April 10, 2020

Federal Reserve Announces Seven New or Updated Lending Facilities, Including Main Street Lending Facilities

Key Takeaways

- The Federal Reserve announced seven lending facilities that will provide up to $2.3 trillion in loans to support the economy.
- The highly anticipated Main Street lending program supports new loans to small- and mid-sized businesses in an amount, when added to "existing outstanding and committed but undrawn debt," that is no more than 4x the borrower's 2019 EBITDA, and in any event not more than $25 million. The program alternatively permits these businesses to upsize their existing loans, with a maximum loan size of the lesser of (i) $150 million, (ii) 30% of the borrower's "existing and outstanding and committed but undrawn bank debt" and (iii) an amount, when added to "existing outstanding and committed but undrawn debt," that is no more than 6x the borrower's 2019 EBITDA. To support the program, the Fed will acquire a 95% participation in the loans made, while banks will retain a 5% interest. Borrowers will be subject to the CARES Act's limitations on dividends, equity repurchases and executive compensation.
- The Paycheck Protection Program Lending Facility will provide liquidity to lenders for the making of loans under the Small Business Administration's Paycheck Protection Program, and the Municipal Liquidity Facility will support state and local governments.
- The remaining facilities expand existing programs: the Term Asset-Backed Lending Facility, the Primary Market Corporate Credit Facility and the Secondary Market Corporate Credit Facility.

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On Thursday, April 9, 2020, the Federal Reserve ("Fed") announced seven lending facilities that will provide up to $2.3 trillion in loans to support the economy. The most anticipated of these were the Main Street New Loan Facility ("MSNLF") and the Main Street Expanded Loan Facility ("MSELF" and, together with the MSNLF, the "Main Street Facilities"), which allow small and midsize businesses to obtain loans from banks. Other announced facilities include the Paycheck Protection Program Lending Facility ("PPPLF"), Municipal Liquidity Facility ("MLF"), Term Asset-Backed Lending Facility ("TALF"), Primary Market Corporate Credit Facility ("PMCCF") and Secondary Market Corporate Credit Facility ("SMCCF").

All seven facilities are authorized under section 13(3) of the Federal Reserve Act[1] with the approval of the Secretary of the U.S. Department of Treasury ("Treasury"), and Treasury is providing equity funding for many of these programs using funds made available by the CARES Act. Borrowing under any of these facilities must be made on or prior to September 30, 2020, unless extended by the Fed and Treasury.

This memorandum provides a detailed summary of the MSNLF and the MSELF, a discussion of certain factors that potential borrowers should consider before borrowing and some issues identified in the term sheets that require further clarification, followed by an executive summary of the other announced facilities.[2]

I. Main Street New Loan and Main Street Expanded Loan Facilities

In connection with the Main Street Facilities, the Fed will lend to a special purpose vehicle ("SPV") to be capitalized by Treasury with $75 billion in equity, resulting in a combined Main Street Facilities size of up to $600 billion. The SPV will purchase 95% participations in eligible new loans (in the case of MSNLF) or upsized tranches of existing loans (in the case of MSELF) issued by eligible lenders. Each of these loans and upsized tranches, and the lenders and borrowers thereunder, must meet certain eligibility criteria. Below we describe the terms of each facility and identify some issues that will require further clarification, and a chart which compares these two programs side-by-side is attached at the back of this memorandum.

For the MSNLF term sheet, click here. For the MSELF term sheet, click here.

- Eligible Borrowers. Borrowers must be businesses created or organized in the U.S. or under the laws of the U.S. with significant operations, and a majority of its employees based, in the U.S., and have only up to (i) 10,000 employees or (ii) $2.5 billion in annual revenues for 2019.[3] A borrower may only participate in one of the MSNLF, the MSELF and the PMCCF. Taking a Paycheck Protection Program ("PPP") loan under the Small Business Administration's ("SBA") lending program does not disqualify a borrower from eligibility. Based on currently available guidance, SBA PPP affiliation rules do not apply to the Main Street Facilities.

