Main Street Loan Program Update
May 6, 2020

On April 30, 2020, the Federal Reserve updated its Main Street Loan Program ("**MSLP**") terms based on thousands of comments (including comments from Secured Finance Network) submitted since the program was initially announced on April 9, 2020. Several important updates were made to the MSLP, though many changes of interest to asset-based lenders were contemplated but not fully developed in this new guidance.[1] In particular, asset-based lenders will likely need to consider the impact of MSLP terms described below on existing financing structures, such as the pari passu treatment of collateral, which could dilute existing lender security in some cases, the continued reliance on EBITDA and risk ratings as metrics for determining borrower eligibility and the restrictions on assignments by MSLP lenders.

Summary of MSLP and Program Updates

As originally announced, the MSLP would consist of two loan facilities with up to $600 billion in available loan funds for borrowers with 10,000 or fewer employees or $2.5 billion or less in revenues: (a) a Main Street Expanded Loan Facility ("**MSELF**") to add a Federal Reserve supported term loan to an existing credit facility and (b) a Main Street New Loan Facility ("**MSNLF**"). In response to comments on the MSLP, the Federal Reserve has added a third facility, the Main Street Priority Loan Facility ("**MSPLF**") which creates additional opportunities for participation by more highly leveraged borrowers, but with more shared risk between the funding Reserve Bank and the originating lender.

The program design will begin with establishment of a special purpose vehicle ("**SPV**") with a $75 billion equity investment by the Treasury Department from funding appropriated to the Exchange Stabilization Fund under §4027 of the CARES Act. The SPV will then be authorized to participate in up to $600 billion in MSLP loans (based on 8x leverage of the Treasury Department equity investment). Eligible lenders will originate loans under one of the three MSLP facilities, and the SPV will purchase 95% of lender originated MSELF and MSNLF loans or 85% of lender originated MSPLF loans, which may be secured or unsecured term loans depending upon the applicable facility terms and originating lender's underwriting requirements.

The chart below sets forth the key differences among the three facilities of the MSLP, as well as noting in *italics* where some of the original terms have changed (including the addition of the MSPLF).

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[1] *See* (a) Main Street Lending Program Frequently Asked Questions ("**MSLP FAQ**") at https://www.federalreserve.gov/monetarypolicy/files/main-street-lending-faqs.pdf, (b) Main Street New Loan Facility Term Sheet at https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200430a1.pdf, (c) Main Street Priority Loan Facility Term Sheet at https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200430a1.pdf and (d) Main Street Expanded Loan Facility Term Sheet at https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm.

Terms & Conditions	MSNLF	*MSPLF*	MSELF
Loan type	Term loan originated after April 24, 2020	*Term loan originated after April 24, 2020*	Upsized tranche of a term loan or revolving credit facility originated on or before April 24, 2020, with a remaining maturity of at least 18 months
Minimum Loan Size	*$500,000 [previously $1 million]*	*$500,000*	*$10 million [previously $1 million]*
Maximum Loan Size	Lesser of (i) $25 million and (ii) 4x 2019 *adjusted* EBITDA* ** methodology used by the Eligible Lender to calculate adjusted 2019 EBITDA must be the methodology previously used for adjusting EBITDA when extending credit to the Eligible Borrower or similarly situated borrowers on or before April 24, 2020*	*Lesser of (i) $25 million and (ii) 6x 2019 adjusted EBITDA** ** methodology used by the Eligible Lender to calculate adjusted 2019 EBITDA must be the methodology previously used for adjusting EBITDA when extending credit to the Eligible Borrower or similarly situated borrowers on or before April 24, 2020*	Least of (i) $200 million, (ii) 35% of outstanding and undrawn available *pari passu* debt equivalent in secured status, and (iii) 6x 2019 *adjusted* EBITDA* ** methodology used by the Eligible Lender to calculate adjusted 2019 EBITDA must be the methodology previously used for adjusting EBITDA when originating or amending the Eligible Loan on or before April 24, 2020*
Annual Year-End Principal Amortization	Year 1: 0 Year 2: 1/3 Year 2: 1/3 Maturity: 1/3	*Year 1: 0 Year 2: 15% Year 3: 15% Maturity: 70%*	Year 1: 0 Year 2: 15% Year 3: 15% Maturity: 70%

