



# A Deep Dive into the CARES Act's Main Street Lending Program and Economic Stabilization Loan Programs

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## Speakers:

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# Today's Presenters



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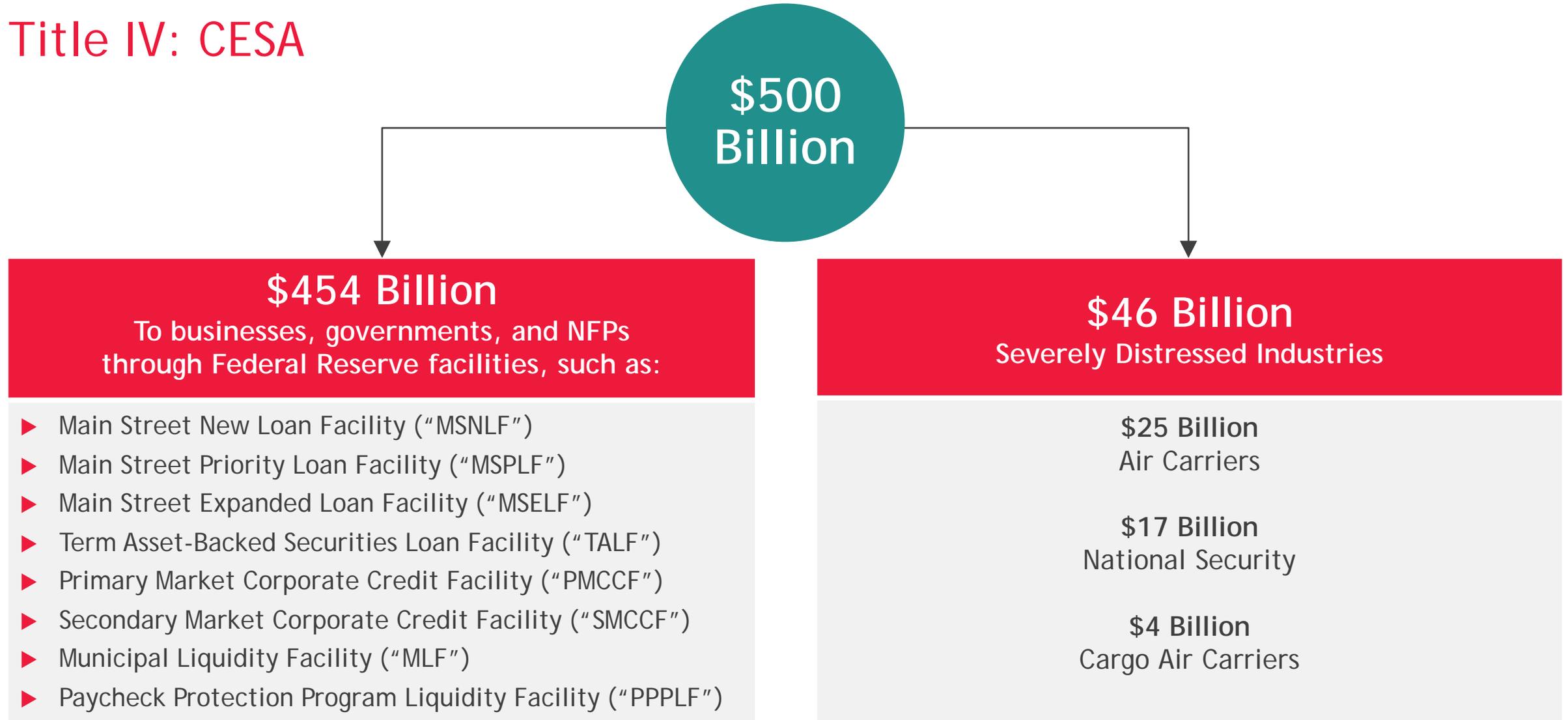
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# CARES Act: Title IV – Coronavirus Economic Stabilization Act of 2020 (CESA)

- ▶ \$46 billion in direct Treasury loans to severely distressed economic sectors
  - \$25 billion for passenger air carriers and their contractors
  - \$4 billion for cargo air carriers
  - \$17 billion for businesses critical to national security
- ▶ \$454 billion to provide liquidity to businesses, governments, and nonprofit organizations not otherwise receiving sufficient relief
  - To be administrated through various Fed Reserve facilities

**PURPOSE:** To provide liquidity to eligible businesses, states, and municipalities related to losses incurred due to the coronavirus. This is a \$500 billion stabilization loan program and gives broad discretion to the Secretary of the Treasury.

# Title IV: CESA



# Economic Stabilization and Assistance Loans (“ESL”) § 4003

## SPECIAL PURPOSE VEHICLES (“SPV”)

Loan Programs	Treasury (Fed Collateral) <sup>3</sup> 	Federal Reserve <sup>4</sup> 
Passenger airlines, cargo airlines, aviation repair operators, airline ticket agents, and business critical to maintaining national security	\$46 Billion	N/A
Main Street New Loan Facility Main Street Expanded Loan Facility Main Street Priority Loan Facility	\$75 Billion	\$600 Billion
Term Asset Based Security Loan Facility	\$10 Billion	\$100 Billion
The Primary Market Corporate Credit Facility The Secondary Market Corporate Credit Facility	\$75 Billion	\$750 Billion
The Municipal Liquidity Facility	\$35 Billion	\$500 Billion
The Paycheck Protection Program Lending Facility § 1102	N/A <sup>2</sup>	\$659 Billion
In Aggregate <sup>1</sup> :	\$241 Billion	\$2,609 Billion

<sup>1</sup>Results in excess of \$259 billion (dry-powder) under the \$500 billion program.

<sup>2</sup>Treasury funding is equal to the amount of federal reserve funding.

<sup>3</sup>Amount funded by the U.S. Treasury to the Federal Reserve to establish each SPV.

<sup>4</sup>Total Federal Reserve lending limit per facility.

