 (April 15, 2020).

17 CARES Act Guide to Legal and Business Issues-HB-COVID-Alerts at 5.

18 Id.

19 Id.

a. Payroll processors

An eligible borrower could include in its employee headcount and payroll costs those employees that are paid through a third-party payer such as a payroll provider or Professional Employer Organization ("***PEO***"). Payroll documentation provided by such payroll provider or PEO that indicates the amount of wages and payroll taxes reported to the IRS for the borrower's employees were considered acceptable PPP loan documentation. Such employees were not considered employees of the payroll provider or PEO.

b. Affiliation

On April 3, 2020, the SBA published affiliation rules that require a business to include the employees of all its affiliates in its own headcount in determining PPP loan eligibility. Generally, it is the responsibility of the borrower to apply the affiliation rules.

VIII. Loan Forgiveness

To receive loan forgiveness, a borrower must complete and submit the Loan Forgiveness Application (SBA Form 3508, 3508EZ, or lender equivalent) to its lender (or the lender servicing its loan). The lender will then review the application and make a decision regarding loan forgiveness. The lender has 60 days from receipt of a complete application to issue a decision to the SBA. If the lender determines that the borrower is entitled to forgiveness for some or all of the amount applied for under the statute and applicable regulations, the lender must request payment from the SBA at such time as the lender issues its decision to the SBA.[20]

Borrowers can apply for loan forgiveness equal to the costs incurred and payments made during the eight-week period or twenty-four-week period immediately following the first disbursement of the PPP loan to such borrower (as opposed to the date of such borrower's application) on the following costs and expenses (in each case, to the extent that such obligations were in place before February 15, 2020): (a) payroll costs (excluding compensation over $100,000), (b) interest on mortgages and, (c) payments of rent and utilities.[21]

In an effort to effectuate the core purpose of the statute and ensure finite program resources are devoted primarily to payroll, the PPPFA provides that no more than 40% of any PPP loan amount may be used for non-payroll costs. Furthermore, forgiveness for additional wages paid to tipped workers may be available. The amount eligible to be forgiven would be reduced in the event of employee layoffs or pay cuts.

20 Id. at 8.

21 See New Interim Final Rule: Revisions to PPP Loan Forgiveness and Loan Review Procedures by Paul Amiel, Jim Markus, Alex Grishman, Brent Beckert, Rachael Apfel, Taylor West and Daniel Wei (July 1, 2020).

On June 22, 2020, the SBA released a new interim final rule on the PPP, making revisions to its prior interim final rule. Borrowers are exempt from loan forgiveness reductions arising from (a) a borrower's inability to: (i) rehire previous employees that were employed on February 15, 2020 and (ii) hire similarly qualified individuals for unfilled positions on or before December 31, 2020, or (b) a borrower's documented inability to return to the same level of business activity as before February 15, 2020 due to compliance with federal or local government COVID-19 related worker or customer safety requirements.[22]

In order to qualify for loan forgiveness, borrowers are required to submit certain documentation and certifications verifying their employment and payroll levels during the loan period. Any loan that has a remaining balance after reduction based on the loan forgiveness amount will be required to be repaid within two years.

22 Id. at 2.

Main Street Lending Program

The MSLP is a small to mid-sized business loan program established by the Federal Reserve and funded in part by the CARES Act. A special purpose vehicle with $75 billion of committed capital has been formed by the Federal Reserve to purchase participation interests in each MSLP loan (the "***Main Street SPV***"). The MSLP is comprised of five separate term loan facilities that will be made available to eligible borrowers who were in sound financial condition prior to the COVID-19 pandemic, none of which are eligible for loan forgiveness.[23] Three of the loan facilities are for for-profit businesses while the other two are for non-profit organizations.[24]

