

# Legal Update

## Synthesizing the Stimulus: A Brief Comparison of Federal Reserve Direct Lending Programs

With the announcement by the Board of Governors of the Federal Reserve System (the “Fed”) on April 9, 2020, of the implementation of a Main Street Lending Program, or “MSLP” (summarized [here](#)), many businesses, nonprofit organizations, and lenders have questions about how the MSLP relates to the various loan programs that are also available to companies under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) enacted on March 27, 2020, particularly (1) the Paycheck Protection Program (the “PPP”) which provides up to \$349 billion to expand the Small Business Administration’s existing 7(a) loan program to support new loan guarantees and subsidies for small businesses; and (2) Section 4003(b)(4) of the CARES Act, authorizing up to \$454 billion in support from the U.S. Department of the Treasury for programs or facilities to be established by the Fed “for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, States or municipalities,” which can include: (a) a program or facility established by the Fed that provides direct loans to “eligible businesses,” which may be without regard to size (a “General Direct Lending Program”); and (b) a program or facility established by the Fed that provides financing to banks and lenders that make direct loans to eligible businesses, including, to the extent practicable, nonprofit organizations, with between 500 and 10,000 employees (a “Mid-Sized Business Program”).

These programs or facilities are in addition to (1) the program of lending directly by the Treasury Department under Sections 4003(b)(1) through (3) of the CARES Act, which authorize up to \$46 billion of lending in total to passenger air carriers, cargo air carriers and businesses critical to maintaining national security and (2) the Primary Market Corporate Credit Facility and the Secondary Market Corporate Credit Facility, each established by the Federal Reserve under the authority of Section 13(3) of the Federal Reserve Act to provide credit to investment grade companies.

In order to answer some of those questions, we have prepared the following comparison of the eligibility requirements, program and maximum loan sizes and other terms of the Main Street Lending Program, the PPP, the General Direct Lending Program and the Mid-Sized Business Program<sup>1</sup>. Of course, which program is best-suited to the needs of each particular business will vary, and each interested business or non-profit organization will need to evaluate the requirements and advantages of each program and consider whether its existing contractual requirements (including under any existing debt documents) will permit it to incur loans under these programs or would require consent of lenders or other third parties. It should also be noted that the CARES Act does not require Treasury and the Fed to establish a General Direct Lending Program or a Mid-Sized Business Program. In particular, Treasury and the Fed could determine that a Mid-Sized Business Program would essentially be duplicative of the Main Street Lending Program, or may otherwise not prioritize the implementation of a Mid-Sized Business Program for this reason.

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<sup>1</sup> Note: we have not addressed in this comparison programs relating to governments and municipalities, Section 4003(b)(1)-(3) relating to air carriers and national security businesses or the Primary Market Corporate Credit Facility or Secondary Market Corporate Credit Facility relating to investment grade companies.

