Finance ADVISORY ■

MAY 6, 2020

Federal Reserve Revises Main Street Lending Program, Adds Third Option

by Matthew Wrysinski and Jonathan Forgang

As we previously summarized, on April 9, 2020, the Federal Reserve announced it would purchase up to $600 billion in participations in eligible loans through the Main Street Lending Program as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act via the Main Street New Loan Facility and the Main Street Expanded Loan Facility.

After receiving more than 2,200 comment letters on the program, many of which critiqued the universe of eligible lenders and eligible borrowers as too small to accomplish the stated purpose of the program to provide liquidity to small and medium-sized U.S. businesses in light of COVID-19-related disruptions, the Federal Reserve released on April 30, 2020 a revised Main Street Lending Program that expanded and further clarified the scope of eligibility, as well as added a third loan option—the Main Street Priority Loan Facility.

The most notable of the revisions to the program include:

- Significant changes to borrower eligibility standards (increasing the maximum employee count from 10,000 to 15,000 and increasing the maximum annual revenue limit from $2.5 billion to $5 billion, while also announcing that the SBA affiliation rules otherwise applicable to the SBA Paycheck Protection Program (PPP) under the CARES Act apply when calculating these limitations).
- Expansion of the group of lenders eligible to participate in the program to include U.S. subsidiaries and branches of foreign banks (though still excluding private credit lenders).
- Release of detailed amortization schedules for each program following the 12-month payment holiday.
- Expansion and clarification of the methodology for calculating adjusted EBITDA for purposes of calculating the leverage limitations under each of the loan facilities.
- Clarification that only the upsizing lender under the Main Street Expanded Loan Facility must satisfy the "eligible lender" criteria. To the extent the underlying facility is a multilender facility, the failure of all lenders to meet the eligible lender criteria does not preclude the loan from being upsized under this program.

- Clarification that the requirements set forth in the Main Street Lending Program term sheets are only a floor to borrower eligibility and that eligible lenders are expected to apply their own underwriting standards when evaluating the financial condition and creditworthiness of a potential borrower before determining whether they are approved to receive a loan under the program.

Under the Main Street New Loan Facility and the Main Street Expanded Loan Facility, eligible lenders will continue to be required to retain only a 5% share of eligible loans and will be permitted to sell a 95% loan participation to a special purpose vehicle (SPV) established by the Federal Reserve. The new Main Street Priority Loan Facility will require eligible lenders to retain a 15% share (with the SPV taking an 85% participation). The newly announced Main Street Priority Loan Facility also differs from the otherwise very similar Main Street New Loan Facility in a few key respects:

(1) Borrowers may borrow up to six times adjusted 2019 EBITDA rather than the four times permitted under the Main Street New Loan Facility (both up to a maximum of $25 million).

(2) Principal payments in years 2 through 4 are equal to 15%, 15%, and 70%[1], instead of 1/3 per year under the Main Street New Loan Facility.

(3) Borrowers may, at the time of origination of a Main Street Priority Loan, refinance existing debt owed by the borrower to a lender that is not the eligible lender.

Each loan under the Main Street Lending Program continues to require an attestation from the borrower that it 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 PPP loans 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, the Main Street Priority 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).

Eligible lenders have the option to charge borrowers an attractive 100 bps origination/upsizing fee on the entirety of the additional debt, but will only retain a 5% or 15% risk retention portion, resulting in a very sizable upfront fee for underwriting and closing these loans. Lenders will also receive a 25 bps per annum servicing fee, payable by the SPV.

A summary and comparison of each Main Street Lending Program facility, including the above items, can be found below.

The Federal Reserve also released answers to Frequently Asked Questions on April 30, 2020 that provide answers to several of the questions that we raised in our first summary of the program. However, many of the original questions are yet to be answered and several new questions and ambiguities remain, including:

- How will the Main Street Lending Program be received by eligible lenders, and will the fee structure entice eligible lenders to provide adequate capital to eligible borrowers?

- Does the 5% and 15% risk retention portion of loans under the program have a chilling effect on the availability of these loans?

[1] The Main Street Expanded Loan Facility also provides for the 15%, 15%, and 70% amortization structure.

- Are existing lenders willing to accommodate these additional loans in existing capital structures, including in situations when the four-year maturity is inside existing credit facilities with greater maturities?
- Do upsized loans under the Main Street Expanded Loan Facility need to be incurred as an incremental loan to the existing debt and pursuant to the existing credit facility documentation, or can such upsized loans be incurred pursuant to a new loan agreement?
- Is it possible to incur an upsized loan under the Main Street Expanded Loan Facility if the existing debt is a split collateral deal with both term loans and asset-backed loans? How will borrowers satisfy the requirement that the upsized loans are "senior to or pari passu with" the existing debt of the existing lenders?
- Will the Federal Reserve open the program to nonbank financial institutions?
- Are borrowers able to certify that they have a reasonable basis to believe that they have the ability to meet their financial obligations for at least 90 days and do not expect to file for bankruptcy during that 90-day period?
- Will outstanding PPP loans be included as debt for the EBITDA/leverage limiter?
- Will media coverage of the decision of many borrowers who believed they were eligible for PPP loans to return those PPP loan proceeds discourage borrowers from applying for loans under the Main Street Lending Program, particularly given that the same affiliation rules apply?
- Will the Federal Reserve and the Treasury Department announce alternative eligibility and debt limitation metrics for asset-based borrowers and not-for-profit organizations, which are generally not evaluated on the basis of EBITDA?

Though eligible lenders can technically expect under the Main Street Lending Program to be able to sell participations in qualifying loans originated after April 24, 2020, the Federal Reserve has yet to announce when the purchase of participations will commence. Until the Federal Reserve can issue binding commitments upon which eligible lenders can rely in advancing funds, as well as greater detail on the administration of the program, it is unlikely that lenders will rush to originate these loans.

We will continue to monitor the many questions that arise and any additional guidance that becomes available.

Overview of CARES Act Main Street Lending Programs

as of April 30, 2020[2]

<table>
<tr><th></th><th>Main Street
New Loan Facility
(MSNLF)</th><th>Main Street
Expanded Loan
Facility (MSELF)</th><th>Main Street
Priority Loan Facility
(MSPLF)</th></tr>
<tr><td>Purpose</td><td colspan="3">Facilitate lending by eligible lenders to small and medium-sized businesses that were in sound financial condition before the onset of the COVID-19 pandemic maintain their operations and payroll until conditions normalize</td></tr>
<tr><td>Program Size</td><td colspan="3">Up to $600 billion in aggregate loan participations to be purchased by the SPV

Fed will make $75 billion equity investment in the SPV on a recourse basis</td></tr>
<tr><td rowspan="5">Program Structure</td><td colspan="3">Fed will lend to a single, common SPV on a recourse basis</td></tr>
<tr><td colspan="3">The SPV will purchase at par value (pursuant to a “true sale” that is completed expeditiously after the origination or the upsizing of the eligible loan) a participation in new eligible loans or upsized tranches of eligible loans from eligible lenders</td></tr>
<tr><td colspan="2">The SPV will purchase 95% participation in new eligible loans or upsized tranches of eligible loans from eligible lenders

Eligible lenders will retain 5%</td><td>The SPV will purchase 85% participation in new eligible loans from eligible lenders

Eligible lenders will retain 15%</td></tr>
<tr><td colspan="3">Eligible lenders must retain the 5% (or 15%) portion until the eligible loan (or, in the case of MSELF loans, the upsized tranche) matures or the SPV sells all its participation in the eligible loans or upsized tranche

For the MSELF, the eligible lender must also retain all its interest in the existing loan to which the upsized tranche is being added for the same duration</td></tr>
<tr><td colspan="3">The SPV and eligible lenders will share risk in the eligible loan (or, in the case of MSELF loans, the upsized tranche) on a pari passu basis</td></tr>
<tr><td>Eligible Lenders</td><td colspan="3">U.S. federally insured depository institutions (including banks, savings associations, and credit unions)

