




COVID-19

UPDATE:
June 11, 2020

**Coronavirus / COVID-19
Response Team**


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**Expansion of the Main
Street Lending Program**

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Background of Main Street Lending Program

Main Street Loan Programs

- Main Street New Loan Facility (“MSNLF”):
 - This program will provide new secured or unsecured loan facilities to Eligible Borrowers.
- Main Street Priority Loan Facility (“MSPLF”):
 - This program will provide new secured or unsecured loan facilities to Eligible Borrowers subject to a higher EBITDA multiple cap and maximum loan limit than the MSNLF.
- Main Street Expanded Loan Facility (“MSELF”):
 - This program will provide Eligible Borrowers with secured or unsecured loan facilities in place prior to April 24, 2020 with new financing to “upsize” existing loan facilities.

Today’s Topics

- On June 8, 2020, the Federal Reserve (“Fed”) issued revised term sheets for the MSNLF, MSPLF and MSELF (collectively the “MSLPs”) in an effort to allow more small and medium-sized businesses to be able to receive support.
- Additionally, the Fed updated its program FAQs to provide further guidance on the MSLPs.

Expansion of the MSLPs

Maturity, Deferment & Interest

- **Term**
 - Each MSLP now has a term/maturity of five years (previously four years).
- **Deferment**
 - Under each MSLP, (i) principal payments are now deferred for two years (previously one year) and (ii) interest payments continue to be deferred for one year.
 - Interest payments will be capitalized pursuant to each Eligible Lender's customary practices.
- **Interest Rate**
 - A LIBOR +3% rate will continue to apply to all MSLP loans.

Loan Size

- **Minimum Loan Size**
 - MSNLF and MSPLF loans now have a minimum size of \$250,000 (previously \$500,000). MSELF loans retain a minimum size of \$10M.
- **Maximum Loan Size**
 - MSNLF: The lesser of \$35M (previously \$25M) or an amount that, when added to the Eligible Borrower's outstanding and undrawn available debt ("Total Debt"), does not exceed 4.0x adjusted EBITDA.
 - MSPLF: The lesser of \$50M (previously \$25M) or an amount that, when added to the Eligible Borrower's Total Debt, does not exceed 6.0x adjusted EBITDA.
 - MSELF: The lesser of \$300M (previously \$200M) or an amount that, when added to the Eligible Borrower's Total Debt, does not exceed 6.0x adjusted EBITDA.
 - MSELF loan size cap of 35% of certain of the Eligible Borrower's existing outstanding and undrawn available debt has been eliminated.

Loan Size (cont.)

- The revised FAQs explain that borrowers are expected to submit statements evidencing their EBITDA calculations, including audited financial statements or U.S. GAAP compliant financial records, in each case to the extent the borrower is required to prepare, or ordinarily prepares, such financial statements and/or records.

Risk Retention & Amortization

■ Risk Retention for Eligible Lenders

- Eligible Lenders' risk retention for MSNLF and MSELF loans remains unchanged at 5%, while risk retention for MSPLF loans declines to 5% (previously 15%).
 - The MSLP SPV will purchase 95% participations in all loans.

■ Amortization Schedules

- MSNLF: Years 3-5: 15%, 15%, 70% (previously 33.33% repayment was due in years 2-4)
- MSPLF & MSELF: Years 3-5: 15%, 15%, 70% (previously 15%, 15%, 70% repayment due in years 2, 3, and 4, respectively)

Updated MSLPs FAQs

Multi-Lender MSELFs

- MSELF “Upsized” Loans
 - For MSELF “upsized” loans, the FAQs now provide that more than one Eligible Lender under an existing multi-lender facility may originate an upsized MSELF loan (subject to the overall MSELF maximum loan limit described above).
 - However, once originated, the Eligible Lender (or Eligible Lenders) may not share their 5% retention of the “upsized” loan with other members of the multi-lender facility (or any other lenders).

Application of Non-Borrower Affiliates

- If only one business in an affiliated group is seeking a MSLP loan, then that business does not need to consolidate EBITDA and/or debt of other affiliated businesses (except for subsidiaries consolidated into its financial statements).
- For example, if only one portfolio company of a private equity fund is seeking a MSLP loan, then it would not be required to consolidate EBITDA and/or debt of other affiliated portfolio companies of that fund.

