Federal Reserve Announces Main Street Lending Program for Small and Mid-sized Businesses

Hinckley Allen Corporate & Business

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Update: On April 30, 2020, the Federal Reserve announced revisions to this program, which are discussed in our alert, "Federal Reserve Revises and Expands Main Street Lending Program For Small and Mid-sized Businesses," found here.

On April 9, 2020, the Federal Reserve announced the creation of a Main Street Lending Program to facilitate lending to small and mid-sized businesses. Under this program, which was established under Section 13(3) of the Federal Reserve Act, the Federal Reserve will lend money on a recourse basis to a special purpose vehicle (the "SPV"). This SPV will then purchase up to $600 billion in loans from two facilities: the Main Street New Loan Facility (the "MSNLF") and the Main Street Expanded Loan Facility (the "MSELF").

Under the MSNLF, eligible lenders may originate new term loans to eligible borrowers, with lenders retaining a 5% share of such loans and selling a 95% share to the SPV at par value.

Under the MSELF, eligible banks may upsize term loans entered into before April 8, 2020 for eligible borrowers, with lenders retaining a 5% share of such upsized tranches and selling a 95% share to the SPV at par value.

The term sheet for the MSNLF is available **here** and the term sheet for the MSELF is available **here**. These terms are subject to change.

The Treasury Department will invest $75 billion in the SPV from funds appropriated under Title IV of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). For information on the relief available for mid-sized and large businesses under Title IV of the CARES Act, see **here**.

Eligibility

U.S. businesses that were in good financial standing before the COVID-19 pandemic are eligible to participate in either the MSNLF or the MSELF, but not both, provided they have (i) significant operations and a majority of their employees based in the United States and (ii) up to 10,000 employees or up to $2.5 billion in 2019 annual revenues. Businesses that borrow money through the Main Street Lending Program may also take advantage of the Small Business Administration's Paycheck Protection Program, but cannot also participate in the Federal Reserve's Primary Market Corporate Credit Facility. Additional information on the Paycheck Protection Program is available **here**.

U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies are eligible to participate as lenders in the Main Street Lending Program.

Loan Terms

Loans under the MSNLF and the MSELF must be for a minimum of $1 million. Under the MSNLF, loans will have a maximum size of the lesser of (i) $25 million or (ii) the amount that, when added to an eligible borrower's existing outstanding and committed but undrawn debt, does not exceed four times its 2019 EBITDA. The maximum loan size under the MSELF is the lesser of (i) $150 million, (ii) 30% of an eligible borrower's existing outstanding and committed but undrawn bank debt, or (iii) the amount that, when added to an eligible borrower's existing outstanding and committed but undrawn debt, does not exceed six times its 2019 EBITDA. The Federal Reserve has not provided guidance on the definition of EBITDA, which is often subject to additional adjustments in credit facilities or borrower financial presentations, the meaning of "existing outstanding and committed but undrawn debt," or the meaning of "existing outstanding and committed but undrawn bank debt."

Each loan made under the Main Street Loan Program will have a four-year term and accrue interest at an adjustable rate of SOFR + 250-400 basis points. Under this program, amortization of principal and interest will be deferred for one year. Loans will be unsecured under the MSNLF and, under the MSELF, collateralization will depend on the terms of the existing loan, with the lender and the SPV sharing in any collateral, whether pledged initially or at the time of upsizing, on a pro rata basis. Loans made under the Main Street Lending Program may not be forgiven, but may be prepaid without penalty.

Use of Proceeds

Under the Main Street Lending Program, borrowers must use the loan or upsize proceeds, as applicable, to make reasonable efforts to maintain their payroll and retain employees during the term of such loan or upsized tranche. Proceeds may not be used to repay any other loans. It is unclear what uses of proceeds would be permissible to maintain payroll and retain employees, or what would constitute "reasonable efforts" to that effect.

Borrower and Lender Attestations

Each eligible borrower must make certain attestations with respect to the new loan or upsized tranche, as applicable, including that:

- the proceeds of the loan or upsized tranche, as applicable, will not be used to repay other loan balances;
- until the loan is repaid in full, the borrower will not repay other debt of equal or lower priority, except for mandatory principal payments;
- the borrower will not seek to cancel or reduce any outstanding lines of credit;
- the borrower requires financing due to the exigent circumstances presented by the COVID-19 pandemic;
- the borrower will use loan or upsize proceeds, as applicable, to make reasonable efforts to maintain its payroll and retain employees during the term of such loan or upsized tranche, as applicable;
- the borrower meets the EBITDA leverage condition noted above;
- the borrower is eligible to participate in the Main Street Lending Program, including in light of the conflicts of interest rules set forth in the CARES Act; and
- until twelve months after such loan is repaid, the borrower will not:
    - repurchase any of its or its parent's equity securities that are listed on a national securities exchange, except if required under a contractual obligation in effect as of March 27, 2020;
    - pay dividends or make other capital distributions with respect to its common stock; or
    - (i) for any officer or employee whose total compensation for 2019 exceeded $425,000, (x) increase such officer's or employee's compensation or (y) provide any severance or other benefits upon termination that exceeds twice the maximum total annual compensation received by such officer or employee in 2019, or (ii) for any officer or employee whose total compensation for 2019 exceeded $3,000,000, pay such officer or employee total compensation during any consecutive twelve months in excess of $3,000,000 plus 50% of the excess over $3,000,000 of the total compensation received for 2019.[1]

Moreover, each eligible lender must make certain attestations with respect to the new loan or upsized tranche, as applicable, including that:

- proceeds of the loan or upsized tranche, as applicable, will not be used to repay or refinance pre-existing loans or lines of credit made by the lender to the borrower (including, with respect to an upsize under the MSELF, the pre-existing portion of an eligible loan);
- the lender will not cancel or reduce any existing lines of credit outstanding to the borrower; and
- the lender is eligible to participate in the Main Street Lending Program.

Fees

Under the MSNLF, each borrower must pay a loan origination fee of 100 basis points of the principal amount of the loan. The lender may also require a borrower under the MSNLF to pay a facility fee of 100 basis points of the principal amount of the loan participation purchased by the SPV; otherwise, the lender is obligated to pay this fee. Under the MSELF, each borrower must pay a fee of 100 basis points of the principal amount of the upsized tranche. In addition, the SPV will pay each eligible lender participating in the Main Street Lending Program 25 basis points of the principal amount of its participation in the loan or upsized tranche, as applicable, annually for loan servicing.

Other Considerations

Among other considerations, eligible borrowers must closely review the terms and conditions of their existing credit arrangements and other contractual obligations when evaluating whether to participate in the Main Street Lending Program. In addition, the ability of borrowers to engage in mergers and acquisitions may be adversely affected by the covenants associated with the Main Street Lending Program, such as the limitations on golden parachute payments until twelve months after the loan is repaid. Borrowers also have to be wary of the numerous certifications required to obtain a loan and whether, in hindsight, future federal or state investigative bodies would have claims for fraud or intentional misrepresentation.

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[1] Total compensation includes salary, bonuses, awards of stock, and other financial benefits provided to an officer or employee. See CARES Act, Title IV, Subtitle A, §4004(b).

We are here to help answer specific questions and offer advice on your options. Please contact any member of our Corporate & Business Group to discuss.

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