Cullen | Dykman

The Main Street Lending Program: A Brief Overview

April 15, 2020

On April 9, 2020, the Federal Reserve (the "Fed") took various actions to bolster the economy, notably providing up to $2.3 trillion in credit support to businesses, households, and state and local governments. Among other goals, the Fed's programs aim to ensure credit flows to small and medium-sized businesses with the purchase of up to $600 billion in loans through the Main Street Lending Program. Each program went into effect on April 9, 2020 and will terminate on September 30, 2020. This alert concerns the Main Street Lending Program.

Main Street New Loan Facility (the "MSNLF") and Main Street Expanded Loan Facility (the "MSELF")

These programs are intended to facilitate lending to small and medium-sized businesses by eligible lenders. The two programs overlap in many areas and the differences will be noted below. An eligible loan under the MSNLF is an unsecured term loan made by an eligible lender to an eligible borrower that was originated **on or after** April 8, 2020. The MSELF permits the Fed to purchase tranches of loans that were originated **before** April 8, 2020. An eligible loan under the MSELF is a term loan made by an eligible lender to an eligible borrower that was originated before April 8, 2020. The MSELF loans will be secured only to the extent that the tranches contained secured loans. Finally, the loans or tranches of the loans must meet the requirements discussed below.

The Fed will commit to lend to a special purpose vehicle ("SPV") on a recourse basis. Under the MSNLF, the SPV will purchase 95% participations in loans from eligible lenders. Under the MSELF, the SPV will purchase 95% participations in the tranches of loans from eligible lenders. The Department of Treasury will make a combined $75 billion capital investment in the single common SPV in connection with both facilities.

Eligible lenders are U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies. Eligible borrowers are businesses with up to 10,000 employees or up to $2.5 billion in 2019 annual revenues. Each eligible borrower must have been created or organized under the laws of the U.S. and have significant operations in the U.S., in addition to having a majority of its employees based in the U.S. Additionally, eligible borrowers cannot participate in more than one of the MSNLF, the MSELF, or the Primary Market Corporate Credit Facility (another program implemented by the Fed, briefly discussed below).

The loans or upsized tranches of the loans must meet the following requirements:

(1) 4-year maturity;

(2) amortization of principal and interest deferred for one year;

(3) adjustable rate of SOFR + 250 basis points to 400 basis points;

(4) minimum loan size of $1 million;

(5) under the MSNLF, a maximum loan size that is the lesser of $25 million or an amount that, when added to the eligible borrower's existing outstanding and committed but undrawn debt, does not exceed four times the borrower's 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA"). Under the MSELF, a maximum loan size that is the lesser of $150 million, 30% of the borrower's existing outstanding and committed but undrawn debt, or an amount that, when added to the eligible borrower's existing outstanding and committed but undrawn debt, does not exceed six times the EBITDA;

(6) prepayment permitted without penalty.

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

(1) the eligible lender must attest that the proceeds of the eligible loan or upsized tranche of the loan will not be used to repay or refinance pre-existing loans or lines of credit made by the eligible lender to the eligible borrower;

(2) the eligible lender must attest that it will not cancel or reduce any existing lines of credit outstanding to the eligible borrower;

(3) the eligible borrower must commit to refrain from using the proceeds of the eligible loan or upsized tranche of the loan to repay other loan balances;

(4) the eligible borrower must commit to refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless the eligible borrower has first repaid the eligible loan or upsized tranche of the loan in full;

(5) the eligible borrower must attest that it will not seek to cancel or reduce any of its outstanding lines of credit with the eligible lender or any other lender;

(6) the eligible 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 eligible loan or upsized tranche of the loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the eligible loan;

(7) the eligible borrower must attest that it meets the EBITDA leverage conditions stated above;

(8) the eligible borrower must attest that it will follow the restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act, such as not engaging in stock buybacks unless contractually obligated, not paying dividends or other capital distributions, not increasing the compensation of any

employee who made $425k in 2019 or offering those employees severance or other termination benefits that exceed twice their 2019 compensation, and not provide employees who received more than $3 million in compensation in 2019 compensation greater than $3 million, plus 50% of the amount over $3 million that the employee received in 2019; and

(9) eligible lenders and eligible borrowers will each be required to certify that the entity is eligible to participate in the facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.

The Fed and the Department of Treasury are expected to issue guidance with respect to these programs. As with the Paycheck Protection Program, it is expected that the Main Street Lending Program will become more refined as it becomes operational.

We will continue to update this as more information becomes available. In the meantime, if you have questions regarding any aspects of the Main Street Lending Program or the implications of the coronavirus (COVID-19) on your place of business, feel free to contact Thomas B. Wassel at (516) 357-3868 or via email at twassel@cullenllp.com, James G. Ryan at (516) 357-3750 or via email at jryan@cullenllp.com, or Hayley B. Dryer at (516) 357-3745 or via email at hdryer@cullenllp.com.

Practices

- Labor and Employment