May 1, 2020

UPDATE: Federal Reserve Issues Revised Term Sheets and Guidance for Main Street Lending Facilities, Announces New Main Street Priority Lending Facility

Key Takeaways

- *On April 30, 2020, the Federal Reserve ("Fed") issued revised term sheets for the Main Street Lending Program's Main Street New Loan Facility ("MSNLF")[1] and Main Street Expanded Loan Facility ("MSELF")[2] and a term sheet for the new Main Street Priority Loan Facility ("MSPLF"). This new program permits borrowers to refinance existing debt with other lenders into a MSPLF loan subject to a higher EBITDA multiple cap than the MSNLF.[3] The Fed also issued new Main Street FAQs.[4]*

- *Prospective borrowers are now subject to certain ineligibility tests and affiliation rules similar to those applicable in the Small Business Administration's ("SBA") Paycheck Protection Program ("PPP"). Other changes include adjustments to minimum and maximum loan sizes and the use of adjusted EBITDA consistent with market practice in determining loan sizes.*

- *The Fed also announced that it will disclose, among other information, the names of participating lenders and borrowers, the amounts borrowed and interest rates charged, and overall costs, revenues and other fees.*

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Overview

The new and revised Main Street Lending Program's ("Main Street" or "Program") guidance preserves many of the prior guidance's key features, including that the U.S. Treasury ("Treasury") will still make a $75 billion equity investment in a single special purpose vehicle ("SPV") established to implement the Program, which will leverage that investment in order to provide up to $600 billion in loans in the aggregate under all three of the Program's facilities to support small and midsize businesses. Consistent with the initial terms

1 For the revised MSNLF term sheet, please click here.

2 For the revised MSELF term sheet, please click here.

3 For the MSPLF term sheet, please click here.

4 For the FAQs, please click here.

of MSNLF and MSELF, prospective borrowers may not participate in a Main Street facility and the Primary Market Corporate Credit Facility.

While the latest Main Street guidance expands eligibility criteria for both borrowers and lenders, many prospective borrowers will continue to face challenges in qualifying for and obtaining Main Street loans, particularly in light of the new affiliation requirements. The Main Street loans will be obtained directly from eligible lenders, who are required to underwrite the loans pursuant to an assessment of the borrower's financial condition at the time of application. Among other things, this is likely to include an assessment of the borrower's expected EBITDA in light of the pandemic and governmental restrictions on business activity and, consequently, the ability of borrowers to take on incremental debt.

This memorandum summarizes the key changes and updates to MSNLF and MSELF and describes the key terms of MSPLF, and also includes a comparative chart outlining the key terms of each of the three facilities.

I. Revisions and Clarifications to MSNLF and MSELF

Many of the requirements from the initial term sheets for MSNLF and MSELF remain unchanged or substantially similar to their prior iterations,[5] and we highlight here certain material revisions and clarifications that recent guidance has implemented.

- Eligible Borrowers; Affiliation; Employment and Revenue Tests. The eligibility requirements for prospective borrowers were modified such that businesses with not more than 15,000 employees (up from 10,000 employees) or not more than $5 billion (up from $2.5 billion) in annual revenues are eligible for the Program. However, the FAQ provides that when determining whether a business meets these criteria, the business must aggregate its employees[6] and 2019 revenues[7] with those of its affiliates. The FAQ instructs borrowers to refer to SBA regulations in determining affiliation.[8] However, the affiliation waivers under Title I of the CARES Act applicable to the PPP (e.g., for food service and accommodations businesses and franchises) do not appear to apply to Main Street.

5 For additional information regarding Main Street's prior guidance, please click here.

6 To determine how many employees it has, a borrower should follow the framework set out in SBA regulations (available here).

7 To determine 2019 annual revenues, Businesses must aggregate their revenues with those of their affiliates. Businesses may use either of the following methods to calculate 2019 annual revenues for purposes of determining eligibility: (1) A Business may use its (and its affiliates') annual "revenue" per its 2019 Generally Accepted Accounting Principles-based (GAAP) audited financial statements; or (2) A Business may use its (and its affiliates') annual receipts for the fiscal year 2019, as reported to the Internal Revenue Service.

8 The applicable regulations are available here. For additional information regarding SBA affiliation requirements, please click here and here.

- *Number of Employees*. A borrower should count each of its (and its affiliates, if any) full-time, part-time, seasonal, or otherwise employed persons, excluding volunteers and independent contractors, as a single full employee. Borrowers should calculate the average number of employees over the 12 months prior to loan origination or upsizing by using each pay period over that time.

