April 15, 2020

VIA ELECTRONIC SUBMISION

Chair Jerome H. Powell
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.,
Washington, DC 20551

Re: Federal Reserve's Main Street Lending Program

Dear Chair Powell:

The Consumer Bankers Association ("CBA")[1] appreciates the opportunity to comment on the Federal Reserve's Main Street Lending Program ("Main Street"). CBA applauds the Federal Reserve for swiftly acting to aid America's small- and mid-sized businesses as we endure the uncertainties presented by the COVID-19 crisis. CBA has reviewed the details of the Main Street Lending Program ("the Program") and has some suggestions the Federal Reserves should consider before finalizing the details of the Program.

Maximum Loan Size

To begin, both the Main Street New Loan Facility ("MSNLF") and the Main Street Expanded Loan Facility ("MSELF") base their maximum loan size on the 2019 EBITDA. The maximum loan for new loans under the MSNLF is the lesser of (a) $25 million, or (b) an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed four times its 2019 EBITDA.[2] Similarly, the maximum loan size for an upsized existing loan under the MSELF is the lesser of (a) $150 million, (b) 30% of the borrower's existing outstanding and committed but undrawn bank debt, or (c) an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed six times the borrower's 2019 EBITDA.[3]

In regards to the MNSLF, CBA believes the requirement stating Eligible Borrowers may only have debt to EBITDA of four times and under should be changed. We recognize this requirement is intended to keep riskier borrowers out of the program, but we believe the terms as written will have the opposite effect. High leverage is not an indicator of borrower weakness. On the contrary, high leverage occurs because sophisticated lenders are prepared to put a great deal of money at risk on a non-recourse basis and with little in hard assets because they are confident borrowers, in normal circumstances, will be able to

[1] 1 The Consumer Bankers Association partners with the nation's leading retail banks to promote sound policy, prepare the next generation of bankers, and finance the dreams of consumers and small businesses. The nation's largest financial institutions, as well as many regional banks, are CBA corporate members, collectively holding two thirds of the industry's total assets.

[2] Federal Reserve, *Main Street New Loan Facility Term Sheet*, https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a7.pdf (April 9, 2020).

[3] Federal Reserve, Main Street Expanded Loan Facility Term Sheet, https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a4.pdf (April 9, 2020).

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service and repay the debt. However, it is the more risky, cyclical borrowers who have debt levels below four times. We encourage the Federal Reserve to increase the maximum loan size for the MNSLF to a level which better considers the appropriate amount of leverage in the respective industry. If thousands of companies are unable to access these resources, the consequences could be catastrophic in terms of endless downsizings and a massive and permanent loss of investment capital.

Furthermore, the Federal Reserve may want to consider sector specific guidance, specifically for industries with higher leverage. For example, many businesses suffering from the COVID-19 pandemic also suffered in 2019 due to the trade war with China and felt the early supply chain disruptions in China. Some China exposed firms would presumably not qualify, unless EBIDTA allows legitimate defined adjustments. Another industry which seems to have been overlooked is the Commercial Real Estate Industry. Owner occupied or investor deals, including development, which would not be measured on an EBITDA basis, but ideally, they would be eligible for assistance if the firms have employees and/or an impaired rental income flow due to the pandemic.

Minimum Loan Size

CBA believes the Federal Reserve should lower its minimum loan amount to significantly less than $1 million. Based on the current terms, there is a potential for a "donut hole" with businesses potentially falling between the Small Business Administration's ("SBA's") Paycheck Protection Program ("PPP") and Main Street. Rather than focusing on excluding risk businesses, the Federal Reserve should identify the overlap where "large" small businesses and small "mid-size" businesses meet.

If the Federal Reserve plans to use loan size as a proxy for Main Street, then it should look at the SBA's PPP loans as a metric for where to set the minimum loans amounts for the Main Street Lending Program. SBA released data on April 13, 2020 detailing the loans approved through ETRAN. 70% of the loans were less than $350k. While an imperfect comparison, this presents sound reasoning to reduce the minimum loan amount for the Main Street Lending program to roughly $350k. CBA believes a concentric circle of overlap between the programs would be ideal, while a gap would leave businesses without adequate support in the midst of an unprecedented crisis.

In addition, CBA performed a cursory analysis of its membership to help quantify the donut hole between the Main Street Lending Program and PPP. We identified the dominant cause of the gap is the interaction between the EBITDA and the $1 million minimum in the Main Street Lending Program. Analysis from our membership suggests thousands of mid-size companies could be too large for the SBA program yet fall below the $1 million loan minimum. One estimate indicates that 175,000 businesses, with an average annual revenue of $15 million, would be served by reducing the loan minimum to $500,000. Furthermore, we believe there should be flexibility in the length of the loans of the Main Street Lending Program. CBA would prefer to see loan terms range from four to six years.

Clarity in Terms

The Federal Reserve should clearly define terms for banks to operationalize the Main Street Loan Program. CBA encourages the Federal Reserve to define "debt." EBITDA is not a defined term under GAAP. Also, based on the Federal Reserve's current guidance about the Program, it seems if the definition of debt includes senior, mezzanine and subordinated debt, it may exclude many businesses in need. In addition, the Federal Reserve states the pricing on loans will be an adjustable rate of SOFR+250-400 bps, but there is no indication how SOFR is calculated, e.g. SOFR Compounded in Advance, SOFR Compounded in Arrears, or Daily Simple SOFR in Arrears.

