GILL RAGON OWEN
ATTORNEYS
425 W. Capitol Ave, Suite 3800, Little Rock, AR 72201
www.gill-law.com ● (501) 376-3800

MAIN STREET LENDING PROGRAM

On Friday, October 30, the Federal Reserve again revised the terms of its "Main Street Lending Program," which is intended to facilitate lending to small and medium-sized businesses. The Federal Reserve reduced the minimum loan size under the program to $100,000 (down from $250,000). The move is intended to boost participation in the program, which has made just over 400 loans for a total of $3.7 billion. The Federal Reserve has also waived the transaction fee (100 basis points) for loans with an initial principal balance below $250,000. Additional resources and documents on the program can be found **here**.

The Main Street Lending Program consists of five types of loans which may be underwritten by lenders. The Program includes the Main Street New Loan Facility ("MSNLF"), the Main Street Priority Loan Facility ("MSPLF"), the Main Street Expanded Loan Facility ("MSELF"), the Nonprofit Organization New Loan Facility ("NONLF"), and the Nonprofit Organization Expanded Loan Facility ("NOELF"). The Federal Reserve has issued a revised term sheet for each facility, and **FAQs** addressing all three facilities. Businesses with up to 15,000 employees are eligible to participate in the program.

The Loan Facilities

1. New Loan Facility - MSNLF

Under the MSNLF, lenders extend new loans to Eligible Borrowers ranging in size from $100,000 to $35,000,000. The maximum loan size of MSNLF loans cannot, when added to the Eligible Borrower's existing and undrawn but available debt, exceed four times the Eligible Borrower's adjusted 2019 EBITDA. The loan must not be contractually subordinated in terms of priority to any of the Eligible Borrower's other loans or debt instruments. The loan must permit prepayment without penalty.

2. Priority Loan Facility - MSPLF

Under the MSPLF, lenders extend new loans to Eligible Borrowers ranging in size from $100,000 to $50,000,000. The maximum loan size of MSPLF loans cannot, when added to the Eligible Borrower's existing and undrawn but available debt, exceed six times the Eligible Borrower's adjusted 2019 EBITDA. At the time of origination and all times thereafter, the loan must be senior to or pari passu with, in terms of priority and security, the Eligible Borrower's other loans or debt instrument. Eligible Borrowers may refinance existing debt owed to other lenders at the time of origination.

3. Expanded Loan Facility - MSELF

Under the MSELF, lenders increase (or "upsize") the Eligible Borrower's existing term loan or revolving credit facility. The upsized tranche is a five-year term loan ranging from $10,000,000 to $300,000,000. The maximum size of the MSELF loan cannot exceed (i) 35% of the Eligible Borrower's existing outstanding and undrawn, but available, debt that is pari passu in priority with the Eligible Loan and equivalent in secured status (i.e., secured or unsecured); or (ii) when added to the Eligible Borrower's existing outstanding and undrawn available debt, six times the Eligible

Borrower's adjusted 2019 EBITDA. At the time of upsizing and at all times thereafter, the upsized tranche must be senior in priority to or pari passu with, in terms of priority and security, the Eligible Borrower's other loans or debt instruments, other than mortgage debt.

4. Nonprofit Organization New Loan Facility – NONLF

Under the NONLF, lenders extend new loans to Nonprofit Organizations ranging in size from $100,000 to $35,000,000. The maximum loan size of NONLF loans cannot exceed the Eligible Borrower's average 2019 quarterly revenue. The loan must not be contractually subordinated in terms of priority to any of the Eligible Borrower's other loans or debt instruments. The loan must permit prepayment without penalty.

5. Nonprofit Organization Expanded Loan Facility – NOELF

Under the NOELF, lenders increase (or "upsize") the Nonprofit Organization's existing term loan or revolving credit facility. The upsized tranche is a five-year term loan ranging from $10,000,000 to $300,000,000. The maximum size of the NOELF loan cannot exceed the Eligible Borrower's average 2019 quarterly revenue. At the time of upsizing and at all times thereafter, the upsized tranche must be senior in priority to or pari passu with, in terms of priority and security, the Eligible Borrower's other loans or debt instruments, other than mortgage debt.

General Information

Under the Main Street Lending Program, Eligible Lenders will provide loans to Eligible Borrowers, and the Federal Reserve Bank will commit to lend to a single common special purpose vehicle ("SPV") on a recourse basis. The SPV will purchase 95% participations in the loans. The lender will retain the remaining five percent.

