

# Prepare to Launch!

## What You Need to Know About the Main Street Lending Program

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## Presenters – Prepare to Launch: What You Need to Know About the Main Street Lending Program

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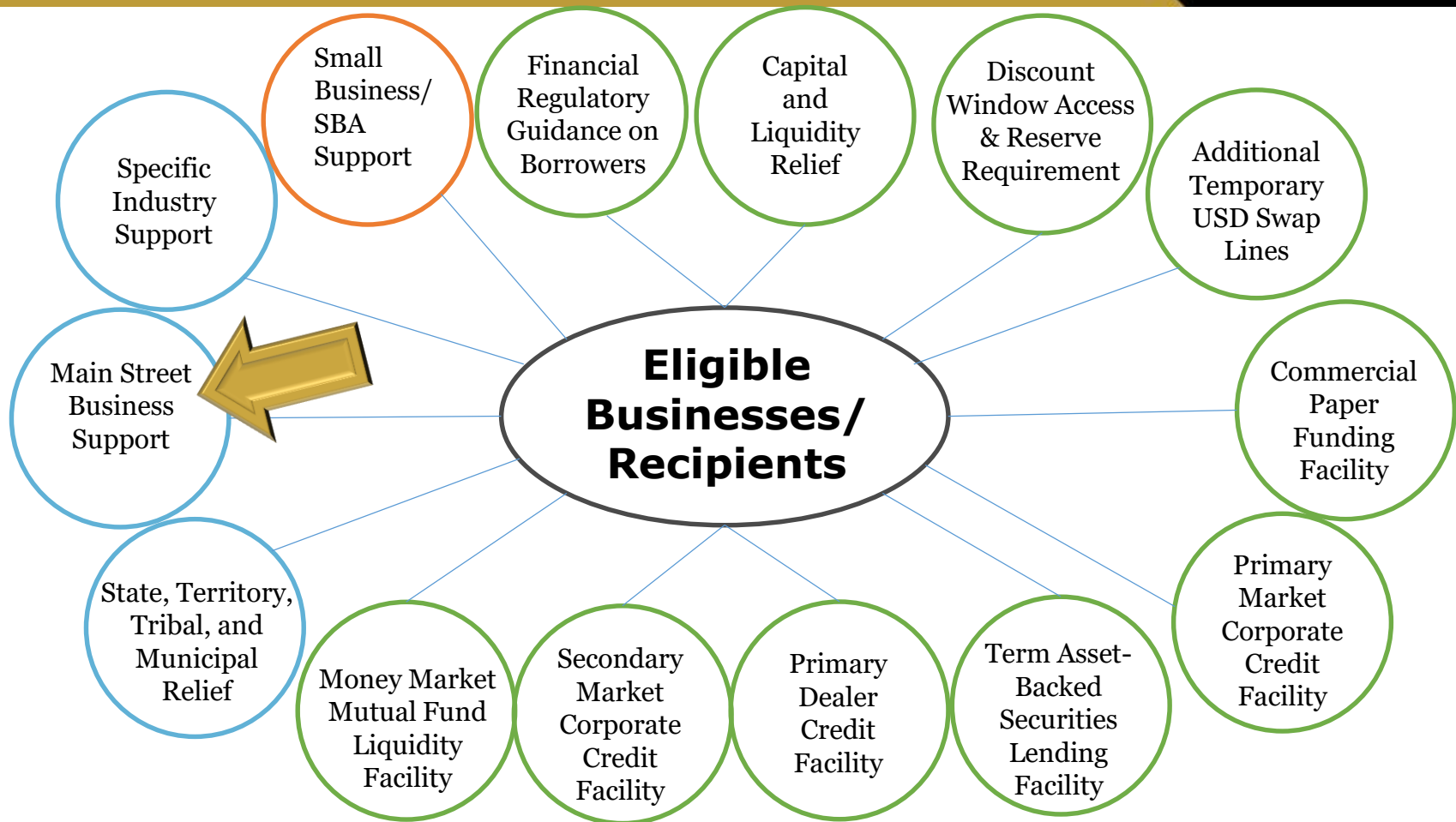




