

Main Street CARES:

Understanding Loans, Forgiveness, and Tax Benefits

Presented By:

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FL Bar Course No. 3966



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Panel Overview

We are currently facing uncertain times. The entire world is suffering the effects of COVID-19 and we are all making our best efforts to get through this. In an attempt to provide relief, the U.S. government has passed certain laws such as the CARES Act and created several relief programs to help the economy stay afloat. Under the CARES Act, aid programs like the Paycheck Protection Program, expanded Economic Injury Disaster Loan, and other loans have become available for both small and mid-sized businesses.

The government has also started other programs like the Main Street Lending Program designed to provide additional aid to small and mid-sized businesses. In this program, we will be discussing the requirements of each program, including eligibility and information that needs to be provided by the applicants.

We will also review some of the important tax benefits for business under the CARES Act.



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Paycheck Protection Program Loans

- The Paycheck Protection Program is a loan designed to provide a direct incentives for small businesses to keep their program workers on their payroll.
- The Program started on April 3rd – You can apply up to June 30th.
- There are still funds available/Round 2 of the Program.
- Small business is defined as up to 500 employees or that meets the SBA Industry size standard if more than 500 employees
- 501 (c) (3) – nonprofit organization, 501 (c) (19) Veterans organizations or Tribal business concern



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Paycheck Protection Program Loans

What can I use these loans for? You should use the proceeds from these loans on your:

- Payroll costs, including benefits;
- Interest on mortgage obligations, incurred before February 15, 2020;
- Rent, under lease agreements in force before February 15, 2020; and
- Utilities, for which service began before February 15, 2020.



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Paycheck Protection Program Loans

What counts as payroll costs? Payroll costs include:

- Salary, wages, commissions, or tips (capped at \$100,000 on an annualized basis for each employee);
- Employee benefits including costs for vacation, parental, family, medical, or sick leave; allowance for separation or dismissal; payments required for the provisions of group health care benefits including insurance premiums; and payment of any retirement benefit;
- State and local taxes assessed on compensation; and
- For a sole proprietor or independent contractor: wages, commissions, income, or net earnings from self-employment, capped at \$100,000 on an annualized basis for each employee.



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Paycheck Protection Program Loans

How large can my loan be?

Loans can be for up to two months of your average monthly payroll costs from the last year plus an additional 25% of that amount. That amount is subject to a \$10 million cap. If you are a seasonal or new business, you will use different applicable time periods for your calculation. Payroll costs will be capped at \$100,000 annualized for each employee.

What is my interest rate? 1.00% fixed rate.



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Paycheck Protection Program Loans

When do I need to start paying interest on my loan? All payments are deferred for 6 months; however, interest will continue to accrue over this period.

When is my loan due? In 2 years.

Can I pay my loan earlier than 2 years? Yes. There are no prepayment penalties or fees.

Do I need to pledge any collateral for these loans? No. No collateral is required.



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Paycheck Protection Program Loans

Summary for Second Round

Loan Count	Gross Dollars	Lender Count
2,571,167	\$188,943,588,568	5,463

Lender Size	Lender Count	Approved Loans	Approved Dollars	% of Amount
>\$50 B in Assets	148	1,235,413	\$100,030,386,202	53%
\$10 B to \$50 B in Assets	86	363,143	\$28,943,084,497	15%
<\$10 B in Assets	5,229	972,611	\$59,970,117,870	32%



Approvals through 05/08/2020



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Paycheck Protection Program Loans

States and Territories for Second Round

State	Approved Loans	Approved Dollars
AK	4,750	\$368,180,450
AL	30,647	\$1,525,755,462
AR	17,401	\$663,435,916
AS	87	\$4,966,444
AZ	51,317	\$4,012,653,804
CA	376,803	\$35,802,231,257
CO	52,785	\$3,267,353,381
CT	34,629	\$2,725,531,573
DC	7,216	\$1,065,656,193
DE	5,667	\$395,884,847
FL	222,570	\$13,410,559,155
GA	78,008	\$5,117,317,474
GU	1,206	\$93,721,567
HI	10,414	\$487,023,393
IA	23,191	\$855,528,382
ID	14,051	\$763,899,867
IL	101,905	\$6,973,556,382
IN	35,624	\$2,173,039,568
KS	21,106	\$873,817,925
KY	20,394	\$1,159,401,378

State	Approved Loans	Approved Dollars
LA	37,186	\$2,271,563,428
MA	56,506	\$4,678,358,510
MD	41,378	\$3,556,949,724
ME	10,287	\$345,125,193
MI	66,790	\$5,822,149,865
MN	42,863	\$2,351,171,512
MO	36,808	\$1,806,239,740
MP	259	\$21,052,640
MS	19,614	\$708,706,077
MT	8,121	\$297,612,268
NC	66,677	\$4,696,588,382
ND	7,461	\$246,267,563
NE	15,647	\$513,129,973
NH	10,228	\$611,995,492
NJ	90,970	\$8,027,542,309
NM	11,565	\$818,989,209
NV	26,516	\$2,097,112,541
NY	190,052	\$18,789,434,045
OH	66,359	\$4,945,138,628
OK	23,856	\$929,949,637

