The New Main Street Lending Program: A Guide to The Fed's Changes and Additions to the Facilities and Comparison of the Program Terms

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On Thursday, April 30, 2020, the Board of Governors of the Federal Reserve System ("Fed") announced it is changing the scope and eligibility for its Main Street Lending Program ("MSLP"). The MSLP was created to help credit flow to small and medium-sized businesses ("SMEs") that were in sound financial condition before the COVID-19 pandemic but that are at risk of being impaired or destroyed in the wake of the crisis, leading to longer-term economic damage in the U.S. Following extensive public comments, the Fed has adopted important changes to the MSLP that will provide greater access for borrowers and lenders, including expanding the types of borrowers who can receive loans, adding a new facility for additional borrowers and broadening the types of lenders who can participate in the MSLP.

The MSLP was initially announced on March 23, 2020 by the Fed as part of a suite of measures to address the economic disruption caused by the COVID-19 pandemic. Those measures included several programs designed to support the debt markets and general corporate lending. See our alert on the Fed's initial announcement and programs, including the MSLP, here. The MSLP, through which the Fed will support the purchase of up to $600 billion in bank loans made to SMEs, was initially comprised of two loan facilities, the Main Street New Loan Facility (the "MSNLF") for new term loans, and the Main Street Expanded Loan Facility ("MSELF") for increases to existing term loans.

In a later announcement regarding the MSLP on April 9, 2020, the Fed defined its MSLP lending facilities. See our alert summarizing the April 9, 2020 announcement and the MSLP generally here.

The Fed solicited comments from the public on the terms of the MSLP and the term sheets for each of the MSNLF and MSELF. More than 2000 individuals, enterprises, and advocacy organizations submitted public comments to the Fed, which clearly drove many of the changes announced on April 30. The April 30, 2020 announcement further defines the program. With these changes, the Fed stated that it believes the program will now offer more options to a wider set of eligible SMEs.

This alert provides a summary of the Fed's changes to the MSLP programs generally, including updates to the MSNLF and MSELF and the addition of a new facility, the Main Street Priority Loan Facility ("MSPLF").

Highlights of the changes to the MSLP

- Creates the MSPLF, a third loan facility under the MSLP, for borrowers with greater leverage, with increased risk sharing by lenders from 5 percent to 15 percent of the loan;
- Reduces the minimum loan size for the original two loan programs from $1,000,000 to $500,000;
- Expands businesses eligible to obtain loans from those with up to 10,000 employees or $2.5 billion in 2019 revenue to those with up to 15,000 employees or up to $5 billion in revenue;
- Adds as eligible lenders the federally regulated U.S. offices and subsidiaries of foreign banks and subsidiaries of U.S. banks;
- Loosens the requirements in the MSELF that lenders for underlying facilities be lenders independently eligible under the MSLP;
- Excludes from the MSLP the same enterprises that are excluded from the Treasury's Paycheck Protection Program under the CARES Act ("PPP") by reason of their lines of business;
- Applies the SBA's affiliation rules governing the PPP to the MSLP– the calculation of the applicant borrower's employee headcount includes the employees of its affiliates under the SBA's affiliation rules that govern the PPP (though it does not provide the relief to hotels and restaurants that the PPP affords);
- Uses "Adjusted EBITDA" instead of EBITDA as the key underwriting metric required in the MSLP, which is in considerably broader use in corporate financings; and
- Changes certification requirements for borrowers by requiring a 90-day viability certification and lenders by requiring an assessment of borrower financial condition but allowing for the lender's own expertise and standards and reliance on borrower certifications.

The Department of the Treasury will provide $75 billion for the new program using funds from the CARES Act. The combined size of the MSPLF, the MSNLF, and the MSELF will continue to be up to $600 billion, reducing the leverage of each program.