# Title IV Loans

## MAIN STREET LOAN FACILITIES

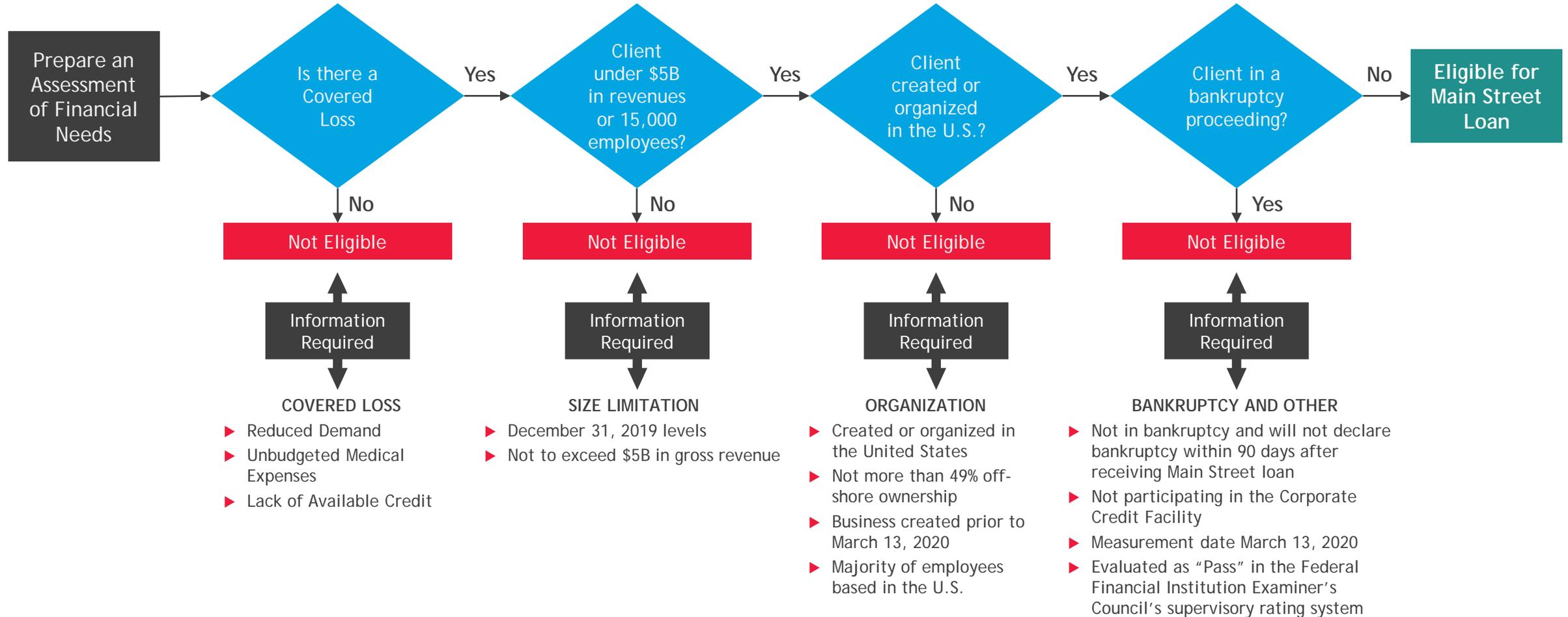
Loan Details:

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Term	5 years	5 Years	5 years
Principal & Interest Payments	Y1 - No P&I Y2 - Interest only Y3 & 4 - 15%/Year Y5 - 70%	Y1 - No P&I Y2 - Interest only Y3 & 4 - 15%/Year Y5 - 70%	Y1 - No P&I Y2 - Interest only Y3 & 4 - 15%/Year Y5 - 70%
Rate	LIBOR + 300bps	LIBOR + 300bps	LIBOR + 300bps
Minimum Loan Size	\$250,000	\$250,000	\$10.0 Million
Maximum Loan Size	Lesser of (a) \$35 Million; or (b) the amount that does exceed borrower's leverage by 4x Adjusted EBITDA (including undrawn available debt)	Lesser of (a) \$50 Million; or (b) the amount that does exceed borrower's leverage by 6x Adjusted EBITDA (including undrawn available debt)	Lesser of (a) \$300 million; or (b) the amount that does exceed borrower's leverage by 6x Adjusted EBITDA (including undrawn available debt)
Loan Participation	(a) SPV - 95%; Lender - 5%; (b) Seniority - pari passu basis	(a) SPV - 95%; Lender - 5%; (b) Seniority - Senior to or pari passu basis	(a) SPV - 95%; Lender - 5%; (b) Seniority - pari passu basis; (c) Collateral - pro rata basis

# Title IV Loans

## MAIN STREET LENDING EVALUATION

## INITIAL MAIN STREET LENDING EVALUATION FLOWCHART



# Main Street Loans: Certifications and Covenants

## SELECT CERTIFICATIONS

Certifications	Guidance
Unavailability of Credit	Unable to secure “adequate credit accommodations” because the amount, price, or terms of credit available from other sources are inadequate for the Borrower’s needs during the current unusual and exigent circumstances
Solvency & Going Concern	Is not insolvent and has the ability to meet financial obligations for the next 90 days
Multiple or Affiliate Applications	Has informed the lender if the borrower, or its affiliates, has previously received, or has a pending application to receive, funds in connection with any Main Street Facility, as well as the value of such funding
CARES Act Title IV, Subtitle A Relief	Has not received specific support pursuant to Subtitle A of Title IV of the CARES Act (relief for air carriers, air cargo carriers, and businesses critical to national defense)

