

Main Street Program: Davis Polk Visual Memo

JUNE 12, 2020

BASED ON FEDERAL RESERVE ANNOUNCEMENTS THROUGH JUNE 11



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COVID-19 Davis Polk Resources

Main Street Program: Legal Architecture

- Our [memo on the Main Street Program's legal architecture](#) describes the Main Street contracts, certificates and other documents in further detail. This memo has been updated to take into account Federal Reserve announcements through June 11.

Government Support for Business

- Our [Government Support for Business](#) page centralizes all of the government materials related to the numerous support programs announced by the Federal Reserve and others enacted as part of the CARES Act in one convenient place.
- We have created separate decks on [Key CARES Act Provisions and Fed Programs for Corporates](#) and the [SBA Paycheck Protection Program \(PPP\) under the CARES Act and the related Fed Paycheck Protection Program Liquidity Facility](#).
- You can also contact any of Davis Polk's Government Support for Business Task Force members at stimulus.taskforce@davispolk.com.

FinReg Tracker

- Our morning FinReg Tracker email is a simple list, with hyperlinks, of all developments from the day before from Congress and the federal financial agencies. View a [recent FinReg Tracker](#) and [sign up](#) to receive the Tracker at 7:00 a.m. ET Monday-Saturday.

Coronavirus Updates

- Our [Coronavirus Updates page](#) contains a compendium of Davis Polk content related to the pandemic's economic fallout and government responses, organized by topic.

Overview of Main Street Program



Main Street Program Documents

This slide includes links to all of the Main Street Program documents that the Federal Reserve has released, with links to a blackline against the previous version of each document if it has been updated. These documents cover all three facilities: the Main Street New Loan Facility, the Main Street Priority Loan Facility and the Main Street Expanded Loan Facility. The only document not posted is a form of commitment letter.

- [Updated FAQs](#), including a Loan Document Checklist with model language
 - [Blackline against the May 27 version](#)
- [Instructions](#)
 - [Blackline against the May 27 version](#)
- [Lender Registration Certifications and Covenants](#)
- [Lender Wire Instructions](#)
- [Participation Agreement Transaction Specific Terms](#)
 - [Blackline against the May 27 version](#)
- [Participation Agreement Standard Terms and Conditions](#)
 - [Blackline against the May 27 version](#)
- [Servicing Agreement](#)
- [Assignment-in-Blank](#)
 - [Blackline against the May 27 version](#)
- [Co-Lender Agreement Transaction Specific Terms](#)
 - [Blackline against the May 27 version](#)
- [Co-Lender Agreement Standard Terms and Conditions](#)
 - [Blackline against the May 27 version](#)
- Lender Transaction Specific Certifications and Covenants: [New](#); [Priority](#); [Expanded](#)
 - Blacklines against the May 27 versions: [New](#); [Priority](#); [Expanded](#)
- Borrower Certifications and Covenants: [New](#); [Priority](#); [Expanded](#)
 - Blacklines against the May 27 versions: [New](#); [Priority](#); [Expanded](#)
- Term Sheets: [New](#); [Priority](#); [Expanded](#)
 - Blacklines against the April 30 versions: [New](#); [Priority](#); [Expanded](#)

Main Street Program Overview

Support for Small and Medium-Sized Businesses and their Employees

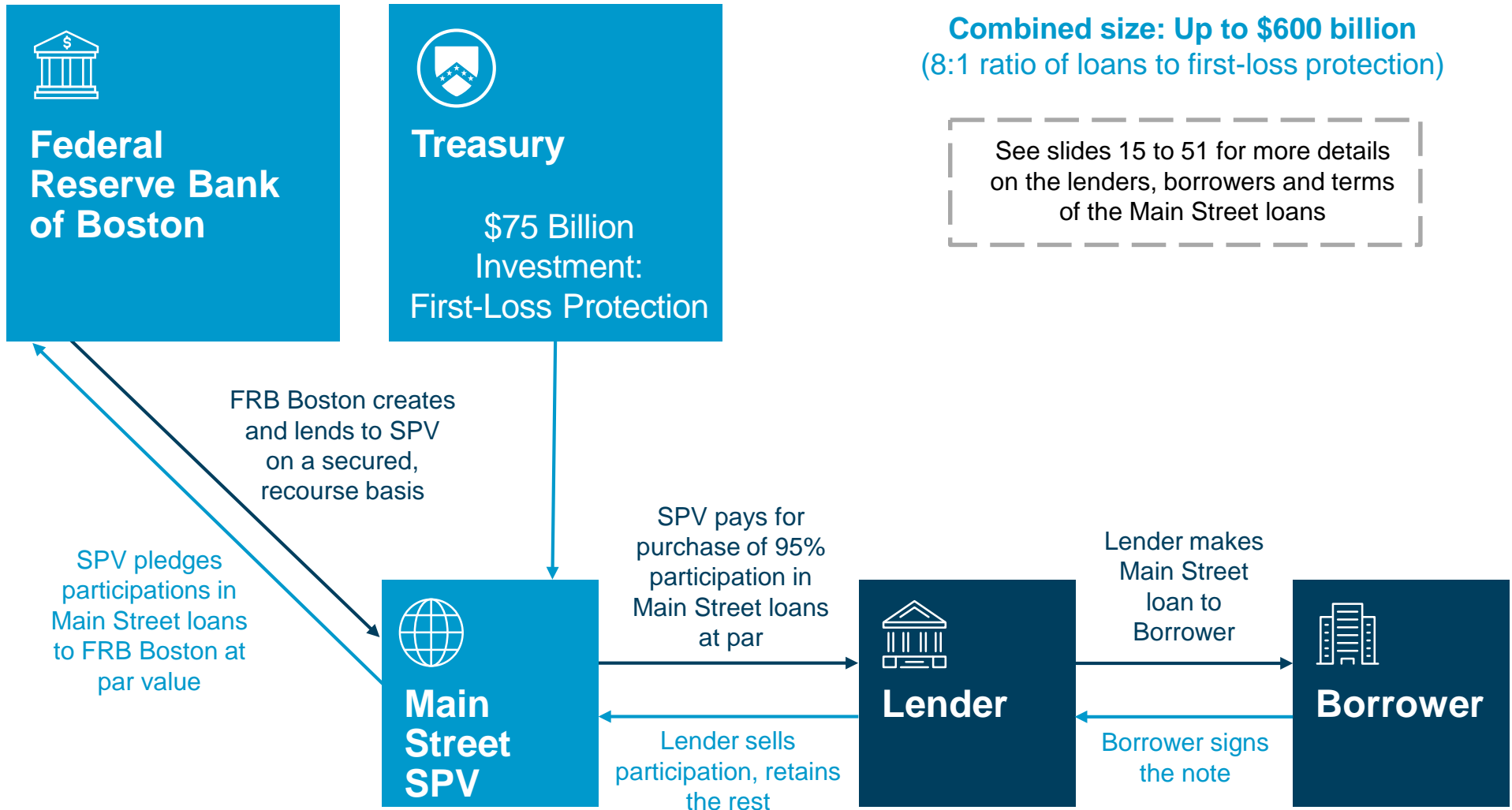
- The Fed established the Main Street Program to support small and medium-sized businesses and their employees by making it easier for these businesses to access credit on commercially reasonable terms.
- The structure of the Main Street Program allows the Fed to work with the U.S. banking sector to channel credit to small and medium-sized businesses across the country.
 - Loans are made by Eligible Lenders (see slide [42](#)).
 - Eligible Lenders sell a 95% participation in each loan to the Main Street SPV set up by the Federal Reserve Bank of Boston (FRB Boston).

Main Street Loans

- The Main Street Program includes three types of loans: **New**, **Priority** and **Expanded** Loans.
- Main Street is not a forgivable loan program – its purpose is to help companies that were in sound financial condition before the pandemic continue to have access to credit on commercially reasonable terms in order to maintain their operations until conditions normalize.
 - A company must satisfy certain requirements to be an Eligible Borrower (see slide [27](#)).
 - Eligible Lenders are expected to assess the financial condition and creditworthiness of potential borrowers, and to approve loans only to borrowers that they believe will be able to repay.

Throughout the remainder of this deck, unless otherwise required by the context, references to lenders and borrowers refer to Eligible Lenders and Eligible Borrowers under the Main Street Program.

Structure of the Main Street Program

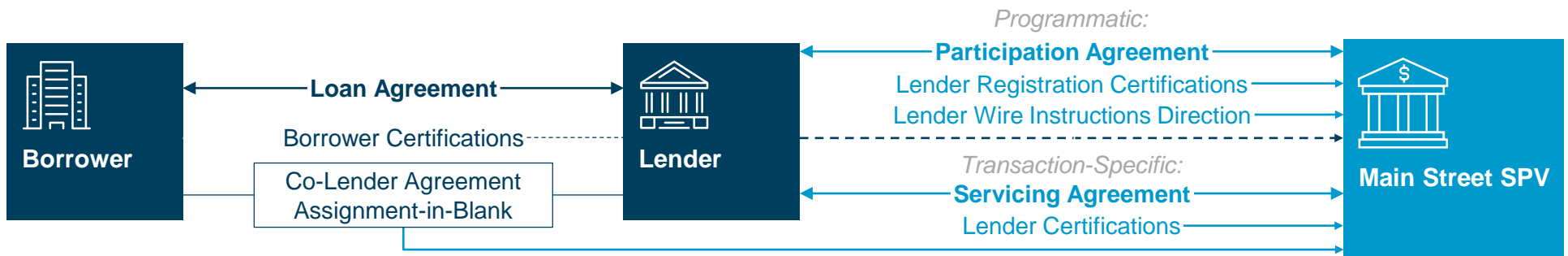


Main Street: The Legal Architecture

Nineteen documents establish the legal architecture of the Main Street Program.

- These include a standard form Participation Agreement and forms of the Lender and Borrower Certifications, together with related instructions.
- Certain documents apply to a party's involvement in the Main Street Program; others are transaction-specific, executed in connection with each Main Street loan.

The figure below shows the basic structure:



Check out our memo – [Main Street Program: Legal Architecture](#) – for more information.

Programmatic and Transaction-Specific Documents

The grid below shows which documents apply on a programmatic basis (blue background, white check mark), and which documents will be signed and delivered with each new loan (regular background, blue check mark).

	Borrower	Lender	Main Street SPV
Loan Agreement	✓	✓	
Borrower Certifications	✓		
Assignment-in-Blank	✓	✓	
Co-Lender Agreement Standard Terms and Conditions	✓*	✓*	
Co-Lender Agreement Transaction Specific Terms	✓	✓	
Participation Agreement Standard Terms and Conditions		✓*	✓*
Participation Agreement Transaction Specific Terms		✓	✓
Lender Registration Certifications and Covenants		✓	
Lender Wire Instructions Direction		✓	
Servicing Agreement		✓	✓
Lender Certifications		✓	

* The Standard Terms and Conditions for the Co-Lender Agreement and Participation Agreement are incorporated by reference into the Transaction Specific Terms relating to each of these agreements.

