





COVID-19 Relief Funding & Reopening America — What is Really Happening in Congress and What are the Risks and Rewards of Resurrecting the US Economy?

MAY 21, 2020 12:00 p.m. EDT





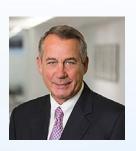
Speakers on Today's Program



Stephen Lerner Moderator Squire Patton Boggs Cincinnati



Senator Joe Manchin US Senator West Virginia



Hon. John Boehner Squire Patton Boggs Washington DC



James Barresi Squire Patton Boggs Cincinnati



Karol Denniston Squire Patton Boggs San Francisco



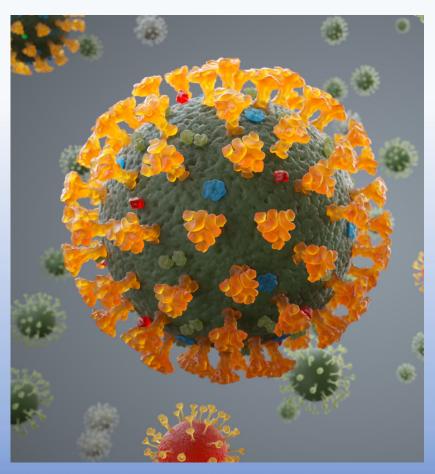
Ed Newberry Squire Patton Boggs Washington DC





What's Different This Time

- Unprecedented global economic shutdown
- Extreme volatility in financial markets
- Businesses closed by government mandate
- Spiraling increase in unemployment claims
- Inability to fulfill contracts
- Little or no revenue generated
- Supply chain disruption
- Little liquidity
- Unknown impact on consumer confidence
- · No clarity on timing of return to normal







Welcome the Government to the Table: The CARES Act CARES Act

- Stabilization funding for small businesses
 - Paycheck Protection Program (PPP)
 - Expansion of Economic Injury Disaster Loan Program by \$10 billion
 - Expansion of small business bankruptcy filing limit to \$7,500,000 for next year
- Financial assistance to businesses, states/municipalities and liquidity to capital markets







Welcome the Government to the Table: The CARES Act

Main Street Lending Program Under Section 4003(b)(4)

- Treasury to invest \$75 billion, and Federal Reserve to invest an additional \$525 billion, through an SPV that will purchase 85% or 95% participation interests in eligible term loans made by banks to eligible mid-sized and small US businesses
- Three different facilities, with eligible loans ranging from \$500k to \$200 million
- May be new term loans, or incremental tranches of loans made prior to April 24, 2020
- Interest rate: LIBOR + 3%, with four year maturity
- Restrictions on capital distributions, compensation of highly paid employees, payments on other debt, and reduction of other credit
- Will pose some restrictions on eligible lenders, and lenders should consider risk mitigation strategies
- Borrowers must attest that, after giving effect to the loan, they do not expect to file for bankruptcy during the following 90 days (and that they have a reasonable basis to believe they will have the ability to meet their financial obligations during that period)
- The program is not yet operational





Venture-backed Start-ups and Private Equity-backed companies May Be Left Out of PPP

Small Business Association (SBA) Affiliation Rules

- Narrow exception to affiliation rules provided for "accommodation and food" industries, franchise operators and companies who have received assistance from a small business Investment Company.
- The SBA's affiliation rules and financial certifications are used to determine whether a business affiliation can influence whether a given company qualifies as "small" and whether relief will be available.
- The affiliation rules may prevent venture-backed start-ups and private equity-backed companies from access to small business relief under the PPP.
- For example, if a start-up has 20 employees, its affiliation with perhaps thousands of other employers at its sponsor's other portfolio companies may prevent it from qualifying for loans or grants under the PPP.





COVID-19 is an Economic Crisis in Addition to a

Humanitarian One

The Economic Ripple Effect

Variables surrounding initial outbreak, detection, spread and reporting of the disease have varied significantly since January and accurate projections are difficult to provide.

But the economic impact is rippling through nations with a similar pattern as depicted here.

Tourism Companies Advertising & **Facilities** Marketing Management Hotels & Vacation Casinos Rentals Healthcare Bars & **Suppliers** Restaurants Healthcare Taxis & Cruise Ships & **Providers Ride Share International Travel** Non-Household **Business** Oil & Gas* Consumer Leisure: COVID-19 Theme **Events** Goods Gyms & Parks & **Ski Resorts** Museums Senior Living **Facilities** Personal Cinema & Durable **Live Sports** Services **Theatres** Goods & Concerts Catering Services **Property** Auto/Supply Retail Chain Fresh Food Agriculture

^{*} The O&G industry is expected to be effected by the trickle-down of decreased demand for transport and a reduction in industrial activity. Such effects are apart from the impact of recent changes in crude oil production.





COVID-19 Poses Acute Boardroom Challenges

Care of Employees, Lenders, Trade Creditors and Equity Holders

- A director's fiduciary duty to act in the best interest of the company is now about as challenging as it can get.
- Boards need professional advice in terms of labor and employment challenges and compliance, accessing CARES Act relief, and deploying cash in a time where the business may be closed.
- Managing cash flow and creating real-time projections is key to having useful and productive conversations with lenders, customers, vendors and investors.
- When approving extensions or other agreements required to respond to COVID-19 challenges care must be taken not to waive *force majeure*, impossibility and other similar defenses.





Board Oversight and Government Supervision

CARES Act Oversight

Oversight bodies created by the CARES Act include:

- Office of the Special Inspector General for Pandemic Recovery with the Treasury Department (the Special Inspector General) for oversight over CARES Act funds
- Pandemic Response Accountability Committee and Congressional Oversight Commission who are tasked with ensuring accountability in the disbursement of CARES Act funds





Observations about the Restructuring Cycle Today

No business operations, no cash, no value

- Companies and their lenders and bondholders recognize that the closure of many businesses has eliminated cash flow while expenses still continue to exist.
- Lenders and bondholders have shown a willingness to enter into standstill agreements to preserve the status quo to the extent possible for as long as three months.
- There is a serious effort to reduce the number of immediate bankruptcy filings in recognition of the inability for anyone to realize sufficient value as part of a bankruptcy process.
- Lenders and many landlords are providing extensions but requiring borrowers who qualify to apply for loans and grants under the CARES Act and pay a portion of the proceeds to the them pursuant to the extension.





Observations about Restructuring After Stabilization

Turning the Economy Back On

- The resumption of business will be slower than anyone wants or can predict today.
- Some businesses will not be able to reopen and will need to be liquidated through a chapter 11 plan or a chapter 7 liquidation.
- Businesses that do not qualify for loans or grants under government stimulus will face challenges finding financing.
- Valuations will be significantly depressed and forcing resolution will severely reduce recoveries. Deal fatigue will plague many borrowers.
- Companies who need the protection of the automatic stay will find bankruptcy courts are jammed and the pace extremely slow.
- Opportunistic investors will swarm distressed businesses seeking to pick off assets and in some cases buy businesses at depressed valuations.
- Law firms and financial advisors will form cross disciplinary swat teams.





Contingency Plans Should be Fueled by Liquidity and Tested by Scenario Analyses

PREPARE IMMEDIATELY FOR UNPREDICTABLE TIMING OF AN EVENTUAL REBOUND

Buying time to last through the downturn, however long it lasts, and preparing for an eventual rebound are the predicates for building longer term operational resilience.

	Revise Cash Flow Forecasts	Reduce Costs	Test Business Plan / Contingency Scenarios
OBJECTIVES	 Revisit cash inflows and outflows Maximize liquidity through working capital management Stabilize situation 	 Assess cost structure – fixed vs. variable costs Manage/control spending Identify core businesses/assets 	 Determine achievability of business plan under a variety of likely and "could never happen" scenarios Drill-down on business unit profitability
TOOLS	 13 week cash flow Weekly "dashboards" Payable aging Receivable analysis Vendor negotiations Vendor terms over time 	 Vendor/contract rationalization Overhead/cost analysis Capital/liquidity allocation 	 Accounts receivable weakness Profit cube – product and sales contribution Reassess revenue drivers SWOT Analysis – competitor benchmarking Scenario planning and sensitivity analysis
TIMING:	NOW	NEAR TERM	SOON AS FEASIBLE 12





What Should Companies Do Today?

- Borrowers under PPP or MSLP must be prepared to produce documentary evidence to demonstrate that proceeds were used for allowable uses.
- It will not be enough to "demonstrate accountability" or "address scrutiny."
- Well advised companies will be able to present documentation to clearly prove that they used the proceeds in a permissible manner.



COVID-19 Relief Funding & Reopening America — What is Really Happening in Congress and What are the Risks and Rewards of Resurrecting the US Economy?

CLE Materials

May 21, 2020



Contents

COVID-19 Public Policy Report

US Executive Branch Update

The Small Business Administration Publishes Helpful Guidance Regarding Its New "Economic Necessity" Certification Requirement for Paycheck Protection Program (PPP) Loans

CARES Act: Main Street Lending Program

Employee Benefit Security Agency and IRS Provide COVID-19 Relief for Employee Benefit Plan Deadlines

Main Street Lending Program: Considerations for Private Equity Sponsors

Can Chapter 11 Debtors Receive PPP Loans?

Squire Patton Boggs is the trade name of Squire Patton Boggs (US) LLP, a limited liability partnership organized under the laws of the state of Ohio, USA. Squire Patton Boggs (US) LLP is part of the international legal practice Squire Patton Boggs, which operates worldwide through a number of separate legal entities. Please visit squirepattonboggs.com for more information.











COVID-19 Public Policy Group Report

US - May 21, 2020

The legislative process in the US Congress is beginning to take on a more familiar look as policymakers work to shape the next steps in the federal response to COVID-19 and the resulting economic crisis. The US House of Representatives will be back in session again next week, albeit with temporary proxy voting measures in place that allow some Members of Congress to cast votes without being physically present in the US Capitol. Legislators on both sides of the aisle are publicly floating proposals, many of them bipartisan, in hopes they will gain the support of colleagues and become candidates for inclusion when the next coronavirus response package is eventually negotiated by Democratic and Republican leaders. Committee leaders are also leaning forward with their ideas for the next package, sensing an opportunity in the coming weeks to address national priorities that have long been stalled due to partisan gridlock.

The aforementioned movement is particularly evident this week in the area of infrastructure policy. Senate Majority Leader Mitch McConnell (R-KY) has discouraged his GOP colleagues from indulging President Donald Trump's vision of helping to rescue the economy through enactment of a US\$2 trillion national investment in transportation and infrastructure construction initiatives. House Speaker Nancy Pelosi (D-CA), who earlier this spring articulated ambitions similar to those of the president, conspicuously declined to include any major infrastructure components in House Democrats' US\$3 trillion Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act. Yet the idea of seizing the moment and harnessing the pandemic crisis to "go big" on long-delayed national

infrastructure objectives remains alive.

In the House, a bipartisan group of 135 Members of Congress - more than one-quarter of the chamber's membership – sent a letter this week to Speaker Pelosi and House Minority Leader Kevin McCarthy (R-CA) urging that nearly US\$50 billion be included in the next COVID-19 response measure. House Committee on Transportation & Infrastructure Chairman Peter DeFazio (D-OR) has been gearing up for early June committee action on a significant infrastructure overhaul and reauthorization package. The White House last week identified infrastructure reform as one of the president's priorities for a future economic stabilization and recovery bill. And CNN reports several Senate Republican committee leaders are publicly pressing Leader McConnell to put aside his misgivings and give Congress a chance to work in a bipartisan way to support economic recovery by passing a long-awaited large-scale national infrastructure bill.

Congress also appears to be moving quickly toward potential passage of targeted legislation that would change the March 27 CARES Act's Paycheck Protection Program (PPP). Speaker Pelosi has announced the House will vote next week on a bipartisan bill by Representatives Dean Phillips (D-MN) and Chip Roy (R-TX) that would provide greater flexibility in the program so that PPP loans can be more effectively accessed by restaurants, hotels and enterprises in the hospitality industry. Senator Marco Rubio (R-FL), the chairman of the Senate Committee on Small Business, has called for similar changes. This strong bipartisan support has raised the possibility that a targeted PPP fix could be quickly passed as a stand-alone bill and signed into law by President Trump in the coming days, while Congress continues partisan deliberations over the composition of another major COVID-19 omnibus bill. It could also establish a template for focused action on other pandemic-related consensus priorities as the two parties remain far apart on their broad visions for future coronavirus response legislation.

For additional public policy insights related to COVID-19, please follow us on Twitter (@SPB_Global) for our daily public policy reports. See here for all the latest editions.

Capital Thinking Blog

In the coming weeks, we will unveil a blog dedicated to global public policy focused content, including this daily report. Follow us on Twitter for the launch announcement and subscribe to the blog to stay informed when our daily reports are published.

Tax and Economic Development Updates

The Federal Reserve yesterday released the minutes from its April 28-29 Federal Open Market Committee meeting. A review of the minutes shows that Federal Reserve officials are concerned about the "substantial likelihood" of additional COVID-19 outbreaks in the United States, which "could lead to a protracted period of severely reduced economic activity." Likely stemming from these concerns, the Federal Reserve is continuing to play a leading role in implementing various economic stimulus measures. In fact, just yesterday, the New York Federal Reserve Bank announced that its Term Asset-Backed Securities Loan Facility (TALF) will be operational and begin receiving loan applications on June 17, with the first loans expected to close on June 25.

