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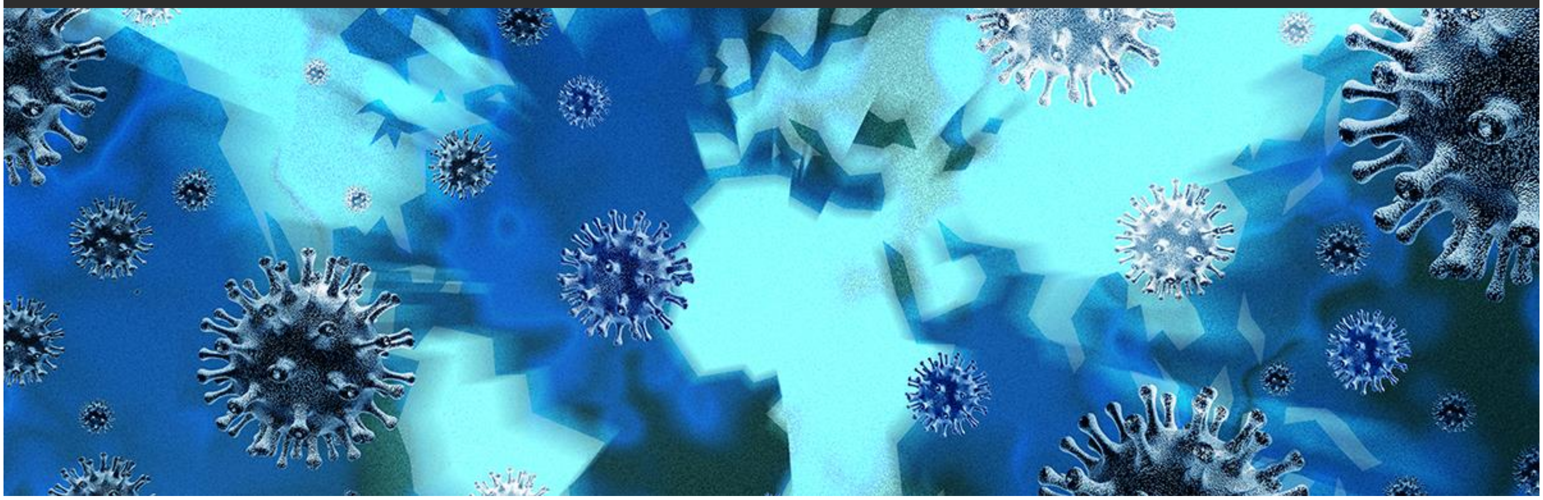
Alert | Health Emergency Preparedness Task Force: COVID-19 Economic Stimulus



May 4, 2020

COVID-19 Economic Stimulus: Federal Reserve Expands Scope and Eligibility for Its Main Street Lending Program

On April 30, 2020, the Board of Governors of the Federal Reserve System (the Federal Reserve) announced changes to its Main Street Lending Program (MSLP) in response to feedback from the public with respect to its initial term sheets published on April 9, 2020. We described the terms of the prior iteration of the MSLP in a previous GT Alert. The MSLP is intended to provide credit support to small- and medium-sized businesses during the current economic crisis caused by the COVID-19 pandemic. The Federal Reserve Bank of Boston will implement the program by creating a special purpose vehicle (SPV) to purchase up to $600 billion of participations in eligible loans made to eligible borrowers originated by eligible lenders. The U.S. Department of the Treasury will provide $75 billion for the program using funds authorized to Treasury by Title IV of the CARES Act. View MSLP Frequently Asked Questions, released April 30. The Federal Reserve stated that a start date for the MSLP will be announced "soon."

Public comments received by the Federal Reserve indicated that the program should be broader and accessible to more businesses. In response, on April 30 the Federal Reserve announced several changes to the program that include lowering the minimum loan size to $500,000, expanding borrower eligibility, creating a third loan facility option, "Priority Loans," in addition to making refinements to the New Loan

Facility and the Expanded Loan Facility, and allowing for the use of adjusted EBITDA in connection with determining the leverage ratio for purposes of calculating the maximum loan amount.[1]

The terms of the three loan facilities are summarized in the below chart:

