The Federal Reserve has announced a $2.3 trillion package of loan facilities earmarked for employers of all sizes, households, and State and local governments. The Fed’s announcement indicates that it will be pooling funds together with the U.S. Department of the Treasury (the “Treasury”) to be spread across a wide swath of facilities established to increase the flow of credit available at all levels of the market. This client alert focuses on the Fed’s Main Street Lending Program (the “Program”), which will purchase up to $600 billion of loans originated by eligible banks made to small- and medium-sized businesses. The Program is supported by $75 billion in equity provided by the Treasury out of a pool of $500 billion reserved under the Coronavirus Aid, Relief, and Economic Security Act ("Act") for U.S. companies which have not “received adequate economic relief” under other provisions of the Act. Miller & Martin has already published on our website a separate client alert focused on the overall $500 billion fund.

Under the Program, each Federal Reserve Bank will establish a special purpose vehicle which will purchase from U.S. banks a 95% participation in loans originated with borrowers that meet certain eligibility requirements, such that the banks would only retain 5% of such loans. The Program is split into sister facilities, the Main Street New Loan Facility, under which lenders originate new loans, and the Main Street Expanded Loan Facility, under which lenders may loan additional funds under already existing credit facilities. The primary differences between the terms of the two facilities appear to be: (i) loans made under the Main Street New Loan Facility must be unsecured, whereas a lender making a loan under the Main Street Expanded Loan Facility can hold collateral as security for the obligations under those loans, whether such security was created under the original loan or the Program loan; (ii) facility fees must be paid by lenders under newly originated loans to the Federal Reserve Bank’s special purpose vehicles (as discussed below); and (iii) the maximum principal amount available for each loan (as discussed below). These special purpose vehicles will cease purchasing participations on September 30, 2020.

Based on certain references in the Federal Reserve’s press release and on the terms of the Program, it appears that the authority to create the Program falls under the portion of the Act granting the Federal Reserve the power to establish a “Main Street Lending Program,” which is separate and apart from other authority granted in the Act to the Secretary of the Treasury to implement facilities for making direct loans to “mid-sized businesses.” This indicates that other lending facilities directed at this segment of the market could be created, especially since the Act devotes a considerable portion of its verbiage to establishing the terms of loans made under such facilities.

The Federal Reserve issued Term Sheets for both of the Program facilities, the significant details of which are as follows:

- **Eligible Borrowers**: Companies with 10,000 or fewer employees or up to $2.5 billion in 2019 revenues are eligible borrowers. Each borrower must also be a U.S. entity with “significant” operations and a majority of its employees based in the U.S.

- **PPP Borrowers Eligible**: Importantly, according to the Federal Reserve’s press release (but nowhere directly mentioned in the Term Sheets), companies that received Small Business Administration loans under the Paycheck Protection Program (“PPP”) created under the Act are also eligible for loans under the Program.

- **Size of Loans**: Loans eligible for purchase under the Program must be for a principal amount of not less than $1 million. For newly originated loans, the principal amount must not exceed the lesser of $25 million and an amount that, when added together with the borrower’s outstanding and committed but undrawn bank debt, does not exceed four times the borrower’s 2019 EBITDA. For expanded loans, the principal amount must not exceed the lesser of (i) $150 million, (ii) 30% of the borrower’s outstanding and committed but undrawn debt, or (iii) an amount that, when added together with the borrower’s outstanding and committed but undrawn debt, does not exceed six times the borrower’s 2019 EBITDA.

- **Eligible Loan Terms**: Loans must be made to eligible borrowers on the following terms:
  - four year maturity;
  - deferral of amortization of principal and interest for one year;
- an adjustable interest rate based on the Federal Reserve’s Secured Overnight Financing Rate plus 250-400 basis points;
- no prepayment penalty; and
- lenders must attest that (i) the proceeds of Program loans will not be used by the borrower to repay or refinance other indebtedness (including the original portion of any expanded loan) owed to the lender, and (ii) the lender will not cancel or reduce lines of credit already in place with the borrower.

**Borrower Certifications:** The Term Sheets indicate that borrowers must make “certifications required by applicable statutes and regulations,” which, in addition to the Act itself, may also be a reference to the Federal Reserve’s regulations under Section 13(3) of the Federal Reserve Act. In addition, borrowers must attest to the following, among others, in obtaining loans:

- the borrower will not use the proceeds of the loan to repay other debt and, in addition, will not repay debt of equal or lower priority (other than mandatory principal payments) until its Program loan has been repaid in full;
- the borrower will not cancel or reduce lines of credit already in place with the Program lender or any other lender;
- the Program funds are needed as a result of exigent circumstances arising from the coronavirus pandemic and that it will make reasonable efforts to use such funds to maintain payroll and employment levels throughout the term of the Program loan;
- the borrower will not pay (during the term of the loan and for one year after the loan is no longer outstanding) the following to any officer or employee whose total compensation exceeded $425,000 in 2019: (i) compensation in any 12-month period in excess of such 2019 amount, or (ii) severance or other benefits upon termination in excess of twice such 2019 amount, with an ultimate cap on total compensation payable in any 12-month period to such individuals equal to $3 million plus half of the excess total compensation over $3 million; and
- the borrower will not, for the duration of the loan and for one year after the loan is no longer outstanding (i) repurchase securities of the borrower or its parent on a national securities exchange, or (ii) pay dividends or other distributions to common stockholders.

**Fees:** For newly originated loans, lenders must pay a facility fee to the Federal Reserve Bank’s special purpose entity equal to 100 basis points on the principal amount of the loan participation purchased by the vehicle, which lenders can pass along to borrowers. In addition, for all Program loans, the borrower shall pay to the lender an origination fee equal to 100 basis points on the principal amount of the Program loan. Finally, the special purpose vehicle shall pay an annual servicing fee to lenders equal to 25 basis points on the principal amount of each loan participation purchased.

**Application Process:** Unlike the application process under the PPP, which was the source of some confusion, the Federal Reserve has not published an application for loans under the Program, which indicates that lenders may be given flexibility in extending these loans to eligible borrowers. Interested borrowers should reach out to their relationship banks to determine whether those banks will be participating in the Program.

**No Loan Forgiveness:** Unlike PPP loans, but similar to all loans made under facilities created by the Federal Reserve using funds from the $500 billion pool established by the Act, the principal amount of Program loans would not be subject to loan forgiveness (although this is not indicated in the Term Sheets).

**Taxation:** Similar again to all loans made under facilities created by the Federal Reserve using funds from the $500 billion pool established by the Act, loans under the Program shall constitute indebtedness for federal tax purposes (although this also is not indicated in the Term Sheets).

We will provide additional updates on the terms of these Program loans and further guidance on obtaining them as more information becomes available. Below is a link to the Federal Reserve’s Term Sheets for each of the Program facilities:

Main Street New Loan Facility

Main Street Expanded Loan Facility
For more information about the ongoing developments related to the COVID-19 pandemic, please visit Miller & Martin's Coronavirus Resources.