Update to Main Street Lending Program

US – June 9, 2020

Main Street Lending Program (MSLP)

Overview

On June 8, 2020, the Federal Reserve (or "Fed") published updated FAQs (the "FAQ") and updated term sheets[1] for the Main Street Lending Program ("MSLP"). The new FAQ,[2] which may be further revised, updates prior FAQs that were published on April 30, 2020 and revised on May 27, 2020. The most recent revisions increase the appeal of the program for US businesses in a number of ways, including by (1) lowering the minimum loan size for "New Loans" and "Priority Loans" (as defined below) to $250,000, (2) increasing the maximum loan size for all Main Street Loans, (3) lengthening the term of the loans from 4 years to 5 years, and providing an additional year of payment deferment, (4) increasing the FRB Boston participation rate in "Priority Loans" to 95% (from 85%), and (5) reducing the amortization schedule for "New Loans".

The MSLP is intended to provide support for small and mid-sized businesses through five-year term loans from eligible lenders to eligible US businesses. Eligible businesses are those that together with their affiliates, have up to 15,000 employees or revenues of up to $5 billion. The Federal Reserve has clarified that the affiliation rules applied by the Small Business Administration ("SBA") to determine eligibility under the Paycheck Protection Program ("PPP") will also apply in respect of certain criteria under the MSLP. The three facilities of the MSLP will be funded by a single special purpose vehicle, MS Facilities LLC ("SPV") established by FRB Boston, capitalized with an equity investment of $75 billion by the Treasury from funds allocated under the CARES Act and up to an additional $525 billion in loans from FRB Boston pursuant to Section 13(3) of the Federal Reserve Act ("Section 13(3)").[3] The SPV will purchase 95% participations[4] in eligible loans, with lenders keeping a 5% interest (and risk) in such loans. The Federal Reserve has not yet announced when the SPV will begin funding participations, but has said that that the MSLP will be open for lender registration soon and the SPV will be actively buying participations in Main Street Loans shortly afterwards.

Eligible lenders may originate Main Street Loans under the Main Street New Loan Facility ("New Loans") or Main Street Priority Loan Facility ("Priority Loans") or increase the size of existing term and revolving credit facilities under the Main Street Expanded Loan Facility ("Loan Increases"). Although the facilities share many common terms (and are still subject to final rules and regulations), there are a number of important differences (further outlined below) among the facilities. A chart summarizing the terms of the three facilities follows.

We note that several key aspects of the MSLP have changed since the initial term sheets were released and that the Federal Reserve has provided substantial guidance in its subsequently published FAQs. Nonetheless, several ambiguities remain. As we have seen with the PPP, programs of this nature are not immune from political pressures (e.g., subsequent guidance under the PPP placed public company borrowers in the hospitality and franchise restaurant industries, private schools and universities (and, possibly, their lenders) at risk for having obtained loans as ineligible borrowers even though the initial guidance under the PPP made these businesses eligible to apply). Potential borrowers and lenders should exercise caution, and consider risk management measures before taking action in respect of the MSLP.

Key June 8 updates include:

- Lowering the minimum loan size for New Loans and Priority Loans to $250,000 from $500,000;
- Increasing the maximum loan size for all facilities:
  - $35 million for New Loans;
  - $50 million for Priority Loans; and
  - $300 million for Loan Increases.
- Increasing the term of each loan option to five years, from four years;
- Extending the repayment period for all loans by delaying principal payments for two years, rather than one;
- Reducing the amortization rate of New Loans to make them match Priority Loans and Loan Increases;
- Raising the FRB Boston's participation to 95% for Priority Loans from 85%; and
- Removing the 35% sizing metric for Loan Increases (which

1 The term sheets for the New-Loan Facility, the Priority-Loan-Facility, and the Expanded-Loan Facility, and are available at the Fed's Main Street Hub.

2 This update comes less than two weeks after Federal Reserve Bank of Boston ("FRB Boston") released form program documents for the MSLP. The form program documents can be found here but most are being updated to account for the June 8 updates to the MSLP. We expect the new versions to be published soon, as the prior documents may only be used on or before June 10, 2020. 3 FRB Boston will make the loans to the SPV on a recourse basis

3 FRB Boston will make the loans to the SPV on a recourse basis to the SPV, such that the Treasury's equity will act as first-loss capital.

4 Although the sale will be documented as a participation, the SPV's interest may be elevated by the SPV from a participation to an assignment upon certain events, including a payment default or bankruptcy default, or upon the lenders taking any action that would cause any portion of the Main Street Loan (in which the SPV has an interest) to be forgiven. In addition, FRB Boston has published a form of Co-Lender agreement that provides, in case of elevation, for the originating lender to act as administrative agent (and collateral agent) for itself and the SPV. The Co-Lender Agreement is to be used if the Main Street Loan is documented on a bilateral (single-lender) form – since such forms typically lack agency, assignment, voting, sharing and other multi-lender provisions. Elevation to an assignment would cause the SPV (or its assignee) to become a direct "lender" under the credit agreement and give the SPV the rights associated with such status (such as the right to require its own note and to direct the administrative agent if the SPV constitutes the "Required Lenders").

had capped Loan Increases at 35% of existing debt).

Key May 27 updates include:

- Clarifications that:
  - certain eligibility standards will be determined on a consolidated basis;
  - loan sizing will consider affiliates participating in the MSLP (or PMCCF);
  - the SPV's participation interest may be elevated to an assignment;
  - US businesses with foreign parents may be eligible, notwithstanding their foreign ownership, but are subject to certain use-of-proceeds restrictions with respect to their foreign affiliates; and
  - the Borrower must be able to certify that it is unable to secure adequate credit accommodations from other banking institutions, and that it is not "insolvent".
- Additional information (and requirements) regarding:
  - the lenders' due diligence requirements;
  - the determination of the priority status of Main Street Loans, including the addition of a collateral coverage ratio concept in respect of Priority Loans (tested at origination);
  - the calculation of EBITDA, including with respect to holding companies and the need for subsidiary guarantees;
  - forms of documents to be used in connection with the MSLP;
  - voting rights of the SPV; and
  - funding mechanics of the SPV's participations.

