

Summary of COVID-19 Relief Programs Under the CARES Act

May 12, 2020

Since March 13, 2020, the United States has been operating under a State of Emergency declared by President Donald Trump in response to the spread of COVID-19. On March 27, [the Coronavirus Aid, Relief, and Economic Security Act](#) (CARES Act) was passed by Congress and signed into law by the President. The economic stimulus package in the CARES Act (as amended by the Paycheck Protection Program and Health Care Enhancement Act on April 24) provides three sets of benefits for businesses and certain nonprofits, as more fully described below.

The following table summarizes the sections and provisions likely to be of importance to corporations and sponsors and their portfolio companies, divided into three broad categories:

- (1) programs administered by the Small Business Administration (**SBA**) under Title I of the CARES Act providing expanded eligibility and payroll support for small businesses (generally those with fewer than 500 employees);
- (2) lending programs administered by the Federal Reserve (**Fed**) under Title IV of the CARES Act intended to ensure the stabilization and continued functioning of the short- and medium-term corporate debt markets; and
- (3) tax relief provisions intended to provide taxpayers with access to cash as quickly as possible.

The programs described herein are developing in an emergency context with highly fluid, dynamic economic effects that will force them to change rapidly and in substantive ways. This chart was prepared based on information available as of May 12, 2020, and should be relied on only as of such date.

An overview of the main governmental aid programs aimed at supporting businesses in Western Europe and Scandinavia can be accessed [here](#). For a catalog of all alerts and communications regarding new developments, please visit the [COVID-19 Resource Center](#) on sidley.com. This is the best place to find all of the most current information on what the firm is saying about COVID-19 as the content continues to evolve and the webpages are updated regularly.

TITLE I LOAN PROGRAMS

(Small Business Assistance)

General Eligibility Criteria for SBA Programs	SBA Affiliation Rules
<ul style="list-style-type: none"> □ Number of full-time, part-time and “other basis” employees with primary residence in U.S., combined with domestic and foreign affiliates, cannot be more than the greater of <ul style="list-style-type: none"> ▪ 500 or ▪ size standard for specific industry (up to 1,500)¹ □ Organized for profit (except certain types are excluded)² □ Place of business in U.S. □ Operate primarily in U.S. <i>or</i> significant contributions to U.S. economy □ Unable to obtain credit elsewhere <p><i>Note: SBA eligibility is expanded for CARES Act programs, as noted below.</i></p>	<ul style="list-style-type: none"> □ Broad affiliation rules; entities deemed to be affiliates “when one controls or has the power to control the other, or a third party or parties controls or has the power to control both.” Also includes minority investors with certain negative control rights, including ability to prevent quorum or block action by board or shareholders.³ If negative control becomes problematic, consider feasibility of irrevocably giving up such right(s). □ Explicit exception under CARES Act for: <ul style="list-style-type: none"> ▪ Certain hospitality and food service providers (NAICS code 72) with not more than 500 employees per physical location ▪ Businesses operated as franchise with SBA-assigned franchise code; ▪ SBIC-funded businesses; and ▪ Faith-based organizations □ Summary of SBA Affiliation Rules (April 3)

¹ The SBA has established a [size standards tool](#) to help businesses determine whether they qualify as a small business concern.

² A full list of ineligible types of businesses for general SBA programs can be found at [13 CFR § 120.110](#) and the [SBA Standard Operating Procedure](#).

³ Negative control is not found to exist where block rights are crafted to protect the investment of a minority shareholder, and do not impede the majority's ability to control a company's operations or to conduct the company's business as it chooses. The following are examples of ordinary actions essential to the daily operation of a company where a minority shareholder's block right **would constitute** negative control: payment of dividends (under certain circumstances); approval over a Company's budget or changes thereto; hiring and firing a company's officers; setting employee compensation; borrowing money; entering into contracts; buying, owning, managing, mortgaging or otherwise disposing of company property; purchasing equipment; incurring expenses over a certain threshold; amending or terminating leases; bringing lawsuits; and encumbering assets.

The following are examples of major decisions where the SBA's Office of Hearings and Appeals (OHA) has determined a minority shareholder's block right **would not** constitute negative control: admission of new members; withdrawal of existing members; dissolving an entity; increasing or decreasing the size of the board; increasing or decreasing the number of authorized interests; reclassifying interests; amending the bylaws of a corporation; issuing additional capital stock; entering into a substantially different business; sale of all or substantially all of a company's assets; mortgage or encumbrance of all or substantially all of a company's assets; committing any act that could result in a change in the amount or character of a company's contribution to capital; committing any act that would make it impossible to carry on the ordinary business of a company; committing any act in contravention of the operating agreement; amending a company's operating agreement in any manner that materially alters the rights of existing members; and filing for bankruptcy.

Program		Terms	Practice Notes	Further Reference
EXISTING PROGRAMS	Section 7(a) <i>SBA Loan Guarantee Program</i>	<ul style="list-style-type: none"> ○ 9 different types of loans with different terms and conditions (<i>e.g.</i>, standard loan, veteran loan, etc.), almost always requiring personal guarantees, collateral + upfront fees ○ Most loans are made by private institutions and guaranteed by SBA for 75-85% of the loan ○ Loans can be used for most business purposes, but some come with restrictions on use of funds 		North American Industry Classification System (NAICS) Size Standard Designations
	EIDL <i>Economic Injury Disaster Loan Program</i>	<ul style="list-style-type: none"> ○ Loans of up to \$2M to businesses following disaster declaration ○ Interest Rate: For profits: 3.75%; Nonprofits: 2.75% 	<ul style="list-style-type: none"> ○ EIDL loan obtained on or after 1/31/20 can be refinanced into Title I paycheck protection program (PPP) (up to the \$10M max), thus become eligible for loan forgiveness 	Apply directly with the SBA
	SBIC <i>Small Business Investment Company Loan Program</i>	<ul style="list-style-type: none"> ○ SBA-regulated investment funds can make equity/debt investments in qualifying small businesses (guaranteed by SBA) ○ Important exceptions to affiliation rules: borrower will not be deemed to be affiliated with (and not affiliated with other companies controlled by): <ul style="list-style-type: none"> ○ Venture capital operating companies (including many PE funds); ○ Investment companies registered under the 40 Act; ○ Unregistered investment companies if principal purpose is securities investment 	<ul style="list-style-type: none"> ○ Given exceptions to the affiliation rules for the SBIC program, certain portfolio companies controlled by PE sponsors may not be deemed to be affiliated ○ Because the affiliation rules are waived for SBIC loan recipients, portfolio companies eligible for SBIC loans should consider obtaining SBIC loan in order to qualify for PPP loans 	List of SBIC Investors

New Program	Additional Eligibility	Terms	Practice Notes	Further Reference
<p>PPP <i>Paycheck Protection Program</i></p> <p><input checked="" type="checkbox"/> In Effect <input type="checkbox"/> Awaiting Guidance</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Available through June 30, 2020 <input type="checkbox"/> For profit business, including partnerships⁴; certain exceptions apply (including passive investors, hedge funds and private equity funds and casinos)⁵ <input type="checkbox"/> Certain non-profits (501(c)(3) organizations, 501(c)(19) veterans organizations or Tribal business <input type="checkbox"/> Size based on either: <ul style="list-style-type: none"> (1) <u>Employees</u>: number of full-time, part-time and “other basis” employees, combined with affiliates, cannot be more than the greater of <ul style="list-style-type: none"> ▪ 500 or ▪ size standard for specific industry⁶; <u>OR</u> (2) <u>Valuation</u>: As of 3/27/20, max tangible net worth ≤ \$15M and average net income after tax for past two full years is ≤ \$5M/year 	<p>The following loan terms will be the same for all borrowers:</p> <ul style="list-style-type: none"> ○ <u>Amount</u>: Lesser of: <ul style="list-style-type: none"> ○ \$10 million⁸ and ○ 2.5x avg. monthly payroll <i>Note: If borrower obtained EIDL loan on or after 1/31/20, the then-outstanding amount of EIDL loan can be added to qualified payroll costs (up to the \$10M max)</i> ○ <u>Interest Rate</u>: 1% ○ <u>Maturity</u>: 2 years ○ <u>Payments</u>: Deferred for 6 months, but interest will accrue; payments of principal and interest for the following 18 months sufficient to fully amortize the unforgiven balance ○ <u>Personal Guarantee</u>: Waived ○ <u>Fees</u>: No loan fee is charged to the borrower by the SBA or the lender, 	<ul style="list-style-type: none"> ○ See discussion of <i>Paycheck Protection Program Liquidity Facility under Title IV below</i> ○ Borrowers are precluded from receiving funding under EDIL and PPP for the same purpose ○ List of SBA borrowers (not applicants) published quarterly ○ Except for those businesses entitled to explicit waiver (see “SBA Affiliation Rules” above), most portfolio companies controlled by PE sponsors are likely to be aggregated with the other controlled companies and, as a result, exceed allowable size based on number of employees ○ <u>FAQ #37</u> makes clear that portfolio companies owned by PE sponsors must take into account “other sources of liquidity” when certifying as to “necessity” 	<p>CARES Act § 1102 Sidley Update (March 30)</p> <p>Application posted to Treasury’s CARES Act resource page (April 2), but note some lenders may use different form</p> <p>SBA Standard Operating Procedure (full list of ineligible businesses)</p> <p>First Interim Final Rule (April 3)</p> <p>Supplemental Interim Final Rule (April 14)</p> <p>Supplemental Interim Final Rule (April 24)</p> <p>Supplemental Interim Final Rule (April 30)</p>

⁴ A partnership and its partners (including an LLC filing taxes as a partnership) are limited to one PPP loan. A partner in a partnership may not submit a separate PPP loan application as a self-employed individual. Rather, self-employment income of general active partners may be reported as a payroll cost (up to \$100,000 annualized) on a PPP loan application filed by or on behalf of the partnership.

