The Federal Reserve continues to release additional guidance relating to the Main Street Lending Program (the “MSLP”) originally announced in April 2020. Though the program is still largely in the setup phase, many community banks are contemplating whether to participate. This summary is intended to provide an overview of the program so that banks can determine whether the terms of the program merit some level of participation by the bank. As this document is intended to serve only as an initial guide, we have included summary terms and links to more detailed information in an appendix. In particular, we urge you to pay close attention to the comprehensive (66 page) FAQ document updated most recently on June 20 that is a great place to start learning the particulars of the MSLP.

MSLP Overview

There are three lending facilities within the Main Street Lending Program—loans can be made under the Main Street New Loan Facility (“New Loans”), the Main Street Priority Loan Facility (“Priority Loans”) or the Main Street Expanded Loan Facility (“Expanded Loans”). Expanded Loans are available for lenders to add an additional loan tranche to existing debt owed by a borrower to the lender. New and Priority Loans are completely new loans that banks can make to existing or new borrowers satisfying the eligibility requirements.

The Federal Reserve Bank of Boston has formed a special purpose vehicle (an “SPV”) that will purchase a 95% participation interest in MSLP loans pursuant to the terms of a participation agreement. There are two options for lenders to sell participations to the SPV:

- Under option 1, lenders fund an MSLP-compliant loan and then submit the loan to the SPV for approval within 14 days of funding. If the SPV approves the loan, the SPV will then purchase the participation. Lenders are allowed to close MSLP-compliant loans now and submit to the SPV within 14 days after the SPV begins purchasing participation interests. This option can be conceptually compared to delegated approvals of SBA loans by preferred lenders.

- Under option 2, which we expect to be the more common path, lenders will enter into a loan agreement contingent on receiving a binding commitment from the SPV to purchase the participation interest, submit the loan to the SPV for approval, then fund the loan within three business days after receiving such binding commitment. The SPV will purchase the participation interest within one business day of being notified (via the MSLP lending portal) that the loan was funded. Since these loans will be sizable, option 2 will generally allow national banks to avoid lending limit issues. State banks will need to consider the specific laws applicable in their state.

Lenders are generally required to retain their 5% interest in the loan until full loan repayment or until the SPV sells its 95% interest. It is unclear if the SPV will actively seek to sell its interests or whether any market will develop. For Expanded Loans, the lender must also retain the original loan.
The program is currently set to end on September 30, 2020 and the SPV’s purchases (the 95% portion) are capped at $600 billion, allowing for approximately $632 billion of loans.

**MSLP Terms**

The terms of MSLP loans are quite complex. As a result, rather than summarize those terms within the body of this document, we have attached an appendix that provides summary information regarding these terms and eligibility requirements.

At a high level, MSLP is designed to provide support to businesses too large and complex to benefit significantly from the Paycheck Protection Program (PPP). Through its various facilities, MSLP loans provide long-term, low-cost financing to these companies to allow them to work through the problems imposed by the COVID-related shutdown without the need to resort to a sale, recapitalization, or bankruptcy. A particular benefit of MSLP loans is the one-year payment deferral at origination of the loan. In exchange for this assistance, borrowers agree to significant financial restrictions, including restrictions on dividends, share buybacks, executive compensation, and prepayment of other debt.

We believe the complexity of these loans and the MSLP in general is a key consideration for community banks. Because both are COVID-crisis programs, many bankers are naturally inclined to attempt to compare the MSLP to PPP. Notwithstanding the ever-changing nature of PPP, at its core, it was a simple, commodity loan product designed to be deployed quickly and repetitively. The MSLP is a more tailored tool, requiring careful attention even though it has a standardized set of terms. We agree with the comments made by Federal Reserve Bank of Boston President Eric Rosengren to American Banker indicating that the MSLP is a true Commercial and Industrial Loan – banks that do not traditionally make such loans should likely approach the MSLP with caution given its complexities.

For that reason, we believe the MSLP should be viewed as a special-purpose tool for most community banks and their borrowers. To justify the complexity of the documentation and terms, a credit will need to be of a relatively significant size (we believe it would be difficult to justify originating a loan as small as $250,000 under the MSLP). At the same time, to justify the significant restrictions placed upon borrower’s financing activities, a borrower will need to face a situation that is relatively dire. Therefore, we view the highest and best use of MSLP for community banks being as a tool to work out significant and problematic commercial credits. While a lender and borrower might not be inclined to accept the terms and restrictions of an MSLP loan under normal circumstances, working out of a difficult situation might justify the use of an MSLP loan. In light of the lending limit benefits of the participation structure, MSLP may also provide an opportunity for banks to attract larger lending relationships and to expand existing lending relationships that may otherwise be limited due to lending limit capacity.