# Main Street Loans: Certifications and Covenants

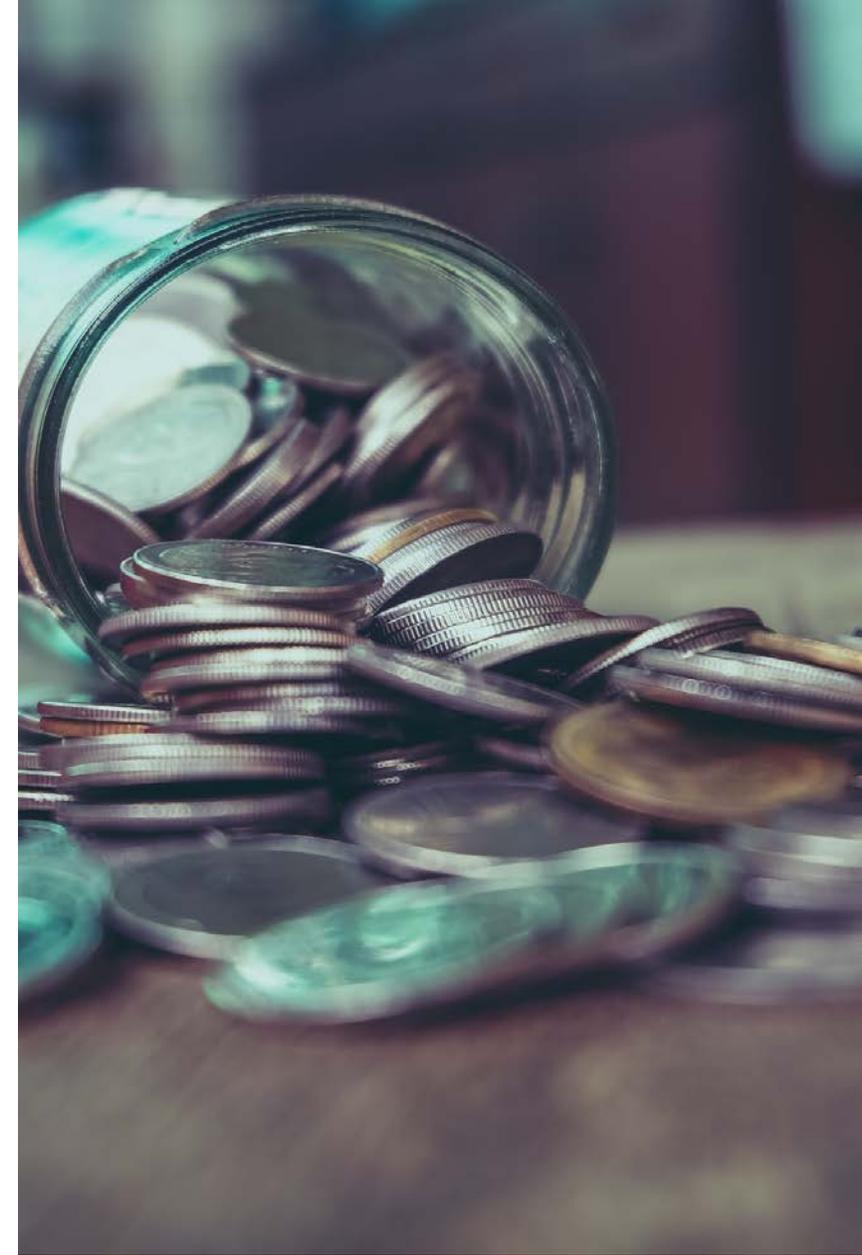
## SELECT CERTIFICATIONS

Certification	Guidance
Early Repayment of Other Debt (MSNLF & MSELF)	Will not repay any debt, unless the principal or interest payment is mandatory and due, until (i) the Eligible Loan is repaid in full or (ii) neither the SPV nor a Governmental Assignee holds an interest in the loan. MSPLF has specific repayment restrictions.
Early Cancellation or Reduction of Other Existing Credit Lines	Will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender
Use of Proceeds	If a subsidiary a of foreign parent, to use proceeds only for the benefit of the borrower, its U.S. subsidiaries, and other affiliates that are U.S. businesses
Financial Restrictions	Will comply with the compensation, stock repurchase, and capital distribution restrictions

# Title IV Loans Restrictions

## LIMITATION ON EMPLOYEE COMPENSATION

- ▶ Restrictions below are applicable to all programs established pursuant to Title IV of the CARES Act § 4004
  - Employees or officers who earned more than \$425,000 in total compensation in 2019
    - The compensation during the restricted period should not exceed their 2019 compensation for 12 consecutive months
    - Severance pay should not exceed 2x the maximum total compensation received in 2019
    - May receive maximum total compensation of \$3 million plus 50% of the excess over \$3 million of the total compensation in 2019
- ▶ Excludes those with collective agreements dated prior to 3/1/20  
Total compensation is defined as salary, bonus, awards of stock, and other financial benefits. Further clarification is needed regarding definition of “financial benefits”



# Title IV Loans

## OTHER TERMS & CONDITIONS

- ▶ No Dividends or Issuance of equity instruments that are dilutive
  - Exception for distributions made by a pass-through entity to the extent reasonably required for owners' tax obligations
- ▶ Existing loans with a lender will have a "Pass" rating in accordance with Federal Reserve Standards as of December 31, 2019
- ▶ Cannot be in bankruptcy at time of application
- ▶ Business established prior to March 13, 2020
- ▶ May not participate in multiple Main Street programs or stack other Title IV loan programs
- ▶ Restrictions remain in place for 12 months subsequent to repayment



# Title IV Loans

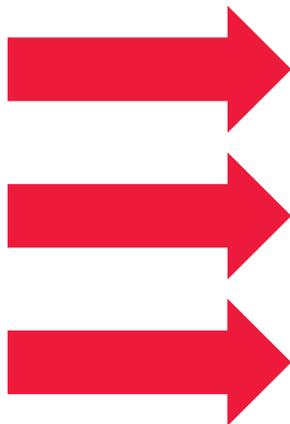
## AFFILIATION RULES TITLE IV PROGRAM

- ▶ Many PE sponsors are conflating the affiliation rules for the Paycheck Protection Program (“PPP”) HR748 §1102 to restrictions under the Main Street Lending Program(s)
- ▶ More than one entity in an affiliated group may both borrow from a MSLP facility, although the loan maximum criteria will then apply to the affiliated group
- ▶ Financial sponsors may make distribution to investors even if one or more portfolio companies has a loan outstanding
- ▶ BDO is defining an entity by parent company’s Federal Employer Identification Number (FEIN)



# Title IV Loans: Preliminary Application Guidance

## FINANCIAL PLAN DISCLOSURE



### FINANCIAL PLAN

Provide a separate document containing a financial plan that includes each of the following components.

(1) *Use of Proceeds* – an itemized description of the purposes for which the Borrower will use the loan proceeds.

(2) *Financial Needs* – quantitative information on the Borrower’s total financial needs for the remainder of 2020, including expected revenues, expenses, and types and amounts of expected borrowing, and how the loan fits within those needs, including (if applicable) payroll support payments under Section 4111 of the Act and employee retention credits under Section 2301 of the Act.

(3) *Operating Plan* – a discussion of the Borrower’s (and any subsidiary’s) operating plan for the remainder of 2020, if the loan is approved. Include a description of any changes to management, employment, routes and aircraft, as well as any strategic focuses or significant ventures or transactions.

(4) *Cost Restructuring* – a description of any plans the Borrower (and any subsidiary) has to restructure its obligations or contracts with creditors, vendors, or employees to improve the Borrower’s financial condition in 2020.

(5) *Prudent Borrowing* – a justification based on the Borrower’s financial needs and operating plan demonstrating that the loan is prudently incurred.

(6) *Stock Buybacks* – a description of any contractual commitment in effect as of March 27, 2020, obligating the Borrower or any affiliate thereof to purchase, before January 1, 2026, an equity security that is listed on a national securities exchange of the Borrower or any parent company of the Borrower.

(7) *Lack of Credit Elsewhere* – evidence based on market conditions, the Borrower’s circumstances, or relationships with existing or potential creditors that credit is not reasonably available to the Borrower elsewhere.

Source: Department of Treasury Airline Loan Application – <https://home.treasury.gov/system/files/136/Airline-Loan-Application-4-6-20.pdf> (pages 6 and 7)

# Title IV: A Phased Approach



## PHASE 1

### TITLE IV CARES ACT RELIEF LOAN ASSESSMENT

- ▶ Determine your business's goal to obtain relief and your debt classes and servicing
- ▶ Identify the forms of aid that align with your goals, plan and culture
- ▶ Understand loan disclosures and other implications
- ▶ Set up a recovery plan to restabilize your business

## PHASE 2

### FINANCIAL ANALYSIS OF ECONOMIC IMPACT AND COVERED LOSSES

- ▶ Set up a centralized repository for application supporting documents
- ▶ Formulate a plan to rapidly collect required application information
- ▶ Calculate incurred and forecasted losses due to COVID-19
- ▶ Compute anticipated revenues and outlays during stymied operations
- ▶ Form a plan to strengthen business and achieve organizational goals

## PHASE 3

### APPLICATION SUBMISSION AND LENDER FOLLOW-UP

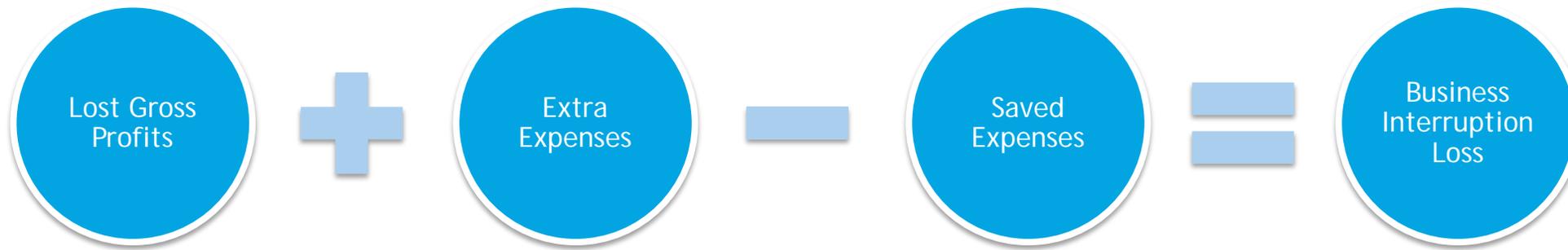
- ▶ Synthesize your collection of documents/analyses
- ▶ Ensure all application forms are completed in an efficient manner
- ▶ Follow up with lender/administrator to avoid delays, hang-ups or misunderstandings