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1 The requirements of section 13(3) of the Federal Reserve Act apply to these facilities, including that credit may not be extended to any entity that is insolvent or any entity borrowing for the purpose of lending the proceeds of the loan to an insolvent entity, the credit facilities must be fully secured and participants in the lending program must be "unable to secure adequate credit accommodations from other banking institutions."

2 This memorandum updates our previous memoranda discussing Fed lending facilities, including our memorandum on the CARES Act generally (available here).

3 These tests of employee and revenue sizes are independent, and prospective borrowers need to satisfy only one of them.

- Eligible Lenders. Lenders must be U.S.-insured depository institutions, U.S. bank holding companies or U.S. savings and loan holding companies. [4]
- Loan Size.
  - *Minimum Size*. Loans made under the MSNLF program, and the upsized tranches of loans made under the MSELF, each have a minimum size of $1 million.
  - *Maximum Size*.
    - *MSNLF*. The maximum loan size under the MSNLF equals the lesser of (i) $25 million and (ii) an amount that, when added to the borrower's "existing outstanding and committed but undrawn debt,"[5] is not greater than four times (4x) the borrower's 2019 EBITDA.[6]
    - *MSELF*. The maximum loan size under the MSELF equals the lesser of (i) $150 million, (ii) 30% of "existing outstanding and committed but undrawn bank debt"[7] and (iii) an amount that, when added to the borrower's "existing outstanding and committed but undrawn debt,"[8] is not greater than six (6) times the borrower's 2019 EBITDA. [9]
- Loan Terms.
  - *MSNLF-Specific Terms*. Loans made under the MSNLF must be unsecured and originated on or after April 8, 2020.
  - *MSELF-Specific Terms*. Loans made under the MSELF must be upsized tranches of term loans that were originated before April 8, 2020. Any collateral securing the original loan, whether pledged under the original terms or at the time of upsizing, will secure the SPV's loan participation on a

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4 On its face, this precludes loans by credit funds and other non-bank lenders. It is unclear whether a loan syndicate qualifies, and if syndicated, whether ineligible lenders in the syndicate will disqualify the loan.

5 The term sheet does not clarify the meaning of "existing outstanding and committed but undrawn debt." However, pending further guidance from the Fed, we believe this is intended to mean the sum of the outstanding principal amount of debt plus the aggregate amount of committed and undrawn funding commitments.

6 The term sheet does not define EBITDA.

7 The term sheet does not clarify the meaning of this phrase. Note that in this instance, the term "bank debt," as opposed to simply "debt," is used, and the intent (if any) of such distinction is not yet clear.

8 As with the MSNLF term sheet, the MSELF term sheet also does not clarify the meaning of this phrase. See note 5 above.

9 As noted above, the term sheet does not define EBITDA.

pro rata basis. This program does not require the pledging of additional collateral as a condition to the upsizing of existing loans.

- *Terms Applicable to MSNLF and MSELF.*
  - *Maturity*. New loans and upsized tranches must have a 4-year maturity.
  - *Deferred Amortization and Interest*. The amortization of principal and interest payments are deferred for one year.
  - *Interest Rate*. The interest rate is adjustable, equal to the secured overnight financing rate ("SOFR") plus 250-400 basis points. No guidance was provided as to how the exact rate should be set within this range.
  - *Prepayment*. Prepayment is permitted without any penalty.

- Loan Fees.
  - *Facility Fee*. Under the MSNLF program, lenders must pay the SPV a facility fee of 100 basis points of the principal amount of the loan participation purchased by the SPV. The lender may require the borrower to pay this facility fee.
  - *Loan Origination/Upsizing and Servicing Fees*. Under both of the Main Street Facilities, borrowers must pay lenders a fee of 100 basis points of the principal amount of the loan or the upsized tranche, as applicable. The SPV will also pay the lender 25 basis points of the principal amount of its participation in the loan or upsized tranche, as applicable, per annum as a loan servicing fee.

