VedderPrice

Fed Paves the Way for Main Street Lending Programs

On April 9, 2020, the Board of Governors of the Federal Reserve System released term sheets outlining two new lending programs under the CARES Act: (1) the Main Street New Loan Facility, and (2) the Main Street Expanded Loan Facility.

These programs are aimed at paving the way for increased lending to small and medium-sized businesses impacted by COVID-19. Under these facilities, a Federal Reserve Bank will commit to lend to SPVs, who in turn will purchase 95% participations in certain eligible loans made by U.S. banks and savings and loan institutions. Eligible lenders would hold 5% of each eligible loan. The combined size of the facilities will be up to $600 billion.

This summary briefly describes the lending programs, and compares and details them in an easy-to-digest chart. We note that adjustments to these programs may be made in the future.

Program	Brief Description
Main Street New Loan Facility	New unsecured term loans originated on or after April 8, 2020 with a maximum loan size equal to the lesser of: • $25 million; or • 4x 2019 EBITDA <u>minus</u> the sum of (i) existing outstanding debt <u>plus</u> (ii) committed but undrawn debt.
Main Street Expanded Loan Facility	Upsizing of an existing term loan that was originated before April 8, 2020 with a maximum upsize tranche equal to the lesser of: • $150 million; • 30% of the sum of (i) existing outstanding bank debt plus (ii) committed but undrawn bank debt; or • 6x 2019 EBITDA <u>minus</u> the sum of (i) existing outstanding debt plus (ii) committed but undrawn debt.

	Main Street New Loan Facility ("NLF")	Main Street Expanded Loan Facility ("ELF")
Availability Period:	Until September 30, 2020 (unless extended).	
Eligible Borrowers:	(i) Businesses up to 10,000 employees or up to $2.5 billion in 2019 annual revenues; (ii) Created or organized in the U.S. with significant operations in and a majority of employees based in the U.S.; and (iii) Cannot participate in both the NLF and ELF programs (also, cannot participate in the Primary Market Corporate Credit Facility). ***VEDDER OBSERVATION:*** *Recipients of SBA Paycheck Protection Loans under the CARES Act are eligible to participate in this program.*	
Eligible Lenders:	(i) U.S. insured depository institutions; (ii) U.S. bank holding companies; and (iii) U.S. savings and loan holdings companies. ***VEDDER OBSERVATION:*** *Alternative lenders are not eligible at this time.*	
Conditions:	• Proceeds cannot be used to repay or refinance pre-existing loans or lines of credit made by the Eligible Lender to the Eligible Borrower. • Proceeds cannot be used to repay other loan balances. • Cannot repay 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. • Cannot cancel or reduce any outstanding lines of credit with the Eligible Lender or any other lender. • Financing is required due to the exigent circumstances presented by COVID-19. • Using the proceeds of the Eligible Loan (or proceeds of the upsized tranche thereof), Eligible Borrower will make reasonable efforts to maintain its payroll and retain its employees during the term of the Eligible Loan (or the upsized tranche thereof). • Eligible Borrower cannot be owned, controlled or held by certain governmental officials or certain of their relatives. ***VEDDER OBSERVATION:*** *The payroll maintenance and employee retention requirement under the Main Street Lending Facilities is less restrictive than the similar requirements under the Mid-Sized Business Lending Program previously specified under the CARES Act, where a borrower is subject to obligations to retain and restore at least 90% of the workforce and related compensation. In addition, the outsourcing/offshoring and union-related restrictions under the Mid-Sized Business Lending Program do not appear to apply to the Main Street Lending Facilities.*	

