SQUIRE PATTON BOGGS

CARES Act: Main Street Lending Program

US – May 4, 2020

Main Street Lending Program (MSLP)

Overview

On April 30, 2020, after receiving over 2,200 comment letters, the Board of Governors of the Federal Reserve ("Federal Reserve") published two updated term sheets and one new term sheet[1] for the Main Street Lending Program ("MSLP"), which will be funded by three Federal Reserve facilities under Section 13(3) of the Federal Reserve Act, along with FAQs that may from time to time be updated.[2] The MSLP is intended to provide support for small and mid-sized businesses through four-year term loans (the "Main Street Loans") from eligible lenders to eligible US businesses, which together with their affiliates, have up to 15,000 employees or revenues of up to $5 billion. The Federal Reserve has clarified that the affiliation rules applied by the Small Business Administration ("SBA") to determine eligibility under the Paycheck Protection Program ("PPP") will also apply in respect of certain eligibility criteria under the MSLP.[3] The three facilities of the MSLP will be funded by a single special purpose vehicle ("SPV") established by the Federal Reserve Bank of Boston ("FRB Boston"), capitalized with an equity investment of $75 billion by the Treasury from funds allocated to the Treasury under the CARES Act, and up to an additional $525 billion in funds from FRB Boston in the form of loans to the SPV pursuant to Section 13(3) of the Federal Reserve Act.[4] The SPV will purchase 85% or 95% participations in eligible loans, with lenders keeping a 5% or 15% interest in such loans, depending on the type of facility under the MSLP.[5]

Eligible lenders may originate Main Street Loans under the Main Street New Loan Facility ("New Loans") or Main Street Priority Loan Facility ("Priority Loans") or increase the size of existing term and revolving credit facilities under the Main Street Expanded Loan Facility ("Loan Increases"). Although the facilities share many common terms (and are still subject to final rules and regulations), there are a number of important differences (further outlined below) among the facilities. A chart summarizing the terms of the three facilities follows.

We note that several key aspects of the MSLP have changed since the initial term sheets were released and that the Federal Reserve has provided substantial guidance in detailed FAQs. Nonetheless, several ambiguities remain (e.g., how foreign affiliates will affect the determination as to whether the majority of a business's employees are in the US). As we have seen with the PPP, programs of this nature are not immune from political pressures (e.g., subsequent guidance under the PPP placed public company borrowers in the hospitality and franchise restaurant industries, private schools and universities (and, possibly, their lenders) at risk for having obtained loans as ineligible borrowers even though the initial guidance under the PPP made these businesses eligible to apply). Potential borrowers and lenders should exercise caution, and consider risk management measures, before taking action in respect of the MSLP.

General Terms of the MSLP

- **Total Program Size**: Up to $600 billion (as of April 30, 2020).
- **Purpose**: To provide support to small and medium-sized businesses and their employees across the US during the current period of financial strain by facilitating credit to such businesses, to help companies that were in sound financial condition prior to the onset of the COVID-19 pandemic maintain their operations and payroll until conditions normalize.
- **Lender Eligibility**:[6] US insured depository institutions, US branches or agencies of foreign banks, US bank holding companies, US savings and loan holding companies, US intermediate holding companies of a foreign bank, or a US subsidiary of any of the foregoing.[7] A Lender providing a Loan Increase must be one of the lenders that holds an interest in the underlying loan at the date of upsizing.

1 The Federal Reserve published an updated New-Loan-Facility term sheet, an updated Expanded-Loan-Facility term sheet, and new Priority-Loan-Facility term sheet.

2 Please see our prior alert regarding a summary of the other Federal Reserve Facilities. We have also addressed recent updates in connection with Municipal Liquidity Facility in a separate Squire Patton Boggs analysis.

3 This is an increase from 10,000 employees and $2.5billion in revenues from the prior term sheets, which had not specified whether and how affiliation rules would apply.

4 FRB Boston will make the loans to the SPV on a recourse basis to the SPV, such that the Treasury's equity will act as first-loss capital.

5 Originally, the Federal Reserve indicated that all would be 95% participations.

6 Nonbank financial institutions are not currently eligible. However, the Federal Reserve has indicated that it is considering options to expand eligibility.

