SheppardMullin

Main Street Lending Program Summary[1]

(as of 4/13/2020)

Program Terms[2]	Main Street New Loan Facility (“**MSNLF**”)	Main Street Expanded Loan Facility (“**MSELF**”)
Overview	A Federal Reserve Bank (the “**Fed**”) will commit to lend to a single common special purpose vehicle (the “**SPV**”) on a recourse basis. The Department of the Treasury (the “**Treasury**”), using funds appropriated to the Exchange Stabilization Fund under section 4027 of the Coronavirus Aid, Relief, and Economic Security Act (“**CARES Act**”), will make a $75 billion equity investment in the SPV (deriving from the $454 billion appropriation under Title IV of the CARES Act). The combined size of the MSNLF and the MSELF will be up to $600 billion. For each loan created under this program, the SPV will purchase a 95% participation and the Eligible Lender would retain 5%.	
Eligible Loans	A new term loan that was originated *on or after* April 8, 2020.	The loan would be an expansion of a term loan that was originated *before* April 8, 2020.
Eligible Borrowers[3]	Eligible Borrower must meet the following criteria: (a) NOT have more than 10,000 employees, OR more than $2.5 billion in 2019 annual revenues; (b) be created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States; AND (c) the President, Vice President, an executive department head, Member of Congress or close relative cannot own over 20% of the outstanding *voting* stock of the Eligible Borrower.[4]	
Eligible Lenders	U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies.[5]	
Loan Size	Minimum: $1 million Maximum: the lesser of (i) $25 million OR (ii) an amount that, when added to the Eligible Borrower’s existing and outstanding and committed by undraw debt, does not exceed 4x 2019 EBITDA.[6]	Minimum size of the expanded loan: $1 million. Maximum size of the expanded loan: the lesser of (i) $150 million, (ii) 30% of the Eligible Borrower’s existing outstanding and committed but undrawn debt, OR (iii) an amount that, when added to the Eligible Borrower’s existing outstanding and committed but undrawn debt, does not exceed 6x 2019 EBITDA.
Availability	Loans will be issued until September 30, 2020, unless the Board of Governors of the Fed and the Treasury extend MSNLF and/or MSELF.	
Payment Terms	Maturity: 4 years.[7] Amortization: Principal and interest deferred for 1 year.[8] Interest rate: Adjustable rate of SOFR[9] + 250-400 basis points. Prepayment: Permitted without penalty. Note: While the Preliminary Term Sheets are silent on this point, Section 4003(d)(3) of the CARES Act expressly provides that the principal amount of any obligation issued under Section 4033(b) of the CARES Act, which would include obligations funded pursuant to the $75 billion capitalization which Treasury will provide to MSNLF and MSELF “shall not be reduced through loan forgiveness”.	

