

# Fed Provides Additional Guidance on \$600 Billion Main Street Lending Program

May 1, 2020

Since the Federal Reserve's announcement on April 9 of the rollout of its Main Street Lending Program<sup>1</sup>, lenders and borrowers have eagerly anticipated additional guidance on key aspects of the program. On April 30, 2020, the Federal Reserve announced it is expanding the scope and eligibility for the Main Street Lending Program and provided additional guidance as to its administration, including [FAQs](#) and updated term sheets. Key highlights of these materials are set forth below. Full materials can be found on the [Federal Reserve's website](#).

The three central changes to the program are:

1. The announcement of a new loan option, the Main Street Priority Loan Facility, which provides a loan option for more highly leveraged borrowers but requires increased risk sharing by participating lenders
2. Lowering the minimum loan size under certain of the facilities from \$1 million to \$500,000
3. Expanding the pool of businesses eligible to borrow under the program by including businesses with either (i) less than 15,000 employees or (ii) less than \$5 billion in revenue.

We discussed the initial architecture of the Main Street Lending Program in our [alert on April 9](#) and in this alert, we highlight key takeaways from the Federal Reserve's latest guidance.

O  
v  
e  
r  
v  
i  
e  
w  
o  
f  
u  
p  
d  
a  
t  
e  
d  
t  
e  
r  
m  
s  
o  
f  
t  
h

e  
M  
a  
i  
n  
S  
t  
r  
e  
e  
t  
L  
e  
n  
d  
i  
n  
g  
p  
r  
o  
g  
r  
a  
m  
s

M  
a  
i  
n  
S  
t  
r  
e  
e  
t  
E  
d  
i  
t  
i  
o  
n  
B  
o  
a  
r  
d  
F  
a  
c  
t  
(  
M  
B  
N  
Y  
F  
M  
S  
E  
L  
F  
)

O  
r  
i  
g  
i  
n  
a  
t  
e  
d  
B  
E

f  
e  
r  
A  
A  
p  
r  
i  
l  
2  
2  
4  
2  
0  
0  
0  
0  
0  
,  
a  
n  
d  
m  
u  
s  
t  
h  
a  
v  
e  
a  
r  
e  
m  
a  
i  
n  
i  
n  
g  
m  
a  
t  
u  
r  
i  
t  
y  
o  
f  
a  
t  
l  
e

a  
s  
t  
1  
8  
m  
o  
n  
t  
h  
s  
(  
t  
a  
k  
i  
n  
g  
i  
n  
t  
o  
a  
c  
c  
o  
u  
n  
t  
a  
n  
y  
a  
d  
j  
u  
s  
t  
m  
e  
n  
t  
s  
m  
a  
d  
e  
t  
o  
t  
h  
e

m  
a  
t  
u  
r  
i  
t  
y  
o  
f  
t  
h  
e  
l  
o  
a  
n  
a  
f  
t  
e  
r  
A  
p  
r  
i  
l  
2  
4  
,  
2  
0  
2  
0  
,  
i  
n  
c  
l  
u  
d  
i  
n  
g  
a  
t  
t  
h  
e  
t  
i  
m

e  
o  
f  
u  
p  
s  
i  
z  
i  
n  
g  
)

8  
6  
e  
a  
c  
t  
i  
v  
e  
b  
r  
e  
a  
d  
i  
n  
g  
s  
e  
d  
c  
u  
r  
e  
d  
,  
e  
x  
t  
e  
n  
s  
i  
o  
n  
i  
s  
s  
e  
c

u  
r  
e  
d  
o  
n  
a  
p  
a  
r  
i  
p  
a  
s  
s  
u  
b  
a  
s  
i  
s  
w  
i  
t  
h  
o  
r  
i  
g  
i  
n  
a  
l  
l  
o  
a  
n  
.  
I  
f  
o  
r  
i  
g  
i  
n  
a  
l  
l  
o  
a  
n

i  
s  
u  
n  
s  
e  
c  
u  
r  
e  
d  
,  
e  
x  
t  
e  
n  
s  
i  
o  
n  
i  
s  
u  
n  
s  
e  
c  
u  
r  
e  
d