7 Previously US branches or agencies of foreign banks, and US intermediate holding companies thereof, had been excluded.

- **Program Termination**: September 30, 2020.[8]
- **Borrower Eligibility**:
  - up to 15,000 employees or up to $5 billion in 2019 revenues, in each case together with affiliates (but only one test needs to be met);[9]
  - formed in or under the laws of the US, prior to March 13, 2020;
  - is a Business (i.e., a for profit entity)[10] or a tribal business concern;[11]
  - is not an ineligible business (listed in 13 CFR 120.110(b)-(j) and (m)-(s),[12] as modified by regulations implementing the PPP), which generally include any business involved in lending activities, passive real estate investments or speculative activities;[13]
  - has significant operations in the US and a majority[14] of employees based in the US;
  - was in sound financial condition prior to the COVID-19 pandemic; and
  - has not received specific support pursuant to Title IV, Subtitle A of the CARES Act, relating to emergency relief to distressed industries, including airlines and businesses important to maintaining national security [15] (and may not also participate in the PMCCF and may only participate in one of the three facilities under the MSLP).[16]
- **Terms and Conditions of Main Street Loans**:
  - SPV Participation: The SPV will purchase a participation in eligible term loans at par.
  - Maturity: Four year maturity.
  - Payment Deferment:
    - No principal or interest payments for one year;
    - interest will be capitalized if not paid.
  - Interest Rate: Adjustable rate of LIBOR (1 or 3 month) + 3.0%.[17]
  - Minimum size of loans:
    - $500,000 for New Loans and Priority Loans;
    - $10 million for Loan Increases.
  - No prepayment penalty.
  - Pari Passu Risk Sharing: SPV and the Lender will share risk on an equal basis (in the case of the Main Street Expanded Loan Facility, in the Loan Increase).

8 The SPV will cease purchasing participations on September 30, 2020. However, FRB Boston will continue to operate the SPV until its assets mature or are sold.

9 To determine its eligibility with respect to this requirement, a business must aggregate its employees and 2019 revenues with the employees and 2019 revenues of its affiliated entities, in accordance with the affiliation test set forth in 13 CFR 121.301(f) (which is also applied under the PPP). A business can calculate its revenues either by using (1) its (and its affiliates') annual "revenue" in its 2019 Generally Accepted Accounting Principles-based (GAAP) audited financial statements or (2) its (and its affiliates') annual receipts for the fiscal year 2019, as reported to the Internal Revenue Service. For purposes of the MSLP, the term "receipts" has the same meaning used by the SBA in 13 CFR 121.104(a). If neither the audited financial statements nor annual receipts are available for 2019, the most recently available should be used.

10 "Business" means a for profit entity formed as a partnership; limited liability company; corporation; association; trust; cooperative; or joint venture with no more than 49% participation by foreign business entities; provided that the Federal Reserve may consider other forms of organization for inclusion.

11 Defined in 15 U.S.C. § 657a(b)(2)(C), except that "small business concern" in that paragraph should be replaced with "Business" as defined in the MSLP.

12 For example, the following businesses (or certain of the following businesses) may be ineligible because of these regulations: financial businesses primarily engaged in lending; passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds; life insurance companies; pyramid sale distribution plans; private clubs; government-owned entities (except for certain hospitals and businesses owned or controlled by a Native American tribe); loan packagers earning more than one third of their gross annual revenue from packaging SBA loans; businesses with an "Associate" (defined in 13 CFR 120.10) who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude; businesses in which the Lender or CDC, or any of its associates owns an equity interest; certain adult entertainment businesses; the businesses or any business owned or controlled by the business or its Associates has previously defaulted on a Federal loan or Federally assisted financing within the past seven years, and caused the Federal government to sustain a loss in any of its programs; businesses primarily engaged in political or lobbying activities; and speculative businesses. The PPP Interim Rule issued on April 24, 2020, stated that PE firms (but not specifically their portfolio companies) were primarily engaged in investment or speculation, and such businesses are therefore ineligible to receive a PPP loan. That Interim Rule also stated that certain government hospitals were still eligible for PPP loans, and that a business that is otherwise eligible for a PPP loan is not rendered ineligible due to its receipt of legal gaming revenues, and 13 CFR 120.110(g) is inapplicable to PPP loans. The SBA has developed interpretative guidance for these rules in its "SOP" which will likely also be applicable to this program.

13 The Federal Reserve reserved the right to modify the application of these restrictions relating to ineligible businesses.

