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Federal Reserve Board Expands $600 Billion Main Street Lending Program for Small and Medium-Sized Businesses

On April 30, 2020, the Federal Reserve Board (the "Fed") announced changes to the Main Street Lending Program originally announced on April 9, 2020 (see Blank Rome's summary here), expanding the types of facilities and the eligibility of lenders and borrowers. After receiving more than 2,200 letters from individuals, businesses, and nonprofits following its initial announcement, the Fed expanded the Main Street program, allowing more types of lenders and businesses to participate; giving lenders more flexibility to evaluate, size, and structure their loans; and adding a new facility for high-leveraged Main Street loans.

Along with the two facilities announced earlier—the Main Street New Loan Facility ("MSNLF") and the Main Street Expanded Loan Facility ("MSELF")—the Fed added a third facility, the Main Street Priority Loan Facility ("MSPLF"). All three facilities are intended to stimulate lending to small and medium-sized businesses by establishing a Fed-sponsored special purpose vehicle ("SPV") that will purchase 95 percent participation interests in MSNLF and MSELF loans and 85 percent participation interests in MSPLF loans. The Fed also expanded the scope of eligible borrowers by increasing the maximum number of employees from 10,000 to 15,000 and the maximum amount of 2019 annual revenue from $2.5 billion to $5 billion. It expanded the scope of eligible lenders to include U.S. branches or agencies of foreign banks, U.S. intermediate holding companies of foreign banking organizations, and U.S. subsidiaries of eligible lenders.

The Fed published updated "term sheets" for the Main Street programs as well as Frequently Asked Questions ("FAQ") that provides more detail about the facilities. The term sheets and FAQ are available in the Fed's press release announcing the changes (see here).

In terms of timing, the FAQ states that "a start date for the program will be announced soon," and in the meantime "updates regarding the Program, including the official launch date and the time and date at which the Main Street SPV will begin purchasing participations in MSNLF Loans, MSPLF Loans and MSELF Upsized Tranches, will be made available on the Board's Main Street page." The Main Street page states that the Fed is currently working to create the infrastructure for the program and will post more information as it becomes available.[1] The forthcoming information will include a form loan participation agreement, form of borrower and lender certifications, and other forms necessary to implement the program. The Fed will not provide form loan documents noting instead that eligible lenders will provide those documents but that the documents must reflect the terms of the program.

As we did in our earlier summary, we are setting forth below a comparison of the different Main Street facilities and a list of questions and issues that remain open.

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COMPARISON OF MAIN STREET NEW LOAN, PRIORITY LOAN, AND EXPANDED LOAN FACILITIES

	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Eligible Borrowers	• Established prior to March 13, 2020 • Not an "Ineligible Business"[2] • Either 15,000 or fewer employees or 2019 revenues of $5 billion or less[3] • Created or organized in the United States, or under the laws of the United States with significant operations in and a majority of its employees based in the United States • Has not received funding under subtitle A of Title IV of the CARES Act[4]	Same	Same
Eligible Loans	• Secured or unsecured term loan originated after April 24, 2020	Same	Existing underlying loan: • Secured or unsecured • Term loan or revolving credit • Made by an Eligible Lender • Originated before April 24, 2020 • At least 18 months remaining maturitye
Minimum Loan Size	$500,000	Same	$10,000,000 upsized tranche
Maximum Loan Size	Lesser of: • $25 million or • An amount, when added to existing outstanding and undrawn available debt, does not exceed 4x 2019 adjusted EBITDA[5]("leverage test")	Same except leverage test based on 6x 2019 adjusted EBITDA	Upsized tranche the lesser of: • $200 million • 35 percent of borrower's existing outstanding and undrawn available debt that is pari passu in priority with the existing loan and equivalent in secured status (whether secured or unsecured) or • An amount, when added to existing outstanding and undrawn available debt, does not exceed 6x 2019 adjusted EBITDA
Collateral/Priority	• May be secured or unsecured • May not be contractually subordinated to borrower's other loans or debt	• May be secured or unsecured • Must be senior to or pari passu with, in terms of priority and security, borrower's other loans, or debt other than mortgage debt	• Upsized tranche must be senior to or pari passu with, in terms of priority and security, borrower's other loans or debt other than mortgage debt • Any collateral securing the underlying Eligible Loan (at the time of upsizing or after) must secure the upsized tranche on a pro rata basis

COMPARISON OF MAIN STREET NEW LOAN, PRIORITY LOAN, AND EXPANDED LOAN FACILITIES (CONTINUED)

