

Federal Reserve Board Amends the Terms of the Main Street Lending Program to Support Small Businesses

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Last week the Board of Governors of the Federal Reserve System (the **Federal Reserve**) **announced** changes to the terms of the Main Street Lending Program (the **Program**) aimed at boosting small business participation in the Program. As explained in further detail below, the Federal Reserve reduced the minimum loan size from \$250,000 to \$100,000 for three of the five Program loan facilities.^[fn]In total, the Program includes five loan facilities. Three of these loan facilities are for for-profit businesses: the Main Street New Loan Facility, the Main Street Expanded Loan Facility and the Main Street Priority Loan Facility. In addition, there are two loan facilities for nonprofits: the Nonprofit Organization New Loan Facility and the Nonprofit Organization Expanded Loan Facility. Participation in the Program will be available until December 31, 2020, unless the Program is extended by the Federal Reserve and the Treasury.^[fn] adjusted the fee structure for loans with an initial principal amount of less than \$250,000 to incentivize lenders to provide these smaller loans, and clarified that the portion of a Paycheck Protection Program (**PPP**) loan with an original principal amount of up to \$2 million that is expected to be forgiven may be excluded from the calculation for determining maximum loan size.

Minimum loan size reduction. Under the revised term sheets, the minimum loan size for the Main Street New Loan Facility, Main Street Priority Loan Facility, and Nonprofit Organization New Loan Facility was reduced from \$250,000 to \$100,000. The minimum loan size for the Main Street Expanded Loan Facility and Nonprofit Organization Expanded Loan Facility remains unchanged at \$10 million.

Change in fee structure to incentivize smaller loans. To incentivize lenders to provide smaller loans, the Federal Reserve revised the transaction fees, loan origination fees and loan servicing fees for loans with an initial principal amount of less than \$250,000. The fee structure for larger loans was not amended.

- **No Transaction Fee for Small Loans:** The transaction fee is paid by the lender to the special purpose vehicle (**SPV**) established by the Federal Reserve Bank of Boston to purchase participation interests in Main Street loans, and the lender is permitted to pass along this cost to the borrower. There is **no transaction fee** for loans with an initial principal amount of less than \$250,000. Larger loans continue to have a transaction fee of 100 basis points of the initial principal amount of loan.
- **Higher Loan Origination Fee for Small Loans:** The loan origination fee is paid by the borrower to the lender. For loans with an initial principal amount of less than \$250,000, the lender may charge an origination fee of **up to 200 basis points** of the initial principal amount of the loan. This is 100 basis points greater than the up to 100 basis points origination fee that a lender may charge for larger loans. Together with the absence of a transaction fee for such loans, the Federal Reserve has effectively maintained the level of fees that a borrower will pay for a Main Street loan with an initial principal amount of less than \$250,000, but has allowed the lender to keep all of these fees instead of paying 100 basis points to the SPV.
- **Higher Loan Servicing Fee for Small Loans:** The loan servicing fee is paid by the SPV to the lender. For loans with an initial principal amount of less than \$250,000, the SPV will pay the lender **50 basis points** of the principal amount of its participation in the loan per annum for loan servicing. This is 25 basis points greater than the 25 basis points servicing fee that the SPV pays for larger loans.

Expected forgiveness amount of certain PPP loans may be excluded from maximum loan amount determination. The Federal Reserve also released a new Frequently Asked Question (**FAQ**) clarifying that for PPP loans with an initial

principal amount of less than \$2 million^[fn]The initial principal amounts of PPP loans received by a borrower's affiliates (as defined for purposes of the PPP) are aggregated together with those received by the borrower itself in calculating this \$2 million threshold.^[fn] the amount of the PPP loan that is expected to be forgiven (**Forgiveness Amount**) may be excluded from a lender's calculation of a borrower's "existing outstanding and undrawn available debt" for purposes of determining the borrower's maximum loan amount. This change effectively increases the size of the Main Street loan for which applicable borrowers are eligible without requiring the borrower to wait for the SBA to make a final determination on forgiveness.^[fn]Lenders and borrowers may exclude 100% of the amount of any PPP loan that the SBA has determined is eligible for forgiveness.^[fn] For a borrower that has applied for forgiveness of its PPP loan, the Forgiveness Amount is the amount reported as such by the borrower on the relevant SBA form. For a borrower that has not yet applied for forgiveness of its PPP loan, the Forgiveness Amount is the amount of its PPP loan that its principal executive officer has a reasonable, good-faith basis to believe will be forgiven in accordance with applicable PPP requirements, after review of the relevant SBA form and instructions. In either case, if the PPP lender or the SBA determines that all or part of a borrower's PPP loan is not forgivable prior to the submission of a Main Street loan to the Main Street Portal, such portion of the PPP loan must be included in the "existing outstanding and undrawn available debt" calculation.

These changes represent the third time that the Federal Reserve has reduced the minimum loan size since the Program was announced in April 2020 with a minimum loan size of \$1 million, and they follow Congressional pressure to take such action. It remains to be seen whether these changes will be enough to increase uptake of the Program, which as of October 30, 2020 had only made about 400 loans totaling \$3.7 billion. Chairman Powell himself in the past has expressed skepticism that lowering the minimum loan size to \$100,000 would have a significant impact, given that previous reductions had not attracted significant interest from borrowers seeking loans of less than \$1 million. Regardless, these changes are surely welcome news for some businesses and nonprofits that will be able to receive loans or receive larger loans as a result.

For more information on the broader Main Street Lending Program, you can read Davis Polk's [visual memo](#) on the Main Street Lending Program, our memo on its [legal architecture](#), and our memo on the [Main Street Lending Program for Nonprofits](#). Davis Polk is also collecting and posting the Program's materials and resources on our Government Support for Business [website](#).

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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