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United States: Main Street Lending Program[1]

Steven Kelly[2]

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Abstract

In March 2020, as the COVID-19 pandemic caused slowdowns and disruptions to economic activity, businesses faced disruptions to their revenues and experienced increased demand for credit. Yet, as the pandemic worsened the economic outlook, banks tightened credit. Starting on March 17, the Federal Reserve rolled out several emergency programs aimed at capital markets. Most of these programs tended to benefit relatively large companies. On March 23, the Fed said it would introduce a program targeting small and mid-sized companies. On April 9, 2020, the Federal Reserve announced its first design iteration of the novel Main Street Lending Program (MSLP). The MSLP targeted businesses that were too small to have access to public markets but too large to be assisted (or sufficiently assisted) by the Paycheck Protection Program, Congress's forgivable-loan program for small businesses. The Fed later expanded the MSLP to also include mid-sized nonprofit firms. The MSLP purchased a 95% participation share in MSLP-compliant loans made by private lenders. The MSLP was available to hold up to an aggregate $600 billion of loans purchased from participating lenders, supported by a $75 billion equity injection from the Treasury. Designed to help ultimately viable businesses weather a period of disrupted cash flows, MSLP loans matured in five years and deferred interest payments for one year and principal payments for two. All MSLP-eligible loans carried an interest rate of LIBOR plus 300 basis points. In December 2020, Congress mandated the closure of the MSLP on January 8, 2021. In total, the MSLP made $16.6 billion of purchases, its 95% share of $17.5 billion of MSLP lending.

Keywords: CARES Act, COVID-19 crisis, Federal Reserve, market liquidity, nonprofits, small and medium-sized enterprises, SMEs, bank lending, Section 13(3)

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Overview

In March 2020, the COVID-19 pandemic caused severe dislocations in many areas of the US economy and financial markets. The effects of this volatility included sharply reduced credit availability for small and medium-sized enterprises. The economic disruption and pandemic-induced closures also led to cashflow shortfalls among many of these entities, and thus an increased demand for bridge financing (FRB 2020l).

Against this backdrop, the Federal Reserve (Fed) invoked its Section 13(3) emergency lending authority, beginning on March 17, to stand up nine liquidity facilities to extend credit outside its usual discount window lending (Clarida, Duygan-Bump, and Scotti 2021, 12). On March 23, 2020, the Fed, while announcing three 13(3) facilities, said it expected "to announce soon the establishment of a Main Street Business Lending Program to support lending to eligible small-and-medium sized businesses" (FRB 2020b).

The Fed announced details of the Main Street Lending Program (MSLP) on April 9, 2020. The MSLP, as introduced, was intended to "enhance support for small and mid-sized businesses that were in good financial standing before the crisis" by purchasing from lenders the supermajority share of eligible loans to these firms (FRB 2020c). The Fed designed the MSLP to assist borrowers through a temporary period of disrupted revenues by deferring interest and principal payments for the first two years and utilizing underwriting criteria that assessed borrowers' pre-pandemic financial standing and post-pandemic outlook (FRB 2020p, 12).

The MSLP was unique among pandemic response programs in its focus on medium-sized companies. While the Federal Reserve

Key Terms

Purpose: To help mid-sized firms that were in strong financial standing pre-pandemic and maintained strong recovery prospects weather a period of sharply disrupted revenue and cash flows.

Launch Dates	Authorized: April 8, 2020 Announced: April 9, 2020
Operational Dates	For-profit firms: July 6, 2020 Nonprofit firms: September 4, 2020
End Date	January 8, 2021 (Consolidated Appropriations Act 2020)
Legal Authority	Section 13(3) of the Federal Reserve Act Section 4027 of the CARES Act
Source of Funding	Federal Reserve Bank of Boston US Treasury
Administrator	Federal Reserve Bank of Boston
Overall Size	Up to $600 billion
Term	Five years
Interest Rate	LIBOR (1- or 3-month) plus 3%
Haircut Rate	None
Collateral	95% pro rata participation in bank loans to mid-sized firms and nonprofits
Peak Utilization	$16.6 billion outstanding

rolled out several emergency programs aimed at capital markets, these tended to benefit larger firms. Congress also passed fiscal assistance for small businesses—particularly the Paycheck Protection Program (PPP), which provided government-guaranteed, forgivable loans to small businesses. Medium-sized firms were thus not well-targeted by these measures (Arseneau et al. 2021). In July 2020, the Wall Street Journal reported estimates that almost 40% of private-sector workers—about 45 million people—were employed at firms eligible for MSLP loans (Timiraos and Davidson 2020).

The MSLP, operated by the Federal Reserve Bank of Boston (FRBB), purchased 95% pro rata participations in loans made by private lenders (FRBB 2020c; FRBB 2020d). All MSLP loans carried an interest rate of LIBOR plus 300 basis points (bps) and had five-year maturities. Interest payments were deferred for one year, and principal payments for two (FRB 2020e; FRB 2020g). The MSLP could hold up to an aggregate $600 billion of loans purchased from participating lenders. The Treasury secretary committed up to $75 billion to the MSLP from funds appropriated to the Exchange Stabilization Fund under Section 4027 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (FRB 2020c; CARES Act 2020). The Treasury's injection of CARES Act funds took the form of an equity injection and provided the Fed with protection against up to the first $75 billion in losses, should they occur (FRB 2020l). The equity was to be injected in two tranches of $37.5 billion (see Key Design Decision 8 below). As the program utilization peaked at $16.6 billion, Treasury only injected the first tranche, and its equity effectively wholly indemnified the Fed for any potential losses (FRB 2021d, 33).

The program originally included two facilities, both for loans to for-profit firms: the Main Street New Loan Facility (MSNLF) and the Main Street Expanded Loan Facility (MSELF) (FRB 2020c). The Fed went on to expand the MSLP to include a third for-profit facility: the Main Street Priority Loan Facility (MSPLF), and later added two non-profit facilities: the Nonprofit Organization New Loan Facility (NONLF) and the Nonprofit Organization Expanded Loan Facility (NOELF) (FRB 2020d; FRB 2020g).

The Fed regularly updated the terms of the MSLP between its April 2020 introduction and its final amendments on October 30, 2020; these modifications and their justifications are described in greater detail in the Key Design Decisions section below. The program's final form is presented in Figure 1 on the next page; eligibility criteria are described in the Key Design Decisions. Program changes contributed to delays in the MSLP's rollout (Arseneau et al. 2021, 35). The Wall Street Journal reported that tension over these changes between the Fed and the Treasury—due to the latter's reluctance to risk taxpayer funds—also slowed the rollout (Timiraos and Davidson 2020).

Figure 1: Main Street Lending Program Terms, by Facility, Finalized October 30, 2020

	Nonprofit Organization New Loan Facility	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility	Nonprofit Organization Expanded Loan Facility
Minimum Loan Size	$100,000			$10 million	
Maximum Loan Size	The lesser of: $35 million *or* the borrower's average 2019 quarterly revenue	The lesser of: $35 million *or* 4.0x adjusted 2019 EBITDA[A]	The lesser of: $50 million *or* 6.0x adjusted 2019 EBITDA[A]	The lesser of: $300 million *or* 6.0x adjusted 2019 EBITDA[A]	The lesser of: $300 million *or* the borrower's average 2019 quarterly revenue
Seniority	Not subordinated		Senior to, or pari passu with other credit, other than mortgage debt		
Term	5 years				
Participation	95% pro rata share				
Risk Retention	5%				
Principal Repayment	Years 1–2: Principal deferred Year 3: 15% Year 4: 15% Year 5: 70%				
Interest Rate	1- or 3-month LIBOR + 3%; Deferred for one year				

[A] "EBITDA" is earnings before interest, taxes, depreciation, and amortization. Specifically, the EBITDA multiple limit caps the MSLP loan to an amount that does not exceed this adjusted EBITDA when added to outstanding and undrawn available debt. Any outstanding PPP loan under $2 million that the borrower expected to be forgiven could also be excluded from the EBITDA calculation (FRB 2020j; FRBB 2020i).

