

Main Street Lending Program

By Rich Johnson

On April 9, 2020, the Federal Reserve announced that the Main Street Lending Program (the “Program”) had been established under the authority of Section 13(3) of the Federal Reserve Act, with approval of the U.S. Secretary of the Treasury. The Program is designed to provide support to small and medium-sized businesses and their employees during this time of financial strain by providing access to credit.



Due to the wide variance in financial needs of businesses, the Federal Reserve accepted comments on the Program until April 16, 2020. After receiving more than 2,200 letters with comments, the Federal Reserve announced on April 30, 2020, that it was expanding the scope and eligibility of the Program to include more loan options and an increase in the maximum size of businesses eligible to participate. Below is a summary of the expanded Program which consists of three separate loan facilities: Main Street New Loan Facility (MSNLF), Main Street Expanded Loan Facility (MSELF) and Main Street Priority Loan Facility (MSPLF).

Eligibility Requirements

Eligible Borrowers under each of the facilities are Businesses (as defined below) that:

1. were established prior to March 13, 2020;
2. are not an Ineligible Business (as defined below);
3. were in sound financial condition prior to the onset of the COVID-19 pandemic;
4. meet at least one of the following two conditions (when aggregated with affiliated entities): (i) has 15,000 employees or fewer, or (ii) had 2019 annual revenues of \$5 billion or less;
5. are created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States;
6. do not also participate in the Primary Market Corporate Credit Facility which was established by the Federal Reserve to support large companies through the purchase of eligible corporate bonds from, and lending through syndicated loans to, large companies; and
7. have not received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Section 4003(b)(1)-(3) of the CARES Act) (applicable to passenger air carriers (and certain specified related businesses), cargo air carriers, and businesses critical to maintaining national security).

A Business is defined as an entity that is 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 percent participation by foreign business entities; or a tribal business concern as defined in 15 U.S.C. §657a(b)(2)(C), except that

“small business concern” in that paragraph should be replaced with “Business” as defined herein. Non-profit organizations are currently not eligible; however, the Federal Reserve is evaluating the feasibility of adjusting the borrower eligibility criteria and loan eligibility metrics of the Program to include such organizations.

Ineligible Businesses are those types of businesses listed in 13 CFR 120.110(b)-(j) and (m)-(s), as modified by regulations implementing the Paycheck Protection Program established by section 1102 of the CARES Act on or before April 24, 2020.

To determine number of employees, a business should count all full-time, part-time, seasonal or otherwise employed persons, excluding volunteers and independent contractors. Businesses should count their own employees and those employed by their affiliates (as determined in accordance with the affiliation test set forth in 13 CFR 121.301(f)). In order to determine the applicable number of employees, businesses should use the average of the total number of persons employed for each pay period over the 12 months prior to the loan origination or upsize under the Program.

To determine its 2019 annual revenues, businesses must aggregate their revenues with those of their affiliates (as determined in accordance with the affiliation test set forth in 13 CFR 121.301(f)). Businesses may use either of the following methods to calculate 2019 annual revenues for purposes of determining eligibility:

1. Annual “revenue” per their most recent GAAP-based audited financial statements; or
2. Annual receipts (as used by the SBA in 13 CFR 121.104(a)) for the 2019 fiscal year, as reported to the IRS.

An Eligible Lender is a U.S. federally insured depository institution (including a bank, savings association, or credit union), a U.S. branch or agency of a foreign bank, a U.S. bank holding company, a U.S. savings and loan holding company, a U.S. intermediate holding company of a foreign banking organization, or a U.S. subsidiary of any of the foregoing.

Eligible Loans are secured or unsecured term loans made to an Eligible Borrower by an Eligible Lender provided that the loan (or in the case of the MSELF, the upsized tranche) has all of the following features:

1. 4-year maturity;
2. principal and interest payments deferred for one year (loans under the Program are full-recourse, non-forgivable loans);
3. adjustable rate of LIBOR (1 or 3 month) + 300 basis points; and
4. prepayment permitted without penalty.

In addition to the above guidance which is applicable to each facility under the Program, the Federal Reserve has identified certain unique qualities for each facility as outlined below.

Main Street New Loan Facility

- Originated after April 24, 2020.
- Minimum loan amount of \$500,000.
- Maximum loan amount is the lesser of \$25 million or an amount that when added to the Eligible Borrower’s existing outstanding and undrawn available debt, does not exceed four times the Eligible Borrower’s adjusted 2019 earnings before interest, taxes, depreciation, and amortization (EBITDA).