	New Loan Program	**Priority Loan Program**	**Expanded Loan Program**
Interest Rate (Deferred and Capitalized for Year One)	LIBOR (1 month or 3 month) + 3.00%	LIBOR (1 month or 3 month) + 3.00%	LIBOR (1 month or 3 month) + 3.00%
Maturity	4 Years	4 Years	4 Years
De Novo Loan?	Yes	Yes	No, upsizes existing loan made by an FDIC-insured bank prior to April 24, 2020, with remaining maturity of 18 months or more.
Collateral	May be secured or unsecured.	May be secured or unsecured.	May be secured or unsecured; however, if the underlying loan is secured, then the Expanded Loan must be secured on a pro rata basis.
Seniority	Not contractually subordinated in terms of priority to any of the borrower's other loans or debt instruments.	Senior to, or *pari passu* with, in terms of priority and security, the borrower's other loans or debt instruments, other than mortgage debt.	Senior to, or *pari passu* with, in terms of priority and security, the borrower's other loans or debt instruments, other than mortgage debt.
Minimum Loan Amount	$500,000	$500,000	$10 million
Maximum Loan Amount[2]	Lesser of (i) $25 million or (ii) 4.00x total leverage (i.e., the ratio of total debt to adjusted 2019 EBITDA).	Lesser of (i) $25 million or (ii) 6.00x total leverage (i.e., the ratio of total debt to adjusted 2019 EBITDA).	Lesser of (i) $200 million, (ii) 35% of existing outstanding and undrawn available debt that is *pari passu* in priority and equivalent in secured status (whether secured or unsecured) or (iii) 6.00x total leverage (i.e., the ratio of total debt to adjusted 2019 EBITDA).

[1] *See* redlined changes to the Main Street New Loan Facility Term Sheet and redlined changes to the Main Street Expanded Loan Facility Term Sheet, April 9, 2020, compared with April 30, 2020.
[2] The calculation of "existing outstanding and undrawn available debt" (i.e., total debt) includes all amounts borrowed under any loan facility, including unsecured or secured loans from any bank, non-bank financial institution, or private lender, as well as any publicly issued bonds or private placement facilities. It also includes all unused commitments under any loan facility, excluding (1) any undrawn commitment that serves as a backup line for commercial paper issuance, (2) any undrawn commitment that is used to finance receivables (including seasonal financing of inventory), (3) any undrawn commitment that cannot be drawn without

	New Loan Program	Priority Loan Program	Expanded Loan Program
EBITDA Methodology (Subject to Lender Certification)	Same as used by the lender when extending other credit to the same borrower or "similarly situated" borrowers on or before April 24, 2020.	Same as used by the lender when extending other credit to the same borrower or "similarly situated" borrowers on or before April 24, 2020.	Same as used by the lender on or before April 24, 2020, with respect to the existing loan being upsized.
Type	Term Loan	Term Loan	Term Loan (as an upsized tranche to an existing term loan or revolver)
Amortization (Deferred for Year One for All)	Year 2: 33.33% Year 3: 33.33% Year 4: 33.33% at maturity	Year 2: 15% Year 3: 15% Year 4: 70% at maturity	Year 2: 15% Year 3: 15% Year 4: 70% at maturity
Refinancing Allowed:	No	At origination only, with respect to existing debt owed by the eligible borrower to a lender that is not the eligible lender.	No
Payments of Other Debt	Only with respect to "mandatory and due" amounts.	Only with respect to "mandatory and due" amounts.	Only with respect to "mandatory and due" amounts.
Transaction Fee to Fed SPV (From Lender to Fed SPV, but the Cost May Be Passed on to Borrower)	1.00%	1.00%	0.75%
Origination Fee (from Borrower to Lender)	Up to 1.00%	Up to 1.00%	Up to 0.75%
Lender's Risk Retention	5%	15%	5%

The Main Street Priority Loan Program. Under the new Priority Loan program, lenders will retain a 15% share of Priority Loans; the SPV will purchase an 85% participation interest in each lender-approved Priority Loan. With the 15% credit risk retention required under the Priority Loan program, Lenders retain more credit risk than they do under the other two loan facilities in which lenders retain only 5%.

In addition, at the time of origination of a Priority Loan, the borrower may use the proceeds therefrom to refinance its existing debt. All three loan facilities have the same borrower and lender eligibility criteria and the same maturity, interest rate, deferral of principal and interest for one year, and ability of the borrower to prepay principal and interest without penalty. The full terms of the Priority Loan program are detailed in its term sheet. Under the Priority Loan program, like the New Loan program, the lender will

additional collateral, (4) any undrawn commitment that is no longer available due to change in circumstance. Existing outstanding and undrawn available debt should be calculated as of the date of the loan application.

pay the SPV a transaction fee of 100 basis points of the principal amount of the loan.[3] The lender may require the borrower to pay an origination fee of up to the amount of the transaction fee.

Borrowers. The Federal Reserve also expanded the class of borrowers eligible for MSLP loans. To be eligible for the MSLP, a borrower may have up to:

- 15,000 employees (increased from the previous cap of 10,000); or
- $5 billion in 2019 annual revenue (increased from the previous cap of $2.5 billion).