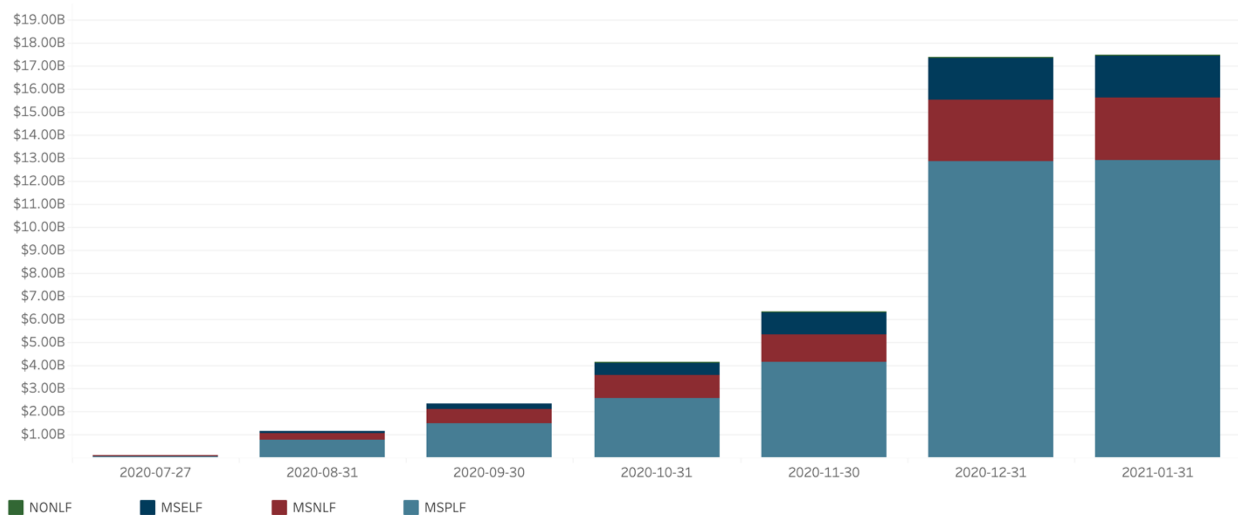
Sources: NONLF 2020a; NOELF 2020a; MSNLF 2020b; MSPLF 2020a; MSELF 2020a.

The MSLP peaked at the time of its closure at $16.6 billion outstanding—its participation share in approximately $17.5 billion of lending (FRB 2021d, 33; FRB 2021e). The MSLP had the largest volume of any of the Fed's CARES Act-supported emergency lending facilities (Clarida, Duygan-Bump, and Scotti 2021, 12). The MSLP purchased 1,830 loans, 15 of which were to nonprofits (GAO 2021, 38; FRB 2021e). Because individual loans could support multiple businesses, about 2,500 businesses received MSLP financing[3] (GAO 2021; Arseneau et al. 2021). The bulk of MSLP loans were from the for-profit priority facility, the MSPLF. Lenders did not submit any loans to the non-profit expanded facility, the NOELF (see Figures 2 and 3 below). Fed researchers suggested that because the expanded loan facilities required

[3] In most cases where a single loan supported multiple businesses, the recipient businesses shared a parent company (Arseneau et al. 2021, 20).

modifying existing loans, demand for these loans may have been deterred (Arseneau et al. 2021, 19).

Figure 2: MSLP Lending Volume, by Facility



Source: FRBB 2021b.

Figure 3: MSLP Loan Volume (in $millions) and Count, by Facility

	Expanded Loans		New Loans		Priority Loans		Non-profit Loans		**Total**	
Loan Size	Volume	Count	Volume	Count	Volume	Count	Volume	Count	**Volume**	**Count**
≤250K			4	19	0.3	2	0.2	1	**5**	**22**
250-500K			26	68	12	28	0.9	2	**39**	**98**
500K-1M			95	118	65	82	1	2	**161**	**202**
1-10M	20	2	1,221	350	3,034	671	40	10	**4,314**	**1,033**
10-35M	238	10	1,349	61	5,809	304			**7,396**	**375**
35-50M	81	2			3,997	86			**4,078**	**88**
>50M	1,466	12			0	0			**1,466**	**12**
All Loans	**1,805**	**26**	**2,695**	**616**	**12,917**	**1,173**	**42**	**15**	**17,459**	**1,830**

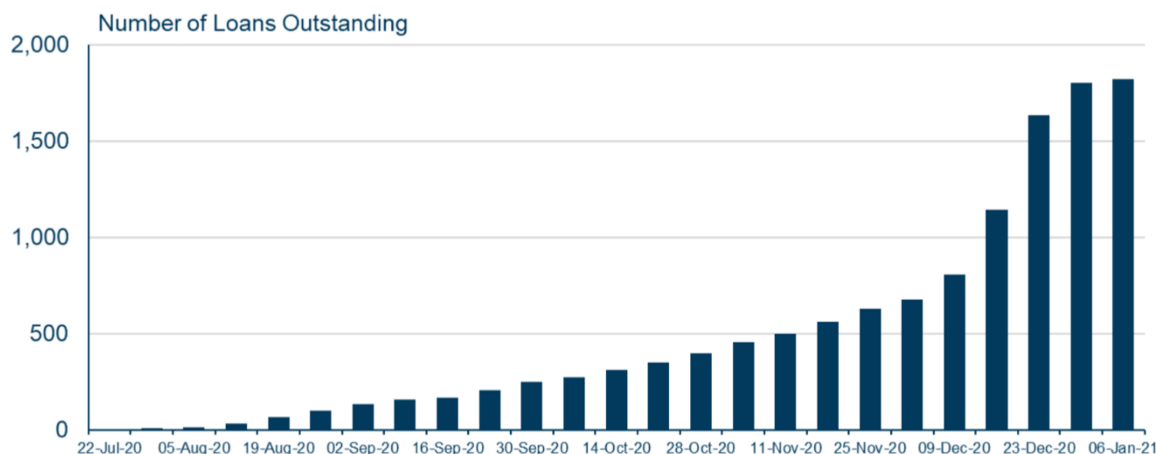
Note: Entries may not sum to total due to rounding.

Source: Arseneau et al. 2021, 18.

Participation in the MSLP was accelerating when the program closed (see Figure 4 below) (Morgan and Clampitt 2021; Rosengren 2021). Approximately half the MSLP purchases occurred in its final month (Arseneau et al. 2021, 17). FRBB President Eric Rosengren noted the acceleration "followed the November 19 announcement of the decision by the Treasury to not extend CARES Act facilities," and that the surge "no doubt reflects the stresses many medium-sized businesses were experiencing at the end of 2020 as a result of the resurgence

of COVID infections" (Smialek and Rappeport 2020; Rosengren 2021). According to FRBB researchers, lenders also noted that getting themselves and their borrowers familiar with the MSLP's legal and operational details required considerable time, which also likely contributed to the relatively late surge in MSLP participation volume (Arseneau et al. 2021, 17, 35).

Figure 4: Number of MSLP Loans Outstanding, Weekly



Source: Rosengren 2021.

On January 8, 2021, the Fed began a series of distributions of "excess equity" to the Treasury by transferring $20.9 billion of its $37.5 billion injection (FRBB 2021c, 18–19; FRBB 2021a). These distributions, which became semiannual, regularly reduced the Treasury's equity investment in the MSLP to approximately the total value the MSLP's outstanding assets (FRBB 2021a).

As of February 28, 2022, the program had reported revenue of approximately $643 million, and the Federal Reserve continued to expect to experience no losses (FRB 2022a). Upon the ultimate wind-down of the facility, the MSLP will distribute 90% of any net profits to the Treasury and the remaining 10% to the FRBB (FRBB 2021a, 8).

