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Treasury and Federal Reserve Board Announce Establishment of the Main Street Business Lending Program

Authored by: Paul Amiel, Jim Markus, Alexander Grishman, Brent Beckert, and Rachael Apfel

On April 9, 2020, the Board of Governors of the Federal Reserve System (the "***Board***") announced the establishment of the Main Street Business Lending Program ("***Main Street Loan Program***"), an up to $600 billion lending program for mid-size businesses. The Department of the Treasury, using funding from the Coronavirus Aid, Relief, and Economic Security ("***CARES***") Act, will provide $75 billion in equity to a single common special purpose vehicle ("***SPV***") in support of the Main Street Loan Program.

Below is a high-level summary of the provisions relating to the Main Street Loan Program, under which eligible lenders may either (i) originate new loans through the Main Street New Loan Facility ("***New Loan Facility***") or (ii) use the program to increase the size of existing loans to businesses through the Main Street Expanded Loan Facility ("***Expanded Loan Facility***" and, together with the New Loan Facility, the "***Facilities***"). Borrowers may participate in only one of the Facilities.

This summary is based on terms sheets released by the Federal Reserve on April 9. 2020. The Board and Secretary of the Treasury may make adjustments to the terms and conditions described in such term sheets, and further updates are expected with the release of formal regulations and guidance. Such guidance and regulations will provide further detail on the administration of the Main Street Loan Program and may materially change the summary below.

There is currently no process in place to apply for a loan under the Main Street Loan Program, and its implementation awaits the formation and funding of the SPV and various other actions. Companies are encouraged to seek advice from qualified legal counsel before making business decisions based upon the anticipated commencement of this program.

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OVERVIEW OF THE MAIN STREET LOAN PROGRAM

Eligible Borrowers	To be eligible for a loan under the Main Street Loan Program, a borrower must meet the following criteria: 1. The borrower must be a business with no more than (a) 10,000 employees[1] or (b) $2.5 billion in 2019 annual revenues; 2. The borrower must have been created or organized in the U.S. or under the laws of the U.S. with significant operations in and a majority of its employees based in the U.S. 3. The borrower must certify that it requires financing due to the exigent circumstances presented by the COVID-19 pandemic. 4. The borrower cannot be a "covered entity"[2] that would run afoul of the conflicts of interest provisions in the CARES Act. A borrower may only participate in <u>one</u> of the Facilities (but not both), and may not also participate in the Primary Market Corporate Credit Facility[3].
Eligible Lenders	Eligible lenders are: 1. U.S. insured depository institutions; 2. U.S. bank holding companies; and 3. U.S. savings and loan holding companies An eligible lender may not be a "covered entity" that would run afoul of the conflicts of interest provisions in the CARES Act.
Loan Timing and Amounts	<u>New Loan Facility</u>: 1. The New Loan Facility will finance <u>unsecured</u> term loans that originate on or after April 8, 2020. 2. Loans through the New Loan Facility are capped at the <u>lesser</u> 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. <u>Expanded Loan Facility</u>: 1. The Expanded Loan Facility will finance the extension of additional credit ("*upsized tranche*") on pre-existing loans that originated prior to

[1] There is no indication that employees of affiliates under common control must be taken into account in calculating the size limits (in contrast to the affiliation rules that apply to the SBA's Paycheck Protection Program).
[2] A "***covered entity***" is an entity in which 20% or more (by vote or value) of the equity of such entity is owned by the President, Vice President, head of an Executive department, or Member of Congress, or any spouse, children, son-in-law, or daughter-in-law of the foregoing (each, a "***Covered Individual***"). (Sec. 4019 of the CARES Act). The Chief Executive Officer and Chief Financial Officer (or individuals performing similar functions) of the borrower must certify that the entity is eligible to obtain an eligible loan and is not an entity in which a Covered Individual directly or indirectly holds a controlling interest.
[3] The Board established the Primary Market Corporate Credit Facility (PMCCF) on March 23, 2020 to support credit to employers through new bond and loan issuance.