- Required Attestations and Covenants. While the Main Street Facilities' term sheets provide for certain attestations to be made by lenders and borrowers, some or all of these attestations may also appear as covenants in the loan documents.
  - *No use of proceeds to repay or refinance debt.*
    - A lender may not use proceeds from the loans or upsized tranches to repay or refinance preexisting loans or lines of credit made by such lender to the applicable borrower, including, in the case of the MSELF program, the preexisting portion of the upsized loan.

- Borrowers may not use proceeds from the loans or upsized tranches to repay other loan balances. Borrowers also may not repay debt of equal or lower priority,[10] other than mandatory principal payments,[11] until the loan or upsized tranche has been repaid in full.

- *Restrictions on Lines of Credit Reduction or Cancellation*. Lenders must not cancel or reduce any existing lines of credit outstanding to the borrower. Borrowers must not seek to cancel or reduce any lines of credit existing with its Main Street Facility lender or any other lender.

- *Exigent Circumstances Related to COVID-19*. Borrowers must attest that they require financing due to the exigent circumstances presented by COVID-19.

- *Payroll and Employees*. Borrowers must make reasonable efforts to retain employees and maintain payroll during the term of the loan or upsized tranche.

- *Eligibility*. Lenders and borrowers must certify they are eligible to participate in the applicable facility.

- Compensation Limits.[12] Borrowers must agree that, while the loan or upsized tranche is outstanding and for one year thereafter (the "Restricted Period"):

  - No officer or employee whose total compensation[13] exceeded $425,000 in 2019 will receive (i) total compensation during any 12-month period that exceeds the officer's or employee's 2019 total compensation or (ii) termination or severance benefits which exceed double the maximum of the officer's or employee's 2019 total compensation.

  - For officers or employees whose total compensation exceeds $3 million in 2019, compensation of each will be capped at the sum of: (i) $3 million plus (ii) 50% of the excess over $3 million that the officer or employee received in 2019.

- Stock Buyback Limits. A borrower is prohibited from repurchasing any outstanding equity interests listed on a national securities exchange of such borrower or any parent company thereof for the

10 The term sheet does not provide guidance as to determining priority.

11 It is unclear whether this prevents use of proceeds to make interest payments on other debt.

12 The term sheets state that the compensation, buyback and dividend restrictions enumerated in the CARES Act apply. This signals that the Treasury Secretary declined to exercise his authority to waive these provisions.

13 Total compensation is defined to include salary, bonuses, awards of stock and other financial benefits provided by an eligible business to an officer or employee. CARES Act, Pub. L. No. 116-136, § 4004(b) (2020). Further guidance is needed from the Fed regarding the timing and valuation of stock awards for these purposes, which could complicate a sale transaction involving a borrower during the Restricted Period (e.g., due to sale proceeds in respect of stock awards).

duration of the Restricted Period, except to the extent required under a contractual obligation in effect as of March 27, 2020.

- Dividend Limits. Borrowers may not pay dividends or make other capital distributions on any outstanding common stock for the duration of the Restricted Period.

- Termination. Borrowing under the Main Street Facilities must be made on or prior to September 30, 2020, unless extended by the Fed and Treasury.

- Commentary. There are many issues that borrowers will need to consider regarding possible participation in the Main Street Facilities, and there are aspects of the term sheets that will require clarification as the program moves to the implementation phase. For example:

  - Lenders are not required to make any loans or upsized tranches available; this will require one-off negotiations between lenders and borrowers. It is unclear whether there will be standard documents for new loans or if they will be negotiated by each lender.

  - It is unclear whether all terms applicable to existing loans will apply to the upsized tranche (apart from the specific terms for the MSELF), and how the upsized tranche will relate to existing loans in terms of inside maturity, "most-favored nations" clauses, cross default, applicable covenants and the like.

