Federal Reserve Provides Greater Access, and Clarity, to the Main Street Lending Program

On April 30, 2020, the Federal Reserve announced a significant expansion of the Main Street Lending Program (MSLP) and released guidance related to specific provisions of each Main Street facility. The expansion of the MSLP increases the number of lending options available and expands the pool of businesses eligible to obtain a Main Street loan. The Fed incorporated these adjustments after receiving comments and input from more than 2,000 businesses and individuals related to the original MSLP term sheets released on April 9, 2020, but still has not announced a start day for the loan programs.

The most significant changes to the MSLP are as follows:

- A new, third loan option (titled the Main Street Priority Loan Facility, or PLF) that requires lenders to retain a 15 percent share on loans. This facility is in addition the New Loan Facility (NLF) and the Existing Loan Facility (ELF).
- Lowering the minimum loan size to $500,000 (from $1 million) for loans under the PLF and the NLF.
- Increasing the maximum number of employees to 15,000 (up from 10,000 originally) and annual revenues to $5 billion (up from $2.5 billion) for businesses eligible to participate in the MSLP.

The Priority Loan Facility

The newly created PLF allows for new loans ranging from $500,000 to $25 million, and establishes identical eligibility requirements to the NLF. These requirements include that (i) the borrower must be a U.S. business (with significant operations and employees in the United States) established prior to March 13, 2020; (ii) the business may only participate in one of the Main Street programs; (iii) the business has either 1**5,000 or fewer employees or 2019 annual revenues of $5 billion or less**. Additionally, entities that received specific support under Title IV, Subtitle A of the CARES Act are ineligible (e.g., air carriers and businesses critical to maintaining national security that have received direct loans from the U.S. Treasury Department).

Similar to other Main Street programs, borrowers under the PLF may receive loans pursuant to the Paycheck Protection Program (PPP) but cannot participate in other Main Street facilities. Additionally, the PLF provides the same restrictions on stock buybacks and dividends as well as a freeze on compensation for certain employees. The PLF also defers interest and principal for one year and allows for prepayment without penalty.

However, unlike other Main Street programs, the PLF requires lenders to retain 15 percent of an eligible loan until maturity (four years), and provides for a different payment structure. Loans under the PLF must have a principal amortization of 15 percent at the end of the second and third years of the loan, and a balloon payment of **70 percent** at maturity at the end of the fourth year. This significantly differs from other Main Street facilities, which provide for equal amortization (one-third) at the end of the second, third, and fourth years. The PLF also differs from the other Main Street facilities with regard to its restrictions on unrelated debt repayment, discussed below.

Updated Guidance

The Fed also released guidance pertaining to all of the Main Street loan facilities, including significant adjustments in definitions and terms than previously provided in the April 9 term sheets. The following provides an overview of this guidance, but we encourage all potential borrowers to carefully review the Fed's FAQ to ascertain its developing lending and credit positions.

Jeff R. Vogel

Co-Chair, Government Contracts

jvogel@cozen.com
Phone: (202) 304-1453
Fax: (202) 861-1905

Matthew J. Howell

Associate

mhowell@cozen.com
Phone: (202) 912-4879
Fax: (202) 499-2451

Jason Kreps

Member

jkreps@cozen.com
Phone: (412) 620-6539
Fax: (412) 275-2390

Related Practice Areas

- Corporate

Threshold Issues and Process

At the outset, the Fed now explicitly provides that any eligible borrower must have been in "sound financial condition" prior to COVID-19, requiring **any loan** that the borrower had as of December 31, 2019 to have an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's system. Additionally, although the Fed's term sheets provide eligibility criteria, the Fed instructs lenders to view such criteria as "minimum requirements" for loan programs. Thus, lenders are directed to apply their own underwriting standards in evaluating a borrower's financial condition and request additional information or documentation the lender deems necessary prior to making an ultimate determination.

