Federal Reserve Updates and Expands Loan Options of Main Street Lending Program

May 6, 2020

On April 30, 2020, in response to public input, the Federal Reserve Board announced it is expanding the loan options available to businesses under the Main Street Lending Program and published a related FAQ.[1] This announcement, which follows the Federal Reserve's initial April 9, 2020, announcement, included the following changes:

- increased the maximum size of businesses that are eligible for support under the program;
- created a new third loan option, with increased risk sharing by lenders for borrowers with greater leverage;
- lowered the minimum loan size for certain loans to $500,000; and
- expanded the pool of businesses eligible to borrow.

As revised, the loan options consist of the following facilities with a combined size of up to $600 billion:

1. Main Street New Loan Facility (MSNLF): Term sheet: Main Street New Loan Facility (PDF);
2. Main Street Priority Loan Facility (MSPLF) [**NEW**]: Term sheet: Main Street Priority Loan Facility (PDF); and
3. Main Street Expanded Loan Facility (MSELF): Term sheet: Main Street Expanded Loan Facility (PDF).

Main Street loans are full-recourse loans and are not forgivable.

To determine eligibility, a Business's employees and 2019 revenues are calculated by aggregating the employees and 2019 revenues of the Business itself with those of the Business's affiliated entities in accordance with the affiliation test set forth in 13 CFR 121.301(f) which is the same test used for the Paycheck Protection Program (PPP) loans.

Although a start date for the program has not yet been announced, set forth below are highlights of these facilities:

	New Loans	**Priority Loans**	**Expanded Loans**
Term	4 years	4 years	4 years
Minimum Loan Size	$500,000	$500,000	$10,000,000
Maximum Loan Size*	The lesser of $25M or an amount that, when added to outstanding and undrawn available debt, does not exceed 4.0x adjusted 2019 EBITDA	The lesser of $25M or an amount that, when added to outstanding and undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA	The lesser of (i) $200M, (ii) 35% of existing outstanding and undrawn available debt, or (iii) an amount that, when added to outstanding and undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA
Risk Retention for Lenders	5%	15%	5%
Payment (year one deferred for all)	Years 2-4: 33.33% each year	Years 2-4: 15%, 15%, 70%	Years 2-4: 15%, 15%, 70%
Rate	LIBOR + 3%	LIBOR + 3%	LIBOR + 3%

Main Street New Loan Facility

Set forth below are the key terms of the previously announced MSNLF, with the new and changed provisions made since the April 9 announcement indicated in **bold** below:

- Eligible Borrowers: An Eligible Borrower is a Business [**NEW**][2] that:

1. was established prior to March 13, 2020 [**NEW**];
2. is not an Ineligible Business[3] [**NEW**];
3. meets at least one of the following two conditions: (i) has 15,000 employees or fewer [**CHANGED** from 10,000], or (ii) had 2019 annual revenues of $5 billion or less [**CHANGED** from $2.5B];
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; [no change];
5. does not also participate in the MSPLF, the MSELF or the Primary Market Corporate Credit Facility[no change]; and
6. has not received specific support pursuant to Subtitle A of Title IV of the CARES Act; however, businesses that have received PPP loans are permitted to borrow under the Facility, provided that they are Eligible Borrowers [**NEW**].

- Eligible Loans: An Eligible Loan is a secured or unsecured term loan made by an Eligible Lender(s) to an Eligible Borrower that was originated after April 24, 2020, provided that the loan has all of the following features:

1. 4-year maturity [no change];
2. principal and interest payments deferred for one year (unpaid interest will be capitalized) [no change];
3. adjustable rate of LIBOR (one or three month) + 300 basis points [**CHANGED** from Secured Overnight Financing Rate plus 250 – 400 basis points];
4. principal amortization of one-third at the end of the second year, one-third at the end of the third year, and one-third at maturity at the end of the fourth year [**NEW**];
5. minimum loan size of $500,000 [**CHANGED** from $1M];
6. maximum loan size that is 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 four times the Eligible Borrower's *adjusted* 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA") [no change, **EXCEPT** "adjusted" added to modify EBITDA];[4]
7. is not, at the time of origination or at any time during the term of the Eligible Loan, contractually subordinated in terms of priority to any of the Eligible Borrower's other loans or debt instruments [**NEW**]; and
8. prepayment permitted without penalty [no change].

- Loan Classification: 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 supervisory rating system on that date [**NEW**].
- Assessment of Financial Condition: Eligible Lenders are expected to conduct an assessment of each potential borrower's financial condition at the time of the potential borrower's application [**NEW**].
- Loan Participations: The SPV will purchase at par value a 95 percent participation and the Eligible Lender will retain 5 percent [no change].
- Required Lender Certifications and Covenants:
  - 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 is repaid in full unless the debt or interest payment is mandatory and due, or in the case of default and acceleration [no change].
  - 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 [**NEW**].