General Terms of the MSLP

- **Total Program Size**: Up to $600 billion (as of April 30, 2020).
- **Purpose**: To provide support to small and medium-sized businesses and their employees across the US during the current period of financial strain by facilitating credit to such businesses, and to help companies that were in sound financial condition prior to the onset of the COVID-19 pandemic maintain their operations and payroll until conditions normalize.
- **Lender Eligibility**:[5] US insured depository institutions, US branches or agencies of foreign banks, US bank holding companies, US savings and loan holding companies, US intermediate holding companies of a foreign bank, or a US subsidiary of any of the foregoing. A Lender providing a Loan Increase must be one of the lenders that holds an interest in the underlying loan at the date of upsizing (and must have held an interest since December 31, 2019).
- **Program Termination**: September 30, 2020.[6]
- **Borrower Eligibility**:
  - up to 15,000 employees, or up to $5 billion in 2019 revenues, in each case together with affiliates (but only one test needs to be met);[7]
  - formed in, or under the laws of the US, prior to March 13, 2020;[8]
  - is a Business (i.e., a for profit entity)[9] or a tribal business concern;[10]
  - is not an ineligible business (listed in 13 CFR 120.110(b)-(j) and (m)-(s),[11] as modified by regulations implementing the PPP), which generally include any business involved in lending activities or speculative activities, and businesses engaged in passive real estate investments;[12]
  - has significant[13] operations in the US and a majority

5 Nonbank financial institutions are not currently eligible.

6 The SPV will cease purchasing participations on September 30, 2020. However, FRB Boston will continue to operate the SPV until its assets mature or are sold.

7 To determine its eligibility with respect to this requirement, a business must aggregate its employees and 2019 revenues with the employees and 2019 revenues of its affiliated entities, in accordance with the affiliation test set forth in 13 CFR 121.301(f) (which is also applied under the PPP). A business can calculate its revenues either by using (1) its (and its affiliates') annual "revenue" in its 2019 Generally Accepted Accounting Principles-based (GAAP) audited financial statements or (2) its (and its affiliates') annual receipts for the fiscal year 2019, as reported to the Internal Revenue Service. For purposes of the MSLP, the term "receipts" has the same meaning used by the SBA in 13 CFR 121.104(a). If neither the audited financial statements nor annual receipts are available for 2019, the most recently available should be used.

8 A Borrower may be a subsidiary of a foreign company. However, a Borrower that is a subsidiary of a foreign company must use the proceeds of any Main Street Loan only for the benefit of the Borrower, its consolidated US subsidiaries, and other US affiliates. No proceeds of a Main Street Loan may be used for the benefit of foreign parents, foreign affiliates or foreign subsidiaries.

9 "Business" means a for profit entity formed as a partnership; limited liability company; corporation; association; trust; cooperative; or joint venture with no more than 49% participation by foreign business entities; provided that the Fed may consider other forms of organization for inclusion. The Fed announced on June 8, 2020 that it is working to establish a loan option that is suitable for non-profit organizations, but non-profits are not currently eligible for the MSLP.

10 Defined in 15 U.S.C. § 657a(b)(2)(C), except that "small business concern" in that paragraph should be replaced with "Business" as defined in the MSLP.

11 For example, the following businesses (or certain of the following businesses) may be ineligible because of these regulations: financial businesses primarily engaged in lending; passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds; life insurance companies; pyramid sale distribution plans; private clubs; government-owned entities (except for certain hospitals and businesses owned or controlled by a Native American tribe); loan packagers earning more than one third of their gross annual revenue from packaging SBA loans; businesses with an "Associate" (defined in 13 CFR 120.10) who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude; businesses in which the Lender or CDC, or any of its associates owns an equity interest; certain adult entertainment businesses; the businesses or any business owned or controlled by the business or its Associates has previously defaulted on a Federal loan or Federally assisted financing within the past seven years, and caused the Federal government to sustain a loss in any of its programs; businesses primarily engaged in political or lobbying activities; and speculative businesses. The Fed has clarified that PE firms are ineligible for Main Street Loans, and that their portfolio companies, like other businesses, will be subject to affiliation rules to determine eligibility, etc.

12 Based on the SBA Standard Operating Procedures, the restriction on passive real estate companies seems to generally exclude from the MSLP any business that is primarily engaged in owning or purchasing real estate and leasing for any purpose, including, for example, shopping centers, salon suites, and similar business models that generate income by renting space to accommodate independent businesses that provide services directly to the public.

13 A Borrower can establish that its US operations, on a consolidated basis, are significant if a majority of its consolidated assets, income, revenue, or expenses,

of employees based in the US (each determined on a consolidated basis[14] in respect of the Borrower and its subsidiaries);

- was in sound financial condition prior to the COVID-19 pandemic;
- has not received specific support pursuant to Title IV, Subtitle A of the CARES Act, relating to emergency relief to distressed industries, including airlines and businesses critical to maintaining national security; [15]
- neither the business nor any of its affiliates may participate in the Primary Market Corporate Credit Facility (PMCCF) (the business and its affiliates must chose only one of the three MSLP facilities); and[16]
- the Borrower must be able to certify that it is unable to secure adequate credit accommodations from other banking institutions.[17]

- **Terms and Conditions of Main Street Loans**:
  - **SPV participation**: The SPV will purchase a 95% participation in eligible term loans at par, and will have the ability to elevate the participation to an assignment upon certain conditions.18
  - **Maturity**: Five-year maturity.
  - **Payment deferment**:
    - No interest payments for one year (interest will be capitalized if not paid);
    - No principal payments required during the first or second year (first payment due on third anniversary of the Main Street Loan).
  - **Amortization**: Principal amortization of 15% at the end of the 3rd year, 15% at the end of the 4th year, and a balloon payment of 70% at maturity.19
  - **Interest rate**: Adjustable rate of LIBOR20 (1 or 3 month) + 3.0%.
  - **Minimum size of loans**:
    - $250,000 for New Loans and Priority Loans; and
    - $10 million for Loan Increases.
  - **No prepayment penalty**.
  - **Pari passu risk sharing**: The SPV and the Lender will share risk on an equal basis in accordance with their pro rata shares (in the case of the Main Street Expanded Loan Facility, in the Loan Increase).[21]
  - **Financial condition**: The Lender must assess the Borrower's financial condition at the time of application.22
  - **Risk retention**: The Lender must retain its 5% portion of a Main Street Loan until (i) it matures or (ii) neither the SPV, nor any government assignee, holds any interest in the Main Street Loan, whichever comes first. The Lender making a Loan Increase must also retain its interest in the Existing Loan until the earliest of (1) the Existing Loan matures, (2) the Loan Increase matures, or (3) such time as neither the SPV, nor any government assignee, holds any interest in the Loan Increase. The sales of participation interests to the SPV will be structured as "true sales".
  - **Servicing fee**: The SPV will pay the Lender 0.25% (25 bps) of the original principal amount of the SPV's participation in the Main Street Loan per year (in arrears) for loan servicing, subject to certain termination conditions.
  - **Not a grant program**: No portion of any Main Street Loan is forgivable.

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or a similar metric, are in, or are generated in, the US.

