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# Memorandum

## UPDATE: Federal Reserve Updates and Expands the Scope of the Main Street Business Lending Program

July 20, 2020

On June 11, 2020, the Federal Reserve updated the terms for the Main Street Lending Program, which commenced operations on July 6, 2020 and which shall remain operational until September 30, 2020 unless extended by the Board and the Treasury Department. As previously stated, the Main Street Lending Program will make up to $600 billion in new financing in the form of four-year term loans available to eligible small- and mid-sized businesses. The Treasury Department, using funds appropriated to the Exchange Stabilization Fund under the CARES Act, will make a $75 billion equity investment to backstop the Main Street Lending Program.

As updated, the Main Street Lending Program will include three facilities: (i) the Main Street New Loan Facility ("New Main Street Facility"), under which the Federal Reserve Bank of Boston ("Reserve Bank") will purchase, through a special purpose vehicle ("SPV"), 95% participations in new loans made by eligible lenders to eligible borrowers, (ii) the Main Street Expanded Loan Facility ("Expanded Main Street Facility"), under which the Reserve Bank will purchase 95% participations in upsized tranches of certain existing loans made by eligible lenders, and (iii) a newly announced Main Street Priority Loan Facility ("Priority Main Street Facility"), under which the Reserve Bank will purchase, through an SPV, 95% participations in new loans made by eligible lenders to eligible borrowers.[1]

The Federal Reserve has also issued the necessary legal forms and agreements for eligible borrowers and eligible lenders to participate in the Main Street Lending Program,[2] as well as an extensive set of frequently asked questions that provide guidance on various program requirements.[3]

Following is a summary of key terms of the Main Street Lending Program facilities.

[1] The term sheet for the Main Street New Loan Facility, as of June 8, 2020, is available here. The term sheet for the Main Street Expanded Loan Facility, as of June 8, 2020, is available here. The term sheet for the Main Street Priority Loan Facility, as of June 8, 2020, is available here.

[2] The Main Street Lending Program legal forms and agreements are available here.

[3] The Main Street Frequently Asked Questions are available here.

## Main Street Lending Program Facilities' Updated Key Terms

- **Eligible Lenders**: U.S. federally insured depository institutions (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.[4]
- **Eligible Borrowers**: Businesses[5] that were established prior to March 13, 2020 that are organized in the United States, with significant operations in and a majority of its employees in the United States, and with either (i) 15,000 employees or fewer[6] or (ii) 2019 annual revenues of $5 billion or less.[7]
  - The Federal Reserve announced that businesses that are ineligible for Paycheck Protection Program ("PPP") loans under the existing rules of the Small Business Administration ("SBA") would likewise be ineligible for loans under the Main Street Lending Program. Such ineligible businesses include "financial businesses," which the SBA has previously interpreted broadly to include, among others, "finance companies," "investment companies" and "other businesses whose stock in trade is money." In more recent guidance following the CARES Act, the SBA clarified that it had determined that hedge funds and private equity firms themselves are ineligible for PPP loans. Accordingly, such entities are likewise expected to be ineligible for loans under the Main Street Lending Program.
  - Similarly, the Federal Reserve has announced that a business's employees and 2019 revenues for purposes of eligibility under the Main Street Lending Program will be calculated by aggregating the employees and 2019 revenues of the business itself with those of the business's affiliated entities in accordance with the SBA's affiliation rules applicable to PPP applicants.[8]
  - Borrowers will be permitted to participate only in one of the three facilities, and will not be permitted to also participate in the Primary Market Corporate Credit Facility ("PMCCF").[9]

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[4] At this time, nonbank financial institutions that are not subsidiaries of an eligible lender are not eligible to participate in the Main Street Lending Program. However, the Federal Reserve is considering options to expand the list of eligible lenders in the future.

[5] For purposes of the Main Street Lending Program, a "business" is 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 in the Main Street Lending Program. Other forms of organization may be considered for inclusion as a business under the Main Street Lending Program at the discretion of the Federal Reserve.

[6] Businesses should count as employees all full-time, part-time, seasonal, or otherwise employed persons, excluding volunteers and independent contractors, in accordance with 13 C.F.R. 121.06, and use the average of the total number of persons employed by the eligible borrower and its affiliates for each pay period over the 12 months prior to the origination or upsizing of the Main Street loan.

