

COVID-19 – The Main Street Lending Program: Federal Reserve Board Revises Key Terms of Main Street Lending Program, Updates FAQs and Launches Lender Registration

June 17, 2020

The Main Street Lending Program (the “Program”) is a financial assistance program established by the Board of Governors (the “Board”) of the Federal Reserve System to support small and medium-sized businesses affected by the COVID-19 pandemic. The Program authorizes eligible lenders to originate up to \$600 billion in eligible loans through three separate facilities - the Main Street New Loan Facility (the “New Facility”), the Main Street Priority Loan Facility (the “Priority Facility”), and the Main Street Expanded Loan Facility (“MSELF”). A special purpose vehicle (“SPV”) formed by the Federal Reserve will purchase 95% participations in these loans. Unlike loans made under the Paycheck Protection Program (“PPP”), loans originated under the Program are full recourse loans and are not forgivable. Please consult our previous Client Alerts on the [April 30th Program Guidance](#) and [May 27th Program Guidance](#) for additional details on the Program terms previously announced.

On June 8th, 2020, the Board issued revised term sheets for the three Program facilities, enacting a number of substantive changes to the prior April 30th term sheets. These changes were intended to expand both the universe of potential borrowers for the Program and the appeal of the loan terms. In addition, although not announced in its press release, the “Frequently Asked Questions” for the Program was also updated to reflect the revised term sheets and to provide certain other clarifications and guidance.

On June 11th, the Federal Reserve updated various Program forms and documents to align with these changes, including the forms of loan participation agreement, co-lender agreement, borrower certifications and covenants and lender transaction certifications and covenants. This Client Alert includes both the term sheet revisions discussed in our previous Client Alert on the [June 8th Term Sheets Guidance](#), as well as a summary of the June 8th revisions to the “Frequently Asked Questions” for the Program and June 11th document updates.

Effective as of June 15th, the Federal Reserve’s Main Street Lending Program is open for lender registration. Accordingly, it is advisable for any lender anticipating to originate any loans under to the Program to initiate the process by registering to confirm its status as an “Eligible Lender”. Interested lenders can register by submitting Lender Registration Certifications and Covenants and Lender Wire Instructions through the Program's lender portal.

The Program is anticipated to be actively buying Main Street loans soon. The Program will also accept loans that were originated by an Eligible Lender under the previously announced terms, if funded before June 10th. Any loans issued in reliance on the April 30th term sheets may be amended or refinanced in accordance with the June 8th terms.

FEATURES OF ELIGIBLE LOANS

Revised Term Sheets

The details on the changes to the term sheets are as follows:

FEATURE	NEW FACILITY LOANS	PRIORITY FACILITY LOANS	MSELF LOANS
Term	5 years (previously 4 years)		
Minimum Loan Size	\$250,000 (previously \$500,000)		\$10M
Maximum Loan Size	The lesser of \$35M, or an amount that, when added to outstanding and undrawn available debt, does not exceed 4.0x adjusted EBITDA (previously \$25M)	The lesser of \$50M, or an amount that, when added to outstanding or undrawn available debt, does not exceed 6.0x adjusted EBITDA (previously \$25M)	The lesser of \$300M, or an amount that, when added to outstanding or undrawn available debt, does not exceed 6.0x adjusted EBITDA (previously \$200M; also eliminated the prior cap based on 35% of borrower's existing and outstanding debt)
Risk Retention	5%	5% (previously 15%)	5%
Principal Repayment	Principal deferred for two years, years 3-5: 15%, 15%, 70% (previously principal deferred for one year and 33.33% repayment due in years 2-4)	Principal deferred for two years, years 3-5: 15%, 15%, 70% (previously principal deferred for one year and 15%, 15%, 70% repayment due in years 2, 3, and 4, respectively)	
Interest Payments	Deferred for one year		
Rate	LIBOR + 3%		

Observations:

- (1) *By increasing the maximum loan size for the Priority Facility to \$50 million, the Program significantly expands a borrower's opportunities to use the Program to refinance existing debt.*
- (2) *By eliminating the MSELF's prior cap based on 35% of the borrower's existing and outstanding debt, even very small loans with the Eligible Lender that were made prior to April 24 can now be upsized by up to \$300 million under the MSELF.*
- (3) *By deferring principal payments for two years rather than one, borrowers may have significantly more time to recover from the impact of COVID-19 before principal amortization commences. Note, however, that interest is only deferred for one year.*

Security and Priority Requirements – Mortgage Debt

The Program continues to generally exclude mortgage debt from the security and priority requirements for Priority Facility loans and MSELF loan upsizes, but such Main Street loans may not be contractually subordinated to mortgage debt. In addition, only mortgage debt that does not secure any other tranche of the underlying credit facility is excluded from the security and priority requirements for MSELF loan upsizes.