14 I.e., the consolidation of the financials of the Borrower and all of direct and indirect subsidiaries.

15 Title IV, Subtitle A of the CARES Act includes the Treasury Direct Lending Program and the other Federal Reserve Facilities, such as the PMCCF, but does not include PPP loans or EIDL (in other words, a Borrower may have received a PPP loan or an EIDL and still participate in the MSLP). Any unforgiven portion PPP loans would constitute debt for purposes of determining Maximum Leverage.

16 A potential borrower and its affiliates may receive more than one Main Street Loan within a particular MSLP facility, as long as the aggregate amount of such loans does not exceed the applicable maximum size parameters ($25MM or $200MM). For example, if any of a potential borrower's affiliates received a Loan Increase, the potential borrower would not be eligible for New Loans or Priority Loans, but might be eligible for its own Loan Increase. This means that portfolio companies and other affiliates should coordinate efforts in selecting a MSLP facility. Please see footnote [37] for a further discussion of the impact of having multiple affiliates apply for Main Street Loans.

17 The Fed has clarified that being unable to secure adequate credit accommodations does not mean that no credit from other sources is available to the Borrower. Rather, the Borrower may certify that it is unable to secure "adequate credit accommodations" because the amount, price, or terms of credit available from other sources are inadequate for the Borrower's needs during the current unusual and exigent circumstances. The Fed has further indicated that the Borrower does not need to show that applications for credit had been denied by other lenders or otherwise document that the amount, price, or terms of credit available elsewhere are inadequate.

18 The SPV has the right to elevate in certain circumstances, such as a Borrower payment default or bankruptcy or insolvency, or upon the Lender attempting to forgive the Main Street Loan.

19 As used in this amortization section, principal includes capitalized interest – unpaid interest during the first year will be capitalized. Prepayments will reduce future payments in the manner specified in the Loan Documents. The FAQ indicates that the Lender, although it has flexibility, should make efforts to align its approach with the expected amortization schedule specified for each loan type (e.g., applying prepayments to the next scheduled principal payment due would maintain the alignment of later payments with the amortization schedule and allow for the intended deferment of some portion of payments to later years.)

20 Fallback contract language should be included in case LIBOR becomes unavailable (consistent with the recommendations of the Alternative Reference Rates Committee).

21 In other words, losses will be split 95/5 between the SPV and the Lender.

22 Lenders will need to assess each potential borrower's financial condition, and will apply their own underwriting standards in evaluating the financial condition and creditworthiness of a potential borrower. A lender may require additional information and documentation in making this evaluation and will ultimately determine whether a potential borrower is approved for a Main Street Loan, and the amount of the Main Street Loan (within the sizing parameters).

- **Required Certifications and Covenants:**
  - Lender certification and covenants with respect to:
    - its diligence regarding the Borrower's formation and its receipt of the Borrower Certifications and Covenants;
    - certain core terms of the MSLP (such as interest rate, maturity date, date of origination, amortization, loan sizing (including in respect of Maximum Leverage), subordination and priority of the loan, prepayments, cross acceleration, negative covenants (in respect of Priority Loans and Loan Increases), and the financial reporting covenant;
    - liens (for Priority Loans and Loan Increases);
    - the SPV's participation interest and the Lender's retention of its interest;
    - restrictions on cancellation or reduction of other existing committed[23] credit lines and receipt of early repayment of other debt owing to the Lender, that is, the Lender may not request that the Borrower repay debt owing to the Lender, or pay interest thereon, until the Main Street Loan is repaid in full, unless the debt or interest payment is mandatory and due (including in the case of default and acceleration),[24] subject to the following exceptions:
  - Borrowers may make normal course payments on lines of credit (including credit cards), and a lender may accept such repayments on such line of credit from a Borrower in accordance with its normal course of business usage for such line of credit;
  - Borrowers may refinance maturing debt; and
  - Borrowers may take on and pay additional debt obligations required in the normal course of business and on standard terms, including inventory and equipment financing, provided that such debt is secured only by newly acquired property (*e.g.*, inventory or equipment), and, apart from such security, is of equal or lower priority than the Main Street Loan;
    - Risk rating (that other loans from the Lender to the Borrower as of December 31, 2019[25] (or in the case of a Loan Increase, the Existing Loan), must have had, at such time, an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system;
    - EBITDA (that the methodology used for calculating the Borrower's adjusted 2019 EBITDA[26] for the leverage requirement is the methodology that the Lender has previously used for adjusting EBITDA when extending credit to the Borrower or, if the Borrower is a new customer, similarly situated borrowers[27] on or before April 24, 2020-- in the case of Loan Increases, the same methodology must be used for the Loan Increase as used for the Existing Loan (prior to April 24, 2020));[28] and
    - the Lender not being controlled by certain US government officials (or their family members), as set forth under Section 4019(b) of the CARES Act.
  - Borrower certifications and covenants with respect to:
    - its eligibility (such as that (a) it is a "Business", (b) its date of formation, (c) it is not an "Ineligible Business", (d) its size, and (e) whether it or its affiliates have received other Main Street Loans or participated in the PMCCF);
    - CARES Act requirements, including participation in direct Treasury lending (under CARES Act 4003(b)(1), (2) or (3)); status as a US business; lack of conflicts of interest under the CARES Act; and the following restrictions on compensation and dividends (until 12 months after the Main Street Loan is repaid):

23 The FAQ indicates that this prohibition on committed lines will not affect uncommitted lines of credit, the expiration of existing lines of credit in accordance with their terms, or the reduction of availability under existing lines of credit in accordance with their terms due to changes in borrowing bases or reserves in asset-based or similar structures.

24 Mandatory prepayments are permissible if required by contract as in effect on the date the Main Street Loan is made (thus existing debt seemingly may be modified in anticipation of a Main Street Loan, a departure from the May 27 FAQ), provided that any such prepayments triggered by the incurrence of new debt can only be paid in the case of origination of Priority Loans or if such payment is de minimis. In other words, New Loans and Loan Increases cannot be used to refinance material existing debt.
With respect to future debt that complies with terms of the Main Street Loan, principal and interest payments are "mandatory and due" on their scheduled dates or upon the occurrence of an event that automatically triggers mandatory prepayments.

25 If the Existing Loan for a Loan Increase was originated or purchased by the Lender after December 31, 2019, it must have been a "pass" at the time of origination or purchase.

26 If the Borrower is not an operating company but a holding company (i.e., substantially all of its assets are equity interests in other entities), the Borrower must designate certain operating subsidiaries as "Selected Subsidiaries" – entities which would be eligible borrowers-- that will guaranty the Main Street Loan (on a secured basis if the Priority Loan or Loan Increase is secured), and whose debt and EBITDA will be used for the calculations.

27 "Similarly situated borrowers" are borrowers in similar industries with comparable risk and size characteristics. Lenders should document their process for identifying similarly situated borrowers when originating a new Main Street Loan.