Another key program receiving attention from policymakers - including from members of the Congressional Oversight Commission – is the Main Street Lending Program (MSLP). While Federal Reserve Chairman Jay Powell and Treasury Secretary Steven Mnuchin have suggested that the MSLP will be operational by June, a growing number of lawmakers and other key stakeholders are expressing concern that the 13(3) facility is not already up and running. There are also concerns about the MSLP requirement that borrowers make "commercially reasonable" efforts to not lay off employees. According to Representative French Hill (R-AR), who serves on the Congressional Oversight Commission and is seeking clarity as to the meaning of "commercially reasonable," "[t]he principal mission of the Main Street Lending Program is to bridge companies cash-flow needs across this coronavirus impact on the economy and keep as many Americans employed as possible."

As reported yesterday, the House is expected as early as next week to vote on and pass bipartisan legislation to make a number of improvements to the PPP. Specifically, it appears that the House will consider H.R. 6886, the Paycheck Protection Flexibility Act, which is the result of efforts by Representatives Phillips and Roy to allow businesses receiving forgivable PPP loans additional flexibility in using their loan proceeds. According to sources referencing a recent Dear Colleague, the House is focused on making changes to the PPP that would:

- Allow forgiveness for expenses beyond the 8week covered period;
- Eliminate restrictions limiting non-payroll expenses to 25% of loan proceeds;
- Eliminate restrictions that limits loan terms to 2 years;

- Ensure full access to payroll tax deferment for businesses that take PPP loans; and
- Provide a rehiring safe harbor for businesses unable to rehire employees due to the effects of enhanced Unemployment Insurance

Given that Senate Republicans – including Senate Committee on Small Business Chairman Rubio – and the Trump Administration have gone on record in support of similar changes to the PPP, it seems increasingly likely that the PPP will be revised in the not-too-distant future.

Health Updates

With one of the first major COVID-19 outbreaks in the United States occurring in a nursing home – and a rapid increase in coronavirus cases in these types of facilities since that time - lawmakers are examining current and potential laws and policies focused on these entities. Yesterday, the Government Accountability Office (GAO) released a report titled "Infection Control Deficiencies Were Widespread and Persistent in Nursing Homes Prior to COVID-19 Pandemic." GAO conducted this study at the request of Senator Ron Wyden (D-OR), Ranking Member of the Senate Committee on Finance. It found "most nursing homes were cited for infection prevention and control deficiencies (82% of those surveyed from 2013-2017) [prior to the pandemic]. About half of these homes had persistent problems and were cited across multiple vears." GAO stated future reports will review infection prevention and control and emergency preparedness in nursing homes more broadly, as well as the Centers for Medicare & Medicaid Services's (CMS's) response to the pandemic. Several weeks ago, President Trump announced the establishment of the Coronavirus Commission for Safety and Quality in Nursing Homes, which is to be composed of industry experts, doctors, scientists, resident and patient advocates, family members, infection and prevention control specialists and state and local authorities. CMS Administrator Seema Verma has also proposed a five-part plan to ensure safety and quality in nursing homes, which focuses on strengthening oversight, enhancing enforcement, increasing transparency, improving quality and removing regulations that providers identify as costly, challenging and not providing significant benefit. House Democrats' HEROES Act includes several sections aimed at nursing homes, including protections to manage safety and quality care for patients, as well as manage outbreaks and allow for infection control as needed.

Representative Michael Burgess, MD (R-TX), Ranking Member of the House Committee on Energy and Commerce Health Subcommittee, led a <u>letter</u> to Department of Health and Human Services (HHS) Secretary Alex Azar, requesting HHS consider nursing homes, skilled nursing centers, senior living communities, independent living communities, assisted living

communities, memory care facilities and continuing care retirement communities for additional Provider Relief Fund allocations. The lawmakers stressed the importance of these facilities in caring for seniors, explaining, "Even when our country is not facing a pandemic, these facilities face staffing difficulties, and they are particularly hard pressed as their nursing and other professionals have become infected with COVID-19. Additionally, they are having difficulty obtaining basic medical supplies, including masks, gowns, and hand sanitizer." On the other side of the Capitol, the Senate Special Committee on Aging will hold a hearing today titled "Caring for Seniors Amid the COVID-19 Crisis." Senators will hear from witnesses from the New York University Grossman School of Medicine. the University of Chicago and the Visiting Nurses Association Health Group.

HHS issued a reminder on the Provider Relief Fund to eligible providers yesterday, stating these providers must act by June 3, 2020, to receive additional relief funds from the general distribution allocation. The notices explains, "[Eligible providers] have until June 3, 2020, to accept the Terms and Conditions and submit their revenue information to support receiving an additional payment from the Provider Relief Fund US\$50 billion General Distribution. All providers who automatically received an additional General Distribution payment prior to 5:00 pm, Friday, April 24th, must provide HHS with an accounting of their annual revenues by submitting tax forms or financial statements. These providers must also agree to the program Terms and Conditions if they wish to keep the funds." HHS also states, "The submission of tax forms or financial statements to the portal will also serve as an application for additional funding for those providers that have not already received an additional General Distribution payment. If these providers do not submit their revenue information by June 3, they will no longer be eligible to receive potential additional funding from the US\$50 billion General Distribution."

Trade Updates

On Wednesday, a bipartisan group of senators sent a letter to Treasury Secretary Mnuchin expressing concerns that companies owned or directed by the People's Republic of China (PRC) may take advantage of the economic crisis caused by the COVID-19 pandemic to acquire distressed US companies. The letter - which included long-time China critic and acting chair of the Senate Select Committee on Intelligence, Senator Rubio urged the administration to "ensure countering the PRC's predatory economic behavior both at home and abroad continues to be featured in policy deliberations. It was important six months ago, remains important today, and must continue to be a US priority in the future." They outline specific requests for actions by the administration, including "to investigate and, if appropriate, block PRC state-owned and -directed enterprises from purchasing or otherwise investing in distressed companies to include

sale and leaseback agreements for high-value equipment and capital goods."

Also on Wednesday, US Customs and Border Protection confirmed that it would be extending current limits on nonessential travel across US land borders and through ferry services until June 22. These restrictions on passenger travel from Canada and Mexico have been in place since March 21 but do not apply to goods trade.

Oversight Updates

Today, the House Select Subcommittee on the Coronavirus Crisis will <u>hold</u> a member briefing on the impact of the coronavirus crisis on medical staff, first responders, grocery store workers, drivers, custodians and other frontline heroes.

The Washington Post reports that next Tuesday the House Committee on Oversight and Reform will hold a member briefing at which Christi Grimm, the HHS Principal Deputy IG, will testify. Grimm authored the report that found hospitals in crisis as COVID-19 diagnoses were increasing, which President Trump characterized as "wrong" and "Another Fake Dossier!" Shortly thereafter, the President announced his intent to nominate Jason Weida to be the HHS's IG. If confirmed by the Senate, Weida will replace Grimm. According to a draft notice of the hearing, Grimm is expected to testify about her office's work in response to the pandemic.

Contacts

David B. Stewart

Principal, Washington DC T +1 202 457 6054 E david.stewart@squirepb.com

David Schnittger

Principal, Washington DC T +1 202 457 6514 E david.schnittger@squirepb.com

Beth L. Goldstein

Senior Associate, Washington DC T +1 202 457 5129 E beth.goldstein@squirepb.com

Brandon C. Roman

Senior Associate, Washington DC T +1 202 457 5330 E brandon.roman@squirepb.com

Kristina V. Arianina

Senior Associate, Washington DC T +1 202 457 5139 E kristina.arianina@squirepb.com

Ludmilla L. Kasulke

Senior Associate, Washington DC T +1 202 457 5125 E ludmilla.kasulke@squirepb.com



US Executive Branch Update

Thursday, May 21, 2020

This report provides a snapshot of the US Executive Branch priorities via daily schedules and the prior day's press releases.

POTUS' Schedule*

12:20 p.m. EDT – THE PRESIDENT departs Washington, D.C., en route to Detroit, MI

1:40 p.m. EDT – THE PRESIDENT arrives at Detroit Metropolitan Wayne County Airport | Detroit, MI

2:10 p.m. EDT – THE PRESIDENT arrives at Ford Rawsonville Plant | Ypsilanti, MI

2:15 p.m. EDT – THE PRESIDENT participates in a listening session with African-American Leaders | Ypsilanti, MI

3:00 p.m. EDT – THE PRESIDENT tours Ford Rawsonville Components Plant | Ypsilanti, MI

3:20 p.m. EDT – THE PRESIDENT delivers remarks at Ford Rawsonville Components Plant | Ypsilanti, MI

4:40 p.m. EDT – THE PRESIDENT departs Detroit, MI, en route to Washington, D.C.

6:15 p.m. EDT – THE PRESIDENT arrives at the White House

VPOTUS' Schedule*

2:30 p.m. – THE VICE PRESIDENT leads a White House Coronavirus Task Force meeting | Situation Room

Looking ahead, Vice President Mike Pence is scheduled to travel to Atlanta, Georgia, on Friday, May 22. He is expected to have lunch with Governor Brian Kemp and participate in a roundtable with restaurant executives, before returning to Washington. Vice President Pence is also expected to travel back to Florida next week for the first piloted SpaceX Crew Dragon launch for NASA on May 27. It remains unclear whether President Trump will also attend the launch at NASA's Kennedy Space Center.

*The US President (POTUS) and Vice President's (VPOTUS) daily schedules are subject to change.

Recap of Wednesday, May 20, 2020

Note: All colored text denotes hyperlinks. Purple colored hyperlink spotlights COVID-19 developments.

The White House

- Remarks by President Trump in a Meeting with Governor Hutchinson of Arkansas and Governor Kelly of Kansas
- Presidential Memorandum on Providing Continued Federal Support for Governors' Use of the National Guard to Respond to COVID-19 and to Facilitate Economic Recovery (re: Utah)
- Text of a Notice on the Continuation of the National Emergency with Respect to the Stabilization of Iraq
- Text of a Letter from the President to the Speaker of the House of Representatives and the President of the Senate
- Transcript: Press Briefing by Press Secretary Kayleigh McEnany
- Remarks by Vice President Pence After Visiting with Westminster Baldwin Park Leadership | Orlando, FL
- Readout from the State and Local Stakeholder Call on COVID-19 Response
- Appointments: President Donald J. Trump Announces Appointments for the Executive Office of the President
- Nomination: President Donald J. Trump Announces Judicial Nominee
- Presidential Message on Cuban Independence Day, 2020

Centers for Disease Control and Prevention (CDC)

COVID-19 webpage

Department of Health and Human Services (HHS)

- Press Release: Providers Must Act by June 3, 2020, to Receive Additional Relief Fund General Distribution Payment
- Press Release: HHS Provides \$225 Million for COVID-19 Testing in Rural Communities

Department of Defense (DOD)

- Press Release: Changing of Health Protection Condition Levels During COVID-19
- Publication: Guidance for Commanders on Risk-Based Changing of Health Protection Condition Levels During the Coronavirus Disease 2019 Pandemic
- Article: Dover AFB to Serve as Key Hub in COVID-19 Fight
- Article: As in Other Domains, U.S. Use of Electromagnetic Spectrum is Contested
- Contracts for May 20, 2020

Department of State

Daily Schedule | Thursday, May 21

- May 20: Statement | United States Provides Additional Assistance for the Crisis in Venezuela and the Region
- May 20: Readout | Secretary Pompeo's Call with Spanish Foreign Minister González Laya
- May 20: Remarks | Secretary Michael R. Pompeo at a Press Availability
- May 20: Statement | Standing with the Iranian People
- May 20: Statement | Delivering on American Commitments in the COVID-19 Response with Additional Foreign Assistance
- May 20: Statement | Cuban Independence Day
- May 20: Statement | The Republic of Cameroon National Day
- May 20: Statement | Passing of Ambassador Matthew J. Matthews

US Mission to the United Nations (UN)

- Remarks at a UN Security Council Briefing on the Situation in the Middle East (via VTC)
- Remarks at a UN Security Council Briefing on the Situation in Venezuela (via VTC)

Department of the Treasury

- Statement of Secretary Steven T. Mnuchin on the Announcement of the Re-Proposed Capital Rule for the Enterprises by the Federal Housing Finance Agency
- Sanctions: Treasury Sanctions Iran's Interior Minister and Senior Law Enforcement Officials in Connection with Serious Human Rights Abuses

Department of Homeland Security (DHS)/Cybersecurity & Infrastructure Security Agency (CISA)/Customs and Border Protection (CBP)

- Travel Advisory: Acting Secretary Wolf Traveling to Texas (May 21-22)
- Fact Sheet | DHS Measures on the Border to Limit the Further Spread of Coronavirus
- Press Release: CISA Guidance on the Essential Critical Infrastructure Workforce (May 19)
- Press Release: CBP Officers Seize Over Three Thousand Pounds of Marijuana in Broccoli Shipment at Pharr International Bridge (Texas)
- Press Release: Utah Sex Offender Arrested By Border Patrol (Arizona)
- Press Release: CBP Officers Apprehend Port Runner, Seize Meth Pills (New York)
- Press Release: Rio Grande Valley Border Patrol Rescues Two Men (Texas)
- Press Release: Since Tuesday, RGV Agents Seize More than 500lbs. of Drugs (Texas)
- Press Release: El Paso CBP Officers Seize Methamphetamine, Heroin, And Oxycodone In Two Seizures (Texas)
- Press Release: Harrisburg CBP Disconnects Counterfeit Wireless PS4 Controllers from the U.S. Marketplace (Pennsylvania)

