Updates
May 04, 2020

Federal Reserve Announces Changes to Main Street Lending Program

Introduction

The Federal Reserve Board (FRB) released updated guidance on its Main Street Lending Program (Main Street Program) on April 30, 2020. Authorized under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and previously announced on April 9, 2020, the Main Street Program will indirectly offer loans to small- and medium-sized businesses to alleviate economic distress caused by the spread of COVID-19. Under the Main Street Program, the FRB will purchase up to $600 billion of participation interests in loans originated by eligible lenders. In this updated guidance, the FRB noted that a start date for the program will be announced soon but did not specify when loans under the program would become available.

Previously, the FRB had announced that it would establish two facilities for the Main Street Program. In updated guidance, the FRB announced the establishment of a third facility and provided new details and clarifications on the terms of the Main Street Program through updated term sheets for each facility and new FAQs.[1] The updated guidance is in part a response to comments received by the FRB regarding the Main Street Program.

Overview of Facilities Under Main Street Program

As announced on April 30, the Main Street Program will consist of the following three loan options:

- **Main Street New Loan Facility (the "New Loan Facility").** The New Loan Facility will provide for *new* term loans. The FRB will purchase 95% participation interests in New Loan Facility loans.
- **Main Street Priority Loan Facility (the "Priority Loan Facility").** The Priority Loan Facility will also provide for *new* term loans, but with a lower participation interest from the FRB and a more borrower-favorable repayment schedule. The FRB will purchase 85% participation interests in Priority Loan Facility loans. The plans to provide this loan facility were first unveiled on April 30, 2020.
- **Main Street Expanded Loan Facility (the "Expanded Loan Facility").** The Expanded Loan Facility will provide for new term loan tranches made under *existing loan facilities*. To be eligible for "upsizing," the existing term loan or revolving credit facility must have been originated on or before April 24, 2020, and must have a remaining maturity of at least 18 months. The lender may extend the maturity of an existing loan or revolving credit facility at the time of upsizing for the underlying instrument to satisfy the 18-month remaining maturity requirement. The FRB will purchase 95% participation interests in Expanded Loan Facility loans.

The following chart provides an overview of the key terms of the New Loan Facility, the Priority Loan Facility, and the Expanded Loan Facility (collectively, the "Facilities").

	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Minimum Loan Size	$500,000	$500,000	$10 million

	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Maximum Loan Size	Lesser of (1) $25 million or (2) an amount that, when added to existing outstanding and undrawn debt, does not exceed 4x 2019 adjusted EBITDA.	Lesser of (1) $25 million or (2) an amount that, when added to existing outstanding and undrawn debt, does not exceed 6x 2019 adjusted EBITDA.	Lesser of (1) $200 million, (2) 35% of outstanding and undrawn available debt that is pari passu in priority with the Eligible Loan and equivalent in secured status, or (3) an amount that, when added to existing outstanding and undrawn debt, does not exceed 6x 2019 adjusted EBITDA.
Security	May be secured or unsecured.	May be secured or unsecured.	May be secured or unsecured, but any collateral that secures the underlying loan must secure the upsized tranche on a pari passu basis.
Priority	Must not be contractually subordinated in terms of priority to any of the borrower's other debt.	Must be senior to or pari passu with, in terms of priority and security, the borrower's other debt, other than mortgage debt.	Must be senior to or pari passu with, in terms of priority and security, the borrower's other debt, other than mortgage debt.
Term	4 years	4 years	4 years
Repayment	Principal and interest deferred for one year. Deferred and unpaid interest will be capitalized. Principal payments of one-third at end of years 2, 3, and 4.	Principal and interest deferred for one year. Deferred and unpaid interest will be capitalized. Principal payments of 15%, 15%, and 70% at end of years 2, 3, and 4, respectively.	Principal and interest deferred for one year. Deferred and unpaid interest will be capitalized. Principal payments of 15%, 15%, and 70% at end of years 2, 3, and 4, respectively.
Prepayment	Permitted without penalty	Permitted without penalty	Permitted without penalty
Interest Rate	LIBOR (1 or 3 month) + 3.00%	LIBOR (1 or 3 month) + 3.00%	LIBOR (1 or 3 month) + 3.00%
Fees	• 1.00% transaction fee paid by originating lender. Fee may be passed on to borrower. • Up to 1.00% origination fee paid by borrower. • 0.25% servicing fee paid by federal government to lender.	• 1.00% transaction fee paid by originating lender. Fee may be passed on to borrower. • Up to 1.00% origination fee paid by borrower. • 0.25% servicing fee paid by federal government to lender.	• 0.75% transaction fee paid by originating lender. Fee may be passed on to borrower. • Up to 0.75% origination fee paid by borrower. • 0.25% servicing fee paid by federal government to lender.
Participation Percentage	FRB to purchase 95% participation interest.	FRB to purchase 85% participation interest.	FRB to purchase 95% participation interest.