  - Borrowers will need to consider whether they have accordion, basket or other capacity issues under their existing loan documents or will need to seek consents to incur the Main Street Facilities' loans or upsized tranches.

  - We are also considering a number of specific questions raised by the MSNLF and MSELF term sheets. These include: How are "debt" and "bank debt" defined? Will EBITDA be allowed to be adjusted consistent with existing borrower debt documents or under these new loans or upsized tranches? How will the "pro rata" security requirement be implemented? Can revolving credit facilities and other working capital loans be repaid? Can tax distributions be paid? Will the U.S.-based subsidiaries of non-U.S. parent companies be deemed eligible borrowers if the majority of their employees are based in the U.S.?

II. Executive Summary of Other Facilities

In addition to the Main Street Facilities, the Fed also announced the following new facilities:

  - **Paycheck Protection Program Lending Facility**. The PPPLF is designed to provide liquidity to entities originating loans to small businesses under the PPP, which was established by the

CARES Act. Initially limited to depository institutions originating PPP loans, the term sheet notes that the Fed intends to expand eligibility to other types of PPP lenders "in the near future." Loan terms include the following:

- Collateral. Loans will be non-recourse and made by a borrower's local Federal Reserve Bank, with the underlying PPP loans serving as collateral and valued at their principal amount.
- Interest. Loans will have an interest rate of 35 basis points and will not have any fees associated with them.
- Maturity. Maturity dates will coincide with each underlying PPP loan, subject to acceleration upon default under, or forgiveness of, the underlying PPP loan.

The term sheet advises that underlying PPP loans will be assigned a risk weight of zero percent, such that PPP loans financed through the PPPLF will have no effect on leverage capital ratios.

For the PPPLF term sheet, click here.[14]

- **Municipal Liquidity Facility**. With an initial equity investment of $35 billion from Treasury, this facility will have the capacity to purchase up to $500 billion in short-term notes (e.g., tax anticipation notes, tax and revenue anticipation notes, and bond anticipation notes) directly from an eligible U.S. state, city or county (or an instrumentality thereof) at the time of issuance, provided that such notes mature no later than 24 months from the date of issuance. Other terms include the following:
  - Eligibility. Eligible issuers (including their instrumentalities) are states, cities with over one million residents, and counties with over two million residents.
  - Pricing. Pricing will be based on the issuer's rating at the time of purchase. Multiple issuances from a single issuer are permitted, subject to a cap on aggregate purchases from any single issuer equal to 20% of the general revenue from the issuer's own sources and utility revenue in FY2017.
  - Use of proceeds. The issuer may use the proceeds of the purchase to manage the cash flow impact of income tax deferrals, potential reductions of tax or other revenues or increases in

[14] The Office of the Comptroller of the Currency, the Fed and the Federal Deposit Insurance Corporation issued an interim final rule designed to neutralize the regulatory capital effects of banks' participation in the PPPLF. The rule also makes amendments to reflect section 1102 of the CARES Act, which provides that PPP loans will receive a zero percent risk weight for regulatory capital purposes. For the interim final rule, click here.

expenses related to or resulting from the COVID-19 pandemic, as well as the issuer's required payments of principal and interest on its obligations. Issuers may also use proceeds to assist their political subdivisions for similar purposes. The notes may be called by the issuer at any time at par.

For the MLF term sheet, click here.

The Fed also expanded and updated the following facilities:

- **Primary and Secondary Market Corporate Credit Facilities**. The PMCCF and SMCCF are facilities designed to maintain the availability of credit to large employers and to support the corporate bond market. The Fed released updated term sheets for each of the PMCCF and SMCCF facilities. Such updates include the following:

  - Concentration and Ownership/Purchase Limitations. The term sheets introduced a new concentration limit for issuers, which limits both facilities' combined exposure to a single issuer to 1.5% of the combined potential size of both facilities. The Fed also updated other ownership and purchase limitations applicable to these corporate credit facilities.