|                          | SMALL BUSINESS ADMINISTRATION – PAYCHECK PROTECTION PROGRAM (PPP)  | MAIN STREET LENDING PROGRAM – MAIN STREET NEW LOAN FACILITY   | MAIN STREET LENDING PROGRAM – MAIN STREET EXPANDED LOAN FACILITY   | CARES ACT SECTION 4003(B)(4) FOR ELIGIBLE BUSINESSES (THE “GENERAL DIRECT LENDING PROGRAM”)   | MID-SIZED BUSINESS PROGRAM WITHIN SECTION 4003(B)(4)   |
|--------------------------|--|---|--|---|--|
| <b>AUTHORITY</b>         | Title I of CARES Act   | Section 13(3) of Federal Reserve Act)   | Section 13(3) of Federal Reserve Act   | Title IV of CARES Act   | Title IV of CARES Act  |
| <b>PROGRAM SIZE</b>      | \$349 billion (Congress is considering additional funding of this program).  | \$600 billion including the Main Street Expanded Loan Facility (capitalized with a \$75 billion equity investment by Treasury pursuant to Sections 4003(b)(4) and 4027 of the CARES Act, i.e., 8x leverage).  | \$600 billion including the Main Street New Loan Facility (capitalized with a \$75 billion equity investment by Treasury pursuant to Sections 4003(b)(4) and 4027 of the CARES Act, i.e., 8x leverage).          | Capitalization by Treasury up to \$425 billion; <sup>2</sup> if leveraged 8x as with the Main Street New Loan Facility and the Main Street Expanded Loan Facility, would be up to \$3.4 trillion.   | TBD, up to unused portion of General Direct Lending Program.   |
| <b>PROGRAM STRUCTURE</b> | Lenders make loans directly to borrower. Borrower must list all owners of 20% or more of its equity, including title, ownership percentage, tax identification number and address.<br><br>Lenders are existing SBA lenders and certain “additional lenders” participating only in the PPP, which may include federally insured depository institutions, federally insured credit unions, Farm Credit | A Federal Reserve Bank will lend to an SPV (the “Main Street SPV”), which will purchase from banks 95% participations of new loans made to borrowers, with banks retaining 5% of the loans.<br><br>As stated above, Treasury will invest \$75 billion in equity in the Main Street SPV. | A Federal Reserve Bank will lend to the Main Street SPV, which will purchase from banks 95% participations of upsized tranches of existing loans made to borrowers, with banks retaining 5% of upsized tranches. | A program or facility established by a Federal Reserve Bank will make direct loans to eligible borrowers (which loans may be made by an SPV created by a Federal Reserve Bank), and/or a program or facility created by a Federal Reserve Bank will finance lenders making direct loans to eligible borrowers. <sup>3</sup> | An SPV created by a Federal Reserve Bank that would finance banks and other lenders making direct loans to eligible borrowers. |

<sup>2</sup> Being the sum of \$454 billion, less the \$75 billion now dedicated to the Main Street Lending Program, plus any amounts available under paragraphs (1), (2), and (3) of Section 4003(b) that are not used as provided under those paragraphs.

<sup>3</sup> Alternatively, a program or facility established by a Federal Reserve Bank may: (A) purchase obligations or other interests directly from issuers of such obligations or other interests; or (B) purchase obligations or other interests in secondary markets or otherwise.

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|   | System institutions, and qualified/approved non-banks and non-federally-insured depositories.   |   |   |   |  |
| <b>DOMESTIC &amp; FOREIGN ELIGIBILITY</b> | <ul style="list-style-type: none"> <li>-Not owned in part or whole by undocumented aliens.</li> <li>-Proceeds used exclusively for domestic operations.</li> <li>-Operate primarily in the U.S. and be authorized to operate in the state, territory, or possession where it seeks SBA financial assistance.</li> </ul> <p><b>OR</b></p> <ul style="list-style-type: none"> <li>-Make a significant contribution to the U.S. economy through the payment of taxes.</li> </ul> | An “Eligible Borrower” is a business created or organized in the United States or under its laws with significant operations in and the majority of its employees based in the United States. | An “Eligible Borrower” is a business created or organized in the United States or under its laws with significant operations in and the majority of its employees based in the United States. | Eligible business is created or organized in the United States or under its laws with significant operations in and the majority of its employees based in the United States. | Eligible borrower is a business or entity created or organized in the United States or under its laws with significant operations in and the majority of its employees based in the United States. |
| <b>COMPANY SIZE RESTRICTIONS</b>          | <ul style="list-style-type: none"> <li>-Businesses with 500 or fewer employees (or if greater as otherwise satisfy SBA’s standard size table <a href="https://www.sba.gov/document/support--table-size-standards">https://www.sba.gov/document/support--table-size-standards</a>).</li> </ul> <p><b>OR</b></p>  | Businesses with up to 10,000 employees <b>OR</b> up to \$2.5 billion in 2019 annual revenues.   | Businesses with up to 10,000 employees <b>OR</b> up to \$2.5 billion in 2019 annual revenues.   | No restrictions.  | Businesses or nonprofit organizations with between 500 and 10,000 employees.   |

