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Fed Formalizes Main Street Lending Program

The Federal Reserve (the "Fed") has announced[1] further changes to its now $600 billion Main Street Lending Program. From the program's initial construct, which seemed aimed at larger companies, minimum loan sizes have been reduced to $250,000, allowing smaller businesses to apply for loans. The program, to be administered by the Federal Reserve Bank of Boston, would provide liquidity to eligible businesses that were in sound financial condition before the COVID-19 pandemic but have been adversely affected by the reduced economic activity surrounding the pandemic. This program is in addition to other programs from the Small Business Administration ("SBA") through the SBA's Payroll Protection Program (the "PPP") and Disaster Loan Program, and other programs that may be established by the Treasury Department or the Fed.

In response to the COVID-19 pandemic, the Fed established several platforms intended to channel dollars into the economy. Some of the programs are designed to get cash directly into midsize or larger companies, including the Main Street New Loan Facility, the Main Street Priority Loan Facility and the Main Street Expanded Loan Facility. Other programs, such as the Secondary Market Corporate Credit Facility and the Term Asset-Backed Securities Loan Facility, are aimed at supporting financial institutions by taking assets off their balance sheets in order to encourage further lending to businesses and consumers. Some of the Fed facilities are hybrid in nature, such as the PPP and the Primary Market Corporate Facility, by purchasing interests in loans made by lenders to eligible borrowers. The Fed's Municipal Liquidity Facility will provide loans to states and municipalities. This alert will focus on the Fed's Main Street Facilities. Our firm has published other alerts on the PPP, the SBA's COVID-19 Disaster Loan Program and many other COVID-19-related topics, which you can access at www.bakerlaw.com/Coronavirus-COVID-19.

Main Street Lending Program

The Main Street Lending Program establishes a $600 billion fund to be advanced through eligible lenders ("Eligible Lenders") making qualifying new loans ("New Loans") or increasing qualifying existing loans (the so-called "Expanded Loans"; together with the New Loans, the "Main Street Loans") to smaller and medium size qualifying businesses ("Eligible Borrowers"). The Fed has created a special purpose vehicle (the "Fed SPV") which will purchase a 95% participation interest[2] in each Main Street Loan made by Eligible Lenders. The Treasury Department has invested $75 billion in the Fed SPV pursuant to the CARES Act.

Given the participation arrangement, Main Street Loans will be underwritten, arranged, negotiated and administered by the Eligible Lender. Eligible Borrowers generally should not have to interact with the Fed SPV or the Fed. The Fed SPV and the Eligible Lender will enter into a separate participation agreement setting out the Fed SPV's approval and consent rights and other requirements with respect to the Eligible Loan.

Because the Main Street Loans will be funded through existing commercial lenders, Eligible Borrowers with existing Eligible Lenders should first talk with those lenders about this program. That said, the Fed has recently released standard legal documents that together establish the architecture of the program, but each Eligible Lender will use its own form loan documents, modified as needed to conform to the terms of the Main Street Lending Program. Model language has been suggested for certain provisions but is not required. For the Expanded Loans, with respect to multi-lender facilities, Eligible Lenders can use language in existing documents to the extent negotiated in good faith prior to April 24, 2020. Thus, these new advances will be documented through amendments, restatements or supplements of existing credit agreements. As commercial loans, these loans should be subject to the usual closing conditions and lender diligence, along with the additional analysis required to comply with the Main Street Lending Program. Main Street Loans must be repaid.

The Main Street Loans must conform to the terms and conditions set forth in the Main Street New Loan Facility term sheet, the Main Street Priority Loan Facility term sheet or the Main Street Expanded Loan term sheet released by the Fed. The three term sheets are largely similar, with some important distinctions. The following summary sets forth the key terms and indicates where the term sheets differ from each other.

1 See https://www.federalreserve.gov/newsevents/pressreleases/monetary20200608a.htm.

2 Participation interests are arrangements between lenders where the participating lender assumes a profits and risk interest in a loan but generally does not become a party to the underlying loan documents between the Eligible Borrower and the Eligible Lender.

