Alert

April 9, 2020

COZEN O'CONNOR

Financial Relief Arrives for Small and Mid-Size Businesses

On April 9, 2020, the Federal Reserve, in conjunction with the Treasury Department, announced additional actions to support small and mid-sized businesses through an expansion of the Main Street Lending Program. The Federal Reserve, via its authority under § 13(3) of the Federal Reserve Act, stated that this expansion will provide up to $600 billion in loans through commercial lenders backstopped by a new special purpose vehicle. The program is effective immediately and will continue through September 30, 2020, absent an extension by the Federal Reserve and Treasury. Although these facilities are effective April 9, the Federal Reserve and Treasury are accepting comments to the available term sheets prior to finalization of the programs on **April 16**.

To account for businesses that both have term loans prior to or after April 8, 2020, the Federal Reserve intends to create two separate facilities: (1) Main Street New Loan Facility and (2) Main Street Expanded Loan Facility (hereinafter the Main Street Facilities). Eligible businesses may only participate in one of the Main Street Facilities, and such participation will be based upon the origination date of unsecured term loans meeting the requirements discussed further below. Notably, however, the Federal Reserve has also stated that eligible businesses that have received Paycheck Protection Program (PPP) loans **are** eligible to participate in the Main Street Facilities.

Businesses eligible for loans under the Main Street Facilities may have up to 10,000 employees **or** up to $2.5 billion in 2019 annual revenues. Similar to direct loans available under the CARES Act, eligible businesses must be created or organized in the United States as well as have a majority of its employees and significant operations within the United States. The Main Street Facilities also incorporate certain CARES Act restrictions, namely prohibiting applicants from participating in stock repurchases or dividend distributions, as well as restricting compensation for certain employees. These restrictions apply until one year **after** the loan is no longer outstanding.

Additionally, the summary provided by the Federal Reserve and the available term sheets state that eligible businesses "must commit to make reasonable efforts to maintain payroll and retain workers," but such language is not included in the available term sheets detailing the Main Street Facilities. Instead, the term sheet requires an applicant to attest that, using the loan funds, it "will make reasonable efforts to maintain its payroll and retain employees during the term" of the loan. These statements mirror language under § 4003(c)(2)(G) of the CARES Act, but the term sheet does not directly reference or incorporate such provision. We expect the Federal Reserve and Treasury to clarify these potential requirements as they receive comments from the public prior to finalization of the Main Street Facilities on April 16, 2020.

Eligible businesses may seek unsecured term loans under the Main Street Facilities from any FDIC insured bank. Such loans must have a term of **four** years, with amortization of principal and interest deferred for 12 months following receipt of the loan. Prepayment is also permitted without penalty, and loans are available with an adjustable rate of SOFR (currently .01 percent) + 250-400 basis points.

Eligible borrowers under either Main Street Facility must apply for **at least** $1 million. For entities seeking loans under the Main Street New Loan Facility, the maximum loan size is the lesser of (a) **$25 million** or (b) an amount that does not exceed **four times** the eligible borrower's 2019 EBIDTA after accounting for existing outstanding and committed but undrawn debt.

Entities applying under the Main Street Expanded Loan Facility may apply for maximum loan size that is the lesser of (a) **$150 million**, (b) 30 percent of the applicant's existing outstanding and committed but undrawn bank debt, or (c) an amount that does not exceed **six times** the eligible borrower's 2019 EBIDTA after accounting for existing outstanding and committed but undrawn debt.

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Applicants under either Main Street Facility must submit a number of attestations, in addition to those currently required by applicable statutes and regulations, including the following:

- The borrower requires financing due to the exigent circumstances of the COVID-19 pandemic.
- The borrower meets the eligibility requirements to participate in the facility, including the conflicts of interest prohibition in § 4019(b) of the CARES Act.
- The borrower meets the EBITDA leverage conditions specified above.
- The borrower "will not seek to cancel or reduce any of its outstanding lines of credit" with any lender.

We encourage all potential businesses to review internal financial statements and employee levels to determine eligibility under the Main Street Facilities. As with other federal actions relating to COVID-19, the Federal Reserve's announcement and subsequent term sheets will likely evolve following consultation with both the public and private sectors. We are constantly reviewing these changes in order to place our clients in optimal positions to remain financially stable during the COVID-19 pandemic.

Should you have any questions regarding the foregoing, please do not hesitate to reach out to Cozen O'Connor's COVID-19 Task Force.