## PHASE 4

### ONGOING CARES ACT LOAN COMPLIANCE AND MONITORING

- ▶ Establish controls and processes to maintain program compliance

# Business Interruption/Economic Loss Analysis



## “But for” sales less COGS

- ▶ Sales of products and services
- ▶ Cancelled contracts and events
- ▶ Ancillary services

## Additional costs due to COVID-19

- ▶ Healthcare costs
- ▶ Purchase of PPE
- ▶ Sanitation/cleaning
- ▶ Remote work setup
- ▶ Customer retention costs
- ▶ Alternative suppliers

## Avoided costs due to business slowdown

- ▶ Utilities
- ▶ Labor
- ▶ Fuel
- ▶ Other incremental expenses

# Business Interruption/Economic Loss Analysis

This analysis may be a gateway for accessing the Main Street Lending Program and can be leveraged for CARES Act loan application assistance.

Summary of Variable Profit 20XX through 20XX and Benchmark Period

Variable Profit									
Month									
Year	May	June	July	August	September	October	November	December	Totals
20XX	\$ 390,226	\$ 329,174	\$ 349,933	\$ 379,962	\$ 378,891	\$ 396,033	\$ 310,559	\$ 259,506	\$ 2,794,283
20XX	\$ 427,073	\$ 470,084	\$ 449,602	\$ 408,650	\$ 402,190	\$ 465,896	\$ 426,150	\$ 300,652	\$ 3,350,299
20XX	\$ 416,349	\$ 443,729	\$ 444,016	\$ 480,230	\$ 408,073	\$ 505,917	\$ 401,131	\$ 319,272	\$ 3,418,717

Variable Profit - Benchmark Period									
Month									
Year	May	June	July	August	September	October	November	December	Totals
20XX/20XX/20XX	\$ 411,216	\$ 414,329	\$ 414,517	\$ 422,947	\$ 396,385	\$ 455,949	\$ 379,280	\$ 293,144	

Step 1 Compensation Calculation

20XX/20XX/20XX Benchmark Period									
Month									
	May	June	July	August	September	October	November	December	Step 1 Compensation
20XX/20XX/20XX Benchmark Period Variable Profit	\$ 411,216	\$ 414,329	\$ 414,517	\$ 422,947	\$ 396,385	\$ 455,949	\$ 379,280	\$ 293,144	
20XX Variable Profit	\$ 263,186	\$ 202,169	\$ 213,904	\$ 229,243	\$ 241,733	\$ 313,278	\$ 263,962	\$ 163,160	
Difference in Variable Profit	\$ 148,030	\$ 212,160	\$ 200,613	\$ 193,704	\$ 154,651	\$ 142,671	\$ 115,318	\$ 129,984	\$ 1,297,132
3			\$ 560,804	\$ 606,478	\$ 548,969	\$ 491,026	\$ 412,640	\$ 387,972	
4				\$ 754,508	\$ 761,129	\$ 691,640	\$ 606,345	\$ 542,624	
5					\$ 909,159	\$ 903,800	\$ 806,958	\$ 736,328	
6						\$ 1,051,830	\$ 1,019,118	\$ 936,941	
7							\$ 1,167,148	\$ 1,149,102	
8								\$ 1,297,132	