State	Approved Loans	Approved Dollars
OR	35,751	\$3,217,222,676
PA	81,093	\$5,740,967,808
PR	23,787	\$1,053,976,529
RI	7,960	\$593,188,486
SC	33,061	\$2,019,303,964
SD	8,991	\$307,098,234
TN	46,905	\$2,613,261,852
TX	204,762	\$13,860,253,758
UT	24,733	\$1,771,010,637
VA	54,989	\$4,337,890,876
VI	913	\$61,469,771
VT	4,152	\$204,865,767
WA	58,149	\$5,394,106,824
WI	34,118	\$1,785,329,072
WV	7,897	\$485,847,921
WY	4,804	\$215,303,718
To be confirmed	188	\$7,899,524

Approvals through 05/08/2020



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Paycheck Protection Program Loans

Loan Size for Second Round

Loan Size	Approved Loans	Approved Dollars	% of Count	% of Amount
\$50K and Under	1,877,950	\$32,856,427,350	73.26%	20.70%
>\$50K - \$100K	331,866	\$23,470,699,187	12.95%	14.79%
>\$100K - \$150K	130,073	\$15,887,602,486	5.07%	10.01%
>\$150K - \$350K	147,602	\$32,631,473,177	5.76%	20.56%
>\$350K - \$1M	61,646	\$34,365,428,096	2.40%	21.65%
>\$1M - \$2M	14,130	\$19,530,467,793	0.55%	12.30%
>\$2M - \$5M	6,352	\$18,857,362,992	0.25%	11.88%
>\$5M	1,548	\$11,344,127,488	0.06%	7.15%

*** Overall average loan size is: \$73K.**



Approvals through 05/08/2020



PPP Forgiveness

Loan Forgiveness

- All or a portion of PPP Loan may be 100% Forgiven
- Amounts forgiven **NOT** treated as Taxable Income
- Forgiven Amount must be spent on “**Eligible Costs**” during **8-week** period from date of funding.
- Payroll Costs*

**Gross salary, wages, tips, vacation, parental, medical, sick leave, health care expenses, retirement contributions, state unemployment taxes and other state employer payroll taxes.*

- Fees to Independent contractors **NOT** included
- Non-Payroll Costs*
 - Interest for Mortgages
 - Rent payments on Leases
 - Utility Payments

**Applies to obligations arising before Feb 15, 2020*

- **75%** MUST BE spent on PAYROLL COSTS
- **UP TO 25%** MAY BE NON-PAYROLL COSTS



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PPP Forgiveness

Forgiveness Reductions

• **Salary & Wages**

- Salary/wage decrease by MORE than **25%** for any employee making less than \$100k.
- Dollar-for-dollar reduction of Loan Forgiveness for salary/wage decreases in excess of **25%**.
- If salary/wages restored by June 30, 2010, no forgiveness reduction.

• **Workforce (FTE*) Reduction**

- Forgivable amount reduced based on formula tied to the lesser of:
 - Avg FTEs per month from Feb 15 – June 30;
 - Avg FTEs per month from Jan 1 – Feb 29.
- Laid-off employees that turn down a written offer to be rehired can be excluded from reduction calculation.
- If workforce restored by June 30, 2010, no forgiveness reduction.

**FTE is min. 30 hours per week, or combo of PTE.*



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PPP Forgiveness

Other Considerations

- ***No Deduction for Business Expenses***
 - Business expenses covered with proceeds from forgiven loan cannot be deducted for tax purposes.
- ***Documentation, Documentation, Documentation***
 - Formal Loan Forgiveness Application with certifications, etc. is expected.
 - Borrower's are expected to maintain adequate books and records supporting the use of proceeds for "Eligible Costs."
 - Copies of mortgage statements, leases, payroll records, etc. to be submitted.
- ***No Forgiveness Guarantee***
 - Even if all criteria is met, forgiveness is subject to bank's discretion.



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PPP Frequently Asked Questions

Question: The affiliation rule based on ownership states that SBA will deem a minority shareholder in a business to control the business if the shareholder has the right to prevent a quorum or otherwise block action by the board of directors or shareholders. If a minority shareholder irrevocably gives up those rights, is it still considered to be an affiliate of the business?

Answer: *No. If a minority shareholder in a business irrevocably waives or relinquishes any existing rights the minority shareholder would no longer be an affiliate of the business (assuming no other relationship that triggers the affiliation rules).*



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PPP Frequently Asked Questions

Question: Do PPP loans cover paid sick leave?

Answer: Yes. PPP loans covers payroll costs, including costs for employee vacation, parental, family, medical, and sick leave. ***However, the CARES Act excludes qualified sick and family leave wages for which a credit is allowed under sections 7001 and 7003 of the Families First Coronavirus Response Act.***

Question: How do the \$10 million cap and affiliation rules work for franchises?

Answer: If a franchise brand is listed on the SBA Franchise Directory, each of its franchisees that meets the applicable size standard can apply for a PPP loan. (The franchisor does not apply on behalf of its franchisees.) The \$10 million cap on PPP loans is a limit per franchisee entity, and each franchisee is limited to one PPP loan.



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PPP Frequently Asked Questions

Question: Do businesses owned by large companies with adequate sources of liquidity to support the business's ongoing operations qualify for a PPP loan?

