

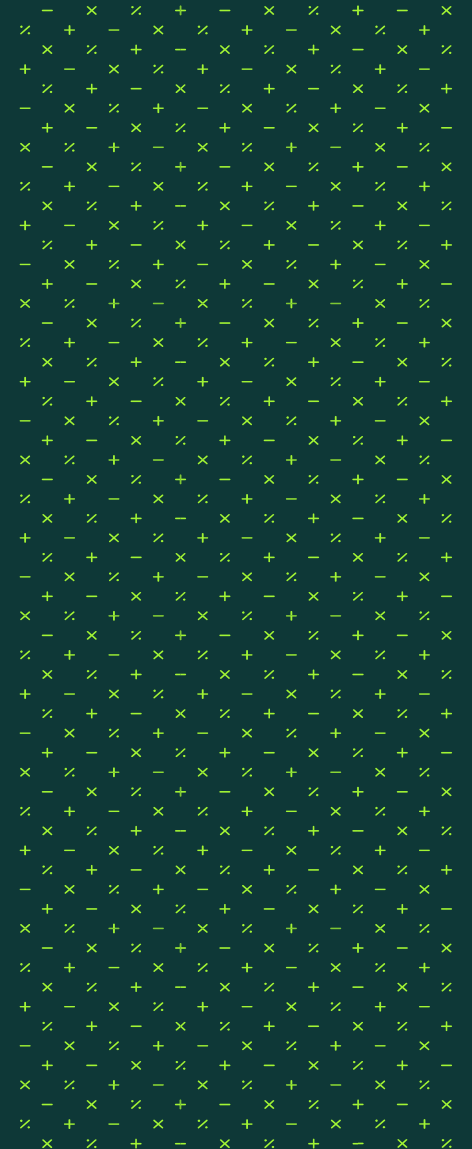


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# Resilience Rising: Loan Forgiveness, Financing Alternatives and Business Continuity

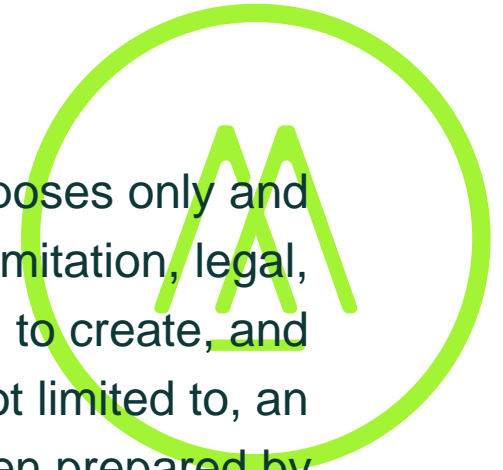
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Kirk Faris, Tax Senior Manager  
Bill Vyenielo, Senior Business Consultant  
Alex Cotter, Tax Manager



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THANK YOU



# Presenters

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Kirk Faris



Bill Vyenielo



Alex Cotter





# Today's Topics

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Paycheck Protection Program  
(PPP) Loan Forgiveness

Other Business Financing  
Alternatives

Business Continuity

Open Q&A



# Paycheck Protection Program Loan Forgiveness

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# PPP Sources of Guidance

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Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748)–  
Enacted March 27, 2020

Paycheck Protection Program and Health Care Enhancement (PPP HCE) Act  
(H.R. 266)– Enacted April 24, 2020

SBA Existing Loan Regulations (Title 13 of the Code of Federal Regulations)

SBA PPP “Frequently Asked Questions” (FAQ’s)

SBA PPP “Interim Final Rules” (IFR’s)



# Where We Came From

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## \$350B distributed pursuant to CARES Act

- Forgivable loans up to \$10M for businesses with <500 employees
- Maximum loan based upon 2.5 months of payroll
- 75% to be used for on-going payroll, 25% for mortgage, rent, utilities
- Limitations on forgiveness based on employee headcount, wage cuts, etc.
- Unforgiven portion repaid in 2-years at 1% interest rate

