Understanding the Main Street Lending Program

Overview
For additional guidance, please refer to Steptoe’s COVID-19 Resource Center.

The Federal Reserve Bank of Boston operates the Main Street Lending Program (MSLP or program). The MSLP is a Federal Reserve program designed to help credit flow to small and medium-sized eligible businesses that were in sound financial condition before the COVID-19 pandemic, and that were either unable to access the Small Business Administration’s (SBA) Paycheck Protection Program (PPP) or that require additional financial support after receiving a PPP loan. Importantly, MSLP loans (as opposed to PPP loans) are not forgivable.

The MSLP offers loans as low as $250,000 and up to $300 million to businesses with up to 15,000 employees or up to $5 billion in annual revenue are now eligible. The program has been expanded multiple times since its inception to allow more small and medium-sized businesses to receive support and to provide borrowers with greater flexibility in repaying the loans. Reports indicate that the program will be operational in the coming days to weeks.

Three separate facilities make up the program: (1) the Main Street New Loan Facility (MSNLF); (2) the Main Street Priority Loan Facility (MSPLF); and (3) the Main Street Expanded Loan Facility (MSELF). Each use the same borrower eligibility criteria and the facilities have similar commercial components – including the same term (five years), interest rate (LIBOR plus 3%), deferral of principal for two years and interest for one year, and permit prepayment without penalty. Lenders are required to retain 5% of each loan.

Click here for a comparison chart of the three program facilities.

The Federal Reserve Bank of Boston will continue to update its program resources page.

Borrowers should contact their lenders for more information on whether the lender plans to participate in the program and to request more information on the application process. Borrowers will not automatically qualify for a loan, and lenders will be expected to assess each potential borrower’s financial condition. Lenders should carefully review relevant sections in the program’s term sheets (linked below) and the program’s Frequently Asked Questions (FAQs), which address lender eligibility, how to evaluate borrower creditworthiness, and the lender’s role in verifying certifications and covenants.

Borrower Eligibility

Eligible businesses must be legally formed, for-profit entities that are organized as one of the following: a partnership; a limited liability company; a corporation; an association; a trust; a cooperative; a joint venture with no more than 49% participation by foreign business entities; or a tribal business concern. Currently, nonprofit organizations are not eligible businesses, but the Federal Reserve is currently evaluating proposed loan terms for them. For more information about the Federal Reserve’s proposal for nonprofits, click here.

A business must satisfy certain eligibility criteria to be eligible to borrow under the MSLP. The criteria are the same across all three of the program facilities.
(1) The business must meet at least one of the following two conditions: (i) the business has 15,000 employees or fewer, or (ii) the business had 2019 annual revenues of $5 billion or less. Businesses must meet at least one of these conditions, but are not required to meet both. To determine how many employees a business has or a business’s 2019 revenues, the employees and revenues of the business must be aggregated with the employees and revenues of its affiliated entities.

To determine how many employees a business has, it should count all full-time, part-time, seasonal, or otherwise employed persons as employees, excluding volunteers and independent contractors. Businesses should count their own employees and those employed by their affiliates. In order to determine the applicable number of employees, businesses should use the average of the total number of persons employed by the business and its affiliates for each pay period over the 12 months prior to the origination or upsizing of the program loan.

To determine its 2019 annual revenues, businesses must aggregate their revenues with those of their affiliates. Businesses may use either of the following methods to calculate 2019 annual revenues for purposes of determining eligibility:

- Its (and its affiliates’) annual “revenue” per its 2019 Generally Accepted Accounting Principles-based (GAAP) audited financial statements.
- Its (and its affiliates’) annual receipts for the fiscal year 2019, as reported to the IRS. For purposes of the program, the term “receipts” has the same meaning used by the Small Business Administration in 13 CFR 121.104(a).

(2) The business must have been established prior to March 13, 2020. The business must have been formed prior to March 13 under the laws of the United States, one of the several states, the District of Columbia, any of the territories and possessions of the United States, or an Indian Tribal government.

(3) The business must be a US business. Borrowers must be businesses that were created or organized in the United States (including US subsidiaries of a foreign company) or under the laws of the United States with significant operations in, and a majority of their employees based in, the United States.

