

CLIENT ALERT

Federal Reserve Announces Expansion of Main Street Lending Program

May 1, 2020

On April 30, 2020, the Federal Reserve announced the expansion of its Main Street Lending Program (the “Program”) to facilitate lending to businesses beyond the small and medium-sized businesses for which the Program was initially established under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The Program will be operated through three facilities, namely (i) the Main Street New Loan Facility (“MSNLF”); (ii) the Main Street Expanded Loan Facility (“MSELF”) and (iii) the new Main Street Priority Loan Facility (“MSPLF”), with similarities and differences among the facilities.

The Program will remain active until September 30, 2020, unless it is extended by the Federal Reserve and the Department of Treasury. The Federal Reserve will formally announce a launch date in future Federal Reserve publications. No tentative date has been set, but potential borrowers should consider reaching out to their bank contacts to begin a dialogue about which loan facility might be the best fit.

The terms of the Program described below are minimum standards. Lenders are expected to conduct an assessment of the potential borrower’s financial condition at the time the application is made and to apply their own underwriting standards in evaluating the financial condition and creditworthiness of a potential borrower. Lenders also may require additional information from the potential borrower.

A lender’s acceptance of an application that meets minimum eligibility requirements is not a guaranty that the loan will be approved by the lender or, even if approved, that such approval will be for the full amount requested. Unlike the SBA’s Payroll Protection Program, this Program has many more up-front characteristics of a normal course loan application process. Notwithstanding the complex and somewhat burdensome nature of the requirements, the benefits of receiving a loan under this Program could make a difference in whether a company is afforded the financial breathing room needed to survive the current pandemic and beyond.

Eligible Borrowers

While “Eligible Borrowers” were initially limited to businesses with up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues, the expanded Program broadens the scope of “Eligible Borrowers” to include businesses with (i) 15,000 employees or fewer or (ii) 2019 annual revenues of \$5 billion or less.

- Number of Employees: While the full definition of an “Eligible Borrower” is beyond the scope of this Client Alert, “Eligible Businesses” are generally required to determine the number of their employees using the framework set out in the SBA’s regulation at 13 CFR 121.106, based on the average of the total number of persons employed by the business in question and its affiliates for each pay period over the 12 months prior to the origination or upsizing of the “Eligible Loan” (as described below). In determining employees, businesses include all full-time, part-time, seasonal, or otherwise employed persons of themselves and their affiliates (based on the affiliation test set forth in 13 CFR 121.301(f)), but not volunteers and independent contractors.

- **2019 Annual Revenues:** 2019 Annual Revenues are determined based on either the business’ (i) annual revenue reflected in its 2019 audited financial statements, determined in accordance with GAAP or (ii) receipts for the 2019 fiscal year, as reported to the Internal Revenue Service. If neither calculation is available, the business may use its most recent audited financial statements or annual receipts.

Additional Eligibility Conditions: Additional conditions that a business must meet to qualify as an Eligible Borrower include:

- being a business created or organized in the United States or under the laws of the United States with significant operations and a majority of its employees based in the United States;
- having been established prior to March 13, 2020;
- not being in an industry or operating a type of business listed as an “Ineligible Business” 13 CFR 120.110(b)-(j) and (m)-(s), as modified and clarified by SBA regulations for purposes of the Payroll Protection Program on or before April 24, 2020;
- only participating in one of the three Program facilities;
- being ineligible if it is participating in the Primary Market Corporate Credit Facility or has received specific support pursuant to Section 4003(b)(1)-(3) of the CARES Act; and
- providing the certifications and complying with the covenants under the Program, as further described below.

It is important to note, however, that acceptance of funds under the SBA Payroll Protection Program does not make a business ineligible to receive a Program loan.

Non-profit organizations may be considered for inclusion as an Eligible Borrower under the Program at the discretion of the Federal Reserve.

Eligible Loans and Key Terms

Common features of “Eligible Loans” under all three Program facilities include:

- 4-year maturity
- 1-year deferred principal and interest amortization (unpaid interest will be capitalized)
- Adjustable rate of LIBOR (1 or 3 month) + 300 basis points
- No prepayment penalty

Differing aspects under each Program facility include:

Key Loan Aspect	MSNLF	MSELF	MSPLF
Origination Date	A new secured or unsecured term loan originated after April 24, 2020	If an Eligible Borrower has an existing term loan or revolving credit facility originated on or before April 24, 2020 with a remaining tenor of at least 18 months to maturity, a new	A new secured or unsecured term loan originated after April 24, 2020

		secured or unsecured term loan upsizing the existing loan and which must include an extension of the tenor of a loan with less than 18 months to maturity	
Minimum Loan Size	\$500,000 (down from \$1 million previously)	\$10 million (up from \$1 million previously)	\$500,000
Maximum Loan Size	Lesser of: (i) \$25 million or (ii) an amount that, when added to the Eligible Borrower’s existing outstanding and committed but undrawn debt, does not exceed four times the Eligible Borrower’s 2019 EBITDA	Lesser of: (i) \$200 million (up from previously \$150 million), (ii) 35% (up from 30% previously) of the Eligible Borrower’s existing outstanding and committed but undrawn bank debt that is pari passu with the Eligible Loan and equivalent in secured status, or (iii) an amount that, when added to the Eligible Borrower’s existing outstanding and committed but undrawn debt, does not exceed six times the Eligible Borrower’s 2019 EBITDA	Lesser of: (i) \$25 million or (ii) an amount that, when added to the Eligible Borrower’s existing outstanding and committed but undrawn debt, does not exceed six times the Eligible Borrower’s 2019 EBITDA
Credit Requirement	Eligible Borrowers must have been in sound financial condition prior to the onset of the COVID-19 pandemic. If the Eligible Borrower had other loans outstanding with Eligible Lender as of December 31, 2019, such loans must have had an internal risk rating equivalent to a “pass” in the Federal Financial Institutions Examination Council’s supervisory rating system on that date.	Same as MSNLF	Same as MSNLF
Seniority	At the time of origination and at all times thereafter, pari	At the time of upsizing and at all times thereafter, the upsized	At the time of origination and at all times thereafter, the