14 It is not clear whether SBA affiliation rules will be used to determine whether a "Business" has a majority of its employees based in the United States, or if such rules will only be used to determine the number of employees a Business has. The FAQs did not directly address the question (as it had for determining the number of employees), and this ambiguity, may discourage lenders from making Main Street Loans to businesses that have, on an affiliated basis, more employees outside of the US than within the US, unless the Federal Reserve directly addresses this issue or provides a way of confirming borrower eligibility prior to the funding of Main Street Loans.

15 This includes the Treasury Direct Lending Program and the other Federal Reserve Facilities, such as the PMCCF, but does not include PPP loans or EIDL.

16 A borrower may receive more than one Main Street Loan within a particular facility, as long as the aggregate amount of such loans does not exceed the applicable maximum size parameters ($25 million and $250 million, respectively). For example., a borrower may receive multiple Loan Increases, but not both a Loan Increase and New Loan/Priority Loan.

17 Previously, the Federal Reserve had indicated that Loans would bear interest base on SOFR (plus 250 to 400 bps). Lenders and Borrowers should include fallback contract language to be used should LIBOR become unavailable during the term of the loan, consistent with the recommendations of the Alternative Reference Rates Committee,

- Risk Rating: Other loans from Lender to Borrower as of December 31, 2019 (or in the case of a Loan Increase, the Existing Loan), must have had, at such time, an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system.
- Lenders must assess each borrower's financial condition at the time of application.[18]
- Risk Retention: a Lender must retain its 5% or 15% portion of a Main Street Loan until it matures or the SPV sells all of its participation, whichever comes first. A Lender making a Loan Increase must also retain its interest in the Existing Loan until the earliest of (1) the Existing Loan matures,(2) the Loan Increase matures, or (3) the SPV sells all of its 95% participation. The sales of participation interests to the SPV will be structured as "true sales" and must be completed "expeditiously" after the making of the Main Street Loan.
- Servicing Fee: The SPV will pay the Lender 0.25% (25 bps) of the principal amount of the SPV's participation in the Main Street Loan per year for loan servicing.

- **Required Certifications**. Main Street Loans require attestations/certifications from the Lender and the Borrower:[19]
  - Proceeds / Payment of other debt: The Borrower may not repay the principal balance of, or pay any interest on, any debt until the Main Street Loan is repaid in full, unless the debt or interest payment is mandatory and due. The Lender may not request the Borrower repay debt owing to the Lender, or pay interest thereon, until the Main Street Loan is repaid in full, unless the debt or interest payment is mandatory and due (including in the case of default and acceleration). Exceptions:
    - In the case of Priority Loans, Borrowers may, at the time of origination of the Priority Loan, refinance existing debt owed to other lenders (*i.e.*, not the lender making the Priority Loan).
    - Borrowers may make normal course payments on lines of credit (including credit cards), and a Lender may accept regularly scheduled, periodic repayments on such line of credit from a Borrower in accordance with its normal course of business usage for such line of credit.
    - Borrowers may refinance maturing debt.
    - Borrowers may take on and pay additional debt obligations required in the normal course of business and on standard terms, including inventory and equipment financing, provided that such debt is secured by newly acquired property (*e.g.*, inventory or equipment), and, apart from such security, is of equal or lower priority than the Main Street Loan.
  - No Reduction of other Credit:
    - The Lender may not cancel or reduce any existing committed[20] lines of credit to the Borrower, except due to an event of default.
    - The Borrower may not seek to cancel or reduce any existing committed lines of credit.
  - Solvent for 90 days: The Borrower must certify that it has a reasonable basis to believe that, immediately giving effect to the Main Street Loan, it will have 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.
  - Employee Retention: Borrower must make commercially reasonable efforts[21] to maintain its payroll and retain its employees during term of the Main Street Loan.[22]
  - Maximum Leverage: Borrower must attest that the applicable Maximum Leverage test (set forth below) is met (4x 2019 adjusted EBITDA for New Loans and 6x 2019 adjusted EBITDA for Loan Increases and Priority Loans).
  - The Lender must certify that the methodology used for calculating the Borrower's adjusted 2019 EBITDA for the leverage requirement is the methodology the Lender has previously used for adjusting EBITDA when extending credit to the Borrower or similarly situated borrowers on or before April 24, 2020 (in the case of Loan Increases, the same methodology must be used for the Loan Increase as used for the Existing Loan (prior to April 24, 2020)).
  - The Borrower must commit to follow the compensation, stock repurchase, capital distribution, dividend and employee compensation restrictions under section 4003(c)(3)(A)(ii) of the CARES Act:
    - Compensation (until 12 months after the Main Street Loan is repaid):
      - Employees who made more than $425,000 in total 2019 compensation[23] may not be paid more (than their 2019 compensation) in any subsequent 12-month period;
      - Severance for such employees is capped at 2x 2019 compensation; and
      - Reduction of compensation for employees who made more than $3 million in total 2019 compensation, by 50% of the excess over $3 million.

