

Summary of Federal Relief Loans Available to Large and Mid-Size Businesses Amid the COVID-19 Pandemic

The Coronavirus Economic Stabilization Act (the Stimulus Act) was established as part of the CARES Act. The Stimulus Act authorized two loan programs for large and midsize businesses: 1) the Main Street Lending Program available to small and midsize businesses on such terms and conditions as set by the Federal Reserve Board; and 2) loans for eligible businesses, with an “endeavor” to make loans and investments available to businesses who employ between 500 and 10,000 employees (referred to as the “Stimulus Act Loan Program”).

Neither program is operational yet, and guidance for the Stimulus Act Loan Program has not yet been issued by the Department of Treasury. However, this Information Memo provides a comprehensive review of both programs pursuant to the text of the Stimulus Act as well as recent guidance issued by the Reserve Board for the Main Street Lending Program.

Main Street Lending Program

On April 9, 2020, the Federal Reserve Board announced the launch of the Main Street Lending Program (MSLP) available to small and mid-size businesses pursuant to the Federal Reserve Act. Under the MSLP, \$600 billion is allocated to the Federal Reserve to purchase 95 percent of the issued loans, while lenders will hold the other five percent. The MSLP is not yet open to applicants, but businesses will work through private banks directly to obtain the MSLP loan. The Federal Reserve has not announced whether the MSLP is available to nonprofit organizations. Unlike some small business loan programs, loans under the MSLP are not eligible for forgiveness.

Eligible borrowers include businesses with up to 10,000 employees or a maximum of \$2.5 billion in 2019 annual revenues. The business must be created or organized in the U.S. or under U.S. laws, and also have significant operations in and a majority of its employees based in the U.S. The MSLP is designed to reach larger businesses that are ineligible for the Paycheck Protection Program (PPP). However, small businesses – including those that have obtained a PPP loan – are eligible for a MSLP loan as well.

The Reserve Board created two types of lending facilities: one for new loans, and one for existing loans. Each MSLP loan must be in a minimum amount of \$1 million up to a maximum loan amount of \$25 million or 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.” The loans will mature in four years and payments on principal and interest will be deferred for one year.

Businesses applying for the MSLP loan must certify, among other things, that:

- The business will not use the loan proceeds to repay other loan balances or repay other debt, with the exception of mandatory principal payments;
- Attest that the business requires financing due to the exigent circumstances presented by the COVID-19 pandemic and that it will make reasonable efforts to maintain its payroll and retain its employees during the term of the loan;

- Neither the business nor any affiliate will purchase an equity security that is listed on a national securities exchange of the business or any parent company from the date that the loan is issued until at least one year after the loan and loan guarantee are no longer outstanding;
- The business will not pay dividends with respect to the common stock of the business from the date that the loan is issued until at least one year after the loan and loan guarantee are no longer outstanding; and
- The business will abide by certain limitations on executive compensation as explained below.

Limitations on Executive Compensation

Businesses must agree to certain officer and employee compensation limitations under the MSLP. To qualify, a business must agree that from the date that the loan is issued until at least one year after the date on which the loan or guarantee is no longer outstanding:

1. An officer or employee whose total compensation exceeded **\$425,000** in 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 1, 2020) will **not** receive:
 - a. compensation that exceeds the amount paid in 2019, and
 - b. severance pay or other benefits upon termination of employment which exceeds twice the maximum total compensation received by the employee in 2019; and
2. An officer or employee whose total compensation exceeded **\$3 million** in 2019 will **not** receive a **total compensation** more than:
 - a. \$3 million, plus
 - b. 50 percent of the excess over \$3 million of the total compensation received by the employee during 2019.

Total compensation is defined under the Stimulus Act as salary, bonuses, awards of stock, and other financial benefits provided by a business to an officer or employee.

Stimulus Act Loan Program

The Stimulus Act authorized the Secretary of the Treasury to make up to \$454 billion available (including any of the funds that are unused from the air carrier bailout) for loans, loan guarantees and other investments in programs and facilities created by the Federal Reserve to eligible large and midsize businesses, states, and municipalities. Loans under the Stimulus Act Loan Program are also not eligible for forgiveness.

Under the Stimulus Act Loan Program, “Eligible Businesses” are defined as a United State business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act. The Secretary has yet to specifically define what “adequate economic relief” entails; as such, businesses should understand that this may be a highly discretionary matter and the lender may not agree that the business has not received adequate economic relief.

Although the Department of Treasury has yet to issue specific guidance and regulations regarding this Loan Program, the Stimulus Act outlines the base requirements for both large and mid-size businesses, which are detailed below.

I. Large Businesses

Eligible businesses with more than 10,000 employees may apply for this loan. The Secretary may enter into agreements to make loans or loan guarantees to eligible businesses who agree that:

1. Neither the business nor any affiliate may purchase an equity security that is listed on a national securities exchange of the business or any parent company from the date that the loan is issued until at least one year after the loan and loan guarantee are no longer outstanding;
2. The business may not pay dividends with respect to the common stock of the business from the date that the loan is issued until at least one year after the loan and loan guarantee are no longer outstanding;
3. The business will abide by the limitations on executive compensation as explained above in relation to the MSLP; and
4. Certify that the business is created or organized in the U.S. and has significant operations in and a majority of its employees based in the U.S.

The Secretary may waive these requirements upon a determination that such waiver is necessary to protect the interest of the federal government; but the Secretary may be required to explain its reasoning to Congress.

II. Mid-Size Businesses

As part of the Stimulus Act Loan Program, the Stimulus Act emphasizes that the Secretary should “endeavor” to make loans and investments available to midsize businesses with 500 to 10,000 employees, including, to the extent practicable, nonprofit organizations. These loans will be at a rate not higher than 2 percent annualized with payment of principal or interest deferred for the first 6 months of the life of the loan.

A mid-size business or nonprofit organization wishing to take advantage of this program must make a good-faith certification that:

1. Economic uncertainty makes the loan request necessary to support the ongoing operations of the borrower;
2. Funds received will be used to retain 90 percent of its workforce at full compensation and benefit levels through September 30, 2020;
3. It intends to restore not less than 90 percent of its workforce level that existed on February 1, 2020, and to restore all compensation and benefits to the workers no later than four months after their termination date;
4. It is domiciled in the U.S. with significant operations and employees located in the U.S.;
5. It is not a debtor in a bankruptcy proceeding;
6. It was created or organized in the U.S. and has significant operations in and a majority of its employees based in the U.S.;
7. It will not pay dividends with respect to the common stock of the business, or repurchase an equity security that is listed on a national securities exchange of the recipient business or any parent company of the receiving while the direct loan is outstanding;

8. It will not outsource or offshore jobs for the term of the loan and two years after completing repayment of the loan;
9. It will not abrogate existing collective bargaining agreements for the term of the loan and two years after completing repayment of the loan; and
10. It will remain neutral in any union organizing effort for the term of the loan.

As stated above, the Reserve Board has yet to issue guidance on the Stimulus Act Loan Program, including how and when businesses may apply.

The attorneys at Bond, Schoeneck & King can help you determine if your business qualifies for relief under the Stimulus Act. Please contact [Jeffrey B. Scheer](#) or the attorney at the firm with whom you are regularly in contact.



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