On the other hand, the Federal Reserve included requirements that an eligible borrower would not include an “Ineligible Business” under the SBA rules, and in addition, that the employees and revenues of the “Business” must be aggregated with the employees and revenues of its affiliated entities in determining the eligibility of the borrower.[4] Importantly, on April 24, 2020, the SBA’s Interim Final Rule clarified that “[h]edge funds and private equity firms are primarily engaged in investment or speculation, and such businesses are therefore ineligible….” Potential borrowers should consult the entire list of ineligible businesses, as modified by subsequent guidance, to ensure their eligibility for the MSLP. In addition, unlike the popular Paycheck Protection Program, nonprofits are ineligible for the MSLP.

An eligible borrower may only use one of the three MSLP options but may take out more than one loan under its chosen option, so long as the sum of the proceeds does not exceed (i) $25 million for the New Loan and Priority Loan facilities or (ii) $200 million in upsized tranches for the Expanded Loan facility. A business may receive loans under both the MSLP and the Paycheck Protection Program, but the business is ineligible for the MSLP if it has received specific industry support under Title IV of the CARES Act or the Primary Market Corporate Credit Facility.

In addition, an eligible borrower must certify that it has reason to believe that, as of the date of loan origination, it has the ability to meet its financial obligations for the next 90 days and does not expect to file bankruptcy. This solvency certification requirement is more stringent than the one that appeared when the MSLP was initially announced on April 9, which only required that the eligible borrower certify that it met the EBITDA-based leverage condition for its requested loan amount. Furthermore, the borrower certification with respect to refraining from repaying any other debt until the MSLP loan has been repaid in full has been relaxed to allow for principal and interest payments with respect to other debt that are “mandatory and due.” Other features include the following:

- If an eligible borrower had other loans outstanding with its lender as of Dec. 31, 2019, the lender must have given the borrower’s outstanding loans an internal risk rating of “pass” or its equivalent.
- A borrower who participates in the MSLP should make “commercially reasonable efforts” to maintain its payroll and retain its employees, “in light of its capacities, the economic environment, its available resources, and the business need for labor” while the MSLP loan is outstanding.
- A new requirement that a borrower must have been in existence before March 13, 2020, to be eligible for any of the MSLP programs.

[3] The transaction and origination fees for the Expanded Loan facility are 75 basis points of the principal amount of the upsized tranche of the eligible loan.
[4] In order to determine the applicable number of employees, Borrowers 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.

Eligible Lenders. The category of eligible lenders has been expanded to include U.S. branches and agencies of non-U.S. banks, intermediate U.S. holding companies of non-U.S. banking organizations, and the non-bank subsidiaries of U.S. bank holding companies or intermediate U.S. holding companies of non-U.S. banking organizations.

In addition, eligible lenders may now assign their 5% or 15% retained risk in any MSLP loan any time after the earlier of (i) the date the SPV sells all of its participation in a loan and (ii) the maturity date of the loan. This relaxation on assignability was accommodated to encourage Eligible lenders to underwrite loans to eligible borrowers.

An eligible lender is expected to collect the required certifications and covenants from each eligible borrower at the time of origination of the eligible loan. To shield lenders from lender liability claims, the Federal Reserve has stated that eligible lenders may rely on an eligible borrower's certifications and covenants, as well as any subsequent self-reporting by the eligible borrower.

In addition, an eligible lender must covenant not to request that the borrower repay debt or pay interest on outstanding obligations extended by the lender until the MSLP loan is repaid in full, unless the debt or interest is mandatory and due or in the case of default. The lender may not cancel or reduce any existing lines of credit to the borrower except in the case of default.

Other Changes. The minimum loan amount for the New Loan facility was reduced from $1,000,000 to $500,000. The minimum amount for the Priority Loan facility is also $500,000. This change is intended to make the program more accessible to smaller businesses.

Furthermore, additional guidance has been provided with respect to the calculation of the maximum loan amount and the constituent definitions of "existing outstanding and undrawn available debt" and the methodology with respect to the calculation of EBITDA (which is now allowed on an adjusted basis, instead of on a non-adjusted basis as it was presented in the prior iteration of the MSLP term sheets).

Significantly, the interest rates will now be based on LIBOR instead of SOFR, in response to comments that lenders and borrowers would have trouble switching to SOFR in the midst of the pandemic. The Federal Reserve encourages lenders and borrowers to include fallback language in their loan documents, depending on the term of the loans, because borrowers cannot rely on the continued publication of LIBOR after December 31, 2021.

For more information and updates on the developing situation, visit GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019 or GT's COVID-19 Economic Stimulus Team.

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