# Topics to be discussed

- I. Main Street Lending Program (MSLP) Introduction
- II. Interaction with Other Stimulus Programs
- III. MSLP Loan Terms
  - I. New Loan Facility (NLF)
  - II. Priority Loan Facility (PLF)
  - III. Expanded Loan Facility (ELF)
- IV. Eligible Borrowers
- V. Eligible Lenders
- VI. Conditions
- VII. Accountability Provisions

# CARES Act and Other Federal Stimulus Programs

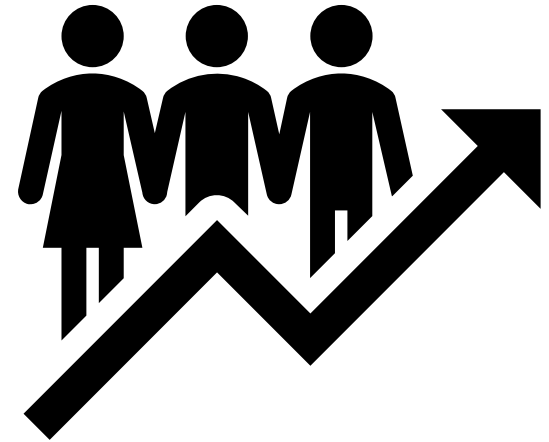


# Interaction with Other Stimulus Programs

- A borrower *may not* use both the MSLP and the Primary Market Corporate Credit Facility
- A borrower *may* use both the MSLP and the SBA's Paycheck Protection Program and Economic Injury Disaster Loan Program
- A borrower is ineligible for the MSLP if it has received specific industry support under Title IV of the CARES Act
  - Airlines and national security businesses

# Main Street Lending Program

- The CARES Act does not limit the discretion of the Federal Reserve to establish a “**Main Street Lending Program**” or other similar program or facility that supports lending to small- and mid-sized businesses on terms consistent with the authority given to the Federal Reserve by Section 13(3) of the Federal Reserve Act