Terms & Conditions	MSNLF	*MSPLF*	MSELF
Priority	MSNLF loans cannot be contractually subordinated in terms of priority to any of the borrower's other loans or debt instruments.	*MSPLF loans must be senior to or pari passu with, in terms of priority and security, MSPLF borrower's other loans or debt instruments, other than mortgage debt.*	MSELF loans must be senior to or *pari passu* with, in terms of priority and security, the MSELF borrower's other loans or debt instruments, other than mortgage debt.
Collateral	*Secured or* unsecured The MSNLF Term Sheet contemplates MSNLF loans being issued as second lien loans. MSNLF terms would not prohibit an MSNLF borrower from obtaining additional debt subordinated to the MSNLF loan. An MSNLF loan may not be junior in priority in bankruptcy to the Eligible Borrower's other unsecured loans or debt instruments.	*Secured or unsecured* *If other existing debt of MSPLF borrower is secured, MSPLF loan must be ratably secured, in priority and security, with such secured debt.*	Secured *or unsecured* Any collateral securing the MSELF borrower's credit facility under which the MSELF is issued, whether existing at origination of the MSELF loan or later added, **<u>must</u>** secure the MSELF loan on a pro rata basis An MSELF lender can require an MSELF borrower to pledge additional collateral to secure an upsized tranche as a condition of approval
MSLP lender's retained percentage of MSLP loans	5%	*15%*	5%
Transaction fee	The MSNLF lender will pay the SPV 1% of the principal amount of the MSNLF loan. The MSNLF lender may require that the MSNLF borrower to pay this fee.	*The MSPLF lender will pay the SPV 1% of the principal amount of the MSPLF loan.* *The MSPLF lender may require that the MSPLF borrower to pay this fee.*	The MSELF lender will pay the SPV 0.75% of the principal amount of the MSELF loan. The MSELF lender may require that the MSELF borrower to pay this fee.
Loan origination fee	The MSNLF borrower will pay the MSNLF lender an origination fee of up to 1% of the principal amount of the MSNLF loan at the time of origination.	*The MSPLF borrower will pay the MSPLF lender an origination fee of up to 1% of the principal amount of the MSPLF loan at the time of origination.*	The MSELF borrower will pay the MSELF lender an origination fee of up to 0.75% of the principal amount of the MSELF loan at the time of origination.

In addition, all of the MSLP facilities share the following terms and conditions (with updates from the April 30 guidance indicated in *italics*):

Subject	MSLP Terms and Conditions applicable to all MSLP facilities
Eligible Lenders	Only U.S. federally insured depository institution (including a bank, savings association, or credit union), a U.S. bank holding company, a U.S. savings and loan holding company, *a U.S. branch or agency of a foreign bank, a U.S. intermediate holding company of a foreign banking organization* [*new additions in italics*], or a U.S. subsidiary of any of the foregoing are currently eligible to serve as MSLP lenders. If the loan underlying an upsized tranche under the MSELF is part of a multi-lender facility, then only the MSELF lender of the MSELF loan, not the other lenders in the multi-lender facility, is required to meet the lender-eligibility criteria.
Eligible Borrowers	To be eligible to borrower of an MSLP loan, a borrower must be a business that • was established prior to March 13, 2020; • *is not a type of business listed in 13 CFR 120.110(b)–(j) and (m)–(s), such as lenders, life insurance companies, pyramid sale distributions, lobbyists, and speculative businesses, as that list has been modified by regulations implementing the Paycheck Protection Program on or before April 24, 2020*; • *together with its affiliates (based on SBA affiliation standards)*, meets at least one of the following two conditions: (1) has 15,000 employees [*increased from 10,000*] or fewer, or (2) had annual revenues in 2019 of $5 billion [*increased from $2.5 billion*] or less; • is 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; • does not also participate in any other MSLP facility or the Primary Market Corporate Credit Facility; and • has not received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020. *Businesses that have received Paycheck Protection Program loans are permitted to borrow under the MSLP if they are otherwise eligible under the foregoing requirements*, but an MSLP borrower may only borrow under one of the three MSLP facilities. Non-profit organizations are not currently eligible under the MSLP. To determine its 2019 annual revenues, a business may use annual "revenue" of the borrower *and its affiliates* based on 2019 annual financial statements audited in accordance with GAAP or on such borrower's and its affiliate's annual receipts for the fiscal year 2019 as reported to the IRS.
Term	Four years.
Rate	*LIBOR (1 or 3 month) + 300 basis points*.
Loan servicing fee	Annual loan servicing fee of 0.25% of the principal amount of SPV participation.
Deferral	Principal and interest payments deferred for one year (unpaid interest will be capitalized).
Voluntary Prepayment	Permitted without penalty.
Assignment Limitation	*Each MSLP lender must retain its interest in the applicable MSLP loan until the MSLP loan matures (or, in the case of the MSELF, until the underlying credit facility matures) or the SPV sells all of its participation, whichever comes first.*
Risk rating requirement	For the MSNLF and MSPLF, if the MSLP borrower had other loans outstanding with the MSLP lender as of December 31, 2019, then those loans must have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system as of December 31, 2019. For the MSELF, the MSELF loan must have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system as of December 31, 2019.

Asset-Based Lending Issues Remain Unresolved

While the revisions proposed by the Federal Reserve generally make the MSLP more attractive for many lenders and borrowers, there remain a number of unresolved concerns for asset-based lenders. In particular, SFNet had advocated for six key revisions in the MSLP, which are summarized below together with the extent to which the new Federal Reserve guidance addressed (or failed to address) these issues.