The Federal Reserve Bank of Boston will administer the MSLP for the Fed system. It will create a single special purpose vehicle ("SPV") common to all facilities that will purchase, under the MSNLF and the MSELF, 95 percent participations in qualifying loans made by eligible lenders, with the lenders retaining a 5 percent share in the loans, and under the MSPLF, 85 percent participations in qualifying loans made by eligible lenders, with the lenders retaining a 15 percent share in the loans.

The term sheet for the MSPLF can be found here. The updated term sheet for the MSNLF can be found here and the updated term sheet for the MSELF can be found here.

Also on April 30, 2020, the Fed provided a list of frequently asked questions and answers for lenders and borrowers under the MSLP, available here ("MSLP FAQs"). The MSLP FAQs contain significant information necessary to understanding the MSLP.

The MSLP has not yet launched and, as the Fed and Treasury further develop the terms and conditions of participation in the MSLP and provide guidance, there remain open questions regarding the MSLP, including questions as to whether the MSLP will be further expanded to include additional borrowers, the conditions of the loans, restrictions on borrowers, and lender and underwriting requirements. The Fed has stated that a start date for the program will be announced soon.

Principal changes to the MSLP

Expansions in the updated MSLP

1. **Larger businesses are eligible under the MSLP**. Businesses with up to 15,000 employees or up to $5 billion in 2019 annual revenue are now eligible, compared to the initial program terms, which were for companies with up to 10,000 employees and $2.5 billion in revenue. The minimum loan size for the two existing facilities was also reduced to $500,000 from $1 million.
2. **Lenders have greater flexibility in underwriting borrower loans**. Under all of the loan facilities, lenders will be able to apply their industry-specific expertise and underwriting standards to better measure a borrower's income.
3. **Borrowers with greater leverage can access the MSPLF, with lenders taking on increased risk**. Under the MSPLF, borrowers can take loans that, when added to the borrower's existing debt and available financing facilities, do not exceed six times a borrower's income, adjusted for interest payments, taxes, and depreciation and other appropriate adjustments ("Adjusted EBITDA"), with lenders retaining a 15 percent share in the loans. Under the initial loan programs under the MSLP, lenders would retain only a 5 percent share in the loans.
4. **Foreign banks with U.S. branches, agencies or holding companies are now eligible to participate as lenders.** U.S. branches or agencies of a foreign bank, U.S. intermediate holding companies of foreign banking organizations or a U.S. subsidiary of these entities are now included as eligible lenders under the MSLP. While preserving the limitation of the lenders for this program to federally regulated institutions, the revisions remove the requirement of domestic formation. Notably, eligible lenders still exclude unregulated or private direct lenders, and the details of assessing the credit standing of a borrower are applicable only for federally regulated institutions. The original description of the program limited lenders to U.S. domestic lenders regulated as depository institutions.

5. **More existing debt facilities are eligible under the MSELF.** The scope of existing facilities that can be a base for participating in the MSELF has been expanded in acknowledgement that many existing debt facilities for companies are held by lenders that would not qualify as eligible lenders under the MSLP. The original proposal required that lenders for baseline facilities for the MSELF be themselves eligible lenders. But since lenders have sold (and will be expected to continue to sell) their lending position in facilities to entities that may not be eligible lenders under the MSELF, many borrowers would have been excluded from the facility because of changes in the identity of their lenders. To remove that distortion, the new program changed the requirement of lender eligibility from all lenders to only the lenders that are essentially administering and leading the facility.

Limitations in the updated MSLP

1. **Exclusion of certain entities not eligible for SBA loans such as private equity and venture capital firms.** The exclusion of entities that are not eligible for SBA loans now means that borrowers, such as those deemed to be primarily in the business of investment speculation, including private equity funds and venture capital funds, cannot participate in the MSLP. This new limitation clarifies what may have been suspected—that the MSLP is intended to assist enterprises that are too large to fit within the range of the PPP or other SBA programs. Of course, larger enterprises have different funding needs and credit profiles, and the other terms of the MSLP reflect this difference. One impact not expressed in the April 30 release but clearer in the reading of the Fed's instructions is that "private equity firms" and "hedge funds" (and, apparently other entities whose primary business is investment or speculation) cannot be part of the MSLP program, and many enterprises sponsored or controlled by private equity will not fit into this program due to the application of the SBA's affiliation rules.

