

Conflicts of Interest Prohibition

June 4, 2020

Under Section 4019(c) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), in order for a lender or borrower to be eligible to participate in the Main Street Lending Program (MSLP), such lender or borrower, as applicable, must certify that it is not a Covered Entity.

Since there is limited public information on ownership interests of Government Officials, each lender and borrower must conduct diligence on its ownership to a level that such lender or borrower is able to make a good faith certification that no Conflicts of Interest exist, to include:

1. Whether an entity has actual knowledge that a Covered Individual, directly or indirectly, owns, controls or holds any Equity Interest in the entity, no matter the size of such Equity Interest, the entity must take such ownership, control or holding into account.
2. An entity must determine whether any beneficial holder of an Equity Interest of 5 percent or greater in such entity is a Covered Individual (i) by checking the name of each beneficial owner against a list of all [Government Officials](#) and (ii) confirm whether a beneficial owner is a Family Member by asking such beneficial owner whether it is or is not a Family Member. If the aggregate amount of Equity Interests owned by identified beneficial owners, together with (i) above, is less than 20 percent, an entity does not need to determine if the identified beneficial owners are Family Members.
3. For publicly traded securities, the entity may rely on information disclosed by such persons in reporting under Section 13(d) and 13(g) of the Securities Exchange Act of 1934 (15 U.S.C. §§78m(d), 78m(g)).

NOTE: 1) Each lender is required to notify the Special Purpose Vehicle (SPV) and the Reserve Bank if at any time prior to Sept. 30, 2020 (or such later date that any MSLP facilities are extended to) such lender becomes a Covered Entity, and 2) if such lender becomes a Covered Entity, it must cease engaging in any new MSLP facilities at that time.

The following defined terms relate to the

- » **Covered Entity.** An entity in which a Covered Individual holds a Controlling Interest.
- » **Covered Individual.** The President, Vice President, any head of an Executive Department (Department of State, Department of the Treasury, Department of Defense, Department of Justice, Department of the Interior, Department of Agriculture, Department of Commerce, Department of Labor, Department of Health and Human Services, Department of Housing and Urban Development, Department of Transportation, Department of Energy, Department of Education, Department of Veterans Affairs and Department of Homeland Security), or a member of Congress (each a Government Official) and the spouse, child, son-in-law or daughter-in-law of any Government Official (each a Family Member). The Equity Interest for a Covered Individual includes such Government Official's and all Family Members' Equity Interests in the aggregate.
- » **Controlling Interest.** Owning, controlling, or holding not less than 20 percent, by vote or value, of the outstanding amount of any class of Equity Interest in an entity.

- Equity Interest. (a) Shares, (b) capital or profit interest in a limited liability company of partnership, or (c) a warrant or right (other than a right to convert) to purchase, sell, or subscribe to any such Equity Interest.
- Direct Interests. If a Covered Individual directly owns, controls or holds 20 percent or more, by vote or value, of the outstanding amount of any class of Equity Interest in an entity – that entity is a Covered Entity.
- Indirect Interests. The amount of any Equity Interest indirectly owned or held by a Covered Individual in an entity:
 - is calculated on a proportional basis – taking into account any partial ownership of the relevant entity's parents.
 - if the Covered Individual controls, directly or indirectly, the entity that owns or holds the Equity Interest.
 - an individual or entity controls another entity only when the individual or entity owns or holds a majority of the voting interest in such entity, or is, or holds a majority of the voting interest in the general partner of such entity.
- Shares. An ownership interest without regard to whether the share is transferrable or classified as stock or anything similar and without regard to whether the share is a voting security. A nonvoting preferred share is a share.
- Warrants or Rights. If a Covered Individual has warrants or rights (other than a right to convert), calculate the Covered Individual's interest in the underlying Equity Interest on a fully diluted basis assuming that all holders of such warrants or rights have exercised such interests. Warrants, options and similar rights must be counted even if unexercised or "out of the money."

Information contained in this alert is for the general education and knowledge of our readers. It is not designed to be, and should not be used as, the sole source of information when analyzing and resolving a legal problem. Moreover, the laws of each jurisdiction are different and are constantly changing. If you have specific questions regarding a particular fact situation, we urge you to consult competent legal counsel.
