Chapman and Cutler LLP

Chapman Client Alert

May 7, 2020 Current Issues Relevant to Our Clients

(Updating an April 14, 2020 Client Alert)

Updates to the Main Street Loan Facilities Offered by the Federal Reserve

On April 30, 2020, the Board of Governors of the Federal Reserve System ("Federal Reserve") announced an expansion in the scope and eligibility of its Main Street loan facilities (collectively, the "Main Street Lending Program"). The Main Street Lending Program is designed to provide support to small and medium-sized businesses that were in sound financial condition prior to the onset of the COVID-19 pandemic to maintain their operations and payroll until conditions normalize. It complements the SBA's Paycheck Protection Program ("PPP"), which was developed to provide liquidity to small businesses, and the Federal Reserve's Primary Market Corporate Credit Facility ("PMCCF"), which was developed to provide liquidity to large companies.[1]

When the Federal Reserve announced the Main Street Lending Program on April 9, 2020, it sought comment on potential refinements. More than 2,200 individuals, businesses, and non-profit organizations submitted comment letters and, in response, the Federal Reserve expanded the loan options available to businesses, decreased the minimum loan size for certain loans to $500,000, and increased the maximum size of businesses that are eligible for support under the Main Street Lending Program. Also on April 30, 2020, the Federal Reserve issued revised term sheets for the Main Street loan facilities and an extensive "frequently asked questions" document ("FAQ Guidance") that clarifies many issues relating to the Main Street Lending Program.[2] This alert explores the three loan facilities constituting the Main Street Lending Program: the newly announced Main Street Priority Loan Facility ("MSPLF"), the revised Main Street New Loan Facility ("MSNLF"), and the revised Main Street Expanded Loan Facility ("MSELF"). It details both the expansions highlighted by the Federal Reserve and the new restrictions that may make the Main Street Lending Program less attractive and, in some cases, unavailable to certain businesses.

How Does the Federal Reserve Lend under the Main Street Lending Program?

Using funds appropriated to the Exchange Stabilization Fund under Section 4027 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), the U.S. Treasury Department will make a $75 billion equity investment in a special purpose vehicle ("SPV") established by the Federal Reserve. All three Main Street loan facilities will use the same SPV and the SPV will purchase up to $600 billion of participations in eligible loans. We note that the $600 billion cap is an aggregate limit across all three Main Street loan facilities.

Under all three facilities, an "eligible lender" will make (or, in the case of the MSELF, increase)[3] a loan to an "eligible borrower" and then sell a participation in that loan to the SPV at par value. The SPV will purchase a 95% participation interest in each loan made under the MSNLF; a 95% participation interest in each loan made under the MSELF; and an 85% participation interest in each loan made under the MSPLF. In each case, the lender must retain 5% or 15%, respectively, of the loan until it matures or the SPV sells all of its participation, whichever comes first. With respect to a loan made under the MSELF, the eligible lender must also retain its interest in the existing loan until that existing loan matures, the MSELF loan matures, or the SPV sells all of its participation, whichever comes first.

A lender's sale of a participation to the SPV must be structured as a "true sale" and must be completed "expeditiously" after the loan's origination. The SPV and the lender will share in any losses on the loan on a *pari passu* basis.

Who Can Be a Lender under the Main Street Lending Program?

All three Main Street loan facilities use the same "eligible lender" criteria, which have been expanded since the initial terms of the MSNLF and the MSELF were announced on April 9, 2020.

Currently, any of the following may be a lender in the Main Street Lending Program:

- a U.S. federally insured depository institution (including banks, savings associations, and credit unions);

- **(new as of April 30, 2020)** U.S. branches or agencies of foreign banks;
- U.S. bank holding companies;
- U.S. savings and loan holding companies;
- **(new as of April 30, 2020)** U.S. intermediate holding companies of foreign banking organizations; and
- any U.S. subsidiary of any of the foregoing.

The Federal Reserve notes that nonbank financial institutions currently are not considered eligible lenders for any Main Street loan facility, but specifically notes in the FAQ Guidance that it may consider expanding the list of eligible lenders in the future.

Does a Lender Have to Make Any Covenants or Certifications?

