GIBSON DUNN

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FEDERAL RESERVE MODIFIES MAIN STREET LENDING PROGRAMS TO EXPAND ELIGIBILITY AND ATTRACTIVENESS

To Our Clients and Friends:

Yesterday, the Board of Governors of the Federal Reserve System ("Federal Reserve") announced revisions to the three lending facilities the Federal Reserve is creating under the *Coronavirus Aid, Relief, and Economic Security Act* ("*CARES Act*"): the Main Street New Loan Facility ("MSNLF"); the Main Street Expanded Loan Facility ("MSELF"); and the Main Street Priority Loan Facility ("MSPLF,") (collectively, the MSPLF, MSNLF, and MSELF are referred to as the "Main Street Programs"). The Federal Reserve also released revised guidance on the Main Street Programs. The Federal Reserve Bank of Boston, which is administering the Main Street Programs, has indicated that it will soon release updated application materials that reflect these changes to the Main Street Programs.

The goal of these revisions, the Federal Reserve explained, is to "allow more small and medium-sized business to be able to receive support." The Federal Reserve expects the Main Street Programs to be open for lender registration soon, shortly after which the Federal Reserve will begin purchasing participations in loans and upsized tranches of existing loans through the Treasury's Special Purpose Vehicle ("SPV").

Key Changes to Program Terms

Changes to the Main Street Programs include:

- **Reducing MSNLF and MSPLF Minimum Loan Size**: For the MSNLF and MSPLF, the minimum loan size decreased to $250,000 (previously $500,000).
- **Increasing Maximum Loan Size for All Facilities**: The new maximum loan sizes are:
  - **MSNLF**: The lesser of $35M, or an amount that, when added to outstanding and undrawn available debt, does not exceed 4.0x adjusted 2019 EBITDA (previously the lesser of $25M).
  - **MSPLF**: The lesser of $50M, or an amount that, when added to outstanding or undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA (previously the lesser of $25M).
  - **MSELF**: The lesser of $300M, or an amount that, when added to outstanding or undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA (previously the lesser of $200M).

- **Loan Term Extended**: The loan term for all three Programs is now 5 years (previously 4).
- **Payment Schedule Adjusted**: For all three Programs, principal payment can now be deferred for 2 years and interest can be deferred for 1 year (previously interest and principal both deferred 1 year). For years 3-5, principal is due based on the following schedule: 15%, 15%, 70%. There is no penalty for prepayment.
- **Reduce Lender Risk Retention in MSPLF**: The SPV will now purchase 95% participations in loans under the MSPLF (previously 85%). Lenders will retain the remaining 5% of the loan.

Key New Guidance

The FAQs include the following new guidance:

- **Economic Injury Disaster Loans Not Disqualifying "Specific Support"**: A business cannot participate in a Main Street Program if the business has received "specific support" under Subtitle A of Title IV of the *CARES Act*. Previous guidance has clarified that receiving funds under Section 4003(b)(1)–(3) of the *CARES Act*—which provides funds to specific industries such as air carriers and businesses critical to national security—or participating in the Primary Market Corporate Credit Facility both constitute "specific support" that bars participation in a Main Street Program. Prior guidance also clarified that recipients of PPP loans could participate in a Main Street Program. The revised FAQs further provide that Economic Injury Disaster Loans do not qualify as "specific support" under the *CARES Act* and, thus, do not bar participation in a Main Street Program.
- **Planned Expansion to Non-Profits**: The Federal Reserve announced that, though nonprofit organizations currently remain ineligible to participate in the Main Street Programs, the Federal Reserve is "working to establish soon one or more loan options that are suitable for" nonprofits.
- **When Loan Is Sought By One Member of Affiliated Group, the Full Affiliated Group's Debt and EBITDA Not Considered**: If a borrower is the only business in an affiliated group that has received or sought funding through a Main Street Program, the debt and EBITDA of the borrower, and not the entire affiliated group, is used to determine whether that business can qualify for the Main Street Programs. This is the case unless the borrower's subsidiaries are consolidated into the borrower's financial statements or if an affiliate of the borrower has previously borrowed (or applied to borrow) from a Main Street Program. In the latter case, the entire affiliated group's debt and EBITDA will determine maximum loan size.
- **Unforgiven Portion of PPP Loans Counts As "Outstanding Debt"**: When determining maximum loan size, the portion of an outstanding PPP loan that has not yet been forgiven counts as outstanding debt.
- **Financial Records Submitted to Lender**: A borrower is required to submit to the lender financial records on the calculation of borrower's adjusted 2019 EBITDA and the financial condition of the borrower. These financial statements will provide the inputs for calculating the

borrower's 2019 adjusted EBITDA. To this end, borrowers should submit the following financial statements:

- GAAP Compliant Companies: Borrowers that are subject to U.S. GAAP reporting requirement or that already prepare financials in accordance with U.S. GAAP must submit U.S. GAAP-compliant financial records.

- Audited Financial Statements: Borrowers that typically prepare audited financial statements must submit audited financial statements. Otherwise, borrowers should submit reviewed financial statements or financial statements prepared for the purpose of filing taxes.

    - If a borrower does not yet have audited or reviewed financial statements, the borrower should use its most recent audited or reviewed financial statement.

- Consolidation: If a borrower typically prepares financial statements that consolidate the borrower with is subsidiaries (but not its parent companies or sister affiliates) it must submit consolidated financial statements. But if a borrower does not typically prepare consolidated financial statements, it need not do so unless required by the lender.

- **Previously Issued Loans That Conform With Prior Guidance Still Eligible**: For the first 14 days the Main Street Programs operate, the SPV will purchase loans issued in reliance on the Term Sheets from April 30, 2020, so long as (1) the documentation is complete and consistent with the requirements in the April 30 Term Sheets and (2) the loan was funded prior to June 10, 2020.

- **Lenders Encouraged to Fund Loans Prior to Official Launch of Main Street Programs**: Lenders are encouraged to fund loans eligible for the Main Street Programs before the Main Street Programs officially launch. The SPV will purchase any loan for which (1) the requirement documentation is complete and properly executed and (2) the required documentation evidences that the loan is consistent with the relevant Main Street Program requirements.

Gibson Dunn's lawyers are available to assist with any questions you may have regarding these developments. Please feel free to contact the Gibson Dunn lawyers with whom you usually work, any member of the firm's Public Policy or Financial Institutions practice groups, or the following authors:

Michael D. Bopp – Washington, D.C. (+1 202-955-8256, mbopp@gibsondunn.com)
Arthur S. Long – New York (+1 212-351-2426, along@gibsondunn.com)
Roscoe Jones, Jr. – Washington, D.C. (+1 202-887-3530, rjones@gibsondunn.com)*
Luke Sullivan – Washington, D.C. (+1 202-955-8296, LSullivan@gibsondunn.com)

** Not admitted to practice in Washington, D.C.; currently practicing under the supervision of Gibson, Dunn & Crutcher LLP.*

GIBSON DUNN