As of December 31, 2021, the MSLP had established an allowance for loan losses representing an expected loan loss rate of 13.1%, down from 14.6% at the end of 2020 (FRBB 2022, 17). The estimated loan loss rate rose to these levels at the February 2021 quarterly update, for an "as of" date of December 31, 2020; in quarters prior to that, the Fed was showing expected losses of under 5% (FRB 2021a; FRB 2021b; FRB 2021c; COC 2021b, 10–13). According to the MSLP's audited financial statements for 2021, the FRBB was expecting a loss rate on MSLP loans to services businesses above the 13.1% average, and a lower loss rate on its non-services loans. As of December 31, 2021, the loss to the book value of the Treasury's equity was $2.0 billion, compared to $2.4 billion at the end of 2020 (FRBB 2022, 17).

Summary Evaluation

The Fed designed its emergency credit programs to function as backstops to the targeted financial markets (GAO 2020, 12). In September 2020, Fed Chair Jerome Powell testified positively in that regard, saying the Fed's suite of programs had improved lending conditions, including for MSLP-eligible borrowers. Powell said the evidence suggested that most creditworthy small and mid-sized businesses could access credit from private financial institutions (Powell 2020). In June 2021, he said that the MSLP "provided an effective backstop and supported credit provision in the private sector, substantially adding to the supply of credit for the smallest eligible borrowers" (Powell 2021). In August 2020 testimony representing the largest US banks, a representative of the Bank Policy Institute said that the MSLP's usefulness would increase in the event the economy worsened (COC 2020c, 62).

Fed Board of Governors researchers found that participating MSLP banks were less likely than other banks to cite heightened risk aversion as a reason for tightening credit, demonstrating a channel by which the MSLP may have prevented tighter private credit conditions (Minoiu, Zarutskie, and Zlate 2021). However, English and Liang (2020) suggested that due to the heterogenous credit characteristics of mid-sized firms—as opposed to large firms issuing rated securities—the MSLP may not have been able to serve the backstop function as effectively as the Fed's capital-markets-based emergency programs (English and Liang 2020, 2).

In general, banks tightened credit conditions in response to the risks and outcomes of the pandemic and experienced falling borrower demand for credit after such demand surged in March 2020 (GAO 2020, 40–46; Morgan and Clampitt 2021; Arseneau et al. 2021, 3). Contemporary coverage reported that many banks were slow to sign up or unwilling to extend MSLP loans outside of preexisting customers (Smialek 2020; Siegel 2020; FRBB 2020j).

However, Minoiu, Zarutskie, and Zlate (2021) found that the MSLP increased banks' broad willingness to lend to firms of all sizes, showing that banks that participated in the MSLP were "more likely to renew maturing loans and to originate new loans, as well as less likely to tighten standards on business loans than nonparticipating banks."

Other Fed researchers showed that the MSLP purchases supported credit to the mid-sized firms the Fed targeted with the program. They found that average MSLP loans were $9.5 million. For comparison, the average loan size of the PPP, which targeted smaller businesses, was about $68,000 (Arseneau et al. 2021, 19; GAO 2021, 38).

Several FRBB studies pointed to the positive effects of the MSLP. Wang, Ballance, and Qing (2021) found that, prior to the opening of the program in July 2020, companies that later borrowed from the MSLP tended to be more at risk of experiencing delinquency or failing than their non-MSLP-borrowing peers—and had seen their risk of financial distress deteriorate more drastically. The authors also found evidence that MSLP borrowers faced less business disruption than their peers, suggesting stronger future performance to the

lender (Wang, Ballance, and Qing 2021). Bräuning, Fillat, and Wang (2021) showed that businesses were more likely to have taken out MSLP loans in states facing relatively sharp economic activity contractions and high pandemic infection rates. Moreover, they demonstrated that the timing of the loans tended to coincide with increases in the infection rate and slowdowns in economic activity. Bräuning and Paligorova (2021) found that MSLP lending tilted strongly toward the industries most impacted by COVID-19. The top industries by share of total MSLP volume were accommodation and food services at 12.5% of the total; manufacturing, 9.8%; real estate, rental, and leasing, 9.5%; and mining, oil, and gas extraction, 8.4%.

FRBB President Rosengren offered three evaluations following the closure of the MSLP. First, he suggested the MSLP's design carried undue focus on loss mitigation for the Treasury, and MSLP credit would have been materially more available without such excess focus. Second, he noted the likely deterrence of banks caused by the MSLP's operational and legal complexity, as well as its requirement for 5% lender participation. He suggested a future MSLP could provide greater incentive to banks while still avoiding adverse selection by allowing lenders to sell the whole loan, but only to continue to earn fees if the loan continued to perform. Lastly, he suggested longer maturities and more flexibility to refinance would have provided greater alignment of the MSLP with the support available to larger companies (Rosengren 2021, 12).

Context: United States 2019–2020	
GDP (SAAR, nominal GDP in LCU converted to USD)	\$21.7 trillion in 2019 \$21.5 trillion in 2020
GDP per capita (SAAR, nominal GDP in LCU converted to USD)	\$65,298 in 2019 Data not available for 2020
Sovereign credit rating (five-year senior debt)	Data for 2019: Moody's: Aaa S&P: AA+u Fitch: AAA Data for 2020: Moody's: Aaa S&P: AA+u Fitch: AAA
Size of banking system	\$13.825 trillion in 2019 \$15.882 trillion in 2020
Size of banking system as a percentage of GDP	63.73% in 2019 73.95% in 2020
Size of banking system as a percentage of financial system	27.14% in 2019 27.30% in 2020
Five-bank concentration of banking system	45.74% in 2019 46.24% in 2020
Foreign involvement in banking system	Data not available for 2019 Data not available for 2020
Government ownership of banking system	Data not available for 2019 Data not available for 2020
Existence of deposit insurance	Yes, in 2019 Yes, in 2020
Sources: Bloomberg, FRED, World Bank Global Financial Development Database, and World Bank Deposit Insurance Dataset.	

Key Design Decisions

1. Purpose: The Fed announced the MSLP alongside several other emergency interventions. The Fed designed the MSLP to facilitate the flow of credit to small and medium-sized enterprises facing pandemic-related disruptions.

The Fed created the MSLP "to help facilitate access to credit so that small and medium-sized businesses are better able to manage the period of dislocations related to the pandemic" (FRB 2020k; FRB 2020l). In particular, the MSLP aimed to provide credit to firms that were too small to participate in the Fed's capital markets programs, but perhaps too large to benefit sufficiently from the Small Business Administration's emergency relief (FRB 2020m, 12; Morgan and Clampitt 2021). These firms tend to be especially dependent on banks for credit (Morgan and Clampitt 2021).

The Fed later noted that due to the pandemic, mid-sized nonprofits had "experienced a significant decrease in revenues and increase in expenses, heightening the need . . . to obtain financing in order to manage cash flows and sustain themselves until economic conditions normalize" (FRB 2020n; FRB 2020o).

The Fed intended the MSLP to function as a backstop to private credit markets "should the recovery falter and a larger number of businesses need more access to credit" (FRB 2020p, 12).

2. Part of a Package: The Fed introduced the MSLP on April 9, 2020, alongside the rollout of several other emergency lending measures in response to the pandemic.

The Fed first announced on March 23, 2020, that its pandemic response would include a program for small and medium-sized borrowers (FRB 2020b). The Fed authorized the MSLP on April 8, 2020, and announced it on April 9, alongside several other emergency programs in response to the volatile financial and economic conditions resulting from the pandemic (FRB 2020a; FRB 2020c). These parallel measures responded to disruptions in other pockets of financial markets—those for corporate bonds, municipal bonds, and structured finance (FRB 2020c).

3. Legal Authority: The Federal Reserve used its authority under Section 13(3) of the Federal Reserve Act to establish the MSLP.

The Federal Reserve Board authorized the MSLP by invoking its authority under Section 13(3) of the Federal Reserve Act (FRB 2020c). Section 13(3) permits the Fed, "in unusual and exigent circumstances," to "discount for any participant in any program or facility with broad-based eligibility" (FRA n.d.c). The invocation of Section 13(3) allows the Fed to provide liquidity more broadly than its monetary policy and discount window authorities allow.

