Updates
June 09, 2020

The Federal Reserve’s Main Street Lending Program: What Borrowers Need to Know (Updated June 9, 2020)

This update amends our prior publication on June 5, 2020, and contains new information based on additional guidance provided by the Federal Reserve on June 8, 2020.

Authorized under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and previously announced on April 9, 2020, the Main Street Lending Program (Main Street Program) will indirectly facilitate loans to businesses to alleviate economic distress caused by the spread of COVID-19. Under the Main Street Program, the Federal Reserve will provide a mechanism to purchase up to $600 billion of participation interests in loans originated by eligible lenders. The Federal Reserve has not yet announced a start date for the program.

On June 8, 2020, the Federal Reserve released updated term sheets for the three types of loan facilities established under the Main Street Program and released new FAQs providing further details about the Main Street Program.[1] On May 27, 2020, through the Federal Reserve Bank of Boston's website, the Federal Reserve released forms of certifications and agreements.

Overview of Facilities Under Main Street Program

The Main Street Program will consist of the following three loan facilities:

- **Main Street New Loan Facility (the New Loan Facility):** The New Loan Facility will provide a mechanism for a special purpose entity created through the Federal Reserve Bank of Boston (FRB) to purchase *new* term loans. The FRB's special purpose entity will purchase 95% participation interests in New Loan Facility loans.
- **Main Street Priority Loan Facility (the Priority Loan Facility):** The Priority Loan Facility also will provide a mechanism for the FRB's special purpose entity to purchase *new* term loans. The FRB's special purpose entity will purchase 95% participation interests in Priority Loan Facility loans.
- **Main Street Expanded Loan Facility (the Expanded Loan Facility):** The Expanded Loan Facility will provide a mechanism for the FRB's special purpose entity to purchase 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's special purpose entity will purchase 95% participation interests in Expanded Loan Facility loans. An existing loan facility may be upsized to provide for an Expanded Loan Facility even if the existing loan facility does not have an "accordion" feature.

These loans are to be originated by "Eligible Lenders" (see FAQ #4 below), not by the FRB directly. However, to be eligible to be sold to the FRB's special purpose entity, the loans will need to satisfy program requirements. The following chart provides an overview of the key mandatory terms of the New Loan Facility, the Priority Loan Facility, and the Expanded Loan Facility (collectively, the Facilities). In addition to what is required by the Federal Reserve, loans under these Facilities will include other terms and conditions as are customary for credit facilities of this type.

	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Minimum Loan Size	$250,000 *(previously $500,000)*		$10 million
Maximum Loan Size	Lesser of (1) $35 million or (2) an amount that, when added to existing outstanding and undrawn debt, does not exceed 4x 2019 adjusted EBITDA. *(previously $25 million)*	Lesser of (1) $50 million or (2) an amount that, when added to existing outstanding and undrawn debt, does not exceed 6x 2019 adjusted EBITDA. *(previously $25 million)*	Lesser of (1) $300 million, or (2) an amount that, when added to existing outstanding and undrawn debt, does not exceed 6x 2019 adjusted EBITDA. *(previously $200 million)*
Security	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 payment priority to any of the borrower's other debt.	Must not be contractually subordinated in terms of payment 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 (mortgage debt is defined as debt secured by real property and limited recourse equipment financings such as purchase money loans). *Additional information on the priority rules is provided in FAQ #8 below.*	
Term	Five years *(previously four years)*		

<table>
<tr><th></th><th>New Loan Facility</th><th>Priority Loan Facility</th><th>Expanded Loan Facility</th></tr>
<tr><td>Repayment</td><td colspan="3">Principal deferred for two years and interest deferred for one year. Deferred and unpaid interest will be capitalized. Principal payments of 15%, 15%, and 70% at end of years three, four, and five, respectively.

(previously principal deferred for one year and 33.33% repayment due in years 2-4 under New Loan Facility; previously principal deferred for one year and 15%, 15%, 70% repayment due in years 2, 3, and 4, respectively, under Priority Loan Facility and Expanded Loan Facility)</td></tr>
<tr><td>Voluntary Prepayment</td><td colspan="3">Permitted without penalty.</td></tr>
<tr><td>Mandatory Prepayment</td><td colspan="3">Each Main Street loan must contain a provision that requires prepayment if borrower breaches certain covenants or makes a material misstatement with respect to certain certifications.</td></tr>
<tr><td>Interest Rate</td><td colspan="3">LIBOR (one or three month) + 3.00%</td></tr>
<tr><td>Fees</td><td colspan="2">• 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.</td><td>• 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 of FRB to lender.</td></tr>
<tr><td>Participation Percentage</td><td>FRB to purchase 95% participation interest.</td><td>FRB to purchase 95% participation interest.

