

Federal Reserve Reworks Main Street Loan Program; SBA Promises To Audit PPP Loans In Excess Of \$2M Before Forgiveness Approved

April 30, 2020

(Last updated April 30, 2020)

Main Street Business Lending Program Adjustments

On April 30, 2020, the Federal Reserve (Fed) announced modifications to the Main Street Business Lending Program (the "Program"). In our original client alert on the program (issued April 9, 2020 – which can be [found here](#)), we discussed both the Main Street Expanded Loan Facility (MSELF) and the Main Street New Loan Facility (MSNLF). This morning, the Fed added the Main Street Priority Loan Facility (MSPLF) to the mix which allows lenders to provide increased loan sizes if they are willing to retain 15% of the subject loan instead of the 5% retention requirement for lenders under the MSELF and MSNLF. The following table provides a basic comparison between the three facilities available under the Program:



The Fed has also released newly updated term sheets for the three facilities under the Program. The MSNLF Term Sheet can be [found here](#), the MSPLF Term Sheet can be [found here](#), and the MSELF Term Sheet can be [found here](#).

The two most significant adjustments to the Program include: (i) the loan minimum size was reduced from \$1,000,000 to \$500,000, which is expected to make the Program a useful option to a wider group of smaller businesses; and (ii) on the upper end, the Program was adjusted to make it available to businesses with up to 15,000 employees and \$5B in annual revenues (up from maximums of 10,000 employees and \$2.5B in annual revenues under the terms announced in early April).

As a means of providing further guidance, the Fed has also published answers to frequently asked questions with respect to the Program ([found here](#)).

It is expected that these adjustments will make the Program's loan options more enticing to small and medium-sized businesses. Please note, however, that loans under the Program are still not forgivable as the Paycheck Protection Program loans are.

Updated Guidance on the Key PPP Loan Certification

Certainly, you have heard news reports related to larger businesses (often publicly traded companies) obtaining large PPP loans and then being encouraged to return the amounts loaned under the logic that they couldn't possibly have made the certification in the application that "(c)urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant" in good faith.

Question 31 of the PPP FAQ sheet maintained by the Treasury ([linked here](#)) states in part:

"Although the CARES Act suspends the ordinary requirement that borrowers must be able to obtain credit elsewhere, . . . borrowers still must certify in good faith that their PPP loan request is necessary. . . . Borrowers must make this certification in good faith, taking into account their current business activity and their ability to access other sources of liquidity sufficient to support their ongoing operations in a manner that is not significantly detrimental to the business. For example, it is unlikely that a public company with substantial market value and access to capital markets will be able to make the required certification in good faith, and such a company should be prepared to demonstrate to SBA, upon request, the basis for its certification."

To reiterate that further scrutiny will be forthcoming, Treasury Secretary Mnuchin and SBA Administrator Jovita Carranza issued a joint statement on April 28, 2020, which stated the following:

"The SBA has decided, in consultation with the Department of Treasury, that it will review all [PPP] loans in excess of \$2 million, in addition to other loans as appropriate, following the lender's submission of the borrower's loan forgiveness application. Regulatory guidance implementing this procedure will be forthcoming."

The SBA has said in its response to the above-referenced Question 31 that "(a)ny borrower that applied for a PPP loan prior to the issuance of this guidance and repays the loan in full by May 7, 2020, will be deemed by SBA to have made the required certification in good faith." In response, over \$170 million in PPP loans made to publicly traded companies has already been repaid.

The SBA also issued yet another Interim Final Rule on April 30, 2020 ([linked here](#)), which clarified that "single corporate groups" (and regardless of otherwise applicable waivers of SBA affiliation rules) cannot receive more than \$20 million in PPP loans in the aggregate. The term "single corporate group" was described as a group of entities majority-owned, directly or indirectly, by a common parent. This decision was in no doubt triggered by the news that large, publicly-traded companies, had received significant PPP loans in the aggregate – including one Dallas-based hotel group which reportedly received an aggregate of approximately \$126 million in PPP loans. Of note, the referenced hotel group has stated publicly that it does not plan to return the PPP funds that it received. One thing is clear – a forgiveness showdown between the SBA and larger PPP borrowers is on the horizon.

As stated in a previous alert, our recommendation is that borrowers start to build their respective cases for forgiveness now by compiling reports on revenue decreases and other adverse effects suffered by their businesses as a result of the coronavirus pandemic.

As a final note, in case you were thinking that additional PPP fund authorizations will be coming in the future, news reports today indicate that one-third of the second tranche of \$310B in PPP funds has already been lent and no further funding authorizations will be coming – a fact confirmed by both Secretary Mnuchin and Speaker Pelosi.

