PUBLICATION

Main Street Lending: Practical Insights

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For six months, the Federal Reserve has been developing and refining the products, purpose and eligibility for the Main Street Lending Program. The portal finally opened for loans at the end of July, and in September, the Federal Reserve started accepting Main Street loans with multiple borrowers. There are many legal and cost issues that banks and borrowers need to consider when evaluating the utilization of a Main Street loan, but if the bank and its customer decide it is an appropriate facility for the borrower's current situation, there are a few practical matters to consider:

1. **The guidelines don't cover it all.** The volume of helpful terms and documents provided by the Federal Reserve offer great guidance, but they are not all inclusive. In every Main Street loan we have closed, there are transactional issues not addressed specifically by the guidelines. Those issues include the treatment of leases, loans to principals and other maturing loans to the bank originating the Main Street loan. Situations such as these call for careful consideration and collaboration with experienced banking counsel and should be thoroughly analyzed.

2. **Costs**. Main Street loan proceeds can be used to pay closing costs. However, the guidance allows for de minimis fees for services that are customary and necessary in the bank's underwriting of commercial and industrial loans to similar borrowers, such as appraisal and legal fees. Generally, the determination of de minimis costs are evaluated in light of the circumstances – the amount of the loan, the work involved, the benefit obtained, etc. A prudent step is to upload your closing statement to the Boston Federal Reserve with the Main Street loan documents that include all costs listed. They won't "approve" those costs, but if they approve the participation after being provided with a list of what costs will be paid with Main Street loan proceeds, it would be difficult for them to take the position that those costs are unreasonable.

3. **The instructions matter**. Uploading the documents to the Main Street loan portal requires some attention to detail. If the Boston Federal Reserve's instructions are not followed *to the letter*, they will reject the loan, and you will be starting all over again.

4. **It's not for everyone.** Aside from the additional cost and documentation required by Main Street loan facilities, borrowers need to be fully aware of the Main Street Loan Program reporting requirements, which are specific for the end of each quarter and each year. Because of the agreement structure, the banks making the loans are also committing to provide those borrower financial reports to the Special Purpose Vehicle (SPV) each quarter and year as well. Failure of a borrower to make those reports not only puts them in breach of their loan agreement, it puts the bank in breach of their agreement with the SPV, which could result in the bank having to repurchase the SPV's interest in the loan.

5. **If it's right for you, it can be a life saver**. Practically every industry has been impacted by COVID-19, and many continue to struggle. For those who are still struggling, Main Street loans offer the opportunity to defer all payments for one year and then pay interest only until the end of year three. If your business has not rebounded from the pandemic, but there is a reasonable expectation that it will

in the next year, Main Street loans may be just the ticket to see you through until you are back on your feet.

At Baker Donelson, we have a team experienced in closing Main Street loans, and we are standing by to assist with any questions or concerns you may have. Also, visit our website's Coronavirus (COVID-19): What You Need to Know information page.