

Main Street Lending Program Summary

The Federal Reserve Bank (the “Fed”) and the U.S. Department of the Treasury (the “Treasury”) announced preliminary details for the Main Street Lending Program (the “MSLP”) on April 9, 2020. Additional details and guidance as well as updated terms were provided by the Fed on April 30, 2020 after the Fed received more than 2,200 letters from businesses, individuals and non-profits providing questions and feedback regarding the proposed program. Under the MSLP, three new loan facilities (the “Facilities”) will be created that will enable lending to small and medium-sized businesses by eligible lenders. The combined size of the three new Facilities will be up to \$600 billion. The following is a Q&A summary of the MSLP. The MSLP is not yet open for loan applications. The terms of the MSLP remain subject to ongoing adjustments by the Fed and the Secretary of the Treasury (the “Secretary”).

OVERVIEW: *How does the MSLP provide relief in terms of loan offerings?*

- A special purpose vehicle (the “SPV”) will be established to purchase 85% or 95% participations in eligible loans from eligible lenders, depending on the type of loan facility (as discussed in “Terms of Eligible Loans” below). Eligible lenders making loans under the MSLP will retain the remaining 15% or 5% participation in the loans. The SPV will cease purchasing loans on September 30, 2020 (unless extended by the Fed and the Treasury).
- The SPV will be funded by loans made available by the Fed pursuant to the Facilities, and a \$75 billion equity investment from the Treasury made from funds appropriated under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”).

ELIGIBLE BORROWERS: *What businesses are eligible to borrow under the MSLP?*

- “Eligible Borrowers” are U.S. businesses¹ formed prior to March 13, 2020 with:
 - 15,000 or fewer employees (including full-time, part-time, seasonal or otherwise employed persons), or
 - \$5 billion or less in 2019 annual revenues (calculated based on revenue reported in 2019 GAAP audited financial statements of the business, or 2019 annual receipts as reported to the IRS).
- The Fed has advised that the SBA’s affiliate aggregation rules will be applied to calculate the business’s number of employees and 2019 revenues for purposes of determining

¹ To be considered a U.S. business, the business must (i) have been created or organized in the United States or under the laws of the United States, (ii) have significant operations in the United States and (iii) have a majority of its employees based in the United States.

eligibility for MSLP loans (as discussed in “Potential Impediments” below). These rules require that an applicant for an MSLP loan aggregate all of its employees and revenues together with all of the employees and revenues of “affiliated” businesses for purposes of determining whether the applicable employee or revenues cap are satisfied. The affiliation rules were a disqualifying factor for many portfolio companies of private equity firms when reviewing eligibility for loans under the Paycheck Protection Program (“PPP”) of the CARES Act. However, given the higher employee and revenue caps in the MSLP, more portfolio companies may be eligible for MSLP loans in spite of the affiliation requirement.

- To be eligible, a business cannot have received specific support pursuant to Section 4003(b)(1) through (3) of the CARES Act (support for passenger air carriers and certain related businesses, cargo air carriers, and businesses critical to maintaining national security). Businesses that have received PPP loans are eligible for MSLP loans.
- A business is ineligible to borrow under the MSLP if it engages in the types of “ineligible business activities” listed under 13 CFR 120.110(b)-(j), (m)-(s), as modified and clarified by SBA regulations issued on or before April 24, 2020.² This limitation expressly incorporates the SBA’s guidance regarding ineligible business activities published in connection with PPP, which notes that private equity and hedge funds are ineligible businesses because they are “primarily engaged in investment or speculation.”

ELIGIBLE LENDERS: *What financial institutions are eligible to lend under the MSLP?*

- “Eligible Lenders” are U.S. insured depository institutions, U.S. branches or agencies of foreign banks, U.S. bank holding companies, U.S. savings and loan holding companies, U.S. intermediate holding companies of foreign banking organizations, or any U.S. subsidiary of any of the foregoing. At this time, non-bank financial institutions are not considered “Eligible Lenders” under the MSLP. However, the Fed has advised that it is considering options to expand the list of “Eligible Lenders” in the future.
- An eligible lender must retain its participation in a MSLP loan until the loan matures or the SPV sells its participation, whichever happens first (and, in the case of an Existing Loan (as defined in “Terms of Eligible Loans” below), the eligible lender must also retain its participation in the underlying Existing Loan until the upsized tranche matures or the SPV sells its participation, whichever happens first).