Federal Emergency Management Agency (FEMA)

- Press Release: FEMA Announces Operational Guidance for the 2020 Hurricane Season
- Press Release: FEMA Issues Public Notice (Mississippi)
- Fact Sheet: Tornado-Damaged Houses of Worship May be Eligible for Federal Assistance
- Fact Sheet: Questions and Answers About FEMA Disaster Assistance (Tennessee)
- Press Release: Deadline to Register in Eastern Oregon Extended to July 2 (Oregon)
- Press Release: FEMA Awards City of Dania Beach More Than \$1.3 Million for Hurricane Irma Expenses (Florida)
- Press Release: FEMA Awards Sumter Electric Cooperative, Inc. Nearly \$3.6 Million for Hurricane Irma Expenses (Florida)

Department of Justice

Daily Federal Bureau of Investigation (FBI) Press Releases

- Press Release: Former Senior U.S. Navy Employee Charged for Role in Bribery Conspiracy and Lying to Investigators
- Press Release: Justice Department Observes National Missing Children's Day
- Press Release: Justice Department Honors Louisiana Marshal with Missing Children's Law Enforcement Award
- Press Release: Justice Department Recognizes Florida Detectives with Missing Children's Child Protection Award
- Press Release: Justice Department Honors Florida Bus Driver for Return of Missing Child
- Press Release: Justice Department Honors Wisconsin Task Force Director and Special Agent for Capture of Child Molester
- Press Release: Justice Department Files Lawsuit Against Township of Jackson, New Jersey, and the Township's Planning Board for Zoning Restrictions that Target the Orthodox Jewish Community

Department of Commerce

- Remarks by Commerce Secretary Wilbur L. Ross at the 5th American Workforce Policy Advisory Board Meeting
- Blog: Spotlight on Commerce | Jolene Lau, Communications Specialist, Pacific Islands Regional Office. NOAA Fisheries

Department of Agriculture (USDA)

- Press Release: USDA Approves Program to Feed Kids in Kentucky, Tennessee, and DC
- Press Release: SNAP Online Purchasing to Cover 90% of Households

Department of Energy

- Press Release: Department of Energy Announces \$67 Million to Enhance Manufacturing Competitiveness Through Innovation
- Press Release: Department of Energy Selects the University of Texas – San Antonio to Lead Cybersecurity Manufacturing Innovation Institute
- Press Release: Department of Energy to Resume Cleanup at Energy Technology Engineering Center
- Congressional Testimony: Under Secretary Mark W. Menezes' Opening Statement for Confirmation Hearing to be Deputy Secretary of Energy

Department of Transportation

- Press Release: Air Travel Consumer Report | March 2020 and 1st Quarter 2020 Numbers
- Press Release: U.S. Department of Transportation Announces up to a \$120.1 Million Loan for the Gilcrease Expressway West Project in Tulsa, OK

Department of Labor

- Press Release: U.S. Department of Labor Cites South Dakota Bull Stud Facility After Employee Asphyxiated While Handling Liquid Nitrogen
- Press Release: U.S. Department of Labor Releases
 Quotes from Written Testimony from Postponed OSHA
 Hearing
- Press Release: U.S. Department of Labor Announces Final Rule To Expand Access to Bonuses for American Workers

US Government (USG) COVID-19 Webpages

- Department of Defense COVID-19 webpage
- Department of State COVID-19 Travel Advisory webpage
- Office of Personnel Management COVID-19 webpage
- Food and Drug Administration COVID-19 webpage
- Department of Homeland Security Employee COVID-19 webpage
- Department of Labor COVID-19 webpage
- USAGov COVID-19 webpage

Non-USG COVID Webpages

Johns Hopkins University & Medicine

- Coronavirus Resource Center
 - COVID-19 Interactive Map

Synopsis of President Trump's Tweets

- May 21: "Wow! Your tax dollars at work" Retweet: Rasmussen Reports @Rasmussen_Poll · 7h · FBI Offered To Pay Christopher Steele 'Significantly' To Dig Up Dirt On Michael Flynn https://dailycaller.com/2020/05/20/christopher-steele-michael-flynn-svetlana-lokhova-cambridge/ via @dailycaller
- May 20: "China is on a massive disinformation campaign because they are desperate to have Sleepy Joe Biden win the presidential race so they can continue to rip-off the United States, as they have done for decades, until I came along!"

- May 20: "Spokesman speaks stupidly on behalf of China, trying desperately to deflect the pain and carnage that their country spread throughout the world. Its disinformation and propaganda attack on the United States and Europe is a disgrace...."
- May 20: "....It all comes from the top. They could have easily stopped the plague, but they didn't!"
- May 20: "Great call with thousands of our Hispanic community, business, and faith leaders today. During this national trial, we have been uplifted by the grit, determination, prayers, and patriotism of Hispanic Americans...."
- May 20: "....Together, we built the greatest economy in history. We will do it again – better than ever before!"
- May 20: [Executive Order on Regulatory Relief to Support Economic Recovery]
- May 20: [Presidential Message on Cuban Independence Day, 2020]
- May 20: "Michigan sends absentee ballot applications to 7.7 million people ahead of Primaries and the General Election. This was done illegally and without authorization by a rogue Secretary of State. I will ask to hold up funding to Michigan if they want to go down this Voter Fraud path!"
- May 20: "Crazy Bernie Sanders is not a fighter. He gives up too easy! The Dem establishment gets Alfred E. Newman (Mayor Pete) & @amyklobuchar to quit & endorse Sleepy Joe BEFORE Super Tuesday, & gets Pocahontas to stay in the race, taking thousands of votes from Bernie. He would have...."
- May 20: "...beaten Sleepy Joe in a LANDSLIDE, every State, if these events didn't happen. Even if Warren just dropped out, he would have easily won. Dems did it to him with Crooked Hillary and now, even more so...and Bernie doesn't even complain. VOTE for Trump on TRADE, better than BS!"
- May 20: "Congratulations to my daughter, Tiffany, on graduating from Georgetown Law. Great student, great school. Just what I need is a lawyer in the family. Proud of you Tiff!"
- May 20: "The Tulsa, Oklahoma area has been approved for a transportation loan from the @USDOT of up to \$120M to help expand highway on the Gilcrease Expressway West Project. This will mean less congestion and faster routes to popular spots! @GovStitt"

- May 20: "We have sent our best Military & @FEMA Teams, already there. Governor must now "set you free" to help. Will be with you soon!" Retweet: Donald J. Trump @realDonaldTrump · 19h · My team is closely monitoring the flooding in Central Michigan Stay SAFE and listen to local officials. Our brave First Responders are once again stepping up to serve their fellow citizens, THANK YOU!
- May 20: "Great news for the Dallas area! Dallas Area Rapid Transit (DART) will be receiving \$229M in funding to keep front line workers, and the many riders that depend on transit, employed and safe. This will be critical to economic recovery! @GregAbbott_TX @dartmedia"
- May 20: "My team is closely monitoring the flooding in Central Michigan – Stay SAFE and listen to local officials. Our brave First Responders are once again stepping up to serve their fellow citizens, THANK YOU!"
- May 20: "Now that our Country is 'Transitioning back to Greatness', I am considering rescheduling the G-7, on the same or similar date, in Washington, D.C., at the legendary Camp David. The other members are also beginning their COMEBACK. It would be a great sign to all - normalization!"
- May 20: "State of Nevada "thinks" that they can send out illegal vote by mail ballots, creating a great Voter Fraud scenario for the State and the U.S. They can't! If they do, "I think" I can hold up funds to the State. Sorry, but you must not cheat in elections.
 @RussVought45 @USTreasury"
- May 20: "Some wacko in China just released a statement blaming everybody other than China for the Virus which has now killed hundreds of thousands of people. Please explain to this dope that it was the 'incompetence of China', and nothing else, that did this mass Worldwide killing!"
- May 20: "I said NO to a deal, Lou. If I would be willing to re-remember.....they would recommend no jail time, & I said NO. This President needs to be re-elected, Lou. One of the greatest Presidents in my lifetime. I would never give false testimony against him." Roger Stone @LouDobbs .."

Contact

Stacy A. Swanson

Public Policy Advisor, Washington DC T +1 202 457 5627 E stacy.swanson@squirepb.com



The Small Business Administration Publishes Helpful Guidance Regarding Its New "Economic Necessity" Certification Requirement for Paycheck Protection Program (PPP) Loans

US - May 15, 2020

As a result of media criticism related to public companies obtaining loans under the Paycheck Protection Program (PPP), the Small Business Administration (SBA) on April 23, 2020, updated its "Frequently Asked Questions" (FAQ) to include Question 31, and an answer.

Ostensibly, FAQ #31 was intended to clarify the meaning and scope of the following certification included in all PPP loan applications: "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." The clarification provided by FAQ #31 retroactively deems to include in the certification a good faith consideration of the borrower's financial needs based on "current business activity" and the borrower's "ability to access other sources of liquidity sufficient to support their on going [sic] operations..." For borrowers who determine that their original "economic certification" (as clarified by FAQ #31) is no longer accurate, FAQ #31 also created a safe harbor by allowing those borrowers to repay their loan no later than May 7, 2020. That date was extended to May 14, 2020 by FAQ #43, and further extended to May 18, 2020 by FAQ #47.

The ambiguity of FAQ #31 has caused considerable uncertainty with a number of borrowers taking advantage of the safe harbor and repaying their loans. Undoubtedly, this was the SBA's intent, particularly with respect to public, or larger companies, but the ambiguity has caused smaller companies to return loans as well.

The issuance of FAQ #46 on May 13, 2020 provides some much-needed guidance by responding to the posed question: "How will SBA review borrowers' required good-faith certification concerning the necessity of their loan request?" Not surprisingly, the answer depends on the size of the loan.

Specifically, for borrowers with a PPP loan of less than US\$2 million, the answer to FAQ #46 states (emphasis added):

"Any borrower that, together with its affiliates, received PPP loans with an original principal amount of less than \$2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith."

In other words, loans of less than US\$2 million are deemed to be "necessary to support the ongoing operations" of the business as the economic necessity certification requires (and making the economic necessity certification a non-issue for PPP loans that are less than US\$2 million). Note that the US\$2 million amount is calculated by aggregating the borrower's PPP loan together with any PPP loans of the borrower's affiliates.

For borrowers with a PPP loan of US\$2 million (it is not clear from the way the rule is written which rule applies to loans of exactly US\$2 million), the answer to FAQ #46: (a) confirms that (i) the borrower will be subject to the economic necessity certification (as clarified by FAQ #31), and (ii) the loan will be subject to automatic review pursuant to FAQ #39; but also (b) importantly, limits the consequences to a borrower for failing to prove the economic necessity of their PPP loan by providing as follows (emphasis added):

"If SBA determines in the course of its review that a borrower lacked an adequate basis for the required certification concerning the necessity of the loan request, SBA will seek repayment of the outstanding PPP loan balance and will inform the lender that the borrower is not eligible for loan forgiveness. If the borrower repays the loan after receiving notification from SBA, SBA will not pursue administrative enforcement or referrals to other agencies based on its determination with respect to the certification concerning the necessity of the loan request."

Effectively, FAQ #46 limits a borrower's liability for an inadequate economic necessity certification to the loss of loan forgiveness and an obligation to repay the loan.

While FAQ #46 has provided some helpful guidance and a limitation of liability under certain circumstances related to the economic necessity certification, it is important to note that FAQ #46 only applies to the economic necessity test and specifically does not shelter any borrower (regardless of whether they have a loan less than or greater than US\$2 million) from review for (and related liability for) "compliance with PPP program requirements set forth in the PPP Interim Final Regulations and in the borrower's Application Form", such as issues and concerns related to eligibility or issues pursued by other regulatory organizations, comprising the CARES Act a formidable oversight and auditing infrastructure. For a discussion of that infrastructure and those organizations, we refer you to our publication, "You Can't Take the Money and Run—Federal Oversight of COVID-19 Spending."

Please contact us with any questions on the economic necessity certification requirement and government oversight.

