bodman

An Update From Bodman PLC

Bodman PLC | COVID-19 Response Team Website April 2020

Summary of Main Street Business Lending Program

The attorneys at Bodman PLC summarized the Main Street Business Lending Program (Main Street Program) recently announced by the Treasury Department and Federal Reserve as part of the CARES Act. This summary focuses on the Main Street Program, which is part of a broader package of lending programs announced by the Treasury Department (Treasury) and Federal Reserve (Fed).

Additional guidance from Treasury will be provided in the days that follow and Treasury has invited interested parties to provide comments before the Main Street Program is officially launched next week. The information in this summary is based on preliminary guidance and this information is subject to change as Treasury and the Fed develop and release additional guidance.

What is the Main Street Program?

The Main Street Program is a lending program that will provide up to $600 billion in financing to mid to large-sized businesses. The Main Street Program is comprised of two loan facilities: the Main Street New Loan Facility and the Main Street Expanded Loan Facility. Under each facility, a single purpose vehicle (SPV) will purchase 95% participations in eligible loans originated by eligible lenders through September 30, 2020 (which date may be extended). The originating lenders will retain the other 5% of each eligible loan. The SPV will be financed by both loans from the Fed as well as a $75 billion equity investment from Treasury (using funds appropriated under the CARES Act).

Who Are Eligible Borrowers and Lenders?

Eligible borrowers are businesses with up to 10,000 employees or up to $2.5 billion in 2019 annual revenues that have incurred or will incur “covered losses” as a result of COVID-19, including reduced demand, unbudgeted medical expenses and unavailability of credit, and that, based on market conditions, cannot reasonably obtain credit elsewhere. These businesses must be created or organized in the United States or under the laws of the United States with significant operations in and a majority of employees based in the United States. The borrower cannot be a debtor in a bankruptcy proceeding and certain restrictions apply regarding participation in other lending programs.

Eligible lenders are U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies.

What Loans Are Eligible?

Main Street New Loan Facilities are unsecured term loans that originated on or after April 8, 2020. Main Street Expanded Loan Facilities are unsecured loans that originated before April 8, 2020, and has been subsequently upsized. Main Street Program loans must have, among other things, a 4-year maturity, deferred amortization of principal and interest for one year, prepayment permitted without penalty, and a minimum loan size of $1 million. Lenders are authorized to charge borrowers certain fees at set amounts.

The maximum loan size for a Main Street New Loan Facility is the lesser of (i) $25 million or (ii) an amount that, when added to the borrower's existing outstanding and committed by undrawn debt, does not exceed four times the borrower's 2019 EBITDA. The maximum loan size for a Main Street Expanded Loan Facility is the lesser of (i) $150 million, (ii) 30% of the borrower's existing outstanding and committed but undrawn bank debt, or (iii) an amount that, when added to the borrower's existing debt, does not exceed six times the borrower's 2019 EBITDA.

What Is the Loan Process?

Guidance has not yet been issued regarding the Main Street Program loan process. It can be reasonably anticipated that the program will be administered similar to other new federal loan programs, such as the Paycheck Protection Program. Treasury will likely provide a standard loan application and a loan agreement with specified terms. Applicants can expect eligible lenders to require documentation sufficient to ensure compliance with program requirements. The primary focus of the Main Street Program is to deliver direct loans from the financial institution to the borrower.

What are the Restrictions?

Loan proceeds from the Main Street Program will not be permitted to be used to repay other loan balances and borrowers may not repay other debts of equal or lower priority (with certain exceptions) until the Main Street loan is repaid in full. Additionally, Borrowers may not seek to cancel or reduce any outstanding line of credit with any lenders until the Main Street loan is fully repaid. Loans issued pursuant to the Main Street Program are not permitted to be part of a private sector syndicated loan, a loan originated by a financial institution in the ordinary course of business, or a securities or capital markets transaction.

Pursuant to the CARES Act, funds received must be used to retain at least 90% of the borrower's workforce at full compensation until September 30, 2020. However, preliminary guidance for the Main Street Program states that the borrower will use the loan proceeds to make reasonable efforts to maintain payroll and retain employees during the loan term. Borrowers also may not outsource or offshore jobs until two years after the loan is repaid and may not pay dividends or buy back shares during the course of the loan or for 12 months after the loan has been paid off. Companies that receive Main Street Program loans are prohibited from increasing the compensation of any employee whose compensation exceeds $425,000 or from offering them significant severance or termination benefits. Additional restrictions apply and guidance on these specifics requirements is anticipated in days to come.

Please contact your Bodman attorney or Darren Burmania at 616-205-3313 or dburmania@bodmanlaw.com or Adam Weiner at 313-392-1076 or aweiner@bodmanlaw.com for more information. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.