

COVID-19 Alert

The Federal Reserve's Main Street Lending Program
April 30, 2020 Update

APRIL 2020

In our [initial advisory](#), we discussed the basic components of the Federal Reserve Main Street Lending Program. In this advisory, we update that discussion based on the Federal Reserve's announcement to revise various terms for the Main Street Program. Effective April 30, 2020, in a further effort to promote liquidity in the lending market for small and medium sized businesses, the Federal Reserve Board and the Treasury's Main Street Lending Program now offers three types of loan facilities: [new loans](#), [expanded loans](#) (upsized tranches of existing loans), and the newly added [priority loans](#), and has changed some of the eligibility requirements from when the program was first announced.

WHO CAN BORROW?

To be eligible, a business must satisfy the following four requirements:

- Up to 15,000 employees or up to \$5 billion in 2019 annual revenues.
- Organized and established in the USA prior to March 13, 2020, with significant operations and a majority of employees based in the USA, and in sound financial condition prior to the COVID-19 pandemic.
- Committed to making commercially reasonable efforts to maintain payroll and retain workers during the time the eligible loan is outstanding.
- Not be an ineligible business (defined in [FAQ E.1\(2\)](#)), such as financial businesses primarily engaged in the business of lending, passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with loan proceeds, life insurance companies, and businesses located in foreign countries, to name a few.
 - In addition to the list of ineligible businesses, non-profit organizations are not currently eligible under the Program ([FAQ E.6](#)).

Note: Borrowers may only participate in one type of Main Street loan facility. Borrowers may participate in *both* the Paycheck Protection Program and the Main Street Lending Program, but neither receive other support under Subtitle A, Title IV of the CARES Act¹, nor participate in a Primary Market Corporate Credit Facility (which is to support large companies through the purchase of corporate bonds and lending through syndicated loans).

¹ Specifically, businesses must not have participated in the Treasury's direct lending programs established under Section 4003(b)(1)-(3) of the CARES Act. ([FAQ E.6](#)).

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WHAT ARE THE LOAN TERMS?

Similar to the Paycheck Protection Program, businesses will need to seek loans from eligible lenders, including U.S. insured depository institutions, U.S. bank holding companies and U.S. savings and loan holding companies. Eligible loans under this Program must meet the following criteria:

Terms	Main Street New Loan Facility (MSNLF)	Main Street Priority Loan Facility (MSPLF)	Main Street Expanded Loan Facility (MSELF)
Origination	Originated after April 24, 2020.	Originated after April 24, 2020.	Originated on or before April 24, 2020 with at least 18 months remaining before maturity, taking into account any extensions of the maturity date at the time of the MSELF.
Security and Priority	May be secured or unsecured, but MSNLF cannot be contractually subordinated to any other loans or debt of borrower. ²	MSPLF must be senior to or equal to, both in terms of priority and security, borrower's other loans or debt (other than mortgage debt).	MSPLF must be senior to or equal to, both in terms of priority and security, borrower's other loans or debt (other than mortgage debt).
Maturity	4 years	4 years	4 years
Deferral	Principal and interest payments deferred for 1 year (unpaid interest will be capitalized).	Principal and interest payments deferred for 1 year (unpaid interest will be capitalized).	Principal and interest payments deferred for 1 year (unpaid interest will be capitalized).
Amortization	Principal amortization of 1/3 at the end of years 2, 3 and 4.	Principal amortization of 15% at the end of years 2 and 3; 70% balloon payment at maturity.	Principal amortization of 15% at the end of years 2 and 3; 70% balloon payment at maturity.
Interest rate	Adjustable rate of LIBOR (1 or 3 month) + 300 basis points	Adjustable rate of LIBOR (1 or 3 month) + 300 basis points	Adjustable rate of LIBOR (1 or 3 month) + 300 basis points
Minimum loan size	\$500,000	\$500,000	\$10,000,000

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² See [FAQ B.3](#) for actions that might be permitted even with this limitation.

Maximum loan size	The lesser 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 (4x) the borrower's 2019 EBITDA.	The lesser 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 (6x) the borrower's 2019 EBITDA.	The lesser of (i) \$200 million, (ii) 35% of the borrower's existing outstanding and undrawn available debt that is equal to, both in terms of priority and security, with the MSELF, or (iii) an amount that, when added to the borrower's existing outstanding and committed but undrawn debt, does not exceed six times (6x) the borrower's 2019 EBITDA.
Prepayment	Permitted without penalty	Permitted without penalty	Permitted without penalty

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WHAT COMMITMENTS DO BORROWERS HAVE TO MAKE?

In order for a loan to be deemed eligible under the Main Street Lending Program, a borrower needs to make the following commitments:

- The borrower will not repay other debt, or interest thereon, with the exception of mandatory payments, unless the borrower has first repaid the eligible loan (or upsized tranche thereof) in full. Based upon the response to [FAQ H.3](#), it appears that repaying a line of credit in accordance with the borrower's normal course usage of such line of credit would be allowed but this is not specifically stated in the terms sheets for these facilities.
- The borrower has a reasonable basis to believe on the origination date that, after giving effect to the MSLP loan, it has the ability to meet its financial obligations for at least 90 days thereafter and does not expect to file for bankruptcy during that time period.
- The borrower will not seek to cancel or reduce any of its outstanding lines of credit with the lender making the MSLP loan or any other lender. A MSPLF borrower may, however, refinance its existing debt owed to a lender that is not the MSPLF lender with the MSPLF lender the time of origination.
- The borrower 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 pass-through entity borrowers may make distributions, to the extent reasonably required, to cover its owners' tax obligations in respect of the entity's earnings.
- The borrower is eligible to participate in the Program, including compliance

with the conflict of interest prohibitions regarding the interests of certain political officials and their respective families in the business as set forth under Section 4019(b) of the CARES Act.

ARE THERE FEES?

For both MSNLF and MSPLF loans, the lender may charge borrowers a fee of up to 100 basis points of the principal amount of the loan. For MSELF loans, the lender may charge the borrower a fee of up to 75 basis points of the principal amount of the upsized tranche.

With respect to new MSNLF and MSPLF loans, the lender will be required to pay a 100 basis point participation fee on the principal amount of the loan, and for MSELF loans, the lender will be required to pay a 75 basis point participation fee on the principal amount of the upside tranche. The lender may pass these participation fees through to the borrower.

ADDITIONAL CONSIDERATIONS

Borrowers should make commercially reasonable efforts to maintain its payroll and retain its employees during the time period that the MSLP loan is outstanding. This iteration of the Main Street Lending Program will be available through September 30, 2020. Further details for obtaining, completing and/or submitting applications for loans under the Main Street Program have not been released. We note that this is current as of May 11, 2020, and adjustments/clarifications to these programs will be made in the future.

Please contact the Reid and Riege attorney with whom you regularly work, or a member of our Business Services practice listed to the right, for more up to date information, or questions about your unique circumstances.

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