18 Lenders will need to assess each potential borrower's financial condition, and will apply their own underwriting standards in evaluating the financial condition and creditworthiness of a potential borrower. A Lender may require additional information and documentation in making this evaluation and will ultimately determine whether a potential borrower is approved for a Main Street Loan, and the amount of the Main Street Loan (within the sizing parameters).

19 The original term sheets stated that the Borrower would be required to attest that the financing is necessary because of COVID-19, but this attestation was not included in the new term sheets.

20 The Federal Reserve indicated that this prohibition on committed lines will not affect uncommitted lines of credit, the expiration of existing lines of credit in accordance with their terms, or the reduction of availability under existing lines of credit in accordance with their terms due to changes in borrowing bases or reserves in asset-based or similar structures.

21 The 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 still eligible to apply for Main Street Loans.

22 The Federal Reserve, however, has indicated that businesses 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.

23 Section 4004 (of the CARES Act defines total compensation to include salary, bonuses, awards of stock, and other financial benefits provided by an eligible business to an officer or employee of the eligible business, but it does not provide guidance on the valuation of non-cash compensation.

- Capital Distributions / Dividends: No stock buy-backs (unless required by contract as of 3/27/20) and no capital distributions or dividends, until 12 months after the Main Street Loan is repaid, other than distributions by pass-thru entities to the extent reasonably required to cover owners' tax obligations in respect of the entity's earnings.

– No Conflicts of Interest: The Lender and the Borrower each must attest it meets the eligibility requirements and that it is not controlled by certain US government officials (or their family members), as set forth under Section 4019(b) of the CARES Act.

Key Differences Among the Facilities

- Participation by SPV:
  - New Loans: 95% (lender holds 5% of risk).
  - Loan Increases: 95% (lender holds 5% of risk); Lender must also retain risk of the Existing Loan.
  - Priority Loans: 85% (lender holds 15% of risk).
- Type of Loan:
  - New Loans and Priority Loans: are new term loans made on or after April 24, 2020.[24]
  - Loan Increases: are made by increasing/upsizing a tranche of an existing term loan or revolving loan (an "Existing Loan"), by means of a term loan, which Existing Loan was made by the Lender prior to April 24, 2020 and matures at least 18 months after the Loan Increase is made. The Lender(s) may extend the maturity of the Existing Loan at the time of upsizing in order for the underlying instrument to satisfy the 18-month requirement. Loan Increases have additional flexibility so these loans can be documented inside of existing credit/loan agreements (by means of amendment).
- Size of Loans:
  - New Loans:
    - Minimum: $500,000; and
    - Maximum: lesser of (1) $25 million, (2) the amount that, when added to existing outstanding and undrawn available debt,[25] calculated as of the date of the loan application ("Total Debt"), does not exceed 4x adjusted 2019 EBITDA (Maximum Leverage).
  - Priority Loans:
    - Minimum: $500,000; and
    - Maximum: lesser of (1) $25 million, (2) the amount that, when added to Total Debt, does not exceed 6x adjusted 2019 EBITDA (Maximum Leverage).
  - Loan Increases:
    - Minimum: $10 million; and
    - Maximum: lowest of (1) $200 million, (2) 35% of outstanding and undrawn available debt that is *pari passu* in priority with the Loan Increase[26] equivalent in secured status,[27] and (3) the amount that, when added to Total Debt, does not exceed 6x adjusted 2019 EBITDA (Maximum Leverage).
- Amortization (starting on second anniversary):[28]
  - New Loans: principal amortization of 1/3 at the end of the 2nd year, 1/3 at the end of the 3rd year, and 1/3 at maturity.
  - Priority Loans and Loan Increases: principal amortization of 15% at the end of the 2nd year, 15% at the end of the 3rd year, and a balloon payment of 70% at maturity.
- Loan Ranking / Priority:
  - New Loans: May not at any time be contractually subordinated to any of the Borrower's other loans or debt instruments.[29]
  - Priority Loans and Loan Increases: must at all times be senior to or pari passu with, in terms of both priority and security, the Borrower's other loans or debt instruments, other than mortgage debt.
- Collateral:
  - New Loans and Priority Loans may be secured or unsecured.
  - Loan Increases must be secured if the original loan is or becomes secured, and collateral securing the loan will secure the loan participation on a pro rata basis.[30]
- Fees[31]:
  - New Loans and Priority Loans:
    - Origination Fees: up to 1.0% (100bps), payable by Borrower to Lender, at the discretion of Lender.
    - Transaction Fees: 1.0% (100bps), payable by Lender to SPV, but Lender may charge this fee to the Borrower.