Answer: In addition to reviewing applicable affiliation rules to determine eligibility, all borrowers must assess their economic need for a PPP loan under the standard established by the CARES Act and the PPP regulations at the time of the loan application. Although the CARES Act suspends the ordinary requirement that borrowers must be unable to obtain credit elsewhere (as defined in section 3(h) of the Small Business Act), borrowers still must certify in good faith that their PPP *loan request is necessary*.



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Should You Return PPP Loan?

- Several **Public Companies** have returned their PPP Loan money.
 - AutoNation, Shake Shack, Ruth's Chris
- **Certification Requirements**
 - "Need" and "Sources of Liquidity"

- **Safe Harbor**

-Loans for Less than \$2 Million -Borrower deemed to have made certification of ***necessity*** in ***good faith***, and have no adequate ***sources of liquidity***.

-Loans for \$2 Million or More - Borrower must consider ***alternate sources of liquidity*** exist and ***good faith*** certification of ***necessity*** of the PPP loan. Prepare to face AUDITS.

-SBA will not pursue remedies or make referrals for prosecution if it disagrees with certification *as long as loan is repaid*.

-Deadline to RETURN FUNDS: **May 14** without penalty.

- Statute of limitation for an investigation will be 10 years.



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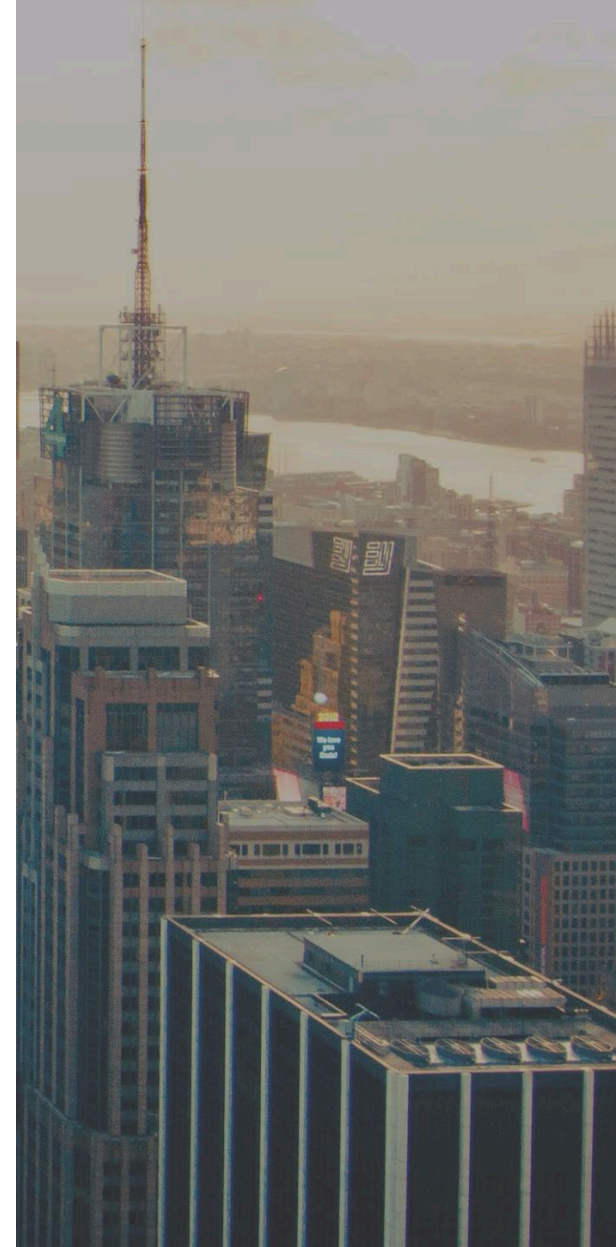
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Overview – Main Street Lending Program

- Very **different from** Paycheck Protection Program:
 - Loans are **not forgivable**.
 - Lenders **will perform credit analyses and underwriting**.
 - Lenders **not obligated to lend** maximum amount.
 - Lenders **can require collateral**, including personal guarantees.
 - Lenders **can require additional information and documentation**.
 - Term sheet terms are **minimums**.
 - But, **can participate in MSLP and PPP**.
 - And - **won't run out of money** (terminates September 30, 2020).



