

Federal Reserve Board Announces Revised Terms for the Main Street Lending Program

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On April 9, 2020, the Board of Governors of the Federal Reserve System (the “**Board**”) announced the establishment of the Main Street Lending Program (“**Main Street Loan Program**”), an up to \$600 billion lending program for mid-size businesses. The Department of the Treasury, using funding from the Coronavirus Aid, Relief, and Economic Security (“**CARES**”) Act, will provide \$75 billion in equity to a single common special purpose vehicle (“**SPV**”) in support of the Main Street Loan Program. On April 30, 2020, the Board announced revised terms for the Main Street Loan Program, including the introduction of a third loan facility.

Below is a high-level summary of the provisions relating to the revised Main Street Loan Program, under which eligible lenders may (i) originate new loans through the Main Street New Loan Facility (“**New Loan Facility**”); (ii) increase or upsize a borrower’s existing term loan or revolving credit facility through the Main Street Expanded Loan Facility (“**Expanded Loan Facility**”); or (iii) originate new loans through the Main Street Priority Loan Facility (“**Priority Loan Facility**” and, together with the New Loan Facility and Expanded Loan Facility, each individually, a “**Facility**” and collectively, the “**Facilities**”). A borrower may participate in only one of the Facilities.

This summary is based on term sheets and Frequently Asked Questions (“**FAQs**”), all of which were released by the Federal Reserve on April 30, 2020. The Board and Secretary of the Treasury may make adjustments to the terms and conditions described in such term sheets and FAQs. Further updates are expected with the release of formal regulations and guidance. Such guidance and regulations will provide further detail on the operation and administration of the Main Street Loan Program and may materially change the summary below.

There is currently no process in place to apply for a loan under the Main Street Loan Program, and its implementation awaits the formation and funding of the SPV and various other actions. Companies are encouraged to seek advice from qualified legal counsel before making business decisions based upon the anticipated commencement of this program.

OVERVIEW OF THE MAIN STREET LOAN PROGRAM

	<u>Main Street New Loan Facility (MSNLF)</u>	<u>Main Street Expanded Loan Facility (MSELF)</u>	<u>Main Street Priority Loan Facility (MSPLF)</u>
Eligible Borrowers	<p>To be eligible for a loan under the Main Street Loan Program, a borrower must meet the following criteria:</p> <ol style="list-style-type: none"> 1. The borrower was established prior to March 13, 2020; 2. The borrower must be a business, which either has no more than (a) 15,000 employees or (b) \$5 billion in 2019 annual revenues¹; 3. The borrower must have been created or organized in the U.S. or under the laws of the U.S. with significant operations in and a majority of its employees based in the U.S. 4. The borrower must certify, among other certifications, that it requires financing due to the exigent circumstances presented by the COVID-19 pandemic. 5. The borrower has not received specific support pursuant to Title IV of the CARES Act.² 6. The borrower cannot be a “covered entity”³ that would run afoul of the conflicts of interest provisions in the CARES Act. 7. The borrower must not be an “ineligible business”.⁴ <p>A borrower may only participate in <u>one</u> of the three Facilities and may not also participate in the Primary Market Corporate Credit Facility⁵.</p>		
Eligible Lenders	<p>Eligible lenders⁶ are:</p> <ol style="list-style-type: none"> 1. U.S. federally insured depository institutions; 2. U.S. bank holding companies; 3. U.S. savings and loan holding companies; 4. U.S. branches or agencies of foreign banks; and 5. Any U.S. subsidiary of the above. 		

¹ Employees and revenues of affiliates under common control must be taken into account pursuant to the affiliation rules set out in 13 CFR 121.301(f) in calculating the size limits (same rules as the SBA’s Paycheck Protection Program).

² More specifically, Sec. 4003(b)(1)-(3) of the CARES Act.

³ A “covered entity” is an entity in which 20% or more (by vote or value) of the equity of such entity is owned by the President, Vice President, head of an Executive department, or Member of Congress, or any spouse, children, son-in-law, or daughter-in-law of the foregoing (each, a “Covered Individual”). (Sec. 4019 of the CARES Act). The Chief Executive Officer and Chief Financial Officer (or individuals performing similar functions) of the borrower must certify that the entity is eligible to obtain an eligible loan and is not an entity in which a Covered Individual directly or indirectly holds a controlling interest.

⁴ Ineligible businesses are the same as those ineligible under the Paycheck Protection Program, which include: (1) financial businesses engaged primarily in lending, investment; companies, and mortgage companies primarily in the business of making loans; (2) REITs and other passive businesses; (3) businesses that are majority-owned by individuals other than U.S. citizens or legal permanent residents; (4) most private clubs; and (5) businesses primarily involved in gambling, life insurance, or speculation.

⁵ The Board established the Primary Market Corporate Credit Facility (PMCCF) on March 23, 2020 to support credit to employers through new bond and loan issuances.

⁶ Non-bank financial institutions are currently ineligible lenders, but the Federal Reserve has noted that it is considering expanding the list of eligible lenders in the future.