28 If a Lender has used different EBITDA adjustment methods with respect to the Borrower, or for similarly situated borrowers (e.g., one for use within a credit agreement and one for internal risk management purposes), the Fed has indicated that such Lender should choose the most conservative method it has employed. In all cases, lenders must select a single method used at a point in time in the recent past and before April 24, 2020. Lenders may not "cherry pick" or apply adjustments used at different points in time or for a range of purposes. In any event, lenders should adopt risk mitigation strategies in respect of the determination of EBITDA. We note that it may be impracticable and burdensome for a lender to determine the most conservative EBITDA definition it has used for "similarly situated borrowers".

- Compensation:
  - Employees who made more than $425,000 in total 2019 compensation[29] may not be paid more (than their 2019 compensation) in any subsequent 12-month period;
  - Severance for such employees is capped at 2x 2019 compensation; and
  - Reduction of compensation for employees who made more than $3 million in total 2019 compensation, by 50% of the excess over $3 million; and
  - Capital Distributions / Dividends: No stock buy-backs (unless required by contract as of 3/27/20) and no capital distributions or dividends, until 12 months after the Main Street Loan is repaid, other than distributions by pass-thru entities to the extent reasonably required to cover owners' tax obligations in respect of the entity's earnings;
    - unavailability of other credit;[30]
    - its solvency,[31] and ability to meet financial obligations for 90 days (that it has a reasonable basis to believe that, immediately giving effect to the Main Street Loan, it will have 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);
    - financial records[32] and the calculation of EBITDA[33];
    - liens (for Priority Loans and Loan Increases);
    - restrictions on cancellation or reduction of other existing committed credit lines and early repayment of other debt, i.e., the Borrower may not repay the principal balance of, or pay any interest on, any debt until the Main Street Loan is repaid in full, unless the debt or interest payment is "mandatory and due", subject to the exceptions set forth above in respect of payments to the Lender, and, in addition:
  - In the case of Priority Loans, Borrowers may, at the time of origination, refinance existing debt owed to other lenders (i.e., not the Lender making the Priority Loan);
    - whether the Borrower or its affiliates have received other Main Street Loans;
    - use of proceeds; and
    - the guaranty of the Main Street Loan by subsidiaries, if the Borrower is a holding company.
- Other Conditions:
  - Employee Retention: Borrower must make commercially reasonable efforts to maintain its payroll and retain its employees during term of the Main Street Loan.[34]

Key Differences among the Facilities

- Type of Loan:
  - New Loans and Priority Loans: are new term loans made on or after April 24, 2020.[35]
  - Loan Increases: are made by increasing/upsizing a tranche of an existing term loan or revolving loan (an "Existing Loan"), by means of a term loan, with the Existing Loan made by the Lender prior to April 24, 2020 and maturing at least 18 months after the Loan Increase is made.[36] The Lender(s) may extend the maturity of the Existing Loan at the time of upsizing in order for the underlying instrument to satisfy the 18-month requirement. Loan Increases have additional flexibility so these loans can be documented inside of existing credit/loan agreements (by means of amendment).

29 Section 4004 (of the CARES Act defines total compensation to include salary, bonuses, awards of stock, and other financial benefits provided by an eligible business to an officer or employee of the eligible business, but it does not provide guidance on the valuation of non-cash compensation.

30 The instructions indicate that a Borrower that has other credit available to may still be able to make this certification if 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.

31 The Borrower must certify that it is not "Insolvent" as that term is used in 12 CFR 201.4(d)(5)(iii). For purposes of this certification, an entity is "Insolvent" if it is in bankruptcy, resolution under Title II of Dodd-Frank, or any other Federal or State insolvency proceeding (as defined in paragraph B(ii) of Section 13(3)), or if it was "generally failing to pay undisputed debts as they become due" during the 90 days preceding the date the certification is made. However, the Fed has clarified that an entity would not be Insolvent or "generally failing to pay its undisputed debts as they become due" if it is behind on its debts because of reduced business activity resulting from stay-at-home, shelter-in-place, social distancing, or other similar orders or recommendations by federal, state, or local government authorities related to COVID-19, but that an entity would be Insolvent if it is failing to pay its undisputed debts as they become due for reasons unrelated to COVID-19.

32 If the Borrower is subject to U.S. GAAP ("GAAP") reporting requirements or already prepares financials in accordance with GAAP, it must submit GAAP-compliant financial records in connection with this certification. If the Borrower does not have to comply with GAAP and does not typically prepare its financials in accordance with U.S. GAAP, it is not required to submit GAAP compliant financials. If the Borrower typically prepares audited financial statements, it must submit audited financial statements (otherwise reviewed financial statements or financial statements prepared for the purpose of filling taxes should be used).

33 If the Borrower typically prepares consolidated financial statements (that do not combine affiliates or include any parent entity, i.e., the financials only include the Borrower and its subsidiaries), it must submit such consolidated financial statements. If the Borrower does not typically prepare such consolidated financial statements, it would only be required to do so if required by the Lender. Because Maximum Leverage will be tested on the basis of these financial statements, if the Borrower provides consolidated financials, it seems that at least the EBITDA portion of Maximum Leverage will be tested on a consolidated basis (and therefore presumably the whole calculation, though the FAQ does not explicitly state that).

34 The Borrower should undertake good-faith efforts to maintain payroll and retain employees, in light of its capacities, the economic environment, its available resources, and the business need for labor. Borrowers that have already laid-off or furloughed workers as a result of the disruptions from COVID-19 are still eligible to apply for Main Street Loans. The FAQ indicates that businesses that have already laid-off or furloughed workers as a result of the disruptions from COVID-19 are eligible to apply for Main Street Loans.

35 In the original term sheets, the Fed had used April 8, 2020. These loans, like Priority Loans, are seemingly intended for new credit facilities that are particularly designed to be eligible for these Main Street Facilities, and would be documented in a new credit/loan agreement.

36 It unclear whether all tranches of the underlying credit facility must mature at least 18 months after the Loan Increase is made, or just the Existing Loan that is being upsized.

