Physician practice financial relief guide

The federal government has established a number of programs to help physician practices offset the financial impact of COVID-19. Many of these programs were enacted into law after significant COVID-19 advocacy from the American Medical Association to the U.S. Congress and the administration as part of the Coronavirus Aid, Relief and Economic Security (CARES) Act, the Families First Coronavirus Response Act, the Paycheck Protection Program and Health Care Enhancement Act, which are now being implemented by the federal agencies. This guide covers:

- Health and Human Services emergency funding (updated Nov. 4, 2020)
- Medicare Accelerated and Advance Payment Program (updated Oct. 9, 2020)
- Small Business Administration loans
- Main Street Lending Program
- Payroll tax-related benefits

Some relief mechanisms lend themselves to certain types of practices (e.g., practices with above or below 500 employees). At this time, federal stimulus funds are not differentiated by physician location, but this could change as the funding programs are more clearly defined by implementing agencies. The following chart illustrates which programs will generally be most appropriate according to physician practice profile, as well as key program terms (timeline and loan forgiveness available).

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<th>Physician practice w/ 500 employees or fewer</th>
<th>Physician practice w/ more than 500 employees</th>
<th>Maximum amount available</th>
<th>Loan forgiveness available</th>
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<tr>
<td>HHS Emergency Funding</td>
<td>√</td>
<td>Formula based</td>
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<td>SBA Loans</td>
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<td>$10M</td>
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<tr>
<td>Main Street Lending Program</td>
<td>√</td>
<td>Up to $50M for new loans &amp; $300M for existing loans, subject to limitations</td>
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<tr>
<td>Payroll tax-related benefits</td>
<td>√</td>
<td>Credit up to $5,000 per employee per year</td>
<td>N/A</td>
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The sections containing updated information in this guide are current as of Nov. 4, 2020, and are subject to change as the federal agencies that oversee these programs continue to issue clarifying guidance. While physician practices should review all the options available in this guide, decisions about which option to pursue will depend on your individual practice situation. You may wish to consult with your financial advisor or attorney about each of the options outlined here.

In addition to the relief mechanisms outlined here, there may be state or municipal financial relief programs, as well as funds established by private entities. See the AMA’s COVID-19 resource center for physicians for additional information related to physician practice operations and response, as well as updated AMA information regarding federal loan programs.
Overview

The U.S. Department of Health and Human Services (HHS) announced on Oct. 1, 2020, that it will be disbursing another $20 billion in CARES Act Provider Relief Funds. Additional information is available online at the HHS Provider Relief Fund website.

General allocation of funds

- Phase 1 was a $30 billion distribution based on provider's share of Medicare fee-for-service reimbursements in 2019.
- Phase 2 was a $20 billion distribution based on the Centers for Medicare & Medicaid Services (CMS) cost reports and provider reported losses.
- Under this Phase 3 General Distribution allocation, physicians that have already received Provider Relief Fund payments may apply for additional funding that considers financial losses and changes in operating expenses caused by the coronavirus. Recognizing that a negative impact of the COVID-19 pandemic has been increased levels of anxiety and depression in the country and that behavioral health providers have continued to provide care through telehealth and other means, HHS also announced that the nation's behavioral health care providers, including psychiatrists, are now eligible for funding. Also, physicians that were previously ineligible, such as those who began practicing in 2020, will also be eligible to apply for funding. Frequently asked questions (FAQs) on the General Distribution Portal are available on the HHS website.

Timeframe

- Physicians will only have from Oct. 5, 2020, through Nov. 6, 2020, to apply for Phase 3 General Distribution funding.

Eligibility

- Providers who previously received, rejected or accepted a General Distribution Provider Relief Fund payment. Providers that have already received payments of approximately 2% of annual revenue from patient care may submit more information to become eligible to receive an additional payment.
- Behavioral Health providers, including those that previously received funding and new providers.
- Health care providers that began practicing Jan. 1, 2020, through March 31, 2020. This includes providers participating in Medicare, Medicaid and CHIP; dentists; assisted living facilities and behavioral health providers.
- All payment recipients will be required to attest to receiving the Phase 3 General Distribution payment and accept the associated terms and conditions.

