Federal Reserve to the Rescue of Main Street

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On April 9, 2020, the United States Federal Reserve issued guidance for the distribution of $2.3 trillion in loans to support the economy. The Federal Reserve has continually promised to use its full range of tools to support the flow of credit to households and businesses to counter the economic impact of COVID-19 and to promote a swift economic recovery. The programs unveiled by the Federal Reserve have been expected since the CARES Act was passed two weeks ago and this alert highlights the guidance for the Main Street Lending Program, funded with $600 billion in loans from the Federal Reserve, and also discusses the other programs discussed in the Federal Reserve's guidance.

Main Street Lending Program

The Federal Reserve's Main Street Lending Program provided guidelines for two loan categories: (i) the Main Street New Loan Facility, to issue new loans (MSNLF), and (ii) the Main Street Expanded Loan Facility, to increase the size of existing loans (MSELF), both of which are intended to further facilitate lending to small and medium-sized businesses by eligible Lenders to eligible Borrowers. Under the Program, Lenders will retain 5% of (i) the new loan with respect to MSNLF Loans and (ii) the upsized tranche of the loan with respect to MSELF Loans (Loan) and will sell the remaining 95 percent of the Loan to the Main Street SPV, which will purchase up to $600 billion of Loans through September 30, 2020.

Who is Eligible?

Eligible Borrowers are businesses with up to 10,000 employees or up to $2.5 billion in 2019 annual revenues. Each Borrower must be a business that is created, organized, or operating under the laws of the United States and has significant operations in and a majority of its employees based in the United States.

Borrowers that have taken advantage of the PPP *may also* take out a Main Street Loan but *may only* participate in one of the (i) MSNLF, (ii) MSELF or the Primary Market Corporate Credit Facility.

What are the Loan Terms?

Main Street Loans must be made by an "Eligible Lender(s)" to an "Eligible Borrower" and must:

- originate on or after April 8, 2020;
- have a 4 year term;
- allow amortization of principal and interest deferred for one year;
- have an adjustable rate of SOFR + 250-400 basis points;
- be for an amount equal to our greater than $1 million;
- permit prepayment without penalty;
- for MSNLF Loans:
  - the maximum MSNLF Loan size is the lesser of (i) $25 million or (ii) an amount that, when added to the Borrower's existing outstanding and committed but undrawn debt, does not exceed four times the Borrower's 2019 EBITDA; and
  - MSNLF Loans are unsecured.
- for MSELF Loans:
  - the maximum MSELF Loan size is the lesser of (i) $150 million, (ii) 30% of the Borrower's existing outstanding and committed but undrawn bank debt, or (iii) an amount that, when added to the Borrower's existing outstanding and committed but undrawn debt, does not exceed six times the Borrower's 2019 EBITDA; and
  - MSELF Loans may be secured.
- The Borrower will pay the Lender an origination fee of 100 basis points of the principal amount of the Loan.
- The SPV will pay the Lender 25 basis points of the principal amount of the Loan per annum for loan servicing.

Are There Any Restrictions?

In addition to certifications required by applicable statutes and regulations, the following attestations will be required with respect to each Loan:

- The Lender must attest that the proceeds of the Loan will not be used to repay or refinance pre-existing loans or lines of credit made by the Lender to the Borrower.
- The Borrower must commit to refrain from using the proceeds of the Loan to repay other loan balances. The Borrower must commit to refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless the Borrower has first repaid the Loan in full.
- Both the Lender and the Borrower cannot cancel or reduce any outstanding lines of credit with respect to each other, and with respect to the Borrower, any other lender.
- The Borrower must attest that it requires financing due to the exigent circumstances presented by the COVID-19 pandemic, and that, using the proceeds of the Loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the Loan.

