Lowenstein Sandler

Debt Financing
The Tech Group

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Dear Tech Company Founders & VCs: Eligible on Main Street
(Main Street Lending Program Is Currently Available *Only* to Companies With Positive 2019 Adjusted EBITDA)

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Certain provisions of the coronavirus/COVID-19 economic stimulus legislation are subject to the issuance of government regulations and other government action; thus, certain details regarding the legislation may be clarified or added.

Numerous startups, growth companies, venture capital investors, and growth equity funds have asked us about the Federal Reserve Board's Main Street Lending Program (Main Street or Program). In response, we present this short guide to whether your company is eligible for the program. In contrast to its sibling, the Paycheck Protection Program (PPP), these loans are for companies that had positive 2019 Adjusted EBITDA, and, while Main Street does require borrower certifications (see example), it does not require the PPP's certification of "necessity." Main Street applies the same "affiliation" rules (Section 301(f)) as the PPP—so, if you've already done that analysis, it's useful here too. For more info on "affiliation," see our prior article and Lowenstein Sandler LLP's #AffiliationChecklist.

Three Easy Pieces

Main Street includes the Main Street New Loan Facility (MSNLF), the Main Street Priority Loan Facility (MSPLF), and the Main Street Expanded Loan Facility (MSELF). Here's a link to the Federal Reserve's Main Street FAQ, from which you can also access the term sheets for each of the three loan types. Receipt of a PPP Loan does NOT preclude eligible borrowers from also borrowing under Main Street. We've also provided a Twitter thread with more detail. The loans have a four-year term, bearing interest at LIBOR + 3 percent, with no payments in the first year. MSNLF requires one-third of principal at the end of each of the subsequent years, while MSPLF and MSELF require 15 percent of principal at the end of years two and three, with a 70 percent balloon payment at the end of the fourth year. See FAQ G.5 or here.

Did the company have "adjusted EBITDA" for 2019 of at least $83,333.33? Adjustments to EBITDA are as determined under any existing company debt or as an eligible lender would adjust for similarly situated borrowers.

If **NO**, then under Federal Reserve Board guidance as of the date of this publication (May 18, 2020), the company is *not* eligible for a loan under the MSPLF, which sets a maximum loan amount of 6.0x the company's adjusted EBITDA for 2019 (and a minimum loan size of $500,000). The company would also be ineligible for a loan under the MSNLF, which sets a maximum loan amount of 4.0x the company's adjusted EBITDA for 2019 (and minimum loan size of $500,000), unless the company had adjusted EBITDA for 2019 of at least $125,000.00. MSELF is only available to expand or "upsize" existing debt and has a $10M minimum loan size.

If the answer is **YES (your company did have more than the requisite 2019 "adjusted EBITDA")**, then the company *may* be eligible for a loan under the Main Street Lending Program. See also "Major Updates to Main Street Lending Program" (May 1, 2020) and "Federal Reserve–Initial Launch Main Street Loan Facilities" (April 10, 2020).

When is my company too big for the Main Street Loan Program?

To be eligible, "[t]he Business must meet at least one of the following two conditions: (a) the

Business has 15,000 employees or fewer, *or* (b) the Business has 2019 annual revenues of $5 billion or less. Businesses must meet at least one of these conditions but are not required to meet both. To determine how many employees a business has or a business's 2019 revenues, the employees and revenues of the business must be aggregated with the employees and revenues of its affiliated entities." FAQ E.1(3). Again, this underscores the importance of conducting and documenting detailed "affiliation" analysis under Section 301(f). See also Lowenstein Sandler's "Bootleg Redline" of Section 301(f).
The FAQs also provide details on how (and as of when) to count employees (FAQ E.3) and determine revenue (FAQ E.4), EBITDA (FAQ G.1), and "existing outstanding and undrawn available debt" (FAQ G.2). These calculations will require precision, especially because of the obligation to aggregate together with your "affiliates."

Part of my company is overseas. Is that OK?

Yes, businesses with overseas components may remain eligible. However, businesses need to pay close attention to the requirements outlined in Federal Reserve Board guidance, including that "Eligible Borrowers must be Businesses that were created or organized in the United States or under the laws of the United States with significant operations in and a majority of their employees based in the United States." FAQ E.1(4).

Upcoming changes

Of course, as we've seen with PPP, the terms of federal coronavirus economic stimulus programs can change quickly and radically. Accordingly, this answer can change. We note that the Federal Reserve Board has specifically stated (as of April 30, 2020) that the "Federal Reserve and the Treasury Department will be evaluating the feasibility of adjusting the loan eligibility metrics of the Program" for borrowers whose credit risk is more appropriately considered on an asset basis, in lieu of the adjusted EBITDA basis. FAQ E.7. Lowenstein Sandler continues to actively monitor available guidance and expects to provide updates to interested companies. CLICK HERE to sign up to receive Client Alerts on future updates to the Federal Reserve Board's Main Street Lending Program.

To see our prior alerts and other material related to the pandemic, please visit the Coronavirus/ COVID-19: Facts, Insights & Resources page of our website by clicking here.

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