

# New Stimulus, Trade and Political Developments

May 12, 2020

Addressing the Ongoing U.S.  
Government Response to COVID-19

Moderator:



**Nancy A. Fischer**  
Partner and SACC DC Chair  
Washington, DC  
nancy.fischer@pillsburylaw.com  
+1.202.663.8965

Speakers:



**Elizabeth Vella Moeller**  
Partner  
Washington, DC  
elizabeth.moeller@pillsburylaw.com  
+1.202.663.9159



**Matthew Oresman**  
Partner  
London & Washington, DC  
matthew.oresman@pillsburylaw.com  
+44.20.7847.9516 | +1.202.663.8047

**pillsbury**

# Overview

- Current Political Environment and Opportunities for Foreign Investors
- Highlights of Treasury's New Main Street Lending Program
- Compliance/Investigations for Recipients of US Funds
- Planning for Reopening and Managing Liability
- Impact on Trade Policy
- What is Next: CARES Act 3.0, Infrastructure, etc.
- Looking ahead – the 2020 Elections



# THE CARES ACT AT-A-GLANCE

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

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



**\$242 billion**  
for public health

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



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

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



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

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



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

# Current Political Environment and U.S. Stimulus Opportunities for Foreign Investors

- COVID-19 – how is it impacting DC business?
  - Executive Branch - NIH Institute of Allergy and Infectious Disease Director Anthony Fauci, White House Coordinator of Coronavirus Response Deborah Birx, CDC Director Robert Redfield, and FDA Commissioner Stephen Hahn currently are in self quarantine
  - Congress is adapting to new procedures
- CARES Act Funding Case Study: Small Business Administration's Paycheck Protection Program (PPP)
  - The U.S. subsidiaries of multinational companies are eligible for a PPP loan if they have less than 500 employees when combined with employees of foreign affiliates.
- State and Local COVID-19 Funding:
  - Guidance allows for a broad range of other expenses for "second order effects," including "economic support to those suffering from employment or business interruptions due to COVID-19-related business closures."
  - Watch for executive actions at the State level

# Main Street Lending Program Overview

- The Main Street Lending Program establishes three new loan facilities:
  - The Main Street New Loan Facility (MSNLF) for term loans originated after April 24, 2020
  - The Main Street Priority Loan Facility (MSPLF) for term loans originated after April 24, 2020, with increased risk sharing by lenders (15% vs 5%) for more highly leveraged borrowers, and
  - The Main Street Expanded Loan Facility (MSELF) for term loans or revolving credit facilities originated on or before April 24, 2020 (referred to as the Eligible Loan), with remaining maturity of at least 18 months and being subsequently upsized with a term loan tranche (referred to as the upsized tranche).

# Eligibility

- Businesses with up to 15,000 employees or up to \$5 billion in 2019 revenues.
- Must be a business that is created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States.
  - Note that the U.S. incorporated subsidiaries of foreign companies can apply.
- May not also participate in the MSELF/MSNLF/MSPLF (as applicable) or the Primary Market Corporate Credit Facility, *but can participate in the PPP program.*
- Borrowers should make commercially reasonable efforts to maintain their payroll and retain their employees. Borrowers that have already laid-off or furloughed workers as a result of the disruptions from COVID-19 are still eligible to apply.



# Loan Terms

- 4-year maturity
- Payment of principal and interest deferred for one year (unpaid interest will be capitalized)
- Rate: LIBOR + 3%
- Minimum loan size of \$500,000 for MSNLF & MSPLF; \$10,000,000 for MSELF
- Loans under the MSNLF and the MSPLF may be secured or unsecured
- Loans under the MSNLF may not be contractually subordinated in terms of priority to other debt. Loans under the MSPLF shall be senior to or pari passu in terms of priority and security with other debt (except mortgage debt).
- The upsized tranche under the MSELF shall be senior to or pari passu in terms of priority and security with other debt (except mortgage debt).
- Prepayment permitted without penalty

# Maximum Loan Size

## MSNLF

Lesser of:

- i. \$25 million, or
- ii. an amount that, when added to the Eligible Borrower's existing outstanding and undrawn available debt, does not exceed four times the Eligible Borrower's adjusted 2019 EBITDA.

