

The logo for SAX, featuring the letters 'S', 'A', and 'X' in a bold, sans-serif font. The 'S' and 'A' are light blue, while the 'X' is a darker blue. The background consists of a dark blue gradient with large, overlapping, semi-transparent chevron shapes pointing to the right.

SAX

Direction that
moves you forward

This slide deck contains information on the COVID-19 related Loan Options & Forgiveness Strategies and is the most up-to-date as of May 7, 2020.

Changes are constant and additional guidance is on-going. We will keep you posted on changes through our weekly webinar updates and COVID-19 resource center. You can also reach out to your Sax advisor for the most recent information.

Please visit our Resource Center at www.saxllp.com for on-going updates, or email covid19@saxllp.com with questions.



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COVID-19 Resource Center

On your road to recovery, lean on Sax for up-to-date information relevant to your state and business.

Preparing for Recovery Loan Options & Forgiveness Strategies

May 7, 2020

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The information provided herein should not be used as a substitute for consultation with professional tax, accounting, legal, or other competent advisers.

Before making any decision or taking any action, you should consult a professional adviser who has been provided with all pertinent facts relevant to your particular situation.

Today's Agenda

- Introduction
- Main Street Lending Program
 - Main Street New Loan Facility
 - Main Street Priority Loan Facility
 - Main Street Expanded Loan Facility
- PPP Certification Requirements
 - SBA FAQs #31, #37, #39 & #43
- Loan Forgiveness
- Open Discussion

Introduction



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Main Street Lending Program

Main Street Lending Programs

Federal Reserve Action

- Federal Reserve takes historic \$2.3 trillion action on April 9, 2020
 - Updated guidance released April 30, 2020
- Aimed at households, small to mid-size businesses and state & local governments
- Number of different economic-bolstering measures, but we will focus on \$600 billion in funding associated with:
 - Main Street New Loan Facility (“MSNLF”)
 - Main Street Priority Loan Facility (“MSPLF”)
 - Main Street Expanded Loan Facility (“MSELF”)
- Launch date TBD
 - Application Process

Main Street Lending Programs

Overview

- Borrowers can use one, but not all, facilities
 - ***Loans are not forgivable!***
- Authorized under Section 13(3) of the Federal Reserve Act
- Federal Reserve Bank of Boston committed to lend to a single common special purpose vehicle (“SPV”) on a recourse basis
 - 95% SPV participation in MSNLF & MSELF
 - 85% SPV participation in MSPLF
- \$75 billion equity investment from the Treasury Department in the SPV
- SPV will cease purchasing loan participations on September 30, 2020
 - Federal Reserve & Treasury will assess and may adjust the program size

Main Street Lending Programs

Lender Eligibility

- Lender Eligibility Requirements
 - U.S. federally insured depository institution
 - Includes banks, savings associations or credit unions
 - U.S. branch or agency of a foreign bank
 - U.S. bank holding companies
 - U.S. savings and loan companies
 - U.S. intermediate holding companies of foreign bank organizations
 - U.S. subsidiaries of any of the organizations above
- Expected to conduct an assessment of each potential borrower's financial condition as part of application process
- MSNLF & MSPLF
 - If eligible borrower had other loans outstanding with eligible lender as of December 31, 2019, such loans must have internal risk rating equivalent to a “pass”
- MSELF
 - Eligible loan must have similar rating

Main Street Lending Programs

Borrower Eligibility (cont'd)

- Borrower Eligibility Requirements
 - Established prior to March 13, 2020
 - Not an ineligible business (discussed on following slide)
 - Meets at least one of the following two conditions
 - \$15,000 or fewer employees; or
 - \$5B or less in 2019 annual revenues
 - Created or organized in the U.S. or under U.S. laws with significant operations and a majority of employees in the U.S.
 - Can only participate in one of the three Main Street Facilities
 - Cannot participate in the Primary Market Corporate Credit Facility
 - Federal Reserve program designed to support large companies by
 - Purchasing eligible corporate bonds and
 - Lending through syndicated loans
 - Has not received support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act)
 - **PPP loans are not included in Title IV and thus do not impact eligibility**
 - Commercially reasonable effort to maintain payroll & retain employees

Main Street Lending Programs

Borrower Eligibility – Business Requirements

- For-profit businesses only
 - JVs maximum foreign ownership = 49%
 - Tribal business as defined un 15 U.S.C. Sec 657(b)(2)(C)
 - Federal Reserve may consider other forms (*i.e.*, NFP entities)
- Ineligible Businesses
 - Title 13, Section 120.110 of the Code of Federal Regulations
 - Subsections (b) – (j); and
 - Subsections (m) – (s)
 - PPP modifications to these eligibility requirements apply here as well
 - Refer to interim final rules released by SBA

Main Street Lending Programs

Loan Details

- **MSNLF & MSPLF:** Secured or unsecured term loan originated after April 24, 2020
- **MSELF:** Secured or unsecured term loan or revolving credit facility originated on or before April 24, 2020 that has at least 18 months of maturity remaining