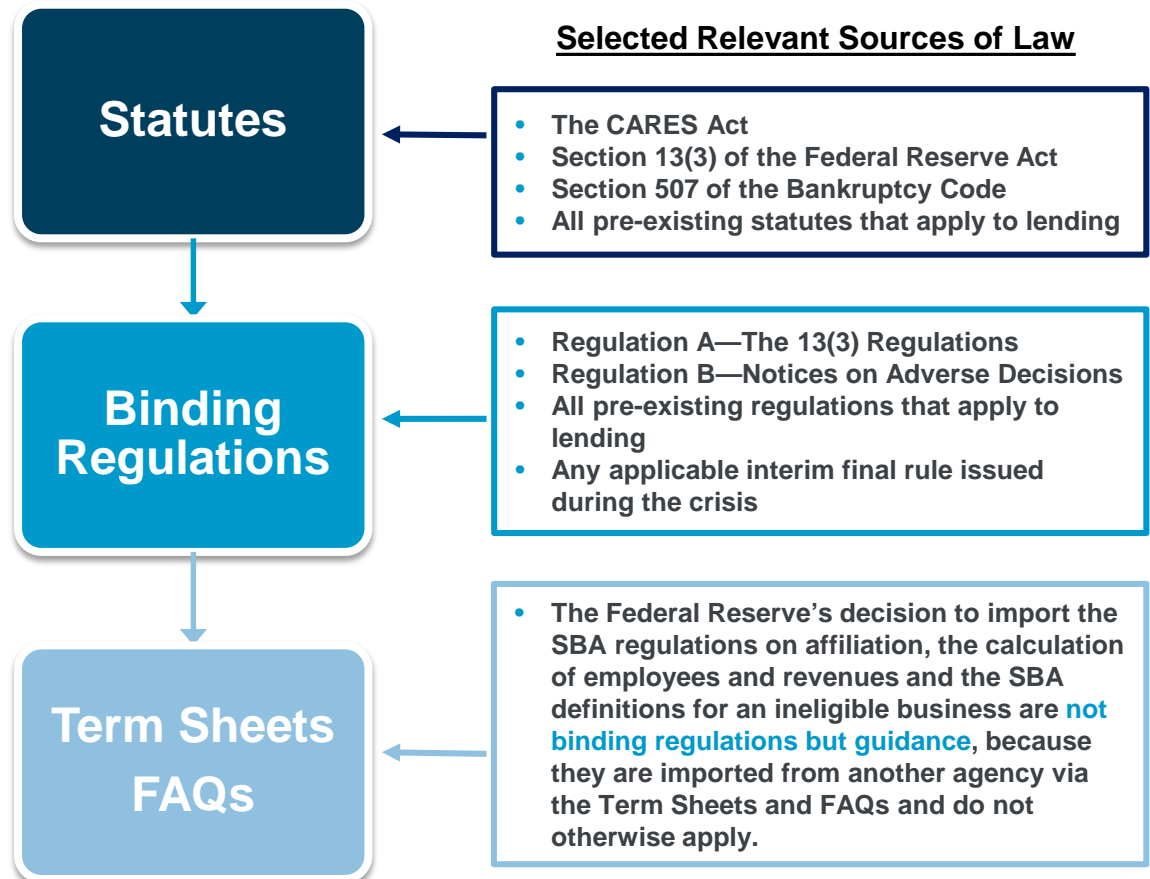
Hierarchy of the Legal Framework that Governs Main Street Lending

The Main Street Program will be governed by a combination of statutes, binding regulations, guidance and contractual arrangements with the Main Street SPV. It is important to understand the hierarchy of the governing legal framework because it tells us what the Fed can change in the programs and what it cannot. It is also a reminder that there are requirements that do not appear in the term sheets or FAQs.

Statutes: Statutory requirements apply automatically whether or not they are repeated in the lower hierarchy regulations, Term Sheets or FAQs. Only Congress can change requirements in a statute.

Regulations: Regulations are binding upon the agency and the public. In normal times, regulations require prior notice and comment. In a crisis, regulations may be adopted as interim final rules that become effective immediately, without prior notice or comment.

Term Sheets and FAQs: Term Sheets and FAQs for the programs are regulatory guidance. Until incorporated into a contract, they can be changed by the Federal Reserve at will. They must fit within the requirements of pre-existing statutes and regulations even if those requirements are not repeated or cross-referenced in the Term Sheets or FAQs.



If there is a conflict between a statute, regulation, or Term Sheet or FAQ, the higher legal authority in this hierarchy controls.

Unable to Secure Adequate Credit Accommodations

- Section 13(3) of the Federal Reserve Act requires the Federal Reserve to obtain evidence that each participant in a Federal Reserve program or facility under 13(3) is “**unable to secure adequate credit accommodations** from other banking institutions.”
- 13(3)’s implementing regulations require a Federal Reserve Bank to obtain evidence that, under prevailing circumstances, participants in the Main Street Program would meet this requirement based on:
 - economic conditions in the market that the Main Street Program is intended to address,
 - written certification from a borrower’s CEO or other officer at the time of borrowing, or
 - other evidence from other sources.
- We believe this standard is less onerous than the PPP’s requirement for a business to certify that “current economic uncertainty makes this loan request necessary to support [its] ongoing operations.”
 - It is noteworthy that the Fed dropped the requirement in the proposed term sheets for a borrower to “attest that it requires financing due to the exigent circumstances presented by” the pandemic.
- A Main Street borrower is required to certify that it is unable to secure adequate credit accommodations from other banking institutions (see slide 34]). The instructions to the Main Street borrower certifications illustrate the Fed’s willingness to interpret the statute and regulations flexibly in response to the current crisis.
- The borrower must certify that it is unable to secure adequate credit accommodations from other banking institutions.
 - The borrower **does not need to establish that no credit is available** from other sources, only that the **amount, price, or terms** of such credit is **inadequate** for the borrower’s current needs.
 - The borrower is **not required to demonstrate** that applications for credit have been **denied** by other lenders or otherwise document that the amount, price, or terms of credit available elsewhere are inadequate.

Entering into Contracts with the Main Street SPV

- The Main Street SPV, like other Federal Reserve special purpose entities, will enter into contracts with private actors.
 - The direct contract will be the participation agreement between lenders and the Main Street SPV.
 - But certificates by borrowers will be entered into with the clear knowledge that they will be delivered to the Main Street SPV.
- There is a risk that the False Claims Act (**FCA**) might apply to the loan applications, loan agreements and the participation agreement.
 - For example, in 2019, the Second Circuit determined that, in the context of the Fed’s emergency lending programs, loan requests may be “claims” under the FCA because Reserve Banks act as “agents of the United States” within the meaning of the FCA when operating the Fed’s emergency lending facilities. 943 F.3d 588 (2d Cir. 2019).
 - Both criminal and civil liability for false claims require that a claimant acted knowingly—see 18 U.S.C. § 287; 31 U.S.C. § 3729.
 - The Main Street borrower and lender certifications explicitly refer to the civil liability provisions of the FCA.
- There is also a statute that makes it a crime to make any false statement or report, or to overvalue any land, property or security, on a loan or credit application.
 - This statute (18 U.S.C. § 1014) applies to both statements made to Reserve Banks and to statements made to insured banks, credit unions and branches of foreign banks.
- We do not believe that the Main Street SPV’s contract would be treated as a “written agreement” with, or a “condition imposed in writing” by, the Fed in connection with its enforcement powers under 12 U.S.C. § 1818.
 - As a result, breaches of the contract should be subject to the usual remedies between contracting parties and not arise to an enforceable event.

Relationship with Other Lending Programs



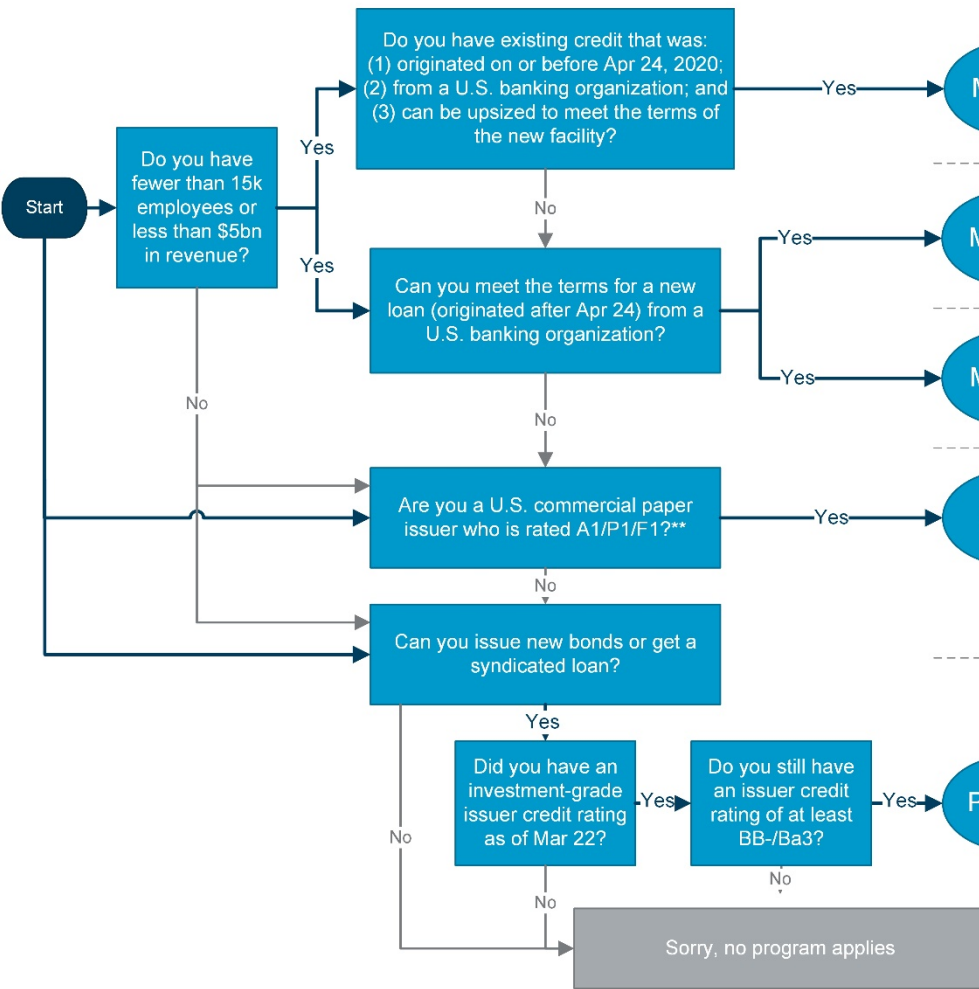
Key Differences Between the Paycheck Protection Program and the Main Street Program

	Paycheck Protection Program	Main Street Program
Eligible Borrower Size	<ul style="list-style-type: none"> 500 employees or fewer or meet other SBA standards for a small business 	<ul style="list-style-type: none"> 15,000 employees or fewer or 2019 annual revenues of \$5 billion or less among all affiliates
Loan Forgiveness	<ul style="list-style-type: none"> Loans can be completely or partially forgiven if used for specified purposes 	<ul style="list-style-type: none"> No loan forgiveness
Use of Funds and Employee Retention	<ul style="list-style-type: none"> 60% of the proceeds of the loan must be used for payroll and loan forgiveness; is reduced if payroll declines 	<ul style="list-style-type: none"> Use of funds is not prescribed but borrower should make commercially reasonable efforts to maintain payroll No certification to that effect required
Credit Underwriting	<ul style="list-style-type: none"> Loans are 100% guaranteed by the SBA and no credit underwriting by the lender is required 	<ul style="list-style-type: none"> 5% of the loan must be retained by the lender during the term of the loan or until the Main Street SPV sells its 95% participation interest in the loan Lenders are to apply their own credit underwriting standards
Size of Program	<ul style="list-style-type: none"> Capped at total funding of \$659 billion; would require legislation to expand further 	<ul style="list-style-type: none"> Program is currently limited to \$600 billion, but the Fed and Treasury may adjust that limit without legislation

Funding Sources for Corporate Issuers

This flowchart shows the Fed facilities that are available to businesses seeking funding.

The chart on the right shows the combination of programs that cannot be accessed simultaneously. A red X indicates that if a business accesses the facility listed in that row, the business and its affiliates are excluded from the facility listed in that column.