- The loans must not be, at the time of origination or at any time during the term of the Eligible Loan, contractually subordinated in terms of priority to any of the Eligible Borrower's other loans or debt instruments.
- Principal amortization of one-third at the end of the second year, one-third at the end of the third year, and one-third at maturity at the end of the fourth year.

Main Street Priority Loan Facility

- Originated after April 24, 2020.
- Minimum loan amount of \$500,000.
- Maximum loan amount is the lesser of \$25 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.
- At the time of origination and at all times thereafter, the Eligible Loan 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.
- May, at the time of origination of the Eligible Loan, refinance existing debt owed by the Eligible Borrower to a lender that is not the Eligible Lender.
- Principal amortization of 15% at the end of the second year, 15% at the end of the third year, and a balloon payment of 70% at maturity at the end of the fourth year.

Main Street Expanded Loan Facility

- Eligible Lenders may increase (or upsize) secured or unsecured term loans or revolving credit facilities originated on or before April 24, 2020, with a remaining maturity of no less than 18 months.
- Minimum increase (or upsize) of \$10 million.
- Maximum increase (or upsize) is the lesser of (i) \$200 million; (ii) 35% of the Eligible Borrower's existing outstanding and undrawn available debt that is pari passu in priority with the Eligible Loan and equivalent in secured status (i.e., secured or unsecured); or (iii) an amount 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.
- At the time of upsizing and at all times thereafter, the upsized tranche 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.
- Principal amortization of 15% at the end of the second year, 15% at the end of the third year, and a balloon payment of 70% at maturity at the end of the fourth year.

Additional Borrower Requirements

Under each of the Program facilities "existing outstanding and undrawn available debt" 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 (i) any undrawn commitment that serves as a backup line for commercial paper issuance, (ii) any undrawn commitment that is used to finance receivables (including seasonal financing of inventory), (iii) any undrawn commitment that cannot be drawn without additional collateral, (iv) any undrawn commitment that is no longer available due to change in circumstance.

Existing outstanding and undrawn available debt should be calculated as of the application date.

During the term of any Eligible Loan, Eligible Borrowers 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 and must commit or certify:

1. to refrain from repaying the principal balance of, or paying any interest on, any debt until the Eligible Loan (or in the case of MSELF, the upsized tranche) is repaid in full, unless the debt or interest payment is mandatory and due (however, with respect to MSPLF, the Eligible Borrower may, at the time of origination, refinance existing debt owed to another lender);
2. that it will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender;
3. that it has a reasonable basis to believe that, as of the date of origination of the Eligible Loan (or in the case of MSELF, the date of upsizing) and after giving effect to such loan (or upsizing), 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;
4. that it will comply with the following restrictions under section 4003(c)(3)(A)(ii) of the CARES Act:
 - until the date 12 months after the date on which the loan is no longer outstanding, not to repurchase an equity security that is listed on a national securities exchange of the Eligible Business or any parent company of the Eligible Business while the loan is outstanding, except to the extent required under a contractual obligation that is in effect as of the date of enactment of the CARES Act;
 - until the date 12 months after the date on which the loan is no longer outstanding, not to pay dividends or make other capital distributions with respect to the common stock of the Eligible Business; and
 - to comply with the limitations on compensation set forth in section 4004 of the CARES Act (applicable to certain highly compensated officers and employees),

except that an S corporation or other tax pass-through entity that is an Eligible Borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings; and

5. that it is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act which provides that entities in which a covered individual (as defined below) directly or indirectly holds a controlling interest are ineligible.
 - For purposes of the above, covered individuals are (i) the President, the Vice President, the head of an Executive department, or a Member of Congress; and (ii) the spouse, child, son-in-law, or daughter-in-law, as determined under applicable common law, of an individual described in (i).

Eligible Borrowers may only participate in one of the Program facilities. Businesses that received Paycheck Protection Program Loans are permitted to borrow under the Program facilities provided that they meet the Eligible Borrower requirements. The Federal Reserve will disclose information regarding the Program facilities, including the names of lenders and borrowers, amounts borrowed and interest rates charged. The Federal Reserve is currently working to create the infrastructure necessary to operationalize the Program. Updates regarding the Program including the launch date can be found online on the Federal Reserve's Main Street Lending Program webpage at <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>.