- *2019 Annual Revenues*. A borrower should aggregate its revenues with those of its affiliates (if any), using either annual revenue as reported in fiscal year 2019 GAAP-compliant audited financial statements or fiscal year 2019 annual receipts[9] as reported to the Internal Revenue Service.

- Ineligible Borrowers. Certain businesses deemed categorically ineligible under SBA's business loan program (as modified by PPP rules and related SBA guidance)[10] and businesses that have received specific support pursuant to Subtitle A of Title IV of the CARES Act are prohibited from participating in the Programs.[11] The SBA regulations generally deem financial businesses primarily engaged in lending (e.g., banks and finance companies), life insurance companies, government-owned entities, businesses in which the lender or any of its associates owns an equity interest and speculative businesses, among others, to be ineligible, although in a few limited cases PPP guidance has relaxed certain of these disqualifying criteria. The reference to SBA guidance in the Main Street guidance suggests that private equity firms and hedge funds will be excluded from borrowing under the Programs, but portfolio companies of private equity firms may qualify for Main Street programs subject to the other Main Street eligibility requirements, including affiliation.

- Eligible Lenders. The scope of "Eligible Lenders" has been expanded somewhat, and now includes U.S. branches or agencies of foreign banks, U.S. intermediate holding companies of foreign banks, and U.S. subsidiaries of any otherwise eligible lender in addition to the previously eligible U.S. federally insured depository institutions (including banks, savings associations, or credit unions), U.S. bank holding companies and U.S. savings and loan holding companies.

- Underwriting. Lenders must conduct an assessment of each prospective borrower's financial condition. The FAQ clarifies that lenders should apply their own underwriting standards and may demand additional documentation or information from borrowers as part of this process. Ultimately, lenders have the authority to deny loan applications based on their own underwriting standards, even if a prospective borrower satisfies the minimum requirements set forth in the Main Street guidance and there is no requirement in the Main Street guidance for any lender to offer these loans.

9 For purposes of the Program, the term "receipts" has the same meaning given to it in SBA regulations, available here.

10 The applicable regulations are available here.

11 Such programs include support for air carriers and businesses critical to national security, but does not include the PPP.

- Loan Size.
  - *MSNLF*: Decreased minimum loan size to $500,000 (from $1 million) and clarified that the maximum loan size is calculated based on adjusted EBITDA[12] (but preserved the four times (4x) multiplier) relative to the sum of the MSNLF loan plus the borrower's existing outstanding undrawn available debt as of the loan application date.[13]
  - *MSELF*: Increased minimum loan size to $10 million (from $1 million) and clarified that the maximum loan size is equal to the lesser of (i) $200 million (up from $150 million), (ii) 35% of "existing outstanding and undrawn available debt that is pari passu in priority with the loan and equivalent in secured status," or (iii) an amount, when added to existing outstanding and undrawn debt, that does not exceed 6x 2019 adjusted EBITDA.[14]
  - While the term sheets provide that maximum loan size is based on 2019 adjusted EBITDA, the term sheets constitute the minimum requirements of the Programs and lenders will apply their own underwriting standards in evaluating the financial condition and creditworthiness of a potential borrower, which may take into account projections of the borrower's EBITDA and other metrics in light of present and anticipated economic and sociopolitical conditions.
- Loan Terms.
  - Loan terms continue to be four years, with principal and interest payments deferred for one year (unpaid interest will be capitalized), and amortization schedules have now been mandated as follows:
    - *MSNLF*: Principal amortizes in one-third installments at the end of each of the second, third and fourth years.

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12 For MSNLF, EBITDA methodology must be one previously used between the lender and the borrower or the lender and other similarly situated borrowers.

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

14 For MSELF loans, EBITDA methodology must be the methodology previously used for adjusting EBITDA when originating or amending the underlying loan on or before April 24, 2020.

        - *MSELF*: Principal amortizes 15% at the end of the second year, 15% at the end of the third year, and a balloon payment of 70% at the end of the fourth year.

    - Loans must now have an adjustable rate of LIBOR (1 or 3 month) plus 300 basis points, rather than the previously mandated SOFR plus 250–400 basis points.

    - Loans cannot, at the time of origination or at any time during the term of the loan, be contractually subordinated in terms of priority to any of the borrower's other loans or debt instruments. However, MSNLF loans can be of any priority (and secured or unsecured), even if the borrower has existing loans that are of higher priority or that are secured, but the borrower may not incur any subsequent debt with a higher priority than the MSNLF loan.

