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COVID-19 TAX RELIEF PROVISIONS

PRESENTED TO:

NATIONAL ASSOCIATION OF LANDSCAPE PROFESSIONALS

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Agenda

- 2019 federal and state filing update
- Policy and legislation
  - Families First Act
  - CARES Act
- Changes impacting individuals, investors and business owners
- Liquidity

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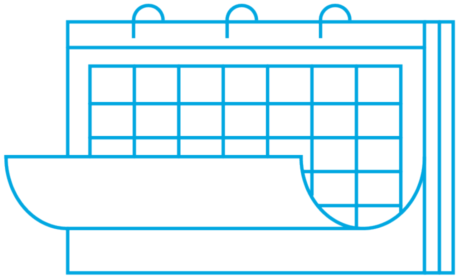
Federal tax filing update

- Notice 2020-18
  - Individual (Form 1040), Trust (Form 1041), and C Corporation (Form 1120) due date for filing and paying tax is **July 15, 2020**
  - First quarter estimated taxes originally due April 15 are now also due **July 15, 2020**
  - IRS FAQs
  - RSM's IRS FAQ Tax Alert



- Notice 2020-20
  - Gift and Generation-Skipping Transfer Tax Returns (Form 709) due date for filing and paying tax is **July 15, 2020**
- Notice 2020-23
  - Extends additional key tax deadlines for individuals and businesses
  - Second quarter estimated tax payments originally due on or after April 1 and before July 15 are now due **July 15, 2020**

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State tax filing update

- Almost all states have provided income tax filing and/or payment relief for corporations and individuals, either as a result of federal conformity or because of state-specific guidance
  - Confirm whether your state(s) are conforming
  - Assume nothing!
- Similar filing and/or payment relief exists for fiduciaries and pass-through entities in some states, but guidance is in flux
- Filing and payment relief is not limited to income tax, in more limited instances relief is available for sales tax and property tax
- Filing deadline resources:
  - State conformity to federal COVID-19 extensions
  - State and local sales tax extensions and relief due to COVID-19
  - AICPA: State Tax Filing Guidance for Coronavirus Pandemic

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POLICY AND LEGISLATION

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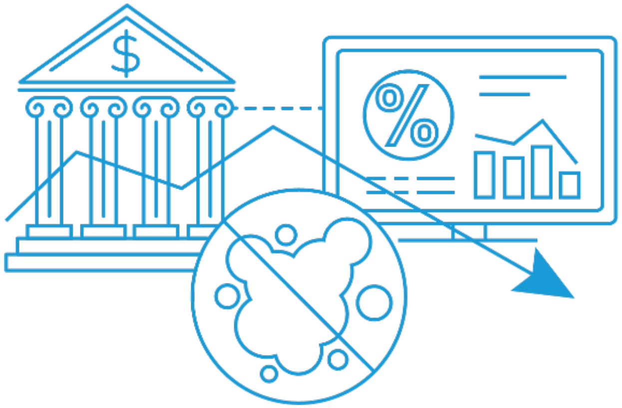
Legislative and regulatory response to COVID-19

- Families First Coronavirus Response Act and Qualified Sick and Qualified Family Medical Leave Act
- Coronavirus Aid, Relief, and Economic Security (CARES) Act
- Making payroll tax credits available
- Tax regulations: enabling cash flows with tax payments (extensions, estimates and filings)



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Families First Coronavirus Response Act

- Effective April 2, 2020
- Mandatory paid leave for certain employees
  - Qualified paid sick leave wage
  - Qualified paid family leave wage
  - Qualified health plan wages (counted with wages above)
    - Some leave based on employees not able to work or telework because of schools or child care centers closure
    - Some leave based on actual COVID-19 quarantine, self quarantine
- Payroll tax credits on leave above, with per employee payroll caps
- Limited to employers with fewer 500 employees in most cases
  - FMLA aggregation rules may apply – fact based
- U.S. Department of Labor
  - Resources
  - Fact sheet of Employee Rights and Employer Requirements