  - The Eligible Lender must certify that the methodology used for calculating the Eligible Borrower's adjusted 2019 EBITDA 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 [**NEW**].
- Required Borrower Certifications and Covenants:
  - 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 [no change].
  - 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 [**NEW**].
  - The Eligible Borrower must 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 [**NEW**].[5]
- Restrictions on Compensation, Stock Repurchase, and Capital Distribution: The Eligible Borrower must commit that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act.
  - *Stock Buybacks* – During the period of the loan and for one year after the loan or guarantee is no longer outstanding, the borrower may not buy back an equity security listed on a national securities exchange of the eligible business or any parent company thereof, unless contractually obligated [no change].
  - *Dividends and Distributions* – During the period of the loan and for one year after the loan or guarantee is no longer outstanding, the borrower may not pay dividends on, or make any capital distributions with respect to, common stock or shares (dividends) 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 [no change, **EXCEPT** for exception for tax distributions].
  - *Compensation Limitations* – During the period of the loan and for one year after the loan or loan guarantee is no longer outstanding, (x) total compensation of employees who made more than $425,000 in 2019 will be capped at 2019 levels, and severance will be capped at two times 2019 compensation and (y) total compensation of employees (if any) who made more than $3 million in 2019 will be capped at $3 million plus one-half of any amounts more than $3 million that the employee made in 2019 [no change].
- Retaining Employees: Each Eligible Borrower that participates in the Facility should make commercially reasonable efforts to maintain its payroll and retain its employees during the time the Eligible Loan is outstanding [no change].
- Transaction Fee: 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. The Eligible Lender may require the Eligible Borrower to pay this fee [no change].
- Loan Origination and Servicing Fees: 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. The SPV will pay an Eligible Lender 25 basis points of the principal amount of its participation in the Eligible Loan per annum for loan servicing [no change].
- Facility Termination: The SPV will cease purchasing participations in Eligible Loans on September 30, 2020, unless the Board and the Department of the Treasury extends the Facility. The Reserve Bank will continue to fund the SPV after such date until the SPV's underlying assets mature or are sold [no change].

Main Street Priority Loan Facility

The terms of the newly announced MSPLF are the same as those for the MSNLF, except as follows:

- Eligible Loans—Amortization: Principal amortization of 15 percent at the end of the second year, 15 percent at the end of the third year, and a balloon payment of 70 percent at maturity at the end of the fourth year.
- Maximum Loan Size: The 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 undrawn available debt, does not exceed six times the Eligible Borrower's *adjusted* 2019 EBITDA [same as MSNLF, **EXCEPT** six times adjusted EBITDA instead of four times].

- Loan Participations: The SPV will purchase at par value an 85 percent participation and the Eligible Lender will retain 15 percent.
- Required Borrower Certifications and Covenants—Exception to Repayment Covenant: The Eligible Borrower may, at the time of origination of the Eligible Loan, refinance existing debt owed by the Eligible Borrower to a lender that is not the Eligible Lender.

Main Street Expanded Loan Facility

The terms of the previously announced MSELF are the same as those of the Main Street New Loan Facility except as follows, with key changes made to the MSELF since the April 9 announcement noted below in **bold**:

- Eligible Loans: An Eligible Loan is a secured or unsecured term loan or revolving credit facility made by an Eligible Lender (s) to an Eligible Borrower that was originated on or before April 24, 2020, and that has 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), provided that the upsized tranche of the loan is a term loan that has all of the following features:
  - principal amortization of 15 percent at the end of the second year, 15 percent at the end of the third year, and a balloon payment of 70 percent at maturity at the end of the fourth year [**NEW**];
  - minimum loan size of $10 million [**CHANGED** from $1M];
  - maximum loan size that is the lesser of (i) $200 million [**CHANGED** from $150M], (ii) 35 percent 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 (*e*., secured or unsecured) [**CHANGED** from 30 percent], or (iii) 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 [**CHANGED** to add "adjusted"];[6] and
- Loan Participation: The SPV will purchase at par value a 95 percent participation and the Eligible Lender will retain 5 percent [no change], but added that the following [**NEW**]:
  - Eligible Lender must be one of the lenders that holds an interest in the underlying Eligible Loan at the date of upsizing.
  - The Eligible Lender must retain its 5 percent portion of the upsized tranche of the Eligible Loan until the upsized tranche of the Eligible Loan matures or the SPV sells all of its 95 percent participation, whichever comes first.
  - The Eligible Lender must also retain its interest in the underlying Eligible Loan until the underlying Eligible Loan matures, the upsized tranche of the Eligible Loan matures, or the SPV sells all of its 95 percent participation, whichever comes first.
- Transaction Fee: 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. The Eligible Lender may require the Eligible Borrower to pay this fee [no change].
- Loan Upsizing and Servicing Fees: 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. The SPV will pay an Eligible Lender 25 basis points of the principal amount of its participation in the upsized tranche of the Eligible Loan per annum for loan servicing [no change].

If you have any questions about the information in this alert, please contact Bob Shrosbree (313-568-6641 or rshrosbree@dykema.com), J. Michael Bernard (313-568-5374 or jbernard@dykema.com), or your Dykema relationship attorney.

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[1] Main Street Lending Program Frequently Asked Questions (PDF).

[2] 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 a tribal business concern as defined in 15 U.S.C. § 657a(b)(2)(C), except that "small business concern" in that paragraph should be replaced with "Business" as defined herein. Other forms of organization may be considered for inclusion as a Business under the Facility at the discretion of the Federal Reserve.

[3] 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 Paycheck Protection Program established by section 1102 of the CARES Act ("PPP") on or before April 24, 2020. The application of these restrictions to the Facility may be further modified at the discretion of the Federal Reserve. A copy of 13 CFR 120.110 is attached hereto as **Exhibit A** [please click the link], with the Ineligible Businesses highlighted in yellow.

[4] The methodology used by the Eligible Lender to calculate adjusted 2019 EBITDA must be 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.

[5] Replaces the following:

The Eligible Borrower must attest that it requires financing due to the exigent circumstances presented by the coronavirus disease 2019 ("COVID-19") pandemic, and that, using the proceeds of the Eligible Loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the Eligible Loan.

[6] The methodology used by the Eligible Lender to calculate adjusted 2019 EBITDA must be the methodology it previously used for adjusting EBITDA when originating or amending the Eligible Loan on or before April 24, 2020.

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