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Main Street Lending Program: Summary Reflecting Updated Guidance

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UPDATE: Main Street Lending Program for For-Profit Businesses

The Main Street Lending Program (Program) is intended to facilitate lending to small and mid-sized businesses that were in sound financial condition prior to the onset of the COVID 19 pandemic. The Program became fully operational on July 6, 2020, nearly three months after the first proposals were released by the Federal Reserve.

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

In all, the SPV will purchase up to $600 billion in participations. The purchases by the SPV will cease on September 30, 2020, unless the Program is extended.

There are three facilities under the Program – the Main Street New Loan Facility (New Loan Facility), the Main Street Priority Loan Facility (Priority Loan Facility) and the Main Street Expanded Loan Facility (Expanded Loan Facility).

This alert summarizes and compares the three facilities. The most recent rounds of guidance included many changes, such as:

- Reducing the minimum loan size from $500,000 to $250,000 for the New Loan Facility and the Priority Loan Facility;
- Increasing the maximum loan size for each facility;
- Increasing the SPV's participation purchase to 95 percent for all three facilities;
- Extending the maturity of the loans from four years to five years; and
- Revising the repayment terms, including deferring principal payments for two years (rather than one year) for all facilities.

The Program differs from the Paycheck Protection Program (PPP) in many ways.

Most significantly, the Program does not feature a loan forgiveness component.

Eligible Borrowers. An eligible borrower is a Business[note]A “Business” is an entity that is organized for profit as a partnership; a limited liability company; a corporation; an association; a trust; a cooperative; a joint venture with no more than 49 percent participation by foreign business entities; or certain tribal business concerns.[/note] that:

1. Was established prior to March 13, 2020;
2. Is not an Ineligible Business;[note]An “Ineligible Business” is a type of business listed in 13 CFR 120.110(b)-(j) and (m)-(s), as modified by regulations implementing the PPP on or before April 24, 2020 – for example, banks and other lenders, life insurance companies and more.[/note]
3. Meets at least one of the following two conditions: (i) has 15,000 employees or fewer; or (ii) had 2019 annual revenues of $5 billion or less;
4. 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;
5. Does not also participate in one of the other facilities under the Program or the Primary Market Corporate Credit Facility; and
6. Has not received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act) (but an eligible borrower that has received a PPP loan may still participate in the Program).

The U.S. Small Business Administration (SBA) affiliation regulations apply for purposes of calculating a business’s employees and 2019 revenues, so the employees and revenues of the borrower must be aggregated with the employees and revenues of its affiliated entities. These regulations specify that companies are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. These restrictions could prove problematic for private equity portfolio companies.

Nonprofit organizations currently are not eligible borrowers. However, on June

15, 2020, the Federal Reserve Board proposed two new facilities that would expand the Program to allow loans to nonprofit organizations. The comment period ended June 22, 2020, and revised term sheets have not yet been released with respect to these proposals.

Eligible Lenders. An eligible lender is a U.S. federally insured depository institution (including a bank, savings association or credit union), a U.S. branch or agency of a foreign bank, a U.S. bank holding company, a U.S. savings and loan holding company, a U.S. intermediate holding company of a foreign banking organization, or a U.S. subsidiary of any of the foregoing.

Private loan funds remain ineligible to lend under the Program.

Eligible Loans. Each loan must be made by an eligible lender(s) to an eligible borrower and satisfy the following criteria.

Criteria	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Term Loan or Revolving Loan	Term loan		The underlying loan may be a term loan or a revolving credit facility; the upsized tranche must be a term loan *Note:* The underlying loan must have a remaining maturity of at least 18 months (taking into account any adjustments made to the maturity of the loan after April 24, 2020, including at the time of upsizing) *Note:* The eligible lender must hold an interest in the underlying loan on the date of upsizing
Secured or Unsecured	Secured or unsecured	Secured or unsecured *Note:* If the eligible borrower has other secured loans (other than mortgage debt), the eligible loan must be secured.	The underlying loan and the upsized tranche may be secured or unsecured *Note:* If the underlying loan is secured, the upsized tranche must be secured *Note:* An eligible lender can require the pledge of additional collateral

Criteria	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Origination Date	After April 24, 2020	After April 24, 2020	The underlying loan must have been originated on or before April 24, 2020
Maturity	Five years	Five years	Five years
Payment Deferral	Principal payments deferred for two years Interest payments deferred for one year (unpaid interest will be capitalized)	Principal payments deferred for two years Interest payments deferred for one year (unpaid interest will be capitalized)	Principal payments deferred for two years Interest payments deferred for one year (unpaid interest will be capitalized)
Amortization	Principal amortization of 15 percent at the end of the third year, 15 percent at the end of the fourth year, and a balloon payment of 70 percent at maturity at the end of the fifth year	Principal amortization of 15 percent at the end of the third year, 15 percent at the end of the fourth year, and a balloon payment of 70 percent at maturity at the end of the fifth year	Principal amortization of 15 percent at the end of the third year, 15 percent at the end of the fourth year, and a balloon payment of 70 percent at maturity at the end of the fifth year
Interest Rate	Adjustable rate of LIBOR (1 or 3 month) + 3 percent	Adjustable rate of LIBOR (1 or 3 month) + 3 percent	Adjustable rate of LIBOR (1 or 3 month) + 3 percent
Minimum Loan Amount	$250,000	$250,000	$10 million