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CARES Act

- Key tax provisions
  - Employee retention credit
  - Delay of payment of employer payroll taxes
    - March 27, 2020 – Dec. 31, 2020
    - Payable ½ Dec. 31, 2021 and ½ Dec. 31, 2022
  - Net operating losses (2018-2020)
    - Suspends 80% limit
    - Five-year carryback: Tax rate arbitrage opportunity
    - Technical correction for fiscal-year filers for FYE beginning prior to Dec. 31, 2017
  - Excess business loss
    - Suspends limitation until 2021
  - 163(j) interest limitations
    - 30% adjusted taxable income limit increased to 50%
    - Partnerships: Special rules with no changes for 2019
  - Qualified improvement property
    - Technical correction retroactive to 2018
    - Now 15-year property eligible for bonus depreciation
    - 20 year for ADS

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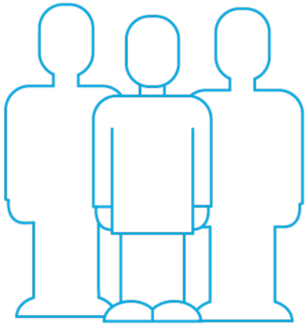
Employee retention credit

- Payroll tax credit equal to 50% of the qualified wages
  - Eligible employers with 100 or fewer employees – may count all employee wages in calculation
  - Eligible employers with more than 100 employees – count just employee wages paid for time when employee is not providing service
- To the extent employer pays more in qualified wages than can be paid for by reducing employer social security tax (6.2%) employer may be able to apply for additional refund
- Credit period is for wages paid after March 12, 2020 and before Jan. 1, 2021



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Employee retention credit

- Credit available to any employer carrying on a trade or business in calendar year 2020 that:
  - was partially or fully suspended due to orders from an ‘appropriate government authority’ limiting commerce, travel, or group meetings due to COVID-19; OR
  - experienced a 50% or greater reduction in gross receipts for a quarter as compared to the same quarter in 2019
  - Continues for subsequent quarters until gross receipts hit 80% for a quarter as compared to the same quarter in 2019
- Credit is also available to tax-exempt organizations under section 501(c) and exempt from tax under section 501(a)
- Credit is not available to certain governmental employers
- An employer is not eligible if it is taking a small business interruption loan

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Employer payroll taxes

- Delay of payment of employer social security (6.2%) payroll taxes
  - Deferral March 27, 2020 – Dec. 31, 2020
  - Payable ½ Dec. 31, 2021 and ½ Dec. 31, 2022
- Not available if employer receives PPP or certain other loans and the loan is forgiven

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Five-year of NOL carryback

- NOL carrybacks for losses arising in a taxable year beginning after Dec. 31, 2017, and before Jan. 1, 2021 to each of the ***prior five taxable years***
  - Corporate rate was 35% for most of the carryback period
  - Individual rate was 39.6%
- Consider taxable years and impact of changes to a corporation's tax year-end or short-years resulting from M&A transactions
- Technical correction for fiscal-year filers for FYE beginning prior to December 31, 2017
- Who will receive the refund?
  - If the corporation carrying back losses was a member of a prior consolidated group in a carryback year the refund will go to the common parent of the prior consolidated group

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Carrybacks and short tax-years

- Five tax-years may not be five calendar years
- Example:
  - Assume that Corporation X was a stand-alone calendar year C corporation acquired June 30, 2018 by Corporation P
  - Corporation P is strictly a holding company and the two corporations elected to file a consolidated return
  - In 2019, the P-X group has a loss, all attributable to X, that it wishes to carry back
- The loss is carried back to the years ending:
  - Dec. 31, 2018 (P-X consolidated return)
  - June 30, 2018 (X stand-alone return)
  - Dec. 31, 2017 (X stand-alone return)
  - Dec. 31, 2016 (X stand-alone return)
  - Dec. 31, 2015 (X stand-alone return)