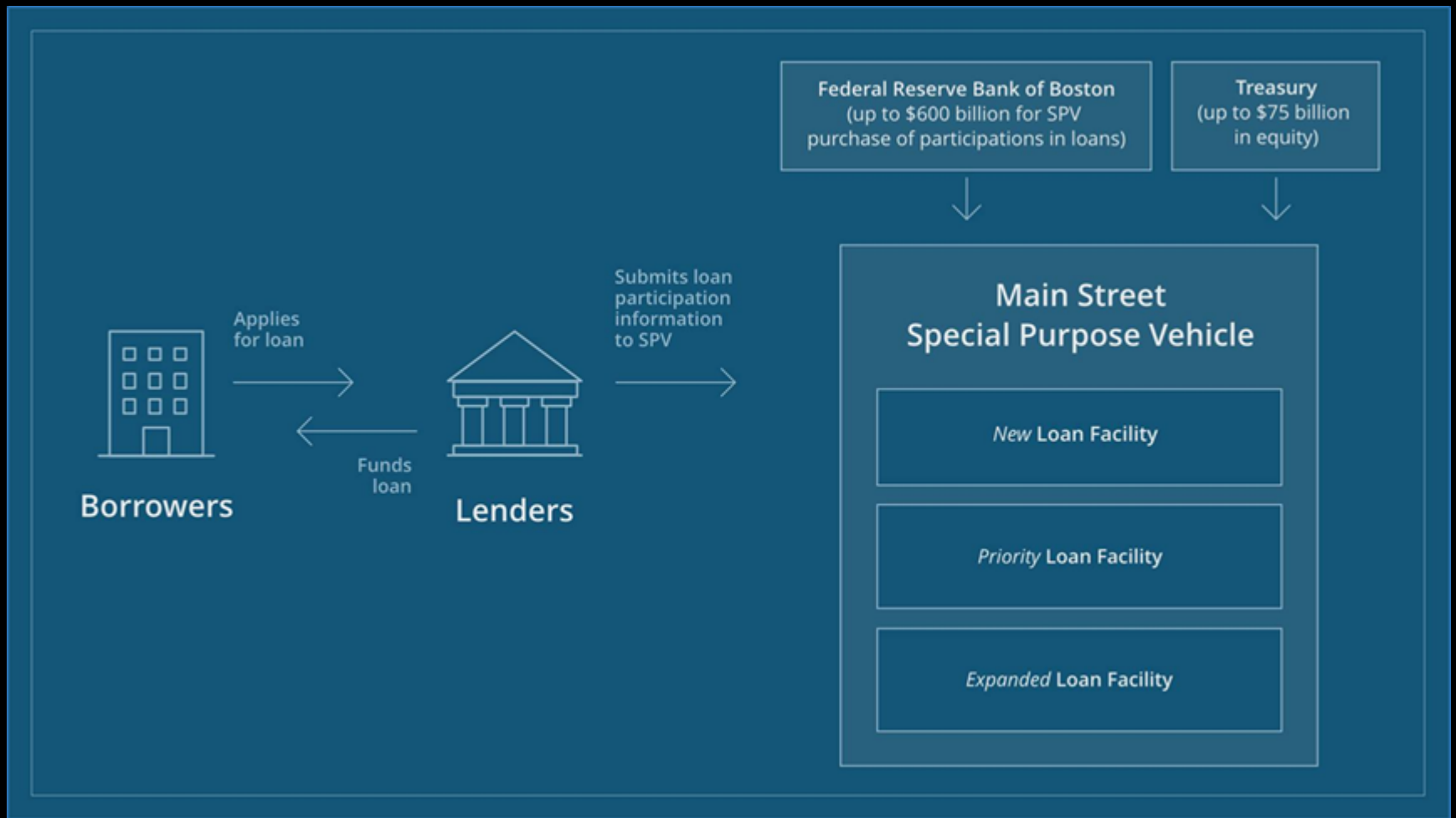
# Section 13(3) of the Federal Reserve Act

- *“In unusual and exigent circumstances, the Board of Governors of the Federal Reserve System . . . may authorize any Federal reserve bank ... to discount for any participant in any program or facility with broad-based eligibility notes... Provided, That before discounting any such note ... the Federal reserve bank shall obtain evidence that such participant in any program or facility with broad-based eligibility is unable to secure adequate credit accommodations from other banking institutions. All such discounts for any participant in any program or facility with broad-based eligibility shall be subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe.”*

# Main Street Lending Program Implementation

- In April, the Federal Reserve created three main street lending programs
  - New Loan Facility
  - Priority Loan Facility
  - Expanded Loan Facility to increase loans existing before April 24, 2020
- The Federal Reserve will purchase up to **\$600 billion** in Main Street loans, and the Treasury will inject **\$75 billion** into the program to support loans to businesses.
- The MSLP will be implemented by the Federal Reserve Bank of Boston through a special purpose vehicle (SPV)
- The Federal Reserve will purchase a **95%** participation interest in MSLP loans while the lender financial institution will retain a **5%** interest in the loan.