**Should community banks register to participate in the MSLP?**

We believe that larger community banks that have credit relationships with sizable businesses should almost certainly register for participation in the MSLP. Smaller community banks may also find themselves facing circumstances in which MSLP is an attractive option, and of course registration for the program will be a prerequisite to extending credit. Therefore, we believe registration is prudent for many community banks at this time, even if there is no current expectation of extending credit under the program.
How should community banks prepare their bankers with respect to the MSLP?

Given what we view as the specialized nature of the MSLP, we do not believe widespread education and attention to the program is called for as it was for PPP. Instead, banks should appoint an informal MSLP point person to track developments and stay informed regarding the program. This person should likely serve in a function that will receive early notification of significant commercial credits in order to provide insight into the program as a part of evaluation of the credit relationship. In addition, banks should identify the appropriate outside advisory team to assist in the documentation and origination of MSLP loans, such that the bank can execute as quickly as feasible with respect to originating an MSLP loan.
APPENDIX A
Summary Terms of the Main Street Lending Facility

Who is an “Eligible Borrower”? 

To be eligible for a loan under any of the Main Street Facilities, a borrower must meet the following criteria:

- Must have been established prior to March 13, 2020.
- Must have been established prior to March 13, 2020.
- Cannot be ineligible under existing SBA rules (e.g. banks, passive real estate, investment funds) (note that non-profits are currently ineligible, but the Federal Reserve plans a separate facility for non-profits).
- Together with affiliates (as determined by SBA rules, which may include private equity-owned businesses), must have either:
  - 15,000 employees or fewer; or
  - 2019 annual revenue of $5 billion or less.
- Must be a U.S. business, with significant operations and a majority of employees based in the U.S.
- Including any affiliates, may not have:
  - Received a loan under any other MSLP facility (although a borrower may receive multiple loans under a single facility, subject to the maximums for each facility);
  - Received “specific support” under the CARES Act (e.g. airlines, air cargo, businesses critical to national security); or
  - Participated in the Primary Market Corporate Credit Facility (the “PMCCF”).

Although a major purpose of the Main Street Lending Program is to benefit businesses too large to participate in PPP, participation in the PPP does not prevent a borrower from obtaining a MSLP loan, nor does PPP participation affect the loan size, use of proceeds or other terms of the Main Street loan.

Banks are expected to conduct their standard loan underwriting, including evaluation of creditworthiness. This is in contrast to PPP, where lenders underwriting obligations were much more limited.

Borrowers are required to execute a set of certifications at closing, which require that the borrower certify as to its eligibility under the above criteria and to make the following additional certifications to the SPV:

- The borrower “is unable to secure adequate credit accommodations from other banking institutions,” which the guidance clarifies: “does not necessarily mean that no other credit is available for the Borrower’s purposes. Rather, the Borrower can 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.”
- The borrower is not insolvent and has the ability to meet its financial obligations for 90 days.
- The borrower has provided financial records to the lender.
- The borrower has no conflicts of interest (e.g. no 20% owner is a senior government official or close family).
Loan Terms

- The following terms apply to all MSLP loans:
  - Five-year term.
  - Not forgivable (in contrast to PPP loans).
  - Floating interest rate equal to LIBOR (one or three month) +300 basis points.
  - Deferral of all payments for the first year; year one interest is capitalized and included in required principal repayment.
  - Principal (including capitalized interest) will be due as follows:
    - 15% on the third anniversary of the loan;
    - 15% on the fourth anniversary of the loan; and
    - 70% at maturity on the fifth anniversary of the loan.
- Loans may be secured or unsecured (although they are required to be secured in certain circumstances).
- No prepayment penalty.
- SPV will pay lender 25 bps servicing fee on SPV’s portion of the loan (pursuant to a servicing agreement that lenders will execute).