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Other NOL-related considerations

- Under the Act, a taxpayer may not utilize the NOL carrybacks to offset section 965 income
- GILTI income in the current tax year or prior tax years reduces the benefit of a taxpayer's current NOL or NOL carryback
- Also, note that the carryback of NOLs can impact credits and deductions the corporation had previously claimed
  - For example, section 199 domestic production activities deduction (DPAD) is limited to taxable income, so an NOL carryback could reduce the DPAD deduction previously claimed
- Taxpayers should look to opportunities in 2019 and 2020 to increase NOLs to maximize carry backs (i.e. accounting method changes)

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Non-corporate NOLs and losses

- The TCJA limited business losses in a year to $250,000 for single filers, $500,000 for joint filers
  - Excess becomes part of the NOL carryover calculation
- The Act defers (retroactively) the effective date of this provision to tax years beginning ***after Dec. 31, 2020***
- Change allows for the following:
  - Full utilization of 2018 – 2020 business losses
  - Carryback of business losses to the extent they create an NOL in 2018 – 2020

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Modification to the alternative minimum tax (AMT) credit

- TCJA eliminated the corporate AMT
- Corporate taxpayers with an AMT tax credit carryover could file for refunds of the credit through 2018 – 2021
- The Act accelerates payment of AMT credit refunds to corporations for the first taxable year beginning in 2019
- Alternatively, a corporation may elect to use 100% of its AMT credit for its first taxable year beginning in 2018
- The Act confirms that the credit is not subject to section 383

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Modification of business interest expense limitation

- The TCJA enacted section 163(j) limiting interest deductions to a 30% of adjusted taxable income (ATI)
- The CARES Act lessens the impact by increasing the ATI limit to 50% of ATI for taxable years beginning in 2019 or 2020
- Taxpayers (including partnerships) may also elect to use their 2019 ATI amount for computing their 2020 limitation
- For partnerships, this change to 50% of ATI applies for years beginning in 2020
- In addition, 50% of a partner’s 2019 disallowed interest expense will be treated as business interest not subject to section 163(j) for tax year beginning in 2020

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Qualified improvement property (QIP)

- Provides a much-awaited technical correction for qualified improvement property (commonly referred to as the retail glitch)
- Definition of QIP:
  - Any improvement made by the taxpayer to an interior portion of a building which is nonresidential real property if such improvement is placed in service after the date such building was first placed into service
  - Certain restrictions on type of interior improvement
- Provision is retroactive to QIP placed into service after Dec. 31, 2017
- Now 15-year property eligible for bonus depreciation

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CHANGES IMPACTING INDIVIDUALS, INVESTORS AND BUSINESS OWNERS

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Recovery rebates for individuals

- Rebates payable to eligible individuals
  - U.S. residents only
  - Not eligible to be claimed as dependent of another taxpayer
  - Must have a social security number
- $1,200 per eligible individual ($2,400 joint) and $500 per dependent
- Rebate amount phases out as adjusted gross income exceeds:
  - $150,000 joint filers (fully phased out at $198,000)
  - $112,500 head of household (fully phased out at $146,500)
  - $75,000 single (fully phased out at $99,000)
- Rebates distributed to eligible individuals based on 2019 tax return, 2018 tax return, or 2019 SSA 1099 statements

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Special use of retirement funds: Distributions up to $100,000

- No 10% early distribution penalty for distributions up to $100,000 from retirement accounts for “Coronavirus-related” purposes in 2020
- Distribution may be repaid to the plan within three years (rather than 60 days), or the inclusion in income is taxed ratably over three-year period (if elected)
- “Coronavirus-related distribution” made to an individual:
  - diagnosed with COVID-19, including a spouse or dependent; <u>OR</u>
  - experiences adverse financial consequences as a result of quarantine, furlough, lay off, reduced work hours, or lack of child care due to COVID-19, closing or reduced hours of operations for business owned/operated, or other factors determined by the Treasury Department

