NORTON ROSE FULBRIGHT

Federal Reserve Main Street Business Lending Program

Released by the Federal Reserve Board on April 30, 2020*

On April 9, 2020, the Board of Governors of the Federal Reserve System (Federal Reserve Board) launched the Main Street Business Lending Program (Main Street Program), adding another in a series of government programs designed to rehabilitate the economy using an unprecedented $2.3 trillion in loans, loan guarantees, and other investments. Congress authorized this new lending program in the Coronavirus Aid, Relief, and Economic Security (CARES) Act. On April 30, 2020, the Federal Reserve Board expanded the scope the program, including broadened eligibility criteria.

The Main Street Business Lending Program is designed to facilitate the flow of credit to small and mid-sized businesses that were financially stable prior to the COVID-19 pandemic. The recent program updates expanded borrower eligibility to generally include U.S. companies with fewer than either 15,000 employees or $5 billion in 2019 annual revenue. The program currently consists of three lending facilities:

- The Main Street New Loan Facility (MSNLF) will allow participants to obtain new term loans from lenders;
- The Main Street Expanded Loan Facility (MSELF), designed with larger businesses in mind, will allow participants to upsize existing term loans; and
- The Main Street Priority Loan Facility (MSPLF) will allow participants with higher debt loads to obtain new term loans from lenders, with the lenders retaining a larger share of the loan.

Lending for these facilities will be implemented through a single common special purpose vehicle (SPV), which will purchase 95% participations in the MSNLF and MSELF loans and 85% participations in the MSPLF loans from lenders. Lenders will retain a higher stake in MSPLF loans in order to allocate risk, given the higher debt threshold for the MSPLF loans. The SPV will be supported by a $75 billion equity investment by the Treasury Department (using funds from the $454 billion appropriated under the CARES Act to support programs established by the Federal Reserve Board) and lending by the Federal Reserve Bank. The combined size of the facilities will be up to $600 billion.

The SPV will stop purchasing participations in eligible loans on September 30, 2020, unless extended by the Federal Reserve Board and Treasury Department. The Federal Reserve Bank will continue to fund the SPV beyond September 30, however, only until the SPV's underlying assets mature or are sold.

* This checklist is based on information available as of April 30, 2020. It is intended to provide information on developments in the law only. It is not legal advice and does not constitute an opinion of Norton Rose Fulbright US LLP. These terms can be adjusted at the discretion of the Federal Reserve Board and the Secretary of Treasury.

The loans to be made under the Main Street Program are based on a function of the borrower's EBITDA. Depending on which lending facility a loan is issued under, the maximum loan amount is capped at either $25 million or $200 million. The varying loan sizes are a function of which lending facility the borrower participates in, as each facility uses its own EBITDA-to-debt ratio to determine the maximum loan size. Federal Reserve Board recognizes that using EBITDA as the primary underwriting metric necessary for these loan facilities excludes asset-based borrowers and non-profit organizations that do not utilize EBITDA for evaluating credit risk. The Federal Reserve Board is considering alternative metrics and revised eligibility criterion for these entities, but asset-based borrowers and non-profit organizations are currently ineligible for these programs.

The revised scope of the Main Street Program lowers the minimum amount to be borrowed from the original $1 million to $500,000 thereby making the Main Street Program accessible to more businesses and also more attractive for smaller businesses. Contrary to other programs in the CARES Act, such as the Payment Protection Program, loans issued under the Main Street Program will not be forgiven and must be repaid in full. Further, borrowers are required to certify that they will follow the employee compensation, stock buyback and capital distribution restrictions outlined in the CARES Act.

The Federal Reserve Board will release details to Congress about the use of the Main Street Program as lending under the program proceeds, including names and identifying details of each participant in the facilities, the amount borrowed, the interest rate or discount paid, and information concerning the types and amounts of collateral pledged or assets transferred in connection with participation in these facilities.

Additional details from the Federal Reserve Board and the Treasury on the implementation of the Main Street Lending Program operational will be forthcoming and available for review here.

