

Main Street Lending Program Set to Launch - Additional Terms and Guidance Released

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On May 27, 2020, the Federal Reserve Board, through the Federal Reserve Bank of Boston, released additional details for lenders and borrowers interested in participating in the \$600 billion Main Street Lending Program (MSLP). The MSLP is aimed at providing direct assistance to companies that were relatively healthy at the end of 2019 but were detrimentally impacted by the COVID-19 pandemic. The newly provided information includes updated Frequently Asked Questions (FAQs), borrower certifications and covenants and reporting requirements for borrowers and lenders, as well as other information.

The released terms and guidance supplement the Term Sheets for the Main Street New Loan Facility (MSNLF), the Main Street Priority Loan Facility (MSPLF), and the Main Street Expanded Loan Facility (MSELF) and other information provided by the Federal Reserve on April 30. Importantly, the definitions of Eligible Borrower and Eligible Lender remain unchanged and the Federal Reserve will continue to purchase either 95% or 85% of each loan, depending on the type of loan. A detailed summary of the Term Sheets and additional information about the programs can be found in our May 4 Client Alert titled [Update to Main Street Lending Program; Federal Reserve Announces Revised Terms and FAQs](#).

According to [recent statements](#) by Federal Reserve Chairman Jerome Powell, the Federal Reserve is “days away” from launching the MSLP. Given the significant number of details included in the recently released documents, we expect the documentation and forms to be essentially final forms for the MSLP launch. Larger lending institutions have indicated there is interest in the program from borrowers, but banks generally expect the initial demand for the program to be a small fraction of the demand for PPP loans. That being said, the Federal Reserve has indicated it may be willing to tweak the program, particularly the eligibility requirements, if there is insufficient demand from borrowers.

In addition to Chairman Powell’s announcement, the Federal Reserve Bank of Boston is hosting a number of “Drop-in Session” webinars for borrowers and lenders, which will summarize the high-level issues of the various programs. You can find information on the webinars and sign up for

updates on the MSLP on the Federal Reserve Bank of Boston's website [here](#).

These are the main highlights from the FAQs, the new documents and other information provided by the Boston Federal Reserve last week:

1. Detailed Instructions for Lenders and Borrowers.

For most borrowers and lenders, the most beneficial aspect of the guidance are the new form documents. These include detailed instructions for lenders, form checklists (see Appendix A of FAQs), itemized lists of specific representations and covenants lenders should include in their loan documents as well as form language in some cases (see Appendix B of FAQs), form borrower certifications, registration forms for lenders, a form servicing agreement for lenders, details for selling participations to the Main Street SPV and numerous other terms. The Federal Reserve also confirmed that lenders should use any existing credit facilities in place with a borrower as a starting point and if no such facilities are in place, the lender is required to use loan documents that it would use for similarly situated borrowers, as adjusted for the applicable MSLP facility.

2. New Lender/Borrower Relationships Are Permitted

The FAQs confirm a lender can make a loan to new customers (see FAQ B.4). However, the lender is required to conduct its traditional onboarding process, including normal KYC procedures. Lenders will generally be required to use similar documentation and underwriting methodologies, including the calculation of adjusted EBITDA, that it has used when extending credit to similarly situated borrowers on or before April 24, 2020.

3. Guidance on Definition of Adjusted EBITDA

If a lender has used multiple definitions of adjusted EBITDA for a particular borrower or similarly situated borrowers, the lender should “choose the most conservative method it has employed,” and in all cases the lender “must select a single method used at a point in time in the recent past and before April 24, 2020” (see FAQ G.13). The lender may not “cherry pick” or apply adjustments from different points in time, and it is recommended that the lender “document the rationale for its selection of an adjusted EBITDA methodology.” The FAQs provide additional guidance to lenders and borrowers on the calculation of adjusted EBITDA, which, among other things, impacts the loan amount a borrower qualifies for under the MSLP.

4. Principal Reductions Not Permitted; Workouts and Restructuring Permitted for Interest Payments Only.

The FAQs confirm the principal amount of a MSLP loan cannot be reduced but the Main Street SPV may agree to reductions in interest, extended amortization schedules and maturities, and higher priority “priming” loans in the event of Chapter 11 proceedings (see FAQ A.10). From the beginning, the MSLP loans were intended to be somewhat borrower friendly but not forgivable, so these provisions are not surprising. We recommend borrowers understand the terms of the loans and the potential consequences before entering into a MSLP facility.

5. Enhanced Borrower Reporting Requirements.

The Federal Reserve previously indicated there would be enhanced reporting requirements for

MSLP, but they surprisingly include 21 definitions, 24 annual reporting requirements for all MSLP borrowers, 42 quarterly reporting requirements for MSELF borrowers, and 22 quarterly reporting requirements for MSNLF and MSPLF borrowers, in addition to any of the borrowers' existing reporting requirements. Some of the more material requirements include:

- Adjusted & Unadjusted EBITDA
- Description of EBITDA Adjustments
- Accounts Receivable, Inventory, Accounts Payable and other Balance Sheet items
- Summary of Capital Expenditures
- Fixed Charges
- Details of the Collateral Value
- Status of All Covenants (Pass/Fail)

One important item to note is that lenders may rely on a borrower's certifications and covenants and are not required or expected to independently verify or actively monitor a borrower's ongoing covenant compliance (see FAQ H.6).