# Title IV: A Phased Approach



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# Measuring the Need

## THIRTEEN WEEK CASH FORECAST

Determine effect of the new cash and application of the funds

Sample 13 Week Cash Analysis																	
Cashflow Forecast																	
Number of Weeks: 13																	
As of week ending (Friday): 5/1																	
Week #	Actual 0	Actual 0	Actual 0	Fcst 1	Fcst 2	Fcst 3	Fcst 4	Fcst 5	Fcst 6	Fcst 7	Fcst 8	Fcst 9	Fcst 10	Fcst 11	Fcst 12	Fcst 13	Total 13
Week Ended	4/17/2020	4/24/2020	5/1/2020	5/8/2020	5/15/2020	5/22/2020	5/29/2020	6/5/2020	6/12/2020	6/19/2020	6/26/2020	7/3/2020	7/10/2020	7/17/2020	7/24/2020	7/31/2020	
<b>Cash Receipts</b>																	
A/R Collections	147,806	326,598	285,051	154,600	183,163	196,111	215,948	272,234	342,250	235,836	269,272	238,546	348,927	351,254	359,888	280,823	3,448,852
Other Cash Receipts	301	24,451	149,616	1,368	1,368	1,368	2,600	2,600	2,600	2,600	2,600	750	750	750	750	1,375	21,478
PPP Loan	-	-	997,658	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Cash Receipts</b>	<b>148,107</b>	<b>351,049</b>	<b>1,432,325</b>	<b>155,967</b>	<b>184,531</b>	<b>197,479</b>	<b>218,548</b>	<b>274,834</b>	<b>344,850</b>	<b>238,436</b>	<b>271,872</b>	<b>239,296</b>	<b>349,677</b>	<b>352,004</b>	<b>360,638</b>	<b>282,198</b>	<b>3,470,330</b>
<b>Operating Disbursements</b>																	
Current AP	35,196	259,076	219,038	136,572	202,137	124,919	96,987	154,975	79,688	219,270	51,909	127,009	-	-	-	-	1,193,468
Payroll and Benefits	87,384	76,545	135,118	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	90,000	1,170,000
Primary Service Line COGS	-	-	-	-	-	-	-	-	-	-	34,890	34,890	34,890	27,912	27,912	27,912	188,404
Other COGS	4,546	54	1,657	60,000	-	70,000	100,000	50,000	100,000	-	29,467	29,467	29,467	23,573	23,573	23,573	539,120
New COGS	-	-	-	-	-	-	-	-	30,000	(30,000)	144,454	144,454	144,454	115,563	115,563	115,563	780,051
Parts, Repairs and Supplies	296	258	597	-	-	-	-	-	-	-	502	502	502	401	401	401	2,708
Taxes	7,278	-	215	-	7,000	-	-	-	-	7,000	-	-	-	7,000	-	-	21,000
Subcontracting	-	-	-	-	-	-	-	-	-	-	1,328	1,328	1,328	1,063	1,063	1,063	7,172
Disposal	-	-	-	-	-	-	-	-	-	-	3,953	3,953	3,953	3,162	3,162	3,162	21,344
T&E	-	26	77	27	27	27	42	42	42	42	42	78	78	78	78	139	742
Fuel	-	603	330	-	-	-	-	-	-	-	2,042	2,042	2,042	1,634	1,634	1,634	11,029
Equipment Rental	-	4,875	651	-	-	-	697	697	697	557	557	557	557	557	697	697	6,269
Admin	2,244	4,455	3,420	5,000	5,000	5,000	5,000	5,000	5,000	5,000	31,071	31,071	31,071	28,875	28,875	28,875	214,838
Real Estate	-	-	-	-	-	-	-	-	-	-	2,051	2,051	2,051	1,700	1,700	1,700	11,253
Rent	-	-	-	-	-	-	400	400	400	400	400	500	500	500	500	500	4,500
Donations	-	-	-	607	607	607	100	100	100	100	100	25	25	25	25	-	2,420
<b>Total Operating Disbursements</b>	<b>136,943</b>	<b>345,893</b>	<b>361,102</b>	<b>292,206</b>	<b>304,771</b>	<b>290,553</b>	<b>293,226</b>	<b>301,214</b>	<b>305,927</b>	<b>292,370</b>	<b>392,765</b>	<b>467,926</b>	<b>340,916</b>	<b>302,043</b>	<b>295,182</b>	<b>295,218</b>	<b>4,174,317</b>
<b>Non-Operating Disbursements</b>																	
Cap-Ex	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Equity Draws	(1,095)	3,049	1,819	3,173	3,173	3,173	3,173	3,173	3,173	3,173	3,173	3,173	3,173	3,173	3,173	3,173	41,247
Interest	-	-	12,604	-	6,250	19,919	7,301	11,213	4,500	1,240	26,098	11,276	4,500	-	27,458	-	119,754
Loan Paydown	-	-	-	-	-	3,581	3,699	24,806	-	260	6,902	24,742	-	-	7,042	-	71,032
Other Items	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Non-Operating Disbursements</b>	<b>(1,095)</b>	<b>3,049</b>	<b>14,423</b>	<b>3,173</b>	<b>9,423</b>	<b>26,673</b>	<b>14,173</b>	<b>39,191</b>	<b>7,673</b>	<b>4,673</b>	<b>36,173</b>	<b>39,191</b>	<b>7,673</b>	<b>3,173</b>	<b>37,673</b>	<b>3,173</b>	<b>232,034</b>
<b>Total Disbursements</b>	<b>135,847</b>	<b>348,942</b>	<b>375,526</b>	<b>295,379</b>	<b>314,194</b>	<b>317,226</b>	<b>307,399</b>	<b>340,405</b>	<b>313,599</b>	<b>297,043</b>	<b>428,938</b>	<b>507,117</b>	<b>348,589</b>	<b>305,215</b>	<b>332,855</b>	<b>298,391</b>	<b>4,406,351</b>
<b>Net increase/(decrease) in Cash</b>	<b>12,260</b>	<b>2,107</b>	<b>1,056,799</b>	<b>(139,412)</b>	<b>(129,664)</b>	<b>(119,747)</b>	<b>(88,850)</b>	<b>(65,571)</b>	<b>31,251</b>	<b>(58,606)</b>	<b>(157,066)</b>	<b>(267,821)</b>	<b>1,087</b>	<b>46,788</b>	<b>27,783</b>	<b>(16,193)</b>	<b>(936,021)</b>
Beginning Book Cash Balance	62,865	75,125	77,232	1,134,032	994,620	864,956	745,210	656,359	590,788	622,039	563,433	406,367	138,545	139,633	186,421	214,204	
Net increase/(decrease) in Cash	12,260	2,107	1,056,799	(139,412)	(129,664)	(119,747)	(88,850)	(65,571)	31,251	(58,606)	(157,066)	(267,821)	1,087	46,788	27,783	(16,193)	
Book Cash Balance	75,125	77,232	1,134,032	994,620	864,956	745,210	656,359	590,788	622,039	563,433	406,367	138,545	139,633	186,421	214,204	198,011	

# Measuring the Need

## REFORECASTED BUSINESS MODEL

Determine effect of the new cash and application of the funds

- ▶ Show new funds in re-forecasted business plan
- ▶ Use to evaluate future debt covenants
- ▶ Compare GAAP cash flow to cash basis 13 week forecast
- ▶ Other base financial statements are needed ~ B/S and I/S

### Statement of Cash Flow

USD in dollars	Act	Proj	Proj
	FY20 Mar-20	FY20 Apr-20	FY20 May-20
<b>Operating Activities:</b>			
Net Income	(372,202)	43,519	(17,875)
Adjustments to reconcile Net Income to Net Cash from Operating Activities:			
Depreciation	-	-	-
Non-Cash Interest (Deferred Financing Fees)	-	-	-
Accounts Receivable	(360,624)	412,868	259,239
Allowance for Doubtful Accounts	-	99,876	(12,962)
A/R - Insurance	(44,225)	-	-
Customer/Vendor Washout Accts.	-	-	-
Prepaid Insurance	2,404	-	-
PRE Paid Tax Deposit	-	-	-
Purchased Brine Inventory	-	-	-
Accounts Payable	840,597	(742,000)	(65,273)
Accrued Expenses	-	(34,430)	(143,736)
Accrued Interest Expense	-	-	-
Accrued Payroll	-	-	-
Accrued Payroll Taxes	-	-	-
Accrued Taxes - Other	3,124	-	-
State 1 Withholding Taxes - Customer	(4,355)	10,540	-
State 2 Unbilled Sales Taxes	-	-	-
Payroll Liabilities	13,942	(43,216)	-
Sales Tax Payable	1,796	(5,858)	-
		-	-
<b>Net Cash Flow from Operations</b>	<b>50,705</b>	<b>(258,700)</b>	<b>19,393</b>
<b>Investing Activities</b>			
Injection Wells	-	-	-
Real Estate Holdings - Land	(7,441)	-	-
Real Estate Holdings - Buildings	-	-	-
Trucks & Equipment - Net	4,400	-	-
<b>Net Cash Flow from Investing Activities</b>	<b>(3,041)</b>	<b>-</b>	<b>-</b>
<b>Financing Activities</b>			
Loans - Real Estate	(11,512)	(15,092)	(13,368)
Loans - Equipment	(36,681)	(21,774)	(29,414)
Loans - LOC	(111)	-	-
Loans - New Term Loan (MSLP)	-	-	-
Loans - Zero Balance at Feb-20	-	-	-
Equity Draws	(11,477)	(16,667)	(16,667)
Owners Equity	-	-	-
<b>Net Cash Flow from Financing Activities</b>	<b>(59,781)</b>	<b>(53,534)</b>	<b>(59,448)</b>
<b>Net Cash Increase/(Decrease) for Period</b>	<b>(12,117)</b>	<b>(312,233)</b>	<b>(40,055)</b>
Cash and Equivalents, Beginning of Period	83,466	71,349	(240,884)
Net Cash Increase/(Decrease) for Period	(12,117)	(312,233)	(40,055)
Cash and Equivalent, End of Period	71,349	(240,884)	(280,939)

# Overview of "SIGTARP"

(SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM)

- ▶ Sworn in Dec. 15, 2008; ramped up to 128 employees by 2010
- ▶ Special agents and analysts are: attorneys; former prosecutors; criminal investigators; federal law enforcement; forensic accountants; and auditors.
- ▶ Initial operating funds of \$50 million; expenditures of:
  - \$19.6 million in 2009;
  - \$33.5 million in 2010; and
  - \$38.2 million in 2011
- ▶ Audit Division
  - Programmatic audits of Treasury's operation of TARP and recipients' compliance with their obligations under relevant law and contract.
- ▶ Investigations Division
  - Supervises and conducts criminal and civil investigations into those, whether inside or outside of government, who waste, steal, or abuse TARP funds