## MSPLF

Lesser of

- i. 25 million, or
- ii. an amount that, when added to the Eligible Borrower's existing outstanding and undrawn available debt, does not exceed six times the Eligible Borrower's adjusted 2019 EBITDA.

## MSELF

Lesser of

- i. \$200 million,
- ii. 35% of the Eligible Borrower's existing outstanding and undrawn available debt that is pari passu in priority with the Eligible Loan and equivalent in secured status (i.e., secured or unsecured), or
- iii. an amount that, when added to the Eligible Borrower's existing outstanding and undrawn available debt, does not exceed six times the Eligible Borrower's adjusted 2019 EBITDA.



# Maximum Loan Size Formulas

## MSNLF

Lesser of:

- i. \$25 million, or
- ii. [Loan Amount] +  
[outstanding debt +  
undrawn available debt]  
 $\leq [4 \times \text{EBIDTA}]$

## MSPLF

Lesser of:

- i. \$25 million, or
- ii. [Loan Amount] +  
[outstanding debt +  
undrawn available debt]  
 $\leq [6 \times \text{EBIDTA}]$

## MSELF

Lesser of

- i. \$200million,
- ii.  $.35 \times$  [existing outstanding  
debt + undrawn available  
debt that is *pari passu* in  
priority with the Eligible  
Loan and equivalent in  
secured status (i.e.,  
secured or unsecured)]
- iii. [Loan Amount] +  
[outstanding debt +  
undrawn available debt]  
 $\leq [6 \times \text{EBIDTA}]$

# Loan Requirements, Restrictions and Certifications

- Borrowers must commit to refrain from repaying other debt, *with the exception of mandatory principal and interest payments or, in the case of the MSPLF, refinancing of debt owed to other lenders*, until the Eligible Loan (or, in the case of the MSELF, the upsized tranche) has been repaid in full.
- Borrowers must certify that they will not seek to cancel or reduce any of their outstanding lines of credit.
- Borrowers must certify that they have a reasonable basis to believe that on a pro forma basis they have the ability to meet their financial obligations for at least the next 90 days and do not expect to file for bankruptcy during this period
- Borrowers that are public companies, may not buy back any related stock.

# Loan Requirements, Restrictions and Certifications

(cont'd)

- Borrowers may not pay any dividends or make other capital distribution (other than tax distributions for pass-through entities) for 12 months following repayment of the loan.
- Borrowers may not increase compensation for employees making more than \$425,000, with additional limits on those making more than \$3 million.
- Lenders are expected to conduct an assessment of each potential borrower's financial condition at the time of application.
- Lenders must certify as to the methodology for calculating adjusted 2019 EBITDA and make certain other certifications.
- Open Question: Whether labor restrictions from Cares Act will be imposed under this program.
- *Note: The Federal Reserve will disclose information regarding the names of lenders and borrowers, amounts borrowed, interest rates charged, and overall costs, revenues and other fees.*





# Compliance/Investigations for Those Taking Government Money

# 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.

**POLITICO**

**Bloomberg Law**

**Pandemic Watchdog Activates Site to Track Trillions in Spending**



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."*

Source: CNN, Politico, Bloomberg Law, ABC News, Reuters



## TARP cop wants bank accountability

## Senate panel to step up TARP oversight: chairman



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.  
Washington, DC 20548

September 6, 2013

Congressional Committees:

Subject: *Troubled Asset Relief Program: GAO's Oversight of the Troubled Asset Relief Program Activities*

The Emergency Economic Stabilization Act of 2008 (EESA) authorized the creation of the Troubled Asset Relief Program (TARP) to address the most severe crisis that the U.S. financial system had faced in decades.<sup>1</sup> EESA provided GAO with broad oversight authorities for actions taken under TARP and required that we report at least every 60 days on TARP activities and performance.

