Steptoe

Federal Reserve Launches Main Street Lending Program

Companies with up to 10,000 employees or $2.5 billion in revenue

On April 9, the Federal Reserve announced a number of measures to provide additional lending to American businesses in the wake of the COVID-19 pandemic. Among the measures was the release of terms for new loans and the expansion of existing loans under the Main Street Lending Program (Program).

The Program is designed to support small and mid-sized businesses that were in good financial standing before the crisis by offering four-year loans to companies (i) employing up to 10,000 workers or (ii) with revenues of less than $2.5 billion. Under the Program, principal and interest payments will be deferred for one year.

Eligible banks will be able to originate new Main Street loans or use Main Street loans to increase the size of existing loans to businesses. The Main Street facilities will purchase up to $600 billion of loans.

Those looking to access these facilities should be aware of a number of important borrower eligibility criteria, features of the loans, and commitments and attestations borrowers will need to make.

Borrower Eligibility

- Borrowers must be businesses with up to 10,000 employees **or** up to $2.5 billion in 2019 annual revenues.
- Each borrower must be a business that is 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.
- Borrowers that have taken advantage of the Payroll Protection Program (PPP) **may** also take out Main Street loans.
- Borrowers that receive *new* loans through the Program may **not** also receive *increases* in existing loans under the Program (and vice versa).
- Borrowers under this Program also may **not** participate in the Primary Market Corporate Credit Facility.

Loan Features

Loans issued under this Program will have the following features:

- A maturity of four years.
- Prepayment without penalty.
- Adjustable rate of SOFR + 250-400 basis points.
- Amortization of principal and interest deferred for one year.

- Minimum loan size of $1 million.
- Maximum loan size of –
    - **For new loans**: The lessor of (i) $25 million or (ii) an amount that, when added to the borrower's existing outstanding and committed undrawn debt, does not exceed four times the borrower's 2019 EBITDA.
    - **For expanded loans**: The lessor of (i) $150 million, (ii) 30% of the borrower's existing outstanding and committed but undrawn bank debt, or (iii) an amount that, when added to the borrower's existing outstanding and committed undrawn debt, does not exceed six times the borrower's 2019 EBITDA.

Commitments and Attestations

Borrowers will need to commit to refrain from using the proceeds of the loan to repay other loan balances, and from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless the borrower has first repaid the loan in full.

A borrower also will need to attest that it:

- Will not seek to cancel or reduce any of its outstanding lines of credit with any lender.
- Requires financing due to the exigent circumstances presented by the COVID-19 pandemic, and that, using the proceeds of the loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the loan.
- Meets the EBITDA leverage condition above.
- Will follow certain restrictions on compensation, stock repurchase, and capital distribution:
    - Borrowers are subject to two tiers of executive compensation (including salary, stock, and bonuses) restrictions for a period of time that extends one year beyond the term of the loan. Officers or employees who received more than $425,000 in total compensation in 2019 cannot receive a pay raise in 2020, and cannot receive severance pay or other benefits that are more than twice the 2019 compensation amount. Officers or employees who received more than $3 million in total compensation in 2019 cannot receive total compensation in 2020 in excess of $3 million plus 50% of the excess over $3 million.
    - Borrowers must agree to not buy back stock or pay dividends for a period of time that extends one year beyond the term of the loan. The current dividend restriction appears to apply to pass-through entities with distribution agreements to pay the taxes on the entity's income that flows up to the partners/S corporation shareholders. Interpreted strictly, this means owners would have to have the liquidity to pay any taxes on their distributive shares of any income the entity earns.
- Will comply with the CARES Act's conflict of interest restrictions related to covered entities holding a controlling interest.

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The Program will continue through September 30, 2020, unless the Federal Reserve and the Treasury Department decide to extend it. The terms of these loans are subject to change, particularly as the Federal Reserve and the Treasury seek feedback until April 16 on this and other programs. Steptoe will continue to monitor for updates.