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|                                       | <p>-Qualified as a “small business concern” under SBA’s normal standards through industry-specific receipts and/or employee standards or an “alternative size standard” as of March 27, 2020 requiring both (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.</p> <p>Exceptions include:</p> <p>-Businesses with NAICS industry codes starting with 72 (food and accommodation) may qualify with up to 500 employees per physical location.</p> |   |  |   |  |
| <b>OTHER ELIGIBILITY REQUIREMENTS</b> | -Affiliation rules apply to size determination, other than for: businesses with NAICS industry codes starting with   | May not also participate in Main Street Expanded Loan Facility or Primary Market Corporate Credit Facility. | May not also participate in Main Street New Loan Facility or Primary Market Corporate Credit Facility. | Has not otherwise received adequate economic relief in the form of loans or loan            | Has not otherwise received adequate economic relief in the form of loans or loan |

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|  | <p>72 (food and accommodation), certain franchise businesses, businesses receiving financial assistance from Small Business Investment Companies, and faith-based organizations;</p> <p>-Affiliation exists when one individual or entity controls, or has the power to control another or a third party or parties controls or has the power to control both (this is regardless of whether control is actually exercised and also includes negative control);</p> <p>-Certain business-types are ineligible under 13 C.F.R. § 120.110 and associated guidance in SBA SOP 50 10 5(K); and</p> <p>-Good character requirements and requirements related to defaults on SBA or other government funding.</p> | <p>Applicable requirements under section 13(3) of the Federal Reserve Act (12 U.S.C. 343(3)) relating to borrower solvency will apply.</p> | <p>Applicable requirements under section 13(3) of the Federal Reserve Act (12 U.S.C. 343(3)) relating to borrower solvency will apply.</p> | <p>guarantees provided under the CARES Act.</p> <p>Applicable requirements under section 13(3) of the Federal Reserve Act (12 U.S.C. 343(3)) relating to borrower solvency will apply.</p> <p>Not a “covered entity” (an entity in which a specified “covered individual” directly or indirectly holds a controlling interest) as defined in Section 4019 of the CARES Act.</p> | <p>guarantees provided under the CARES Act.</p> <p>Applicable requirements under section 13(3) of the Federal Reserve Act (12 U.S.C. 343(3)) relating to borrower solvency will apply.</p> <p>Not a “covered entity” (an entity in which a specified “covered individual” directly or indirectly holds a controlling interest) as defined in Section 4019 of the CARES Act.</p> |

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|-----------------------|---|---|--|--|--|
| <b>CERTIFICATIONS</b> | <ul style="list-style-type: none"> <li>-It has read and understands the statements included in the application;</li> <li>-Eligibility to receive a loan under the rules in effect at the time the application is submitted;</li> <li>-Satisfaction of size requirements;</li> <li>-Compliance, whenever applicable, with the civil rights and other limitations in the application;</li> <li>-All loan proceeds will be used only for business-related purposes as specified in the application and consistent with the program;</li> <li>-To the extent feasible, applicant will purchase only American-made equipment and products;</li> <li>-The applicant is not engaged in any activity that is illegal under federal, state or local law;</li> <li>-Any loan received by the Applicant under Section 7(b)(2) of the Small Business</li> </ul> | <ul style="list-style-type: none"> <li>-The proceeds of the loan will not be used to repay or refinance pre-existing loans or lines of credit made by the lender to the borrower, including the pre-existing portion of the upsized loan;</li> <li>-Commit to refrain from using the proceeds of the loan to repay other loan balances; commit to refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, while loan is outstanding;</li> <li>-It will not cancel or reduce any existing lines of credit and will attest that it will not seek to cancel or reduce any of its outstanding lines of credit with any lender;</li> <li>-It requires financing due to the exigent circumstances presented by the COVID-19 pandemic, and that, using the proceeds of the loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term;</li> </ul> | <ul style="list-style-type: none"> <li>-The proceeds of the upsized tranche will not be used to repay or refinance pre-existing loans or lines of credit made by the lender to the borrower;</li> <li>-Commit to refrain from using the proceeds of the loan to repay other loan balances; commit to refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, while loan is outstanding;</li> <li>-It will not cancel or reduce any existing lines of credit and will attest that it will not seek to cancel or reduce any of its outstanding lines of credit with any lender;</li> <li>-It requires financing due to the exigent circumstances presented by the COVID-19 pandemic, and that, using the proceeds of the upsized loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term;</li> </ul> | <ul style="list-style-type: none"> <li>-The entity is eligible to engage in the transaction, including that the entity is not a “covered entity” (an entity in which a specified “covered individual” directly or indirectly holds a controlling interest) as defined in Section 4019 of the CARES Act; and</li> <li>-Borrower solvency certification may be required under section 13(3) of the Federal Reserve Act.</li> </ul> | <ul style="list-style-type: none"> <li>-The entity is eligible to engage in the transaction, including that the entity is not a “covered entity” (an entity in which a specified “covered individual” directly or indirectly holds a controlling interest) as defined in Section 4019 of the CARES Act;</li> <li>-Borrower solvency certification may be required under section 13(3) of the Federal Reserve Act;</li> <li>-The loan request necessary to support the recipient’s ongoing operations given the economic uncertainty as of the date of the application;</li> <li>-The funds received will be used to retain at least 90% of the recipient’s workforce, at full compensation and benefits, until September 30, 2020;</li> <li>-The recipient intends to restore at least 90% of its workforce that existed as of February 1, 2020, and to</li> </ul> |

