MID-SIZED BUSINESSES, THE CARES ACT CARE(S) ABOUT YOU!

Posted on April 30, 2020 by Michelle F. Schwerin

Tags: CARES Act, COVID - 19, COVID - Business, Danielle Durban, Michelle Schwerin

The information on this post is current as of 4/29/2020. After being signed into law on **March 27, 2020**, much of the focus surrounding the Coronavirus Aid, Relief, and Economic Security Act (the "**CARES Act**") has centered around the Paycheck Protection Program and the Economic Injury Disaster Loan and Emergency Grant. Both programs are designed to provide relief to small businesses (primarily those with under 500 employees).

But what about mid-sized businesses? Or businesses that need vital financial support, but do not meet the definition of a "small business concern" due to affiliation rules?

Good news: the CARES Act *does* "care" and now encourages the Federal Reserve and Treasury to implement additional lending programs.

CARES Act Provides Assistance For Mid-Sized Businesses

Section 4003(c)(3)(D)(ii) of the CARES Act provides that the "Federal Reserve establish a Main Street Lending Program or other similar program or facility that supports lending to small and mid-sized businesses." **Section 4003(c)(3)(D)(i)** directs the Treasury to assist in implementing the program.

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Federal Reserve and Treasury Announce Lending Program for Mid-Sized Businesses

On **April 9, 2020**, the Federal Reserve, published term sheets for a Main Street Lending Program for small and/or mid-size businesses.

This program was announced as one of four CARES Act programs, including:

- (1) providing funds (financial liquidity) to the lenders supplying 7(a) Paycheck Protection Program Loans;
- (2) expanding certain credit facilities for highly rated (i.e., investment grade) borrowers; and
- (3) a municipal credit facility for states and cities).

There are actually two separate loan programs under the Main Street Lending Program—the **Main Street Lending Program and** the **Main Street Expanded Lending Program**. Comments from lenders and borrowers concerning the two programs were due to the Federal Reserve on **April 16**, and we await further guidance regarding the implementation, application process, etc.

This is what we know thus far:

The Federal Reserve will establish an entity to purchase 95% of each Main Street Loan that a bank and/or savings & loan company (the "Lenders") makes to a small and/or mid-size business. The programs still rely on the Lenders to make the actual loans, either as a new loan ("**Main Street Lending Program**") ***or*** as an increase to an already existing loan ("**Main Street Expanded Lending Program**"). However, lenders will be encouraged to extend the loans because the Federal Reserve will assume 95% of the default risk.

The proposed terms of the programs are similar (aside from the loan amount and the collateral required) and are outlined below:

Main Street Lending Programs

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	MAIN STREET LENDING PROGRAM	MAIN STREET EXPANDED LENDING PROGRAM
Eligibility Requirements:	A lender cannot extend credit to the same company under both the Main Street Lending Program and the Main Street Expanded Lending Program. However, small businesses that applied for and/or received a 7(a) Paycheck Protection Program loan are also eligible for either of the Main Street Lending Programs. **So long as the business has:** 1. no more than 10,000 employees, and a majority of the employees are based in the United States (note: *affiliate rules may apply to this program*) **OR** 2. annual revenues of less than $2.5 billion **AND** was created/organized in the United States and was in good financial standing before the economic impact of COVID-19, it will be eligible to participate.	
Terms of The Loan:	• **4 year** maturity date • **2.5%—4.0% interest rate** • 1 year deferral of principal and interest payments • No collateral or personal guarantee required • Unlike the PPP Program, there are no provisions for loan forgivability.	• **4 year** maturity date • **2.5%—4.0% interest rate** • **1 year deferral** of principal and interest payments • **No** *new* security required (the new loan may be secured by the assets securing the original loan) • Unlike the PPP Program, there are no provisions for loan forgivability.

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	MAIN STREET LENDING PROGRAM	MAIN STREET EXPANDED LENDING PROGRAM
Loan Amount:	From **$1 million** up to the ***lesser* of (i) $25 million or (ii)** an amount that, when added to the business' outstanding and committed, but undrawn debt, does not exceed **four times** the business' **EBITDA** ("earnings before interest, taxes, depreciation, and amortization).	From **$1 million** up to the ***lesser* of (i) $150 million or (ii) 30%** of the borrower's existing outstanding and committed, but undrawn bank debt or (iii) an amount that, when added to the business' outstanding and committed, but undrawn debt, does not exceed **six times** the business' **EBITDA** ("earnings before interest, taxes, depreciation, and amortization).

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	MAIN STREET LENDING PROGRAM	MAIN STREET EXPANDED LENDING PROGRAM
Certifications:	In addition to certifications required by applicable statutes and regulations, the business must attest that it meets the qualification requirements to participate in the Main Street Lending Program and that it will comply with the following requirements: • The business cannot use the proceeds to pay down other indebtedness to the lender or to satisfy or reduce any existing lines of credit with the lender, and they cannot use the proceeds to repay loan balances; • The business may not repay other debt of equal or lower priority, with the exception of mandatory principal payments, before repaying the Main Street Program loan; • Through September 30, 2020, the business must maintain its employment levels as of March 24, 2020, to the extent practicable, and shall not reduce its employment levels by more than 10%; • The business must make reasonable efforts to maintain payroll and retain employees during the term of the loan; • The business must certify its need for financing due to the COIVD-19 pandemic; **AND** • For the term of the loan and for a period of one year thereafter: - neither the business nor any parent company (or, in specified industries, an "affiliate") may purchase publicly traded securities, except to the extent required under a preexisting contractual obligation as of March 27, 2020; - the business may not pay any dividends or make any distributions with respect to its common stock; - in general, officers or employees with more than $425,000 in total compensation in 2019 (including bonuses, equity awards, and other financial benefits) may not receive an increased salary or severance benefits more than twice their 2019 compensation; - officers or employees with more than $3,000,000 in total compensation in 2019 (including bonuses, equity awards, and other financial benefits) will be limited to compensation of the sum of $3,000,000 plus 50% of the officer/employee's 2019 compensation in excess of $3,000,000.	

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	MAIN STREET LENDING PROGRAM	MAIN STREET EXPANDED LENDING PROGRAM
Application Process:	Business may apply through **September 30, 2020**, with additional details in future guidance.	

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