- Size of Loans (determined with reference to affiliates, if any has applied for a Main Street Loan):[37]
  - New Loans:
    - Minimum: $250,000; and
    - Maximum: lesser of (1) $35 million, (2) the amount that, when added to existing outstanding and undrawn available debt,[38] calculated as of the date of the loan application ("Total Debt"), does not exceed 4x adjusted 2019 EBITDA (Maximum Leverage).
  - Priority Loans:
    - Minimum: $250,000; and
    - Maximum: lesser of (1) $50 million, (2) the amount that, when added to Total Debt, does not exceed 6x adjusted 2019 EBITDA (Maximum Leverage).
  - Loan Increases:
    - Minimum: $10 million; and
    - Maximum: lesser of (1) $300 million, and (2) the amount that, when added to Total Debt, does not exceed 6x adjusted 2019 EBITDA (Maximum Leverage).
- Loan Ranking / Priority:
  - New Loans: May not at any time be contractually subordinated to any of the Borrower's other Loans or Debt Instruments.[39]
  - Priority Loans and Loan Increases: must at all times be senior to or *pari passu* with, in terms of both priority and security, the Borrower's other Loans or Debt Instruments, other than Mortgage Debt,[40] which will be enforced through negative covenants[41] and a prohibition on contractual subordination. In the case of secured Priority Loans, this will be tested at closing by a collateral coverage ratio,[42] and the Lender will have internal diligence requirements with respect to other debt owing to the Lender.[43] Secured Loan Increases must be secured by the collateral that secures the Existing Loan (and any other term loans that are part of the underlying facility). Unsecured Loan Increases and Priority Loans will only be permitted if none of the Borrower's other Loans or Debt Instruments, other than Mortgage Debt (in the case of Loan Increases, Mortgage Debt that is not a tranche of the underlying credit facility), are secured, which will need to be verified by lien searches (and other customary diligence).

37 The FAQ states that affiliation rules will be used to size loans if more than one affiliate receives a Main Street Loan, in two ways: (1) Main Street Loans made to affiliates will reduce the amount available under the $35MM, $50MM, or $200MM cap, and (2) the debt of all members of the entire affiliated group will be tested on a consolidated basis (in addition to testing the particular Borrower's debt) – which means Maximum Leverage will be tested in two ways. For example, if a potential Borrower's affiliate receives a $10MM Priority Loan, the potential borrower will only be able to borrow up to $40MM – ($50MM minus $10MM), and will not be eligible for any New Loans or Loan Increases. Moreover, (1) the Borrower's EBITDA will be tested against its Total Debt (and requested Priority Loan), and (2) the consolidated EBITDA of the "entire affiliated group" will be tested against the consolidated Total Debt (and Priority Loans) of the "entire affiliated group". The FAQ clarifies that the Fed intends to include the "entire affiliated group" (and not just those borrowing under the MSLP), such that having multiple affiliates borrow under the MSLP means that the leverage of all affiliates becomes a sizing metric (and an indirect eligibility criteria). It is unclear if the same methodology for calculating EBITDA must be used both for the Borrower and the affiliated group (though that could be inferred from the instructions for the Lender Certifications and Covenants).

38 "Existing outstanding and undrawn available debt" includes all amounts borrowed under any loan facility, including unsecured or secured loans from any bank, non-bank financial institution, or private lender, as well as any publicly issued bonds or private placement facilities. It also includes all unused commitments under any loan facility, but excluding (1) any undrawn commitment that serves as a backup line for commercial paper issuance, (2) any undrawn commitment that is used to finance receivables (including seasonal financing of inventory), (3) any undrawn commitment that cannot be drawn without additional collateral, (4) any undrawn commitment that is no longer available due to change in circumstance.

39 This would not prevent a New Loan from being structurally or effectively subordinated.

40 "Loans or Debt Instruments" means debt for borrowed money and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, and all guarantees of the foregoing. "Mortgage Debt" means (i) debt secured by real property at the time of the Main Street Loan's origination, or (ii) limited recourse equipment financings (including equipment capital or finance leasing and purchase money equipment loans) secured only by the acquired equipment. It is unclear if real estate "Mortgage Debt" is intended to be debt that is solely secured by real property, or if Loans or Debt Instruments that have an abundance-of-caution mortgage would constitute Mortgage Debt, though the inclusion of "secured only by the acquired equipment" at the end of equipment "Mortgage Debt" suggests that real estate "Mortgage Debt" may be secured by personal property (in addition to real property).

41 The FAQ supplies a model covenant. Loan Increases to a multi-lender facility may also use the existing lien covenant if it was negotiated in good faith prior to April 24, 2020.

42 If a Priority Loan is secured, then the Collateral Coverage Ratio for the Priority Loan at the time of its origination must be either (i) at least 200% or (ii) not less than the aggregate Collateral Coverage Ratio for all of the Borrower's other secured Loans or Debt Instruments (other than Mortgage Debt). "Collateral Coverage Ratio" is defined as (i) the aggregate value of any relevant collateral security, including the pro rata value of any shared collateral, divided by (ii) the outstanding aggregate principal amount of the relevant debt; though no standard of determining the value of collateral is specified. A Borrower can thus automatically satisfy this test by granting a pari passu lien on all collateral that currently secures any existing debt. If the Priority Loan is secured by the same collateral as any of the Borrower's other Loans or Debt Instruments (other than Mortgage Debt), the lien upon such collateral securing the Priority Loan must be and remain senior to or pari passu with the lien(s) of the other creditor(s) upon such collateral-- though the Priority Loan need not be secured by all of the collateral that secures the other Loans or Debt Instruments.

43 The Lender should (i) inquire with any of its officers and employees that manage its relationship with the Borrower and (ii) conduct a good faith, reasonable search of the Lender's records, in each case to determine if the Borrower has accurately reported the outstanding debt it has with the Lender. Although only the Lender Certifications and Covenants instructions for Priority Loans contain this requirement, Lenders should consider requiring this inquiry for all Main Street Loans.

- Collateral:
  - New Loans and Priority Loans may be secured or unsecured.
  - Loan Increases must be secured if the original loan is or becomes secured, and collateral securing the loan will secure the loan participation on a pari passu basis.[44]
- Fees:[45]
  - New Loans and Priority Loans:
    - Origination Fees: up to 1.0% (100bps), payable by Borrower to the Lender, at the discretion of the Lender.
    - Transaction Fees: 1.0% (100bps), payable by the Lender to SPV, but the Lender may charge this fee to the Borrower.
  - Loan Increases:
    - Origination Fees: up to 0.75% (75bps), payable by Borrower to the Lender, at the discretion of the Lender.
    - Transaction Fees: 0.75% (75bps), payable by the Lender to SPV, but the Lender may charge this fee to the Borrower.

Given the differences among the facilities, lenders and borrowers with existing lending relationships will need to decide which facility to use. Given the additional flexibility provided by Loan Increases, many will favor getting a Loan Increase if a business is eligible, especially now that revolver credit facilities are eligible for Increase Loans. The necessary analysis will include considerations relating to (i) the size of the loan needed, (ii) the current debt structure of the Borrower, (iii) the Borrower's 2019 adjusted EBITDA (and whether it can meet the 6x test), (iv) whether collateral securing the existing loans should secure the new loans, (v) the maturity of the existing loan (Loan Increases have a four year maturity which might not match the Existing Loan), (vi) the extent of the amendments to current credit agreement(s) that would be needed, (vii) the expected timing of documentation and related consents, (viii) the amount of the transaction and origination fees (Loan Increases have lower fees), (ix) whether any existing debt needs to be repaid when the Main Street Loan is funded (only Priority Loans permit repayment of debt when the loan is made, but that is limited to debt not owing to the Lender), and (x) the needs and situation of the Borrower's affiliates that might borrower (or have borrowed).