Yes. A lender must:

- commit not to request that the borrower repay other loan balances owed to that lender by the borrower until the Main Street loan is repaid in full, unless repayment of any such other loan is mandatory and due or in the case of an event of default and acceleration;
- commit not to cancel or reduce any existing committed lines of credit outstanding to the borrower, except upon the occurrence of an event of default;
- certify as to the methodology it used to calculate the borrower's adjusted 2019 EBITDA; and
- certify that it is eligible to participate in the Main Street Lending Program, including in light of the conflicts of interest prohibition in Section 4019(b) of the CARES Act.

A lender may still accept regularly scheduled, periodic repayments on a line of credit from a borrower in accordance with the borrower's ordinary usage for that line of credit. Further, a lender may reduce or terminate uncommitted lines of credit, allow existing lines of credit to expire in accordance with their terms, or reduce the availability under existing lines of credit in accordance with their terms due to changes in borrowing bases or reserves in asset-based or similar structures.

Who Can Be a Borrower under the Main Street Lending Program?

All three Main Street loan facilities use the same "eligible borrower" criteria, which have been significantly expanded since the initial terms of the MSNLF and the MSELF were announced on April 9, 2020. Of greatest significance is the application of the SBA's affiliation requirements to the "eligible borrower" criteria, as that may limit the availability of this support program to some businesses.

Currently, a business[4] must satisfy the following criteria in order to be an "eligible borrower" in the Main Street Lending Program:

- must have been established prior to March 13, 2020 under the laws of the U.S., one of its states, the District of Columbia, any U.S. territory or possession, or an Indian tribal government
- must have been in sound financial condition prior to the onset of the COVID-19 pandemic
- **(new as of April 30, 2020)** must not be an "Ineligible Business" that the SBA lists in 13 CFR 120.11(b)-(j), (m)-(s), as modified and clarified by SBA regulations for purposes of the PPP on or before April 24, 2020. These Ineligible Businesses include:
  - a financial business primarily engaged in lending, such as a bank or finance company
  - a passive business that holds real and/or personal property from which it receives rental income and does not provide sufficient services to be considered "active" (and is not an "eligible passive company")
  - a life insurance company
  - a business located outside the U.S.
  - a pyramid sale distribution plan
  - a business engaged in illegal activity[5]
  - a private club or business which limits the number of memberships for reasons other than capacity
  - a government-owned entity, other than a business owned or controlled by a Native American tribe
  - a loan packager earning more than 1/3 of its gross annual revenue from packaging SBA loans

- a business with an associate who is incarcerated, on probation, or on parole, or who has been indicted for a felony or a crime of moral turpitude

- a business in which any of the related lender's associates owns an equity interest in the business of 30% or greater

  - a business owned by a lender's outside director or a business in which a lender's associate owns an equity interest of less than 30% may receive a loan under the Main Street Lending Program from that lender, so long as the business follows the same process as the lender's similarly situated customers or account holders

  - favoritism by the lender in processing time or prioritization of the director's or equity holder's loan application is prohibited

  - the lender should comply with all other applicable state and federal regulations concerning loans to the lender's associates

  - it appears that officers and key employees of a lender may obtain a loan under the Main Street Lending Program from a different lender, but not from the lender with which they are associated

- a business which presents live performances of a prurient sexual nature or derives more than five percent of its gross annual revenue from the sale of products or services, or the presentation of any depictions or displays of a prurient sexual nature

- a business that has defaulted on a federal loan or federally assisted financing, resulting in the federal government sustaining a loss (unless waived by the SBA for good cause)

- a business primarily engaged in political or lobbying activities

- a speculative business (such as shopping center development, oil wildcatting, and R&D)

- **(new numbers as of April 30, 2020)** must meet at least one of the following two size restrictions: have 15,000 or fewer employees or have 2019 annual revenues of $5 billion or less

  - a business is not required to meet both size restrictions

  - as more fully described below, the SBA's complex affiliation requirements now apply when a business determines the number of its employees or its 2019 annual revenues

- must be a U.S. business with "significant operations in" the U.S. and a "majority of [its] employees based in" the U.S.