Amount of funds available

- $20 billion subject to additional allocations by HHS

Loan forgiveness and repayment terms

- These are payments, not loans, and do not need to be paid back as long as a provider follows the program's terms and conditions.
- On Oct. 22, HHS responded to stakeholder concerns and issued a policy update reinstating flexibility in the definition of lost revenues for the Provider Relief Funds (PRF).
  - On Nov. 2, HHS clarified the instructions to reflect this flexibility, which now provide that "PRF payment amounts not fully expended on healthcare related expenses attributable to coronavirus are then applied to patient care lost revenues. Recipients may apply PRF payments toward lost revenue, up to the amount of the difference between their 2019 and 2020 actual patient care revenue."
Use of funds

- Providers must follow the program’s terms and conditions, including the following:
  - Funds can only be used to prevent, prepare for, and respond to COVID-19, and reimburse providers only for healthcare-related expenses or lost revenues that are attributable to COVID-19.
  - Funds cannot be used to reimburse providers for expenses or losses reimbursed from other sources or obligated for payment from other sources.
  - Balance billing presumptive or active COVID-19 patients is prohibited.
- HHS has communicated to the AMA that it is the department’s intent to provide relief to both providers in areas heavily impacted by the COVID-19 pandemic and those providers who are struggling to keep their doors open due to healthy patients delaying care and cancelled elective services. HHS has also noted that it is important to acknowledge that although it is disbursing these funds in advance of an attestation, it is doing so with the expectation that each recipient could document, if asked, amounts they have experienced in lost revenue or increased costs at least equal to the amount of the grant.

Certification

- Providers must sign an attestation confirming receipt of funds within 90 days and agree to the terms and conditions available on the HHS website.

Application

- All providers who had automatically received Phase 2 funds prior to 5 p.m., Friday, April 24, must provide HHS with an accounting of their annual revenues by submitting tax forms or financial statements through the General Distribution Portal. These providers must also agree to the program terms and conditions if they wish to keep the funds. The submission of tax forms or financial statements to the portal will also serve as an application for additional funding. All providers submitting their financial information will be considered for additional funding from the General Distribution.
- The deadline for providers to submit revenue information for consideration for additional payment from the Provider Relief Fund $20 billion Phase 2 General Distribution was June 3, 2020. Only providers with complete submissions received prior to the June 3 deadline will be considered for an additional General Distribution payment. Providers who did not submit this revenue submission by the deadline may qualify for future provider relief funding.

Availability of funds

- The first round of funding was via direct deposit (or checks by mail) to all Medicare FFS providers. The secretary will determine the most efficient payment system for providing additional payments to approved applications, including on a rolling basis and/or in the form of pre-payments, prospective payments, or retrospective payments.

Reporting

- HHS has released additional information about reporting requirements outlined in the “Terms and Conditions” for recipients who received more than $10,000 in aggregate Provider Relief Fund payments. There are additional reporting obligations for recipients who received $500,000 or more in aggregate. According to HHS, the reporting portal will open in early 2021, but please keep in mind that deadlines and timelines associated with the Provider Relief Fund have changed frequently.
- Review a summary and additional guidance about reporting requirements.

Among other items, the continuing resolution (CR) extends flexibilities to 2019 novel coronavirus (COVID-19) pandemic measures and other pandemic-related health care funding programs. It also extends several Medicare and Medicaid provisions through Dec. 11, 2020. Below are the details on key health care provisions in the CR for providers:

- **Revises the Medicare Accelerated and Advance Payment (AAP) Program.** The CR includes a provision that delays repayment and revises the Centers for Medicare & Medicaid Services’ (CMS) AAP program. Although the AAP is currently suspended by CMS and is not accepting any new requests from Medicare Part B providers and suppliers, the previous payments allowed most Medicare Part B providers and suppliers to request anticipated Medicare payment amounts for a three- or six-month period as a repayable advance. The repayment terms were challenging to many physician practices—the AAP payments would need to be repaid by a 100% offset against Medicare claims beginning 120 days after the payment was made to the provider or supplier, and a 10.25% interest rate began to accrue as soon as 210 days after the payment date.