Below is a checklist outlining the core requirements for the MSNLF, MSPLF and the MSELF.

Program	New Loan Facility (MSNLF)	Priority Loan Facility (MSPLF)	Expanded Loan Facility (MSELF)
Eligible Lenders	Eligible Lenders ("Lenders") are: • US insured depository institutions (incl. bank, savings association or credit union); • US branch or agency of a foreign bank; • US bank holding companies; and • US savings and loan holding company; • US intermediate holding company of a foreign banking organization; or • US subsidiary of any of the foregoing.		

Program	New Loan Facility (MSNLF)	Priority Loan Facility (MSPLF)	Expanded Loan Facility (MSELF)

Eligible Borrowers

Eligible Borrowers ("Borrowers") are businesses established before March 13, 2020:

1. With up to 15,000 employees or up to $5 billion in 2019 annual revenues, incl. its affiliates; and
2. Created or organized in the US or under the laws of the US with significant operations in and a majority of its employees based in the US
3. Not otherwise ineligible.[1]

A **business** is defined as:

An entity that is organized for profit, e.g.:

a. A partnership, a limited liability company, a corporation, an associations, a trust, a cooperative, or
b. A joint venture with no more than 49 percent participation by a foreign business; or
c. A tribal business concern, that is wholly owned or owned in part[2] by one or more Indian tribal governments or by a corporation that is wholly owned by one or more Indian Tribal governments.[3]

Employee count is determined by the Borrower's and its affiliates[4]:

1. Full-time, part-time, seasonal, or otherwise employed persons and counting them as employees;
2. Excluding all volunteers and independent contractors.
3. The Borrower shall use the average of the total number of persons employed by the Borrower and its affiliate for each pay period over the 12 months prior to the origination or upsizing of the Eligible Loan.

2019 revenue is determined by using the Borrower's and its affiliates:

1. 2019 Generally Accepted Accounting Principles-based audited financial statements; or
2. Annual receipts[5] for the fiscal year 2019, as reported to the Internal Revenue Service.

If the Borrower's 2019 audited financial statements are not yet available the most recent audited financial statements or annual receipts shall be used.

1 As described in 13 CFR 120.110(b)-(j), (m)-(s), and modified by SBA's interim final rules (IFR) available at 85 Fed. Reg. 20811, 85 Fed. Reg. 21747, and 85 Fed. Reg. 23450. Some examples of ineligible businesses under the IFRs include (i) private equity firms and hedge funds, primarily engaged in investment or speculation are ineligible; (ii) engaged in any illegal activity; (iii) household employers; (iv) owner of 20% or more of the equity of an applicant that is incarcerated, on probation, on parole, presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction; or has been convicted of a felony within the last five years; or (v) the business or a business owned or controlled by the same Borrower, has obtained an SBA in the past that is currently delinquent or defaulted on in the last 7 years, etc.

2 As long as all other owners are US Citizens or businesses.

3 See 15 U.S.C. § 657a(b)(2)(C) – note: that all reference in section (C) to "small business" shall be changed to "Business".

4 13 CFR 121.106

5 13 CFR 121.104 (a)

Program	New Loan Facility (MSNLF)	Priority Loan Facility (MSPLF)	Expanded Loan Facility (MSELF)
Eligible Borrowers	**Restrictions**: • Borrowers meeting the above eligibility requirements may only participate in either the MSNLF, MSPLF *or* the MSELF. However, Borrowers may also participate in the Paycheck Protection Program. • Borrowers participating in either the MSNLF, MSPLF, or MSELF may not participate in the **Primary Market Corporate Credit Facility**, which is discussed in detail here. • Borrower must not have received specific support under the Economic Stabilization Act of 2020 (Subtitle A IV of the CARES Act). Borrower must be able to make all of the certifications and covenants required under the Program (*see Borrower attestation below*).		
Eligible Loans	An Eligible Loan (Loan) is: • A secured or unsecured term loan made by a Lender(s) to a Borrower; • Originated **on or after April 24, 2020;** and • With the following features:	An Eligible Loan (Loan) is: • A secured or unsecured term loan made by a Lender(s) to a Borrower; • Originated **on or after April 24, 2020**; and • With the following features:	An Eligible Loan (Loan) is: • A secured or unsecured term loan or a revolving credit facility made by a Lender(s) to a Borrower; • Originated **on or before April 24, 2020**; • That has a maturity of at least 18 months[6]; and • The upsized tranche of the loan is a term loan with the following features:
Maturity	4 years.		
Deferral	Interest and principal will be deferred for one year.[7]		

