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Legal Update

U.S. Federal Reserve Further Expands Main Street Lending Program to Offer Support to More Small and Medium-Sized Businesses

On June 8, 2020, the Federal Reserve Board announced a further expansion of the terms for the forthcoming Main Street Lending Program.[1] These updates are intended to broaden the appeal and workability of the program, making more small and medium-sized businesses eligible (and, potentially, willing) to receive support.

Originally unveiled on April 9, updated and expanded on April 30, and further updated on May 27, the program is designed to provide assistance to businesses that are too large to qualify for the Small Business Administration's Paycheck Protection Program (generally limited to companies with under 500 employees), not large enough to access corporate debt markets, and not eligible for the Federal Reserve's lending facilities for investment-grade companies.[2]

Under the Main Street Lending Program, the Department of the Treasury will use funds appropriated to the Treasury's Exchange Stabilization Fund under section 4027 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") to make a $75 billion equity investment in a Special Purpose Vehicle (the "SPV") established by the Federal Reserve Bank of Boston. The SPV will then purchase up to $600 billion of participations in eligible loans from eligible lenders. Eligible lenders will retain a portion of each eligible loan. The Federal Reserve will be secured by all of the assets of the SPV.

The SPV will participate in three Main Street facilities: for new loans, (i) the Main Street New Loan Facility ("New Loan Facility") and (ii) the Main Street Priority Loan Facility ("Priority Loan Facility"), and for upsized tranches of existing loans, (iii) the Main Street Expanded Loan Facility ("Expanded Loan Facility"). All three Main Street facilities use the same lender and borrower eligibility criteria and have many of the same features.

This Legal Update provides an overview of the Federal Reserve's most recent revisions to the terms of the Main Street Lending Program.

Overview of the Revised Terms

MINIMUM AND MAXIMUM LOAN SIZE

The revised terms decrease the minimum loan amounts available under the New Loan Facility and the Priority Loan Facility. While the minimum loan amount for the Expanded Loan Facility remains at $10 million, the minimum for the New Loan Facility and the Priority Loan Facility is now $250,000, a reduction from $500,000.

Additionally, the maximum loan amounts have been increased for each of the three facilities. The maximum loan amount for the New Loan Facility is now the lesser of $35 million (an increase from $25 million) and four times the Eligible Borrower's 2019 adjusted EBITDA. The maximum loan amount for the Priority Loan Facility is now the lesser of $50 million (an increase from $25 million) and six times the Eligible Borrower's 2019 adjusted EBITDA. The maximum loan amount for the Expanded Loan Facility is now the lesser of $300 million (an increase from $200 million) and six times the Eligible Borrower's 2019 adjusted EBITDA, and the additional prong of 35% of the Eligible Borrower's existing outstanding and undrawn debt has been removed from the determination.

REPAYMENT AND MATURITY

The revised terms extend the maturity dates of each of the three facilities. All facilities will now mature after five years rather than after four years. The delay of the repayment of principal on loans across all three facilities has been extended from one year to two years. Interest payments remain deferred for one year. As a result of this, and in order to accommodate the extended terms, all three facilities will now follow the same less-burdensome amortization schedule, as follows: 15% at the end of the third year, 15% at the end of the fourth year and a balloon payment of 70% at maturity at the end of the fifth year.

LOAN PARTICIPATION

The Federal Reserve will purchase a larger share of the loans. When the Federal Reserve introduced the Priority Loan Facility it intended to only purchase an 85% participation, as opposed to 95% in the other two facilities. The Federal Reserve will now purchase a 95% participation in the Eligible Loans under each of the three facilities.

Summary of Terms, Conditions, and Other Requirements

The table below summarizes the terms, conditions, and other requirements for each of the three Main Street Lending Program facilities as revised.

	New Loans	Priority Loans	Expanded Loans
Eligible Lender Requirements	• U.S. federally insured depositary institutions (e.g., bank, savings association, credit institution) • U.S. branch/agency of foreign bank • U.S. bank holding company • U.S. intermediate holding company of a foreign banking organization • Any U.S. subsidiary of the above		
Eligible Borrower Size Requirements	No more than: • 15,000 employees; or • $5 billion 2019 revenues		
Type	Term Loan	Term Loan	Term Loan or Revolving Credit Facility, each with a remaining maturity of at least 18 months
Secured Status	Secured or Unsecured		
Term	5 years ***(previously 4 years)***		
Minimum Loan Size	$250,000 ***(previously $500,000)***		$10,000,000
Maximum Loan Size	Lesser of: • $35M (**previously $25M**); or • 4x Eligible Borrower's 2019 adjusted EBITDA	Lesser of: • $50M (**previously $25M**); or • 6x Eligible Borrower's 2019 adjusted EBITDA	Lesser of: • $300M (**previously $200MM**); or • 6x Eligible Borrower's 2019 adjusted EBITDA
Subordination	Eligible Loan not to be contractually subordinated (in terms of priority) to any other debt of the Eligible Borrower.	Eligible Loan to be senior or *pari passu* (in terms of priority and security) with Eligible Borrower's other debt (other than Mortgage Debt[3]).	Upsized tranche of Eligible Loan to be senior or *pari passu* (priority and security) with Eligible Borrower's other debt (other than Mortgage Debt).