Main Street Lending Program Loan Options	New Loans	Priority Loans	Expanded Loans
Term	4 years	4 years	4 years
Minimum Loan Size	\$500,000	\$500,000	\$10,000,000
Maximum Loan Size	Lesser of \$25M or 4x 2019 adjusted EBITDA	Lesser of \$25M or 6x 2019 adjusted EBITDA	Lesser of \$200M, 35% of outstanding and undrawn available debt, or 6x 2019 adjusted EBITDA
Risk Retention	5%	15%	5%
Payment (year one deferred for all)	Years 2-4: 33.33% each year	Years 2-4: 15%, 15%, 70%	Years 2-4: 15%, 15%, 70%
Rate	LIBOR + 3%	LIBOR + 3%	LIBOR + 3%

Main Street Lending Programs

Loan Details (cont'd)

- Additional loan details include
 - No prepayment penalties
 - Transaction Fee
 - Lender will pay a fee to the SPV at the date of origination
 - MSNLF & MSPLF = 100 basis points
 - MSELF = 75 basis points
 - May be passed along to the Borrower
 - Loan Origination/Upsizing Fee
 - Borrower will pay a fee to the Lender at the date of origination/upsizing
 - MSNLF & MSPLF = 100 basis points
 - MSELF = 75 basis points
 - SPV will pay an annual fee of 25 basis points to the Lender
 - Loans may be secured or unsecured
 - MSELF upsized tranche must be secured if the underlying loan is secured

Main Street Lending Programs

Lender Attestations & Certification

- **MSNLF, MSPLF & MSELF**

- Commit that it will not request that the Eligible Borrower repay debt extended by the Eligible Lender to the Eligible Borrower, or pay interest on such outstanding obligations, until the Eligible Loan or Upsized Tranche is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration.
- Commit that it will not cancel or reduce any of its committed lines of credit to the Eligible borrower, except in the event of a default.
- Certify that the methodology used for calculating the Eligible Borrower's adjusted 2019 EBITDA for the leverage requirement is the methodology it has previously used for adjusting EBITDA when extending credit to the Eligible Borrower or similarly situated borrowers on or before April 24, 2020.
- Certify that it is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.

Main Street Lending Programs

Borrower Attestations & Certifications

- MSNLF, MSPLF & MSELF

- Refrain from repaying the principal balance of, or paying any interest on, any debt until the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due.
 - **MSPLF Only:** At the time of loan origination, Eligible Borrower may refinance an existing debt to a lender that is **not the Eligible Lender**
- Commit to not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender.
- Certify that it has a reasonable basis to believe that, as of the date of origination of the Eligible Loan and after giving effect to such loan, it 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 time period.

Main Street Lending Programs

Borrower Attestations & Certifications (cont'd)

- MSNLF, MSPLF & MSELF

- Commit to follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act
 - An S corporation or other tax pass-through entity that is an Eligible Borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings.
- Certify that it is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.

PPP Certification Requirements (FAQs #31, #37, #39 & #43)

Certification Requirements

SBA FAQs #31, #37, #39 & #43

- Existing certification per CARES Act (in part)
 - The uncertainty of the current economic conditions makes necessary the loan request to support the ongoing operations
- Further clarified by SBA FAQs #31, #37, #39 & #43
 - Borrowers must make above certification in good faith, taking into account
 - their current business activity; and
 - their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business.
 - Example in FAQ #31 surrounds public enterprises, but all applicants must consider the implications
 - SBA issued FAQ #37 on April 28, 2020
 - Businesses owned by private companies must consider these stipulations

Certification Requirements

SBA FAQs #31, #37, #39 & #43 (cont'd)

- Treasury Secretary Mnuchin indicated on April 28, 2020 that loans of at least \$2M will be reviewed by the SBA
 - See SBA FAQ #39
- Lenders may rely on borrower's certification
- Any borrower that applied for a PPP loan prior to April 23, 2020 and repays the loan in full by May 14, 2020 will be deemed by SBA to have made the required certification in good faith.
 - SBA FAQ #43 (issued May 5, 2020) extended the repayment date from May 7, 2020 to May 14, 2020
 - FAQ #43 also indicates that further guidance on the review of the certification will be issued prior to May 14, 2020.
- Borrowers that return the funds by May 7, 2020 are eligible for the employee retention credit
 - Date may be extended to May 14, 2020

Certification Requirements

SBA FAQs #31, #37, #39 & #43 (cont'd)

AM I THE INTENDED RECIPIENT OF THE LOAN?

Questions you should be asking to determine if your business is an intended recipient include:

- Based on the facts and circumstances known at the time you applied for the loan, can you prove that you had a reasonable belief that your business was or would be negatively impacted:
 - Did you lose key customers or a significant number of customers, or anticipate that you would?
 - Did you have a valid basis to believe that customers would slow pay or become non-payers?
 - Did you lack access to financial resources to be able to withstand a decline in revenue?
- Can you *prove* the facts and circumstances for the first bullet point with written documentation?
- From the date that you applied for the loan and the date that you received it, has the business improved or declined?