6 Taking into account any adjustment made to the maturity of the loan made after April 24, 2020.

7 Unpaid interest will be capitalized.

Program	New Loan Facility (MSNLF)	Priority Loan Facility (MSPLF)	Expanded Loan Facility (MSELF)
Amortization	Principal amortization of • 1/3 at the end of the 2nd year; • 1/3 at the end of the 3rd year; and • 1/3 at maturity at the end of the 4th year	Principal amortization of: • 15% at the end of the 2nd year; • 15% at the end of the 3rd year; and • A balloon payment of 70% at maturity at the end of the 4th year.	
Rate	Adjustable rate of London Inter-Bank Offered Rate (LIBOR) (1 or 3 months) +300 basis points.		
Minimum loan size	**$500,000**		
Maximum loan size	The maximum loan size is the **lesser of:** i. 25 million **or** ii. An amount that, when added to the Borrower's existing outstanding and undrawn available debt[8], does not exceed 4 times the Borrower's 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA").[9]	The maximum loan size is the **lesser of**: i. $25 million **or** ii. An amount that, when added to the Borrower's existing outstanding and undrawn available debt,[10] does not exceed 6 times the Borrower's 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA").[11]	The maximum loan size is the **lesser of**: i. $200 million **or** ii. 35% of the Borrower's existing outstanding and undrawn available debt that is pari passu in priority with the Loan and equivalent to secured status[12] **or** iii. An amount that, when added to the Borrower's existing outstanding but undrawn available debt, does not exceed 6 times the Borrower's 2019 EBITDA.

8 As of the date of the loan application.
9 Methodology used to calculate the adjusted 2019 EBITDA must be the methodology previously used for adjusting EBITDA when extending credit to the Borrower or similarly situated Borrowers.
10 As of the date of the loan application.
11 Methodology used to calculate the adjusted 2019 EBITDA must be the methodology previously used for adjusting EBITDA when extending credit to the Borrower or similarly situated Borrowers.
12 i.e. secured or unsecured.

Program	New Loan Facility (MSNLF)	Priority Loan Facility (MSPLF)	Expanded Loan Facility (MSELF)
Prepayment	Permitted without penalty.		
Subordination	The Loan is **not** at the time of origination or any time during the term contractually subordinated in terms of priority to any of the Borrower's other loans or debt instruments.	In terms of priority and security the Loan **is** • at time of origination and at all times the Loan is outstanding — senior to; or — pari passu with • the Borrower's other loans or debt instruments, other than mortgage debt	In terms of priority and security the upsized tranche **is** • at the time of upsizing and at all times, — senior to; or — pari passu with • the Borrowers other loans or debt instruments.
Loan Classification	If the Borrower had other loans outstanding with the Lender as of December 31, 2019, such loans must have had an internal risk rating equivalent to "pass" in the Federal Financial Institutions Examination Council's supervisory rating system, as of December 31, 2019.		The Loan 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.
Lender Assessment of Borrower's Financial Condition	Lenders are expected to conduct an assessment of each potential borrower's financial condition at the time of the potential borrower's application for any of the programs.		

