



## BANKING AND FINANCE | U.S. Federal Reserve Launches Main Street Lending Program by Opening Lender Registration and Updates Loan and Participation Documentation

On June 15, 2020, the Federal Reserve launched the highly anticipated Main Street Lending Program by announcing that the program is open for lender registration and encouraged lenders to begin making program loans to small and medium-sized businesses immediately. Participation by the Federal Reserve is expected to begin “soon.”<sup>1</sup> This follows the release of [updated forms](#) of many of the documents that establish the legal architecture of the program. These updates reflect the latest terms of the program released on June 8, 2020.

The Main Street Lending Program is designed to provide assistance to businesses that are too large to qualify for the Small Business Administration’s Paycheck Protection Program (generally limited to companies with under 500 employees), that are not eligible for the Federal Reserve’s lending facilities for investment-grade companies and that otherwise may have difficulty obtaining sufficient debt financing in current market circumstances. Under the Main Street Lending Program, the Department of the Treasury will use funds appropriated to the Treasury’s Exchange Stabilization Fund under section 4027 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) to make a \$75 billion equity investment in a Special Purpose Vehicle (the “SPV”) established by the Federal Reserve Bank of Boston. The SPV will then purchase up to \$600 billion of participations in eligible loans from eligible lenders. Eligible lenders will retain a portion (5%) of each eligible loan. The Federal Reserve’s investment in the SPV will be secured by all of the assets of the SPV. The SPV will participate in three Main Street facilities: for new loans, (i) the Main Street New Loan Facility (“New Loan Facility”) and (ii) the Main Street Priority Loan Facility (“Priority Loan Facility”) and, for upsized tranches of existing loans, (iii) the Main Street Expanded Loan Facility (“Expanded Loan Facility”).<sup>2</sup>

This Legal Update provides an overview of lender registration and the legal documents both borrowers and lenders are required to enter into in order for a Main Street loan participation to be sold to the SPV.

## Lender Registration

In order to participate in any one of the three Main Street facilities, eligible lenders must first submit (i) Lender Registration Certifications and Covenants and (ii) Lender Wire Instructions.

The Lender Registration Certifications and Covenants is to be signed by the eligible lender's CEO and CFO (or officers performing similar functions) certifying as to its solvency and eligibility to participate in the Main Street Lending Program. The Lender Registration Certifications and Covenants also include a number of covenants that require the eligible lender to notify the SPV and the Federal Reserve regarding changes in its solvency or eligibility, and the agreement to record retention and public disclosure by the Federal Reserve.

The Lender Wire Instructions are to be completed by the CFO (or an individual performing similar functions) of the eligible lender, and provide wire instructions to the SPV in order for the SPV to transfer the purchase amount, fees, and any other payments related to any Main Street Facility transactions.

## Funding and Participation

The SPV intends to purchase 95% participations in any Main Street loan that is submitted to the SPV for purchase, so long as the required documentation is complete and properly executed, and the documentation evidences that the loan is consistent with the relevant Main Street facility's requirements.

Eligible lenders will have two options when seeking participation in the loans:

(a) Funded Loan: Eligible lender may seek participation by the SPV by submitting the required documentation to the SPV within 14 days following the funding of the loan.

(b) Condition of Funding: Eligible lender may submit the required documentation to the SPV with the funding of such loan conditional on a binding commitment from the SPV. Upon its review and approval, the SPV will issue a commitment letter relating to its purchase of the participation in the loan which must then be funded by the eligible lender within 3 business days.

## Loan Agreement

### *Loan Agreement*

The Federal Reserve did not release a form of loan agreement to be used for the Main Street Facilities and requires that each eligible lender use its own loan documentation for the related loans. Such documentation should be substantially similar to the loan documentation that the eligible lender uses in its ordinary course lending to similarly situated borrowers. For the Expanded Loan Facility, the documentation may include the same language in the existing facility, as long as it was negotiated in good faith prior to April 24, 2020.

The Federal Reserve released a checklist of the required components of each loan document and model language which may be used for certain certifications and covenants.<sup>3</sup> Eligible lenders are not required to use the model language and instead can use their own variations to the extent they serve the same substantive purpose and are otherwise substantially similar to provisions that the eligible lender uses in its ordinary course lending to similarly situated borrowers.

## Participation Documentation

In connection with each sale of a loan participation, the eligible lender will need to provide the following documents to the SPV:

### *Loan Participation Agreement*

The Loan Participation Agreement governs the sale of a loan participation from the eligible lender to the SPV and is spread across (i) the Loan Participation Agreement Transaction Specific Terms ("Transaction Specific Terms") and (ii) the Loan Participation Agreement Standard Terms and Conditions ("Standard Terms and Conditions").

The Transaction Specific Terms lay out the specific information regarding a particular facility, for example, the parties, the type of Main Street facility, the amount being purchased and notice information.

The Standard Terms and Conditions govern the relationship between the eligible lender and the SPV, including:

- Transfers – Eligible lender may not make assignments of its rights under the underlying loan agreement without consent of the SPV.
- Elevation – The SPV has the ability to elevate its position from participant to a lender of record under the underlying loan agreement.
- Voting – The SPV shall maintain voting control over any "Core Rights Act," which essentially captures anything unique to the Main Street Lending Program.
- Bankruptcy Code Waiver – The SPV waives Section 507(a)(2) of the Bankruptcy Code which may have otherwise allowed it to assert special administrative priority in bankruptcy proceedings.

