



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

TOM QUAADMAN
EXECUTIVE VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5540
tquaadman@uschamber.com

April 16, 2020

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

The Honorable Jerome Powell
Chairman
Board of Governors of the Federal
Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

Re: Main Street New Loan Facility and Main Street Expanded Loan Facility

Dear Secretary Mnuchin and Chairman Powell:

The U.S. Chamber of Commerce (“the Chamber”) appreciates your continued leadership in addressing the economic fallout caused by the coronavirus pandemic. We are pleased to offer comments regarding the recently announced Main Street Lending Program (“MSLP”), which is to consist of the Main Street New Loan Facility (“MSNLF”) and the Main Street Expanded Loan Facility (“MSELF”).

The Chamber has strongly supported recent actions by the Federal Reserve and Treasury Department to create lending facilities to provide necessary liquidity to households, businesses, and municipalities throughout the country. Without these facilities, many otherwise healthy businesses will face the prospect of permanent closure, and the sudden shock caused by the coronavirus pandemic will turn into a prolonged economic downturn.

The MSLP would be especially critical for middle market businesses to weather this storm. Middle market companies employ over 60 million Americans, yet many of these businesses remain ineligible for other relief programs established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act. A bridge facility that helps these businesses retain their employees and pay operating expenses until the crisis recedes is a key component of economic recovery efforts.

As the Federal Reserve and Treasury Department consider the scope and conditions for borrowers to participate in the MSLP, the Chamber urges both agencies to keep in mind the unique nature of the pandemic's economic shock. A significantly large portion of our economy has come to a complete halt, and virtually no industry or business has been left unaffected. This crisis was not caused by a market or financial regulatory failure and did not originate as part of the normal business cycle.

Moreover, businesses of all sizes have been mandated by government to shut down or limit their operations. At least 46 states have ordered "non-essential" businesses to close since the beginning of March, leaving business owners with incredibly difficult decisions to make regarding their employees and future growth plans. With limited or no income to generate, it is entirely appropriate and necessary that a bridge loan program be established to help businesses and their employees pay their bills until they are able to re-open.

In addressing this unprecedented crisis, we believe that the terms and conditions of the MSLP should reflect – to the greatest extent possible – current market practices for lending, and should not seek to create new, lasting standards. We believe that the overall approach guiding the MSLP should be to provide short-term, bridge financing to middle market and other businesses, and to provide an accommodative path for businesses to repay the loans as swiftly as possible once they are back up and running.

The Chamber also urges the Federal Reserve and Treasury Department to use extreme prudence when considering changes to corporate governance and capital distribution decisions made by businesses that may access the MSLP. Businesses that have been mandated to shut down through no fault of their own must still be able to attract and retain investors. Arbitrary limits on dividends, stock buybacks, and other corporate decisions would only exacerbate the financial squeeze that many companies are currently experiencing. Furthermore, investors – particularly retail investors that rely on dividend income for retirement savings – would be unduly harmed if thousands of companies were forced to suspend capital distributions for several years.

As the Federal Reserve and Treasury Department work to get the MSLP up and running, the Chamber makes the following recommendations:

- 1) Lenders should be able to provide flexibility on loan maturities for a period of up to six years, and the minimum loan size should be reduced significantly.**
- 2) The employee and revenue thresholds used to determine eligible borrowers should be modified so that certain businesses are not arbitrarily excluded.**

Eligible lenders should additionally include U.S. branches or affiliates of non-U.S. institutions. Greater clarification is needed to determine what constitutes “reasonable efforts” by borrowers to maintain payroll during the life of the loan.

- 3) Since many borrowers – particularly emerging companies and those in the lower middle market – do not calculate earnings before interest, taxes, depreciation, and amortization (EBITDA) based on generally accepted accounting principles (GAAP), borrowers should be allowed to use “adjusted” EBITDA when determining their eligibility under the MSLP leverage thresholds.**
- 4) Businesses that participate in the MSLP should not be automatically prohibited from paying dividends to shareholders or engaging in stock repurchases. The terms of the MSLP should also reflect certain investment structures – such as real estate investment trusts (REITs) and regulated investment companies – that are obligated to make distributions to shareholders in order to maintain their regulatory status.**
- 5) Given the ongoing transition from the London Interbank Offered Rate (LIBOR) to the Secured Overnight Financing Rate (SOFR), the MSLP should initially utilize LIBOR with a “fallback” approach to SOFR, which is currently a common practice in the syndicated loan market.**
- 6) To facilitate quick loan disbursement, lenders should be able to rely on representations from borrowers regarding their eligibility, similar to requirements under the Paycheck Protection Program (PPP).**
- 7) Eligible loans under the MSELF should be expanded so borrowers that do not have term loans are included.**
- 8) The Federal Reserve and Treasury Department should amend the terms of the MSLP so that during the duration of the program, eligible lenders would retain their respective category with respect to regulatory tailoring.**
- 9) Clarity should be provided regarding material terms of the participation agreement for the Special Purpose Vehicle.**