- <u>Covenants and Certifications</u>.

    - *Dividends and Capital Distributions*. An exception to the prohibition on dividends and capital distributions has been added for borrowers that are S corporations or other tax pass-through entities, in which case such a borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings. Notably, the latest guidance does not contemplate an exception for dividends or capital distributions in the context of sale transactions.

    - *Payroll and Employees*. In contrast to the previous term sheets' requirement that borrowers make reasonable efforts to retain employees and maintain payroll during the term of the loan, the revised guidance provides that borrowers must use commercially reasonable efforts to retain employees and maintain payroll during the loan term. The guidance explains that such efforts are "good-faith efforts to maintain payroll and retain employees, in light of [the borrower's] capacities, the economic environment, its available resources, and the business need for labor."

    - *Solvency*. Borrowers must certify that they have a reasonable basis to believe that, as of the date of origination or upsizing, as applicable, of the loan and after giving effect to the loan, the borrower 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.

    - *Repayment of Other Debt*. The Fed has clarified that the prohibition on repaying principal or interest on other debt until the Main Street loan has been repaid in full does not apply to debt or interest payments that are mandatory and due. In addition, borrowers may (i) repay lines of credit (including credit cards) in the ordinary course, (ii) take on and pay additional debt as required in the ordinary course on standard terms (e.g., inventory or equipment financing) so long as that additional debt is pari passu or junior to the loan and does not include any collateral other than newly acquired property in connection therewith and (iii) refinance maturing debt.

  - *Risk Rating*. If a borrower had other loans outstanding with the lender as of December 31, 2019, such loans must have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system on that date.

  - *Exigent Circumstances Related to COVID-19*. The revised term sheets for both facilities no longer include a requirement that borrowers attest that they require financing due to the exigent circumstances presented by COVID-19.

- Public Disclosure. The Fed will disclose, among other information, the names of participating lenders and borrowers, the amounts borrowed and interest rates charged, and overall costs, revenues and other fees.

- Other MSELF-Specific Changes.

  - *Eligible Loans*. MSELF has been expanded to include upsized tranches of revolving credit facilities, in addition to previously authorized term loans (which the recent guidance confirms may be secured or unsecured).

  - *Syndicated Loans*. The fact that an underlying loan has been syndicated to multiple lenders, some of which are not "Eligible Lenders" under MSELF, does not disqualify the underlying loan from participating in MSELF so long as a lender from the syndicate that qualifies as an "Eligible Lender" provides the MSELF upsized tranche. However, the guidance is unclear on whether the upsized tranche may be syndicated at all, and if so whether syndication must be limited to other lenders who qualify for MSELF.

II. Main Street Priority Loan Facility

Eligibility requirements for both lenders and borrowers (including affiliation rules), loan terms (e.g., four year term to maturity, interest rates), covenants and certifications (e.g., restrictions on executive compensation, stock buybacks and dividends and capital distributions) and public disclosure considerations are generally the same in MSPLF as in MSNLF and MSELF. Below we clarify certain terms of MSPLF and highlight a few key differences between it and the other Main Street facilities.

- Fed Participation. The SPV will purchase 85% participations in MSPLF loans, with lenders retaining the other 15%, as contrasted with the 95% participations the SPV will purchase under MSNLF and MSELF.

- Eligible Loans. Like MSNLF, only secured or unsecured term loans may be made under MSPLF.

- Loan Size.

  - *Minimum Size*. As in MSNLF, loans made under MSPLF have a minimum size of $500,000.

  - *Maximum Size*. The maximum loan size under the MSPLF equals the lesser of (i) $25 million (the same as MSNLF) or (ii) an amount that, when added to the borrower's existing outstanding and undrawn available debt, is not greater than six times (6x) the borrower's 2019 EBITDA (the same as MSELF), among other criteria. The terms used in this calculation have the same meanings as under MSNLF.

- <u>Amortization</u>. MSPLF loans amortize on the same schedule as MSELF loans, 15% at the end of the second year, 15% at the end of the third year, and a balloon payment of 70% at the end of the fourth year.

- <u>Covenants and Certifications</u>.

  - *Repayment of Debt*. In addition to the carve-outs to the Program's prohibition on repayment of other debt, under MSPLF only the borrower may, at the time of origination, refinance existing debt owed by the borrower to a lender that is not the MSPLF lender.

