

THE FEDERAL RESERVE MAKES \$600 BILLION IN NEW CREDIT AVAILABLE FOR SMALL AND MEDIUM-SIZED BUSINESSES

THE NEW MAIN STREET LENDING PROGRAMS¹

On March 27, 2020, in response to the spread of the novel Coronavirus Disease 2019 (“COVID-19”) in the United States, the Coronavirus Aid, Relief, and Economic Security Act of 2020 (“CARES Act”) was signed into law, creating, among other things, the Paycheck Protection Program (“PPP”), which is designed to help small businesses with 500 or less employees that were impacted by COVID-19.

On April 9, 2020, the board of governors of the Federal Reserve System (the “Federal Reserve”) took several steps designed to promote maximum employment and stabilize the financial system during the pendency of the COVID-19 pandemic, including the creation of the Main Street New Loan Facility (the “New Loan Facility”) and the Main Street Expanded Loan Facility (the “Expanded Loan Facility,” and collectively with the New Loan Facility, the “Main Street Lending Programs” or the “Programs”), which will provide up to \$600 billion in new credit to eligible businesses that were in good standing prior to the COVID-19 crisis, including small businesses and the approximately 20,000 medium-sized U.S. businesses that employ between 500 and 10,000 workers and who were not able to access PPP funds or other initiatives limited to small businesses. The Federal Reserve expects to launch the Programs one day this week. Small businesses that have benefitted from the PPP program may also participate in the Main Street Lending Programs.

The following summarizes the latest available information as of the above date and is largely based on the Federal Reserve’s Term Sheets for the Programs (the “Term Sheets”). In the coming days, we anticipate adjustments to and guidance on the Programs by the Board of Governors of the Federal Reserve and/or the Secretary of the U.S. Department of Treasury (“Treasury”). Any changes to the Programs will be announced on the Board of Governors’ website. Accordingly, while this overview may be useful for prospective participants, it is necessarily preliminary in nature and should not be relied upon as the final statement of the terms of the Main Street Lending Programs.

The Federal Reserve has not yet provided information regarding how businesses can obtain a new loan or upsize an existing loan under the Programs, except that prospective borrowers will apply directly to eligible lending institutions (“Eligible Lenders”), and will not apply to a governmental agency.

ELIGIBLE BORROWERS:

NEW LOAN FACILITY:

An “*Eligible Borrower*” under the New Loan Facility must be a business that meets the following conditions:

- ❖ Not more than: (i) 10,000 employees, or (ii) \$2.5 billion in 2019 annual revenues;
- ❖ Created or organized in the United States or under the laws of the United States;
- ❖ Significant operations are in and a majority of its employees are based in the United States;
- ❖ Not a participant in the Federal Reserve’s newly created Primary Market Corporate Credit Facility;
- ❖ Not a participant in the Expanded Loan Facility.

¹ **NOTICE:** This Client Alert is solely for informational purposes and is not intended to give legal advice. Each business’ circumstances will be different, and Gunster is ready and able to assist you with obtaining a loan under the Main Street Lending Programs. Additionally, the Main Street Lending Programs are new and still developing. You should research new developments and guidance as it arises.

EXPANDED LOAN FACILITY:

To qualify as an “Eligible Borrower” under the Expanded Loan Facility, a business must satisfy the same conditions that an Eligible Borrower must meet under the New Loan Facility, except that under the Expanded Loan Facility an Eligible Borrower cannot participate in the New Loan Facility.

ELIGIBLE LOANS:

An “*Eligible Loan*” under the Main Street Lending Programs is a term loan made by an Eligible Lender(s) to an Eligible Borrower that was originated on or after April 8, 2020, provided that the new loan, or the upsized tranche of an existing loan, as applicable, has the following features:

- ❖ 4-year maturity;
- ❖ Interest rate not to exceed 2%;
- ❖ Amortization of principal and interest deferred for one year;
- ❖ Adjustable rate of SOFR + 250-400 basis points;
- ❖ Minimum loan size of \$1 million; and
- ❖ Prepayment permitted without penalty.

NEW LOAN FACILITY:

In addition to the criteria applicable to all Eligible Loans under the Main Street Lending Programs, an Eligible Loan under the New Loan Facility is an unsecured loan that meets the following maximum loan criteria:

- ❖ Maximum loan size is 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”).

EXPANDED LOAN FACILITY:

In addition to the criteria applicable to all Eligible Loans under the Main Street Lending Programs, an Eligible Loan under the Expanded Loan Facility that meets the following maximum loan criteria:

- ❖ Maximum loan size that is the lesser of (i) \$150 million, (ii) 30% of the Eligible Borrower’s existing outstanding and committed but undrawn bank debt, or (iii) an amount that, when added to the Eligible Borrower’s existing outstanding and committed but undrawn debt, does not exceed six times the Eligible Borrower’s 2019 EBITDA.

HOW THE MAIN STREET PROGRAMS WORK:

NEW LOAN FACILITY:

- ❖ Eligible Lender makes a new Eligible Loan to an Eligible Borrower
- ❖ New Loan Facility purchases a 95% participation in the new Eligible Loan, at par value.
- ❖ Eligible Lender retains 5% of the new Eligible Loan.
- ❖ New Loan Facility and Eligible Lender share the risk on a *pari passu* basis.

EXPANDED LOAN FACILITY:

- ❖ Eligible Lender upsizes an existing Eligible Loan.
- ❖ Expanded Loan Facility purchases a 95% participation *in the upsized tranche* of the expanded

Eligible Loan at par value, *provided* that the upside occurs on or after April 8, 2020.