Program Exclusions

Direct Loans From Treasury* MSELF MSNLF MSPLF CPFF PMCCF PPP

	Direct Loans From Treasury*	MSELF	MSNLF	MSPLF	CPFF	PMCCF	PPP
MSELF	X		X	X		X	
MSNLF	X	X		X		X	
MSPLF	X	X	X			X	
CPFF							
PMCCF	X	X	X	X			

* In the CARES Act or subsequent federal legislation. Specifically, this column refers to companies that have received support under section 4003(b)(1)-(3) of the CARES Act, which authorizes Treasury to provide loans or guarantees to air carriers, certain related companies and businesses that are critical to national security. A company may, however, receive assistance through the PPP or the Payroll Support Program for air carriers and remain eligible.

** A one-time sale is permitted for issuers who were rated at least A1/P1/F1 on Mar 17, 2020 and are still rated at least A2/P2/F2.

Loans



Terms of Main Street Loans

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Maturity	<ul style="list-style-type: none"> • 5 years 	<ul style="list-style-type: none"> • Same 	<ul style="list-style-type: none"> • Same
Payment Deferral	<ul style="list-style-type: none"> • Principal payments deferred for two years • Interest payments deferred for one year—unpaid interest will be capitalized in accordance with the lender's customary practices for capitalizing interest (e.g., at quarter-end or year-end) 	<ul style="list-style-type: none"> • Same 	<ul style="list-style-type: none"> • Same
Principal Amortization	<ul style="list-style-type: none"> • 15% at end of third year • 15% at end of fourth year • Balloon payment of 70% at maturity 	<ul style="list-style-type: none"> • Same 	<ul style="list-style-type: none"> • Same
Interest rate	<ul style="list-style-type: none"> • LIBOR* (1-month or 3-month) + 300 basis points 	<ul style="list-style-type: none"> • Same 	<ul style="list-style-type: none"> • Same
Prepayment	<ul style="list-style-type: none"> • Permitted without premium or penalty • Will reduce future payments in the manner specified in the underlying loan documents, which lenders should make efforts to align with the expected amortization schedule specified for each loan type 	<ul style="list-style-type: none"> • Same 	<ul style="list-style-type: none"> • Same

* Consistent with the recommendations of the Alternative Reference Rates Committee, lenders and borrowers should include fallback contract language to be used should LIBOR become unavailable during the term of the loan.

Types of Main Street Loans

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Type of Loan	<ul style="list-style-type: none"> Must be a term loan originated after April 24, 2020, and may be secured or unsecured subject to the priority features described on slides 18 to 20 	<ul style="list-style-type: none"> Same as New loans, subject to the priority and security features described on slides 18 to 20 	<ul style="list-style-type: none"> Must be an upsized term loan tranche on an existing secured or unsecured term loan or revolving credit facility that: <ul style="list-style-type: none"> was originated on or before April 24, 2020; has a remaining maturity of at least 18 months (taking into account any adjustments made to the maturity of the loan after April 24, 2020, including at the time of upsizing); and may be secured or unsecured subject to the priority and security features described on slides 18 to 20

Priority and Security of Main Street Loans

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Ranking and Priority	<ul style="list-style-type: none"> Must not, (1) at the time of origination or (2) at any time during the life of the loan, be contractually subordinated in terms of priority to any of the borrower's other loans or debt instruments. We read this to mean that it may not be junior in right of payment priority in bankruptcy to the borrower's other unsecured debt for borrowed money and obligations evidenced by bonds, notes, loan agreements or similar instruments, and all guarantees of the foregoing 	<ul style="list-style-type: none"> At the time of origination and at all times the loan is outstanding, the loan must be senior to or pari passu with, in terms of payment priority and security, the borrower's other debt for borrowed money and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, and all guarantees of the foregoing other than <u>Mortgage Debt</u> <div data-bbox="905 1065 1377 1390" style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Mortgage Debt means (i) debt secured by real property at the time of the Main Street loan's origination; and (ii) limited recourse equipment financings (including equipment capital or finance leasing and purchase money equipment loans) secured only by the acquired equipment.</p> </div>	<ul style="list-style-type: none"> At the time of upsizing and at all times the upsized tranche is outstanding, the upsized tranche must be senior to or pari passu with, in terms of payment priority and security, the borrower's other debt for borrowed money and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, and all guarantees of the foregoing, other than <u>Mortgage Debt</u>

Priority and Security of Main Street Loans

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Collateral and Security	<ul style="list-style-type: none"> May be a secured or unsecured term loan, including on a second lien basis, regardless of the term or secured or unsecured status of the borrower's existing indebtedness Does not preclude the borrower from taking on new secured or unsecured debt after receiving a New loan, provided the new debt would not have higher contractual payment priority in bankruptcy than the New loan 	<ul style="list-style-type: none"> The Priority loan must be secured or may be unsecured only under the circumstances described on slide 20 below. At the time of origination: if secured, the <u>Collateral Coverage Ratio</u> must be either (i) at least 200% or (ii) not less than the aggregate Collateral Coverage Ratio for all of the borrower's other loans or debt instruments. During the life of the loan: the loan agreement must include a lien covenant or negative pledge that is of the type and that contains exceptions, limitations, carve-outs, baskets, materiality thresholds and qualifiers that are consistent with the lender's ordinary course documentation (see also the FAQ's model language) 	<ul style="list-style-type: none"> The Expanded loan must be secured or may be unsecured only under the circumstances described on slide 20 below. At the time of upsizing: the Expanded loan must be secured if the underlying loan is secured, and any collateral securing the underlying loan must secure the upsized tranche on a pro rata basis. During the life of the upsized tranche: same as Priority loans, however with respect to an underlying multi-lender credit facility, any lien covenant that was negotiated in good faith prior to April 24, 2020, as part of any underlying Expanded loan, is sufficient to satisfy the loan documentation requirement For an underlying loan that includes an existing term loan tranche and an existing revolver tranche, the upsized tranche must share collateral only with the other term loan tranche(s) on a pari passu basis. If any of the other term loan tranche(s) of the underlying loan constitute Mortgage Debt, the upsized tranche must also be secured by all of the collateral securing such Mortgage Debt on a pari passu basis.

Collateral Coverage Ratio means (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

Priority and Security of Main Street Loans

Main Street Priority Loan Facility

Collateral and Security (cont.)

- The Priority loan **must be secured if**, at the time of origination, the borrower has any other secured loans or debt instruments, other than Mortgage Debt.
 - **If secured by the same collateral** as any other loan or debt instruments, then it must be and remain senior to or pari passu with the liens of the other creditors.
 - However, the Priority loan **need not share in all of the collateral** that secures the other loans or debt instruments.
- The Priority loan **may be unsecured only if**, at the time of origination, the borrower does not have any other secured loans or debt instruments, other than Mortgage Debt.

Main Street Expanded Loan Facility

- The Expanded loan **must be secured if**, at the time of origination, the borrower has any other secured loans or debt instruments, other than Mortgage Debt.
 - The Expanded loan **must be and remain secured by the same collateral** (including, if applicable, any Mortgage Debt) as the underlying credit facility on a pari passu basis, and borrowers and lenders may add new collateral to secure the loan at the time of upsizing.
 - If the underlying credit facility includes both a term loan tranche(s) and revolver tranche(s), the Expanded loan needs to share collateral on a **pari passu basis with the term loan tranches(s) only**.
- The Expanded loan **may be unsecured only if**, at the time of origination, the borrower does not have any other secured loans or debt instruments, other than Mortgage Debt that does not secure any other tranche of the underlying credit facility.

Size of Main Street Loans

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Minimum Loan Size	<ul style="list-style-type: none"> • \$250,000 	<ul style="list-style-type: none"> • \$250,000 	<ul style="list-style-type: none"> • \$10,000,000
Maximum Loan Size	<ul style="list-style-type: none"> • The lesser of: <ul style="list-style-type: none"> – \$35 million; or – the amount, that when added to the borrower’s existing outstanding and undrawn available debt, does not exceed 4 times its adjusted 2019 EBITDA* 	<ul style="list-style-type: none"> • The lesser of: <ul style="list-style-type: none"> – \$50 million; or – the amount, that when added to the borrower’s existing outstanding and undrawn available debt, does not exceed 6 times its adjusted 2019 EBITDA* 	<ul style="list-style-type: none"> • The lesser of: <ul style="list-style-type: none"> – \$300 million; or – the amount, that when added to the borrower’s existing outstanding and undrawn available debt, does not exceed 6 times its adjusted 2019 EBITDA*

* The Fed noted in the FAQs that the EBITDA metric is generally not applied to non-profits or asset-backed borrowers and stated that the Fed and Treasury will evaluate the feasibility of adjusting the loan eligibility metrics for the Main Street Program for such borrowers.

Maximum Loan Size Calculation

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Methodology for Existing Outstanding and Undrawn Available Debt Calculation	<ul style="list-style-type: none"> Should be calculated as of the date of the loan application. 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. Also includes all unused commitments under any loan facility, excluding: <ul style="list-style-type: none"> any undrawn commitment that serves as a backup line for commercial paper issuance; any undrawn commitment that is used to finance receivables (including seasonal financing of inventory); any undrawn commitment that cannot be drawn without additional collateral; and any undrawn commitment that is no longer available due to change in circumstance. 		
Methodology for Adjusted 2019 EBITDA Calculation	<ul style="list-style-type: none"> Lender must require borrower to use a methodology it previously required to be used for adjusting EBITDA when extending credit to the borrower or to <u>similarly situated borrowers</u> on or before April 24, 2020. If a range of methodologies were used for the borrower, the lender should choose the most conservative method it has employed. Adjustments will not necessarily include all EBITDA adjustments in a borrower's existing credit agreement to the extent such adjustments are beyond the scope of the lender's underwriting metrics. 	<ul style="list-style-type: none"> Same as New loans 	<ul style="list-style-type: none"> Lender must require borrower to use the methodology it previously required the borrower to use for adjusting EBITDA when originating or amending the underlying loan on or before April 24, 2020, or if no EBITDA methodology was used, the methodology used for <u>similarly situated borrowers</u>. Adjustments will not necessarily include all EBITDA adjustments in a borrower's existing credit agreement to the extent such adjustments are beyond the scope of the lender's underwriting metrics.

Similarly situated borrowers are borrowers in similar industries with comparable risk and size characteristics.

Maximum Loan Size Calculation

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Affiliate and Holdco Adjusted 2019 EBITDA Calculation	<ul style="list-style-type: none"> If any affiliate of the borrower has participated in the New facility, then the affiliated group's total participation in the New facility must not exceed the maximum loan size on a consolidated basis. If any affiliate of the borrower has participated, or has a pending application to participate, in the New facility, then the borrower can only participate in the New facility and not the Priority facility or the Expanded facility. If the borrower is a holding company (i.e., all or substantially all of its assets comprised of equity interest in other entities), the aggregate adjusted 2019 EBITDA of the "Selected Subsidiaries" (i.e., one or more operating subsidiaries selected by the borrower to provide a guarantee of the Main Street facility) may not exceed the maximum loan size based on leverage. 	<ul style="list-style-type: none"> Same 	<ul style="list-style-type: none"> Same

If a borrower is the **only Business in its affiliated group that has sought funding** through the Main Street Program, its affiliated group's debt and EBITDA are **not** relevant to determining whether the borrower can qualify, except to the extent that the borrower's subsidiaries are consolidated into its financial statements.

If the borrower has an **affiliate(s) that has previously borrowed** or has an **application pending to borrow** from a Main Street facility, then the entire affiliated group's debt and EBITDA are relevant to the determining the borrower's maximum loan size.

Cross-Acceleration Provision

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Cross-Acceleration	<ul style="list-style-type: none"> New loans must contain a cross-acceleration provision that would trigger an event of default upon an acceleration of a different debt instrument of the borrower owed to the lender or any common controlled affiliate of the lender. 	<ul style="list-style-type: none"> Same as New loans 	<ul style="list-style-type: none"> For Expanded loans under bilateral facilities, same as New loans For Expanded loans under multi-lender facilities, the loan must include a similar cross-acceleration provision. The underlying credit facility's cross-default or cross-acceleration provision will be deemed sufficient if it was negotiated in good faith before April 24, 2020.