⁵ On April 24, the SBA [released additional guidance](#) explicitly stating that hedge funds and private equity funds are not eligible to receive a PPP loan. A full list of ineligible types of businesses can be found at [13 CFR § 120.110](#) and the [SBA Standard Operating Procedure](#) (except that non-profits authorized by the CARES Act are eligible). Generally, ineligible businesses include: (i) businesses engaged in lending; (ii) passive businesses; (iii) life insurance companies; (iv) business located in a foreign country or owned by undocumented (illegal) aliens; (v) businesses selling through a pyramid plan; ~~(vi) businesses deriving more than one third of gross annual revenue from legal gambling activities (rev. April 24)~~; (vii) businesses engaged in any illegal activity; (viii) businesses which restrict patronage; (ix) government-owned entities (excluding Native American tribes); (x) businesses engaged in promoting religion; (xi) businesses engaged in SBA loan packaging; (xi) businesses with an associate of poor character; (xii) equity interest by lender or associates in applicant concern; (xiii) businesses providing prurient sexual materials; (xiv) prior loss to the government and delinquent federal debt; (xv) businesses primarily engaged in political or lobbying activities; and (xvi) speculations.

⁶ The SBA has established a [size standards tool](#) to help businesses determine whether they qualify as a small business concern.

	<ul style="list-style-type: none"> <input type="checkbox"/> Certain hospitality and food service providers (NAICS code 72) with not more than 500 employees per physical location <input type="checkbox"/> In operation on Feb 15, 2020 <input type="checkbox"/> Unable to obtain credit elsewhere (<i>waived for PPP</i>) <input type="checkbox"/> Borrower must certify that “[c]urrent economic uncertainty makes this loan request necessary to support [its] ongoing operations”⁷ 	<p>and the borrower is not permitted to pay any fees to any third party specifically to assist with its loan application</p> <ul style="list-style-type: none"> <input type="checkbox"/> <u>Recourse</u>: <input type="checkbox"/> Recourse <input checked="" type="checkbox"/> Non-recourse <input type="checkbox"/> <u>Collateral</u>: <input type="checkbox"/> Secured <input checked="" type="checkbox"/> Unsecured <input type="checkbox"/> <u>Use of proceeds</u>: <ul style="list-style-type: none"> <input type="checkbox"/> Payroll costs⁹ <input type="checkbox"/> Insurance premiums and group health benefits <input type="checkbox"/> Interest payments on mortgage <input type="checkbox"/> Rent <input type="checkbox"/> Utilities <input type="checkbox"/> Interest on other debt incurred prior to 2/15/20 <input checked="" type="checkbox"/> 1099 payments¹⁰ 	<ul style="list-style-type: none"> <input type="checkbox"/> SBA will audit all loans in excess of \$2M, in addition to other loans as appropriate, following the lender’s submission of borrower’s loan forgiveness application <input type="checkbox"/> Any borrower who applied for a PPP loan prior to April 24, 2020 and repays the loan in full by May 714, 2020 will be deemed by SBA to have made in good faith the certification that the loan is necessary in light of economic uncertainty 	<p>Summary of SBA Affiliation Rules (April 3)</p> <p>PPP Information Sheet</p> <p>PPP FAQ (updated regularly; latest through FAQ #45 on May 6)</p>
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⁸ On April 30, the SBA [released additional guidance](#) stating that businesses that are part of a single corporate group shall in no event receive more than \$20,000,000 of PPP loans in the aggregate.

⁷ On April 23, the SBA, in consultation with the Treasury Department, [released additional guidance](#) stating: “Borrowers must make this 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. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification.”

⁹ “Payroll costs” include (i) salary, commissions and similar compensation (including those paid through a Professional Employer Organization), (ii) tip payments, (iii) vacation, parental, family, medical or sick leave, (iv) allowance for dismissal and separation, (v) group health care payments, including premiums, (vi) retirement benefits, and (vii) state and local tax imposed on compensation to employees; specifically excludes: (a) annual individual compensation > \$100,000, prorated from 2/15/20 – 6/30/20, (b) FICA or income tax withholdings, (c) compensation to anyone whose primary residence is outside of the U.S., and (d) qualified sick leave and family leave wages for which a credit is allowed under the Families First Coronavirus Response Act.

¹⁰ Individuals with self-employment income (such as an independent contractor or a sole proprietor) that have filed or will file a Form 1040 Schedule C for 2019 are eligible to apply for a PPP loan. SBA will issue additional guidance for individuals with self-employment income who (i) were not in operation in 2019 but who were in operation on Feb. 15, 2020 and (ii) will file a Form 1040 Schedule C for 2020.

<p>PPP Loan Forgiveness</p> <p><input type="checkbox"/> In Effect <input type="checkbox"/> Awaiting Guidance</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Amounts incurred and paid during 8-week period, beginning on date of loan disbursement for eligible expenses, but not later than 6/30/20 <input type="checkbox"/> Amount of loan forgiveness is subject to reduction based on reduction in full-time workforce and total wages during reference period; Borrower can elect applicable reference period: <ul style="list-style-type: none"> <input type="checkbox"/> 2/15/19 through 6/30/19 or <input type="checkbox"/> 1/1/20 through 2/29/20 <p><i>Note: Loan forgiveness will be determined without regard to any reductions between 2/15/20 and 4/26/20 that are cured by 6/30/2020</i></p>	<ul style="list-style-type: none"> ○ <u>Eligible Expenses:</u> <ul style="list-style-type: none"> ○ Payroll costs ○ Interest on mortgages incurred before 2/15/20 ○ Rent under leases in effect before 2/15/20 ○ Utilities for service that began before 2/15/20 ○ Additional wages to tipped employees ○ Forgiven amount is nontaxable (<i>i.e.</i>, no cancellation of indebtedness income) 	<ul style="list-style-type: none"> ○ Only loans disbursed under PPP are eligible for loan forgiveness ○ While 100% of payroll costs may be eligible to be forgiven, due to high subscriptions, not more than 25% of the forgiven amount may be for non-payroll costs (<i>e.g.</i>, rent, utilities) ○ No tax deduction is allowed for any expense otherwise deductible to the extent that the payment of such expense results in loan forgiveness pursuant to the PPP. For more info, see Sidley Update (May 1) 	<p>CARES Act § 1102</p> <p>Sidley Update (March 30)</p>
<p>Subsidies for Loan Payments</p> <p><input type="checkbox"/> In Effect <input checked="" type="checkbox"/> Awaiting Guidance</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Loans <i>not</i> disbursed under PPP 	<ul style="list-style-type: none"> ○ Subsidies for 6 months ○ Covers principal, interest and associated fees 		<p>CARES Act § 1112</p> <p>Sidley Update (March 30)</p>
<p>Bankruptcy and Reorganization Protection</p> <p><input type="checkbox"/> In Effect <input checked="" type="checkbox"/> Awaiting Guidance</p>	<ul style="list-style-type: none"> <input type="checkbox"/> < \$7.5M of liquidated secured/unsecured debts as of date of filing <input type="checkbox"/> ≥ 50% of debts arising from business operations <input type="checkbox"/> Not a member of affiliated group of debtors w/ > \$7.5M debt <input type="checkbox"/> Not a corporation subject to section 13 or 15(d) of Exchange Act <input type="checkbox"/> Not an affiliate of an issuer under section 3 of Exchange Act 	<ul style="list-style-type: none"> ○ Provides special bankruptcy protections ○ If a company is already under plan before CARES Act, plan can be amended 		<p>CARES Act § 1113</p> <p>Sidley Update (March 30)</p>

TITLE IV LOAN PROGRAMS ADMINISTERED BY THE FEDERAL RESERVE¹¹

(Mid- and Large-Cap Business Assistance)

General Eligibility Criteria	Restrictions Applicable to “Direct Loan” Programs
<p>The following “Title IV Eligibility Criteria” apply where indicated in the chart below to any business to which credit is extended through a loan or purchase of debt obligations authorized under the existing Title IV programs, other than the purchase of securities that are based on an index or that are based on a diversified pool of securities:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Organized under U.S. law <input type="checkbox"/> “Significant” U.S. operations <input type="checkbox"/> Majority of employees in U.S. <input type="checkbox"/> Solvent <input type="checkbox"/> Unable to secure adequate credit from other sources under the circumstances <input type="checkbox"/> No conflicts of interest under CARES Act § 4019 <input type="checkbox"/> Federal loans and guarantees must have security sufficient to protect taxpayers from losses (as determined by the Fed) 	<p>A “Direct Loan” is a loan under a bilateral loan agreement that is (i) entered into directly with an eligible business as borrower; and (ii) not part of a syndicated loan, a loan originated by a financial institution in the ordinary course of business, or a securities or capital markets transaction.</p> <p>A loan, loan guarantee or other investment by the Treasury as part of a facility that provides Direct Loans comes with the following  Direct Loan Restrictions, which are applicable until 12 months after the termination of the direct loan:</p> <ul style="list-style-type: none"> <input type="checkbox"/> No dividends or other capital distribution with respect to common stock;¹² <input type="checkbox"/> No stock buybacks, except as required per contract in effect as of 3/27/20; and <input type="checkbox"/> Limitations on compensation to highly-compensated employees and officers.¹³
	<h3>Disclosure Requirements</h3>
	<p>The Federal Reserve will publish reports on its CARES Act 13(3) facilities on its website at least every 30 days and without redactions, including the:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Names and details of participants in each facility; <input type="checkbox"/> Amounts borrowed and interest rate charged; and <input type="checkbox"/> Overall costs, revenues, and fees for each facility. <p>For more, see Fed Press Release (April 23) and Sidley Update (April 15)</p>

¹¹ Under Section 13(3) of the Federal Reserve Act, the purpose of emergency finance facilities or programs administered by the Fed is to provide liquidity to the financial system, and not to aid a failing financial company.

¹² Unclear whether the distribution restriction applies to distributions on interests in partnerships or LLCs.

