Federal Reserve Main Street Lending Program Update

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CLIENT ALERT | 5.5.2020

On April 30, 2020, the United States Federal Reserve (Fed) issued additional guidance (Guidance) for the Main Street Lending Program (MSLP). Among other things, this Guidance expanded and clarified portions of the MSLP as it was initially outlined on April 9, 2020. The purpose of this client alert is to highlight changes made by the Fed to the MSLP since our prior client alert; to review the initial terms of the MSLP please see our prior client alert.

Eligibility Requirements

The objective of the Fed's MSLP remains to facilitate lending to small and medium-sized businesses that may not have been otherwise eligible for the Paycheck Protection Program (PPP), or that may need additional financial assistance above and beyond assistance provided under the PPP. In furtherance of this objective, the Fed expanded the definition of "Eligible Borrowers" under the MSLP to permit businesses with up to 15,000 employees or $5 billion in 2019 annual revenues to apply for the MSLP loans. This is an increase from the initial eligibility requirements that limited access to the MSLP to businesses with up to 10,000 employees or $2.5 billion in 2019 annual revenues. However, the Fed clarified that in determining the size of a borrower for the MSLP, the Small Business Association's "affiliation rules" would apply, meaning that any potential borrower must aggregate its employees and revenues with those of its affiliates to determine if such borrower is eligible. Additionally, as indicated in the initial guidance, Borrowers under the MSLP must (i) be created or organized in the United States or under the laws of the United States, (ii) have significant operations in the United States, and (iii) have a majority of their employees based in the United States.

Although the Guidance expanded the employee and revenue requirement, it also restricted borrowers by disallowing any business classified as an "Ineligible Business" under 13 CFR 120.110(b)-(j) and (m)-(s) as modified by the PPP from participating in the MSLP. Additionally, with the exception of receipt of financial support under the PPP, the Fed has reiterated that businesses that have received any other support under the CARES Act are not eligible to participate in the

MSLP.

New Main Street Priority Loan Facility

Initially, the Fed provided guidelines for two MSLP loan categories: (i) the Main Street New Loan Facility (MSNLF), and (ii) the Main Street Expanded Loan Facility (MSELF). The Guidance now provides for a third loan category, the Main Street Priority Loan Facility (MSPLF), which permits the issuance of new loans with different rules then issuance of new loans under the MSNLF.

For example, the MSPLF requires the lender to retain 15% of the MSPLF with the remaining 85% of the MSPLF loan to be sold to the Fed's Main Street SPV (SPV). Additionally, except for mortgage debt held by the borrower, the MSPLF Loan must be senior to or pari passu with a borrower's other loans or debt instruments in terms of security and priority. To help alleviate any issues created by the MSPLF loan's seniority requirement, the Fed allows for the borrower, at the time of origination of the MSPLF Loan, to refinance any existing debt that is held by a lender that is not qualified to be an "Eligible Lender."

No Restriction on Tax Distributions

While the stock buy -back, distribution and executive pay restrictions placed on borrower's in the initial guidance remain, the Guidance now allows for dividends and other capital distributions made by an S corporations or other tax pass-through entities to the extent such dividends/distributions are reasonably required to cover its owners' tax obligations in respect of the entity's earnings.

Lender and Borrower Disclosure by the Fed

As expected, the Fed has made it clear that during the term of the MSLP, the Fed will disclose certain information, including, the names of lenders and borrowers, and the size of the loans such borrowers receive.

LIBOR

Initially, the MSLP's reference rate was based on the Secured Overnight Financing Rate (SOFR). However, upon consideration of the comments and feedback received, the Fed determined that any reference rate other than the London Inter-bank Offered Rate (LIBOR) would be burdensome to implement as LIBOR remains the most common reference rate used in business lending.

Summary of Loan Terms

Main Street New Loan Facility (MSNLF) – New Loan

Main Street Priority Loan Facility (MSPLF) – New Loan

Main Street Expanded Loan Facility (MSELF) – Increase on an Existing Loan

Eligibility

The Business must have

- 15,000 employees or less, ***or***

- 2019 revenues of $5 billion or less

Employees and revenue must be aggregated with the employees and revenue of affiliated entities.

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Additionally:

- The existing term loan or revolving credit facility must have originated on or before April 24, 2020, ***and***

- Have a remaining maturity of at least 18 months.

