



## Finance ADVISORY ■

**APRIL 14, 2020**

### Federal Reserve Announces Main Street Lending Program to Provide Liquidity to Small and Mid-Size Businesses

by [Matthew Wrynski](#) and [Jonathan Forgang](#)

On April 9, 2020, the Federal Reserve announced it is taking additional actions to provide up to \$2.3 trillion in loans to support the economy as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. These actions include providing credit to small and mid-size businesses with up to 10,000 employees or \$2.5 billion in annual revenues through the purchase of up to \$600 billion in loans through the Main Street Lending Program.

Four-year term loans, with principal and interest payments deferred for the first year of the loan, will be provided by eligible banks (limited to U.S. insured depository institutions, U.S. bank holding companies and U.S. savings and loan holding companies) by either originating new unsecured term loans (the “Main Street New Loan Facility”) or increasing the size of existing facilities with secured or unsecured term loans (the “Main Street Expanded Loan Facility”). Eligible banks will retain a 5% share of the loans and sell a 95% loan participation to a special purpose vehicle (SPV) established by the Federal Reserve. The SPV is authorized to purchase up to \$600 billion of these loans. Both the Main Street New Loan Facility and Main Street Expanded Loan Facility require an attestation from borrowers that the borrowers will comply with certain compensation, stock repurchase, and capital distribution restrictions until 12 months after the loans are no longer outstanding. While companies that have availed themselves of the benefits of SBA Payroll Protection Program loans under the CARES Act remain generally eligible to borrow under the Main Street Lending Program, each eligible company will only be permitted to access one of the Main Street New Loan Facility, the Main Street Expanded Loan Facility, or the Primary Market Corporate Credit Facility (a separate, \$750 billion facility that will serve as a funding backstop for companies rated BBB-/Baa3 or greater).

A summary and comparison of both Main Street Lending Program facilities can be found below.

We will continue to monitor the many questions that remain to be answered in the coming weeks as additional guidance becomes available and eligible lenders begin underwriting and originating eligible loans. Notable areas that will benefit from further clarification include:

- Whether the leverage limitations will be based solely on generally accepted accounting principles (GAAP) or if earnings before interest, taxes, depreciation, and amortization (EBITDA) will be permitted to be adjusted for any pro forma events or other customary leverage adjustments.

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

- What exceptions, if any, will be permitted to the required lender representations and covenants regarding cancellation of existing credit facilities (including in circumstances of future events of default).
- What the negative covenants in the definitive loan documentation will include. Will there be a debt negative covenant basket to incur additional secured debt?
- Whether borrowings under the program may be used to temporarily retire revolving debt so long as such revolving facility remains available for future borrowings.
- What constitutes reasonable efforts to maintain the borrower's payroll and retain employees during the term of the eligible loan.
- What is the term loan amortization schedule after the one-year payment holiday?
- Will companies with asset-based revolving credit facilities calculate their maximum debt limitation using commitments or borrowing base? If commitment, will borrowers reduce excess commitments?
- How will debt be defined for the leverage limitation? Will Paycheck Protection Program loans count as debt for the EBITDA/leverage limiter?
- How existing lenders adapt to accommodate these additional loans in existing capital structures, including:
  - The impact of the 4-year maturity on existing credit facilities with greater maturities currently in place.
  - How traditional subordination and intercreditor arrangements (including lien priority arrangements and waterfall allocations) will be addressed.
  - What lender reaction will be to the 5% risk retention portion of loans under the program and whether that will have any chilling effect on the availability of these loans to smaller or struggling companies.

Since this is not an SBA program, there is no indication that the "affiliation" rules that blocked so many private equity portfolio companies from eligibility for the Paycheck Protection Program will be applicable to Main Street Lending Program eligibility. The more than 4,000 eligible lenders could earn an attractive 100 bps origination/upsizing fee to originate these loans and will hold only a 5% risk retention portion of loans, amounting to essentially a 20% fee. The lenders will also receive a 25 bps per annum servicing fee. All of these features should make the Main Street Lending Program popular with both borrowers and lenders alike.

**Overview of CARES Act Main Street Lending Programs**  
as of April 9, 2020<sup>1</sup>

	Main Street New Loan Facility (MSNLF)	Main Street Expanded Loan Facility (MSELF)
<b>Purpose</b>	Facilitate lending to small and medium-sized businesses by eligible lenders	
<b>Program Size</b>	\$600 billion in aggregate	
<b>Program Structure</b>	<p>Fed will lend to a single, common SPV on a recourse basis</p> <p>SPV will purchase a 95% participation in new eligible loans or upsized tranches of eligible loans from eligible lenders at par; eligible lenders will retain 5% at par</p> <p>SPV and eligible lenders will share risk on pari passu basis</p> <p>Treasury will make \$75 billion equity investment in SPV</p>	
<b>Eligible Lenders</b>	<p>U.S. insured depository institutions</p> <p>U.S. bank holding companies</p> <p>U.S. savings and loan holding companies</p>	
<b>Eligible Borrowers / Issuers</b>	<p>Businesses that were created or are organized in U.S. or under laws of U.S. with:</p> <ol style="list-style-type: none"> <li>1. Significant operations in the U.S.</li> <li>2. Majority of employees based in the U.S.</li> </ol> <p>Having not more than:</p> <ol style="list-style-type: none"> <li>1. <b>10,000 employees</b> or</li> <li>2. <b>\$2.5 billion in 2019 annual revenues</b></li> </ol>	
<b>Program Exclusions</b>	Eligible borrowers may participate in <b>only one</b> of MSNLF, MSELF, or PMCCF	
<b>Program Duration</b>	September 30, 2020, unless extended by the Fed and Treasury	

<sup>1</sup> Summaries are based on term sheets published by the Fed on April 9, 2020.