[7] A business may use its (and its affiliates') annual "revenue" per its 2019 GAAP audited financial statements; or annual receipts for the fiscal year 2019, as reported to the Internal Revenue Service. For purposes of the Main Street Lending Program, the term "receipts" has the same meaning used by the SBA in 13 CFR 121.104(a). If a potential borrower (or its affiliate) does not yet have audited financial statements or annual receipts for 2019, the borrower (or its affiliate) should use its most recent audited financial statements or annual receipts.

[8] The waiver of the SBA's affiliation rules under the CARES Act (*i.e.*, for hotels, franchises, and companies that received SBIC financial assistance) does not appear to apply to the Main Street Lending Program.

[9] The PMCCF was established on March 23, 2020 to support credit to investment grade companies and provides bridge financing for up to four years; the facility was expanded on April 9 and June 29, 2020.

However, companies that have received PPP loans will be permitted to borrow under the Main Street Lending Program.

- **Upsized Tranches Under Expanded Main Street Facility**: To be eligible for "upsizing," the existing term loan or revolving credit facility must have been originated on or before April 24, 2020, and must have a remaining maturity of at least 18 months. The lender may extend the maturity of an existing loan or revolving credit facility at the time of upsizing in order for the underlying instrument to satisfy the 18-month remaining maturity requirement.

  Underlying loans eligible to be upsized will include existing revolving credit facilities (in addition to existing term facilities), as well as syndicated facilities. Only the lender for the upsized tranche is required to meet the eligible lender criteria. Other members of a syndicated facility are not required to meet the eligibility criteria.

- **Loan Pricing**: Loans and loan upsizes under each Main Street Lending Program facility will have an adjustable interest rate of the one-month or three-month LIBOR plus 300 basis points (instead of a pricing range of SOFR as provided in the previously announced terms). Consistent with the recommendations of the Alternative Reference Rates Committee, the Federal Reserve indicated that the loan agreements should include fallback considerations to be used should LIBOR become unavailable during the term of the loan. In addition, the addition of a LIBOR "floor" is not permitted.

- **Loan Pricing Maturity and Payment Terms**: Loans and loan upsizes will have a five-year maturity. Under the Main Street Lending Program, amortization of principal will be deferred for two years and interest will be deferred for one year, and prepayment will be permitted without penalty. Unpaid interest will be capitalized during the one-year deferral.

  For years two through four, loan principal will be amortized as follows:

| Facility | Year 3 | Year 4 | Year 5 |
|---|---|---|---|
| **New Main Street Facility** | 15% | 15% | 70% |
| **Priority Main Street Facility** | 15% | 15% | 70% |
| **Expanded Main Street Facility** | 15% | 15% | 70% |

- **Minimum Loan Amount**: The minimum loan size under both the New Main Street Facility and Priority Main Street Facility will be $250,000. The minimum loan size under the Expanded Main Street Facility will be $10 million.

- **Maximum Loan Amount**:
  - *New Main Street Facility*: Lesser of (i) $35 million or (ii) an amount that, when added to the borrower's existing outstanding and undrawn available debt,[10] does not exceed four times the borrower's adjusted 2019 EBITDA;
  - *Priority Main Street Facility*: lesser of (i) $50 million or (ii) an amount that, when added to the borrower's existing outstanding and undrawn available debt, does not exceed six times the borrower's adjusted 2019 EBITDA;
  - *Expanded Main Street Facility*: lesser of (i) $300 million, or (ii) an amount that, when added to the borrower's existing outstanding and undrawn available debt, does not exceed six times the borrower's adjusted 2019 EBITDA.[11]
- **Priority and Subordination**:
  - *New Main Street Facility*: The Main Street loan must not be, at the time of origination or at any time during the term of the loan, contractually subordinated in terms of priority (but not necessarily in security) to any of the borrower's other loans or debt instruments.[12]
  - *Priority Main Street Facility*: At the time of origination and at all times thereafter, the Main Street loan must be senior to or *pari passu* with, in terms of priority and security, the borrower's other loans or debt instruments, other than mortgage debt.
  - *Expanded Main Street Facility*: 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 borrower's other loans or debt instruments, other than mortgage debt.
- **Loan Classification:** If the borrower had other loans outstanding with the lender as of December 31, 2019, such loans must have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system on that date.

[10] "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 (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. Existing outstanding and undrawn available debt should be calculated as of the date of the loan application.

[11] While EBITDA is the key underwriting metric required for the Main Street Lending Program facilities, the Federal Reserve recognized that the credit risk of asset-based borrowers, as a matter of practice, is generally not evaluated on the basis of EBITDA. Accordingly, the Federal Reserve noted that it will be evaluating (together with the Treasury Department) the feasibility of adjusting the loan eligibility metrics of the Main Street Lending Program for such borrowers.

