Main Street Loan Facilities for Mid-Sized Businesses: Deal or No Deal?

On June 15, 2020, the Board of Governors of the Federal Reserve System (the "Fed') opened registration for lenders to participate in the Main Street loan facilities authorized by the Coronavirus Aid, Relief, and Economic Security Act enacted on March 27, 2020 (the "CARES Act"). Previously, on June 8, 2020, the Fed had updated the term sheets for three distinct Main Street loan facilities intended to assist mid-sized businesses that were in sound financial condition prior to the pandemic but now have inadequate access to credit (emphasis added):[1]

- Main Street <u>New</u> Loan Facility ("MS<u>N</u>LF")
- Main Street <u>Priority</u> Loan Facility ("MS<u>P</u>LF")
- Main Street <u>Expanded</u> Loan Facility ("MS<u>E</u>LF")

None of these loans is made directly by the Fed. Eligible lenders must underwrite and originate the loans to eligible borrowers, and the Fed purchases a 95% risk participation through a special purpose vehicle ("Fed SPV") formed specifically for these programs.[2] The Fed will require its purchase of each participation to constitute a "true sale". This structure incentivizes eligible lenders to extend credit to eligible borrowers, despite the impact of COVID-19, on specified terms under which the Fed will provide 95% of the funding and assume 95% of the risk. This structure also enable private lenders to deploy loan funds quickly through their existing processes for underwriting, originating and servicing commercial loans, rather than depending on loan-level closing administration by the Fed.

All three Main Street loan facilities use the same criteria for determining whether lenders are eligible to participate. The term "Eligible Lenders" includes a U.S. federally insured depository institution (including a bank, savings association, or credit union), a U.S. branch or agency of a foreign bank, a U.S. bank holding company, a U.S. savings and loan holding company, a U.S. intermediate holding company of a foreign banking organization, or a U.S. subsidiary of any of the foregoing. Unlike the Paycheck Protection Program, non-traditional lenders independent of an insured depository institution may not participate as Eligible Lenders. Multiple affiliated entities may register as Eligible Lenders under the Program. If a lender is eligible to participate, all Main Street loan facilities require the lender to register with the Fed, to accept certain ongoing regulatory obligations, and to enter into a number of agreements with the Fed for each loan,

[1] On June 15, 2020, the Fed also published draft term sheets for two new lending facilities for nonprofit organizations, a Nonprofit Organization New Loan Facility and a Nonprofit Organization Expanded Loan Facility, and accepted public comments through June 22. As of the date of this alert, final term sheets are not yet available.

[2] The SPV was formed through the Boston Branch of the Fed, and additional information can be located at the Branch website at https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/information-for-lenders/docs.aspx.

including specified forms of a co-lending agreement, a participation agreement, a servicing agreement and a certification that the loan complies with all applicable Fed requirements.

All three Main Street loan facilities also use the same criteria for identifying eligible borrowers. For example, each borrower must (a) have been formed under United States law prior to March 13, 2020, and (b) taking into account the borrower and its affiliates, (1) have 15,000 or fewer employees, or 2019 annual revenues of $5 billion or less, (2) have significant operations in the United States and a majority of its employees based in the United States, and (c) not have in excess of 20% ownership, directly or indirectly, by persons occupying certain elected or administrative positions in the federal government. Finally, borrowers that obtained loans under the Paycheck Protection Program (PPP) from the Small Business Administration are still eligible for loans under the Main Street loan facilities, but borrowers that participated in the Fed's Primary Market Corporate Credit Facility (PMCCF) or received a direct loan from the Fed under the CARES Act are not eligible for a Main Street loan facility.

All three Main Street loan facilities share certain terms and conditions:

- Five-year maturity.
- Interest deferred for one year (interest is capitalized).
- Principal deferred for two years.
- Principal due 15% at end of third year, 15% at end of fourth year, and 70% at final maturity.
- Interest rate of LIBOR (1 or 3 months) plus 300 basis points.
- Prepayment permitted without penalty.
- Fed SPV will pay lenders an annual servicing fee equal to 0.25% of each loan/tranche amount. Lenders should not charge additional servicing fees to borrowers.
- Each borrower and its affiliates can participate in only one Main Street loan facility in an aggregate amount not exceeding that facility's dollar cap.