  - the CARES Act uses this terminology to restrict the beneficiaries of various programs funded under it

- may only participate in one of the following: MSNLF, MSPLF, MSELF, or PMCCF

  - if a business or one of its affiliates receives a PPP loan, it may still borrow under one of the Main Street loan facilities, so long as it otherwise satisfies the "eligible borrower" criteria

- must not have received support from the U.S. Treasury pursuant to section 4003(b)(1)-(3) of the CARES Act, which provides up to $46 billion to passenger air carriers, cargo air carriers, and businesses critical to maintaining national security

- must be able to make the certifications and covenants discussed more fully below

Currently, non-profit organizations are not eligible to borrow under the Main Street Lending Program. However, acknowledging the unique needs of non-profit organizations, the FAQ Guidance notes that the Federal Reserve and the U.S. Treasury Department "will be evaluating the feasibility of adjusting the borrower eligibility criteria and loan eligibility metrics" of the Main Street Lending Program for such organizations.[6]

How Does a Business Count Employees and Revenues for Purposes of Determining Borrower Eligibility?

The Federal Reserve increased the maximum size of businesses that are eligible for support under the Main Street Lending Program. As noted above, an eligible borrower must have 15,000 employees or fewer or 2019 annual revenues of $5 billion or less.[7] At the same time, however, the Federal Reserve elected to apply the SBA's complex affiliation requirements, which generally require a business to aggregate all of its parent companies, affiliates, and subsidiaries when determining a business's number of employees and 2019 annual revenues. As a result, the Main Street Lending Program may now be unavailable to some businesses that would otherwise qualify for it, including private equity portfolio companies.

To determine how many employees it has, a business should:

- count as employees all full-time, part-time, seasonal, or otherwise employed persons (not counting volunteers or independent contractors)
- count its own employees and those employed by its affiliates (following the SBA's affiliation test set forth in 13 CFR 121.301(f) to determine which affiliates are relevant to this analysis)
- use the average number of persons employed by the business and its affiliates for each pay period over the 12 months prior to loan origination (or, in the case of the MSELF, the loan increase)

To determine its 2019 annual revenues, a business:

- must aggregate its own revenues with those of its affiliates (following the same SBA affiliation test used in determining the number of its employees)
- may use its and its affiliates' (i) annual "revenue" per its 2019 GAAP audited financial statements or (ii) annual receipts for the 2019 fiscal year, as reported to the Internal Revenue Service.[8]

If a potential borrower (or any relevant affiliate) does not have its audited financial statements or annual receipts for 2019, the borrower (or the affiliate) should use its most recent audited financial statements or annual receipts.

We note that, under the CARES Act and implementing SBA regulations, some categories of businesses, including certain restaurants and hotels, were exempted from the SBA's affiliation rules for purposes of the PPP. The Main Street Lending Program does not similarly exempt those businesses, so the affiliation requirements apply to all businesses borrowing under a Main Street loan facility.

Does a Borrower Have to Make Any Covenants or Certifications?

Yes. A borrower must:

- commit not to repay principal or interest on any other loan balances until the Main Street loan is repaid in full, unless the repayment of such other loan is mandatory and due;
    - under the MSPLF, at the time of loan origination, a borrower may refinance existing debt owed by the borrower to a lender other than the lender of the Main Street loan
- commit not to seek to cancel or reduce any of its committed lines of credit with any lender;
- certify that it has a reasonable basis to believe that, as of the loan origination date and after giving effect to the loan, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period;
- commit to comply with the stock repurchase, compensation, and capital distribution requirements that apply to direct loan programs such as the Main Street Lending Program under Section 4003(c)(3)(A)(ii) of the CARES Act (subject to the ability for S corporations and other tax pass-through entities to make distributions "to the extent reasonably required to cover its owners' tax obligations in respect of an entity's earnings"); and
- certify that it is eligible to participate in the Main Street Lending Program, including in light of the conflicts of interest prohibition in Section 4019(b) of the CARES Act.

Notwithstanding the foregoing, a borrower may repay a line of credit (including a credit card) in accordance with the borrower's ordinary usage for that line of credit. It also may take on and pay additional debt obligations required in its normal course of business and on standard terms, including inventory and equipment financing, provided that such debt is secured by newly acquired property and that, apart from such security, such debt is of equal or lower priority than the Main Street loan.

