

COVID-19: Federal Reserve's Main Street Lending Program: What Businesses Need to Know to Prepare

April 19, 2020

On April 9, 2020, the Federal Reserve, acting under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") and Section 13(3) of the Federal Reserve Act (12 USC §344), announced the creation of a new "Main Street Lending Program" that will provide credit to eligible businesses with up to 10,000 employees or up to \$2.5 billion in annual revenues through the purchase of up to \$600 billion in loans.

The Main Street Lending Program's facilities are designed to support lending to both investment grade and below-investment grade borrowers, and are separate and distinct from the mid-sized business loan program contemplated to be created under Section 4003(c)(3)(D)(i) of the CARES Act, which remains unimplemented.

The below summary of the Main Street Lending program is based on term sheets made available on the **Federal Reserve's website** on April 9, 2020. The Federal Reserve Board and the Secretary of the Treasury may make adjustments to the terms and conditions described in the term sheets. Any changes are to be announced on the Federal Reserve's website.

The Main Street Lending Program consists of two facilities: the Main Street New Loan Facility ("MSNLF"), which applies to eligible unsecured new term loans originated on or after April 8, 2020, and the Main Street Expanded Loan Facility ("MSELF"), which applies to eligible "upsized tranches" (e.g., similar to an accordion facility)[1] to existing secured or unsecured loans originated before April 8, 2020 (provided the upsize occurs on or after April 8, 2020). The primary differences between the terms of loans under the MSNLF and the MSELF relate to the maximum loan sizes and collateral requirements.

Under the facilities, a newly formed special purpose vehicle ("SPV") will purchase 95% participations in loans made to borrowers under the programs, and the lenders will retain 5% of the loan. Funding for the SPV will come from the Federal Reserve and a \$75 billion equity investment from the Department of the Treasury. The SPV will cease purchasing participations on September 30, 2020 unless the program is extended by the Federal Reserve and the Department of the Treasury.

Eligible Lenders:

Eligible lenders are U.S. insured depository institutions, U.S. bank holding companies and U.S. savings and loan holding companies. There is not current or contemplated eligibility for "non-bank" lenders.

Eligible Borrowers:

An eligible borrower is a business which (i) is created or organized in the U.S. or under the laws of the U.S. or one of its states, (ii) has "significant operations" in the U.S., (iii) has a majority of its employees based in the U.S. **and** (iv) has **either** 10,000 or fewer employees **or** 2019 revenues of \$2.5 billion or lower. At this time, it is unclear whether a U.S. subsidiary of a foreign company would be allowed to participate if it meets the specified criteria.

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Program Exclusions:

Companies that have obtained loans under the SBA's Paycheck Protection Program created under the CARES Act are generally eligible to borrow under the Main Street Lending Program. However, an eligible borrower is permitted to access only one of the MSNLF, the MSELF or the Primary Market Corporate Credit Facility (a separate \$750 billion facility that will serve as a funding backstop for companies rated BBB-/Baa3 or greater).

Eligible Lender's Required Attestations and Certification:

- Attest that proceeds of an eligible loan will not be used to repay or refinance preexisting loans or lines of credit made by the eligible lender to the eligible borrower (including, in the case of MSELF loans, the pre-existing portion of the eligible loan).
- Attest that it will not cancel or reduce any existing lines of credit outstanding to the eligible borrower.
- Certify that it is eligible to participate in the Main Street Lending Program.

Eligible Borrower's Required Attestations and Certification:

- Commit to refrain from using the proceeds of the eligible loan (including the upsized tranche of the eligible loan) to repay other loan balances.
- Commit to refrain from repaying other debt (with the proceeds of the eligible loan or otherwise) of equal or lower priority, with the exception of mandatory principal payments, unless it has first repaid the eligible loan in full.
- Attest that it will not seek to cancel or reduce any of its outstanding lines of credit with the eligible lender or any other lender.
- Attest that it requires financing due to the exigent circumstances presented by the coronavirus disease 2019 ("COVID-19") pandemic, and that, using the proceeds of the eligible loan (including any upsized tranche of the eligible loan), it will make reasonable efforts to maintain its payroll and retain its employees during the term of the upsized tranche of the eligible loan.
- Attest that it meets the EBITDA leverage condition stated above (see Maximum Loan Size).
- Attest that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act.**[2]**
- Certify that it is eligible to participate in the Main Street Lending Program, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.

[1] An "accordion facility" is a feature of some loan agreements that allows the borrower to add a new term loan or tranche, or increase the commitments under an existing revolving credit, term loan, or delayed draw term loan facility up to a specified amount under certain terms and conditions. The advantage of this feature is that the increase in the loan/commitment amount is pre-approved by the lenders so that the borrower does not have to get the lenders' consent if it increases the loan facility at a later date.

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[2] Under the restrictions applicable to the FRB direct lending facilities under Title IV of the CARES Act, the borrower may not do any of the following **during the period commencing** when the loan agreement or loan guarantee agreement is executed **and ending** 12 months after the loan or loan guarantee is no longer outstanding:

- Purchase its own or parent company's equity securities that are listed on a national securities exchange (absent a pre-existing contractual obligation);
- Pay dividends on common stock or make other **capital** distributions;
- To employees whose 2019 compensation **exceeded \$425,000**, pay
 - more than \$425,000 during any 12 consecutive months; or
 - an amount in severance that is twice the total compensation the employee received in 2019.
- To employees whose 2019 compensation **exceeded \$3 million**, pay more than the sum of \$3 million plus 50% of their 2019 compensation during any 12 consecutive months.

This information is based on the facts and guidance available at the time of publication, and may be subject to change.