Certification Requirements

SBA FAQs #31, #37, #39 & #43 (cont'd)

- **What if my business was not negatively impacted despite COVID-19 and I received a PPP loan?**
 - There are three considerations:
 1. **Certification:** If your business improved financially despite COVID-19, and you received a PPP loan, serious consideration needs to be given as to whether the certification was falsely made.
 2. **Forgiveness**
 3. **Repayment:** If the certification is believed by the government to have been falsely made, the government can require immediate repayment

Certification Requirements

SBA FAQs #31, #37, #39 & #43 (cont'd)

- Each borrower should consider the impact of this newly issued clause and document the reason(s) to support PPP eligibility. Examples include, but are not limited to:
 - Do you have access to capital outside the PPP (*i.e.*, line of credit, significant cash reserves, other capital resources)?
 - Is your business open? If yes, are you operating with a reduced staff?
 - Did you have a decline in current sales and/or a cancellation of future orders?
 - Have your receivable collections decreased and/or have your customers requested more favorable payment terms?
 - Any supply chain issues (*i.e.*, diminished access to product or materials, inability to deliver product, reduced access to labor market)?
 - Are your customers/vendors applying for PPP funding?

Certification Requirements

SBA FAQs #31, #37, #39 & #43 (cont'd)

- We encourage all businesses who have applied or plan to apply for the PPP loan to document their rationale as to why the loan is necessary to support ongoing operations.
- Preparation of a 30/60/90 day cash flow analysis taking into account loss of income, slowdown of receivable collections, lack of currently available credit facilities, potential employee layoffs or furloughs, debt repayments, projected expenses and other cash disbursement commitments would be one example to demonstrate that the PPP loan is needed to be able to support ongoing operations.
- Management / Board should formalize guidance

Loan Forgiveness

PPP Loan Forgiveness

Recap

- Caveat : SBA still needs to come out with additional guidance
- **Step 1:** Start with Eligible costs that are forgivable spent in the 8 week period:
 - Payroll costs (must be at least 75% of forgivable loan amount)
 - Certain non-payrolls costs (capped at 25% of forgivable loan amount)
 - Interest on mortgage obligations
 - Rent
 - Utilities
- **Step 2:** Apply formula that considers workforce reduction **(A)/(B)**
 - (A) Avg # of FTE employees during 8 week period beginning with the date of the loan origination
 - (B) Avg # of FTE employees from 2/15/19 – 6/30/19 or 1/1/20 – 2/29/20

PPP Loan Forgiveness

Recap (cont'd)

- Caveat : SBA still needs to come out with additional guidance
- **Step 3:** Decrease amount by certain employees whose wages were reduced during the 8 week period by an excess of 25% compared with the most recent full quarter during which the employee was employed prior to commencement of the period.
 - Keep in mind \$100K limit
- **Step 4:** For the period from February 15, 2020 – April 26, 2020 where there was a decrease in number of FTE employees or wages, you restore the FTE employee count or wages by June 30, 2020 to pre February 15, 2020 status.

PPP Loan Forgiveness

Open Questions

- The following questions still are unclear and need further guidance from the SBA:
 1. Will the 8-week period be extended?
 2. Are the costs for the 8-week period to be determined on a cash basis or an accrual basis?
 3. At least 75% of the loan proceeds shall be used for Payroll Costs. What happens if I spend less?
 4. Should full year bonuses and/or year end profit-sharing contributions be included in the forgiveness calculation?
 5. Does rent cover only costs for facilities or do equipment rentals count as rent for forgiveness purposes?
 6. How is full-time equivalent calculated?
 7. How are non-COVID-19 reductions in workforce and/or salary treated for purposes of the loan forgiveness reduction?
 8. Will the formula for salary reduction be pro-rata adjusted?
 9. Do the exceptions for headcount and/or salary reduction allow for a replacement of the terminated worker?

PPP Loan Forgiveness

Open Questions (cont'd)

- The following questions still are unclear and need further guidance from the SBA:
 10. What types of transportation costs qualify as utility costs?
 11. For employees re-hired by June 30th, is there a time period for which they need to be employed in order to count towards headcount/salary restoration?
 12. Will the expenses associated with the forgiven funds give rise to a tax deduction?
 - Per IRS Notice 2020-32 (issued April 30, 2020), expenses are not tax-deductible
 13. Will the forgiven funds be tax-exempt for state tax purposes?
 14. How will PPP forgiveness be impacted if a laid off employee declined a rehire opportunity?
 - Per SBA Q&A #40, the SBA & Treasury will issue guidance indicating that forgiveness will not be reduced if the borrower makes a good faith, written offer to rehire the employee.
 - Documentation of the employee's rejection should be kept
 - Employee may forfeit eligibility for continued unemployment compensation

Open Discussion



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- **For additional questions:** Email Covid19@saxllp.com
- Visit **Sax's COVID-19 Resource Center** found on Saxllp.com to register and for on-going information and resources.

Upcoming Webinars

- ***Thursday, May 14 @ 10AM - Preparing for Forgiveness – Updates on Loan Options & Forgiveness Strategies***

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