	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Maturity	Four years	Same	Same for upsized tranche
Amortization	• Principal and interest payments deferred for one year (unpaid interest is capitalized). • Principal paid ⅓ end of each of second, third, and fourth years	• Principal and interest payments deferred for one year (unpaid interest is capitalized) • Principal paid 15 percent end of each of second and third year and 70 percent end of fourth year	Upsized tranche: • Principal and interest payments deferred for one year (unpaid interest is capitalized) • Principal paid 15 percent end of each of second and third year and 70 percent end of fourth year
Rate	LIBOR (one or three month) + 300 bps	Same	Same for upsized tranche
Prepayment	Permitted without penalty	Same	Same for upsized tranche
Forgiveness	MSNLF loans are full recourse and may not be reduced by forgiveness	Same	Same
Eligibility for other Facilities	• May not also participate in MSELF, MSPLF	• May not also participate in MSNLF, MSELF • Same	• May not also participate in MSNLF, MSPLF • Same
Borrower Certifications and Covenants	• Refrain from repaying principal balance or interest on any debt until MSNLF is repaid in full unless payment is mandatory and due • Will not seek to cancel or reduce its committed credit lines with the Eligible Lender or any other lender • Reasonable basis to believe that as of the date of the Eligible Loan and after giving effect to the Eligible Loan, borrower can meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during such period • Will comply with compensation, stock repurchase, and capital distribution restrictions under § 4003(c)(3)(A)(ii) of the CARES Act[6] • No conflicts of interest under § 4019(b) of the CARES Act[7]	Same except the borrower may, at the time a MSPLF loan is made, refinance existing debt owed by the borrower to a lender that is not the Eligible Lender	Same for upsized tranche
Retaining Employees	Although not included as a covenant, Eligible Borrowers "should" make commercially reasonable efforts to maintain its payroll and retain its employees while the Eligible Loan is outstanding.	Same	Same

COMPARISON OF MAIN STREET NEW LOAN, PRIORITY LOAN, AND EXPANDED LOAN FACILITIES (CONTINUED)

	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Eligible Lenders	• U.S. federally insured depository institution (including a bank, savings association, or credit union) • U.S. branch or agency of a foreign bank • U.S. bank holding company • U.S. savings and loan holding company • U.S. intermediate holding company of a foreign banking organization • U.S. sub of any of the foregoing	Same	Same plus the Eligible Lender for the upsized tranche must be one of the lenders that holds an interest in the underlying Eligible Loan on the date of upsizing
Lender Certifications and Covenants	• Cannot request borrower to repay debt or outstanding interest to lender until Eligible Loan is repaid in full, unless the debt or interest is mandatory and due, or in the case of default and acceleration • Cannot cancel or reduce existing lines of credit to borrower except in case of default • Methodology used to calculate 2019 adjusted EBITDA is same used to extend credit to same borrower or similarly situated borrower on or before April 24, 2020 • No conflicts of interest under §4019 of CARES Act	Same	Same for upsized tranche
Assessment of Financial Condition	Eligible Lender is expected to conduct an assessment of each potential borrower's financial condition at the time of application	Same	Same

COMPARISON OF MAIN STREET NEW LOAN, PRIORITY LOAN, AND EXPANDED LOAN FACILITIES (CONTINUED)

	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Participation[8]	• 95 percent participation purchased by SPV at par • Must be completed "expeditiously" after the loan is made • Structured as "true sale" • Risk between SPV and lender shared pari passu • Lender must retain its five percent interest until the earlier of when the loan matures or the SPV has sold all of its participation interest	Same except 85 percent participation purchased by SPV at par	• 95 percent participation in upsized tranche purchased by SPV at par • Must be completed "expeditiously" after the loan is upsized • Structured as "true sale" • Risk between SPV and lender in the upsized tranche shared pari passu • Lender must retain its five percent interest in the upsized tranche until the earlier of when the upsized tranche matures or SPV has sold all of its participation interest in the upsized tranche • Lender must retain its interest in the underlying loan until the earlier of when it matures, the upsized tranche matures or SPV has sold all of its interest in the upsized tranche
Fees	• Transaction fee of 100 bps of loan amount paid by Eligible Lender to SPV; Eligible Lender may require Eligible Borrower to pay this fee • Origination fee of up to 100 bps of loan amount paid by Eligible Borrower to Eligible Lender • Servicing fee of 25 bps of SPV's participation amount paid by SPV to Eligible Lender	Same	• Transaction fee of 75 bps of principal amount of upsized tranche paid by Eligible Lender to SPV; Eligible Lender may require Eligible Borrower to pay this fee • Origination fee of up to 75 bps of the upsized tranche amount paid by Eligible Borrower to Eligible Lender • Servicing fee of 25 bps of SPV's participation amount in upsized tranche paid by SPV to Eligible Lender
Termination of the Main Street Facility	• SPV will cease purchasing participations on September 30, 2020, unless extended; Fed will continue funding SPV after such date until SPV assets mature or are sold	Same	• Same