Contacts

Kirk D. Beckhorn

Partner, Washington DC T +1 202 457 7516 E kirk.beckhorn@squirepb.com

Pablo E. Carrillo

Of Counsel, Washington DC T +1 202 457 6415 E pablo.carrillo@squirepb.com

Keith Bradley

Partner, Denver T +1 303 894 6156 E keith.bradley@squirepb.com

Karen Harbaugh

Partner, Washington DC T +1 202 457 6485 E karen.harbaugh@squirepb.com

George J. Schutzer

Partner, Washington DC T +1 202 457 5273 E George.schutzer@squirepb.com

Thomas B. Reems

Partner, Denver T +1 303 894 6110 E thomas.reems@squirepb.com



CARES Act: Main Street Lending Program

US - May 4, 2020

Main Street Lending Program (MSLP)

Overview

On April 30, 2020, after receiving over 2,200 comment letters, the Board of Governors of the Federal Reserve ("Federal Reserve") published two updated term sheets and one new term sheet¹ for the Main Street Lending Program ("MSLP"), which will be funded by three Federal Reserve facilities under Section 13(3) of the Federal Reserve Act, along with FAQs that may from time to time be updated.² The MSLP is intended to provide support for small and mid-sized businesses through four-year term loans (the "Main Street Loans") from eligible lenders to eligible US businesses, which together with their affiliates, have up to 15,000 employees or revenues of up to \$5 billion. The Federal Reserve has clarified that the affiliation rules applied by the Small Business Administration ("SBA") to determine eligibility under the Paycheck Protection Program ("PPP") will also apply in respect of certain eligibility criteria under the MSLP.³ The three facilities of the MSLP will be funded by a single special purpose vehicle ("SPV") established by the Federal Reserve Bank of Boston ("FRB Boston"), capitalized with an equity investment of \$75 billion by the Treasury from funds allocated to the Treasury under the CARES Act, and up to an additional \$525 billion in funds from FRB Boston in the form of loans to the SPV pursuant to Section 13(3) of the Federal Reserve Act.⁴ The SPV will purchase 85% or 95% participations in eligible loans, with lenders keeping a 5% or 15% interest in such loans, depending on the type of facility under the MSLP.⁵

Eligible lenders may originate Main Street Loans under the Main Street New Loan Facility ("New Loans") or Main Street Priority Loan Facility ("Priority Loans") or increase the size of existing term and revolving credit facilities under the Main Street Expanded Loan Facility ("Loan Increases"). Although the facilities share many common terms (and are still subject to final rules and regulations), there are a number of important differences (further outlined below) among the facilities. A chart summarizing the terms of the three facilities follows.

We note that several key aspects of the MSLP have changed since the initial term sheets were released and that the Federal Reserve has provided substantial guidance in detailed FAQs. Nonetheless, several ambiguities remain (e.g., how foreign affiliates will affect the determination as to whether the majority of a business's employees are in the US). As we have seen with the PPP, programs of this nature are not immune from political pressures (e.g., subsequent guidance under the PPP placed public company borrowers in the hospitality and franchise restaurant industries, private schools and universities (and, possibly, their lenders) at risk for having obtained loans as ineligible borrowers even though the initial guidance under the PPP made these businesses eligible to apply). Potential borrowers and lenders should exercise caution, and consider risk management measures, before taking action in respect of the MSLP.

General Terms of the MSLP

- Total Program Size: Up to \$600 billion (as of April 30, 2020).
- **Purpose**: To provide support to small and medium-sized businesses and their employees across the US during the current period of financial strain by facilitating credit to such businesses, to help companies that were in sound financial condition prior to the onset of the COVID-19 pandemic maintain their operations and payroll until conditions normalize.
- **Lender Eligibility**: ⁶ US insured depository institutions, US branches or agencies of foreign banks, US bank holding companies, US savings and loan holding companies, US intermediate holding companies of a foreign bank, or a US subsidiary of any of the foregoing. ⁷ A Lender providing a Loan Increase must be one of the lenders that holds an interest in the underlying loan at the date of upsizing.

¹ The Federal Reserve published an updated New-Loan-Facility term sheet, an updated Expanded-Loan-Facility term sheet, and new Priority-Loan-Facility term sheet.

² Please see our <u>prior alert</u> regarding a summary of the other Federal Reserve Facilities. We have also addressed recent updates in connection with Municipal Liquidity Facility in a separate <u>Squire Patton Boggs analysis</u>.

³ This is an increase from 10,000 employees and \$2.5billion in revenues from the prior term sheets, which had not specified whether and how affiliation rules would apply.

⁴ FRB Boston will make the loans to the SPV on a recourse basis to the SPV, such that the Treasury's equity will act as first-loss capital.

⁵ Originally, the Federal Reserve indicated that all would be 95% participations.

⁶ Nonbank financial institutions are not currently eligible. However, the Federal Reserve has indicated that it is considering options to expand eligibility.

⁷ Previously US branches or agencies of foreign banks, and US intermediate holding companies thereof, had been excluded

Program Termination: September 30, 2020.8

Borrower Eligibility:

- up to 15,000 employees or up to \$5 billion in 2019 revenues, in each case together with affiliates (but only one test needs to be met);⁹
- formed in or under the laws of the US, prior to March 13, 2020;
- is a Business (i.e., a for profit entity)¹⁰ or a tribal business concern;¹¹
- is not an ineligible business (listed in 13 CFR 120.110(b)-(j) and (m)-(s), ¹² as modified by regulations implementing the PPP), which generally include any business involved in lending activities, passive real estate investments or speculative activities; ¹³
- has significant operations in the US and a majority¹⁴ of employees based in the US;
- was in sound financial condition prior to the COVID-19 pandemic; and
- has not received specific support pursuant to Title IV, Subtitle A of the CARES Act, relating to emergency relief to distressed industries, including airlines and businesses important to maintaining national security ¹⁵ (and may not also participate in the PMCCF and may only participate in one of the three facilities under the MSLP). ¹⁶

• Terms and Conditions of Main Street Loans:

- SPV Participation: The SPV will purchase a participation in eligible term loans at par.
- Maturity: Four year maturity.
- Payment Deferment:
 - No principal or interest payments for one year;
 - interest will be capitalized if not paid.
- Interest Rate: Adjustable rate of LIBOR (1 or 3 month) + 3.0%.¹⁷
- Minimum size of loans:
- \$500,000 for New Loans and Priority Loans;
- \$10 million for Loan Increases.
- No prepayment penalty.
- Pari Passu Risk Sharing: SPV and the Lender will share risk on an equal basis (in the case of the Main Street Expanded Loan Facility, in the Loan Increase).
- 8 The SPV will cease purchasing participations on September 30, 2020. However, FRB Boston will continue to operate the SPV until its assets mature or are sold.
- To determine its eligibility with respect to this requirement, a business must aggregate its employees and 2019 revenues with the employees and 2019 revenues of its affiliated entities, in accordance with the affiliation test set forth in 13 CFR 121.301(f) (which is also applied under the PPP). A business can calculate its revenues either by using (1) its (and its affiliates') annual "revenue" in its 2019 Generally Accepted Accounting Principles-based (GAAP) audited financial statements or (2) its (and its affiliates') annual receipts for the fiscal year 2019, as reported to the Internal Revenue Service. For purposes of the MSLP, the term "receipts" has the same meaning used by the SBA in 13 CFR 121.104(a). If neither the audited financial statements nor annual receipts are available for 2019, the most recently available should be used.
- 10 "Business" means a for profit entity formed as a partnership; limited liability company; corporation; association; trust; cooperative; or joint venture with no more than 49% participation by foreign business entities; provided that the Federal Reserve may consider other forms of organization for inclusion.
- 11 Defined in 15 U.S.C. § 657a(b)(2)(C), except that "small business concern" in that paragraph should be replaced with "Business" as defined in the MSLP.
- For example, the following businesses (or certain of the following businesses) may be ineligible because of these regulations: financial businesses primarily engaged in lending; passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds; life insurance companies; pyramid sale distribution plans; private clubs; government-owned entities (except for certain hospitals and businesses owned or controlled by a Native American tribe); loan packagers earning more than one third of their gross annual revenue from packaging SBA loans; businesses with an "Associate" (defined in 13 CFR 120.10) who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude; businesses in which the Lender or CDC, or any of its associates owns an equity interest; certain adult entertainment businesses; the businesses or any business owned or controlled by the businesses or its Associates has previously defaulted on a Federal loan or Federally assisted financing within the past seven years, and caused the Federal government to sustain a loss in any of its programs; businesses primarily engaged in political or lobbying activities; and speculative businesses. The PPP Interim Rule issued on April 24, 2020, stated that PE firms (but not specifically their portfolio companies) were primarily engaged in investment or speculation, and such businesses are therefore ineligible to receive a PPP loan. That Interim Rule also stated that certain government hospitals were still eligible for PPP loans, and that a business that is otherwise eligible for a PPP loan is not rendered ineligible due to its receipt of legal gaming revenues, and 13 CFR 120.110(g) is inapplicable to PPP loans. The SBA has developed interpretative guidance for these rules in its "SOP" which will likely also be applicable to this program.
- 13 The Federal Reserve reserved the right to modify the application of these restrictions relating to ineligible businesses.
- 14 It is not clear whether SBA affiliation rules will be used to determine whether a "Business" has a majority of its employees based in the United States, or if such rules will only be used to determine the number of employees a Business has. The FAQs did not directly address the question (as it had for determining the number of employees), and this ambiguity, may discourage lenders from making Main Street Loans to businesses that have, on an affiliated basis, more employees outside of the US than within the US, unless the Federal Reserve directly addresses this issue or provides a way of confirming borrower eligibility prior to the funding of Main Street Loans.
- 15 This includes the Treasury Direct Lending Program and the other Federal Reserve Facilities, such as the PMCCF, but does not include PPP loans or EIDL.
- 16 A borrower may receive more than one Main Street Loan within a particular facility, as long as the aggregate amount of such loans does not exceed the applicable maximum size parameters (\$25 million and \$250 million, respectively). For example., a borrower may receive multiple Loan Increases, but not both a Loan Increase and New Loan/Priority Loan.
- 17 Previously, the Federal Reserve had indicated that Loans would bear interest base on SOFR (plus 250 to 400 bps). Lenders and Borrowers should include fallback contract language to be used should LIBOR become unavailable during the term of the loan, consistent with the recommendations of the Alternative Reference Rates Committee,

- Risk Rating: Other loans from Lender to Borrower as of December 31, 2019 (or in the case of a Loan Increase, the Existing Loan), must have had, at such time, an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system.
- Lenders must assess each borrower's financial condition at the time of application.¹⁸
- Risk Retention: a Lender must retain its 5% or 15% portion of a Main Street Loan until it matures or the SPV sells all of its participation, whichever comes first. A Lender making a Loan Increase must also retain its interest in the Existing Loan until the earliest of (1) the Existing Loan matures, (2) the Loan Increase matures, or (3) the SPV sells all of its 95% participation. The sales of participation interests to the SPV will be structured as "true sales" and must be completed "expeditiously" after the making of the Main Street Loan.
- Servicing Fee: The SPV will pay the Lender 0.25% (25 bps) of the principal amount of the SPV's participation in the Main Street Loan per year for loan servicing.
- Required Certifications. Main Street Loans require attestations/certifications from the Lender and the Borrower:¹⁹
 - Proceeds / Payment of other debt: The Borrower may not repay the principal balance of, or pay any interest on, any debt until the Main Street Loan is repaid in full, unless the debt or interest payment is mandatory and due. The Lender may not request the Borrower repay debt owing to the Lender, or pay interest thereon, until the Main Street Loan is repaid in full, unless the debt or interest payment is mandatory and due (including in the case of default and acceleration). Exceptions:
 - In the case of Priority Loans, Borrowers may, at the time of origination of the Priority Loan, refinance existing debt owed to other lenders (i.e., not the lender making the Priority Loan).
 - Borrowers may make normal course payments on lines of credit (including credit cards), and a Lender may accept regularly scheduled, periodic repayments on such line of credit from a Borrower in accordance with its normal course of business usage for such line of credit.
 - Borrowers may refinance maturing debt.
 - Borrowers may take on and pay additional debt obligations required in the normal course of business and on standard terms, including inventory and equipment financing, provided that such debt is secured by newly acquired property (e.g., inventory or equipment), and, apart from such security, is of equal or lower priority than the Main Street Loan.
- 18 Lenders will need to assess each potential borrower's financial condition, and will apply their own underwriting standards in evaluating the financial condition and creditworthiness of a potential borrower. A Lender may require additional information and documentation in making this evaluation and will ultimately determine whether a potential borrower is approved for a Main Street Loan, and the amount of the Main Street Loan (within the sizing parameters).
- 19 The original term sheets stated that the Borrower would be required to attest that the financing is necessary because of COVID-19, but this attestation was not included in the new term sheets.

- No Reduction of other Credit:
 - The Lender may not cancel or reduce any existing committed²⁰ lines of credit to the Borrower, except due to an event of default.
 - The Borrower may not seek to cancel or reduce any existing committed lines of credit.
- Solvent for 90 days: The Borrower must certify that it has a reasonable basis to believe that, immediately giving effect to the Main Street Loan, it will have the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period.
- Employee Retention: Borrower must make commercially reasonable efforts²¹ to maintain its payroll and retain its employees during term of the Main Street Loan.²²
- Maximum Leverage: Borrower must attest that the applicable Maximum Leverage test (set forth below) is met (4x 2019 adjusted EBITDA for New Loans and 6x 2019 adjusted EBITDA for Loan Increases and Priority Loans).
- The Lender must certify that the methodology used for calculating the Borrower's adjusted 2019 EBITDA for the leverage requirement is the methodology the Lender has previously used for adjusting EBITDA when extending credit to the Borrower or similarly situated borrowers on or before April 24, 2020 (in the case of Loan Increases, the same methodology must be used for the Loan Increase as used for the Existing Loan (prior to April 24, 2020)).
- The Borrower must commit to follow the compensation, stock repurchase, capital distribution, dividend and employee compensation restrictions under section 4003(c)(3)(A)(ii) of the CARES Act:
 - Compensation (until 12 months after the Main Street Loan is repaid):
 - Employees who made more than \$425,000 in total 2019 compensation²³ may not be paid more (than their 2019 compensation) in any subsequent 12-month period;
 - Severance for such employees is capped at 2x 2019 compensation; and
 - Reduction of compensation for employees who made more than \$3 million in total 2019 compensation, by 50% of the excess over \$3 million.
- 20 The Federal Reserve indicated that this prohibition on committed lines will not affect uncommitted lines of credit, the expiration of existing lines of credit in accordance with their terms, or the reduction of availability under existing lines of credit in accordance with their terms due to changes in borrowing bases or reserves in asset-based or similar structures.
- 21 The Borrower 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.
- 22 The Federal Reserve, however, has indicated that businesses that have already laid-off or furloughed workers as a result of the disruptions from COVID-19 are eligible to apply for Main Street Loans.
- 23 Section 4004 (of the CARES Act defines total compensation to include salary, bonuses, awards of stock, and other financial benefits provided by an eligible business to an officer or employee of the eligible business, but it does not provide guidance on the valuation of non-cash compensation.