Facility Fees and Termination

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Transaction Fee	<ul style="list-style-type: none"> Lender pays Main Street SPV 100 bps of the principal amount of the loan at time of origination Lender may require borrower to pay this fee 	<ul style="list-style-type: none"> Same as New loans 	<ul style="list-style-type: none"> Lender pays Main Street SPV 75 bps of the principal amount of the upsized tranche of the loan at time of upsizing Lender may require borrower to pay this fee
Origination Fee	<ul style="list-style-type: none"> Borrower pays lender up to 100 bps of the principal amount of the loan at time of origination 	<ul style="list-style-type: none"> Same as New loans 	<ul style="list-style-type: none"> Borrower pays lender up to 75 bps of the principal amount of the loan at time of origination
Servicing Fee	<ul style="list-style-type: none"> Main Street SPV pays lender 25 bps of the principal amount of its participation per annum Lenders should not charge servicing fees to borrowers 	<ul style="list-style-type: none"> Same 	<ul style="list-style-type: none"> Same
Facility Termination	<ul style="list-style-type: none"> Main Street SPV will cease purchasing participations in loans on September 30, 2020 unless extended by the Fed and Treasury FRB Boston will continue to operate the Main Street SPV after September 30, 2020 until the Main Street SPV's assets mature or are sold 	<ul style="list-style-type: none"> Same 	<ul style="list-style-type: none"> Same

Lenders are not permitted to charge borrowers any additional fees, except de minimis fees for services that are customary and necessary in the lender's underwriting of commercial and industrial loans to similar borrowers, such as appraisal and legal fees. Permissible fees include customary consent fees if necessary to amend existing loan documentation in the context of upsizing a loan in connection with the Expanded facility.

Borrowers



4

Eligible Borrowers

Definition of Eligible Borrower

- For all three Main Street facilities, an Eligible Borrower is a Business (see slide [28](#)) that:
 - Was established before March 13, 2020;
 - Is not an Ineligible Borrower (see slides [29](#) and [30](#));
 - Meets at least one of the following two conditions after application of the affiliation rules (see slide [31](#)):
 - has 15,000 or fewer employees; **or**
 - had 2019 annual revenues of \$5 billion or less;
 - Is created or organized in the U.S. or under the laws of the U.S. with significant operations in and a majority of its employees based in the U.S.;
 - Participates in only one of the three Main Street lending facilities, and in the same Main Street facility as any of its affiliate(s) that have participated in the Main Street Program, **but** an Eligible Borrower may receive more than one loan under one Main Street facility, provided that the sum of those loans does not exceed the maximum loan size per Eligible Borrower, and an affiliated group's total participation in a single Main Street facility may not exceed the maximum loan size that the entire affiliated group is eligible to receive on a consolidated basis;
 - Does not participate in the Primary Market Corporate Credit Facility (**PMCCF**) and has no affiliate that has participated in the PMCCF; and
 - Has not received specific support under the CARES Act programs for air carriers, certain related companies and businesses critical to national security, **but** an Eligible Borrower is permitted to receive support from other programs, e.g., payroll support for airlines and the Paycheck Protection Program.

Eligible Borrowers

Loan Classification

The lender determines whether a borrower's existing loans have the requisite internal risk rating.

- An Eligible Borrower must have been in sound financial condition before the onset of the COVID-19 pandemic.
 - For the New and Priority facilities, if the borrower had other loans outstanding with the lender as of December 31, 2019, those loans must have had an internal risk rating (based on the lender's risk rating system) equivalent to a **"pass"** in the Federal Financial Institutions Examination Council's (**FFIEC**) supervisory rating system on that date.
 - For the Expanded facility, if the underlying loan was originated on or before December 31, 2019, and held by the lender on that date, the underlying loan must have had an internal risk rating (based on the lender's risk rating system) equivalent to a **"pass"** in the FFIEC's supervisory rating system as of December 31, 2019. If the underlying loan was originated or purchased by the lender after December 31, 2019, the lender should use the internal risk rating given to that loan at the time of its origination or purchase, respectively, to determine whether the loan is eligible for upsizing under the Expanded facility.

Definition of Business

The Fed may in its discretion consider including other forms of organization as Eligible Borrowers.

- A **Business** is a legally formed entity that is organized **for profit** as:
 - a partnership;
 - a limited liability company;
 - a corporation;
 - an association;
 - a trust cooperative;
 - a joint venture with no more than 49% participation by foreign business entities; or
 - a tribal business concern that is either:
 - wholly owned by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments, or
 - owned in part by one or more Indian tribal governments, or by a corporation that is wholly owned by one or more Indian tribal governments, if all other owners are either U.S. citizens or Businesses.
- **Non-profits** are currently ineligible to borrow, but the Fed announced on June 8, 2020 that it is working to establish soon one or more loan options that are suitable for non-profit organizations.

Ineligible Borrowers

The following businesses are currently ineligible for the Main Street Program:

- Non-profit businesses;
- Firms engaged in investment or speculation, such as oil wildcatting, hedge funds, and private equity firms;
- Financial businesses primarily engaged in the business of lending, such as banks and finance companies;
- Passive businesses owned by developers and landlords, subject to limited exceptions;
- Life insurance companies;
- Businesses located outside of the U.S.;
- Pyramid sale distribution plans;
- Businesses that are insolvent, i.e., in bankruptcy, or have not paid debts due during the 90 days preceding the date of borrowing;
- Businesses primarily engaged in political or lobbying activities;
- Businesses engaged in any activity that is illegal under state or federal law;
- Private clubs and businesses which limit the number of memberships for reasons other than capacity;
- Government-owned entities, except for:
 - businesses owned or controlled by a Native American tribe; and
 - hospitals that receive less than 50% of their funding from state or local government sources, excluding Medicaid;
- Businesses with an officer, director, owner of more than 20% of the equity, or key employee 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 any of its Associates owns an equity interest (see slide [30](#) for further details);
- Businesses which present live performances of a prurient sexual nature or derive revenue through the sale of products or services, or the presentation of any depictions or displays, of a prurient sexual nature;
- Loan packagers earning more than one third of their gross annual revenue from packaging SBA loans; and
- Unless waived for good cause, businesses that have previously defaulted on a federal loan or federally assisted financing.

Gaming Businesses. While businesses which derive more than one-third of gross annual revenue from legal gambling activities are ordinarily ineligible for SBA business loans, the SBA modified this bar in an Interim Final Rule. For purposes of the PPP, and thus for purposes of the Main Street Program, a business that is otherwise eligible is not rendered ineligible due to its receipt of legal gaming revenues. Businesses that received illegal gaming revenue remain categorically ineligible.

Loans to Insiders

- The Main Street term sheets incorporate by reference an existing exclusion under SBA regulations, as amended by Interim Final Rules (IFR) implementing the PPP, for a business in which **the lender or any of its Associates owns an equity interest**.
 - Such a business would be ineligible to borrow from that lender under the Main Street Program but still may be eligible to borrow from other lenders.
- Associate is defined for this purpose as:
 - any **officer, director, key employee, or holder of more than 20% of the equity or debt** of the lender; and
 - any **entity** in which one or more of **these individuals, or a Close Relative** of one of these individuals, owns more than **20%** of the equity.
 - A Close Relative is a spouse; a parent; or a child or sibling, or the spouse of any such person.
- Eligibility exception for equity held by **outside directors** of a lender and **holders of a 20% to 30% equity interest** in a lender:
 - Pursuant to a PPP IFR incorporated by reference into the Main Street Program, an otherwise eligible business is **not ineligible** to borrow from a lender under the Main Street Program merely because the business is owned, in whole or in part, by an outside director or a holder of a less than 30% equity interest in the lender, provided that the business follows the same process as any similarly situated customer or account holder of the lender.
 - It is unclear how this exception interacts with the second prong of the Associate definition, i.e., whether equity owned by an outside director of the lender or a holder of a 20% to 30% equity interest in the lender, or a Close Relative of such individuals, counts toward the 20% equity ownership threshold in the second prong.
- The 20% and 30% thresholds noted above apply to determinations of whether an entity is an Associate or whether the eligibility exception applies. Ownership of **any** equity of a business by the lender or an Associate of the lender (other than an outside director or 20% to 30% equity holder of the lender) makes that business ineligible for a Main Street loan from that lender; there is no minimum threshold for the equity interest.
- The broad definitions of Associate and Close Relative may make it difficult for some borrowers to certify this criterion of their eligibility.
 - It may be impossible for a widely held borrower such as a public company to know of all holders of its equity.
 - The definition of Close Relative is broader than those under applicable banking regulations, such as Regulation O. Tracking the equity holdings of the siblings, in-laws and adult children of a lender's officers, directors and key employees will be difficult both for the lender and its potential Main Street borrowers.
 - The Borrower Certifications require a borrower to make a reasonable, good faith effort to determine if its activities or ownership would cause it to be an Ineligible Business, and to conduct further inquiry into the SBA's interpretations of its regulations if the borrower has reason to believe it may be ineligible.

Affiliation Rules for Eligible Borrowers

- The Main Street Program imports the SBA's affiliation rules, which generally require a potential borrower to aggregate all of its employees or revenues with those of its affiliates when determining eligibility for the PPP and other SBA programs.
 - Under SBA rules, entities are affiliates when one entity controls or has the power to control the other, or a third party or parties controls or has the power to control both entities. This includes, among other circumstances:
 - where one entity owns or has the power to **control more than 50%** of another entity's voting equity;
 - where a minority shareholder of an entity has the ability, under the entity's charter, by-laws, or shareholder's agreement, **to prevent a quorum or otherwise block action** by the board of directors or shareholders; and
 - where a single individual, concern, or entity that controls the board of directors or management of one entity also controls the board of directors or management of another entity.
 - The SBA rules also include exceptions to affiliation.
- Therefore, to determine whether it meets either of the size thresholds for the Main Street Program, a Business will need to:
 - aggregate its employees with those of its affiliates for purposes of the 15,000 employee threshold; and
 - aggregate its 2019 revenues with the 2019 revenue of its affiliates for purposes of the \$5 billion or less of annual revenue threshold.
- A business must count **all of its employees and the employees of its U.S. and foreign affiliates**, absent a waiver of or an exception to the affiliation rules.
- The CARES Act exempts certain hospitality businesses, franchisees, and SBIC borrowers from the SBA affiliation rules for the PPP. These statutory exemptions were not applied to the Main Street Program.

Calculating 2019 Revenues

- To calculate 2019 annual revenues for eligibility purposes, a Business may use either its and its affiliates' (1) annual revenue per its 2019 GAAP audited financial statements or (2) annual receipts for the fiscal year 2019, as reported to the IRS.
- If a potential borrower or its affiliate does not yet have audited financial statements or annual receipts for 2019, the borrower or its affiliate should use its most recent audited financial statements or annual receipts.

Treatment of Foreign-Owned Borrowers

- Eligible Borrowers must be organized in the United States with **significant operations** in and a **majority of their employees** based in the United States.
 - This requirement is in the CARES Act text and is binding as a statutory matter.
 - The Main Street FAQs provide a non-exhaustive list of examples of what constitutes significant operations in the United States. An Eligible Borrower would meet that condition if, when consolidated with its subsidiaries but not its parent companies or sister affiliates:
 - greater than 50% of its assets are in the United States; or
 - greater than 50% of any of the following are generated in the United States:
 - annual net income;
 - annual net operating revenues; or
 - annual consolidated operating expenses (excluding interest expense and any other expenses associated with debt service).
 - To determine if it has a majority of its employees in the United States, the borrower's operations should be evaluated on a consolidated basis together with its subsidiaries, but not its parent companies or sister affiliates.
- Businesses that are **joint ventures** must have no more than 49% participation by foreign business entities.
 - This requirement is imported from the SBA regulations into the term sheets and therefore it is guidance that the Federal Reserve could change or clarify.
- An Eligible Borrower may be a **subsidiary of a foreign company**, provided that:
 - the borrower itself is created or organized in the United States or under the laws of the United States, and
 - the borrower on a consolidated basis has significant operations in and a majority of its employees based in the United States.
- An Eligible Borrower that is a subsidiary of a foreign company must use the proceeds of a Main Street loan **only for the benefit of** the Eligible Borrower, its consolidated U.S. subsidiaries, and other affiliates of the Eligible Borrower that are U.S. businesses, and **not** for the benefit of its foreign parents, affiliates, or subsidiaries.
- Application of the Main Street Program's employee and revenue limitations, combined with the affiliation rules requiring aggregation of domestic and foreign affiliates, will likely work to exclude U.S. subsidiaries of large multi-national companies.

