



# Pillsbury's Washington Weekly Briefing: COVID-19 Developments

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Addressing the ongoing  
federal responses  
to COVID-19

pillsbury

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# THE CARES ACT AT-A-GLANCE

**\$2.3 Trillion Stimulus Package**  
(expected \$4 trillion in economic activity)

**\$500 billion**  
in loans for distressed  
companies



**\$242 billion**  
for public health

**\$260 billion**  
in unemployment  
insurance benefits



**\$150 billion**  
for hospitals to invest in  
equipment and infrastructure

**\$377 billion**  
in small business loans



**\$150 billion**  
to assist hard-hit state and  
local governments

**\$250 billion**  
in direct checks to  
qualifying individuals/  
families



**\$32 billion**  
in airline-related support

# THE CARES ACT AT-A-GLANCE

- New Federal Stimulus Funding 3.5
  - \$320 billion for SBA PPP
  - Adds \$75 billion for hospitals and health care providers
- Oversight Game On: New bill adds \$6 million for oversight by the HHS Inspector General
- Outlook for Stimulus 4.0
- What is Next: Main Street Program and Reopening America for Business

# Main Street Business Lending Program

On April 9, the Treasury Department and Federal Reserve announced the Main Street Business Lending Program, making as much as \$150 million in loans available to U.S. businesses with up to 10,000 employees.

*For additional information, please visit Pillsbury's Covid 19 Resource Center:  
<https://www.pillsburylaw.com/en/services/covid-19-coronavirus.html>*

# Main Street Lending Program Overview

- The Main Street Lending Program establishes two new loan facilities:
  - The **Main Street New Loan Facility (MSNLF)**, which covers new loans issued by private banks to eligible business since April 8, 2020; and
  - The **Main Street Expanded Loan Facility (MSELF)**, which covers similar loans issued before April 8 and later increased in size.
- The Term Sheets released by the Federal Reserve are **preliminary only**.
  - Final rules will not be released for another 1-2 weeks.
  - Loans will start after the release of the final rules.

# Eligibility

- Businesses with up to 10,000 employees or up to \$2.5 billion in 2019 revenues.
- Must be a business that is created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States.
  - I.e. the U.S. incorporated subsidiaries of foreign companies can apply.
- May not also participate in the MSELF/MSNLF (as applicable) or the Primary Market Corporate Credit Facility.
- Must attest that it requires financing due to the exigent circumstances presented by the coronavirus disease pandemic.

# Loan Terms

- 4-year maturity.
- Amortization of principal and interest deferred for one year.
- Adjustable rate of SOFR + 250-400 basis points (e.g. 2.5-4%).
- Prepayment permitted without penalty
- Minimum loan size of \$1 million.
- New loans under the MSNLF will be unsecured. Existing collateral on upsized loans under the MSELF will secure the upsized loan on a pro rata basis.

# Maximum Loan Size

## MSNLF

Lesser of:

- (i) \$25 million, or
- (ii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed four times the Eligible Borrower's 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA").

## MSELF

Lesser of

- (i) \$150 million,
- (ii) 30% of the Eligible Borrower's existing outstanding and committed but undrawn bank debt, or
- (iii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed six times the Eligible Borrower's 2019 EBITDA.

# Maximum Loan Size Formulas

## MSNLF

Lesser of:

- (i) \$25 million, or
- (ii) [Loan Amount] + [outstanding debt + committed, but undrawn debt]  $\leq$  [4 x EBIDTA]

## MSELF

Lesser of

- (i) \$150 million,
- (ii) .3 x [outstanding debt + committed, but undrawn debt ]
- (iii) [Loan Amount] + [outstanding debt + committed, but undrawn deb]t  $\leq$  [6 x EBIDTA]

# Uses and Restrictions

- Refrain from using the proceeds of the Eligible Loan or *upsized tranche* of the Eligible Loan (as applicable) to repay other loan balances.
- Refrain from repaying other debt of equal or lower priority, *with the exception of mandatory principal payments*, unless the Eligible Loan has first been repaid in full.
- Make reasonable efforts to maintain its payroll and retain its employees during the term of the Eligible Loan or upsized tranche of the Eligible Loan (as applicable).
- For public companies, not buyback any related stock, pay any dividend, or make other capital distribution for 12 months following repayment of the loan.
- Not increasing compensation for employees making more than \$425,000 and other limits on employee compensation.
- Eligible Borrower must attest that it will not seek to cancel or reduce any of its outstanding lines of credit with the Eligible Lender or any other lender.
- Other restrictions from Section 4003(c)(3)(D)(i) of the Cares Act may be added.
- *Watching for additional use restrictions or requirements.*



GUIDELINES

# OPENING UP AMERICA AGAIN

# Overview of White House Guidelines

- Released on April 16<sup>th</sup>
- Guidelines are premised on a three-phase opening
- Guidelines establish “Gating Criteria” that should be satisfied before states and regions can proceed to the first phase or from one phase to the next.
- Guidelines premised on “Core State Preparedness Responsibilities.”
- Within each phase, the Administration provides guidelines for employers and individuals.