The definition of “mortgage debt” has also been expanded to include limited recourse equipment financings (including equipment capital or finance leasing and purchase money equipment loans) secured only by the acquired equipment.

Loan Size

Affiliation Rules

The debt and EBITDA of the borrower’s affiliates will be taken into account in determining the borrower’s maximum loan size only if and to the extent that they are consolidated into the borrower’s financial statements, have borrowed from a Main Street facility or have a pending Main Street loan application.

***Observation:** For private equity/venture capital funds, this means that all of their portfolio companies will have their Main Street loans aggregated for purposes of determining the maximum loans they may incur under the program. For example, if a fund portfolio company borrows \$40 million under the Priority Loan Facility, the Main Street loans of all other portfolio companies of such fund will be limited to the lesser of (i) the remaining \$10 million of borrowing capacity under the Priority Loan Facility or (ii) such lesser amount as is permitted under the leverage test, taking into account the debt and EBITDA of all of the fund’s portfolio companies that are Main Street borrowers or have pending applications for Main Street loans.*

Outstanding Debt

For the purposes of the leverage tests used to calculate the maximum loan size, the portion of any outstanding PPP loan that has not yet been forgiven will be counted as outstanding debt.

Capitalizing Unpaid Interest

Unpaid interest will be capitalized in accordance with the lender’s customary practices for capitalizing interest (e.g., at quarter-end or year-end).

Application of Prepayments of Principal

Although the lender has flexibility in specifying how prepayments of principal will be applied to future payments, it is encouraged to align the approach in the loan documents with the expected amortization schedule. For example, applying prepayments to the next scheduled principal payment due would maintain the alignment of later payments with the amortization schedule and allow for the intended deferment of some portion of payments to later years.

ELIGIBLE LENDERS

The new guidance provides a number of clarifications regarding lender eligibility criteria under the existing terms of the Program.

Multi-Lender MSELF Upsizes

More than one lender under an existing multi-lender facility may participate in a MSELF upsize of such facility, subject to the MSELF upsize limits. Each such lender should separately submit its upsized tranche to the SPV for the sale of a participation interest.

Eligible Lenders for MSELF Upsized Tranche

A lender is permitted to be an “Eligible Lender” for a MSELF upsize even if it did not originate the underlying loan, provided that it purchased its interest in the underlying loan before April 24, 2020. The prior guidance had required that such purchase be completed by December 31, 2019.

ELIGIBLE BORROWERS

The new guidance also provides certain clarifications regarding the Program’s borrower eligibility criteria.

Borrower Participation in Other CARES Act Programs - EIDL

The Program terms limiting borrowers from participating in certain other CARES Act programs do not restrict loans through the SBA’s Economic Injury Disaster Loan (“EIDL”) program.

How to Calculate 2019 Revenues

When using GAAP audited financial statements to calculate the 2019 annual revenues of a business and its affiliates, the new guidance clarifies that “GAAP” refers to “U.S. GAAP”.

Borrowers that typically prepare audited financial statements must submit audited financial statements. Otherwise borrowers should submit reviewed financial statements or financial statements prepared for the purpose of filing taxes. If a borrower does not yet have audited or reviewed financial statements for 2019, the borrower should use its most recent audited or reviewed financial statements.

FEES ASSOCIATED WITH THE LOAN FACILITIES

Additional Fees That Lenders May Charge Borrowers

Prior guidance had imposed restrictions on fees that lenders are permitted to charge borrowers. The new guidance clarifies that such restrictions do not prevent customary consent fees, if necessary to amend existing loan documentation in the context of a MSELF loan upsize.