¹³ Total compensation of all personnel whose total compensation exceeded \$425,000 in 2019 will be limited to the total compensation received during the 2019 calendar year; any severance pay or other termination benefits for such personnel is limited to twice the total compensation received by such person during the 2019 calendar year. Officers and employees who received more than \$3 million in 2019 cannot receive more than \$3 million plus 50% of the excess compensation over \$3 million.

Program	Additional Eligibility	Terms	Practice Notes	Further Reference
<p>Assistance for Mid-Sized Businesses</p> <p><input type="checkbox"/> In Effect <input checked="" type="checkbox"/> Awaiting Guidance</p> <p><i>Note: The Fed has not published any guidance in respect of this program. It remains ineffective and may have been supplanted by the Main Street Lending Facilities announced on April 9, 2020.</i></p>	<p><input type="checkbox"/> Title IV Eligibility Criteria</p> <p><input type="checkbox"/> Business or certain non-profits</p> <p><input type="checkbox"/> 500 to 10,000 employees (no applicable affiliation rule)</p> <p><input type="checkbox"/> Borrower must certify:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Loan is necessary to support ongoing operations <input type="checkbox"/> Intent to retain 90% of workforce in place, at time loan obtained, until 9/30/20 <input type="checkbox"/> Intent to restore at least 90% of its workforce, as it existed as of 2/1/20, and restore all compensation and benefits to workers, within four months after national health crisis ends <input type="checkbox"/> Will not outsource or offshore jobs during loan program, or the two years thereafter <input type="checkbox"/> Refrain from abrogating any existing collective bargaining agreement during loan program, or the two years thereafter <input type="checkbox"/> Remain neutral in any union organization efforts during loan term 	<ul style="list-style-type: none"> ○ Fed and Treasury will provide financing to banking institutions and other lenders to make Direct Loans to eligible borrowers ○ <u>Interest Rate</u>: ≤ 2% ○ <u>Payments</u>: No payments (principal or interest) for at least six months ○ <u>Collateral</u>:¹⁴ <input type="checkbox"/> Secured <input type="checkbox"/> Unsecured <p> Direct Loan Restrictions (<i>i.e., no distributions, no stock buybacks, comp limitations</i>)¹⁵</p>	<ul style="list-style-type: none"> ○ Many PE sponsor-controlled companies are precluded from participating in PPP (<i>i.e.</i>, SBA loan) on account of SBA Affiliation Rules, but do not have sufficient e'ees on standalone basis to qualify for this program ○ The fact that a company may have already had layoffs does not preclude participation ○ Retaining (or re-hiring) specific personnel not required ○ Treatment of disproportionately large reduction of non-U.S. workforce unclear (<i>e.g.</i>, 100% U.S. workforce retention, 40% reduction in foreign workforce, resulting in overall reduction of 85%) ○ Distribution restrictions may be problematic for REITs¹⁶ and pass-through entities 	<p>CARES Act § 4003(c)(3)(D)(i)</p>

¹⁴ The CARES Act is silent with respect to security for Direct Loans. Under the Federal Reserve Act and Regulation A, however, lenders generally must provide adequate security for any federal guarantee. Regulations may require collateral for Direct Loans accordingly.

¹⁵ There appears to be a conflict, however, between the Direct Loan Restrictions and the statutorily required borrower certifications. Under the Direct Loan Restrictions, prohibitions on stock buybacks and distributions remain until 12 months after the termination of the loan, whereas the borrower certifications regarding such actions only apply during the life of the loan. Furthermore, it is possible that the limits on compensation are not intended to apply because they are not reflected in the statutory borrower certifications.

¹⁶ REITs are statutorily required to annually distribute taxable profits in order to preserve REIT status. In the case of private REITs, shareholders could consider consent dividend.

MSLF <i>Main Street Lending Facilities</i>	There are three Main Street Lending Facility programs: two for new loans (with different levels of lender risk sharing based on borrower leverage) and one for upsizing existing loans. The following apply to all three.	MSELF <i>Main Street <u>Expanded</u> Loan Facility</i>	MSNLF <i>Main Street <u>New</u> Loan Facility</i>	MSPLF <i>Main Street <u>Priority</u> Loan Facility</i>
<input type="checkbox"/> In Effect <input checked="" type="checkbox"/> Awaiting Guidance Boston Fed will lend to new SPV, with initial \$75bn of funding by Treasury, that will purchase participations in eligible loans; level of lender risk sharing dependent on borrower leverage. Combined size of facility is up to \$600bn.	<input type="checkbox"/> Participations purchased through September 30, 2020 <input type="checkbox"/> MSELF, MSNLF and MSPLF require eligible lender lending to eligible borrower pursuant to eligible loan <input type="checkbox"/> All loans are full recourse and non-forgivable <input type="checkbox"/> Participations structured as “true sales”; lenders will retain remaining portion until earlier of maturity or sale of interest by SPV <input type="checkbox"/> <u>Eligible Lenders:</u> <ul style="list-style-type: none"> <input type="checkbox"/> U.S. federally insured depository institutions (including bank, savings association, credit union) <input type="checkbox"/> U.S. bank holding company <input type="checkbox"/> U.S. S&L holding company <input type="checkbox"/> U.S. branch or agency of a 	Federal Reserve Term Sheet (April 9) Federal Reserve Term Sheet (April 30) Blackline of Term Sheets Main Street FAQs <u>Key Terms:</u> <ul style="list-style-type: none"> ○ <u>Maturity:</u> 4 years ○ <u>Lender Risk Retention:</u> 5% ○ <u>Rate:</u> LIBOR + 3% ○ <u>Payment:</u> <ul style="list-style-type: none"> ○ Yr 1: principal and interest are deferred (unpaid interest is capitalized) ○ Yr 2-4: principal amortized 15%, 15%, 70% ○ <u>Minimum Loan:</u> \$10M ○ <u>Maximum Loan:</u> <i>lesser of</i> <ul style="list-style-type: none"> ○ \$200M; ○ 35% of borrower’s existing outstanding and undrawn available debt²³ that is <i>pari</i> 	Federal Reserve Term Sheet (April 9) Federal Reserve Term Sheet (April 30) Blackline of Term Sheets Main Street FAQs <u>Key Terms:</u> <ul style="list-style-type: none"> ○ <u>Maturity:</u> 4 years ○ <u>Lender Risk Retention:</u> 5% ○ <u>Rate:</u> LIBOR + 3% ○ <u>Payment:</u> <ul style="list-style-type: none"> ○ Yr 1: principal and interest are deferred (unpaid interest is capitalized) ○ Yr 2-4: principal amortized 33.3%/year ○ <u>Minimum Loan:</u> \$500k ○ <u>Maximum Loan:</u> <i>lesser of</i> <ul style="list-style-type: none"> ○ \$25M; and ○ An amount, when added to borrower’s existing outstanding and undrawn 	Federal Reserve Term Sheet (April 30) Main Street FAQs <u>Key Terms:</u> <ul style="list-style-type: none"> ○ <u>Maturity:</u> 4 years ○ <u>Lender Risk Retention:</u> 15% ○ <u>Rate:</u> LIBOR + 3% ○ <u>Payment:</u> <ul style="list-style-type: none"> ○ Yr 1: principal and interest are deferred (unpaid interest is capitalized) ○ Yr 2-4: principal amortized 15%, 15%, 70% ○ <u>Minimum Loan:</u> \$500k ○ <u>Maximum Loan:</u> <i>lesser of</i> <ul style="list-style-type: none"> ○ \$25M; and ○ An amount, when added to borrower’s existing outstanding and undrawn

²³ See [Main Street FAQ #G.2](#). The phrase “existing outstanding and undrawn available debt” includes all amounts borrowed under any loan facility, including unsecured or secured loans from any bank, non-bank financial institution, or private lender, as well as any publicly issued bonds or private placement facilities. It also includes all unused commitments under any loan facility, excluding (1) any undrawn commitment that serves as a backup line for commercial paper issuance, (2) any undrawn commitment that is used to finance receivables (including seasonal financing of inventory), (3) any undrawn commitment that cannot be drawn without additional collateral, (4) any undrawn commitment that is no longer available due to change in circumstance. Existing outstanding and undrawn available debt should be calculated as of the date of the loan application.