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Special use of retirement funds: Plan loans and waiver of RMDs

- Qualified individuals may borrow up to $100,000 from qualified retirement plans within 180 days of enactment date of CARES Act (prior loan limit was $50,000)
  - This does not apply to IRAs
- Definition of qualified individuals tied to “Coronavirus-related distribution”
- Loan repayments, normally spread over five years, are delayed up to one additional year
- Temporary waiver of required minimum distributions for 2020 from defined contribution plans and IRAs

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Charitable deduction changes for 2020: Individuals

- The charitable deduction limit for individuals has been suspended for 2020 (formerly 50% / 60% of adjusted gross income limit) for qualified charitable contributions (QCC) when itemizing deductions
- Individuals not itemizing deductions on Schedule A are allowed to deduct up to $300 of QCC
- QCC deduction is first reduced by gifts subject to 30% / 20% AGI limitations
- QCC are those made to:
  - Public charities (excludes donor advised funds and non-operating private foundations)
  - In the form of cash during 2020

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Charitable deduction changes for 2020: Corporations

- Increases the limitation for the deduction for food inventory from any trade or business to 25% from 15% of taxable income (applies to individuals also donating food inventory from trade or business)
- Increases the limitation for the deduction of “qualified charitable contributions” from 10% to 25% of the corporation’s taxable income
- Nonqualified charitable contribution gifts made will reduce the 25% taxable income limit

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Suspension of excess business loss limitation for 2018 – 2020

- The limitation on the deduction of excess business losses (annual net losses in excess of $250,000 or $500,000 for joint filers) does not apply until 2021
- Amended returns may be filed for 2018 and 2019 (if filed already) to allow full deduction of losses otherwise limited by this provision originally enacted in the TCJA
- The loss limitation rule will apply for 2021 – 2025
- These loss limitation rules apply to individuals, estates and trusts

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Net operating loss changes applicable to individuals and trusts

- The same changes in NOL deductions described for businesses apply to individuals, estates and trusts
- The prior 80% of taxable income limitation for losses incurred in 2018, 2019, and 2020 is eliminated for 2018 – 2020 tax years
- NOLs for 2018, 2019 and 2020 may be carried back five years to generate refunds
- The taxpayer may waive the carryback period and instead carry the losses forward
- Recall top income tax rates were 39.6% in 2013 – 2017

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Exclusion from income for employer payments of student loans

- For employer student loan payments made after the date of enactment of the CARES Act and before Jan. 1, 2021, the employee is not subject to income taxation on payments up to $5,250
  - The payment plan must meet the requirements of IRC section 127
- The exclusion from income for all employer educational assistance payments (including student loan payments) is capped at $5,250 per year
  - Employees cannot take deductions for interest amounts so forgiven

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Coronavirus Aid, Relief and Economic Security (CARES) Act

- Increases access to loans for small and middle market businesses
- Three programs
  - Small Business Administration (SBA) Economic Injury and Disaster Loan Program (EIDL)
  - Paycheck Protection Program (PPP) third-party loans with SBA guarantees
  - Main Street Lending Program loans for small and mid-sized businesses

Effective April 23, 2020, Congress approved an additional $310 billion in funding for the Paycheck Protection Program, $50 billion for the EIDL program and $10 billion for emergency EIDL grants.

Effective April 30, 2020, the Federal Reserve issued additional information and amended terms for the Main Street Lending Program.