<table>
<tr><th></th><th>New Loan Facility</th><th>Priority Loan Facility</th><th>Expanded Loan Facility</th></tr>
<tr><td>Covenants (Compensation)</td><td colspan="3">Until 12 months after loan has been repaid:
Officers and employees whose total compensation exceeded $425,000 in calendar year (CY) 2019 may not:
Receive total compensation during any consecutive 12-month period in excess of the total compensation received in CY2019.
Receive severance pay or other benefits upon termination of employment in excess of 2x the total compensation received in CY2019.
Officers/employees whose total compensation exceeded $3 million in CY2019 may not receive total compensation during any 12 consecutive month period in excess of (1) $3 million, plus (2) 50% of excess over $3 million of total compensation received in CY2019.
"Total compensation" includes salary, bonuses, awards of stock, and other financial benefits.</td></tr>
<tr><td>Covenants (Restricted Payments)</td><td colspan="3">Until 12 months after loan has been repaid:
Borrower may not repurchase listed equity securities (including securities issued by the borrower's parent), except to the extent required under a contractual obligation in existence as of March 27, 2020.
Borrower may not pay dividends or make other capital distributions with respect to the common stock of the business (other than tax distributions).</td></tr>
<tr><td>Covenants (Debt Repayments)</td><td>No payments on other debt (other than payments that are mandatory and due) until loan has been repaid.
No cancellation or reduction of any committed lines of credit.</td><td>No payments on other debt (other than payments that are mandatory and due) until loan has been repaid. However, may refinance other debt at time of origination of Priority Loan Facility.
No cancellation or reduction of any committed lines of credit.</td><td>No payments on other debt (other than payments that are mandatory and due) until loan has been repaid.
No cancellation or reduction of any committed lines of credit.</td></tr>
<tr><td>Covenants (Retaining Employees)</td><td colspan="3">Borrower must make commercially reasonable efforts to retain employees during the term of the loan. In FAQ guidance, the FRB states that a borrower "should undertake good-faith efforts to maintain payroll and retain employees, in light of its capacities, the economic environment, its available resources, and the business need for labor." Borrowers that have already laid off or furloughed workers as a result of the disruptions from COVID-19 are eligible to apply for the Main Street Program.</td></tr>
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Frequently Asked Questions

Included below are answers to frequently asked questions about the Main Street Program.

What types of businesses qualify as eligible borrowers under the Main Street Program?

To be eligible under the Main Street Program, a borrower must meet the following criteria:

- The borrower is an entity organized for profit as a partnership, a limited liability company, a corporation, an association, a trust, a cooperative, a joint venture with no more than 49% participation by foreign business entities, or a tribal business concern. Other forms of organization may be considered for inclusion at the discretion of the FRB.
- The borrower was established prior to March 13, 2020.
- The borrower (1) was created or organized in the United States or under the laws of the United States, (2) has significant operations in the United States, and (3) has a majority of its employees based in the United States.
- The borrower (1) has 15,000 employees or fewer, or (2) had 2019 annual revenues of $5 billion or less. To determine how many employees a borrower has or a borrower's 2019 revenues, the employees and revenues of the borrower must be aggregated with the employees and revenues of its affiliated entities. The Main Street Program incorporates the U.S. Small Business Administration's affiliation test set forth in 13 CFR 121.301(f) for purposes of this affiliation analysis.[2]
- The borrower is not one of the following types of businesses:
    - Financial businesses primarily engaged in lending (e.g., banks)
    - Passive businesses owned by developers and landlords
    - Life insurance companies
    - Businesses located in another country
    - Pyramid sale distribution plans
    - Businesses that derive more than one-third of their gross annual revenue from legal gambling
    - Businesses involved in any illegal activity
    - Private clubs and businesses that limit the number of memberships for reasons other than capacity
    - Government-owned entities (except businesses owned or controlled by a Native American tribe)
    - Businesses that derive more than one-third of their gross annual revenue from packaging SBA loans
    - Businesses with an associate who is incarcerated, on probation or parole, or who has been indicted for a felony or crime of moral turpitude
    - Businesses in which the lender or an associate owns an equity interest
    - Businesses which have a prurient or sexual nature
    - Businesses that have previously defaulted on a federal loan or federally assisted financing resulting in the federal government sustaining a loss
    - Businesses primarily engaged in political or lobbying activities
    - Speculative businesses (including private equity funds and hedge funds)
- If the borrower had other loans outstanding with the lender making the loan under the Main Street Program as of December 31, 2019, such loans must have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system on that date.

