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Main Street Lending Program: Initial Guidance

UPDATE: Main Street Lending Program for For-Profit Businesses

Under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Federal Reserve received authority to set up a "Main Street Lending Program" to facilitate lending to small and mid-sized businesses. On April 9, 2020, the Federal Reserve published press releases describing the two new facilities under the programs: Main Street New Loan Facility (New Loan Facility) and the Main Street Expanded Loan Facility (Expanded Loan Facility).

This alert summarizes and compares the two facilities while also highlighting some potential areas of concern for both lenders and borrowers and where further guidance might be beneficial. Just like when prior stimulus packages were announced, there are many details to be fleshed out.

Under these two facilities, eligible lenders will originate new term loans (or expand the size of existing term loans) to eligible borrowers. A special purpose vehicle (SPV) funded by the Federal Reserve Bank (Reserve Bank) will then purchase a 95 percent participation in the eligible loans (or the upsized tranche of eligible loans). Lenders will retain 5 percent of each eligible loan (or the upsized tranche of each eligible loan).

The combined size of the two facilities will be up to $600 billion. There is no guidance yet as to when companies may start filing applications. The purchases by the SPV will continue until at least September 30, 2020.

The Main Street Lending Program facilities differ from the Paycheck Protection Program (PPP) in many ways. For example, the Main Street Lending Program facilities:

- Allow larger companies to be borrowers;
- Are not restricted by the SBA "affiliation" rules; and
- Do not feature a loan forgiveness component.

Eligible Borrowers

The eligibility criteria for borrowers is identical under the New Loan Facility and

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Eligible borrowers are businesses with up to 10,000 employees or up to $2.5 billion in 2019 annual revenues. Each eligible borrower must be a business that is 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.

An eligible borrower may only participate in either the New Loan Facility or the Expanded Loan Facility, not both. An eligible borrower may, however, participate in the PPP while also participating in one of these two new facilities.

The mere fact that a borrower has an existing credit facility should not necessarily keep it from participating in the New Loan Facility. A borrower could, for example, use room under the debt basket in its existing credit agreement or seek an amendment to the existing credit agreement to allow it to incur such additional debt.[note]It is worth noting that borrowers and lenders should consider how any stimulus loan might impact, and require amendments to, a borrower's existing loan documents.[/note]

Borrowers and lenders should note that the press releases:

- Do not establish a minimum size requirement for eligibility and, as mentioned above, do not mention any SBA "affiliation" rules; and
- Do not exclude domestic (U.S.) subsidiaries of foreign companies from eligibility so long as such subsidiaries comply with the other requirements.

Eligible Lenders

The eligibility criteria for lenders is identical under the New Loan Facility and the Expanded Loan Facility.

Eligible lenders are U.S. insured depository institutions, U.S. bank holding companies and U.S. savings and loan holding companies.

At least for now, non-bank lenders are not eligible to participate in these facilities. If a borrower has an existing credit facility with only a non-bank lender, the borrower apparently cannot take advantage of the Expanded Loan Facility.

Eligible Loans

Each loan under the facilities must be made by an eligible lender(s) to an eligible borrower and satisfy the following criteria:

Criteria	New Loan Facility	Expanded Loan Facility
Term Loan or Revolving Loan	Term loan	Same
Secured or Unsecured	Unsecured	Secured or unsecured
Origination Date	On or after April 8, 2020	Before April 8, 2020 (origination date of the existing loan)
Maturity	Four-year maturity	Same
Deferral	Amortization of principal and interest deferred for one year	Same
Interest Rate	Adjustable rate of Secured Overnight Financing Rate (SOFR) + 250-400 basis points	Same
Minimum Loan Size	$1 million	Same
Maximum Loan Size	Lesser of (i) $25 million; or (ii) an amount that, when added to the eligible borrower's existing outstanding and committed but undrawn debt, does not exceed four times the eligible borrower's 2019 EBITDA	Lesser of (i) $150 million; (ii) 30 percent of the eligible borrower's existing outstanding and committed but undrawn bank debt; or (iii) an amount that, when added to the eligible borrower's existing outstanding and committed but undrawn debt, does not exceed six times the eligible borrower's 2019 EBITDA

Criteria	New Loan Facility	Expanded Loan Facility
Prepayment Penalty	Prepayment permitted without penalty	Same

Borrowers and lenders should note:

- In the EBITDA leverage conditions, the term sheets simply use "earnings before interest, taxes, depreciation and amortization" to define EBITDA. It is not the highly negotiated "adjusted EBITDA" concept – with numerous add-backs and adjustments – like you might find in a credit agreement.
- In the calculation to determine the maximum loan size, the language refers to "existing outstanding and committed but undrawn debt." The calculation should take into account unused revolving commitments and delayed-draw term loan commitments.
- Any borrower intending to use an accordion or incremental facility provision in an existing credit agreement, in connection with the Expanded Loan Facility, should carefully examine the credit agreement's requirements. For example:
  - If the Expanded Loan Facility's stipulated four-year maturity is before the existing loan's maturity date, this would trip up any requirement that the incremental term loan mature after the existing term loans;
  - In the unlikely event that the interest rate required by the Expanded Loan Facility is higher than the rate being paid on existing term loans, it could be an issue under any "most-favored nation" provision as to the interest rate on the existing term loans; and
  - Consent rights of other lenders.

