Cooley

Fed Provides Additional Guidance on $600 Billion Main Street Lending Program

May 1, 2020

Since the Federal Reserve's announcement on April 9 of the rollout of its Main Street Lending Program[1], lenders and borrowers have eagerly anticipated additional guidance on key aspects of the program. On April 30, 2020, the Federal Reserve announced it is expanding the scope and eligibility for the Main Street Lending Program and provided additional guidance as to its administration, including **FAQs** and updated term sheets. Key highlights of these materials are set forth below. Full materials can be found on the **Federal Reserve's website**.

The three central changes to the program are:

1. The announcement of a new loan option, the Main Street Priority Loan Facility, which provides a loan option for more highly leveraged borrowers but requires increased risk sharing by participating lenders
2. Lowering the minimum loan size under certain of the facilities from $1 million to $500,000
3. Expanding the pool of businesses eligible to borrow under the program by including businesses with either (i) less than 15,000 employees or (ii) less than $5 billion in revenue.

We discussed the initial architecture of the Main Street Lending Program in our **alert on April 9** and in this alert, we highlight key takeaways from the Federal Reserve's latest guidance.

Overview of updated terms of the Main Street Lending programs

Main Street Expanded Priority Loan Facility (MSELF) (MSPLF)

Overview of updated terms of the Main Street Lending programs

Main Street Expanded Loan Facility (MSELF)

Origination

Originated before April 24, 2020, and 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)

Overview of updated terms of the Main Street Lending programs

Main Street Expanded Loan Facility (MSELF)

Security

If original loan is secured, extension is secured on a pari passu basis with original loan. If original loan is unsecured, extension is unsecured

Maturity

4 years

Amortization

No amortization in first year. Thereafter:

- End of Year 2: 15% 33.33%
- End of Year 3: 15% 33.33%
- Remainder of 70% 33.33% at maturity

Overview of updated terms of the Main Street Lending programs

Main Street Priority Loan Facility (MSPLF) / **Main Street Expanded Loan Facility (MSELF)**	
Interest rate	LIBOR (1 or 3 month) plus 300 basis points Interest deferred for first year (and will be capitalized)
Minimum loan size	$10,000,000

Overview of updated terms of the Main Street Lending programs

	Main Street Priority Loan Facility (MSPLF)	**Main Street Expanded Loan Facility (MSELF)**
Maximum loan size	The lesser of (i) $25 million, or (ii) an amount that, when added to the eligible borrower's existing outstanding and undrawn available debt, does not exceed *six times* the eligible borrower's adjusted 2019 EBITDA	The lesser of (i) $200 million, (ii) 35% of the eligible borrower's existing outstanding and undrawn available debt that is pari passu in priority with the eligible loan and equivalent in secured status, or (iii) an amount

Overview of updated terms of the Main Street Lending programs

that, when added to the eligible borrower's existing outstanding and undrawn available debt, does not exceed *six times* the eligible borrower's adjusted 2019 EBITDA

Main Street Priority Loan Facility (MSPLF)

Ranking	Senior to or pari passu (in terms of priority and security) with the borrower's other loans or debt instruments
	loans must not be contractually subordinated in terms of priority to the borrower's other loans or debt instruments
Prepayment	Prepayment permitted without penalty

Overview of updated terms of the Main Street Lending programs

Main Street Priority Loan Facility (MSPLF)

Main Street Expanded Loan Facility (MSELF)

Loan classification

If the borrower has any loans outstanding with the lender as of December 31, 2019, such loans must have an internal risk rating equivalent of "pass" in the Federal Institutions Examination Council's supervisory rating system on that date

Overview of updated terms of the Main Street Lending programs

Lender risk retention

5%

Fees

- 75 bps fee on 95% participation purchased by the Fed may be passed through to the borrower
- 100 bps fee on 95% participation purchased by the Fed may be passed through to the borrower
- Up to 100 bps origination fee
- Up to 75 bps origination fee

Main Street Priority Loan Facility (MSPLF)

Main Street Expanded Loan Facility (MSELF)

Restrictions on prepayment of other debt

- Proceeds may not be used to refinance other debt
- Proceeds may be used to refinance other debt at the time of origination
- Borrower is only permitted to pay required interest so long as such indebtedness

Overview of updated terms of the Main Street Lending programs

Main Street Expanded Loan Facility (MSELF)

is pari passu with ... principal held by the lender making the eligible loan rather than

and other debt while loan is outstanding (other than repayments of lines of credit in accordance with the borrower's normal course of business usage for such lines of credit)

- Borrower is only permitted to pay required interest and principal of other debt while loan is outstanding (other than repayments of lines of credit in accordance with the borrower's normal course of business for usage of such line of credit)
- Participating lender may request repayment of the borrower's other existing debt upon default and acceleration and may cancel lines of credit if
- Participating lender

Overview of updated terms of the Main Street Lending programs

Main Street Priority Loan Facility (MSPLF)

Main Street Expanded Loan Facility (MSELF)

an event of default has occurred thereunder

may request repayment of existing debt upon default and acceleration and may cancel lines of credit if an event of default has occurred thereunder

Eligible lenders

An eligible lender is a US federally insured depository institution (including a bank, savings association or credit union), US branch or agency of a foreign bank, US bank holding company, US savings and loan holding company, US intermediate holding company of a foreign banking organization or US subsidiary of any of the foregoing. This definition was not expanded in the Federal Reserve's recent guidance to include non-bank lenders.