Recommendations

Recommendation #1: Lenders should be able to provide flexibility on loan maturities for a period of up to six years, and the minimum loan size should be reduced significantly.

Both the MSNLF and MSELF provide only for loans with a four-year maturity. As many potential borrowers will be capable of paying back their loans by the end of that period or even sooner, we believe that the MSLP should provide lenders and borrowers the ability to agree for tenors for any period up to six years. This would provide options and flexibility for businesses that may wish to amortize their loans over a longer period to account for existing debt terms and would prevent the creation of a destabilizing wave of refinancing needs in the future with a single loan maturity.

We also believe that the \$1 million loan minimum in both programs would unnecessarily shut out many emerging companies that may reach the leverage triggers if they were to borrow that amount. We believe that a minimum loan amount, mindful not to cannibalize other lending programs, should be considered to encourage more companies to use the facility while still being economically practical for eligible lenders.

Additionally, we believe further clarity is needed for the post-deferral period that would allow amortization to be negotiated between the borrower and lender in order to best serve the borrower from a cash flow perspective. The Fed should also confirm that deferred interest will be accreted to principal at the relevant interest payment date, as is standard market practice.

Recommendation #2: The employee and revenue thresholds used to determine eligible borrowers should be modified so that certain businesses are not arbitrarily excluded. Eligible lenders should additionally include U.S. branches or affiliates of non-U.S. institutions. Greater clarification is needed to determine what constitutes “reasonable efforts” by borrowers to maintain payroll during the life of the loan.

The MSLP will be restricted to borrowers that have up to 10,000 employees or up to \$2.5 billion in revenue. Additionally, the program appears to limit eligible lenders to U.S. banks or holding companies of U.S. banks, despite the fact that many non-U.S. institutions with U.S. branches or affiliates are active lenders to small and medium-sized businesses that would qualify as eligible borrowers under the program. It would also be helpful if clarification can be made as to whether affiliates and subsidiaries of U.S. insured depository institutions and bank holding companies can qualify as eligible lenders. The CARES Act

notably states that nothing in the act limits the discretion of the Fed to set up the MSLP, so we are concerned that placing arbitrary thresholds on the facility could prohibit a number of potential borrowers from accessing the program.

We also believe that greater clarity is necessary regarding the requirement that eligible borrowers must make “reasonable efforts” to maintain their payroll and retain employees during the term of the loan. It is unclear what exactly would constitute “reasonable efforts” and how companies that have already been forced to furlough or lay off workers would be treated under the MSELF. It appears that this requirement would remain in place regardless of underlying economic conditions during the life of a loan, so further explanation regarding its application is necessary.

Recommendation #3: Since many borrowers – particularly emerging companies and those in the lower middle market – do not calculate earnings before interest, taxes, depreciation, and amortization (EBITDA) based on generally accepted accounting principles (GAAP), borrowers should be allowed to use “adjusted” EBITDA when determining their eligibility under the MSLP leverage thresholds.

Both the MSNLF and MSELF contain leverage restrictions for how much can be borrowed by a single entity under the programs. For the MSNLF, businesses would be restricted from borrowing the lesser of 1) \$25 million or 2) an amount that, when added to the borrower’s existing outstanding and committed but undrawn debt, does not exceed four times the borrowers 2019 EBITDA. For the MSELF, it is the lesser of 1) \$150 million, 2) 30% of the borrower’s existing outstanding and committed but undrawn bank debt, or 3) an amount that, when added to the borrower’s existing outstanding and committed but undrawn debt, does not exceed six times the borrower’s 2019 EBITDA. We believe that several revisions to these restrictions are necessary to fully capture existing market practices.