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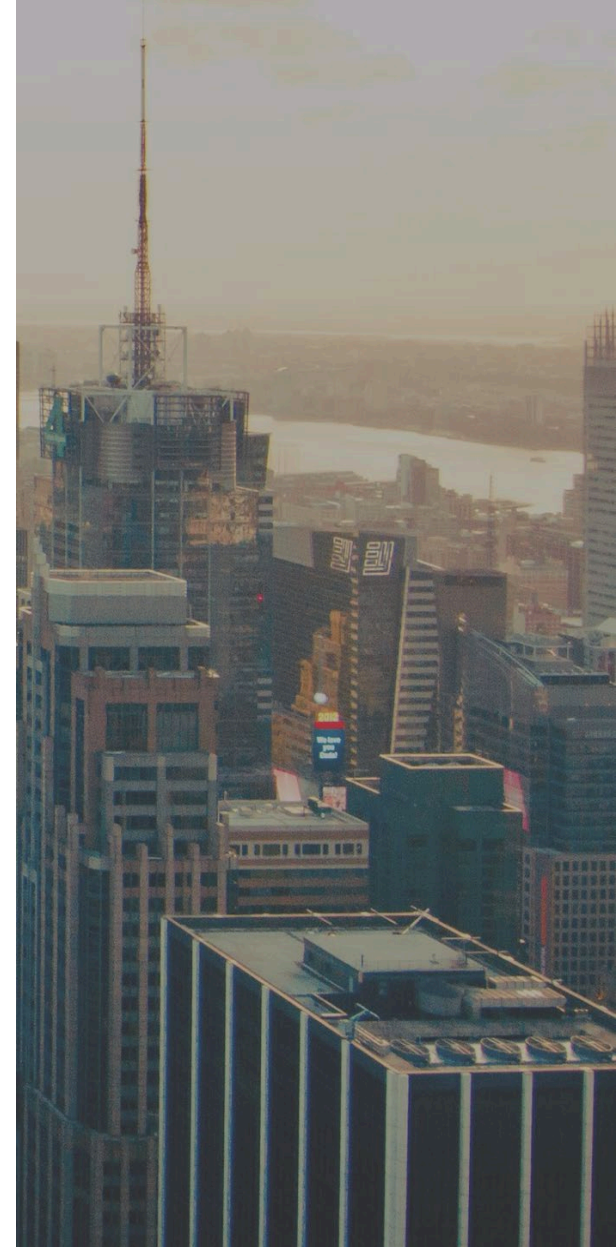


Overview – Main Street Lending Program

- Available to “**eligible businesses**” - any US business with not more than **15,000 employees** (together with affiliates) or not more than **\$5 billion in 2019 revenue** (together with affiliates).
- Must have:
 - Been **created or organized in the US** before March 13, 2020.
 - Have **significant operations in the US**.
 - Have a **majority of its total employees based in the US**.
 - In **sound financial condition** prior to onset of pandemic crisis (“**pass**” **risk rating** on existing loans at 2019 YE).
 - **Not “ineligible”** under SBA rules - **developers and landlords** that do not actively use or occupy the assets ineligible unless Eligible Passive Company.
- **SBA affiliation rules apply** in determining number of employees.
- **Foreign ownership** - no restriction, except a joint venture must have <49% foreign ownership.
- **Nonprofits** are not Eligible Borrowers - must be for profit; Fed evaluating separate program.

Overview – Main Street Lending Program

- Fed creating Special Purpose Vehicle (SPV) to purchase up to \$600 billion in loans originated/upsized **after April 24, 2020**.
 - SPV will **purchase 85% to 95% of Eligible Loan** after origination.
 - Eligible Lender **will retain 5% to 15%** share until maturity/SPV sells participation.
- Three separate facilities:
 - **New Loan Facility** - up to \$25 million.
 - **Priority Loan Facility** - up to \$25 million.
 - **Expanded Loan Facility** - up to \$200 million.
- Can participate in only one of the facilities but **can participate in this program and the Paycheck Protection Program**.



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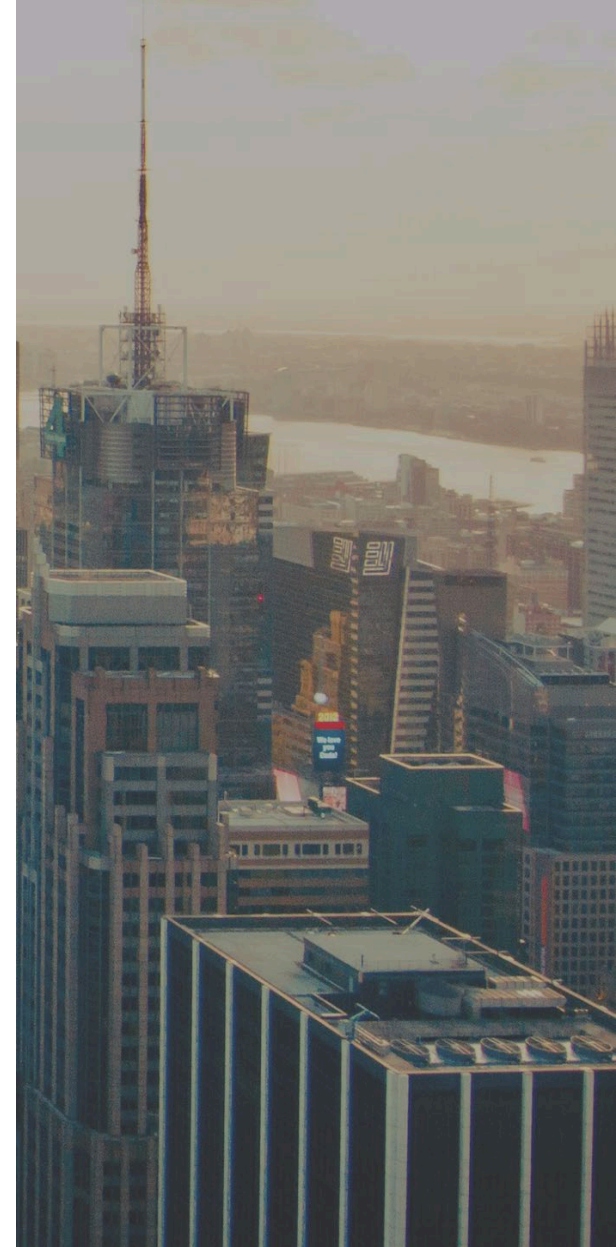
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Main Street Lending Program - Loan Terms

- Principal and interest payments are **deferred for one year**.
- **Four-year maturity** under varying amortization by facility.
- **Rate:** LIBOR plus 300 basis points.
- Loans may be **secured or unsecured**.
- **Prepayments permitted** without penalty.
- **Loan sizes:** \$500,000 to \$25 million (New and Priority Facilities) or \$10 million to \$200 million (Expanded Facility).