Required Documentation

Lenders: Lenders will be required to register once for the MSLP. Then, in respect of each Main Street Loan originated by a Lender, it will be required to complete additional documentation.

- For Initial Registration:
  - Lender Registration Certifications and Covenants: A document that requires the Lender to certify regarding its eligibility, lack of conflicts of interests (as set forth in the CARES act) and solvency, and to agree to certain covenants relating to Section 13(3), the CARES Act, the Federal Reserve's Regulation A, and the MSLP term sheets.
  - Lender Wire Instructions Direction: A one-page document specifying wire instructions for payments owing to the Lender from the SPV, e.g., the participation price and servicing fees.
- Transaction Specific Required Documents (for each Main Street Loan)[46]:
  - Participation Agreement under the Main Street Program Transaction Specific Terms: A 3-page, transaction specific agreement under which the SPV purchases a participation in a particular eligible loan and which incorporate the terms of a longer, master Participation Agreement. Although the master Participation Agreement is not signed by the Lender, it should be carefully reviewed as it will act as the master agreement for all Main Street Loans.[47]
  - Lender Transaction Specific Certifications and Covenants (for the particular MSLP facility)("Lender Certifications and Covenants"): A form that requires that the Lender to certify to the eligibility of the Main Street Loan and to agree to certain covenants relating to requirements under the applicable MSLP facility, including certifications that the Loan Documents meet the specific requirements in the Appendix A of the FAQ. The instructions for the form state that the Lender may rely on the information in the FAQ (in effect at the time the Lender Certifications and Covenants are signed) for the purposes of its certifications and covenants.[48] To make the various certifications and covenants, the Lender will need to perform due diligence on certain of the eligibility criteria for the borrower (regarding the date of formation and the type of entity), and, in certain circumstances, due diligence regarding liens and regarding other debt owing

44 If the Borrower defaults on a loan consisting (in part) as a secured Loan Increase, the SPV and lender(s) would share equally in any collateral securing the loan relative to their proportional interests in such loan (including the Loan Increase). The Lender can require the Borrower to pledge additional collateral to secure a Loan Increase.

45 All such fees are based on the entire original principal amount of the Main Street Loan (not only the amount participated in by the SPV). No other fees (or additional interest) may be charged by the Lender, except de minimis fees for services that are customary and necessary in the Lender's underwriting of commercial and industrial loans to similar borrowers, e.g., appraisal and legal fees; provided that the Lender may charge customary consent/amendment fees if needed to amend existing loan documentation for a Loan Increase. The FAQ is silent about consent fees for amending other non-Main Street Loans made by the Lender.

46 FRB Boston has indicated that the Transaction Specific Required Documents for Lenders are being revised to conform to the June 8, 2020 updates, and we note that the amended versions may contain additional changes.

47 Some borrowers and loan officers who are used to dealing with smaller loans may not be familiar with the rights of participants and co-lenders. Lenders should consider training and other tools to help loan officers understand how the SPV's rights affect loan administration, and borrowers, especially those who favor relationship-oriented lending partners, should consider the related effects on consents, waivers and amendments (and workouts).

48 Such reliance language, however, is not in the Lender Certifications and Covenants that will actually be signed by the Lender. The Lender Certifications and Covenants reference the instructions, and some of the covenants and certifications explicitly reference the instructions, but some do not. We therefore note that relying on the FAQ may not absolve a lender from all liability or prevent all claims from being raised.

to the Lender.

- Assignment Executed In Blank: An assignment, modeled after the LSTA form assignment, to be held in escrow and used in the future by the SPV to elevate its participation in certain limited circumstances, where so permitted, in order to facilitate the elevation (and assignment). Different guidance is provided depending on whether the underlying loan is documented on a bilateral or co-lender form.
- Co-Lender Agreement under The Main Street Program Transaction Specific Terms: Only for Main Street Loans documented on a bilateral (single-lender) agreement, this form provides the agency and operational mechanics to accommodate multiple lenders in case the SPV elevates its interest and becomes a co-lender. Under the Co-Lender Agreement, the Lender is appointed as Administrative Agent with respect to the loan, effective upon the elevation (or elevation and transfer) of the loan by the SPV such that there will then be multiple lenders with respect to the loan. The Co-Lender Agreement is executed in blank by the Lender and the Borrower and held in escrow in case the participation is elevated at a future time.[49]
- Servicing Agreement: A 16-page agreement that sets for the 25 bps fee payable by the SPV to the Lender and the enhanced reporting services that the Lender undertakes to the SPV in consideration for the servicing fee.

- Borrowers[50]:
  - "Borrower Certifications and Covenants" (for the particular MSLP facility): requires the Borrower to make required certifications and agree to be bound by required covenants, relating to Section 13(3), the CARES Act, the Board's Regulation A, and the applicable term sheet. The Lender is an express beneficiary.
  - Assignment Executed In Blank (see above).
  - Co-Lender Agreement (if the Main Street Loan is on a bilateral form – see above).
- Loan Documents:
  - Lenders will use their own loan documents (the "Loan Documents") for Main Street Loans, which should be in substantially the form that the Lender ordinarily uses when lending to similarly situated borrowers, adjusted only as appropriate to reflect the requirements of the MSLP.
  - The FAQ contains a checklist of items (the "Document Requirements") that must be present in the Loan Documents, which are consistent with the terms of the Main Street Loans set forth herein,[51] and in addition have the following requirements:
    - a cross-acceleration provision-- if a different loan extended to the Borrower by the Lender or the Lender's affiliate is accelerated (a provision model is provided);
    - a mandatory prepayment provision for material breaches of the Borrower Certifications and Covenants -- if the Federal Reserve determines that the borrower made a material misstatement in its certifications, or materially breached covenants, relating to CARES Act, the Federal Reserve Act, or the Federal Reserve's Regulation A, the Federal Reserve will notify the Lender to trigger a mandatory prepayment requirement under the Main Street Loan (a model provision is provided); and
    - a quarterly financial reporting covenant requiring the financial information set forth in Appendix C to the FAQ (provided that, in the case of Loan Increases where the underlying loan is part of a multi-lender facility, any financial reporting provision that was negotiated in good faith prior to April 24, 2020, as part of the underlying loan shall be deemed sufficient) – a model provision is provided.
- The FAQ also contains a model covenant for Priority and Security Requirement (for Priority Loans and Loan Increases).
- In additional the FAQ lists the financial information that the Lender must require the Borrower to provide on an ongoing basis until the Main Street Loan matures.