SBA Loans (PPP / EIDL)

- While PPP borrowers remain eligible for MSLP loans, the updated FAQs clarify that PPP loans do count as “outstanding debt” for MSLP purposes, unless already forgiven.
- Economic Injury Disaster Loan (EIDL) borrowers are also eligible for MSLP loans.
 - EIDL debt also presumably counts as “outstanding debt” for MSLP purposes, though not specifically addressed by the updated FAQs.

Financial Records

- The Fed has provided guidance about how to prepare and present borrower financial information for purposes of loan origination.
 - U.S. GAAP Compliance – Eligible Borrowers that are subject to or already prepare financials using U.S. GAAP must submit U.S. GAAP-compliant financial statements/records.
 - Financial Statements – Eligible Borrowers that typically prepare audited financial statements must generally submit audited financial statements.
 - Consolidation – Eligible Borrowers that typically prepare financial statements consolidating the Eligible Borrower’s subsidiaries must submit those consolidated financial statements.

Timing of Loan Funding

- Purchasing Participations in MSLP Loans
 - The Fed is encouraging Eligible Lenders to fund loans that satisfy the MSLP criteria even before the MSLP SPV begins purchasing loan participations.
 - The Fed is committing to future purchases of qualifying MSLP loan participations from Eligible Lenders that register with the MSLP SPV.

Fees

- Generally, Eligible Lenders were not permitted to charge fees to borrowers other than as explicitly permitted under the MSLP facilities, except for “*de minimis*” fees for services that are customary and necessary,” such as legal fees.
- The updated FAQs now also permit MSELF lenders to charge “customary consent fees” as necessary to amend the existing facility’s documentation for purposes of the MSELF upsizing.

Next Steps for MSLP

- The Fed is in the process of updating its form legal documents and certifications to align with the updated program terms.
- The Fed also announced that it is likely to roll out a Main Street-type lending program for non-profits, which are not eligible to participate in the existing MSLPs.



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PPP Compliance Readiness Program

Miller Johnson's interdisciplinary team of corporate and litigation attorneys will work with you to identify and gather relevant documents and performance data to ensure your business is best positioned to comply with the ever-changing rules governing the Paycheck Protection Program (PPP) and any resulting inquiry or investigation related to your business's application for, and receipt of, PPP funds.

Services

- Assist with identifying and compiling records and performance data to support the good faith "need certification" made at the time the PPP loan application was made.
- Review use and accounting of funds to support your application for loan forgiveness.
- Compliance assessment based on review of information received.
- Advise on best practices and evolving rules and guidance related to the PPP.
- Development of audit preparedness plan.
- Advise on enforcement defenses and evidentiary support for the same.

*Legal services related to responding to, or otherwise participating in, an informal or formal inquiry, investigation, audit or any other enforcement action (collectively, "PPP Enforcement Action") are excluded from the scope of legal services offered in this Compliance Readiness Program. However, in the event your business is required to respond to, or otherwise participate in, a PPP Enforcement Action, Miller Johnson will credit 50% of the Flat Fee paid for the Compliance Readiness Program against the cost of advising and representing your business with respect to any PPP Enforcement Action.

COVID-19 RESPONSE TEAM

Learn More
For more program information and enrollment, please contact Max Barnes or Jeff Muth.

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Pricing

Flat Fee based on amount of PPP loan*

| | |
|----------------|--------------------------------------|
| \$5,000 | Loan amount of \$2MM+ |
| \$3,500 | Loan amount between \$1M+ - \$1,999K |
| \$2,000 | Loan amount between \$500K - \$999K |
| \$2,000 | Loan amount between \$250K - \$499K |
| \$1,500 | Loan amount less than \$250K |

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Back to Work Resource Center

<https://resources.millerjohnson.com/>



Our **Back to Work Resource Center** provides a single source option for employers who are wrestling with the legal and practical consequences of a changed world.

For less than the cost of a typical handbook update, you gain access to an extensive collection of resources and Miller Johnson work product that we are confident will provide meaningful support to your efforts to navigate waters that are not only choppy but continuously changing direction.

Here is a sampling of what subscribers will find:

- Forms, Plans and Policies – we have drafted templates for you to put into service immediately
- Practical Guidance – tools to effectively, safely and confidently return to work incorporating best practices from outside organizations, including community partners such as Spectrum Health
- Industry Specific Guidance – pages devoted to industries singled




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