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SBA EIDL Program

- Eligibility
  - Businesses unable to meet existing financial obligations as a result of COVID-19 crisis
  - Most manufacturing companies with 500 or fewer employees and most non-manufacturing businesses with average annual receipts under $7.5 million (exceptions by industry)
- Amount
  - Up to $2 million for working capital and ordinary expenditures (actual amount tied to economic injury from COVID-19)
- Rate
  - 3.75% for small businesses and 2.75% for nonprofit
  - Loans are not forgivable
- How to apply
  - Apply online directly with the SBA https://www.sba.gov/disaster-assistance/coronavirus-covid-19

Note: Borrowers are precluded from receiving SBA funding under PPP and EIDL for the same purpose

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Paycheck Protection Program (PPP)

- Eligibility
  - 500 employees or less (including affiliates*)
  - Meets applicable employee size standards based on NAICS (including affiliates*)
  - 500 employees or less by location in accommodation and food service industry (NAICS 72x) or for any business acting as a franchise that is assigned a franchise identifier code by SBA
  - Sole proprietors, independent contractors and other self-employed individuals, including “gig economy” workers
  - Charitable tax-exempt organizations (including religious organizations), described in section 501(c)(3) of the Internal Revenue Code, and veterans organizations, described in section 501(c)(19), are eligible to participate in the program. However, other tax-exempt organizations (e.g., those described in sections 501(c)(4), (5), and (6)) are not eligible to participate.
- Amount
  - 2.5 times a borrower’s monthly payroll costs for U.S. employees (cash compensation of any employee above $100,000 must be subtracted) or $10 million, whichever is smaller
- Rate
  - 1% for 2 years
  - Payments of both principal and interest will be deferred for six months following the date of loan disbursement; however, interest will accrue during that period
  - Loans are forgivable provided certain criteria are met (see slide 7)
- How to apply
  - Applicants must submit SBA Form 2483 with payroll documentation to a participating lender

Note that borrower must certify in good faith that current economic uncertainty makes this loan request necessary to support ongoing operations

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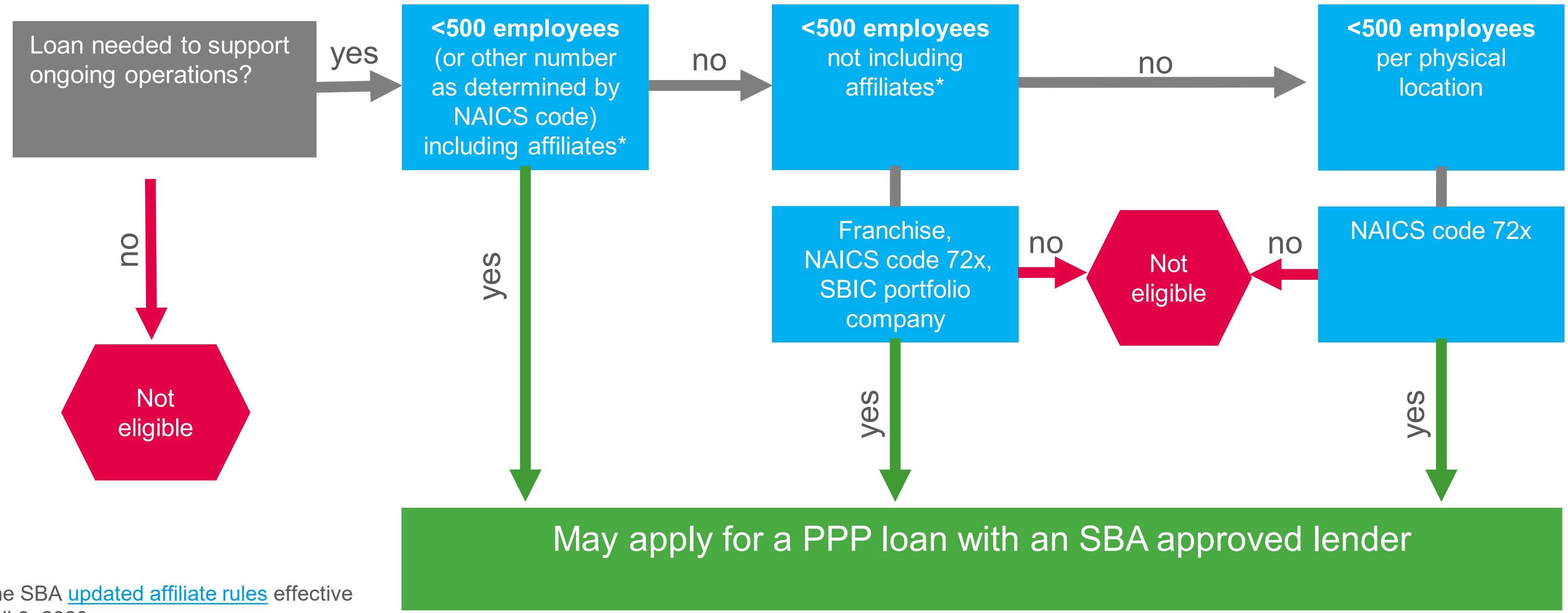
Can I apply for a PPP loan?