The MSLP term loan facilities available to for-profit businesses are (a) the Main Street New Loan Facility (the "***MSNLF***"), (b) the Main Street Priority Loan Facility (the "***MSPLF***"), and (c) the Main Street Expanded Loan Facility (the "***MSELF***"). All three loan facilities have many of the same features, including the same maturity (5-year term) and amortization schedule, interest rate (adjustable rate of LIBOR (1 or 3 month) plus 300 basis points), deferral of principal for two years, deferral of interest for one year and the ability of the borrower to prepay without penalty. Unlike PPP loans, MSLP loans are full-recourse loans and are not forgivable. For year three, four and five, the loan will amortize at a rate of 15%, 15% and 70%, respectively. The eligible lender risk retention rate is at 5% for all three loan facilities. Individually, each loan facility differs in the following ways:

I. Main Street New Loan Facility

Under the MSNLF, the minimum amount that can be borrowed is $250,000 and the maximum loan amount cannot exceed the lesser of (a) $35 million or (b) four times the 2019 adjusted

23 Overview of Main Street Lending Program at 2.

24 Board of Governors of the Federal Reserve System Policy Tools, Main Street Lending Program at https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm.

EBITDA (considering existing outstanding and undrawn debt).[25] The loan facility may be secured or unsecured. The MSNLF loan cannot be contractually subordinated to any of the borrower's other indebtedness but may be secured by a second lien on the collateral. The use of proceeds is unrestricted, but loan proceeds cannot be used to repay existing debt. All MSNLF loans are non-assignable until the MSLP loan matures or Main Street SPV sells all of its participation interest. There is a transaction fee of 1% of the loan amount payable by the lender to the Main Street SPV (but the borrower may be required to pay this fee). Furthermore, there is an origination fee of up to 1% of the loan amount payable by the borrower to the lender. Finally, there is a servicing fee which is 0.25% per annum of participation amount and is payable by the Main Street SPV to the lender. Any existing loan of the borrower as of December 31, 2019 must have an internal risk rating equivalent to "pass" in the Federal Financial Institutions Examination Council's ("***FFIEC***") system.[26]

II. Main Street Priority Loan Facility

Under the MSPLF, the minimum amount that can be borrowed is $250,000 and the maximum loan amount cannot exceed the lesser of (a) $50 million or (b) six times the 2019 adjusted EBITDA (considering existing outstanding and undrawn debt).[27] The loan facility may be secured if other existing debt is secured or unsecured. If the facility is secured, the MSPLF loan must be senior to, or pari passu with, a borrower's other indebtedness, except for mortgage debt. All MSPLF loans must have a collateral coverage ratio of (i) at least 200% or (ii) not less than the aggregate collateral coverage ratio for all of the borrower's other secured indebtedness.[28] Unlike the MSNLF, the loan proceeds of an MSPLF loan may be used to repay existing debt. All MSPLF loans are non-assignable until the MSLP loan matures or Main Street SPV sells all of its participation interest. There is a transaction fee of 1% of the loan amount payable by the lender to the Main Street SPV (but the borrower may be required to pay this fee). There is an origination fee of up to 1% of the loan amount payable by the borrower to lender. Finally, there is a servicing fee equal to 0.25% per annum of participation amount and is payable by the Main Street SPV to the lender. Any existing loan of the borrower as of December 31, 2019 must have an internal risk rating equivalent to "pass" in the FFIEC's system

III. Main Street Expanded Loan Facility

Under the MSELF, the minimum amount that can be borrowed is $10 million and the maximum loan amount cannot exceed the lesser of (a) $300 million or (b) six times the 2019 adjusted EBITDA (considering existing outstanding and undrawn debt).[29] The facility may be secured if

25 Overview of Main Street Lending Program, 4837-4616-7743_3.pptx at 3.

26 Id. at 6.

27 Id. at 3.

28 Id. at 4.

29 Id. at 3

other existing debt is secured or unsecured depending on the status of the underlying credit facility. If secured, the MSELF upsized tranche must be secured by the same collateral securing any other tranche of the underlying credit facility on a pari passu basis, but new collateral may be added to secure both the upsized tranche and the underlying credit facility. The use of proceeds is unrestricted, but loan proceeds cannot be used to repay existing debt. All MSELF loans are non-assignable until the underlying credit facility matures or Main Street SPV sells all of its participation interest.[30] There is a transaction fee of 0.75% of the loan amount payable by the lender to the Main Street SPV (but the borrower may be required to pay this fee). There is an origination fee of up to 0.75% of the loan amount payable by the borrower to the lender. There is a servicing fee equal to 0.25% per annum of the participation amount payable by the Main Street SPV to the lender. Finally, the underlying credit facility as of December 31, 2019 must have an internal risk rating equivalent to "pass" in the FFIEC's system.