1. **Allow for non-depository lenders to be Eligible Lenders under the Program**. At this time, the only additions to existing Federal Reserve guidance was to allow U.S. branches or agencies of foreign banks and U.S. intermediate holding companies of foreign banking organizations to participate. But for now, MSLP remains limited to depository institutions (U.S. federally-insured depository institutions (including banks, savings associations, and credit unions), 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). The Federal Reserve's guidance did indicate that it is considering options to expand the list of eligible lenders to include nonbank financial institutions in the future.

2. **Prohibit MSLP borrowers from canceling, amending or reducing existing lines of credit**. This prohibition has been included in the updated MSLP terms, in that each MSLP facility requires that the MSLP borrower must agree that it will not repay the principal balance of, or pay any interest on, any debt until the MSLP loan is repaid in full, with an exception for mandatory payments that become due and payable under existing debt facilities. Note that the Federal Reserve guidance also prohibits MSLP lenders from canceling or reducing existing lines of credit of an MSLP borrower, except in an event of default. But the new guidance specifies that this requirement does not prohibit 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, nor would it prohibit the reduction or termination of uncommitted lines of credit or the expiration of existing lines of credit in accordance with their terms.[2]

3. **Limit SPV rights to customary participant rights rather than lender rights, and limit SPV rights to interfere with exercise of remedies by existing lenders after an event of default under existing facilities**. The Federal Reserve did not directly address voting rights of the SPV, indicating that more information will be made available regarding loan participation terms, credit administration, and loan servicing. But the updated guidance continues to refer to the SPV interest as a purchase of a "participation" and specified that the sale of a participation in an MSLP loan to the SPV will be structured as a "true sale" to be completed expeditiously after the origination of such MSLP loan.

4. **Limit MSLP lender liability**. MSLP lenders were not granted a hold-harmless or other limitation on liability, but were authorized to implement their own underwriting standards to determine eligibility for an MSLP loan requested by any borrower. The Federal Reserve

[2] MSLP FAQ H.5.

guidance is clear that no borrower is guaranteed an MSLP loan and that the MSLP loans are intended for borrowers "in sound financial condition prior to the onset of the COVID-19 pandemic."[3]

5. **Allow for MSLP loans to be subordinated to existing debt or be structured as first-in, last-out loans**. MSNLF loans must not be, at the time of origination or at any time during the term thereof, "contractually subordinated in terms of priority" to any of the MSNLF's other loans or debt instruments[4], but the guidance does not appear to limit structural subordination of MSNLF loans. MSELF and MSPLF loans must be ratably secured, in terms of priority and security, to the extent that the existing credit facility to which MSELF loans are added or that exist at the time of the MSPLF loan, as the case may be, is secured, which creates a risk of dilution of security for existing lenders unless additional collateral can be provided.

6. **Allow continued use of LIBOR rather than requiring implementation of SOFR**. The terms of the MSLP facilities were revised to permit use of LIBOR as the interest rate index rather than SOFR, subject to application of customary transition requirements with respect to the expected discontinuation of LIBOR. In addition, each loan facility will have an applicable margin of 300 basis points.

Other MSLP terms and conditions that may be of particular interest for asset-based lenders include the following:

1. **Financial Underwriting Metric**. Under the new guidance, EBITDA remains the "key underwriting metric" required for the MSLP facilities. The Federal Reserve expressly acknowledged that "the credit risk of asset-based borrowers, as a matter of practice, is generally not evaluated on the basis of EBITDA" and stated that the Federal Reserve and Treasury Department are" evaluating the feasibility of adjusting the loan eligibility metrics of the Program for such borrowers."[5] But, as noted in the charts above, the MSLP also relies on risk ratings to determine eligibility, which would also likely need to be addressed for asset-based and certain other secured lending transactions.

2. **Prohibition on Assignments**. As noted in the chart of common terms and conditions, each MSLP lender must retain its interest in the applicable MSLP loan until the earlier of (a) the MSLP loan maturity date and (b) the date that the SPV sells all of its participation in such MSLP loan. This could be particularly onerous in the MSELF where the MSELF loan is an additional tranche of an existing debt facility that the MSELF lender otherwise wishes to exit.

3. **Borrower Certifications**. Borrowers will be required to make a number of certifications, including that the borrower "has a reasonable basis to believe that, as of the date of origination of the [applicable MSLP loan] and after giving effect to such loan, it has the

[3] MSLP FAQ A.1.
[4] MSLP FAQ A.4 and MSNLF Term Sheet (https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200430a1.pdf).
[5] MSLP FAQ E.7.

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."[6] Other borrower certifications include eligibility to participate in the MSLP and an agreement to comply with certain limits on compensation, stock repurchases, and capital distributions restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act.

4. **Documentation**. The Federal Reserve has announced on its website that it will publicly issue certain form loan documents, including a form of participation agreement, form borrower and lender certifications, but that it will not provide form loan documents for MSLP loans. MSLP lenders are directed to provide form MSLP loan documents reflecting the MSLP terms and conditions.[7]

   The views and opinions set forth herein are the personal views or opinions of the author; they do not necessarily reflect the views or opinions of the law firm with which the author is associated.

[6] *See*, for example, MSNLF Term Sheet.
[7] *See* https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm.