



MAIN STREET BUSINESS LENDING PROGRAM ESTABLISHED FOR MID-SIZED BUSINESSES

On April 9, 2020, the Federal Reserve Board announced new details of the Main Street Business Lending Program. This new initiative will provide new borrowing opportunities for eligible small and medium-sized businesses impacted by the COVID-19 pandemic.

Using funds appropriated under the CARES Act, the Treasury has committed to a \$75 billion equity investment in a Special Purpose Vehicle (SPV) designed to carry out the Main Street Business Lending Program. This investment will be matched with the Federal Reserve's commitment to purchase up to \$600 billion in new financing for small and mid-sized businesses that were in good financial standing before the crisis.

This legal update details all currently known borrowing and lending provisions available to both our small to mid-sized business and financial institution clients. The Federal Reserve and Treasury continue to seek input from lenders, borrowers, and other stakeholders to ensure that the program efficiently supports the needs of small to medium-sized businesses.

Comments are being accepted by the Federal Reserve ([Federal Reserve Comment form](#)) until April 16. The Main Street Business Lending Program is very fluid at the time of writing this Legal Update. We will endeavor to update our guidance as the program evolves, but we caution you to look for updates on a continuous basis.

SMALL & MID-SIZED BUSINESSES

The Main Street Business Lending Program, authorized under section 13(3) of the Federal Reserve Act, will facilitate lending to small and medium-sized businesses by execution of two separate programs: the Main Street Expanded Loan Facility (MSELF) and the Main Street New Loan Facility (MSNLF). MSELF is intended to upsize loans originated before April 8, 2020 and MSNLF is intended for new loans originated after April 8, 2020. Eligible Borrowers that participate in the MSNLF may not also participate in the MSELF.

Which businesses are eligible for the loans?

Eligible Borrowers are businesses: (1) with up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues; and (2) that were created or organized in the United States or under US law with significant operations and a majority of their employees in the United States. Eligible Borrowers may not participate in both the MSELF and the MSNLF programs.

What is an eligible loan under MSELF?

An Eligible Loan under the MSELF is an upsized term loan made by an Eligible Lender to an Eligible Borrower that was originated before April 8, 2020. The maximum loan size for the upsized tranche is the lesser of (1) \$150 million; (2) 30% of the borrower's existing outstanding and committed bank debt; or (3) an amount that, when added to the

borrower's existing outstanding and committed bank debt, would not exceed **six** times the Eligible Borrower's 2019 earnings before interest, taxes, depreciation, and amortization (EBITDA).

What is an eligible loan under MSNLF?

An Eligible Loan under the MSNLF is a term loan made by an Eligible Lender to an Eligible Borrower that was originated after April 8, 2020. The maximum loan size for that term loan is the lesser of (1) \$25 million; or (2) an amount that, when added to the borrower's existing outstanding and committed bank debt, would not exceed four times the borrower's 2019 EBITDA.

When will the loans be available?

Unfortunately, not yet. The April 9 announcement by the Federal Reserve provided more details on these programs but did not create or outline an application process. The Federal Reserve will continue to receive input from lenders, borrowers, and other stakeholders through at least April 16 and we expect further details to both borrowers and lenders following that initial timeframe. Given the ongoing turmoil and confusion concerning the Paycheck Protection Program loans, the Federal Reserve and lenders could very well delay this new Main Street Business Lending Program for several weeks until: (a) all details, forms and requirements are clarified for borrowers and lenders; and (b) banks have processed the enormous number pending Paycheck Protection Program loans.

What are the Permitted and Prohibited Uses of Loans?

- The Eligible Borrower must further 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 (upsized tranche under MSELF), it will make reasonable efforts to maintain its payroll and retain its employees during the term of the Eligible Loan.
- Under both programs, the Eligible Borrower must commit to refrain from using the proceeds of the Eligible Loan (upsized tranche under MSELF) to repay other loan balances. The Eligible Borrower must commit to refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless the Eligible Borrower has first repaid the Eligible Loan in full.
- In addition, the Eligible Borrower must attest that it meets specific leverage conditions (no more than four times EBITDA under MSNLF and no more than six times EBITDA under MSELF).
- Lastly, the Eligible Borrower must attest 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.

