Published on *The National Law Review* https://natlawreview.com

COVID-19 Update: Federal Reserve Announces Main Street Lending Program

Article By:

Nick Shiren

On April 9, 2020, the Federal Reserve established a $600 billion lending program to aid small and medium-sized businesses affected by the COVID-19 pandemic. The new initiative—the Main Street Lending Program—will purchase qualifying loans from lenders that lend to U.S. businesses with up to 10,000 employees or up to $2.5 billion in 2019 annual revenues.[1] Firms that have taken advantage of the Small Business Administration's previously announced Paycheck Protection Program are eligible to participate in the Main Street program.[2]

The program is not yet operational or accepting applications. For now, the Federal Reserve and the Department of the Treasury are seeking input from lenders, borrowers and other stakeholders, with comments on the program being accepted through April 16.

The program will operate through two facilities: the Main Street New Loan Facility ("**MSNLF**"), which will purchase participations in eligible loans originated by lenders *on or after* April 8, 2020, and the Main Street Expanded Loan Facility ("**MSELF**"), which will purchase upsized tranches of loans originated by lenders *before* April 8, 2020, that meet specified eligibility criteria.[3] In both cases, purchases will be on a risk-shared basis, with the lender retaining a 5% loan participation and the applicable facility purchasing a 95% participation. The Main Street Lending Program is the first of the Federal Reserve's pandemic response facilities to use SOFR-based interest as a requirement for collateral eligibility.

Borrower and lender eligibility requirements are the same across the two facilities, but, in addition to the origination date, there are a few notable differences in terms. The MSNLF will purchase unsecured term loans and charge a 100-basis-point facility fee. The MSELF, which facilitates increases to loans that predate the program, will purchase secured loans, will not charge a facility fee and allows for potentially larger loan sizes. We review terms of the program in more detail below.

Main Street New Loan Facility

Who can participate? Loans will be extended through regulated banking organizations. More specifically, only U.S. insured depository institutions, U.S. bank holding companies and U.S. savings and loan holding companies are eligible to extend loans under the program.

What assets are eligible? Eligibility criteria address both the borrower and the underlying loan terms. To qualify for participation, a borrower must be a business with up to 10,000 employees or up to $2.5 billion in 2019 revenue. Further, a borrower must be a U.S. business, which is defined as a business created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States.

Another Federal Reserve program, the Primary Market Corporate Credit Facility, can also originate loans to U.S. businesses, and to address the potential overlap, the Main Street Lending Program requires participating borrowers not to use the Primary Market Corporate Credit Facility.

To be eligible for purchase by the MSNLF, loans must be originated on or after April 8, 2020, and must meet the following criteria:

- a four-year maturity;
- deferral of interest and principal during the first year of the loan term;
- an interest rate of 250-400 basis points over SOFR;
- a minimum loan size of $1 million; and
- prepayment without penalty.

Maximum loan size for the MSNLF is capped at the lesser of (i) $25 million and (ii) the loan amount that results in a four times debt-to-EBITDA ratio based on the borrower's existing outstanding and committed but undrawn debt and its 2019 EBITDA.

What are the other key terms? Both the borrower and lender are required to make specific attestations.

The borrower is required to certify the following:

- it will refrain from using loan proceeds to repay other debt of equal or lower priority other than mandatory principal until the loan is repaid in full;
- it will not seek to cancel or reduce its outstanding lines of credit with any lender;
- the loan is necessitated by the COVID-19 pandemic and the borrower will make reasonable efforts to maintain its payroll and retain its employees during the term of the loan;
- it complies with the debt-to-EBITDA loan size limit;
- it will comply with the compensation, stock repurchase, dividend and capital distribution restrictions under the CARES Act; and
- it is eligible to participate in the facility, including under the conflicts of interest prohibition in the CARES Act.[4]

These attestations serve as a compliance mechanism for enforcing, among other terms, the stock repurchase, dividend and capital distribution restrictions under the CARES Act.[5] More specifically, borrowers are prohibited from buying back listed equities (except under a pre-existing contract), paying dividends, or making other capital distributions with respect to common stock until 12 months after the loan is no longer outstanding. Participating businesses are also required, to the extent practicable, to maintain employment at the March 24, 2020 level until September 30, 2020 and, in any case, not to reduce employment by more than 10% from the initial level.

The certifications also address compensation, and apply the CARES Act provisions that (i) prohibit pay increases to employees and officers who received more than $425,000 in total compensation in 2019 (excluding employees paid under a collective bargaining agreement), (ii) cap severance payments at two times 2019 earnings for employees who earned more than $425,000 in total compensation in 2019 (excluding employees paid under a collective bargaining agreement), and (iii) limit total compensation to officers and employees who received more than $3,000,000 in total compensation in 2019 to no more than $3,000,000 plus 50% of the excess over $3,000,000 of the total compensation received in 2019.[6] The compensation limits remain in effect through the one-year period after the loan is no longer outstanding.

