Main Street Lending Program to Roll Out Shortly

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On May 19, 2020 during a Senate hearing Federal Reserve Chairman Jerome Powell announced that Federal Reserve anticipates launching the Main Street Lending Program (the "Program") near the end of May. As a result, media coverage of the Program has begun – but what exactly is the Program? Continue reading for details about the Program, including who is eligible, and the terms of the Program. Note that this alert is mostly catered to borrowers.

What is the Main Street Lending Program?

Simply put, the Program is designed to make credit available to small and medium-sized businesses that were in sound financial condition before the onslaught of the COVID-19 pandemic. The Program design includes the formation of a special purpose vehicle ("SPV") that will be authorized to purchase up to $600 billion (this number is subject to adjustment by the Board of Governors of the Federal Reserve System (the "Board") and the Treasury) of participations in three new loan facilities created for the Program. Those new loan facilities are: the Main Street New Loan Facility (MSNLF), the Main Street Priority Loan Facility (MSPLF), and the Main Street Expanded Loan Facility (MSELF). The SPV is authorized to purchase participations Program loans until September 30, 2020 (this date is subject to adjustment by Treasury and the Board).

All three facilities use the same "Eligible Lender" and "Eligible Borrower" (terms described below) criteria, and share several features, such as:

Maturity: 4 years

Rate: LIBOR (1 or 3 month) + 300 basis points

Prepayment: No penalty

Despite the similarities, the loans have distinct features that warrant consideration. Those features are discussed below after the discussion of

"Eligible Lender" and "Eligible Borrower". Details and updates directly from the Board can be found on its website, which has a sample term sheet for each facility. Please note that unlike the popular Paycheck Protection Program (the "PPP"), the loans available through the Program are full-recourse loans and are not forgivable.

What is an "Eligible Borrower"?

An Eligible Borrower:

1. was in "sound financial condition" prior to the onset of the COVID-19 pandemic. There is no guidance directly from the governmental actors as to what a "sound financial condition" consists of at this time. It appears that the Eligible Lender will make this determination.
2. must have been formed prior to March 13, 2020.
3. must not be an Ineligible Business pursuant to 13 CFR 120.110(b)-(j), (m)-(s), as modified and clarified by SBA regulations for purposes of the PPP on or before April 24, 2020. The list of ineligible businesses includes financial businesses primarily engaged in the business of lending, such as banks, finance companies, and factors, passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan, life insurance companies, businesses deriving more than one-third of gross annual revenue from legal gambling activities, among others. The Federal Reserve has reserved the right to further limit this list.
4. must meet one of these two conditions: (a) the Business has 15,000 employees or fewer, or (b) the Business has 2019 annual revenues of $5 billion or less.
5. must be a U.S. Business. Under section 4003(c)(3)(C) of the CARES Act, Eligible Borrowers must be Businesses that were created or organized in the United States or under the laws of the United States with significant operations in and a majority of their employees based in the United States.
6. may only participate in one of the facilities, and cannot participate in the Primary Market Corporate Credit Facility, which is another SPV created by the Federal Reserve to aid with the availability of credit to large employers in response to the COVID-19 crisis. However, the Business may participate in the PPP.
7. must not have received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act).
8. must be able to make all of the certifications and covenants required under the Program:
    1. 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.
    2. 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.
    3. 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.

4. 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, 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.
5. The Eligible Borrower must certify that it is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.

9. must make "commercially reasonable efforts" to maintain payroll and maintain employees. More specifically, the FAQ states that "an Eligible Borrower should undertake good-faith efforts to maintain payroll and retain employees, in light of its capacities, the economic environment, its available resources, and the business need for labor. Borrowers that have already laid-off or furloughed workers as a result of the disruptions from COVID-19 are eligible to apply for Main Street loans."

What is an "Eligible Lender"?

An Eligible Lender is 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. This list would likely include the borrower's current lender(s).

What are the key features of the MSNLF, MSPLF, and MSELF loans?

MSNLF:

Loan size: $500,000-$25,000,000 (subject to the limitation based on prior debt, cited below)

Interaction with prior debt: The maximum loan amount cannot, when added to the Eligible Borrower's existing outstanding and undrawn available debt, exceed four times (4x) the Eligible Borrower's adjusted 2019 earnings before interest, taxes, depreciation, and amortization.

Principal Amortization Schedule: 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.

Priority: Loans cannot be subordinated to prior debt.

Security: Secured or unsecured.

Fees: The Eligible Lender will pay the SPV 100 basis points of the principal amount of the loan (the Eligible Lender may pass this transaction fee to the Borrower). The Eligible Borrower will pay the lender up to 100 basis points of the principal amount of the loan.

MSPLF:

Loan size: $500,000-$25,000,000 (subject to the limitation based on prior debt, cited below)

Interaction with prior debt: The maximum loan amount cannot, when added to the Eligible Borrower's existing outstanding and undrawn available debt, exceed six times (6x) the Eligible Borrower's adjusted 2019 earnings before interest, taxes, depreciation, and amortization.

Principal Amortization Schedule: 15% at the end of the second year, 15% at the end of the third year, and a balloon payment of 70% at maturity at the end of the fourth year.

Priority: At the time of origination and at all times thereafter, the Eligible Loan must be senior to or pari passu (equal footing) with, in terms of priority and security, the Eligible Borrower's other loans or debt instruments, other than mortgage debt. Eligible Borrowers may, at the time of origination of the loan, refinance existing debt owed by the Eligible Borrower to a lender that is not the Eligible Lender.

Security: Secured or unsecured.

Fees: The Eligible Lender will pay the SPV 100 basis points of the principal amount of the loan (the Eligible Lender may pass this transaction fee to the Borrower). The Eligible Borrower will pay the lender up to 100 basis points of the principal amount of the loan.

MSELF:

Eligible Lenders can increase (or upsize) an Eligible Borrower's existing term loan or revolving credit facility. The upsized tranche is a four-year term loan which can range in size.

Loan size: $10 million to $200 million (subject to the limitation based on prior debt, cited below)

Interaction with prior debt: The maximum loan amount cannot exceed:

(i) 35% 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 (i.e., secured or unsecured); or

(ii) when added to the Eligible Borrower's existing outstanding and undrawn available debt, six times (6x) the Eligible Borrower's adjusted 2019 earnings before interest, taxes, depreciation, and amortization.

Principal Amortization Schedule: 15% at the end of the second year, 15% at the end of the third year, and a balloon payment of 70% at maturity at the end of the fourth year.

Priority: At the time of upsizing and at all times thereafter, the upsized tranche must be 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.

Security: Secured or unsecured (but if the underlying loan is secured, then the upsized tranche must also be secured).

Fees: The Eligible Lender will pay the SPV 75 basis points of the principal amount of the upsized tranche (the Eligible Lender may pass this transaction fee to the Borrower). The Borrower will also pay the Eligible Lender up to 75 basis points of the principal amount of the upsized tranche.

What should I do next if I am interested in the Program?

You will need to submit an application and requisite documentation to an Eligible Lender. Note that the term sheets for each facility, summarized in this alert, simply provide the bare minimum requirements for the Program. The Eligible Lender will make its own determinations as to your eligibility and creditworthiness.

If you need guidance about which loan is best for you, or if have questions about any of the eligibility requirements such as business size, affiliation rules, or the certifications you must make, a member of our robust team stands ready to help you navigate the Program.

Our insights are published as a service to clients and friends. They are intended to be informational and do not constitute legal advice regarding any specific situation.