The Standard Terms and Conditions are incorporated into the Transaction Specific Terms by reference. The two parts together constitute a single integrated Participation Agreement under the Main Street Lending Program.

### *Servicing Agreement*

The Servicing Agreement is entered into between the SPV and the eligible lender, in its capacity as servicer. The Servicing Agreement sets forth the terms of the eligible lender's servicing of the Main Street loan and specifically requires the eligible lender to provide to the SPV "Enhanced Reporting Services" (as defined in the Servicing Agreement) with respect to the borrower. The eligible lender is to be paid a 0.25% per annum servicing fee by the SPV who may terminate the Servicing Agreement and remove the eligible lender as servicer at any time for "Cause" (as defined in the Servicing Agreement).

### *Assignment in Blank*

The Assignment and Assumption is to be executed by the eligible lender and the borrower and delivered with the SPV. This serves as an advance consent for the SPV to elevate its position from participant to lender of record under certain circumstances. The SPV will not sign this document at the time it purchases the participation but will hold this for future use.

The form released by the Federal Reserve is to be used only in connection with a bilateral facility. For a syndicated facility, the form of assignment and assumption agreement used in connection with that particular loan agreement shall be used, with modifications to match the substance of the Federal Reserve's form.

### *Co-Lender Agreement*

The Co-Lender Agreement is to be completed only in connection with a bilateral Main Street Facility, and provides the necessary agency and operational mechanics to accommodate multiple lenders in what was previously an agreement between only the eligible lender and the borrower. Pursuant to the Co-Lender Agreement, the underlying bilateral loan agreement will become a multiple-lender facility in which eligible lender is appointed administrative agent for the lenders, which will include the SPV as lender of record.

Structured similarly to the Participation Agreement, the Co-Lender agreement comes in two parts, (i) the Co-Lender Agreement Transaction Specific Terms ("Co-Lender Specific Terms") and (ii) Co-Lender Agreement Standard Terms and Conditions ("Co-Lender Terms and Conditions"). The Co-Lender Terms and Conditions are incorporated into the Co-Lender Specific Terms by reference. The Co-Lender Specific Terms is executed *in blank* by the Eligible lender and the borrower at the time of sale of the participation to the SPV, and like the Assignment in Blank, it is held by the SPV for potential future use.

### *Lender Transaction Specific Certifications and Covenants*

In addition to the certifications and covenants made at the time of registration, an authorized officer of the eligible lender must execute the applicable Lender Transaction Specific Certifications and Covenants with each sale of participation to the SPV, which certifications and covenants include:

- That after due inquiry, the eligible lender has no knowledge or reason to believe that the certifications made in the Borrower Certifications and Covenants (see below) are incorrect or untrue in any material respect.
- The loan and participation by the SPV thereof complies with the terms of the Main Street Lending program.
- A covenant to promptly notify the SPV and the Federal Reserve of any material breach of covenant made by the eligible lender.
- Methodology used to calculate adjusted 2019 EBITDA is the same as eligible lender has previously required to be used for EBITDA adjustments.
- Any loans the eligible lender previously made to the borrower had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system as of December 31, 2019.

- A covenant that the eligible lender will not request repayment of debt extended to the borrower (unless mandatory or due) under any other facility until the Main Street Loan is repaid in full or SPV no longer holds an interest.

### *Borrower Certifications and Covenants*

Each borrower shall execute the Borrower Certifications and Covenants at the time a loan participation is sold to the SPV. The Borrower Certifications and Covenants shall be executed by the CEO and CFO of the borrower and includes the following:

- CARES Act and Main Street Loan Facility eligibility.
- Borrower unable to secure adequate credit accommodations from other banking institutions.
- Borrower is not insolvent, meaning that it was not generally failing to pay undisputed debts as they became due during the 90 days preceding the date of borrowing (for reasons other than disruptions to its business resulting from the COVID-19 pandemic).
- Accuracy of financial records and EBITDA calculation.

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<https://www.bostonfed.org/news-and-events/press-releases/2020/federal-reserves-main-street-lending-program-opens-for-lender-registration.aspx>.

<sup>2</sup> For analysis of the Main Street Lending Program's initial and updated terms, see Mayer Brown's Legal Updates: U.S. Federal Reserve Further Expands Main Street Lending Program to Offer Support to More Small and Medium-Sized Businesses (June 11, 2020),

<https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2020/06/us-federal-reserve-further-expands-main-street-lending-program.pdf>; U.S. Federal Reserve Expands and Provides

Additional Details on Main Street Lending Program for Small and Mid-Sized Businesses (May 1, 2020),

<https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2020/05/main-street-lending-program.pdf>; U.S. Federal Reserve Announces Main Street Lending Program to Provide Financing to Small and Mid-Sized Businesses (April 10, 2020),

<https://www.mayerbrown.com/en/perspectives-events/publications/2020/04/us-federal-reserve-announces-main-street-lending-program-to-provide-financing-to-small-and-midsized-businesses>.

<sup>3</sup> See Frequently Asked Questions, Appendices A and B:

<https://www.bostonfed.org/-/media/Documents/special-lending-facilities/mslp/legal/frequently-asked-questions-faqs.pdf?la=en>