- <u>Fees</u>. MSPLF loans are subject to the same fees as MSNLF loans, 100 basis points paid by the lender to the SPV at origination (which the lender may require the borrower to pay) and up to 100 basis points paid by the borrower to the lender at origination, in addition to a 25 basis points per annum fee on the SPV's participation payable by the SPV to the lender.

III. Ongoing Updates

The Main Street Facilities term sheets are under continuing review and open for public comment. The Fed and the Treasury may make adjustments to the terms and conditions of any of the lending facilities described above as they deem appropriate. We will continue to provide updates on any further developments.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Ariel J. Deckelbaum +1-212-373-3546 ajdeckelbaum@paulweiss.com	Brian P. Finnegan +1-212-373-3079 bfinnegan@paulweiss.com	Roberto J. Gonzalez +1-202-223-7316 rgonzalez@paulweiss.com
Gregory F. Laufer +1-212-373-3441 glaufer@paulweiss.com	Brian C. Lavin +1-212-373-3650 blavin@paulweiss.com	Jean M. McLoughlin +1-212-373-3135 jmcloughlin@paulweiss.com
T. Robert Zochowski Jr. +1-212-373-3762 rzochowski@paulweiss.com		

Associates Amitav Chakraborty, Andrew Goldman, Rebekah Scherr, Jeffrey Stricker contributed to this Client Memorandum.

<table>
<tr><th></th><th>Main Street New Loan Facility (“<u>MSNLF</u>”)[1]</th><th>Main Street Expanded Loan Facility (“<u>MSELF</u>”)</th><th>Main Street Priority Loan Facility (“<u>MSPLF</u>”)</th></tr>
<tr><td>Eligible Borrowers</td><td colspan="3">▪ Businesses with (i) 15,000 employees or less or (ii) 2019 annual revenues of $5 billion or less[2]
▪ Established before March 13, 2020
▪ Created or organized in the U.S. or under the laws of the U.S. with significant operations and a majority of employees in the U.S.
▪ Not an ineligible business pursuant to regulations of the SBA’s business loan program[3]
▪ Have not received specific support pursuant to Subtitle A of Title IV of the CARES Act (i.e., CESA loan programs)[4]
▪ Borrowers may only participate in <u>one</u> of the MSNLF, MSPLF, MSELF and Primary Market Corporate Credit Facility[5]
▪ Lenders should apply their own underwriting standards and evaluate borrowers’ creditworthiness and condition
o Lenders may demand additional documentation or information and have ultimate authority to approve or deny loan applications; the term sheets set forth minimum requirements but lenders are not required to lend based solely on those requirements</td></tr>
<tr><td>Eligible Lenders</td><td colspan="3">▪ U.S. federally insured depository institutions (including banks, savings associations, or credit unions), U.S. branches or agencies of foreign banks, U.S. bank holding companies, U.S. savings and loan holding companies, U.S. intermediate holding companies of foreign banks, or U.S. subsidiaries of any of the foregoing
o MSELF: if the underlying loan is syndicated, the Eligible Lender must be a lender holding an interest in the underlying loan at upsizing, but only the Eligible Lender must meet the MSELF eligibility criteria (i.e., other lenders in the syndicate need not be eligible)
▪ A special purpose vehicle (“<u>SPV</u>”) established by the Federal Reserve Bank under the MSNLF and MSELF programs will purchase (at par value) 95% participation (85% participation under MSPLF) in the loan or upsized tranche, as applicable. The sale of a participation in the loan or the upsized tranche of the loan to the SPV will be structured as a “true sale” and must be completed expeditiously after the loan’s upsizing
▪ SPV and lender will share risk on a pari passu basis
▪ The lender will retain 5% (15% under MSPLF) of the loan or upsized tranche, and must do so until it matures or the SPV sells all of its participation, whichever comes first. Under MSELF, the lender must also retain its interest in the underlying loan until the underlying loan matures, the upsized tranche matures or the SPV sells all of its participation, whichever comes first</td></tr>
</table>

[1] The Fed and Treasury stated that they may make adjustments to the terms and conditions in the MSNLF, MSPLF, and MSELF term sheets.

[2] Borrowers must aggregate their employees and 2019 revenues with those of their affiliates. The new guidance clarifies the applicable affiliation requirements are as set forth in 13 CFR 121.301(f) (1/1/2019 ed.), which are the same requirements applicable under the SBA’s Paycheck Protection Program (“PPP”). The exceptions to affiliation rules applicable to the PPP program under Title I of the CARES Act (e.g., for hospitality and restaurant businesses) do not appear to apply to the Main Street loan programs.