IV. Eligible Borrowers

To be eligible for a loan under the MSNLF, MSPLF or MSELF, a borrower must meet the following criteria: (a) the borrower must be a for-profit entity that was established prior to March 13, 2020, (b) the borrower must be a business which, together with its affiliates, either has no more than (i) 15,000 employees or (ii) $5 billion in annual revenues in fiscal year 2019, (c) the borrower must have been created, or organized in the United States, or under the laws of the United States with significant operations in, and a majority of its employees based in the United States, (d) the borrower must not have received specific support pursuant to Title IV of the CARES Act (although PPP loans are permitted), (d) the borrower cannot be a "covered entity" that would run afoul of the conflicts of interest provisions in the CARES Act, (e) the borrower must not be an "ineligible business", which term includes financial businesses, passive businesses, or private equity firms, and (f) a borrower may participate in only one of the three MSLP facilities for for-profit businesses and may not also participate in the Fed's Primary Market Corporate Credit Facility.[31]

V. Borrower Certifications

In order to obtain a loan under any of the MSLP facilities for for-profit businesses, the borrower must, among other things, certify and agree that: (a) the borrower is unable to secure adequate credit accommodations from other banking institutions; (b) the borrower is solvent and has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that period; (c) the borrower will not pay the principal of, or interest on, any debt except mandatory amounts when due, regular payments on revolving lines of credit and refinancing debt within 90 days of its maturity; (d) while the MSLP loan is outstanding and for a

30 Id. at 5

31 Id at 7-8.

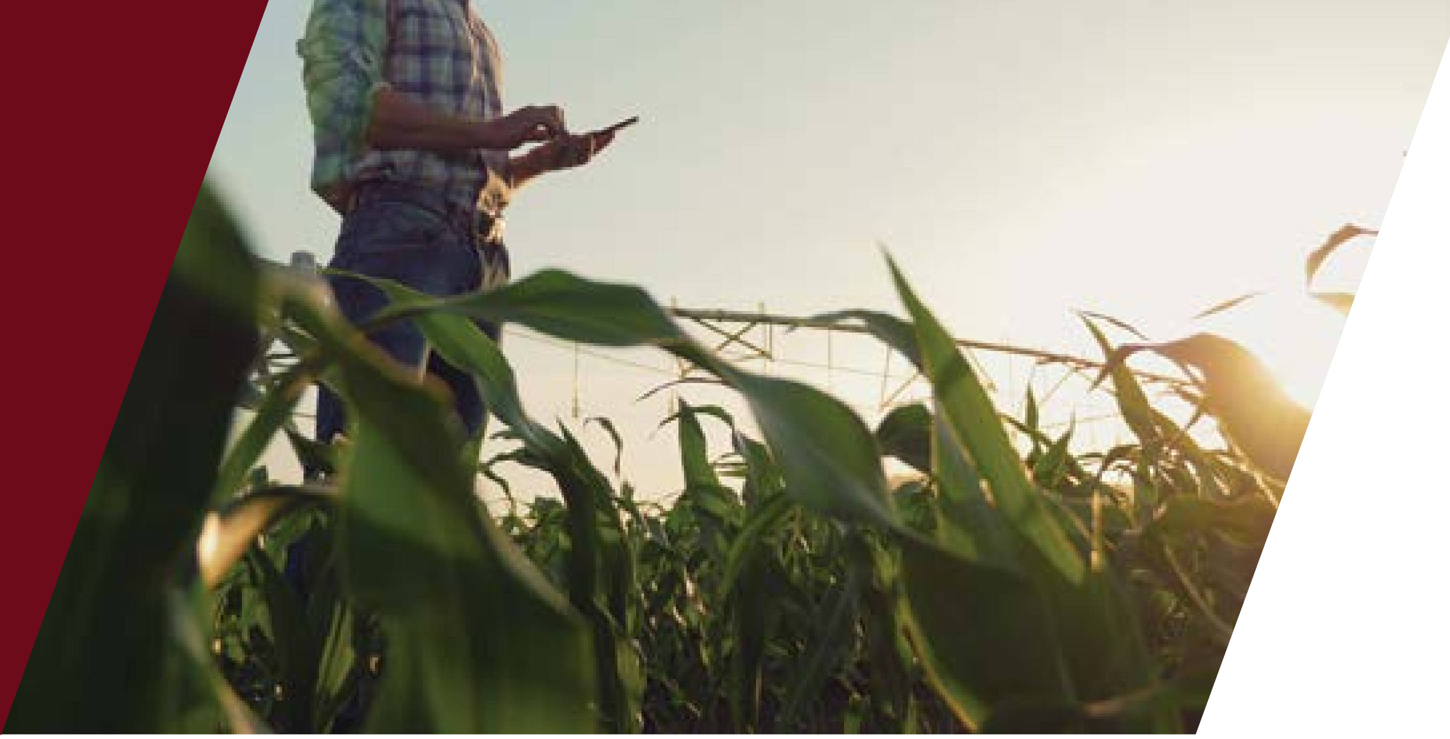
period of 12 months thereafter, the borrower will (i) not increase the compensation of officers or employees whose annual compensation is between $425,000 and $3 million and (ii) reduce the compensation of officers or employees whose annual compensation exceeds $3 million; and (e) while the MSLP loan is outstanding and for a period of 12 months thereafter, (i) the borrower is restricted from repurchasing its own shares and the shares of its parent company if such shares are listed on a national securities exchange; and (ii) the borrower will not pay dividends or make other capital distributions on its common stock (except for S corporations and other pass-through entities which may make tax distributions).[32]

