

PPP Loan Forgiveness and Other Lending Program Updates

Doug Criscitello, Managing Director, Public Sector, Grant Thornton

William Eck, Partner, Seyfarth Shaw LLP

Stanley S. Jutkowitz, Senior Counsel, Seyfarth Shaw LLP

Leslie Kersey, Counsel, Seyfarth Shaw LLP

Aselle Kurmanova, Counsel, Seyfarth Shaw LLP

Monday, June 1, 2020

Seyfarth Shaw LLP

“Seyfarth” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).

©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



Speakers



STANLEY S. JUTKOWITZ
Senior Counsel
Corporate
Washington, DC



DOUG CRISCITELLO
Managing Director
Public Sector
Grant Thornton



ASELLE KURMANOVA
Counsel
Corporate
New York



LESLIE KERSEY
Counsel
Corporate
New York



WILLIAM ECK
Partner
Corporate
Washington, DC



Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Seyfarth Shaw LLP

“Seyfarth” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).
©2020 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



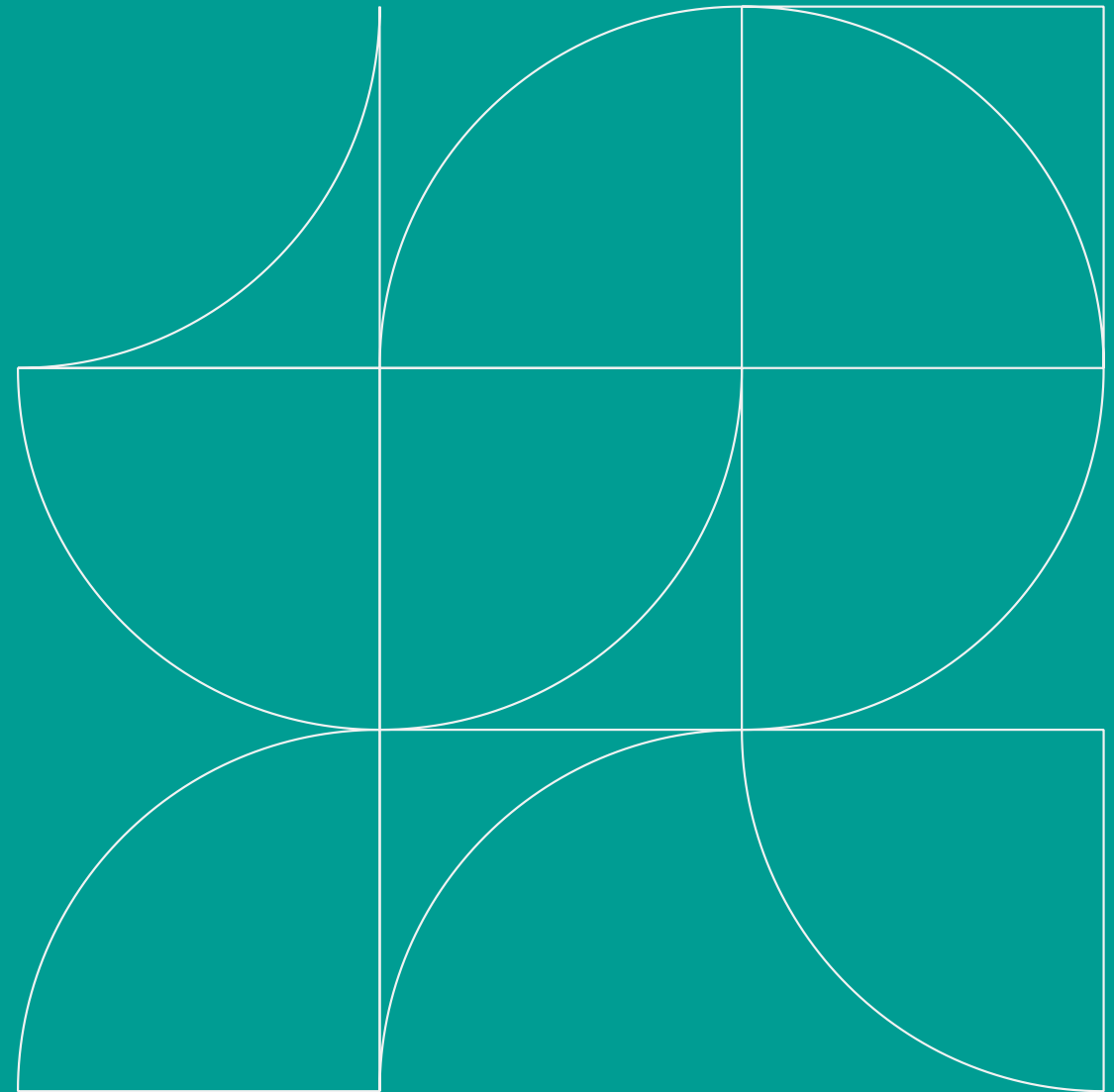
**Visit Seyfarth's COVID-19
Resource Center to sign
up for daily updates:**