	<p>foreign bank</p> <ul style="list-style-type: none"> □ U.S. intermediate holdco of a foreign banking organization □ U.S. subsidiary of any of the above □ Lenders must commit to refrain from: <ul style="list-style-type: none"> □ Asking borrower to repay or refinance – or pay interest on – pre-existing debt of borrower held by lender, except as mandatorily required or upon default □ Canceling or reducing borrower’s existing committed lines of credit □ Eligible to participate (including in light of no conflicts of interest) □ <u>Eligible Borrowers:</u> <ul style="list-style-type: none"> □ Title IV Eligibility Criteria □ Eligible for profit business¹⁷ established before 3/13/2020 	<p><i>passu</i> with MSELF loan and equivalent in secured status; and</p> <ul style="list-style-type: none"> ○ An amount, when added to borrower’s existing outstanding and undrawn available debt, does not exceed 6x 2019 <u>adjusted EBITDA</u>²⁴ <p><u>Other Eligibility Criteria:</u></p> <ul style="list-style-type: none"> ○ Secured or unsecured ○ Term loan <u>or</u> revolver²⁵ ○ Originated <i>on or before</i> April 24, 2020 <u>and</u> has remaining maturity of at least 18 mo (taking into account any adjustments made after 4/24 or at upsizing) ○ Internal risk rating of “pass” per FFIEC as of 12/31/19 <p>★ Direct Loan Restrictions (<i>i.e., no distributions, no stock buybacks, comp limitations; except tax distributions permitted</i>)</p>	<p>available debt, does not exceed 4x 2019 <u>adjusted EBITDA</u>²⁶</p> <p><u>Other Eligibility Criteria:</u></p> <ul style="list-style-type: none"> ○ Secured or unsecured ○ Term loan <u>only</u> ○ Originated <i>after</i> April 24, 2020 ○ Any borrower loans outstanding with lender as of 12/31/19 must have had internal risk rating of “pass” per FFIEC as of 12/31/19 <p>★ Direct Loan Restrictions (<i>i.e., no distributions, no stock buybacks, comp limitations; except tax distributions permitted</i>)</p>	<p>available debt, does not exceed 6x 2019 <u>adjusted EBITDA</u> (<i>see FN26</i>)</p> <p><u>Other Eligibility Criteria:</u></p> <ul style="list-style-type: none"> ○ Secured or unsecured ○ Term loan <u>only</u> ○ Originated <i>after</i> April 24, 2020 ○ Any borrower loans outstanding with lender as of 12/31/19 must have had internal risk rating of “pass” per FFIEC as of 12/31/19 <p>★ Direct Loan Restrictions (<i>i.e., no distributions, no stock buybacks, comp limitations; except tax distributions permitted</i>)</p>
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¹⁷ For this purpose, a “business” must be legally formed entities that are organized for profit as a partnership; a limited liability company; a corporation; an association; a trust; a cooperative; a joint venture with no more than 49 percent participation by foreign business entities; or a tribal business concern. An ineligible businesses is any type listed in [13 CFR § 120.110\(b\)-\(j\)](#) and (m)-(s), as modified by regulations implementing PPP on or before April 24, 2020. As of the date hereof, ineligible businesses include: (i) businesses engaged in lending; (ii) passive businesses (including private equity funds and hedge funds); (iii) life insurance companies; (iv) business located in a foreign country or owned by undocumented (illegal) aliens; (v) businesses selling through a pyramid plan; (vi) businesses engaged in any illegal activity; (vii) businesses which restrict patronage; (viii) government-owned entities (excluding Native American tribes); (ix) businesses engaged in SBA loan packaging; (x) businesses with an associate of poor character; (xi) equity interest by lender or associates in applicant concern; (xii) businesses providing prurient sexual materials; (xiii) prior loss to the government and delinquent federal debt; (xiv) businesses primarily engaged in political or lobbying activities; and (xv) speculations. Unlike the PPP, the Main Street program is open to businesses engaged in promoting religion.

	<ul style="list-style-type: none"> □ After applying SBA Affiliation Rules,¹⁸ size based on either: <ul style="list-style-type: none"> (1) <u>Employees</u>: number of full-time, part-time and “other basis” employees cannot be more than 15,000; <u>OR</u> (2) <u>Revenues</u>: <ul style="list-style-type: none"> ▪ ≤ \$5bn of 2019 revenue per audited GAAP financials ▪ ≤ \$5bn of 2019 receipts¹⁹ per tax return □ Borrowers must: <ul style="list-style-type: none"> □ Commit to refrain from using proceeds to repay – or pay interest on – “any debt” except as mandatory²⁰ 	<p><u>Fees and Other Terms:</u></p> <ul style="list-style-type: none"> ○ <u>Transaction Fee</u>: Lender to pay SPV 75bps x amount of upsized tranche (can be passed on to borrower) ○ <u>Origination Fee</u>: Borrower to pay lender up to 75bps x amount of upsized tranche ○ <u>Loan Servicing Fee</u>: SPV to pay lender annually 25bps x amount of participation ○ <u>Prepayment</u>: Permitted without penalty ○ <u>Seniority</u>: At all times until repaid, senior to or <i>pari passu</i> with borrower’s other debt (other than mortgage debt) ○ <u>Collateral</u>: not required; but any collateral securing eligible loan or upsized tranche will secure the participation on a <i>pro rata</i> basis 	<p><u>Fees and Other Terms:</u></p> <ul style="list-style-type: none"> ○ <u>Transaction Fee</u>: Lender to pay SPV 100bps x loan amount at origination (can be passed on to borrower) ○ <u>Origination Fee</u>: Borrower to pay lender up to 100bps x loan amount at origination ○ <u>Loan Servicing Fee</u>: SPV to pay lender annually 25bps x amount of participation ○ <u>Prepayment</u>: Permitted without penalty ○ <u>Seniority</u>: Not contractually subordinated to other loans or debt 	<p><u>Fees and Other Terms:</u></p> <ul style="list-style-type: none"> ○ <u>Transaction Fee</u>: Lender to pay SPV 100bps x loan amount at origination (can be passed on to borrower) ○ <u>Origination Fee</u>: Borrower to pay lender up to 100bps x loan amount at origination ○ <u>Loan Servicing Fee</u>: SPV to pay lender annually 25bps x amount of participation ○ <u>Prepayment</u>: Permitted without penalty ○ <u>Seniority</u>: At all times until repaid, senior to or <i>pari passu</i> with borrower’s other debt (other than mortgage debt)
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²⁴ The methodology used by a lender to calculate adjusted 2019 EBITDA must be the methodology previously used for adjusting EBITDA when originating or amending the MSELF loan on or before April 24, 2020.

²⁵ The loan being upsized may be a term loan or a revolving credit facility, but the *upsized tranche* must be a term loan.

²⁶ The methodology used by a lender to calculate adjusted 2019 EBITDA must be the methodology previously used for adjusting EBITDA when extending credit to the borrower or similarly situated borrowers on or before April 24, 2020.

¹⁸ See [Main Street FAQ #E.3-5](#). A business’s employees and revenues are calculated by aggregating its own employees and revenues with those of the business’s affiliated entities in accordance with the SBA Affiliation Rules. The SBA Affiliation Rules are summarized under “Title I Programs” above and Treasury’s summary (as of April 3rd) can be accessed on its website [here](#).

¹⁹ For this purpose, “receipts” has the same meaning used by the SBA and means all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions, reduced by returns and allowances. See [13 CFR § 121.104\(a\)](#).

²⁰ For the MSPLF, this covenant is modified to allow a borrower to refinance existing debt owed to a lender that is not the “Eligible Lender” at the time the MSPLF loan is originated.

	<ul style="list-style-type: none"> □ Commit to refrain from seeking to cancel or reduce any committed line of credit with any lender □ Certify there is reasonable basis to believe that, on account of Main Street program, it has the ability to meet financial obligations for at least the next 90 days and does not expect to file for bankruptcy during such period □ Use commercially reasonable efforts²¹ to maintain its payroll and retain employees during loan term □ Certify compliance with other program terms and conditions (including Direct Loan Restrictions, as modified for Main Street to allow tax distros) □ Be eligible to participate (including in light of no conflicts of interest) ☒ PMCCF ☒ No “specific support” under CARES or future legislation 	<p><u>MSELF Lender Eligibility</u></p> <ul style="list-style-type: none"> ○ “Eligible Lender” must be one of the lenders that, at the date of upsizing, holds an interest in the loan being upsized ○ Only the lender for the upsized tranche is required to meet the lender eligibility criteria (<i>i.e.</i>, other members of a multi-lender facility are not required to be eligible lenders) ○ Lender must retain its interest in the loan being upsized until it matures, the upsized mature or the SPV sells its 95% participation, whichever comes first 		
		Practice Notes		Further Reference
		<ul style="list-style-type: none"> ○ Lenders are expected to conduct an assessment of each potential borrower’s financial condition at the time of their application; but they may rely on borrower’s certifications, covenants and any subsequent self-reporting ○ Terms set forth by the Fed are the <i>minimum</i> requirements; lenders will apply their own underwriting standards for evaluating borrower finances and creditworthiness, and may require additional information and documentation before approving loan ○ Borrower covenants do not prohibit borrower from undertaking the following during the term of the Main Street loan: <ul style="list-style-type: none"> ○ Repaying a line of credit (including credit card) in the ordinary course of business; 		<p>Federal Reserve Act § 13(3); CARES Act § 4003(c)(3)(D)(ii)</p> <p>Sidley Update (April 9)</p> <p>Sidley Update (April 30)</p> <p>Federal Reserve website for Main Street announcement, term sheets and FAQs</p> <p>Federal Financial Institutions Examination Council (FFIEC)</p>

²¹ See [Main Street FAQ #G.8](#). In this context, “commercially reasonable efforts” means 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 still eligible to apply for Main Street loans.

	<p>(<i>e.g.</i>, air carriers)</p> <p>☒ Only one Main Street program (must pick among MSELF, MSNLF, MSPLF²²)</p>	<ul style="list-style-type: none"> ○ Taking on or paying additional debt obligations required in the normal course of business and on standard terms (including inventory and equipment financing), subject to certain conditions (see Main Street FAQ #H.3); or ○ Refinancing maturing debt ○ Eligible borrowers organized as S corporations or other pass through entity may make distributions “to the extent reasonably necessary to cover its owners’ tax obligations in respect of the [borrower’s] earnings” ○ Fed suggests parties include a fallback reference rate (<i>e.g.</i>, SOFR) to be used once LIBOR is no longer available ○ Program not available to commercial mortgage REITs (public and private) and private fund direct lenders, as neither are “eligible lenders” ○ Participation in SBA PPP loan or tax relief programs (<i>e.g.</i>, payroll credit or payment deferral) not restricted ○ Investment rating not required 	
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²² Borrowers may receive more than one loan under a facility, up to maximum amount, with credit extended under the MSNLF and MSPLF aggregated for purposes of computing the maximum.