Source: Federal Reserve Bank of Boston

# MSLP Loan Terms

Terms	New Loan Program	Priority Loan Program	Expanded Loan Program
<b>Interest Rate (Deferred and Capitalized for One Year)</b>	LIBOR (1 month or 3 month) + 3.00%	LIBOR (1 month or 3 month) + 3.00%	LIBOR (1 month or 3 month) + 3.00%
<b>Maturity</b>	5 Years	5 Years	5 Years
<b>De Novo Loan?</b>	Yes	Yes	No, upsizes existing loan made by an FDIC-insured bank prior to April 24, 2020 with remaining maturity of 18 months or more
<b>Collateral</b>	May be secured or unsecured.	May be secured or unsecured.	May be secured or unsecured; however, if the underlying loan is secured, then the Expanded Loan must be secured on a pro rata basis.
<b>Seniority</b>	Not contractually subordinated in terms of priority to any of the borrower's other loans or debt instruments	Senior to, or pari passu with, in terms of priority and security, the borrower's other loans or debt instruments, other than mortgage debt and secured equipment financings	Senior to, or pari passu with, in terms of priority and security, the borrower's other loans or debt instruments, other than mortgage debt and secured equipment financings
<b>Minimum Loan Amount</b>	\$250,000	\$250,000	\$10 million
<b>Maximum Loan Amount</b>	Lesser of (i) \$35 million or (ii) 4.00x total leverage (i.e., the ratio of existing outstanding and undrawn available debt, including the MSLP Loan, to adjusted 2019 EBITDA).	Lesser of (i) \$50 million or (ii) 6.00x total leverage (i.e., the ratio of existing outstanding and undrawn available debt, including the MSLP Loan, to adjusted 2019 EBITDA).	Lesser of (i) \$300 million or (ii) 6.00x total leverage (i.e., the ratio of existing outstanding and undrawn available debt, including the MSLP Loan, to adjusted 2019 EBITDA).

# MSLP Loan Terms (continued)

Terms	New Loan Program	Priority Loan Program	Expanded Loan Program
<b>Adjusted EBITDA Methodology (subject to lender certification)</b>	Same as used by the lender when extending other credit to the same borrower or “similarly situated” borrowers on or before April 24, 2020	Same as used by the lender when extending other credit to the same borrower or “similarly situated” borrowers on or before April 24, 2020	Same as used by the lender on or before April 24, 2020 with respect to the existing loan being upsized
<b>Type</b>	Term Loan	Term Loan	Term Loan (as an upsized tranche to an existing term loan or revolver)
<b>Amortization (Deferred for Two Years for All):</b>	<ul style="list-style-type: none"> <li>Year 3: 15% at year end</li> <li>Year 4: 15% at year end</li> <li>Year 5: 70% bullet at maturity</li> </ul>	<ul style="list-style-type: none"> <li>Year 3: 15% at year end</li> <li>Year 4: 15% at year end</li> <li>Year 5: 70% bullet at maturity</li> </ul>	<ul style="list-style-type: none"> <li>Year 3: 15% at year end</li> <li>Year 4: 15% at year end</li> <li>Year 5: 70% bullet at maturity</li> </ul>
<b>Refinancing Allowed:</b>	No	At origination only, to lenders other than the PLF lending bank	No
<b>Payments of Other Debt</b>	Only with respect to “mandatory and due” amounts	Only with respect to “mandatory and due” amounts	Only with respect to “mandatory and due” amounts
<b>Transaction Fee to Fed SPV (From Lender to Fed SPV, but the Cost may be passed on to Borrower)</b>	1.00%	1.00%	0.75%
<b>Origination Fee (From Borrower to Lender)</b>	Up to 1.00%	Up to 1.00%	Up to 0.75%
<b>Lender’s Risk Retention</b>	5%	5%	5%

# Eligible Borrowers

- In good financial standing prior to the COVID-19 crisis
  - Must meet Borrower Solvency Requirements
  - Must have been in existence before March 13, 2020 to be eligible for any of the MSLP programs.
- If a borrower had other loans outstanding with its lender as of December 31, 2019, the lender must have given the borrower's outstanding loans an internal risk rating of "pass" or its equivalent
- Employ fewer than **15,000 workers** or have 2019 revenues less than **\$5 billion**
- Organized in the United States
- Significant operations in and a majority of its employees based in the United States
- May only use one of the three MSLP options but may take out more than one loan under its chosen option so long as the sum of the proceeds does not exceed \$35 million for the New Loan Facility, \$50 million for the and Priority Loan Facility or \$300 million in upsized tranches for the Expanded Loan Facility