In addition, a borrower should make "commercially reasonable efforts" to retain employees during the term of a Main Street loan. The FAQ Guidance encourages a borrower to "undertake good-faith efforts to maintain payroll and retain employees, in light of its capacities, the economic environment, its available resources, and the business need for labor."

Borrowers that have laid off or furloughed employees as a result of the COVID-19 pandemic are still eligible to apply for Main Street loans.

The FAQ Guidance specifically addresses a lender's role in verifying a borrower's certifications. A lender is required to collect the certifications from each borrower at the time of loan origination, and the lender may rely on them and any subsequent self-reporting by the borrower. While a lender is not expected to independently verify a borrower's certifications or actively monitor ongoing compliance with a borrower's covenants, a lender should notify the Federal Reserve Bank of Boston if it becomes aware that a borrower made a material misstatement or otherwise breached a covenant during the term of a Main Street loan.

What Are the Terms and Conditions of a Loan under the Main Street Lending Program, Including Principal, Interest, and Maturity?

All loans made under the Main Street Lending Program, regardless of which loan facility is used, have the same maturity, interest rate, deferral of principal and interest for one year, and ability of the borrower to prepay without penalty.

- Maturity: four years
- **(new features as of April 30, 2020)** Interest Rate: adjustable rate of one-month or three-month LIBOR plus 300 basis points
  - the initial terms of the MSNLF and the MSELF indexed the interest rate based on SOFR, with a range of 250-400 basis points
- Payment Deferral: no principal or interest payments will be required during the first year of the loan and unpaid interest for the first year will be capitalized

What are the Differences Among Loans Made Under the MSNLF, MSPLF, and the MSELF?

As noted above, all loans made under the Main Street Lending Program, regardless of which loan facility is used, have the same maturity, interest rate, deferral of principal and interest for one year, and ability of the borrower to prepay without penalty. They also have the same eligible lender and eligible borrower criteria. Further, all three Main Street loan facilities use EBITDA as the key underwriting metric.

There are key differences among the three facilities, however. We address the salient terms of loans made under each Main Street loan facility below as we know them at this time. As well, the Federal Reserve published the following table to compare the three Main Street loan facilities:

Main Street Lending Program Loan Options	New Loans	Priority Loans	Expanded Loans
Term	4 years	4 years	4 years
Minimum Loan Size	$500,000	$500,000	$10,000,000
Maximum Loan Size	The lesser of $25M or 4x 2019 adjusted EBITDA	The lesser of $25M or 6x 2019 adjusted EBITDA	The lesser of $200M, 35% of outstanding and undrawn available debt, or 6x 2019 adjusted EBITDA
Risk Retention	5%	15%	5%
Payment (year one deferred for all)	Years 2-4: 33.33% each year	Years 2-4: 15%, 15%, 70%	Years 2-4: 15%, 15%, 70%
Rate	LIBOR + 3%	LIBOR + 3%	LIBOR + 3%

MSNLF

- **(new amounts as of April 30, 2020)** a secured or unsecured term loan made by a lender to a borrower that was originated after April 24, 2020, ranging in size from a minimum of $500,000 to a maximum of $25 million
- **(new feature as of April 30, 2020)** the loan amount, when added to the borrower's "existing outstanding and undrawn available debt," cannot exceed four times the borrower's adjusted 2019 EBITDA
  - "existing outstanding and undrawn available debt" includes all amounts borrowed under any loan facility, including unsecured or secured loans from any bank, non-bank financial institution, or private lender, any publicly issued bonds, any private placement facilities, and all unused commitments under any loan facility, other than those (i) serving as commercial paper backups, (ii) being used to finance receivables, (iii) that cannot be drawn without additional collateral, and (iv) that are no longer available due to changed circumstances

- "existing outstanding and undrawn available debt" should be calculated as of the loan application date

- the loan cannot be, at origination or at any time during its term, "contractually subordinated in terms of priority" to any of the borrower's other loans or debt instruments

- after year 1, the loan will be amortized over its remaining term, with 1/3 of principal due at the end of year 2, year 3, and year 4 (maturity), with year 1 capitalized interest added to principal for purposes of this amortization schedule