<p>PMCCF <i>Primary Market Corporate Credit Facility</i></p> <p><input type="checkbox"/> In Effect <input type="checkbox"/> Awaiting Guidance</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Purchases made through September 30, 2020 <input type="checkbox"/> Issuers must meet Title IV Eligibility Criteria²⁷ <input type="checkbox"/> Issuer may be for-profit or non-profit business <input type="checkbox"/> Public offering or private placement <input type="checkbox"/> Investment grade (BBB-/Baa3) as of 3/22/20²⁸ <input type="checkbox"/> “Fallen Angel” <ul style="list-style-type: none"> <input type="checkbox"/> Investment grade (BBB-/Baa3) as of 3/22/20 <u>and</u> <input type="checkbox"/> At least BB-/Ba3 at the time of issuance <input type="checkbox"/> Issuer required to certify eligibility, solvency and inability to secure adequate credit accommodations (including due to 	<ul style="list-style-type: none"> ○ SPV with initial \$75bn of funding by NY Fed and Treasury will (i) purchase portions of syndicated loans or bonds at issuance (up to 25%) and/or (ii) buy qualified bonds as sole investor in bond issuance ○ <u>Program Size</u>: PMCCF + SMCCF combined will be up to \$750bn ○ <u>Issuer Limits</u>: <ul style="list-style-type: none"> ○ Max amount of outstanding bonds or loans of an issuer that borrows from PMCCF may not exceed 130% of issuer’s max outstanding bonds and loans on any given day from 3/22/19 through 3/22/20 (calculated at the consolidated top-tier parent level)²⁹ ○ Purchases from single issuer under PMCCF + SMCCF capped at 1.5% x total program size 	<ul style="list-style-type: none"> ○ Apr 9: Program significantly expanded to include “fallen angels” that were investment grade as of 3-22-20 ○ SMCCF is expected to begin purchasing eligible ETFs in early May. The PMCCF is expected to become operational and the SMCCF is expected to begin purchasing eligible corporate bonds soon thereafter 	<p>Federal Reserve Act § 13(3); CARES Act § 4003(b)(4)</p> <p>Federal Reserve Term Sheet (March 23)</p> <p>Federal Reserve Term Sheet (April 9)</p> <p>Blackline of Term Sheets showing revisions</p> <p>FAQ (May 4)</p> <p>Sidley Update (March 31)</p> <p>Sidley Update (April 9)</p>
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²⁷ Per the [FAQ](#), if an eligible entity is **not** a subsidiary whose sole purpose is to issue debt, the entity, on a consolidated basis (*i.e.*, together with its consolidated subsidiaries), must have significant operations in and a majority of its employees based in the United States. The Fed would not consider any parent company or sister affiliate. If the entity is a subsidiary whose sole purpose is to issue debt, any corporate affiliate of the Eligible Entity to which 95 percent or more of the proceeds from the syndicated loan or corporate bond purchase are transferred for use in its operations (the “primary corporate beneficiary”) must have significant operations in and a majority of its employees based in the United States on a consolidated basis. If there is no primary corporate beneficiary, it is required that corporate affiliates that, in each case, have significant operations in and a majority of their employees based in the United States on a consolidated basis must receive, in the aggregate, 95 percent or more of the proceeds from the syndicated loan or corporate bond purchase.

Also, an issuer may be a subsidiary of a foreign company, provided that (i) the issuer itself is created or organized in the United States or under the laws of the United States, and (ii) the issuer on a consolidated basis has significant operations in and a majority of its employees based in the United States. An issuer in the PMCCF that is a subsidiary of a foreign company must use the proceeds derived from participation in the PMCCF only for the benefit of the issuer, its consolidated U.S. subsidiaries, and other affiliates of the issuer that are U.S. businesses, and not for the benefit of its foreign affiliates

²⁸ If a new entity is formed, it generally may rely on the ratings history of any U.S. affiliate that is guaranteeing the issuance.

²⁹ Per the [FAQ](#), “outstanding bonds and loans” includes current and non-current portions of corporate bonds and loans, including drawn portions of “term loans,” drawn portions of long-term revolving facilities (*i.e.*, maturity greater than one year), and long-term bonds (whether USD denominated or otherwise). Any operating leases, non-recourse debt, commercial paper, and other short-term liabilities are not included. Information on debt should be consistent with the issuer’s audited financial reports maintained during the March 22, 2019 to March 22, 2020 period, including the value of non-USD denominated debt. Issuers that are public companies may not use a higher amount of outstanding bonds and loans than is reflected in public filings.

	<p>pricing inconsistent with normal, well-functioning market)</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Main Street Lending Facilities <input checked="" type="checkbox"/> “insured depository institution” or “depository institution holding company” under Dodd-Frank <input checked="" type="checkbox"/> No “specific support” under CARES or future legislation (<i>e.g.</i>, air carriers) 	<p>(calculated at the consolidated top-tier parent level)</p> <ul style="list-style-type: none"> ○ <u>SPV Leverage</u>: <ul style="list-style-type: none"> ○ Investment Grade: 10:1 ○ Others: 7:1 ○ <u>Maturity</u>: ≤ 4 years ○ <u>Pricing</u>: <ul style="list-style-type: none"> ○ <u>Bonds</u>: Issuer-specific and “informed by market conditions” ○ <u>Syndications</u>: Same as other syndicate members. Market pricing should not be lowered for the purpose of decreasing demand from market participants in order to fill deal capacity via the PMCCF ○ <u>Fixed vs Floating</u>: If sole participant, PMCCF will purchase fixed-rate bonds only. If not sole participant, PMCCF will expect any floating-rate debt priced off LIBOR to include adequate fallback language ○ <u>Minimums</u>: No required minimum issuance amounts or percentages, but issuers are not expected to use the PMCCF to borrow very small amounts or small percentages of the total deal ○ <u>Facility Fee</u>: 100bps <input checked="" type="checkbox"/> Direct Loan Restrictions n/a 		
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<p>SMCCF <i>Secondary Market Corporate Credit Facility</i></p> <p><input checked="" type="checkbox"/> In Effect <input type="checkbox"/> Awaiting Guidance</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Purchases made through September 30, 2020 <input type="checkbox"/> Issuers, ETFs and each institution from which the SMCCF purchases securities must (i) meet Title IV Eligibility Criteria (See FN27) and (ii) certify eligibility <input type="checkbox"/> <u>Eligible Bond Issuer:</u> <ul style="list-style-type: none"> <input type="checkbox"/> For-profit or non-profit business <input type="checkbox"/> Investment grade (BBB-/Baa3) as of 3/22/20 <input type="checkbox"/> “Fallen Angel” <ul style="list-style-type: none"> <input type="checkbox"/> Investment grade (BBB-/Baa3) as of 3/22/20 <u>and</u> <input type="checkbox"/> At least BB-/Ba3 at the time of SPV purchase <input type="checkbox"/> Remaining maturity ≤ 5 years <input type="checkbox"/> USD-denominated <input type="checkbox"/> <u>Eligible ETFs:</u> <ul style="list-style-type: none"> <input type="checkbox"/> U.S. listed <input type="checkbox"/> “Preponderance” allocated to ETFs w primary exposure to U.S. investment-grade corporate bonds; remainder allocated to ETFs with U.S. high-yield corp bonds <input type="checkbox"/> <u>Eligible Sellers Certifications:</u> As follows, on pain of applicable criminal or civil penalty for knowing material misrepresentation, with a duty to update if any certification becomes untrue: 	<ul style="list-style-type: none"> <input type="checkbox"/> SPV with initial \$75bn of funding by NY Fed and Treasury will purchase in secondary market (i) qualifying corp bonds and (ii) corp bond portfolios in the form of ETFs <input type="checkbox"/> Unless otherwise approved by Fed, SMCCF will purchase ETFs only if reasonably expected to achieve the SMCCF’s purposes more effectively than purchase of underlying bonds <input type="checkbox"/> <u>Program Size:</u> PMCCF + SMCCF combined will be up to \$750bn <input type="checkbox"/> <u>Issuer Limits:</u> <ul style="list-style-type: none"> <input type="checkbox"/> SPV purchases capped at 10% of company’s bonds outstanding on any given day from 3/22/19 through 3/22/20 (calculated at the consolidated top-tier parent level) <input type="checkbox"/> Will not purchase more than 20% of ETF’s outstanding shares <input type="checkbox"/> <u>Pricing:</u> Purchases will be made at FMV; for ETF shares, price must not materially exceed est. NAV of underlying portfolio <input type="checkbox"/> <u>SPV Leverage:</u> <ul style="list-style-type: none"> <input type="checkbox"/> Investment Grade Bonds: 10:1 <input type="checkbox"/> Below Investment Grade Bonds: 7:1 <input type="checkbox"/> All Other Assets: range from 3:1 to 7:1, depending on risk <input checked="" type="checkbox"/> Direct Loan Restrictions n/a 	<ul style="list-style-type: none"> <input type="checkbox"/> SMCCF will begin purchasing on May 12. 	<p>Federal Reserve Act § 13(3); CARES Act § 4003(b)(4)</p> <p>Federal Reserve Term Sheet (March 23)</p> <p>Federal Reserve Term Sheet (April 9)</p> <p>Blackline of Term Sheets showing changes</p> <p>FAQ, Registration Materials and vendor (investment manager) information</p> <p>Sidley Update (March 31)</p> <p>Sidley Update (April 9)</p>
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	<ul style="list-style-type: none"> <input type="checkbox"/> Not insolvent (including failure generally to pay debts during the 90 days preceding any sale to the CCF) <input type="checkbox"/> Title IV Eligibility Criteria regarding U.S. organization, operations and employees <input type="checkbox"/> No conflicts of interest based on due diligence (including inquiry of 5% or greater beneficial owners in some cases)³⁰ <input type="checkbox"/> Seller must maintain for 20 years a record containing the bases for the certifications other than as to solvency, and make available to the NY Fed a copy of the record or an external auditor’s attestation that it has examined the record and found it sufficient. NY Fed may request the record following auditor attestation <input checked="" type="checkbox"/> Main Street Lending Facilities <input checked="" type="checkbox"/> “insured depository institution” or “depository institution holding company” under Dodd-Frank³¹ <input checked="" type="checkbox"/> No “specific support” under CARES or future legislation (<i>e.g.</i>, air carriers) 			
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³⁰ Per the [registration materials](#), a company is barred from participation in the SMCCF if certain individuals have 20% direct or indirect ownership, holding or control of any class of equity interest of the company. Indirect ownership and holding are determined ratably based on an individual’s stake in direct or indirect parent companies of the company. Indirect control is triggered by majority ownership of a direct or indirect parent that owns at least 20% of the company.

³¹ A U.S. subsidiary or U.S. branch or agency of a foreign bank is not disqualified.