## \$310B added to program in PPP HCE Act



# Good Faith “Need” Certification

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SBA FAQ #46 provided comfort to borrowers:

*“...all borrowers must certify in good faith that “[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.”*

*“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.”*

*“...borrowers with loans greater than \$2 million that do not satisfy this safe harbor may still have an adequate basis for making the required good-faith certification, based on their individual circumstances in light of the language of the certification and SBA guidance.”*





# Forgiveness Part 1 – Spend the Money

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75%+ of Forgiven Amount must be spent on Payroll Costs

- Employee Compensation
  - Up to \$15,385 (\$100,000 annualized) per employee
- Owner Compensation
  - Up to lesser of \$15,385 or 8/52 of 2019 actual compensation per owner (**NEW**)
  - Sch C Owners – based solely on 2019 Sch C net income
  - Includes compensation paid to “general partners” (**NEW**)
    - What about LLC member-managers or guaranteed payments for service?
- Group health care benefits
  - Employer portion only
- Retirement Benefits
- State and Local Employer taxes on compensation



# Spend the Money (cont.)

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## **NEW** “Alternative Payroll Covered Period”

- **By Election**
  - Borrowers may choose to start their 8-week covered period (solely with respect to payroll costs) on the date of their first payroll occurring after PPP loan receipt
  - Non-payroll costs still use standard 8-week covered period



# Spend the Money (cont.)

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25% of Forgiven Amount may be spent on Non-Payroll Costs

- Interest on real or personal business property
  - In force before 2/15/20
- Rent on real or personal business property
  - In force before 2/15/20
- Utilities
  - Electricity
  - Water
  - “Transportation”
  - Telephone
  - Internet Access



# Spend the Money (cont.)

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## NEW Guidance on “Paid and Incurred” Language in CARES Act

- Payroll Costs
  - Amounts paid during 8-week covered period (or alternative payroll covered period if elected) count towards forgiveness
    - Paid = Date paychecks are cut or deposited via ACH
  - Amounts incurred also count, if paid during first payroll after covered period ends
    - Incurred = Date employees earn pay
- Non-Payroll Costs
  - Amounts paid during 8-week covered period count towards forgiveness
    - No pre-payments of future obligations
  - Amounts incurred also count, if paid timely on first invoice/bill received after covered period ends



# Forgiveness Part 2 – Retain Headcount

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Forgiveness will be reduced pro-rata for reductions in headcount as compared to 'reference period'

- **NEW** Definition of an FTE (40-hour workweek)
- **NEW** Simplified FTE calculation election (<40 hours = ½ of an employee)
- **NEW** Options for Seasonal Employers to select alternate reference periods for pre-COVID Headcount
- **NEW** Favorable rules regarding:
  - Employees who refused an offer for rehire
  - Employees fired for cause
  - Employees who voluntarily resigned
  - Employees who voluntarily requested and received a reduction of hours
- **CLARIFIES** Safe Harbor for rehiring employees to restore forgiveness
  - FTE's as of 6/30/2020 must be equal to or greater than headcount at 2/15/2020



# Forgiveness Part 3 – Limits on Paycuts

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Salary/Hourly Wage Reductions >25% reduce forgiveness

- **NEW** Reduction is based upon changes to pay rates only (not triggered by reduction in worked hours)
  - As compared to average pay rates in 1/1/20 – 3/31/20 period
- **NEW** Guidance for estimating forgiveness reduction when hourly workers receive a pay rate cut >25%
- **NEW** Safe Harbor to restore forgiveness if employee pay rates restored by June 30<sup>th</sup>



# Documentation – Prepare Now

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Loans >\$2M will receive an SBA “Audit”  
(Loans <\$2M may receive one as well)