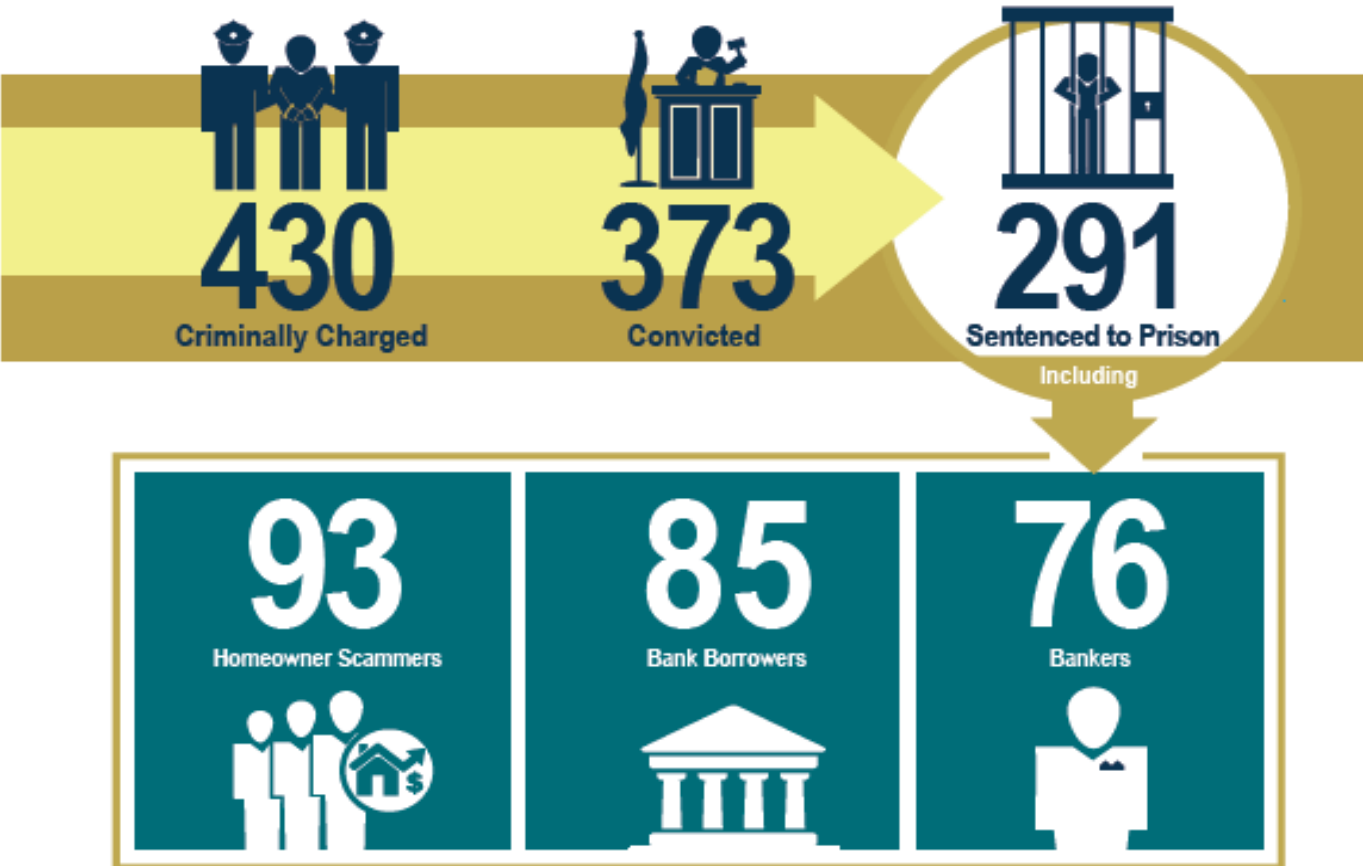
**GAO's Oversight Has Been Comprehensive**

THE WALL STREET JOURNAL.