A lender is required to certify that:

- loan proceeds will not be used to repay or refinance pre-existing loans or lines of credit that the lender has in place with the borrower;
- it will not cancel or reduce existing lines of credit outstanding to the borrower; and
- it is eligible to participate in the facility, including under the conflicts of interest prohibition in the CARES Act.

Risk sharing between the facility and the lender is on a *pari passu* basis. The MSNLF will purchase a 95% participation of an eligible loan at par value, and the lender will retain 5%.

Borrowers under the MSNLF are charged a 100-basis-point origination fee. The lender is required to pay to the MSNLF a facility fee of 100 basis points of the principal amount of the loan participation purchased by the facility. This facility fee may be paid by the borrower. In turn, the MSNLF will pay the lender a yearly servicing fee of 25 basis points, also calculated based on the principal amount of the facility's loan participation.

How long will the program continue? Unless extended by the Federal Reserve and the Treasury Department, the MSNLF will cease purchasing loan participations on September 30, 2020. The facility will remain funded until its underlying assets mature or are sold.

Main Street Expanded Loan Facility

Who can participate? Lender eligibility criteria are the same as those for the MSNLF.

What assets are eligible? Borrower eligibility criteria are the same as those for the MSNLF. Qualifying upsized tranches of existing loans are eligible for purchase, and required terms relating to tenure, first-year deferral of interest and principal, interest rate, loan size, and prepayment terms track the MSNLF. The maximum size for an upsize tranche is capped at the lesser of (i) $150 million,

(ii) 30% of the borrower's outstanding and committed but undrawn bank debt, and (iii) the loan amount that results in a six times debt-to-EBITDA ratio based on the borrower's existing outstanding and committed but undrawn debt and its 2019 EBITDA.

What are the other key terms? The required borrower and lender attestations track those of the MSNLF, as does the risk sharing arrangement. The MSELF will purchase secured loans. Collateral that secures the loan, including collateral pledged under the original loan or at the time of upsizing, will secure the loan participation on a *pro rata* basis.

Borrowers under the MSELF are charged a 100-basis-point upsize fee assessed on the principal amount of the upsized tranche. The MSELF does not charge a facility fee. The facility will pay a 25-basis-point annual servicing fee to lender based on the facility participation amount in the upsized tranche.

How long will the program continue? Unless extended by the Federal Reserve and the Treasury Department, the MSELF will cease purchasing loan participations on September 30, 2020. The facility will remain funded until its underlying assets mature or are sold.

*   *   *

The CARES Act made available $454 billion for loans and loan guarantees under programs of the Federal Reserve. With $75 billion committed to the program by the Treasury, the Main Street Lending Program accounts for one of the largest equity commitments to date to such a lending program.[7] Even so, total equity commitments across all the lending programs announced to date account for less than half of the earmarked allocation under the CARES Act. This leaves significant room for increased commitments to existing programs or additional future market support initiatives from the Federal Reserve and Treasury.

---

1 Federal Reserve Takes Additional Actions to Provide Up to $2.3 Trillion in Loans to Support the Economy, *available here.*

2 The Paycheck Protection Program ("**PPP**") provides financial assistance to small businesses to keep employees on the payroll by extending unsecured loans guaranteed by the Small Business Administration. Compared with the Main Street Lending Program, lending under the PPP is limited to smaller businesses (borrowers must meet the SBA's small business size standards), loan sizes are lower (the lesser of $10 million and 2.5x of the borrower's average monthly payroll cost in 2019), and the use of proceeds are more restricted (75% of the PPP loan proceeds must be used for payroll purposes). For more on the PPP, *see* Cadwalader's COVID-19 Update: The SBA's Paycheck Protection Program Explained, *available here.*

3 Main Street New Loan Facility Term Sheet, *available here*; Main Street Expanded Loan Facility Term Sheet, *available here*.

4 Section 4019(b) of the CARES Act bars the President, Vice President, heads of Executive departments, Members of Congress and their specified relatives from participating in the emergency relief funding under the CARES Act.

5 Section 4003(c)(3)(A)(ii) of the CARES Act.

6 Section 4004 of the CARES Act.

7 The combined equity commitment to the Primary Market Corporate Credit Facility and the Secondary Market Corporate Credit Facility also totals $75 billion after the Federal Reserve and Treasury announced an upsized commitment to both programs on April 9, 2020.

National Law Review, Volume X, Number 107