- if the borrower had other loans outstanding with the lender as of December 31, 2019, those loans must have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system on that date

MSPLF (this facility is new as of April 30, 2020)

- a secured or unsecured term loan made by a lender to a borrower that was originated after April 24, 2020, ranging in size from a minimum of $500,000 to a maximum of $25 million

- the loan amount, when added to the borrower's "existing outstanding and undrawn available debt," cannot exceed <u>six</u> times the borrower's adjusted 2019 EBITDA

- in terms of priority and security, the loan must be, at origination and at any time during its term, senior to, or *pari passu* with, the borrower's other loans or debt instruments, other than mortgage debt

- after year 1, the loan will be amortized over its remaining term, with 15% of principal due at the end of year 2, 15% of principal due at the end of year 3, and a balloon payment of 70% of principal due at the end of year 4 (maturity), with year 1 capitalized interest added to principal for purposes of this amortization schedule

- if the borrower had other loans outstanding with the lender as of December 31, 2019, those loans must have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system on that date

MSELF

- **(new features as of April 30, 2020)** a secured or unsecured term loan or revolving credit facility made by a lender to a borrower that was originated on or before April 24, 2020 and has a remaining maturity of at least 18 months

    - the lender may extend the maturity of an existing loan or revolving credit facility at the time of upsizing in order for the underlying loan to satisfy the 18-month remaining maturity requirement

    - as a result of permitting a lender to add an "upsized" term loan to an existing revolving credit facility, the MSELF – with its larger maximum borrowing amount – is now available to any eligible borrower that has an existing revolving credit facility, even if that eligible borrower does not have an existing term loan facility. This loan (referred to in the MSELF term sheet and the FAQ Guidance as the MSELF Upsized Tranche) will be a term loan, subject to the amortization and other features of the MSELF

- **(new amounts as of April 30, 2020)** the amount of the loan ranges in size from a minimum of $10 million to a maximum of $200 million

    - the maximum amount of the loan is the least of (i) $200 million, (ii) 35% of the borrower's "existing outstanding and undrawn available debt" that is *pari passu* in priority with the loan and equivalent in secured status (i.e., secured or unsecured), and (iii) an amount that, when added to the borrower's "existing outstanding and undrawn available debt," does not exceed <u>six</u> times the borrower's adjusted 2019 EBITDA

    - Although the Federal Reserve increased the limit in clause (ii) to 35% and includes "all" debt (instead of just "bank" debt), it restricted the definition to "equivalent debt." As a result, a borrower with outstanding secured and unsecured debt could have a lower maximum borrowing amount under clause (ii) as compared to the initial MSELF term sheet

- in terms of priority and security, the loan must be, at the time of upsizing and at any time during its term, senior to, or *pari passu* with, the borrower's other loans or debt instruments, other than mortgage debt

    - if the existing loan is secured, then the MSELF loan must also be secured on a *pari passu* basis with the existing loan

- after year 1, the loan will be amortized over its remaining term, with 15% of principal due at the end of year 2, 15% of principal due at the end of year 3, and a balloon payment of 70% of principal due at the end of year 4 (maturity), with year 1 capitalized interest added to principal for purposes of this amortization schedule

- the existing loan must have had an internal risk rating equivalent to a “pass” in the Federal Financial Institutions Examination Council’s supervisory rating system on that date

- the FAQ Guidance specifically states that a loan made under the MSELF can be added to a syndicated (i.e., a “multi-lender”) facility. Only the lender actually selling a participation in the MSELF loan needs to be an “eligible lender.”

How is EBITDA Calculated?

EBITDA is the key underwriting metric required for all loans issued under the Main Street Lending Program and, as such, lenders must calculate a borrower’s adjusted 2019 EBITDA.

For the MSNLF and the MSPLF, a lender must use a methodology that it previously used for adjusting EBITDA when extending credit to the borrower or to similarly situated borrowers on or before April 24, 2020.

For the MSELF, a lender must use the methodology that it previously used for adjusting EBITDA when originating or amending the existing loan on or before April 24, 2020.

The Federal Reserve has acknowledged that lenders generally do not assess the credit risk of asset-based borrowers based on EBITDA. Accordingly, the FAQ Guidance notes that the Federal Reserve and the U.S. Treasury will be evaluating the feasibility of adjusting the loan eligibility metrics of the Main Street Lending Program for those borrowers.