- Capital Distributions / Dividends: No stock buy-backs (unless required by contract as of 3/27/20) and no capital distributions or dividends, until 12 months after the Main Street Loan is repaid, other than distributions by pass-thru entities to the extent reasonably required to cover owners' tax obligations in respect of the entity's earnings.
- No Conflicts of Interest: The Lender and the Borrower each must attest it meets the eligibility requirements and that it is not controlled by certain US government officials (or their family members), as set forth under Section 4019(b) of the CARES Act.

Key Differences Among the Facilities

- Participation by SPV:
 - New Loans: 95% (lender holds 5% of risk).
 - Loan Increases: 95% (lender holds 5% of risk); Lender must also retain risk of the Existing Loan.
 - Priority Loans: 85% (lender holds 15% of risk).
- Type of Loan:
 - New Loans and Priority Loans: are new term loans made on or after April 24, 2020.²⁴
 - Loan Increases: are made by increasing/upsizing a tranche of an existing term loan or revolving loan (an "Existing Loan"), by means of a term loan, which Existing Loan was made by the Lender prior to April 24, 2020 and matures at least 18 months after the Loan Increase is made. The Lender(s) may extend the maturity of the Existing Loan at the time of upsizing in order for the underlying instrument to satisfy the 18-month requirement. Loan Increases have additional flexibility so these loans can be documented inside of existing credit/loan agreements (by means of amendment).
- Size of Loans:
 - New Loans:
 - Minimum: \$500,000; and
 - Maximum: lesser of (1) \$25 million, (2) the amount that, when added to existing outstanding and undrawn available debt,²⁵ calculated as of the date of the loan application ("Total Debt"), does not exceed 4x adjusted 2019 EBITDA (Maximum Leverage).
 - Priority Loans:
 - Minimum: \$500,000; and
 - Maximum: lesser of (1) \$25 million, (2) the amount that, when added to Total Debt, does not exceed 6x adjusted 2019 EBITDA (Maximum Leverage).
- 24 In the original term sheets, the Federal Reserve had used April 8, 2020. These loans, like Priority Loans, are seemingly intended for new credit facilities that are particularly designed to be eligible for these Main Street Facilities, and would be documented in a new credit/loan agreement.
- "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, but 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.

- Loan Increases:
 - Minimum: \$10 million; and
 - Maximum: lowest of (1) \$200 million, (2) 35% of outstanding and undrawn available debt that is *pari passu* in priority with the Loan Increase²⁶ equivalent in secured status,²⁷ and (3) the amount that, when added to Total Debt, does not exceed 6x adjusted 2019 EBITDA (Maximum Leverage).
- Amortization (starting on second anniversary):²⁸
 - New Loans: principal amortization of 1/3 at the end of the 2nd year, 1/3 at the end of the 3rd year, and 1/3 at maturity.
 - Priority Loans and Loan Increases: principal amortization of 15% at the end of the 2nd year, 15% at the end of the 3rd year, and a balloon payment of 70% at maturity.
- Loan Ranking / Priority:
 - New Loans: May not at any time be contractually subordinated to any of the Borrower's other loans or debt instruments.²⁹
 - Priority Loans and Loan Increases: must at all times be senior to or pari passu with, in terms of both priority and security, the Borrower's other loans or debt instruments, other than mortgage debt.
- Collateral:
 - New Loans and Priority Loans may be secured or unsecured.
 - Loan Increases must be secured if the original loan is or becomes secured, and collateral securing the loan will secure the loan participation on a pro rata basis.³⁰
- Fees³¹:
 - New Loans and Priority Loans:
 - Origination Fees: <u>up to</u> 1.0% (100bps), payable by Borrower to Lender, at the discretion of Lender.
 - Transaction Fees: 1.0% (100bps), payable by Lender to SPV, but Lender may charge this fee to the Borrower.
- 26 We note that the term sheet references "Eligible Loan" (35% of the Eligible Borrower's existing outstanding and undrawn available debt that is pari passu in priority with the Eligible Loan and equivalent in secured status), which is often used to refer to the combination of the underlying loan and the Loan Increase. This could be read to suggest that the underlying loan cannot be used to as part of the equation to size the Loan Increase in respect of this criterion. However, we assume such a reading is incorrect.
- 27 The 35% test, together with the \$10MM minimum amount, will exclude from the upsize facility any Borrower with less than \$28,5714,285 of existing outstanding and undrawn available debt. Likewise, a Borrower would need over \$571MM in existing outstanding and undrawn available debt to get to the \$200MM maximum amount of this facility.
- 28 As used in this amortization section, principal includes capitalized interest unpaid interest during the first year will be capitalized.
- 29 This would not prevent a New Loan from being structurally or effectively subordinated.
- 30 If the borrower defaults on a loan consisting (in part) as a secured Loan Increase, the SPV and lender(s) would share equally in any collateral securing the loan relative to their proportional interests in such loan (including the Loan Increase). The Lender can require the Borrower to pledge additional collateral to secure a Loan Increase.
- 31 All such fees are based on the entire original principal amount of the Main Street Loan, not just the amount participated in by the SPV.

- Loan Increases:
 - Origination Fees: up to 0.75% (75bps), payable by Borrower to Lender, at the discretion of Lender.
 - Transaction Fees: 0.75% (75bps), payable by Lender to SPV, but Lender may charge this fee to the Borrower.

Given the differences among the facilities, lenders and borrowers with existing lending relationships will need to decide which facility to use. Given the additional flexibility provided by Loan Increases, many will favor getting a Loan Increase if the Borrower is eligible, especially now that revolver credit facilities are now eligible for Increase Loans. The necessary analysis will include considerations relating to the size of the loan needed, the current debt structure of the Borrower, the Borrower's 2019 adjusted EBITDA (and whether it can meet the 4x test), whether collateral securing the existing loans should secure the new loans, the maturity of the existing loan (Loan Increases have a four year maturity which might not match the Existing Loan), the extent of the amendments to current credit agreement(s) that would be needed, the expected timing of documentation and related consents, the amount of the transaction and origination fees (Loan Increases have lower fees), and whether any existing debt needs to be repaid when the Main Street Loan is funded (only Priority Loans permit repayment of debt when the loan is made, but that is limited to debt not owing to the Lender).

Other Considerations

Syndicated Loans:

- If the Existing Loan underlying a Loan Increase is part of a multi-lender facility, the Lender making the Loan Increase (the "Upsizing Lender") must be one of the lenders that holds an interest in the Existing Loan at the date of upsizing.³²
- Only the Upsizing Lender is required to meet the eligibility criteria. Other members of a multi-lender facility are not required to meet the eligibility criteria.³³

Lender Verification of Borrower Certifications and Covenants:

- Lenders' Duties: Lenders will have an obligation to collect the required certifications and covenants from each Borrower at the time Main Street Loans are made.
- Reliance on Borrower Reps: The Federal Reserve has indicated that Lenders will be entitled to rely on a Borrower's certifications and covenants, as well as any subsequent self-reporting by the Borrower, and that a Lender is not expected to independently verify the Borrower's certifications or actively monitor ongoing compliance with covenants required for Borrowers under the MSLR³⁴
- 32 This may allow an Eligible Lender to take an assignment from an ineligible lender prior to the upsize date, to make an existing facility eligible for an upsize. However, elsewhere the Increase Loan term sheet states that an "Eligible Loan is a secured or unsecured term loan or revolving credit facility made by an Eligible Lender(s) to an Eligible Borrower that was originated on or before April 24, 2020"
- 33 The relevant term sheet states that the underlying loans need to have been made by "a Eligible Lender(s)" which suggests the possibility that more than one lender in a syndicate can act as an Eligible Lender for a Loan Increase. Regardless, if there are more than one potential eligible Lenders, they will need to determine how to allocate the increase among themselves.
- 34 We caution, however, that this statement from the Federal Reserve may not shield lenders from actions by state attorneys general and other agencies with enforcement powers, much less negative publicity and/ or private lawsuits, such as the class action claims filed against several prominent lenders in the wake the PPP.

 However, if a Lender becomes aware that a Borrower made a material misstatement or otherwise breached a covenant during the term of a Main Street Loan, the Lender will be required to notify FRB Boston.

Mechanics of Participation Funding: We are still awaiting guidance regarding the timing of when the SPV would fund the participations, and when/how the SPV would communicate to a lender that the SPV will participate in a particular loan. The Federal Reserve has indicated that the loan documentation required to sell a loan participation to the SPV will be made available on the Federal Reserve's website.

Monitoring by SPV / Disclosure of Information:35

- The SPV will collect information on certifications, covenants, lenders, loan terms, and loan performance as well as borrowers, borrower fundamentals, collateral, and other characteristics.
- This information will be used to verify the meeting of eligibility requirements and to support ongoing accounting and credit risk monitoring needs with respect to purchased participations.
- Information will be collected at different stages and at appropriate frequencies through a variety of channels designed to accommodate the range of lenders and borrowers anticipated to participate in the program.
- The Federal Reserve has stated that it will disclose information regarding the MSLP, including information regarding names of lenders and borrowers, amounts borrowed and interest rates charged, and overall costs, revenues and other fees. Borrowers may want to take into account and prepare ahead of time for receipt and use of funds provided through the CARES Act in anticipation of significant oversight and review by government entities, further discussed in this analysis.
- Balance sheet items related to the MSLP will be reported weekly, on an aggregated basis, on the H.4.1 statistical release titled "Factors Affecting Reserve Balances of Depository Institutions and Condition Statement of Federal Reserve Banks," published by the Federal Reserve. In addition, the Federal Reserve will disclose to Congress information pursuant to Section 13(3) of the Federal Reserve Act.³⁶
- Under section 11(s) of the Federal Reserve Act, the Federal Reserve also will disclose information concerning the facilities one year after the effective date of the termination by the Federal Reserve of the authorization of the facilities. This disclosure will include names and identifying details of each participant in the facilities, the amount borrowed, the interest rate or discount paid, and information concerning the types and amounts of collateral pledged or assets transferred in connection with participation in the facilities.

5

³⁵ More details on the SPV's collection and monitoring of information will be provided by the Federal Reserve at a later date.

³⁶ The Federal Reserve is required to provide reports to the Senate Banking Committee and the House Financial Services Committee within seven days after the authorization of a loan or other financial assistance detailing the program, including the amount and material terms, the identity of the recipients of the assistance, justification for the program, any requirements imposed on the recipients under the program, list and value of collateral pledged, and expected costs to taxpayers. The Federal Reserve is also required to provide monthly reports to these Committees detailing the value of collateral, amount of interest and fees received and expected or final cost to taxpayers.

Regulatory Status:37

- The interest in the portion of a Main Street Loan that is retained by a Lender should be assigned the risk weight applicable to the counterparty for the loan—generally a 100% risk weight for a corporate exposure under the standardized approach. For purposes of risk-based capital rules and leverage rules, the exposure amount for Priority Loans is 15% of the outstanding Priority Loan balance; and the exposure amount for New Loans and Loan Increases is 5% of the New Loan balance or Loan Increase balance, respectively. With respect to Loan Increases, this treatment applies only to the outstanding Loan Increase balance (and the Existing Loan would continue to be subject to the capital treatment that applied prior to the sale of the participation to the SPV).
- Secured Main Street Loans are eligible for the credit risk mitigation treatment in the standardized approach provided that any collateral securing the loan is eligible financial collateral. Eligible Lenders are not permitted to recognize collateral attributable to the Main Street SPV's interest for purposes of the credit risk mitigation treatment under the capital rule.

Next Steps

Your approach to this facility should be based on your individual facts and circumstances and caution is warranted when interpreting some of the ambiguities and open questions in the governing rules and is beyond the scope of this alert. Please contact us to discuss your particular situation.

Contacts

James Schneider

Partner, Cleveland and Washington DC T +1 216 479 8638

E james.schneider@squirepb.com

James Barresi

Partner, Cincinnati and Washington DC T +1 513 361 1260 E james.barresi@squirepb.com

Thomas Reems

Partner, Denver T + 303 894 6110 E thomas.reems@squirepb.com

David Stewart

Principal, Washington DC T +1 202 457 6054 E david.stewart@squirepb.com

Adam Nazette

Partner, Cleveland T +1 216 479 8510 E adam.nazette@squirepb.com

Kirk Beckhorn

Partner, Washington DC T + 1 202 457 7592 E kirk.beckhorn@squirepb.com

³⁷ For Lenders that are subject to the federal banking agencies' capital rule. Credit unions that participate in the Program are subject to any capital requirements implemented by the National Credit Union Administration.