# Gating Criteria

<b>SYMPTOMS</b>	<b>CASES</b>	<b>HOSPITALS</b>
Downward trajectory of influenza-like illnesses (ILI) reported within a 14-day period	Downward trajectory of documented cases within a 14-day period	Treat all patients without crisis care
<b>AND</b>	<b>OR</b>	<b>AND</b>
Downward trajectory of covid-like syndromic cases reported within a 14-day period	Downward trajectory of positive tests as a percent of total tests within a 14-day period (flat or increasing volume of tests)	Robust testing program in place for at-risk healthcare workers, including emerging antibody testing

# Core State Preparedness Responsibilities

## TESTING & CONTACT TRACING

- ✓ Ability to quickly set up safe and efficient screening and testing sites for symptomatic individuals and trace contacts of COVID+ results
- ✓ Ability to test Syndromic/ILI-indicated persons for COVID and trace contacts of COVID+ results
- ✓ Ensure sentinel surveillance sites are screening for asymptomatic cases and contacts for COVID+ results are traced (sites operate at locations that serve older individuals, lower-income Americans, racial minorities, and Native Americans)

## HEALTHCARE SYSTEM CAPACITY

- ✓ Ability to quickly and independently supply sufficient Personal Protective Equipment and critical medical equipment to handle dramatic surge in need
- ✓ Ability to surge ICU capacity

## PLANS

- ✓ Protect the health and safety of workers in critical industries
- ✓ Protect the health and safety of those living and working in high-risk facilities (e.g., senior care facilities)
- ✓ Protect employees and users of mass transit
- ✓ Advise citizens regarding protocols for social distancing and face coverings
- ✓ Monitor conditions and immediately take steps to limit and mitigate any rebounds or outbreaks by restarting a phase or returning to an earlier phase, depending on severity

# Employer Guidelines for All Phases

**Develop and implement appropriate policies, in accordance with Federal, State, and local regulations and guidance, and informed by industry best practices, regarding:**

- ✓ Social distancing and protective equipment
- ✓ Temperature checks
- ✓ Sanitation
- ✓ Use and disinfection of common and high-traffic areas
- ✓ Business travel

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**Monitor workforce for indicative symptoms. Do not allow symptomatic people to physically return to work until cleared by a medical provider.**

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**Develop and implement policies and procedures for workforce contact tracing following employee COVID+ test.**

# Employer Guidelines for Phase One

Continue to **ENCOURAGE TELEWORK**, whenever possible and feasible with business operations.

If possible, **RETURN TO WORK IN PHASES.**

Close **COMMON AREAS** where personnel are likely to congregate and interact, or enforce strict social distancing protocols.

Minimize **NON-ESSENTIAL TRAVEL** and adhere to CDC guidelines regarding isolation following travel.

Strongly consider **SPECIAL ACCOMMODATIONS** for personnel who are members of a **VULNERABLE POPULATION.**

# Considering Risk and Liability

- Employers are tasked with health and safety responsibilities.
- Responsibilities are rife with logistical, operational, and legal roadblocks.
  - Health Privacy
  - Data Privacy Rules
  - Workplace Fairness Issues
  - Enforcement Challenges
  - Expense
  - Realities of Testing and Private-Sector Capabilities
- Rules and guidance will vary by jurisdiction and industry.
  - Inconsistencies for businesses that operate across states.
- **Public Opinion:** Pew Research finds that three-quarters of U.S. adults say the worst is yet to come with COVID-19 and two-thirds were worried that restrictions would be lifted too soon.
- **Thousands of OSHA complaints related to COVID-19 already filed.**

# Managing Risk and Liability

- Risk Assessments
- Development of COVID-19-specific policies and procedures
  - Federal, state, and local orders and guidance
  - Industry best practices
  - Legal obligations and precedent
  - Business imperatives
  - Cost
  - Feasibility
- Planning for implementation
  - Contract Negotiations
  - Operational Support
  - Employee and Public Communications
- Documented decision-making to demonstrate “reasonableness”
- Use of federal and state programs to cover certain costs.
- Statutory safe harbor program?

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# Questions?

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# Pillsbury's COVID-19 Resources:

If you have questions about how the Coronavirus impacts you or your business, please contact us.

## **COVID-19 (Coronavirus) Resource Center:**

<https://www.pillsburylaw.com/en/services/covid-19-coronavirus.html>

## **Trending Topics:**

- [CARES Act \(Stimulus\)](#)
- [Crisis Management](#)
- [Insurance & Contract Disputes](#)
- [Liquidity & Financial Markets](#)
- [Stay-at-Home Orders](#)
- [Workforce & Employment Law](#)

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