Required Certifications and Covenants by Borrowers

The borrower must **promptly notify** the lender of any material misrepresentation with respect to any borrower certification or any material breach of any borrower covenant while its loan is outstanding and the Main Street SPV or a government assignee hold any interest in it, or up to one year afterwards. The lender must then promptly notify the Main Street SPV and the FRB Boston if the borrower reports such a misrepresentation or breach, as described on slide [46](#).

A Main Street loan would promptly become subject to mandatory prepayment upon discovery of a material misrepresentation or a material breach by the borrower of certifications and covenants that address requirements under the CARES Act and Section 13(3), including the following:

CARES Act Eligibility

- The borrower must certify that it meets certain requirements to be eligible for financial assistance under the CARES Act, including that it is a U.S. business, has not received specific support under certain other CARES Act programs, and is not a covered entity for purposes of the conflicts of interest prohibition in section 4019(b) of the CARES Act (see slide [40](#) for details). The conflict of interest certification also prescribes a standard for the due diligence that the borrower must perform.

CARES Act Payout Restrictions

- The borrower must commit that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act (see slide [39](#) for details), **except that** an S corporation or other tax pass-through entity that is a borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings.
 - These restrictions apply for the life of the loan plus 12 months.
-

Required Certifications and Covenants by Borrowers

A Main Street loan would promptly become subject to mandatory prepayment upon discovery of a material misrepresentation or a material breach by the borrower of certifications and covenants that address requirements under the CARES Act and Section 13(3), including the following:

13(3) Requirements

- The borrower must certify that it is not insolvent, as defined in Section 13(3)'s implementing regulations.
 - The borrower certification instructions provide interpretive guidance on the meaning of “insolvent” in the context of the COVID-19 pandemic.
 - The borrower must certify that it is unable to secure adequate credit accommodations from other banking institutions.
 - The borrower **does not need to establish that no credit is available** from other sources, only that the **amount, price, or terms** of such credit is **inadequate** for the borrower's current needs.
 - The borrower is **not required to demonstrate** that applications for credit have been **denied** by other lenders or otherwise document that the amount, price, or terms of credit available elsewhere are inadequate.
-

Required Certifications and Covenants by Borrowers

Certifications and covenants that would not trigger mandatory prepayment if materially breached, but which are in scope of the borrower's indemnity,* include the following:

Ineligible Business

- The borrower must certify that it is not an Ineligible Business (see slide [29](#) for details)
 - The borrower is expected to review the list of Ineligible Businesses in the SBA's regulations and make a reasonable, good faith effort to determine if the borrower's activities or ownership would cause it to be an Ineligible Business.
 - If the borrower has reason to believe that it may be an Ineligible Business, it is expected to conduct further inquiry into the SBA's interpretations of its regulations, including in the recent IFRs related to the PPP, and to reference the Main Street FAQs.

Repayment of Existing Debt

- The borrower must commit not to repay the principal balance of, or paying any interest on, any debt until either the Main Street loan is repaid in full or neither the Main Street SPV nor any government assignee hold any interest in the Main Street loan, unless the debt or interest payment is mandatory and due. This restriction applies only to other debt for borrowed money of the borrower.
 - **Only for the Priority facility:** The borrower may, at the time of origination of the loan, refinance existing debt owed by the borrower to a lender that is not the Eligible Lender.
 - Borrowers are permitted to refinance debt that is maturing no later than 90 days from the date of such refinancing.
 - The Main Street FAQs clarify principal and interest payments on other debt are mandatory and due if they were previously scheduled, or automatically triggered by the occurrence of an event, under a contract executed before the date of origination of the Main Street loan.

***Indemnity.** The Borrower Certifications include an indemnity to the lender, the Main Street SPV, the Federal Reserve and the Treasury that covers any liability or loss of those beneficiaries associated with any material breach of any of the borrower's certifications or covenants.

Required Certifications and Covenants by Borrowers

Certifications and covenants that would not trigger mandatory prepayment if materially breached, but which are in scope of the borrower's indemnity, include the following:

Ability to Meet Financial Obligations

- The borrower must certify that it has a reasonable basis to believe that, as of the date of origination/upsizing of the loan and after giving effect to such loan/upsizing, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period.

Holding Company Borrowers

- If (and only if) the borrower is a holding company, it must certify that the loan is fully guaranteed on a joint and several basis by all of its subsidiaries that are included in the EBITDA Requirement for Holding Company lender certification described on slide [47](#) and if the loan is secured, that such guarantees are also secured.

Role of Lenders

- See slides 46 to 49 for information on required certifications by lenders.
- A lender is expected to collect the required certifications and covenants from a borrower at the time of origination or upsizing.

Required Certifications and Covenants by Borrowers

Certifications and covenants that would not trigger mandatory prepayment if materially breached, but which are in scope of the borrower's indemnity, include the following:

Provision of Financial Records to Eligible Lender

- The borrower must certify that:
 - It has provided financial records to the lender and a calculation of the adjusted 2019 EBITDA of the borrower (and, as relevant, its affiliates and/or subsidiary guarantors), reflecting only those adjustments permitted pursuant to the methodology that the borrower agreed upon with the lender, and
 - such financial records fairly present, in all material respects, the financial condition of such entities for the period covered thereby in accordance with U.S. GAAP (if applicable), consistently applied, and that such adjusted EBITDA calculations are true and correct in all material respects.
- A borrower is expected to submit statements to its lender as follows:
 - A borrower must submit **U.S. GAAP-compliant** financials in connection with this certification if it is subject to U.S. GAAP reporting requirements or that already prepares its financials in accordance with U.S. GAAP. Otherwise U.S. GAAP-compliant financials are not required.
 - A borrower must submit **audited** financial statements if it typically prepares audited financial statements. Otherwise, borrowers should submit reviewed financial statements or financial statements prepared for the purpose of filing taxes. If a borrower does not yet have audited or reviewed financial statements for 2019, the borrower should use its most recent audited or reviewed financial statements.
 - A borrower must submit **consolidated** financial statements if it typically prepares financial statements that consolidate the borrower with its subsidiaries (but not its parent companies or sister affiliates). If a borrower does not typically prepare consolidated financial statements, it is not required to do so, unless so required by the lender.
- The same expectations apply where a borrower submits to its lender statements of the borrower's affiliates or Selected Subsidiaries, as applicable.

Employee Retention by Borrowers

Retaining Employees

- The Main Street facility term sheets state that each borrower should make commercially reasonable efforts to maintain its payroll and retain its employees during the time the Main Street loan is outstanding.
 - Specifically, a 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.
 - However, **no certification or covenant** on employee retention is required from the borrower.
 - Borrowers 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.
-

Payout Restrictions

Borrower Covenant

- A borrower is required to commit that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act, **except that** an S corporation or other tax pass-through entity that is a borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings.

CARES Act Payout Restrictions

- The payout restrictions under section 4003(c)(3)(A)(ii) of the CARES Act, which apply for the life of the loan plus 12 months, are:
 - No repurchases of equity securities of the business or any parent company of the business that are listed on a national securities exchange, except to the extent required by a contractual obligation in effect as of March 27, 2020;
 - No dividends or other capital distributions on common stock;
 - Restrictions on compensation of officers and employees, excluding employees whose compensation is determined through an existing collective bargaining agreement entered into before March 1, 2020:
 - If an officer or employee's calendar year 2019 total compensation exceeded \$425,000, his or her total compensation during any 12-month period is limited to calendar year 2019 total compensation (i.e., no raises);
 - If an officer or employee's calendar year 2019 total compensation exceeded \$3 million, his or her total compensation during any 12-month period is limited to the sum of \$3 million plus 50% of the excess over \$3 million of calendar year 2019 total compensation (i.e., pay cuts); and
 - For both categories above, severance pay or other benefits upon termination of employment are capped at two times the officer or employee's calendar year 2019 total compensation.
 - Total compensation includes salary, bonus, equity awards and other financial benefits; the calculation method is not clear.

While these restrictions have been applied to borrowers under the Main Street Program, that has been done as a policy matter, not as a statutory requirement. Accordingly, the Federal Reserve is able to vary from the statutory terms.

Conflicts of Interest Prohibition

Borrower Certification of Eligibility

- A borrower is required to certify that it is eligible to participate in the facility, including in light of the **conflicts of interest prohibition** in section 4019(b) of the CARES Act.
 - This provision applies as a statutory matter and the Federal Reserve has no power to vary it.
 - Unlike most of the Borrower Certifications, the conflicts of interest certification is knowledge-qualified. Each borrower signatory is required to certify that the conflicts of interest prohibition does not apply to the borrower to the best of his or her knowledge and based on reasonable diligence as described in the Borrower Certification instructions.

Conflicts of Interest Prohibition

- Section 4019(b) prohibits the use of CARES Act economic stabilization funds to provide financial assistance to any entity in which a **Covered Individual** directly or indirectly holds a controlling interest.
 - A controlling interest is owning, controlling or holding **20%** or more, by vote or value, of any class of equity.
 - **Covered Individual** means the United States President, the Vice President, the head of an Executive Department or a Member of Congress (or a spouse, child, daughter-in-law or son-in-law of any of the foregoing).
 - The definition of “Executive Department” includes the Departments of: State, Treasury, Defense, Justice, Interior, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, Energy, Education, Veterans Affairs and Homeland Security.
 - A “Member of Congress” includes a member of the Senate or House of Representatives, a Delegate to the House of Representatives and the Resident Commissioner from Puerto Rico.
 - In determining whether the 20% threshold is crossed, the securities owned, controlled, or held by two or more individuals who are related (i.e., spouse, child, daughter-in-law or son-in-law) must be **aggregated**.

Lenders



Eligible Lenders

Definition of Eligible Lender

- For all three Main Street facilities, an Eligible Lender is:
 - a U.S. federally insured depository institution (including a bank, savings association, or credit union);
 - a U.S. branch or agency of a foreign bank;
 - a U.S. bank holding company or savings and loan holding company;
 - a U.S. intermediate holding company of a foreign banking organization; or
 - a U.S. subsidiary of any of the foregoing.
 - For example, the following are not Eligible Lenders as currently defined:
 - direct lending funds;
 - foreign lenders, excluding U.S. branches or agencies of foreign banks;
 - customary term loan B lenders, including CLOs and institutional investors; and
 - affiliates (other than subsidiaries) of otherwise eligible lenders
 - Multiple affiliated entities may register as Eligible Lenders.
-

While nonbank financial institutions are not considered Eligible Lenders for purposes of the Main Street Program now, the Fed is considering options to expand the list of Eligible Lenders in the future.