[12] This requirement does not prevent: (i) the issuance of a New Main Street loan that is a secured loan (including in a second lien or other capacity) to a borrower, whether or not the borrower has an outstanding secured loan of any lien position or maturity; (ii) the issuance of a New Main Street loan that is an unsecured loan to a borrower, regardless of the term or secured or unsecured status of the borrower's existing indebtedness; or (iii) the borrower from taking on new secured or unsecured debt after receiving a New Main Street loan, provided the new debt would not have higher contractual priority in bankruptcy than the New Main Street loan.

- **<u>Assessment of Financial Condition</u>**: Lenders are expected to conduct an assessment of each potential borrower's financial condition and creditworthiness at the time of the potential borrower's application, applying their own underwriting standards. For example, lenders can require borrowers to pledge additional collateral to secure an upsized tranche as a condition of approval under the Expanded Main Street Facility.
- **<u>Loan Participations</u>**: The Reserve Bank will, through its SPV, purchase a 95% participation in the loan or upsized tranche at par value for the New, Priority, and Expanded Main Street Facilities. In each case, the lender will retain the remaining portion until the loan or upsized tranche matures or the SPV sells all of its participation, whichever comes first.

  The Reserve Bank and the lender will share risk on a *pari passu* basis.

  The sale of a participation in the Eligible Loan to the SPV for all three Facilities will be structured as a "true sale" and must be completed expeditiously after the Eligible Loan's origination or upsizing.
- **<u>Loan Collateral</u>**: Loans or upsized tranches under any Main Street Lending Program facility may be secured or unsecured.
  - If the loan underlying an Expanded Main Street Facility upsized tranche is secured, the upsized tranche must be secured, and any collateral securing the underlying loan (at the time of upsizing or on any subsequent date) must secure the Expanded Main Street Facility Upsized Tranche on a pro rata basis.

    Thus, by participating in the program, the lender would potentially reduce its collateral coverage for its current loan exposure since the same collateral pool would also secure the new upsized loan. However, lenders can require borrowers to pledge additional collateral to secure an Expanded Main Street Facility upsized tranche.
  - If a Priority Main Street Facility loan is secured, then the collateral coverage ratio for the loan at the time of its origination must be either (i) at least 200% or (ii) not less than the aggregate collateral coverage ratio for all of the borrower's other secured loans or debt instruments (other than mortgage debt). If a Priority Main Street Facility loan is secured by the same collateral as any of borrower's other loans or debt instruments (other than mortgage debt), the lien upon such collateral securing the Priority Main Street Facility loan must be and remain senior to or *pari passu* with the liens of the other creditors. The a Priority Main Street Facility loan can be unsecured only if the borrower does not have, as of the date of origination, any secured loans or debt instruments (other than mortgage debt)
- **<u>Required Lender Certifications and Covenants</u>**: The following certifications and covenants will be required from each lender with respect to each loan in addition to other certifications required under the Main Street Program:[13]

[13] The Lender Transaction Specific Certifications and Covenants for the Main Street New Loan Facility, as of June 11, 2020, are available here. The Lender Transaction Specific Certifications and Covenants for the Expanded Main Street Loan Facility, as of June 11, 2020, are available here. The Lender Transaction Specific Certifications and Covenants for the Priority Main Street Loan Facility, as of June 11, 2020, are available here.

- Certify that, following due inquiry with respect to formation, the lender has no knowledge or reason to believe that the certifications made in the Borrower Certifications and Covenants that the Borrower (i) is a Business and (ii) was established prior to March 13, 2020, are incorrect or untrue in any material respect.
- Commit that it will not request that the borrower repay debt extended by the lender to the borrower, or pay interest on such outstanding obligations, until the Main Street loan or upsized tranche is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration.
- Commit that it will not cancel or reduce any existing committed lines of credit to the borrower, except in an event of default.[14]
- Certify that the methodology used for calculating the borrower's adjusted 2019 EBITDA for the leverage ratio cap on the maximum loan amount is the same methodology previously used by the lender for adjusting EBITDA when extending credit to the borrower or similarly situated borrowers on or before April 24, 2020 (in the case of the New and Priority Main Street Facilities) or when originating or amending the underlying loan on or before April 24, 2020 (in the case of the Expanded Main Street Facility).[15]
- Certify that, if the borrower had other loans outstanding with the Lender as of December 31, 2019, such loans had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system on that date.
- Certify that the loan documentation contains certain provisions that meet specified requirements under the Main Street Program, including a provision triggering mandatory prepayment upon following a borrower's material misstatement or material breach of a certification or covenant, a cross-default provision, a lien covenant or negative pledge covenant (in the case of the Priority and Expanded Main Street Facilities), and financial reporting covenants.