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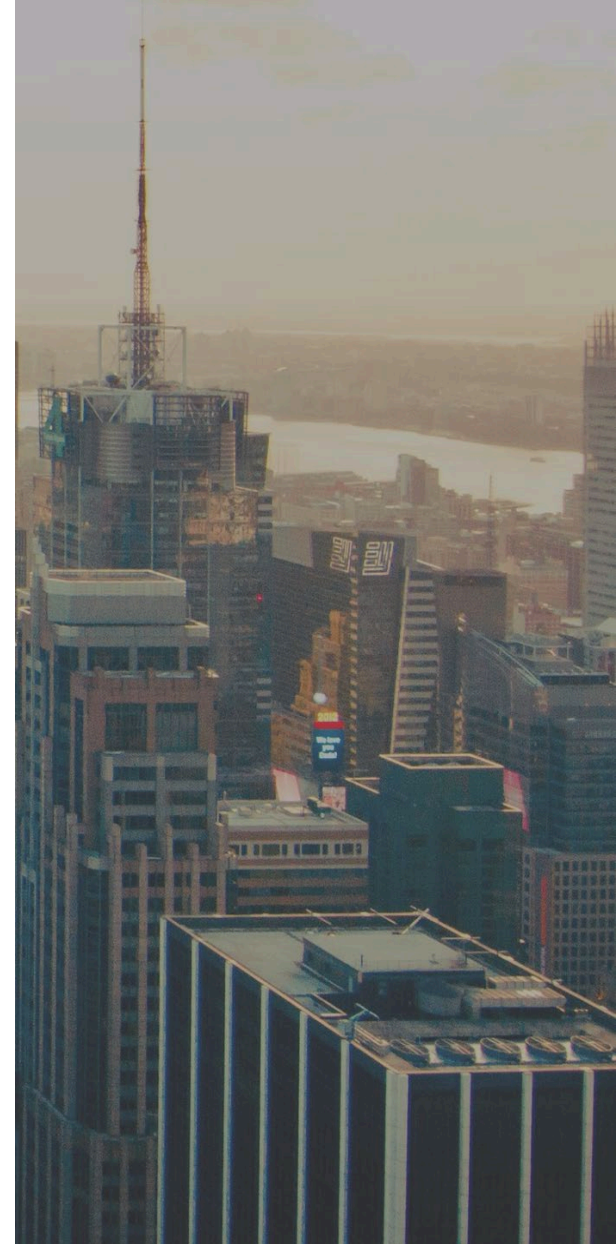


Main Street Lending Program – Loan Terms

- Maximum Loan Amount - **lesser of:**
 - **New Loan:** \$25 million **OR** 4X Eligible Borrower's 2019 Adjusted EBITDA less Outstanding + Committed but Undrawn Debt.
 - **Priority Loan:** \$25 million **OR** 6X Eligible Borrower's 2019 Adjusted EBITDA less Outstanding + Committed but Undrawn Debt.
 - **Expanded Loan:** Lesser of \$200 million **OR** 35% of Eligible Borrower's Outstanding + Committed but Undrawn Debt **OR** 6X Eligible Borrower's 2019 Adjusted EBITDA less Outstanding + Committed but Undrawn Bank Debt. Existing loan that is upsized must have at least 18 months remaining to maturity.

Main Street Lending Program - Loan Terms

- **Outstanding and Committed but Undrawn available debt:**
 - All **amounts borrowed** under any loan facility, publicly issued bonds, or private placement facilities. Unclear if includes PPP loans.
 - All **unused commitments** under any loan facility calculated as of the date of the application EXCEPT undrawn commitments:
 - Serving as a backup line for commercial paper,
 - Used to finance receivables,
 - Requiring added collateral, or
 - No longer available due to change in circumstances.
- **Adjusted 2019 EBITDA:** Must be method used by the Eligible Lender previously for adjusting EBITDA in last 12 months.