Eligible Lenders

Additional Lender Eligibility Considerations for Expanded Facility

- If the underlying loan is a multi-lender or syndicated facility, an Eligible Lender must be one of the lenders that holds an interest in the underlying loan at the date of upsizing.
 - Only the Eligible Lender, not the other lenders that hold interests in the underlying loan, is required to meet the eligibility criteria.
 - The Expanded facility Eligible Lender is not required to have originally extended the underlying loan, as long as it purchased the interest in the underlying loan before April 24, 2020.
 - If the lender purchased the interest on or before December 31, 2019, the lender must have assigned an internal risk rating to the underlying loan equivalent to a “pass” in the FFIEC’s supervisory rating system as of that date.
 - If the lender purchased the interest after December 31, 2019, the lender should use the internal risk rating given to that loan at the time of purchase to determine whether the loan is eligible for upsizing under the Expanded facility.
 - More than one lender under an existing multi-lender facility may choose to upsize the existing facility to originate an Expanded Upsized Tranche, but the Eligible Borrower’s aggregate borrowing is constrained by the Expanded facility maximum loan size tests.
-

Credit Underwriting in the Time of Corona

Credit Underwriting Standards

- A business that meets the Eligible Borrower criteria is **not automatically approved** for a Main Street loan, or to receive a particular amount if it is approved.
- The Fed expects a lender to **conduct an assessment** of each potential borrower and to apply its own credit underwriting standards.
 - Lenders evaluate the financial condition and creditworthiness of a potential borrower **at the time of its application**.
 - Lenders may require additional information and documentation in connection with their evaluation.
 - The **lender ultimately determines** whether a borrower is approved in light of these considerations.

New Normal

- Lenders will need to determine whether their pre-pandemic credit underwriting standards should be adjusted to reflect current conditions.
 - Any pre-existing loans from a lender to a borrower must have had an internal risk rating **as of December 31, 2019** that is equivalent to a “pass” supervisory rating in the FFIEC’s supervisory rating system, i.e., performing loans without an identified credit weakness.
 - The FAQs state that EBITDA is the key underwriting metric for Main Street loans.
 - A lender may use adjusted EBITDA, and must certify that its methodology is consistent with the one it previously used when extending credit to the same borrower or others similarly situated before April 24, 2020.
 - A lender is not bound by the definition of an adjusted EBITDA metric in any specific credit agreement; it may rely on an internally developed methodology previously used in making credit decisions.
- The FAQs state that a lender assessing a borrower’s ability to repay a Main Street loan should consider both the borrower’s credit history and financial performance prior to the crisis and its post-pandemic business prospects.

Credit Underwriting in the Time of Corona

Supervision

- The FAQs state that supervisors “acknowledge the high degree of uncertainty in predicting COVID-19’s economic impact and effect on individual borrowers” but that lenders are “encouraged to work with borrowers affected by COVID-19.”
- Nonetheless, the FAQs specify that lenders should apply safe and sound credit risk management policies and practices throughout the life of the Main Street Program loans and regulatory supervisors will approach review the loans in a manner consistent with their supervisory approach to other commercial and industrial loans. Lenders are directed to SR 17-14 for supervisory expectations under extraordinary circumstances.
- Many lenders will also need to take into account that the OCC, the FDIC or a state banking authority will also be evaluating their credit underwriting procedures.

Required Certifications and Covenants by Lenders

Certifications and covenants required from a lender at the time of its registration include the following:

Eligibility and Solvency

- The CEO and CFO of a lender must sign a certificate that states that the lender is eligible to participate in the facility, including in light of the Eligible Lender definition (see slide [42](#) for details) and the conflicts of interest prohibition in section 4019(b) of the CARES Act (see slide [40](#) for details), and that the lender is not insolvent, as defined in Section 13(3)'s implementing regulations. The lender conflicts of interest certification is knowledge-qualified.
- The lender must immediately cease participation in the Main Street Program if any of the certifications are not true.

In addition to other certifications required by applicable statutes and regulations, the following certifications and covenants will be required from a lender in connection with each loan:

Due Inquiry With Respect to Formation

- The lender must certify that, following **due inquiry**, it has no knowledge or reason to believe that the certifications made by the borrower that borrower is a Business (as defined on slide [28](#)) and was established before March 13, 2020 are incorrect or untrue in any material respect.
 - The **due inquiry standard** for purposes of this certification requires a lender to receive documentation from the borrower evidencing the borrower's legal formation certified by the appropriate governmental authority and to take those steps to verify such formation as are required under the lender's ordinary underwriting policies and procedures.

Reliance on Borrower Certifications

- The lender must certify that the borrower has delivered to the Borrower Certifications (discussed on slides 33 to 37) to the lender, signed by the persons identified as the signatories thereof.
- In making this certification, the lender assumes no responsibility for verifying the accuracy of the Borrower Certifications and may rely entirely on them, except regarding Due Inquiry With Respect to Formation (see row above) and, for Priority and Expanded loans only, Lien Certifications and Covenants (see slide [48](#)).
- The lender is **not expected to monitor** the borrower's ongoing compliance with covenants set out in the Borrower Certifications and Covenants.

Prompt Notice

- The lender must **promptly notify** the Main Street SPV and the FRB Boston if:
 - The lender becomes aware of a material breach of covenant under the Lender Certifications, or
 - A borrower reports a material misrepresentation or material breach of any material covenant under the Borrower Certifications while its loan is outstanding and the Main Street SPV or a government assignee hold any interest in it, or up to one year afterwards, as described on slide [33](#).

Required Certifications and Covenants by Lenders

In addition to other certifications required by applicable statutes and regulations, the following certifications and covenants will be required from a lender in connection with each loan:

Methodology for Adjusted 2019 EBITDA Calculation

- The lender must certify that the methodology used for calculating the borrower's adjusted 2019 EBITDA for the leverage requirement in the Main Street loan criteria is the methodology:
 - for purposes of New and Priority loans, that it has previously used for adjusting EBITDA when extending credit to the borrower or similarly situated borrowers on or before April 24, 2020; or
 - for purposes of Expanded loans, that it previously used for adjusting EBITDA when originating or amending the underlying loan on or before April 24, 2020.
- In certifying compliance with this requirement, the lender is permitted to rely on financial records delivered by the borrower to the lender and the calculation of adjusted 2019 EBITDA certified to the lender by the borrower.

EBITDA Requirement for Holding Company

- If (and only if) the borrower is a holding company, the lender must certify, based solely on financial records received from the borrower and the EBITDA calculations certified to the lender by the borrower, that the Main Street loan does not exceed applicable limits on maximum loan size based on the aggregate adjusted 2019 EBITDA of the borrower's subsidiaries that are guaranteeing the Main Street loan.
 - Generally market practice for loans to a holding company would be to measure EBITDA by reference not only to guarantors, but also to all restricted subsidiaries.

EBITDA Requirement for Borrower's Affiliated Group

- If (and only if) the borrower notifies the lender that one of its affiliates has previously applied for or received funding from the same Main Street facility, the lender must certify, based solely on financial records received from the borrower and the EBITDA calculations certified to the lender by the borrower, that the aggregate of all Main Street loans under such facility to the borrower and all of its affiliates does not exceed applicable limits on maximum loan size based on the combined adjusted 2019 EBITDA of the borrower and all of its affiliates.

Required Certifications and Covenants by Lenders

In addition to other certifications required by applicable statutes and regulations, the following certifications and covenants will be required from a lender in connection with each loan:

Debt and Lien Certifications and Covenants

- If a Priority loan is **secured**, the lender must certify that, following **due inquiry**, the Collateral Coverage Ratio is at least 200%, or else not less than the aggregate Collateral Coverage Ratio for the borrower's other secured debt (other than Mortgage Debt, as defined on slide [18](#)).
 - The **due inquiry standard** for purposes of this certification requires the lender to inquire with any officers and employees of the lender that manage the relationship with the borrower and conduct a good faith, reasonable search of the lender's records to determine whether the borrower has accurately reported the outstanding debt it has with the lender, but the lender can otherwise rely on the collateral reporting provided by the borrower.
- If a Priority loan is **secured** by a shared pool of collateral, the lender must certify that, following **due inquiry**, it has no knowledge or reason to believe that its lien is not senior to or pari passu with the lien that its lien is not senior to or pari passu with the lien that secures the borrower's other debt (other than Mortgage Debt). If a Priority or Expanded loan is **unsecured**, the lender must certify that, following **due inquiry**, the lender has no knowledge or reason to believe that the borrower's other debt (other than Mortgage Debt) is secured at the time the loan is originated.
 - The **due inquiry standard** for purposes of this certification requires the lender to conduct lien searches and other customary diligence that is consistent with its ordinary course approach to similarly situated borrowers, but can otherwise rely on the collateral reporting provided by the borrower.
- For Expanded loans, the lender must certify and commit that any collateral securing the underlying credit facility at the time the Expanded loan is originated secures both the underlying credit facility and the Expanded loan on a pari passu basis, until the Expanded loan matures or neither the Main Street SPV nor any government assignee hold any interest in the Expanded loan.

Required Certifications and Covenants by Lenders

In addition to other certifications required by applicable statutes and regulations, the following certifications and covenants will be required from a lender in connection with each loan:

Repayment of Existing Debt

- The lender must commit that it will not request that the borrower repay any principal amount of debt extended by the lender to the borrower, or pay interest on that debt, unless the debt or interest payment is mandatory and due or in the case of default and acceleration, until either the Main Street loan is repaid in full or neither the Main Street SPV nor any government assignee hold any interest in the Main Street loan.
 - This requirement does not prevent the lender from exercising customary rights and remedies, including acceleration, upon an event of default under other debt, or from accepting repayments on a line of credit from the borrower in accordance with the borrower's normal course of business usage for such line of credit.
 - The commitment implies that the lender should put in place controls and procedures for the life of the loan.

Committed Lines of Credit

- The lender must commit that it will not cancel or reduce any existing committed lines of credit to the borrower, except in an event of default, until either the Main Street loan is repaid in full or neither the Main Street SPV nor any government assignee hold any interest in the Main Street loan.
 - This requirement does not prevent the lender from exercising customary rights and remedies, including acceleration, upon an event of default under other debt, or from accepting repayments on a line of credit from the borrower in accordance with the borrower's normal course of business usage for such line of credit.
 - This also does not prohibit the reduction or termination of uncommitted lines of credit, the expiration of existing lines of credit in accordance with their terms, or the reduction of availability of existing lines of credit in accordance with their terms due to borrowing bases or reserves in asset-based or similar structures.
 - The commitment implies that the lender should put in place controls and procedures for the life of the loan.
-

Regulatory Capital Treatment of Retained Interests

The Fed clarified in its FAQs the regulatory capital treatment of an interest in a Main Street loan retained by a lender that is subject to the Fed/FDIC/OCC capital rules,* as well as the treatment of Main Street loans for supervised firms subject to capital planning and stress testing.

Exposure Amount

- For purposes of risk-based capital rules and leverage rules, the exposure amount for the retained interest in a Main Street loan is equal to the retained percentage times the applicable loan balance, i.e., 5% of the loan or upsized tranche.
 - With respect to the Expanded facility, this treatment applies only to the outstanding Expanded upsized tranche balance. The underlying loan or line of credit would be subject to the capital treatment that applied prior to the sale of the participation to the Main Street SPV.

Risk Weight

- For purposes of the risk-based capital rules, the lender's retained interest in a Main Street loan is assigned the risk weight applicable to the counterparty for the loan, which is generally a 100% risk weight for a corporate exposure under the standardized approach.

Collateral Recognition

- Secured Main Street loans may be eligible for credit risk mitigation treatment for the recognition of collateral under the capital rules' standardized approach, which requires that any collateral securing the loan be eligible financial collateral. We expect this to be a relatively rare occurrence.
- Lenders are not permitted to recognize collateral attributable to the Main Street SPV's interest in a secured Main Street loan for purposes of credit risk mitigation treatment under the capital rule.

Capital Planning and Stress Testing

- Lenders subject to capital planning guidance should continue to reference that guidance, including the Federal Reserve's SR 15-18 and SR 15-19, as applicable, when evaluating Main Street loans for capital planning and stress testing purposes.
- Lenders should evaluate only the retained portion of Main Street loans for capital planning and stress testing purposes.