	<u>Main Street New Loan Facility (MSNLF)</u>	<u>Main Street Expanded Loan Facility (MSELF)</u>	<u>Main Street Priority Loan Facility (MSPLF)</u>
Loan Timing and Amounts	<ol style="list-style-type: none"> 1. The Facility will provide secured or unsecured term loans that originate after April 24, 2020. 2. Minimum loan size of \$500,000. 3. Capped at the <u>lesser</u> of (i) \$25 million or (ii) an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed four times the borrower's 2019 adjusted EBITDA⁷. 	<ol style="list-style-type: none"> 1. The Facility will provide an extension of additional credit ("upsized tranche") on pre-existing secured or unsecured term loans or revolving credit facility that originated on or before April 24, 2020, with at least 18 months⁸ remaining until maturity. 2. Minimum loan size of \$10 million. 3. Upsized tranche amounts are capped at the lesser of (i) \$200 million, (ii) 35% of the borrower's existing outstanding and committed but undrawn bank debt⁹, or (iii) an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed six times the borrower's 2019 adjusted EBITDA¹⁰. 	<ol style="list-style-type: none"> 1. The Facility will provide secured or unsecured term loans that originate after April 24, 2020. 2. Minimum loan size of \$500,000. 3. Capped at the <u>lesser</u> of (i) \$25 million or (ii) an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed six times the borrower's 2019 adjusted EBITDA¹¹.

⁷ The methodology used under the New Loan Facility and Priority Loan Facility in calculating the 2019 adjusted EBITDA of a borrower must be the same one that the lender has either previously used for the borrower or used for another similarly situated borrower on or before April 24, 2020.

⁸ At the time of upsizing, an eligible lender may extend the maturity of an existing facility in order to satisfy the 18-month requirement.

⁹ The upsized tranche needs to be pari passu in priority and equivalent in secured status to the loan made under the existing facility.

¹⁰ The methodology used by a lender to calculate the 2019 adjusted EBITDA of a borrower under the Expanded Loan Facility must be the same as the method the lender used when originating or amending the underlying loan on or before April 24, 2020.

¹¹ See footnote 7.

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Loan Terms	<p>Loans provided through each of the Facilities will have the following features:</p> <ol style="list-style-type: none"> 1. 4-year maturity; 2. Principal and interest payments deferred for 1 year (unpaid interest will be capitalized); 3. Adjustable rate equal to LIBOR (1 or 3 month) + 3%; 4. Prepayment permitted without penalty; and 5. The underlying loan, in the case of the Expanded Loan Facility, or any outstanding loans that the borrower has with the lender, must have 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. <p>Loans upsized pursuant to the Expanded Loan Facility must be made by a lender in the pre-existing facility and must be secured if the underlying loan is secured. The upsized tranche may be secured by the collateral pledged under the terms of the underlying loan (on a pro rata basis), though additional collateral may be required.</p> <p>Note that borrowers may be required to pay some or all of the fees set forth below.</p>		
Principal Loan Payments	<p>Year 1: No principal payment.</p> <p>Year 2: 1/3 principal due year end.</p> <p>Year 3: 1/3 principal due year end.</p> <p>Year 4: 1/3 principal due at maturity.</p>	<p>Year 1: No principal payment.</p> <p>Year 2: 15% principal due year end.</p> <p>Year 3: 15% principal due year end.</p> <p>Year 4: 70% principal due at maturity.</p>	<p>Year 1: No principal payment.</p> <p>Year 2: 15% principal due year end.</p> <p>Year 3: 15% principal due year end.</p> <p>Year 4: 70% principal due at maturity.</p>
Loan Fees	<ol style="list-style-type: none"> 1. <u>Facility Fee</u>: Lender pays SPV a fee equal to 1% of loan amount purchased by the SPV (95% of the principal); <i>provided</i>, the lender may require the borrower to pay this fee. 2. <u>Origination Fee</u>: Borrower pays lender 1% of the principal amount of the loan. 3. <u>Servicing Fee</u>: SPV pays lender 0.25% of the principal amount of the SPV’s participation in the loan per year. 	<ol style="list-style-type: none"> 1. <u>Facility Fee</u>: Lender pays SPV 0.75% of the principal amount of the upsized tranche at the time of upsizing; <i>provided</i>, the lender may require the borrower to pay this fee. 2. <u>Upsizing Fee</u>: Borrower pays lender 0.75% of the principal amount of the upsized tranche at the time of upsizing. 3. <u>Servicing Fee</u>: SPV pays lender 0.25% of the principal amount of the SPV’s participation in the loan per year. 	<ol style="list-style-type: none"> 1. <u>Facility Fee</u>: Lender pays SPV a fee equal to 1% of loan amount purchased by the SPV (85% of the principal); <i>provided</i>, the lender may require the borrower to pay this fee. 2. <u>Origination Fee</u>: Borrower pays lender 1% of the principal amount of the loan. 3. <u>Servicing Fee</u>: SPV pays lender 0.25% of the principal amount of the SPV’s participation in the loan per year.