www.seyfarth.com/returntobusiness

Agenda

- 1** | Legislative Update
- 2** | Main Street Lending Programs
- 3** | SBA Lending Programs
- 4** | PPP Loan Forgiveness
- 5** | Q&A

Legislative Update





Legislative Update

On May 28, House overwhelmingly (417-1) passed **Paycheck Protection Program Flexibility Act**

- Extends covered period to 24 weeks
- Exemption for rehires extended to 12/31/20
- Reduces required payroll share to 60%
- Increases loan term to 5 years
- Allows payroll tax deferral for forgiveness recipients

Similar legislation in Senate

- Timing of action uncertain, week of June 1?

If either bill enacted, will require substantial changes to forgiveness application and guidance

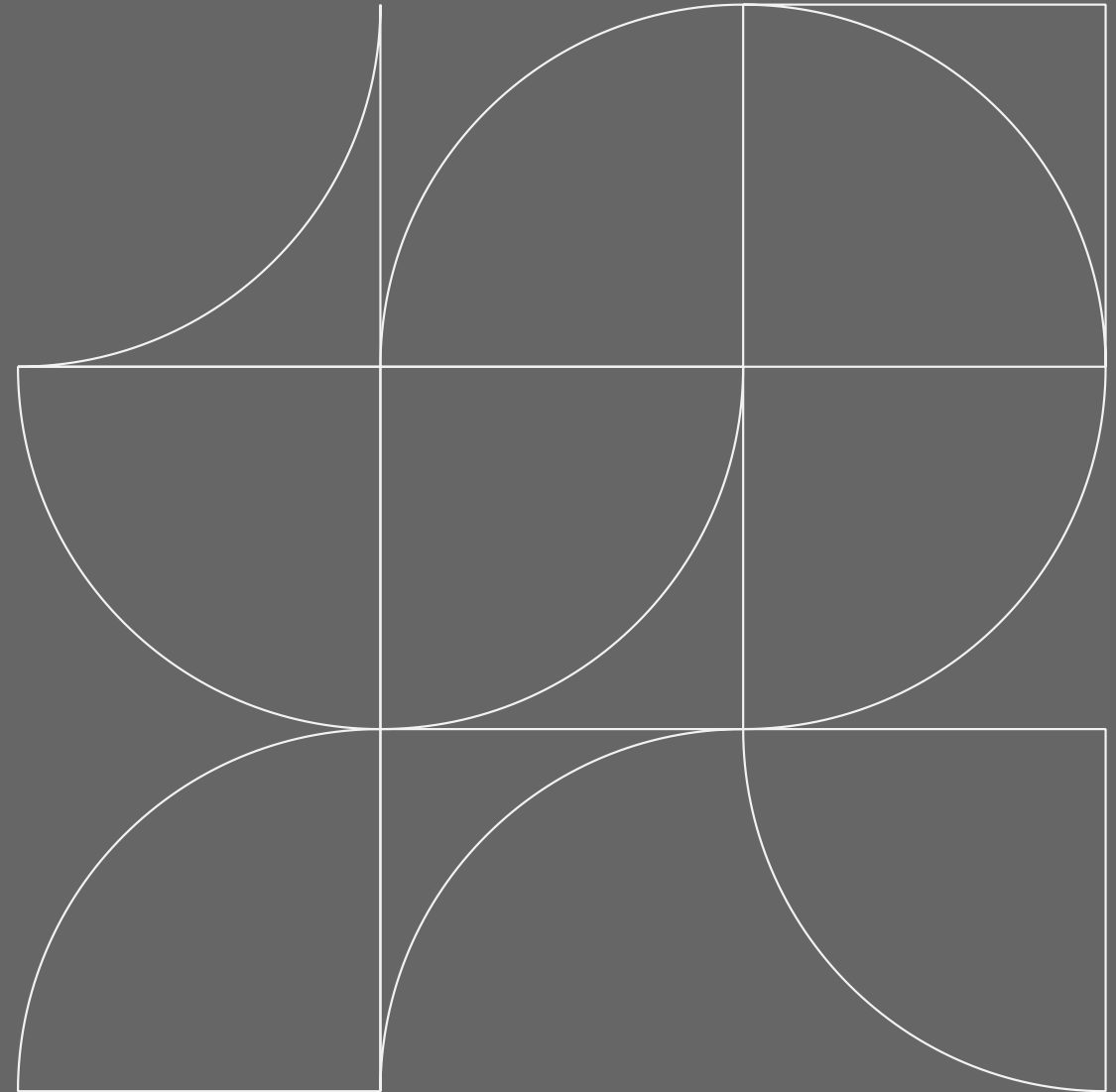
Legislative Update

Additional Relief Measures

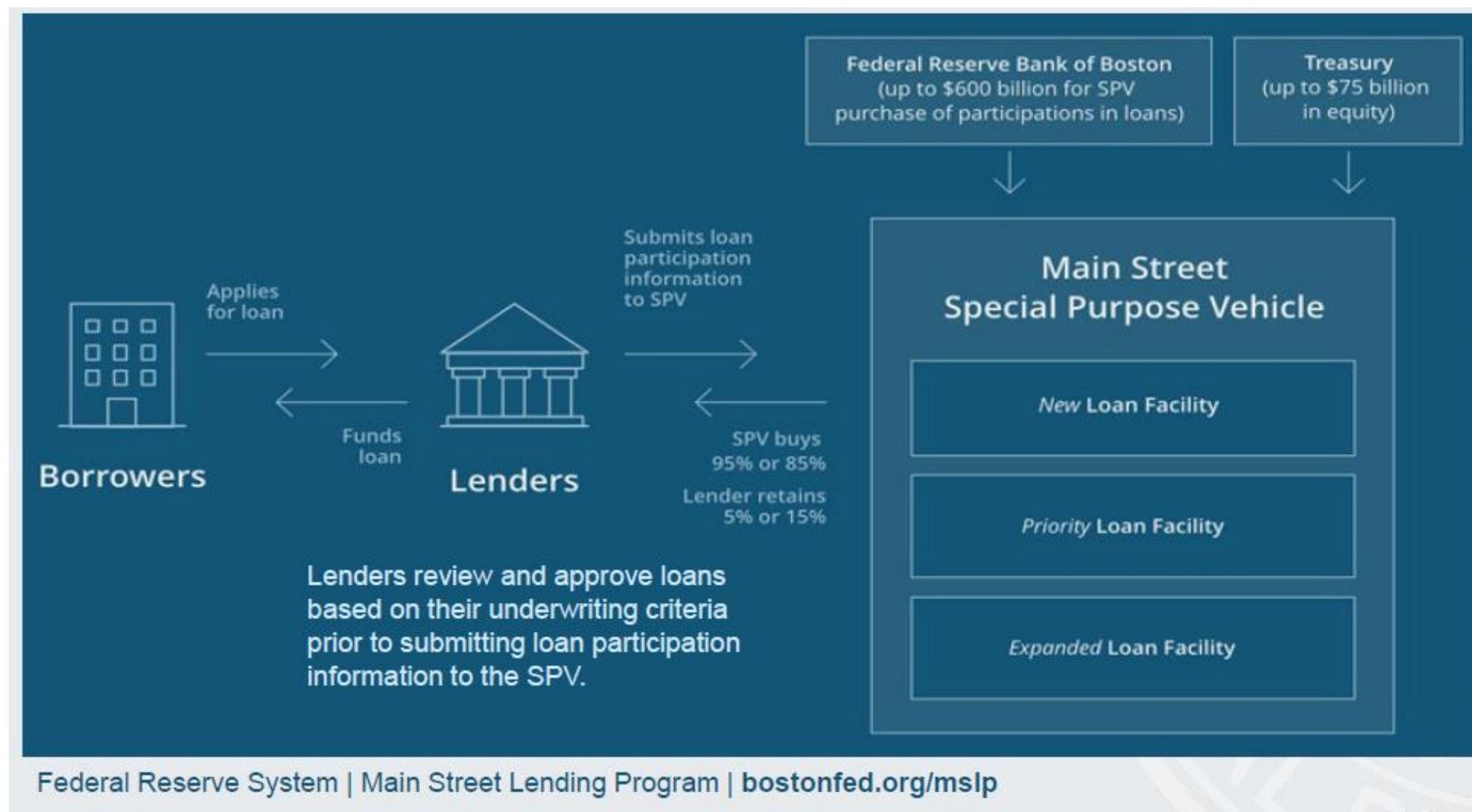
On May 15, House narrowly passed \$3T **Health & Economic Recovery Omnibus Emergency Solutions (HEROES) Act**