- ❖ Eligible Lender retains 5% of the upsized tranche of the expanded Eligible Loan.
- ❖ Expanded Loan Facility and Eligible Lender share the risk of the upsized tranche on a *pari passu* basis.
- ❖ Any collateral securing an expanded Eligible Loan, whether such collateral was pledged under the original terms of the Eligible Loan or at the time of upsizing, will secure the loan participation on a pro rata basis.

REQUIRED ATTESTATIONS:

The Main Street Lending Programs will require Eligible Lenders and/or Eligible Borrowers to attest that:

- ❖ Eligible Borrower will not repay or refinance pre-existing debt with the proceeds of the Eligible Loan.
- ❖ Eligible Borrower will refrain from repaying other debt of equal or lower priority until the Eligible Loan is repaid in full, except for mandatory principal payments.
- ❖ Eligible Lender will not cancel or reduce any existing lines of credit outstanding to Eligible Borrower.
- ❖ Eligible Borrower will not seek to cancel or reduce any of its outstanding lines of credit.
- ❖ Eligible Borrower requires financing as a result of circumstances related to COVID-19.
- ❖ Using the proceeds of the Eligible Loan, Eligible Borrower will make reasonable efforts to maintain its payroll and retain its employees during the term of the Eligible Loan.
- ❖ Eligible Borrower meets the EBITDA leverage criteria for obtaining an Eligible Loan.
- ❖ Eligible Borrower will follow the compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under Section 4003(c)(3)(A)(ii) of the CARES Act.
- ❖ Eligible Borrower is eligible to participate in the Main Street Lending Programs, including with respect to the conflicts of interest prohibition in Section 4019(b) of the CARES Act. (Required of both Eligible Borrower and Eligible Lender.)
- ❖ Any additional certifications required by applicable statutes and regulations.

IMPORTANT RESTRICTIONS:

Participation in the Main Street Lending Program will impose several constraints on Eligible Borrowers, including the following important restrictions:

Repurchases of Equity Securities:

- ❖ While the loan is outstanding, an Eligible Borrower cannot repurchase its equity securities (or those of its parent company) listed on a national securities exchange, except to the extent required under a contractual obligation in place as of March 27, 2020. There is no restriction on repurchases of unlisted equity securities.

Dividends, Capital Distributions and CARES Act Loan Proceeds

- ❖ While a loan is outstanding, an Eligible Borrower cannot pay dividends or other capital distributions.

Employment Matters:

- ❖ The proceeds of the loan must be used to retain at least 90% of the Eligible Borrower's workforce, at full compensation and benefits until September 30, 2020.
- ❖ An Eligible Borrower must restore at least 90% of its workforce that existed as of February 1, 2020.
- ❖ An Eligible Borrower must restore all compensation and benefits to workers no later than 4 months after the public health emergency (declared by the Secretary of Health and Human Services on

January 31, 2020) is terminated.

- ❖ Eligible Borrower cannot outsource or offshore any jobs until 2 years after repayment of the loan.
- ❖ Eligible Borrower cannot abrogate existing collective bargaining agreements until 2 years after repayment of the loan.
- ❖ Until the loan is repaid, an Eligible Borrower must remain neutral in union organizing efforts.

Compensation:

During the term of the loan and for 1 year after repayment:

- ❖ No officer or employee whose total compensation exceeded \$425,000 in 2019 may receive (i) total compensation during any 12 consecutive months that exceeds his or her total compensation in 2019, or (ii) severance pay or other benefits upon termination of employment in excess of twice his or her total compensation in 2019.
- ❖ No officer or employee whose total compensation exceeded \$3 million in 2019 may receive total compensation during any 12 consecutive months in excess of \$3 million plus 50% of the excess over \$3 million of his or her total 2019 compensation.

CERTAIN FEES:

NEW LOAN FACILITY:

Eligible Borrowers will pay Eligible Lenders a loan origination fee, as follows:

- ❖ *Loan Origination Fee:* An amount equal to 100 basis points of the principal amount of the Eligible Loan.

Eligible Lenders will pay the New Loan Facility the following facility fee:

- ❖ *Facility Fee:* An amount equal to 100 basis points of the principal amount of the loan participation purchased by the New Loan Facility.
- ❖ Eligible Borrowers should anticipate that Eligible Lenders may pass this facility fee to them.

EXPANDED LOAN FACILITY:

Under the Expanded Loan Facility, Eligible Borrowers will pay the following fee:

- ❖ *Loan Upsizing Fee:* An amount equal to 100 basis points of the principal amount of the upsized tranche of the Eligible Loan at the time of upsizing.

The Term Sheet for the Expanded Loan Facility is silent with respect to whether Eligible Lenders will owe a facility fee. We will look to future guidance from the Federal Reserve or Treasury on this point.

TERMINATION OF THE PROGRAMS:

- ❖ On September 30, 2020, the Main Street Lending Programs will discontinue purchasing participations in Eligible Loans, unless extended by the Federal Reserve and Treasury.
- ❖ The Federal Reserve Bank will continue to fund the Programs after such date, until the underlying assets mature or are sold.

IMMEDIATE STEPS & CERTAIN CONSIDERATIONS:

If you are considering applying for a new loan or upsizing an existing loan under the Main Street Lending Programs, you should do the following:

- ❖ Consider your financial needs for the balance of 2020;
- ❖ Gather anticipated required information;
- ❖ Carefully review and familiarize yourself with the restrictions that will be placed on your business in connection with a loan;
- ❖ Consider whether the Programs' restrictions may have negative consequences with respect to your operations, your existing credit facilities, and/or your other material agreements.