In determining whether a borrower has “significant operations” in the United States, the business’s operations should be evaluated on a consolidated basis together with its subsidiaries, but not its parent companies or sister affiliates. For example, a borrower has significant operations in the United States if, when consolidated with its subsidiaries, greater than 50% of the borrower’s:

- Assets are located in the United States
- Annual net income is generated in the United States
- Annual net operating revenues are generated in the United States or
- Annual consolidated operating expenses (excluding interest expense and any other expenses associated with debt service) are generated in the United States

A borrower that is a subsidiary of a foreign company must use the proceeds of a MSLP loan only for the benefit of itself, its consolidated US subsidiaries, and other affiliates that are US businesses. The MSLP loan may not be used to benefit the borrower’s foreign parents, affiliates, or subsidiaries.

(4) The business must not be an ineligible business. Ineligible businesses include those same businesses ineligible to receive a loan under the SBA’s PPP. Specifically, ineligible businesses are listed in 13 CFR 120.110(b)-(j), (m)-(s), as modified and clarified by SBA regulations for purposes of the PPP on or before April 24. Such modifications and clarifications include the SBA’s recent interim final rules available at 85 Fed. Reg. 20811, 85 Fed. Reg. 21747, and 85 Fed. Reg. 23450. The FAQs call out as ineligible businesses private equity funds and certain portfolio companies of private equity funds. The portfolio company of a private equity fund’s eligibility would be calculated by aggregating the employees and the 2019 annual revenues of all affiliated entities under the SBA’s rules, as was done with the PPP. The Federal Reserve may further modify the application of these restrictions to its program.

(5) The business may only participate in one of the MSLP facilities and cannot also participate in the Primary Market Corporate Credit Facility (PMCCF). A borrower (and its affiliates) may only participate in one of the program’s facilities: the MSNLF, the MSPLF, or the MSELF. However, a borrower may receive more than one loan under a single program facility, so long as the sum of the loans do not exceed the loan maximums for the facility (described below). In addition, a business is not eligible if it (or any of its affiliates) participates in the PMCCF, which was established to support large companies through the purchase of eligible corporate bonds from, and lending through syndicated loans to, large companies.

(6) The business cannot have received specific support under Title IV of the Coronavirus Economic Stabilization Act of 2020 (CARES Act). A business is not eligible if it has received support pursuant to section 4003(b)(1)-(3) of the CARES Act, which consists of support to passenger air carriers, Part-145 certified repair station operators and ticket agents, cargo air carriers, and businesses critical to maintaining national security.

A business that has received loans under the SBA’s PPP, or that has affiliates that have received PPP loans, is permitted to borrow under the MSLP.
The Federal Reserve will disclose the names of borrowers, amounts borrowed, and interest rates charges, and overall costs, revenues, and other fees.

The Three MSLP Facilities

Each of the three program facilities use the same borrower eligibility criteria, and many have the same features – including the same maturity, interest rate, deferral of principal and interest, risk retention, and prepayment without penalty. Other features of the loans extended in connection with each facility differ. The loan types also differ in how they interact with the borrower’s existing outstanding debt, including with respect to the level of pre-crisis indebtedness a borrower may have incurred.

- Under the Main Street New Lending Facility (MSNLF), borrowers can receive loans ranging in size from $250,000 to $50 million. The maximum size of a loan made in connection with the MSNLF cannot, when added to the borrower’s existing outstanding and undrawn available debt, exceed six times the borrower’s adjusted 2019 EBITDA. The loans must not be, at the time of origination or at any time during the term of the loan, contractually subordinated in terms of priority to any of the borrower’s other loans or debt instruments. This means that an MSNLF loan may not be junior in priority in bankruptcy to the borrower’s other unsecured loans or debt instruments. More information on the MSNLF can be found here.

- Under the Main Street Priority Lending Facility (MSPLF), borrowers also can receive loans ranging in size from $250,000 to $50 million. The maximum size of a loan made in connection with the MSPLF also cannot, when added to the borrower’s existing outstanding and undrawn available debt, exceed six times the borrower’s adjusted 2019 EBITDA. At the time of origination, and at all times thereafter, the loan must be senior to or pari passu with, in terms of priority and security, the borrower’s other loans or debt instruments, other than mortgage debt. Any existing loan the borrower has outstanding with the lender as of December 31, 2019, must have had an internal risk rating (based on the lender’s risk rating system) equivalent to a “pass” in the Federal Financial Institutions Examination Council’s (FFIEC) supervisory rating system as of that date. Borrowers may, at the time of origination of the loan, refinance existing debt to a different lender. More information on the MSPLF can be found here.