Official Guidance

CBA urges the Federal Reserve to issue guidance to eligible lenders and borrowers in a prompt and complete manner. CBA member banks are ready to do their part to help stabilize and restart the economy, but we will need timely and thorough guidance to help our banks lend and to help America's businesses responsibly borrow. CBA also implores the Federal Reserve to continue to seek feedback once the facility is open to continue to ensure the Main Street Lending Program is working as intended. Please provide more clear guidance. CBA has included an appendix with a list of technical questions intended to generate clear and comprehensive guidance for financial institutions.

On a separate but related issue, CBA encourages the Federal Reserve to not change any existing regulatory tiers for financial institutions who choose to participate in this facility. During the duration of the Main Street Lending Program, banking organizations should retain their respective category in regards to the application of enhanced prudential standards. Asset sizes of banks will likely increase dramatically during the duration of the COVID-19 crisis as they participate in the Main Street Lending Program and other Federal Reserve and government-sponsored programs aimed at supporting the American economy during this time.

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Again, CBA fully supports the Federal Reserves efforts to aid small- and mid- sized businesses during these unprecedented times. CBA sincerely wants to see the Federal Reserve's Main Street Lending Program as effective as possible for the countless American businesses who stand in need.

If you have any additional questions or concerns, please do not hesitate to contact André Cotten at 202-552-6360 or at Acotten@consumerbankers.com.

Sincerely,

André B. Cotten

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Appendix to the CBA's Comment on the Main Street Lending Program

<u>Borrower Eligibility</u>

- How are 10,000 employees calculated? Are their affiliation rules similar to the SBA's Paycheck Protection Program?
- Will U.S. based subsidiaries of non-U.S. parent companies be deemed eligible borrowers if the majority of its employees are located in the U.S.?
- Can Main Street Loans be made on a consolidated basis to co-borrowers or must it be to a single-borrower?

<u>General Loan Features</u>

- Will the Federal Reserve provide standard loan documents or will documents be negotiated by each lender?
- Will the Federal Reserve provide a standard participation agreement for each loan or will the participation terms be set out as part of the program guidance? Will SPV's participation function as a true sale of the loan? Will the SPV have voting and consent requirements in the servicing of the loan?
- What are the mechanics of funding and the participation purchase? What conditions precedent exist for funding?
- What risk weighting will be assigned to these loans?
- Are the loans fully funded at closing or may the loans have a draw feature?
- Does the loan have to amortize over the 3 year payment period or may there be a balloon? Straight line or escalating?
- Are there loan to value or any other credit qualification requirements?
- How will SOFR be defined or measured? Who sets the pricing between 250 and 400 bps?
- EBITDA calculations:
    - Does the EBITDA have to be determined from 2019 audited financial statements subject to GAAP? What if audits have been delayed due to COVID-19?
    - How will one-time 2019 expenses be handled when calculating EBITDA?
    - Will EBITDA be allowed to be defined based on existing lending facilities?
    - Will there be any leverage exceptions for commercial real estate companies, non-profits or other industries, which are not typically measured by EBITDA?
- Fees
    - Are closing costs and outside counsel fees permitted?
    - How are servicing fees paid out? Up front or at the end of the year?

<u>Expanded Loan Facility</u>

- What is the definition of "existing, outstanding and committed but undrawn debt"? Are these limited to committed sub-facilities or all revolving lines? To clarify, discretionary, uncommitted lines of credit would not be considered?
- Will the SPV provide consents and waivers in loan arrangements where all lenders must consent? If not, it could create risk on existing loan documentation?
- Existing loans that are part of a syndicated facility or subject to intercreditor agreements may be excluded from the program without clear guidance on the management by SPV and use of proceeds.
- Can lenders lower the loan to a lower leverage?

- Should the terms, amortization and other covenants match the existing facility or is the upsize tranche option meant to be a separate "cleaner" arrangement?
- How will the "pro rata" security interest requirement be implemented? Any exemptions caused by the dilution of collateral under the terms of existing facility?

<u>Required Attestations</u>

- How can a lender attest that loan proceeds will not be used to repay or refinance pre-existing loans or lines of credit other than not accepting payments on such loans for the entirety of the Main Street Loan? If proceeds are commingled with other Borrower funds, the lender is not in a position to attest that payments to existing loans or lines were not from Main Street Loan proceeds. Can revolving credit facilities and other working capital loans be repaid?
- What is lender's role in oversight of borrower's attestations/covenants in the loan documents?
    - Does a lender have to verify use of proceeds, both in the prohibition of the payment of other loans or COVID-19 related expenses?
    - What level of record-keeping is required to demonstrate the use of loan proceeds?
    - Does a lender have to investigate that the need for financing was due to COVID-19?
    - Does a lender have to review borrower's efforts in maintaining payroll and employment levels?
    - What is a lender's responsibility in monitoring compensation, stock repurchase and capital distribution restrictions? If it does, how and under what authority does a lender have to enforce restrictions for the year following repayment?
    - Are tax distributions allowed?
- What is the definition of "debt of equal or lower priority"? What constitutes a mandatory principal payment?
    - If debt of equal priority may not be paid, does this requirement forbid PPP loans to the same borrower?
    - If a bank has a loan to a borrower who receives a Main Street Loan from another lender and borrower breaches the covenant of using Main Street Loan proceeds from paying off pre-existing loans, does the SPV have the right to come after the bank who received the proceeds?
- The summary of the program states that lenders are not able to reduce line of credit availability after the borrower receives funds. Does this include the situation where the borrower subsequently defaults? Can a lender enforce its rights under the existing line of credit?
- If a borrower obtains a loan via the Programs and later defaults on pre-existing debt with the bank, is the bank precluded from enforcing defaults on the pre-existing debt? Any limitations in place?