What Underwriting is Required for a Loan Under the Main Street Lending Program?

As noted above, a borrower’s adjusted 2019 EBIDTA is the key underwriting metric required for each Main Street loan facility, with the leverage ratio capped at four times for each of the MSNLF and six times for each of the MSPLF and the MSELF.

In addition, the eligibility criteria in the term sheet for each Main Street loan facility establishes the minimum requirements for the Main Street Lending Program. The Federal Reserve expects that lenders will evaluate a borrower’s financial condition “at the time of” the loan application. Lenders also will apply their own underwriting standards in evaluating a potential borrower’s financial condition and creditworthiness, including whether additional information and documentation is required from the potential borrower.

All decisions to approve or deny a loan application rest with the lenders, and businesses meeting the eligible borrower criteria do not automatically qualify for a loan under the Main Street Lending Program. As well, there is no guarantee that, even if approved for a loan, an eligible borrower will receive the maximum allowable amount.

Is Collateral Required for Main Street Loans?

Loans made under any Main Street loan facility may be secured or unsecured. Under the MSELF, if the existing loan is secured, then the MSELF loan must also be secured on a *pari passu* basis with the existing loan.

Is a Borrower Permitted to Undertake Restructuring Prior to Obtaining a Main Street Loan in Order to Meet Eligibility Requirements?

A borrower may want to undertake certain restructurings to meet the eligible borrower criteria, for example taking steps to relieve itself from existing debt burdens to satisfy the EBITDA requirements. Given the time, cost, and other potential consequences of any corporate restructuring, a borrower may develop a restructuring plan prior to applying for a Main Street loan, but may not want to actually complete the restructuring until its Main Street loan application has been approved.

Based on FAQ H.6. in the FAQ Guidance, which specifically states that a lender is required to collect the covenants and certifications from each borrower at the time of loan origination, we believe it is permissible for a borrower to undertake a restructuring to meet the eligible borrower criteria at any time prior to loan origination, including during the period between loan application and loan origination. It is important to note, however, that the loan application must accurately reflect what the borrower’s eligibility status will be as of the loan origination date. A borrower may also consider discussing its restructuring plan with the lender providing the Main Street loan prior to submitting a loan application to make sure the lender agrees that the post-application restructuring steps achieve the intended result and do not invalidate the application.

Are There Fees Associated With Main Street Loans?

Yes.

Under the MSNLF and the MSPLF, at loan origination, a lender must pay the SPV a transaction fee of 100 basis points of the principal amount of the loan. The lender, in its discretion, may pass on to the borrower the cost of this fee. In addition, at loan origination, the borrower may have to pay the lender a fee of up to 100 basis points of the principal amount of the loan. The lender has discretion over whether to charge this fee to the borrower and, if so, what that fee will be up to 100 basis points.

Under the MSELF, at the time of upsizing, a lender must pay the SPV a transaction fee of 75 basis points of the principal amount of the loan. The lender, in its discretion, may pass on to the borrower the cost of this fee. In addition, at the time of upsizing, the borrower may have to pay the lender a fee of up to 75 basis points of the principal amount of the loan. The lender has discretion over whether to charge this fee to the borrower and, if so, what that fee will be up to 75 basis points.

With respect to each Main Street loan facility, the SPV will pay each lender an amount equal to 25 basis points of the principal amount of the SPV's participation per annum for loan servicing.

When Will Main Street Loan Applications Be Accepted and When Will Sales of Loan Participations to the SPV Begin?

Unknown at this time. The official launch date, as well as the date and time when the SPV will begin purchasing participations in loans made under a Main Street loan facility, will be made available on the Federal Reserve's website.

Any potential borrower must submit an application to a lender, along with any additional information or documentation required by that lender. We recommend interested borrowers contact their lenders directly for more information about whether those lenders intend to participate in the Main Street Lending Program and to request more information on the application process.

What Is the Deadline to Apply for a Main Street Loan?

Essentially, prior to September 30, 2020, as that is when the SPV will stop purchasing participations in loans made under a Main Street loan facility, although that date may be extended by the Federal Reserve and the U.S. Treasury. The Federal Reserve Bank of Boston will continue to operate the SPV until the SPV's assets mature or are sold, whichever comes first.