   As described in our previous CARES Act alerts, Congress tasked the Treasury with endeavoring to implement a mid-sized business lending program for businesses between 500 and 10,000 employees. Although the MSLP shares several similarities with the mid-sized business lending program, the MSLP term sheets do not directly tie its programs to the provisions in the CARES Act that describe the mid-sized business lending program or the associated borrower restrictions. Accordingly, we do not know whether Treasury will create yet another program that could be available to private equity and venture capital firms and their portfolio companies.

2. **The SBA's affiliation rules apply to borrowers under the MSLP when counting the number of employees to determine eligibility**. The calculation of an applicant's employee headcount for purposes of determining eligibility under the MSLP is governed by the SBA's affiliation rules that also govern the PPP. Under the affiliation rules, applicants must include both their employees and the employees of their affiliates, which include entities that control, are controlled by or under common control with the applicant. As a result, enterprises that are controlled by (or affiliated with) investors such as private equity funds or venture capital funds, will be required to add the employees of other businesses controlled by those controlling investors, and if they exceed the employee headcount caps, they would be excluded from the MSLP. Notably, the rules applicable to the MSLP do not include an

exception for hotels and restaurants that is provided under the PPP. The incorporation of affiliation rules under the SBA policies that govern the PPP will result in the aggregation of entities (sometimes very loosely related to an applicant) for purposes of calculating compliance with the maximum employee requirement, thereby increasing risks of mistaken certifications and more complicated loan administration. The aggregation might make the MSLP unavailable to entities that, although they have between 500 and 14,999 employees, are affiliated with broader or larger groups that would attribute other group members' employees to the entities seeking assistance under MSLP.

3. **Use of Adjusted EBITDA expands the pool of eligible borrowers but still excludes many companies**. Under the MSLP, the calculation of maximum leverage to determine a borrower's eligibility and loan size now uses "Adjusted EBITDA," a measure more commonly used in finance. By using a measure of Adjusted EBITDA, the MSLP brings under the program a metric that is more consistent with companies' other financings and financial obligations. In so doing, the updated MSLP provides the necessary qualification that the "adjustment" must be a consistent format or measure that comes out the requirements on the borrower or the general procedures of the lender. All the same, using Adjusted EBITDA still excludes large swaths of otherwise eligible borrowers (principally growth companies and similar companies that are not yet cash flow positive): if an applicant did not have positive cash flow from operations in 2019 (or inadequate cash flow to meet the EBITDA- cased leverage tests), it cannot access the MSLP. Many companies, including companies that are in their growth phases, are investing in research and technology development, product development, business development and hiring and other scaling activities. These activities can result in companies operating at a loss and/or having negative net cash flow in return for building long-term value. While these businesses may not be profitable and/or cash flow positive yet, the absence of free cash flow does not by itself mean that the company is not in good financial standing or creditworthy. The MSLP FAQs reference whether an alternative metric for EBITDA may be developed:

   "E.7. *Will an alternative underwriting metric be developed for asset-based borrowers?*

   > EBITDA is the key underwriting metric required for the MSNLF, MSPLF, and MSELF. The Federal Reserve recognizes that the credit risk of asset-based borrowers, as a matter of practice, is generally not evaluated on the basis of EBITDA. The Federal Reserve and the Treasury Department will be evaluating the feasibility of adjusting the loan eligibility metrics of the Program for such borrowers."

Alternative tests could provide appropriate loan sizes for such growth companies and similar companies.