- \$1 trillion to state & local governments for any purpose
- \$200 billion for essential workers hazard pay
- \$75 billion for testing, contact tracing & treatment
- Add'l payments to Americans (\$1,200/family member, up to \$6,000 per household)
- Enhancements to new employee retention tax credit
- OSHA required to issue strong worker safety regulations
- \$10 billion for SBA EIDL
- Extends weekly \$600 federal unemployment payments
- \$175 billion in support for renters and homeowners
- 15% increase to SNAP benefits
- New resources to ensure safe elections, accurate Census & funding for USPS

Main Street Lending Programs



Main Street Lending Program Overview



Main Street Loans and Key Terms

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	The lesser of \$25M or an amount that, when added to outstanding and undrawn available debt, does not exceed 4.0x adjusted 2019 EBITDA	The lesser of \$25M or an amount that, when added to outstanding and undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA	The lesser of \$200M, 35% of existing outstanding and undrawn available debt, or an amount that, when added to outstanding and undrawn available debt, does not exceed 6.0x adjusted 2019 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%

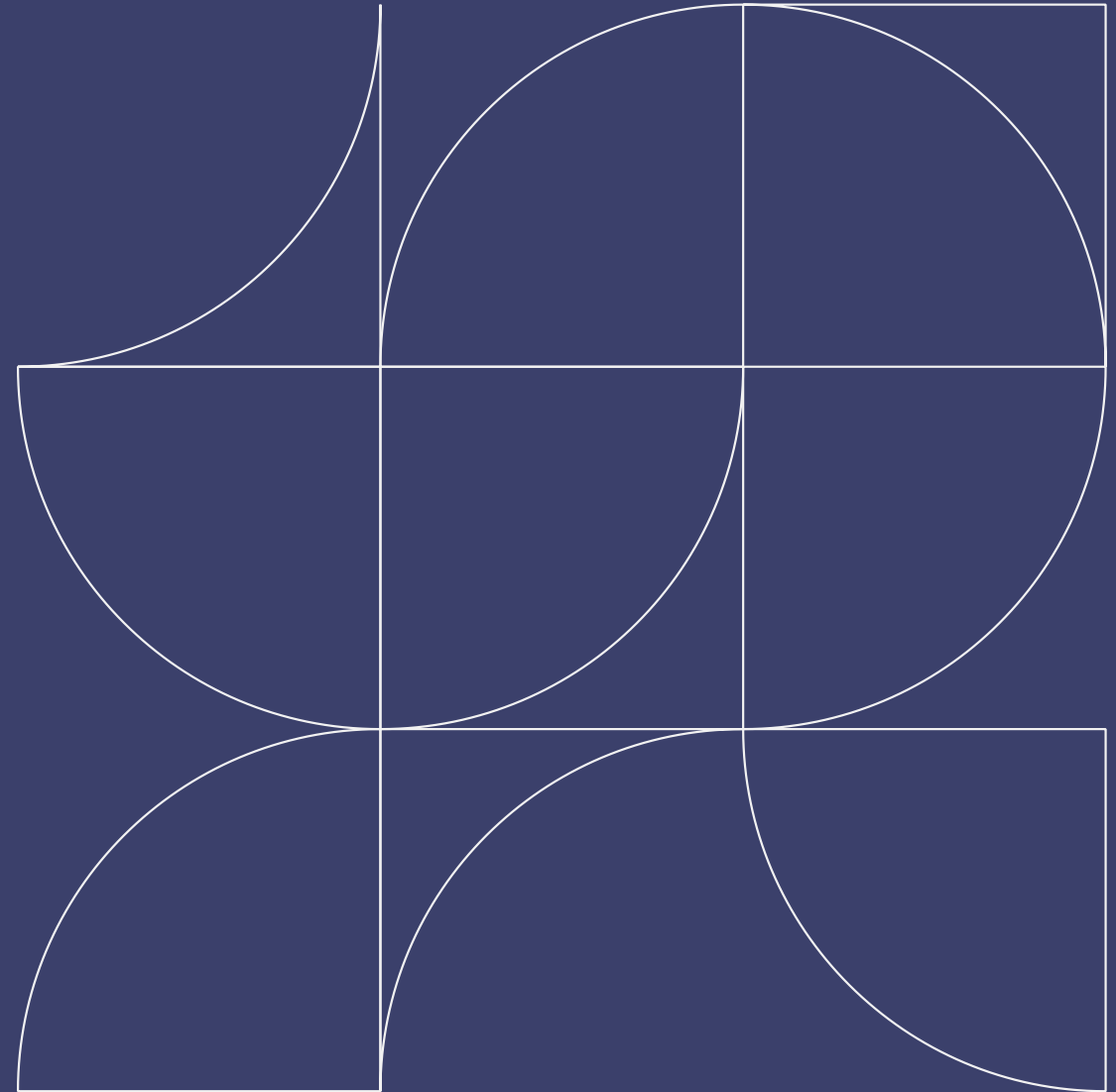
Participation Eligibility

- Borrower eligibility
 - U.S. Presence Test
 - U.S. business established prior to March 13, 2020
 - “significant operations”/”majority of employees” in the U.S.