VI. Eligible Lenders

Under the MSLP, the eligible lenders are United States (U.S.) federally insured depository institutions, U.S. bank holding companies, U.S. savings and loan holding companies, U.S. savings and loan holding companies, U.S. branches or agencies of foreign banks, and any U.S. subsidiary of any of the above. Non-bank financial institutions are ineligible lenders.[33]

32 Id. at 9-10.

33 Id. at 11



Economic Injury Disaster Loan

The EIDL is an existing loan facility operated by the SBA under Section 7(b) of the Small Business Administration Act of 1953. The purpose of the EIDL is to extend low-interest credit to small businesses that are impacted by disasters. Unlike PPP loans, EIDL loans are not forgivable and must be paid back. The EIDL is designed to provide economic relief to businesses that are currently experiencing temporary loss of revenue. Loan proceeds can be used to cover working capital and normal operating expenses.[34]

Under the terms of the CPRSA Act, the coronavirus pandemic was declared a disaster, thereby allowing affected businesses to apply for an EIDL loan. The CPRSA Act also allocated $20 million to the EIDL. The CPRSA Act modified the EIDL by establishing an EIDL Emergency Grant to provide a loan advance of up to $10,000 to EIDL applicants. The advance will not need to be repaid, even if the qualifying business is denied an EIDL loan.[35]

Loans under the EIDL are capped at $2 million. EIDL loan proceeds may be used toward payroll, fixed debts, accounts payable, additional costs associated with disruptions in supply chains, and obligations that cannot be met as a result of revenue losses. Ineligible uses include: (a) dividends or bonuses, (b) disbursements to owners (unless if for the performance of services), (c) repayment of stockholder/principal loans, (d) expansion of facilities or acquisitions of fixed assets, (e) refinancing long term debt, (f) civil fines, (g) paying down or paying off loans provided or owned by a federal agency (including the SBA), (h) payment of direct Federal debt, and (i) relocation costs. EIDL loans can have up to a 30-year term, but the term is determined on a case

34 https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loans

35 H.R.6074 – Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020.

by case basis. The interest rates for EIDL loans are 3.75% for businesses and 2.75% for non-profits. The rates are fixed for the full term of the loan. There are no upfront fees or prepayment penalties.[36] Furthermore, loan payments are automatically deferred for 12 months. Payment of the previous EIDL disaster loans will also be deferred through the end of 2020, but interest will still accrue. An eligible borrower will be approved based on certain criteria, including acceptable credit history and the ability for loan repayment.