(previously 85%)</td><td>FRB to purchase 95% participation interest.</td></tr>
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<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 exceed $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 consecutive 12-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:
The 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.
The borrower may not pay dividends or make other capital distributions with respect to the common stock of the business (other than tax distributions by S corporations and other pass-through entities).</td></tr>
<tr><td>Covenants (Debt Repayments)</td><td colspan="3">No payments may be made on other debt (other than payments that are mandatory and due) until loan has been repaid. However, the borrower may refinance other debt at the time of origination of a loan under the Priority Loan Facility.
Payments on other debt are considered "mandatory and due" (1) on the future dates upon which they were scheduled to be paid as of the date of origination of the Main Street Program loan, or (2) upon a mandatory prepayment event under a contract for indebtedness executed prior to the date of origination of the Main Street Program loan, (except that any such prepayments triggered by the incurrence of new debt can only be paid (i) if such prepayments are de minimis, or (ii) under a loan under the Priority Loan Facility at the time of origination of such loan).
No cancellation or reduction of any committed lines of credit is permitted.</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 the Main Street Program 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>
</table>

	New Loan Facility	Priority Loan Facility	Expanded Loan Facility
Covenants (Financial Reporting)	Borrowers must comply with robust annual and quarterly reporting requirements that are more detailed than required by many customary credit agreements. Model language for such covenant is provided in the Main Street Program FAQ guidance.[2]		Must include the same annual and quarterly reporting requirements as loans under the New Loan Facility and Priority Loan Facility, except that for loans under the Expanded Loan Facility that are part of multi-lender credit facilities, a financial reporting covenant that was negotiated in good faith prior to April 24, 2020, will be deemed sufficient.
Cross-Acceleration	Each Main Street loan that is part of a bilateral facility must contain a cross-acceleration provision, triggering an event of default under the Main Street loan if any debt owed by a borrower to the lender or any affiliate of the lender is accelerated. Model language for such cross-acceleration provision is provided in the Main Street Program FAQ guidance.[3]		Must include the same cross-acceleration provision as loans under the New Loan Facility and Priority Loan Facility except that for loans under the Expanded Loan Facility that are part of multi-lender credit facilities, a cross-default or cross-acceleration provision that was negotiated in good faith prior to April 24, 2020, will be deemed sufficient.

Frequently Asked Questions

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

1. 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. [3] Similar to the Paycheck Protection

Program, in determining the total number of employees a borrower must include all full-time, part-time, seasonal, or otherwise employed persons, excluding volunteers and independent contractors.

- No "Covered Individual" owns, controls, or holds 20% or more (by vote or value) of any class of equity ownership interest in the borrower. "Covered Individuals" include the president of the United States, the vice president, the head of any executive department, any member of the U.S. Congress, or certain immediate family members of the foregoing.
- The borrower is not one of the following:
  - 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 an Economic Injury Disaster Loan (EIDL), a COVID-19 emergency EIDL advance, or a Paycheck Protection Program loan will not preclude a borrower from participation in the Main Street Program.

2. How does a borrower determine if it has "significant operations in the United States"?

Borrowers must have "significant operations in the United States" to be eligible to participate in the Main Street Program. To make this determination, a borrower's operations should be evaluated on a consolidated basis together with its subsidiaries, but not its parent companies or sister affiliates. This methodology will make it easier for U.S. subsidiaries of foreign companies to access the program. The Federal Reserve has created a non-exhaustive safe harbor that deems a borrower to have "significant operations in the United States" if, when consolidated with its subsidiaries, greater than 50% of the borrower's:

- Assets are located in the United States
- Annual net income is generated in the United States
- Annual net operating revenues are generated in the United States
- Annual consolidated operating expenses (excluding interest expense and any other expenses associated with debt service) are generated in the United States

3. Can multiple affiliated borrowers participate in the Main Street Program?

An affiliated group of companies can participate in only one Main Street facility and cannot participate in both a Main Street facility and the Primary Market Corporate Credit Facility.[4] Furthermore, the affiliated group's total participation in a single Main Street facility may not exceed the maximum loan size that the affiliated group is eligible to receive on a consolidated basis, taking into account the leverage level of the affiliated group on a consolidated basis, and the size of any loan extended to other affiliates in the group. This rule will limit the ability of portfolio companies of private equity and venture capital firms to access the Main Street Program.