Despite their common characteristics, each Main Street loan facility has unique terms and conditions that will better serve some clients more than others:

1. Main Street New Loan Facility (MSNLF): Supports new loans from eligible lenders to eligible borrowers that do not already have outstanding loans together. Distinctive traits of MSNLF include:

    - Minimum loan size of $250,000.
    - Maximum aggregate loan amount for any borrower, including affiliates, is lesser of (a) $35 million or (b) four times the borrower's earnings before interest expense, taxes, depreciation and amortization ("EBITDA") for 2019 less outstanding and undrawn available debt.
    - MSNLF loan cannot at any time be contractually subordinated in priority to borrower's other loans or debt instruments.
    - Lender pays Fed SPV a transaction fee of 1% of each loan, which lender can require the borrower to pay. In addition, lender can charge each borrower an origination fee of up to 1% of the loan amount. Fees are payable at origination.

MSNLF is typically attractive to businesses that need smaller loans and have less existing debt.

2. Main Street Priority Loan Facility (MSPLF): Supports new loans from eligible lenders to eligible borrowers, regardless of whether they already have outstanding loans together. Distinctive traits of MSPLF include:

    - Minimum loan size of $250,000.
    - Maximum aggregate loan amount for any borrower, including affiliates, is lesser of (a) $50 million or (b) six times the borrower's 2019 EBITDA less outstanding and undrawn available debt.
    - MSPLF is senior to or on parity with, in both priority and security, borrower's other loans and debt instruments, other than mortgage debt.
    - Lender pays Fed SPV a transaction fee of 1% of each new loan, which lender can require the borrower to pay. In addition, the lender can charge each borrower an origination fee of up to 1% of the loan amount. Fees are payable at origination.

MSPLF is typically attractive to businesses with higher existing indebtedness that prefer not to intermingle the collateral for their existing indebtedness with the new Main Street loan. *MSPLF is the only Main Street loan that can be used to refinance existing loans, but only if the refinanced loan is from a different lender than is providing the MSPLF loan.*

3. Main Street Expanded Loan Facility (MSELF): Supports an additional tranche to an existing loan between an eligible lender and eligible borrower. Distinctive traits of MSELF include:

    - Minimum loan size of $10,000,000.
    - Maximum aggregate amount of the new tranche for any borrower, including affiliates, is lesser of (a) $300 million or (b) six times the borrower's 2019 EBITDA less outstanding and undrawn available debt.
    - MSELF tranche is senior to or on parity with, in both priority and security, borrower's other loans and debt instruments, other than mortgage debt.
    - Lender pays Fed SPV a transaction fee of 0.75% of each new tranche, which lender can require the borrower to pay. In addition, lender can charge each borrower an origination fee of up to 0.75% of the new tranche amount. Fees are payable at origination.

MSELF is typically attractive to businesses that have a strong, existing banking relationship where both borrower and lender are comfortable cross-collateralizing their existing loans with the new Main Street loan.

Analysis of the Main Street loan facilities is complex, ranging from threshold issues of eligibility to comparison of the loan facilities for each client to evaluation of the obligations associated with each loan, including certain covenants and regulatory requirements that survive repayment of the loan. This analysis is often hampered by public confusion concerning distinctions between the Main Street loan facilities and other federal programs, such as the Paycheck Protection Program (PPP) implemented by the Small Business Administration and the direct loans available from the Fed to certain borrowers under the CARES Act itself. We are fully prepared to help potential borrowers and lenders navigate these complexities to arrive at an optimum outcome.

Our firm has a dedicated Main Street Task Force that has tracked the Main Street loan facilities since passage of the CARES Act and is organized into three interdisciplinary client service teams focused on client-specific needs:

1. Potential Lenders Evaluating Whether to Participate. This team advises potential lenders whether they are eligible to participate, and if so, what financial and regulatory obligations must be undertaken with respect to the Fed.

2. Participating Lenders Evaluating Loan Opportunities. This team advises participating lenders regarding potential loans, including Main Street's underwriting guidance, required versus optional terms and conditions, permitted fees, closing documentation, and the impact, if any, on the lender's existing loans to participating borrowers.

3. Borrowers Evaluating Main Street Loan Facilities. This team advises potential borrowers whether they are eligible to participate, and if so, which Main Street loan facility may be most advantageous, including maximum loan amount, permitted use of proceeds, required covenants, and impact, if any, on the borrower's existing loans.

For additional information regarding the Main Street loan facilities, please contact any attorney at our firm. You may connect directly with the Main Street Task Force by contacting:

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