TERMS OF ELIGIBLE LOANS: *What are the terms of the loans that qualify under the MSLP?*

- The MSLP provides for purchase of (a) 95% of new secured or unsecured loans that were originated after April 24, 2020 (a “New Loan”), (b) 85% of new secured or unsecured loans that were originated after April 24, 2020 (a “Priority Loan”), or (c) 95% of an upsized tranche of term loans or revolving credit facilities that were originated on or prior to April

² These types of ineligible business activities include: life insurance companies, financial businesses primarily engaged in lending, businesses engaged in illegal activities, businesses which present live performance of a prurient or sexual nature, government owned entities, private clubs, certain gambling businesses, lobbying or political businesses, etc.

24, 2020, and that has a remaining maturity of at least 18 months (“Existing Loans”).³ The Priority Loan option requires lenders to retain a 15% share rather than a 5% share due to the increased risk of loans to borrowers with greater leverage, as shown below.

- To be eligible for the MSLP, New Loans, Priority Loans or the upsized tranche of Existing Loans must have the following terms and features:

	New Loans	Priority Loans	Upsized Tranche of Existing Loans
Term	4 years	4 years	4 years
Minimum Amount	\$500,000	\$500,000	\$10,000,000
Maximum Loan Size	Lesser of (i) \$25M and (ii) 4x 2019 adjusted EBITDA ⁴ when taken together with borrower’s existing outstanding and undrawn available debts ⁵	Lesser of (i) \$25M and (ii) 6x 2019 adjusted EBITDA when taken together with borrower’s existing outstanding and undrawn available debts	Lesser of (i) \$200M, (ii) 35% of outstanding and undrawn available debt that is pari passu with the Existing Loan and equivalent in secured status, and (iii) 6x 2019 adjusted EBITDA when taken

³ The calculation of remaining maturity on Existing Loans takes into account any amendments made to extend the loan’s maturity beyond the 18-month deadline, including if made at the time of the upsizing.

⁴ With respect to New Loans and Priority Loans, the calculation of 2019 EBITDA of a borrower must follow a methodology that the applicable eligible lender previously used for adjusting EBITDA when extending credit to such borrower or to similarly situated borrowers on or before April 24, 2020.

With respect to the upsized tranche of Existing Loans, the calculation of 2019 EBITDA of a borrower must follow the methodology that the applicable eligible lender previously used for adjusting EBITDA of the borrower when originating or amending the underlying loan on or before April 24, 2020. (See Section G.1. of the Frequently Asked Questions published by the Fed on April 30, 2020 (the “FAQ”).)

⁵ A borrower’s “existing outstanding and undrawn available debt” includes all amounts borrowed under any loan facility, including unsecured or secured loans 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, excluding undrawn commitment that (i) serves as a backup line for commercial paper issuance, (ii) is used to finance receivables (including seasonal financing of inventory), (iii) cannot be drawn without additional collateral, (iv) 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. (See Section G.2. of the FAQ.)

	New Loans	Priority Loans	Upsized Tranche of Existing Loans
			together with borrower's existing outstanding and undrawn available debts
Payment	Year 1: All principal and interest payments deferred (unpaid interest will be capitalized) Years 2-4: 33.33% principal due at the end of each year	Year 1: All principal and interest payments deferred (unpaid interest will be capitalized) Years 2-3: 15% principal due at the end of each year Year 4: 70% principal due at the end of the year	Year 1: All principal and interest payments deferred (unpaid interest will be capitalized) Years 2-3: 15% principal due at the end of each year Year 4: 70% principal due at the end of the year
Prepayment	Permitted without penalty	Permitted without penalty	Permitted without penalty
Interest Rate⁶	Adjustable rate of LIBOR + 3%	Adjustable rate of LIBOR + 3%	Adjustable rate of LIBOR + 3%
Priority	Must not be contractually ⁷ subordinated to any of the borrower's other debt	Must be senior to or pari passu with	Must be senior to or pari passu with the borrower's other debt instruments, in

⁶ The Fed decided to avoid the difficulty of implementing new systems to issue loans based on SOFR. The Fed advises that lenders and borrowers should include fallback contract language to be used should LIBOR become unavailable during the term of the loan.

⁷ The Fed advises this means that a New Loan may not be junior in priority in bankruptcy to the borrower's other unsecured loans or debt instruments. However, the Fed further clarified that such requirement does not prevent: (i) the issuance of a New Loan that is a secured loan (including in a second lien or other capacity) to the borrower, whether or not the borrower has an outstanding secured loan of any lien position or maturity; (ii) the issuance of a New Loan that is an unsecured loan to the borrower, regardless of the term or secured or unsecured status of the borrower's existing indebtedness; or (iii) the borrower from taking on new secured or unsecured debt after receiving a New Loan, provided the new debt would not have higher contractual priority in bankruptcy than the New Loan. (See Section B.3. of the FAQ.)