Maturity

4 years

Payment

- Principal and interest deferment for 12 months (unpaid interest will be capitalized).

- 1/3 of the principal due at the end of years 2, 3, with the remainder due at maturity at the end of year 4.

- May prepay without penalty.

- Principal and interest deferment for 12 months (unpaid interest will be capitalized).

- 15% of principal due at the end of years 2 and 3.

- Balloon payment of 70% of principal due at maturity at the end of year 4.

- May prepay without penalty.

- Principal and interest deferment for 12 months (unpaid interest will be capitalized).

- 15% of principal due at the end of years 2 and 3.

- Balloon payment of 70% of principal due at maturity at the end of year 4.

- May prepay without penalty.

Interest Rate

LIBOR + 3%

Minimum Loan Size

$500,000

$10,000,000

Maximum Loan Size

The lesser of (i) $25,000,000 and (ii) 4x the adjusted EBITDA, when added to the borrower's existing outstanding and undrawn available debt.

The lesser of (i) $25,000,000 and (ii) 6x the adjusted EBITDA, when added to the borrower's existing outstanding and undrawn available debt.

The lesser of (i) $200,000,000, (ii) 35% of borrower's existing, outstanding and undrawn available debt that is pari passu in priority with the underlying loan and equivalent in security status, and (iii) 6x the adjusted EBITDA, when added to the borrower's existing outstanding and undrawn available debt.

Priority

Cannot be contractually subordinated, at the time of origination or any time during the term, to borrower's other loans or debt instruments.

- Must be senior to or pari passu with borrower's other loans or debt instruments in terms of security and priority, except for mortgage debt.

- At time of origination of MSPLF loan, the borrower can refinance existing debt held by a non-"Eligible Lender."

Must be senior to or pari passu with borrower's other loans or debt instruments in terms of security and priority, except for mortgage debt.

Security

Can be secured or unsecured.

Can be secured or unsecured.

If the underlying loan is secured then Collateral that secures the underlying loan must secure the upsized trance on a pro rate basis.

SPV Participation

- 95% at par value.

- Lender must retain 5% until it matures or the SPV sells all of its participation.

- Losses between SPV and lender are on a pari passu basis.

- 85% at par value.

- Lender must retain 15% until it matures or the SPV sells all of its participation.

- Losses between the SPV and lender are on a pari passu basis.

- 95% at par value.

- Lender must retain 5% until it matures or the SPV sells all of its participation.

- Lender must retain its interest underlying loan until (i) the underlying loan matures, matures (ii) the MSELF Upsized Tranche matures, or (iii) the SPV sells all of its participation

- Losses between the SPV and lender are on a pari passu basis.

Borrower Restrictions

Cannot until 12 months after the MSLP Loan is no longer outstanding the borrower shall not:

- repurchase any equity security that is listed on a national securities exchange of the borrower or any parent company of the borrower, except if contractual obligated as of March 27, 2020;

- pay dividends or make other capital distributions with respect to common stock of the borrower;

- pay an officer or employee whose total compensation exceeded $425,000 in calendar year 2019 more, during any 12 consecutive months, than what such officer or employee received in 2019, ***<u>or</u>*** any severance or benefits upon termination which exceeds twice the total compensation received by such officer or employee in 2019; or

- pay an officer or employee whose total compensation exceeded $3,000,000 in calendar year 2019 more, during any 12 consecutive months, than $3,000,000 plus 50% of the excess over $3,000,000 received by the officer or employee during calendar year 2019.

Transaction Fee

1% of the principal amount at the time of origination.

Origination

Up to 1% of the principal amount at the time of origination.

Servicing Fee

0.25%

Rules and Additional Guidance

As of the date of this alert, the Main Street Lending Program is not yet in effect. The Fed has released this Guidance, but the terms of the Main Street Lending Program may change as additional details are provided. It is expected that additional Main Street Lending Program rules and guidance to be released by the Fed in the near future.

If you have questions about the Main Street Lending Program or the CARES Act and how they apply to your business or investment, please contact Christopher DePizzo, Marty Gates, Drew Parobek, Elia Woyt, or your regular Vorys attorney.

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Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients on a myriad of others issues related to the outbreak. We have established a comprehensive COVID-19 Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.