Regarding EBITDA, we note that many businesses – particularly emerging companies and those in the lower-middle market – do not use GAAP EBITDA as a relevant credit metric. Accordingly, we believe that the terms of the MSLP should be amended so that EBITDA is defined by a comparable calculation used in a borrower’s existing credit arrangement. For example, “adjusted” EBITDA is used by much of the corporate loan market and could be used by borrowers in lieu of GAAP EBITDA.

Additionally, the requirement to include undrawn credit lines in leverage calculations is somewhat of an anomaly in the corporate loan market. Borrowers do not typically

include, and lenders do not require, this input when calculating leverage covenants. Including it for purposes of determining leverage could ultimately preclude otherwise healthy borrowers from accessing the MSLP. In addition, many existing credit agreements calculate debt for purposes of a leverage ratio by netting out the amount of cash that the borrower has. We also believe that the 4x leverage limit (for MSNLF) and 6x (for MSELF) may prohibit a number of otherwise healthy growth companies from accessing the facility and may be unnecessarily low for certain industries. We believe consideration should be given to raising these limits. Finally, in order to facilitate rapid underwriting decisions, loans should not be subject to leveraged lending guidelines, as developing accurate projections in addition to taking time would prove difficult in the current economic environment.

Recommendation #4: Businesses that participate in the MSLP should not be automatically prohibited from paying dividends to shareholders or engaging in stock repurchases. The terms of the MSLP should also reflect certain investment structures – such as real estate investment trusts (REITs) and regulated investment companies – that are obligated to make distributions to shareholders in order to maintain their regulatory status.

Notwithstanding the unprecedented challenges brought on by the pandemic, businesses have gone to extraordinary lengths to retain workers and mitigate disruptions in their operations and in the lives of their employees. The crisis has demonstrated the commitment that American businesses have to their workers and the communities in which they operate. However, we are concerned that certain restrictions currently included in the MSLP are based upon the misguided notion that the federal government must manage certain corporate governance decisions in order to protect American workers. Affected companies are already making decisions to cut executive compensation, suspend stock repurchases and cut dividends already on their own based upon their own individual circumstances. Additionally, companies seeking assistance are required to use reasonable efforts to maintain payroll and employees during the term of the loan. Therefore, we believe widespread restrictions for companies are misguided and would ultimately harm businesses, shareholders, and employees.

Both the MSNLF and MSELF require that borrowers abide by the compensation, stock repurchase, and capital distributions restrictions under section 4003(c)(3)(A)(ii) of the CARES Act, unless those provisions are waived by the Treasury Secretary. While these restrictions are intended to prevent borrowers from taking advantage of direct loan programs, the extraordinary circumstances of the pandemic – and the profile of businesses that are likely to borrow under the MSLP - call for special consideration of this issue.

The MSLP is not a facility designed to provide liquidity to a sector of the economy that had taken on too much risk; it is designed to support businesses that were in good financial standing before the coronavirus crisis hit. Through no fault of their own and in many cases because the government has ordered them to shut down, businesses have little choice other than to seek short-term financing through the MSLP. Under current terms, these restrictions could last for up to five years.

The MSLP should be viewed as a bridge loan program that helps companies get back up and running as soon as possible – not as a long-term or permanent source of credit for thousands of middle market businesses. The borrowers that access the facility still need to attract and retain investors, and the boards of these companies maintain their fiduciary duty to make decisions that are in the best interest of all shareholders. Limiting the ability of firms to deploy capital in the best way they see fit is a slippery slope that would do little to address the immediate economic threat imposed by the pandemic.

Moreover, U.S. households own roughly \$16 trillion of U.S. equities directly or indirectly through mutual funds or other vehicles.¹ Many of these retail investors are retired or close to retirement and depend heavily on dividend income for their retirement security. From an institutional standpoint, pension plans, 401k's, and other savings vehicles also rely on annual dividend income to provide returns for their beneficiaries. Limiting or prohibiting dividend payouts for all businesses that borrow under MSLP would directly harm such income-oriented investors at a time when they are seeking to safeguard their retirement and other savings and would contradict the income stabilization goals that are prevalent elsewhere in the CARES Act.

Additionally, we also note that the initial terms of the MSRP do not take into account certain investment structures that are obligated to distribute income to their shareholders. These include real estate investment trusts (REITs), regulated investment companies, as well as pass-through limited liability companies (LLCs) that would effectively be precluded from participating at all in the MSLP. We believe at a minimum the terms of the MSLP should reflect the unique characteristics of these structures.