[3] Ineligible businesses are listed in 13 CFR 120.110(b)-(j) and (m)-(s), as modified by regulations implementing the PPP established by section 1102 of the CARES Act on or before April 24, 2020. Examples of ineligible businesses include financial businesses primarily engaged in the business of lending, life insurance companies, businesses in which the lender (or any of its associates) owns an equity interest and speculative businesses.

[4] The latest guidance provides that a borrower will not be deemed ineligible under this criterion if such borrower has received a PPP loan.

[5] An SPV established under the Primary Market Corporate Credit Facility will purchase corporate bonds as the sole investor in a bond issuance and portions of syndicated loans or bonds at issuance.

	Main Street New Loan Facility ("MSNLF")[1]	Main Street Expanded Loan Facility ("MSELF")	Main Street Priority Loan Facility ("MSPLF")
Loans	▪ Secured or unsecured term loan to be made after April 24, 2020	▪ Upsized tranche of a secured or unsecured term loan or revolving credit facility made on or before April 24, 2020, and 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) ▪ Any collateral securing underlying loan, whether pledged under original terms or at time of upsizing, will secure the SPV's participation on a pro rata basis	▪ Secured or unsecured term loan to be made after April 24, 2020
Loan Terms (for MSELF, applies only to upsized tranche)	▪ 4 year maturity ▪ Principal and interest payments deferred for one year (unpaid interest will be capitalized) o For MSELF and MSPLF, principal amortizes 15% at the end of the second year, 15% at the end of the third year, and a balloon payment of 70% at the end of the fourth year (i.e., maturity) o For MSNLF, principal amortizes one-third at the end of each of the second, third and fourth years ▪ Adjustable rate of LIBOR (1 or 3 month) + 300 basis points ▪ Loan cannot, at the time of origination or at any time during the term of the loan, be contractually[6] subordinated in terms of priority to any of the borrower's other loans or debt instruments[7]		
Loan Size (for MSELF, applies only to upsized tranche)	▪ Minimum equal to $500,000 ▪ Maximum equal to the lesser of: o $25 million; and	▪ Minimum equal to $10 million ▪ Maximum equal to the lesser of: o $200 million; o 35% of "existing outstanding and undrawn available debt that is pari passu with the loan and equivalent in secured status"; or o an amount, when added to existing outstanding and undrawn debt, does not exceed 6x 2019 adjusted EBITDA	▪ Minimum equal to $500,000 ▪ Maximum equal to the lesser of: o $25 million; and o an amount, when added to "existing outstanding and committed but undrawn debt," that does not exceed 6x 2019 adjusted EBITDA

6 The guidance does not directly address structural subordination, however, lenders will apply their own underwriting standards which will presumably take this into account.

7 However, MSNLF loans can be of any priority, even if the Eligible Borrower has existing loans that are of higher priority or that are secured, but the Eligible Borrower may not incur any subsequent debt with a higher priority than the MSNLF loan.

	Main Street New Loan Facility ("MSNLF")[1]	Main Street Expanded Loan Facility ("MSELF")	Main Street Priority Loan Facility ("MSPLF")
	o an amount, when added to "existing outstanding and undrawn available debt,"[8] that does not exceed 4x 2019 adjusted EBITDA[9]		
Employee Considerations	▪ CESA section 4004 limitations apply to borrowers while the loan is outstanding and for one year thereafter (the "Restricted Period")[10] ▪ No officer or employee with total compensation greater than $425,000 in 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 1, 2020) may receive (i) total compensation exceeding, during any 12 consecutive months, his or her total compensation in 2019 or (ii) severance pay or other termination benefits exceeding twice his or her total compensation in 2019[11] ▪ No officer or employee with total compensation greater than $3M in 2019 may receive, during any 12 consecutive months, total compensation exceeding the sum of (i) $3M plus (ii) 50% of the excess over $3M of his or her total compensation in 2019 ▪ Borrowers must agree to use commercially reasonable efforts to retain employees and maintain payroll during loan term[12]		
Stock Buyback Limits	▪ During the Restricted Period, borrowers are prohibited from purchasing equity securities listed on a national securities exchange of borrower (or any parent company), except as required under contracts in effect as of March 27, 2020		
Dividends and Capital Distribution Limits	▪ Prohibited in respect of common stock during the Restricted Period, except where the Eligible Borrower is an S corporation or other tax pass-through entity, in which case it may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings		
Fees	▪ 100 basis points, paid by lender to SPV at origination (lender may require borrower to pay this fee) ▪ Up to 100 basis points, paid by borrower to lender at origination	▪ 75 basis points, paid by lender to SPV at upsizing (lender may require borrower to pay this fee) ▪ Up to 75 basis points on upsized tranche, paid by borrower to lender at upsizing ▪ 25 basis points on SPV's participation per annum, paid by SPV to lender	▪ 100 basis points, paid by lender to SPV at origination (lender may require borrower to pay this fee) ▪ Up to 100 basis points, paid by borrower to lender at origination ▪ 25 basis points on SPV's participation per annum, paid by SPV to lender