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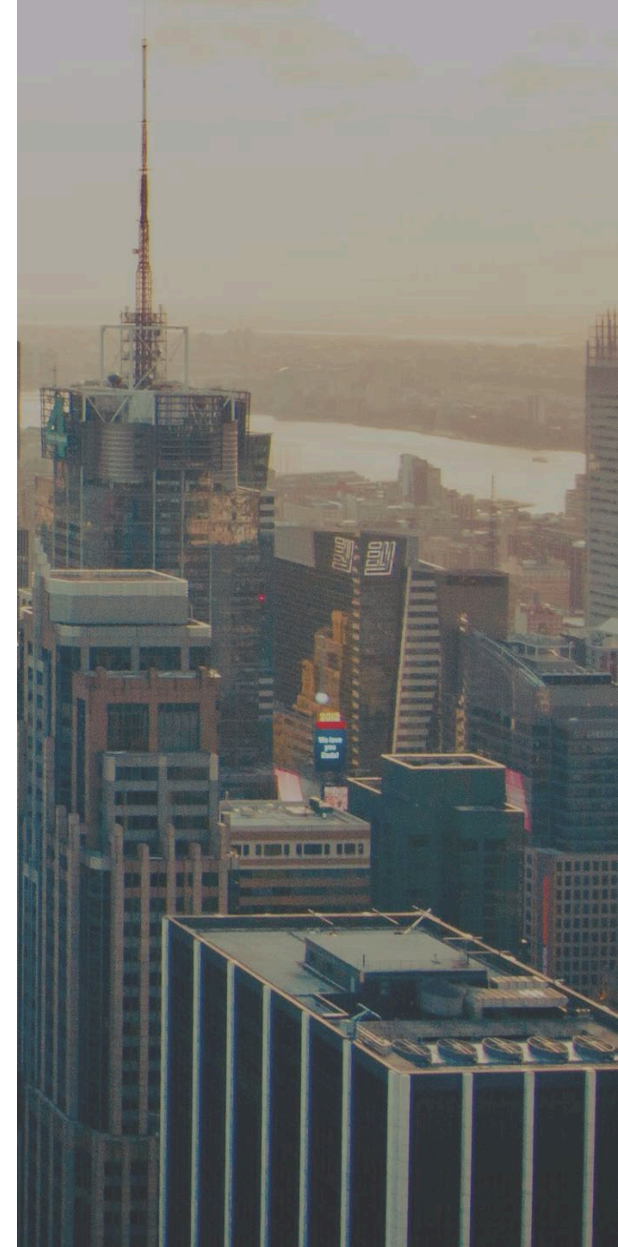
Main Street Lending Program - Loan Terms

- **Amortization:**
 - New Facility: Beginning in year 2, **1/3 each year** until maturity.
 - Other Facilities: Beginning in year 2, **15%, 15%, 70%** at maturity
- **Priority** - New Loan Facility: Cannot be **contractually subordinated** to other loans or debt instruments. **Does not prevent:**
 - the issuance of a New Loan Facility loan that is a secured (including in a second lien or other capacity) to an Eligible Borrower, whether or not the borrower has an outstanding secured loan of any lien position or maturity;
 - the issuance of a New Loan Facility loan that is unsecured to an Eligible Borrower, regardless of the term or secured or unsecured status of the Eligible Borrower's existing indebtedness; or
 - the Eligible Borrower from taking on new secured or unsecured debt after receiving a New Loan Facility loan, provided the new debt would not have higher contractual priority in bankruptcy than the New Loan Facility loan.



Main Street Lending Program - Loan Terms

- **Priority** - Priority Loan Facility: **Senior to or pari passu with**, other loans or debt instruments, other than mortgage debt.
- **Priority** - Expanded Loan Facility: **Senior to or pari passu with**, other loans or debt instruments, other than mortgage debt.
- Cannot **cancel or reduce any existing** committed lines of credit outstanding, except in event of default.



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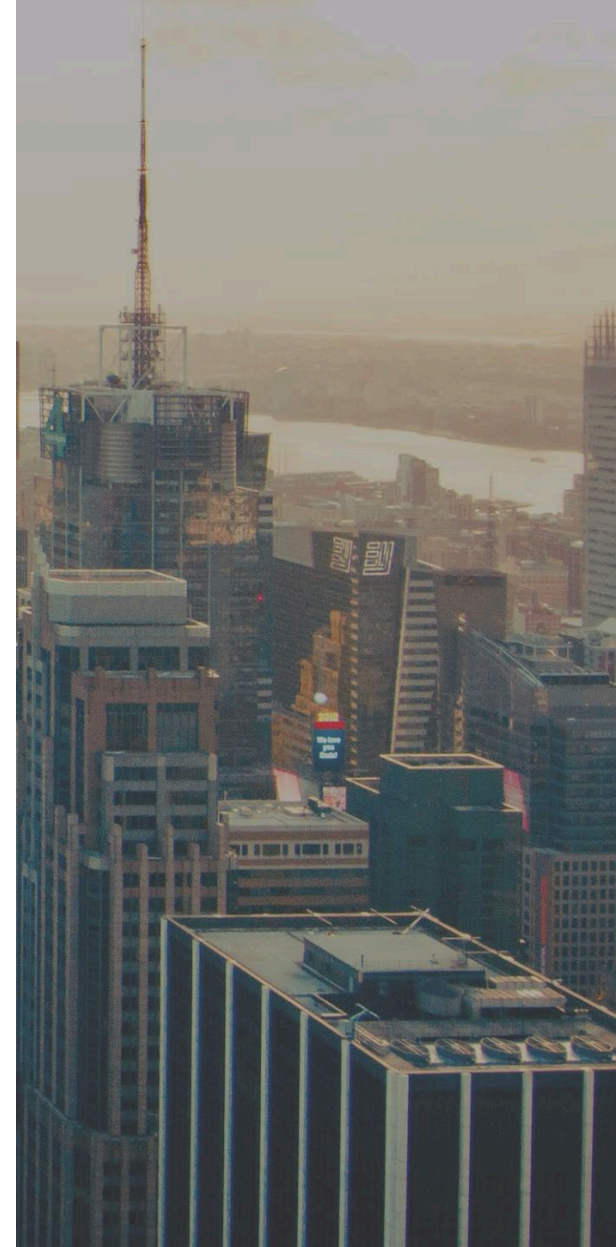
Main Street Lending Program - Loan Fees