- File and retain quarterly payroll tax reports (Form 941)
- Retain receipts/cancelled checks/account statements for employer contributions to group health or retirement benefits
- Track FTE’s for ‘reference period’, covered period (or Alternative), and as of 6/30/2020
- Retained receipts/cancelled checks/account statements for interest, rent, and utility payments
  - **Pay attention to invoices issued after covered period which cover costs incurred during covered period**
- **NEW** SBA is authorized to review documentation for 6 years from date of forgiveness/payoff of loan



# Reminder – Limits on Tax Deductions

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## **IRS Notice 2020-32**

Expenses related to PPP forgiveness will not be deductible (to extent of amount forgiven)

Back-door = PPP forgiveness essentially becomes taxable!

NOTE – Multiple members of Congress have stated intention to fix this in next COVID-19 legislation package





# Pondering the Unknowns

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Will there be any more changes to the program?

What is a “Transportation” utility?

What happens if my 8-week “covered period” ends later than the program end date of June 30<sup>th</sup>?

Are self-rental payments considered ‘rent’?

What about owner compensation for LLC’s?



# Other Business Financing Alternatives

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# Major Financing Options Post-CARES Act

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- Federal Reserve Bank Main Street Lending Program (MSLP)
- SBA 7(A) Loan Expansion and Paycheck Protection Program (PPP)
- SBA Economic Injury Disaster Loan Program (EIDL)
- Senior Bank Lenders
- Junior & Equity Capital Providers
- **Coronavirus Food Assistance Program (New Details Released 5-19-20)**
  - Applications open 5-26-20 through USDA Farm Service Agency
  - **\*Grapes are not currently listed as an eligible crop by the USDA**



# Main Street Lending Program (“MSLP”)

## AGENCY

U.S. Department of Treasury

## WHERE TO APPLY

Contact your local senior bank lender

## Program Overview

- Program. The \$600b+ Main Street New Loan Facility is intended to facilitate lending to small and medium sized businesses by Eligible Lenders. Not an SBA program.
- Underwriter. The Federal Reserve Bank will underwrite 95% of Eligible Loans, with the remaining 5% coming from Eligible Lenders
- Eligible Lenders. US FDIC institutions.
- Eligible Borrowers. Businesses with up to 15, 000 employees or \$5 billion in 2019 annual revenues
- Program Types. New Loans; Priority Loans; Expanded Loans

## Key Common Loan Terms

- Term. 4 year maturity
- Deferral. Principal and interest deferred for one year
- Interest Rate. Prime + 300 basis points
- Limitations. Borrower must commit to refrain from using proceeds to repay other loan balances, with the exception of mandatory principal payments. Borrower will also have restrictions on executive compensation, distributions and stock-buy-backs.



# MSLP Program Overview

Main Street Lending			
Program Loan Options	New Loans (MSNLF)	Priority Loans (MSPLF)	Expanded Loans (MSELF)
Loan Term	4 years	4 years	4 years
Minimum Loan Size	\$500,000	\$500,000	\$10,000,000
Maximum Loan Size	The lesser of \$25M or an amount that, when added to outstanding and undrawn available debt, does not exceed 4.0x adjusted 2019 EBITDA	The lesser of \$25M or an amount that, when added to outstanding and undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA	The lesser of \$200M, 35% of existing outstanding and undrawn available debt, or an amount that, when added to outstanding and undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA
Risk Retention (Lender Owned Portion)	5%	15%	5%
Payment (year one deferred for all)	Years 2-4: 33.33% each year	Years 2-4: 15%, 15%, 70%	Years 2-4: 15%, 15%, 70%
Interest Rate	LIBOR + 3%	LIBOR + 3%	LIBOR + 3%



# Borrower Certifications

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- The Eligible Borrower must commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due.
- The Eligible Borrower must commit that it will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender.
- The Eligible Borrower must certify that it has a reasonable basis to believe that, as of the date of origination of the Eligible Loan and after giving effect to such loan, it has 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.
- The Eligible Borrower must commit that 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, except that an S corporation or other tax pass-through entity that is an Eligible Borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings.
- The Eligible Borrower must certify that 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.