	New Loans	Priority Loans	Expanded Loans
Loan Participations	SPV will purchase a 95% participation in Eligible Loan as a "true sale" after closing.	SPV will purchase a 95% ***(previously 85%)*** participation in Eligible Loan as a "true sale" after closing.	SPV will purchase a 95% participation in upsized tranche of Eligible Loan as a "true sale" after closing.
Risk Retention	Eligible Lender must hold 5% of Eligible Loan until Eligible Loan matures or SPV sells all of its participation.	Eligible Lender must hold 5% ***(previously 15%)*** of Eligible Loan until Eligible Loan matures or SPV sells all of its participation.	Eligible Lender must be one of the lenders that holds an interest in the underlying Eligible Loan. Eligible Lender must hold 5% of upsized tranche of Eligible Loan until upsized tranche matures or SPV sells all of its participation.
Amortization	• Year 1: N/A • Year 2: N/A • Year 3: 15% • Year 4: 15% • Year 5: 70% ***(previously:*** • ***New Loans: Year 1: N/A, Year 2: 33.33%, Year 3: 33.33%, Year 4: 33.33%*** • ***Priority Loans: Year 1: N/A, Year 2: 15%, Year 3: 15%, Year 4: 70%*** • ***Expanded Loans: Year 1: N/A, Year 2: 15%, Year 3: 15%, Year 4: 70%)***		
Interest Payments	Deferred for 1 year. Unpaid interest will be capitalized.		
Benchmark Rate	LIBOR (1 or 3 months)		
Margin	3%		
Prepayment	No penalty		
Key Eligible Lender Certifications and Covenants	• Eligible Lender shall not request early repayment of any other debt from Eligible Borrower. • Eligible Lender shall not cancel or reduce any other committed line of credit to the Eligible Borrower (except following an Event of Default). • Eligible Lender to certify methodology used to calculate 2019 EBITDA is the same as previously used for Eligible Borrower (or similarly situated borrowers in the case of New Loans and Priority Loans).		

<table>
<tr><th></th><th>New Loans</th><th>Priority Loans</th><th>Expanded Loans</th></tr>
<tr><td></td><td colspan="3">• Eligible Lender to certify that (i) any underlying credit facility originated prior to December 31, 2019, had an internal risk rating equivalent to a “pass” in the Federal Financial Institutions Examination Counsel’s (“FFIEC”) supervisory rating system on that date or (ii) that any underlying credit facility originated after December 31, 2019, had an internal risk rating equivalent to a “pass” in the FFIEC’s supervisory rating system at the time of its origination.</td></tr>
<tr><td>Key Eligible Borrower Certifications and Covenants</td><td colspan="3">• Eligible Borrower shall not make any prepayment of other debt (in case of Priority Loans, Eligible Borrower may refinance existing debt owed by the Eligible Borrower to a lender other than the Eligible Lender concurrently with closing).
• Eligible Borrower shall not cancel or reduce any other committed lines of credit.
• Eligible Borrower to certify it has reasonable basis to believe that it has the ability to meet its financial obligations for 90 days following closing.
• Eligible Borrower to follow compensation, stock repurchase and capital distributions restrictions applicable to 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).</td></tr>
<tr><td>Retention of Employees</td><td colspan="3">Eligible Borrower to make “commercially reasonable efforts” to maintain its payroll and retain employees while Eligible Loan (or upsized tranche of Eligible Loan, in case of Expanded Loans) is outstanding.</td></tr>
<tr><td>Fees</td><td colspan="2">Eligible Lender to pay:
• Transaction Fee: 1%
• Origination Fee: 1%

SPV to pay:
Servicing Fee: 0.25% of SPV’s participation</td><td>Eligible Lender to pay:
• Transaction Fee: 0.75% of upsized tranche
• Upsizing Fee: 0.75% of upsized tranche
SPV to pay:
• Servicing Fee: 0.25% of SPV’s participation</td></tr>
<tr><td>Program Termination</td><td colspan="3">SPV to purchase participations in Eligible Loans until September 30, 2020, or until $600 billion of participations in eligible loans have been purchased, unless extended by the Department of the Treasury.</td></tr>
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And for any legal questions related to this pandemic, please contact the authors of this Legal Update or Mayer Brown's COVID-19 Core Response Team at FW-SIG-COVID-19-Core-Response-Team@mayerbrown.com.

Endnotes

[1] Federal Reserve, Federal Reserve Board announces it is expanding the scope and eligibility for the Main Street Lending Program (Jun. 08 2020), https://www.federalreserve.gov/newsevents/pressreleases/monetary20200608a.htm

[2] For analysis of the Main Street Lending Program's initial and updated terms, see Mayer Brown's Legal Updates: *U.S. Federal Reserve Expands and Provides Additional Details on Main Street Lending Program for Small and Mid-Sized Businesses* (May 1, 2020), https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2020/05/main-street-lending-program.pdf; *U.S. Federal Reserve Announces Main Street Lending Program to Provide Financing to Small and Mid-Sized Businesses* (April 10, 2020), https://www.mayerbrown.com/en/perspectives-events/publications/2020/04/us-federal-reserve-announces-main-street-lending-program-to-provide-financing-to-small-and-midsized-businesses.

[3] Mortgage Debt to mean (i) debt secured by real property at the time of the Main Street Loan's origination, and based on June 8 updates, (ii) limited recourse equipment financings (including equipment capital or finance leasing and purchase money equipment loans) secured only by the acquired equipment.

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