- The Borrower must attest that it meets the EBITDA leverage condition for its Loans.
- The Borrower must attest that:
  - While the Loan is outstanding and for 12 months thereafter, the Borrower or any parent company shall not repurchase an equity security that is listed on a national securities exchange, except to the extent required under a contractual obligation that is in effect as of March 27, 2020;
  - While the Loan is outstanding and for 12 months thereafter, the Borrower shall not pay dividends or make other capital distributions with respect to the common stock of the Borrower; and
  - While the Loan is outstanding and for 12 months thereafter, an officer or non-union employee whose total compensation in 2019 exceeded $425,000 cannot receive total compensation during any 12-month period in excess of the lesser of: (i) total compensation received by such individual in 2019 and (ii) $3,000,000 plus 50% of the amount that such individual's total compensation in 2019 exceed $3,000,000. Additionally, severance upon termination cannot exceed twice the maximum total compensation for such individual in 2019.
- Both Lenders and Borrowers will each be required to certify that the entity is eligible to participate in the Main Street Lending Program.

As of the date of this alert, the Main Street Lending Program is not yet in effect. The Federal Reserve has released this initial guidance, but the terms may change as additional details are provided.

Paycheck Protection Program Lending Facility

To bolster effectiveness of the Small Business Administration's Paycheck Protection Program (PPP) the Federal Reserve Banks (Reserve Banks) will lend to depository institutions in such Reserve Bank's district that originate PPP Loans on a non-recourse basis, taking only PPP Loans as collateral – which will be valued at the principal amount of the PPP Loan.

The extension of credit under this Facility will be made at a rate of 35 basis points and there are no fees associated with the Facility

The maturity date of credit under the Facility will equal the maturity date of the PPP Loan pledged to secure the extension of credit and will be accelerated (i) if the underlying PPP Loan goes into default and the eligible borrower sells the PPP Loan to the SBA to realize on the SBA guarantee or (ii) to the extent of any loan forgiveness reimbursement received by the eligible borrower from the SBA.

As the Federal Reserve, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation communicated in their interim final rule on April 9, 2020 to allow banking organizations to neutralize the effect of PPP Loans financed under the Facility on leverage capital ratios, a PPP Loan will be assigned a risk weight of zero percent under the risk-based capital rules of the federal banking agencies.

No new extensions of credit will be made under this Facility after September 30, 2020, unless the Federal Reserve and the Department of the Treasury determine to extend the Facility.

Market Corporate Credit Facilities

To increase the flow of credit to households and businesses through capital markets, the Federal Reserve has expanded the size and scope of the Primary and Secondary Market Corporate Credit Facilities, as well as the Term Asset-Backed Securities Loan Facility (see below). These three programs will now support up to $850 billion in credit backed by $85 billion in credit protection provided by the Department of the Treasury.

Term Asset-Backed Securities Loan Facility

To support further credit flow to households and businesses, the Federal Reserve will broaden the range of assets that are eligible collateral for the Term Asset-Backed Securities Loan Facility (TALF). TALF-eligible collateral will now include the AAA rated tranches of both outstanding commercial mortgage-backed securities and newly issued collateralized loan obligations. The size of the facility will remain $100 billion, and TALF will continue to support the issuance of asset-backed securities that fund a wide range of lending, including student loans, auto loans, and credit card loans.

Municipal Liquidity Facility

The Municipal Liquidity Facility is designed to help state and local governments better manage cash flow pressures in order to continue to serve households and businesses in their communities. The facility will purchase up to $500 billion of short term notes directly from U.S. states (including D.C.), U.S. counties with a population of at least two million residents, and U.S. cities with a population of at least one million residents. Eligible state-level issuers may use the proceeds to support additional counties and cities. The Federal Reserve will also continue to evaluate whether additional measures are needed to support the flow of credit and liquidity to state and local governments.

Final Rules and Additional Guidance

The Federal Reserve and the Department of the Treasury are taking comments on these programs until April 16, 2020 at which time it is expected formal rules and additional guidance will be provided.

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 in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus 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.