**M  
g  
e  
a  
r  
s  
t  
y**

**N  
o  
v  
e  
m  
b  
e  
r**

à z à ò ñ o n i n f i r s t y e a r . T h e r e a f t e r :

- E n d o f Y e a r 2 : 3 5 %
- 3 5 %
- d e f h

e  
a  
Y  
a  
n  
5  
%  
• 3  
R  
e  
m  
a  
%  
• n  
R  
e  
m  
o  
f  
n  
d  
%  
a  
b  
m  
a  
B  
u  
B  
B  
%  
t  
m  
a  
t  
u  
r  
i  
t  
y

L  
h  
B  
R  
e  
s  
o

r  
a  
m  
e  
n  
t  
h  
)  
p  
l  
u  
s  
3  
0  
0  
b  
a  
s  
i  
s  
p  
o  
i  
n  
t  
s  
l  
i  
n  
t  
e  
r  
e  
s  
t  
d  
e  
f  
e  
r  
r  
e  
d  
f  
o  
r  
f  
i  
r  
s  
t  
y  
e

a  
r  
(  
a  
n  
d  
w  
i  
l  
l  
b  
e  
c  
a  
p  
i  
t  
a  
l  
i  
z  
e  
d  
)

M  
e  
d  
i  
c  
i  
n  
e  
p  
r  
o  
f  
e  
s  
s  
i  
o  
n  
a  
l  
s  
i  
z  
e

M  
e  
l  
i  
t  
a  
r  
y  
o

o  
n  
e  
i  
x  
2  
o  
m  
l  
l  
o  
o  
r  
(  
i  
i  
)  
a  
b  
o  
m  
b  
t  
u  
h  
e  
e  
h  
a  
g  
j  
w  
h  
e  
b  
a  
d  
d  
e  
w  
e  
o  
t  
b  
e  
l  
i  
s  
g

i  
b  
g  
e  
b  
b  
s  
t  
e  
w  
e  
r  
h  
h  
g  
e  
m  
d  
a  
h  
d  
n  
g  
o  
t  
a  
s  
a  
h  
a  
h  
e  
b  
h  
g  
e  
a  
d  
t  
h  
d  
a  
a  
w  
a  
p  
a  
a  
i  
p  
a  
s  
s  
e

d  
e  
p  
t  
i  
d  
o  
e  
s  
p  
o  
t  
t  
e  
h  
c  
e  
d  
s  
ö  
g  
r  
b  
m  
e  
e  
a  
a  
e  
h  
h  
g  
g  
b  
b  
e  
b  
b  
e  
n  
b  
w  
w  
e  
e  
a  
a  
p  
p  
a

6  
6  
6  
6  
0  
0  
E  
B  
B  
T  
D  
D  
A  
n  
a  
m  
o  
u  
n  
t  
t  
h  
a  
t  
,  
w  
h  
e  
n  
a  
d  
d  
e  
d  
t  
o  
t  
h  
e  
e  
l  
i  
g  
i  
b  
l  
e  
b  
o  
r  
r

o  
w  
e  
r  
,  
s  
e  
x  
i  
s  
t  
i  
n  
g  
o  
u  
t  
s  
t  
a  
n  
d  
i  
n  
g  
a  
n  
d  
u  
n  
d  
r  
a  
w  
n  
a  
v  
a  
i  
l  
a  
b  
l  
e  
d  
e  
b  
t  
,  
d  
o  
e

s  
n  
o  
t  
e  
x  
c  
e  
e  
d  
s  
i  
x  
t  
i  
m  
e  
s  
t  
h  
e  
e  
l  
i  
g  
i  
b  
l  
e  
b  
o  
r  
r  
o  
w  
e  
r  
,  
s  
a  
d  
j  
u  
s  
t  
e  
d  
2  
0  
1  
9  
E

B  
I  
T  
D  
A

B  
a  
k  
o  
a  
g  
e  
n  
a  
p  
a  
n  
o  
p  
a  
e  
s  
a  
n  
t  
n  
a  
e  
r  
m  
a  
b  
f  
p  
s  
u  
b  
o  
r  
d  
y  
a  
a  
d  
e  
c  
o  
r  
e

t  
y  
s  
w  
r  
p  
h  
t  
b  
e  
b  
o  
y  
t  
o  
w  
e  
e  
b  
e  
o  
t  
b  
w  
e  
r  
b  
a  
o  
s  
b  
e  
d  
e  
b  
a  
n  
a  
e  
t  
d  
a  
m  
e  
n  
h  
s  
t  
r  
u  
m  
e

n  
t  
s

P  
r  
e  
p  
a  
y  
m  
e  
n  
t  
p  
e  
r  
m  
i  
t  
t  
e  
d  
w  
i  
t  
h  
o  
u  
t  
p  
e  
n  
a  
l  
t  
y

