BRC's Guide to the Main Street Lending Program

The spread of COVID-19 has led to an unprecedented time for us as individuals, business owners and employees to the extent of significant harm to our communities and the disruption of economic activity throughout the global economy. As a result, small and medium - sized businesses are in need of working capital to keep operational in the hopes of weathering the pandemic's effect. The availability of credit has contracted due to the economic uncertainty during a critical time when these businesses need access to working capital.

April 9, 2020, the Federal Reserve announced a $600 billion lending program to help small and medium - sized businesses that were on solid financial ground before the onset of the COVID-19 pandemic. This program is called the MAIN STREET LENDING PROGRAM (Program) and will operate through three lending facilities: the Main Street New Loan Facility (MSNLF), the Main Street Priority Loan Facility (MSPLF), and the Main Street Expanded Loan Facility (MSELF). Then, on June 8, 2020, the Federal Reserve provided additional details and updated terms regarding the Program.

The Main Street program will be receiving additional support from the Department of Treasury in the form of a $75 billion equity investment in a Special Purpose Vehicle (Main Street SPV). The Treasury's investment was made possible via funding from the Coronavirus Aid, Relief, and Economic Security Act (CARES) ACT. Eligible businesses seeking loans will be required to make commercially reasonable efforts to maintain payroll and retain workers. These eligible borrowers will also be required to follow compensation, stock repurchase and dividend restrictions that apply to direct loan programs under the CARES ACT. S Corporations and other tax pass-through entities will still be allowed to make distributions to the extent reasonably required to cover its owners' tax obligations in respect to the entity's earnings.

Unlike the Payroll Protection Program (PPP) loans, the Main Street Program loans are full-recourse loans and are not forgivable under the CARES ACT. These loans can be used for all cash and working capital needs and are not restricted to compensation costs as under the PPP loans.

The official launch date of the program has yet to be announced. Small and medium - sized businesses will need to be aware of the following regarding the three lending facilities and to check eligibility:

Program Overview

The Program offers 3 different secured or unsecured 5-year term loan options at an adjustable rate of LIBOR + 3% with principal deferred for 2 years and interest deferred for 1 year (unpaid interest will be capitalized in accordance with the Eligible Lender's customary practices for capitalizing interest.) . All loans under the Main Street Program will be allowed to be prepaid without penalty and will be originated by a private financial institution but backed by the Federal Reserve System.

	Main Street NEW Loans	Main Street PRIORITY Loans	Main Street EXPANDED Loans
Term	5 years	5 years	5 years
Min. Loan Amount	$250,000	$250,000	$10,000,000
Max Loan Size	< of $35m or 4x 2019 Adj. EBITDA*	< of $50m or 6x 2019 Adj. EBITDA*	< of $300m or 6x 2019 Adj. EBITDA*
Risk Retention by Lender	5%	5%	5%
Principal Payment (2 year deferred for all)	Years 3 – 5; 15%,15%, 70%	Years 3 – 5; 15%,15%, 70%	Years 3 – 5; 15%,15%, 70%
Rate	Libor (1 or 3 month) +3%	Libor (1 or 3 month) +3%	Libor (1 or 3 month) +3%
Priority/Security Requirement	May not include any provisions that would cause the MSNLF loan to be contractually subordinated to other debt in or outside of bankruptcy.	May not include any provisions that would cause the MSPLF loan to be contractually subordinated to other debt in or outside of bankruptcy. Must include a standard lien covenant or negative pledge that is of the type and that contains 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 MSELF loan to be contractually subordinated to other debt in or outside of bankruptcy Must include a standard lien covenant or negative pledge that this 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.
Prepayment	Prepayment without penalty	Prepayment without penalty	Prepayment without penalty
Collateral	If secured, collateral should be described in accordance with the bank's ordinary practices in its loan documentation	If secured, collateral should be described in accordance with the bank's ordinary practices in its loan documentation	If secured, collateral should be described in accordance with the bank's ordinary practices in its loan documentation
Financial Reporting	Must include a quarterly financial reporting covenant requiring the financial	Must include a quarterly financial reporting covenant requiring the financial	Must include a quarterly financial reporting covenant requiring the financial

	information. Eligible Lenders will specify the required reporting standards and forms for each Eligible Borrower.	information. Eligible Lenders will specify the required reporting standards and forms for each Eligible Borrower.	information. Eligible Lenders will specify the required reporting standards and forms for each Eligible Borrower.

- *When added to borrower's existing outstanding and undrawn available debt.*

EBITDA: Earnings before interest, tax, depreciation and amortization
LIBOR: London Interbank Offer Rate, a common benchmark interest rate index

Borrower Eligibility

Eligibility for all three loans, MSNLF, MSPLF, MSELF, is exactly the same across all three of the loan options. Borrowers, to be eligible, must satisfy certain eligibility criteria as described below.