As noted in an internal Fed legal memo from 2008, the Fed Board "consistently has viewed the term 'discount' under section 13(3) as including a Reserve Bank extension of credit . . .

as well as a purchase by a Reserve Bank of third-party notes" (FRB 2008, 13). In the case of the MSLP, the Fed was effecting the latter function.

In addition to the Board vote, Section 13(3) authority requires the approval of the Treasury secretary (FRA n.d.c). Extension of the program also requires a Board vote and approval from the Treasury secretary (FRB 2020a); see Key Design Decision 18.

Section 4027 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act allocated funding to the Department of the Treasury that it used to provide first-loss equity protection for the MSLP, helping the Fed meet the Section 13(3) requirements of being secured to its satisfaction and protecting taxpayers from losses (FRB 2020l; FRA n.d.c).

4. Use of SPV: The Federal Reserve Bank of Boston established a special purpose vehicle to operate the MSLP.

The Federal Reserve Bank of Boston (FRBB) established a special purpose vehicle (SPV), MS Facilities LLC, to purchase eligible loans (FRBB 2020h). The Department of the Treasury committed to a $75 billion equity investment in the SPV (FRB 2020k). The FRBB funded the SPV on a recourse basis, charging the interest rate on reserves, secured by all the assets of the SPV (FRB 2020k; FRBB 2020h).

The Fed has viewed use of the SPV structure as providing management, accounting, and legal advantages to an intervention—especially when the Fed operates multiple 13(3) programs in parallel. (See also: Geithner, Bernanke, and Paulson 2020, 156–158.) Use of an SPV allows the Fed to better tailor a 13(3) program to the goals of the intervention (Baxter 2009, 12–13). Each intervention has its own specific terms, timeline, capital structure, and management team. The management teams may also be in geographically separate reserve banks, depending on which one(s) is administering a given intervention.

The SPV structure simplifies the reporting of income and the management of any sales of assets discounted by the program. As noted in Key Design Decision 8, the Fed provided separate annual financial statements for the MSLP that were independently audited by an outside accounting firm. These statements provided greater detail and transparency than existed for Fed facilities that did not utilize the SPV structure (Bernanke, Geithner, and Paulson 2020, 157; FRB 2022b). Moreover, the degree of corporate separation from both the Fed and other 13(3) interventions provided by an SPV structure may provide those other entities some protection in the event a 13(3) program is sued.

SPVs are also typically easy and inexpensive to set up. The Fed has viewed its creation of the structures as falling under the "incidental powers as shall be necessary to carry on the business of banking within the limitations" of the Federal Reserve Act (FRA n.d.a; Bernanke, Geithner, and Paulson 2020, 156).

5. Administration: The Federal Reserve Bank of Boston established and operated the MSLP SPV, and it enlisted counsel and several vendors to help with the program's operational capabilities.

FRBB built from scratch an infrastructure to process and verify lender registrations and loan documentations. Because, unlike with the Fed's capital markets programs, MSLP loans did not have an existing secondary market, the FRBB had to create an electronic portal through which banks could register and submit loans for purchase by the MSLP. The Fed's "lack of an existing blueprint" or infrastructure for the MSLP contributed to its relatively slow rollout, as compared to its other emergency programs and similar loan programs in other countries (Arseneau et al. 2021).

While FRBB staff and vendors reviewed loan submissions, the SPV did not re-underwrite any submitted loans (Arseneau et al. 2021, 14). If submitted loans complied with the MSLP terms, the SPV purchased them (COC 2021a, 22).

MS Facilities LLC did not have any employees itself (FRBB 2021c, 10). The FRBB relied on its staff and third-party vendors to run the program.

The FRBB selected State Street Bank and Trust Company to provide custodial and accounting services for the SPV (FRBB 2021c). FRBB picked State Street after assessing its response to a request for proposals (RFP), considering overall qualifications and operational capabilities needed to support the MSLP (FRBB n.d.).

FRBB also enlisted Guidehouse, Inc., a consulting company, in partnership with PricewaterhouseCoopers (PwC) to provide credit administration. This selection resulted from an RFP process that considered technological and operational capabilities, technical expertise, and control technology (FRBB 2021c; FRBB n.d.).

The FRBB hired FTI Consulting as a workout advisor. This was the result of an RFP that considered FTI's design and operational capabilities, delivery approach, and broader market presence (FRBB 2021c; FRBB n.d.). FRBB also utilized eight firms to provide legal services to the SPV (FRBB n.d.).

The inspector general of the Fed's Board of Governors said that, to handle the MSLP's surge in volume in its final two months, the FRBB "implemented an expedited loan purchase process for certain lenders" and that the Office of Inspector General intended to assess this process (OIG 2021). The Congressional Oversight Commission (COC) wrote that in response to the surge in MSLP submissions in the program's final weeks, "the FRBB increased staffing by bringing in additional trained legal and risk/compliance professionals from the [Fed] Board, the FRBB, and the [Federal Reserve Bank of New York], and the [MSLP] vendors also expanded the sizes of their teams considerably." Additionally, both Fed and external staff added hours on weekends and evenings (COC 2021a, 25).

Furthermore, the FRBB streamlined its loan review process during December by deferring review of items "that could be easily addressed on an ex-post basis, such as the completion of certain non-signature fields," until after the acceptance of a loan. The FRBB initiated the

streamlined approach for loans smaller than $5 million, expanding it as submissions increased to loans up to $50 million (excluding MSELF loans) (COC 2021a, 25).

The FRBB said in February 2021 that since the MSLP's termination, Guidehouse/PwC and FRBB staff had reviewed deferred items and begun working with lenders to make necessary corrections to any errors (COC 2021a, 25). The COC deemed the Fed's process for buying and managing the MSLP portfolio "sufficient" (COC 2021a, 10).

6. Governance: Section 13(3) of the Federal Reserve Act required the Fed Board to provide congressional committees with regular updates regarding outstanding MSLP credit.

Section 13(3) provides that within seven days of authorizing 13(3) assistance, the Fed must submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives. The report needs to describe "the justification for the exercise of authority to provide such assistance; the identity of the recipients of such assistance; the date and amount of the assistance, and form in which the assistance was provided; and the material terms of the assistance." Furthermore, the statute requires the Fed to submit an updated report every 30 days on the details of any outstanding credit under 13(3) lending facilities. The law calls for such reports to contain updates on "the value of collateral; the amount of interest, fees, and other revenue or items of value received in exchange for the assistance; and the expected or final cost to the taxpayers of such assistance" (FRA n.d.c).

The Fed chair can elect to keep identifying details of individual liquidity recipients confidential in these reports and only release them up to one year after the closure of the lending program[4]—the maximum delay permissible under Section 11(s) of the Federal Reserve Act (FRA n.d.b, sec. 11(s)(2)(A); FRA n.d.c, sec. 13(3)(D)). However, the Fed elected not to take this option in the case of the MSLP. This contrasted with some of its other COVID-19 Section 13(3) facilities, where the Fed thought disclosing participant identities would increase financial stress for the intended beneficiaries (Guida 2020; GAO 2020, 19–20). The monthly transaction-specific disclosures thus shared all the same information eventually revealed by the Section 11(s) report (FRB 2021a; FRB n.d.; FRB 2021e).

The CARES Act stipulated that the Fed make these regular reports to the congressional committees available on its website within seven days of submitting them if the program used CARES Act funding, as the MSLP did (CARES Act 2020, sec. 4026(b)(1)(B)).

As a recipient of the funds allocated under the CARES Act's Section 4027, the MSLP was also subject to oversight from the COC, a congressionally appointed oversight panel. The CARES Act created the COC to conduct ongoing oversight of the use, implementation, and effectiveness of these funds, and it was to submit regular reports to Congress (COC 2020a,

[4] If the Fed chair elects to keep borrowers' identifying details confidential, Section 13(3) stipulates that "such information shall be made available only to the Chairpersons or Ranking Members of the" Senate Banking Committee and House Financial Services Committee.