## TARP Oversight Panel Urges Transparency, Accountability

Source: Reuters, The Wall Street Journal, GAO, CNN





**\$11 Billion =**  
Recovered from Investigations

**31x**  
Return on Investment

# 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
- 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

# 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



# Sample Fraud and Misconduct Schemes

---

## Internal Fraud (Employees or Management)

---

- False statements - deception/fraud by employees working for financial institutions - promising individuals that they qualify for benefits
- Invalid recipients – Recipients do not meet the minimum standards to qualify for benefits
- Invalid payments – payments of expenditures which are no allowable or permissible under the program requirements
- Unsupported payments
- Misclassification of expenditures
- Co-mingling of program funds

---

## External Fraud (Vendors, Agents, etc.)

---

- Fraud by third parties (e.g., brokers or agents) working on behalf of organizations
- False information provided
- Fraud by fraudsters – pay for program entry scams
- Loss of eligibility – over time, otherwise valid recipients may no longer qualify for benefits
- Vendor fraud

---

## Collusion (Internal and external parties collude in fraudulent schemes)

---

- Kickback schemes
- Bid rigging

# Compliance Questions

1. Do you have an adequately resourced and fulsome compliance program addressing your company's current legal and compliance risks?
2. Is that program subject to regular updating and testing to regularly integrate new requirements and test its effectiveness to address new challenges?
3. How do you establish, within that program or a new program, adequate controls, policies and procedures for the new requirements your organization faces for both CARES Act loan obligations and reopening conditions?
4. Do all relevant stakeholders, including the Board, employees and third-party business partners, understand their obligations and know how to report issues?
5. How should you plan to communicate and train relevant stakeholders regarding the company's new and existing legal and compliance obligations?



# Elements of a Compliance Program

- Tone from the top
- Code of conduct, policies and procedures
- Risk assessment processes
- Training and communications
- Confidential reporting/internal hotline
- Investigations
- Vendor management controls
- Adequately resources legal and compliance team
- Incentives and discipline
- Monitoring and testing
- Analysis, remediation and updating



# Impact on Trade Policy

- Supply Chain Vulnerability Emphasized
  - Executive Orders and Legislation Requiring Closer Scrutiny
    - Energy – Bulk Power System EO and recent 232 investigation on electrical transformers
    - Telecom – NDAA 2019 – Telecom supply chain scrutiny
    - Personal Protective Equipment – EO on export restrictions
- Foreign Investment Scrutiny
  - CFIUS – emerging tech, biotech, PII, Real Estate, critical infrastructure
  - Telecom Executive Order – New Team Telecom
- 301 Tariff and 232 Import Restriction Tools
- Restrictions focused on China and Russia

# What's Next: Reopening, Cares 4.0 and Infrastructure

- Challenges of 'reopening' and strategies to reduce liability
  - Legislation in development
  - Outlook for insurance coverage
- CARES Act 4.0:
  - Broadband development, state and local government funding; Hospitals and PPE; US Post Service
- What is next? Planning for Infrastructure Spending
  - Water and wastewater
  - Transportation
  - Energy and climate change



# Pillsbury's Public Policy and Trade Teams



**Elizabeth Vella Moeller**  
Partner  
Washington, DC  
elizabeth.moeller@pillsburylaw.com  
+1.202.663.9159



**Brian E. Finch**  
Partner  
Washington, DC  
brian.finch@pillsburylaw.com  
+1.202.663.8062



**Craig J. Saperstein**  
Partner  
Washington, DC  
craig.saperstein@pillsburylaw.com  
+1.202.663.9244



**Matthew Oresman**  
Partner  
London & Washington, DC  
matthew.oresman@pillsburylaw.com  
+44.20.7847.9516  
+1.202.663.8047