Summary of Key Terms of Main Street Lending Programs

Term	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Eligibility			
Eligible Borrower: Small to Medium-Size Businesses	(1) Established prior to March 13, 2020; (2) No more than 15,000 employees; or (3) $5 billion in 2019 annual revenue.	Same.	Same.
Eligible Lender	U.S. insured depository institutions; U.S. branch or agency of foreign bank; U.S. bank holding companies; U.S. savings and loan holding companies; U.S. intermediate holding company of a foreign banking organization; or U.S. subsidiary of any of the above.	Same.	Same.
U.S. Business	The Eligible Borrower must be created or organized in the United States or under the laws of the United States with significant operations, and a majority of its employees based, in the United States.	Same.	Same.
No Multiple COVID-19 Fed Loans	Eligible Borrowers may participate in only one of the following programs: ■ The Main Street New Loan Facility; ■ The Main Street Primary Loan Facility; ■ The Main Street Expanded Loan Facility; or ■ The Primary Market Corporate Facility.	Same.	Same.
Loan Terms			
Origination Date	After April 24, 2020.	Same.	Before April 24, 2020 (with at least 18 months remaining maturity).
Term	5 years.	Same.	Same.
Interest Rate	Adjustable rate of LIBOR (one or three months) + 300 basis points.	Same.	Same.
Security	Secured or unsecured.	Same.	Same.
Deferred Payment of Principal and Interest	Principal payments deferred for two years and interest payments deferred for one year (unpaid interest will be capitalized).	Same.	Same.
Principal Amortization	15% at the end of the third year; 15% at the end of the fourth year; balloon payment of 70% at maturity (end of fifth year).	Same.	Same.
Fees	*Transaction Fee* of 100 basis points paid to Fed SPV by the Eligible Lender; the Eligible Lender may require the Eligible Borrower to pay this fee. *Origination Fee* of 100 basis points payable by the Eligible Borrower to the Eligible Lender. *Servicing Fee* of 25 basis points payable by the Eligible Lender to the Fed SPV.	Same.	*Transaction Fee* of 75 basis points; otherwise same. *Loan Upsizing Fee* of 75 basis points of the principal amount of the upsized tranche at the time of upsizing, payable by the Eligible Borrower to the Eligible Lender. Same Servicing Fee, but only on the Expanded Loan amount.
Subordination	Loan, at the time of origination or at any time during the term of the loan, the loan may not be contractually subordinated in terms of priority to any of other loans or debt instruments.	At the time of origination and at all times the loan is outstanding, the loan is senior to or *pari passu* with, in terms of priority and security, the Eligible Borrower's other loans or debt instruments, other than mortgage debt.	At the time of upsizing and at all times the upsized tranche is outstanding, the Expanded Loan is senior to or *pari passu* with, in terms of priority and security, the Eligible Borrower's other loans or debt instruments, other than mortgage debt.

Term	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Minimum Loan Amount	$250,000.	Same.	$10,000,000.
Maximum Loan Amount[3]	Lesser of: a. $35 million; or b. An amount of debt that, when added to the Eligible Borrower's existing outstanding and undrawn debt, does not exceed four times the Eligible Borrower's 2019 EBITDA.	Lesser of: a. $50 million; or b. An amount of debt that, when added to the Eligible Borrower's existing outstanding and undrawn debt, does not exceed six times the Eligible Borrower's 2019 EBITDA.	Lesser of: a. $300 million; or b. An amount of debt that, when added to the Eligible Borrower's existing outstanding and undrawn debt, does not exceed six times the Eligible Borrower's 2019 EBITDA.
Prepayment Penalty	No.	Same.	Same.
Availability	Through Sept. 30, 2020, unless further extended.	Same.	Same.
Use of Proceeds & Other Restrictions (referred to as "attestations or certifications" in the term sheets)			
No Payment, Reduction or Cancellation of Other Loans or Commitments	a. Loan proceeds cannot be used to repay or refinance other outstanding loans or lines of credit made by the Eligible Lender to the Eligible Borrower; b. Neither the Eligible Lender nor the Eligible Borrower will cancel or reduce any existing lines of credit to the Eligible Borrower; c. The Eligible Borrower must certify that it has a reasonable basis to believe that 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; and d. The Eligible Borrower cannot use the proceeds to pay other debt that is of even or lower payment priority.	Same, except, at the time of origination, an Eligible Borrower may use the loan proceeds to prepay existing debt that is outstanding and owed to lenders other than the Eligible Lender.	Same as Main Street New Loan Facility.
COVID-19 Relief; Employee Retention	The Eligible Borrower must certify that it is eligible to participate in this program and must attest that it will use the loan proceeds to make commercially reasonable efforts to maintain its payroll and retain its employees during the loan term.	Same.	Same.
CARES Act Restrictions on Executive Compensation, Stock Buyback and Dividends	The Eligible Borrower must follow compensation, stock repurchase and capital distribution restrictions set forth in Section 4003 of the CARES Act. The Eligible Borrower must agree (a) for a period of 12 months from the date such loan is no longer outstanding (i) not to buy back any equity securities of the Eligible Borrower or any parent company that is listed on any national securities exchange (other than to the extent required under a contractual obligation in effect prior to the enactment of the CARES Act) and (ii) not to pay any dividend or make other capital distribution; and (b) comply with certain limitations regarding employee compensation set forth by the CARES Act in Section 4004. These requirements may be waived by the Secretary of the Treasury only if such waiver is deemed necessary to protect the interests of the federal government. Eligible Borrowers that are S corporations or other pass-through entities may make reasonably required tax distributions to their owners.	Same.	Same.
Conflicts Policy	The Eligible Borrower must certify compliance with Section 4019 of the CARES Act, which prohibits any business that is directly or indirectly owned by the president, senior executive branch officials or members of Congress – or certain of their immediate family members – from receiving any relief funds.	Same.	Same.

3 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. Please note that for an upsized tranche under the Expanded Loan Facility, 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.

For more information and to help navigate these issues, please contact Phillip M. Callesen at pcallesen@bakerlaw.com, Christopher J. Carolan at ccarolan@bakerlaw.com, Keith C. Durkin at kdurkin@bakerlaw.com or your regular BakerHostetler contact.

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08.07.20.16.43_p04