[14] This requirement does not prohibit the reduction or termination of uncommitted lines of credit, the expiration of existing lines of credit in accordance with their terms, or the reduction of availability under existing lines of credit in accordance with their terms due to changes in borrowing bases or reserves in asset-based or similar structures.

[15] If one or more of the borrower's affiliates previously participated, or has applied to participate, in a Main Street Facility, the lender must certify that the principal amount of the loan is an amount that, when added to the borrower's and all of the borrower's affiliates' existing outstanding and undrawn available debt, does not exceed four times the borrower's and all of the borrower's affiliates' adjusted 2019 EBITDA.

If the Borrower is a company, all or substantially all of the assets of which comprise equity interests in other entities (a "holding company"), the lender must certify that the principal amount of the loan is an amount that, when added to the Selected Subsidiaries' existing outstanding and undrawn available debt, does not exceed four times the Selected Subsidiaries' adjusted 2019 EBITDA. For this purpose, Selected Subsidiaries means one or more operating subsidiaries selected by the Borrower to provide a guarantee for the Main Street loan on a joint and several basis, provided that (i) a borrower is only required to designate Selected Subsidiaries if it is a holding company; (ii) each Selected Subsidiary must itself be eligible to borrow under the Main Street Facility's eligibility criteria; and (iii) the aggregate adjusted 2019 EBITDA of the Selected Subsidiaries must be used to calculate the borrower's maximum loan size under the Facility (in addition to the other tests, as applicable).

- **<u>Required Borrower Certifications and Covenants</u>**: The following certifications and covenants will be required from each borrower with respect to each loan in addition to other certifications required under the Main Street Program:[16]
    - Refrain from repaying the principal balance of, or paying any interest on, any debt until the Main Street loan or upsized tranche is repaid in full, unless the debt or interest payment is mandatory and due[17] (except that borrowers under the Priority Main Street Facility may, at the time of origination of the Main Street loan, refinance existing debt owed by the borrower to another lender).
    - Commit that it will not seek to cancel or reduce any of its committed lines of credit with any lender (except certain lines of credit in the normal course of its business).
    - Certify that it has a reasonable basis to believe that, as of the date of origination or upsizing of the Main Street loan 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.
    - Commit 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,[18] except that an S corporation or other tax pass-through entity that is a borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings.
    - Certify that it is eligible to participate in the facility, including in light of the conflict-of-interest restrictions of the CARES Act, which would generally prohibit any entity from receiving Main Street loans if the entity is at least 20% owned by the U.S. President or Vice President, senior administration officials, a member of Congress or certain of their family members.
- **<u>Retaining Employees</u>**: Each borrower that participates in the Facility should make commercially reasonable efforts to maintain its payroll and retain its employees during the time the Eligible Loan or upsized tranche is outstanding, in light of the borrower's capacities, the economic environment, its

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[16] The Borrower Certifications and Covenants for the Main Street New Loan Facility, as of June 11, 2020, are available here. The Borrower Certifications and Covenants for the Expanded Main Street Loan Facility, as of June 11, 2020, are available here. The Borrower Certifications and Covenants for the Priority Main Street Loan Facility, as of June 11, 2020, are available here.

[17] The following actions will not be prohibited: repaying a line of credit (including a credit card) in accordance with the borrower's normal course of business usage for such line of credit; taking on and paying additional debt obligations required in the normal course of business and on standard terms, including inventory and equipment financing, provided that such debt is secured by newly acquired property (*e.g.*, inventory or equipment), and, apart from such security, is of equal or lower priority than the New Main Street Facility loan, the Priority Main Street Facility loan, or the Expanded Main Street Facility upsized tranche; or refinancing maturing debt.