Through the CR, claim offsets are limited to 25% of the full Medicare payment for 11 months followed by six months with claim offsets limited to 50% of the full amount. The CR extends repayment for a full year before recoupment of the AAP payment begins. This change effectively provides 29 months to repay the AAP amount in full. Thereafter, the CR reduces the interest rate on the unpaid balance of any AAP amount to 4%, provided the AAP payment was made between passage of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (CARES Act) and the end of the COVID-19 public health emergency.

Detailed information and FAQs on the updates to the Medicare AAP are available on the CMS website.
Targeted allocation: COVID-19 testing and treatment of the uninsured

HHS will provide claims reimbursement to health care providers generally at Medicare rates for testing and treating uninsured COVID-19 patients. Additional information is available online at the Health Resources and Services Administration (HRSA) website. FAQs on the COVID-19 Claims Reimbursement Program are available on the HRSA website.

Timeframe

- HHS began accepting applications electronically on May 6, 2020.

Eligibility

- Any health care providers who provided testing or treatment for uninsured COVID-19 patients on or after Feb. 4, 2020 can request claims reimbursement through the program. Providers will be reimbursed at Medicare rates on a rolling basis.

Amount of funds available

- Roughly $30 billion subject to available funding and additional allocations by HHS.

Loan forgiveness and repayment terms

- Payments may be subject to post-reimbursement audits.

Use of funds

- Reimburse providers for testing and treatment of uninsured COVID-19 patients.

Certification

- To be eligible for participation in the program providers must attest to the following:
  - The provider has confirmed that the patient is uninsured and does not have individual, employer-sponsored, Medicare or Medicaid coverage, and no other payer will reimburse for COVID-19 testing and/or care for that patient.
  - Provider will accept the program's reimbursement as payment in full.
  - Providers cannot balance bill the patient.
  - Providers agree to program's testing terms and conditions and treatment terms and conditions.

Application

- HRSA has contracted with UnitedHealth Group to administer this program for uninsured individuals. Providers will need a direct deposit Automated Clearing House (ACH) account with Optum Pay.
- Claims submission details and instructions are available on the HRSA website.

Availability of funds

- Until expended.

Medicaid and CHIP provider relief funds

HHS is distributing $15 billion to eligible providers that participate in state Medicaid, Children's Health Insurance Program (CHIP) or Medicaid managed care plans and have not yet received a payment from the Provider Relief Fund General Distribution allocation. The payment to each provider will be at least 2% of reported gross revenue from patient care. The final amount each provider receives will be determined after application. FAQs on the Medicaid funds are available on the HHS website.
**Timeframe**

**Eligibility**
Applicants must meet all six requirements to submit applications:
1. Must not have received payment from the $50 billion General Distribution
2. Must have directly billed Medicaid, CHIP or Medicaid managed care plans for health care related services during the period of Jan. 1, 2018, to Dec. 31, 2019, or (ii) own (on the application date) an included subsidiary that has billed Medicaid for health care related services during the period of Jan. 1, 2018, to Dec. 31, 2019
3. Must have either (i) filed a federal income tax return for fiscal years 2017, 2018 or 2019, or (ii) be an entity exempt from the requirement to file a federal income tax return and have no beneficial owner that is required to file a federal income tax return. (e.g., a state-owned hospital or health care clinic)
4. Must have provided patient care after Jan. 31, 2020
5. Must not have permanently ceased providing patient care directly, or indirectly through included subsidiaries
6. If the applicant is an individual with gross receipts or sales from providing patient care reported on Form 1040, Schedule C, Line 1, excluding income reported on a W-2 as a (statutory) employee

**Amount of funds available**
- $15 billion subject to additional allocations by HHS.

**Loan forgiveness and repayment terms**
- These payments are not loans and do not need to be paid back as long as a provider follows the program's terms and conditions.

**Use of grant funds**
- Providers must follow the program's terms and conditions, including the following:
  - Funds can only be used to prevent, prepare for, and respond to coronavirus, and reimburse providers only for health care related expenses or lost revenues that are attributable to coronavirus.
  - Funds cannot be used to reimburse providers for expenses or losses reimbursed from other sources or obligated for payment from other sources.
  - Balance billing presumptive or active COVID-19 patients is prohibited.

