

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.

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COVID-19 Resource Center

Stay up-to-date with meaningful information relevant to your state and business.

Preparing for Recovery Managing Forgivable & Unforgivable Loans

April 16, 2020

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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 Expanded Loan Facility
- Key PPP & EIDL Takeaways & Considerations
- Loan Forgiveness

Introduction



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Main Street Lending Program

Main Street Lending Programs

Federal Reserve Takes Action

- Federal Reserve takes historic \$2.3 trillion action on April 9, 2020
- Aimed at households, small to mid-size businesses and state & local governments
- Funding programs and credit facilities designed to add liquidity to the struggling economy
- Number of different economic-bolstering measures, but we will focus on \$600 billion in funding associated with:
 - Main Street New Loan Facility
 - Main Street Expanded Loan Facility

Main Street Lending Programs

Eligibility

- Borrowers can use one, but not both, facilities
 - ***Loans are not forgivable!***
 - Does not impact PPP eligibility
 - Cannot participate in the Primary Market Corporate Credit Facility
- Borrower limits:
 - Up to 10,000 employees; or
 - Up to \$2.5 billion in 2019 annual revenues
- Borrowers must:
 - Be created or organized in the United States or under the laws of the United States;
 - Have significant operations in the United States;
 - Have a majority of its employees based in the United States; and
 - Have been in good financial standing prior to the COVID-19 crisis

Main Street Lending Programs

Loan Details – Main Street New Loan Facility

- For new loans that originate on or after April 8, 2020
- 4 year amortization period w/ 1 year deferral
- Adjustable rate of Secured Overnight Financing Rate (“SFR”) + 250-400 basis points
- Minimum loan = \$1 million
- Maximum loan is the lesser of:
 - (i) \$25 million; or
 - (ii) an amount that, when added to the Eligible Borrower’s existing outstanding and committed but undrawn debt, does not exceed 4 times the Eligible Borrower’s 2019 EBITDA
- No prepayment penalty
- Servicing / Facility fees

Main Street Lending Programs

Loan Details – Main Street Expanded Loan Facility

- Increase the size of loans outstanding prior to April 8, 2020
- 4 year amortization period w/ 1 year deferral
- Adjustable rate of SOFR + 250-400 basis points
- Minimum loan = \$1 million
- Maximum loan is the lesser of:
 - (i) \$150 million; or
 - (ii) 30% of the Eligible Borrower's existing outstanding and committed but undrawn bank debt; or
 - (iii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed 6 times the Eligible Borrower's 2019 EBITDA
- No prepayment penalty
- Servicing / Facility fees

Main Street Lending Programs

Attestations & Certifications

- Both the Lender and the Borrower must make additional attestations and certifications beyond the general requirements
- Eligible Borrowers may not:
 - Use the proceeds of the Eligible Loan to repay other loan balances and/or lines of credit; and
 - Repay other debt of equal or lower priority, with the exception of mandatory principal payments, unless the Eligible Borrower has first repaid the Eligible Loan in full.

Main Street Lending Programs

Attestations & Certifications (cont'd)

- Eligible Borrowers must also attest that they:
 - Require financing due to the exigent circumstances presented by the COVID-19 pandemic;
 - Will use the proceeds of the loan to make reasonable efforts to maintain payroll and retain employees during the term of the Eligible Loan.;
 - Meet the EBITDA leverage conditions (discussed earlier); and
 - Will 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 (discussed later).

Main Street Lending Programs

Attestations & Certifications (cont'd)

- Eligible Lenders must attest that:
 - The proceeds of the Eligible Loan will not be used to repay or refinance pre-existing loans or lines of credit made by the Eligible Lender to the Eligible Borrower; and
 - They will not cancel or reduce any existing lines of credit outstanding to the Eligible Borrower
- Both the Borrower and the Lender must certify that:
 - The Borrower is eligible to participate, including in light of the conflicts of interest prohibition in Section 4019(b) of the CARES Act.
 - CARES Act Section 4019(b) points to the provisions of CARES Act Section 4003 & Section 4004

Main Street Lending Programs

CARES Act Section 4003 & 4004

- Equity Transaction Restrictions
 - Certain stock buybacks and other equity-repurchase transactions; and
 - Dividends or other capital distributions with respect to common stock
- Workforce Retention
 - Retain at least 90% of the full compensation and benefits of the workforce until September 30, 2020;
 - Restore at least 90% of the workforce that existed as of February 1, 2020;
 - Will restore all compensation and benefits no later than 4 months after the termination of the public health emergency
 - Jobs will not be outsourced/offshored from loan inception – 2 years after the loan is repaid/satisfied

Main Street Lending Programs

CARES Act Section 4003 & 4004 (cont'd)

- Compensation limitations
 - Officers or employees with 2019 compensation from \$425K to \$3M
 - Compensation frozen until 12 months after loan is paid off/satisfied
 - Severance pay and/or other termination-related benefits shall not exceed 2x the compensation received in 2019
 - Officers or employees with 2019 compensation >\$3M
 - Compensation limited until 12 months after loan is paid off/satisfied as follows:
 - \$3M plus 50% of the amount in excess of \$3M
- Exceptions for certain collectively-bargained salaries
- Additional restrictions & limitations
 - Cannot be a debtor in bankruptcy
 - Must honor existing collective bargaining agreements
 - Remain neutral in union organizing efforts

