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Main Street Lending Program: Loans for Small- and Medium-Sized Businesses

The Treasury Department ("Treasury") and the Federal Reserve ("the FED") have announced two new lending programs authorized by the Economic Stabilization provisions of the CARES Act. Businesses and nonprofits with up to 10,000 employees will be eligible to obtain as much as $25 million in loans through the Main Street Business New Loan Facility ("MSNLF"). In addition, another program, the Main Street Expanded Loan Facility or ("MSELF") will offer similar businesses loans of as much as $125 million. (Note: the rest of this analysis will discuss the MSNLF program, although the requirements of the two programs are similar.)

Borrowers considering this funding should review financial need, collect likely required information and consider other potential impacts on operations or existing financing. Treasury is also asking interested parties to provide comments on the programs before officially launching them sometime this week.

Similar to the Paycheck Protection Program, access to funds will be made through applications to participating banks, not the U.S. government. Although details on the program remain to be determined, the summary below provides initial information as to the outline of the program. This information is subject to change as Treasury and the FED develop and release additional guidance.

What is the Main Street Business New Loan Facility Program?

The program is designed for businesses with up to 10,000 employees or $2.5 billion in 2019 annual revenue. Notably, the program announcement does not specify a minimum number of employees that a business must employ in order to be eligible, despite the CARES Act originally targeting companies with a minimum of 500 employees. It is possible that the program could include such a limitation.

Under the MSNLF, the Fed will commit to lend to a single purpose vehicle ("SPV"). Treasury will use $75 billion in CARES Act funds to make an equity investment in the SPV. The SPV will then purchase 95% participation in eligible loans from eligible lenders, with lenders retaining 5% of each loan. The combined size of both loan programs will be up to $600 billion. The SPV will purchase participation until September 30, 2020, unless Treasury and the FED extend the date.

Who Are Eligible Borrowers?

Businesses and nonprofits with up to 10,000 employees or up to $2.5 billion in 2019 annual revenue are eligible to participate. A minimum size requirement (for example, over 500 employees) has not been established. Businesses must be created or organized in the United States or under the laws of the United States with significant operations in, and a majority of employees based in, the U.S. It appears that some foreign ownership of the U.S. entity will be permitted.

Other requirements include:

- The borrower cannot be a debtor in a bankruptcy proceeding.
- The borrower must attest it requires financing due to the exigent circumstances presented by the coronavirus disease (COVID-19) pandemic, and that by using the proceeds, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the loan.
- Borrowers may not also participate in the Primary Market Corporate Credit Facility (see below). Further, borrowers participating in the Main Street New Loan Facility may not participate in the Expanded Loan Facility and vice versa.

What Loans Are Eligible?

An eligible loan is an unsecured term loan made by an eligible lender. For the Main Street New Loan Facility, eligible loans are those originated on or after April 8, 2020, provided it includes the following features:

- 4-year maturity
- Interest rates on direct loans will need to reflect risk and market conditions but should not be higher than 2% per annum. Duration of the loan has not been established. (Note: these are statutory provisions and have not yet been set by Treasury.)
- Amortization of principal and interest deferred for one year
- Prepayment permitted without penalty
- Minimum loan size of $1 million
- Lenders are authorized to charge borrowers certain fees at set amounts

The maximum loan size that is the lesser of (i) $25 million, or (ii) an amount that, when added to the borrower's existing outstanding and committed by undrawn debt, does not exceed four times the borrower's 2019 earnings (before interest, taxes, depreciation, and amortization)

How Will the Money Be Delivered?

Under the program, eligible lenders include U.S. insured banks and saving associations. The loan process has not been announced yet but if similar procedures to the Paycheck Protection Program or the aviation industry and businesses "critical to maintaining national security" grant and loan programs are followed, it is expected that there will be a short-form loan application including basic organizational information, loan size and purpose disclosures, as well as required certifications.

If the application is accepted, Treasury will provide a draft agreement to the applicant to govern the terms of the loan. It is unclear at this time whether Treasury will require collateral or other commitments to secure loans.

What Restrictions Will Be Put on the Loan?

- Borrowers must refrain from using loan proceeds to repay another loan balance.
- Borrowers must refrain from repaying other debts of equal or lower priority (with the exception of mandatory principal payments) until the Main Street Loan is repaid in full.
- Borrowers may not seek to cancel or reduce any outstanding line of credit with any lenders.

- As noted above, the borrower must attest it requires financing due to the exigent circumstances presented by the coronavirus disease (COVID-19) pandemic, and that by using the proceeds, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the loan.

Note that although the CARES Act states that the funds received under these loan programs must be used to retain at least 90% of the recipient's workforce at full compensation and benefits until September 30, 2020, the initial guidance from Treasury and the FED merely says that the borrower "will use the loan proceeds to 'make reasonable efforts' to maintain payroll and retain employees during the loan term."

Other provisions from the CARES Act that are not specifically addressed in the initial guidance (some of which are not applicable to nonprofits) include:

- The borrower will not outsource or offshore jobs until two years after the loan is repaid.
- The borrower may not pay dividends or buy back shares during the course of the loan or for 12 months after the loan has been paid off. At this time, it is unclear if non-public companies will be similarly restricted from making other types of capital distributions.
- Highly-paid officers and executives of companies that receive a large business loan are prohibited from increasing the compensation of any employee whose compensation exceeds $425,000 or from offering them significant severance or termination benefits.
- The recipient will not abrogate any collective bargaining agreements during the term of the loan and for a period of two years thereafter, and will remain neutral in any union organizing effort during the term of the loan.