In addition, borrowers under the Main Street Program may participate in only one Facility under the Main Street Program and may not also participate in the Primary Market Corporate Credit Facility or receive other specific support from the FRB under the CARES Act. However, receipt of a Paycheck Protection Program loan will not preclude a borrower from participation in the Main Street Program.

What types of financial institutions qualify as eligible lenders under the Main Street Program?

U.S. federally insured depository institutions (including a bank, savings association, or credit union), U.S. branches or agencies of foreign banks, U.S. bank holding companies, U.S. savings and loan holding companies, U.S. intermediate holding companies of foreign banking organizations, or U.S. subsidiaries of any of the foregoing all qualify.

What certifications and covenants are lenders required to make?

The following certifications and covenants will be required from each lender (in addition to any other certifications required by applicable statutes or regulations):

- Commit that it will not cancel or reduce any existing committed lines of credit except in an event of default[3]
- Commit that it will not request the borrower to repay debt extended by the lender to the borrower, or pay interest on such outstanding obligations, until the Main Street Program loan or upsized loan is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration[4]

Do borrowers need to certify to financial need?

The updated term sheets for the Facilities released on April 30, 2020, do not require any certification from the borrower as to financial need or otherwise require evidence that the borrower has been negatively affected by COVID-19. The prior term sheets issued on April 9, 2020, had contemplated that borrowers would need to certify that they required the financing due to the exigent circumstances of the COVID-19 pandemic. It remains to be seen whether the FRB will impose additional need-based limitations on the Main Street Program.

How will "adjusted EBITDA" be defined and calculated?

EBITDA is the key underwriting metric required for loans under the Main Street Program. The prior term sheets issued on April 9, 2020, had contemplated that the leverage test would be calculated based on EBITDA, without further adjustments. In response to comments that most credit facilities are underwritten based on adjusted EBITDA, the revised term sheets issued April 30, 2020, incorporate an adjusted EBITDA concept.

For New Loan Facilities and Priority Loan Facilities, the methodology used to calculate a borrower's adjusted 2019 EBITDA will be the methodology previously used by the lender for adjusting EBITDA when extending credit to the borrower or to similarly situated borrowers on or before April 24, 2020. For Extended Loan Facilities, the methodology used to calculate a borrower's adjusted 2019 EBITDA will be the methodology previously used by the lender for adjusting EBITDA when originating or amending the underlying loan on or before April 24, 2020.

How may companies apply for a Main Street Program loan?

Applications must be submitted to an eligible lender. Prospective borrowers should contact an eligible lender to request more information on the application process. The start date for the program has not yet been announced.

Unlike loans made under the Paycheck Protection Program, Main Street Program lenders will be expected to apply their own underwriting standards in evaluating the financial condition and creditworthiness of a potential borrower. As a result of this lender discretion, eligible borrowers may not be approved for a loan or may not receive the maximum allowable amount.

The federal government will cease purchasing participations in Main Street Program loans on September 30, 2020, unless the FRB and the U.S. Department of the Treasury extend the program.

Endnotes

[1] See Main Street New Loan Facility Term Sheet (April 30, 2020).

See Main Street Priority Loan Facility Term Sheet (April 30, 2020).

See Main Street Expanded Loan Facility Term Sheet (April 30, 2020).

See Main Street Lending Program Frequently Asked Questions (April 30, 2020).

[2] For more information on the SBA's affiliation rules, see our publication Congress Approves New Funding for PPP Loans and EIDLs; SBA Issues Updated FAQ Regarding "Necessity."

[3] This requirement does not prevent the reduction or termination of uncommitted lines of credit, the expiration of existing lines of credit in accordance with their terms, or the reduction of availability based on borrowing base formulas and the imposition of reserves.

[4] This does not prohibit a lender from accepting regularly scheduled, periodic repayments on a line of credit from a borrower in the ordinary course of business.

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