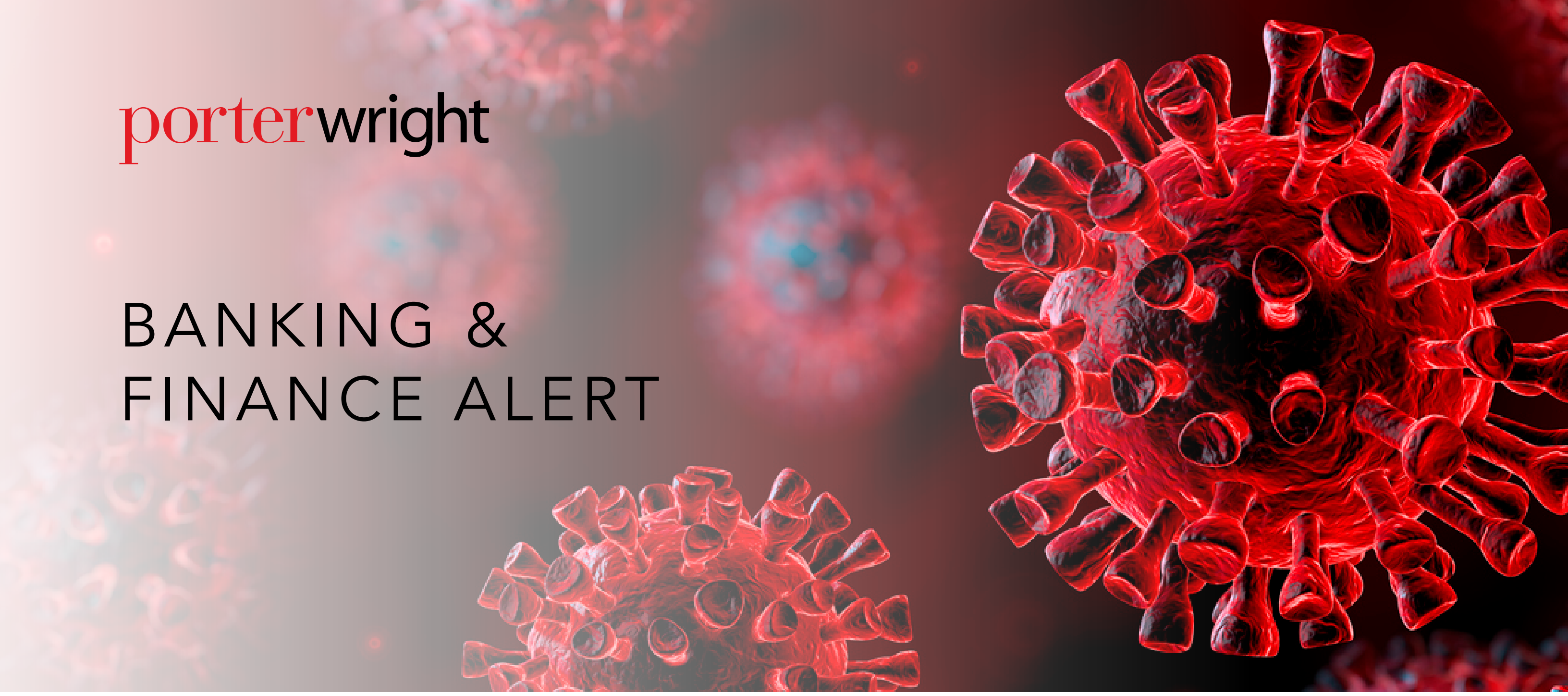

APRIL 14, 2020

JACK BEELER
614.227.1959
jbeeler@porterwright.com

JACK MEADOWS
614.227.2101
jmeadows@porterwright.com

CASSANDRA RICE
937.449.6713
crice@porterwright.com

Main Street Lending Program summary

On April 9, 2020, U.S. Treasury Secretary Steve Mnuchin announced the details for a "Main Street Lending Program" intended to provide financing opportunities to small- and medium–sized businesses. Secretary Mnuchin said, "The Main Street Business Lending Program will make a significant difference for the 40,000 medium-sized businesses that employ 35 million Americans." The program supplements the relief efforts already available to certain businesses, such as the Paycheck Protection Program, Employee Retention Tax Credits, and Economic Impact Payments for individuals, without increasing taxes on individuals.