# How SBA Affiliation Rules Apply

- SBA affiliation rules must be applied to determine whether Borrower is eligible for a MSLP loan.
- If more than one company in an affiliated group takes a MSLP loan, that company can borrow only from the same facility as the other company(ies) in the group, and those companies are subject to the same maximum loan size and leverage test in the aggregate. The leverage test applies on the basis of the leverage of the entire affiliated group.
- However, if only one company in an affiliated group applies, that single borrower does not have to apply the affiliation rules for leverage – only for eligibility (maximum number of employees/revenue cap).
- Consolidated financials of Borrower and Subsidiaries required if usual practice.

# Ineligible Borrowers

- The following types of businesses are ineligible to receive Main Street loans:
  - Financial businesses primarily engaged in the business of lending, such as banks, private equity funds, finance companies, and factors;
  - Passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved with the loan proceeds (except Eligible Passive Companies under § 120.111);
  - Life insurance companies;
  - Businesses located in a foreign country (businesses in the U.S. owned by aliens may qualify);
  - Pyramid sale distribution plans;
  - Businesses deriving more than one-third of gross annual revenue from legal gambling activities;
  - Businesses engaged in any illegal activity;
  - Private clubs and businesses which limit the number of memberships for reasons other than capacity;

# Ineligible Borrowers (continued)

- Government-owned entities (except for 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 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;
- Businesses which:
  - Present live performances of a prurient sexual nature; or
  - Derive directly or indirectly more than **de minimis** gross revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;
- Unless waived (presumably by the Federal Reserve), businesses that have previously defaulted on a Federal loan or Federally assisted financing, resulting in the Federal government or any of its agencies or Departments sustaining a loss in any of its programs;
- Businesses primarily engaged in political or lobbying activities; and
- Speculative businesses (such as oil wildcatting).

# Borrower Solvency Requirements

- Borrower must certify that it is not “**Insolvent**,” meaning
  - In bankruptcy, resolution by the FDIC under FIRREA or the Dodd-Frank Act, or any other federal or state insolvency proceeding; or
  - Generally failing to pay undisputed debts as they become due during the preceding 90 days
- A person or officer (or successor of either) that submits a written certification must immediately notify the lending Federal Reserve Bank if the information in the certification changes.
  - If a participant or person has provided a certification that includes a knowing material misrepresentation in the certification, all extensions of credit that are outstanding to the relevant participant **shall become immediately due and payable**, and all accrued interest, fees and penalties shall become immediately due and payable. The Board or the lending Federal Reserve Bank **will also refer the matter to the relevant law enforcement authorities for investigation and action in accordance with applicable criminal and civil law.**
- Additionally the borrower must certify that it has reason to believe that, as of the date of loan origination, it has the ability to meet its financial obligations for the next **90 days** and does not expect to file bankruptcy.



# Lack of Available Credit Elsewhere

- Under 12 C.F.R. 201.4(d)(8), participants in a Federal Reserve program must be unable to secure adequate credit accommodations from other banking institutions.
- Evidence of this lack of available credit may be based on economic conditions in the market or markets intended to be addressed by the program or facility.
- 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**.
- Borrowers are **not required** to demonstrate 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.