<p>TALF <i>Term Asset-Based Securities Loan Facility</i></p> <p><input type="checkbox"/> In Effect <input checked="" type="checkbox"/> Awaiting Guidance</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Loans will be made through September 30, 2020 <input type="checkbox"/> Title IV Eligibility Criteria applicable to borrowers <input type="checkbox"/> <u>Eligible Borrowers:</u> <ul style="list-style-type: none"> <input type="checkbox"/> Organized under laws of U.S. (including foreign-owned companies) or U.S. branch of foreign bank <i>(change made on April 9)</i> <input type="checkbox"/> Own eligible collateral <input type="checkbox"/> Maintain account with primary dealer 	<ul style="list-style-type: none"> ○ New SPV funded by NY Fed and Treasury will make loans to eligible borrowers against eligible collateral ○ Up to \$100bn in loans ○ <u>Interest Rate:</u> <ul style="list-style-type: none"> ○ <u>ABS</u> (without underlying governmental guarantee): <ul style="list-style-type: none"> ▪ WAL < 2 yrs: 2-yr OIS + 125bps ▪ WAL ≥ 2 yrs: 3yr-OIS + 125bps ○ <u>CLOs</u>: 30-day SOFR + 150bps ○ <u>SBA 7a loans</u>: top of federal funds target range + 75bps ○ <u>SBA 504 loans</u>: 3yr OIS + 75bps ○ <u>Fee</u>: 10bps x loan amount ○ <u>Maturity</u>: 3 years ○ <u>Recourse</u>: <input type="checkbox"/> Recourse <input checked="" type="checkbox"/> Non-recourse ○ <u>Collateral</u>: <input checked="" type="checkbox"/> Secured <input type="checkbox"/> Unsecured <p>Will be purchased at discount, generally consistent with 2008 TALF haircuts</p> <p>USD-denominated cash ABS with following characteristics:</p> <ul style="list-style-type: none"> ○ Must be rated the highest rating by at least two NRSROs; ○ All or substantially all of the underlying credit exposures originated by U.S. company; ○ Issued on or after 3/23/20 (but CMBS must be issued <i>before</i> 	<ul style="list-style-type: none"> ○ Apr 9: Fed significantly expanded program to include top-rated legacy CMBS and non-CRE CLOs; other asset classes may be added ○ Remains unclear whether eligible borrowers include (i) investment funds, (ii) public and/or private mortgage REITs and/or (iii) externally-managed BDCs ○ Additional guidance is expected, “primarily based off of the terms and conditions used for the 2008 TALF” 	<p>Federal Reserve Act § 13(3); CARES Act § 4003(b)(4)</p> <p>Federal Reserve Term Sheet (March 23)</p> <p>Federal Reserve Term Sheet (April 9)</p> <p>Blackline of Term Sheets showing changes</p> <p>Sidley Update (April 9)</p>
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		<p>3/23/20)</p> <ul style="list-style-type: none"> ○ ABS must be backed by auto or equipment loans or leases, student loans, credit card receivables (consumer, corporate), floorplan loans, insurance premium loans, certain SBA-guaranteed loans, or leveraged loans; CMBS must be backed by real property located in US or territory ○ Must not bear interest that steps up/down to predetermined levels on specific dates; and ○ Underlying credit exposures are not themselves cash or synthetic ABS ○ No collateral substitutions; static CLOs only ☒ Single-asset single-borrower CMBS (SASB) ☒ Commercial real estate CLOs ○ Direct Loan Restrictions may apply to the extent TALF is deemed to be offered pursuant to CARES Act § 4003(b)(4); however, no reference has been made to date regarding such restrictions 		
<p>CPFF <i>Commercial Paper Funding Facility</i></p> <p><input checked="" type="checkbox"/> In Effect <input type="checkbox"/> Awaiting Guidance</p>	<ul style="list-style-type: none"> □ NY Fed will buy through March 17, 2021 □ <u>Eligible Issuers</u>: U.S. issuers of CP (municipalities, U.S. branches of foreign banks, foreign-parented U.S. issuers) <i>Note</i>: Each entity is separate issuer □ <u>Eligible Paper</u>: 	<ul style="list-style-type: none"> ○ New SPV with initial \$10bn of funding by NY Fed and Treasury will buy commercial paper from eligible issuers ○ Max amount of single issuer's CP owned by SPV at any time cannot exceed the greatest amount of USD-CP outstanding on any given day from 3/16/19 through 3/16/20; for 	<ul style="list-style-type: none"> ○ Issuer can use proceeds to repurchase its outstanding CP 	<p>Federal Reserve Act § 13(3); CARES Act § 4003(b)(4)</p> <p>Federal Reserve term sheet, required documents and FAQ</p>

<p>Expected to begin making purchases on 4-14-20</p>	<ul style="list-style-type: none"> <input type="checkbox"/> 3-month USD-denominated CP (for asset-backed CP, issuer must have been active prior to program) <input type="checkbox"/> Rated at least A1/P1/F1 (issuers downgraded after 3/17/20 can make one-time sale) 	<p>downgraded issuers, max is amount outstanding on day before downgrade</p> <ul style="list-style-type: none"> ○ <u>Pricing</u>: Will be sold at discount <ul style="list-style-type: none"> ○ A1/P1/F1: 3-mo OIS + 110bps ○ A2/P2/F2: 3-mo OIS + 200bps ○ <u>Facility Fee</u>: 10bps x max amount that can be sold to SPV (regardless of amount intended to be sold) <p><input checked="" type="checkbox"/> Direct Loan Restrictions n/a</p>		<p>Sidley Update (March 31)</p> <p>Sidley Update (April 9)</p> <p>NY Fed Registration</p>
<p>MMFL <i>Money Market Mutual Fund Liquidity Facility</i></p> <p><input checked="" type="checkbox"/> In Effect <input type="checkbox"/> Awaiting Guidance</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Will lend through September 30, 2020 <input type="checkbox"/> <u>Eligible Borrowers</u>: the following purchasers of eligible collateral from eligible funds: <ul style="list-style-type: none"> <input type="checkbox"/> U.S. depository institutions; <input type="checkbox"/> U.S. bank holding companies (parent companies incorporated in the U.S. or their U.S. broker-dealer subs); and <input type="checkbox"/> U.S. branches/agencies of foreign banks <input type="checkbox"/> <u>Eligible Funds</u>: MM mutual funds including Prime, Single State, Other Tax-Exempt MM fund on SEC Form N-MFP <input type="checkbox"/> Eligible borrower must certify that both it <u>and</u> the eligible fund are not insolvent 	<ul style="list-style-type: none"> ○ Boston Fed will lend to borrowers, taking collateral purchased from eligible funds ○ <u>Rate</u>: Dependent on collateral ○ <u>Collateral</u>: <input checked="" type="checkbox"/> Secured <input type="checkbox"/> Unsecured <ul style="list-style-type: none"> ○ U.S. treasuries ○ ABCP w/ top short-term rating ○ Municipal debt with top short-term rating ○ Variable demand notes with top short-term rating ○ Bank CDs ○ <u>Maturity</u>: Same as collateral, up to 12 months ○ Direct Loan Restrictions may apply to the extent MMFL is deemed to be offered pursuant to CARES Act § 4003(b)(4); however, no reference has been made to date regarding such restrictions 		<p>Federal Reserve Act § 13(3); CARES Act § 4003(b)(4)</p> <p>Federal Reserve term sheet, required documents and FAQs</p>

<p>PDCF <i>Primary Dealer Credit Facility</i></p> <p><input checked="" type="checkbox"/> In Effect <input type="checkbox"/> Awaiting Guidance</p>	<p><input type="checkbox"/> NY Fed will lend “for at least 6 months” (presumably through September 30, 2020)</p> <p><input type="checkbox"/> Primary dealers of NY Fed Reserve that have eligible collateral</p>	<ul style="list-style-type: none"> ○ Direct lending by NY Fed in the form of a repo ○ <u>Term</u>: Overnight up to 90 days ○ <u>Rate</u>: Primary credit rate in effect at FRNY discount window ○ <u>Collateral</u>: <input checked="" type="checkbox"/> Secured <input type="checkbox"/> Unsecured <ul style="list-style-type: none"> ○ Collateral eligible for pledge in open market operations, Treasury STRIPS ○ Investment grade corporate debt ○ International agency securities ○ Commercial paper ○ Municipal securities ○ MBS, ABS (AAA for CMBS, CLOs, CDOs; otherwise investment grade) ○ Equity securities excluding ETFs, unit investment trusts, mutual funds, rights and warrants ○ Direct Loan Restrictions may apply to the extent PDCF is deemed to be offered pursuant to CARES Act § 4003(b)(4); however, no reference has been made to date regarding such restrictions 		<p>Federal Reserve Act § 13(3); CARES Act § 4003(b)(4)</p> <p>Federal Reserve term sheet and FAQs</p>
<p>MLF <i>Municipal Liquidity Facility</i></p> <p><input type="checkbox"/> In Effect <input checked="" type="checkbox"/> Awaiting Guidance</p>	<p><input type="checkbox"/> NY Fed will buy through December 31, 2020</p> <p><input type="checkbox"/> <u>Eligible Notes</u>:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Newly-issued tax anticipation notes (TAN), tax and revenue anticipation notes (TRAN), bond anticipation notes (BAN), other similar short- 	<ul style="list-style-type: none"> ○ SPV with initial \$35bn of funding by Fed and Treasury will purchase eligible notes directly from issuers ○ Can buy up to \$500bn of debt ○ <u>Issuer Limits</u>: <ul style="list-style-type: none"> ○ <u>Municipalities</u>: Up to 20% of the general revenue from own 	<ul style="list-style-type: none"> ○ Fed is considering whether to include governmental entities that provide essential public services as eligible issuers 	<p>Federal Reserve Act § 13(3); CARES Act §§ 4003(b)(4), 4027</p> <p>Federal Reserve Term Sheet (April 9)</p> <p>Federal Reserve Term Sheet (April 27)</p>