The Main Street Business Lending Program creates a new loan facility and also expands a previously existing one. To implement this program, the treasury will lend $75B to a special purpose vehicle (SPV) to be sponsored by the government that will enable lenders to make up to $600 billion of new loans for small- to medium-sized businesses. Unlike the Paycheck Protection Program (PPP), the SPV will only purchase 95% participations in eligible loans from eligible lenders, thus leaving eligible lenders on the hook for 5% of each eligible loan.

Eligibility

Eligibility rules are the same for both facilities. "Eligible lenders" are defined as "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. Additionally, an eligible borrower must be a business that is 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 U.S. As further explained in the next section, borrowers that are otherwise eligible may be ineligible if there is a conflict of interest (e.g., if they are owned by a member of Congress).

In addition to these eligibility requirements, borrowers and lenders must both make certain attestations in order to participate in the Main Street Lending Programs. These required attestations are explained in more detail below.

Eligible borrowers that participate in either the Main Street New Loan Facility or the Main Street Expanded Loan Facility cannot also participate in the other Main Street facility. Likewise, such borrowers cannot also participate in the Primary Market Corporate Credit Facility, which the Federal Reserve established on March 23, 2020 to support credit to employers through new bond and loan issuance. However, a borrower may apply for either Main Street loan if it has previously applied for a PPP loan or an Economic Injury Disaster Loan.

Main Street New Loan Facility (MSNLF)

Eligible loan

Under the MSNLF, an Eligible Loan is an unsecured term loan made by an eligible lender(s) to an eligible borrower that was originated on or after April 8, 2020, provided that the loan has the following features:

1. 4 year maturity;
2. Principal and interest payments will be deferred for one year;
3. Adjustable rate of interest equal to the Secured Overnight Financing Rate (SOFR, which was about 0.01% when the program was announced) + 250 to 400 basis points;
    a. SOFR is intended to replace LIBOR, which has long been used to determine interest rates for loans. It is based on transactions in the Treasury repurchase market, where investors offer banks overnight loans backed by their bond assets.
4. Minimum loan size of $1,000,000;
5. 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); and
6. Prepayment permitted without penalty.

Loan participations

The SPV will purchase a 95 percent participation in an eligible loan at par value, and the lender will retain five percent of the eligible loan. The SPV and the lender will share risk equally.

Facility fee

The lender will pay the SPV a facility fee of 100 basis points of the principal amount of the loan participation purchased by the SPV. The lender may require the borrower to pay this fee.

Loan origination and servicing

Borrowers will pay the lender an origination fee of 100 basis points of the principal amount of the MSNLF Eligible Loan. The SPV will pay the lender 25 basis points of the principal amount of its participation in the eligible loan per annum for loan servicing.

Main Street Expanded Loan Facility (MSELF)

Eligible loan

Under the MSELF, an eligible loan is a term loan made by an eligible lender(s) to an eligible borrower that was originated before April 8, 2020, provided that the upsized tranche of the loan has the following features:

1. 4 year maturity;
2. Principal and interest payments will be deferred for one year;
3. Adjustable rate of SOFR + 250 to 400 basis points;
4. Minimum loan size of $1,000,000;
5. Maximum loan size 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 earnings before interest, taxes, depreciation, and amortization (EBITDA); and
6. Prepayment permitted without penalty.

Loan participations and security

The SPV will purchase a 95% participation in the upsized tranche of the MSELF Eligible Loan, provided that it is upsized on or after April 8, 2020, at par value, while the lender will retain 5% of the upsized tranche. The SPV and the lender will share risk in the upsized tranche equally. Any collateral securing an eligible loan, no matter when such collateral was pledged, will secure the loan participation on a pro rata basis.

Loan upsizing and servicing

The borrower will pay the lender a fee of 100 basis points of the principal amount of the upsized tranche of the eligible loan at the time of upsizing. The SPV will pay the lender 25 basis points of the principal amount of its participation in the upsized tranche of the eligible loan per annum for loan servicing.