# Economic Injury Disaster Loans (“EIDL”)

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## AGENCY

U.S. Small Business Administration (SBA)

## WHERE TO APPLY

<https://disasterloan.sba.gov/ela/>

## Terms

- A guaranteed loan by the SBA offered directly through the SBA to small businesses.
- Loan Amount & term. Up to \$2m; up to 30 years.
- Deferral. EIDL principle and interest are deferred 12 months
- Eligible borrowers. Eligibility for EIDL loans is expanded with reduced requirements, including personal guarantees in some instances.
- Collateral. Eligible borrowers must provide personal guarantee (if loan amount in excess of \$200,000) or provide collateral.
- Common limitations. Churches, cannabis industry. Small business size varies by industry, and depends on average annual sales and average annual number of employees.
- Criteria. Loans aren't meant to replace lost profits. The amount of loan is based upon working capital need – expenses that need to be paid but cannot due to the loss of revenue.

## Eligibility

- Small businesses, as defined by the Small Business Act, in all U.S. states and territories are currently eligible to apply for a low-interest loan due to Coronavirus (COVID-19).



# Senior Bank Lenders, Junior & Equity Capital Providers

## Senior Bank Lenders

- Focused on seniority, security, and underlying collateral
- Deploy covenants meant to help reduce risk
- Personal guarantees may be required
- Least expensive source of capital, after SBA & Government led programs
- Financing can be obtained in 30-60 days

## Junior Debt Capital Providers

- Focused on remaining available collateral, after Senior Bank Lenders, and cash flow
- Deploy covenants meant to help reduce risk
- No personal guarantee required
- Modestly expensive source of capital, at 7-15% required return
- Financing can be obtained in 30-90 days

## Equity Capital Providers

- Focused on cash flow and long-term prospects of the business
- No personal guarantees or covenants required
- Deploy control provisions, to limit certain actions of the Company; require board seat(s)
- Most expensive source of capital, at 15-30% required return
- Financing can be obtained in 60-90 days





# Senior Bank Lenders

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- Focused on collateral and security right now;
- Banks are eager to lend, but are having difficulty finding high quality assets to lend to;
- Federal reserve bank, treasury, and congress have all initiated programs to help Banks lend to perceived riskier assets;
- The market for Senior Bank loans broadens when the targeted loan amount is in the \$10m - \$50m range; Senior Bank lenders will expect sufficient collateral and/or cash flow (“EBITDA”) to lend these amounts;
- Preparing a 13-week and 52 week cash flow forecast, in addition to a Business Liquidity Assessment, can aid lender conversations. Important to understand:
  - Immediate liquidity and collateral available
  - Forecasted cash burn rate or monthly cash flow
  - Debt service and fixed cost obligations



# Junior Capital Providers

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- Focused on any remaining collateral (after senior lenders) and near-term cash flow;
- Given Junior Capital providers are subordinated to Senior lenders, they will have limited interest in cash flow negative, asset-light operations;
- Junior Capital providers use a combination of debt-like and equity-like instruments to target a 7-15% required annual return;
- The market for Junior Capital providers broadens when the total investment amount is in the \$10m - \$30m range; near term cash flow will be an important underwriting consideration;
- When talking with Junior Capital providers, it is important to emphasize the cash needs today relative to the cash generation of the future under normal circumstances;
- Preparing an information memorandum and proposed financing package for Junior Capital Providers will help Junior Capital Providers feel confident in the management team's depth and capabilities, and the prospects of the business



# Business Continuity

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# Address Immediate Needs

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Accelerate cash generation. Cut all non-essential expenditures and defer payments

Determine cash required to sustain your business through the year

Evaluate & secure government support & forgiveness options for your business (PPP, EIDL...)