* Main Street loans made by lenders that are credit unions are subject to the NCUA's requirements regarding capital treatment.

Other Regulatory Considerations for Lenders

Customer Due Diligence for Main Street Loans

- A lender can make a New or Priority loan to a new customer. In doing so, the lender should follow its normal policies and procedures for originating loans to new customers, including know-your-customer procedures.
- The FAQs include the following guidance from FinCEN regarding lenders' obligations under FinCEN's customer due diligence obligations rule when extending Main Street loans to existing customers:
 - If a lender is making a Main Street loan to an existing customer and the necessary information was previously verified, the lender does not need to re-verify the information.
 - If a lender has not yet collected beneficial ownership information on an existing customer, the lender does not need to collect and verify beneficial ownership information for those customers applying for new Main Street loans, unless otherwise indicated by the lender's risk-based approach to Bank Secrecy Act compliance.
- The lender will also assess the potential borrower's financial condition at the time of the application.

Community Reinvestment Act (CRA)

- According to a recent joint Fed, FDIC and OCC [set of FAQs](#) on CRA consideration for activities undertaken in response to the COVID-19 pandemic, a bank may receive CRA consideration for Main Street loans that meet relevant CRA requirements. The FAQs provided the following guidance:
 - Main Street loans in amounts of **\$1 million or less** are reported and considered as small business loans under the applicable CRA retail lending test.
 - Main Street loans will be considered particularly responsive if made to small businesses with gross annual revenues under \$1 million or to businesses located in low- or moderate-income geographies or distressed or underserved nonmetropolitan middle-income geographies. Such loan programs could also receive consideration as innovative or flexible lending practices.
 - Main Street loans in amounts of **greater than \$1 million** may be considered community development loans if they also have a primary purpose of community development as defined under CRA.
 - Generally, loans to small businesses with gross annual revenues of less than \$1 million that create or retain jobs for low- or moderate-income individuals or in low- or moderate-income geographies, or that otherwise meet the economic development "size" and "purpose" tests, qualify as community development loans.
 - Such loans may also qualify if they help to revitalize or stabilize low- or moderate-income geographies or distressed or underserved nonmetropolitan middle-income geographies.

Participation Structure



6

Framework of Participation Documents

Six documents set forth the rights and obligations of lenders and the Main Street SPV in relation to participations of Main Street loans. Together they form the framework that governs the sale of each participation interest, the management of any subsequent elevation or transfers, and decision-making among the parties during the life of the loan. These six documents are as follows:

Participation Agreement

- This is the agreement pursuant to which the Main Street SPV purchases a participation interest in each Main Street loan from the lender.
- It has two components:
 - **Standard Terms and Conditions** that govern the overarching relationship between the Main Street SPV and the lender, and
 - **Transaction-Specific Terms** setting forth the principal terms of the participation of each Main Street loan.
- With respect to each Main Street loan, the Participation Agreement governs:
 - funding and sale mechanics, including the absence of any repurchase or buy-back rights,
 - subsequent transfer rights with respect to the participation interests,
 - the right of the Main Street SPV to “elevate” – i.e., via an assignment of the loan, move from being a participant to a lender of record,
 - pre-and post-default voting matters,
 - the waiver by the Main Street SPV of any special administrative priority status under Section 507(a)(2) of the Bankruptcy Code, and
 - the relationship generally between the lender and the Main Street SPV, as the seller and the buyer, respectively, of the participation interests in the Main Street loans.

Servicing Agreement

- This agreement sets forth the rights and obligations of the Main Street SPV, and the lender, as servicer, in connection with:
 - the administration of the participation interest purchased under the Participation Agreement, including performance of customary administrative agent functions, and
 - the delivery of enhanced financial reporting pursuant to the financial reporting covenants of each Main Street loan agreement.
-

Framework of Participation Documents

Assignment-in-Blank

- The Assignment-in-Blank is intended to be used by the Main Street SPV to facilitate the elevation of its participation, or the elevation and transfer of its participation, in each case, in connection with a **Specified Permitted Transfer**, as defined in the Participation Agreement and discussed on slide [57](#) below.
- By executing and delivering an Assignment-in-Blank in connection with each Main Street loan, the lender and borrower consent in advance to any such elevation and/or transfer.
- In a bilateral facility, the lender and borrower would use the Federal Reserve's standard form Assignment-in-Blank. In a multi-lender facility governing an Expanded loan, the parties would instead use the facility's pre-existing assignment document.
- The Main Street SPV would not countersign this document at the time it acquires the participation in the loan, but would hold it for potential future use.

Co-Lender Agreement

- The Co-Lender Agreement is executed in connection with each bilateral facility to provide mechanics for a multi-lender facility if the Main Street SPV later elevates its participation interest to that of a lender of record.
 - Like the Participation Agreement, the Co-Lender Agreement has two parts:
 - **Standard Terms and Conditions** that govern the relationship between the Main Street SPV and each lender, and
 - **Transaction-Specific Terms** setting forth the principal terms of each Main Street loan.
 - Upon taking effect, the Co-Lender Agreement would transform a bilateral facility into a multi-lender facility by adding provisions to govern inter-creditor relationships, allowing the Main Street SPV to become a lender of record alongside the Eligible Lender, and designating the Eligible Lender as the administrative agent to act on behalf of all lenders for certain functions.
 - As with the Assignment-in-Blank, the Main Street SPV would not countersign this document at the time of acquiring its participation interest, but would hold it for potential future use in connection with an elevation.
 - The voting provisions in the Co-Lender Agreement would require unanimous lender consent of the **Core Rights Acts** described on slide [60](#) below.
 - No Co-Lender Agreement would be required in a multi-lender facility, because the underlying credit documents would already contain provisions governing inter-creditor relationships.
-

Participation Agreement and General Participation Structure

	Main Street New Loan Facility	Main Street Priority Loan Facility	Main Street Expanded Loan Facility
Participation by Main Street SPV	<ul style="list-style-type: none"> Main Street SPV will purchase at par value a 95% participation in the New loan 	<ul style="list-style-type: none"> Same as New loans 	<ul style="list-style-type: none"> Main Street SPV will purchase at par value a 95% participation in the upsized tranche, provided that it is upsized on or after April 24, 2020
	<ul style="list-style-type: none"> Apart from the Main Street Program's size and time limitations, there is no limit on the amount of participations the Main Street SPV is permitted to purchase from a single lender. The two conditions to the Main Street SPV purchasing a 95% participation in a Main Street loan are that (1) the required documentation is complete and properly executed, and (2) the required documentation evidences that the loan is consistent with the relevant Main Street facility's requirements. If those requirements are met, the Main Street SPV intends to purchase a loan submitted by a lender without additional conditions. Loans made in reliance on the April 30 term sheets will be accepted by the Main Street SPV during the first 14 days of the relevant Main Street facility's operation, subject to certain conditions. Any such loans may be amended or refinanced in accordance with the June 8 terms. 		
Risk Retention by Lender	<ul style="list-style-type: none"> Lender must retain its 5% of the New loan until (1) the loan matures or (2) neither the Main Street SPV nor a governmental assignee holds an interest in the loan in any capacity, whichever comes first 	<ul style="list-style-type: none"> Same as New loans 	<ul style="list-style-type: none"> Lender must retain its 5% portion of the upsized tranche until (1) the upsized tranche matures or (2) neither the Main Street SPV nor a governmental assignee holds an interest in the upsized tranche in any capacity, whichever comes first Lender must also retain its interest in the underlying loan until (1) the underlying loan matures, (2) the upsized tranche matures, or (3) neither the Main Street SPV nor a governmental assignee holds an interest in the upsized tranche in any capacity, whichever comes first

Participation Agreement and General Participation Structure

Equal Treatment; Pro Rata Risk Sharing

- Main Street SPV and lender will share risk in the Main Street loan on a pari passu basis.
- Both the Participation Agreement and the Co-Lender Agreement include an express waiver of, and covenant by the Main Street SPV not to assert, any right or claim under or pursuant to Section 507(a)(2) of the Bankruptcy Code that could provide the Main Street SPV special administrative priority in a bankruptcy proceeding ahead of the lenders.
 - There is no express obligation for the Main Street SPV to turn over and share with the lenders any preferential proceeds that it may obtain notwithstanding this express waiver.
- According to the FAQs, in the event of a restructuring or workout scenario, the Main Street SPV may agree to reductions in interest, including capitalized interest, extended amortization schedules and maturities, and higher priority “priming” loans.

Structure and Timing of Participation

- Will be structured as an **“irrevocable” true sale** and the Participation Agreement contains an express acknowledgement from the Main Street SPV that the Main Street SPV has **no right to put back** or otherwise require lenders to repurchase, buy back, rescind or void any participation, including in the event of:
 - a breach by any party of its representations, warranties, covenants or agreements under or in connection with the Participation Agreement,
 - any action taken or omitted to be taken by the lender under in connection with the Participation Agreement or any applicable loan document, or
 - any default or breach by a borrower or other obligor under any loan document.
- Purchase of the participation must be completed **expeditiously after** the loan’s origination (for New and Priority loans) or the upsizing of the underlying loan (for Expanded loans).
- The FAQs emphasize that the Fed has designed the legal forms and agreements to facilitate a determination that the participation interests purchased by the Main Street SPV are “true participations” and in particular*:
 - purchased participation interests have characteristics of true participations under the Bankruptcy Code,
 - the transfer of the interests in financial assets under the Participation Agreement is structured to qualify for the FDIC safe harbor regulations under 12 CFR 360.6(d)(1) regarding the treatment of financial assets transferred in connection with a participation, and
 - the participations purchased by the Main Street SPV should qualify as “participations” within the meaning of the 12 CFR 360.6(a)(7) safe harbor, as they are sales of an undivided interest in the relevant loans without recourse to the lender.

* FDIC staff were consulted in preparing this response in the FAQs.

Participation Agreement: Transfer and Elevation Rights

- A lender is not permitted to assign its obligations under the Participation Agreement without Main Street SPV consent.
- The Main Street SPV is permitted to assign, sub-participate or otherwise transfer its participation interest:
 - At any time in connection with a Specified Permitted Transfer, without Eligible Lender consent.
 - Otherwise, with Eligible Lender consent, not to be unreasonably withheld.
- A **Specified Permitted Transfer** means any transfer, sub-participation or elevation:
 - following a payment or bankruptcy event of default of the borrower or any obligor;
 - in connection with an act that the Main Street SPV determines would result in a violation of the CARES act prohibition on loan forgiveness;
 - certain transfers to government entities;
 - transfers required by statute or court order; or
 - in the case of a lender insolvency.

Participation Agreement: Transfer and Elevation Rights

- The Main Street SPV is permitted to elevate its participation interest to become a lender of record either: (1) at any time in connection with a **Specified Permitted Transfer**, without Eligible Lender consent or (2) otherwise, subject to Eligible Lender consent, not to be unreasonably withheld.
- In connection with a Specified Permitted Transfer, lenders would have pre-consented by executing and delivering an **Assignment-in-Blank** and a **Co-Lender Agreement** for any bilateral facility, upon the sale of the participation.
 - According to the FAQs, the Main Street SPV would not typically seek to elevate except in connection with a Specified Permitted Transfer. Instead, the Fed would expect the Main Street SPV to be guided by lenders following market-standard workout processes and exercising the standard of care set out in the Participation Agreement and the Servicing Agreement in addressing any borrower downside scenario.
- The Fed expects that the Main Street SPV **would not elevate or assign except** in situations where (1) the economic interests of the lender and the Main Street SPV are misaligned or (2) the loan amount is relatively large in comparison to other loans in the Main Street SPV's portfolio of participations.
- Accordingly, Eligible Lenders do not have full control over their potential co-lenders and/or participants, given the lack of consent rights, tag rights, or rights of first refusal or first offer in connection with a Specified Permitted Transfer. The Main Street SPV, on the other hand, may control who will be its seller/counterparty, given its consent right, not to be unreasonably withheld, on transfers by the lender.