 - Size Test
 - Up to 15,000 employees or up to \$5 billion in 2019 annual revenue
 - Must not be an Ineligible Business
- Lender eligibility
 - U.S. federally insured depository institutions
 - U.S. bank holding companies
 - U.S. savings and loan holding companies

Certifications and Covenants; Disclosure

- Borrower certifications, conditions and covenants
 - Eligibility
 - Use of proceeds
 - Solvency
 - Compensation/distribution restrictions
 - Participation in other stimulus programs
- Lender certifications
 - Loan eligibility
 - Adjusted 2019 EBITDA and calculation methodology
 - Use of proceeds
 - Cancellation of existing lines of credit
 - Mandatory prepayment
- Disclosure by the Federal Reserve

SBA Lending Programs



Other Available SBA Programs



SBA Credit Assistance Beyond PPP

- Debt Relief
 - SBA will pay 6 months of principal, interest & any associated fees borrowers owe for current 7(a), 504 & Microloans in regular servicing status as well as new 7(a), 504 & Microloans disbursed prior to 9/27/20
- Disaster Loans
 - Economic injury disaster loans provide relief to firms experiencing a temporary loss of revenue. Direct loans from SBA up to \$150,000, with \$10,000 advance that does not have to be repaid
 - Presently limited to agriculture-related businesses
- Bridge Loans
 - Small businesses can access up to \$25,000 quickly from SBA Express Lenders while applying for economic injury disaster loans