  - Eligibility Criteria. Updates and clarifications were also made to eligibility criteria for corporate issuers under both facilities and exchange-traded funds ("ETF") under the SMCCF, including (i) with respect to issuer ratings requirements for corporate issuers, which generally require the issuer to have had investment-grade issuer ratings as of March 22, 2020, but permits subsequent downgrades to no lower than BB-/Ba3 (so-called "fallen angels") and (ii) an expansion to ETF eligibility that permits the inclusion of ETFs that primarily invest in high yield U.S. corporate bonds

  - Payment In-Kind. A payment-in-kind option that was introduced in the prior term sheets was removed, and the latest term sheets for these corporate credit facilities clarifies that the facilities themselves will be leveraged.

  For the PMCCF term sheet, click here. For the SMCCF term sheet, click here.

- **Term Asset-Backed Securities Loan Facility**. The TALF is designed to facilitate the issuance of asset-backed securities ("ABS") and improve the market conditions for ABS more generally. The Fed's updates to the TALF term sheet include the following:

  - Asset classes. The updated term sheet permits additional asset classes consisting of commercial mortgage-backed securities issued by U.S. issuers and new-issue securities issued by static U.S. collateralized loan obligations, in each case subject to certain exceptions.

- Pricing and Discounts. The latest term sheet also includes changes to pricing and discounts for various asset classes, and provides updates regarding eligibility criteria applicable to borrowers, issuers and originators in connection with the TALF program.

For the TALF term sheet, click here.

Ongoing Updates

The Main Street Facilities term sheets are under continuing review and open for public comment. The Fed and the Treasury may make adjustments to the terms and conditions of any of the lending facilities described above as they deem appropriate. We will continue to provide updates on any further developments.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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<table>
<tr><th></th><th>Main Street New Loan Facility (“<u>MSNLF</u>”)[1]</th><th>Main Street Expanded Loan Facility (“<u>MSELF</u>”)</th></tr>
<tr><td>Eligible Borrowers</td><td colspan="2">▪ Businesses with (i) up to 10,000 employees or (ii) up to $2.5B in 2019 annual revenues
▪ Created or organized in the U.S. or under the laws of the U.S. with significant operations and a majority of employees in the U.S.
▪ Borrowers may only participate in <u>one</u> of the MSNLF, MSELF and Primary Market Corporate Credit Facility[2]
▪ Taking a PPP loan does not disqualify a borrower from eligibility in the MSNLF and MSELF programs</td></tr>
<tr><td>Eligible Lenders</td><td colspan="2">▪ U.S.-insured depository institutions, U.S. bank holding companies and U.S. savings and loan holding companies
▪ A special purpose vehicle (“<u>SPV</u>”) established by the Federal Reserve Bank under the MSNLF and MSELF programs will purchase (at par value) 95% participation in the loan or upsized tranche, as applicable
▪ The lender will retain 5% of the loan. SPV and lender will share risk on a pari passu basis</td></tr>
<tr><td>Size of Pool</td><td colspan="2">▪ Combined size of MSNLF and MSELF up to $600B</td></tr>
<tr><td>Loans</td><td>▪ Unsecured term loan to be made on or after April 8, 2020</td><td>▪ Upsized tranche of a term loan made before April 8, 2020
▪ Any collateral securing underlying loan, whether pledged under original terms or at time of upsizing, will secure the SPV’s loan participation on a pro rata basis</td></tr>
<tr><td>Loan Terms (for MSELF, applies only to upsized tranche)</td><td colspan="2">▪ 4 year maturity
▪ Amortization of principal and interest deferred for one year
▪ Adjustable rate of SOFR + 250-400 basis points</td></tr>
<tr><td>Loan Size (for MSELF, applies only to upsized tranche)</td><td>▪ Minimum equal to $1M
▪ Maximum equal to the lesser of:
o $25M; and
o an amount, when added to “existing outstanding and committed but undrawn debt,” that does not exceed 4x 2019 EBITDA[3]</td><td>▪ Minimum equal to $1M
▪ Maximum equal to the lesser of:
o $150M;
o 30% of “existing outstanding and committed but undrawn bank debt”; and
o an amount, when added to “existing outstanding and committed but undrawn debt,” does not exceed 6x 2019 EBITDA</td></tr>
</table>