*The SBA updated affiliate rules effective April 3, 2020.

Note that borrower must certify in good faith that current economic uncertainty makes this loan request necessary to support ongoing operations, which includes taking into account their current business activity and their ability to access other sources of liquidity

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Can a PPP loan be forgiven?

- Under certain conditions
  - Funds must be used in an **<u>eight-week period</u>** following loan origination for the following (with respect to the items below, no more than 25% of the loan forgiveness may be attributed to non-payroll costs)
    - Payroll costs (cash compensation of any employee above $100,000 must be subtracted)
    - Interest payments made on any mortgage incurred prior to February 15, 2020
    - Payment of any lease in force prior to February 15, 2020
    - Payment on any utility for which service began before February 15, 2020
  - Existing employees are retained at or near current salary levels
    - Employee cuts or wage reductions will reduce forgiven amounts
    - Employers are allowed to rehire employees previously let go before the application without penalty
  - Proceeds from any advance up to $10,000 on an EIDL loan will be deducted from the loan forgiveness amount

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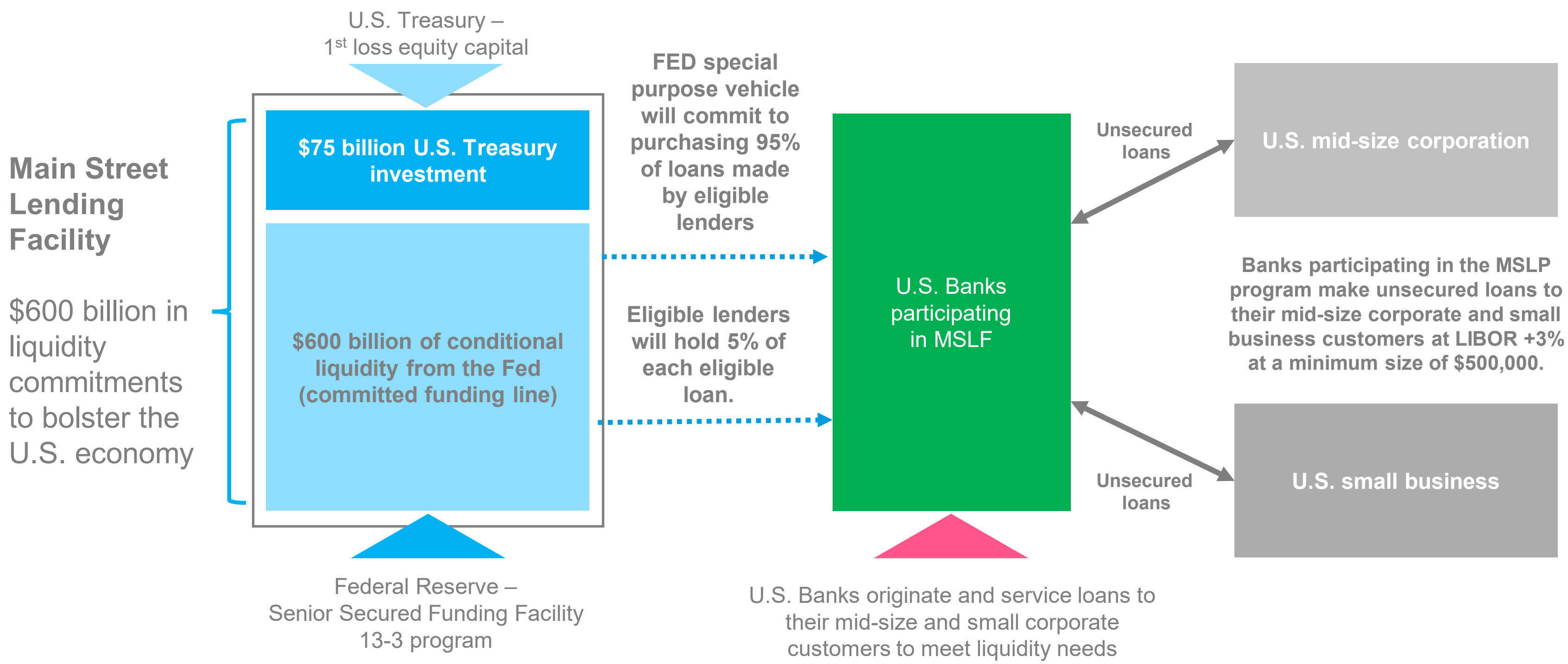
Last updated May 2, 2020