Required attestations

The required attestations are essentially the same under both facilities. In addition to certifications required by applicable statutes and regulations, lenders will have to make the following attestations with respect to each Eligible Loan:

- The loan will not be used to repay or refinance pre-existing loans made by such lender to the borrower.
  - For Main Street Expanded Loan Facilities, the lender must attest that the proceeds will not be used to repay or refinance the pre-existing portion of the eligible loan.
- The lender will not cancel or reduce any existing lines of credit outstanding to the borrower.
- The lender is eligible to participate in the facility, including compliance with the conflict of interest prohibition in Section 4019(b) of the CARES Act.

Borrowers also have to make a number of certifications at loan closing. In addition to certifications required by applicable statutes and regulations, a borrower will have to attest to the following with respect to an eligible loan:

- The borrower won't use the proceeds to repay other loan balances or repay other debt of equal or lower priority, except for mandatory principal payments, unless the borrower has first fully repaid the eligible loan.
- The borrower will not cancel or reduce any outstanding lines of credit, including indebtedness with the lender providing the Eligible Loan or any other lender.
- The borrower meets the EBITDA leverage condition required for eligible loans:
  - For Main Street New Loan Facilities, this means the maximum loan amount, when added to the borrower's existing outstanding and committed but undrawn debt, will not exceed ***four*** times the eligible borrower's 2019 EBITDA
  - For Main Street Expanded Loan Facilities, this means the maximum loan amount, when added to the borrower's existing outstanding and committed but undrawn debt, will not exceed ***six*** times the eligible borrower's 2019 EBITDA
- The borrower needs the loan due to the exigent circumstances presented by the COVID-19 pandemic, and it will use the proceeds to make reasonable efforts to maintain its payroll and its employees during the term of the eligible loan.
- The borrower 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, which provides that the borrower must agree that:

- While the loan is outstanding and for one year thereafter, it will not repurchase any of its equity securities that are listed on a national securities exchange (or those of any parent company of the borrower) while the direct loan is outstanding, except to the extent required under a contractual obligation that is in effect as of the date of enactment of the CARES Act (March 27, 2020);
- While the loan is outstanding and for one year thereafter, the Borrower will not pay dividends or make other capital distributions with respect to its common stock; and
- The borrower will comply with the limitations on compensation set forth in section 4004 of the CARES Act. That means:
  - No officer or employee of the borrower whose total compensation exceeded $425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 1, 2020)—
    a. will receive from the borrower total compensation which exceeds his or her 2019 total compensation; or
    b. will receive from the borrower severance pay or other benefits upon termination of employment which exceed twice the maximum total 2019 compensation received by the officer or employee; AND
  - No officer or employee of the borrower whose total compensation exceeded $3,000,000 in calendar year 2019 may receive during any 12 consecutive months of the loan period total compensation in excess of the sum of:
    a. $3,000,000; plus
    b. 50 percent of the excess over $3,000,000 of the total compensation received by the officer or employee from the borrower in calendar year 2019.
  - Under the CARES Act, "total compensation" includes salary, bonuses, awards of stock and other financial benefits.

- The borrower is eligible to participate in the facility, including the conflict of interest prohibition in Section 4019(b) of the CARES Act.
  - Treasury has announced that companies in which the President of the United States, the Vice President, the head of an Executive department, or a Member of Congress (or members of their families) hold at least 20% interest are not eligible for a Main Street loan.

Termination

For both Main Street facilities, the SPV will stop purchasing participations in Eligible Loans on Sept. 30, 2020, unless the programs are extended by the Board and the Treasury Department. After that date, the Federal Reserve

Bank will continue to fund the SPV until the SPV's underlying assets mature or are sold.

Further guidance

For both the MSNLF and MSELF, the Board of Governors of the Federal Reserve System and the Secretary of the Treasury may make amendments to the terms and conditions described above. We will continue to monitor any changes and update this summary accordingly.

For more information contact Jack Beeler, Cassandra Rice, Jack Meadows or any member of Porter Wright's Banking & Finance practice group.