- **Eligible Lender** = US financial institution; U.S. branch or agency of a foreign bank; U.S. intermediate holding company of a foreign banking organization. Non-bank financial institutions not eligible.
- **Facility Fee:** Eligible Lender is required to pay SPV a fee = **100 basis points** (New and Priority) or **75 basis points** (Expanded) of 100% of the principal amount of the Eligible Loan at the time of origination or upsizing, which **may be passed on to Borrower**.
- **Origination Fee:** Eligible Borrower is required to pay Eligible Lender an origination fee = **100 basis points** (New and Priority) or **75 basis points** (Expanded) of the total principal amount.
- **Servicing Fee:** SPV will pay Eligible Lender an annual servicing fee = 25 basis points of the principal amount of the loan purchased by SPV (85% or 95% of total). Borrower **not responsible** for this fee.



Eligible Borrower Commitments

- During time Eligible Loan is outstanding, Eligible Borrower must exercise good faith "**commercially reasonable efforts**" to maintain payroll and retain employees.
- Eligible Borrower must agree **until 12 months after the loan is no longer outstanding**:
 - **not to purchase** an equity security of the eligible business or any parent company listed on a national exchange; and
 - **not to pay dividends or make other capital distributions** on the common stock of the eligible business.
 - **Sub S and other pass through entities** can make distributions to cover taxes.



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Eligible Borrower Commitments

Additional commitments **ending 1 year after the loan is no longer outstanding:**

- No **officer or employee** whose total compensation (salary, bonuses, stock awards, and other financial benefits) **exceeded \$425,000** in 2019 will receive:
 - 2019 calendar year compensation, during any 12 consecutive months of the period, or
 - severance pay or other benefits upon termination of employment, in each case which exceed twice their 2019 total compensation.
- No **officer or employee** of the eligible business whose total compensation **exceeded \$3,000,000** in 2019 may receive more than \$3,000,000 and 50% of the excess over \$3,000,000 during any 12 consecutive month period.



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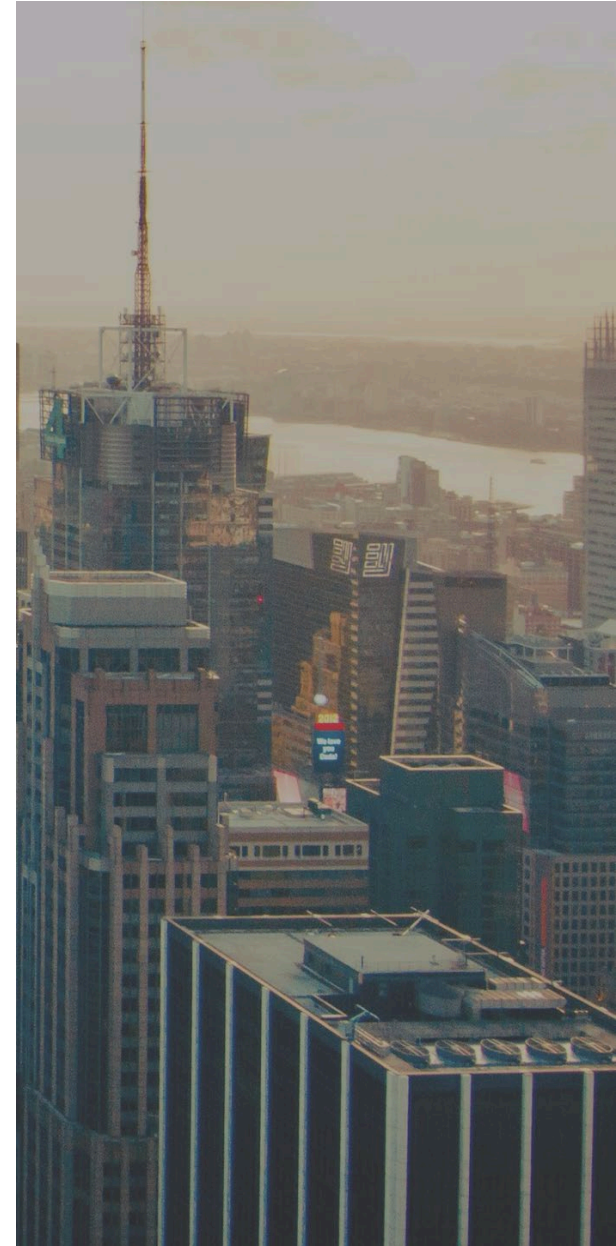
Main Street Lending Program - FAQs

- Can a Borrower **refinance existing debt**? **No**, except under the Priority Loan Facility, which allows a borrower to refinance existing debt with a lender that is not the Eligible Lender making the loan.
- Must the Borrower have been **EBITDA positive in 2019**? **Yes**, although EBITDA may be "adjusted" using previously used methodologies for other loans.
- What are "**commercially reasonable efforts**" to maintain payroll and retain **employees**? Borrowers should undertake good-faith efforts to maintain payroll and retain employees, in light of its capacities, the economic environment, its available resources, and the business need for labor. Borrowers that have **already laid-off or furloughed workers** as a result of the disruptions from COVID-19 are eligible to apply for Main Street loans.