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|  | <p>Act between January 31, 2020, and April 3, 2020, was for a purpose other than paying payroll costs and other allowable uses for loans under the PPP;</p> <ul style="list-style-type: none"> <li>-The applicant was in operation on February 15, 2020 and had employees for whom it paid salaries and payroll taxes or paid independent contractors;</li> <li>-Current economic uncertainty makes the loan request necessary to support the ongoing operations of the applicant;</li> <li>-The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments, and utility payments;</li> <li>-Understands that if the funds are knowingly used for unauthorized purposes, the federal government may hold applicant legally liable, such as for charges of fraud;</li> </ul> | <ul style="list-style-type: none"> <li>-It meets the EBITDA leverage condition described below;</li> <li>-It will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act; and</li> <li>-It is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.</li> </ul> | <ul style="list-style-type: none"> <li>-It meets the EBITDA leverage condition described below;</li> <li>-It will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act; and</li> <li>-It is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.</li> </ul> |   | <ul style="list-style-type: none"> <li>restore all compensation and benefits to workers no later than 4 months after termination of the COVID-19 emergency;</li> <li>-The recipient is an entity or business that is domiciled in the United States, with significant operations and employees located in the United States;</li> <li>-The recipient is not a debtor in a bankruptcy proceeding;</li> <li>-The recipient is created or organized in the United States, or under United States laws, and has significant operations in and a majority of its employees based in the United States;</li> <li>-The recipient will not pay dividends with respect to the common stock of the eligible business, or repurchase an equity security listed on a national securities exchange of the recipient or recipient’s parent company while the direct loan is outstanding</li> </ul> |



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|  | <ul style="list-style-type: none"> <li>-The applicant will provide to the lender documentation verifying the number of FTE employees on the applicant’s payroll as well as the dollar amounts of payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities for the eight-week period following this loan;</li> <li>-Understand that loan forgiveness will be provided for the sum of documented payroll costs, covered mortgage interest payments, covered rent payments, and covered utilities, and not more than 25% of the forgiven amount may be for non-payroll costs;</li> <li>-During the period beginning on February 15, 2020, and ending on December 31, 2020, the applicant has not and will not receive another loan under the PPP;</li> <li>-The information provided in the application and in all</li> </ul> |   |  |   | <ul style="list-style-type: none"> <li>(except to the extent required under a contractual obligation that is in effect as of the date of enactment of the CARES Act, i.e., March 27, 2020);</li> <li>-The recipient will not outsource or offshore jobs for the term of the loan and 2 years after completing loan repayment;</li> <li>-The recipient will not abrogate existing collective bargaining agreements for the term of the loan and 2 years after completing loan repayment; and</li> <li>-The recipient will remain neutral in any union organizing effort for the term of the loan.</li> </ul> |