49 Given the terms of the Co-Lender Agreement, potential lenders and borrowers should consider whether to document all Main Street Loans, or all Main Street Loans over a certain threshold, on a market standard (or the Lender's standard) multi-lender form.

50 FRB Boston has also indicated that the form documents for borrowers are being revised to conform to the June 8, 2020 updates, and we note that the amended versions may contain additional changes.

51 The Documentation Requirements do not list each term or condition of the MSLP, which suggests that the Loan Documents do not need to include all of the terms of the MSLP, presumably because those terms are included in the Borrower Certifications and Covenants or other forms supplied by FRB Boston. For example, the covenants regarding compensation and dividend restrictions are not included in the Documentation Requirements. Potenial lenders (and borrowers) should consider the risks and benefits of including such covenants in the Loan Documents (whether directly or by reference), especially with respect to similar (but the not the same) provisions that are often part of a lender's form or standard loan documents.

Other Considerations

Syndicated Loans:

- If the Existing Loan underlying a Loan Increase is part of a multi-lender facility, the lender making the Loan Increase (the "Upsizing Lender") must be one of the lenders that holds an interest in the Existing Loan at the date of upsizing.[52]
- Only the Upsizing Lender is required to meet the eligibility criteria. Other members of a multi-lender facility are not required to meet the eligibility criteria.[53]

Lender Verification of Borrower Certifications and Covenants:

- Lenders' Duties: Lenders will have an obligation to collect the required certifications and covenants from each Borrower at the time Main Street Loans are made.
- Reliance on Borrower Reps: The Federal Reserve has indicated that lenders will be entitled to rely on a Borrower's certifications and covenants, as well as any subsequent self-reporting by the Borrower, and that a Lender is not expected to independently verify the Borrower's certifications or actively monitor ongoing compliance with covenants required for Borrowers under the MSLP.[54]
- However, if a Lender becomes aware that a Borrower made a material misstatement or otherwise breached a covenant during the term of a Main Street Loan, the Lender will be required to notify FRB Boston.

Mechanics of Participation Funding:

- Lenders will not be required to, but may, fund prior to receiving a binding commitment from the SPV to fund its participation.
- Lenders will have two options for funding Main Street Loans:
  - Funded Loan: A Lender can fund the Main Street Loan, and then within 14 days[55] submit the signed documentation to the SPV for a determination whether the paperwork is complete and consistent with the MSLP requirements, at which point the Federal Reserve has indicated that the SPV would purchase a participation in such loan (though we assume that will be subject to availability of funds for the MSLP).
  - Condition of Funding: A Lender can close the Loan Documents for the Main Street Loan, but condition the funding of the Main Street Loan upon receipt of a binding commitment from the SPV to fund its participation. The SPV would then review the required documentation and, if complete and consistent with the MSLP requirements, the SPV would provide a commitment letter to the Lender with a binding commitment to purchase the participation interest in the Main Street Loan within three business days after the SPV is notified that it is funded,[56] by means of the Main Street Portal (which is not yet operational). The Federal Reserve has provided model language for conditioning the Main Street Loan on an SPV commitment.

Other Issues Addressed by the FAQ:

- "True Sale" considerations for the Lender in respect of the SPV's participation;
- Disclosure of Information related to MSLP (including about lenders and borrower);
- Accounting status of the participation interest, and whether a Loan Increase will be considered a unit of account that is, for accounting purposes, separate and distinct from the Existing Loan;
- The SPV's current views on future workouts of Main Street Loans (including the rights of the SPV to elevate the participation to an assignment if a borrower enters bankruptcy or misses a payment (beyond the grace period), and the automatic elevation if the Lender attempts to cause any of the SPV's portion of the Main Street Loan to be forgiven);[57]

52 Although the Lender need not have originated the Existing Loan, it must have taken assignment of the Existing Loan by April 24, 2020.

53 The FAQ clarifies that more than one lender in a syndicate can act as a lender for Loan Increases if multiple Loan Increases are made, but each must be separately submitted to the SPV for the sale of the participation interest and thus would constitute separate Main Street Loans. However, no Lender may share its 5% retained interest in any particular Loan Increase with other members of a multi-lender facility.

54 We caution, however, that this statement from the Fed may not shield lenders from actions by state attorneys general and other agencies with enforcement powers, much less negative publicity and/or private lawsuits, such as the class action claims filed against several prominent lenders in the wake the PPP.

55 The FAQ states that an exception will be made for any Main Street Loans funded after April 24, 2020 but prior to the first day that the SPV begins funding, to encourage lenders to make Main Street Loans prior to the date that the MSLP opens. Additional exceptions (regarding the terms of the loans) will be made for such loans if funded in reliance on the April 30, 2020 iterations of the term sheets. Although this suggests that additional exceptions will be made if the terms further change prior the MSLP becoming operational, lenders and borrowers should consider the risk that this could change.

56 The Lender will need to fund the Main Street Loan within 3 business days of receiving the commitment letter.

57 The Fed has indicated that it only intends to exercise such rights where (i) the economic interests of the Lender and the SPV are misaligned, or (ii) the loan amount is relatively large in comparison to other loans in the SPV's portfolio of participations. The FAQ states that the Fed will generally rely on the Lender to follow market-standard workout processes and to exercise the standard of care set out in the Loan Participation Agreement (i.e., to exercise the same duty of care in approaching such proceedings as the Lender would exercise if it had retained a beneficial interest in the entire loan).

- Voting rights of the SPV;[58]
- Treatment of Main Street Loans for supervised firms subject to stress testing;
- Beneficial ownership determinations (for existing customers);[59]
- Treatment of Main Street Loans by Federal Supervisors in respect of Borrowers affected by COVID-19; and
- Regulatory status of the portion of a Main Street Loan that is retained by a Lender.[60]

Next Steps

Your approach to the MSLP should be based on your individual facts and circumstances and caution is warranted when interpreting some of the ambiguities and open questions in the governing rules and is beyond the scope of this alert. Please contact us to discuss your particular situation.

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58 The Participation Agreement (and if applicable, the Co-Lender Agreement) will give the SPV the right to take all "Core Rights Acts" in respect of the participated interest, which Core Rights Acts are defined in a manner consistent with (a) matters requiring the consent of "all lenders" or "all affected lenders" under multi-bank facilities, and/or (b) maintaining certain of the express requirements of the MSLP, such as actions or inaction in respect of (1) extensions and increases, (2) reduction of principal or interest, (3) postponement of payment dates, (4) changes in sharing of proceeds, (5) release of substantial portions of collateral and/or guaranties, (6) waivers of funding conditions, (7) waivers related to certain of the Borrower Certifications and Covenants, (8) material changes in financial reporting, (9) subordination of the loan or collateral, (10) additional constraints on the SPV's assignment rights, (11) waivers or amendments of the Cross-Acceleration Provision, (12) exercising (or failing to exercise) remedies in respect of common collateral in connection with the Cross-Acceleration Provision, and (13) voting rights under the Loan Documents in respect of any of the foregoing; provided that certain acts that are not divisible from the participation may be made upon the consent of the majority holders of such rights.