**Certification**
- Within 90 days providers must accept the terms and conditions available on the HHS website.

**Application**
- Providers must submit their gross revenues from patient care for calendar year 2017, 2018 or 2019 by Aug. 3, 2020, through the Enhanced Provider Relief Fund Payment Portal. HHS encourages applicants to read and download the Medicaid Provider Distribution Instructions and the Medicaid Provider Distribution Application Form.
  - The deadline was extended from the original deadline of July 20, 2020, to give physicians and organizations more time to complete the application process.

**Availability of funds**
- $15 billion until expended.
Overview

The Small Business Administration (SBA) has two loan programs to address COVID-19-related economic stress. The first program is the 7(a) Paycheck Protection Program and the second is the Economic Injury Disaster Loan (EIDL) program. The Paycheck Protection Program allows an eligible business to obtain up to $10 million in loans for payroll, rent and utilities. The loan is eligible for forgiveness up to 100% of the principal of the loan, but such forgiveness will be reduced by any layoffs or reductions in salaries in excess of 25% of an employee’s salary, subject to certain exceptions detailed below. The EIDL program allows an eligible business to obtain up to $2 million in loans for working capital. The EIDL program allows for a $10,000 forgivable advance upon application but is otherwise not forgivable.

TIP: You can obtain both a Paycheck Protection Program loan and an EIDL; however, you cannot seek recovery under the EIDL for the same costs that are covered by a Paycheck Protection Program loan. Both loans are low interest loans with favorable terms; however, only the Paycheck Protection Program has the forgiveness element.

Paycheck Protection Program

Eligibility timeframe

- Feb. 15–June 30, 2020

Eligibility

- Businesses that employ 500 employees or fewer are eligible.
- In determining whether you have less than 500 employees, you must aggregate with any affiliates.
- Affiliation is a fact-specific question, but generally the SBA will find affiliation in the following circumstances. Detailed information regarding affiliation is available here.
  - A business is an affiliate of an individual, concern or entity that owns or has the power to control more than 50% of the concern's voting equity.
  - Affiliation arises where the CEO or president of the applicant concern (or other officers, managing members or partners who control the management of the concern) also controls the management of one or more other concerns.
  - Affiliation also arises where a single individual, concern or entity controls the management of the applicant concern through a management agreement.

Amount of funds available

- The maximum amount of the loan is the lesser of:
  - $10 million and the sum of:
    - The product obtained by multiplying the average total monthly payments by the applicant for payroll costs incurred during the one-year period before the date on which the loan is made (with separate determination for seasonal employer), by 2.5
    - The outstanding amount of a loan under the SBA's EIDL program made from Jan. 31 to April 3, 2020

- Payroll costs are defined as:
  - Including:
    - Salary, wage, commission, or similar compensation
    - Payment of cash tip or equivalent
    - Payment for vacation, parental, family, medical or sick leave
    - Allowance for dismissal or separation
    - Payment required for the provisions of group health care benefits, including insurance premiums
• Payment of any retirement benefit
• Payment of state or local tax assessed on the compensation of employees

Excluding:
• The compensation of an individual employee in excess of an annual salary of $100,000 as prorated for the covered period
  • Note: This only applies to cash compensation. Non-cash benefits, including employer contributions to defined benefit and defined contribution retirement plans, payment for the provision of group health care benefits and insurance premiums, and payment of state and local taxes assessed on employee compensation, are not counted in calculating the cap. Therefore, those non-cash benefits may be included as a payroll cost, even for employees who have cash compensation in excess of $100,000 on an annualized basis.
• Taxes imposed or withheld under chapters 21, 22 or 24 of the Internal Revenue Code for the covered period
• Any compensation of an employee whose principal place of residence is outside of the U.S.
• Qualified sick leave for which credit is allowed under Section 7001 of the Families First Coronavirus Response Act
• Qualified family leave for which credit is allowed under Section 7003 of the Families First Coronavirus Response Act

Repayment terms
• Loans entered into prior to June 5: Two-year maturity beginning on origination with 1% interest
• Loans entered into following June 5: Five-year maturity beginning on origination with 1% interest