# Eligible Lenders

- U.S.-insured depository institutions (*i.e.*, banks, thrifts and credit unions)
- Bank holding companies
- Savings and loan holding companies
- U.S. branches and agencies of non-U.S. banks, intermediate U.S. holding companies of non-U.S. banking organizations, and non-bank subsidiaries of U.S. bank holding companies or intermediate U.S. holding companies of non-U.S. banking organizations



# Borrower Conditions

- Borrower must make *reasonable efforts* to maintain **payroll** and retain employees during the term of the loan.
- Borrower *must not* pay **dividends** or **repurchase** its stock for 12 months after the loan is repaid, except that pass-through entities may make distributions to the extent reasonably required to cover owners' tax obligations with respect to the borrower's earnings.
- Borrower must comply with CARES Act compensation limits on employees earning over **\$425,000** and **\$3,000,000** in 2019.
- A borrower that is a subsidiary of a foreign company must use the proceeds of a Main Street loan only for the benefit of itself, its consolidated U.S. subsidiaries, and other affiliates that are U.S. businesses. The proceeds of a Main Street loan may not be used for the benefit of a borrower's foreign parents, affiliates or subsidiaries.

# Lender Conditions

- Lender must covenant not to request that the borrower repay debt or pay interest on outstanding obligations extended by the lender until the MSLP loan is repaid in full, unless the debt or interest is mandatory and due or in the case of default.
  - Lender would not be prevented from accepting repayments on a line of credit from a borrower in accordance with the borrower's normal course of business usage for such line of credit.
- Lender may not cancel or reduce any existing lines of credit to the borrower except in the case of default.
- Lenders will need to implement an MSLP-related **compliance program** and maintain it for the lives of its Main Street loans plus one year

# Lender Certifications

- Lender *may rely* on borrower certifications, but ***must certify*** that, following due inquiry, it has no knowledge or reason to believe that certain borrower certifications are incorrect or untrue:
  - Formation
  - Liens
  - Other debt
- The required certifications track the requirements of the loan facilities as to priority, repayment, cancellation of lines and other MSLP terms.
- Lender ***must notify*** the SPV if it becomes aware of a material misrepresentation or breach of covenant by borrower while the loan is outstanding or up to one year afterwards.

# EBITDA Certification

- Lender must certify that its methodology for calculating the borrower's adjusted 2019 EBITDA is the same methodology that the lender used for calculating EBITDA for the borrower (or other similarly situated borrowers) on or before April 24, 2020 (and with respect to the Expanded loan facility, the lender must use the same EBITDA calculation methodology it used when originating or amending the underlying loan on or before April 24, 2020).
  - If a lender has used multiple EBITDA adjustment methods with respect to the borrower or similarly situated borrowers (e.g., one for use within a credit agreement and one for internal risk management purposes), the lender should choose **the most conservative method it has employed**.
  - 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 they originate an NLF Loan or an PLF Loan.
- If the borrower is a holding company, only the EBITDA of guarantors may be included in the calculation.
- If a borrower and any of its affiliates receive a loan under the same facility, the EBITDA of the borrower and the affiliates must be aggregated for the calculation.

# Material Breach Mandatory Prepayment Provision

- If the Federal Reserve determines that a borrower made a **material misrepresentation** in certifications, or materially breached covenants, relating to CARES Act, the Federal Reserve Act, or FRB's Regulation A, the Federal Reserve will notify the lender to trigger a mandatory prepayment requirement for the borrower to repay the loan in full along with any accrued and unpaid interest.
- Cross-acceleration provision triggers an event of default if a different loan extended by the lender or any of its affiliates is accelerated.

# Borrower Certifications

- Borrowers must indemnify lenders, the Federal Reserve and Treasury for any liability or loss associated with any material breach of any of the borrower's certifications or covenants.
- Certifications and covenants that *do not trigger* mandatory prepayment but are in the scope of borrower's indemnity:
  - Borrower is not an Ineligible Business
  - Commitment to refrain from paying other debt
  - Forward-looking solvency
  - Holding company borrower EBITDA certification



