

COVID-19 – The Main Street Lending Program: Federal Reserve Adjusts Program to Better Target Smaller Businesses

November 3, 2020

The Main Street Lending Program (“MSLP” or the “Program”) is a financial assistance program established by the Federal Reserve System to support small and medium-sized businesses affected by the COVID-19 pandemic. The Program authorizes eligible lenders to originate up to \$600 billion in eligible loans through three separate facilities - the Main Street New Loan Facility (the “New Facility”), the Main Street Priority Loan Facility (the “Priority Facility”), and the Main Street Expanded Loan Facility (the “Expanded Facility”). A special purpose vehicle (“SPV”) formed by the Federal Reserve will purchase 95% participations in these loans. Please consult [our previous Client Alerts](#) for additional details on the Program terms previously announced.

On October 30th, the Federal Reserve announced some adjustments to the terms of the Program to better target support to smaller businesses, as discussed below.

Minimum Loan Size

The minimum loan size for all three MSLP facility options available to for-profit and non-profit borrowers has been reduced from \$250,000 to \$100,000.

Fees

The MSLP fees have been adjusted to encourage the provision of smaller loans, as follows:

Fee	Prior Rule (still applies to Loans where principal amount is at least \$250,000)	New Rule for Loans of Less than \$250,000
SPV Facility Fee	Lender must pay (or require the borrower to pay) the SPV a facility fee equal to 100 basis points of the original principal amount of a New Facility or Priority Facility loan, or 75 basis points of the original principal amount of the upsized tranche under the Expanded Facility.	This fee will be waived.
Lender Origination Fee	Borrower must pay the lender an origination fee of up to 100 basis points of the original principal loan amount under the New Facility or the Priority Facility, and up to 75 basis points of the original principal amount of the upsized tranche under the Expanded Facility.	Lender may increase this fee to 200 basis points under the New Facility or the Priority Facility, and to 150 basis points under the Expanded Facility.
Servicing Fee	The SPV will pay the lender an annual loan servicing fee equal to 25 basis points of the principal amount of the SPV’s participation in the applicable loan.	This fee will increase to 50 basis points per annum.

The MSLP Term Sheets, the frequently asked questions (“*FAQs*”) and certain of the other MSLP forms (including the Lender Transaction Specific Lender Certifications and Covenants form and the Servicing Agreement) have been updated to reflect these fee changes.

Paycheck Protection Program Loans – Exclusion of Loans Anticipated to be Forgiven

The FAQs have been updated to revise FAQ G.16., which provides certain additional guidance on the exclusion of Paycheck Protection Program (“*PPP*”) loans from the calculation of “existing outstanding and undrawn available debt” for purposes of determining the maximum loan size under the Program.

The new guidance provides that PPP loans may be excluded from the calculation of “existing outstanding and undrawn available debt” as follows:

- For PPP loans of less than \$2 million in which the borrower applied for PPP forgiveness, the borrower may exclude the “Forgiveness Amount,” except to the extent determined ineligible for forgiveness by the PPP lender or the Small Business Administration (“*SBA*”). As a condition to exclusion, the borrower must provide the Program lender with a copy of the PPP loan forgiveness application form.
- For PPP loans of less than \$2 million in which the borrower has not yet applied for PPP forgiveness, the borrower may exclude the portion of its PPP loan that its principal executive officer has a reasonable, good-faith basis to believe will be forgiven. As a condition to exclusion, the borrower must provide the Program lender with a new Program form titled “Exclusion of PPP Loan from Main Street Outstanding Debt”, which is now available on the Federal Reserve’s website.
- For PPP loans of \$2 million or more, the borrower may only exclude from “existing outstanding and undrawn available debt” the amounts that the SBA has actually determined are eligible for forgiveness.

The PPP loans of the borrower and its affiliates (as determined under SBA affiliation rules) will be aggregated for purposes of calculating whether the \$2 million threshold has been met.

How Long Will the Program be in Effect?

Item A.5. of the Program’s FAQs continues to state that the SPV will cease purchasing loan participations on December 31, 2020, unless the Program is extended by the Federal Reserve. It is difficult to predict whether the Program’s loan participation purchase period will be extended, particularly given the low level of participation in the Program by borrowers and lenders alike, and thus far the Federal Reserve has not given any clear indication of its intent.

Accordingly, lenders seeking to utilize the Program are advised to act promptly, and to submit participation requests to the SPV well in advance of the December 31 deadline.

The terms of the Loan Facilities are subject to further rulemaking and guidance from the Federal Reserve System and the Federal Reserve Bank of Boston. We will continue to monitor developments and provide additional details as they become available. In the meantime, please feel free to contact us if you have any questions about the Program.

CONTACT

Please do not hesitate to contact your Windels Marx relationship lawyer or a member of our [Financial Transactions Practice Group](#) with any questions or comments.

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