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Main Street Loan Guidelines Released By Treasury and Federal Reserve

On April 9, 2020, the U.S. Treasury and the Federal Reserve announced the details of the Main Street New Loan Facility ("New Loan Facility"), which covers loans originating *after* April 8, 2020, and Main Street Expanded Loan Facility ("Expanded Loan Facility"), which covers loans originating *before* April 8, 2020. These loans are designed to provide financing to lenders that make direct, unsecured loans to qualifying businesses. These emergency lending facilities will support businesses that were in good financial standing before the pandemic and that may be too small to access broader capital markets or the Federal Reserve's facilities supporting larger corporations, or that may not qualify for the SBA's Paycheck Protection Program ("PPP"), whether as a result of not meeting the PPP loan requirements or more stringent guidelines imposed by SBA lending banks. However, businesses that have taken advantage of the PPP may also qualify for these loans.

Eligibility

Any business with up to 10,000 employees or up to $2.5 billion in 2019 annual revenues is eligible to apply. Those businesses must be formed 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. Borrowers may not participate in both the New Loan Facility and the Expanded Loan Facility. Borrowers should contact their lenders to inquire about the specifics of loan eligibility as each lender may have its own qualifications.

Lenders

All U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies are eligible lenders. Businesses should contact their lenders to inquire about participation. As with the PPP loan program, it is unclear whether participating lenders will require companies seeking these loans to hold accounts with the lender or have existing credit facilities with that lender.

Loan Amounts

Under the New Loan Facility, eligible businesses may borrow up to four times their 2019 earnings before interest, taxes, depreciation and amortization ("EBITDA"), minus existing outstanding and committed but undrawn debt. The minimum loan amount under this program is $1 million and the maximum amount for any entity is $25 million.
Under the Expanded Loan Facility, an eligible business may obtain extended credit on a pre-existing loan originated before April 8, 2020, up to the lesser of (i) $150 million, (ii) 30% of the business existing outstanding and committed but undrawn bank debt, or (iii) six times the borrower's 2019 EBITDA minus the borrower's existing outstanding and committed but undrawn debt. The minimum loan under the Expanded Loan Facility Program is $1 million and the maximum amount for any entity is $150 million. There remains some ambiguity regarding how lenders will calculate these amounts. The Treasury is expected to provide additional guidance as businesses begin to use the program.

Loan Features

- 4-year maturity;
- Principal and interest deferred for one year;
- Adjustable rate equal to the Secured Overnight Financing Rate (currently at .01%) plus 2.5%-4.0% per annum; and
- Prepayment permitted without penalty or premium.

Other Terms

- Loans do not qualify for any forgiveness;
- Loans cannot be used to repay other loan balances;
- Application fee of up to 1.0% of the new principal amount;
- The Borrower must certify that it requires financing due to the exigent circumstances presented by the coronavirus disease 2019 ("COVID-19") pandemic, and that it will, using the loan proceeds, make reasonable efforts to maintain its payroll and retain its employees during the loan term. The Treasury has not explained the details of what efforts must be taken;
- Borrowers may not pay dividends or make any other capital distributions on common stock, or repurchase any of its stock for one year after taking the loan. The Federal Reserve has not provided any guidance on how this restriction affects capital distributions to other classes of stock or other types of entities, such as pass-through entities;
- Borrowers must also agree to the following limitations on compensation as outlined in Sec. 4004 of the CARES Act, including, between the date of the loan and 1 year after the loan is no longer outstanding:
    - For any non-union employee or officer whose 2019 total compensation exceeded $425,000, total compensation for any consecutive 12-month period may not exceed 2019 total compensation levels.
    - For any employee or officer whose 2019 total compensation exceeded $3.0 million, total compensation for any consecutive 12-month period may not exceed the sum of (i) $3.0 million plus (ii) 50 percent of the excess over $3.0 million.
    - For any person in either of the above categories, severance upon termination may not exceed two times 2019 maximum total compensation.
- Borrowers must certify that they meet the EBITDA leverage condition listed above and are eligible to participate in the program, including meeting the conflicts of interest prohibition in Sec. 4019(b) of the CARES Act
    - Section 4019(b) prohibits the President, Vice President, head of an executive department or a member of Congress (and the spouse, child and/or son or daughter-in-law) from directly or indirectly holding twenty percent or more of any class of shares in an entity applying for loan and/or from being the chief executive officer or chief financial officer (or similar roles) of such entity.

For the term sheet for the New Loan Facility, as released by the Federal Reserve, click here.
For the term sheet for the Expanded Loan Facility, click here.

Further Help

We understand that at this time of crises these additional requirements may prove difficult for many employers. They also may be the springboard for litigation and problems down the road. Our team stands ready to help. For further assistance, do not hesitate to call any member of our team:

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