4. **Changes to certification requirements – with borrowers certifying expected viability in 90 days and lenders using their own standards to assess their financial condition while relying on borrower**

representations - will alter the ways in which each will assess participation in the MSLP. Borrowers will now need to certify as to their expected viability in the upcoming 90 days, which creates a new area of assessment that a borrower will need to undertake, involving considerable review of future developments that may harm the borrower's operations. Lenders are expected to conduct an assessment of each potential borrower's financial condition at the time of the potential borrower's application, hence lenders continue to have an irreducible level of responsibility both to make credit analyses and to conduct compliance inquiries; however, lenders can now apply their own specific expertise and underwriting standards, and can rely to a greater extent on borrower certification of compliance.

New MSLP FAQs

The MSLP FAQs provide critical additional details regarding each of the MSNLF, MSPLF and MSELF programs.

Eligibility

Affiliation Rules and Number of Employees: SBA regulations apply to MSLP. Notably, with respect to how an applicant would count employees for determining eligibility, the MSLP FAQs confirm that the same SBA regulations that are applicable to the PPP regarding how to count employees also apply to borrowers under the MSLP (except that there is no special treatment for hotels and restaurants as there is under the PPP):

"E.3. How should a Business count employees for purposes of determining eligibility under the Program?

> To be an Eligible Borrower, a Business must meet at least one of the following two conditions: (a) the Business has 15,000 employees or fewer, or (b) the Business has 2019 annual revenues of $5 billion or less. To determine how many employees a Business has, it should follow the framework set out in the SBA's regulation at 13 CFR 121.106. As set out in 13 CFR 121.106, the Business should count as employees all full-time, part-time, seasonal, or otherwise employed persons, 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 Eligible Borrower and its affiliates for each pay period over the 12 months prior to the origination or upsizing of the Main Street loan."

While only one timeframe for determining headcount was included for the MSLP, the PPP also permitted borrowers to count employees using 2019 calendar numbers. In addition, with respect to how an applicant would analyze affiliates for purposes of employee and revenue criteria for eligibility, the MSLP FAQs again reference the SBA regulations to confirm that the same affiliation rules that apply to borrowers under the PPP also apply to applicants under the MSLP:

"E. 5. Which entities are a Business's affiliates for purposes of the employee and revenue eligibility criteria?

> To determine eligibility, a Business's employees and 2019 revenues are calculated by aggregating the employees and 2019 revenues of the Business itself with those of the Business's affiliated entities in accordance with the affiliation test set forth in 13 CFR 121.301(f) (1/1/2019 ed.)."

The effect of these affiliation rules is that venture capital and private equity portfolio companies that were ineligible under the PPP due to the affiliation rules would similarly be ineligible under the MSLP's similar affiliation rules.

Borrower Covenants

"Commercially Reasonable Efforts." With respect to borrower covenants, commenters had requested clarification as to what constitutes "reasonable efforts" by borrowers to maintain payroll during the loan. The Fed modified the covenant to require "*commercially* reasonable efforts" to maintain payroll and retain employees as distinct from the requirements under the PPP, and the MSLP FAQs provide guidance on the modified requirement:

"G.8. What constitutes "commercially reasonable efforts" to maintain payroll and retain employees?

> Eligible Borrowers should make commercially reasonable efforts to retain employees during the term of the MSNLF Loan, MSPLF Loan, or MSELF Upsized Tranche. Specifically, an Eligible 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 eligible to apply for Main Street loans."

Borrower Restrictions

Repayment or refinancing of existing debt. With respect to some of the restrictions on borrowers, commenters expressed concern that under the original MSLP term sheets, there was no ability to repay or refinance existing debt. The MSPLF allows for borrowers to refinance existing debt owed by the borrower to a lender other than the lender under the MSLP:

"*H.3. What restrictions are placed on the Eligible Borrower's ability to repay existing debt?*

> The restrictions on repaying debt vary across the various Main Street loans:

• MSNLF and MSELF: The Eligible 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 Eligible Borrower must also commit that it will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender.