# Overview of "SIGTARP"

(SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM)

- ▶ SIGTARP Hotline - one of SIGTARP's primary investigative priorities
  - Received 29,552 Hotline contacts by 2012
- ▶ Has criminally charged 443 individuals and recovered \$11 billion from investigations since inception
- ▶ Secured enforcement actions against direct and indirect recipients of TARP funds, including banks, mortgage lenders, insurance companies, and more
- ▶ SIGTARP currently anticipated to sunset in 2024



# Special Inspector General for Pandemic Recovery

## “SIGPR” Overview

- ▶ Brian Miller confirmed as SIGPR on June 2
  - Previously served as Inspector General at GSA for nine years and as counsel to the White House
  - Investigated head of GSA for diverting contract to a friend
    - Administrator eventually stepped down
- ▶ Will bring on 75-100 personnel to get the program up and running
- ▶ Initial operating funds of \$25 million
- ▶ Initial term of five years

### Note: Other CARES Act Oversight Bodies

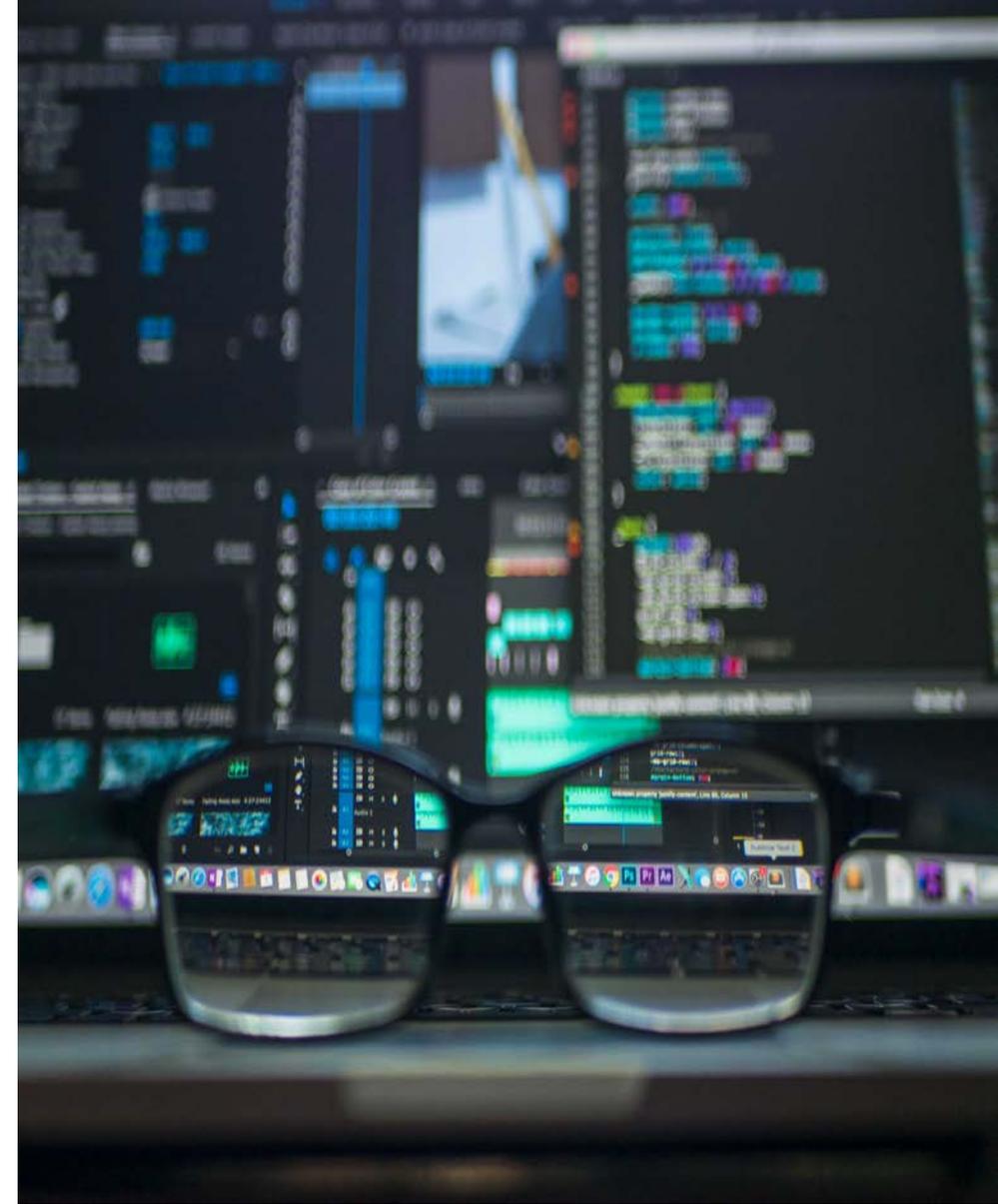
- Pandemic Response Accountability Committee , Five-member Congressional Oversight Commission, Government Accountability Office, Existing Law Enforcement Authorities



# Special Inspector General for Pandemic Recovery

## DUTIES OF THE SIGPR

- ▶ Conduct audits and investigations of loans, loan guarantees, and other investments made by Treasury under any CARES Act program collecting and summarizing the following information:
  - Categories of the loans
  - Reasons loans were made
  - Details about each loan
- ▶ SIG may request information from any Federal Government agency



# Title IV: Special Inspector General for Pandemic Recovery

## COMPLIANCE AND POST-APPROVAL ACCOUNTING

### Creation of a Main Street “COMPLIANCE FILE” for Conforming Loans for FEDERAL INSPECTION and AUDIT

- ▶ Covers the various certifications and covenants the borrower signed off on when applying for the MSLP loan
  - Company eligibility
  - Conflicts of interest
  - Use of Proceeds
  - Compensation restrictions
  - Stock repurchase and capital distribution restrictions
  - Reasonable efforts to maintain payroll & employee headcount





# Compliance/Investigations for Those Taking Government Money

# Executive Branch Oversight/Investigations

- Department of Justice
  - Already making indictments for PPP fraud
- Special Inspector General for Pandemic Recovery (SIGPR)
  - Audits/investigations of Treasury Department activity related to COVID-19 response
- Pandemic Response Accountability Committee (PIGIE)
  - IGs from various agencies
  - “Promote transparency and conduct and support oversight” of the government’s coronavirus response in order to “prevent and detect fraud, waste, abuse, and mismanagement” and “mitigate major risks that cut across program and agency boundaries.”
  - Develop website to foster transparency in the use of CARES Act funds
- Agency-by-agency reporting



# Coronavirus oversight panel staffs up



## Mnuchin warns some U.S. firms could face criminal liability over coronavirus loans

WASHINGTON (Reuters) - The U.S. Treasury Department will audit every loan for more than \$2 million given under the Paycheck Protection Program for businesses hurt by the coronavirus fallout, Treasury Secretary Steven Mnuchin said on Tuesday.

## Watchdogs scramble to keep tabs on billions in stimulus spending

CORONAVIRUS

## House creates new select coronavirus oversight committee over GOP objections

"This is about taking responsibility," Pelosi says.