Required Attestations

In addition to certifications required by applicable law, the eligible lender and the eligible borrower must make certain certifications under each of the programs.

Certifying Entity	New Loan Facility	Expanded Loan Facility
Lender	The proceeds of the eligible loan will not be used to repay or refinance pre-existing loans or lines of credit made by the eligible lender to the eligible borrower	Same, but only as to the upsized tranche: The proceeds of the upsized tranche of the eligible loan will not be used to repay or refinance pre-existing loans or lines of credit made by the eligible lender to the eligible borrower, including the pre-existing portion of the eligible loan
Borrower	It will refrain from using the proceeds of the eligible loan to repay other loan balances	Same, but only as to the upsized tranche: It will refrain from using the proceeds of the upsized tranche of the eligible loan to repay other loan balances
Borrower	It will refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless the eligible borrower has first repaid the eligible loan in full	Same
Lender	It will not cancel or reduce any existing lines of credit outstanding to the eligible borrower	Same
Borrower	It will not seek to cancel or reduce any of its outstanding lines of credit with the eligible lender or any other lender	Same

Certifying Entity	New Loan Facility	Expanded Loan Facility
Borrower	It requires financing due to the exigent circumstances presented by the COVID-19 pandemic and, using the proceeds of the eligible loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the eligible loan	Same, but only as to the upsized tranche: It requires financing due to the exigent circumstances presented by the COVID-19 pandemic and, using the proceeds of the upsized tranche of the eligible loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the upsized tranche of the eligible loan
Borrower	It meets the EBITDA leverage condition stated above for eligible loans under the facility	Same
Borrower	It will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act[2]	Same
Borrowers and Lenders	It is eligible to participate in the facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act[3]	Same

Some of the limits above raise questions. For example, an eligible lender is required to certify that it will not "seek to cancel or reduce any existing lines of credit outstanding to the eligible borrower." What does "cancel or reduce" mean? Can a lender terminate its commitment under a revolving line of credit after a default? In addition, will a borrower be allowed to repay a revolving line of credit before paying off the eligible loan?

Fees

Fee	New Loan Facility	Expanded Loan Facility
Facility Fee	An eligible lender will pay the SPV a facility fee of 100 basis points of the principal amount of the loan participation purchased by the SPV (the eligible lender can require the eligible borrower to pay this fee)	None specified
Loan Origination or Upsizing Fee	An eligible borrower will pay an eligible lender an origination fee of 100 basis points of the principal amount of the eligible loan	Same, but only as to the upsized tranche: An eligible borrower will pay an eligible lender a fee of 100 basis points of the principal amount of the upsized tranche of the eligible loan at the time of upsizing
Servicing	The SPV will pay an eligible lender 25 basis points of the principal amount of its participation in the eligible loan per annum for loan servicing	Same, but only as to the upsized tranche: The SPV will pay an eligible lender 25 basis points of the principal amount of its participation in the upsized tranche of the eligible loan per annum for loan servicing

Loan Participations

As mentioned above, the SPV will purchase participations in the eligible loans (or in the upsized tranches of eligible loans).

Criteria	New Loan Facility	Expanded Loan Facility
Participation Percentages	The SPV will purchase a 95 percent participation in an eligible loan at par value	Same, but only as to the upsized tranche: The SPV will purchase a 95 percent participation in the upsized tranche of the eligible loan, provided that it is upsized on or after April 8, 2020, at par value
Risk Sharing	The SPV and the eligible lender will share risk on a pari passu basis	Same, but only as to the upsized tranche: The SPV and the eligible lender will share risk in the upsized tranche on a *pari passu* basis
Collateral	N/A	Any collateral securing an eligible loan, whether such collateral was pledged under the original terms of the eligible loan or at the time of upsizing, will secure the loan participation on a *pro rata* basis

Facility Termination

The duration of the two facilities is identical. The SPV will cease purchasing participations in eligible loans on September 30, 2020, unless the Board of Governors of the Federal Reserve System and the Treasury Department extend the applicable facility. The Reserve Bank will continue to fund the SPV after such date until the SPV's underlying assets mature or are sold.

Comment Period

Lenders, borrowers and other stakeholders are invited to comment on the Main Street Lending Program, through April 16, 2020.

If you have any questions about the Main Street Lending Program or your eligibility to participate under the program as a borrower or a lender, please contact your Reinhart attorney.

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