

COVID-19 NEWS OF INTEREST

Federal Reserve Announces New Main Street Lending Program

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On April 9, 2020, the Board of Governors of the Federal Reserve System (the “Board”) announced additional actions taken by the Federal Reserve to support the economy during the COVID-19 pandemic. Among these is a new \$600 billion Main Street Lending Program (the “Main Street Program”).¹ The program is designed to facilitate lending to small and medium-sized businesses impacted by COVID-19. It offers four-year loans to eligible companies employing up to 10,000 workers or with revenues of up to \$2.5 billion.

While we summarize key features of the Main Street Program below, we note that the term sheets published by the Board describing the [new loans](#) and [expanded loans](#) of the Main Street Program lack fine detail with respect to a number of terms, such as the technical aspects of financial calculations, the discretion (if any) afforded to participating lenders and the meaning under the program of key words like “debt” or “reasonable efforts.” We expect the Board to answer some of these questions in further guidance following the public comment period that ends on April 16, 2020.

A threshold consideration for many interested parties will be the pro forma leverage limitations that borrowers must satisfy to incur loans under the Main Street Program. Most leveraged loan facilities incurred in the recent pre-COVID-19 period were incurred at leverage multiples of “adjusted” EBITDA, after giving effect to certain negotiated add-backs to net

¹ The Main Street Program is part of a [broader slate of initiatives](#) undertaken by the Federal Reserve to provide up to \$2.3 trillion in loans in support of employers and communities across the country, including a Paycheck Protection Program Liquidity Facility to extend credit to eligible financial institutions that originate loans under the Small Business Administration’s Paycheck Protection Program, an expansion of the Federal Reserve’s Primary and Secondary Market Corporate Credit Facilities and Term Asset-Backed Securities Loan Facility and establishing a Municipal Liquidity Facility to aid state and local governments.

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income. The term sheets published by the Board indicate that leverage under the Main Street Program will be capped at four times the borrower's 2019 non-adjusted EBITDA (or six times 2019 non-adjusted EBITDA for increases to existing loans as further described below). Absent further changes to the program or clarification as to what (if any) add-backs may be taken in making this calculation, many private equity portfolio company borrowers and other borrowers that rely on leverage may find themselves ineligible for the Main Street Program.

Overview

The Main Street Program consists of two new loan facilities with a combined capacity of up to \$600 billion: the Main Street New Loan Facility (the "New Loan Facility") and the Main Street Expanded Loan Facility (the "Expanded Loan Facility" and, together with the New Loan Facility, the "Main Street Facilities"). The New Loan Facility provides for new unsecured term loans to eligible borrowers originated on or after April 8, 2020. The Expanded Loan Facility provides for upsized tranches of existing term loans (which may be secured) originated prior to April 8, 2020.

Firms that have taken advantage of the Small Business Administration's Paycheck Protection Program may also borrow under the Main Street Facilities. However, eligible borrowers must choose between the New Loan Facility and the Expanded Loan Facility and may not participate in both. In addition, borrowers that obtain financing under either of the Main Street Facilities cannot participate in the Federal Reserve's program to facilitate the purchase of qualifying bonds or syndicated loans under the Primary Market Corporate Credit Facility.

Borrower Eligibility

To be eligible for the Main Street Facilities, a borrower may have up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues. The borrower must also be a business that is created or organized in the U.S. with significant operations in the U.S. and a majority of its employees based in the U.S. ²

Loan Terms

Importantly, as indicated above, loans under the Main Street Facilities are subject to maximum size limitations. These differ between the two facilities:

- Under the New Loan Facility, loans cannot exceed the lesser of (i) \$25 million and (ii) an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed four times the borrower's 2019 earnings before interest, taxes, depreciation and amortization ("EBITDA").

² Borrowers with significant investments from certain Executive Branch officeholders, members of Congress and their families are ineligible for the program.

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- Under the Expanded Loan Facility, upsized tranches cannot exceed the lesser of (i) \$150 million, (ii) 30% of the borrower's existing outstanding and committed but undrawn bank debt and (iii) an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed six times the borrower's 2019 EBITDA.

Otherwise, loans under both Main Street Facilities will share the following features:

- a four-year maturity, with amortization and interest deferred in the first year;
- an adjustable rate of SOFR plus 250-400 basis points;
- a minimum size of \$1 million; and
- no prepayment penalty.

Borrower Attestations

In addition to any certifications required by applicable statutes and regulations, each borrower will be required to attest to the following items, which limit use of the loan proceeds and the borrower's ability to de-lever under other credit lines:

- the borrower requires financing due to the exigent circumstances presented by the COVID-19 pandemic and, using the proceeds of its loan, it will make "reasonable efforts" to maintain its payroll and retain its employees during the term of its loan;
- it will not use the proceeds to repay other loan balances or seek to cancel or reduce any outstanding lines of credit; and
- it will not repay other debt of equal or lower priority, with the exception of mandatory principal payments, unless the borrower has first repaid its loan under the applicable Main Street Facility in full.

Each borrower must also 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, specifically that:

- it will not buy back stock until at least 12 months after the date the loan is satisfied, except under a preexisting contractual agreement;
- it will not pay dividends or make other capital distributions with respect to its common stock until at least 12 months after the date the loan is satisfied; and

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- it will abide by limits on executive compensation. Specifically, employees who earned more than \$425,000 in total compensation in 2019 cannot receive a raise in 2020, and cannot receive severance pay or other benefits that are more than double the 2019 amount in total compensation. Officers and employees who earned more than \$3 million in total compensation in 2019 cannot receive total compensation in 2020 that exceeds \$3 million plus 50% of the excess amount over \$3 million received in 2019.

Sales of Participations and Lender Eligibility

In connection with the Main Street Facilities, a Federal Reserve Bank will lend to a special purpose vehicle (the “SPV”), which in turn will purchase 95% participations in eligible new term loans and upsized tranches from lenders at par value. Lenders will retain the remaining 5%.

Borrowers may obtain financing under the Main Street Facilities only from U.S. insured depository institutions, U.S. bank holding companies or U.S. savings and loan holding companies. Each lender will also be required to attest to certain matters, including that:

- the proceeds of the loan or upsized tranche, as applicable, will not be used to repay or refinance preexisting loans or lines of credit made by the lender to the borrower; and
- it will not cancel or reduce any existing lines of credit to the borrower.

Program Fees

The following fees will be payable under the Main Street Facilities:

- Lenders under the New Loan Facility will pay the SPV a facility fee of 100 basis points of the principal amount of the participation purchased by the SPV (which lenders may opt to pass on to borrowers, in which case this fee would be in addition to the loan origination fee below);
- Borrowers under both Main Street Facilities will pay lenders a loan origination (or upsizing) fee of 100 basis points of the principal amount of the loan or upsized tranche, as applicable; and
- The SPV will pay lenders 25 basis points of the principal amount of its participation per annum for loan servicing.

Solicitation of Comments

In announcing the Main Street Program, the Board indicated that, as the program is being finalized, the Federal Reserve and the Treasury will seek input from lenders, borrowers and other stakeholders to make sure the program supports the economy effectively while also safeguarding taxpayer funds. Included in the Board’s announcement is a link to a feedback

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form with a note that comments may be sent until April 16. Businesses evaluating potential participation in the Main Street Program and the terms and restrictions that may apply should consider providing feedback before the Board and the Secretary of the Treasury finalize the terms and conditions of the Main Street Facilities.

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