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility		
Eligible Lenders	US insured depository institutions, US branches or agencies of foreign banks, US bank holding companies, US savings and loan holding companies, US intermediate holding companies of a foreign bank, or a US subsidiary of any of the foregoing				
Eligible Borrowers	• up to 15,000 employees, or up to \$5 billion in 2019 revenues, in each case together with affiliates (with affiliation rules similar to PPP loans)				
	 has significant operations in the US and a majority of employees based in the US 				
	• a for profit business formed in or under the laws of the US, prior to March 13, 2020; if a joint venture, may not have more than 49% foreign participation				
	• is not an ineligible business i.e., a type of business listed in 13 CFR 120.110(b)-(j) and (m)-(s), as modified in connection with the PPP Loan				
	 was in sound financial condition prior to the onset of the COVID-19 pandemic 				
	• has not received Treasury Direct Loans (for air carriers (and related entities), and businesses critical to national security) under CARES Act 4003(b)(1), (2) or (3), and				
	• does not participate PMCCF or r	nore than one Main Street Loan fac	ility (but may receive a PPP Ioan)		
Minimum Loan Size		0,000	\$10MM		
Maximum Loan	lesser of:	lesser of:	lowest of:		
Size	(1) \$25MM, and	(1) \$25MM, and	(1) \$200MM,		
	(2) the amount that, when added to existing outstanding and undrawn available debt, does not exceed 4x adjusted 2019 EBITDA	(2) the amount that, when added to existing outstanding and undrawn available debt, does not exceed 6x adjusted 2019 EBITDA	(2) 35% of outstanding and undrawn available debt that is pari passu in priority with the Loan Increase equivalent in secured status, and		
			(3) the amount that, when added to existing outstanding and undrawn available debt, does not exceed 6x adjusted 2019 EBITDA		
Interest Deferment	No interest pa	ayments for one year; unpaid interest wi	ll be capitalized		
Amortization	1/3 at the end of the 2nd year, 1/3 at the end of the 3rd year, 1/3 at maturity	15% at the end of the 2nd year, 15% at the end of the 3rd year, 70% at maturity			
Priority	May not be contractually subordinated		ith, in terms of both priority and security, t instruments, other than mortgage debt		
Collateral	May be secur	ed or unsecured	must be secured if the original loan is or becomes secured		
Participation Amount by SPV	95%	85%	95%		
Shared Terms of	• 4 year maturity				
Loans	No principal or interest payments for one year				
	Unpaid interest will be capitalized				
	• LIBOR (1 or 3 month) + 3.0%				
	• SPV and the Lender will share risk on an equal basis				
	 Any loans from Lender to Borrower existing as of December 31, 2019, must have had, at such time, an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system 				
	 Restrictions on principal balance of, or pay any interest on, any debt until the Main Street Loan is repaid in full, unless the debt or interest payment is mandatory and due (including in the case of default and acceleration). 				
	 No reduction of committed lines of credit (by Lender with respect to Borrower) or Borrower with any lender 				
Other	 Borrower must attest it has a reasonable basis to believe it will be solvent for 90 days Lenders must assess each borrower's financial condition at the time of application 				
Requirements	Borrower must make commercially reasonable efforts to maintain its payroll and retain its employees during the term of the Main Street Loan				
	 Methodology used for calculating the Borrower's adjusted 2019 EBITDA must be what lender previously used for adjusting EBITDA when extending credit to the Borrower (or similarly situated borrowers) on or before April 24, 2020 (in the case of Loan Increases, the same methodology must be used for the Loan Increase as used for the Existing Loan (prior to April 24, 2020) 				

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility		
-	The compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act will apply for a year after the loan is paid in full:				
Restrictions / Considerations	• No repurchases of equity securities listed on national exchanges (including those issued by parent entities), unless required by a pre-existing contract				
	No dividends or other capital distributions with respect to the Borrower's common stock				
	Compensation:				
	 Raises/Severance: Employees/officers who earned more than \$425k in 2019 (total compensation, including sala bonus, stock awards, other financial benefits), cannot be given raises, or be given severance in excess of 2x 201 total comp. 				
	 Comp Reduction: Employees/officers who earned more than \$3MM in total comp in 2019, must have their compensation reduced by 50% of the amount their 2019 comp exceeded \$3MM (e.g., an employee who made \$3.5MM may not make more than \$3.25MM per year; an employee who made \$4MM may not make more than \$3.5MM per year.) 				
Other Differences	New secured or unsecured term loan	originated after April 24, 2020	Term loan made by upsizing a tranche of an existing secured or unsecured term loan or revolving loan (an "Existing Loan").		
			Existing Loan must have been made by the Lender on or prior to April 24, 2020, and matures at least 18 months after the Loan Increase is made.		
		The Borrower may, at the time of origination of a Priority Loan, refinance existing debt owed by the Borrower to other lenders (i.e., not the lender making the Priority Loan)			
Origination Fee to Lender (at discretion of Lender)	Up to 100 bps to Le	ender from Borrower	Up to 75 bps to Lender from Borrower		
Transaction Fee to SPV	100 bps from Lender to SF	PV (chargeable to Borrower)	75 bps from Lender to SPV (chargeable to Borrower)		
Servicing Fee	25bps (payable by SPV to Lender)				
Program	September 30, 2020 (the Federal Reserve will still fund the SPV after such date)				

Contacts

Termination Date

James Schneider

Partner, Cleveland and Washington DC T +1 216 479 8638

E james.schneider@squirepb.com

James Barresi

Partner, Cincinnati and Washington DC T +1 513 361 1260

E james.barresi@squirepb.com

Thomas Reems

Partner, Denver T + 303 894 6110

E thomas.reems@squirepb.com

David Stewart

Principal, Washington DC T +1 202 457 6054 E <u>david.stewart@squirepb.com</u>

Adam Nazette

Partner, Cleveland T +1 216 479 8510 E <u>adam.nazette@squirepb.com</u>

Kirk Beckhorn

Partner, Washington DC T + 1 202 457 7592 E <u>kirk.beckhorn@squirepb.com</u>



Employee Benefit Security Agency and IRS Provide COVID-19 Relief for Employee Benefit Plan Deadlines

Washington DC - May 7, 2020

The US Department of Labor (DOL) recently announced deadline relief for employee benefit plan notices, disclosures and document deadlines that must be furnished between March 1, 2020 and 60 days after the announced end of the coronavirus disease 2019 (COVID-19) National Emergency ("Outbreak Period"), if the employee benefit plan and responsible fiduciary act in good faith and furnish the notice, disclosure, or document as soon as administratively practicable under the circumstances. In addition, the guidance sets forth a guiding principle for plan fiduciaries: plans "should make reasonable accommodations to prevent the loss of benefits or undue delay in benefit payments and should attempt to minimize the possibility of losing benefits because of a failure to comply with pre-established timeframes."

The guidance, Disaster Relief Notice 2020-21, issued by DOL's Employee Benefits Security Administration (EBSA) on April 28, 2020, was closely followed by a final regulation, issued jointly by DOL and the Internal Revenue Service (IRS), extending timeframes for a variety of requirements under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (the Code). The Final Rule, Extension of Timeframes, was published in the Federal Register on May 4, 2020.

Forwarding Participant Contributions and Wage Withholding to Retirement Plans

During the Outbreak Period, employers will be relieved of the obligation to transfer participant contributions and wage withholdings within the existing timeframes (by the earliest date that they can be segregated from general assets but no later than the 15th day of the month following the month in which the amounts are withheld from participant wages) as long as they act in good faith and forward these amounts as soon as administratively practicable under the circumstances.

COBRA

COBRA premium payments, generally required to be paid within 30 days of their due date, will be treated as timely if made within 30 days following the end of the Outbreak Period. The Outbreak Period also will be disregarded with respect to the 60-day period that individuals who have lost health care coverage are given to elect continuation coverage under COBRA, the deadline for individuals to notify their plans of a determination of disability or COBRA qualifying event, and the date by which health plans, sponsors or administrators must provide COBRA election notices.

The extended deadlines for electing COBRA coverage and paying COBRA premiums appear to give individuals the flexibility to evaluate whether COBRA coverage is desirable (and affordable) after the end of the National Emergency and to elect and pay for coverage retroactively at that time. The package of COBRA deadline relief may reduce – or complicate – the tide of COBRA litigation that some expect to result from the enormous number of COVID-19-related layoffs.

Special Enrollment Rights

The same flexibility applies to individuals who have lost health care eligibility or have become a dependent of an employee based on birth, marriage or adoption and are eligible for coverage under another plan. These individuals generally are permitted to enroll in health care coverage for which they are otherwise eligible outside of the regular enrollment period if they elect to do so within 30 days (or in some cases 60 days) of losing coverage. With the relief provided, this decision (and, in theory, the accompanying payment) need not be made until after 30 (or 60) days after the Outbreak Period.

Benefit Claims

Deadlines for benefit claims, appeals of adverse decisions, and requests for external reviews of decisions will be delayed so that they need not be filed until the end of the Outbreak Period.

Notices and Disclosures

Delays in furnishing notices, disclosures or other documents required under Title I of ERISA or blackout period notices due during the Outbreak Period will not be treated as ERISA violations if the delay is COVID-related and the notice, disclosure or other document is furnished as soon as administratively practicable under the circumstances.

DOL Conformity With CARES Act and Other Guidance

Notice 2020-21 provides ERISA relief with respect to plan loans and Form 5500 filings to conform to the measures under the Internal Revenue Code enacted by the CARES Act. It also extends relief to Form M-1 filing deadlines for multiple employer welfare arrangements.

Contacts

Joseph P. Yonadi Jr.

Partner, Cleveland T +1 216 479 8441 E joe.yonadi@squirepb.com

Carl A. Draucker

Partner, Cleveland T +1 216 479 8766 E carl.draucker@squirepb.com

Gregory J. Viviani

Partner, Cleveland T +1 216 479 8622 E gregory.viviani@squirepb.com

Michael A. Curto

Partner, Washington DC T +1 202 457 5611 E michael.curto@squirepb.com

Mitch Thompson

Partner, Cleveland T +1 216 479 8794 E mitch.thompson@squirepb.com

Matthew A. Secrist

Principal, Cleveland T +1 216 479 8006 E matthew.secrist@squirepb.com Stacev Grundman

Senior Attorney, Washington DC T +1 202 457 6178 E stacey.grundman@squirepb.com



Main Street Lending Program: Considerations for Private Equity Sponsors

April 12, 2020

Background on the Main Street Lending Program

As a result of the coronavirus disease 2019 (COVID-19) pandemic, more so now than ever, private equity sponsors and their portfolio companies are regularly monitoring their cash flows and cash reserves, sometimes on a daily or weekly basis.

By and large, many private equity sponsors have encouraged their portfolio companies to draw down on credit lines and implement significant cost-cutting measures. Given the uncertainty of when the crisis will ease and the economy will begin to recover, private equity sponsors and their portfolio companies are evaluating options for obtaining additional liquidity.

To support the US financial system that facilitates lending to eligible businesses, the Federal Reserve has established programs providing up to US \$2.3 trillion in credit. One recently established program, the Main Street Lending Program (Main Street Program), will provide up to US \$600 billion in new financing in the form of four-year term loans available to US businesses employing up to 10,000 employees, or with less than US \$2.5 billion in 2019 annual revenues, that were in good financial standing before the crisis and plan to take reasonable efforts to maintain payroll and retain employees during the term of the loan.1 These businesses may have been too small to access broader capital markets or the Federal Reserve's facilities supporting larger companies or may have not qualified under the Paycheck Protection Program. Unlike loans under the Paycheck Protection Program, loans under the Main Street Program (Main Street Loans) are not eligible for forgiveness and come with additional strings attached, including restrictions related to use of proceeds, employee compensation, stock repurchase and capital distribution.

In this alert, we summarize the key terms of the Main Street Program, discuss considerations for private equity sponsors whose portfolio companies are contemplating applying for a Main Street Loan and identify additional guidance that is required from the Federal Reserve. We plan to update this alert as the Federal Reserve issues additional guidance. The Federal Reserve is accepting comments on the Main Street Program until April 16, 2020, following which we expect to receive further details and clarifications on qualifying for and submitting applications for Main Street Loans. In our separate alert, we provide detailed summaries of all of the available federal assistance programs, including the Main Street Program.

Key Terms and Considerations for Private Equity Sponsors

Eligibility

To be eligible, a borrower must be a business that:

- Has no more than 10,000 employees or no more than US \$2.5 billion in 2019 annual revenues
- 2. Was created or organized in or under the laws of the US with significant operations in and a majority of its employees based in the US, and
- 3. Is able to make certain certifications, including that the financing is required because of the COVID-19 pandemic and that it is not insolvent

Required Guidance:

- Which employees have to be counted to determine eligibility (e.g., full-time equivalents or full-time, part-time and other-basis employees)?
- What constitutes annual revenues, what constitutes "significant" operations, and whether businesses must aggregate their employees or annual revenues with their affiliates?

The Federal Reserve announced the establishment of the Main Street Program on April 9, 2020, pursuant to its emergency lending authority under Section 13(3) of the Federal Reserve Act and using funds appropriated to the Treasury Department under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The Main Street Program will be funded by a special purpose vehicle (SPV) established by the Federal Reserve and capitalized with an equity investment of US\$75 billion by the Treasury Department and up to an additional US\$525 billion in loans from the Federal Reserve. After a lender extends a Main Street Loan to a business, the SPV will purchase from the lender a 95% participation (or economic interest) in the loan and the lender will keep the remaining 5% and service the loan.