Loan forgiveness
• Recipients are eligible for forgiveness of a portion of the loan in an amount equal to the sum of payroll costs, interest payments on mortgage obligations, payments on covered rent obligations and any covered utility payments, but not to exceed the principal amount spent during the covered period. For loans originated prior to June 5, the covered period may be eight weeks, or the earlier of 24 weeks and Dec. 31, 2020. For loans originated after June 5, the covered period is the earlier of 24 weeks and Dec. 31, 2020.
• The amount of loan forgiveness will be reduced in accordance with any reduction in the number of employees or employee salaries during the covered period, though there are some exceptions. One such exception is an inability to return to the same level of business activity as the business was operating at before Feb. 15 due to compliance with COVID-19 related requirements or guidance issued by HHS, CDC, or OSHA.
• Please note that the SBA will only forgive up to 40% of a Paycheck Protection Program loan used for non-payroll costs incurred in the covered period.

TIP: To be eligible for full forgiveness under the Paycheck Protection Program, at least 60% of the loan must be spent on payroll costs.

Payment deferment
• Until the date on which the amount of forgiveness is determined and remitted to the lender, interest will accrue during deferment.
• Payments may begin on the day that is 10 months after the end of the covered period if the borrower has failed to apply for forgiveness within 10 months of the last day of the covered period.

Use of loan funds
• Payroll costs
• Mortgage interest payments for mortgages on real and personal property incurred prior to Feb. 15, 2020
• Utilities, for contracts dated prior to Feb. 15, 2020
• Rent for leases on real and personal property dated prior to Feb. 15, 2020
Application
Applications for the Paycheck Protection Program are processed through qualified 7(a) lenders. You must complete SBA Form 2483, provide payroll documentation and provide any other information required by the lender.

Paycheck Protection Program applicants must respond to the following questions:
• Is the Applicant or any owner of the Applicant presently suspended, debarred, proposed for debarment, declared ineligible, voluntarily excluded from participation in this transaction by any Federal department or agency, or presently involved in any bankruptcy?
• Has the Applicant, any owner of the Applicant, or any business owned or controlled by any of them, ever obtained a direct or guaranteed loan from SBA or any other Federal agency that is currently delinquent or has defaulted in the last seven years and caused a loss to the government?
• Is the Applicant or any owner of the Applicant an owner of any other business, or have common management with, any other business? If yes, list all such businesses and describe the relationship on a separate sheet identified as addendum A.
• Has the Applicant received an SBA Economic Injury Disaster Loan between Jan. 31, 2020, and April 3, 2020? If yes, provide details on a separate sheet identified as addendum B.
• Is the Applicant (if an individual) or any individual owning 20% or more of the equity of the Applicant subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction, or presently incarcerated, or on probation or parole?
• Within the last five years, for any felony, has the Applicant (if an individual) or any owner of the Applicant (1) been convicted; (2) pleaded guilty; (3) pleaded nolo contendere; (4) been placed on pretrial diversion; or (5) been placed on any form of parole or probation (including probation before judgment)?
• Is the United States the principal place of residence for all employees of the Applicant included in the Applicant’s payroll calculation above?

Certification
• The Applicant was in operation on Feb. 15, 2020, and had employees for whom it paid salaries and payroll taxes or paid independent contractors, as reported on Form(s) 1099-MISC.
• Current economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant.
• The funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments and utility payments.
• The Applicant will provide to the Lender documentation verifying the number of full-time equivalent 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 the loan.
• The Applicant must state that he or she understands 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.
• During the period beginning on Feb. 15, 2020, and ending on Dec. 31, 2020, the Applicant has not and will not receive another loan under the Paycheck Protection Program.
• The information provided in the application and the information provided in all supporting documents and forms is true and accurate in all material respects.

Additional information
The AMA has more discussion of the SBA loans available here.

Economic Injury Disaster Loan

Eligibility timeframe
• Businesses in operation during the period of Jan. 31–Dec. 31, 2020
Eligibility

- Businesses that employ 500 employees or fewer are eligible.
- In determining whether you have less than 500 employees, you must aggregate with any affiliates.
- Affiliation is a fact-specific question, but generally the SBA will find affiliation in the following circumstances. Detailed information regarding affiliation is available here.
  - A business is an affiliate of an individual, concern or entity that owns or has the power to control more than 50% of the concern's voting equity.
  - Affiliation arises where the CEO or president of the applicant concern (or other officers, managing members or partners who control the management of the concern) also controls the management of one or more other concerns.
  - Affiliation also arises where a single individual, concern or entity controls the management of the applicant concern through a management agreement.