OPEN QUESTIONS AND ISSUES

Eligiblity

- For businesses that are U.S. subsidiaries of foreign companies, are foreign employees and foreign revenues included for eligibility purposes?
- Nonprofit organizations are excluded although the Fed says it will evaluate the feasibility of adjusting borrower and loan eligibility criteria for such organizations.[9]
- Non-bank lenders continue to be excluded as Eligible Lenders.
- Will the Fed's decision to publicly disclose the identities of Main Street borrowers, lenders, the amounts of loans, interest rates, and costs discourage businesses and lenders from participating?

Loans

- For expanded loans under MSELP, what inter-lender issues arise in upsizing multi-lender loans that include non-Eligible Lenders?
- If borrower received PPP loan subject to forgiveness, is it counted as debt for leverage test?

Participations

- What voting rights will the SPV have in connection with it 95 percent participation interest?
- What is the scope, form, and frequency of borrower and loan information that will be required to be reported to the SPV?

Further details of the Main Street Loan Programs, including an official launch date and forms of the participation agreement and certifications will be posted on the Main Street page. The FAQ directs borrowers to obtain application information from Eligible Lenders so it is not clear if the Fed will publish a form of application. These programs are complex and must be applied to the particular facts and circumstances for each lender and borrower.

We are available to assist our clients in assessing the applicability of these facilities to their particular facts and circumstances in all of their roles, whether as borrowers, lenders, or other interested parties.

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1. During a hearing of the Senate Committee on Banking, Housing, and Urban Affairs on May 13, 2020, Federal Reserve Vice-Chairman of Supervision Randal Quarles commenting on the Main Street Lending program said, “It is important that we do the complicated technical work to ensure they can be rolled out effectively, as well as quickly. . . . I don’t think we’re looking at months, but it would be premature for me to say exactly how many weeks it would be before they’re operational.”

2. The Fed identifies Ineligible Businesses by reference to eligibility regulations of the Small Business Administration (“SBA”) set forth in 13 C.F.R. §120.110(b)–(j) and (m)-(s) as those regulations are modified under the SBA’s Paycheck Protection Program (“PPP”) (see here).

3. The FAQ states that for purposes of determining the number of employees a business has or the amount of its 2019 revenue, “the employees and revenues of the Business must be aggregated with the employees and revenues of its affiliated entities.”

4. Subtitle A of Title IV of the CARES Act provides relief funding to airline businesses, companies that contract with airline businesses and businesses critical to national security.

5. For MSNLF and MSPLF (new loans), Eligible Lender must calculate adjusted 2019 EBITDA using same methodology used to extend credit to same or similarly situated borrower before April 24, 2020. For MSELF (upsized tranches), Eligible Lender must use the same methodology used when originating or amending the existing underlying loan.

6. Section 4003(c)(3)(A)(ii) of the CARES Act prohibits borrowers from (a) repurchasing equity securities of the borrower or any parent of the borrower that are listed on a national exchange and (b) paying dividends or other capital distributions with respect to the common stock of the borrower, in both cases for 12 months after the Main Street loan is no longer outstanding. It also limits compensation (including severance) of the borrower’s officers or employees whose 2019 total compensation exceeded $425,000.

7. Section 4019(b) of the CARES Act prohibits participation by (a) the President, the Vice President, the head of an Executive department, or a Member of Congress; (b) the spouse, child, son-in-law, or daughter-in-law of an individual described in clause (a); or (c) an entity in which an individual described in clause (a) or (b) holds a direct or indirect controlling interest.

8. Terms of the participation have not yet been announced. The FAQ states that such information will be made available on the Main Street page.

9. On May 12, 2020, members of the House of Representatives introduced H.R. 6800, the “Health and Economic Recovery Omnibus Emergency Solutions Act,” known as the HEROES Act. Sections 110604 and 110605 of the HEROES Act would amend Title IV of the CARES Act to require the Fed to make nonprofit organizations eligible for Main Street loans and to provide low-cost loan options for such organizations.