

[Latham & Watkins Financial Institutions Group](#)

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FAQs: Federal Reserve's Main Street Lending Facilities for Small and Mid-Sized Businesses

Federal Reserve set to make up to \$600 billion available to eligible small and mid-sized businesses.

On April 9, 2020, the Board of Governors of the Federal Reserve System (Federal Reserve) announced details regarding the terms and conditions of two Main Street lending facilities to support small and mid-sized businesses that were "in good financial standing" prior to the COVID-19 emergency: the Main Street New Loan Facility (MSNLF) and the Main Street Expanded Loan Facility (MSELF, and together with the MSNLF, the Main Street Lending Facilities). The Federal Reserve will establish a single common special purpose vehicle (the Main Street Facility SPV) which will purchase 95% participations in eligible loans from eligible lenders. The combined size of the Main Street Lending Facilities will be up to \$600 billion, which will consist of a \$75 billion equity investment in the Main Street Facility SPV from the Department of the Treasury (using a portion of the \$454 billion appropriated in Title IV of the CARES Act to support programs or facilities established by the Federal Reserve, see Latham's related [Client Alert](#)) and up to \$525 billion to be lent to the Main Street Facility SPV by the Federal Reserve.

As noted in the term sheets for the [MSNLF](#) and [MSELF](#), the Federal Reserve and the Secretary of the Treasury have reserved the right to make further adjustments to the terms and conditions of the Main Street Lending Facilities and will publicly announce if any such adjustments are required. In addition, the Federal Reserve and the Department of the Treasury invite comments from lenders, borrowers, and other stakeholders, through April 16. This *Client Alert* provides answers to frequently asked questions about the initial term sheets for the Main Street Lending Facilities, including what types of loans are available under each facility, who is eligible for relief, and what the terms and conditions are for loans under the facilities.

General

1. What types of borrowers are permitted to receive loans through the Main Street Lending Facilities?

Eligible borrowers under the Main Street Lending Facilities include companies with up to 10,000 employees or with revenues of less than \$2.5 billion in 2019 annual revenues. Such businesses must also be (i) created or organized in the United States or under US law, (ii) have significant operations in the United States, and (iii) have a majority of their employees based in the United States.

2. What types of lenders are permitted to make loans through the Main Street Lending Facilities?

Eligible lenders under the Main Street Lending Facilities include US insured depository institutions, US bank holding companies, and US savings and loan holding companies.

Main Street New Loan Facility

3. What types of loans are available under the MSNLF?

An eligible loan is an unsecured term loan made by an eligible lender to an eligible borrower that was originated on or after April 8, 2020 and meets certain terms and conditions.

4. What are the terms and conditions of any loan that is available to eligible borrowers under the MSNLF?

An eligible loan under the MSNLF must be originated on or after April 8, 2020 and must have the following features:

- Four-year maturity
- Amortization of principal and interest is deferred for one year
- Interest rate is an adjustable rate of Secured Overnight Financing Rate (SOFR) plus 250-400 basis points
- Prepayment of loan is permitted without penalty

5. What are the limits under the MSNLF regarding loan size?

- **Minimum** loan size is \$1 million.
- **Maximum** loan size is the lesser of either:
 - \$25 million
 - 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 earnings before interest, taxes, depreciation, and amortization (EBITDA)

6. Does the MSNLF require lenders to retain any portion of the eligible loans?

Yes. The Main Street Facility SPV will purchase a 95% participation in an eligible loan at par value, and the eligible lender will retain 5% of the eligible loan. The Main Street Facility SPV and the eligible lender will share risk on a pari passu basis.

7. Is a loan made through the MSNLF subject to any collateral requirements?

No. An eligible loan under the MSNLF is an unsecured term loan.

8. What other requirements must an eligible borrower satisfy in order to receive a loan through the MSNLF?

Eligible borrowers that receive a loan through the MSNLF are required to make **all** of the following attestations with respect to each loan:

- The borrower will not use the proceeds of the loan to repay other loan balances.
- The borrower will not repay other debt of equal or lower priority (other than mandatory principal payments), unless the borrower has first repaid the loan in full.
- The borrower will not seek to cancel or reduce outstanding existing lines of credit.
- The loan is required due to exigent circumstances caused by the COVID-19 pandemic.
- The borrower will make reasonable efforts to maintain its payroll and employees during the term of the loan.
- The loan, 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.
- Neither the borrower nor any of its affiliates will engage in share buybacks until 12 months after the loan is no longer outstanding (except pursuant to a previously existing contractual obligation).
- The borrower will not make dividend payments or other capital distributions with respect to common stock until 12 months after the loan is no longer outstanding.
- The borrower will comply with the employee compensation limits set forth under Section 4004 of the CARES Act, which seeks to limit compensation, bonus, severance, and termination payments of certain employees.
- The borrower must certify that it is eligible to participate in the MSNLF.
- The borrower must certify that no conflicts of interest preclude participation in the MSNLF (including conflicts of interest specified in Section 4019(b) of the CARES Act, which rules are designed to prohibit companies owned or controlled by certain senior government officials or members of their immediate family from participating in the MSNLF).

9. What other requirements must an eligible lender satisfy in order to make an eligible loan through the MSNLF?

Eligible lenders that make a loan through the MSNLF are required to make **all** of the following attestations with respect to each loan:

- The lender will not use the proceeds of the loan to repay or refinance pre-existing loans or lines of credit made by such lender to the eligible borrower.
- The lender will not cancel or reduce any existing lines of credit outstanding to the eligible borrower.
- The lender must certify that it is eligible to participate in the MSNLF.

- The lender must certify that its participation in the MSNLF does not present any conflicts of interest (including those specified in Section 4019(b) of the CARES Act).

10. Are there any fees associated with participation in the MSNLF?

Yes.

- **Participation fee:** An eligible lender will pay the Main Street Facility SPV a facility fee of 100 basis points of the principal amount of any loan participation purchased by the Main Street Facility SPV. The lender may require an eligible borrow to pay this fee.
- **Origination fee:** An eligible borrower will pay an eligible lender a fee of 100 basis points of the principal amount of any loan.
- **Servicing fee:** The Main Street Facility SPV will pay an eligible lender 25 basis points of the principal amount of the SPV's participation in the loan per year as a loan servicing fee.

11. How long will the MSNLF be active?

The Main Street Facility SPV will cease purchasing participations in eligible loans on September 30, 2020, unless such date is extended by the Federal Reserve or the Department of the Treasury. However, the Federal Reserve will continue to fund the Main Street Facility SPV until the SPV's underlying assets mature or are sold.

12. Are eligible borrowers that participate in the MSNLF permitted to also participate in the Small Business Administration's (SBA) Payroll Protection Program (PPP) established pursuant to Title I of the CARES Act?

Yes. Eligible borrowers that have obtained loans under the SBA's PPP are permitted to also participate in the MSNLF.

13. Are eligible borrowers prohibited from participating in other Federal Reserve facilities or programs?

Eligible borrowers that participate in the MSNLF are not permitted to participate in the MSELF or the Primary Market Corporate Credit Facility (PMCCF). The PMCCF is a direct bond purchasing and loan issuance SPV facility established by the Federal Reserve.

14. Will an eligible borrower that receives a loan pursuant to the MSNLF be subject to affiliation rules similar to those set out by the SBA for the PPP under Title I of the CARES Act?

Eligible borrowers must have fewer than 10,000 employees or less than \$2.5 billion in 2019 annual revenues, but the term sheet for the MSNLF does not contain affiliation rules similar to those of the SBA.

15. When will loans be available under the MSNLF?

The Federal Reserve has invited comments and feedback regarding the MSNLF through April 16, 2020, and the Federal Reserve and the Department of the Treasury may make adjustments to the terms described in this FAQ. There are also many unanswered questions that remain to be addressed. Latham will continue to monitor and publish additional analysis as the facilities are further developed.

Main Street Expanded Loan Facility

16. What types of loans are available under the MSELF?

The MSELF provides for increases to existing eligible loan facilities. An eligible loan is a term loan made by an eligible lender to an eligible borrower that was originated before April 8, 2020. In addition, the upsized tranche of the loan must meet certain terms and conditions.

17. What are the terms and conditions of an upsized tranche of a loan that is available to eligible borrowers under the MSELF?

The upsized tranche of an eligible loan under the MSELF must have the following features:

- Four-year maturity
- Amortization of principal and interest is deferred for one year
- Interest rate is an adjustable rate of SOFR plus 250-400 basis points
- Prepayment of loan is permitted without penalty

18. What are the limits under the MSELF regarding loan size?

- **Minimum** loan size is \$1 million.
- **Maximum** loan size is the lesser of:
 - \$150 million
 - 30% of the eligible borrower's existing outstanding and committed but undrawn bank debt
 - An amount that, when added to the eligible borrower's existing outstanding and committed but undrawn debt, does not exceed six times the 2019 EBITDA

19. Does the MSELF require lenders to retain any portion of the eligible loans?

Yes. The Main Street Facility SPV will purchase a 95% participation in the upsized tranche of an eligible loan at par value, provided that such loan is upsized on or after April 8, 2020.

20. Is a loan made through the MSELF subject to any collateral requirements?

Yes. Any collateral securing an eligible loan, whether pledged under the original terms of the eligible loan or at the time of upsizing, will secure the loan participation on a pro rata basis.

21. What other requirements must an eligible borrower satisfy in order to receive a loan through the MSELF?

Eligible borrowers that receive a loan through the MSELF are required to make **all** of the following attestations with respect to the upsized tranche of each loan:

- The borrower will not use the proceeds of the upsized tranche of the loan to repay other loan balances.

- The borrower will not repay other debt of equal or lower priority (other than mandatory principal payments), unless the borrower has first repaid the loan in full.
- The borrower will not seek to cancel or reduce outstanding existing lines of credit.
- The loan is required due to exigent circumstances caused by the COVID-19 pandemic.
- The borrower will make reasonable efforts to maintain its payroll and employees during the term of the upsized tranche of the loan.
- The loan, 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.
- Neither the borrower nor any of its affiliates will engage in share buybacks until 12 months after the loan is no longer outstanding (except pursuant to a previously existing contractual obligation).
- The borrower will not make dividend payments or other capital distributions with respect to common stock until 12 months after the loan is no longer outstanding.
- The borrower will comply with the employee compensation limits set forth under Section 4004 of the CARES Act.
- The borrower must certify that it is eligible to participate in the MSELF.
- The borrower must certify that no conflicts of interest preclude participation in the MSELF (including conflicts of interest specified in Section 4019(b) of the CARES Act).

22. What other requirements must an eligible lender satisfy in order to make an eligible loan through the MSELF?

Eligible lenders that make a loan through the MSELF are required to make **all** of the following attestations with respect to the upsized tranche of each loan:

- The lender will not use the proceeds of the upsized tranche of the loan to repay or refinance pre-existing loans or lines of credit made by such lender to the eligible borrower, including the pre-existing portion of the eligible loan.
- The lender will not cancel or reduce any existing lines of credit outstanding to the eligible borrower.
- The lender must certify that it is eligible to participate in the MSELF.
- The lender must certify that its participation in the MSELF does not present any conflicts of interest (including those specified in Section 4019(b) of the CARES Act).

23. Are there any facility fees associated with an eligible lender's participation in the MSELF?

Yes.

- **Upsizing fee:** An eligible borrower will pay an eligible lender a fee of 100 basis points of the principal amount of the upsized tranche of any loan.

- **Servicing fee:** The Main Street Facility SPV will pay an eligible lender 25 basis points of the principal amount of the SPV's participation in the upsized tranche of the loan per year as a loan servicing fee.

24. How long will the MSELF be active?

The Main Street Facility SPV will cease purchasing participations in eligible loans on September 30, 2020, unless such date is extended by the Federal Reserve or the Department of the Treasury. However, the Federal Reserve will continue to fund the Main Street Facility SPV until the SPV's underlying assets mature or are sold.

25. Are eligible borrowers that participate in the MSELF permitted to also participate in the SBA's PPP established pursuant to Title I of the CARES Act?

Yes. Eligible borrowers that have obtained loans under the SBA's PPP are permitted to also participate in the MSELF.

26. Are eligible borrowers prohibited from participating in other Federal Reserve facilities or programs?

Eligible borrowers that participate in the MSELF are not permitted to participate in the MSNLF or the PMCCF.

27. Will an eligible borrower that receives a loan pursuant to the MSELF be subject to affiliation rules similar to those set out by the SBA for the PPP under Title I of the CARES Act?

Eligible borrowers must have fewer than 10,000 employees or less than \$2.5 billion in 2019 annual revenues, but the term sheet for the MSELF does not contain affiliation rules similar to those of the SBA.

28. When will loans be available under the MSELF?

The Federal Reserve has invited comments and feedback regarding the MSELF through April 16, 2020, and the Federal Reserve and the Department of the Treasury may make adjustments to the terms described in this FAQ. There are also many unanswered questions that remain to be addressed. Latham will continue to monitor and publish additional analysis as the facilities are further developed.

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