BCLP. Client Intelligent

RetailLawBCLP

U.S. ECONOMIC STIMULUS UNDER THE MAIN STREET LENDING PROGRAM

Apr 16, 2020

On April 9, 2020, the Federal Reserve (the "Fed") announced that it is taking additional action to provide up to $2.3 trillion in loans to support the economy through various programs, including the Main Street Lending Program ("MSLP"). The Fed intends that the MSLP will ensure credit flow to small and mid-sized businesses by providing support to businesses that were in good financial standing prior to the COVID-19 crisis, on terms and conditions to be set by the Federal Reserve Board. Funds for MSLP were appropriated pursuant to Section 4027 of Title IV of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"), and the program is being established under Section 13(3) of the Federal Reserve Act (12 U.S.C. § 344).

MSLP consists of two facilities:

- The Main Street New Loan Facility ("MSNLF") for **unsecured** term loans originated on or after April 8, 2020; and
- The Main Street Expanded Loan Facility ("MSELF") for upsize tranches of **secured or unsecured** term loans originated before April 8, 2020 (provided the upsize is on or after April 8, 2020).

As detailed below, the collateral packages and maximum loan sizes are the primary differences between the two facilities.

A Federal Reserve Bank will commit to lend funds (in an amount expected to result in up to $600 billion in MSLP loan purchases) to a special purpose vehicle ("SPV") that the Department of the Treasury ("Treasury") will capitalize with a $75 billion equity investment using its Exchange Stabilization Fund, made available under Section 4027 of the CARES Act (part of the $454 billion previously authorized under the CARES Act). The SPV will use the proceeds of such loans and the Treasury's equity investment to purchase up to a 95% participation in loans made by "Eligible Lenders" (defined below) to "Eligible Borrowers" (defined below). The SPV and the Eligible Lender will share risk on a *pari-passu* basis. The SPV will cease purchasing participations on September 30, 2020, unless the Fed and the Treasury extend the program.

Because comments are being accepted regarding MSLP until April 16, 2020, details of the program are still being finalized. The Term Sheets that the Fed published last week indicate the following:

An "**Eligible Lender**" is a U.S. insured depository institution, U.S. bank holding company, or a U.S. savings and loan holding company.

An “**Eligible Borrower**” is a business:

- with up to 10,000 employees or up to $2.5 billion in 2019 annual revenues; and
- that is created or organized in the U.S. or under the laws of the U.S. with significant operations in and a majority of its employees based in the U.S._

Loan Terms and Requirements:

- Loans provided under MSLP are not eligible for loan forgiveness.
- MSNLF loan size between $1 million and $25 million.
  - 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”). Note that the Term Sheet does not reference the “add-backs” that are typical of EBITDA definitions in loan documents.
  - MSNLF loans are unsecured.
- MSELF loan size between $1 million and $150 million.
  - 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 EBITDA.
  - Any collateral securing the existing loan will secure the upsized tranche on a pro rata basis.
- 4 year maturity.
- Principal and interest payments deferred for one year.
- Interest rate of Secured Overnight Financing Rate + 250-400 basis points.
- No prepayment penalty.
- Facility fee of 100 basis points for MSNLF loans (payable by the Eligible Lender to the SPV, although the Eligible Lender may require the Eligible Borrower to pay this fee).
- Origination fee of 100 basis points of the principal amount of a MSNLF loan or of the principal amount of the upsize tranche of an MSELF loan, payable by the Eligible Borrower to the Eligible Lender.
- The SPV will pay the Eligible Lender 25 basis points per annum for loan servicing

- The Eligible Borrower must attest that it requires financing due to exigent circumstances presented by the COVID-19 pandemic.
- The Eligible Borrower must attest 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 loan proceeds cannot be used to repay or refinance existing loans (including, for MSELF loans, the pre-existing tranche of the loan that is being upsized).
- The Eligible Borrower cannot repay other debt of equal or lower priority (except mandatory principal payments) until the MSLP loan is repaid in full.
- The Eligible Lender cannot cancel or reduce any existing lines of credit, and the Eligible Borrower cannot seek cancellation or reduction of any outstanding lines of credit.
- The Eligible Borrower must follow compensation, stock repurchase, and capital distribution restrictions set forth in the CARES Act.
- The Eligible Borrower and the Eligible Lender must each certify eligibility to participate in MSLP, including that they do not have a conflict of interest prohibited by the CARES Act.
- Businesses can take advantage of loans made under MSLP in addition to the SBA Section 7(a) Paycheck Protection Program loans. Note, however, that Eligible Borrowers must elect among the MSNLF, MSELF, and the Primary Market Corporate Credit Facility, and may not participate in more than one of these programs.
- The Term Sheets imply that foreign ownership may not disqualify a borrower, but that a U.S. holding company with no operations may not be eligible for MSLP. We expect further guidance on the "up to" 10,000 employees rule—at present there is no guidance on the minimum number of employees.

Like with other programs implemented by the CARES Act, BCLP is tracking these developments closely, and will continue to publish additional guidance over the coming weeks.

---

[1] See Federal Reserve, Term Sheet: Main Street New Loan Facility (April 9, 2020), https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a7.pdf; Federal Reserve, Term Sheet: Main Street Expanded Loan Facility (April 9, 2020), https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a4.pdf (collectively, the "Term Sheets").

[2] A business that receives a loan or loan guarantee under Title IV of the CARES Act must agree that during the lifetime of such loan or guarantee, it will not pay total compensation (meaning salary, bonuses, award of stock, and other financial benefits) that exceeds the following limits:

- The total compensation during any consecutive 12 months for any officer or employee who made over $425,000 in 2019 may not exceed their 2019 total compensation, and severance or other benefits on termination of employment may not exceed twice their 2019 maximum total compensation.

- The total compensation during any consecutive 12 months for any officer or employee who made over $3,000,000 in 2019 may not exceed the sum of $3,000,000, and 50% of the compensation the officer or employee received over $3,000,000 in 2019.

RELATED PRACTICE AREAS

- Retail & Consumer Products

MEET THE TEAM

Merrit M. Jones

San Francisco

merrit.jones@bclplaw.com
+1 415 675 3435