White and Williams LLP 125th Anniversary

The Main Street Business Lending Program

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On April 9, 2020, the Department of the Treasury and the Federal Reserve Board formally announced the establishment of the Main Street Business Lending Program (Main Street Program)[1], to support the flow of credit to small and medium-sized businesses impacted by the coronavirus pandemic (COVID-19).

Under the Main Street Program, certain U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies (Eligible Lenders) will make direct, unsecured loans to "main street" businesses. The Federal Reserve Bank will lend to a single common special purpose vehicle (SPV) on a recourse basis and the SPV will, in turn, purchase 95% of each Eligible Loan (as defined below) extended by an Eligible Lender, while the respective Eligible Lender will retain the remaining 5% interest of each respective Eligible Loan.

The funding for the Main Street Program comes from capital appropriated to the Department of the Treasury's Exchange Stabilization Fund made available under Title IV of the Coronavirus Aid, Relief and Economic Security Act (CARES Act) (see our Guide to the CARES Act). The Treasury will make a 5% equity investment in the SPV for a total of $75 billion, which will support the SPV's purchase of up to $600 billion of Eligible Loans.

Availability to borrow under the Main Street Program will terminate on September 30, 2020 unless extended by the Department of the Treasury and the Federal Reserve Board.

As with other CARES Act programs, the initial announcement leaves many unanswered questions regarding the finer points. Here are the basic terms of the Main Street Program:

Eligible Borrowers

In order for a business to qualify as an "Eligible Borrower" under the Main Street Program, the business must have: (i) 10,000 or fewer employees or (ii) $2.5 billion or less in 2019 annual revenues. In addition, a qualifying business must be created or organized in the U.S. or under the laws of the U.S. with significant operations and a majority of its employees based in the U.S.

Eligible Loans

An "Eligible Loan" is an unsecured loan made by an Eligible Lender to an Eligible Borrower based upon the following criteria:

Loan Amount: A minimum amount of $1 million, up to a maximum amount equal to the lesser of: (i) $25 million; or (ii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed four times the Eligible Borrower's 2019 earnings before interest, taxes, depreciation, and amortization (EBITDA).

Basic Loan Terms: Four-year term (amortized) at an adjustable rate equal to the Secured Overnight Financing Rate (SOFR), plus a margin of 250-400 basis points. Principal and interest payments are deferred for one year and prepayment is permitted at any time during the term of the loan at no penalty.

Additional Loan Attestations

In addition to applicable certifications required under applicable statutes and regulations, the following attestations will need to be made by each Eligible Lender and each Eligible Borrower in connection with the extension of an Eligible Loan:

- The Eligible Lender must attest that the proceeds of the Eligible Loan will not be used to repay or refinance pre-existing loans or lines of credit made by the Eligible Lender to the Eligible Borrower.
- The Eligible Borrower must commit to refrain from using the proceeds of the Eligible Loan to repay other loan balances. The Eligible Borrower must commit to refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless the Eligible Borrower has first repaid the Eligible Loan in full.
- The Eligible Lender must attest that it will not cancel or reduce any existing lines of credit outstanding to the Eligible Borrower. The Eligible Borrower must attest that it will not seek to cancel or reduce any of its outstanding lines of credit with the Eligible Lender or any other lender.
- The Eligible Borrower must attest that it requires financing due to the exigent circumstances presented by COVID-19, and that, using the proceeds of the Eligible Loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the Eligible Loan.
- The Eligible Borrower must attest that it meets the EBITDA leverage condition stated in the "Loan Amount" paragraph above specifying required features of Eligible Loans.
- The Eligible Borrower must attest that it will follow the restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act, which provide that:
    - Until the date 12 months after the loan is no longer outstanding, the Eligible Borrower will not repurchase an equity security of the Eligible Borrower or any parent company of the Eligible Borrower that is listed on a national securities exchange while the Eligible Loan is outstanding (except to the extent required by a contractual obligation in effect as of the date of the enactment of the CARES Act); and
    - The Eligible Borrower will not pay any dividends or make other capital distributions with respect to the common stock of the Eligible Borrower until the date 12 months after the loan is no longer outstanding; and
    - The Eligible Borrower will comply with the following compensation restrictions:
        - no officer or employee whose total compensation exceeds $425,000 in calendar year 2019 (A) will receive from the Eligible Borrower total compensation during any 12-consecutive month period that exceeds the total compensation received in calendar year 2019 or (B) will receive service or other benefits upon termination of employment which exceeds twice the maximum total compensation received in calendar year 2019; and
        - no officer or employee whose total compensation exceeds $3,000,000 in calendar year 2019 may receive during any 12 consecutive months total compensation in excess of the sum of (A) $3,000,000 and (B) 50% of the excess over $3,000,000 of the total compensation received in calendar year 2019.
- Eligible Lenders and Eligible Borrowers will each be required to certify that the entity is eligible to participate in the Main Street Program, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.

Fees and Loan Servicing

Each Eligible Lender must pay the SPV a facility fee equal to 100 basis points of the principal amount of the loan origination purchased by the SPV and such Eligible Lender is permitted to pass this fee on to the Eligible Borrower.

Each Eligible Borrower must pay the applicable Eligible Lender an origination fee equal to 100 basis points of the principal amount of the Eligible Loan.

The SPV will pay an Eligible Lender a fee equal to 25 basis points of the principal amount of its participation in the Eligible Loan per year for servicing each Eligible Loan.

Notes of Interest for our Lender and Borrower Clients

As with other programs established under the CARES Act, the Main Street Program does not provide an abundance of substantive guidance at this time but we assume additional interpretive regulations and announcements will be forthcoming. We will update clients and friends on such further guidance under the Main Street Program as it becomes available.

Despite the limited information currently available, it is worth noting that the initial guidance appears to indicate that these Eligible Loans can be obtained in addition to the Small Business Administration's Paycheck Protection Program (PPP) loans. Moreover, the Main Street Program does provide that the extension of an Eligible Loan can take the form of a new loan or additional funding to supplement an existing loan. However, as we have already noted, borrowers that have obtained a PPP loan or a Main Street Program loan, cannot take the payroll tax deferral under the CARES Act.

Of particular interest to Lenders, the SPV and the applicable Eligible Lender share the Eligible Loan risk on a pari passu basis. Lenders (and Borrowers alike) should also be aware that unlike PPP Loans for small businesses, Eligible Loans provided under the Main Street Program must be repaid and are not eligible for forgiveness.

Small and medium-sized businesses should review the eligibility requirements under the Main Street Program to determine whether their businesses would qualify for funding. Additionally, any such business should be mindful of existing debt obligations that might prohibit participation in the Main Street Program and start talking with their existing lenders now regarding their desire to obtain a loan under this program.

If you have questions or would like additional information, please contact Jennifer Santangelo (santangeloj@whiteandwilliams.com; 215.864.7199), Ryan Udell (udellr@whiteandwilliams.com; 215.864.7152), Maulin Vidwans (vidwansm@whiteandwilliams.com; 215.864.6369), Adam Chelminiak (chelminiaka@whiteandwilliams.com; 215.864.7078) or Patrick Haggerty (haggertyp@whiteandwilliams.com; 215.864.6811).

As we continue to monitor COVID-19, White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates here.

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[1] The Main Street Business Lending Program is comprised of (i) Main Street New Loan Facility, and (ii) Main Street Expanded Loan Facility. The parameters of each program are virtually identical with the caveat that the Main Street New Loan Facility is intended to apply to new loans and the Main Street Expanded Loan Facility is intended to apply to an upsized tranche in an existing loan.

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