COVID-19 Alert: Main Street Lending Program

The Federal Reserve Main Street Lending Program

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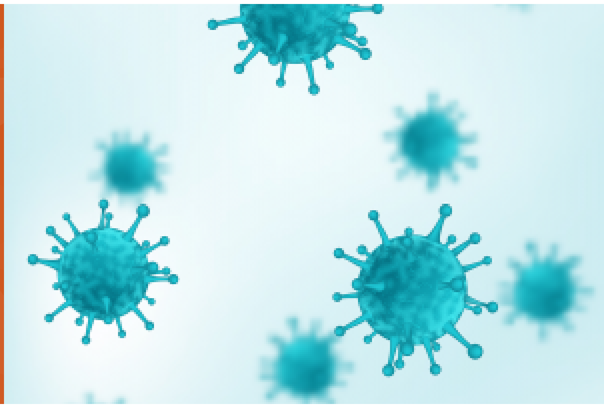

On April 30, 2020, the Federal Reserve released additional details concerning the proposed Main Street Lending Program (the “Program”). No information concerning the official launch date of the Program was included in the release and the Federal Reserve stated that it is currently working to create the infrastructure necessary to implement the Program. The release includes changes to the original term sheets for the Main Street New Loan Facility (MSNLF) and the Main Street Expanded Loan Facility (MSELF) and introduced a new term sheet for the Main Street Priority Loan Facility (MSPLF). The Federal Reserve also issued a revised Main Street Lending Frequently Asked Questions document, which includes the term sheets.

The Program is not yet finalized and additional changes may be forthcoming. Below is a chart summarizing some of the key terms of the MSNLF, MSELF and MSPLF, as currently proposed.

Main Street Lending Program Loan Options	New Loans (MSNLF)	Priority Loans (MSPLF)	Expanded Loans (MSELF)
Eligibility[1]	Maximum 15,000 employees, or less than US$5 billion 2019 Annual Revenues	Maximum 15,000 employees, or less than US$5 billion 2019 Annual Revenues	Maximum 15,000 employees, or less than US$5 billion 2019 Annual Revenues
Term	4 years	4 years	4 years
Minimum Loan Size	$500,000	$500,000	$10,000,000
Maximum Loan Size	Lesser of US$25M or an amount that, when added to outstanding and undrawn available debt, does not exceed 4x adjusted 2019 EBITDA	Lesser of US$25M or an amount that, when added to outstanding and undrawn available debt, does not exceed 6x adjusted 2019 EBITDA	Least of US$200M, 35% of outstanding and undrawn available debt, or an amount that, when added to outstanding and undrawn available debt, does not exceed 6x adjusted 2019 EBITDA
Risk Retention by Eligible Lenders/Fed Participation	5%/95%	15%/85%	5%/95%
Repayment	Year 1: all principal and interest deferred (and interest capitalized) Years 2-4: 33.33% of principal each year, plus current interest.	Year 1: all principal and interest deferred (and interest capitalized) Years 2-4: 15%, 15%, 70% of principal each year, plus current interest	Year 1: all principal and interest deferred (and interest capitalized) Years 2-4: 15%, 15%, 70% of principal each year, plus current interest
Prepayment	Prepayment permitted without penalty	Prepayment permitted without penalty	Prepayment permitted without penalty
Interest Rate	LIBOR 1-month or 3-month rate +3%	LIBOR 1-month or 3-month rate +3%	LIBOR 1-month or 3-month rate +3%
Restrictions on Repayment of Other Debt	Cannot prepay any other debt.	Cannot prepay any other debt.	Cannot prepay any other debt.
Subordination	Cannot be contractually subordinated in terms of priority to other debt.	Must be senior to or equal to other debt	Must be senior to or equal to other debt
Restrictions on Compensation, Stock Repurchase and Dividends	Subject to compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act	Subject to compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act	Subject to compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act

Retention of Employees	Make commercially reasonable efforts to maintain its payroll and retain employees during the loan term, in light of its capacities, the economic environment, its available resources, and the business need for labor.	Make commercially reasonable efforts to maintain its payroll and retain employees during the loan term, in light of its capacities, the economic environment, its available resources, and the business need for labor.	Make commercially reasonable efforts to maintain its payroll and retain employees during the loan term, in light of its capacities, the economic environment, its available resources, and the business need for labor.

As articulated by the Federal Reserve, the revised term sheets are designed to expand the scope of and eligibility under the Program. Some commentators suggest that practical considerations may, however, limit the availability and benefits of the Program to businesses.

In an April 30, 2020 article titled "*The Main Street Fakeout – The Fed's Terms Suggest It Really Doesn't Want To Lend to These Companies*," the *Wall Street Journal* editorial board highlighted an essential criticism of the Program when it stated "Banks must keep 5% to 15% of the loan on their books, depending on the type of loan, which means they'll apply their normal covenants. But if banks are going to treat the loans as routine, their incentive is to lend only to the best customers without the Fed and keep 100% on the books." As noted in the article, under the Program:

- Meeting the eligibility requirements does not qualify a borrower to receive a Program loan and the Federal Reserve has stated that the term sheets contain minimum requirements for the Program.
- The banks will apply their own underwriting standards in evaluating a borrower and will determine if they will make a Program loan.
- If a bank has gone through the underwriting process and determined that it wants to make a loan to a borrower, then the incentive for a bank is to make a loan outside of the Program.
- Conversely, if the bank has gone through the underwriting process and determined that it does not want to make a loan to a borrower, then it seems likely that such bank will not be persuaded to make a Program loan to such borrower – even with the Federal Reserve holding 85-95% of such loan.

Whether the concerns articulated by the *Wall Street Journal* materialize remains to be seen.

Morse will continue to follow developments related to the Program, and will report as appropriate.

For more information, please contact Timothy Manning or David Dinwoodey.

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Footnotes.

1. Additional eligibility criteria apply. See term sheets and Main Street Lending Frequently Asked Questions.