In an update to its FAQs published on June 8, 2020, the Federal Reserve clarified that if a borrower is the only business in its affiliated group that has sought funding through the Main Street Program, its affiliated group's debt and EBITDA are not relevant to determining whether the borrower can qualify, except to the extent that the borrower's subsidiaries are consolidated into its financial statements.

4. 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.

5. Do borrowers need to certify to financial need?

To obtain a Main Street Program loan, a borrower must certify that it is unable to secure "adequate credit accommodations" from other banking institutions. The Federal Reserve has clarified that this does not necessarily mean that no other credit is available for the borrower's purposes. Rather, the Federal Reserve states that a borrower can certify that it is unable to secure "adequate credit accommodations" because the amount, price, or terms of credit available from other sources are inadequate for the borrower's needs during the current unusual and exigent circumstances.

6. How will loans under Main Street Program be documented?

Lenders originating Main Street loans are required to use documentation that is substantially similar to the documentation that it uses in the ordinary course of business with respect to similarly situated borrowers. Appendix A of the Main Street Program FAQ guidance provides a checklist of terms that must be addressed in the loan documentation (including the cross-acceleration and mandatory prepayment provisions and financial reporting covenants), however it does not address all of the terms and conditions that will be included in the definitive loan documentation.

7. How will "adjusted EBITDA" be defined and calculated?

Adjusted EBITDA is the key underwriting metric required for loans under the Main Street Program.

For loans under the New Loan Facility and Priority Loan Facility, 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 loans under the Extended Loan Facility, 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. If the borrower's EBITDA was not calculated or included in the loan documentation or internal risk analysis when originating the underlying loan, the adjusted EBITDA for loans under the Extended Loan Facility must be calculated using a methodology that the lender has required to be used in other contexts for the borrower or, if there is no such calculation, for similarly situated borrowers.

8. What does it mean that loans under the Priority Loan Facility and Extended Loan Facility must be "senior to or pari passu with, in terms of priority and security, the Eligible Borrower's other loans or debt instruments, other than mortgage debt"?

Loans under the Priority Loan Facility and Extended Loan Facility may not be contractually subordinated in terms of priority to any of the borrower's other debt.

If a borrower has other secured debt (other than mortgage debt, which is defined as debt secured by real property and limited recourse equipment financings such as purchase money loans) at the time a Priority Loan Facility loan or an Expanded Loan Facility loan is originated, then the Priority Loan Facility loan or Expanded Loan Facility loan must be secured as well.

If a Priority Loan Facility loan is secured, then the "Collateral Coverage Ratio" for the Priority Loan Facility loan at the time of its origination must be either (1) at least 200% or (2) not less than the aggregate Collateral Coverage Ratio for all of the borrower's other secured debt (other than mortgage debt). "Collateral Coverage Ratio" means (i) the aggregate value of any relevant collateral security, including the pro rata value of any shared collateral, divided by (ii) the outstanding aggregate principal amount of the relevant debt.

If a Priority Loan Facility loan is secured by the same collateral as any of the borrower's other debt (other than mortgage debt), the lien upon such collateral securing the Priority Loan Facility loan must be and remain senior to or pari passu with the lien(s) of the other creditor(s) upon such collateral.

An Expanded Loan Facility loan must be secured by the collateral (including, if applicable, any mortgage debt) securing any other tranche of the underlying credit facility on a pari passu basis. If the underlying credit facility includes both term loan tranche(s) and revolver tranche(s), the Expanded Loan Facility loan needs to share collateral on a pari passu basis with the term loan tranche(s) only.

Loan documentation for Priority Loan Facility loans and Extended Loan Facility loans must contain a lien covenant or negative pledge that is consistent with those used by the lender in its ordinary course lending to similarly situated borrowers, including with respect to exceptions, baskets, thresholds, and qualifiers.

9. 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 (June 8, 2020).

See Main Street Priority Loan Facility Term Sheet (June 8, 2020).

See Main Street Expanded Loan Facility Term Sheet (June 8, 2020).

See Main Street Lending Program Frequently Asked Questions (June 8, 2020).

[2] See Main Street Lending Program Frequently Asked Questions (June 8, 2020).

[3] 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."

[4] The Primary Market Corporate Credit Facility is a funding backstop established by the Federal Reserve to support corporate debt issued by eligible issuers.

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