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The "Main Street Lending Program" for Small and Mid-Size Businesses Launches

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The Federal Reserve Board ("**FRB**") announced on June 15, 2020 the launch of its Main Street Lending Program (the "**Lending Program**") for small and mid-size businesses. Registration for lenders opened on June 15th and the FRB encouraged lenders to begin making loans under the Lending Program immediately. Lenders that wish to participate in the Lending Program can register through an online portal on the FRB's website.

The Lending Program, authorized under Section 13(3) of the Federal Reserve Act, consists of three loan facilities:

1. The Main Street New Loan Facility, which provides for new unsecured or secured term loans originated on or after April 24, 2020 (the "**New Loan Facility**");

2. The Main Street Priority Loan Facility, which also provides for new unsecured or secured term loans originated on or after April 24, 2020, but with different repayment and other terms and conditions as explained below (the "**Priority Loan Facility**"); and

3. The Main Street Expanded Loan Facility, which provides for increases in existing term loans or lines of credit made by Eligible Lenders (defined below) prior to April 24, 2020 (the "**Expanded Loan Facility**").

In a previous article, we discussed the general requirements and criteria of the Lending Program as of April 30, 2020. Subsequent to April 30th, the FRB clarified some requirements, operational documents and Frequently Asked Questions ("**FAQS**") for the Lending Program on May 27, 2020, and again on June 8, 2020. The FRB also revised the term sheets for the Lending Program's three loan facilities on June 8, 2020. This article focuses on the updates to the Lending Program since our previous article.

On May 27th, the FRB released new FAQs and operational documents for lenders in connection with the implementation of the Lending Program; and it further updated the FAQs on June 8th. The FAQS clarified terms regarding eligibility and criteria regarding the terms of any other indebtedness that may be outstanding for an eligible borrower. With respect to operational documents, the FRB clarified terms regarding what forms would be used for the credit facilities and additional borrower certifications that will be required under the Lending Program.

Eligible Borrowers Criteria

The revised FAQs included some of the following updates regarding criteria for being an eligible borrower under the Lending Program:

- An eligible borrower must (1) have "significant operations in the United States" when evaluated on a consolidated basis with its subsidiaries, but not when evaluated with its parent or affiliates. "Significant Operations" as used in the foregoing includes, when consolidated with its subsidiaries, 50 percent of the eligible borrower's (a) assets being located in the United States, (b) generating revenues and/or net income in the United States, and (c) incurring consolidated operating expenses for the eligible borrower; and (2) be created or organized in the United States, but may be a subsidiary of a foreign company so long as the eligible borrower has "significant operations" in the US and uses the loan proceeds from the Loan Program strictly for its own operations and those of its subsidiaries and affiliates located in the United States.

- Eligible borrowers that have taken advantage of the Paycheck Protection Loan Program (the "**PPP**") may obtain a loan under the Lending Program but can only obtain one loan under the Lending Program and cannot also participate in the FRB's Primary Market Corporate Credit Facility program (the "**PMCCF**"). Additionally, if an affiliate of an eligible borrower has participated in the PMCCF, the borrower cannot borrow funds under the Lending Program.

- For affiliated companies, the total participation by the affiliated group in any single facility cannot exceed the maximum loan size for that facility for the affiliated group on a consolidated basis.

- Ineligible businesses listed in 13 CFR 120.111(b)-(j), (m)-(s), as modified and clarified on or before April 24, 2020 by the Small Business Administration regulations for purposes of the PPP, are not eligible borrowers for participation in the Lending Program, including, without limitation, private equity funds.

- While 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 loans under the Lending Program.

Lender Certifications

In addition to other certifications required by lenders, under the June 8th revised FAQs lenders must also certify as follows:

- Based solely on the financial information provided by the borrower and the calculation of the borrower's adjusted 2019 EBITDA certified to the lender by the borrower, the eligible loan amount when added to the borrower's existing and undrawn debt does not exceed four times the borrower's adjusted 2019 EBITDA for the New Loan Facility or six times the borrower's adjusted 2019 EBITDA for the Priority and Expanded Loan Facilities.

- The eligible loan is not, and will not be, contractually subordinated to any other indebtedness of the borrower.

- In addition to other provisions, the loan documentation must include provisions that (a) trigger a mandatory prepayment upon the lender's receipt of notice from the FRB or its designee that the borrower has made a material misstatement with respect to its certifications or covenants regarding eligibility under the CARES Act or that such covenants have been materially breached; (b) trigger an event of default and permit acceleration if the borrower has defaulted on other loans made by the lender or any of lender's affiliates; and (c) permit prepayments without penalty.