	Main Street New Loan Facility ("NLF")	Main Street Expanded Loan Facility ("ELF")
Eligible Loans:	An unsecured term loan made by an Eligible Lender to an Eligible Borrower that was originated on or after April 8, 2020, provided that the loan has the features described below.	A term loan made by an Eligible Lender to an Eligible Borrower that was originated before April 8, 2020, provided that the upsized tranche of the loan has the features described below.
New/Upsized Loan Features:		
Loan Size:	**Minimum:** $1 million.	
	Maximum: Lesser of: • $25 million; or • 4x 2019 EBITDA minus the sum of (i) existing outstanding debt plus (ii) committed but undrawn debt.	**Maximum:** Lesser of: • $150 million; • 30% of the sum of (i) existing outstanding bank debt plus (ii) committed but undrawn bank debt; or • 6x 2019 EBITDA minus the sum of (i) existing outstanding debt plus (ii) committed but undrawn debt.
	VEDDER OBSERVATION: *EBITDA appears to be calculated on an un-adjusted basis. Also, the 30% test above is based on "bank debt" rather than "debt". Neither term is defined but the difference between bank debt and debt, if any, is likely to be clarified.*	
Interest Rate:	Adjustable rate of SOFR + 2.5% to 4%. ***VEDDER OBSERVATION:*** *The interest rate is based on SOFR rather than LIBOR or prime rate.*	
Maturity:	4 years.	
Payment Deferrals:	1 year deferral for principal amortization and interest payments.	
Prepayment:	Yes, with no prepayment premium.	
Collateral:	Unsecured.	Any collateral securing an Eligible Loan, whether such collateral was pledged under the initial loan or at the time of upsizing, will secure the loan participation on a pro rata basis.
Loan Participation:	SPV will purchase a 95% pari passu participation in the Eligible Loan, at par value.	SPV will purchase a 95% pari passu participation in the upsized tranche of the Eligible Loan upsized on or after April 8, 2020, at par value.
Fees:		
(i) Facility Fee:	Eligible Lender will pay SPV a 1% facility fee of the principal amount of the loan participation. Eligible Lender may require Eligible Borrower to pay this fee.	N/A.

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<tr><th></th><th>Main Street New Loan Facility (“NLF”)</th><th>Main Street Expanded Loan Facility (“ELF”)</th></tr>
<tr><td>(ii) Origination Fee:</td><td colspan="2">1% from Eligible Borrower to Eligible Lender on new loan amount or upsized tranche amount.</td></tr>
<tr><td>(iii) Servicing Fee:</td><td colspan="2">SPV will pay an Eligible Lender 0.25% per annum of the principal amount of its participation in the new loan or upsized tranche.</td></tr>
<tr><td>Restrictions:</td><td colspan="2"></td></tr>
<tr><td>(i) No Buybacks:</td><td colspan="2">No buybacks of equity securities listed on a national exchange until 12 months after the loan is no longer outstanding, <u>except</u> to the extent required under a contractual obligation in effect as of March 27, 2020.</td></tr>
<tr><td>(ii) No Dividends:</td><td colspan="2">No dividends or other capital distributions with respect to the common stock of the borrower until 12 months after the loan is no longer outstanding.</td></tr>
<tr><td>(iii) Compensation Limitations:</td><td colspan="2">Until 1 year after the loan is no longer outstanding:

(a) No officer or employee whose total compensation in calendar year 2019 from the borrower exceeded $425,000 (unless covered by a collective bargaining agreement entered into prior to March 1, 2020):

(1) can receive total compensation from the borrower which exceeds, during any 12 consecutive months of such period, total compensation received from the borrower in calendar year 2019; and

(2) can receive severance pay or other benefits upon termination of employment which exceeds twice the maximum total compensation received in calendar year 2019.

(b) If the officer or employee had total compensation in calendar year 2019 in excess of $3 million, the total compensation limit during any 12 consecutive months of such period is the sum of $3 million plus 50% of calendar year 2019 total compensation in excess of $3 million.

Total compensation includes salary, bonuses, awards of stock and other financial benefits provided by the borrower to the officer or employee.</td></tr>
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If you would like to discuss the matters addressed in this bulletin, please contact **Michael A. Nemeroff** at (312) 609-7858, **Venu V. Talanki** at (312) 609-7749, **Daniel J. Robot** at (312) 609-7644 or your Vedder Price attorney.