24 In the original term sheets, the Federal Reserve had used April 8, 2020. These loans, like Priority Loans, are seemingly intended for new credit facilities that are particularly designed to be eligible for these Main Street Facilities, and would be documented in a new credit/loan agreement.

25 "Existing outstanding and undrawn available debt" includes all amounts borrowed under any loan facility, including unsecured or secured loans from any bank, non-bank financial institution, or private lender, as well as any publicly issued bonds or private placement facilities. It also includes all unused commitments under any loan facility, but excluding (1) any undrawn commitment that serves as a backup line for commercial paper issuance, (2) any undrawn commitment that is used to finance receivables (including seasonal financing of inventory), (3) any undrawn commitment that cannot be drawn without additional collateral, (4) any undrawn commitment that is no longer available due to change in circumstance.

26 We note that the term sheet references "Eligible Loan" (*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*), which is often used to refer to the combination of the underlying loan and the Loan Increase. This could be read to suggest that the underlying loan cannot be used to as part of the equation to size the Loan Increase in respect of this criterion. However, we assume such a reading is incorrect. .

27 The 35% test, together with the $10MM minimum amount, will exclude from the upsize facility any Borrower with less than $28,5714,285 of existing outstanding and undrawn available debt. Likewise, a Borrower would need over $571MM in existing outstanding and undrawn available debt to get to the $200MM maximum amount of this facility.

28 As used in this amortization section, principal includes capitalized interest – unpaid interest during the first year will be capitalized.

29 This would not prevent a New Loan from being structurally or effectively subordinated.

30 If the borrower defaults on a loan consisting (in part) as a secured Loan Increase, the SPV and lender(s) would share equally in any collateral securing the loan relative to their proportional interests in such loan (including the Loan Increase). The Lender can require the Borrower to pledge additional collateral to secure a Loan Increase.

31 All such fees are based on the entire original principal amount of the Main Street Loan, not just the amount participated in by the SPV.

- Loan Increases:
  - Origination Fees: up to 0.75% (75bps), payable by Borrower to Lender, at the discretion of Lender.
  - Transaction Fees: 0.75% (75bps), payable by Lender to SPV, but Lender may charge this fee to the Borrower.

Given the differences among the facilities, lenders and borrowers with existing lending relationships will need to decide which facility to use. Given the additional flexibility provided by Loan Increases, many will favor getting a Loan Increase if the Borrower is eligible, especially now that revolver credit facilities are now eligible for Increase Loans. The necessary analysis will include considerations relating to the size of the loan needed, the current debt structure of the Borrower, the Borrower's 2019 adjusted EBITDA (and whether it can meet the 4x test), whether collateral securing the existing loans should secure the new loans, the maturity of the existing loan (Loan Increases have a four year maturity which might not match the Existing Loan), the extent of the amendments to current credit agreement(s) that would be needed, the expected timing of documentation and related consents, the amount of the transaction and origination fees (Loan Increases have lower fees), and whether any existing debt needs to be repaid when the Main Street Loan is funded (only Priority Loans permit repayment of debt when the loan is made, but that is limited to debt not owing to the Lender).

Other Considerations

Syndicated Loans:

- If the Existing Loan underlying a Loan Increase is part of a multi-lender facility, the Lender making the Loan Increase (the "Upsizing Lender") must be one of the lenders that holds an interest in the Existing Loan at the date of upsizing.[32]
- Only the Upsizing Lender is required to meet the eligibility criteria. Other members of a multi-lender facility are not required to meet the eligibility criteria.[33]

Lender Verification of Borrower Certifications and Covenants:

- Lenders' Duties: Lenders will have an obligation to collect the required certifications and covenants from each Borrower at the time Main Street Loans are made.
- Reliance on Borrower Reps: The Federal Reserve has indicated that Lenders will be entitled to rely on a Borrower's certifications and covenants, as well as any subsequent self-reporting by the Borrower, and that a Lender is not expected to independently verify the Borrower's certifications or actively monitor ongoing compliance with covenants required for Borrowers under the MSLP.[34]
- However, if a Lender becomes aware that a Borrower made a material misstatement or otherwise breached a covenant during the term of a Main Street Loan, the Lender will be required to notify FRB Boston.