No collateral will be required for loans under $25,000. For EIDL loans larger than $25,000, the SBA will take real estate as collateral when available, which is the preferred form of collateral even if it is insufficient to secure the full loan. For EIDL loans under $200,000, the SBA will not require the pledge of the primary residence of the business owner as collateral if the owner can offer assets of equal quality that can cover the loan.[37] Applicants must complete and submit applications by December 31, 2020. Applications are processed on a first come first serve basis. PPP eligibility is not affected by entities that have received EIDL loans between January 31, 2020 through April 3, 2020, and did not use the loan for payroll costs. However, if the EIDL loan was used for payroll purposes, any PPP loan, if applicable, must be used to refinance the EIDL loan.[38]

Existing borrowers of EIDL loans receiving disaster loans that are not related to COVID-19 are also eligible to apply for a PPP loan, but cannot refinance their EIDL loan using the PPP loan.[39]

I. Eligibility

Small business owners and qualified agricultural businesses in all U.S. states, the District of Columbia, and territories are currently eligible to apply. This includes cooperatives, employee stock ownership plans (“***ESOP’s***”), Tribal business, and agricultural enterprises. Additionally, agricultural businesses with 500 or fewer employees are now eligible as a result of new authority granted by Congress in response to the COVID-19 pandemic.[40] Agricultural businesses include those businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries (as defined by section 18(b) of the Small Business Act (15. U.S.C. 647(b)).[41]

36 *Looking for an Alternative to the PPP? Taking a Second Look at the Economic Injury Disaster Loan (EIDL Program by Paul Amiel, Jim Markus, Alex Grishman, Javier Martinez, Brent Breckert, Rachael Apfel, Daniel Wei* https://www.haynesboone.com/-/media/files/alert-pdfs/2020/looking-for-an-alternative-to-the-ppp.ashx?la=en&hash=A54DBF0C8EBB120F07B4D2445055A4F87B1B0D8D

37 Id. at 4

38 Id.

39 Id.

40 https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loans.

41 Id.

II. Ineligible Businesses.

As noted in ***Section B.I*** above, the eligibility standard for SBA loans includes a size component. For-profit companies must generally have fewer than 500 employees (including employees of "affiliates"). Businesses that are ineligible for an EIDL loan are outlined in 13 CFR §123.101, 13 CFR §123.201, and 13 CFR §123. 301, and include: (a) businesses principally engaged in illegal activities or gambling or that are otherwise of a sexual nature; (b) concerns engaged in lending, multi-level sales distribution, speculation, or investments (except for real estate investment with property held for rental when the disaster occurred); and political or lobbying concerns.

Index / Helpful Sources

PPP Information

https://www.federalregister.gov/documents/2020/04/15/2020-07672/business-loan-program-temporary-changes-paycheck-protection-program

https://www.sba.gov/document/sba-form-2483-paycheck-protection-program-borrower-application-form

https://www.haynesboone.com/alerts/bridging-the-gap---an-overview-of-sba-loans-under-the-paycheck-protection-program

https://www.sba.gov/sites/default/files/2020-06/PPP--IFR--Revisions-to-Loan-Forgiveness-Interim-Final-Rule-and-SBA-Loan-Review-Procedures-Interim-Final-Rule-508.pdf

MSLP Information

https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm

Board of Governors of the Federal Reserve System, Policy Tools, Main Street Lending Program, https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm

EIDL Information

https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loans

https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loans.

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We're Here To Help

We can help guide your business through the economic fallout of the coronavirus pandemic. For additional assistance, please contact your relationship attorney or any of the following:

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