How Many Loans Can a Borrower Obtain Under the Main Street Lending Program?

An eligible borrower may only participate in one of the following: MSNLF, MSELF, MSPLF, and PMCCF. However, an eligible borrower may receive more than one loan under a single Main Street loan facility, so long as the loan amount (or, in the case of the MSELF, the loan increase) does not exceed the maximum allowable amount.

As noted earlier, if a business or one of its affiliates receives a PPP loan, it may still borrow under one of the Main Street loan facilities, so long as it otherwise satisfies the "eligible borrower" criteria.

Can Main Street Loans Be Forgiven Like PPP Loans?

No. By statute, loans made under a Main Street loan facility are not forgivable.[9]

Are There Any Restrictions on How Main Street Loan Proceeds Can Be Used?

No, none that have been specified to-date, other than restrictions flowing from the covenants and certifications (noted above) that a borrower is required to make at the time of loan origination.

Are There Any Capital or Other Benefits for Lenders in the Main Street Lending Program?

For purposes of risk-based capital rules and leverage rules issued by the federal banking agencies, a lender's exposure amount for loans made under the MSPLF is 15% of the outstanding loan amount. Under the MSNLF and the MSELF, a lender's exposure is 5% of the outstanding loan amount. This treatment is consistent with the participation being treated as a "true sale" of 95% (or, in the case of the MSELF, 85%) of the lender's original interest in the loan.

Any secured Main Street loan is eligible for the credit risk mitigation treatment in the standardized approach provided that any collateral securing the loan is "eligible financial collateral." A lender is not permitted to recognize collateral attributable to the SPV's interest for purposes of the credit risk mitigation treatment under the capital rule because it has sold the portion of the loan represented by the SPV's participation interest.

For More Information

We will be monitoring developments in the Main Street Lending Program, as well as other government response programs to address the COVID-19 pandemic, and we will provide additional alerts with changes or updated information.

If you would like further information concerning the matters discussed in this article or any matter related to the COVID-19 pandemic, please visit our COVID-19 Insights webpage or contact the Chapman attorney with whom you regularly work.

1 See our client alerts, "Questions and Answers about the Main Street Bank Lending and Primary Market Corporate Credit Syndicated Bank Lending Facilities Established by the Federal Reserve under the CARES Act" (April 14, 2020), and "Small Business Administration: The Paycheck Protection Program under the CARES Act" (April 1, 2020).

2 This alert references the "frequently asked questions" dated as of April 30, 2020, available at: https://www.federalreserve.gov/monetarypolicy/files/main-street-lending-faqs.pdf

3 For purposes of this alert, all references to a "loan" made under the MSELF means the upsized loan tranche or the new term loan added to an existing revolving loan facility.

4 The FAQ Guidance defines businesses as "legally formed entities that are organized for profit as a partnership; a limited liability company; a corporation; an association; a trust; a cooperative; a joint venture with no more than 49% participation by foreign business entities; or a tribal business concern." The FAQ Guidance also specifically notes that the Federal Reserve, in its discretion, may include other forms of organization as an eligible borrower under the Main Street Lending Program.

5 It remains unclear what effect this restriction will have on businesses such as cannabis-related businesses, where a business's activity may be legal at the state level but illegal at the federal level. Those businesses have been rendered ineligible for the PPP by virtue of the SBA's borrower application form, which requires applicants to certify that it "is not engaged in any activity that is illegal under federal, state or local law." The Federal Reserve has not yet released a similar borrower application or provided clarifying guidance on this issue.

6 It appears that a for-profit business principally engaged in teaching, counseling, or indoctrinating religion or religious beliefs, whether in a religious or a secular setting, may be an "eligible borrower" for purposes of the Main Street Lending Program.

7 The initial terms of the MSNLF and the MSELF set those thresholds at 10,000 or fewer employees and 2019 annual revenues up to $2.5 billion.

8 For purposes of the Main Street Lending Program, "receipts" has the same meaning used by the SBA in 13 CFR 121.104(a).

9 Section 4003(d)(3) of the CARES Act.

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