Main Street Lending Program - FAQs

- Do Eligible Borrowers **qualify automatically** for an Eligible Loan? **No**. The loan requirements are minimum requirements for the Program. Eligible Lenders must conduct an assessment of each potential borrower's financial condition at the time of the application, and can apply their own underwriting standards and require additional information and documentation.
- How do I **calculate 2019 revenue** for the \$5 billion limit? A Business may use its (and its affiliates') annual "revenue" per its 2019 GAAP audited financial statements or use its (and its affiliates') annual receipts for the fiscal year 2019, as reported to the Internal Revenue Service.



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CARES ACT: Business Tax Benefits

Net Operating Loss Carryovers – The CARES Act states that for taxable years beginning in 2019 or 2020, net operating loss carryovers (“NOLs”) are no longer subject to an 80% taxable income limitation, and NOLs from 2018, 2019, or 2020 can be carried back five years.

Interest Expense Limitation – For taxable years beginning in 2019 or 2020, the interest expense limitation in Code section 163(j) is increased to 50%, and taxpayers can use 2019’s adjusted taxable income for purposes of the 2020 calculation.

AMT Credits –The TCJA repealed the corporate AMT and allowed corporations to fully offset regular tax liability with AMT credits. Any remaining AMT credit amount became refundable incrementally from 2018 through 2021. The CARES Act accelerates the refund schedule, permitting corporate taxpayers to claim the refund in full in either 2018 or 2019. Taxpayers wishing to accelerate an AMT credit refund for 2018 may use a quick refund procedure (e.g., Form 1139) to claim these credits.



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CARES ACT: Business Tax Benefits

Payroll Tax Payments – The CARES Act permits employers to defer payment of the employers share of the Social Security tax (6.2%) paid over the following two years, with 50% of the amount required to be paid by December 31, 2021 and the other half by December 31, 2022: employers would still be responsible for FICA tax on employee wages.

Employee Retention Credit – The CARES Act allows qualified business owners who may be eligible for an employee retention credit, employers that closed operations or lost at least half their gross receipts due to COVID-19 can receive a refundable payroll tax credit of up to \$5,000 per eligible employee through the end of 2020. Businesses with more than 100 employees can only claim the credit for inactive employees that are still being paid, while smaller businesses can claim it for all employees. Note: The CARES Act Employer Retention Credit cannot be combined with Small Business Administration (SBA) loans.



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CARES ACT: Business Tax Benefits

Employee Paid Leave – The CARES Act allows for employees to receive up to 80 hours of paid sick leave and expanded paid childcare leave. This is a dollar-for-dollar tax offset against payroll taxes and per the release be refunded as quickly as possible. The credit for employers is \$511 per day and \$5,110 in the aggregate, for a total of 10 days for an employee under quarantine or has Coronavirus symptoms and is seeking medical diagnosis and 2/3 the employee's regular pay rate, up to \$200 per day and \$2,000 in the aggregate, for up to 10 days for caring for someone with the Coronavirus, or school closing or child care is unavailable.

Forgiven Expenses Non-Deductible – On April 30, 2020, the IRS issued Notice 2020-32, notifying taxpayers that certain expenses that may otherwise be deductible are not deductible if paid with amounts from forgiven Paycheck Protection Program (PPP) loans.

Business Loss Deduction Cap Suspended - The cap on the deduction for business losses on individual returns is halted. Under the 2017 tax reform law, the amount of trade or business losses that exceeded a \$500,000 threshold for couples and \$250,000 for other filers was nondeductible, with any excess carried forward. Loss limitation suspended for 2018 through 2020.



Main Street CARES: ***Round Up***

QUESTIONS & ANSWERS



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Main Street CARES: *RESOURCES*

PPP Loan Program:

PPP Information Sheet

<https://home.treasury.gov/system/files/136/PPP--Fact-Sheet.pdf>

PPP Affiliation Rules (April 3, 2020)

<https://home.treasury.gov/system/files/136/Affiliation%20rules%20overview%20%28for%20public%29.pdf>

How to Calculate PPP Loan Amount (April 24, 2020)

<https://www.sba.gov/sites/default/files/2020-04/How-to-Calculate-Loan-Amounts.pdf>

PPP FAQs (May 6, 2020)

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

Main Street Lending Program:

- <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200430a.htm>
- <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200430a1.pdf>
- <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200430a2.pdf>
- <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200430a3.pdf>
- <https://www.federalreserve.gov/monetarypolicy/files/main-street-lending-faqs.pdf>

Other:

<https://www.journalofaccountancy.com/news/2020/may/aicpa-small-business-advocates-call-for-ppp-rules-clarity.html>



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