

## CLIENT BULLETIN

To: Raines Feldman LLP (“**RF**”) Clients  
From: Raines Feldman LLP  
Date: April 17, 2020  
Re: Update on the CARES Act and Small Business Loans

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This Client Bulletin summarizes key updates regarding the status of Paycheck Protection Program (“**PPP**”) loans and Emergency Economic Injury Disaster Loans (“**EIDLs**”) and briefly discusses two new alternative loan options, the Main Street New Loan Facility (“**MSNLF**”) and the Main Street Expanded Loan Facility (“**MSELF**,” and together with the MSNLF, the “**Main Street Lending Program**”), established by the Board of Governors of the Federal Reserve System (the “**Federal Reserve**”) and funded in part by the Federal Reserve and the Department of the Treasury with funds authorized under the Coronavirus Aid, Relief, and Economic Security (“**CARES**”) Act (P.L. 116-136). Applications for PPP and EIDL loans are currently closed, and applications for the Main Street Lending Program are not yet available.

In response to the public health emergency in the United States due to the 2019 novel coronavirus, also known as SARS-CoV-2 and the illness it causes, COVID-19 (collectively, “**COVID-19**”), which the World Health Organization has declared a “pandemic,” the United States Congress passed, and the President signed into law, the CARES Act on March 27, 2020.

The CARES Act is primarily an emergency stimulus package to address the economic fall-out from the COVID-19 pandemic and its effects in the United States. The CARES Act provides up to \$349 billion in loans to small businesses through the PPP and up to \$10 billion in additional EIDLs. Loans under both programs are in part forgivable, their application processes have been streamlined and a wide range of businesses are eligible for them.

Since the passage of the CARES Act and the opening of the PPP loan application process on April 3, 2020 for eligible businesses and on April 10, 2020 for independent contractors, many PPP loan and EIDL applicants have encountered difficulties in applying for loans and are unsure about the status of the loans provided under the CARES Act.

## **PAYCHECK PROTECTION PROGRAM**

On April 16, 2020, the Small Business Administration (“SBA”) announced that the application process for PPP loans was closed. SBA-approved lenders have now committed to lending the entire \$349 billion in loans authorized by the CARES Act. Lenders are now processing existing loan applications and some are beginning to disburse loans to approved applicants.

Prior to the closing of the application process, many applicants encountered difficulties in finding SBA-approved lenders and in some cases, approval of their loan applications. Many lenders opened their application process to only those borrowers with whom they had a pre-existing banking relationship.

Members of both parties in the United States Senate and House of Representatives are currently negotiating a potential further funding of the PPP, with competing plans, to address some of the difficulties with the PPP. Neither house of Congress has yet made plans to reconvene in Washington prior to May 4, 2020. Although there is not yet agreement on a bill to increase authorized funds under the CARES Act or pass a new stimulus package, negotiations are ongoing and further updates may be forthcoming.

While the PPP loan application process is currently closed, potential applicants may still complete a sample PPP loan application for submission to an SBA-approved lender if and when additional funding is authorized and the SBA re-opens the application process. The sample PPP loan application is available here: <https://www.sba.gov/sites/default/files/2020-04/PPP%20Borrower%20Application%20Form.pdf>.

**Applicants and potential applicants for the PPP are strongly encouraged to monitor Congressional updates regarding the CARES Act and to check in with their SBA-approved lenders for any further developments. Applicants are also encouraged to monitor any additional guidance from the SBA on the existing rules of the PPP that may be forthcoming. The SBA provides updates and guidance on the PPP here: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp>.**

## **EIDLs**

On April 16, 2020, the SBA also announced that the application process for EIDLs was closed. The SBA has committed to lending the full amount of the \$10 billion made available for EIDLs under the CARES Act.

**EIDL applicants and potential EIDL applicants are also strongly encouraged to monitor Congressional updates regarding the CARES Act and any additional guidance from the SBA on the existing rules for EIDLs that may be forthcoming. The SBA provides updates and guidance on EIDLs and emergency advances provided under EIDLs here: <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance>.**

## MAIN STREET LENDING PROGRAM

On April 9, 2020, the Federal Reserve announced the terms and conditions of two lending facilities, the MSNLF and the MSELF, as part of the Main Street Lending Program funded in part by the Department of the Treasury from funds authorized by the CARES Act. The Main Street Lending Program is designed for small to mid-sized businesses that meet the following criteria:

- Have 10,000 or less employees;
- Had annual revenues of less than \$2.5 billion in 2019;
- Are created or organized in the United States or under U.S. law;
- Have significant operations in the United States; and
- Have a majority of their employees based in the United States.

### *What is the MSNLF?*

The MSNLF is a loan program available to eligible borrowers from certain eligible lenders that provides **unsecured loans** with an origination date of April 8, 2020 or later with the following key terms:

- Interest rate equal to an adjustable rate of the Secured Overnight Financing Rate (0.03% as of April 16, 2020) plus 250-400 basis points;
- Four (4)-year maturity;
- No prepayment penalties; and
- Deferral of amortization of principal and interest for one (1) year.

The minimum loan amount is \$1 million, while the maximum loan amount is the lesser of \$25 million or an amount that, when added to a borrower's existing debt, is not more than four times 2019 earnings before interest, taxes, depreciation and amortization (EBITDA).

### *What is the MSELF?*

The MSELF is a loan program available to eligible borrowers with existing loan facilities originated before April 8, 2020 as an upsized tranche of an existing loan. MSELF loans also have the same features of the MSNLF as noted above, except: (i) any collateral securing the original loan of the eligible borrower will also secure the MSELF loan on a *pro rata* basis; and (ii) the minimum loan amount is \$1 million, while the maximum loan amount is the lesser of (A) \$150

million, (B) 30% of the borrower's existing bank debt or (C) an amount that, when added to the borrower's existing debt, is not more than six times 2019 EBITDA.

*Further Information and Application Process*

Potential applicants should note that these loans are NOT forgivable loans like PPP loans, although the Federal Reserve has indicated that borrowers with PPP loans may also apply for loans under the Main Street Lending Program. Borrowers may also need to pay loan origination fees and facility fees passed on to the borrower by the lender, each of 1% of principal. Finally, the borrower MUST comply with certain requirements as published by the Federal Reserve, which include caps on executive compensation and restrictions on the use of proceeds of the loans, some of which are designed to ensure that the borrower maintain its existing payroll and keep its employees.

**The application processes for the MSNLF and the MSELF are not yet open.** Further, the Federal Reserve may issue new, or clarify the existing, rules of the Main Street Lending Program. The above is not a full or complete summary of either the MSNLF or MSELF. If you have any questions or would like further information about the Main Street Lending Program, please contact a Raines Feldman LLP attorney.

## FURTHER INFORMATION

If you have any questions or concerns about any of the information briefly summarized in this Client Bulletin or require any further information, please contact one of the following lawyers at Raines Feldman LLP:

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