Loan Structure

The Main Street Program will have two facilities: the New Loan Facility and the Extended Loan Facility, with aggregate available funding of up to US\$600 billion that US insured depository institutions² can use to extend credit. Businesses may borrow under either facility, but not both.³

- Loans issued pursuant to the New Loan Facility will be structured as new unsecured term loans. This loan will be suitable for a borrower that either does not have an existing term loan or, if it does, its existing lender is not willing to upsize the amount (in which case an amendment to the existing agreement may be required).
- Loans issued pursuant to the Expanded Loan Facility will be structured as an incremental increase (or upsized tranche) to the amount under term loans made prior to April 8, 2020. Unless a borrower's existing term loan has "incremental loan" or "accordion" provisions, which provide a framework for increasing the aggregate amount of financing available under an existing agreement, an incremental loan would require an amendment to its existing agreement in order to add these provisions. An incremental loan must be secured if the existing term loan is secured (whether the collateral was pledged prior to or at the time of the upsizing), and collateral securing these loans will secure the loan participation on a pro rata basis.

Required Guidance:

 Whether borrowers with existing syndicated term loans are eligible to apply under the Expanded Loan Facility, and if they are eligible, how extending an incremental loan will affect the various rights of co-lenders, such as voting rights and allocation of the incremental loan (and related fees).

Loan Amount

- New Loan: Minimum US \$1 million and up to the lesser of (1) US \$25 million and (2) an amount that, when added to the borrower's outstanding and committed (even if undrawn) debt, does not exceed four times (4x) the borrower's 2019 EBITDA.⁴
- Incremental Loan: Minimum US\$1 million and up to the lesser of (1) US \$150 million, (2) 30% of the borrower's outstanding and committed (even if undrawn) bank debt and (3) an amount that, when added to the borrower's outstanding and committed (even if undrawn) debt, does not exceed six times (6x) the borrower's 2019 EBITDA.

Required Guidance:

- What constitutes debt for purpose of calculating the applicable leverage test? For example, it is unclear if debt includes convertible debt securities, deferred obligations such as trade payables, guaranteed amounts by a borrower, accrued obligations not yet due or debt owed to affiliates.
- Whether a borrower can make adjustments to its EBITDA and whether values must be obtained from a borrower's audited 2019 financial statements if a borrower typically has its financial statements audited.

Maturity, Prepayment and Payment Deferment

Main Street Loans have a maturity period of four years, with prepayment permitted without penalty. A borrower with an existing term loan that is interested in obtaining an incremental loan should check its existing agreement for the maturity of the existing term loan because typically an incremental loan cannot mature before the existing term loan unless the existing agreement is amended to allow for this. Principal and interest payments will be deferred for Main Street Loans for one year.

Interest Rate

Main Street Loans have an adjustable interest rate equal to the Secured Overnight Financing Rate (SOFR) plus 2.5% to 4.0% (at the discretion of the lender).

Loan Fees

A borrower must pay its lender a fee equal to 1.0% of the principal amount of its Main Street Loan. The SPV will pay the lender an annual fee for loan servicing equal to 0.25% of the principal amount of its participation in the Main Street Loan. Under the New Loan Facility (but not the Expanded Loan Facility), a lender must pay the SPV a fee equal to 1.0% of the principal amount of the loan participation purchased by the SPV, which will be 95% of the loan participation, and the lender is authorized to charge this fee back to the borrower.

Restrictions on Share Repurchases

From the date a Main Street Loan is issued until one year after it is repaid, a borrower may not repurchase any of its (or its parent company's) equity securities that are listed on a national securities exchange, except to the extent required under a preexisting contractual obligation.

Restrictions Related to Existing Debt and Other Debt

A borrower may not use the proceeds of a Main Street Loan to repay or refinance pre-existing loans or lines of credit made by its lender. Moreover, until it has repaid its Main Street Loan, a borrower may not repay other debt of equal or lower priority (other than mandatory principal payments).

Required Guidance:

- What constitutes "other debt of equal or lower priority" (e.g., working capital liabilities, trade debt or advisory fees) and whether other debt has to be contractually subordinated.
- Given that money is fungible, how should a borrower keep track of its compliance with these restrictions?
- If a borrower obtained an incremental loan, would the borrower be restricted from repaying other debt of equal or lower priority until the borrower has repaid the incremental loan or both the incremental loan and the existing term loan?

² Eligible lenders under the Main Street Program include US insured depository institutions, US bank holding companies, and US savings and loan holding companies.

In addition, businesses cannot participate in both the Main Street Program and the Primary Market Corporate Credit Facility, which was established by the Federal Reserve on March 23, 2020, to serve as a funding backstop for corporate debt issued by investment grade companies.

⁴ EBITDA is defined under the term sheets as earnings before interest, taxes, depreciation and amortization.

Restrictions on Dividends and Capital Distributions

From the date a Main Street Loan is issued until one year after it is repaid, a borrower may not pay dividends or make any other capital distributions with respect to its common stock. A portfolio company structured as a pass-through entity (S-corporation or limited liability company) that obtains a Main Street Loan may not be able to make tax distributions to its owners for purposes of paying income taxes on its earnings. In addition, a portfolio company that is part of a holding company structure may not be able to make distributions to its parent holding company for corporate overhead and expenses.

Unless the Federal Reserve issues guidance in the coming weeks that permits the payment of tax distributions, a private equity sponsor with a portfolio company structured as a pass-through entity and planning to apply for a Main Street Loan should consult with the private equity sponsor's tax advisors with respect to its potential tax exposure and any possible solutions.

Required Guidance:

- Whether tax distributions by a pass-through entity will be restricted payments.
- Whether the restrictions on paying dividends and making other capital distributions apply only to a borrower's common stock or all equity securities (e.g., preferred stock).

Restrictions on Employee Compensation⁵

From the date a Main Street Loan is issued until one year after it is repaid, the following restrictions apply:

- Compensation Freeze: Any non-union officer or employee
 of the borrower whose 2019 total compensation exceeded
 US\$425,000 but was equal to or less than US\$3 million
 will have their total compensation frozen at 2019 levels.
- Compensation Reduction: Any officer or employee of the borrower whose 2019 total compensation exceeded US\$3 million will have their total compensation reduced by an amount equal to 50% of the excess of their 2019 total compensation over US\$3 million and frozen at such level.⁶
- Severance Limits: Any non-union officer or employee of the borrower whose 2019 total compensation exceeded US\$425,000 may not receive from the borrower more than two times (2x) their 2019 total compensation as severance or termination benefits.
- For purposes of these restrictions, "total compensation" includes salary, bonuses, awards of stock and other financial benefits.

A private equity sponsor whose portfolio company is contemplating applying for a Main Street Loan should consider the potential repercussions on the growth of its portfolio company and retention of key employees from having to comply with these restrictions, especially because these restrictions will last at least one year and potentially up to five years.

- First, even though the compensation freeze applies to officers and employees whose 2019 total compensation exceeded US\$425,000, the effect of this restriction would be to freeze the compensation of certain employees whose 2019 compensation was less than but still close to US\$425,000, such as the direct reports of officers and employees whose total compensation will be frozen. Depending on a company's enterprise value and the industry in which it operates, the compensation freeze could apply to its middle and senior management.⁷
- Second, these restrictions may affect a portfolio company's ability to retain key employees who may find better paying opportunities at other companies not subject to similar restrictions.
- Finally, the compensation freeze and the compensation reduction will likely misalign interests and eliminate incentives for the highest performing employees to pursue performance targets. Many private equity sponsors believe that bonuses and option awards align the interests of the employees of a portfolio company with the private equity sponsor's interests in growing and operating a successful company. A portfolio company that obtains a Main Street Loan will be restricted from paying bonuses or granting option awards to incentivize certain employees and align interests because of these restrictions, and this may result in the private equity sponsor having to hold on to its portfolio company for a longer period than planned in order for its portfolio company to achieve targeted growth metrics.

Required Guidance:

- How a borrower should value stock awards for purposes
 of calculating total compensation (e.g., grant date value
 vs. realized value during the applicable period), what is
 considered "other financial benefits" and how these would
 be valued, and how a borrower should treat compensation
 for 2019 that was deferred or that was subject to vesting over
 future periods for purpose of calculating total compensation.
- Whether after the restricted period expires, if a borrower that has a contractual obligation to its officer or employee to pay this officer or employee compensation in excess of US\$425,000 or severance in excess of two times (2x) 2019 total compensation would then become obligated to pay its officer or employee what they would have been otherwise entitled to receive but for these restrictions.
- We note that unlike the Mid-Size Business Facility that is described in the CARES Act, but yet to be established, borrowers under the Main Street Program are not yet (i) required to use loan proceeds to retain at least 90% of workforce through September 30, 2020, or to restore 90% of workforce that existed on February 15, 2020, and (ii) restricted from outsourcing jobs offshore or abrogating existing collective bargaining agreements.
- 6 For example, an officer or employee whose 2019 total compensation was US\$4 million would have their total compensation reduced to and capped at US\$3.5 million (US\$3 million plus 50% of the US\$1 million in excess of US\$3 million). For this restriction, the regulations do not distinguish between union and non-union officers or employees.
- Here is an example: Assume a company paid an assistant manager an annual salary of US\$450,000 and a manager an annual salary of US\$450,000 in 2019. When this company obtains a Main Street Loan, from the date the loan is issued until one year after it is repaid (potentially a period of up to five years), the manager's annual salary would be frozen at US\$450,000. Even though this company could increase the assistant manager's annual salary, it would likely not increase it because it would be unusual for an assistant manager to be paid more than his or her direct report.

 Whether these restrictions apply to an officer or employee hired after 2019 and whether these restrictions apply to the officers and employees of the borrower's subsidiaries and affiliates.⁸

Exit Considerations

A private equity sponsor should bear in mind that when it plans to sell a portfolio company that has a Main Street Loan, which is either repaid (1) on the date its portfolio company is sold or (2) prior to the date its portfolio company is sold but a year has not passed since the repayment date, the restrictions related to employee compensation, dividends and capital distributions and share repurchases will apply to its portfolio company for a year even after the Main Street Loan is repaid. The applicability of these restrictions for a year even after the Main Street Loan is repaid may affect how much a buyer may be willing to pay to acquire its portfolio company.

Moreover, many portfolio companies' equity incentive plans are structured so that when the portfolio company is sold and its private equity sponsor no longer owns a majority of its securities (i.e., it has a change of control), all issued equity incentive units would automatically vest and the holders would be entitled to receive a share of the purchase price. Given the employee compensation restrictions that would apply to a portfolio company that has a Main Street Loan, key employees who hold equity incentive units may not be able to receive payment for their equity incentive units if the payment would result in their total compensation exceeding their 2019 total compensation. If the Federal Reserve issues guidance in the coming weeks related to how awards of stock and other financial benefits are to be valued, a portfolio company contemplating applying for a Main Street Loan should consider whether an amendment to its equity incentive plans is necessary or whether it could establish a new type of incentive plan for its key employees.

Reporting of Information

A private equity sponsor whose portfolio company is contemplating applying for a Main Street Loan should be aware of the Federal Reserve's reporting obligations under Section 13(3) of the Federal Reserve Act. The Federal Reserve is required to provide reports to the Senate Banking Committee and the House Financial Services Committee within seven days after the authorization of a loan or other financial assistance detailing the program, including the amount and material terms, the identity of the recipients of the assistance, justification for the program, any requirements imposed on the recipients under the program, list and value of collateral pledged, and expected costs to taxpayers. The Federal Reserve is also required to provide monthly reports to these committees detailing the value of collateral, amount of interest and fees received, and expected or final cost to taxpayers.

If the Chairman of the Federal Reserve submits a written request to Congress, information in these reports related to (1) the identity of the borrowers under the Main Street Program, (2) the amounts borrowed by each participant and (3) identifying details concerning the assets or collateral held in connection with the Main Street Program will be kept confidential and available only to the chairpersons or ranking members of these committees. The Federal Reserve has not indicated whether it will submit a written request to maintain the confidentiality of this information.

If you have any questions regarding the matters covered in this alert, please contact one of the authors listed here.

Contacts

Danielle Asaad

Partner, Cleveland T +1 216 479 8655 E danielle.asaad@squirepb.com

James Barresi

Partner, Cincinnati T +1 513 361 1260 E james.barresi@squirepb.com

Jim Schneider

Partner, Cleveland T +1 216 479 8638 E james.schneider@squirepb.com

⁸ Unlike the share repurchase restrictions, which expressly impose buyback restrictions at the ultimate parent-company level and the borrower level, the employee compensation restrictions appear to apply only to the officers and employees of the borrower, and it is unclear if these restrictions would apply to the officers and employees of the borrower's subsidiaries and affiliates.

Restructuring GlobalView



Worldwide Restructuring and Insolvency News

Can Chapter 11 Debtors Receive PPP Loans?

