Fed Rolls Out Main Street Lending Program Under CARES Act

Last Thursday, April 9, 2020, the Federal Reserve in conjunction with the U.S. Treasury established the Main Street Lending Program ("MSLP"), a new loan facility that covers a broader range of US employers, and supplements loans under the Paycheck Protection Program ("PPP").

Under the MSLP, the Federal Reserve will purchase up to $600 billion in loans originated by FDIC insured banks. Originating banks keep 5% of the MSLP loans they underwrite and the US Treasury will guaranty $75 billion of the loans purchased by the Federal Reserve.

Similar to the PPP loan program, companies will work directly with their bank to obtain an MSLP loan. Unlike the PPP loan program, the SBA will not play a role in the MSLP program. The great news is a company can obtain both a PPP loan and MSLP loan, assuming all conditions are met.

An MSLP loan can be a new facility ("New Loan"), or added to an existing facility ("Supplemental Loan").

The following conditions apply to all MSLP loans:

- Businesses with up to 10,000 employees or as much as $2.5 billion in 2019 revenues are eligible;
- Minimum loan size is $1 million;
- The loan will mature within 4 years;
- The interest rate will be the Secured Overnight Financing Rate ("SOFR"), plus 2.5 to 4 %. SOFR floats daily. (The Federal Reserve plans on replacing LIBOR with SOFR by 2022);
- Principal and interest payments are deferred for the first year;
- All or part of the loan may be pre-paid, at any time, without penalty;
- The maximum amount of a *New Loan* is the lesser of (i) $25 million, or (ii) an amount when added to the borrower's unused credit facility does not exceed 4 times EBITDA for 2019;
- The maximum amount of a *Supplemental Loan* is the lesser of (i) $150 million, (ii) 30% of the borrower's unused credit facility, or (iii) an amount when added to the borrower's unused credit facility does not exceed 6 times EBITDA for 2019;
- The lender must attest the loan proceeds are not used to repay or re-finance existing loans;
- The borrower must agree to not use the loan proceeds to pay other loans or long term debt. The borrower must also use reasonable efforts to maintain payroll and employees during the loan term;
- The borrower cannot pay dividends or buy back stock during the loan term, or for 12 months after the loan is repaid;
- The borrower's executives and officers who earned $425,000 or more in 2019, cannot receive a pay increase during the loan term; and
- The lender may charge an origination fee up to 1% of loan amount.

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MSLP loans cannot be stacked. A borrower can only apply for either a New Loan or Supplemental Loan. As noted above, obtaining a PPP loan does not disqualify a borrower from obtaining a MSLP loan.

Many of the restrictions for PPP loans do not apply to MSLP loans. While the borrower must be incorporated in the US, only a significant portion of its operations must be located in America. Additionally, only a majority of the borrower's employees must work in the US. The SBA's rules on affiliated entities and borrowers do not apply to MSLP loans.

Whether an MSLP must be wholly or partially secured is left to the lending bank.

While the MSLP loan program appears to be aimed at larger companies, given the minimum loan amount of $1,000,000, it covers a wider range of businesses, with domestic and foreign operations, as well as domestic and foreign employees. It will cover many of the private equity backed companies potentially excluded under the PPP loan program because of the SBA's affiliation rules.

The MSLP represents a significant increase in US governmental financial assistance related to the COVID-19 pandemic. While it does not incorporate the loan forgiveness component of the PPP, for many companies it may represent a much larger and more crucial source of funding. However, without SBA involvement, far less uniformity of loan terms is anticipated and therefore individual business' relationships with their bankers may be even more critical than has been the case to date.

This advisory is for information purposes only, and does not constitute legal advice. If you would like to discuss the impact of COVID-19 on you or your business, please contact Joe Laferrera, Aaron Kriss, or Sean Gilligan at (617) 350-6800, or email them at joe.laferrera@gesmer.com, aaron.kriss@gesmer.com, or sean.gilligan@gesmer.com.

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