• MSPLF: The Eligible 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 Eligible Borrower may, at the time of origination of the MSPLF Loan, refinance existing debt owed by the Eligible Borrower to a lender that is not the Eligible Lender** (emphasis added). The Eligible Borrower must also commit that it will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender.

These covenants would not prohibit an Eligible Borrower from undertaking any of the following actions during the term of the MSNLF Loan, MSPLF Loan, or MSELF Upsized Tranche:

• repaying a line of credit (including a credit card) in accordance with the Eligible Borrower's normal course of business usage for such line of credit;

• 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 MSNLF Loan, the MSPLF Loan, or the MSELF Upsized Tranche; or

• refinancing maturing debt."

Lender Restrictions

Restriction on Lenders' ability to cancel or reduce existing debt. Notwithstanding these changes reflected in the MSPLF, under the MSLP, during the term of the loan, borrowers must commit to refrain from voluntary repayment or prepayment of principal or interest on any debt until the MSLP loan is repaid in full, and lenders must commit that they will not request repayment until the MSLP loan is repaid in full, unless the debt or interest payment is mandatory and due or in the event of default and acceleration. Commenters had requested that borrowers and lenders have more flexibility with existing lines. The Fed responded in its MSLP FAQs:

"H.5. What restrictions are placed on an Eligible Lender's ability to cancel or reduce any existing committed lines of credit outstanding?

> An Eligible Lender must commit that it will not cancel or reduce any existing committed lines of credit outstanding to the Eligible Borrower, except in an event of default. This requirement does not prohibit the reduction or termination of 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."

Lender Requirements

Lenders may rely on borrower certifications. Commenters had requested that, to facilitate quick loan disbursement, lenders be able to rely on representations from borrowers regarding their eligibility, similar to requirements under the PPP. The Fed made changes to the MSLP, and noted the change in the MSLP FAQs, as follows:

"H.6. What is the Eligible Lender's role in verifying certifications and covenants?"

> An Eligible Lender is required to collect the required certifications and covenants from each Eligible Borrower at the time of origination or upsizing. **Eligible Lenders may rely on an Eligible Borrower's certifications and covenants, as well as any subsequent self-reporting by the Eligible Borrower**. **The Eligible Lender is not expected to independently verify the Eligible Borrower's certifications or actively monitor ongoing compliance with covenants required for Eligible Borrowers under the Main Street term sheets** (emphasis added)."

Questions regarding the MSLP Remain

The Fed's changes to the size and scope of, and eligibility for the MSLP will allow for more borrowers and lenders to participate in the MSLP and the FAQs provide further guidance on how the program will work. However, the MSLP is not yet in operation and, as the Fed and Treasury further develop the terms and conditions of participation in the MSLP, there remain open questions regarding the MSLP, including questions as to whether the MSLP would be further expanded to include additional borrowers, the conditions of the loans, restrictions on borrowers, and lender and underwriting requirements. Some of these questions include the following:

1. Will alternatives to adjusted EBITDA be added, broadening the MSLP to growth companies and similar companies?

2. Will greater flexibility in restructuring and reducing debt during the term of the MSLP loan be allowed to enable more borrowers to have access to, and more lenders to participate in the MSLP?
3. Will the capital distribution limitation be clarified to confirm it will not limit borrower liquidity events? and
4. Will the list of eligible lenders be expanded to non-bank lenders such as fintech lenders to enable more borrowers to access the MSLP?

While the MSLP is not yet operational, the Fed has stated that it and the Treasury may make adjustments to the terms and conditions of the MSLP and its facilities, and that any changes will be announced on the Fed's website, here.

The chart below summarizes the different loan facilities under the MSLP with the new or modified items underlined in bold.