Bloomberg Law

## Pandemic Watchdog Activates Site to Track Trillions in Spending

abc NEWS CORONAVIRUS GOVERNMENT RESPONSE

## Experts warn about big dollar fraud in \$2.2 trillion coronavirus relief package

*Former watchdog warns one program could be "be defrauded in massive ways."*

# Congressional Investigations

- House Select Committee on the Coronavirus Crisis (“Benghazi 2.0?”)
  - Root out waste/fraud/abuse
  - Protect against price gouging and profiteering
  - Ensure that federal response is guided by science/health experts
  - ***First Investigation: Public companies taking PPP loans***
- Congressional Oversight Commission (“TARP 2.0”)
  - Oversight of Treasury/Federal Reserve Board’s economic relief activities
  - Will last for 5 years and will report to Congress every 30 days
  - Hearings/reports likely
- Government Accountability Office reporting/audits
  - Strong relationships with IGs/agencies
  - Bipartisan credibility in Congress

# Congressional Investigations 101

## Pillsbury's Expertise

- The representation of companies or individuals subject to Congressional investigations is a specialized legal practice that combines litigation, negotiation, and advocacy.
- Pillsbury represents companies, associations, and executives in high-profile congressional investigations conducted by each of the investigatory committees of Congress.
- Our Congressional investigations experts are now defending a public company; one of the first targets of the new House Select Subcommittee on Coronavirus Response.

### Broad Powers

- Especially hazardous given Congress has very broad powers of investigation.
- In short, Congress makes the rules and enforces them.

### Political Stakes

- Stakes are especially high when control of the federal government is split between the two political parties.
- The best approach is to try to reduce risks - and surprises - by understanding the players and the process.

### Responding

- There is always a danger that one investigation can spiral into multiple Congressional, criminal, and/or civil investigations at the state and federal levels.
- The best approach is always to undertake communications cautiously, but promptly, and with a tone that shows respect for the legitimacy of the investigator's efforts.

### Control of Information

- In preparation, respondents should first ensure proper control of information flow, including documents, and avoid destroying or displacing any documents or information that investigators might request.

### Best Practices for Negotiating Responses

- The practical reality is that by the time an investigation has begun, Congressional leaders have decided to invest time and resources into the inquiry.
- Working with Congressional leaders is preferable to resisting requests altogether and risking the triggering of a subpoena and a dangerous domino effect.

# Case Study: First Investigations by the Select Subcommittee

“Since your company is a public entity with a substantial investor base and access to capital markets, we ask that you return these funds immediately,” a panel of seven Democratic members of the Select Subcommittee on the Coronavirus Crisis wrote to each of the five firms. Responses from the companies have varied widely. Our Congressional investigations experts are currently representing one of these public companies.

The investigations are currently ongoing and have included meetings between the companies and the Select Subcommittee.

JAMES E. CLYBURN  
CHAIRMAN  
MAXINE WATERS  
CAROLYN B. MALONEY  
NYDIA M. VELÁZQUEZ  
BILL FOSTER  
JAMIE RASKIN  
ANDY KIM

ONE HUNDRED SIXTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
SELECT SUBCOMMITTEE ON THE CORONAVIRUS CRISIS  
2157 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6143  
Phone: (202) 225-4400  
<https://coronavirus.house.gov>  
May 8, 2020

STEVE SCALISE  
RANKING MEMBER  
SIM JORDAN  
BLAINE LUETKEMEYER  
JACKIE WALORSKI  
MARK E. GREEN, M.D.

[REDACTED]

The Select Subcommittee on the Coronavirus Crisis requests that [REDACTED] immediately return the Paycheck Protection Program (PPP) loan it obtained so that these funds may be used to support truly small businesses that are struggling to survive during the coronavirus crisis.

When Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act with broad bipartisan support, we intended to provide an invaluable lifeline for small businesses that otherwise might be forced to lay off employees or shut down entirely.<sup>1</sup> We did not intend for these funds to be used by large corporations that have a substantial investor base and access to capital markets.<sup>2</sup>

Unfortunately, many large companies were able to utilize this program and obtained PPP loans that were intended for small businesses. Some of the companies returned these funds amid widespread public outrage.<sup>3</sup> However, other companies—including yours—still have not returned these funds.

ONE HUNDRED SIXTEENTH CONGRESS  
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May 11, 2020

The Honorable James E. Clyburn  
May 11, 2020  
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Small Business Act, 15 U.S.C. 632. A business can qualify if it meets the SBA employee-based or revenue-based.

Additionally, a business can qualify for the Paycheck Protection Program as a small business concern if it met both tests in SBA's "alternative size standard" as of March 27, 2020: (1) maximum tangible net worth of the business is not more than \$15 million; and (2) the average net income after Federal income taxes (excluding any carry-over losses) of the business for the two full fiscal years before the date of the application is not more than \$5 million.<sup>1</sup>

Your letters attacking the five companies misinterpret the SBA guidance and make unsupported assumptions about their financial conditions and the ready access they may or may not have to the capital markets. Your purported analysis is severely flawed. We learned that due to current market conditions, at least four of these companies would be unable to operate or make payroll without the assistance from CARES.

For instance, without the PPP loan, Universal Stainless & Alloy Products, Inc. (Universal Stainless) would be forced to lay off a significant number of the 725 steelworkers it employs outside of Pittsburgh, Pennsylvania. The company publicly stated this fact before your letter was sent. Prior to receiving the loan, Universal Stainless reported that it had furloughed a significant number of its employees. After consulting with financial analysts and legal counsel, it determined it cannot adequately access market capital. Without the PPP funds, Universal Stainless would not survive and its 725 Pennsylvania workers would lose their jobs.

EVO Transportation and Energy Services (EVO) is a public company employing 1,200 truck drivers who help to serve the U.S. Postal Service. These drivers do long haul service, regional services, and even last-mile service in rural parts of the country. In March, EVO was near bankruptcy and unable to raise private funds outside of one internal investor. According to EVO, it does not have financial liquidity, its stock rarely trades, it has no access to market capital, and it is unable to operate without the PPP funds.<sup>2</sup>

Gulf Island Fabrication, Inc. (Gulf Island) is a shipbuilding company employing 800 people, largely outside of New Orleans, Louisiana. The company, a small business under the applicable industry standards, properly qualified for a PPP loan. According to the company:

<sup>1</sup> U.S. Small Business Administration, Paycheck Protection Loans, Frequently Asked Questions available at [https://www.sba.gov/sites/default/files/2020-04/Final%20PPP%20FAQs%20for%20Lenders%20and%20Borrowers%204-8-20\\_0.pdf](https://www.sba.gov/sites/default/files/2020-04/Final%20PPP%20FAQs%20for%20Lenders%20and%20Borrowers%204-8-20_0.pdf) (May 11, 2020).

<sup>2</sup> Press Statement of EVO Transportation & Energy Services, Inc. Regarding PPP available at <http://www.globenewswire.com/news-release/2020/05/09/2030693/0/en/Statement-of-EVO-Transportation-Energy-Services-Inc-Regarding-PPP.html> (May 9, 2020).