Mechanics of Participation Funding: We are still awaiting guidance regarding the timing of when the SPV would fund the participations, and when/how the SPV would communicate to a lender that the SPV will participate in a particular loan. The Federal Reserve has indicated that the loan documentation required to sell a loan participation to the SPV will be made available on the Federal Reserve's website.

Monitoring by SPV / Disclosure of Information:[35]

- The SPV will collect information on certifications, covenants, lenders, loan terms, and loan performance as well as borrowers, borrower fundamentals, collateral, and other characteristics.
- This information will be used to verify the meeting of eligibility requirements and to support ongoing accounting and credit risk monitoring needs with respect to purchased participations.
- Information will be collected at different stages and at appropriate frequencies through a variety of channels designed to accommodate the range of lenders and borrowers anticipated to participate in the program.
- The Federal Reserve has stated that it will disclose information regarding the MSLP, including information regarding names of lenders and borrowers, amounts borrowed and interest rates charged, and overall costs, revenues and other fees. Borrowers may want to take into account and prepare ahead of time for receipt and use of funds provided through the CARES Act in anticipation of significant oversight and review by government entities, further discussed in this analysis.
- Balance sheet items related to the MSLP will be reported weekly, on an aggregated basis, on the H.4.1 statistical release titled "Factors Affecting Reserve Balances of Depository Institutions and Condition Statement of Federal Reserve Banks," published by the Federal Reserve. In addition, the Federal Reserve will disclose to Congress information pursuant to Section 13(3) of the Federal Reserve Act.[36]
- Under section 11(s) of the Federal Reserve Act, the Federal Reserve also will disclose information concerning the facilities one year after the effective date of the termination by the Federal Reserve of the authorization of the facilities. This disclosure will include names and identifying details of each participant in the facilities, the amount borrowed, the interest rate or discount paid, and information concerning the types and amounts of collateral pledged or assets transferred in connection with participation in the facilities.

32 This may allow an Eligible Lender to take an assignment from an ineligible lender prior to the upsize date, to make an existing facility eligible for an upsize. However, elsewhere the Increase Loan term sheet states that an "Eligible Loan is a secured or unsecured term loan or revolving credit facility made by an Eligible Lender(s) to an Eligible Borrower that was originated on or before April 24, 2020"

33 The relevant term sheet states that the underlying loans need to have been made by "a Eligible Lender(s)" which suggests the possibility that more than one lender in a syndicate can act as an Eligible Lender for a Loan Increase. Regardless, if there are more than one potential eligible Lenders, they will need to determine how to allocate the increase among themselves.

34 We caution, however, that this statement from the Federal Reserve may not shield lenders from actions by state attorneys general and other agencies with enforcement powers, much less negative publicity and/or private lawsuits, such as the class action claims filed against several prominent lenders in the wake the PPP.

35 More details on the SPV's collection and monitoring of information will be provided by the Federal Reserve at a later date.

36 The Federal Reserve is required to provide reports to the Senate Banking Committee and the House Financial Services Committee within seven days after the authorization of a loan or other financial assistance detailing the program, including the amount and material terms, the identity of the recipients of the assistance, justification for the program, any requirements imposed on the recipients under the program, list and value of collateral pledged, and expected costs to taxpayers. The Federal Reserve is also required to provide monthly reports to these Committees detailing the value of collateral, amount of interest and fees received and expected or final cost to taxpayers.

Regulatory Status:[37]

- The interest in the portion of a Main Street Loan that is retained by a Lender should be assigned the risk weight applicable to the counterparty for the loan—generally a 100% risk weight for a corporate exposure under the standardized approach. For purposes of risk-based capital rules and leverage rules, the exposure amount for Priority Loans is 15% of the outstanding Priority Loan balance; and the exposure amount for New Loans and Loan Increases is 5% of the New Loan balance or Loan Increase balance, respectively. With respect to Loan Increases, this treatment applies only to the outstanding Loan Increase balance (and the Existing Loan would continue to be subject to the capital treatment that applied prior to the sale of the participation to the SPV).
- Secured Main Street Loans are eligible for the credit risk mitigation treatment in the standardized approach provided that any collateral securing the loan is eligible financial collateral. Eligible Lenders are not permitted to recognize collateral attributable to the Main Street SPV's interest for purposes of the credit risk mitigation treatment under the capital rule.