Below is a matrix summarizing the most material terms that vary across the three MSLP facilities:

|                               | New Loans                  | Priority Loans              | Expanded Loans              |
|                               | Minimum loan size           | Maximum loan size           | Subordination/Seniority     |
|                               | $250,000                   | Lesser of $35 million or 4x EBITDA (including existing debt) | May not be contractually subordinated |
|                               | $250,000                   | Lesser of $50 million or 6x EBITDA (including existing debt) | Senior or pari passu with all other debt (except mortgage debt) |
|                               | $10 million                | Lesser of $300 million or 6x EBITDA (including existing debt) | Senior or pari passu with all other debt (except mortgage debt) |
| Use of Proceeds               | May not be used to refinance existing debt | May be used to refinance existing debt, but not if owed to the same lender | May not be used to refinance existing debt |
| Security                      | Lender may choose unsecured or secured in all circumstances | Lender may choose unsecured or secured; must be secured if there is existing non-mortgage secured debt | Lender may choose unsecured or secured; must be secured if there is existing non-mortgage secured debt; must be pari passu with debt being upsized |
| Transaction Fee (payable to SPV; lender may collect from borrower) | 100 bps | 100 bps | 75 bps |
| Origination Fee (optional; lender may collect from borrower and retain) | 100 bps | 100 bps | 75 bps |
Additional Requirements for Expanded Loans:

- Existing debt being upsized must:
  » be rated pass as of December 31, 2019 (or, if originated in 2020, be internally rated pass);
  » have been originated on or before April 24, 2020;
  » have remaining maturity of at least 18 months (which may be addressed by an extension at closing of the Expanded Loan); and
  » must be held by an eligible lender, but the eligible lender need not have originated.
- Existing loan documents must be amended to comply with the terms of the Expanded Loans.

Loan Covenants

The MSLP instructions contemplate that the loans will be primarily documented by each lender’s own loan or credit agreements. However, the MSLP FAQs also include three appendices of covenants that must be reflected in the loan or credit agreement or otherwise in the loan documentation. The most significant covenants are as follows:

- The borrower is prohibited from paying any dividends or capital distributions.
  » S corporations and other pass through entities are allowed to distribute an amount reasonably required to cover owners’ tax obligations; and
  » Applies while loan is outstanding and for one year after repayment in full.
- No stock buybacks are allowed for public company borrowers (applies for one year after repayment in full).
- The borrower may not make any voluntary prepayment of other debt while the loan is outstanding (subject to reasonable exclusions, including making required debt service payments, repaying lines of credit, incurring and paying new debt in the normal course if secured by newly acquired property, and refinancing existing debt to a non-eligible lender).
- Executive compensation limitations:
  » Apply while loan is outstanding and for one year after repayment in full;
  » Officer/employee making $450,000-$3 million in 2019 may not make more than the 2019 amount;
  » Officer/employee making more than $3 million is limited to $3 million plus 50% of the excess over $3 million;
  » Officer/employee may not receive severance in excess of two times the above amounts; and
  » This is measured as “total compensation,” which is defined broadly to include salary, bonus, stock awards, etc.
- “Commercially reasonable” efforts to retain employees during the term of the loan.
- Priority and security covenants, including a negative pledge, for Priority and Enhanced Loans.
- Mandatory prepayment upon material breach.
- Cross-default and cross-acceleration.
- Financial reporting covenants.
Lender Certifications and Covenants

The Federal Reserve has posted documents specific to each of the three facilities containing lender certifications and covenants, which the lender is required to provide with respect to each loan submitted for participation.

The most material of these certifications are as follows:

- The lender has performed due inquiry with respect to the formation of the borrower.
- The lender will inform the SPV upon becoming aware of any material breach by the borrower (but is not required to monitor compliance).
- The loan complies with the terms of the applicable facility.
- For Priority and Enhanced Loans, this includes representations about existing debt to determine whether the loan may be unsecured or must be secured; and
- For Enhanced Loans, this includes representations about the existing debt.
- The lender will retain its 5% interest as required.
- All loans from the lender to the borrower were rated “pass” as of December 31, 2019.
- Lender will not request that the borrower repay any other debt (except as required by the existing loan documents) until the MSLP loan is repaid in full.
- Lender will not cancel or reduce any outstanding committed lines of credit to the borrower (except upon a default).
- Lender must certify that the EBITDA methodology used is the same as the methodology previously used for credit extensions to the borrower (or, for new borrowers, as that methodology used for similarly situated borrowers).
- Lender is eligible to participate and has no conflicts of interest (e.g. no 20% owner is a senior government official or close family).
APPENDIX B

Links for Helpful Information

Additional information about the Main Street Lending Program is available at

- Program FAQs (revised through June 20): https://www.bostonfed.org/mslp-faqs (PDF).