	<p>term notes</p> <ul style="list-style-type: none"> □ Maturing < 36 months from date of issuance □ <u>Eligible Issuers:</u> <ul style="list-style-type: none"> □ U.S. states and D.C. □ U.S. cities w pop. > 250k residents per Census Bureau □ U.S. counties w pop. > 500k residents per Census Bureau □ “Multi-State Entity” (MSE) created by compact among states and approved by Congress □ Issuer must be rated investment grade by 2+ NSROs as of 4/8/20 (BBB-/Baa3 for municipalities; A-/A3 for MSEs)³² □ “Fallen Angel” <ul style="list-style-type: none"> □ Investment grade (as noted above) as of 4/8/20 <u>and</u> □ 2+ NSROs At least BB-/Ba3 (municipalities) or BBB-/Baa3 (MSEs) at the time of purchase □ Issuer must provide confirmation at time of pricing of all existing long-term ratings on the applicable credit to be used for eligible notes □ If notes are to be sold to MLF 	<p>sources and utility revenue of issuer for fiscal year 2017, based on Census Bureau data (see Appendix A to FAQ for Fed’s calculations and methodology)</p> <ul style="list-style-type: none"> ○ <u>MSE:</u> Up to 20% of gross revenue for fiscal year 2019, based on audited financial statements ○ <u>Number of Issuances:</u> No limit (issuer may sell in any number of issuances, up to maximum amount) ○ <u>Minimum Amount:</u> None, but use of MLF for frequent, small issuances is discouraged ○ <u>Use of proceeds:</u> <ul style="list-style-type: none"> ○ Manage cash flow impact of income tax deferrals; ○ Deferral or reduction of revenue, or expense increase, due to COVID-19; ○ Debt servicing; and ○ Issuer (other than MSE) may buy similar notes issued by or otherwise assist its political subdivisions or other governmental entities for the foregoing purposes (must be solvent) ○ <u>Security for Eligible Notes:</u> Subject to Fed review and approval; should be generally consistent with the source of repayment and strongest security typically pledged for 		<p>Federal Reserve Term Sheet (May 11)</p> <p>Federal Reserve FAQs (April 27; May 11)</p> <p>Sidley Update (April 9)</p>
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³² The issuer may be so rated by only one NSRO, provided that it meets “Fallen Angel” below at time of purchase by MLF, including the requirement for 2+ NSROs.

	<p>following a competitive sale process, the issuer must obtain ratings for the notes</p> <ul style="list-style-type: none"> □ Eligible Issuers must certify: <ul style="list-style-type: none"> □ Solvent □ Inability to secure adequate credit accommodations (including due to pricing inconsistent with normal, well-functioning market) ☒ Only one issuer per state, city, county or MSE is eligible (Fed may approve add'l issuers) □ <u>Initial Disclosure Requirements</u>: <ul style="list-style-type: none"> □ If competitive sale process: Same as public offering □ If no competitive sale process: Fed will review EMMA information and issuer website □ Notes repaid from issuer revenues (e.g. TRANs, TANs): Cashflow statements required (prior year and 12-month projections); Explanation of required “set-asides” from taxes and revenue for repayment or, if not required, plan for repayment □ BANs: Issuer must provide authorization to issue bonds to repay BANs and explain why it will be able to issue □ Copies of materials provided to rating agencies in 	<p>publicly offered obligations</p> <ul style="list-style-type: none"> ○ <u>Municipalities</u>: Fed generally expects notes to represent general obligations or be backed by tax or other specified governmental revenues ○ <u>MSEs</u>: Fed generally expects notes to be parity obligations of existing debt secured by a senior lien on gross or net revenues ○ <u>Closing Conditions</u>: Relevant legal opinions and disclosures will be required, as applicable ○ <u>Pricing</u>: <ul style="list-style-type: none"> ○ Fixed interest rate based on publicly available methodology based on fixed OIS rate for comparable maturity (interpolated if necessary) plus a fixed spread corresponding to ratings and tax status (see Appendix B to FAQ) ○ Pricing for split-rated credits based on average rating; if a credit has only two ratings from major NSROs and one is two or more gradations higher than the other, issuer may either obtain a third and price based on the average, or price at the lower of the two ratings ○ Interest must be a penalty rate (<i>i.e.</i>, premium to market rate under normal circumstances) ○ <u>Origination Fee</u>: 10bps x principal amount of notes purchased (may be paid from proceeds) ○ <u>Prepayment Right</u>: Issuer may, with 		
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	<p>connection with rating confirmation</p> <ul style="list-style-type: none"> □ <u>Continuing Disclosure Req:</u> <ul style="list-style-type: none"> □ As provided in SEC Rule 15c2-12 (including if Rule is not otherwise applicable) □ Issuer website: quarterly cash flows (actual and projected); quarterly financial reports in customary format; and funding of set-asides with explanation of negative variances □ At 6 months and 3 months prior to maturity: explanation of how issuer will repay notes (including for BANs, explanation of material credit or other matters affecting bonds expected to take out BANs) 	<p>MLF approval, prepay in whole or part at par (or, in the case of notes purchased at a premium, par plus unamortized premium) plus accrued interest</p> <ul style="list-style-type: none"> ○ <u>CUSIP:</u> Required ○ <u>Depository:</u> DTC ○ <u>Methods of Sale (Issuer’s Option):</u> <ul style="list-style-type: none"> ○ Competitive sale (“all or nothing” or “modified Dutch auction”), with MLF commitment to purchase unsold notes (MLF will not bid unless required by issuer legal constraints) ○ Direct to SPV without bidding ○ <u>Documentation Process:</u> <ul style="list-style-type: none"> ○ Submit Notice of Interest form, subject to Fed approval. No preference for early filers. New NOI required for each issuance ○ Submit application prior to preliminary offering statement (for competitive transaction) or pricing of any transaction. Fed will commit to purchase upon approval ○ Customary closing conditions and schedules ○ Issuer should use its standard form of note and documentation ○ Issuer should submit evidence of compliance with MLF requirements <p><input checked="" type="checkbox"/> Direct Loan Restrictions n/a</p>		
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<p>PPPLF <i>Paycheck Protection Program Liquidity Facility</i></p> <p><input checked="" type="checkbox"/> In Effect <input type="checkbox"/> Awaiting Guidance</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Fed Reserve Banks will lend through September 30, 2020 <input type="checkbox"/> Eligible Borrowers: all lenders that are eligible to originate PPP loans (<i>see discussion of Paycheck Protection Program under Title I above</i>) are eligible to borrow from the applicable Fed Reserve Bank³³ <input type="checkbox"/> Borrower must certify that it is not insolvent and it is unable to secure adequate credit accommodations (including due to pricing inconsistent with normal, well-functioning market) 	<ul style="list-style-type: none"> ○ Pricing: Par ○ Rate: 35bps ○ Maturity: Same as underlying PPP collateral (accelerated in event of default or loan forgiveness) ○ Risk Weight: 0% under risk-based capital requirements ○ Recourse: <input type="checkbox"/> Recourse <input checked="" type="checkbox"/> Non-recourse ○ Collateral: <input checked="" type="checkbox"/> Secured <input type="checkbox"/> Unsecured <ul style="list-style-type: none"> ○ Only eligible collateral PPP loans guaranteed by SBA, originated or purchased by the borrower³⁴ ○ Fees: None ○ Prepayment: Permitted without penalty; must be accompanied by withdrawal of collateral <input checked="" type="checkbox"/> Direct Loan Restrictions unlikely to apply 	<ul style="list-style-type: none"> ○ Intended to facilitate and increase PPP lending by financial institutions (<i>e.g.</i>, Wells Fargo)³⁵ ○ Depository institutions must have a master account with the Fed, or a correspondent relationship with an institution that has a master account 	<p>Federal Reserve Act § 13(3); CARES Act §§ 1102, 4003(b)(4)</p> <p>Federal Reserve Term Sheet (April 9)</p> <p>Federal Reserve Term Sheet (April 30)</p> <p>PPPLF FAQ (April 30) (includes links to required certifications, forms and other required documentation)</p> <p>Sidley Update (April 9)</p>
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³³ Depository institutions and credit unions may borrow from their local Fed Reserve bank; members of the farm credit system and small business lending companies (as defined in [13 CFR § 120.10](#)) may borrow from the Fed Reserve Bank of Minneapolis; community development financial institutions (as defined in [12 USC § 4702](#)) and all other borrowers may borrow from the Fed Reserve Bank of Cleveland.

³⁴ The [PPPLF FAQ](#), which appears to be out of date, states that “only the depository institution that originated the PPP loan may pledge it to the PPPLF.”

³⁵ See [Interim Final Rule](#) intended to neutralize the regulatory capital effects of participating in PPPLF.

TAX RELIEF

PAYROLL TAX PROVISIONS³⁶

Program	Description	Terms	Practice Notes	Further Reference
<p>Payroll Tax Credit under Families First Coronavirus Relief Act (FFCRA) <i>(Independent of CARES Act)</i></p>	<p>Eligible employers are entitled to refundable tax credit against employer-portion of all payroll taxes. Credits provided to self-employed taxpayers are taken against income tax.</p>	<ul style="list-style-type: none"> ○ <u>Eligible Employers:</u> <ul style="list-style-type: none"> ○ Employers required to provide paid leave under FFCRA (<i>i.e.</i>, those with fewer than 500 employees) ○ Employers required to provide paid leave under FMLA ○ Self-employed (SE) taxpayers who would have been entitled to paid leave under FFCRA/FMLA ○ <u>Applicable Payroll Taxes:</u> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> 6.2% employer's/SE Social Security <input checked="" type="checkbox"/> 1.45% employer's/SE Medicare <input type="checkbox"/> 6.2% employee's Social Security <input type="checkbox"/> 1.45% employee's Medicare ○ <u>Applicable Wages:</u> <ul style="list-style-type: none"> ○ Wages required to be paid pursuant to mandatory leave under FFCRA or FMLA ○ Paid from 3/18/20-12/31/20 ○ <u>Applicable Limitations:</u> <ul style="list-style-type: none"> ○ Credit for FFCRA wages is capped: <ul style="list-style-type: none"> ▪ E'ee leave for own sickness \$511/day, \$5,110 max total 	<ul style="list-style-type: none"> ○ Number of employees tested at the time relevant employee takes leave ○ Only domestic e'ees count ○ Independent contractors are not counted as employees for this purpose 	<p>FFCRA §§ 7701, 7703</p> <p>Sidley Update (March 19)</p> <p>Department of Labor website with FAQs</p> <p>IRS website with FAQs</p>

³⁶ Taxes under the Federal Insurance Contributions Act (FICA) are composed of the old-age, survivors, and disability insurance taxes (Social Security taxes) and the hospital insurance tax (Medicare taxes). The employer-portion of FICA tax is 6.2% Social Security tax plus 1.45% Medicare tax; the employee-portion is also 6.2% Social Security tax plus 1.45% Medicare tax.

