Help for Mid-Sized Businesses: Congress Provides for Implementation of New Direct Loan Program to Eligible Mid-Size Borrowers in CARES Act

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On Friday, March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act or the “CARES Act.” The CARES Act provides significant relief to state and local governments, small and medium sized businesses, individuals and certain sectors of the U.S. economy that have been impacted the most by the COVID-19 pandemic. While a portion of the CARES Act is aimed at providing relief to eligible small businesses through programs such as the Paycheck Protection Program (the “PPP”), key qualifications and restrictions of the PPP such as SBA affiliation rules and limitations on number of employees of an eligible business will preclude mid-sized companies (including many private equity portfolio companies) from accessing funds through the PPP. The programs for mid-sized companies contemplated by Title IV of the Cares Act (including the proposed “Main Street Lending Program”) may offer feasible alternatives to many companies (including private equity portfolio companies) that would not qualify for relief under the PPP.

Help for Mid-Sized Businesses. Title IV of the CARES Act offers economic stabilization and assistance to severely distressed sectors of the U.S. economy by, among other things, providing for the implementation of a new Federal Reserve program that provides financing to banks and other lenders that make direct loans to eligible mid-sized businesses, including nonprofit organizations. The full details of this new program have not yet been released by the Secretary of the Treasury or the Federal Reserve, but the program intends to cover certain businesses that exceed the size limitations under programs such as the PPP. The direct loans offered through this program would be subject to an annualized interest rate that is no higher than two percent (2%) per annum and payment of principal and interest would not commence until at least six months after the loan is incurred.

Eligibility. To be eligible for a loan under this program, a mid-sized business would need to show that (i) it was created or organized in the U.S. or under the laws of the U.S., (ii) it has significant operations in and a majority of its employees are based in the U.S., and (iii) it has between 500 and 10,000 employees. Any eligible borrower applying for a direct loan under this program will also be required to make a good faith certification that:

1. The uncertainty of economic conditions as of the date of the application makes necessary the loan request to support ongoing operations;

2. The funds it receives will be used to retain at least 90% of its workforce, at full compensation and benefits, until September 30, 2020;

3. It intends to restore not less than 90% of the workforce that existed as of February 1, 2020 and to restore all compensation and benefits to its workers not later than four (4) months after the termination date of the national public health emergency declared on January 31, 2020 in response to COVID-19;

4. It is an entity or business 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 is created or organized in the U.S. or under the laws of 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 its common stock or repurchase any of its equity securities or any equity securities of any parent company while the loan is outstanding, with certain exceptions;

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.

Other Restrictions. The direct loan must be entered into directly with an eligible business as borrower and cannot be part of a syndicated loan, a loan originated by a financial institution in the ordinary course of business, or a securities or capital markets transaction. Additionally, the eligible business must agree that it will not purchase any of its own equity securities or any equity securities of any parent company, nor pay dividends or make any other capital distributions with respect to its common stock, until a date that is 12 months after the date the direct loan is no longer outstanding. Finally, the eligible business must abide by certain restrictions on compensation to highly compensated employees.

Eligible Lenders. Title IV also authorizes the Secretary of the Treasury Department to designate financial institutions, including but not limited to, depositories, brokers, dealers and other institutions, as financial agents of the U.S. to help administer this program. Locke Lord will publish additional guidance for the participation of lending institutions and mid-sized businesses in this program upon the release of regulatory guidance from the Treasury Department and/or the Federal Reserve.

Your regular Locke Lord contact and the authors of this article would be happy to help you navigate the CARES Act as it relates to or otherwise affects mid-sized businesses and their lenders.

For more information on the matters discussed in this Locke Lord QuickStudy, please contact the authors.

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Please visit our COVID-19 Resource Center often for up-to-date information to help stay informed of the legal issues related to COVID-19.

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2 Id. at § 4003(c)(3)(A)(ii)(I)-(II).
3 Id. at § 4003(c)(3)(A)(ii)(III).
4 Id. at § 4003(g).