JUNE 10, 2020

NP

Expanded Main Street Lending Program

By Robert A. Drobnak, Amanda Darwin, Richard C. Pedone, Erik Schneider, Joshua T. Scarborough

On Monday, June 8, 2020, the Federal Reserve announced it would be expanding the Main Street Lending Program (the Program) to permit smaller and larger loan facilities, extend repayment terms, and make other changes to expand the number of small and medium-sized businesses that would be eligible to receive financial support under the Program. This Alert highlights certain of the key changes relevant to both eligible borrowers and eligible lenders.[1]

The Program, which was established to support funding to small and medium-sized businesses that were in sound financial condition prior to the COVID-19 pandemic, consists of three separate facilities: the Main Street New Loan Facility (the "MSNLF"), the Main Street Priority Loan Facility (the "MSPLF"), and the Main Street Expanded Loan Facility (the "MSELF") (collectively, the "Facilities").

The principal changes to the Facilities include the following:

- a reduction of the minimum principal amount of loans under each of the Main Street New Loan Facility and the Main Street Priority Loan Facility from $500,000 to $250,000;
- an increase in the maximum principal amount of loans under each of the MSNLF and MSPLF from $25,000,000 to $35,000,000 and $50,000,000, respectively;
- an increase in the maximum principal amount of loans under the MSELF from $200,000,000 to $300,000,000;
- extension of the term of the loans under each Facility from four years to five years;
- deferral of principal payments for the first two years, rather than just the first year; and
- principal amounts under each of the Facilities will amortize in years three through five as follows: 15%, 15%, and 70%.

The Federal Reserve further indicated that the previously released form documents will be updated to reflect the changes described above.

[1] See our prior alerts: (i) "Main Street Lending Program established to facilitate lending to small and medium-size businesses," April 9, 2020 and (ii) "Main Street Lending Program Form Documents and Updated FAQs," May 29, 2020.

While the eligibility criteria for each of the Facilities remains largely unchanged, the Federal Reserve added some additional clarity regarding certain of the consolidation rules for affiliated entities when determining maximum loan size. FAQs previously released by the Federal Reserve Bank of Boston provided that the maximum loan size for any eligible borrower would be limited by its own leverage level, the leverage level of its affiliated group on a consolidated basis, and the size of any loan extended to other members of the affiliated group. The Federal Reserve clarified that if an eligible borrower is the only entity in its affiliated group that sought or received funding through one of the Facilities, the 2019 adjusted earnings before interest, taxes, depreciation, and amortization (EBITDA) and debt are not relevant to the determination of the maximum loan size for such borrower, except to the extent such borrower's subsidiaries are consolidated into its financial statements (whether historically or as required by the eligible lender). If, however, any member of the affiliated group has applied for or received a loan under one of the Facilities, then the entire affiliated group's EBITDA and debt must be included when determining the maximum loan size for such borrower.

Recognizing the critical role of nonprofit organizations, the Federal Reserve also announced that it is working to establish a program suitable for such organizations, which are currently ineligible to receive a loan under any of the Facilities.

Though the start date for the Program remains open, the Federal Reserve indicated that eligible lenders, once registered, are encouraged to begin making loans under the Facilities immediately.

The Federal Reserve also provided some additional details on the terms of the participation agreement by which the SPV will acquire the participation interest in the loans under the MSNLF the MSPLF and the MSELF. The participation documentation reflects the Federal Reserve's intent that these participations are "true participation" and "true sales"—i.e., outright sales and not subject to recharacterization as secured loans. To that end, the documentation includes the following features eligible borrowers and eligible lenders should take note of: (i) the participation cannot be put-back, voided, or rescinded; (ii) the eligible lender is not guaranteeing repayment of the loan and there is no recourse by the SPV against the eligible lender (other than recourse consistent with a sale of the participation interest); (iii) proceeds paid by the eligible borrower will pass through and not be comingled with the eligible lender's funds for any significant amount of time; (iv) the eligible lender will provide certain reporting services to the SPV under the servicing agreement, for which the SPV will pay the eligible lender a servicing fee; and (v) a prohibition on the eligible lender taking any "Core Rights Acts" (i.e., any workout, restructuring, or modification of the loan, etc.) without prior instruction by the SPV.

Here is the press release issued by the Federal Reserve with respect to the expanded terms of the Program.

Attorneys at Nixon Peabody are continuously monitoring developments with respect to the Main Street Lending Program to better assist borrowers and lenders looking to participate in the Program. If you have any questions related to the Program, please contact your regular Nixon Peabody attorney or the attorneys listed below. In addition, it may make sense for borrowers to initiate discussions with their existing lenders. In all events, borrowers should evaluate how taking out a loan under the Program could impact their obligations under any existing loan documents.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Robert A. Drobnak, 312-977-4348, radrobnak@nixonpeabody.com
- Amanda Darwin, 617-345-1042, adarwin@nixonpeabody.com
- Richard M Pedone, 617-345-1305, rpedone@nixonpeabody.com
- Erik Schneider, 617-345-1112, eschneider@nixonpeabody.com
- Joshua T. Scarborough, 312-977-4148, jtscarborough@nixonpeabody.com