**The Honorable Gregory H. Laughlin**  
Senior Counsel  
Washington, DC  
greg.laughlin@pillsburylaw.com  
+1.202.663.9163



**The Honorable Jeffrey S. Merrifield**  
Partner  
Washington, DC  
jeff.merrifield@pillsburylaw.com  
+1.202.663.8718



**The Honorable Christopher R. Wall**  
Partner  
Washington, DC  
cwall@pillsburylaw.com  
+1.202.663.9250



**Richard Mroz**  
Managing Director  
Resolute Strategies, LLC  
rmroz@resolutestrategies.net  
856-261-3066



**Cassie Lentchner**  
Senior Counsel  
New York  
cassie.lentchner@pillsburylaw.com  
+1.212.858.1211



**Nadia Barazi**  
Counsel  
London  
nadia.barazi@pillsburylaw.com  
+44.20.7847.9619



**Aimee P. Ghosh**  
Counsel  
Washington, DC  
aimee.ghosh@pillsburylaw.com  
+1.202.663.8091



**Jeff Metzler**  
Special Counsel  
New York  
jeffrey.metzler@pillsburylaw.com  
+1.212.858.1153



**Zachary M. Kessler**  
Associate  
Washington, DC  
zachary.kessler@pillsburylaw.com  
+1.202.663.9012



**Nicole Steinberg**  
Associate  
Washington, DC  
nicole.steinberg@pillsburylaw.com  
+1.202.663.8151



**Stephanie Rosenberg**  
Associate  
Washington, DC  
stephanie.rosenberg@pillsburylaw.com  
+1.202.663.8129



# Pillsbury's Public Policy and Trade Teams



**Stephan E. Becker**  
Partner  
Washington, DC  
stephan.becker@pillsburylaw.com  
+1.202.663.8277



**Benjamin J. Cote**  
Counsel  
Washington, DC  
benjamin.cote@pillsburylaw.com  
+1.202.663.8305



**Nancy A. Fischer**  
Partner  
Washington, DC  
nancy.fischer@pillsburylaw.com  
+1.202.663.8965



**Sahar J. Hafeez**  
Associate  
Washington, DC  
sahar.hafeez@pillsburylaw.com  
+1.202.663.8051



**Aaron R. Hutman**  
Partner  
Washington, DC  
aaron.hutman@pillsburylaw.com  
+1.202.663.8341



**Moushami P. Joshi**  
Attorney  
Washington, DC  
moushami.joshi@pillsburylaw.com  
+1.202.663.8021



**Roya Motazed**  
Associate  
Washington, DC  
roya.motazed@pillsburylaw.com  
+1.202.663.8052



**Matthew Ross Rabinowitz**  
Counsel  
Washington, DC  
matthew.rabinowitz@pillsburylaw.com  
+1.202.663.8623



**Stephanie T. Rosenberg**  
Associate  
Washington, DC  
stephanie.rosenberg@pillsburylaw.com  
+1.202.663.8129



**Zachary C. Rozen**  
Associate  
Washington, DC  
zachary.rozen@pillsburylaw.com  
+1.202.663.8039



**Mario A. Torrico**  
Associate  
Washington, DC  
mario.torrico@pillsburylaw.com  
+1.202.663.8188



**Christopher R. Wall**  
Partner  
Washington, DC  
cwall@pillsburylaw.com  
+1.202.663.9250



# Pillsbury's COVID-19 Resources:

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

## Global Trade & Sanctions Blog:

<https://www.globaltradeandsanctionslaw.com/>

## Client Alert: U.S. Subsidiaries of Foreign Companies Can Also Benefit from the CARES Act

<https://www.pillsburylaw.com/en/news-and-insights/subsidiaries-cares-act.html>

## COVID-19 (Coronavirus) Resource Center:

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

## Trending Topics:

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