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|  | <p>supporting documents and forms is true and accurate in all material respects and understand that knowingly making a false statement to obtain a guaranteed loan from SBA is punishable under the law, including under 18 USC 1001 and 3571 by imprisonment of not more than five years and/or a fine of up to \$250,000; under 15 USC 645 by imprisonment of not more than two years and/or a fine of not more than \$5,000; and, if submitted to a federally insured institution, under 18 USC 1014 by imprisonment of not more than thirty years and/or a fine of not more than \$1,000,000; and</p> <p>-Acknowledge that the lender will confirm the eligible loan amount using required documents submitted, and understand, acknowledge and agree that the lender can share any tax information provided with SBA's authorized representatives,</p> |   |  |   |  |

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|                                   | for the purpose of compliance with SBA Loan Program Requirements and all SBA reviews.  |  |   |   |   |
| <b>USE OF PROCEEDS</b>            | Payroll (includes benefits and other specified costs), rent, utilities, interest on mortgage, interest on other debt obligations incurred before February 15, 2020, refinancing of certain SBA disaster loans made between January 31, 2020, and April 3, 2020<br><br>-75% of loan proceeds must be used for payroll costs | See certifications described above (it will not use proceeds to repay other debt; “using the proceeds of the loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term”).     | See certifications described above (it will not use proceeds to repay other debt; “using the proceeds of the upsized tranche, it will make reasonable efforts to maintain its payroll and retain its employees during the term”).   | Not prescribed by Act.  | See certifications described above (“the funds received will be used to retain at least 90% of the recipient’s workforce....recipient intends to restore not less than 90 percent of the workforce of the recipient that existed as of February 1, 2020, and to restore all compensation and benefits to the workers of the recipient...”). |
| <b>FACILITY SIZE RESTRICTIONS</b> | Maximum amount per borrower is the lesser of:<br><br>-2 ½ time average total monthly payroll, plus the amount of any SBA disaster loan permitted to be refinanced; and<br><br>-\$10 million.   | Minimum \$1 million; maximum of the lesser of (i) \$25 million or (ii) an amount that, when added to the borrower’s existing outstanding and committed but undrawn debt, does not exceed 4.00x the borrower’s 2019 EBITDA. | Minimum \$1 million; maximum of the least of (i) \$150 million, (ii) 30% of the borrower’s existing outstanding and committed but undrawn bank debt, or (iii) an amount that, when added to the borrower’s existing outstanding and committed but undrawn debt, does not exceed 6.00x the borrower’s 2019 EBITDA. | No limit.   | No limit.   |

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| <b>LOAN RECOURSE, FORGIVABILITY ETC.</b> | <ul style="list-style-type: none"> <li>-Loan is forgivable up to 100% of principal.</li> <li>-To the extent of payroll, rent, interest on mortgage, utilities (for rent, mortgage, and utility obligations in existence before February 15, 2020) during the 8-week period following the date of disbursement of the loan.</li> <li>-Must generally maintain FTE February 15, 2020, to June 30, 2020, and not reduce salaries by greater than 25% (certain exclusions for employees with cash compensation over \$100,000) (there are provisions for rehire).</li> <li>-Not more than 25% of forgiven amount for non-payroll.</li> <li>-Loan forgiveness amounts are not subject to federal income tax.</li> </ul> | <ul style="list-style-type: none"> <li>Loan is full-recourse to the applicable borrower and not forgivable; guarantees not apparently required.</li> </ul> | <ul style="list-style-type: none"> <li>Loan is full-recourse to the applicable borrower and not forgivable; guarantees not apparently required but per collateral note below may be required to share ratably in existing guarantees.</li> </ul> | <ul style="list-style-type: none"> <li>Loan is full-recourse to the applicable borrower and not forgivable.</li> </ul> | <ul style="list-style-type: none"> <li>Loan is full-recourse to the applicable borrower and not forgivable.</li> </ul> |
| <b>COLLATERAL</b>                        | None.  | None; term loans will be “unsecured.”  | Main Street SPV and lender to share ratably in collateral  | Applicable requirements under Section 13(3) of the Federal Reserve Act relating to loan collateralization will         | Applicable requirements under Section 13(3) of the Federal Reserve Act relating to loan collateralization will         |