REQUIRED REPRESENTATIONS AND COVENANTS

Borrower Certifications and Covenants

Mandatory and Due Debt Payments

Under the prior guidance, payments on debt that predates the Main Street loan were to be deemed “mandatory and due” (and therefore the borrower would not be restricted from paying them) upon:

- (i) any payment due date scheduled prior to April 24, 2020, or
- (ii) subject to certain exceptions, the occurrence of a mandatory prepayment event under a contract for debt executed prior to April 24, 2020.

Under the new guidance, the origination date of the Main Street loan will be used in lieu of April 24, 2020 for these purposes.

Financial Statements and EBITDA Calculations

The existing Borrower Certifications and Covenants forms require the borrower to make certain certifications with respect to the financial statements or records it provides to the lender and its calculation of adjusted 2019 EBITDA. The new FAQs provide certain guidance to borrowers as to the submission of such certifications to the lender, as follows:

- U.S. GAAP Compliance: U.S. GAAP compliance is not required for borrowers that do not typically prepare financial statements in accordance with U.S. GAAP and are not otherwise required to do so.
- Financial Statements: Borrowers that typically prepare audited financial statements must submit audited financial statements. Borrowers that do not typically prepare audited financial statements should submit reviewed financial statements or financial statements prepared for the purpose of filing taxes. If a borrower does not yet have audited or reviewed financial statements for 2019, it should use its most recent audited or reviewed financial statements.
- Consolidation: Borrowers that typically prepare financial statements that consolidate the borrower with its subsidiaries (but not its parent companies or sister affiliates) must submit such consolidated financial statements. If a borrower does not typically prepare consolidated financial statements, it is not required to do so unless so required by the lender.

However, as discussed above and in our prior Client Alerts, in certain instances a borrower will separately need to calculate the EBITDA of its entire affiliated group. In addition, borrowers that are holding companies (all or substantially all of the assets of which comprise equity interests in other entities) must calculate the EBITDA of “Selected Subsidiaries”.

ADDITIONAL MATTERS FOR LENDERS

Lender Accounting for the Transfer of Participation Interest to the SPV

The new guidance includes additional details supporting the prior guidance's assertions that the Program's structure is generally intended and expected to meet the accounting rules necessary for the loan participations sold to the SPV to qualify for sale treatment, and thus removal from the lender's financial statements.

- The guidance explains how the participation interests purchased by the SPV have characteristics of true participations and how the Program documents are consistent with the requirements of, and reflect the intention of the parties to effect, a true sale.
- The Federal Reserve Bank of Boston agrees that it will not assert in any proceeding that the sales of the participation interests are other than true sales constituting true participations.
- The lender will have no right or obligation to repurchase the sold participation interest, and the SPV has no right to put the participation interest back to the lender.
- The Federal Reserve has structured sales of the participation interests to the SPV with the intent that they would qualify for the safe harbor regulations of the Federal Deposit Insurance Corporation ("FDIC") and the National Credit Union Administration ("NCUA") for transfers of participation interests by a federally insured depository institution or credit union. Under such safe harbors, the FDIC and NCUA will not reclaim or recover any such transferred participation interest, provided that the conditions for sale accounting treatment are satisfied and subject to certain exceptions.

Allocation of Interest that Accrues Prior to Sale of Loan Participation to SPV

The guidance clarifies that all accrued but uncapitalized interest on the participation interest is for the account of the SPV, regardless of when such interest accrued, and is taken into account in determining the purchase price paid by the SPV.

Loan Funding

The prior guidance indicated that a lender electing to fund a Main Street loan prior to submission of the paperwork to the SPV must submit such paperwork expeditiously (i.e., no later than 14 days) after the closing of such loans. Under an exception added in the new guidance, for the first 14 days that the SPV purchases loan participations, the SPV will accept submissions of any loan originated after April 24, 2020 and before the date that the SPV begins purchasing loan participations under the relevant Main Street facility.

The terms of the Loan Facilities are subject to further rulemaking and guidance from the Federal Reserve System and the Federal Reserve Bank of Boston. We will continue to monitor developments and provide additional details as they become available. In the meantime, please feel free to contact us if you have any questions about the Program.

CONTACT

Please do not hesitate to contact your Windels Marx relationship lawyer or a member of our [Financial Transactions Practice Group](#) with any questions or comments.

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