BURR ALERT

Federal Reserve Announces New Programs for Mid-Size Business Relief

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In addition to its much-discussed small business relief programs, the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act" or the "Act") included $500 billion in funds for relief for businesses not otherwise eligible for small business relief under the Act. Of this amount, at least $454 billion is to be made available for loans, loan guarantees and other investments in programs or facilities established by the Board of Governors of the Federal Reserve System (the "Federal Reserve") under its monetary and lending powers.

On April 9, 2020, the Federal Reserve announced two new, related programs that will leverage a portion of these funds from the CARES Act to encourage lenders[1] to extend either new loans under the Main Street New Loan Facility ("MSNLF") or upsize outstanding loans under the Main Street Expanded Loan Facility ("MSELF") (both the MSNLF and the MSELF, the "Facilities"). It is important to remember that obtaining relief under these Facilities requires approval from your bank. You should discuss accessing additional funds under these Facilities with your bank, but keep in mind that loans issued or upsized in connection with the Facilities come with certain restrictions on your ability to engage in stock buybacks, pay dividends, and increase compensation to certain employees. The Facilities are expected to close on September 30, 2020.

Is Your Business Eligible?

Your business is eligible to obtain a loan or upsize a loan in connection with the Facilities if:

- U.S. Business Criteria: The business is organized in the United States, has significant U.S. operations and a majority of its employees are based in the United States.
- Size Criteria: The business either (i) employs no more than 10,000 employees or (ii) had no more than $2.5 billion in 2019 annual revenues.

If your business has participated or plans to participate in the "Primary Market Corporate Credit Facility,"[2] pursuant to which the Federal Reserve may purchase some portion your business's investment-grade debt, you cannot participate in the Facilities. Likewise, if your business has

[1] Lenders eligible for the Facilities are U.S. insured deposit institutions, U.S. bank holding companies, and U.S. savings and loan holding companies. The Federal Reserve will encourage these lenders by establishing a vehicle that will purchase 95% participations in the loans under the MSNLF and the upsized tranches under the MSELF. The lenders would retain 5% of such loans or upsized tranches.
[2] Only certain issuers are eligible for the Primary Market Corporate Credit Facility.

participated or plans to participate in the MSNLF, your business cannot participate in the MSELF, and vice versa.

You should ask your bank what documentation it will require to verify eligibility. You will be required to certify that your business is eligible to participate in the Facilities.[3]

Features of Loans under the Facilities

Loans originated on or after April 8, 2020 may be eligible for the MSNLF, and loans that originated prior to April 8, 2020 may be eligible for the MSELF. Loans extended or upsized in connection with both Facilities are subject to similar terms. However, note that that new loans arising in connection with the MSNLF do not require collateral, whereas MSELF loans may do so.

	MSNLF Terms	**MSELF Terms**
Collateral?	No	Maybe, whether under terms of original loan or upon upsizing
Term	4 years	
Deferral	Principal and interest amortization deferred for 1 year.	
Interest rate	Adjustable rate based on SOFR + 2.5-4%	
Minimum Loan Amount	$1 million	
Maximum Loan Amount	Lesser of (i) $25 million or (ii) an amount that, when added to your business's existing outstanding and committed but undrawn debt, does not exceed <u>4 times</u> your business's 2019 EBITDA	Lesser of (i) $150 million, (ii) 30% of your business's outstanding and committed but undrawn bank debt, or (iii) an amount that, when added to your business's existing outstanding and committed but undrawn debt, does not exceed <u>6 times</u> your business's 2019 EBITDA
Prepayment	No prepayment penalty	

Unlike the new paycheck protection program created by the CARES Act, loans issued or upsized in connection with these Facilities are not forgivable. Additionally, if your business is already highly leveraged, you should be mindful that your maximum loan amount may be significantly lower than $25 million or $150 million, as applicable. Your business must certify that it meets the applicable EBITDA leverage condition described with respect to the MSNLF and MSELF.

Use of Loan Proceeds

These loans will require your business to promise to refrain from using the loan proceeds to repay other loan balances. Specifically, the business must commit to refrain from paying other debt of equal or lower priority (except for mandatory payments of principal) until it has repaid the MSNLF loan or MSELF loan in full.

[3] Under the CARES Act, businesses in which certain individuals with high-level positions in Federal government own 20% or more, by vote or value, are not eligible for relief. These individuals include the President, Vice President, a head of an Executive department or a Member of Congress and, in each case, certain family of such individual. If this prohibition applies to your business, it is not eligible.

In addition, your business will be required to certify that the financing is required due to the economic conditions caused by the COVID-19 pandemic and that, through use of the proceeds of a loan issued or upsized in connection with these Facilities, your business will make reasonable efforts to maintain its payroll and retain employees during that loan's term.

Restrictions on Your Business

A business that is issued or upsizes a loan in connection with the Facilities is subject to the CARES Act's restriction on so-called direct loans. Your business must agree to the following:

- No stock buybacks: Until the date that is 12 months after the date on which the loan is no longer outstanding, your business cannot repurchase any of its equity securities listed on a national securities exchange or any equity securities of its parent company, except as required by contractual obligation effective prior to March 27, 2020.
- No dividends: Until the date that is 12 months after the date on which that loan is no longer outstanding, the borrower cannot pay dividends or make any other capital distributions with respect to its common stock.
- No increase to compensation of certain highly-compensated employees: Until 1 year after the date on which such loan is no longer outstanding, no officer or employee whose total compensation for 2019 exceeded $425,000 can receive compensation in any 12-month period which exceeds his/her 2019 compensation or receive any severance pay or other benefits upon termination which exceed an amount equal to twice his/her 2019 compensation. If an officer or employee received total compensation in excess of $3,000,000 in 2019, then, until 1 year after the date on which such loan is no longer outstanding, he/she cannot receive total compensation for any 12-month period which exceeds the sum of $3,000,000 plus 50% of the excess over $3,000,000 which such employee or officer received in 2019. For these purposes, you must include stock awards and other financial benefits, along with salary and bonuses, in total compensation.

You should balance your business's need for liquidity in these challenging times against these restrictions, which would apply for the term of the loan plus 1 year.

Relief for mid-size businesses will likely continue to develop. In addition to the Facilities, the CARES Act instructs the Treasury Secretary to endeavor to develop a special "mid-size business relief" program or facility that would be available for businesses with between 500 to 10,000 employees and would have its own special rules, summarized here. As with the Facilities, this other program would be administered through private lenders. You should continue to work closely with your bank to assess your financial needs as further programs or facilities are created and guidance develops.

To discuss this further, please contact:

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