8 "Existing outstanding and undrawn available debt" includes all amounts borrowed under any facility (whether secured or unsecured, from a bank, non-bank financial institution or private lender, and including public bonds or private placement facilities) plus unused commitments under such facilities (but excluding undrawn commitments (i) that are backup lines for commercial paper, (ii) used to finance receivables, (iii) that cannot be drawn without additional collateral and (iv) no longer available due to changes in circumstance). This calculation should be made as of date of loan application.

9 For MSELF loans, EBITDA methodology must be the same as previously used in the underlying loan. For MSNLF and MSPLF loans, EBITDA methodology must be one previously used between the lender and the borrower or other similarly situated borrowers.

10 Treasury has the authority to waive compensation, buyback, and dividend restrictions that apply to Fed facilities supported by the Treasury under the CARES Act. The term sheets state (and, in the cases of MSNLF and MSELF, continue to state) that these CESA restrictions apply, signaling that Treasury decided to not exercise its waiver authority.

11 Total compensation is defined to include salary, bonuses, awards of stock, and other financial benefits provided by an eligible business to an officer or employee. CARES Act, Pub. L. No. 116-136, § 4004(b) (2020).

12 The guidance explains that such efforts are "good-faith efforts to maintain payroll and retain employees, in light of [the borrower's] capacities, the economic environment, its available resources, and the business need for labor."

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<tr><td></td><td>▪ 25 basis points on SPV’s participation per annum, paid by SPV to lender</td><td></td><td></td></tr>
<tr><td>Other Key Terms</td><td colspan="3">▪ Disclosure / Certification
o The Federal Reserve will disclose information regarding participation in these programs, including names of lenders and borrowers, amounts borrowed, interest rates charged and overall costs, revenues and other fees
o Lenders must not request that borrowers repay debt extended by the lender to the borrower, or pay interest on such outstanding obligations, until the loan or upsized tranche, as applicable, is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration
o Lenders must gather required certifications and covenants from borrowers at origination, and may rely on borrowers’ certifications and subsequent self-reporting without independently verifying borrowers’ ongoing compliance
o Borrowers and lenders must certify that they are eligible to participate in the applicable facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act
▪ Repayment Terms
o Borrowers must not repay the principal balance of, or pay any interest on, any debt until the loan or upsized tranche, as applicable, is repaid in full, unless the debt or interest payment is mandatory and due. However:
– borrowers may (i) repay lines of credit (including credit cards) in the ordinary course, (ii) take on and pay additional debt as required in the ordinary course on standard terms (e.g., inventory or equipment financing) so long as that additional debt is pari passu or junior to the loan and does not include any collateral other than newly acquired property in connection therewith and (iii) refinance maturing debt;
– Eligible Lenders are permitted to accept regularly scheduled, periodic repayments on borrowers’ lines of credit in the ordinary course; and
– MSPLF only: borrowers may, at origination, refinance existing debt owed to a lender other than the Eligible Lender
o Lenders must not cancel or reduce any existing committed lines of credit to the borrower, except in an event of default[13]
▪ Other
o Borrowers must not seek to cancel or reduce any of their committed lines of credit with the Eligible Lender or any other lender
o Borrowers must certify that they have a reasonable basis to believe that, as of the date of origination or upsizing, as applicable, and after giving effect to such loan, 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
o If a borrower had other loans outstanding with the Eligible Lender as of December 31, 2019, such loans must have had an internal risk rating equivalent to a “pass” in the Federal Financial Institutions Examination Council’s supervisory rating system on that date
o Borrowing must be made on or prior to September 30, 2020, unless extended</td></tr>
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[13] However, lenders are not prohibited from reducing or terminating uncommitted lines of credit, allowing lines of credit to expire in accordance with their terms or reducing availability under lines of credit in accordance with their terms (e.g., due to borrowing base changes).