Program	New Loan Facility (MSNLF)	Priority Loan Facility (MSPLF)	Expanded Loan Facility (MSELF)
Lender Certifications and Covenants	For each Loan, the Lender must certify and covenant that:[13] • The Lender commits that it will not request Borrower to repay debt extended by Lender to the Borrower or pay interest on such outstanding obligations, until the Loan/upsized tranche of the Loan is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration. • The Lender commits that it will not cancel or reduce any existing committed lines of credit to the Borrower, except in the event of default. • The Lender certifies that the methodology use for calculating Borrower's adjusted 2019 EBITDA for the leverage requirement[14] of the Loan is the methodology it previously used for adjusting EBITDA when extending credit to the Borrower or similarly situated borrowers on or before April 24, 2020. • The Lender must certify that it is eligible to participate in the program, including in light of the conflicts of interest prohibition (see below). Note that: • The Lender is required to collect all required certifications and covenants from each Borrower at the time of origination and upsizing, but: — The Lender: — Can rely on the Borrower's certifications and covenants, as well as any subsequent self-reporting. — Does not have an obligation to independently verify the Borrowers certifications or actively monitor ongoing compliance with covenants. — Shall report any material misstatement made by the Borrower or otherwise breach covenant during the term of the Main Street loan program, of which the Lender becomes aware.		

13 These certifications are in addition to applicable statutes and regulations.

14 *See above under* Maximum loan amount (ii).

Program	New Loan Facility (MSNLF)	Priority Loan Facility (MSPLF)	Expanded Loan Facility (MSELF)

Borrower Certifications and Attestations

For each Loan, the Borrower must certify and covenant that the Borrower:[15]

- Commits to refrain from using the proceeds of the Loan (MSNLF and MSPLF) or the upsized tranche of the Loan (MSELF) to repay the principal balance of, or pay interest on, any debt until the Loan/upsized tranche of the Loan is repaid in full, unless the debt or interest payment is mandatory and due.[16]
- Commits that Borrower will not seek to cancel or reduce any of its committed lines of credit with the Lender or any other lender.
- Certifies that it has reasonable basis to believe that, as of the date of origination of origination of the Loan/upsizing of the tranche and after giving effect to the Loan/upsizing, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during such time.
- Will follow the employee compensation, stock repurchase, and capital distribution restrictions[17] that apply to direct loan programs under the CARES Act. Specifically, the CARES Act requires Borrowers to agree to the following:
  - To limit "total compensation" (defined as salary, bonuses, stock awards, and other financial benefits) for certain officers and employees during the loan term plus one year.

    For individuals who earned between $425,000 and $3 million in 2019 (except for employees whose compensation is determined through a collective bargaining agreement entered into prior to March 1, 2020), annual total compensation cannot exceed the amount earned in 2019.

    For individuals who earned over $3 million in 2019, annual total compensation can neither exceed the amount earned in 2019, nor exceed $3 million plus half of the amount of total compensation exceeding $3 million that was earned in 2019. (e.g. total compensation for an individual who earned $4 million in 2019 will be limited to $3.5 million).

    Additionally, all individuals who earned over $425,000 in 2019 will be prohibited from receiving severance or other exit payments exceeding twice the amount earned in 2019.
  - To refrain, during the loan term plus one year, from buying back any equity securities listed on a national securities exchange (including of their parent companies, if applicable), as well as paying dividends on common stock or making other capital distributions.

    Note that the stock buy-back prohibition does not apply to contractual obligations in effect as of the date of enactment (March 27, 2020).

    Note also that the CARES Act allows the Treasury Secretary to waive the employee compensation, stock repurchase, and capital distribution restrictions for this program, if necessary to protect the interests of the federal government. If the Secretary issues such a waiver, he must make himself available to testify before Congress regarding the reasons for the waiver.

15 These certifications are in addition to applicable statutes and regulations.

16 Only for MSPLF: at the time of origination of the Loan the Borrower may refinance existing debt owed by Borrower to a lender that is not the Lender.

17 S-Corporations or other tax pass-through entities that are a Borrower may make distributions to the extent reasonably required to covers its owner's tax obligations in respect of the entity's earnings.

<table>
<tr><th>Program</th><th>New Loan Facility (MSNLF)</th><th>Priority Loan Facility (MSPLF)</th><th>Expanded Loan Facility (MSELF)</th></tr>
<tr><td>CARES Act Conflict of Interest Attestation by both Lender and Borrower</td><td colspan="3">The Lender and the Borrower must attest that the president, vice president, an executive department head, member of Congress, or any of such individual’s spouse, child, son-in-law, or daughter-in-law does not hold directly or indirectly, at least 20% of any class of equity interest in its business.
• Applicable equity interests include:
— Shares (regardless of whether they are transferable or classified as stock or anything similar)
— Capital or profit interests in a limited liability or company or partnership
— Warrants or rights (other than a right to convert) to purchase, sell, or subscribe to a share or interest</td></tr>
<tr><td>Retaining Employees</td><td colspan="3">Borrowers that participate in the Main Street Program shall make commercially reasonable efforts to maintain its payroll and retain its employees during the time the Loan/upsized tranche of the Loan is outstanding.</td></tr>
<tr><td>Transaction Fee</td><td colspan="3">A Lender will pay the SPV a transaction fee of:
• MSNLF and MSPLF: 100 basis points of the principal amount of the Loan at the time of origination;
• MSELF: 75 basis points of the principal amount of the upsized trance of the Loan at the time of upsizing
The Lender may require the Borrower to pay the Transaction Fee.</td></tr>
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Program	New Loan Facility (MSNLF)	Priority Loan Facility (MSPLF)	Expanded Loan Facility (MSELF)
Loan Participations	• The SPV will purchase a 95% participation in a Loan at par value; • The SPV and the Lender will share risk on a pari passu basis; and • Lender will retain 5% of the Loan until it matures or the SPV sells all of its participation, whichever occurs first. • The sale of a participation in the Loan to the SPV will be structured as a "true sale" and must be completed expeditiously after the Loan's origination.	• The SPV will purchase a 85% participation in a Loan at par value; • The SPV and the Lender will share risk on a pari passu basis; and • The Lender will retain 15% of the Loan until it matures or the SPV sells all of its participation, whichever occurs first. • The sale of a participation in the Loan to the SPV will be structured as a "true sale" and must be completed expeditiously after the Loan's origination.	• The SPV will purchase a 95% participation in the upsized tranche of the Loan, provided that it is upsized on or after April 24, 2020, at par value; • The SPV and the Lender will share risk in the upsized tranche on a pari passu basis. • The Lender must be one of the lenders that holds an interested in the underlying Loan at the date of upsizing. • The Lender will retain 5% of the Loan until it matures or the SPV sells all of its participation, whichever occurs first. • The Lender must retain its interest in the underlying Loan until the underlying Loan matures, the upsized tranche of the Loan matures, or the SPV sells all of its participation, whichever comes first. • Any collateral securing the Loan, at time of upsizing or any subsequent date, must secure the upsized tranche on a pro rata basis. • The sale of the upsized tranche of the Loan to the SPV will be structured as a "true sale" and must be completed expeditiously after the Loan's upsizing.

Program	New Loan Facility (MSNLF)	Priority Loan Facility (MSPLF)	Expanded Loan Facility (MSELF)
Loan Origination/ Upsizing and Servicing Fees[18]	**Origination:** • The Borrower will pay the Lender an origination fee of 100 basis points of the principal amount of the Loan at time of origination. • The SPV will pay the Lender 25 basis points of the principal amount of its participation in the Loan per annum for loan servicing.		**Upsizing**: • The Borrower will pay the Lender a fee of 75 basis points of the principal amount of the upsized tranche of the Loan at the time of upsizing. • The SPV will pay an Lender 25 basis points of the principal amount of its participation in the upsized tranche of the Loan per annum for loan servicing.
Facility Termination	The SPV will cease purchasing participations in Loans on September 30, 2020 unless the Federal Reserve or the Department of Treasury extend the Facilities. The Reserve Bank will continue to fund the SPV until the underlying assets mature or are sold.		

18 Additional information regarding credit administration and loan servicing will be made available in due course.

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