# Structure of Loan Documentation

- The Federal Reserve recently updated the FAQs and released MSLP documents
  - Program documents:
    - **Participation agreement**, to be entered into between the Main Street SPV and the lender, by which the SPV purchases a participation interest in each Main Street Loan (standard terms)
    - **Lender registration certification**, a one time certification that the lender is eligible and solvent
    - Lender wire instructions directions
  - Transaction specific documents:
    - **Borrower certifications**, transaction specific certifications with each Main Street loan
    - Loan agreement
    - **Assignment-in-blank**, to be used by SPV for elevation and transfer of its participation
    - **Co-lender agreement**, for multi-lender facilities
    - Participation agreement (specific terms)
    - **Servicing agreement**, between SPV as lender and the MSLP lender as servicer
    - **Lender certifications**, transaction specific certifications with each Main Street loan

# Loan Documentation

- The MSLP FAQs include in Appendix A a loan document checklist of elements that must be incorporated into a loan agreement under the program. Lenders *may* use their own forms for loan agreements.
- Appendix B provides model language for the required covenants. Lenders are *permitted but not required* to use this language.
- ELF loans with multi-lender facilities may use language in the existing facility if it was negotiated in good faith before April 24, 2020.
- The **only** fees lenders may charge borrowers are the origination and transaction fees and necessary customary fees (appraisal and legal fees)



# Model Negative Covenant Baskets

- A model lien covenant for bilateral (single lender) Priority Loan Facility and Extended Loan Facility loans includes the following baskets:
  - Liens securing obligations under the Main Street loan
  - Liens on real property in connection with loans with respect to which substantially all of the proceeds were used for acquisition, construction, fit-out, and/or renovation of the property
  - Junior liens securing permitted indebtedness
  - Liens on receivables assets and related assets incurred in connection with a receivables facility, provided that such debt is secured only by the newly acquired property
- Lien covenants included in Main Street loan documentation **may include carve-outs at the discretion of the lender in accordance with its customary underwriting practices** with respect to similarly situated borrowers. The carve-outs from the lien covenant listed above illustrate the types of carve outs, among others, that lenders may choose to include in a Main Street loan's lien covenant.

# Mandatory Prepays, Excess Cashflow Sweeps and Limitations on Payment of Other Debt Unless Mandatory and Due

- The debt repayment covenants generally prohibit a borrower from repaying the principal balance of, or paying any interest on, any debt until the Main Street loan is repaid in full, unless the principal or interest payment is “mandatory and due.”
- With respect to debt that predates the Main Street loan, principal and interest payments are “mandatory and due”:
  - on the future date upon which they were scheduled to be paid as of the date of origination of the MSLP loan, or
  - **upon the occurrence of an event that automatically triggers mandatory prepayments** under a contract for indebtedness that the borrower executed prior to the date of origination of the MSLP loan, except that any such prepayments triggered by the incurrence of new debt can only be paid if such prepayments are de minimis, or under the PLF at the time of origination of a PLF Loan.
- For future debt incurred by the borrower in compliance with the terms and conditions 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.

# Priority Loan Facility: Priority and Security Requirement

- The PLF Loan must be, at time of origination and all times thereafter, senior to or pari passu with, in terms of priority and security, the borrower's other loans or debt instruments, other than mortgage debt and secured equipment financings. The PLF Loan **must be secured if, at the time of origination, the borrower has any other secured loans or debt, other than mortgage debt and secured equipment financings.**
- Pari Passu or Senior in Priority: Cannot be contractually subordinated in terms of priority to any of the borrower's other loans or debt, other than mortgage debt and secured equipment financings.
- Pari Passu or Senior in Security:
  - If the PLF Loan is secured, then the **Collateral Coverage Ratio** (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) for the PLF 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 debts (other than mortgage debt and secured equipment financings)

