

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 Program¹, 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.

Overview
of
updated
terms
of
the
Main
Street
Lending
programs

Main
Street
Priority
Loan
Facility
(MSPLF)

Overview
of
updated
terms
of
the
Main
Street
Lending
programs

Main
Street
Repaired
Loan
Facility
(MSRLF)

Originated
before
April
24,
2020,
and
must
have
a
remaining
maturity
of
at
least
18
months
(taking
into
account
any
adjustments
made
to
the
maturity
of
the
loan
after
April
24,
2020,
including

at
the
time
Overview
of
of
upsizing)
updated
terms
of
the
Secured
Main
Original
Street
secured
Lending
is
programs
secured,
extension
is
secured
Main
Street
Secured
Main
Secured
Loan
Pass
Facility
(MSLF)
original
loan.
If
original
loan
is
unsecured,
extension
is
unsecured

Maturity
years

Overview
of
updated
terms
of
the
Main
Street
Lending
programs

Main
Street
Repaired
Loan
Facility
(MSRLF)

Amortization
amortization
in
first
year.
Thereafter:

- End
of
Year
2:
~~35%~~33%
- End
of
Year
3:
~~35%~~33%
- Remainder
of
~~30%~~33%
at
maturity

Overview
of
updated
terms
of
the
Main
Street
Lending
programs

Main
Street
Equity
Loan
Facility
(MSLF)

LIBOR
rate
(1
or
3
month)
plus
300
basis
points
Interest
deferred
for
first
year
(and
will
be
capitalized)

~~\$50,000,000~~
\$50,000,000
loan
size

Maximum
loan
size
(i)
\$250
million,
(or)

an amount that, when added to the eligible borrower's existing outstanding and undrawn available debt, does not exceed six times the eligible borrower's adjusted 2019 EBITDA

Overview
of
updated
terms
of
the
Main
Street
Lending
programs

Main
Street
Equity
Loan
Facility
(MSLF)

~~Banking~~
loans
must
participate
(contractually
terminated
or
priority
and
security)
with
the
borrower's
other
loans
or
debt
instruments

Prepayment
permitted
without
penalty

Overview
of
updated
terms
of
the
Main
Street
Lending
programs

Main
Street
Equity
Loan
Facility
(MSLF)

If a loan
classification
the borrower
has
any
loans
outstanding
with
the
lender
as
of
December
31,
2019,
such
loans
must
have
an
internal
risk
rating
equivalent
of
"pass"
in
the
Federal
Institutions
Examination
Council's
supervisory

rating
system

on
Overview
that
of
date
updated

terms

of

Model

Main

Selection

Lending

programs

Fees

- 760

bps

Main fee

Streetn

Equity

Loan participation

Facility purchased

(MSLF)

by

the

Fed

may

be

passed

through

to

the

borrower

- 1000

bps

Origination

fees

origination

fee

Restrictions

on • Proceeds

prepayment

of bet

other beed

debt used

to finance

refinance

other

debt

- Borrower

time

only

permitted

to

pay
acquired
interest
of indebtedness
updated principal
terms of
of other
the debt
Main while
Street loader
Lending making
programs outstanding
(other
than

• Repayments
Main of
Street lines
Expanded permitted
Loan credit
Facility
(MSRP)

accordance
with
the
principal's
normal
course
debt
business
loan
usage
outstanding
other
time
of payments
of credit)

• Participating
lender
may
request
repayment
with
other
existing's
debt
upon
default
business
acceleration
and
may
cancel
lines

of
 credit)
 Participating
Overview
 of under
 updated
 terms of request
 of default
 the has
Main occurred
Street thereunder
Lending
programs debt
 upon
 default
 and
 acceleration
Main and
Street may
Expanded cancel
Loan lines
Facility of
(MSLF) credit
 if
 an
 event
 of
 default
 has
 occurred
 thereunder

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,"² 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)³
- 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.

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