Criteria	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Maximum Loan Amount	Lesser of (i) $35 million; or (ii) an amount that, when added to the eligible borrower's existing outstanding and undrawn available debt, does not exceed 4x the eligible borrower's adjusted 2019 EBITDA To calculate adjusted 2019 EBITDA, use the methodology the eligible lender previously used for adjusting EBITDA when extending credit to the eligible borrower or similarly situated borrowers on or before April 24, 2020	Lesser of (i) $50 million; or (ii) an amount that, when added to the eligible borrower's existing outstanding and undrawn available debt, does not exceed 6x the eligible borrower's adjusted 2019 EBITDA Same EBITDA methodology as the New Loan Facility	Lesser of (i) $300 million; or (ii) an amount that, when added to the eligible borrower's existing outstanding and undrawn available debt, does not exceed 6x the eligible borrower's adjusted 2019 EBITDA To calculate adjusted 2019 EBITDA, use the methodology the eligible lender previously used for adjusting EBITDA when originating or amending the eligible loan on or before April 24, 2020
Priority Requirement	May not include any provisions that would cause the eligible loan (or the upsized tranche) to be contractually subordinated to other debt in or outside of bankruptcy		

Criteria	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Security Requirement	None	Must include a standard lien covenant or negative pledge that is of the type and that contains the exceptions, limitations, carveouts, baskets, materiality thresholds and qualifiers that are consistent with those used by the eligible lender in its ordinary course lending to similarly situated borrowers At the time of origination and at all times the eligible loan is outstanding, the eligible loan is senior to or *pari passu* with, in terms of priority and security, the eligible borrower's other loans or debt instruments, other than mortgage debt *Note:* If a Priority Loan Facility loan is secured, a "Collateral Coverage Ratio" must be satisfied	Same requirement as to a standard lien covenant or negative pledge At the time of upsizing and at all times the upsized tranche is outstanding, the upsized tranche is senior to or *pari passu* with, in terms of priority and security, the eligible borrower's other loans or debt instruments, other than mortgage debt

Criteria	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Prepayment Penalty	No prepayment penalty		

With respect to the leverage test, note that:

- The test utilizes an "adjusted EBITDA" concept;
- The guidance specifies that "existing outstanding and undrawn available debt" does not include, among other things, any undrawn commitment that is used to finance receivables (including seasonal financing of inventory); and
- If the borrower has an affiliate that has previously borrowed or has an application pending to borrow under the Program, then the entire affiliated group's debt and EBITDA are relevant to determining the borrower's maximum loan size. The affiliated group's total participation in a facility cannot exceed the maximum loan size that the entire affiliated group is eligible to receive on a consolidated basis. The SBA affiliation rules apply.

Finally, any borrower intending to use an accordion or incremental facility provision in an existing credit facility, in connection with the Expanded Loan Facility, should carefully consider whether the upsizing complies with the credit agreement.[note]Indeed, borrowers and lenders should consider how any stimulus loan [might impact, and require amendments to, a borrower's existing loan documents].

Borrower Certifications and Covenants. In addition to other certifications required by applicable law, the eligible borrower must make certain certifications and covenants under each facility.

Topic	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Repayment of other debt	The eligible borrower must commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the eligible loan is repaid in full, unless the debt or interest payment is mandatory and due	Same *Note:* A Priority Loan Facility loan can be used to refinance existing debt of another lender at the time of borrowing the eligible loan	Same, but refers to the upsized tranche: The eligible borrower must commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the upsized tranche of the eligible loan is repaid in full, unless the debt or interest payment is mandatory and due
Cancellation or reduction of existing lines	The eligible borrower must commit that it will not seek to cancel or reduce any of its committed lines of credit with the eligible lender or any other lender		
Ability to Meet Financial Obligations	The eligible borrower must certify that it has a reasonable basis to believe that, as of the date of origination of the eligible loan (or the date of upsizing) and after giving effect to such loan (or upsizing), it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period		
Solvency	The eligible borrower must certify that it is not currently in bankruptcy and that it was not "generally failing to pay undisputed debts as they become due" during the 90 days preceding the date of borrowing		

Topic	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Compensation, stock purchase and distribution restrictions	The eligible borrower must commit that it will follow the compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act, except that an S corporation or other tax pass-through entity that is an eligible borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings		
Eligibility	The eligible borrower must certify that 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		

Each facility further contains a safe harbor allowing a borrower to refinance debt that is maturing no later than 90 days from the date of such refinancing.

Finally, each eligible borrower that participates in the Program is expected to make commercially reasonable efforts to maintain its payroll and retain its employees during the time the eligible loan (or the upsized tranche) is outstanding. This requires the borrower to make good-faith efforts to maintain payroll and retain employees in light of its capacities, the economic environment, its available resources and the business need for labor.