	New Loans	Priority Loans	Upsized Tranche of Existing Loans
	instruments at any time	the borrower's ⁸ other debt instruments, in priority and security (other than mortgage debt)	priority and security (other than mortgage debt)

FEES: *Are there fee associated with MSLP loans?*

- Lenders are authorized to charge borrowers origination fees, and the SPV is authorized to charge transaction fees, in each case at amounts set by the Fed. The SPV will also pay lenders annual servicing fees at amounts set by the Fed.⁹

POTENTIAL IMPEDIMENTS AND OTHER CONSIDERATIONS: *What are the key potential impediments, limitations, or other considerations facing borrowers seeking loans under the MSLP?*

- **Affiliate Aggregation.** As discussed above, when determining eligibility for MSLP loans, affiliate aggregation rules will be applied to the calculation of a prospective borrower's number of employees and 2019 annual revenue. "Affiliate" for this purpose is broadly defined. (See 13 CFR 121.301(f).) Applicants that are part of a 'large' affiliated group, including portfolio companies of private equity firms, may have unexpected challenges meeting eligibility criteria as a result.
- **Intercreditor Issues.** Absent capacity under the negative covenants of a borrower's existing credit facilities (e.g., indebtedness and liens covenants), required lien and payment priority of MSLP loans will require potential engagement and negotiations with the borrower's existing lenders.

⁸ The use of the term "borrower" raises a question of whether the priority requirements applicable to Priority Loans and Existing Loans are intended to cover structurally subordinated debt as well. Further guidance from the Fed may be needed in connection with this issue.

⁹ For New Loans and Priority Loans, a borrower must pay the eligible lender an origination fee of up to 100 basis points of the principal amount of the New Loan or Priority Loan, as applicable, and the eligible lender must pay (or cause the borrower to pay) the SPV a transaction fee of 100 basis points of the principal amount of the New Loan or Priority Loan, as applicable, at the time of origination. For an upsized tranche of Existing Loans, the borrower must pay the eligible lender a fee of up to 75 basis points of the principal amount of the upsized tranche of the Existing Loans, and the eligible lender must pay (or cause the borrower to pay) the SPV a transaction fee of 75 basis points of the principal amount of the upsized tranche of the Existing Loans at the time of upsizing. Under any MSLP loan (whether a New Loan, a Priority Loan, or an upsized tranche of an Existing Loan), the SPV will pay the eligible lender an annual loan servicing fee of 25 basis points of the principal amount of the SPV's participation in the MSLP Loan.

- **No Other Facilities.** A business may only participate in one of the three MSLP Facilities. A business is also ineligible to participate in the MSLP if it participates in the Primary Market Corporate Credit Facility, a program established by the Fed on March 23, 2020 to support credit to employers through new bond and loan issuances.
- **Disclosure.** The Fed will disclose information regarding the operation of the MSLP, including names of lenders and borrowers and amounts borrowed. To the extent a business has concerns regarding such disclosure (including the potential of news media learning of the business' participation in the MSLP), alternative financing sources should be considered.
- **Limitations on Business Operations.** In order to receive loans under the MSLP, eligible borrowers must agree to a number of restrictions on the operation of their business, the overall impact of which may be unpalatable for some companies (and/or their existing lenders). Applicable restrictions include the following:
 - the eligible borrower cannot repay any principal or interest on any debt, other than mandatory payments, until the MSLP loan has been repaid in full; provided that, solely with respect to Priority Loans, a borrower may, at the time of origination of the Priority Loan, refinance existing debt owed by the borrower to a lender that is not the eligible lender providing the Priority Loan;¹⁰
 - although MSLP loans may generally be secured or unsecured, the upsized tranche of an Existing Loan must be secured if the underlying Existing Loan is secured, and any collateral securing the Existing Loan, whether pledged originally or at the time of upsizing, must secure the loan on a pro rata basis (i.e. the upsized tranche must be pari passu with the Existing Loans in lien priority);
 - borrowers may not seek to cancel or reduce any outstanding lines of credit during the term of the MSLP loan;
 - borrowers must use commercially reasonable efforts to maintain payroll and retain employees during the term of the MSLP loan. In that regard, the Fed advises that “good-faith efforts” to maintain payroll and retain employees in light of the borrower’s capacities, resources, business needs for labor, and the economic environment, constitute “commercially reasonable efforts” for purposes of the MSLP. The Fed further clarified that borrowers that have already laid off or furloughed workers as a result of the disruptions from COVID-19 remain eligible to apply for MSLP loans (see Section G.8 of the Frequently Asked Questions published by the Fed on April 30, 2020 (the “[FAQ](#)”));

¹⁰ The following exceptions apply: (i) repaying a line of credit (including a credit card) in accordance with the borrower’s normal course of business usage for such line of credit; (ii) taking on and paying additional debt obligations required in the normal course of business and on standard terms, including inventory and equipment financing, provided that such debt is secured by newly acquired property (e.g., inventory or equipment), and, apart from such security, is of equal or lower priority than the MSLP Loan; and (iii) refinancing maturing debt. (See Section H.3. of the [FAQ](#).)