Main Street Lending Program

$600 Billion lending facility to provide low-cost loans to help small to medium-size enterprises impacted by COVID-19



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Main Street Lending Program (facilities and terms)

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

Borrowers should contact their lender directly to apply

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Main Street Lending Program (eligibility)

- Businesses
  - Must be established before March 13, 2020 and be created or organized in the U.S. with significant operations in and a majority of employees in the U.S.
  - Have up to 15,000 employees or $5 billion in 2019 annual revenues (affiliated companies must be included in total)
  - Must not be an ineligible business as listed in 13 CFR 120.110 (b)–(j), (m) –(s), as modified and clarified by SBA regulations for purpose of PPP on or before April 24, 2020 (including interim final rules available at 85 Fed. Reg. 20811, 85 Fed. Reg. 21747 and 85 Fed. Reg. 23450)
  - Must not have received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (section 4003(b)(1)-(3) of the CARES Act)
  - May only participate in one Main Street facility and must not participate in the Primary Market Corporate Credit Facility
  - Must be able to make all of the certifications and covenants required under the program

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Main Street Lending Program (certifications)

- Borrowers must
  - Make a commercially reasonable effort to retain payroll and employees while the loan is outstanding
  - Commit that they will not cancel or reduce any existing lines of credit to the Main Street lender or any other lender
  - Commit to refrain from repaying principal or interest on any debt until the Main Street loan is repaid, unless the debt or interest payment is mandatory and due; however, Priority Facility borrowers may, at the time of origination, refinance existing debt owed to a lender that is not the Main Street lender
  - Certify that they have a reasonable basis to believe that, as of the date of loan origination and after giving effect to such loan, they have the ability to meet their financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period
  - Follow compensation, stock repurchase and capital distribution restrictions outlined in section 4003(c)(3)(A)(ii) of the CARES Act, except that an S corporation or other tax pass-through entity may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings
  - Certify eligibility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act

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QUESTIONS AND ANSWERS

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NALP RESOURCES

Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

COVID-19 Operating Guidelines for Landscape Companies

Letter Stating That Lawn and Landscape are Essential Services

DHS CISA Memorandum Listing Landscape Services as Essential

The Landscape Industry COVID-19 Statement

State by State COVID-19 Guidance

Facebook Landscape and Lawn Care Coronavirus Discussion Group

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