Notably, the Fed places the onus of eligibility certification squarely on borrowers, stating that lenders are **not** expected to independently verify the borrower's certifications or actively monitor compliance with any covenants or similar certifications. This protects lenders but also creates significant liability for borrowers that may be questionably eligible under the Fed's criteria. Any potentially eligible business should carefully review all applicable regulations and term sheet conditions before accepting a loan, as liability may be severe under federal law. Notably, Treasury Secretary Mnuchin announced earlier this week that the Treasury will begin auditing PPP loan recipients to review compliance with the program's eligibility criteria. It is reasonable to anticipate that the federal government will undertake similar audits of Main Street loan recipients.

Relatedly, the Fed restated that nonprofit organizations are **ineligible** under the current programs due to credit risk not being evaluated on the basis of EBITDA. The Fed and Treasury continue to evaluate the possibility of adjusting these eligibility metrics to include these organizations going forward but have not provided a timeline for the completion of such evaluation. For those organizations currently eligible under the NLF and PLF, lenders must use an EBITDA methodology that it previously operated from when extending credit to the borrower on or before April 24, 2020. Similarly, lenders providing loans under the ELF must use an EBITDA methodology similar to that used when originating or amending the underlying loan prior to April 24, 2020.

Updates to Loan Parameters

The Fed included certain technical updates to loan parameters under each of the facilities within its guidance. Included among these updates is an amendment to the loan interest rate from SOFR to LIBOR (one or three months) plus 300 basis points.

For ELF loans, lenders may now use such loans to upsize **revolving credit facilities** in addition to the term loans as previously provided by the April 9 term sheets. Additionally, the Fed has clarified that loans in **all three facilities may be secured or unsecured**, but that upsized loans under the ELF must be secured if the underlying loan is secured. This is a significant change from the April 9 NLF term sheet, which have provided that all new loans would be unsecured.

Employee Count and Retention

The Fed's guidance provides that eligible businesses must include any affiliates when calculating employee count and annual revenue to determine eligibility under the 15,000 employee and $5 billion in annual revenue ceilings. The Fed applies the Small Business Administration's affiliation rules for purposes of this section, and we encourage all clients to consult counsel when reviewing such regulations to determine whether related entities qualify as affiliates.

Additionally, any eligible borrower under the Main Street facilities must state that it will "make **commercially reasonable efforts** to maintain its payroll and retain its employees during" the loan period. In clarifying this requirement, the Fed noted that borrowers 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." Significantly, the guidance provides that "[b]orrowers 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." Although this does not provide bright-line tests for "commercially reasonable efforts," the guidance acknowledges that employee and payroll retention remain inherently tied to the ongoing pandemic and resulting economic upheaval.

Outstanding and Undrawn Available Debt

The Fed provided more explicit guidance on how "existing outstanding and undrawn available debt" will be calculated under the Main Street programs. This term is critical to the structure of the Main Street programs as it factors into the calculation of maximum loans available to eligible borrowers. For example under the PLF and ELF, the maximum loan may not exceed six times the eligible borrower's adjusted 2019 EBITDA when the loan is added to the borrower's existing outstanding and undrawn available debt. Similarly, under the NLF, the maximum loan may not exceed four times the eligible borrower's adjusted 2019 EBITDA when the loan is added to the borrower's existing outstanding and undrawn available debt. The Fed now broadly defines this term to include "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."

Debt Repayment

The restrictions upon repayment of existing debt differ between the NLF and ELF on one hand and the PLF on the other. When accepting a loan under the NLF and ELF, borrowers must refrain from repaying the principal or any interest on **any debt** until the NLF or ELF loan is repaid in full, unless the debt/interest at issue is mandatory and due. Borrowers under the PLF face a similar restriction, but PLF borrowers may, at the time of the PLF loan origination, refinance existing debt owed by the borrower to a lender **so long as that lender is not the PLF lender**.

Borrowers under any of the Main Street facilities may still undertake the following actions during the term of the eligible loans:

- Repaying lines of credit in accordance with normal business practices;
- Taking on and paying additional debt obligations required in normal business practices on standard terms, provided that the debt is secured by newly acquired property and is subordinate to the eligible Main Street loan;
- Refinancing maturing debt.

As we have stated previously, these federal actions relating to COVID-19 are constantly evolving as interested parties review programs and provide input to the federal government. Likewise, we are constantly reviewing any changes in order to place clients in position to remain financially stable while seeking all possible avenues for relief during this pandemic.