Eligible borrowers

An eligible borrower is a business that meets all of the following:

- Was established prior to March 13, 2020
- Is not an "ineligible business,"[2] as this term has been modified and clarified by SBA regulations for the PPP
- 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
- Is created or organized in the US or under the laws of the US with significant operations in and a majority of its employees based in the US
- Does not also participate in any other Main Street Lending Program or the Primary Market Corporate Credit Facility (and receipt of PPP loan does not disqualify any business from the Main Street Lending programs)[3]
- Has not received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the

CARES Act)

In addition to the other attestations required in the initial term sheets, an eligible borrower must also certify that it has a reasonable basis to believe that, as of the date of origination of the eligible loan and after giving effect to such loan, 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.

Key updates from initial Federal Reserve term sheets

1. **No automatic qualification for Main Street Loan Program**. The Federal Reserve has made clear that the terms of each program are minimum requirements and lenders must apply their own independent underwriting standards in determining the creditworthiness of the borrower. This will be true for each facility and may be most salient in the case of the new Main Street Priority Loan Facility, where lenders are required to retain 15% of the loan made to the borrower.
   - Applications for the Main Street Lending Program are not yet available
   - The Federal Reserve has noted that interested businesses should contact lenders for more information on whether the lender plans to participate in the program and to request more information on the application process
2. **Maximum loan amount remains tied to EBITDA**. Companies with negative EBITDA are still foreclosed from accessing the Main Street Lending Programs (with potential exceptions for nonprofits and asset-based borrowers as described below). In calculating EBITDA for a loan under the Main Street Lending Program, the Federal Reserve has clarified that the eligible lender may employ "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."
   - The Federal Reserve noted throughout its FAQs that EBITDA is the key underwriting metric for the Main Street Lending Programs. However, it did note that it will be evaluating the feasibility of adjusting the loan eligibility metrics for asset-based borrowers given that credit risk for such borrowers is generally not evaluated on the basis of EBITDA
   - While nonprofits are not currently eligible under the program, the Federal Reserve and Treasury are evaluating adjusting the eligibility criteria and the EBITDA-based metric for nonprofits
3. **Definition of debt for purposes of leverage calculation clarified.** For purposes of determining the maximum loan amount based on a borrower's leverage, the indebtedness included in such calculation includes all amounts borrowed under any loan facility, including unsecured or secured loans from any bank, non-bank financial institution or private lender, as well as any publicly issued bonds or private placement facilities. It also includes all unused commitments under any loan facility, excluding (1) any undrawn commitment that serves as a backup line for commercial paper issuance, (2) any undrawn commitment that is used to finance receivables (including seasonal financing of inventory), (3) any undrawn commitment that cannot be drawn without additional collateral and (4) any undrawn commitment that is no longer available due to change in circumstance.
4. **Application of SBA affiliation rules**. For purposes of determining whether a business has 15,000 employees or 2019 annual revenues of $5 billion or less, a business must aggregate the employees and 2019 revenues of the business itself with those of the business's affiliates in accordance with the SBA's affiliation test set forth in **13 CFR 121.301(f)**. This is the first indication that eligibility under the Federal Reserve's program will also be subject to the SBA affiliation rules applicable to the PPP loan program. Private equity and VC-backed companies must be sure to understand whether employees and/or revenues of affiliated controlled entities (including, potentially, foreign affiliates) will need to be included in any eligibility criteria for the program. For our earlier guidance on this provision with respect to the PPP program, please see the **following alert**.

5. **Ability of pass-through entities to make required tax distributions**. As noted in our prior alerts on the conditions to receiving funds under CESA, borrowers participating in the Main Street Lending Program will not be permitted to make distributions or consummate stock buybacks and must agree to limits on executive compensation as a condition to receiving a Main Street loan. The FAQs, however, clarify that the restriction on distributions will not apply to distributions made by an S corporation or other tax pass-through entity to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings.
6. **Additional flexibility to refinance existing debt**. In addition to allowing access to the Main Street Lending Program for more highly leveraged companies, the new Main Street Priority Loan Facility allows the refinancing of existing debt of the borrower at the time of origination so long as the existing debt is not held by the new lender making the eligible loan. Unlike the rigid prohibition under the initial Main Street Lending Program that prohibited any refinancing of existing debt of the borrower, this new option may provide businesses the ability to refinance existing lenders unwilling to otherwise consent to the incurrence by borrower of a loan under the Main Street Lending Program.
7. **SOFR replaced with LIBOR**. As a result of input from lenders as to the impracticality of quickly administering SOFR-based loans, the loans under the Main Street Lending Program will all accrue interest at LIBOR plus 300 basis points, rather than SOFR plus a range of 250 to 400 basis points.

Notes

1. The Main Street Lending Program (under the Coronavirus Economic Stabilization Act of 2020 portion of the CARES Act) provides for the Federal Reserve's purchase of up to an aggregate of $600 billion of loans made to small and medium-sized business.
2. For a full list of ineligible businesses, please see **13 CFR 120.110(b)-(j), (m)-(s)**. Businesses that would be ineligible under the regulation include (amongst others) businesses such as certain financial businesses, life insurance companies, businesses involved in legal gambling, private clubs, businesses with an associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude, and businesses primarily engaged in political or lobbying activities. Note in its FAQs, the Federal Reserve has reserved the right to further modify the application of these SBA restrictions as they apply to the Main Street Lending Program.
3. Note, however, that a borrower may receive more than one loan under a single Main Street Loan Program, provided that the sum of MSNLF loans or MSPLF loans received by a single borrower cannot exceed $25 million, and the sum of MSELF upsized tranches received by a single borrower cannot exceed $200 million.

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