Participation Agreement: Voting Rights

• Pre-Elevation Voting Rights.

- Lenders are granted sole authority for most decisions and votes relating to the Main Street loan that may arise during the life of the loan.
- However, the Main Street SPV maintains the power to vote on **Core Rights Act** (as defined on the next slide) and, as a result, unless the loan agreement contains divisible voting, Lenders will be dragged along by any Main Street SPV vote on such matters.
 - **Divisible Voting.** If the votes with respect to the interest in the Main Street loan are **divisible** (as defined here), then the Lender would vote the Main Street SPV's participated interest as instructed by the Main Street SPV but may vote its 5% interest separately from the Main Street SPV's participated interest.
 - **Non-Divisible Voting.** If the votes with respect to the interest in the Main Street loan are **not divisible**:
 - **Pre-Bankruptcy.** The Main Street loan would be voted at the direction of the majority holders of interests in the Main Street loan and so the Main Street SPV (or its assignee), as majority holder, can direct the vote of the full Main Street loan with respect to Core Rights Act matters. For an Expanded loan, if the lender's loans in the underlying facility are not divisible from the Main Street loan, then the majority determination would be made in the aggregate (i.e., taking into account the lender's existing loans and the Main Street loan), and the lender would vote its aggregate position accordingly.
 - **Post-Bankruptcy.** If the lender's votes in respect of its loans under the loan agreement are **not divisible**, but the vote **is divisible** in respect of all claims in the same class that the lender may have against the borrower, then, with respect to claims arising from that loan agreement, the lender would be required to act at the direction of the majority holders of interests in the loan agreement. If the vote is **not divisible** in respect of all claims that the Lender may have against the borrower in the class, then presumably acts with respect to all of the lender's claims in such class would be at the direction of the majority holders of the Lender's claims of such class. In bankruptcy, it is possible that all pari passu claims, whether under the loan agreement or otherwise, may be classified for voting and distribution purposes in the same class.
 - **Limits.** Lenders are not required to follow instructions that would expose them to material obligation, liability or expense without adequate indemnity or that would violate any applicable law, rule, order or the loan documents. Additionally, according to the FAQs, the Main Street SPV will make commercially reasonable decisions to protect taxpayers from losses on Main Street loans and will not be influenced by non-economic factors when exercising its voting rights under the Participation Agreement or the Co-Lender Agreement.

• Post-Elevation Voting Rights.

- Once the Main Street SPV (or its assignee) becomes a lender of record, the lender's retained 5% interest and the Main Street SPV's (or its assignee's) interest will be voted separately.
- Elevation has different consequences on the requisite vote depending on whether the Main Street loan is a new bilateral loan subject to the Co-Lender Agreement or is subject to voting mechanics in an existing loan agreement:
 - For bilateral loans governed by the Co-Lender Agreement, any Core Rights Act remains an "each Lender" or "each directly and adversely affected Lender" vote requiring the consent of lender and the Main Street SPV (or its assignee) voting separately.
 - For Expanded loans that are subject to existing, unmodified voting arrangements in the underlying loan agreement, voting would default to the existing voting mechanics which would likely provide for majority vote determinations for many of the Core Rights Acts.

Divisibility. A vote is divisible if the Lender may vote the retained and participated interests in the Main Street loan separately. A vote is not divisible if the lender must vote the interests in the entire Main Street loan as one unit. Note that most standard loan agreements will not provide for voting to be divisible and, and thus, Lenders should ensure their Main Street loan agreements permit the divisibility of votes.

Participation Agreement: Voting and Core Rights Acts



The definition of **Core Rights Act** includes the following actions (and inactions) in respect of the SPV's participated and/or elevated interest that include customary lender "sacred rights" (typically requiring each affected lender's consent under market standards), as well as certain additional rights:

Customary Sacred Rights:

1. Any extension, increase or reinstatement of any commitment,
2. Any reduction in the principal, the rate of interest or any fees or other amounts payable in respect of the participated interest, including any loan forgiveness,
3. Any delay or postponement of any date scheduled for any payment of principal, interest, fees or other amounts payable in respect of the SPV's interest, or any reduction in the amount of, waiver or excuse of any such payment,
4. Any change of the pro rata sharing provisions or application of proceeds provisions in the credit documents affecting the SPV's interest,
5. Any release of all or substantially all of the collateral in any transaction or series of transactions or all or substantially all of the value of the guaranties,
6. Any change to any lender voting approval level under or pursuant to any credit document with respect to any of the foregoing,

Other Voting Items:

7. The waiver of any condition precedent to closing, effectiveness or funding under the applicable Main Street loan agreement,
8. With respect to certain Borrower Certification and Covenants relating to CARES Act, Federal Reserve Act and Regulation A compliance, any amendment, modification, waiver or consent to any departure from any provision in any loan document, including any mandatory prepayment, relating thereto,
9. Any amendment to, modification of, waiver of or consent to any departure from any provision in any credit document requiring the periodic financial and notice reporting, other than any consent to the temporary delay in (but not the permanent waiver of) delivery of any such periodic financial and notice reporting:
 - originally required to be delivered on or before September 30, 2020, or
 - originally required to be delivered after September 30, 2020 for a period not to exceed 90 days after such original delivery requirement date,
10. The express subordination of the Main Street loans, or any encumbrance in or over all or substantially all of the collateral,
11. Any greater restriction on the ability of, or any additional consent necessary for, any lender to assign, participate or pledge its rights or obligations under any credit document,
12. An adverse effect on the transferred rights that would be disproportionate to the effect on any other class of obligations under the applicable Main Street loan document,
13. Any amendment to, modification of, waiver of or consent to any departure with respect to a cross-acceleration of debt owed to the lender or one of its affiliates (a **Seller Debt Cross-Acceleration**),
14. The declaration, or failure to declare, any obligations of the applicable borrower due and payable upon the occurrence and during the continuance of a Seller Debt Cross-Acceleration, and
15. The exercise, or failure to exercise, of any rights or remedies with respect to any of the collateral at any time that the lender or any of its affiliates, or their representatives, is exercising rights or remedies with respect to any collateral securing, or purporting to secure, any other indebtedness owed to the lender or one of its affiliates, the default under which has resulted in a Seller Debt Cross-Acceleration.

Lending Process



Main Street Lending Process

- Before making any Main Street loans or selling any participations to the Main Street SPV, a lender must first **register to participate** in the Main Street Program by submitting to the Main Street SPV:
 - The Lender Registration Certifications and Covenants, signed and delivered by the CEO and CFO of the lender (or individuals performing similar functions).
 - The Lender Wire Instructions Direction, signed and delivered by the principal financial officer of the lender (or an individual performing a similar function).
 - The Fed intends to publish a lender registration handbook to guide lenders through the registration process and submitting transaction documents for each loan to the Main Street SPV through an online Main Street Portal.
- **Before each Main Street transaction**, a lender must decide whether to make the funding of a Main Street loan contingent on a binding commitment from the Main Street SPV that it will purchase a participation interest, as described on slide [56](#).
- With respect to **each Main Street transaction**, the lender must submit to the Main Street SPV:
 - The completed Participation Agreement Transaction Specific Terms, signed and delivered by a duly authorized employee or officer of the lender.
 - The Borrower Certifications and Covenants, signed and delivered to the lender by the CEO and CFO of the borrower (or individuals performing similar functions), or if the CEO and CFO of the borrower are the same individual, by the CEO and the next-in-line officer or employee of the borrower that works in a financial or accounting capacity.
 - The Lender Transaction Specific Certifications and Covenants, signed and delivered by a duly authorized employee or officer of the lender.
 - An Assignment Executed in Blank, signed by a duly authorized employee or officer of the lender, the borrower and, as applicable, the Administrative Agent. For existing multi-lender facilities that are upsized through the Expanded facility, the lender should use an Assignment and Acceptance form under the existing credit agreement, rather than the Fed's form.
 - For bilateral loans only, the completed Co-Lender Agreement Transaction Specific Terms, signed and delivered by both a duly authorized employee or officer of the lender, as both the Initial Lender and the Administrative Agent, and by a duly authorized employee or officer of the borrower and any other applicable Loan Party (any guarantor or grantor).
 - The completed Servicing Agreement, signed and delivered by a duly authorized employee or officer of the lender.

Main Street Lending Process

- For the **sale of the participation**, a lender has two options:
 - Lender funds the Main Street loan and submits documentation to the Main Street SPV for purchase of participation interest within 14 days (however, for the first 14 days that the Main Street SPV purchases participations, it will accept submissions of any loans made before it began purchasing participations), **or**
 - Lender submits documents to the Main Street SPV and, once cleared, the Main Street SPV issues to the lender a **commitment letter** to purchase the participation.
 - The commitment letter would indicate that the lender is required to fund the Main Street loan within 3 business days following the date of the commitment letter and that the Main Street SPV will purchase the participation in the Main Street loan not later than 3 business days after the lender notifies the Main Street SPV, via the Main Street Portal, that the Main Street loan has been funded.
 - If the lender elects to use the commitment letter option, the Main Street loan documentation should include a condition precedent to borrowing similar to the model provision to that effect.
- **During the life of the loan**, the borrower must deliver to the lender quarterly and annually financial information and calculations identified in Appendix C to the Main Street FAQs, pursuant to a covenant required to appear in Main Street loan agreement.
 - This requirement applies to New loans, Priority loans and Expanded loans under bilateral facilities.
 - Expanded loans under multi-lender facilities must include a financial reporting covenant requiring delivery of the specified financial information required for other Main Street loans. The underlying credit facility's financial reporting provision will be deemed sufficient if it was negotiated in good faith before April 24, 2020.
- While its loan is outstanding and the Main Street SPV or a government assignee hold any interest in it, and **up to one year afterwards**:
 - The borrower must promptly notify the lender of any material misrepresentation with respect to any borrower certification or any material breach of any borrower covenant.
 - The lender must promptly notify the Main Street SPV and the FRB Boston if the borrower reports such a misrepresentation or breach, or if the lender becomes aware of a material breach of covenant under the Lender Certifications.

Disclosures



8

Disclosures under Main Street Program

“ The Federal Reserve is committed to [transparency and accountability](#) by providing the public and Congress detailed information about our actions to support the economy during this difficult time. ”

–Chair Jerome H. Powell (April 23, 2020 Press Release)

- The Federal Reserve has obligations to make disclosures under multiple statutes.
 - These obligations include [Section 13\(3\)](#) of the Federal Reserve Act and its implementing regulation, as well as [Section 11](#) of the Federal Reserve Act.
 - The Federal Reserve may, under the legal framework, choose to keep some information confidential from the public but disclose it to the Senate Committee on Banking, Housing and Urban Affairs or the House Committee on Financial Services or to delay its disclosure for a year.
 - The Federal Reserve Chair may waive the delayed disclosure for more immediate disclosure.
- In light of the Federal Reserve’s [April 23rd press release](#), the [Main Street Program FAQs](#), and calls from the [Congressional Oversight Commission](#) for increased disclosure, we expect substantial transparency, as highlighted in the Federal Reserve Chair’s quote above.
- Borrowers and lenders are required to acknowledge in their respective certifications that the FRB Boston, the Federal Reserve, the Department of the Treasury, and any governmental assignee may make public and nonpublic disclosures with respect to the Main Street Facilities and to consent to such disclosures.
- As a result, borrowers and lenders should expect that, at a minimum, over time, the following information will become public:
 - names and identifying details of each participant in the facilities;
 - the amount borrowed;
 - the interest rate or discount paid;
 - information concerning the types and amounts of collateral pledged or assets transferred in connection with participation in the facilities; and
 - the overall costs, revenues and other fees.

Davis Polk Contacts



Davis Polk Contacts

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