Cooley

Main Street Lending Program

April 16, 2020

Speakers

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Treasury and Federal Reserve Board Main Street Lending Program

- Last week Treasury and Federal Reserve Board released details on the $600 billion Main Street Lending Program.
- Treasury will use $75 billion of the $454 billion in funds allocated by Congress under a sub-part of the broader $2 trillion CARES Act.
- Purpose is to promote liquidity in the lending market for small to medium sized businesses.
- Additional guidance is expected in coming weeks.

Federal Reserve's Main Street Lending Program

- The Main Street Lending Program consists of a combination of two separate facilities:
- **Main Street New Loan Facility**. Provides for the purchase by the Federal Reserve from eligible lenders of new unsecured term loans made to eligible borrowers originated on or after April 8, 2020.
- **Main Street Expanded Loan Facility**. Provides for the purchase by the Federal Reserve from eligible lenders of upsized tranches of existing loans originated before April 8, 2020. These will be secured solely to the extent the existing loans are secured and, in such instances, upsized loans will be secured on a pari passu basis.

Eligible Borrowers

- **Size.** Businesses with up to 10,000 employees are eligible (including businesses with 500 or fewer employees) or up to $2.5 billion in 2019 annual revenues.
- **U.S. Requirement.** 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.
- **Solvency.** The Federal Reserve press release notes that this program is available for businesses that were in good financial standing before the crisis, and lenders will be expected to use customary underwriting standard to ensure that these loans are prudently incurred and are not provided to insolvent entities or a debtor in a bankruptcy proceeding.
- **PPP.** The Main Street Loan Program is available to businesses *in addition* to loans received under Paycheck Protection Program for small businesses.
- **Employee size.** All businesses up to 10,000 employees are eligible, including businesses with 500 or fewer employees.

Amendments to Existing Debt

- Borrowers need to carefully examine existing debt agreements to determine whether any amendments are needed to permit incurrence of new or upsized loans.
- Borrowers of Main Street loans can’t repay debt of equal or lower priority until the Main Street loan is **repaid in full**, so should review any restrictions on the incurrence of debt and any restriction on negative pledges.

Paycheck Protection Program (PPP) & Economic Injury Disaster Loans (EIDL)

- One of the key features of the CARES Act is the Paycheck Protection Program, administered by the SBA under the umbrella of its existing 7(a) business loan regime.
- Purpose is to provide qualifying businesses with financial support necessary to stay in business and avoid layoffs and pay cuts.
- The PPP is available to businesses in operation on February 15, 2020, with fewer than 500 employees (with some exceptions)
- A portion of the PPP loans are forgivable, the loans do not require borrowers to issue personal guarantees, there are no prepayment penalties and no collateral.

PPP & EIDL cont'd

- The CARES Act expands access to SBA's Economic Injury Disaster Loan (EIDL) program to businesses with fewer than 500 employees, subject to the same affiliation principles.
- Eligible businesses that suffer substantial economic injury as a result of a disaster or emergency – including the COVID-19 pandemic - can apply for an EIDL loan until December 31, 2020.
- Key features of the EDIL program include the following:
  1. No personal guarantee is required for EIDLs under $200,000.
  2. Loans can be made solely upon the applicant's credit score.
  3. Initial advances of up to $10,000 can be issued within three days and need not be repaid.
  4. The loan will bear a low rate of interest; however, unlike PPP 7(a) loans, the act does not provide for forgiveness for EIDLs.
  5. Businesses may receive both PPP loans and EIDLs, so long as both loans are not used for the same purpose or otherwise duplicative.

How does this impact participation in the Paycheck Protection Program and other programs?

- The Main Street Loan Program is available to businesses *in addition* to loans received under the PPP for small businesses, but for new loans and loan extensions. However, participation in the two Main Street Programs are mutually exclusive.
- Similar to the PPP, businesses will seek loan from qualifying banks.
- Banks that qualify as eligible lenders are US-insured depository institutions, US bank holding companies and US savings and loan holding companies.
- Similar to the PPP, borrowers under the Main Street Loan Facilities must attest that it requires financing due to the coronavirus pandemic.
- One difference is that the Borrower is only required to make reasonable efforts to maintain its payroll and retain its employees during the term of the loan.
- Given the anticipated demand for these loan programs, most banks may only provide financing to existing clients.

Criteria for Eligible Loans:

	Main Street New Loan Facility	Main Street Expanded Loan Facility
Origination:	Originated on or after April 8, 2020	Originated before April 8, 2020
Security:	Unsecured	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	4 years
Amortization:	Amortization of principal and interest deferred for one year	Amortization of principal and interest deferred for one year
Interest Rate:	Adjustable rate of SOFR + 250-400 basis points	Adjustable rate of SOFR + 250-400 basis points

Criteria for Eligible Loans:

	Main Street New Loan Facility	**Main Street Expanded Loan Facility**
Minimum Loan:	$1 million	$1 million
Maximum Loan:	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 EBITDA.	The least 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 EBITDA
Prepayment:	Prepayment permitted without penalty.	Prepayment permitted without penalty.

SOFR

- The Federal Reserve has required that both new and upsize loans bear interest at SOFR plus an applicable margin, rather than using the LIBOR reference rate.

Required Attestations by Borrowers for Loan Eligibility

- Must commit to refrain from using the proceeds of the eligible loans to repay other loan balances.
- Must commit to refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless the borrower has first repaid the eligible loan in full.
- Must attest that it will not seek to cancel or reduce any of its outstanding lines of credit.
- Must attest that it requires financing due to the exigent circumstances presented by the coronavirus pandemic, and that, using the proceeds of the loan or upsized tranche of the loan, as applicable, it will make reasonable efforts to maintain its payroll and retain its employees during the term of such loan.
- Must attest that it meets the EBITDA leverage condition that is a required feature of eligible loans.
- Must attest that it will follow the executive compensation limitations, stock repurchase restrictions, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act.
- Each of the borrower and the lender is required to certify that the borrower is eligible to participate in the facility, including with respect to conflict of interest prohibitions regarding the interests of certain political officials and their respective families in the business as set forth under Section 4016 of the CARES Act.

Fees

- **Loan participation fee:** Solely with respect to a *new loan* made (and not an upsized loan), the lender will be required to pay to the Federal Reserve a 100 basis point fee on the principal amount of the loan purchased via participation (e.g., 95% of the par value of the loan). This fee is permitted to be passed through to the borrower.
- **Loan origination fee:** The borrower shall pay an origination fee of 100 basis points of the principal amount of the new or upsized loans.
- **Loan servicing fee:** The Federal Reserve will pay a per annum fee of 25 basis points of the principal amount of the new or upsized loan that it has purchased via participation as consideration for the lender administering the loan.