		<ul style="list-style-type: none"> ▪ E'ee leave for care of other \$200/day, \$2,000 max total ○ Credit for FMLA wages is capped at \$200/day, \$10,000 maximum ○ Credit increased by amounts paid to provide and maintain group health plan allocable to relevant employee (to the extent excluded from e'ee gross income) 		
CARES Payroll Tax Credit <i>Employee Retention Credits</i>	<p>Eligible employers whose businesses are substantially impaired are entitled to refundable credit against employer-portion 6.2% Social Security taxes in amount equal to 50% of qualified wages.</p>	<ul style="list-style-type: none"> ○ Maximum Amount: For all calendar quarters, the maximum amount of qualified wages that may be taken into account is \$10k per employee (meaning the maximum amount of the credit is \$5k per employee) ○ Eligible Employers: <ul style="list-style-type: none"> ○ Eligibility determined on quarterly basis ○ Non-government employers operating business in 2020 if during relevant calendar: <ul style="list-style-type: none"> ▪ business is fully or partially suspended by government order; <i>or</i> ▪ > 50% decline in gross receipts from prior year (on quarterly basis)³⁷ ○ Non-profit operating business in 2020 that is fully or partially suspended by government order ☒ Employers receiving PPP loan (i.e., SBA loan) under CARES Act ○ Qualified Wages: <ul style="list-style-type: none"> ○ Paid from 3/12/20 - 1/1/21 	<ul style="list-style-type: none"> ○ Employer size is not relevant to qualification; only that the business is sufficiently impaired ○ Because certain organizations are aggregated and treated as a single employer for this purpose, taxpayers should consider extent to which they treat organizations under common control as a “single employer” under existing guidance applicable in various employment contexts ○ Whether a “single employer” exists is relevant to (i) the determination of “qualified wages” based on number of e'ees, (ii) whether the business has been substantially impaired and (iii) eligibility for the SBA PPP loan ○ No restriction on use of additional liquidity ○ No requirements to retain 	<p>CARES Act § 2301</p> <p>Sidley Update (March 26)</p> <p>IRS website for FAQs regarding how to claim the credit (updated April 29)</p> <p>JCT Blue Book containing explanations of CARES Act tax provisions (April 22)</p>

³⁷ An employer is treated as experiencing a significant decline in gross receipts in the period (i) beginning with the first calendar quarter beginning after December 31, 2019, for which gross receipts for the calendar quarter are less than 50 percent of gross receipts for the same calendar quarter in the prior year, and (ii) ending with the quarter following the first calendar quarter beginning after a calendar quarter described in (i) in which gross receipts exceed 80 percent of gross receipts for the same calendar quarter for the prior year. For example, if an employer had gross receipts of \$100 in each calendar quarter of 2019 and then had gross receipts in the first, second, third, and fourth quarters of 2020 of \$100, \$40, \$90, and \$100, respectively, the period in which such employer is treated as meeting the significant decline in gross receipts test is the second and third quarters of 2020.

		<ul style="list-style-type: none"> ○ > 100 FT e'ees in U.S.: only wages paid to idle employees³⁸ ○ < 100 FT e'ees in U.S.: wages paid to all e'ees (whether idle or not) ☒ <i>Excludes</i> wages entitled to FFCRA payroll tax credit discussed above 	<ul style="list-style-type: none"> workforce, in whole or part ○ No compensation restrictions ○ No restrictions on stock buybacks or distributions 	
<p>CARES Act Payroll Deferral <i>Deferral of Employer Portion of Social Security Contributions</i></p>	<p>Eligible employers are entitled to defer payments of the employer-portion of social security payroll taxes.</p>	<ul style="list-style-type: none"> ○ <u>Eligible Employers:</u> <ul style="list-style-type: none"> ○ All employers (including government and non-profits) ○ Self-employed taxpayers ☒ Taxpayers whose SBA Loan has been forgiven under the PPP Loan Forgiveness Program ○ <u>Applicable Payroll Taxes:</u> <ul style="list-style-type: none"> ☑ 6.2% employer's/SE Social Security ☒ 1.45% employer's/SE Medicare ☒ 6.2% employee's Social Security ☒ 1.45% employee's Medicare ○ Amounts eligible for deferral are those otherwise due 03/27/20 through 1/1/21 ○ <u>New Due Date:</u> <ul style="list-style-type: none"> ○ 50% of amount due 12/31/21 ○ 50% of amount due 12/31/22 	<ul style="list-style-type: none"> ○ Interest-free deferral ○ Employer size is irrelevant ○ Fast liquidity because it is generated by not paying cash on hand to Treasury ○ No business impairment required ○ No restriction on use of additional liquidity ○ No requirements to retain workforce, in whole or part ○ No compensation restrictions ○ No restrictions on stock buybacks or distributions ○ PPP loan recipients whose loan has not yet been forgiven may defer payroll tax payments through the date the lender issues a decision to forgive the loan ○ Payroll taxes that have been deferred through the date that the PPP loan is forgiven continue to be deferred and will be due on the "applicable dates" 	<p>CARES Act § 2302</p> <p>Sidley Update (March 26)</p> <p>IRS website for FAQs regarding payroll tax deferral</p> <p>JCT Blue Book containing explanations of CARES Act tax provisions (<i>April 22</i>)</p>

³⁸ More specifically, the statute provides that in the case of large employers, qualified wages include "wages paid... with respect to which an employee is not providing services." In this context, the JCT Blue Book takes the taxpayer-favorable view that this language does not require an employee to provide no services in order for wages paid to that employee to constitute qualified wages. For example, for an accounting firm that continues to pay administrative assistants their full salaries but only requires them to work two days per week on a rotating schedule reflecting reduced demand for assistance resulting from the office closure, the portion of an administrative assistant's salary attributable to days not worked are qualified wages.

NET OPERATING LOSS (NOL) PROVISIONS

Program	Summary				Practice Notes
<p>Taxpayers (other than REITs) can carry back NOLs arising in taxable years 2018, 2019 and 2020 to each of the five preceding taxable years; and for all taxable years beginning 2021, the 80% taxable income cap is eliminated.</p> <p>CARES Act § 2303</p> <p>Sidley Update (March 26)</p> <p>Sidley Update (April 10)</p>	Year NOL Arose	Carryback	Carryforward	Income Offset	<ul style="list-style-type: none"> ○ Given high trading volumes and extreme levels of market volatility during COVID-19 pandemic, many companies have adopted poison pills to protect valuable NOLs. See Sidley Update: ISS Signals More Understanding for Poison Pills (April 9) ○ Relatively fast liquidity by filing amended tax returns to claim refund (though IRS processing time unclear) ○ Taxpayers should carefully consider collateral consequences to carryback, including: <ul style="list-style-type: none"> ○ impact on Section 250 (<i>FDII and GILTI</i>) calculations with respect to international operations; and ○ application of special rules where NOLs are carried back to any taxable year with a Section 965 inclusion (repatriation tax) ○ In addition to timing benefit of immediate refund, the amount of the refund will be determined by reference to the tax rates in effect in the year in which the losses are carried back. Thus, to the extent NOLs are carried back to pre-2017 tax years when the corporate tax rate was 35%, the amount of the tax benefit will be significantly greater than would have been absent carry back (in addition to timing benefit of immediate refund)
	2018 - 2020	5 preceding years <small>(previously no carryback)</small>	∞ <small>(no change)</small>	Applied to 2020 or before: 100% <small>(previously 80%)</small> Applied to 2021 or after: 80% <small>(no change)</small>	
	Prior to 2017 <small>(no changes)</small>	2 preceding years	20 years	100%	
	2021 or after <small>(no changes)</small>	None	∞	80%	
Additional Guidance					
<ul style="list-style-type: none"> ○ Rev. Proc. 2020-24 (April 9) provides guidance for: <ul style="list-style-type: none"> ○ waiving the carryback period in the case of a net operating loss arising in a taxable year beginning after 12/31/17 and before 1/1/21 ○ disregarding certain amounts of foreign income subject to transition tax that would normally have been included as income during the five-year carryback period ○ waiving a carryback period, reducing a carryback period, or revoking an election to waive a carryback period for a taxable year that began before 1/1/18 and ended after 12/31/17 ○ Rev. Proc. 2020-26 (April 9) grants a six-month extension to file applications for a tentative carryback adjustment for NOLs that arose in tax years that began in 2018 and ended on or before 6/30/19 					

		<ul style="list-style-type: none"> ○ Requires taxable income within past 5 years ○ If target was subject of recent M&A transaction, need to analyze tax covenant provisions (<i>e.g.</i>, Do amendments require consent? Who is entitled to refunds attributable to pre-closing periods?) ○ Employer size is irrelevant ○ No business impairment required ○ No restriction on use of cash ○ No requirements to retain workforce, in whole or part ○ No compensation restrictions ○ No restrictions on stock buybacks or distributions
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CONTACTS

If you have any questions about these government programs or would like to discuss how these programs apply to your company in particular circumstances, please contact the Sidley lawyer with whom you usually work, or:

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