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TAX AND BUSINESS GROUPS

Overview of the Main Street Lending Programs under the CARES Act

By Marc T. Finer, Mark J. Tarallo and Sergio E. Marin | April 21, 2020

On April 9, 2020, the Federal Reserve Bank announced the establishment of the Main Street Lending Program ("MSLP") to provide up to $2.3 trillion in loans to small and mid-sized businesses striving to remain afloat during the COVID-19 pandemic. The MSLP is a $600 billion lending program designed to assist these businesses, provided they were in good standing before the COVID-19 pandemic. Under the MSLP, the Federal Reserve will provide liquidity to eligible lenders, which will then make direct loans to qualifying businesses facing current financial hardship as a result of COVID-19.

Borrower Eligibility

The Main Street Lending Program targets small and medium-sized businesses by providing two separate loan facilities: (1) the Main Street New Loan Facility, and (2) the Main Street Expanded Loan Facility. Both loan facilities contain the following borrower eligibility requirements:

- A borrower may only utilize one of the two loan facilities;
- The borrower may have up to 10,000 employees or up to $2.5 billion in 2019 annual revenue;
- The borrower must be a business that is created or organized in the U.S. or under the laws of the U.S. with significant operations, and a majority of its employees based, in the U.S.;
- The borrower will be required to make certain attestations (described below);
- The borrower will not be able to participate in the Primary Market Corporate Credit Facility; and
- The borrower, if eligible, may also participate in the Paycheck Protection Program.

NOTE: There is currently no clear guidance on affiliation rules with respect to employee count, and unlike borrowers receiving funds through the Paycheck Protection Program, loans received through the MSLP are not eligible for forgiveness.

Main Street New Loan Facility

A Main Street New Loan Facility loan is a new term loan originated on or after April 8, 2020 with the following features:

- The loan must be unsecured;
- 4-year maturity;
- Amortization of principal and interest deferred for one year;
- Adjustable rate of Secured Overnight Financing Rate (SOFR) + 250 – 400 basis points;
- Minimum loan size of $1 million;
- Maximum loan size is 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 four times the borrower's 2019 earnings before interest, taxes, depreciation and amortization ("EBITDA"); and
- No prepayment penalty.

NOTE: An origination fee of 1% of the principal amount of the loan is imposed on the borrower.

Main Street Expanded Loan Facility

This loan option involves a borrower upsizing an already existing eligible term loan facility. A Main Street Expanded Loan Facility is a term loan made to an eligible borrower that was originated before April 8, 2020. The upsized tranche of the loan must have the following features:

- 4-year maturity;
- Amortization of principal and interest deferred for one year;
- Adjustable rate of Secured Overnight Financing Rate (SOFR) + 250 – 400 basis points;
- Minimum loan size of $1 million;
- Maximum loan size that is the lesser 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 six times the borrower's 2019 EBITDA.
- No prepayment penalty.

NOTE: An origination fee of 1% of the principal amount of the upsized tranche is imposed on the borrower.

Borrower's Required Attestations

An eligible borrower seeking to participate in the MSLP must make the following attestations:

- The borrower must commit to refrain from (i) using the proceeds of the loan to repay other loan balances and (ii) repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless the borrower has first repaid the MSLP loan in full.
- The borrower will not seek to cancel or reduce any of its outstanding lines of credit with the MSLP lender or any other lender.
- The borrower requires financing due to the exigent circumstances presented by the coronavirus pandemic, and that, using the proceeds of the MSLP loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the loan.
- The borrower meets the EBITDA leverage conditions described above.
- The borrower 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. Those restrictions include:
    - Until 12 months after the MSLP loan is no longer outstanding, no stock buybacks of equity securities listed on a national securities exchange of the borrower or its parent (exceptions for contractual obligations entered into before March 27, 2020) and no dividend payments or capital distributions on common stock of the borrower.
    - During the period of the MSLP loan and for one year after the loan is no longer outstanding: (1) officers and employees whose total compensation exceeded $425,000 in 2019 is frozen (for 12 consecutive months), (2) officers and employees whose pay exceeds $425,000 cannot receive severance pay in excess of twice their total compensation in 2019, and (3) no officer or employee whose total compensation exceeded $3 million in 2019 may receive pay (for 12 consecutive months) in excess of the sum of (i) $3 million and (ii) 50% of the excess over $3 million of total compensation received in 2019.
- The borrower is eligible to participate in the program, including in light of the conflicts of interest prohibition in Section 4019(b) of the CARES Act (which generally prohibits the disbursement of CARES Act funds for any business that is directly or indirectly owned by the President or members of Congress).

Key Terms for Eligible Lenders

- The Federal Reserve will cease participation in the MSLP on September 30, 2020, unless extended.
- In addition to the 1% origination fee received from the borrower on the principal amount of the loan or the upsized tranche (as applicable), the eligible lender will receive a 25-basis point fee from the Federal Reserve on the principal amount of its participation in the loan or upsized tranche, as applicable.
- Eligible lenders will only retain 5% of new loans, or the upsized tranches, originated under the MSLP. A single common special purpose vehicle established by the Federal Reserve will purchase the remaining 95% from eligible lenders.
- The Federal Reserve term sheets require certain attestations from eligible lenders as well. Among other items, an eligi-

ble lender must attest: (i) that the proceeds of the loan will not be used to repay or refinance pre-existing loans or lines of credit made to the eligible borrower, (ii) that it will not cancel or reduce any existing lines of credit outstanding to the eligible borrower, and (iii) that (like the eligible borrower) the lender is eligible to participate in the program, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.

Like the Paycheck Protection Program, MSLP loans will be made directly through eligible lenders so borrowers will need to apply directly with their lending institution. Eligible borrowers should consult with their legal advisors and lenders so they can comply with the many restrictions associated with MSLP loans and can be well positioned to participate in the MSLP.

If you have any questions regarding the Main Street Lending Program, your eligibility to participate in the program or how it might affect your business, please contact:

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