Talk with your banker / source of capital. How are they helping borrowers in this situation?



# Address Immediate Needs (cont.)

Determine what functions to remain open, what to close.

Staffing decisions- rank in importance, furlough, layoff, how to support & retain.

For ongoing functions - new safety protocols, train employees, monitor

Adapt sales & communication strategies to our current business environ:

Outreach via the digital world:

- virtual tastings, streaming video & zoom meetings, phone, wine club, refresh website with beautiful images that invite interaction and instill the desire to visit (someday)

The physical world:

- delivery, pickup, social distancing, prep the business location for safe operation, reducing travel



# Take Time to Address Next Steps

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For owners consider:

What stage is your company in?

What are your personal, long term goals?

Business Lifecycle stages (Launch, Growth, Shake-out, Mature, Decline)

Develop business plan tailored to the stage your business is in and your personal goals.

It's never too early to create a succession plan



# Inching Forward to Reopening

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There are 3 recommended thresholds to meet for reopening:

- 1) the community demonstrates that significant monitoring is no longer required,
- 2) the business to be reopened is in compliance with state and local health orders and
- 3) the business is ready to protect employees, visitors and suppliers.

Success will hinge on the ability of business to instill the confidence of employees, customers & suppliers that the location is a safe place to work and to visit.

Convey by:

- the content of the company's messaging
- demonstrating that it is safe to work and visit here



# Inching Forward to Reopening (cont.)

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Draw from a success story on the frontlines- Mass General Brigham hospital in Boston 75,000 employees (New Yorker Magazine article by Atul Gawande, May 13, 2020 “Amid the Coronavirus – A Regime for Reentry”

Rules of reentry:

- 1) Screening employees & visitors
- 2) Hygiene measures
- 3) Social distancing
- 4) Masks

Center for Disease Control new “*Interim Guidance for Restaurants & Bars*”





# Additional Thoughts

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Rules and guidelines are evolving almost daily. For example, the Governor of Texas announced Phase 2 of reopening of Texas just this Monday May 18<sup>th</sup>.

On the same day, In California, the Wine Beer and Spirits industry announced it has been working to secure regulatory relief that will allow for the expansion of your alcohol beverage licensed premise into adjacent areas such as courtyards, parking lots, other building space, etc. This only applies to those licensees which have been allowed to reopen (restaurants, brewpubs and brewery tasting rooms serving meals) in counties where temporary stay at home orders have been lifted.

Architects are actively collaborating with businesses such as wineries to find creative, effective ways to redesign their workplace in ways that helps minimize the spread of the coronavirus.



# Open Q&A

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# Questions? Contact us.

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Kirk Faris  
(707) 535-4186  
[Kirk.Faris@mossadams.com](mailto:Kirk.Faris@mossadams.com)

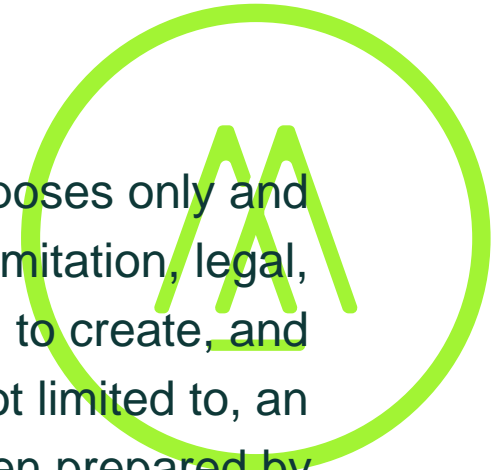
William (Bill) Vyeniolo  
(707) 508-3821  
[William.Vyeniolo@mossadams.com](mailto:William.Vyeniolo@mossadams.com)

Alex Cotter  
(214) 242-7503  
[Alex.Cotter@mossadams.com](mailto:Alex.Cotter@mossadams.com)



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