Comparison of the revised MSNLF and MSELF and new MSPLF

	MSNLF (New Loans)	**<u>MSPLF</u> <u>(Priority Loans)</u>**	**MSELF (Expanded Loans)**
Eligible Lenders	• U.S. **<u>federally</u>** insured depository institutions (including a bank, savings association, or credit union), • U.S. bank holding companies, • U.S. savings and loan holding companies, • **<u>U.S. branches or agencies of a foreign bank,</u>** • **<u>U.S. intermediate holding companies of foreign banking organizations, or</u>** • **<u>a U.S. subsidiary of any of the foregoing.</u>**	**<u>Same as MSNLF</u>**	**<u>Same as MSNLF</u>**
Eligible Borrowers	• **<u>a Business;[i] established prior to March 13, 2020;</u>** • **<u>not an Ineligible Business;[ii]</u>** • has no more than **<u>15,000</u>** employees or revenues above **<u>$5</u>** billion in 2019; • was created or organized in the United States or under the laws of the United States and have significant operations, and has a majority of its employees based, in the United States; • is able to make the attestations described below;	**<u>Same as MSNLF</u>**	**<u>Same as MSNLF</u>**

	MSNLF (New Loans)	**MSPLF** **(Priority Loans)**	MSELF (Expanded Loans)
	• does not also participate in more than one of the MSPLF, MSNLF or the MSELF, as applicable;[iii] and • **has not received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act).[iv]**		
Security	**Secured or** Unsecured	**Same as MSNLF**	**Same as MSNLF**
Term	4 years	**Same as MSNLF**	**Same as MSNLF**
Minimum Loan Size	**$500,000**	**Same as MSNLF**	**$10,000,000**
Maximum Loan Size	Lesser of $25M or 4x 2019 **Adjusted** EBITDA	**Lesser of $25M or 6x 2019 Adjusted EBITDA**	Lesser of $200M, 3**5**% of outstanding and undrawn available debt, or 6x 2019 **Adjusted** EBITDA
Risk Retention	5% Risk shared on a pari passu basis	**15%** Risk shared on a pari passu basis	**Same as MSNLF**
Loan Participations	**The lender must retain its 5% of the Eligible Loan until it matures or the SPV sells all of its participation, whichever comes first.**	**The lender must retain its 15% of the Eligible Loan until it matures or the SPV sells all of its participation, whichever comes first.**	**The lender must be one of the lenders that holds an interest in the underlying loan at the date of upsizing. The lender must retain its 5% portion of the upsized tranche of the Eligible Loan until the upsized tranche of the Eligible Loan matures or the SPV sells all of its 95% participation,**

	MSNLF (New Loans)	MSPLF (Priority Loans)	MSELF (Expanded Loans)
			whichever comes first. The lender must also retain its interest in the entire underlying Eligible Loan until the underlying Eligible Loan matures, the upsized tranche of the Eligible Loan matures, or the SPV sells all of its 95% participation, whichever comes first. Any collateral securing the Eligible Loan (at the time of upsizing or on any subsequent date) must secure the upsized tranche on a pro rata basis
Payment (year one deferred for all; unpaid interest will be capitalized)	Years 2-4: 33.33% each year	Years 2-4: 15%, 15%, 70%	Same as MSPLF
Interest Rate	LIBOR (1 or 3 month) + 3%	Same as MSNLF	Same as MSNLF
Seniority	The loan is not, 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.	At the time of origination and at all times the Eligible Loan is outstanding, the Eligible Loan is senior to or pari passu with, in terms of priority and security, the Borrower's other loans or debt instruments, other than mortgage debt.	At the time of upsizing and at all times the upsized tranche is outstanding, the upsized tranche is senior to or pari passu with, in terms of priority and security, the Borrower's other loans or debt instruments, other than mortgage debt.