What are the repayment terms?

All loans under the program have a maximum maturity of four years, and the interest rate will be structured as an adjustable rate equal to the Secured Overnight Financing Rate (SOFR) plus 2.50-4.00%. As of April 8, 2020, the SOFR was 0.01%.

What options does an eligible borrower have if it is unable to repay all or part of the loan?

Eligible Borrowers may seek deferment of repayment of the loans made under the Main Street Business Lending Program for a period of up to one year.

FINANCIAL INSTITUTIONS

The Main Street initiative not only creates two new forms of loans to borrowers (MSELF and MSNLF), but also establishes a participation and repurchase program for lenders with the Federal Reserve. Some key questions and answers for financial institutions follow. Again, additional details are expected to be released by the Federal Reserve and Department of Treasury soon.

What financial institutions will be eligible to lend?

Eligible Lenders include U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies.

What are the loan and repayment terms?

All loans under the program have a maximum interest rate of SOFR plus 2.50-4.00% and payments (principal and interest) on the loan may be deferred for up to one year.

Further term revisions for lending consideration include: (1) a 4-year maturity period; (2) a minimum loan size of \$1 million; and (3) no prepayment penalties.

How are the loan amounts calculated?

Upon establishment of the Main Street Business Lending Program, eligible financial institutions will soon be available to make loans to small to mid-sized businesses impacted by the COVID-19 pandemic pursuant to the following guidelines:

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An Eligible Loan under the MSNLF is a term loan made by an Eligible Lender to an Eligible Borrower that was originated after April 8, 2020. The maximum loan size for that term loan is the lesser of (1) \$25 million; or (2) an amount that, when added to the borrower's existing outstanding and committed bank debt, would not exceed four times the borrower's 2019 EBITDA.

What is the risk allocation?

Under MSELF and MSNLF, the Federal Reserve will commit to lend to a single common SPV on a recourse basis. The SPV will purchase 95% participations in Eligible Loans (upsized tranche of Eligible Loan under MSELF) from Eligible Lenders. Eligible Lenders would retain 5% of each Eligible Loan (upsized tranche under MSELF). The SPV and Eligible Lender will share risk in the Eligible Loan (upsized tranche under MSELF) on a pari passu basis. Treasury will make a \$75 billion equity investment in the SPV.

What are the applicable loan upsizing and servicing fees under MSELF?

The SPV established by the Main Street Business Lending Program will pay an Eligible Lender twenty-five basis points of the principal amount of its participation in the upsized tranche of the Eligible Loan per annum for loan servicing.

Additionally, the Eligible Borrower will pay the Eligible Lender a fee of one-hundred basis points of the principal amount of the upsized tranche of the Eligible Loan at the time of upsizing.

What are the applicable loan origination, servicing fees and facility fees under MSNLF?

The SPV will pay an Eligible Lender twenty-five basis points of the principal amount of its participation in the Eligible Loan per annum for loan servicing. An Eligible Borrower will pay an Eligible Lender an origination fee of one-hundred basis points of the principal amount of the Eligible Loan. Additionally, the Eligible Lender will be required to pay the SPV a facility fee of one-hundred basis points of the principal amount of the loan participation purchased by the SPV; however, the Eligible lender may require the Eligible Borrower to pay this fee.

What attestations will be required with respect to each Loan?

- Under both programs, the Eligible Lender must attest that the proceeds of the Eligible Loan (upsized tranche of the Eligible Loan under MSELF) will not be used to repay or refinance pre-existing loans or lines of credit made by the Eligible Lender to the Eligible Borrower (including the pre-existing portion of the Eligible Loan under MSELF).
- The Eligible Lender must attest that it will not cancel or reduce any existing lines of credit outstanding to the Eligible Borrower.
- Eligible Lenders and Eligible Borrowers will each be required to certify that the entity is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.

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<https://www.grsm.com/publications/2020/main-street-business-lending-program-established>