L  
b  
a  
h  
e  
b  
e  
s  
s  
o

W  
e  
c  
h  
h  
s  
e  
n  
y  
l  
o  
a  
n  
s  
o  
u  
t  
s  
t  
a  
n  
d  
i  
n  
g  
w  
i  
t  
h  
t  
h  
e  
l  
e  
n  
d  
e  
r  
a  
s  
o  
f  
D  
e  
c  
e  
m  
b  
e  
r  
3  
1

, 2019, such loans must have an internal risk rating equivalent

t  
o  
f  
" p a s s "  
i  
n  
t  
h  
e  
F  
e  
d  
e  
r  
a  
l  
I  
n  
s  
t  
i  
t  
u  
t  
i  
o  
n  
s  
E  
x  
a  
m  
i  
n  
a  
t  
i  
o  
n  
C  
o  
u  
n  
c  
i  
l  
.

s  
s  
u  
p  
e  
r  
v  
i  
s  
o  
r  
y  
r  
a  
t  
i  
n  
g  
s  
y  
s  
t  
e  
m  
o  
n  
t  
h  
a  
t  
d  
a  
t  
e

Under  
retention

Fees

• 700  
p  
s  
e  
e  
o  
a  
o  
p  
a  
t  
t  
c  
p  
a  
t  
o  
p  
p

u  
c  
b  
h  
a  
e  
d  
d  
p  
y  
h  
h  
e  
e  
d  
d  
n  
p  
p  
e  
p  
a  
s  
e  
d  
d  
h  
h  
o  
o  
g  
g  
h  
t  
t  
h  
h  
e  
b  
o  
r  
o  
w  
w  
e  
r  
•  
•  
U  
p  
o  
o  
o

þ  
s  
p  
s  
ö  
g  
i  
g  
ä  
h  
ä  
ö  
h  
ö  
ä  
é  
é  
é

R  
e  
s  
t  
r  
i  
c  
t  
i  
o  
n  
s  
o  
n  
p  
r  
e  
p  
a  
y  
m  
e  
n  
t  
o  
f  
o  
t  
h  
e  
r  
d  
.  
P  
r  
o  
c  
e  
e  
d  
s  
m  
a  
y  
b  
e  
t  
r  
e  
d  
s  
e  
d  
ö  
r  
ä  
h  
ö  
ä  
ö  
c

e  
b  
t

b  
e  
t  
h  
e  
b  
t  
d  
e  
b  
t  
h  
•  
B  
o  
r  
m  
e  
w  
é  
o  
r  
s  
g  
ñ  
h  
y  
p  
è  
o  
m  
s  
b  
t  
e  
d  
g  
e  
p  
a  
y  
c  
è  
q  
o  
d  
e  
è  
d  
è  
d  
h  
e  
s

e  
s  
s  
a  
o  
t  
p  
e  
l  
d  
b  
y  
p  
a  
e  
b  
e  
o  
t  
h  
e  
m  
a  
e  
b  
t  
h  
y  
h  
h  
e  
e  
l  
o  
g  
n  
b  
s  
e  
l  
t  
a  
h  
• a  
B  
d  
r  
n  
g  
w  
e  
t  
h

e  
o  
h  
h  
a  
p  
e  
e  
p  
a  
y  
m  
e  
d  
t  
e  
p  
a  
y  
r  
a  
q  
a  
o  
f  
e  
d  
e  
d  
t  
e  
r  
a  
a  
t  
e  
o  
d  
p  
a  
n  
o  
e  
w  
p  
a  
h  
b  
h  
e  
b  
b

e  
r  
d  
w  
t  
w  
a  
n  
b  
e  
m  
e  
h  
o  
o  
a  
o  
a  
e  
o  
f  
b  
o  
a  
i  
n  
g  
s  
o  
f  
b  
e  
u  
s  
a  
g  
e  
o  
e  
p  
a  
g  
m  
e  
n  
h  
e  
o  
f  
c  
r

e  
d  
i  
b  
j  
c  
P  
a  
d  
t  
t  
c  
h  
p  
a  
t  
o  
n  
g  
h  
e  
n  
d  
w  
r  
m  
a  
y  
h  
e  
q  
u  
e  
s  
t  
i  
o  
n  
s  
p  
a  
y  
m  
e  
n  
t  
o  
f  
o  
t  
h  
e  
s  
e