Next Steps

Your approach to this facility should be based on your individual facts and circumstances and caution is warranted when interpreting some of the ambiguities and open questions in the governing rules and is beyond the scope of this alert. Please contact us to discuss your particular situation.

Contacts

James Schneider
Partner, Cleveland and Washington DC
T +1 216 479 8638
E james.schneider@squirepb.com

James Barresi
Partner, Cincinnati and Washington DC
T +1 513 361 1260
E james.barresi@squirepb.com

Thomas Reems
Partner, Denver
T + 303 894 6110
E thomas.reems@squirepb.com

David Stewart
Principal, Washington DC
T +1 202 457 6054
E david.stewart@squirepb.com

Adam Nazette
Partner, Cleveland
T +1 216 479 8510
E adam.nazette@squirepb.com

Kirk Beckhorn
Partner, Washington DC
T + 1 202 457 7592
E kirk.beckhorn@squirepb.com

37 For Lenders that are subject to the federal banking agencies' capital rule. Credit unions that participate in the Program are subject to any capital requirements implemented by the National Credit Union Administration.

<table>
<tr><th></th><th>Main Street New Loan Facility</th><th>Main Street Priority Loan Facility</th><th>Main Street Expanded Loan Facility</th></tr>
<tr><td>Eligible Lenders</td><td colspan="3">US insured depository institutions, US branches or agencies of foreign banks, US bank holding companies, US savings and loan holding companies, US intermediate holding companies of a foreign bank, or a US subsidiary of any of the foregoing</td></tr>
<tr><td>Eligible Borrowers</td><td colspan="3">• up to 15,000 employees, or up to $5 billion in 2019 revenues, in each case together with affiliates (with affiliation rules similar to PPP loans)
• has significant operations in the US and a majority of employees based in the US
• a for profit business formed in or under the laws of the US, prior to March 13, 2020; if a joint venture, may not have more than 49% foreign participation
• is not an ineligible business i.e., a type of business listed in 13 CFR 120.110(b)-(j) and (m)-(s), as modified in connection with the PPP Loan
• was in sound financial condition prior to the onset of the COVID-19 pandemic
• has not received Treasury Direct Loans (for air carriers (and related entities), and businesses critical to national security) under CARES Act 4003(b)(1), (2) or (3), and
• does not participate PMCCF or more than one Main Street Loan facility (but may receive a PPP loan)</td></tr>
<tr><td>Minimum Loan Size</td><td colspan="2">$500,000</td><td>$10MM</td></tr>
<tr><td>Maximum Loan Size</td><td>lesser of:
(1) $25MM, and
(2) the amount that, when added to existing outstanding and undrawn available debt, does not exceed 4x adjusted 2019 EBITDA</td><td>lesser of:
(1) $25MM, and
(2) the amount that, when added to existing outstanding and undrawn available debt, does not exceed 6x adjusted 2019 EBITDA</td><td>lowest of:
(1) $200MM,
(2) 35% of outstanding and undrawn available debt that is pari passu in priority with the Loan Increase equivalent in secured status, and
(3) the amount that, when added to existing outstanding and undrawn available debt, does not exceed 6x adjusted 2019 EBITDA</td></tr>
<tr><td>Interest Deferment</td><td colspan="3">No interest payments for one year; unpaid interest will be capitalized</td></tr>
<tr><td>Amortization</td><td>1/3 at the end of the 2nd year, 1/3 at the end of the 3rd year, 1/3 at maturity</td><td colspan="2">15% at the end of the 2nd year,
15% at the end of the 3rd year,
70% at maturity</td></tr>
<tr><td>Priority</td><td>May not be contractually subordinated</td><td colspan="2">Must be senior to or pari passu with, in terms of both priority and security, the Borrower’s other loans or debt instruments, other than mortgage debt</td></tr>
<tr><td>Collateral</td><td colspan="2">May be secured or unsecured</td><td>must be secured if the original loan is or becomes secured</td></tr>
<tr><td>Participation Amount by SPV</td><td>95%</td><td>85%</td><td>95%</td></tr>
<tr><td>Shared Terms of Loans</td><td colspan="3">• 4 year maturity
• No principal or interest payments for one year
• Unpaid interest will be capitalized
• LIBOR (1 or 3 month) + 3.0%
• SPV and the Lender will share risk on an equal basis
• Any loans from Lender to Borrower existing as of December 31, 2019, must have had, at such time, an internal risk rating equivalent to a “pass” in the Federal Financial Institutions Examination Council’s supervisory rating system
• Restrictions on principal balance of, or pay any interest on, any debt until the Main Street Loan is repaid in full, unless the debt or interest payment is mandatory and due (including in the case of default and acceleration).
• No reduction of committed lines of credit (by Lender with respect to Borrower) or Borrower with any lender
• Borrower must attest it has a reasonable basis to believe it will be solvent for 90 days</td></tr>
<tr><td>Other Requirements</td><td colspan="3">• Lenders must assess each borrower’s financial condition at the time of application
• Borrower must make commercially reasonable efforts to maintain its payroll and retain its employees during the term of the Main Street Loan
• Methodology used for calculating the Borrower’s adjusted 2019 EBITDA must be what lender previously used for adjusting EBITDA when extending credit to the Borrower (or similarly situated borrowers) on or before April 24, 2020 (in the case of Loan Increases, the same methodology must be used for the Loan Increase as used for the Existing Loan (prior to April 24, 2020)</td></tr>
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<table>
<tr><th></th><th>Main Street New Loan Facility</th><th>Main Street Priority Loan Facility</th><th>Main Street Expanded Loan Facility</th></tr>
<tr><td>Compensation and Capital Distribution Restrictions / Considerations</td><td colspan="3">The compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act will apply for a year after the loan is paid in full:
• No repurchases of equity securities listed on national exchanges (including those issued by parent entities), unless required by a pre-existing contract
• No dividends or other capital distributions with respect to the Borrower’s common stock
• Compensation:
– Raises/Severance: Employees/officers who earned more than $425k in 2019 (total compensation, including salary, bonus, stock awards, other financial benefits), cannot be given raises, or be given severance in excess of 2x 2019 total comp.
– Comp Reduction: Employees/officers who earned more than $3MM in total comp in 2019, must have their compensation reduced by 50% of the amount their 2019 comp exceeded $3MM (e.g., an employee who made $3.5MM may not make more than $3.25MM per year; an employee who made $4MM may not make more than $3.5MM per year.)</td></tr>
<tr><td rowspan="2">Other Differences</td><td colspan="2">New secured or unsecured term loan originated after April 24, 2020</td><td>Term loan made by upsizing a tranche of an existing secured or unsecured term loan or revolving loan (an “Existing Loan”).