Amount of funds available

- The maximum amount of the loan is $2 million.

Repayment terms

- Thirty-year maturity beginning on origination with 3.75% interest.

Loan forgiveness

- Applicants may request a $10,000 advance, upon application, that is forgivable.

Payment deferment

- At least a six-month deferment, which may be extended to up to one year. Interest will accrue during deferment.

Use of loan funds

- Working capital

Application

Apply online here. Applicants must respond to the following questions:
- In the past year, has the business or a listed owner been convicted of a criminal offense committed during and in connection with a riot or civil disorder or other declared disaster, or ever been engaged in the production or distribution of any product or service that has been determined to be obscene by a court of competent jurisdiction?
- Is the applicant or any listed owner currently suspended or debarred from contracting with the Federal government or receiving Federal grants or loans?
- Are you presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction?
- Have you been arrested in the past six months for any criminal offense?
- For any criminal offense—other than a minor vehicle violation—have you ever been convicted, plead guilty, plead nolo contendere, been placed on pretrial diversion, or been placed on any form of parole or probation (including probation before judgment)?

Certification

- The information provided in the application and the information provided in all supporting documents and forms is true and accurate in all material respects.

Additional information

The AMA has more information about the CARES Act and the SBA Loan programs available here.
Main Street Lending Program

Overview
On March 23, 2020, the Federal Reserve announced the creation of a Main Street Lending Program to support small and medium-sized businesses. This program is designed to encourage lenders to make low interest loans to eligible businesses with fewer than 15,000 employees or less than $5 billion in 2019 revenue. The program consists of three facilities, which function in the same manner but involve slightly different loan terms (discussed further below). The facilities are:
- Main Street New Loan Facility (MSNLF)
- Main Street Priority Loan Facility (MSPLF)
- Main Street Expanded Loan Facility (MSELF)

The Federal Reserve has published revised term sheets for each facility, required documentation for borrowers and lenders, and updated FAQs, and has indicated that the program should launch imminently.

Timeframe
Expected to launch imminently, and purchases under the Facilities are scheduled to cease on Sept. 30, 2020, unless extended.

Eligibility
- **Eligible lenders:** Any U.S. insured depository institution, U.S. bank holding company or U.S. savings and loan holding company are eligible.
- **Eligible borrowers:** Entities that are (i) established prior to March 13, 2020, (ii) not an ineligible business, as defined under the Paycheck Protection Program, (iii) have fewer than 15,000 employees or 2019 annual revenues of $5 billion or less, (iv) organized in the U.S. and with both significant operations and a majority of their employees in the U.S and (v) has not received targeted support to the aviation and related industries under the CARES Act. For purposes of the employee count and 2019 revenue thresholds, borrowers must aggregate their employees and revenue with “affiliates,” which include other entities under common majority ownership or control. Borrowers (or affiliate groups) may not participate in more than one of the facilities, and borrowers under any facility may not use the Federal Reserve’s Primary Market Corporate Credit Facility (for large investment grade or recently downgraded borrowers). The Federal Reserve has proposed terms for separate facilities that would be available to non-profit organizations.

**TIP:** Lending under the Main Street Lending Program is subject to banks’ existing underwriting policies. Therefore, availability may depend on the perceived creditworthiness of potential borrowers, access to collateral and/or ability to provide guarantees.

Amount of funds available
The total amount of credit extended via the facilities in the aggregate is expected to be up to $600 billion, based on current commitments. Loans (or tranches) are subject to minimum and maximum loan amounts outlined in the Federal Reserve’s FAQs. The maximum loan amounts apply to an affiliated group of borrowers on an aggregated basis, so borrowers that are part of an affiliate group may be subject to further limitation.

Repayment terms
Loans or eligible tranches would have a five year maturity, with interest deferred for 12 months (capitalized into principal) and with principal amortization of 15% at the end of the third year, 15% at the end of the fourth year and a balloon payment of 70% at maturity at the end of the fifth year. Prepayment is permitted at any time without penalty. Loans would have an interest rate of LIBOR plus 3%.
Loan forgiveness
No loan forgiveness is allowed under the facilities.