	<u>Main Street New Loan Facility (MSNLF)</u>	<u>Main Street Expanded Loan Facility (MSELF)</u>	<u>Main Street Priority Loan Facility (MSPLF)</u>
Loan Priority	Cannot be subordinated to any of borrower's other debt instruments at any time.	Senior or pari passu with borrower's other debt instruments, except for mortgage debt.	Senior or pari passu with borrower's other debt instruments, except for mortgage debt.
Usage Restrictions	<p><u>Lender Covenants</u></p> <p>Each lender must commit not to request that proceeds of a Facility loan be used to repay or refinance pre-existing loans or lines of credit made by such lender to the borrower, including the pre-existing portion of a loan increased through the Expanded Loan Facility.</p> <p><u>Borrower Covenants</u></p> <ol style="list-style-type: none"> <u>Treatment of Other Debt/Credit.</u> Each borrower must commit to refrain from using the proceeds of the Facility loan or upsized tranche to repay other debt, with the exception of mandatory principal payments, unless the borrower has first repaid the Facility loan in full. <ul style="list-style-type: none"> <i>Exception</i> – Under the Priority Loan Facility, borrower may refinance existing debt owed to a lender that is not the lender making the MSPLF loan <u>Employment.</u> Borrower must make “commercially reasonable” efforts to maintain payroll and retain employees during the time the Facility loan is outstanding. 		

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Additional Certifications/Covenants	<p><u>Lender Certifications/Covenants:</u></p> <ol style="list-style-type: none"> <u>Reduction.</u> A lender may not cancel or reduce any existing lines of credit outstanding to the borrower. <u>Financial Assessment.</u> A lender must conduct an assessment of each potential borrower's financial condition at the time of the borrower's application¹². <p><u>Borrower Certifications/Covenants:</u></p> <ol style="list-style-type: none"> <u>Lines of Credit.</u> The borrower will not seek to cancel or reduce any of its outstanding lines of credit with any lender. <u>Dividends.</u> The borrower will be prohibited from paying dividends or making other capital distributions on its common stock during term of the loan, and for a year after the date the loan is no longer outstanding, except that an S corporation or another tax pass-through entity may make contributions to the extent reasonably required to cover its owners' tax obligations with respect to that entity's earnings. <u>Stock Buybacks.</u> The borrower cannot make stock buybacks of equity securities of the borrower, or any parent of borrower, that are listed on a national securities exchange (except to the extent required by a preexisting contract), during term of the loan, and for a year after the date the loan is no longer outstanding. <u>Employee Compensation.</u> The borrower must agree to cap all employee compensation (including salary, stock, and bonuses) for a period ending one year after the loan is repaid as follows: <ol style="list-style-type: none"> Employees receiving more than \$425,000 per year cannot receive (i) more compensation than they received in 2019 (except for compensation determined through a collective bargaining agreement entered into prior to March 1, 2020) or (ii) severance pay or other benefits upon termination exceeding twice the 2019 compensation amount. Officers or employees receiving more than \$3 million per year cannot receive total compensation in excess of (i) \$3 million plus (ii) 50% of the excess over \$3 million. <u>Bankruptcy.</u> The borrower under either the (i) New Loan Facility or (ii) Priority Loan Facility must certify, on a "reasonable basis", that it does not expect to file for bankruptcy for 90 days after the date of the loan origination. <p>The Treasury may waive the conditions outlined in 2-4 above, as necessary "to protect the interests of the Federal Government." (Sec. 4003(c)(3)(A)(iii) of the CARES Act).</p>		

¹² The FAQs provide that eligible lenders should view the eligibility criteria in the term sheets as the minimum requirements for the Main Street Loan Program and should apply their own underwriting standards in evaluating the financial condition and creditworthiness of a potential borrower. An eligible lender may require additional information and documentation in making this evaluation and will ultimately determine whether an eligible borrower is approved for a Facility loan in light of these considerations. See FAQs, section I.2.

	<u>Main Street New Loan Facility (MSNLF)</u>	<u>Main Street Expanded Loan Facility (MSELF)</u>	<u>Main Street Priority Loan Facility (MSPLF)</u>
Loan Participations	The SPV will purchase a 95% participation in loans provided through both New Loan Facility and Expanded Loan Facility, at par value, and the lender will retain 5% of the eligible loan. The SPV and lender will share risk on a pari passu basis.		The SPV will purchase an 85% participation in loans provided through the Priority Loan Facility, at par value, and the lender will retain 15% of the eligible loan. The SPV and lender will share risk on a pari passu basis.
Facility Termination	The SPV will cease purchasing participations in eligible loans on September 30, 2020, unless the Board and the Treasury Department extend any of the Facilities.		
Application Procedures	Applicants are encouraged to contact eligible lenders to see whether the eligible lenders plan to participate in the Main Street Loan Program and for any relevant information. However, there is no formal process available today to apply for a loan under any of the Facilities, but further guidance is expected to be released in the upcoming days.		

Additional Questions? Contact a member of the Haynes and Boone [Finance](#) or [Corporate](#) Practice Groups at Haynes and Boone, including the following individuals:

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