

Further Updates Regarding the CARES Act Financial Assistance for Businesses Too Large for the Paycheck Protection Program

May 05 2020

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Practice Area: Business and Corporate Law

This *Legal Update* follows our earlier updates entitled CARES Act Programs for Businesses Too Large for the Paycheck Protection Program and New Detail Available Regarding Main Street Loan Facilities. After receiving feedback from the public, the Federal Reserve has released revised term sheets for its Main Street Lending Program. With the revisions, the Federal Reserve hopes to expand eligibility and fill some of the gaps present in the original term sheets. This *Legal Update* discusses the revised terms sheets.

New Loan Facility - Main Street Priority Loan Facility

The Federal Reserve has added a new loan facility to the Main Street Lending Program, called the Main Street Priority Loan Program (the "MSPLP"). The MSPLP is a hybrid of the Main Street New Loan Facility (the "MSNLF") and the Main Street Expanded Loan Facility (the "MSELF"). The following are key features of the MSPLP:

- Similar to the MSNLF, the MSPLP applies to new loans
- Similar to the MSNLF, the MSPLP minimum loan amount is \$500,000
- The MSPLP maximum loan amount is the lesser of (i) \$25,000,000 or (ii) an amount that, when added to outstanding and undrawn available debt, does not exceed six times the borrower's adjusted 2019 EBITDA
- Unlike the MSNLF or the MSELF, at the time of origination, the MSPLP may be used to refinance a borrower's existing loans

Eligible Business Defined

Previously released term sheets for the Main Street Lending Programs did not define the term "business." The revised term sheets now define "business" and provide additional exclusions. In order to be eligible for the Main Street Lending Programs a "business:"

- Must be a **for profit** entity with no more than 49% participation by foreign business entities
- Must have been established prior to March 13, 2020
- Must have 15,000 or fewer employees OR had annual revenues of \$5,000,000,000 or less in 2019
- Must be created or organized in the United States with significant operations in and a majority of its employees based in the United States
- Must not be participating in another Main Street Facility, the Primary Market Corporate Credit Facility, or received specific support pursuant to the CARES Act. PPP loans are not considered to be specific support pursuant to the CARES Act.

A business that is an Ineligible Business under 13 CFR 120.110(b)-(j) and (m)-(s) is excluded from participating in the loan program. The Federal Reserve has also added another certification for borrowers. A borrower must also certify that it can meet the financial obligations for at least ninety days and does not expect to file for bankruptcy during that ninety-day period. The borrower must also make commercially reasonable efforts to maintain its payroll and its employees during the term of the loan.

Revised Loan Terms

The revised term sheets contain the following revised terms:

- The minimum loan amounts for the MSNLF and the MSPLP are \$500,000 and \$10,000,000 for the MSELF
- The borrower's adjusted 2019 EBITDA may be used to calculate the maximum loan amount
- Interest rates for the loans are based on either 1 or 3 month LIBOR rather than SOFR
- A borrower is permitted to make payments of principal or interest under any other debt facility that is mandatory and due

Application Status

The Federal Reserve is in the process of creating the necessary infrastructure to support the Main Street Lending Programs. Once the infrastructure has been created, businesses may apply through eligible lenders, which include banks, savings associations, and credit unions.

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