	MSNLF (New Loans)	MSPLF (Priority Loans)	MSELF (Expanded Loans)
Prepayment	Permitted without penalty	**Same as MSLNF**	Same as MSLNF
Loan Classification	**If the Borrower had other loans outstanding with the lender as of December 31, 2019, such loans must have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system on that date.**	**Same as MSLNF**	**The 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.**
Required Borrower Certifications and Covenants			
	• Commit to refrain from voluntary payment or prepayment of principal **or interest** on **any** debt until the loan is repaid in full, unless the debt or interest payment is mandatory **and due**.	• Commit to refrain from voluntary payment or prepayment of principal or interest on any debt until the 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 loan, refinance existing debt owed by the borrower to a lender that is not the lender under the MSPLF.**	• Commit to refrain from voluntary payment or prepayment of principal **or interest** on **any** debt until the **upsized tranche** is repaid in full, unless the debt or interest payment is mandatory **and due**.
	• Commit to not seek to cancel or reduce any of borrower's committed lines of credit with the lender under the MSLP or any other lender.	• **Same as MSNLF**	• **Same as MSNLF**

	MSNLF (New Loans)	MSPLF (Priority Loans)	MSELF (Expanded Loans)
	• **The Borrower must certify that borrower 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.**	• Same as MSNLF	• Same as MSNLF
	• Borrower must commit that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under Section 4003(c)(3)(A)(ii) of the CARES Act,(i) **except that an S corporation or other tax pass-through entity that is an Borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings**.	• Same as MSNLF	• Same as MSNLF
	• Borrower must certify that it is eligible to participate in the facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act	• **Same as MSNLF**	**Same as MSNLF**
Retaining Employees	• Borrower should make **commercially** reasonable efforts to maintain its payroll and retain its employees during the time the loan is outstanding.	• **Same as MSNLF**	• Borrower should make **commercially reasonable efforts** to maintain its payroll and retain its employees during the time the upsized tranche of the loan is outstanding.

	MSNLF (New Loans)	MSPLF (Priority Loans)	MSELF (Expanded Loans)
Required Lender Certifications and Covenants[ii]			
	• The lender must commit that **it will not request that the Borrower** repay debt **extended** by the lender to the borrower, **or pay interest on such outstanding obligations, until the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration**.	• **Same as MSNLF**	• The lender must commit that **it will not request that the Borrower** repay debt **extended** by the lender to the Borrower, or **pay interest on such outstanding obligations, until the upsized tranche of the Eligible Loan is repaid in full**, **unless the debt or interest payment is mandatory and due, or in the case of default and acceleration**.
	• The lender must commit that it will not cancel or reduce any existing committed lines of credit to the Borrower, **except in an event of default**.	• Same as MSNLF	• Same as MSNLF
	• The **lender must certify that the methodology used for calculating the Borrower's adjusted 2019 EBITDA for the leverage requirement is the methodology it has previously used for adjusting EBITDA when extending credit to the borrower or similarly situated borrowers on or before April 24, 2020.**	• Same as MSNLF	• **The lender must certify that the methodology used for calculating the Borrower's adjusted 2019 EBITDA for the leverage requirement is the methodology** it previously used for adjusting EBITDA when originating or amending the Eligible Loan on or before April

	MSNLF (New Loans)	<u>MSPLF</u> <u>(Priority Loans)</u>	MSELF (Expanded Loans)
			24, 2020.
	• The lender must certify that it is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act.	• Same as MSNLF	• Same as MSNLF
Transaction Fee	• Lender will pay the SPV a transaction fee of 100 basis points of the principal amount of the Eligible Loan at the time of origination. The lender may require the Borrower to pay this fee.	• <u>**Same as MSNLF**</u>	• <u>**Lender will pay the SPV a transaction fee of 75 basis points of the principal amount of the upsized tranche of the Eligible Loan at the time of upsizing. The lender may require the Borrower to pay this fee.**</u>
Loan Origination/Upsizing and Servicing Fee	• Borrower will pay lender an origination fee of up to 100 basis points of the principal amount of the Eligible Loan <u>**at the time of origination**</u>. The SPV will pay lender 25 basis points of the principal amount of its participation in the Eligible Loan per annum for loan servicing.	• <u>**Same as MSNLF**</u>	• Borrower will pay lender <u>**an origination**</u> fee of up to 75 basis points of the principal amount of the upsized tranche of the Loan at the time of upsizing. • The SPV will pay lender 25 basis points of the principal amount of its participation in the upsized tranche of the Eligible Loan per annum for loan servicing.
Interplay with other programs	• Borrowers may obtain both PPP loans and MSLP loans, but may	• <u>**Same as MSNLF**</u>	• Same as MSNLF