	Main Street New Loan Facility (MSNLF)	Main Street Expanded Loan Facility (MSELF)
<b>TERMS OF ELIGIBLE LOANS</b>		
<b>Type</b>	<b>Unsecured</b> term loan made by an eligible lender to an eligible borrower	<b>Unsecured or secured</b> term loan made by an eligible lender to an eligible borrower <i>Any collateral securing an eligible loan will secure loan participation on pro rata basis</i>
<b>Origination Date</b>	Applies to new credit facilities entered into on or after April 8, 2020	Allows term loans to be added to credit facilities entered into before April 8, 2020
<b>Maturity</b>	4 years	
<b>Amortization</b>	Amortization of principal and interest deferred for one year	
<b>Pricing</b>	SOFR + 250-400 bps	
<b>Min Loan Size</b>	\$1 million	
<b>Max Loan Size</b>	Lesser of: <ol style="list-style-type: none"> <li><b>\$25 million</b></li> <li>An amount that, when added to the eligible borrower's existing outstanding and committed but undrawn debt, does not exceed <b>4x</b> the eligible borrower's 2019 EBITDA</li> </ol>	Lesser of: <ol style="list-style-type: none"> <li><b>\$150 million</b></li> <li><b>30%</b> of the eligible borrower's existing outstanding and committed but undrawn bank debt</li> <li>An amount that, when added to the eligible borrower's existing outstanding and committed but undrawn debt, does not exceed <b>6x</b> the eligible borrower's 2019 EBITDA</li> </ol>

	Main Street New Loan Facility (MSNLF)	Main Street Expanded Loan Facility (MSELF)
Lender Reps / Covenants	<p>Eligible Lender Must:</p> <ol style="list-style-type: none"> <li>1. Attest that proceeds of an eligible loan will not be used to repay or refinance preexisting loans or lines of credit made by the eligible lender to the eligible borrower (including, in the case of upsized loans, the preexisting portion of the eligible loan)</li> <li>2. Attest that it will not cancel or reduce any existing lines of credit outstanding to the eligible borrower</li> <li>3. Certify that it is eligible to participate in the Main Street program, including in light of the conflicts of interest prohibition in <a href="#">Section 4019(b)</a> of the CARES Act</li> </ol>	
Borrower Reps / Covenants	<p>Eligible Borrower Must:</p> <ol style="list-style-type: none"> <li>1. Commit to refrain from using the proceeds of the eligible loan to repay other loan balances</li> <li>2. Commit to refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless it has first repaid the eligible loan in full</li> <li>3. Attest that it will not seek to cancel or reduce any of its outstanding lines of credit with the eligible lender or any other lender</li> <li>4. Attest that it requires financing due to the exigent circumstances presented by the COVID-19 pandemic and that, using the proceeds of the eligible loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the eligible loan</li> <li>5. Attest that it meets the EBITDA leverage condition stated above (see Max Loan Size)</li> <li>6. Attest that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under <a href="#">Section 4003(c)(3)(A)(ii)</a> of the CARES Act</li> <li>7. Certify that it is eligible to participate in the Main Street program, including in light of the conflicts of interest prohibition in Section 4019(b) of the CARES Act</li> </ol>	
Facility Fee	<p><b>100 bps</b> on the principal amount of participation purchased by an SPV, payable by the eligible lender to the SPV</p> <p><i>The eligible lender may require a fee to be paid by the eligible borrower</i></p>	None

	Main Street New Loan Facility (MSNLF)	Main Street Expanded Loan Facility (MSELF)
Origination / Upsize Fee	100 bps on the principal amount of the eligible loan (or upsized portion), payable by the eligible borrower to the eligible lender	
Loan Servicing Fee	25 bps per annum on the principal amount of participation purchased by an SPV, payable by the SPV to the eligible lender	

Alston & Bird has formed a multidisciplinary [task force](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

You can subscribe to future *Finance* advisories and other Alston & Bird publications by completing our [publications subscription form](#).

If you have any questions or would like additional information, please contact your Alston & Bird attorney or the following:



**Matthew J. Wrynski**  
213.576.1192  
matthew.wrynski@alston.com



**Jonathan D. Forgang**  
213.576.1118  
jonathan.forgang@alston.com

# ALSTON & BIRD

[WWW.ALSTON.COM](http://WWW.ALSTON.COM)

© ALSTON & BIRD LLP 2020

**ATLANTA:** One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777  
**BEIJING:** Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86.10.85927500  
**BRUSSELS:** Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719  
**CHARLOTTE:** Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111  
**DALLAS:** Chase Tower ■ 2200 Ross Avenue ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899  
**LONDON:** 5th Floor ■ Octagon Point, St. Paul's ■ 5 Cheapside ■ London, EC2V 6AA, UK ■ +44.0.20.3823.2225  
**LOS ANGELES:** 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100  
**NEW YORK:** 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444  
**RALEIGH:** 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260  
**SAN FRANCISCO:** 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001  
**SILICON VALLEY:** 950 Page Mill Road ■ Palo Alto, California, USA 94304-1012 ■ 650.838.2000 ■ Fax: 650.838.2001  
**WASHINGTON, DC:** The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333