5). The COC held a hearing specifically on the MSLP, during which it called several stakeholders as witnesses, including FRBB President Rosengren (COC 2020c; COC 2020d).

In addition to congressional oversight, the MSLP was subject to review by the Special Inspector General for Pandemic Recovery (created by §4018 of the CARES Act), the Fed board's Office of the Inspector General, and the Government Accountability Office (GAO) (Miller 2020; OIG 2020; GAO 2020).

7. Communication: The Fed provided regular press releases announcing the introduction of and changes to the MSLP.

The Fed made regular press releases accompanying decisions on the terms and operational details of the MSLP (FRB 2020q).

8. Disclosure: Section 13(3) of the Federal Reserve Act required the Fed Board to provide congressional committees with regular reports regarding outstanding MSLP credit, and the CARES Act required these reports be published.

The CARES Act stipulated that the Fed make its monthly reports to the congressional committees on MSLP activity available on its website within seven days of submitting them (CARES Act 2020, sec. 4026(b)(2)(B)). The Fed chair could elect to keep identifying details of individual liquidity recipients confidential in its reports to the congressional committees[5] and only release them publicly up to one year after the closure of the emergency program—the maximum delay permissible under Section 11(s) of the Federal Reserve Act (FRA n.d.b, sec. 11(s)(2)(A); FRA n.d.c, sec. 13(3)(D)). However, the Fed elected not to take this option in the case of the MSLP. This contrasted with some of its other COVID-19 Section 13(3) facilities, where the Fed thought disclosing participant identities in real time would increase financial stress for the intended beneficiaries (Guida 2020; GAO 2020, 19–20).

The Fed reported aggregate MSLP lending data on a weekly basis as part of the usual publication of its overall balance sheet (FRBB 2020c; FRBB 2020d). It also published annual, audited financial statements specific to the SPV, MS Facilities LLC; as of this writing, two have been published (FRBB 2021c; FRBB 2022).

9. Size: The Fed designed the MSLP to reach up to $600 billion outstanding, based on the $75 billion equity commitment from Treasury.

The Fed designed the MSLP to reach up to $600 billion outstanding (FRB 2020c). The MSLP peaked at the time of its closure at $16.6 billion outstanding—its participation share in approximately $17.5 billion of lending (FRB 2021d, 33; FRB 2021e).

In crafting the MSLP, Fed staff projected bounds for the SPV's net income under various credit risk scenarios and design choices, akin to a stress test (Arseneau et al. 2021, 14).

[5] See *supra* note 4.

These scenarios utilized historical worst loan charge-off rates; projected loss rates from the Fed's bank stress tests on non-investment grade, unsecured loans; and a credit rating agency's default forecasts for the institutional leveraged loan market (see Figure 5 for MSLP loans' internal credit ratings at year-end 2020 and 2021). The Fed considered multiples of these figures as well, ultimately weighing loss rates from approximately 5% to over 25% (Arseneau et al. 2021, 42–43). Under the less adverse scenarios, including the worst historically observed commercial and industrial loan charge-off rate and the stress testing portfolio-average losses, the stress test projected that income would outweigh losses. The more adverse scenarios, however, were projected to cause losses. This scenario analysis led to the Fed's decision to set the MSLP's maximum leverage ratio at eight times Treasury's first-loss position. With $75 billion committed from Treasury, this ratio "dictated a maximum program size of $600 billion" (Arseneau et al. 2021).

Figure 5: MSLP Loan Credit Quality

	% of Loan participations, principal amount outstanding	
Rating	2021	2020
Ba or higher	29%	27%
B	35%	41%
Caa	16%	20%
Ca	20%	12%
Total	100%	100%

Note: The figure shows the Moody's credit ratings agency equivalent of banks' internal risk rating of the MSLP's holdings.

Source: FRBB 2022, 18.

10. Source of Funding: Authorities funded the MSLP SPV with $75 billion equity from the Treasury and a loan from FRBNY.

The Treasury Secretary committed to up to $75 billion as an equity investment in the MSLP SPV, with funds provided by the CARES Act (MSNLF 2020a). Authorities designed the equity investment to release in two tranches of $37.5 billion, with Treasury to inject the second tranche when the MSLP SPV fell below its designed 8-to-1 leverage ratio (or at the FRBB and Treasury's agreed discretion) (FRBB 2020e, 6–7). Due to the low program utilization, officials never injected the second tranche (see Kelly 2020a and Kelly 2020b for a discussion of the unused funds) (FRBB 2020e).

The FRBB funded the SPV on a recourse basis, secured by all the assets of the SPV (FRB 2020k; FRBB 2020h, 17). The Fed expanded its balance sheet to fund the SPV, creating central bank reserves (FRBB 2020h, 16–17; FRBNY 2021; FRB 2021b). FRBB will continue to fund the MSLP SPV until its loans mature or it sells them (FRB n.d.).

On January 8, 2021, the Fed transferred $20.9 billion back to the Treasury, leaving Treasury's investment at $16.6 billion, just covering the entire amount of loans purchased by the MSLP, and thus still effectively protecting the Fed from any losses (FRBB 2021c, 18–19; FRBB 2021a, 9). As the SPV's audited financial statements for 2020 said, "this interim distribution reduced the Treasury's preferred equity to approximately the maximum risk to the FRBB" (FRBB 2021c). On November 17, 2021, the Fed and Treasury agreed to execute similar transfers of excess equity on a semiannual basis (FRBB 2021a). The Fed then transferred $0.9 billion to the Treasury on November 19, 2021 (FRBB 2022, 20).

11. Eligible Institutions: US-based banking entities were eligible to sell loans to the MSLP.

US-based depository institutions, bank holding companies, bank branches/agencies, and their domestic subsidiaries were eligible to issue MSLP loans (MSELF 2020a; MSNLF 2020b; MSPLF 2020a; NOELF 2020a; NONLF 2020a). This included all US-based:

- Federally insured depository institutions (including banks, savings associations, and credit unions)
- Branches or agencies of a foreign bank
- Bank holding companies
- Savings and loan holding companies
- Intermediate holding companies of a foreign banking organization
- Subsidiaries of any of the above.

Ultimately, 643 banks registered for the MSLP, with just over 300 of those selling loans to the MSLP; the rest ended up not participating (FRBB 2020j; Arseneau et al. 2021; GAO 2021). Most active banks sold just one or two loans to the program (Arseneau et al. 2021, 25). The top 10 lenders in the program accounted for 33% of the credit extended and 34% of the number of loans (COC 2021a).

By contrast, 5,467 lenders participated in the Small Business Administration's Paycheck Protection Program (PPP) (GAO 2021). Unlike PPP loans, MSLP loans were not guaranteed by the government and continued to carry private credit risk. The list of lenders was thus kept to only federally regulated and supervised banking institutions to ensure lenders' underwriting standards and anti-money-laundering practices were subject to continued supervisory oversight (Arseneau et al. 2021, 12). Unlike the PPP, the MSLP did not include nonbanks and financial technology firms as eligible lenders (Arseneau et al. 2021). The COC noted that although both Fed Chair Powell and Treasury Secretary Steven Mnuchin stated in their June 24, 2020, meeting with the Commission that they were not aware of "any philosophical or administrative reason" as to why nonbank lenders could not be eligible for MSLP, officials never expanded the program to include these lenders (COC 2020d, 36).

FRBB research showed that registered lenders tended to have lower capital ratios than comparably sized non-registered lenders. Moreover, the ultimate reductions in capital requirements due to sales to the MSLP were particularly material for the smaller banks that participated in the program (Arseneau et al. 2021, 32–33).

12. Loan or Purchase: The MSLP SPV purchased a 95% participation in MSLP-compliant loans written by private lenders.

The MSLP purchased a 95% participation in loans made by private lenders. The Fed relied on private lenders to leverage their existing expertise and infrastructure in issuing the loans (Arseneau et al. 2021). By purchasing most of the loan, the Fed intended to ease loan supply constraints by reducing banks' risk and capital demands when making MSLP-compliant loans to mid-sized firms (Morgan and Clampitt 2021; COC 2020c, 39).