Who is an Eligible Lender?

An Eligible Lender is a U.S. federally insured depository institution (including a bank, savings association, or credit union), a U.S. branch or agency of a foreign bank, a U.S. bank holding company, a U.S. savings and loan holding company, a U.S. intermediate holding company of a foreign banking organization, or a U.S. subsidiary of any of the foregoing.

Who is eligible to borrow under the program?

An Eligible Borrower is a business that:

- was established prior to March 13, 2020;
- is not an Ineligible Business;
- meets at least one of the following two conditions:
    - has 15,000 employees or fewer, or
    - had 2019 annual revenues of $5 billion or less;
- is created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States;
- does not also participate in the MSPLF, the MSELF, or the Primary Market Corporate Credit Facility; and

- has not received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act).

A Nonprofit Organization may be an Eligible Business if it is a tax-exempt nonprofit organization under 501(c)(3) or 501(c)(19) of the Internal Revenue Code, has an endowment of less than $3 billion, and meets certain other criteria. For more information, see the **NONLF Term Sheet**.

The business must be created or organized in the U.S. or under the laws of the U.S with significant operations and a majority of its employees based in the US.

Loan Terms:

For each of the three facilities, the Eligible Loan must have the following features:

- A five-year maturity;
- Amortization of principal deferred for two years interest payments deferred for one year;
- Adjustable rate of LIBOR (one or three month) **plus** 300 basis points;
- Maximum loan size varies depending on the facility, as discussed above.
- Prepayment permitted without penalty.

How may the funds be used?

The Eligible borrower must attest that the proceeds will not be used to repay or refinance pre-existing loans or lines of credit made by the Eligible Lender to the Eligible Borrower, and must commit to refrain from using the proceeds to repay other loan balances. However, borrowers under the Priority Loan Facility, or MSPLF, may, at the time of origination, refinance existing debt that is owed to a lender other than the origination Eligible Lender.

Are there any additional fees associated with this loan program?

An Eligible Borrower will pay the Lender an origination fee of 100 basis points of the principal amount of the eligible loan. The SPV will pay an Eligible Lender 25 basis points of the principal amount of its participation in the Eligible Loan per annum for loan servicing. The Eligible Lender will pay the SPV a transaction fee of 100 basis points of the principal amount of the loan at the time of origination. The Lender may require the Eligible Borrower to pay this fee. No transaction fee is imposed for loans with an initial principal balance below $250,000.

Retention of Employees

Each Eligible Borrower that participates in the program must make commercially reasonable efforts to maintain its payroll and retain its employees during the time the Eligible Loan is outstanding.

Other Key Borrower Covenants

In addition to certifications required by applicable statutes and regulations, the following covenants and certifications are required:

- The Eligible Borrower must certify that it is unable to secure adequate credit accommodations from other banking institutions. This does not mean that no other credit is available. Rather, the Borrower is certifying that it cannot secure “adequate credit accommodations" because the amount, price, or terms of credit available from other sources are inadequate for the Borrower's needs during these unusual circumstances.

- The Eligible Borrower must commit that it will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender.
- The Eligible Borrower must certify that it has a reasonable basis to believe that, as of the date of upsizing of the Eligible Loan and after giving effect to such upsizing, 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.
- The Eligible Borrower must commit that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act, except that an S corporation or other tax pass-through entity that is an Eligible Borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings.
    - Annual compensation of officers or employees is limited to 2019 compensation levels for employees earning between \$425,000 and \$3,000,000, until twelve months after the date on which the loan is no longer outstanding.
    - Annual compensation of officers or employees earning more than \$3,000,000 is limited to \$3,000,000 plus 50% of the excess over \$3,000,000 of total compensation the employee or officer received in 2019.
    - Borrowers may not pay dividends or make capital distributions, except to cover owner's tax obligations in the case of an S-corporation or pass-through tax entity.
- The Eligible Borrower must certify that it is eligible to participate in the Facility, including the conflicts of interest prohibition in section 4019(b) of the CARES Act.

Additional Information

Interested borrowers can review the full term sheets. The MSNLF term sheet is available here. The MSPLF term sheet is available here. The MSELF term sheet is available here. The NONLF term sheet is available here. The NOELF term sheet is available here.

The Federal Reserve Bank of Boston has published instructions for using the lender required documentation with links to the documents, which can be found **here**.

For more information on this loan program, please review our COVID-19 Resources page here: https://www.gill-law.com/covid-19-resources/#