Other Indebtedness of Borrower

Indebtedness of an eligible borrower that exists prior to the date of obtaining a loan under the Lending Program is allowed, so long as it meets the following criteria:

- The underlying loan must have been in place on or before April 24, 2020 and must have at least 18 months remaining before maturity of such loan. If there is less than 18 months remaining, a lender can extend the maturity date of the underlying loan at the time of extending a loan under the Lending Program to comply with this 18-month requirement.

- Unsecured New Loan Facility loans cannot be junior in priority in bankruptcy to any unsecured debt existing at the time of loan origination but can be junior to existing secured debt.

- Loans issued under the Lending Program cannot be contractually subordinated to any other indebtedness of the eligible borrower.

- The loans issued under the Priority Loan Facility or Expanded Loan Facility can be unsecured if the eligible borrower does not have as of the date of origination any other secured loans.
- Expanded Loan Facility loans must be secured to the same extent as the underlying loan being upsized.
- The aggregate value of collateral for secured Priority Loan Facility loans must be at least either (a) twice the outstanding aggregate principal amount of the loan, or (b) the ratio of the aggregate value of collateral for the loan to the outstanding aggregate principal amount of the loan must be at least equal to the ratio of the aggregate value of collateral for all other secured indebtedness to the outstanding aggregate principal amount of all other secured indebtedness.
- If a borrower has an existing debt arrangement that requires prepayment of more than a *de minimis* amount upon the incurrence of new indebtedness, in order to receive loans under the New Loan Facility or Expanded Loan Facility the borrower must request that such requirement be waived or reduced to a *de minimis* amount.

Operational Documents

In addition to providing additional FAQs and clarifications, on May 27th the FRB also released several forms to be used by lenders and borrowers participating in the Loan Program, including without limitation, Lender Wire Instructions Direction, Loan Participation Agreement, Co-Lender Agreement, Servicing Agreement, and Assignment-in-Blank. There is no form of credit agreement to be used by each lender, but each lender is expected to rely upon its form of credit agreement and to incorporate provisions, as needed, and/or modify the form credit agreement to meet the terms and conditions, including restrictions and required covenants, of the Lending Program.

On June 8th, the FRB revised the terms of the three loan facilities under the Lending Program and issued revised term sheets. The FRB made the following modifications to the facilities:

- Term: The term for each of the New Loan Facility, Priority Loan Facility and Expanded Loan Facility have been increased from four years to five years.
- Minimum Loan Amount: The minimum loan amount under the New Loan Facility and Priority Loan Facility was decreased from $500,000 to $250,000.
- Maximum Loan Amount: The maximum loan amount under the three facilities were modified as follows:
    - **New Loan Facility** was increased from the lesser of (a) $25M or (b) four times the 2019 adjusted EBITDA when added to outstanding and undrawn available debt to the lesser of (a) $35M or b) four times the 2019 adjusted EBITDA when added to outstanding and undrawn available debt.
    - **Priority Loan Facility** was increased from the lesser of (a) $25M or (b) six times the 2019 adjusted EBITDA when added to outstanding and undrawn available debt to the lesser of (a) $50M or b) six times the 2019 adjusted EBITDA when added to outstanding and undrawn available debt.
    - **Expanded Loan Facility** was increased from the lesser of (a) $200M or (b) six times the 2019 adjusted EBITDA when added to outstanding and undrawn available debt to the lesser of (a) $300M or b) six times the 2019 adjusted EBITDA when added to outstanding and undrawn available debt.
- Payment Terms: The payment terms for each of the New Loan Facility, Priority Loan Facility and Expanded Loan Facility were modified to now not require any principal payments for the first two years instead of just for the first year. Below is a summary for the payment terms for the full five-year term of the facilities under the revised payment terms:

New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Year 1: No payments required – unpaid interest will be capitalized Year 2: Interest payments required Year 3: 15% Year 4: 15% Year 5: 70%	Year 1: No payments required – unpaid interest will be capitalized Year 2: Interest payments required Year 3: 15% Year 4: 15% Year 5: 70%	Years 1: No payments required – unpaid interest will be capitalized Year 2: Interest payments required Year 3: 15% Year 4: 15% Year 5: 70%

- Loan Participations: The special-purpose funding vehicle established by the FRB will now purchase 95 percent participation in all eligible loans under the three loan facilities, including under the Priority Loan Participation.
- Consent Fees: Lenders may now charge customary consent fees if necessary when amending an Eligible Borrower's credit facility to add an upsized tranche under the Expanded Loan Facility.

For More Information

Saul Ewing Arnstein & Lehr corporate attorneys regularly counsel businesses on how federal regulations apply to their companies. Please feel free to contact the authors if you have questions about eligibility for loans under the Main Street Lending Program.

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