- Under the Main Street Expanded Lending Facility (MSELF), borrowers can have their existing term loan or revolving credit facility increased (or “upsized”). The upsized tranche is a five-year term loan ranging in size from $10 million to $300 million. The maximum size of a loan made in connection with the MSELF cannot, when added to the borrower’s existing outstanding and undrawn available debt, exceed six times the borrower’s adjusted 2019 EBITDA. At the time of upsizing and at all times thereafter, the upsized tranche must be senior to or pari passu with, in terms of priority and security, the borrower’s other loans or debt instruments, other than mortgage debt. To be eligible for upsizing, the existing term loan or revolving credit facility must have been originated on or before April 24, 2020, and must have a remaining maturity of at least 18 months. The lender of an upsized loan does not have to be the original lender of the underlying loan, as long as it purchased the interest in the loan before April 24, 2020. If the lender purchased the interest in the underlying loan as of December 31, 2019, the existing loan or revolving credit facility must have had a risk rating (based on the lender’s internal rating system) equivalent to a “pass” in the FFIEC’s supervisory rating system as of that date. If the lender purchased the interest after December 31, 2019, the lender should use the internal risk rating given to that loan at the time of purchase to determine whether the loan is eligible for upsizing under the MSELF. More information on the MSELF can be found here.

Click here for a comparison chart of the three program facilities.

Interest Payments and Repayment Restrictions

The interest rate for the loans in each program facility is the adjustable rate of LIBOR (one- or three-month) plus 3%.

No payment of principal will be required during the first two years of the loan, and no payment of interest will be required during the first year of the loan. Under the programs, 15% of the principal will be due at the end of years three and four, and a balloon payment of 70% of principal due at the end of year five.

Restrictions on repaying debt also vary across the facilities. Under the MSNLF and the MSELF, the borrower must commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the MSNLF loan or the MSELF upsized tranche is repaid in full, unless the debt or interest payment is mandatory and due. The borrower also must commit that it will not seek to cancel or reduce any of its committed lines of credit with the lender or any other lender.

Under the MSPLF, the borrower must commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the MSPLF loan is repaid in full, unless the debt or interest payment is mandatory and due; however, the borrower may, at the time of origination of the MSPLF loan, refinance existing debt owed to a different lender. The borrower also must commit that it will not seek to cancel or reduce any of its committed lines of credit with the lender or any other lender.

Employee Retention; Certifications and Covenants
While most of the certifications and covenants across the program facilities are the same, the MSPLF includes a modification to the borrower covenant regarding debt repayment – described above – to allow a borrower to refinance existing debt owed to a different lender at the time the MSPLF loan is originated.

Other certifications and covenants include:

- The borrower should make “commercially reasonable efforts” to retain employees during the term of the loan. Specifically, a borrower should undertake good-faith efforts to maintain payroll and retain employees, in light of its capacities, the economic environment, its available resources, and the business need for labor. Borrowers that have already laid-off or furloughed workers as a result of the disruptions from COVID-19 are still eligible to apply.
- The borrower must certify that it has a reasonable basis to believe that, as of the date of origination of the 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.
- The borrower must certify that it is “unable to secure adequate credit accommodations from other banking institutions.” This 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.
- The borrower must commit that it will follow certain compensation, stock repurchase, and capital distribution restrictions.
  - Borrowers are subject to two tiers of executive compensation (including salary, stock, and bonuses) restrictions for a period of time that extends one year beyond the term of the loan.
    - Officers or employees who received more than $425,000 in total compensation in 2019 cannot receive a pay raise in 2020, and cannot receive severance pay or other benefits that are more than twice their 2019 compensation amount.
    - Officers or employees who received more than $3 million in total compensation in 2019 cannot receive total compensation in 2020 in excess of $3 million plus 50% of the excess over $3 million.
  - Borrowers must agree to not buy back stock or pay dividends for a period of time that extends one year beyond the term of the loan. However, an S corporation or other tax pass-through entity that is a borrower may make distributions to the extent reasonably required to cover its owners’ tax obligations related to the entity’s earnings. This exception was added to the program in response to feedback on the initial term sheet.
- The borrower must certify that it is not an entity in which the president, vice president, the head of an executive department, or a member of Congress (or a family member of any of them) directly or indirectly holds a controlling interest.

Origination/Upsizing Fees

Under the MSNLF and the MSPLF, borrowers will pay lenders a fee of up to 1% of the principal amount of the loan at the time of origination. Under the MSELF, borrowers will pay lenders a fee of up to 0.75% of the principal amount of the upsized tranche at the time of upsizing. Lenders may also require borrowers to pay the transaction fees lenders in turn pay to the Federal Reserve.

Practices

Financial Services

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