The Fed did not purchase the entire loan, however. If lenders could offload whole loans to the Fed, they may have had "little incentive to screen and monitor credits or work out problem loans" (Morgan and Clampitt 2021). The Fed and Treasury said they "believe[d] that a 95 percent participation provides an appropriate balance of these considerations" (COC 2020b).

Moreover, FRBB researchers noted the impracticality of quickly onboarding sufficient personnel from the banking sector to issue these loans directly on the Fed's behalf, which led to the Fed's use of private lenders. Because the market for loans to mid-sized firms lacks standardization, liquid secondary markets, and external credit ratings, the MSLP was operationally complex and slow to roll out. The rollout was also delayed because "there was no blueprint" at the Fed for purchasing loan participations, especially from mid-sized enterprises (Arseneau et al. 2021).

13. Auction or Standing Facility: The MSLP was a standing program, accessible at the lender's election.

The MSLP was a standing purchase program, accessible at the lender's election (FRBB 2020a).

14. Eligible Assets: Eligible assets included bank-originated loans to domestic medium-sized businesses and nonprofits, subject to leverage and loan size limits, among other conditions.

Loans fitting the MSLP structure (see Figure 1 above) that were originated after April 24, 2020, for the for-profit facilities and after June 15, 2020, for the nonprofit facilities were eligible for the MSLP if they also met the terms described below. Firms that had taken advantage of the PPP, were still eligible to take out MSLP loans (and could typically exclude it from their leverage calculations) (FRB 2020c; FRBB 2020i). As discussed in Key Design Decision 15, authorities considered but did not implement an asset-based lending facility to support highly leveraged firms.

A substantial number of public and private comments submitted to the Fed in April urged the expansion of the MSLP to include nonprofit entities (COC 2020d, 42; Kelly 2021, 774). On April 30, the Fed said that it "recognizes the critical role that nonprofit organizations play throughout the economy and is evaluating a separate approach to meet their unique needs" (FRB 2020d). On June 15, the MSLP began accepting lender registrations, and the Fed solicited feedback on draft terms for the two nonprofit facilities (FRBB 2020k; FRB 2020f). The Fed announced nonprofits' eligibility for the MSLP on July 17 (FRB 2020g). It began its purchases of for-profit loans on July 6, and of nonprofit loans on September 4 (FRBB 2020l).

While originally announced with a four-year maturity, the Fed extended MSLP loans' maturity to five years on June 8, 2020, prior to the MSLP becoming operational (FRB 2020e). This change was partly based on public feedback to the previously proposed terms (GAO 2020, 13–14).

The Fed required all MSLP loans to carry a five-year maturity, with interest payments deferred for the first year and principal payments deferred for the first two years. Principal was to be repaid in tranches: 15% at the end of the third and fourth years, and then the final 70% at maturity. According to FRBB President Rosengren, the MSLP utilized the deferral feature as a means to target borrowers facing "disrupted cash flow" but with the ability "over time to actually be able to make payments" (COC 2020c, 40). Prepayment was permitted without penalty (FRBB 2020c; FRBB 2020d).

Rosengren said the five-year maturity was designed to respond to near-term cash-flow disruptions caused by the COVID-19 pandemic and to facilitate medium-term credit provision. He viewed the five-year maturity as balancing the competing considerations that a longer term could both make the program more attractive to borrowers and carry more term risk for the lenders and government (COC 2020c, 31).

MSLP lenders were to underwrite the loans using their existing underwriting practices. The Fed said on April 30, 2020, that "under all of the loan options, lenders will be able to apply their industry-specific expertise and underwriting standards to best measure a borrower's income" (FRB 2020d). The Fed, along with the other federal banking supervisory agencies, clarified and emphasized in September 2020 that the Fed and Treasury expected that MSLP lenders to underwrite the loans by looking "back to the borrower's pre-pandemic condition and forward to their post-pandemic prospects" (FRB 2020i).

The MSLP also required that when banks calculated borrowers' adjusted EBITDA/EBIDA[6], they were to utilize only the adjustments that the bank previously and recently used for that borrower; in the case of a new loan, the bank was to use the adjustments applied to similar borrowers (FRBB 2020c; FRBB 2020d).

[6] Taxes were only included in the for-profit facilities' earnings calculations. Where earnings calculations were needed for the NONLF and NOELF, lenders were to use "EBIDA" (earnings before interest, depreciation, and amortization).

Each MSLP loan borrower, whether a for-profit or nonprofit firm, had to meet the following criteria (MSELF 2020b; MSNLF 2020c; MSPLF 2020b; NOELF 2020b; NONLF 2020b):

- Had 15,000 employees or fewer, or 2019 annual revenues of $5 billion or less
- Was created or organized in the US or under the laws of the US with significant operations in, and a majority of its employees based in, the United States
- Did not participate in other MSLP facilities or the Fed's programs engaging in direct purchases of corporate bonds and municipal bonds: the Primary Market Corporate Credit Facility and the Municipal Liquidity Facility
- Had not already received direct financial support from the provisions of the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act)
- Was generally not a type of firm ineligible to receive a loan from the Small Business Administration[7]
- Had an internal risk rating on any pre-existing debt with the MSLP lender that was equivalent to a "pass" in the Federal Financial Institutions Examination Council's (FFIEC) supervisory rating system as of December 31, 2019 (FRBB 2020c; FRBB 2020d).

A borrower in the for-profit facilities had the following additional criteria:

- Established prior to March 13, 2020
- Structured as a domestic for-profit firm: either a partnership, limited liability company, corporation, association, trust, cooperative, joint venture with no more than 49 percent participation by foreign business entities, or a tribal business concern.

A borrower in the nonprofit facilities, meanwhile, had this set of additional criteria:

- In continuous operation since at least January 1, 2015
- Structured as a nonprofit firm under section 501(c)(3) of the Internal Revenue Code, or a tax-exempt veterans' organization described under section 501(c)(19)
- Had at least 10 employees

[7] Firms eligible for MSLP loans could not be of a type listed under 13 CFR 120.110(b)-(j) and (m)-(s) and amended by regulations implementing the Paycheck Protection Program as part of the CARES Act (SBA n.d.). 13 CFR 120.110 (a) and (k) were allowed as they were nonprofit and religious entities; 120.110 (l) is empty (SBA n.d.). See SBA n.d. for the list of types of ineligible firms.

- Had an endowment of less than $3 billion
- Had total non-donation revenues equal to or greater than 60% of expenses for the period from 2017 through 2019
- Had, at loan origination, a ratio of adjusted 2019 EBIDA to unrestricted 2019 operating revenue greater than or equal to 2%
- Had a ratio of liquid assets to average daily expenses over the previous year, equal to or greater than 60 days
- Had, at loan origination, a ratio of unrestricted cash and investments to existing outstanding and undrawn available debt, plus the amount of any loan under the Facility, plus the amount of any Centers for Medicare & Medicaid Services (CMS) Accelerated and Advance Payments, that is greater than 55%.

15. Purchase Price: The MSLP purchased 95% loan shares based on their par price. The Fed set loan caps for each MSLP facility by dollar amount and by borrowers' existing debt relative to their adjusted 2019 earnings.

MSLP facilities faced the following limits on loan amounts and borrower participation limits:

Figure 6: MSLP Facilities' Maximum Loan Size

Nonprofit Organization New Loan Facility	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility	Nonprofit Organization Expanded Loan Facility
The lesser of: $35 million *or* the borrower's average 2019 quarterly revenue	The lesser of: $35 million *or* 4.0x adjusted EBITDA[A]	The lesser of: $50 million *or* 6.0x adjusted EBITDA[A]	The lesser of: $300 million *or* 6.0x adjusted EBITDA[A]	The lesser of: $300 million *or* the borrower's average 2019 quarterly revenue

[A] Specifically, an amount that does not exceed this adjusted EBITDA when added to outstanding and undrawn available debt. Any outstanding PPP loan under $2 million that the borrower expected to be forgiven could also be excluded from the EBITDA calculation (FRB 2020j; FRBB 2020i).