	MSNLF (New Loans)	MSPLF (Priority Loans)	MSELF (Expanded Loans)
	borrow under only one of the MSLP facilities.		

Notes:

(i) Pursuant to section 4003(c)(3)(A)(ii) of the CARES Act, the borrower under the MSLP is required to agree to the following restrictions:

(i) *No Stock Repurchases*. Until the date 12 months after the date on which the loan is no longer outstanding, not to repurchase an equity security that is listed on a national securities exchange of such borrower or any parent company of the borrower, except to the extent required under a contractual obligation that is in effect as of the date of enactment of the CARES Act.

(ii) *No Dividends or Distributions*. Until the date 12 months after the date on which the loan is no longer outstanding, not to pay dividends or make other capital distributions with respect to the common stock of the borrower.

(iii) *Limitation on Compensation*. Until the date 12 months after the date on which the loan is no longer outstanding:

  a. no officer or employee of the borrower whose total compensation (consisting of salary, bonuses, awards of stock, and other financial benefits) exceeded $425,000 in calendar year 2019 (other than an employee whose compensation is determined through a collective bargaining agreement entered into prior to March 1, 2020):

    i. will receive total compensation from the borrower in any consecutive 12-month period which exceeds the total compensation received by the officer or employee from the borrower in calendar year 2019; or

    ii. will receive severance pay or other benefits upon termination of employment from the borrower which exceeds twice the maximum total compensation received by the officer or employee from the borrower in calendar year 2019; and

(iv) no officer or employee of the borrower whose total compensation exceeded $3,000,000 in calendar year 2019 may receive during any 12 consecutive months total compensation in excess of the sum of: (A) $3,000,000; and (B) 50 percent of the excess over $3,000,000 of the total compensation received by the officer or employee from the borrower in calendar year 2019.

(ii) Lenders are expected to conduct an assessment of each potential borrower's financial condition at the time of the potential borrower's application

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[i] For purposes of the MSPLF, a Business is an entity that is organized for profit as a partnership; a limited liability company; a corporation; an association; a trust; a cooperative; a joint venture with no more than 49 percent participation by foreign business entities; or a tribal business concern as defined in 15 U.S.C. § 657a(b)(2)(C), except that "small business concern" in that paragraph should be replaced with "Business" as defined herein. Other forms of organization may be considered for inclusion as a Business under the MSPLF at the discretion of the Federal Reserve.

[ii] For purposes of the Facility, an Ineligible Business is a type of business listed in 13 CFR 120.110(b)-(j) and (m)-(s), as modified by regulations implementing the Paycheck Protection Program established by section 1102 of the CARES Act on or before April 24, 2020. The application of these restrictions to the Facility may be further modified at the discretion of the Fed.

[iii] No borrower under either of these facilities can participate in the Fed's Primary Market Corporate Credit Facility or its Secondary Market Corporate Credit Facility.

[iv] For the avoidance of doubt, the Fed has stated that Businesses that have received PPP loans are permitted to borrow under the MSPLF, provided that they are Eligible Borrowers.

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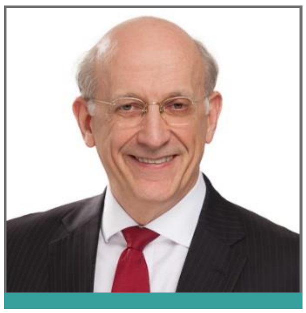

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