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Relationship with other CARES Act Assistance	The Eligible Borrower may only participate in one of the Main Street Loan Facilities (i.e., MSNLF or MSELF, as applicable) and cannot also participate in the Primary Market Corporate Credit Facility (the "**PMCCF**"). The PMCCF applies to investment grade companies that have certain ratings from a major nationally recognized statistical rating organization. While the Preliminary Term Sheets are silent on this point, the Fed's April 9, 2020 press release expressly provides that businesses that have received a PPP loan are not ineligible to receive a MSNLF or MSELF loan.	
Security Features	Unsecured loan.	Any collateral provided for the underlying loan will secure the expanded loan on a pro rata basis.
Relationship with Other Debt	Loan proceeds cannot be used to refinance or repay any other pre-existing loans or lines of credit of the Eligible Borrower (of any priority). [10] Until the loan is repaid, the Eligible Borrower contractually must agree not to (i) use the proceeds of the loan to repay other loan balances and (ii) repay (using any source of funds) any other debt of equal or lower priority,[11] except only for mandatory principal payments.[12]	Loan proceeds cannot be used to refinance or repay any other pre-existing loans or lines of credit of the Eligible Borrower (of any priority), *including any portion of the underlying loan*. Until the expanded loan is repaid, the Eligible Borrower contractually must agree not to (i) use the proceeds of the loan to repay other loan balances and (ii) repay (using any source of funds) any other debt of equal or lower priority,[13] except only for mandatory principal payments.[14]
Fees	Origination fee paid by the Eligible Borrower: 100 basis points of the principal amount of the Eligible Loan. The SPV will pay the Eligible Lender 25 basis points of the principal amount of its participation per annum as a servicing fee (i.e., 25 bps of 95% of the Eligible Loan). Facility fee: An Eligible Lender will pay the SPV a facility fee of 100 basis points of the SPV's participation (i.e., 25 bps of 95% of the Eligible Loan). The Eligible Lender may require the Eligible Borrower to pay this fee.	Origination fee paid by the Eligible Borrower: 100 basis points of the principal amount of the expansion tranche. The SPV will pay the Eligible Lender 25 basis points of the principal amount of its participation per annum as a servicing fee (i.e., 25 bps of 95% of the expansion tranche).
Employee Compensation	While the loan is outstanding and for 1 year thereafter: (a) No officer or employee whose total compensation exceeded $425,000 in 2019 can receive compensation which exceeds the total compensation received by such person in 2019; (b) No officer or employee whose total compensation exceeded $425,000 in 2019 can receive severance pay that exceeds twice such person's 2019 total compensation; (c) No officer or employee will receive severance pay or other benefits upon termination of employment that exceeds twice the maximum total compensation received by such person in 2019; AND	

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	(d) No officer or employee whose total compensation exceeded $3 million in 2019 can receive total compensation that exceeds $3 million + 50% of the amount above $3 million that such person received in 2019. This applies for any 12 consecutive month period. Total compensation includes salary, bonuses, stock awards and other financial benefits .[15]	
No Dividends or Buybacks	Until one year after the date of the loan or loan guarantee, the Eligible Borrower and its affiliates may not pay dividends *on its common stock* or engage in public company stock buybacks, unless contractually obligated to do as of March 27, 2020 (i.e., the enactment date of the CARES Act).	
Other Required Certifications	Eligible Borrower must certify that: (a) the loan is needed due to exigent circumstances caused by the COVID-19 pandemic; (b) using the proceeds, it will make reasonable efforts to maintain its payroll and employees during the loan term; AND (c) it meets all eligibility requirements and other restrictions (such as the EBITDA leverage condition).	

[1] This chart describes information from the preliminary term sheets for the MSNLF and the MSELF that were released by the Fed on April 9, 2020 (the “**Preliminary Term Sheets**”). The Preliminary Term Sheets refer to undertakings, terms and other restrictions contained in Title IV of the CARES Act but for ease of reference and reading, we describe the substantive information in this chart and use endnotes to indicate where applicable provisions are found in the CARES Act. The Preliminary Terms Sheets for MSNLF and MSELF remain subject to public comment until April 16.

[2] Sec. 4003(c)(3)(D)(i) of the CARES Act mandates Treasury to “endeavor to seek to implement” a program, working with the Fed exercising its Section 13(3) emergency authority under the Federal Reserve Act, that provides direct loans or loan guaranties to mid-size businesses, and sets forth eligibility and other terms and restrictions that would apply to such a Treasury implemented program. The Preliminary Term Sheets contain some but not all of these enumerated terms and restrictions. Without them, it is unclear whether Treasury’s participation in MSNLF and MSELF alone satisfies Congress’s mandate to Treasury seek to implement a mid-size business loan program. It remains to be seen whether Treasury will nonetheless impose these requirements on mid-size businesses in order to clearly satisfy the Congressional mandate. For your information, these additional requirements are:

- Interest rate would be capped at 2% per annum.
- The Eligible Borrower would be obligated to maintain at least 90% of its workforce at full compensation and benefits until September 30, 2020.
- The Eligible Borrower must have intent to restore not less than 90% of its workforce that was in place as of February 1, 2020, at full compensation and benefits by not later than 4 months following the HHS Secretary’s termination of the emergency COVID-19 declaration.
- The Eligible Borrower may not be the subject of a bankruptcy proceeding.
- The Eligible Borrower may not outsource or offshore jobs during the loan term and for 2 years after loan repayment.
- The Eligible Borrower may not abrogate existing collective bargaining agreements during the loan term plus an additional two years.
- The Eligible Borrower has to remain neutral in any union organizing effort during the loan term.

[3] The eligibility criteria, including the SBA’s affiliation rules, that apply to Paycheck Protection Program (“**PPP**”) loan under Title I of the CARES Act do not apply to the MSNLF or MSELF programs. The Fed may announce additional eligibility criteria as it rolls out additional details of the programs.

[4] Although this is not in the Preliminary Term Sheets’ definition of Eligible Borrower, this is a type of eligibility requirement that is described in required attestation provisions of the Preliminary Term Sheets. The conflict of interest requirement can be found in Section 4019 of the CARES Act.

[5] Eligible Lenders is currently limited to regulated financial institutions and does not include, for example, BDCs, funds, insurance companies or other non-bank unregulated financial institutions.

[6] Reference to 2019 EBITDA appears to refer to calendar year 2019 regardless of the applicant's fiscal year.

[7] The Preliminary Term Sheets mandate a 4 year term but it is possible that the intent was to allow a maturity of *up to* 4 years. This could matter for some borrowers trying to obtain these loans in compliance with the terms of their existing loan arrangements.

[8] It is unclear whether *interest* is deferred for the 1st year pursuant to the Preliminary Term Sheets or if the intent is that *interest payments* are deferred for the 1st year.

[9] Secured Overnight Financing Rate. SOFR is an emerging and still evolving market index that is the focus of significant discussion among all participants in the financial markets as it is the contemplated replacement index for all IBOR based rates, including LIBOR, which are expected to sunset as of December 31, 2021. There are many different ways to calculate SOFR, some backwards looks and some forward looking. It remains to be seen which version of SOFR the Fed has in mind.

[10] We anticipate that many borrowers will need to seek waivers of existing mandatory prepayment provisions in order to comply with these restrictions. Separately, the restrictions described here are supported by 2 of the 3 certifications that the Eligible Lender is required to make (presumably to the Fed) as a condition to the loans. The 3 required Eligible Lender certifications are: 1) that the loan proceeds will not be used to repay or refinance pre-existing loans or lines of credit of the Eligible Borrower, 2) that the Eligible Lender will not cancel or reduce any existing lines of credit that is has outstanding to the Eligible Borrower, and 3) that the Eligible Lender is eligible to participate in the loan.

[11] It appears that this restriction would not apply to secured debt that is structurally senior to the loan, although an issue (including a potential valuation issue) arises if the secured debt is undersecured so that a portion of the debt is in fact unsecured. ***Note: We anticipate that issues such as this underscore the significant challenges ahead navigating the knotty intercreditor issues that will inevitably arise as the Main Street loans are incurred alongside existing debt facilities and issuances.***

[12] Permitted Mandatory principal payment are anticipated to include (i) scheduled amortization or installment payments and (ii) repayment at maturity. To be seen is whether other customary mandatory prepayments would be allowed especially if these loan proceeds are not being used to make that mandatory prepayment (some examples of very common mandatory prepayments are: (i) prepayment of the proceeds of asset dispositions and extraordinary receipts, such as insurance and condemnation awards, (ii) prepayments of the proceeds of new equity or debt, (iii) excess cash flow prepayments and (iv) overadvances). A distinction may be drawn between such mandatory prepayment requirements present in loan documents existing at the time of the loan or loan expansion as opposed that may be included in loan documents entered into subsequently. Hopefully there is guidance to come as the details of MSNLF and MSELF are rolled out.

[13] See Endnote 11.

[14] See Endnote 12

[15] Section 4004 of the CARES Act.

As you are aware, things are changing quickly and the aid measures and interpretations described here may change.
This summary represents our best understanding and interpretation based on where things currently stand as of April 10, 2020.

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