• a f b t s n g d e b f o p o a d g e a t s t a h d a o e e f e r a t i o n a R a d m a y c a p e e l h g h

e  
a  
d  
e  
c  
m  
e  
y  
r  
e  
q  
u  
a  
a  
e  
v  
e  
p  
a  
y  
m  
e  
n  
t  
a  
f  
a  
b  
t  
h  
a  
s  
e  
e  
c  
c  
a  
t  
r  
e  
g  
t  
h  
e  
r  
e  
p  
o  
d  
e  
e  
f  
a  
u

l  
t  
a  
n  
d  
a  
c  
c  
e  
l  
e  
r  
a  
t  
i  
o  
n  
a  
n  
d  
m  
a  
y  
c  
a  
n  
c  
e  
l  
l  
i  
n  
e  
s  
o  
f  
c  
r  
e  
d  
i  
t  
i  
f  
a  
n  
e  
v  
e  
n  
t  
o

f  
d  
e  
f  
a  
u  
l  
t  
h  
a  
s  
o  
c  
c  
u  
r  
r  
e  
d  
t  
h  
e  
r  
e  
u  
n  
d  
e  
r

## Eligible lenders

An eligible lender is a US federally insured depository institution (including a bank, savings association or credit union), US branch or agency of a foreign bank, US bank holding company, US savings and loan holding company, US intermediate holding company of a foreign banking organization or US subsidiary of any of the foregoing. This definition was not expanded in the Federal Reserve's recent guidance to include non-bank lenders.

## Eligible borrowers

An eligible borrower is a business that meets all of the following:

- Was established prior to March 13, 2020
- Is not an "ineligible business,"<sup>2</sup> as this term has been modified and clarified by SBA regulations for the PPP
- Meets at least one of the following two conditions: (i) has 15,000 employees or fewer, or (ii) had 2019 annual revenues of \$5 billion or less
- Is created or organized in the US or under the laws of the US with significant operations in and a majority of its employees based in the US
- Does not also participate in any other Main Street Lending Program or the Primary Market Corporate Credit Facility (and receipt of PPP loan does not disqualify any business from the Main Street Lending programs)<sup>3</sup>
- Has not received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act)

In addition to the other attestations required in the initial term sheets, an eligible borrower must also certify that it has a reasonable basis to believe that, as of the date of origination of the eligible loan and after giving effect to such loan, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period.