6. Additional Details for MSELF Program

While the underlying terms of the MSELF facility remain unchanged (see our May 4 [Client Alert](#)), many of the questions lenders and borrowers have are related to further understanding the logistics of the MSELF Program. The FAQs and additional guidance provided by the Federal Reserve clarify a number of these questions. These clarifications include:

- The lender is not required to have originated the underlying loan, but the lender must have purchased its interest in the loan on or prior to December 31, 2019.
- If an existing syndicated facility does not have an "opening" or "accordion" feature, existing lenders are required to amend the borrower's existing loan documents to permit upsizing MSELF loans.
- If the underlying loan documents do not include a definition of EBITDA, the lender must require that borrowers calculate their adjusted EBITDA using a methodology that the lender required to be used in other contexts for the applicable borrower (e.g., as part of the lender's internal risk analysis) or, if there is no such calculation, for similarly situated borrowers.
- If the underlying loan was originated after December 31, 2019, the lender should use its internal risk rating given to the loan as of the date of origination to determine if the loan satisfies the "pass" criteria.
- Additional details on the "pari passu in priority" language for secured and unsecured loans. See Paragraph 7 below for more details.

7. Clarifications on Priority and Security of Facilities.

The FAQs answer many questions the followers of MSLP had regarding the meaning of “senior to or pari passu with, in terms of priority and security” with other loans (see FAQ C.6). Essentially, no MSLP loans can be subordinated to other indebtedness, and the MSPLF and the MSELF loans must be senior or pari passu to the borrower’s other credit facilities (other than mortgage debt). Additionally, MSPLF and MSELF loans can be unsecured or secured, but if any of the borrower’s existing financing is secured (other than through a mortgage), the applicable MSLP loan or upsized tranche must also be secured, and in the case of the MSELF, must be secured by the collateral securing the underlying facility on a pari passu basis (but new collateral may also be added). The MSLP documentation must also ensure that during the life of the loan, (i) the loan must not become contractually subordinated to any of the borrower’s other loans, (ii) the loan must contain a lien negative covenant consistent with such covenants ordinarily used by the lender (see Appendix B to the FAQs for a model lien covenant) and (iii) in the case of the MSELF, must ensure that the upsized tranche remains secured by the collateral securing the underlying loan on a pari passu basis.

One significant wrinkle for MSPLF loans is the Collateral Coverage Ratio (see FAQ C.6). If a MSPLF loan is secured, the Collateral Coverage Ratio must be “either (i) at least 200 percent or (ii) not less than the aggregate Collateral Coverage Ratio for all” other secured loans of the borrower (other than mortgage debt). This, along with the debt-to-EBITDA requirements for the three facilities, is another significant limitation on the ability of companies to participate in the program.

8. Lenders May Be Reimbursed for Legal, Appraisal and Other Service Fees

According to the FAQs, lenders may be reimbursed by borrowers for “de minimis fees for services that are customary and necessary” to underwrite and prepare MSLP loans, such as appraisal and legal fees (see FAQ G.12). However, lenders may not charge any additional fees other than the origination fees and transaction fees set forth in the MSLP term sheets.

9. Borrowers must certify they are “unable to secure adequate credit accommodations from other banking institutions.”

Each participant in the MSLP must now certify to its lender that it is “unable to secure adequate credit accommodations from other banking institutions.” The form certifications and covenants for the borrower include the above language, and the FAQs include the following guidance to assist borrowers with evaluating the interpretation of this certification (emphasis added):

Being unable to secure adequate credit accommodations does not mean that no credit from other sources is available to the borrower. Rather, ***the borrower may certify that it is unable to secure “adequate credit accommodations” because the amount, price, or terms of credit available from other sources are inadequate for the borrower’s needs during the current unusual and exigent circumstances. Borrowers are not required to demonstrate that applications for credit had been denied by other lenders or otherwise document that the amount, price, or terms of credit available elsewhere are inadequate*** (see FAQ H.9).

Ultimately, this means borrowers should be prepared to document why the loan is necessary and the reasons why it is unable to receive financing on reasonable terms from other lenders. This is substantially similar to the documentation we recommended borrowers prepare under the Paycheck Protection Program (see our Client Alert titled [The Price of PPP – Guidance for Management & Board on Mitigating PPP Risk](#)).

10. Possible Significant Consequences if Borrower is Not Eligible to Participate in MSLP.

The updated FAQs and form Borrower Certifications provided by the Federal Reserve include significant consequences on ineligible borrowers who are participating in the MSLP. Appendix B of the FAQs includes a covenant that a borrower's material misstatement or material breach of any covenants, as determined by the Federal Reserve, will result in a mandatory prepayment of the MSLP loan. In addition, Paragraph 7.B of the Borrower Certifications released by the Federal Reserve includes a certification that if the borrower knowingly makes a material misrepresentation, it may be subject to any applicable criminal or civil penalties. Unsurprisingly, these penalties are similar to those under PPP for ineligible borrowers participating in that program.

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