Payment deferment
The facilities would require that eligible loans or tranches are deferred as to the payment of interest during the first 12 months of the loan and principal amortization would begin at the end of year three of the loan.

Use of funds
See “Certification” below.

Certification
Borrowers and lenders are required to make several certifications in relation to participation in either of the facilities including:

- The borrower and lender attest that they are eligible pursuant to the terms of the program as well as under the CARES Act conflict of interest provision. The borrower commits to refrain from making any voluntary prepayment of other existing debt (though borrowers may continue to make due and payable payments on other debt), subject to the right, under the MSPLF only, and to refinance existing debt of a lender other than the MSPLF lender with the MSPLF loan proceeds.
- The borrower attests that it will comply with the restrictions on compensation, stock repurchase, and capital distribution included under Section 4003 of the CARES Act.

Application instructions
Since the underlying loans will be offered via banks, each such lender will produce its own application forms and loan documentation for potential borrowers. Forms of the required certifications are available here along with the forms of participation agreement and servicing agreement that would govern the participation structure and servicing of the loan by the originating lender.

Availability of funds
The relevant funds were appropriated to the U.S. Treasury as part of the CARES Act and Federal Reserve officials have indicated they expect the program to be launched imminently.
Overview

The CARES Act provides an employer retention tax credit and allows delayed payment of employer payroll taxes.

Employer retention credit

The CARES Act provides for a tax credit against employment taxes for certain businesses. An employer is eligible for this credit if the operation of the trade or business is fully or partially suspended during the calendar quarter, or is fully or partially suspended due to orders of a governmental authority that limited commerce, travel or group meetings. An employer is also eligible for this credit in the first calendar quarter in which the employer has a reduction of gross receipts of more than 50% in a calendar quarter as compared to the same calendar quarter in the prior year, and eligibility for the credit continues in each calendar quarter as long as the employer has a reduction of gross receipts of more than 80% reduction of gross receipts from the calendar quarter in the prior year.

The amount of the tax credit is 50% of the qualifying wages of the employer paid after March 12, 2020, and before Jan. 1, 2021. In general terms, qualifying wages for each employee are limited to $10,000 for all quarters and wages paid to certain employees.

For employers with an average of more than 100 employees, the credit only applies to employees that are still on the payroll but not providing services to the employer as a result of COVID-19. Guidance from the IRS indicates that reduced services may also qualify for the credit depending on the factual situation. For employers with an average of less than 100 employees, wages paid by the employer qualify regardless of whether the employee is still performing services for the employer.

In addition, the credit is not available if the employer is a borrower under the SBA 7(a) Paycheck Protection Program.

Delay of payment of employer payroll taxes

The CARES Act allows employers to delay paying their portion of the social security payroll tax (6.2%) for wages paid starting March 27, 2020, through Dec. 31, 2020. Fifty percent of the deferred amount of payroll taxes are due Dec. 31, 2021, with the remaining amount due Dec. 31, 2022.

Originally this payroll tax deferral benefit had certain limitations on those employers who receive SBA 7(a) Paycheck Protection Program loans; however, the Paycheck Protection Program Flexibility Act of 2020 signed by President Trump on June 5, 2020, retroactively removed the limitation on the deferment of such taxes after the forgivable portion of the loan and now allows employers to take full advantage of deferment of the employer’s Social Security payroll taxes for wages paid between March 27, 2020, and Dec. 31, 2020, even if the employer received a SBA 7(a) Paycheck Protection Program loan and has all or a portion of the loan forgiven.

This chart summarizes each credit:

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<th>Employer retention credit</th>
<th>Delayed payroll</th>
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<td><strong>Amount of credit</strong></td>
<td>Credit up to $5,000 per employee per year</td>
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<tr>
<td><strong>Employer size</strong></td>
<td>Rules vary for fewer than 100 employees</td>
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<td><strong>Relation to Payroll Protection Program</strong></td>
<td>An employer may not receive the retention credit if the employer receives a Small Business Interruption Loan under the SBA’s Paycheck Protection Program</td>
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</tbody>
</table>

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