[18] CARES Act, H.R. 748, 116th Con. (2020) § 4003(c)(3)(A)(ii). Those provisions require a borrower to agree that until 12 months after the loan is repaid, it will not (1) repurchase an equity security that is listed on an national securities exchange of the borrower or any parent company of the borrower, except as contractually obligated or (2) pay dividends or make other capital distributions with respect to the common stock of the borrower. Additionally, a borrower must abide by the compensation guidelines in section 4004 of the CARES Act, which require that, until 12 months after the loan is repaid, (1) any officer or employee of the borrower whose 2019 total compensation exceeded $425,000 cannot receive total compensation greater than their 2019 total compensation, (2) any officer or employee of the borrower whose 2019 total compensation exceeded $3 million cannot receive total compensation greater than the sum of (i) $3 million and (ii) 50% of the excess of their 2019 total compensation over $3 million and (3) any officer or employee of the borrower whose 2019 total compensation exceeded $425,000 cannot receive more than twice their 2019 total compensation as severance pay.

available resources and the business need for labor. Borrowers that have already laid-off or furloughed workers as a result of the disruptions from coronavirus disease 2019 ("COVID-19") would still be eligible to apply for Main Street loans.

- **Transaction Fee**: Lenders will be required to pay the SPV a transaction fee of 100 basis points of the loan principal amount (in the case of the New and Priority Main Street Facilities) and 75 basis points of the upsized tranche principal amount (in the case of the Expanded Main Street Facility) at the time of the loan or loan upsizing.

- **Loan Origination/Upsizing and Servicing Fees**: Borrowers will be required to pay lenders an origination fee of 100 basis points of the loan principal amount (in the case of the New and Priority Main Street Facilities) and 75 basis points of the upsized tranche principal amount (in the case of the Expanded Main Street Facility) at the time of the loan or loan upsizing. For each Main Street Lending Program facility, the SPV will pay the lender an annual servicing fee of 25 basis points of the principal amount of its loan participation.

- **Facility Termination**: The facilities will remain open to purchase participations until September 30, 2020, unless further extended by the Federal Reserve and the Treasury.

## Summary Table

| Main Street Lending Program Option | New Loans | Priority Loans | Expanded Loans |
|---|---|---|---|
| **Term** | 5 years | 5 years | 5 years |
| **Principal Deferral** | 2 years | 2 years | 2 years |
| **Interest Deferral (with capitalization of unpaid interest)** | 1 year | 1 year | 1 year |
| **Minimum Loan Size** | $250,000 | $250,000 | $10,000,000 |
| **Maximum Loan Size** | Lesser of $35 million or 4 times adjusted 2019 adjusted EBITDA | Lesser of $50 million or 6 times adjusted 2019 adjusted EBITDA | Lesser of $300 million or 6 times adjusted 2019 adjusted EBITDA |
| **Priority/Security Requirement** | May not include any provisions that would cause the loan to be contractually subordinated to other debt in or outside of bankruptcy | May not include any provisions that would cause the loan to be contractually subordinated to other debt in or outside of bankruptcy.<br><br>Must include a standard lien covenant or negative pledge that is of the type and that contains the exceptions, limitations, carve-outs, baskets, materiality thresholds, and qualifiers that are consistent with those used by the Eligible Lender in its ordinary course lending to similarly situated borrowers | May not include any provisions that would cause the upsized tranche to be contractually subordinated to other debt in or outside of bankruptcy.<br><br>Must generally include a standard lien covenant or negative pledge that is of the type and that contains the exceptions, limitations, carveouts, baskets, materiality thresholds, and qualifiers that are consistent with those used by the Eligible Lender in its ordinary course lending to similarly situated borrowers. A lien covenant negotiated in good faith in the underlying syndicated credit facility is sufficient to satisfy this requirement. |
| **Risk Retention** | 5% | 5% | 5% |
| **Payment (year one and two deferred for all)** | Years 3-5: 15%, 15%, 70% | Years 3-5: 15%, 15%, 70% | Years 3-5: 15%, 15%, 70% |
| **Rate** | LIBOR + 3% | LIBOR + 3% | LIBOR + 3% |

We offer a dedicated team of advisors to help businesses weigh available options and seek assistance under one or more of the liquidity and support programs established under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Whether in the form of direct funding from Treasury, loans or other credit support from a Federal Reserve lending facility or participation in Small Business Administration loan programs, our team has the expertise to help navigate the complex political and legal challenges associated with obtaining government financial assistance and the experience to help access the programs if a decision is made to do so.

Led by Lee Meyerson, who guided the Firm's financial crisis team that advised Treasury in developing, structuring and documenting its $250 billion TARP program for purchasing equity in U.S. financial institutions and related programs, and Keith Noreika, who recently served with Treasury Secretary Mnuchin as acting Comptroller of the Currency, a role in which he also acted as a director of the FDIC and member of the Financial Stability Oversight Council, the cross-disciplinary team also includes financing and governance lawyers, as well as former Treasury and Federal Reserve counsel.

See our Accessing Emergency Government Support Programs webpage for further information.


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