By Mark Salzberg, Stephen D. Lerner and Jihyun Park on April 25, 2020 Posted in US

The nearly \$350 billion loan program made available to small businesses by the Coronavirus Aid, Relief, and Economic Security (CARES) Act was tapped out in less than two weeks. In response to this overwhelming demand, on Friday, April 24, 2020, an additional \$320 billion was funded into the loan program, and the second round of applications for small businesses requesting



these loans will open on Monday, April 27, 2020. However, one uncertainty looms for many statutorily eligible small businesses ahead of their second shot at obtaining a loan: how will their bankruptcy affect their loan application.

This question may be answered soon. Yesterday (April 24, 2020), the Bankruptcy Court for the Southern District of Texas granted a temporary restraining order (TRO) preventing, for now, the Small Business Administration (SBA) from denying loans to one applicant on the basis of the applicant's pending bankruptcy. Next Wednesday (April 29, 2020), the District Court for the Western District of New York will also consider this same issue.

The Paycheck Protection Program

The \$670 billion in loans was made available to small businesses through the Paycheck Protection Program (PPP). The PPP is guaranteed under section 7(a) of the Small Business Act (15 U.S.C. § 636(a)), which is administered by the SBA.

Neither the Small Business Act nor the CARES Act prohibits a chapter 11 debtor from requesting or receiving a PPP loan. However, the PPP loan application form promulgated by the SBA (Form 2483) asks whether "the Applicant or any owner of the Applicant . . . [is] presently involved in any bankruptcy" and provides that if the answer to this question is "Yes," that the "loan will not be approved." Furthermore, on April 24, 2020, the SBA issued a new interim final rule, affirming that, "[i]f the applicant or the owner of the applicant is the debtor in a bankruptcy proceeding, either at the time it submits the application or at any time before the loan is disbursed, the applicant is ineligible to receive a PPP loan." Thus, SBA expressly conditions the approval of PPP loans on the borrower not being "presently involved in any bankruptcy," a requirement that was not legislated by the Congress.

This SBA-created eligibility requirement has no doubt dissuaded many small businesses that are otherwise eligible for a PPP loan from applying for the loan and has led to applications being denied. Indeed, many of the companies that are struggling the most to maintain their business as a going concern—the intended beneficiaries of Congressional response to the global pandemic—are left defenseless and are being discriminated against.

SBA Blocked by Texas Court

The bankruptcy-related eligibility requirement has already been challenged in two federal courts and was recently enjoined, albeit very narrowly, in one. On April 24, 2020, the Bankruptcy Court for the Southern District of Texas granted chapter 11 debtor Hidalgo County Emergency Service Foundation's (HCESF) request for a TRO against SBA.

HCESF is an ambulance company based in South Texas that filed for bankruptcy on October 8, 2019. HCESF has maintained 100% of its approximately 250 employees while working to reorganize in chapter 11 in the midst of the global pandemic. HCESF applied for a loan on the first day that the lenders began accepting loan applications. As indicated on its application, HCESF had planned to use its PPP loan to pay its rent, utility, insurance, and full-time employees' payroll costs—all of which are permissible uses of the PPP loans pursuant to both the Small Business Act and the CARES Act. HCESF had met, and continues to meet, all other requirements for receipt of a PPP loan. However, HCESF's PPP loan application was rejected solely because HCESF had truthfully answered "Yes" to Form 2483's question regarding its involvement in a bankruptcy.

After failed attempts at appealing directly to the SBA and elected officials, on April 22, 2020, HCESF filed a complaint in the Bankruptcy Court, seeking, among other things, (1) removal of all references to the applicant's involvement in bankruptcy in Form 2483 and all other PPP policies, procedures, etc., (2) an instruction to all participating lenders that applicants involved in bankruptcy shall not be excluded from the PPP loan program on account of such involvement, and (3) a declaration that the bankruptcy-related exclusion is an unlawful discrimination in violation of the Bankruptcy Code. HCESF argued that the SBA exceeded its administrative authority by creating an additional eligibility requirement for PPP borrowers that neither the CARES Act nor the Small Business Act requires. Furthermore, HCESF argued that the SBA's exclusion of bankruptcy debtors from participating in the PPP loan program constitutes unlawful discrimination under section 525 of the Bankruptcy Code. Section 525(a) provides, in relevant part, that "a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against . . . a person that is or has been a debtor under [the Bankruptcy Code]."

On April 24, 2020, the Bankruptcy Court held a hearing on HCESF's request for a TRO, and in an oral ruling stated that it will grant the TRO, finding that (1) HCESF has a substantial likelihood of success on the merits of its complaint, (2) HCESF will suffer irreparable injury if the TRO is not granted, (3) the risk of harm to HCESF if the TRO is not granted outweighs the harm to SBA if the TRO is granted, and (4) the TRO is in the public interest. As of today (April 25, 2020), the Bankruptcy Court has not yet entered the TRO, but HCESF has filed a proposed amended TRO. The proposed amended TRO is narrower in scope than the one originally proposed by HCESF, and protects *only HCESF* from SBA's requirement that an applicant not be involved in bankruptcy, instead of removing the bankruptcy-related eligibility requirement from PPP loan applications for all applicants as originally requested. The TRO, once signed, will remain in effect until May 8, 2020, when the Bankruptcy Court will conduct a hearing for a preliminary injunction.

What Does This Mean for Other Chapter 11 Debtors?

As of today, on the eve of the second round of PPP loan applications, the official forms and policies promulgated by the SBA continue to prohibit chapter 11 debtors from receiving PPP loans. The \$320 billion may be depleted before the Bankruptcy Court rules on HCESF's request for injunctive relief, and it is unclear whether the injunction, if granted, will apply to other debtors. However, the District Court for the Western

District of New York is scheduled to hear oral arguments on Wednesday, April 29, 2020 in another action challenging the SBA's disqualification of bankruptcy debtors from participating in the PPP loan program (*The Diocese of Rochester v. The U.S. Small Business Administration*, Case No. 20-cv-06243-EAW). It remains to be seen whether either of these courts will grant permanent injunctive relief, and if so what—if any—remedy it will provide to those chapter 11 debtors who may have already been denied PPP loans, because of their status as a debtor under the Bankruptcy Code. Current chapter 11 debtors should consider applying for PPP loans as soon as possible and should be prepared to litigate any bankruptcy-based denial by the SBA.

Copyright © 2020, Squire Patton Boggs. All Rights Reserved.

STRATEGY, DESIGN, MARKETING & SUPPORT BY

LEXBLOG

Local Connections. Global Influence.



Faculty

James J. Barresi is a partner in the Cincinnati office of Squire Patton Boggs, where he leads its global Financial Services Practice. He focuses on corporate finance, mergers, acquisitions and joint ventures, complex investments and related regulatory issues. Mr. Barresi's representative clients include commercial, investment and merchant banks, specialty finance companies, private-equity and debt funds, and other alternative investors. He also advises corporations in cross-border financing and strategic transactions. Immediately prior to joining the firm, Mr. Barresi served as senior vice president and deputy general counsel of one of the largest and most acquisitive bank holding companies in the U.S. He has been listed in *The Best Lawyers in America* each year since 2007 and was recently named an Acritas Star in the inaugural global ratings published by Acritas, an independent research and ratings firm that serves corporate legal departments. Mr. Barresi received his B.A. in 1988 from Alma College and his J.D. in 1991 from Wake Forest University.

Hon. John A. Boehner is a senior strategic advisor with Squire Patton Boggs in Washington, D.C., and Cincinnati, where he focuses on helping to remove government barriers to economic growth and job creation while providing high-level strategic advice to the firm's global clientele. Previously, he led the U.S. House from January 2011 to October 2015, during which time he navigated legislative challenges and forged strong relationships with business and government leaders throughout the world. Prior to entering public service, Speaker Boehner spent years running a small business representing manufacturers in the packaging and plastics industry. He represented the people of Ohio's 8th Congressional District in the U.S. House for nearly 25 years, leading the reform-minded "Gang of Seven" in the early 1990s that closed the scandal-ridden House Bank and forced a series of institutional changes in Congress, including measures requiring the House to be subject to annual independent audits of its financial records. In 1999, Speaker Boehner took over the chairmanship of the House Education and the Workforce Subcommittee on Employer/Employee Relations, the congressional panel with jurisdiction over the Employee Retirement Income Security Act (ERISA) and matters of private-sector health care and retirement security policy. In this role, he crafted and successfully advanced measures dealing with employer-sponsored health care, pensions, stock options and other employee benefits. He then became chairman of the full House Committee on Education and the Workforce in 2001. During his five years as chairman, Speaker Boehner developed a reputation for bringing Republicans and Democrats together in support of major policy initiatives and solving big legislative puzzles in areas ranging from education policy to pension reform. He received his B.A. in 1977 from Xavier University.

Karol K. Denniston is a partner in the San Francisco office of Squire Patton Boggs and a member of its Global Board, as well as the firm's Advancing Women Task Force. She negotiates restructurings and has been a mediator since 1992. Ms. Denniston has been working in the distress municipal sector since 2009 and routinely represents cities, special districts, indenture trustees, bondholders, taxpayers and monoline insurers in a variety of municipal restructuring engagements throughout the U.S. She has represented clients in municipal insolvency proceedings with a focus on negotiating resolutions, including in Puerto Rico PROMESA restructurings for the Government

Development Bank and COFINA. *The Legal 500* has designated Ms. Denniston as a municipal restructuring Leading Lawyer. She is admitted to practice in Texas and California. Ms. Denniston received her B.A. in 1980 from Concord College, and her M.A. in 1982 and J.D. in 1985 from West Virginia University.

Stephen D. Lerner is a partner with Squire Patton Boggs (US) LLP and global chair of the firm's Restructuring & Insolvency Practice Group in Cincinnati. He has a national and cross-border restructuring practice and represents debtors, unsecured creditors' committees, secured and unsecured creditors, directors and acquirers of troubled businesses in chapter 11 cases, chapter 9 municipal restructurings, chapter 15 cases and out-of-court restructurings throughout the U.S., Europe and, more recently, in the United Arab Emirates, South America and India. Mr. Lerner has led the representation of clients in the chapter 11 bankruptcies of Lehman Brothers, Enron, Chrysler, WorldCom, FirstEnergy Solutions, AmFin Financial, Blackjewel, Midway Gold and EaglePicher, among others. He also represented the court-appointed expert in the City of Detroit's historic chapter 9 case and led Squire Sanders's representation of the American College of Bankruptcy in filing an amicus brief with the U.S. Supreme Court in Executive Benefits Insurance Agency v. Peter H. Arkison, Trustee of the Estate of Bellingham Insurance Agency, Inc. Mr. Lerner is a Fellow of the American College of Bankruptcy and currently serves as the chair of its Board of Regents. He is an ABI Director and a former advisory board chair of ABI's Midwest Regional Bankruptcy Seminar. Mr. Lerner contributes to bankruptcy and restructuring scholarship and has taught and lectured at scores of conferences throughout the U.S., Europe and Canada, including at the National Conference of Bankruptcy Judges, TMA Europe's 2016 Annual Conference in Rome, and numerous ABI seminars. He also has served as a guest lecturer at Harvard Business School, the University of Michigan Law School and the University of Cincinnati Law School. Mr. Lerner received his B.A. in 1982, his M.A. in 1982 and his J.D. in 1985 from the University of Pennsylvania.

Sen. Joe Manchin is a Democratic senator to West Virginia and was sworn in to the U.S. Senate on Nov. 15, 2010, to fill the seat left vacant by the late Sen. Robert C. Byrd. He began his tenure as West Virginia's 34th governor in January 2005, and during his time as governor worked on the state's workers' compensation system, established the first comprehensive teacher pay package in more than 15 years and decreased the state's debt. Sen. Manchin has served in several leadership capacities in various associations, including chairman of the National Governors Association, chairman of the Southern States Energy Board, president of the Council of State Governments, chairman of the Democratic Governors Association and chairman of the Southern Governors Association. He served as Secretary of State from 2000-04 and was a state legislator from 1982-96. Sen. Manchin currently serves as the ranking member of the Senate Energy and Natural Resources Committee, and also serves on the Senate Committee on Appropriations, the Senate Committee on Armed Services and the Senate Committee on Veterans' Affairs. He attended West Virginia University on a football scholarship.

Edward J. Newberry is a partner in the Washington, D.C., office of Squire Patton Boggs's Public Policy Practice, Investigatory and Regulatory Solutions group and is a member of the firm's Executive Leadership Group. He is widely recognized as one of the leading lawyer lobbyists in

Washington, D.C., and is ranked as a leading lawyer by *The Legal 500*. He also has been selected a "Top Lobbyist" by *The Hill*, and *POLITICO* ranked him as a top municipal lobbyist. In addition, his work has been highlighted in mainstream news media, including *The Wall Street Journal*, *The New York Times*, the *National Journal*, *Roll Call* and others. Mr. Newberry serves as an advisor to a wide range of corporate and sovereign government clients, including among the highest profile and most difficult policy challenges. His current projects include helping the largest technology company in the world address challenges with the U.S. government, assisting one of the largest Korean conglomerates in expanding its business operations in the U.S., and leading efforts to secure U.S. government approval of the Pebble Mine in Alaska, as well as assisting major sovereign nations in their relations with the U.S. government. Before assuming his current role as a global managing partner, Mr. Newberry served as managing partner of Patton Boggs, LLP and led the firm's merger with Squire Sanders to create Squire Patton Boggs, LLP. He received his B.A. and B.S. in 1984 with distinction from George Mason University and his J.D. in 1989 from George-town University Law Center.