59 The Fed has indicated that FinCEN has provided guidance that lenders will generally not need to collect beneficial ownership information with respect to existing customers, unless otherwise indicated by a particular Lender's risk-based approach to Bank Secrecy Act compliance

60 For lenders that are subject to the federal banking agencies' capital rule. Credit unions that participate in the Program are subject to any capital requirements implemented by the National Credit Union Administration.

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Eligible Lenders	US insured depository institutions, US branches or agencies of foreign banks, US bank holding companies, US savings and loan holding companies, US intermediate holding companies of a foreign bank, or a US subsidiary of any of the foregoing		
Eligible Borrowers	• up to 15,000 employees, or up to $5 billion in 2019 revenues, in each case together with affiliates (with affiliation rules similar to PPP loans) • has significant operations in the US and a majority of employees based in the US (on a consolidated basis) • a for profit business formed in or under the laws of the US, prior to March 13, 2020; if a joint venture, may not have more than 49% foreign participation • is not an ineligible business i.e., a type of business listed in 13 CFR 120.110(b)-(j) and (m)-(s), as modified in connection with the PPP Loan • was in sound financial condition prior to the onset of the COVID-19 pandemic • has not received Treasury Direct Loans (for air carriers (and related entities), and businesses critical to national security) under CARES Act 4003(b)(1), (2) or (3), and • does not participate (and none of its affiliates participate in) PMCCF or more than one Main Street Loan facility (but may receive a PPP loan)		
Minimum Loan Size	$250,000		$10MM
Maximum Loan Size (calculated, in certain respects, on an affiliated basis, if any affiliates have applied for Main Street Loans)	lesser of: (1) **$35MM**, and (2) the amount that, when added to existing outstanding and undrawn available debt, does not exceed **4x** adjusted 2019 EBITDA	lesser of: (1) **$50MM**, and (2) the amount that, when added to existing outstanding and undrawn available debt, does not exceed **6x** adjusted 2019 EBITDA	lowest of: (1) **$300MM**, and (2) the amount that, when added to existing outstanding and undrawn available debt, does not exceed **6x** adjusted 2019 EBITDA
Interest Deferment	No interest payments for one year; unpaid interest will be capitalized		
Amortization	15% at the end of the 3rd year, 15% at the end of the 4th year, 70% at maturity (end of fifth year)		
Priority	May not be contractually subordinated	Must be senior to or pari passu with, in terms of both priority and security, the Borrower's other loans or debt instruments, other than Mortgage Debt. If secured, must pass collateral coverage ratio test at close	Must be senior to or pari passu with, in terms of both priority and security, the Borrower's other loans or debt instruments, other than Mortgage Debt
Collateral	May be secured or unsecured	May be secured or unsecured, but must be secured if the borrower has secured non- Mortgage Debt	Must be secured if the original loan is or becomes secured, or if the Borrower has secured loans or debt instruments (other than Mortgage Debt that is not a tranche of the underlying credit facility)

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Participation Amount by SPV	95%		
Shared Terms of Loans	• 5 year maturity • No principal or interest payments for one year • Unpaid interest will be capitalized • LIBOR (1 or 3 month) + 3.0% • SPV and the Lender will share risk on an equal basis on their pro rata shares • Any loans from Lender to Borrower existing as of December 31, 2019, must have had, at such time, an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system. If a Loan Increase is based on an Existing Loan made or acquired after December 31, 2019, the date the Existing Loan was made or acquired should be used. • Restrictions on principal balance of, or pay any interest on, any debt until the Main Street Loan is repaid in full, unless the debt or interest payment is mandatory and due (including in the case of default and acceleration). • No reduction of committed lines of credit (by Lender with respect to Borrower) or Borrower with any lender		
Other Requirements	• Lenders must assess each borrower's financial condition at the time of application • Borrower must make commercially reasonable efforts to maintain its payroll and retain its employees during the term of the Main Street Loan • Borrowers may not be insolvent, and must have a reasonable basis to believe they will be solvent for 90 days after the Main Street Loan is made (and will not declare bankruptcy during such time) • Borrowers must be able to certify regarding their inability to secure adequate credit accommodations from other banking institutions • Methodology used for calculating the Borrower's adjusted 2019 EBITDA must be what lender previously used for adjusting EBITDA when extending credit to the Borrower (or, if a new customer, similarly situated borrowers) on or before April 24, 2020 (in the case of Loan Increases, the same methodology must be used for the Loan Increase as used for the Existing Loan (prior to April 24, 2020). Holding Companies must designate operating subsidiaries as guarantors to utilize their EBITDA.		
Compensation and Capital Distribution Restrictions / Considerations	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 will apply for a year after the loan is paid in full: • No repurchases of equity securities listed on national exchanges (including those issued by parent entities), unless required by a pre-existing contract • No dividends or other capital distributions with respect to the Borrower's common stock • Compensation: – Raises/Severance: Employees/officers who earned more than $425k in 2019 (total compensation, including salary, bonus, stock awards, other financial benefits), cannot be given raises, or be given severance in excess of 2x 2019 total comp. – Comp Reduction: Employees/officers who earned more than $3MM in total comp in 2019, must have their compensation reduced by 50% of the amount their 2019 comp exceeded $3MM (e.g., an employee who made $3.5MM may not make more than $3.25MM per year; an employee who made $4MM may not make more than $3.5MM per year.)		

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Other Differences	New secured or unsecured term loan originated after April 24, 2020		Term loan made by upsizing a tranche of an existing secured or unsecured term loan or revolving loan (an "Existing Loan"). Existing Loan must have been made or acquired by the Lender on or prior to April 24, 2020, and matures at least 18 months after the Loan Increase is made.
		The Borrower may, at the time of origination of a Priority Loan, refinance existing debt owed by the Borrower to other lenders (i.e., not the lender making the Priority Loan)	
		Negative covenant regarding liens is required (negative pledge)	
Origination Fee to Lender (at discretion of Lender)	Up to 100 bps to Lender from Borrower		Up to 75 bps to Lender from Borrower
Transaction Fee to SPV	100 bps from Lender to SPV (chargeable to Borrower)		75 bps from Lender to SPV (chargeable to Borrower)
Servicing Fee	25bps (payable by SPV to Lender)		
Program Termination Date	September 30, 2020 (the Federal Reserve will still fund the SPV after such date)		