U.S. bank holding companies

U.S. savings and loan holding companies

U.S. branches or agencies of foreign banks

U.S. intermediate holding companies of foreign banking organizations

U.S. subsidiaries of any of the above</td></tr>
</table>

---

2 Summaries are based on term sheets published by the Fed on April 30, 2020.

<table>
<tr><th></th><th>Main Street
New Loan Facility
(MSNLF)</th><th>Main Street
Expanded Loan
Facility (MSELF)</th><th>Main Street
Priority Loan Facility
(MSPLF)</th></tr>
<tr><td>Eligible Borrowers / Issuers</td><td colspan="3">Businesses[3] (other than ineligible businesses) that were established before March 13, 2020 and were created or are organized in the U.S. or under laws of the U.S. with:
1. Significant operations in the U.S.
2. Majority of employees based in the U.S.
Having (together with its “affiliated entities” in accordance with the affiliation test set forth in 13 CFR 121.301(f)) not more than:
1. 15,000 employees[4] <u>OR</u>
2. $5 billion in annual revenues per either 2019 (or most recent available) GAAP-based audited financial statements or 2019 annual “receipts” as reported to the IRS</td></tr>
<tr><td>Program Exclusions</td><td colspan="3">Eligible borrowers may participate in only one of MSNLF, MSELF, MSPLF, and PMCCF. Eligible borrowers may not have received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act)
Receipt of PPP loans does not preclude a borrower from borrowing under the Main Street Lending Programs to the extent it is otherwise eligible</td></tr>
<tr><td>Program Duration</td><td colspan="3">The SPV will cease purchasing loan participations on September 30, 2020, unless the program is extended by the Fed and the Treasury Department
The Federal Reserve Bank of Boston will continue to operate the SPV after that date</td></tr>
<tr><td colspan="4">TERMS OF ELIGIBLE LOANS</td></tr>
<tr><td rowspan="2">Type</td><td colspan="3">Must be made by one or more eligible lenders to an eligible borrower</td></tr>
<tr><td>Term loans</td><td>Term loans or revolving credit facilities</td><td>Term loans</td></tr>
</table>

3 Fed defines a business as an entity that is organized for profit as a partnership; a limited liability company; a corporation; an association; a trust; a cooperative; a joint venture with no more than 49% participation by foreign business entities; or a tribal business concern as defined in 15 U.S.C. §657a(b)(2)(C), except that “small business concern” in that paragraph should be replaced with “business” as defined here. Other forms of organization may be considered for inclusion as a business under the Main Street Lending Programs at the discretion of the Fed.

4 To determine how many employees a business has, it should follow the framework set out in the SBA’s regulation at 13 CFR 121.106. As set out in 13 CFR 121.106, the business should count as employees all full-time, part-time, seasonal, or otherwise-employed persons, excluding volunteers and independent contractors. Businesses should count their own employees and those employed by their affiliates. In order to determine the applicable number of employees, businesses should use the average of the total number of persons employed by the eligible borrower and its affiliates for each pay period over the 12 months before the origination or upsizing of the Main Street loan.

	Main Street New Loan Facility (MSNLF)	Main Street Expanded Loan Facility (MSELF)	Main Street Priority Loan Facility (MSPLF)
Priority and Collateral	Unsecured or secured		
	May not be "contractually subordinated" at any time in terms of priority to any of the eligible borrower's other loans or debt instruments. This does not prevent: ▪ A secured MSNLF loan (including in a second lien or other capacity) ▪ An unsecured MSNLF loan, regardless of the term or secured or unsecured status of the eligible borrower's existing indebtedness ▪ The eligible borrower from taking on new secured or unsecured debt after receiving an MSNLF loan, provided the new debt would not have higher contractual priority in bankruptcy than the MSNLF loan	Any collateral securing an eligible loan under the MSELP must secure an upsized tranche on a pro rata basis At the time of upsizing and at all times the upsized tranche is outstanding, the upsized tranche must be senior to or pari passu with (in terms of priority and security) the eligible borrower's other loans or debt instruments, other than mortgage debt	At the time of origination and at all times the eligible loan is outstanding, the eligible loan must be senior to or pari passu with, in terms of priority and security, the eligible borrower's other loans or debt instruments, other than mortgage debt
Origination Date	Applies to new eligible loans entered into after April 24, 2020	Allows an upsized tranche to be added to revolving credit or term loan facilities entered into on or before April 24, 2020 that have a remaining maturity of at least **18 months** (taking into account any adjustments made to the maturity of the loan after April 24, 2020, including at the time of upsizing)	Applies to new eligible loans entered into after April 24, 2020
Maturity	**4 years**		