¹ SIFMA Insights: Q: Who Owns Stocks in America? A: Individual Investors

Recommendation #5: Given the ongoing transition from the London Interbank Offered Rate (LIBOR) to the Secured Overnight Financing Rate (SOFR), the MSLP should initially utilize LIBOR with a “fallback” approach to SOFR, which is currently a common practice in the syndicated loan market.

The MSLP would set an adjustable rate for loans of SOFR + 250-400 basis points for both new loans under the MSNLF and existing loans under the MSELF. This would effectively speed the transition from LIBOR at a time when there is not yet an established SOFR rate in the corporate loan market and many system and operational changes have been based on plans for year end. Many smaller lenders are also not operationally ready to fully transition to SOFR and so would be unlikely to participate in the MSLP.

The vast majority of corporate loans in the United States currently use LIBOR. Consistent with the transition approach adopted by the Alternative Reference Rates Committee (ARRC), we recommend that the adjustable rate terms allow for the use LIBOR with a “fallback” approach to then transition to SOFR. This practice is already widely accepted in the United States. Allowing for such flexibility would cut down on unnecessary operational costs and encourage more lenders – particularly community banks and regional lenders – to participate in the MSLP.

Recommendation #6: To facilitate quick loan disbursement, lenders should be able to rely on representations from borrowers regarding their eligibility, similar to requirements under the Paycheck Protection Program (PPP).

Given the urgent need that businesses have to access credit under the MSLP, we urge the Federal Reserve and Treasury Department to avoid any unnecessary roadblocks that would delay the flow of credit into the economy. Accordingly, we believe that lenders should be permitted to rely on the attestation of borrowers regarding their eligibility for the program, similar to what was permitted under the PPP administered by the Small Business Administration. Subsequent guidance for lenders regarding where and how borrower attestations should be documented would also increase the chances for a successful launch of the MSLP.

Additionally, it is important that lenders participating in the program are still able to continue to apply criteria and determine creditworthiness based on the relevant lender’s own analysis and standards, in addition to the requirements set out under the program. As lenders are required to retain 5% economic interest of all loans under the program, this will ensure that taxpayer interests and institutional safety and soundness are protected.

Recommendation #7: Eligible loans under the MSELF should be expanded so borrowers that have term loans with non-eligible lenders or that do not have term loans are included.

As currently defined in the MSELF, only term loans made by eligible lenders would be permissible under facility. This would exclude borrowers that have term loans that were made by lenders that happen to not be eligible lenders, as well as businesses that use revolving credit facilities or other vehicles. Many businesses, particularly younger emerging companies, do not use term loans and therefore would be ineligible to participate under the MSELF. We believe the terms of the MSELF should be amended to reflect the diverse credit and loan arrangements that exist for businesses of all sizes.

Recommendation #8: The Federal Reserve and Treasury Department should amend the terms of the MSLP so that during the duration of the program, eligible lenders would retain their respective category as part of regulatory tailoring.

Given the balance sheet of banks and other depository institutions is likely to dramatically increase during the duration of the MSLP, we do not believe that lenders should effectively be penalized from a supervision standpoint for facilitating loans to eligible borrowers. We believe such balance sheet increases would incur even with the 5% risk retention provisions and urge the Federal Reserve and Treasury Department to explicitly state that lenders will maintain their regulatory tailoring category.

Recommendation #9: Clarity should be provided regarding material terms of the participation agreement for the Special Purpose Vehicle.

Clarity should be provided that would address key issues common to all lenders, such as how the loan will be administered, what rights the SPV will have as participation holder to vote or consent under the relevant loan agreement, what obligations will the bank have to the SPV, and will lenders need to sell the 95% participation to the SPV upon origination or have the option of electing to sell at par for as long as the facility is open. Additionally, the agreement should also include limitations on liability and other customary terms.

Secretary Mnuchin and Chairman Powell

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Conclusion

The Chamber again thanks you for your leadership during this crisis and for the work that the Federal Reserve and Treasury department have done to establish critical credit facilities to provide liquidity to economy. We look forward to assisting in any way we can to help the Main Street Lending Program reach its full potential.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Quadman', with a long horizontal flourish extending to the right.

Tom Quadman