- borrowers may not repurchase its or its parent company's equity securities listed on a national securities exchange until 12 months after the loan is no longer outstanding (unless repurchased pursuant to contractual obligation in effect prior to the enactment of the CARES Act);
 - no dividends or other capital distributions with respect to common stock may be paid until 12 months after the loan is no longer outstanding except that, in each case, such restrictions will not apply to distributions made by an S corporation or other tax pass-through entity to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings; and
 - employee and officer compensation will be subject to certain limitations.¹¹
- In addition to the foregoing, eligible lenders making loans under the MSLP will be required to commit that: (i) it will not request the borrower to repay principal or interest on debt extended by the eligible lender to the borrower until the MSLP loan is repaid in full, other than mandatory payments or in the event of default; and (ii) the lender will not cancel or reduce any lines of credit outstanding to the borrower, except in an event of default. (However, the lender is not prohibited from reducing or terminating uncommitted lines of credit, the expiration of existing lines of credit in accordance with their terms, or the reduction of availability under existing lines of credit in accordance with their terms due to changes in borrowing bases or reserves in asset-based or similar structures (see Section H.5 of the FAQ).)
 - It is plausible that the Fed will seek to apply other terms and limitations on MSLP loans, including the types of restrictions set forth in Section 4003(c)(3)(D)(i) of the CARES Act with respect to mid-size business loans. Current guidance regarding the MSLP does not on its face incorporate such restrictions, or other concepts applicable to certain other loans contemplated under the CARES Act, like the "credit elsewhere" test. The Fed, however, has broad discretion to set the terms and conditions of MSLP loans, and may incorporate such concepts in future updates.

¹¹ Eligible borrowers receiving loans under the MSLP will be required to limit employee compensation as follows until 12 months after the loan is no longer outstanding:

- For an employee whose total compensation (including salary, bonuses, awards of stock and other financial benefits provided by the business) exceeded \$425,000 in 2019, (i) total compensation during any 12-month period may not exceed compensation received by such person in 2019 and (ii) severance pay or other benefits available upon termination may not exceed two times the total compensation received by such person in 2019.
- For an employee whose total compensation exceeded \$3 million in 2019, total compensation during any 12-month period may not exceed the sum of (i) \$3 million and (ii) 50% of the excess compensation over \$3 million that was received by such person in 2019.

REQUIRED CERTIFICATIONS AND ATTESTATIONS: *What certifications will be required?*

- In addition to certifications required under applicable statutes and regulations, and attestation with respect to the matters covered above, borrowers will be required to attest or certify to the following:
 - That the borrower has reasonable basis to believe that, as of the date of the origination of the MSLP 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; and
 - That the borrower is eligible to participate, including in light of certain conflict of interest prohibitions applicable to businesses directly or indirectly controlled by the President, the Vice President, heads of executive departments, members of congress or their respective relatives (note that lenders will also have to certify to the same).
- It remains plausible that the Fed may require additional certifications in future guidance. This is an area to be monitored for further updates, especially in light of the successive guidance and updates that occurred and continue to occur in connection with the PPP regulations.

FORGIVENESS: *Is there loan forgiveness available?*

- No, the MSLP does not contemplate forgivable loans.

APPLICATION PROCESS/ACCESSING FUNDS: *How do businesses apply for loans under the MSLP?*

- When the MSLP launches, businesses will make applications to participating eligible lenders and not to the U.S. government.
- Eligible borrowers will not automatically qualify for MSLP loans or qualify to receive loans of the maximum allowable principal amount. Lenders are expected to conduct a review of the eligible borrower's financial condition and creditworthiness in making loan determinations.
- The Fed advises that borrowers contact an eligible lender for more information on whether the lender plans to participate in the MSLP and to request more information on the application process.

FURTHER GUIDANCE: *When is further guidance regarding the MSLP expected?*

- The Fed and the Treasury ended its feedback period on the MSLP from lenders, borrowers, and other stakeholders on April 16, 2020. On April 30, 2020 the Fed provided updates and additional guidance on the MSLP and also noted that it is currently working to create the infrastructure necessary to operate the MSLP, and that it will provide additional updates, including the official launch date of the program.