

NEWS & INSIGHTS

It is time for businesses to reevaluate their CARES Act loan options

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Since being signed into law in March, much ink has been spilled on the CARES Act and the loan programs it created. One frustrating aspect for borrowers and the people advising them is that both a lack of clarity and frequent changes to the programs have made decisions difficult. What program should a borrower choose? What can the funds be used for? What will be the repayment terms? While many borrowers may have already made decisions on these programs, recent changes warrant a reexamination of the options.

The three loan programs that broadly apply to borrowers are the Paycheck Protection Program (PPP), the Main Street Lending Program (MSLP) and Economic Injury Disaster Loan (EIDL) program. While the EIDL program is

currently only available for agricultural operators, last week the agencies administering the PPP and MSLP announced changes that both clarify the nature of the programs as well as make them more attractive to borrowers.

The most visible of the CARES Act loan programs have been PPP loans. PPP loans were originally envisioned as providing an infusion of operating funds for businesses to be spent in an eight-week period. While technically a loan, those funds were to be forgiven so long as certain guidelines governing how and when the funds were spent were met. Businesses quickly found, however, that the eight-week period for spending the funds, as well as the requirement that 75% of the funds be used on payroll, made it difficult to meet the guidelines for forgiveness. As a result, after an initial rush, PPP loans have not been as popular as originally expected.

Two recent sets of changes to PPP have addressed those concerns. First, the [Paycheck Protection Program Flexibility Act](#), adopted on June 5, extended the eight-week covered period originally used for PPP loans to 24 weeks, reduced the required amount of funds to be used for payroll to 60% of the loan and extended the maturity date for PPP loans. In response, last week the Small Business Administration (SBA) amended the [Interim Final Rule governing the PPP](#) to incorporate the changes required by the act. Notably, the new rule clarifies that even if borrowers don't hit the 60% payroll threshold, they can still obtain proportional forgiveness of their loan. It also makes clear that borrowers with PPP loans received prior to June 5 may elect to retain the eight-week covered period in lieu of using the new 24-week period.

Both existing and new borrowers under PPP should consult with their advisors on these changes. There may be advantages, for example, for existing borrowers to elect to use the eight-week period rather than extend the covered period. Furthermore, some of these changes will necessitate reviewing recordkeeping practices for borrowers in order to ensure that maximum forgiveness is obtained.

The other major CARES Act loan program, the MSLP, was further revised last week by the [Federal Reserve](#) (the Fed). The MSLP is a true loan program, which is not forgivable, but provides advantageous terms to the borrower and allows the lender to sell up to 95% of the loan to the Fed. The MSLP features three different loan programs depending on the size and needs of the borrower, with loans capped at certain ratios of the borrower's 2019 earnings before interest, taxes, depreciation and amortization (EBITDA). Interest rates under MSLP are LIBOR plus 300 basis points.

Unfortunately, initial response to the MSLP was tepid due to some of the constraints imposed by the program, such as a high minimum loan amount and compressed repayment schedules. The Fed [responded to these concerns](#) last week with several revisions to the MSLP. First, the minimum loan size for a MSLP loan was reduced from \$500,000 to \$250,000. Furthermore, the maximum size of the different loan facilities was also increased. In conjunction with these changes, the maturity date of the various loan programs was extended to five years, with a corresponding adjustment in the amortization schedule. Finally, the Fed agreed to adjust its participation rate in all of the programs to match the 95% level.

By extending the maturity date, increasing the loan amount range and providing for additional participation in some of the loans, the MSLP should be more attractive to borrowers. Companies that originally passed on the MSLP should reconsider whether a MSLP loan makes sense for them. One of the MSLP programs permits a borrower to refinance existing debt, and with the increase in participation by the Fed, that program should also be more attractive to lenders.

In these uncertain times, an experienced attorney can provide information and guidance to help you make fully

informed decisions. The COVID-19 pandemic has presented challenges to businesses on all levels. In addition to CARES Act loans, there are questions businesses may have related to employment matters, such as the [Families First Coronavirus Response Act](#), [insurance coverage relief](#) for business interruption losses and financial consulting relating to [debt restructuring options](#), [tax credits](#) and [employee benefits](#). [Erik Hume](#) and Saxton & Stump's full [COVID-19](#) response team are available to answer your questions and discuss how we can partner with your business or organization to develop a proactive approach and a new roadmap for success.

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