The Honorable James E. Clyburn  
May 11, 2020  
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As a result of the effects of the pandemic, Gulf Island had to furlough approximately 70 employees during the period from March 25 through April 3. In addition, there were additional employees who were slated for release in April and shortly thereafter due to the uncertainty created by the pandemic. Through the PPP loan, we were able to avoid or reverse these actions, bringing furloughed employees as well as retaining the additional employees who were scheduled for April release, which totals more than 100 employees. We immediately applied the PPP loan proceeds for the purpose which it was intended.

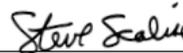
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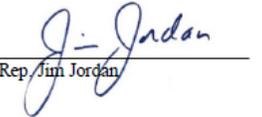
The majority of our employees are the heads of their household. We cannot over-emphasize the negative impact that a potential layoff will have on their lives, and the financial impact in Houma, Louisiana and the surrounding community. As you may be aware, Louisiana has one of the highest unemployment rates in the country following the onset of the pandemic and knock-on-effect of the crude oil price. We would like to continue to use the PPP loan proceeds for the exclusive purpose of saving our employees from layoff and to be a positive force and economic multiplier in the community.<sup>3</sup>

To date, the PPP has saved millions of jobs by awarding nearly four million loans in record time.<sup>4</sup> We fail to understand how your goal of demonizing American businesses and publicly shaming them advances the purpose of the CARES Act—legislation for which each of you voted. Even more disappointing, your letters raise significant concerns about the intentions of the Select Panel. We urge you to reconsider your approach to politicizing the coronavirus epidemic and putting at risk the jobs of hardworking Americans trying to provide for their families.

Thank you for your attention to this matter.

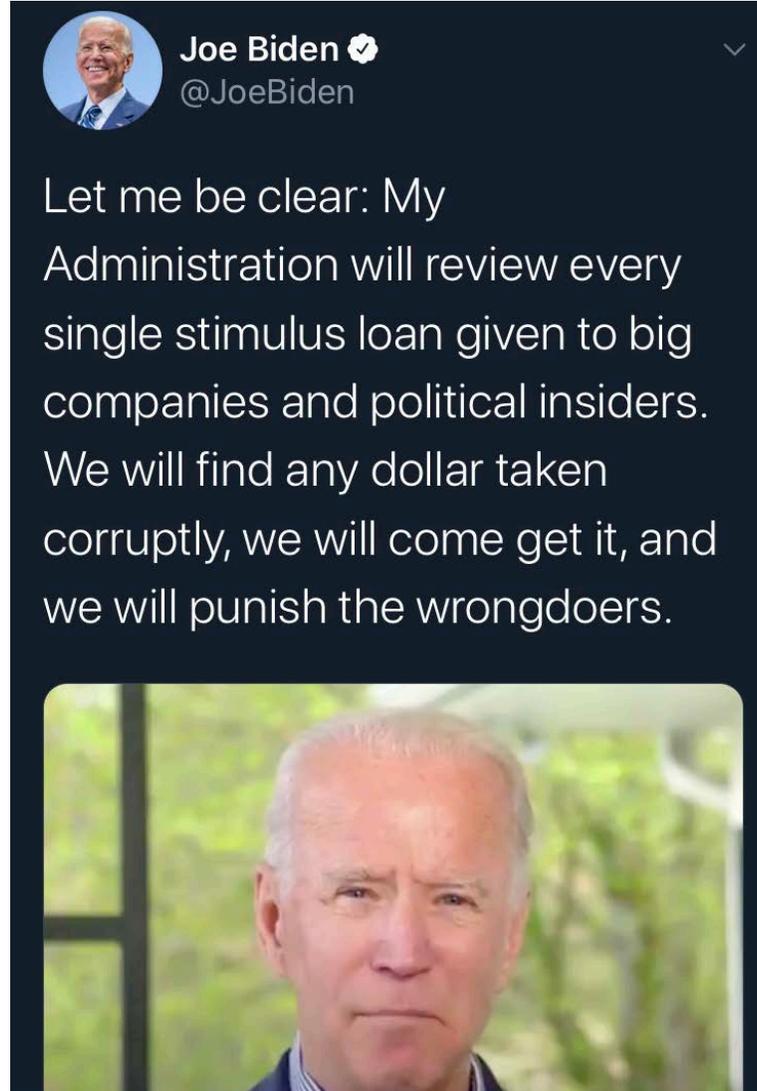
Sincerely,

  
Rep. Steve Scalise  
Ranking Member

  
Rep. Jim Jordan

<sup>3</sup> Letter from Mr. Richard W. Heo, President & CEO, Gulf Island Fabrication, Inc. to Hon. James E. Clyburn, Chairman, Select Subcommittee on the Coronavirus Crisis, H. Oversight & Reform Comm. (May 11, 2020).  
<sup>4</sup> Remarks by President Trump on Supporting our Nation's Small Businesses Through the Paycheck Protection Program available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-supporting-nations-small-businesses-paycheck-protection-program/> (Apr. 28, 2020); See also Important Information to Know About the Coronavirus: PPP Works available at <https://www.eop.gov/pppworks/>

# Oversight/Investigations



# Impact of Government Investigations



## Monetary cost

- Fines, penalties, disgorgement of profits
- Debarment
- Cost of investigation (attorneys and specialists' fees)
- Loss of profit
- Loss of market capitalization



## Non-monetary cost

- Brand or reputational impact
- Business disruptions
- Inability to grow or expand business
- Loss of financing
- Loss of talent

# Best Practices for Compliance with the Main Street Lending Program

- How do you create a culture of Compliance First?
  - Do you have adequate resources and a fulsome compliance program addressing your company's current legal and compliance risks, including fiscal controls, anti-corruption risks, vendor management, etc.?
  - Does your organization have policies and procedures in place for CARES Act loan obligations?
  - How are you preparing for reopening conditions imposed by the government?
- Is your compliance program subject to frequent updating and testing to regularly integrate new requirements and test its effectiveness to address new challenges?
- Do all relevant stakeholders including the Board, employees and third-party business partners understand their legal and compliance obligations?
  - Do they know to whom they should report issues that may arise?
- How should you plan to communicate and train relevant stakeholders regarding the company's new and existing legal and compliance obligations?

# Compliance and Integrity Programs and Controls

## Oversight Functions

- Board/audit committee oversight
- Executive and line management functions
- Internal audit, compliance, and monitoring functions

## Prevention

- Fraud and misconduct risk assessment
- Code of conduct and related standards
- Financial policies and controls
- Employee and third-party due diligence
- Communication and training

## Detection

- Hotlines and whistle-blower mechanisms
- Auditing and monitoring
- Proactive forensic data analysis

## Response

- Internal and external investigation protocols
- Enforcement and accountability protocols
- Disclosure protocols
- Remedial action protocols

# COVID-19 (Coronavirus)

*If you have questions about how the 2019 Novel Coronavirus impacts you or your business, please contact us.*

Robert Berdanier [rberdanier@bdo-ba.com](mailto:rberdanier@bdo-ba.com)

Brian Finch [brian.finch@pillsburylaw.com](mailto:brian.finch@pillsburylaw.com)

Elizabeth Vella Moeller [elizabeth.moeller@pillsburylaw.com](mailto:elizabeth.moeller@pillsburylaw.com)

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Paul Peterson [ppeterson@bdo.com](mailto:ppeterson@bdo.com)

