# Paycheck Protection Program and Overview of Main Street Lending Program



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# Paycheck Protection Program

**Hannah Fischer Frey**

**Areas of Practice:**
- Business & Corporate Transactions
- Nonprofit & Tax Exempt Organizations
- Taxation

# Applicable Legislation

- Families First Coronavirus Response Act (FFCRA)
  - Enacted on March 18, 2020
  - Emergency paid sick leave and emergency paid family leave; payroll tax credits
- Coronavirus Aid, Relief, and Economic Security Act
  - Enacted on March 27, 2020
  - Economic stimulus, tax relief & additional employer relief
- PPP Flexibility Act
  - Enacted June 4, 2020
  - Expands PPP and relaxes requirements

# Overview

- **Lender:** Participating banks, loans guaranteed by SBA
- **Amount:** Up to 2.5x monthly payroll expense
- **Terms:**
  - 1% interest
  - 2-year term or 5-year term, depending on when loan was originated
  - Forgivable, if proceeds spent properly

# Eligible Uses

- Payroll costs (defined, see next slide)
- Interest on mortgage or other debts incurred before 2/15/20
- Rent on lease agreement in force before 2/15/20
- Utilities that began before 2/15/20

# Eligible Uses (continued)

- Payroll costs, defined as:
  - Salary, wage, commission, or similar compensation;
  - Payment of cash tip or equivalent;
  - Payment for vacation, parental, family, medical, or sick leave;
  - Allowance for dismissal or separation;
  - Payment required for the provisions of group health care benefits, including insurance premiums;
  - Payment of any retirement benefit; or
  - Payment of State or local tax assessed on the compensation of employees;



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# Eligible Uses (continued)

- shall not include—
  - the compensation of an individual employee in excess of an annual salary of $100,000, as prorated for the covered period;
  - taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 during the covered period;
  - any compensation of an employee whose principal place of residence is outside of the United States;
  - qualified sick leave wages for which an FFCRA credit is allowed; or
  - qualified family leave wages for which an FFCRA credit is allowed;

# Loan Necessity Substantiation

- Section 1102 of the CARES Act
- "the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient"
- Rely on guidance in place on date of application (FAQ #17)



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# Good Faith Certification

- FAQ #31
  - Liquidity analysis
  - Current adverse business conditions
  - Safe harbor of May 7, then May 14
- FAQ #46
  - Under $2MM, presumed good faith
  - Over $2MM, if audited and return money, no criminal prosecution

# Interim Final Rules

- Some were contrary to CARES Act
- Affiliation
- Self-Employers, Partnerships, and S Corporations
- Many later amended for PPP Flexibility Act

# Loan Forgiveness Application

- May 15 – Original Application
  - Calculator
  - Incurred vs. Paid
  - Exceptions for firings, resignations, etc.

# PPP Flexibility Act

- 24 weeks to spend proceeds
  - Can still elect to use 8 week period
- Only 60% required to be spent on payroll costs
- Repayment period increased to 5 years
- Exception for changes due to COVID-19 laws



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# Revisions to Previous Guidance

- More IFRs
- New Loan Application
- EZ Application Options:
  - Self-employed, an independent contractor, or a sole proprietor and did not have any employees
  - No wage reduction and no headcount reduction
  - No wage reduction and unable to operate at same business level due to COVID-19 laws



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# PPP Loan Deadline Extended

- Applications open until August 8
- $130 billion in funding still available (as of last week)

# Timeline of Forgiveness

- Submit Application for Forgiveness within 10 months, otherwise start paying on loan
- If used all proceeds, may apply for forgiveness early
- 90-day review by Bank
- 60-day review by SBA

# Main Street Lending Program

**Aaron B. Johnson**

**Areas of Practice:**
- Real Estate
- Banking
- Business & Corporate Transactions
- Finance
- Tax Credits & Alternative Financing

# Main Street Lending

## General Summary

- Part of the $454 billion CARES Act appropriation to the Federal Reserve for economic stabilization programs
- Designed to support small and medium-sized businesses that were either unable to access PPP or that require additional financing
- Unlike PPP, non-forgivable



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# Main Street Lending
## General Summary (continued)

- Comprised of Main Street New Loan Facility ("MSNLF"), Main Street Priority Loan Facility ("MSPLF"), Main Street Expanded Loan Facility ("MSELF"), Nonprofit Organization New Loan Facility ("NONLF") and Nonprofit Organization Expanded Loan Facility ("NOELF")
  - MSNLF, MSPLF and NONLF are new loans to eligible borrowers; MSELF and NOELF are increases to existing term loan or revolving credit facilities

# Main Street Lending

## General Summary (continued)

- Fed will purchase up to $600 billion in participations in eligible loans (including upsized loans) made pursuant to the programs

# Main Street Lending

## General Summary (continued)

- Most financial institutions are eligible lenders under the programs
- Currently the MSNLF, MSPLF and MSELF are fully operational
- NONLF and NOELF are still being finalized – term sheets released on July 17th