- The business MUST have been formed prior to March 13, 2020, under the laws of the United States, one of the several states, the District of Columbia, any of the territories and possessions of the United States or an Indian Tribal government.
- Business must not be an Ineligible business. Ineligible businesses include businesses listed in 13 CFR 120.110(b)-(i), (m) – (s), as modified and clarified by SBA regulations for purposes of the PPP on or before April 24, 2020. Such modifications and clarifications include the SBA's recent interim final rules available at 85 FED. REG. 20811, 85 FED. REG. 21747, and 85 REG. FED. 23450. The Federal Reserve may further modify the application of these restrictions to Main Street.
- Must meet 1 of the following 2 conditions: (a) the business has 15,000 employees or fewer, or (b) the business has 2019 annual revenues of $5 billion or less. Businesses will be required to include affiliated entities when determining how many employees or 2019 revenues.
- Business may only participate in 1 of the Main Street facilities (MSNLF, MSELF, MSPLF) and MUST not also participate in the PMCCF. Eligible businesses will only be able to participate in 1 of the Main Street facilities.
- Must be a U.S. Business. Under section 4003(c)(3)(C) of the CARES ACT, eligible borrowers must be businesses that were created or organized in the United States or under laws of the United States with significant operations in and a majority of their employees based in the United States.
- Must be able to make all of the certifications and covenants required under the Main Street Program.
- Must not have received specific support (air and cargo carriers, etc.) pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES ACT). If you have received support pursuant to section 4003(b)(1)-(3) of the CARES ACT, then the business is not eligible for the Main Street Loan program.
- Non-profit Organizations are not eligible (currently). The Federal Reserve, on June 8, 2020, announced that it is working to create one or more loan options for these organizations. Be on the lookout for additional information related to non-profit organizations.

Businesses that meet all criteria above may apply to an Eligible Lender for a Main Street Loan. We anticipate the lenders to conduct an assessment of each borrower's financial condition to determine the approval of the loan. We recommend discussing these loan facilities with your current lending institution and starting the process to determine if your business will meet the lender institutions financial condition criteria.

Counting Employees for Eligibility

Businesses with fewer than 15,000 employees can be eligible for the program, albeit the Business meets the other listed criteria above as well. But, how should these businesses count their employees?

The framework established in the SBA's regulation at 13 CFR 121.106 is the basis for determining how a business will count their employees under this program. According to 13 CFR 121.106, head count will include employees that are full-time, part-time, seasonal, or otherwise employed persons but will exclude volunteers and independent contractors. Affiliation rules will also need to be adhered to, and therefore the business should include the count of their own employees and those employees employed by its affiliates.

Businesses should use the average of the total number of employees (as defined by 13 CFR 121.106) and its affiliates for each pay period over the 12 months preceding the origination or upsizing of the Main Street Loan.

Calculating 2019 Revenues

To determine their 2019 revenues, a Business must aggregate their revenues with those of their affiliates. Either of the following methods can be used to calculate 2019 revenues for purposes of determining their eligibility:

- Audited Financial Statement method: Use their (and its' affiliates) annual "revenue" per its 2019 U.S. Generally Accepted Accounting Principles-based (GAAP) audited financial statements or,
- Federal Tax Return method: Use their (and its' affiliates) annual receipts for the fiscal year 2019, as reported to the Internal Revenue Service (IRS). The definition of "receipts", under the Main Street Loan program, is the same as under the SBA in 13 CFR 121.104(a).

In the event the 2019 audit or 2019 federal tax return has not yet been completed, then the business (or its affiliate) should use its most recent audited financial statements or completed tax return. A recommendation would be to work very closely with your lending institution and certified public accountant regarding these items and ensure that all parties are on the same page to ensure the loan gets approved as quickly as possible.

Do I have "significant" operations in the United States?

What does "significant" mean under the Main Street Loan program? To determine if an eligible borrower has "significant" operations in the United States (as listed as one of the eligibility requirements above), these operations should be evaluated on a consolidated basis together with its subsidiaries, but not its parent companies or sister affiliates. Significant operations in the United States if, when consolidated with its subsidiaries, greater than 50% of the eligible borrower's:

- Annual net income is generated in the United States
- Assets are located in the United States
- Annual net operating revenues are generated in the United States, or

- Annual consolidated operating expenses (excluding interest expense and other expenses associated with debt service) are generated in the United States.

This list is not an exhaustive list but meant to provide some examples to support the principles that should be considered by each potential borrower when considering and evaluating its eligibility under this criterion. Keep in mind the purpose of this Program is to support small and medium - sized businesses within the United States and provide working capital to these business for purposes of weathering this pandemic and shutdown.

Ready to Apply? What's the Application Process?

First step, start the conversation and dialogue with your current lending institution regarding the program and how your lending institution is going to handle the program regarding processing and documentation. Each lending institution will have their own set of requests for information and documentation to support eligibility and the amount of lending the eligible borrower is seeking out.

Each eligible business will be required to submit an application with an eligible lending institution. Make sure that your lending institution is eligible to be a lender and will be participating in the Program.

- Can I borrow funds if my business participated and received a PPP loan or an Economic Injury Disaster loan? The answer here is yes. A borrower can have received a PPP loan or Economic Injury Disaster loan and still qualify for the Main Street Loan Program.
- Will my business be automatically qualified? No! The term sheets contain minimum requirements for the program. Each borrower will be assessed of their financial condition at the time the borrower submits their application. Each eligible lending institution will be allowed to apply their own underwriting standards to evaluate the financial condition and creditworthiness of a borrower.

Don't be alarmed if your lending institution requires additional information and documentation in order to make a decision. The eligible lending institutions are able to request this additional information and will ultimately use that to determine whether the borrower is approved for a program loan. There could be instances where a borrower meets the eligibilities under the Main Street Loan program, but may not be approved for a loan or may not receive the maximum allowable amount.