The Federal Reserve's Main Street Lending Program: Practical Takeaways for Lenders

Article By:

Kristen M. Veresh

In our initial advisory on April 30, we discussed the revised terms for the Federal Reserve Main Street Lending Program (Main Street Program). In this advisory, we focus on the lender requirements under the Main Street Program.

Which Lenders Can Participate in the Main Street Program?

Loans under each of the three facilities - the Main Street New Loan Facility (MSNLF), the Main Street Priority Loan Facility (MSPLF) and the Main Street Expanded Loan Facility (MSELF) – may only be made by eligible lenders. In addition, under the MSELF the upsized portion of the loan may only be made by an eligible lender that is one of the existing lenders on the loan to be upsized. As of the date of this advisory, 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. Such term does not include non-depository lenders or non-bank financial institutions. However, according to the FAQ's issued in connection with the revised term sheets for the Main Street Program, the Federal Reserve is currently "considering options to expand the list of eligible lenders in the future."

How Does This Differ From a Typical Bank Loan?

As discussed in previous advisories, the Main Street Program will be supported by a $75 billion equity investment by the Department of Treasury in a Special Purpose Vehicle (SPV). The Federal Reserve Bank of Boston will also commit to lend to this SPV, such that the SPV may then purchase at par value (i) a 95 percent participation in each eligible loan extended under the MSNLF, (ii) an 85 percent participation in each eligible loan extended under the MSPLF, and (iii) a 95 percent participation in the upsized tranche of the eligible loan under the MSELF (provided the eligible loan is upsized on or after April 24, 2020). The sale of the eligible loan to the SPV will be structured as a true sale and must be completed promptly after the origination of the eligible loan. The eligible lender will then be required to retain its five percent or 15 percent interest, as applicable, in the eligible loan until such loan matures (or in the case of the MSELF, the upsized tranche of the loan matures), or the SPV sells its participation.

As a result of this guaranteed sale of a participation in each eligible loan, an eligible lender has additional incentive to extend loans to customers under the Main Street Program with the assurance that it will only be required to retain a small portion of the risk associated with such loan on its books.

Evaluation and Certifications by Eligible Lender With Respect to Each Facility

Despite the reduced participation held by eligible lenders in eligible loans, eligible lenders are still expected to conduct an assessment of each borrower's financial condition and creditworthiness at the time the borrower applies for an eligible loan. As of the date of this advisory, no specific criteria is provided with respect to the extent of this assessment, other than the requirement that eligible lenders will need to apply their own underwriting standards and may require additional information and documentation from borrowers to complete this assessment. Ultimately, eligible lenders are meant to treat the eligible borrower requirements set forth under the Main Street Program as minimum requirements. A borrower is not guaranteed the extension of an eligible loan simply because it constitutes an eligible borrower. The final decision as to whether to extend an eligible loan will result from the eligible lender's assessment.

In addition to performing the above-described assessment, eligible lenders will also be expected to make the following certifications and commitments in connection with each loan (in addition to other certifications required by applicable statutes and regulations):

- **No prepayment of existing eligible lender debt:** The eligible lender must commit that it will not request repayment of debt or payment of interest on such debt extended by the eligible lender to the eligible borrower until the eligible loan is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration. According to the FAQ's, this certification does not prevent the eligible lender from accepting partial prepayment on an eligible borrower's existing line of credit with the eligible lender, in accordance with the borrower's normal course of business usage for such line of credit.

- **No cancellation or reduction of lines of credit:** The eligible lender must commit that it will not cancel or reduce any existing committed lines of credit to the eligible borrower, except in an event of default.

- **Calculation of 2019 EBITDA:** The eligible lender must certify that the methodology used for calculating the eligible borrower’s adjusted 2019 EBITDA for the leverage requirement in determining the maximum loan size is the methodology the eligible lender has previously used for adjusting EBITDA when extending credit to the eligible borrower or similarly situated borrowers on or before April 24, 2020.

- **No conflict of interest:** The eligible lender 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.

Resources

Main Street New Loan Facility (MSNLF)Term Sheet
Main Street Priority Loan Facility (MSPLF) Term Sheet
Main Street Expanded Loan Facility (MSELF) Term Sheet
Main Street Lending Program Frequently Asked Questions (FAQs)

National Law Review, Volume X, Number 129