Lender Certifications and Covenants. In addition to other certifications required by applicable law, the eligible lender must make certain certifications and covenants under each facility.

Topic	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Repayment of other debt extended by the eligible lender	The eligible lender must commit that it will not request that the eligible borrower repay debt extended by the eligible lender to the eligible borrower, or pay interest on such outstanding obligations, until the eligible loan (or the upsized tranche) is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration		

<table>
<tr><th>Topic</th><th>New Loan Facility</th><th>Priority Loan Facility</th><th>Expanded Loan Facility</th></tr>
<tr><td>Cancellation or reduction of existing lines</td><td colspan="3">The eligible lender must commit that it will not cancel or reduce any existing committed lines of credit to the eligible borrower, except in an event of default</td></tr>
<tr><td>Adjusted EBITDA</td><td colspan="2">The eligible lender must certify that the methodology used for calculating the eligible borrower’s adjusted 2019 EBITDA for the leverage requirement above is the methodology it has previously used for adjusting EBITDA when extending credit to the eligible borrower or similarly situated borrowers on or before April 24, 2020</td><td>The eligible lender must certify that the methodology used for calculating the eligible borrower’s adjusted 2019 EBITDA for the leverage requirement above is the methodology it previously used for adjusting EBITDA when originating or amending the eligible loan on or before April 24, 2020</td></tr>
<tr><td>Eligibility</td><td colspan="3">The eligible lender must certify that 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</td></tr>
</table>

Moreover, the guidance specifies that the eligible lenders are expected to conduct an assessment of each potential borrower’s financial condition at the time of the potential borrower’s application. The mere fact that a company is eligible under the Program does not mean that a lender must approve a loan or entitle the company to the maximum loan amount.

Note that the eligible lender is tasked with collecting the eligible borrower’s required certifications and covenants at the time of origination (or upsizing) of the eligible loan. Eligible lenders are entitled to rely on the eligible borrower’s certifications and covenants, as well as any subsequent self-reporting by the eligible borrower.

Finally, the guidance has a requirement as to risk rating classification.

<table>
<tr><th>New Loan Facility</th><th>Priority Loan Facility</th><th>Expanded Loan Facility</th></tr>
<tr><td colspan="2">If the eligible borrower had other loans outstanding with the eligible lender as of December 31, 2019, such loans must have had an internal risk rating equivalent to a “pass” in the Federal Financial Institutions Examination Council’s (FFIEC) supervisory rating system on that date</td><td>The eligible loan must have had an internal risk rating equivalent to a “pass” in the FFIEC’s supervisory rating system as of December 31, 2019</td></tr>
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Fees. The guidance sets forth the following fees for the Program:

<table>
<tr><th>Fee</th><th>New Loan Facility</th><th>Priority Loan Facility</th><th>Expanded Loan Facility</th></tr>
<tr><td>Transaction Fee</td><td colspan="2">An eligible lender will pay the SPV a transaction fee of 100 basis points of the principal amount of the eligible loan at the time of origination
Note: The eligible lender can require the eligible borrower to pay this fee</td><td>An eligible lender will pay the SPV a transaction fee of 75 basis points of the principal amount of the upsized tranche of the eligible loan at the time of upsizing
Note: The eligible lender can require the eligible borrower to pay this fee</td></tr>
<tr><td>Loan Origination Fee</td><td colspan="2">An eligible borrower will pay an eligible lender an origination fee of up to 100 basis points of the principal amount of the eligible loan at the time of origination</td><td>An eligible borrower will pay an eligible lender an origination fee of up to 75 basis points of the principal amount of the upsized tranche of the eligible loan at the time of upsizing</td></tr>
<tr><td>Servicing Fee</td><td colspan="3">The SPV will pay an eligible lender 25 basis points of the principal amount of its participation in the eligible loan (or the upsized tranche) per annum for loan servicing</td></tr>
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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	Priority Loan Facility	Expanded Loan Facility
Participation Percentage	The SPV will purchase at par value a 95 percent participation in the eligible loan (or the upsized tranche)		
Retention	The eligible lender must retain its 5 percent of the eligible loan until it matures or the SPV sells all of its participation, whichever comes first		Same, but refers to the upsized tranche: The eligible lender must retain its 5 percent of the upsized tranche until it matures or the SPV sells all of its participation, whichever comes first *Note:* The eligible lender must retain its interest in the underlying loan until the underlying loan matures, the upsized tranche matures, or the SPV sells all of its participation, whichever comes first
Risk Sharing	The SPV and the eligible lender will share risk in the eligible loan (or the upsized tranche) on a *pari passu* basis		
Existing Collateral	N/A		Any collateral securing the eligible loan (at the time of upsizing or on any subsequent date) must secure the upsized tranche on a *pari passu* basis
Structure	True sale		
Timing of Sale	To be completed expeditiously after the eligible loan's origination (or upsizing)		

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