	passu to the Eligible Borrower's other loans or debt instruments (i.e., it may not be junior in priority in bankruptcy to other unsecured loans or debt instruments of Eligible Borrower)	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.	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.
Amortization	33.33% of deferred principal at end of year 2; 33.33% at end of year 3; 33.33% at maturity	15% of deferred principal at end of year 2; 15% at end of year 3; 70% at maturity	15% of deferred principal at end of year 2; 15% at end of year 3; 70% at maturity

Required Certifications and Covenants:

Certifications that are the same for all three Program facilities include:

- The Eligible Lender must commit that it will not cancel or reduce any existing committed lines of credit to the Eligible Borrower, except in an event of default.
- The Eligible Borrower must commit that it will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender.
- The Eligible Borrower must attest that it will follow compensation, stock repurchase, and capital distribution limitations that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act.
- Eligible Lenders and Eligible Borrowers will each be required to certify that the borrower is eligible to participate in the facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.

Other covenants and certifications that differ among the three Program facilities include:

Provision	MSNLF	MSELF	MSPLF
Eligible Lender Covenants and Certifications	<ul style="list-style-type: none"> • Lender will not request the Eligible Borrower to repay debt extended by the Lender to the Eligible Borrower, or pay interest on such outstanding obligations, until the Eligible Loan is repaid in full, <i>unless the debt or interest payment is mandatory and due, or in the case of default and acceleration.</i> • Lender's methodology used 	<ul style="list-style-type: none"> • Lender will not request that the Eligible Borrower repay debt extended by the Lender to the Eligible Borrower, or pay interest on such outstanding obligations, until the upsized tranche of the Eligible Loan is repaid in full, <i>unless the debt or interest payment is mandatory and due, or in the case of default and</i> 	Same as MSNLF

	<p>for calculating the Eligible Borrower’s adjusted 2019 EBITDA is the methodology it has previously used for adjusting EBITDA when extending credit to the Eligible Borrower or similarly situated borrowers on or before April 24, 2020.</p>	<p>acceleration.</p> <ul style="list-style-type: none"> Lender’s methodology used for calculating the Eligible Borrower’s adjusted 2019 EBITDA is the methodology it previously used for adjusting EBITDA when originating or amending the existing Eligible Loan on or before April 24, 2020. 	
<p>Eligible Borrower Covenants and Certifications</p>	<ul style="list-style-type: none"> Borrower must commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due. Borrower must certify that it has a reasonable basis to believe that, as of the date of origination of the Eligible Loan and after giving effect to such loan, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period. 	<ul style="list-style-type: none"> Borrower must commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the upsized tranche of the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due. Borrower must certify that it has a reasonable basis to believe that, as of the date of upsizing of the Eligible Loan and after giving effect to such upsizing, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period. 	<ul style="list-style-type: none"> Same as MSNLF, but the Borrower may, at the time of origination of the Eligible Loan, refinance existing debt owed by the Borrower to a lender that is not the Eligible Lender. Same as MSNLF

Other Noteworthy Features

- Fees: There are fees associated with the three Program facilities. Eligible Lenders will have to pay a transaction fee.
- Collateral: The Program facility loans may be secured or unsecured. An MSELF upsized tranche must be secured if the underlying Eligible Loan is secured.

- **Employee Retention:** Eligible Borrowers must make commercially reasonable efforts to retain employees during the term of the loan facilities. To meet this requirement, an Eligible Borrower should undertake good-faith efforts to maintain employee and payroll in light of its capacities, the economic environment, its resource and the business need for labor. On the other hand, potential borrowers who have already laid-off or furloughed employees as a result of COVID-19 disruptions are eligible to apply for a Program loan.
- **Leverage Test:** For purposes of calculating maximum loan amount, “existing outstanding and undrawn available debt” includes all amounts borrowed under any loan facility from any bank, non-bank 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, but excludes (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, and (4) any undrawn commitment that is no longer available due to change in circumstance. Existing outstanding and undrawn available debt should be calculated as of the date of the loan application.

Eligible Lenders

In addition to U.S. insured depository institutions, U.S. bank holding companies and U.S. savings and loan holding companies, a U.S. intermediate holding company of a foreign banking organization or a U.S. subsidiary of any of the foregoing qualify as “Eligible Lenders”. Non-bank financial institutions such as commercial finance companies or funds are currently not eligible to participate, but the Federal Reserve is considering options to expand the category of Eligible Lenders.

How Can Businesses Apply for a Program Loan?

A business interested in the Program should submit an application and any other documentation required by an Eligible Lender to such Eligible Lender. In addition, the Eligible Lender should be contacted for more information on whether it plans to participate in the Program and for more information on the application process. As has been the case with PPP loans, the most likely source of loans under this Program will be from a bank with whom a business has an existing relationship.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Scott Lessne

Senior Counsel – Washington, D.C.

Phone: +1.202.624.2597

Email: slessne@crowell.com

James G. Flood

Partner – Washington, D.C.

Phone: +1.202.624.2716

Email: jflood@crowell.com

Manuela Siragy

Counsel – Washington, D.C.

Phone: +1.202.624.2836

Email: msiragy@crowell.com

Nicholas James

Counsel – Washington, D.C.

Phone: +1.202.624.2959

Email: njames@crowell.com