1 The Fed and Treasury stated that they may make adjustments to the terms and conditions in the term sheet; the Fed is accepting public comments through April 16.

2 An SPV established under the Primary Market Corporate Credit Facility will purchase corporate bonds as the sole investor in a bond issuance and portions of syndicated loans or bonds at issuance.

3 Note that the term sheet does not clarify the meanings of EBITDA or “existing outstanding and committed but undrawn debt.” However, we believe this is intended to mean the sum of the outstanding principal amount of debt plus the aggregate amount of committed and undrawn funding commitments.

	Main Street New Loan Facility ("MSNLF")[1]	Main Street Expanded Loan Facility ("MSELF")
Employee Compensation Limits	▪ CESA section 4004 limitations apply to borrowers while the loan is outstanding and for one year thereafter (the "Restricted Period")[4] o No officer or employee with total compensation greater than $425,000 in 2019 may receive (i) total compensation exceeding, during any 12 consecutive months, his or her total compensation in 2019 or (ii) severance pay or other termination benefits exceeding twice his or her total compensation in 2019[5] o No officer or employee with total compensation greater than $3M in 2019 may receive, during any 12 consecutive months, total compensation exceeding the sum of (i) $3M plus (ii) 50% of the excess over $3M of his or her total compensation in 2019	
Stock Buyback Limits	▪ During the Restricted Period, borrowers are prohibited from purchasing equity securities listed on a national securities exchange of borrower (or any parent company), except as required under contracts in effect as of March 27, 2020	
Dividends and Capital Distribution Limits	▪ Prohibited in respect of common stock during the Restricted Period	
Fees	▪ 100 basis points, paid by lender to SPV (lender may require borrower to pay this fee) ▪ 100 basis points, paid by borrower to lender ▪ 25 basis points on SPV's participation per annum, paid by SPV to lender	▪ 100 basis points on upsized tranche, paid by borrower to lender ▪ 25 basis points on SPV's participation per annum, paid by SPV to lender
Other Key Terms	▪ Lenders and borrowers will each be required to attest that the entity is eligible to participate ▪ Borrowers must attest that they require financing due to exigent circumstances presented by COVID-19 ▪ Proceeds of MSNLF loan (or MSELF upsized tranche) may not be used to repay other loan balances ▪ Lender must attest that the proceeds of MSNLF loan (or MSELF upsized tranche) will not be used to repay or refinance pre-existing loans or lines of credit made by the lender to the borrower ▪ Lender must attest that it will not cancel or reduce any existing lines of credit outstanding to the borrower ▪ Borrower must attest that it will not seek to cancel or reduce any of its outstanding lines of credit with the lender or any other lender ▪ Borrower must commit to refrain from repaying other debt of equal or lower priority, except mandatory principal payments ▪ Borrower will make reasonable efforts to retain employees and maintain payroll during loan term ▪ Borrowing must be made on or prior to September 30, 2020, unless extended	

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4 Treasury has the authority to waive compensation, buyback, and dividend restrictions that apply to Fed facilities supported by the Treasury under the CARES Act. The term sheet states that these CESA restrictions apply, signaling that Treasury decided to not exercise its waiver authority.

5 Total compensation is defined to include salary, bonuses, awards of stock, and other financial benefits provided by an eligible business to an officer or employee. CARES Act, Pub. L. No. 116-136, § 4004(b) (2020).