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The Main Street Lending Program

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Title IV of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) permits the Federal Reserve to establish the Main Street Lending Program (Program). The Program will provide eligible borrowers loans in the aggregate amount of $600 billion through the Main Street New Loan Facility (MSNLF) and the Main Street Expanded Loan Facility (MSELF).

Eligible borrowers that may seek relief under the Program are defined as businesses with up to 10,000 employees or up to $2.5 billion in 2019 annual revenues (the Program is silent on how to count the number of employees and whether there are similar aggregation rules resembling those in the SBA programs in relation to size requirements). 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.

Under the Program the Federal Reserve Bank will commit to lend to a single common special purpose vehicle ("SPV") on a recourse basis. The SPV will purchase 95% participations in eligible loans from eligible lenders (U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies) and eligible lenders will retain 5% of the participations in each eligible loan. Additionally, the department of treasury will make $75 billion equity investment in the SPV in connection with the Program.

Main Street New Loan Facility

Through MSNLF an eligible borrower may receive an unsecured term loan originated on or after April 8, 2020 in accordance with the terms and conditions set forth below:

- 4 year maturity
- Amortization of principal and interest deferred for one year
- Adjustable rate of SOFR + 250-400 basis points
- Minimum loan size of $1 million
- Maximum loan size is the 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 earnings before interest, taxes, depreciation, and amortization (EBITDA)
- Prepayment permitted without penalty
- The eligible lender is required to pay a facility fee of 100 basis points. This cost may be passed on to the eligible borrower
- The eligible borrower will pay an eligible lender an origination fee of 100 basis points of the principal amount of the eligible loan
- The SPV will pay the eligible lender 25 basis points of the principal amount of its participation in the eligible loan per annum for loan servicing

Main Street Expanded Loan Facility

Through MSELF an eligible borrower may receive an upsize tranche originated on or after April 8, 2020 in accordance with the terms and conditions set forth below:

- 4 year maturity
- Amortization of principal and interest deferred for one year
- Adjustable rate of SOFR + 250-400 basis points

- Minimum loan size of $1 million
- Maximum loan size that is the lesser of (i) $150 million, (ii) 30% 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 earnings before interest, taxes, depreciation, and amortization (EBITDA)
- Prepayment permitted without penalty
- The eligible lender/borrower will not pay a facility fee
- The eligible borrower will pay an eligible lender an origination fee of 100 basis points of the principal amount of the eligible loan
- The SPV will pay the eligible lender 25 basis points of the principal amount of its participation in the eligible loan per annum for loan servicing

The SPV and the eligible lender will share risk in the upsized tranche on a pari passu basis. 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.

The SPV will cease purchasing participation in eligible loans on September 30, 2020 unless the Federal Reserve and the Treasury Department extend the MSNLF and MSELF. The Federal Reserve will continue to fund the SPV after such date until the underlying assets mature or are sold. Additionally, unlike the SBA's Paycheck Protection Program, these loans will not be reduced through forgiveness.

General Restrictions

If an eligible borrower participates in the Program, each eligible borrower shall (i) be restricted from purchasing its securities listed on a national securities exchange for a period of 12 months, except as required under a contractual obligation outstanding as of the enactment date of the CARES Act, (ii) be restricted from making dividends or contributions during the term of the outstanding obligations and for a period of 12 months thereafter, (iii) provide the government with an upside equity position in the company, if appropriate, (iv) not use the proceeds of the loan to repay other loan balances and will maintain current lines of credit, (v) not have applied for bankruptcy protection, and (vi) meet the EBITDA leverage condition set forth above.

Compensation Restrictions

During the term of the outstanding obligations and for a period of one (1) year thereafter, the eligible borrower shall not allow any officer or employee (whose compensation exceeded $425,000 in 2019; excluding collective bargaining agreements) (i) to receive compensation that exceeds their compensation in 2019 for any 12 consecutive month period, (ii) to receive any termination or severance benefits that are twice the total maximum compensation received by the officer or employee in 2019, and (iii) who received compensation of $3 million or more in 2019, to receive compensation, for any 12 consecutive month period, in excess of the sum of $3 million and shall receive compensation in the sum of 50% of the total excess sum over $3 million received by any officer or employee in 2019. Please note that total compensation includes salary, stock awards, bonuses, and other financial benefits.

Employment Restrictions

Eligible borrowers must (i) make a loan request related to supporting operations of the company, (ii) retain 90% of the company's workforce under current compensation levels and benefits until September 30, 2020, (iii) restore 90% of the eligible borrower's workforce prior to February 1, 2020 and restore all compensation and benefits to workers within 4 months from January 31, 2020, (iv) be domiciled in the United States or has a significant amount of operations or employees in the United States, (v) not outsource jobs for two (2) years after the repayment of the outstanding obligations, (vi) not abrogate any collective bargaining agreement for two (2) years after the repayment of the outstanding obligations, and (vii) remain neutral during the term of the outstanding obligations in connection with any union organizing efforts.

Lastly, as a practical note, this Program is intended to help larger and smaller/more leveraged companies tap into liquidity during these uncertain times. Many companies are disqualified under the SBA lending programs for not meeting the SBA small business size requirements. Although loans under this Program are not forgivable, like some of the SBA programs, the loans are intended to provide cash flow to companies that were in sound financial condition prior to the pandemic. If your company requires additional assistance in navigating the MSNLF and MSELF programs, please contact our law offices.

For additional information contact Edward Grattan.