

CLIENT ALERT

Federal Reserve Board Enhances COVID-19 Stimulus Package for Small and Mid-Sized Businesses by Creating a Main Street Lending Program

Apr. 10. 2020

As part of a larger \$2.3 trillion liquidity package, effective as of April 9, 2020, the Board of Governors of the Federal Reserve System (the “Fed”) with the financial support of the Department of the Treasury, has established the Main Street New Loan Facility (the “MSNLF”) and the Main Street Expanded Loan Facility (the “MSELF”). These loan facilities are authorized under Title IV of the recently enacted CARES Act economic stimulus legislation. The MSNLF provides terms and conditions for loans to Eligible Borrowers which are made by Eligible Lenders *after* April 8, 2020. The MSELF provides terms and conditions for loans to upsize an Eligible Borrower’s existing loan facility if it had been made by an Eligible Lender *prior to* April 8, 2020. The combined MSNLF and MSELF programs will be up to \$600 billion. The Federal Reserve will commit to lend to a newly created special purpose vehicle (the “SPV”) which will in turn purchase 95% of a loan made by an Eligible Lender pursuant to the MSNLF or the MSELF thereby creating additional liquidity for Eligible Lenders to issue additional loans under these programs. It is important to note that Eligible Borrowers may not participate in both programs nor may an Eligible Borrower participate in the Fed’s Primary Market Corporate Credit Facility. Businesses, however, that have participated in the SBA’s Paycheck Protection Program *are* eligible to participate in either of the MSNLF or the MSELF. Prior to opening up the application process, the Fed is soliciting comments on this and its other COVID-19 related programs recognizing that “businesses vary widely in their financing needs, particularly at this time, and, as the program is being finalized, will continue to seek input from lenders, borrowers, and other stakeholders to make sure the program supports the economy as effectively and efficiently as possible while also safeguarding taxpayer funds.” Comments may be submitted to the Fed through the following link through April 16, 2020:

<https://www.federalreserve.gov/apps/contactus/feedback.aspx?refurl=/main/>.

Eligible Lenders (both MSNLF and MSELF):

Eligible Lenders are U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies.

Eligible Borrowers (both MSNLF and MSELF):

Eligible Borrowers are businesses with up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues. Each Eligible Borrower must be a business that is created or organized in the United States or under the laws of the United States with significant operations, and a majority of its employees based, in the United States.

Eligible Loans:

MSNLF

MSELF

1. New unsecured term loan originated <i>on or after</i> April	1. Term loan made by an Eligible Lender to an Eligible
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8, 2020 with the following features:	Borrower <i>prior to</i> April 8, 2020 provided the upsized tranche has the following features:
a. 4-year maturity	a. Same
b. 1-year deferred principal and interest amortization	b. Same
c. Adjustable rate of SOFR plus 250-400 basis points	c. Same
d. Minimum loan size of \$1 million	d. Same
e. Maximum loan size is the lesser of: (i) \$25 million or (ii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed four times the Eligible Borrower's 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA")	e. Maximum loan size is the lesser of: (i) \$150 million, (ii) 30% of the Eligible Borrower's existing outstanding and committed but undrawn bank debt, or (iii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed six times the Eligible Borrower's 2019 "EBITDA"
f. No Prepayment penalty	f. Same

Conditions: In addition to certifications required by applicable statutes and regulations:

MSNLF

MSELF

1. The Eligible Lender must attest that the proceeds of the Eligible Loan will not be used to repay or refinance pre-existing loans or lines of credit made by the Eligible Lender to the Eligible Borrower.	1. The Eligible Lender must attest that the proceeds of the upsized tranche of the Eligible Loan will not be used to repay or refinance pre-existing loans or lines of credit made by the Eligible Lender to the Eligible Borrower, <i>including the pre-existing portion of the Eligible Loan.</i>
2. The Eligible Borrower must commit to refrain from using the proceeds of the Eligible Loan to repay other loan balances. The Eligible Borrower must commit to refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless the Eligible Borrower has first repaid the Eligible Loan in full.	2. The Eligible Borrower must commit to refrain from using the <i>proceeds of the upsized tranche of the Eligible Loan</i> to repay other loan balances. The Eligible Borrower must commit to refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless the Eligible Borrower has first repaid the Eligible Loan in full.
3. The Eligible Lender must attest that it will not cancel or reduce any existing lines of credit outstanding to the Eligible Borrower. The Eligible Borrower must attest that it will not seek to cancel or reduce any of its outstanding lines of credit with the Eligible Lender or any other lender.	3. Same
4. The Eligible Borrower must attest that it requires financing due to the exigent circumstances presented by the coronavirus disease 2019 ("COVID-19") pandemic,	4. The Eligible Borrower must attest that it requires financing due to the exigent circumstances presented by the "COVID-19" pandemic, and that, using the

and that, using the proceeds of the Eligible Loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the Eligible Loan.	<i>proceeds of the upsized tranche of the Eligible Loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the upsized tranche of the Eligible Loan.</i>
5. The Eligible Borrower must attest that it meets the EBITDA leverage condition stated in the required features of Eligible Loans.	5. Same
6. The Eligible Borrower must attest that it 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.	6. Same
7. Eligible Lenders and Eligible Borrowers will each be required to certify that the entity is eligible to participate in the facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.	7. Same

Fees:

For the MSNLF –

The Eligible Lender will pay the SPV a facility fee of 100 basis points of the principal amount of the loan participation purchased by the SPV which the Eligible Lender may pass through to the Eligible Borrower. The Eligible Borrower will also pay the Eligible Lender an origination fee of 100 basis points of the principal amount of the Eligible Loan. The SPV will pay the Eligible Lender an annual servicing fee of 25 basis points of the principal amount of the purchased participation.

For the MSELF-

The Eligible Borrower will also pay the Eligible Lender an origination fee of 100 basis points of the principal amount of the upsized tranche of the loan at the time of upsizing. The SPV will pay the Eligible Lender an annual servicing fee of 25 basis points of the principal amount of its participation in the upsized tranche.

SPV Participation Mechanics:

For the MSNLF –

The SPV will purchase a 95% participation in an Eligible Loan at par value with the Eligible Lender retaining 5%. The SPV and the Eligible Lender will share risk on a *pari passu* basis.

For the MSELF-

The SPV will purchase a 95% participation in the upsized tranche of the Eligible Loan, provided it was upsized on or after April 8, 2020, at par value. The SPV and the Eligible Lender will share risk on a *pari passu* basis. If there is collateral securing the loan, the collateral will secure the participation on a *pro rata* basis.

The SPV will continue to purchase participations from Eligible Lenders through September 30, 2020 and will continue to fund the SPV until its assets have either matured or have been sold.

As of this writing, the Fed has not provided guidance as to when Eligible Lenders may commence taking applications for either MSNLF or MSELF loans. Given that the Fed will be taking comments through April 16, 2020 and it has specifically indicated that either it or the Treasury may make adjustment to the terms and conditions of these programs, it may be at least a week before a formal application process is rolled out by Eligible Lenders. On the other hand, if you believe that you are eligible for either program to fill a gap in cash flow, we believe that it would be prudent to contact your existing lender now to express your interest and to request that you receive notification as soon as the lender is ready to take applications.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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