

Main Street Loan Program – US Subsidiaries of Foreign Companies Can Apply

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The US Federal Reserve has confirmed in its frequently asked questions about the [Main Street lending program](#) (the “FAQ”) that US subsidiaries of foreign companies can be eligible borrowers under the various loans available under the program so long as they otherwise meet the other conditions to eligibility for the loans.

As a reminder, the Main Street lending program consists primarily of three separate loan programs:

- (i) **Main Street New Loan Program** – New secured or unsecured five year amortizing term loans with principal amounts ranging from US\$250,000 up to the lesser of: (i) US\$35 million (less any amounts already loaned to an affiliate of the borrower under the program), (ii) an amount that when added to the borrower’s existing outstanding and undrawn available debt does not exceed 4x adjusted 2019 EBITDA of the borrower, and (iii) an amount that when added to the borrower’s affiliated group’s entire existing outstanding and undrawn available debt does not exceed 4x adjusted 2019 EBITDA of the borrower and its affiliates.
- (ii) **Main Street Priority Loan Program** – New secured or unsecured five year amortizing term loans with principal amounts ranging from US\$250,000 up to the lesser of: (i) US\$50 million (less any amounts already loaned to an affiliate of the borrower under the program), (ii) an amount that when added to the borrower’s existing outstanding and undrawn available debt does not exceed 6x adjusted 2019 EBITDA of the borrower, and (iii) an amount that when added to the borrower’s affiliated group’s entire existing outstanding and undrawn available debt does not exceed 6x adjusted 2019 EBITDA of the borrower and its affiliates.
- (iii) **Main Street Expanded Loan Program** – Incremental secured or unsecured five year amortizing term loans over exiting term loans or revolving loans of the borrower with principal amounts ranging from US\$10 million up to the lesser of: (i) US\$300 million (less any amounts already loaned to an affiliate of the borrower under the program), (ii) an amount that when added to the borrower’s existing outstanding and undrawn available debt does not exceed 6x adjusted EBITDA of the borrower, and (iii) an amount that when added to the borrower’s affiliated group’s entire existing outstanding and undrawn available debt does not exceed 6x adjusted 2019 EBITDA of the borrower

and its affiliates.

For purposes of the Main Street lending program, “affiliates” are determined as under the Cares Act Paycheck Protection Program (PPP). Under the definition, “affiliates” include not only majority control but also certain minority controls as further set forth in 13 CFR 121.301(f).

US subsidiaries of foreign companies are eligible for loans so long as, among other conditions:

1. The borrower itself must be an entity created or organized in the United States before March 13, 2020.
2. The borrower has significant operations in the United States and a majority of its employees in the United States – for purposes of this test, the relevant entities to look at are the borrower and its consolidated subsidiaries only (and not its parent (including foreign parent) or other companies controlled by the parent (i.e., sister companies)). The determination of significant operations in the United States needs to be made taking into account multiple factors such as whether:
 - over 50% of the assets are located in the United States,
 - over 50% of the annual net income is generated in the United States,
 - over 50% of the annual net operating revenues are generated in the United States or
 - over 50% of the annual consolidated operating expenses (excluding interest expense and any other expenses associated with debt service) are generated in the United States.These factors are not exhaustive and other factors may be taken into account in the analysis.
3. The borrower and its affiliates (including its foreign parent and other foreign affiliates) on a combined basis have either (i) 15,000 employees or less worldwide or (ii) 2019 annual revenues of US\$5 billion or less. 2019 revenues may be determined based on US GAAP audited financials or annual receipts as reported to the US Internal Revenue Service. If the borrower does not have audited financials, it can use its most recent audited financial statements or annual receipts.
4. The business is not an ineligible business as defined under 13 CFR 120.110(b)-(j), (m)-(s), which includes, among other businesses: private equity funds, lending businesses, life insurance companies and businesses located in a foreign country.

Note that even though a US subsidiary of a foreign parent may be an eligible borrower under the Main Street lending program, none of the proceeds from those loans can be used by the borrower for the benefit of the foreign parent, foreign affiliates or foreign subsidiaries of the US borrower.

Borrowers under the Main Street loan program must also make commercially reasonable efforts to maintain their payroll and retain their employees during the time of the loan. They will also be subject to restrictions on share repurchases, dividend and other capital distributions and will be required to

comply with limits on executive compensation during the term of the loan and for 12 months thereafter.

Finally, borrowers are subject to certain restrictions on debt refinancings or debt repayments during the term of the loan.

The Federal Reserve posted the term sheets for each three loan programs and the FAQ on its website. For further details about the program, see the alert posted by our Coronavirus Task Force with a full summary of the program terms [here](#).

The main Street lending program is expected to formally become operational in the coming weeks.

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