Sources: NONLF 2020a, NOELF 2020a, MSNLF 2020b, MSPLF 2020a, and MSELF 2020a.

The Fed and Treasury said they arrived at this set of standards because using EBITDA and leverage requirements for considering a borrower's creditworthiness for cash-flow-based lending was standard industry practice. Moreover, they permitted greater leverage for the MSELF and MSPLF relative to the MSNLF due to the greater seniority required on those loans (COC 2020b, 53–54).

An ex-post analysis by Fed researchers showed that the leverage limits were likely more often the binding constraint on loan size than the nominal loan limit (Arseneau et al. 2021, 26–27). English and Liang (2020) suggested in June 2020 that the Fed consider adding an option for higher leverage loans in exchange for the lender taking a greater than 5% stake in the loans[8] (English and Liang 2020, 3). They suggested that this would balance the risks to the Fed appropriately with the potential for increased lending (English and Liang 2020, 22).

The Fed researchers, however, noted that more highly leveraged borrowers may have traditionally relied on asset-based borrowing, which was not the MSLP's role (Arseneau et al. 2021, 36). Treasury Secretary Mnuchin told the Congressional Oversight Commission on June 24, 2020, that the Treasury and Fed were considering an asset-based lending facility (COC 2020d, 34). When testifying on August 7, 2020, however, FRBB President Rosengren said that there were ongoing discussions about asset-based financing but that "there is no term sheet that is imminent" (COC 2020c).

Some commissioners suggested the Fed and Treasury "continue exploring" the addition of asset-based lending and second-lien lending to viable business, and several early letters to the Fed from members of Congress suggested relaxing the 2019 EBITDA parameters (COC 2020d, 34; Kelly 2021, 774). Throughout the life of the MSLP, however, its leverage constraints continued to be benchmarked against 2019 earnings measures (Kelly 2021, 774).

The Fed established minimum new loan sizes at $500,000 as of April 30, 2020, before lowering them to $250,000 on June 8, prior to the program's opening, and to $100,000 on October 30. The Fed implemented these changes in response to feedback it received and to better target support to smaller businesses (FRB 2020d; FRB 2020j; GAO 2020, 13).

Loan minimums were initially larger to balance the Fed and Treasury's aims to make the MSLP as accessible as possible while still maintaining operational feasibility (COC 2020b, 53). FRBB President Rosengren said "the additional volume and the costs of originating smaller loans could therefore reduce lenders' willingness to participate" (COC 2020e).

16. Haircuts: The MSLP purchased 95% participations in eligible loans without applying a haircut.

The MSLP purchased 95% participations in eligible loans without applying a haircut.

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[8] Initially, the Fed introduced the MSPLF to fit this motive. As introduced on April 30, 2020, the MSPLF required the lender to retain a 15% stake in the loan; the Fed described it as an option "with increased risk sharing by lenders for borrowers with greater leverage" (FRB 2020d). The Fed announced on June 8, 2020 (prior to the MSLP becoming operational), however, that it was bringing the MSPLF's loan participation share in line with the other facilities, raising it to 95% (FRB 2020e). The Fed and Treasury said that "upon full consideration of the relevant factors" raising the participation to 95% across all the (then only three) MSLP facilities provided the appropriate balance of risks (COC 2020b, 52; GAO 2020, 14).

17. Interest Rates: All five MSLP facilities charged borrowers a floating rate of LIBOR plus 300 basis points. Interest payments were deferred for the first year of the loan.

The Fed followed its Regulation A in setting interest rates for pandemic-era facilities that intervened in primary markets, including the MSLP (GAO 2020, 12). Regulation A details the Fed's prescribed rules for emergency lending and calls for the Fed to charge a "penalty rate" on all 13(3) lending. The regulation calls for the Fed to set a rate that "(A) Is a premium to the market rate in normal circumstances; (B) Affords liquidity in unusual and exigent circumstances; and (C) Encourages repayment of the credit and discourages use of the program or facility as the unusual and exigent circumstances that motivated the program or facility recede and economic conditions normalize" (Availability and Terms of Credit n.d., sec. 201.4(d)(7)). Fed officials told the GAO that, therefore, "the facilities would experience limited participation when credit is available in the marketplace and increased participation when markets declined and there was a shortage of credit" (GAO 2020). Additionally, by contributing to the MSLP's earnings, the interest charged was one of several measures intended to reduce the risk of the MSLP to the Federal Reserve and taxpayers (FRB 2020l).

The Fed required all MSLP loans to charge a floating rate of LIBOR plus 300 bps, and the lender could choose either the 1-month or 3-month LIBOR. MSLP loans also deferred interest for the first year of the loans (FRBB 2020c; FRBB 2020d). According to FRBB President Rosengren, the MSLP utilized this deferral feature to target borrowers that faced cash-flow disruptions but would return to being able to make payments (COC 2020c, 40).

In the Fed's April 30, 2020, update of MSLP terms, the Fed changed the benchmark interest rate from the Secured Overnight Financing Rate (SOFR) to LIBOR after receiving comments from potential MSLP participants. At the time, the Fed and other regulators were encouraging the private sector to transition from LIBOR to SOFR in setting rates on private contracts. Commenters told the Fed that it would be challenging to implement the new SOFR system in the middle of a crisis. The Fed recommended that eligible lenders include fallback language in the MSLP loan contracts in the event LIBOR became unavailable during the loan's existence (FRBB 2020a, 13).

In assessing the MSLP in retrospect, Fed researchers suggested that the program could have been more efficient if it had allowed lenders some flexibility to adjust interest rates based on the risks of individual borrowers (Arseneau et al. 2021, 36).

18. Fees: The MSLP facilities carried three sets of fees: from the lender to the MSLP, from the MSLP to the lender, and optional fees from the borrower to the lender. Fees applied to the whole principal amount, were capped by the Fed, and were more favorable to the lender on small loans.

(a) *Transaction Fees from the Lender to the SPV (paid at time of transaction)*: For the new and priority loan facilities, the Fed required lenders to pay the MSLP a transaction fee of 100 bps of the original principal amount for loans of $250,000 or more; they paid no fee on smaller loans (MSNLF 2020b; MSPLF 2020a; NONLF 2020a). For the

expanded loan facilities, the Fed required lenders to pay the MSLP a transaction fee of 75 bps of the principal amount of the upsized tranche. The lender could pass this cost on to the borrower. Transaction fees, by contributing to the MSLP's earnings, were one of several measures intended to reduce the risk of the MSLP to the Federal Reserve and taxpayers (FRB 2020l).

(b) *Loan Servicing Fees from the SPV to the Lender (annual)*: There were also annual loan servicing fees that flowed in the opposite direction, paid by the SPV to the lender. In the new and priority loan facilities, loans of less than $250,000 carried an annual loan servicing fee of 50 bps of the principal amount; loans of at least $250,000 paid 25 bps (MSNLF 2020b; MSPLF 2020a; NONLF 2020a). MSLP loans from the expanded loan facilities borrower paid lenders an annual loan servicing fee of 25 bps of the upsized tranche (MSELF 2020a; NOELF 2020a).

(c) *Origination/Upsizing Fees from the Borrower to the Lender (lender's discretion):* MSLP loans from the new and priority loan facilities also carried borrower fees paid to the lender. Borrowers of less than $250,000 could pay a loan origination fee of up to 200 bps. For loans of at least $250,000, the Fed capped this fee at 100 bps (MSNLF 2020b; MSPLF 2020a; NONLF 2020a). For MSLP loans from the expanded loan facilities, borrowers could pay a loan upsizing fee of up to 75 bps (MSELF 2020a; NOELF 2020a). Lenders had discretion over the existence and size of the loan origination and upsizing fees (subject to the maximums) (FRBB 2020a, 14; FRBB 2020b, 28–29). It is unclear if lenders also had discretion over the timing of this fee.[9]

The Fed added the more favorable fee structure for loans of under $250,000 on October 30, 2020, to encourage the provision of smaller loans (FRB 2020j).