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|                          | (Also, no personal guarantees and no fees for borrowers.)  |   | securing existing loan being expanded.  | apply; unclear if loans will be unsecured as in the Main Street New Loan Facility, which is also established under Section 13(3). May depend on analysis with respect to Treasury capitalization of any Fed SPV used. | apply; unclear if loans will be unsecured as in the Main Street New Loan Facility.                 |
| <b>STATUS OF PROGRAM</b> | Applications being accepted now until June 30, 2020, or funding runs out.  | Term sheets posted and effective April 9, 2020. The Main Street SPV will cease purchasing participations on September 30, 2020. | Term sheets posted and effective April 9, 2020. The Main Street SPV will cease purchasing participations on September 30, 2020. | Terms and conditions have not yet been published <sup>4</sup> .   | Terms and conditions have not yet been published.  |
| <b>LOAN TERMS</b>        | <p>-All PPP loans have the same core terms (though specific note forms and terms not listed below may vary by lender)</p> <p>-Interest Rate: 1%</p> <p>-Maturity: 2 years</p> <p>-Deferral period: 6 months</p> <p>-No prepayment penalty</p> <p>-Borrower may only apply for one PPP loan</p> | Interest rate of SOFR + 250-400 bps; 4-year maturity; amortization and interest deferred for one year.                          | Interest rate of SOFR + 250-400 bps; 4-year maturity; amortization and interest deferred for one year.                          | Interest rate, maturity and other terms TBD.  | 2% cap on interest; amortization and interest deferred for one year; maturity and other terms TBD. |

<sup>4</sup> We intend to update this Legal Update upon the issuance of such rules. Note that certain terms of General Direct Lending Program and Mid-Sized Business Program listed herein may change based on such issuance.

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|--|---|---|--|--|--|
| <b>EMPLOYEE RETENTION REQUIREMENTS</b>                             | No formal/specific employee retention requirements, but see above regarding loan forgiveness and incentives for retaining pre-COVID employee bases and salary levels. | See above regarding certifications at time of loan.         | See above regarding certifications at time of loan.              | None.  | See above regarding certifications at time of loan.  |
| <b>RESTRICTIONS ON COMPENSATION, DIVIDENDS AND SHARE BUY-BACKS</b> | No limitation on compensation, dividends, or share buy-backs, (but loan proceeds themselves may only be used for permitted uses).                                     | Same as General Direct Lending Program.                     | Same as General Direct Lending Program.                          | <p>-Until 12 months after the loan is no longer outstanding, such eligible business shall not repurchase an equity security that is listed on a national securities exchange of such eligible business or any parent company of such eligible business while the direct loan is outstanding (except to the extent required under a contractual obligation that is in effect as of the date of enactment of the CARES Act, i.e., March 27, 2020);</p> <p>-Until 12 months after the direct loan is no longer outstanding, such eligible business shall not pay dividends or make other capital distributions with respect to the common</p> | Generally the same as General Direct Lending Program, except for an exception from the dividend limitation to the extent that payment of the dividend is required under a contractual obligation that is in effect as of the date of enactment of the Act; see above regarding certifications at time of loan. |

|  | SMALL BUSINESS ADMINISTRATION – PAYCHECK PROTECTION PROGRAM (PPP) | MAIN STREET LENDING PROGRAM – MAIN STREET NEW LOAN FACILITY | MAIN STREET LENDING PROGRAM – MAIN STREET EXPANDED LOAN FACILITY | CARES ACT SECTION 4003(B)(4) FOR ELIGIBLE BUSINESSES (THE “GENERAL DIRECT LENDING PROGRAM”)  | MID-SIZED BUSINESS PROGRAM WITHIN SECTION 4003(B)(4) |
|--|---|---|--|--|--|
|  |   |   |  | <p>stock of such eligible business;<sup>5</sup> and</p> <p>-Such eligible business shall comply with the compensation limits set out in Section 4004 of the CARES Act.</p> |  |

<sup>5</sup> Note that the Secretary may waive the dividend restriction upon a determination that a waiver is necessary to protect the Federal Government’s interests.

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