Key differences btw MSLP & SBA

MSLP aimed at larger firms

- Up to 15,000 employees or \$5B in revenue
- Higher loan amounts
- Shorter term
- Leverage existing lines

SBA focused on smaller firms

- Size standards thresholds
- Loans amounts lower
- Terms generally longer

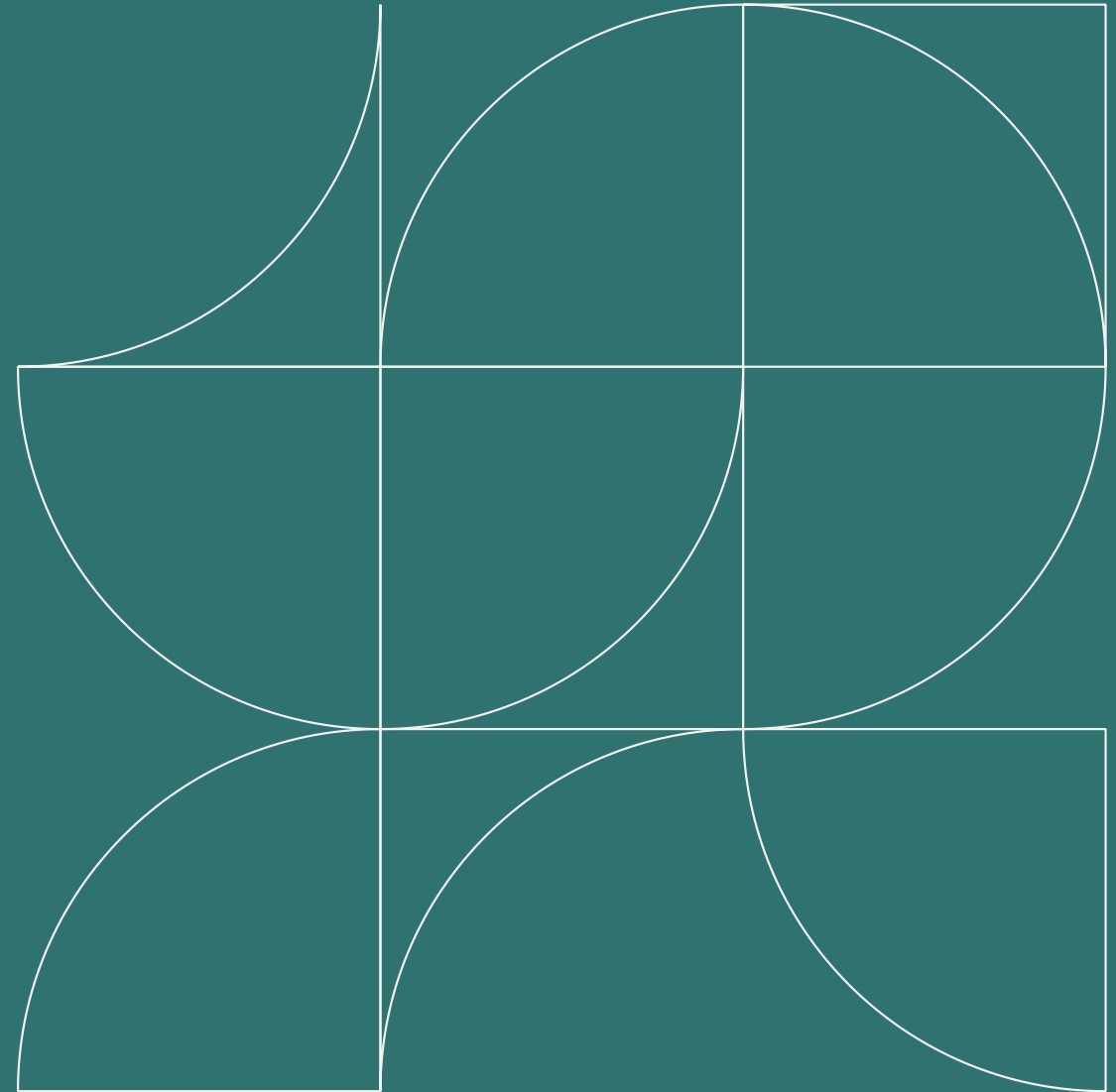
Similarities across interest rates & deferral policies