Key PPP & EIDL Takeaways & Considerations

Loan Programs

Key General & EIDL Takeaways & Considerations

- General Takeaways & Considerations
 - Applicants are eligible for loans under both programs
 - Main Street Lending Program eligibility
 - Interactions with other deferrals, credits and incentives
- Economic Injury Disaster Loans
 - \$2,000,000 maximum loan balance at SBA discretion
 - \$10K advance limit up to \$1k x 10 employees
 - Net worth and taxable income limitations
 - Detailed application process through SBA
 - No forgiveness aspect (other than potential \$10K advance)
 - 30 year amortization, 2.75% - 3.75% interest rate

Loan Programs

Key PPP Takeaways & Considerations

- Paycheck Protection Program Loans
 - \$10,000,000 maximum loan balance (formulaic computation)
 - Forgiveness of some/all of the debt is available
 - Payroll Cost Clarifications
 - \$100K + Non-Cash Benefits
 - SE Income of general active partners
 - Individual partners in partnerships may not submit separate PPP applications
 - Borrowers may use payroll from calendar 2019 or trailing 12 months
 - Differences between use of funds and funds eligible for forgiveness
 - Application process completed at SBA designated banks
 - 2 year amortization period, 1.0% interest rate
 - Interest accrual commences upon funding

Loan Programs

Key PPP Takeaways & Considerations (Self-Employed)

- Self-Employed Eligibility
 - Filed or will file 2019 Schedule C, *Profit or Loss from Business*
 - Operating as of February 15, 2020
 - Must plan to file Schedule C with 2020 tax return
 - If there are employees on payroll:
 - Form 941;
 - State quarterly wage unemployment tax reporting forms; and
 - Evidence of retirement and health insurance contributions
 - Owner compensation loan forgiveness limited to 8 weeks of 2019 profit
- Documentation / PPP Application requirements
 - 2019 Schedule C;
 - 2019 Form(s) 1099-MISC, invoice, bank statement or book of record;
 - 2020 invoice, bank statement or book of record
 - February 15, 2020 payroll statement or similar documentation (if applicable)

Status of the Paycheck Protection Program

- As of April 15, 2020, the SBA is reporting that over 1,292,000 applications have been approved totaling over \$289 billion. That leaves about \$60 billion left.

Loan Forgiveness

PPP Loan Forgiveness

General Rules

- SBA clarification of forgiveness expected via additional guidance
- Payroll costs include:
 - Compensation of employees (principal place of residence is the US)
 - Wages, Salaries, Commissions or similar compensation
 - Payment of vacation, parental, family, medical or sick leave, allowance for separation or dismissal
 - Payment for provision of employee benefits consisting of
 - Group Health Care Coverage including insurance premiums
 - Retirement
 - Payment of State and Local Taxes Assessed on Employees Compensation
- Per the SBA Interim Final Rule, not more than 25% of the loan forgiveness may be attributable to non-payroll costs.

PPP Loan Forgiveness

General Rules (cont'd)

- Only 25% can be used for the following payments over the eight–week period following the date of the loan:
 - Payments on interest on mortgage obligations incurred before February 15, 2020;
 - Rent payments on leases entered into prior to February 15, 2020; and/or
 - Utility payments under service agreements entered into prior to February 15, 2020
- Utilities include payments for electricity, gas, water, transportation, telephone or internet access

PPP Loan Forgiveness

Headcount Decrease

- Loan amount eligible for forgiveness may be reduced (but not increased) by the following 2 part formula:
 - Part I
 - (a) Average number of full-time equivalent (“FTE”) employees during the 8-week period beginning with the date of the origination on the loan
 - (b) Average number (at the borrower’s discretion) of FTE employees from
 - February 15, 2019 – June 30, 2019; or
 - January 1, 2020 – February 29, 2020
 - Part II
 - (c) Paycheck Protection Program loan used for eligible costs
- The formula is $(a) / (b) \times (c)$

PPP Loan Forgiveness

Salary Decrease

- Loan amount eligible for forgiveness may also be reduced by decreases in salary and wages of any employee if:
 - Decrease occurs during the 8-week period beginning with the date of the origination on the loan; and
 - The decrease is in excess of 25% of the of the total salary or wages of the employee during the most recent full quarter during which the employee was employed prior the commencement of the 8-week period
 - Employees who received annualized wages or salary in excess of \$100,000 are excluded

PPP Loan Forgiveness

Exemptions from Reductions

- Exemptions from forgiveness reductions are available if:
 - During the period from February 15, 2020 – April 26, 2020, there is a workforce or salary reduction that meets the criterion on the earlier slides, but:
 - Borrower restores FTE employees to pre-February 15, 2020 amounts by June 30, 2020; and/or
 - Borrower restores the reduced salaries or wages for employees to pre-February 15, 2020 amounts by June 30, 2020
- The following is an example of how to calculate the Forgivable Portion of the Loan (based on what we know now)

PPP Loan Forgiveness

Documentation Requirements

- Documentation Requirements:
 - # of FTE employees on payroll and pay rates;
 - Payroll tax filings with the Internal Revenue Service;
 - State income, payroll, and unemployment filings;
 - Cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, covered lease obligations, and covered utility payments;
 - Independent Contractors & Sole Proprietors – See earlier slides
 - Certification from an authorized representative that:
 - The documentation presented is true and correct; and
 - The amount for which forgiveness is requested was used to retain employees, or make interest payments on mortgage obligations, rent obligations and/or utility payments in force prior to February 15, 2020
- Lenders have 60 days from receipt of documentation to render decision

PPP Loan Forgiveness

Open Questions

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



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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.

- **For additional questions:** Email Covid19@saxllp.com

Upcoming Webinars

- *Monday, April 20 @ 2 PM*
State and Local Tax Impact & Implications from COVID-19

Visit **Sax's COVID-19 Resource Center** found on Saxllp.com to register and for on-going information and resources.

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