NORTON ROSE FULBRIGHT

Federal Reserve Main Street Expanded Loan Facility and Main Street New Loan Facility Checklists

Released by the Federal Reserve Board on April 9, 2020[1]

On April 9, 2020, the Board of Governors of the Federal Reserve System (Federal Reserve Board) unveiled the Main Street Business Lending Program, adding to the growing list of government actions aimed at rehabilitating the economy though an unprecedented $2.3 trillion in loans, loan guarantees, and other investments. This announcement provided much anticipated detail on the new lending program, which the Federal Reserve Board first announced on March 23, 2020, and Congress referenced and funded in the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

The Main Street Business Lending Program is intended to ensure that credit flows to small- and mid-sized businesses, defined generally as US companies with under 10,000 employees or no more than $2.5 billion in 2019 annual revenues. It consists of two lending facilities. First, the Main Street New Loan Facility (MSNLF) will allow participants to obtain new term loans from lenders. Second, the Main Street Expanded Facility (MSELF), which appears to have been designed with larger businesses in mind, will allow participants to upsize existing term loans.

Lending for both facilities will be implemented through a single common special purpose vehicle (SPV), which will purchase 95 percent participations in eligible loans (or the upsized tranche of eligible loans) from lenders. 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 both facilities will be up to $600 billion.

The SPV will cease 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, until the SPV's underlying assets mature or are sold.

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

Program	Main Street New Loan Facility (MSNLF)	Main Street New Expanded Facility (MSELF)
Eligible Lenders	Eligible Lenders ("Lenders") are: • US-insured depository institutions • US bank holding companies • US savings and loan holding companies	

[1] This checklist is based on information available as of April 9, 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.

<table>
<tr><th>Program</th><th>Main Street New Loan Facility (MSNLF)</th><th>Main Street New Expanded Facility (MSELF)</th></tr>
<tr><td>Eligible Borrowers</td><td colspan="2">Eligible Borrowers ("Borrowers") are businesses:
• With up to 10,000 employees or up to $2.5 billion in 2019 annual revenues
• 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
Restrictions:
• Borrowers meeting the above eligibility requirements may only participate in either the MSNLF or the MSELF – not both.
• Borrowers participating in either the MSNLF or the MSELF may not participate in the Primary Market Corporate Credit Facility, which is discussed in detail here.</td></tr>
<tr><td>Eligible Loans</td><td>An Eligible Loan (Loan) is:
• An unsecured term loan made by a Lender(s) to a Borrower
• Originated on or after April 8, 2020
• With the following features:</td><td>An Eligible Loan (Loan) is:
• A term loan made by a Lender(s) to a Borrower
• That was originated before April 8, 2020
• With the following features:</td></tr>
<tr><td>Maturity</td><td colspan="2">4 years.</td></tr>
<tr><td>Amortization</td><td colspan="2">Amortization of principal and interest deferred for one year.</td></tr>
<tr><td>Rate</td><td colspan="2">Adjustable rate of the Secured Overnight Financing Rate + 250-400 basis points.</td></tr>
<tr><td>Minimum loan size</td><td colspan="2">$1 million.</td></tr>
<tr><td>Maximum loan size</td><td>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 committed but undrawn debt, does not exceed 4 times the Borrower's 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA").</td><td>The maximum loan size is the lesser of:
i. $150 million or
ii. 30% of the Borrower's existing outstanding and committed but undrawn bank debt or
iii. An amount that, when added to the Borrower's existing outstanding and committed but undrawn debt, does not exceed 6 times the Borrower's 2019 EBITDA..</td></tr>
<tr><td>Prepayment</td><td colspan="2">Permitted without penalty.</td></tr>
<tr><td>Lender Attestation</td><td colspan="2">For each Loan, the Lender must attest that:
• The proceeds of the Loan (MNSLF) or the upsized tranche (MSELF) will not be used to repay or refinance pre-existing loans or lines of credit made by the Lender to the Borrower; and
• The Lender will not cancel or reduce any existing lines of credit outstanding to the eligible borrower.</td></tr>
</table>

Program	Main Street New Loan Facility (MSNLF)	Main Street New Expanded Facility (MSELF)
Borrower Attestations	For each Loan, the Borrower must attest that it: • Commits to refrain from using the proceeds of the Loan (MSNLF) or the upsized tranche of the Loan (MSELF) to repay other loan balances; • Commits to refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless the Borrower has first repaid the Loan in full; • Will not seek to cancel or reduce any of its outstanding lines of credit with the Lender or any other lender; • Requires financing due to the exigent circumstances presented by the coronavirus disease 2019 pandemic, and that, using the proceeds of the Loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the Loan; • Meets the EBITDA leverage condition stated above specifying required features for Loans; and • Will follow the employee compensation, stock repurchase, and capital distribution restrictions 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.	

Program	Main Street New Loan Facility (MSNLF)	Main Street New Expanded Facility (MSELF)
CARES Act Conflict of Interest Attestation by both Lender and Borrower	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, and — warrants or rights (other than a right to convert) to purchase, sell, or subscribe to a share or interest.	
Loan Participations	• The SPV will purchase a 95% participation in a Loan at par value, and the Lender will retain 5% of the Loan. • The SPV and the Lender will share risk on a pari passu basis.	• The SPV will purchase a 95% participation in the upsized tranche of the Loan, provided that it is upsized on or after April 8, 2020, at par value. • The SPV and the Lender will share risk in the upsized tranche on a pari passu basis. Any collateral securing a Loan, whether such collateral was pledged under the original terms of the Loan or at the time of upsizing, will secure the loan participation on a pro rata basis.
Facility Fee	The Lender will pay the SPV a facility fee of 100 basis points of the principal amount of the loan participation purchased by the SPV. The Lender can require the Borrower to pay the facility fee.	N/A
Loan Origination/Upsizing and Servicing Fees	**Origination:** • The Borrower will pay the Lender an origination fee of 100 basis points of the principal amount of the Loan. • 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 100 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.

NORTON ROSE FULBRIGHT

Law around the world

nortonrosefulbright.com