	Main Street New Loan Facility (MSNLF)	Main Street Expanded Loan Facility (MSELF)	Main Street Priority Loan Facility (MSPLF)
Payments of Principal and Interest	Principal and interest payments deferred for one year (unpaid interest will be capitalized)		
Amortization	Principal amortization of 1/3 at the end of the second year, 1/3 at the end of the third year, and 1/3 at maturity at the end of the fourth year	Principal amortization of 15% at the end of the second year, 15% at the end of the third year, and a balloon payment of 70% at maturity at the end of the fourth year	
Prepayments	Prepayable at any time without penalty		
Pricing	LIBOR (1 or 3 month) + **300 bps** AARC fallback language to be included		
Transaction Fee	**100 bps** on the principal amount of the eligible loan at the time of origination, payable by the eligible lender to the SPV	**75 bps** on the principal amount of the upsized tranche of the eligible loan at the time of upsizing, payable by the eligible lender to the SPV	**100 bps** on the principal amount of the eligible loan at the time of origination, payable by the eligible lender to the SPV
	The eligible lender may require this fee to be paid by the eligible borrower		
Origination / Upsize Fee	**Up to 100 bps** on the principal amount of the eligible loan at the time of origination, payable by the eligible borrower to the eligible lender	**Up to 75 bps** on the principal amount of the upsized tranche of the eligible loan at the time of upsizing, payable by the eligible borrower to the eligible lender	**Up to 100 bps** on the principal amount of the eligible loan at the time of origination, payable by the eligible borrower to the eligible lender
	Eligible lenders have discretion over whether and when to charge eligible borrowers this fee		
Loan Servicing Fee	**25 bps** per annum, payable by the SPV to the eligible lender on the principal amount of SPV participation		
Min Loan Size	**$500,000**	**$10 million**	**$500,000**

	Main Street New Loan Facility (MSNLF)	Main Street Expanded Loan Facility (MSELF)	Main Street Priority Loan Facility (MSPLF)
Max Loan Size	Lesser of: 1. **$25 million** 2. An amount that, when added to the eligible borrower's existing outstanding and undrawn available debt as of the date of the loan application, does not exceed **4.0x** the eligible borrower's adjusted 2019 EBITDA	Lesser of: 1. **$200 million** 2. An amount that, when added to the eligible borrower's existing outstanding and undrawn available debt as of the date of the loan application, does not exceed **6.0x** the eligible borrower's adjusted 2019 EBITDA 3. **35%** of the eligible borrower's existing outstanding and undrawn available debt that is pari passu in priority with the eligible loan and equivalent in secured status (i.e., secured or unsecured)	Lesser of: 1. **$25 million** 2. An amount that, when added to the eligible borrower's existing outstanding and undrawn available debt as of the date of the loan application, does not exceed **6.0x** the eligible borrower's adjusted 2019 EBITDA
Adjusted 2019 EBITDA	The methodology used for calculating the eligible borrower's "adjusted 2019 EBITDA" for the leverage requirements above is the methodology the eligible lender has used on or before April 24, 2020 for adjusting EBITDA when extending credit to the eligible borrower or similarly situated borrowers (and in the case of MSELF loans, must be consistent with the methodology used when originating or amending the eligible loan that is being upsized)		

	Main Street New Loan Facility (MSNLF)	Main Street Expanded Loan Facility (MSELF)	Main Street Priority Loan Facility (MSPLF)
Existing Outstanding and Undrawn Available Debt	Will be required to include all amounts borrowed under any loan facility, including unsecured or secured loans from any bank, nonbank financial institution, or private lender, as well as any publicly issued bonds or private placement facilities. It also includes all unused commitments under any loan facility, excluding: (1) Any undrawn commitment that serves as a backup line for commercial paper issuance (2) Any undrawn commitment that is used to finance receivables (including seasonal financing of inventory) (3) Any undrawn commitment that cannot be drawn without additional collateral (4) Any undrawn commitment that is no longer available due to change in circumstance		
Other Terms and Conditions	The eligible borrower must have been in sound financial condition before the onset of the COVID-19 pandemic If the eligible borrower had other loans outstanding with the eligible lender as of December 31, 2019, such loans (or in the case of the MSELP, the eligible loan that is being upsized) must have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system on December 31, 2019 Eligible lenders should view the eligibility criteria in the term sheets as the minimum requirements and are expected to conduct an assessment of each potential borrower's financial condition at the time of the potential borrower's application and apply their own underwriting standards in evaluating the financial condition and creditworthiness of a potential borrower The Federal Reserve will disclose information about the programs, including the names of lenders and borrowers and amounts borrowed		
Lender Reps / Covenants	Eligible Lender Must: 1. Commit that it will not request that the eligible borrower repay debt extended by the eligible lender to the eligible borrower, or pay interest on such outstanding obligations, until the eligible loan, or in the case of an MSELF loan, the upsized tranche, is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration 2. Commit that it will not cancel or reduce any existing committed lines of credit to the eligible borrower, except in an event of default. This requirement does not prohibit the reduction or termination of uncommitted lines of credit, the expiration of existing lines of credit in accordance with their terms, or the reduction of availability under existing lines of credit in accordance with their terms due to changes in borrowing bases or reserves in asset-based or similar structures 3. Certify that the methodology used for calculating the eligible borrower's adjusted 2019 EBITDA complies with the requirements described in "adjusted 2019 EBITDA" above 4. 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		

