

Act Now or Be Exiled from Main Street

Corporate Alert

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Related People:

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The window for the Main Street Loan Program (“Main Street Program”), designed to provide loans with favorable terms to midsize companies to help address the economic fallout caused by the pandemic, is closing on December 31, 2020. With a capacity of up to \$600 billion for providing loans, the Main Street Program to date has originated loans totaling about \$4 billion to fewer than 500 borrowers. Loans for the Main Street Program are originated by a qualified banking institution (“Eligible Lender”), which then sells 95% participations in such loans at the full principal amount to a special-purpose vehicle created by the Federal Reserve Bank of Boston (“SPV”). The SPV is scheduled to cease purchasing participations on December 31, 2020, absent action by the Treasury Department and the Federal Reserve System. This alert summarizes the key features of the Main Street Program to provide midsize businesses one last opportunity to evaluate whether to pursue a loan from the Main Street Program.

Eligible Borrower

Any entity organized in the United States prior to March 13, 2020 (the date on which a federal emergency was declared), which conducts active business operations and which either (a) has no more than 15,000 employees or (b) has annual revenues for 2019 of not more than \$5 billion will qualify as an Eligible Borrower. The business must have significant operations, and a majority of its employees based, in the United States; the business must not be passive (such as lending, investing, life insurance) or involve illegal business operations. For purposes of determining the number of employees and annual revenues, as with the Small Business Administration’s Paycheck Protection Program, the relevant business must include all other business entities under common control, which may make it difficult for portfolio companies of private equity, venture capital and hedge pooled investment funds to qualify for a loan. See our prior alerts [here](#) and [here](#). Eligible Borrowers who received an SBA Paycheck Protection Program loan can still qualify for a Main Street Program loan. An affiliated group of companies may receive only one Main Street Program loan.

A proposed borrower must have been in sound financial condition before the onset of the pandemic. The Eligible Lender must assess the financial condition of the proposed borrower at the time of the loan application, and any outstanding loans with the Eligible Lender as of December 31, 2019, must have been assigned an internal risk rating equivalent to “pass” under the applicable supervisory rating system in effect on such date.

To qualify as an Eligible Borrower, the entity will be required to certify that (a) it has significant operations in the United States (greater than 50% of its assets, annual net income, annual net operating revenues or annual operating expenses), (b) a majority of its employees are based in the United States, (c) no federal government official or the official's family members owns directly or indirectly 20% or more of the entity, (d) it is unable to secure adequate credit accommodations from other banking institutions, and (e) it has a reasonable basis to believe that, as of the origination of the Main Street Program loan and after giving effect to such loan, 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 such 90-day period.

Key Financial Terms of a Main Street Program Loan

A Main Street Program loan must have:

- a five-year maturity;
- a floating interest rate of one- or three-month LIBOR (currently ranging from 0.15% to 0.25%) plus 3.0%, or about 3.25%;
- principal payments deferred for two years and interest payments deferred for one year;
- amortization of 15% of principal and deferred interest that was capitalized in the first year by the end of the third year, an additional 15% amortization by the end of the fourth year with the balance in a balloon payment at maturity, and a requirement that payments during the third and fourth years are due no more frequently than monthly;
- prepayment without penalty.

The Main Street Program contains three types of loans:

- a New Loan Facility,
- a Priority Loan Facility and
- an Expanded Loan Facility, in which an existing loan facility is expanded to include a new tranche.

The principal difference between the facilities concerns the loan amount and the priority of the loan facility relative to other debt of the Eligible Borrower. The maximum loan amount of any loan in the Main Street Program will be a multiple of adjusted earnings before interest, taxes, depreciation and amortization ("EBITDA") for 2019. EBITDA for 2019 may be adjusted using the methodology that the Eligible Lender previously required when extending credit to the Eligible Borrower, or if the Eligible Borrower is a new customer of the Eligible Lender, the adjustments permitted to similarly situated borrowers on or before April 24, 2020.

The Main Street Program loan amounts are as follows:

- **New Loan Facility.** Principal amount of at least \$100,000 and maximum amount of the lesser of (a) **\$35 million** and (b) 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 2019 adjusted EBITDA.
- **Priority Loan Facility.** Principal amount of at least \$100,000 and maximum amount of the lesser of (a) **\$50 million** and (b) 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 2019 adjusted EBITDA.
- **Expanded Loan Facility.** Principal amount of \$10 million and maximum amount of the lesser of (a) **\$300 million** and (b) 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 2019 adjusted EBITDA.

The relative priority of the Main Street Program loan facilities is as follows:

- **New Loan Facility.** Upon its origination and until fully repaid, a Main Street Program New loan must not be contractually subordinated in terms of priority of payment in bankruptcy

to any of the Eligible Borrower's unsecured loans or debt instruments. This restriction does not prevent a Main Street Program New loan from being secured by a second lien or other capacity whether or not the Eligible Borrower has an outstanding secured loan of any lien position or maturity. For avoidance of doubt, however, this restriction will not disturb any mandatory priority under the Bankruptcy Code or other insolvency laws that apply to entities generally.