PPP recipients eligible for MSLP but cannot use other SBA loans for same purposes

SBA Credit Programs

	PPP	Debt Relief	EIDLs & Advance	SBA Express Bridge Loan	SBA Express
Status	Funds remain available as of 6/1/20	Open	Currently open to agricultural businesses only	Open	Amount increased to \$1M thru 12/31/2020
Eligibility	Firms meeting SBA size standards & non-profits with < 500 employees; operating as of 2/15/20	7(a) loans not made under PPP, 504 loans and microloans; disaster loans not eligible	Firms meeting SBA size standards and non-profits with < 500 employees; operating as of 1/31/20	Firms meeting SBA size standards. No credit available elsewhere; operating as of 3/13/20	Firms meeting SBA size standards & showing need; operating for at least 2 years
Lender	SBA-certified bank/credit union	Borrower's current SBA-certified lender	SBA	SBA-certified bank/credit union	SBA-certified bank/credit union
Term	2 years	SBA to pay 6 months P&I for current borrowers or new loans thru 9/27/20	Up to 30 years	Up to 7 years	Up to 25 years real estate; 10 years for most other purposes
Amount	250% of monthly payroll up to a maximum of \$10M	Up to \$5M 7(a) & 504	Normally \$2M but reportedly capped at \$150,000 now	Up to 25K	Up to \$1M
Interest Rate	1.00%	Prime + 2.25% or 2.75% for 7(a)	3.75% for businesses, 2.75% for non-profits	Not to exceed Prime + 6.5%, fixed or variable	Not to exceed Prime + 6.5%, fixed or variable
Forgiveness	Yes	No	None	May be repaid with proceeds from EIDL	No
Usage	Employee salaries & benefits; overhead	Support survival and/or reopening	Fixed debts, payroll, accounts payable & other bills	Working capital to support survival or reopening	Real estate, equipment, working capital

PPP Loan Forgiveness





Maximum Loan Forgiveness Amount

- Maximum forgiveness amount is lesser of:
 - Principal amount of the loan
 - Total forgivable costs less reductions for wage/salary and FTE reductions
 - Payroll costs divided by 0.75
 - Unforgiven portion can be repaid over two years at 1% interest.

Loan Forgiveness Updates



Covered Period

- Payroll costs - borrower with bi-weekly or more frequent payroll cycle can choose between two options:
 - 8 weeks beginning on date of loan disbursement (***covered period***)
 - 8 weeks beginning on first day or borrower's first payroll cycle in the covered period (***alternative payroll covered period***)
- Non-payroll costs - 8 weeks beginning on date of loan disbursement

Loan Forgiveness Updates



Paid vs. Incurred

- Payroll Costs
 - Generally forgiveness-eligible if paid or incurred during the covered period or alternative payroll covered period
 - **Paid** on the day paychecks are distributed or borrower originates an ACH credit transaction
 - **Incurred** on the day the employee's pay is earned (i.e., on the day the employee worked or, if not working, would have performed work)
 - Also forgiveness eligible if incurred in covered period or alternative payroll covered period and paid on or before next regular payroll date
 - Salary, wages, or commission payments to furloughed employees; bonuses; and hazard pay paid during applicable eight-week period are eligible for forgiveness - subject to \$100,000 annualized cap
 - Issues around “owner-employees”

Loan Forgiveness Updates



Paid vs. Incurred

- Non-Payroll Costs
 - Generally forgiveness-eligible if paid during covered period or incurred during the covered period and paid on or before the next regular billing date -- even if the billing date is after the covered period
 - Rent and utility prepayments generally ok
 - Mortgage prepayments prohibited