# Main Street Lending
## Borrower Eligibility

- NONLF and NOELF
  - 501(c)(3) or 501(c)(19) in continuous operation since January 1, 2015
  - **>10** employees
  - either **<u><</u> 15,000** employees or 2019 revenues of **<u><</u> $5 billion**
  - total endowment **<u><</u> $3 billion**



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# Main Street Lending
## Borrower Eligibility (continued)

- non-donation revenues $\geq$ **60%** of expenses for period from 2017-2019
- ratio of 2019 EBITDA to unrestricted operating revenue $\geq$ **2%**
- ratio (expressed as number of days) of liquid assets to average daily expenses of $\geq$ **60 days**
- ratio of unrestricted cash and investments to existing undrawn and available debt plus program loan amount plus any CMS accelerated or advance payments **> 55%**

# Main Street Lending

## Borrower Eligibility (continued)

- not participating under any of the other programs comprising the Main Street Lending Program
- not ineligible under SBA guidelines
- didn't receive funding under Title IV of the CARES Act
  - note that organizations that received PPP loans are eligible provided they meet the other eligibility requirements



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# Main Street Lending
## Borrower Eligibility (continued)

- MSNLF, MSPLF and MSELF
  - established prior to March 13, 2020
  - either <u>**<**</u> **15,000** employees or 2019 revenues of <u>**<**</u> **$5 billion**
  - not participating under any of the other programs comprising the Main Street Lending Program

# Main Street Lending

## Borrower Eligibility (continued)

– not ineligible under SBA guidelines

– didn't receive funding under Title IV of the CARES Act

- note that organizations that received PPP loans <u>are</u> eligible provided they meet the other eligibility requirements



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# Main Street Lending
## Loan Terms

| Program | Loan Size | Maturity | Interest Rate | Principal and Interest Deferral |
|---|---|---|---|---|
| MSNLF | $250k to lesser of $35mm or 4x 2019 EBITDA (aggregate all other debt) | 5 yrs | 1 or 3 month LIBOR plus 3.00% | Principal 2 yrs interest 1 yr |
| MSELF | $10mm to lesser of $300mm or 6x 2019 EBITDA (aggregate all other debt) | Same as above | Same as above | Same as above |
| MSPLF | $250k to lesser of $50mm or 6x 2019 EBITDA (aggregate all other debt) | Same as above | Same as above | Same as above |
| NONLF | $250k to lesser of $35mm or 2019 average quarterly revenue | Same as above | Same as above | Same as above |
| NOELF | $10mm to lesser of $300mm or 2019 average quarterly revenue | Same as above | Same as above | Same as above |



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# Main Street Lending
## Loan Terms (continued)

| Program | Principal Repayment | Collateral | Prepayments | Fees |
|---|---|---|---|---|
| **MSNLF** | 15% principal at end of yr 3, 15% at end of yr 4, 70% balloon at maturity | Secured or unsecured; cannot be contractually subordinated to other debt | permitted without penalty | Up to 1.00% origination fee |
| **MSELF** | Same as above | Secured or unsecured; must be senior to pari-passu with all other debt, other than mortgage debt | Same as above | Up to 0.75% origination fee |
| **MSPLF** | Same as above | Same as above | Same as above | Up to 1.00% origination fee |
| **NONLF** | Same as above | Secured or unsecured; cannot be contractually subordinated to other debt | Same as above | Same as above |
| **NOELF** | Same as above | Secured or unsecured; must be senior to pari-passu with all other debt, other than mortgage debt | Same as above | Up to 0.75% origination fee |



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# Main Street Lending
## Other Facility Requirements

- Use of Proceeds
  - can't use for benefit of foreign parent or affiliates
  - can't use to refinance existing debt (exception for MSPLF)
  - can't use to pay dividends, distribute capital, repurchase equity or pay executive compensation over specified thresholds

# Main Street Lending

## Other Facility Requirements (continued)

- Other Indebtedness
  - can't voluntarily prepay any other debt
  - can't voluntarily reduce any other committed lines of credit
- Must make "reasonable efforts" to maintain payroll and retain employees
  - means good faith efforts given capacity, economic environment, available resources and the business need for labor

# Main Street Lending

## Other Facility Requirements (continued)

- During the period the loan is outstanding and for 1 year after:
  - officers and employees earning more than \$425k in 2019 may not receive a raise or severance benefits totaling more than 2x 2019 compensation
  - officers and employees earning more than \$3mm in 2019 may not earn more than \$3 million plus ½ of the amount of their 2019 compensation in excess of \$3mm



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# Main Street Lending

## Other Facility Requirements (continued)

- During the period the loan is outstanding and for 1 year after, can't pay dividends or distributions
  - does not prohibit redemptions pursuant to contractual obligations in effect as of March 27, 2020 or tax distributions

# Main Street Lending
## Additional Resources and Information

*Program Summary, Term Sheets and FAQs:*

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

*Additional Borrower Information:*

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

*List of Participating Lenders:*

https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/information-for-borrowers.aspx#map

# Questions?

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