# Priority Loan Facility: Priority and Security Requirement (continued)

- The Federal Reserve also specified that where a PLF Loan is secured by the *same collateral* as any of the borrower's other loans or debts (other than mortgage debt and secured equipment financing), the lien upon such collateral securing the PLF Loan must be and remain senior to or pari passu with the liens of the other creditors upon such collateral. The PLF Loan need not share in all of the collateral that secures the borrower's other loans or debts.
- In order to comply with the PLF Priority and Security Requirement during the term of the PLF Loan, **after the date of origination**, the loan documentation for the PLF Loan must:
  - ensure that the PLF Loan does not become contractually subordinated in terms of priority to any of the borrower's other loans or debts; and
  - contain a lien covenant or negative pledge that is of the type – and contains exceptions, limitations, carve-outs, baskets, materiality thresholds, and qualifiers – that are consistent with those used by the lender in its ordinary course lending to similarly situated borrowers.

# Expanded Loan Facility: Priority and Security Requirement

- The ELF Loan must be, at time of origination and all times thereafter, **senior to or pari passu with, in terms of priority and security, the borrower's other loans or debt instruments, other than mortgage debt and secured equipment financings.** As with the PLF, the ELF Loan must be secured if, at the time of origination, the borrower has any other secured loans or debts, other than mortgage debt and secured equipment financings.
- Unique to the ELF Loan, the upsized tranche must be secured by the collateral securing any other tranche of the underlying credit facility on a pari passu basis. Lenders and borrowers may add new collateral to secure the loan (including the ELF upsized tranche on a pari passu basis) at the time of upsizing. If the underlying credit facility includes both term loan tranche(s) and revolver tranche(s), the ELF upsized tranche needs to share collateral on a pari passu basis with the term loan tranche(s) only.
- To maintain pari passu priority, the ELF Loan's credit agreement must contain a lien covenant or negative pledge that is of the type – and contains exceptions, limitations, carve-outs, baskets, materiality thresholds, and qualifiers – that are consistent with those used by the lender in its ordinary course lending to similarly situated borrowers. With respect to an underlying credit facility that has more than one lender, any lien covenant that was negotiated in good faith prior to April 24, 2020, as part of any underlying ELF Loan, is sufficient to satisfy this requirement.

# New Loan Facility: Priority and Security Requirement

- An NLF Loan, at the time of origination or at any time during its term, may not be contractually subordinated in terms of priority to the borrower's other loans or debt instruments. This means that an NLF Loan may not be junior in priority in bankruptcy to the borrower's other unsecured loans or debt instruments.
- This provision does not prevent:
  - the issuance of **an NLF Loan that is a secured loan (including in a second lien or other capacity) to a borrower, whether or not the Eligible Borrower has an outstanding secured loan** of any lien position or maturity;
  - the **issuance of an NLF Loan that is an unsecured loan**, regardless of the term or secured or unsecured status of the borrower's existing indebtedness; or
  - the borrower from **taking on new secured or unsecured debt** after receiving an NLF Loan, provided the new debt would not have higher contractual priority in bankruptcy than the NLF Loan.



# Participation Agreement Assignments

- Lender *may not* assign its obligation under the Participation Agreement without SPV consent.
- SPV may assign, sub-participate or elevate its participation interest with lenders consent, which may not be unreasonably withheld, or without lender consent in connection with a “Specified Permitted Transfer”:
  - Following a payment or bankruptcy default
  - Act violating in CARES Act prohibition on loan forgiveness
  - Certain transfers to government entities
  - Required by statute or court order
- The Federal Reserve expects that the SPV will not elevate or assign unless the economic interests of the lender and the SPV are misaligned or the loan is large compared to SPV’s portfolio.

# CARES Act Title IV

## Accountability Provisions

- CARES Act establishes a Congressional Oversight Commission and Pandemic Response Accountability Committee
- CARES Act establishes within Treasury an Office of the Special Inspector General for Pandemic Recovery. The Special Inspector General is tasked with conducting audits and investigations of loans and loan guarantees made by Treasury under Title IV
- Federal Reserve will publish monthly reports with names of MSLP lenders and borrowers, the amounts borrowed, and the rate charged

# Questions? Contact:

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