Loan Forgiveness Updates



Wage and Salary Reductions

- Amount of salary cut for any employee employed by the company during the covered period or alternative covered period in excess of 25% of the employee's total salary or wages January 1 to March 31, 2020, and either
 - (i) did not receive annualized compensation of \$100,000 or more in any pay period in 2019, or
 - (ii) was not employed by employer in 2019

Loan Forgiveness Updates



FTE Related Reductions

- Reduced proportionally for reductions in the average number of FTEs during the 8-week covered period compared to the average number of covered employees per week during a reference period.
- Reference periods can be one of the following:
 - 2/15/19 – 6/30/19
 - 1/1/20 – 2/29/20
 - Seasonal employees: the average number of FTEs per week between 5/1/19 – 9/15/19

Loan Forgiveness Updates



Safe Harbors

- FTE Reduction Exceptions
 - Positions for which:
 - The borrower made good faith, written offer to rehire and restore the reduced hours of an employee during the covered period (or alternative payroll covered period)
 - The offer was for the same salary/wages as earned in the pay period prior to separation
 - The offer was rejected
 - The borrower has records documenting the offer and rejection, and
 - The borrower informed the state unemployment insurance office of the offer and rejection within 30 days.
 - An employee was fired, resigned or voluntarily requested a reduction in hours

Loan Forgiveness Updates



Safe Harbors

- FTE Reduction Exceptions
 - No double penalty for salary decline due to FTE reduction
 - Reduction only applies to the portion of the decline in employee salary / wages that is not attributable to FTE reduction
 - Calculate the average FTE
 - FTE is based on a 40-hour work week
 - Simple method: .5 FTE for those who worked fewer than 40 hours per week, however this could understate FTE's if employees work less than 40 hours but more than 20 hours per week

Loan Forgiveness Updates



Safe Harbors

- Salary / Wage Reduction
 - Assessed on an employee by employee basis
 - Borrower is exempt from a reduction if both:
 - (i) the borrower reduced that employee's compensation by more than 25% in the period 2/15/20 to 4/26/20, and
 - (ii) the average annual salary / wages of that employee as of 6/30/20 is equal or greater than the employees annual salary / wages as of 2/15/20
 - NOTE: the implication of “average” in this context in unclear

Loan Forgiveness Updates



Safe Harbors

- FTE Safe Harbor Reduction
 - The Borrower is exempt from reduction in the number of FTE employees if both of the following are met:
 - (i) the borrower reduced its average FTE employee level in the period 2/15/20 to 4/26/20, and
 - (ii) the borrower restored, by not later than 6/30/20, its total FTEs to the levels of the pay period inclusive of 2/15/20
 - NOTE: this implies that so long as the borrower had any reduction in this period or after it can be cured by 6/30/20
- Additional FTE Safe Harbor
 - If a borrower has not reduced either (i) the number of its employees or (ii) the average paid hours of employees between 1/1/20 and the end of the covered period or the alternative covered period, then there is no reduction in the forgiveness amount

Loan Forgiveness Updates



Unanswered Questions

- There is no guidance related to if and what a borrower is required to do after June 30 or the end of the covered period (or alternative covered period).
- It is unclear what borrowers should do if June 30 falls within the covered period (or alternative covered period).
- If the forgiveness review process is not completed prior to the expiration of the 6 month payment deferral, will (or can) the deferred period be extended until a forgiveness decision is rendered?

Loan Forgiveness Updates



Taxes

- PPP loan proceeds are not taxable income
- Expenses paid with PPP loan and forgiven proceeds are not deductible



Questions?

Thank you!

COVID-19 Webinar Series

Upcoming Webinars

June 2: Returning to Business in Illinois – Unique Challenges for Companies Operating in Illinois

June 4: Securities Litigation and Regulation in the COVID Era: Recent Developments and Expected Trends

June 4: Future of Automotive: Digital Retailing Before, During, and After COVID-19

June 9: Protecting Trade Secrets in the Pharmaceutical Industry in the Age of COVID-19