<table>
<tr><th></th><th>Main Street New Loan Facility (MSNLF)</th><th>Main Street Expanded Loan Facility (MSELF)</th><th>Main Street Priority Loan Facility (MSPLF)</th></tr>
<tr><td rowspan="2">Borrower Reps / Covenants / Agreements</td><td colspan="3">Eligible Borrower Must:
1. Commit that it will not seek to cancel or reduce any of its outstanding lines of credit with the eligible lender or any other lender
2. Certify that it has a reasonable basis to believe that, as of the date such eligible loan is originated (in the case of MSNLF and MSPLF loans) or upsized (in the case of MSELF loans), and after giving effect to such loan, it has the ability to meet its financial obligations for at least 90 days and does not expect to file for bankruptcy during that 90-day period
3. Commit that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under Section 4003(c)(3)(A)(ii) of the CARES Act, except that an S corporation or other tax pass-through entity that is an eligible borrower may make distributions to the extent reasonably required to cover its owners' tax obligations
4. 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
5. Use "commercially reasonable efforts" to maintain its payroll and retain its employees (i.e., undertake good-faith efforts to maintain payroll and retain employees, in light of its capacities, the economic environment, its available resources, and the business need for labor) during the time the eligible loan, or in the case of MSELF loans, the upsized tranche, is outstanding</td></tr>
<tr><td colspan="2">6. Commit to refrain from repaying the principal balance of, or paying any interest on, any other debt until the eligible loan, or in the case of MSELF loans, the upsized tranche, is repaid in full, unless the debt or interest payment is mandatory and due</td><td>6. Commit to refrain from repaying the principal balance of, or paying any interest on, any other debt until the eligible loan is repaid in full, unless the debt or interest payment is mandatory and due
However, the eligible borrower may, at the time of origination, refinance existing debt owed by the eligible borrower to a lender that is not the eligible lender</td></tr>
</table>

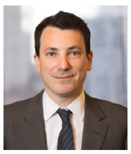
	Main Street New Loan Facility (MSNLF)	Main Street Expanded Loan Facility (MSELF)	Main Street Priority Loan Facility (MSPLF)
	The covenants in #6 above would not prohibit: ▪ Repaying a line of credit (including a credit card) in the normal course of business for such line of credit ▪ Taking on and paying additional debt obligations required in the normal course of business and on standard terms, including inventory and equipment financing, provided that such debt is secured by newly acquired property (e.g., inventory or equipment) and, apart from such security, is of equal or lower priority than the MSNLF loan, MSPLF loan, or MSELF upsized tranche ▪ Refinancing maturing debt		
	An eligible lender is required to collect the required certifications and covenants from each eligible borrower at the time of origination or upsizing Eligible lenders may rely on an eligible borrower's certifications and covenants, as well as any subsequent self-reporting by the eligible borrower, and is not expected to independently verify the certifications or actively monitor ongoing compliance with covenants If an eligible lender becomes aware that an eligible borrower made a material misstatement or otherwise breached a covenant, the eligible lender should notify the Federal Reserve Bank of Boston		

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. Wrysinski
213.576.1192
matthew.wrysinski@alston.com



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

ALSTON & BIRD

WWW.ALSTON.COM

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