- **Priority Loan Facility.** Upon its origination and until fully repaid, a Main Street Program Priority loan must be, in priority of payment and collateral, senior to or *pari passu* with the Eligible Borrower's other loans or debt, other than mortgage debt. If the Eligible Borrower has other secured debt, while the Main Street Program Priority loan need not share in all the collateral of such secured debt, the collateral coverage ratio of the Main Street Program Priority loan (value of the collateral to the amount of the loan) must be either (a) at least 200% or (b) not less than the aggregate collateral coverage ratio for all of the Eligible Borrower's other secured debt. For avoidance of doubt, a Main Street Program Priority loan may be unsecured only if the Eligible Borrower does not have any secured debt, other than mortgage debt, when the Main Street Program Priority loan is originated. Furthermore, the Main Street Program Priority loan agreement must have a covenant restricting future liens on assets subject to such exceptions, limitations, carve-outs, baskets, material thresholds and qualifiers as are consistent with those used by the Eligible Lender in its ordinary course of lending to similarly situated borrowers.
- **Expanded Loan Facility.** Upon its origination and until fully repaid, a Main Street Program Expanded loan must be, in priority of payment and collateral, senior to or *pari passu* with the Eligible Borrower's other loans or debt, other than mortgage debt.

The fees for a Main Street Program loan are as follows:

- **New Loan Facility and Priority Loan Facility.** If a loan is \$250,000 or greater:
 - **Transaction Fee.** A transaction fee of 100 basis points of the loan amount is to be paid by the Eligible Lender to the SPV. The Eligible Lender may pass this fee to the Eligible Borrower, and it may be rolled into the loan.
 - **Loan Origination Fee.** The Eligible Borrower is required to pay an Eligible Lender an origination fee of up to 100 basis points of the principal amount of the loan at the time of origination. If the loan is less than \$250,000, the Eligible Borrower is required to pay the Eligible Lender an origination fee of up to 200 basis points of the principal amount of the loan at the time of origination.
 - **Loan Servicing Fee.** The SPV will pay the Eligible Lender an annual loan servicing fee of 25 basis points of the principal amount of its participation amount, or 50 basis points if the loan is less than \$250,000.
- **Expanded Loan Facility.**
 - **Transaction Fee.** A transaction fee of 75 basis points of the loan amount is to be paid by the Eligible Lender to the SPV. The Eligible Lender may pass this fee to the Eligible Borrower, and it may be rolled into the loan.
 - **Loan Origination Fee.** The Eligible Borrower is required to pay the Eligible Lender an origination fee of up to 75 basis points of the principal amount of the loan at the time of origination.
 - **Loan Servicing Fee.** The SPV will pay the Eligible Lender an annual loan servicing fee of 25 basis points of the principal amount of its participation amount.

Use of Proceeds of a Main Street Program Loan

The Main Street Program was designed to provide liquidity to small and midsize businesses that were in sound financial condition prior to the onset of the pandemic. As such, an Eligible Borrower may use the proceeds of a Main Street Program loan to fund its ongoing domestic operations but may not use the proceeds to fund (a) the operations of foreign affiliates, (b)

dividend payments or other distributions to its owners, (c) compensation over specified thresholds or (d) the repayment or prepayment of other debt, except in specified situations.

Eligible Borrower Restrictions on Ongoing Business Operations

For a period from the origination of a Main Street Program loan until 12 months after the Main Street Program loan is fully repaid, an Eligible Borrower must agree to (a) restrict the total compensation it pays to any employee or officer in excess of \$3 million over any 12-month period; (b) not repurchase any of its or its parent's publicly traded equity securities, other than repurchases required under a contractual obligation in effect as of March 27, 2020; (c) not pay any dividends or other capital distributions on its ownership equity, other than certain tax distributions and preferred or mandatory preferential dividends or distributions if the obligation to make such payments existed as of March 27, 2020; and (d) not seek to cancel or reduce any of its committed lines of credit.

In addition, an Eligible Borrower must agree not to repay any principal amount of, or pay any interest on, any debt, unless such payment is mandatory and due in accordance with its terms, until the Main Street Program loan is repaid in full or the government no longer holds its participation interest in the loan. A safe harbor is provided for (a) refinancing debt that is maturing no later than 90 days from the date of such refinancing, (b) repaying a line of credit in accordance with the Eligible Borrower's normal course of business usage for such line of credit, and (c) taking on additional debt obligations required in the normal course of business on standard terms and other than a security interest in respect of the assets funded thereby, in which case any security must be of equal or lower priority (in respect of a Main Street Program Priority or Expanded loan). An Eligible Borrower is also expected to use commercially reasonable efforts to maintain its payroll and retain its employees during the time the Main Street Program loan is outstanding.

To evaluate whether the Main Street Program may work for their liquidity needs, businesses are urged to consult their professional advisers. Please contact McCarter & English, LLP, with any questions you may have with evaluating whether the Main Street Program is right for your business.