	April 8, 2020, provided that such loans are upsized on or after April 8, 2020. 2. Upsized tranche amounts are capped at 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.
Loan Terms	Loans provided through each of the Facilities will have the following features: 1. 4-year maturity; 2. Amortization of principal and interest deferred for 1 year; 3. Adjustable rate equal to (i) the Secured Overnight Financing Rate (SOFR) *plus* (ii) 2.5% to 4%; 4. Prepayment permitted without penalty; and 5. Minimum amount of $1 million. Loans obtained pursuant to the New Loan Facility loans are unsecured. Loans upsized pursuant to the Expanded Loan Facility may be secured by the collateral pledged under the terms of the original loan, though additional collateral may be required. Note that borrowers may be required to additionally pay some or all of the fees set forth below.
Loan Fees	<u>New Loan Facility</u>: 1. <u>Facility Fee</u>: Lender is required to pay the SPV a fee equal to 1% of loan amount purchased by the SPV (95% of the principal); *provided*, the lender may require the borrower to pay this fee. 2. <u>Origination Fee</u>: Borrower to pay lender 1% of the principal amount of the loan. 3. <u>Servicing Fee</u>: SPV to pay lender 0.25% of the principal amount of the SPV's participation in the loan per year. <u>Expanded Loan Facility</u>: 1. <u>Upsizing Fee</u>: Borrower to pay lender 1% of the principal amount of the upsized tranche at the time of upsizing. <u>Servicing Fee</u>: SPV will pay lender 0.25% of the principal amount of its participation in the upsized tranche per year.

Usage Restrictions	Lender Certification. Each lender must attest that proceeds of a loan would not be used to repay or refinance pre-existing loans or lines of credit made by such lender to the borrower, including the pre-existing portion of a loan increased through the Expanded Loan Facility. Borrower Certifications. 1. Refinancing. Each borrower must commit to refrain from using the proceeds of the loan or upsized tranche to repay other loan balances. 2. Employment. Borrower must certify it will use the proceeds of the loan or upsized tranche to make "reasonable efforts" to maintain its payroll and retain its employees during the term of the loan or upsized tranche.
Additional Conditions	Lender Conditions: A lender may not cancel or reduce any existing lines of credit outstanding to the borrower. Borrower Conditions: 1. Treatment of Other Debt/Credit. The borrower will not (a) repay other debt of equal or lower priority, with the exception of mandatory principal payments, unless the borrower has first repaid the eligible loan in full, or (b) seek to cancel or reduce any of its outstanding lines of credit with any lender. 2. Dividends. The borrower will be prohibited from paying dividends or making other capital distributions on its common stock during term of the loan, and for a year after the date the loan is no longer outstanding. 3. Stock Buybacks. The borrower cannot make stock buybacks of equity securities of the borrower, or any parent of borrower, that are listed on a national securities exchange (except to the extent required by a preexisting contract), during term of the loan, and for a year after the date the loan is no longer outstanding. 4. Employee Compensation. The borrower must agree to cap all employee compensation (including salary, stock, and bonuses) for a period ending one year after the loan is repaid as follows: a. Employees receiving more than $425,000 per year cannot receive (i) more compensation than they received in 2019 (except for compensation determined through a collective bargaining agreement entered into prior to March 1, 2020) or (ii) severance pay or other benefits upon termination exceeding twice the 2019 compensation amount. b. Officers or employees receiving more than $3 million per year cannot receive total compensation in excess of (i) $3 million plus (ii) 50% of the excess over $3 million. The Treasury may waive the conditions outlined in 2-4 above, as necessary "to protect the interests of the Federal Government." (Sec. 4003(c)(3)(A)(iii) of the CARES Act).

Loan Participations	The SPV will purchase a 95% participation in loans provided through both facilities, at par value, and the lender will retain 5% of the eligible loan. The SPV and lender will share risk on a pari passu basis.
Facility Termination	The SPV will cease purchasing participations in eligible loans on September 30, 2020, unless the Board and the Treasury Department extend either of the Facilities.
Application Procedures	There is no process available today to apply for a loan under the Main Street Loan Program, but further guidance is expected to be released in the upcoming weeks.

Additional Questions? Contact a member of the Haynes and Boone Finance or Corporate Practice Groups at Haynes and Boone, including the following individuals:

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Paul Amiel (Partner, Finance): Paul.Amiel@haynesboone.com
Jim Markus (Partner, Finance): James.Markus@haynesboone.com
Alex Grishman (Partner, Finance): Alexander.Grishman@haynesboone.com
Brent Beckert (Associate, Corporate Law): Brent.Beckert@haynesboone.com
Rachael Apfel (Associate, Corporate Law): Rachael.Apfel@haynesboone.com