Existing Loan must have been made by the Lender on or prior to April 24, 2020, and matures at least 18 months after the Loan Increase is made.</td></tr>
<tr><td></td><td>The Borrower may, at the time of origination of a Priority Loan, refinance existing debt owed by the Borrower to other lenders (i.e., not the lender making the Priority Loan)</td><td></td></tr>
<tr><td>Origination Fee to Lender (at discretion of Lender)</td><td colspan="2">Up to 100 bps to Lender from Borrower</td><td>Up to 75 bps to Lender from Borrower</td></tr>
<tr><td>Transaction Fee to SPV</td><td colspan="2">100 bps from Lender to SPV (chargeable to Borrower)</td><td>75 bps from Lender to SPV (chargeable to Borrower)</td></tr>
<tr><td>Servicing Fee</td><td colspan="3">25bps (payable by SPV to Lender)</td></tr>
<tr><td>Program Termination Date</td><td colspan="3">September 30, 2020 (the Federal Reserve will still fund the SPV after such date)</td></tr>
</table>

Contacts

James Schneider
Partner, Cleveland and Washington DC
T +1 216 479 8638
E james.schneider@squirepb.com

James Barresi
Partner, Cincinnati and Washington DC
T +1 513 361 1260
E james.barresi@squirepb.com

Thomas Reems
Partner, Denver
T + 303 894 6110
E thomas.reems@squirepb.com

David Stewart
Principal, Washington DC
T +1 202 457 6054
E david.stewart@squirepb.com

Adam Nazette
Partner, Cleveland
T +1 216 479 8510
E adam.nazette@squirepb.com

Kirk Beckhorn
Partner, Washington DC
T + 1 202 457 7592
E kirk.beckhorn@squirepb.com

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