Despite the MSLP purchasing 95% of the loan, all fee payments remained based on the whole principal (or upsized) amount. This program feature was intended to incentivize lenders to issue MSLP loans (COC 2020c, 41).

19. Term: As the MSLP purchased assets from eligible lenders, there was no maturity to the credit extension.

The MSLP purchased assets off eligible lenders' balance sheets; there was no maturity to the credit extension. MSLP purchases were structured as true sales (FRBB 2020c; FRBB 2020d).

20. Other Restrictions on Eligible Participants (A): MSLP borrowers had to certify that they were not insolvent and that they lacked adequate credit accommodations from other banking institutions.

Section 13(3) of the Federal Reserve Act stipulates that recipients of liquidity under such programs cannot be insolvent (FRA n.d.c). The Fed required MSLP borrowers to attest to

[9] The MSLP's term sheets suggest it was an up-front charge, while the FRBB's Frequently Asked Questions documents suggest lenders could choose when to charge these fees (MSELF 2020b; MSNLF 2020c; MSPLF 2020b; NOELF 2020b; NONLF 2020b; FRBB 2020c; FRBB 2020d).

such, and said the borrower may comply with the solvency requirement by certifying that it was not (1) "in bankruptcy, resolution under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any other Federal or State insolvency proceeding" (as required by Section 13(3)), and that it was not (2) "'generally failing to pay undisputed debts as they become due' during the 90 days preceding the borrowing" (as prescribed by Regulation A) (FRA n.d.c; FRBB 2020f; FRBB 2020g). However, the Fed carved out an exception for any failure to pay debts that was attributable to COVID-19-related economic or market disruptions (FRBB 2020f, 8; FRBB 2020g, 10).

Prior to extending credit under Section 13(3), the Fed must also "obtain evidence" that a recipient "is unable to secure adequate credit accommodations from other banking institutions" (FRA n.d.c). The Fed required each MSLP borrower to certify that it lacked such adequate credit. The Fed said the borrower did not need to lack credit access altogether, but instead could certify that "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" (FRBB 2020f; FRBB 2020g).

The Fed also mandated that an MSLP borrower (MSELF 2020b; MSNLF 2020c; MSPLF 2020b; NOELF 2020b; NONLF 2020b):

- Refrain from repaying other debt "unless the debt or interest payment is mandatory and due"[10]
- Not seek to cancel or reduce any of its committed credit lines with any lender
- Certify that it believes "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"
- Follow the "compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act"[11]
- Certify its MSLP eligibility, "including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act," which restricted the involvement of firms affiliated with high-level executive branch officials and members of Congress (CARES Act 2020, sec. 4019)

[10] The Fed granted MSPLF borrowers an exception to this term: at the time of origination, they could refinance existing debt owed to a lender other than their MSLP lender (MSPLF 2020b). If a borrower was using an MSLPF loan to refinance, the amount being refinanced could be excluded from the borrower's debt for purposes of calculating its leverage (FRBB 2020c, 19). Timiraos (2022, 241–242) reports that the lack of broadly allowed refinancing was driven by Treasury's desire to avoid bailing out lenders and taking additional risk of losses.

[11] Generally, this stipulation prohibited until 12 months after an MSLP loan was outstanding that the borrower not repurchase shares, pay dividends, or make other common stock capital distributions. For the same timeframe, it also placed restrictions on compensation increases for employees who, in 2019, made over $425,000, and it provided for reductions in compensation for employees making over $3 million (CARES Act 2020, secs. 4003 and 4004).

- Make "commercially reasonable efforts" to maintain its employment and payroll throughout the life of the MSLP loan
  - The Fed and Treasury said this standard meant borrowing businesses were to make "good-faith efforts to maintain payroll and retain employees in light of their respective capacities, economic environment, available resources, and business need for labor."
  - They also said they would not assess compliance with this standard on a borrower-by-borrower basis, but by evaluating "the program's impact on the economic recovery and employment broadly" (COC 2020b, 55).

Other Restrictions on Eligible Participants (B): MSLP lenders faced a set of restrictions that largely mirrored those faced by MSLP borrowers.

MSLP lenders were required to engage in their normal underwriting process before extending an MSLP loan and retain 5% of the loans they sold to the MSLP. Lenders were required to retain this portion of the loan (and its interest in the underlying loan, in the case of a loan upsizing) until it matured or the MSLP sold off the entirety of its 95% share of the loan (FRBB 2020c; FRBB 2020d; FRB 2020i).

Lenders in the MSLP facilities also faced conditions on their participation. Many of the restrictions mirrored those to which the borrower was subject.

The Fed mandated that an MSLP lender (MSELF 2020b; MSNLF 2020c; MSPLF 2020b; NOELF 2020b; NONLF 2020b):

- Refrain from requesting that the borrower repay other debt "unless the debt or interest payment is mandatory and due" during the life of the loan, except in the event of default and acceleration[12]
- Not cancel or reduce any of its committed credit lines with the borrower except in an event of default.
- Certify that the methodology used for calculating the borrower's adjusted 2019 EBITDA and operating revenue of the borrower was the methodology it previously used when originating or amending them before April 24, 2020, in the case of the for-profit facilities and June 15, 2020, in the case of the nonprofit facilities
- Certify its MSLP eligibility, "including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act," which restricted the involvement of firms affiliated with high-level executive branch officials and members of Congress (CARES Act 2020, sec. 4019).

[12] The MSLPF carried an exception. See *supra* note 10.

21. Regulatory Relief: The Fed and Treasury did not issue any regulatory relief with respect to the MSLP.

The Fed and Treasury did not issue any regulatory relief with respect to the MSLP. However, the Fed suggested MSLP lenders experienced some supervisory relief. In his appearance at the COC hearing in August 2020, FRBB President Rosengren described the Fed as treating the pandemic like it would disruption to a given geography following a natural disaster, where the Fed issues guidance to provide "a little more leeway" in the supervisory assessment of the affected loans (COC 2020c). As noted in Key Design Decision 14, the Fed and Treasury (along with other federal banking agencies) sought to clarify in September 2020 that MSLP lenders were to underwrite loans based on borrowers' pre- and post-pandemic prospects (FRB 2020i).

22. International Coordination: The Fed and Treasury did not appear to engage in any international coordination with respect to the MSLP.

The Fed and Treasury did not appear to engage in any international coordination with respect to the MSLP.

23. Duration: In the Consolidated Appropriations Act, 2021, Congress stipulated that the MSLP could not be extended or reinstated.

As announced on April 9, 2020, the MSLP was to be open until September 30, 2020, absent an extension from the Fed and Treasury (MSNLF 2020a). On July 28, 2020, the Fed announced that it extended the termination date to December 31, 2020, to "provide certainty that the facilities will continue to be available to help the economy recover from the COVID-19 pandemic" (FRB 2020h).

The Consolidated Appropriations Act, 2021, effective December 27, 2020, stipulated that the Section 13(3) facilities the MSLP could not be extended or reinstated (Consolidated Appropriations Act 2020, sec. 1005). The legislation did make an exception for the MSLP to purchase loans through January 8, 2021, if the loan had been submitted to the Fed for purchase on or before December 14, 2020 (Consolidated Appropriations Act 2020, sec. 1005(c)(1)).

The mandated closure of the MSLP, alongside that of the other Section 13(3) facilities that had received CARES Act funding, was contrary to the preference of the Fed, which, in November 2020, expressed that it "would prefer that the full suite of emergency facilities established during the coronavirus pandemic continue to serve their important role as a backstop for our still-strained and vulnerable economy" (Smialek and Rappeport 2020; Kelly 2020b). As noted above, participation in the MSLP was accelerating when the program closed (Morgan and Clampitt 2021).

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