## Key updates from initial Federal Reserve term sheets

- 1. No automatic qualification for Main Street Loan Program.** The Federal Reserve has made clear that the terms of each program are minimum requirements and lenders must apply their own independent underwriting standards in determining the creditworthiness of the borrower. This will be true for each facility and may be most salient in the case of the new Main Street Priority Loan Facility, where lenders are required to retain 15% of the loan made to the borrower.
  - Applications for the Main Street Lending Program are not yet available
  - The Federal Reserve has noted that interested businesses should contact lenders for more information on whether the lender plans to participate in the program and to request more information on the application process
- 2. Maximum loan amount remains tied to EBITDA.** Companies with negative EBITDA are still foreclosed from accessing the Main Street Lending Programs (with potential exceptions for nonprofits and asset-based borrowers as described below). In calculating EBITDA for a loan under the Main Street Lending Program, the Federal Reserve has clarified that the eligible lender may employ "the methodology it has previously used for adjusting EBITDA when extending credit to the eligible borrower or similarly situated borrowers on or before April 24, 2020."
  - The Federal Reserve noted throughout its FAQs that EBITDA is the key underwriting metric for the Main Street Lending Programs. However, it did note that it will be evaluating the feasibility of adjusting the loan eligibility metrics for asset-based borrowers given that credit risk for such borrowers is generally not evaluated on the basis of EBITDA
  - While nonprofits are not currently eligible under the program, the Federal Reserve and Treasury are evaluating adjusting the eligibility criteria and the EBITDA-based metric for nonprofits
- 3. Definition of debt for purposes of leverage calculation clarified.** For purposes of determining the maximum loan amount based on a borrower's leverage, the indebtedness included in such calculation includes all amounts borrowed under any loan facility, including unsecured or secured loans from any bank, non-bank financial institution or private lender, as well as any publicly issued bonds or private placement facilities. It also includes all unused commitments under any loan facility, excluding (1) any undrawn commitment that serves as a backup line for commercial paper issuance, (2) any undrawn commitment that is used to finance receivables (including seasonal financing of inventory), (3) any undrawn commitment that cannot be drawn without additional collateral and (4) any undrawn commitment that is no longer available due to change in circumstance.
- 4. Application of SBA affiliation rules.** For purposes of determining whether a business has 15,000 employees or 2019 annual revenues of \$5 billion or less, a business must aggregate the employees and 2019 revenues of the business itself with those of the business's affiliates in accordance with the SBA's affiliation test set forth in [13 CFR 121.301\(f\)](#). This is the first indication that eligibility under the Federal Reserve's program will also be subject to the SBA affiliation rules applicable to the PPP loan program. Private equity and VC-backed companies must be sure to understand whether employees and/or revenues of affiliated controlled entities (including, potentially, foreign affiliates) will need to be included in any eligibility criteria for the program. For our earlier guidance on this provision with respect to the PPP program, please see the [following alert](#).
- 5. Ability of pass-through entities to make required tax distributions.** As noted in our prior alerts on the conditions to receiving funds under CESA, borrowers participating in the Main Street Lending Program will not be permitted to make distributions or consummate stock buybacks and must agree to limits on executive compensation as a condition to receiving a Main Street loan. The FAQs, however, clarify that the restriction on distributions will not apply to distributions made by an S corporation or other tax pass-through entity to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings.
- 6. Additional flexibility to refinance existing debt.** In addition to allowing access to the Main Street Lending Program for more highly leveraged companies, the new Main Street Priority Loan Facility allows the refinancing of existing debt of the borrower at the time of origination so long as the existing debt is not held by the new lender making the eligible loan. Unlike the rigid prohibition under the initial Main Street Lending Program that prohibited any refinancing of existing debt of the borrower, this new option may provide businesses the ability to refinance existing lenders unwilling to otherwise consent to the incurrence by borrower of a loan under the Main Street Lending Program.
- 7. SOFR replaced with LIBOR.** As a result of input from lenders as to the impracticality of quickly administering SOFR-based loans, the loans under the Main Street Lending Program will all accrue interest

at LIBOR plus 300 basis points, rather than SOFR plus a range of 250 to 400 basis points.

#### Notes

1. The Main Street Lending Program (under the Coronavirus Economic Stabilization Act of 2020 portion of the CARES Act) provides for the Federal Reserve's purchase of up to an aggregate of \$600 billion of loans made to small and medium-sized business.
2. For a full list of ineligible businesses, please see [13 CFR 120.110\(b\)-\(j\), \(m\)-\(s\)](#). Businesses that would be ineligible under the regulation include (amongst others) businesses such as certain financial businesses, life insurance companies, businesses involved in legal gambling, private clubs, businesses with an associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude, and businesses primarily engaged in political or lobbying activities. Note in its FAQs, the Federal Reserve has reserved the right to further modify the application of these SBA restrictions as they apply to the Main Street Lending Program.
3. Note, however, that a borrower may receive more than one loan under a single Main Street Loan Program, provided that the sum of MSNLF loans or MSPLF loans received by a single borrower cannot exceed \$25 million, and the sum of MSELF upsized tranches received by a single borrower cannot exceed \$200 million.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our [legal notices](#).

## Key Contacts

<b>Andrea Bromfeld</b> New York	<b>abromfeld@cooley.com</b> <b>+1 212 479 6115</b>
Vince Sampson Washington, DC	vsampson@cooley.com +1 202 728 7140
David Silverman New York	dsilverman@cooley.com +1 212 479 6739

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.

