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Federal Reserve Updates Terms of Main Street Lending Program

Jason D. Navarino, Richard J.L. Lomuscio, and Hannah J. Greendyk*

The Main Street Lending Program, aimed at businesses facing difficulties as a result of the COVID-19 outbreak that are too large to qualify for, or need additional support beyond that provided under the Small Business Administrations' Paycheck Protection Program or Economic Injury Disaster Loan Program, has been revised. The authors of this article discuss the program.

The Federal Reserve has released additional details on the previously announced Main Street Lending Program (the "Program"). The Program is aimed at businesses facing difficulties as a result of the COVID-19 outbreak that are too large to qualify for, or need additional support beyond that provided under, the Small Business Administration's Paycheck Protection Program ("PPP") or Economic Injury Disaster Loan Program. The Main Street New Loan Facility ("MSNLF") and Main Street Priority Loan Facility ("MSPLF") are intended to help facilitate new loans to businesses, while the Main Street Expanded Loan Facility ("MSELF") is intended to help facilitate the extension of already existing loans. Under each facility, private lenders are responsible for originating loans that meet the Program's requirements, but may then sell a 95 percent participation in such loans to a special purpose vehicle established by the Federal Reserve Bank of Boston, thereby shifting most of the risk off of their books.

The key revised terms for loans under the Program are as follows:

BORROWER ELIGIBILITY

Each facility under the Program is now available to U.S.-based businesses that:

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- Were established prior to March 13, 2020;
- Together with affiliated entities (determined under the Small Business Administration's affiliation rules, which also apply to PPP), have up to 15,000 employees or less than $5 billion in revenue in 2019 (up from 10,000 employees and $2.5 billion in 2019 revenues);
- Do not also participate in one of the other facilities under the Program or the Primary Market Corporate Facility (note that affiliated entities may each participate in the Program, but all must participate in the same facility);
- Are not a type of business listed in 13 CFR 120.110(b)-(j) and (m)-(s); and
- Have not received specific support (i.e., support to air carriers, businesses critical to national security, etc.) pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act).

MINIMUM LOAN AMOUNTS

- For loans under the MSNLF and MSPLF, the minimum loan amount has been lowered to $250,000.
- For loans under the MSELF, the minimum loan amount has been lowered to $10 million.

MAXIMUM LOAN AMOUNTS

- Under the MSNLF, the maximum amount for new loans is the lesser of (i) $35 million and (ii) an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed four times the borrower's 2019 EBITDA (i.e., earnings before interest, tax, depreciation and amortization).
- Under the MSPLF, the maximum amount for new loans is the lesser of (i) $50 million and (ii) an amount that, when added to the eligible borrower's existing outstanding and undrawn available debt, does not exceed six times the borrower's 2019 EBITDA;
- Under the MSELF, the maximum loan size is the lesser of (i) $300 million and (ii) an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed six times the borrower's 2019 EBITDA.

Note that, for these purposes, any portion of a PPP loan that is unforgiven at the time a loan under the Program is obtained counts as outstanding debt, thereby reducing the amount that can be borrowed under the Program.

INTEREST

The interest rate for loans under all three facilities will be an adjustable rate of LIBOR (one or three month) plus 300 basis points. Interest payments under all three facilities are deferred for one year.

TERM AND MATURITY

Loans under all three facilities will have a five-year maturity. In addition, loans will have principal amortization of 15 percent at the end of the third year, 15 percent at the end of the fourth year and a balloon payment of 70 percent at maturity at the end of the fifth year.

PREPAYMENT

Loans may be prepaid without penalty.

OTHER DEBT

Under the MSNLF, the loan may not be contractually subordinated in terms of priority to any of the borrower's other loans or debt instruments. Under the MSPLF and the MSELF, the loan (or upsized tranche, in the case of MSELF) must be senior to or pari passu with, in terms of priority and security, the borrower's other loans or debt instruments, other than mortgage debt.

Under the MSPLF, a borrower may, at the time of origination of its loan, refinance existing debt (other than debt owed to the lender from which it is receiving the MSPLF loan). Any such refinanced debt is not treated as outstanding for purposes of determining the maximum loan amount.

RESTRICTIONS

Borrowers must abide by the following stock repurchase, capital distribution and compensation restrictions for the term of the loan (or upsized tranche, in the case of MSELF) and 12 months thereafter:

- A borrower and its affiliates may not repurchase any equity securities of the borrower or its parent listed on a national securities exchange, except to the extent required by a contractual obligation in effect on or prior to March 27, 2020.
- A borrower may not pay dividends or make other capital distributions with respect to its common stock or membership interests, except (1) tax distributions to owners of pass-through entities for tax purposes, to

enable them to pay taxes on their share of the entity's income, and (2) as provided below with respect to officers and employees.

- Note that redemptions and repurchases are not considered dividends or distributions for this purpose.

- No officer or employee whose total 2019 compensation exceeded $425,000 may receive total compensation during any 12 consecutive months in excess of his or her 2019 compensation, nor may any officer or employee receive severance pay or other termination benefits exceeding twice his or her 2019 compensation. Additionally, no officer or employee whose total 2019 compensation exceeded $3 million may receive total compensation during any 12 consecutive months in excess of the sum of (i) $3 million and (ii) 50 percent of the total compensation received by that officer or employee in calendar year 2019 in excess of $3 million.
  - "Officer or employee" means an individual who performs compensated services for a borrower and either receives a W-2 or is a partner in a partnership or a member of an LLC. Therefore, a service-providing owner of an LLC or S corporation can presumably receive compensation, subject to the limits set forth above, and such compensation would not be considered an impermissible dividend or capital distribution.
  - For this purpose, total compensation includes amounts paid by the borrower and its affiliated entities.
  - Distributions to officers and employees that are included in permissible compensation are excluded from the prohibition against dividends and capital distributions. However, making distributions that are so permitted without making distributions to other owners could run afoul of the "single class of stock" requirement applicable to S corporations, or to the terms of the distributing entity's shareholders', partnership or operating agreement.

The Program deadline (previously September 30, 2020) has been extended to December 31, 2020.