CLEARY GOTTLIEB

Main Street Lending Program

June 1, 2020

clearygottlieb.com

Main Street Lending Program

The Main Street Lending Program is designed to provide support for U.S. businesses with up to 15,000 employees or $5 billion in annual revenues that were in sound financial condition prior to the pandemic. The Program permits eligible borrowers to obtain loans on generally favorable terms, subject to certain conditions and restrictions unique to the Program. Loans must be repaid; they are not eligible for principal reduction or forgiveness.

Loans are intermediated by banks, which sell a portion of the loan (85-95%) to a Federal Reserve-sponsored SPV and retain the remaining risk. A key feature of the Program is the lack of a credit rating requirement for borrowers, but a restriction on a borrower's debt-to-EBITDA ratio after accepting a loan may operate as an eligibility constraint.

The Program consists of three lending facilities: New (term sheet), Expanded (term sheet) and Priority (term sheet). The FAQs are available here.

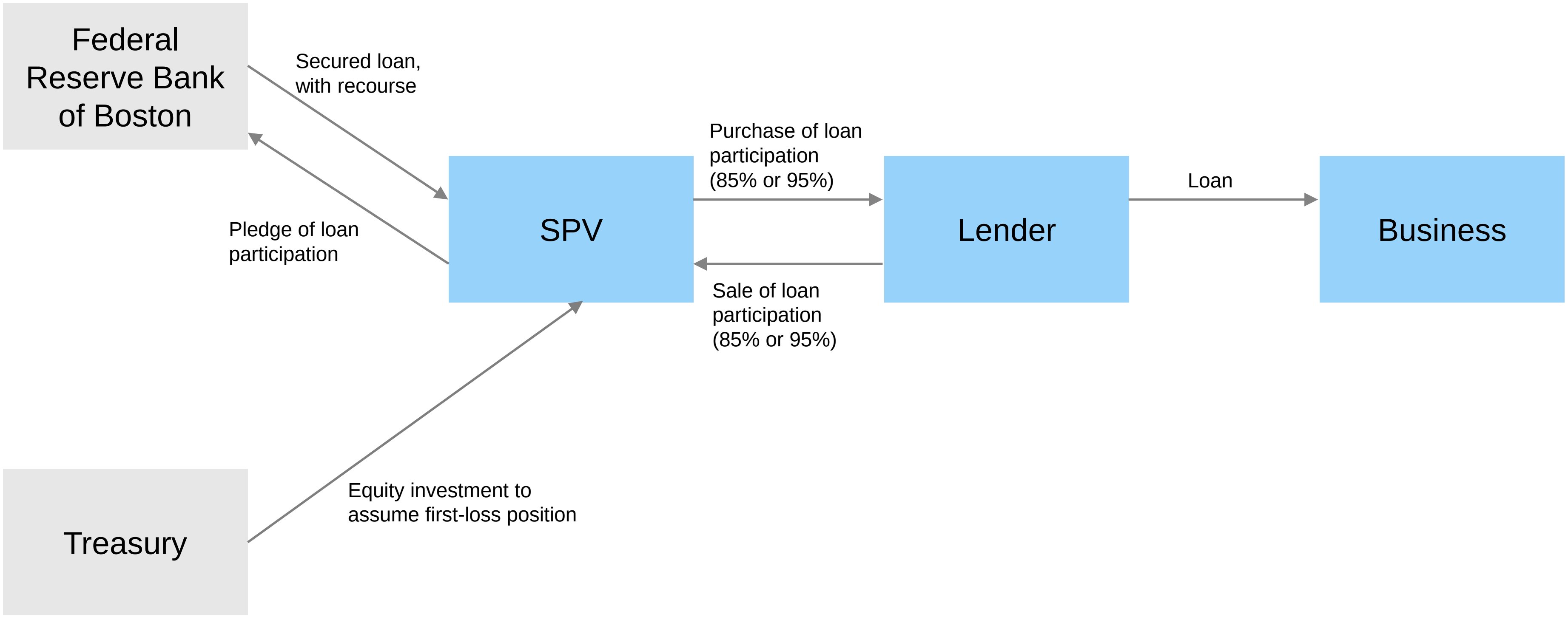
A form loan participation agreement, form borrower and lender certifications and other form agreements were released on May 28, 2020 and are available here. Loan documentation required at the time of origination will be developed by lenders, and must contain a number of provisions requested by the Federal Reserve in the term sheets and set out in a checklist contained in Appendix A of the FAQs.

Program Overview

FACILITY	KEY TERMS
Main Street New Loan Facility (MSNLF)	— Newly originated secured or unsecured term loans ranging in size from $500,000 to $25 million — Maximum loan amount cannot, when added to existing outstanding and committed but undrawn debt, exceed 4x 2019 EBITDA — Loan must not be contractually subordinated to any of the borrower’s other loans or debt instruments (*MSPLF and MSELF include an exception for mortgage debt*)
Main Street Priority Loan Facility (MSPLF)	— Newly originated secured or unsecured term loans ranging in size from $500,000 to $25 million — Maximum loan amount cannot, when added to existing outstanding and committed but undrawn debt, exceed 6x 2019 EBITDA — Loan must be senior to or pari passu, in terms of both priority and security, with the borrower’s other loans or debt instruments, other than mortgage debt — May refinance existing debt owed by the borrower to a different lender; combined with higher EBITDA ratio, will permit borrowers to rationalize their capital structure (*MSNLF and MSELF do not permit refinancing*)
Main Street Expanded Loan Facility (MSELF)	— Secured or unsecured extensions of additional credit on existing term loans or revolving credit facilities ranging from $10 million to $200 million — “Upsize” may not exceed (i) 35% of the borrower’s existing outstanding and committed but undrawn pari passu debt or (ii) an amount that, when added to existing outstanding and committed but undrawn debt, exceeds 6x 2019 EBITDA — Upsized tranche must be senior to or pari passu, in terms of both priority and security, with the borrower’s other loans or debt instruments, other than mortgage debt

APPLYING FOR A LOAN	— Potential borrowers should contact a lender to determine if it meets both the Program requirements and the lender’s own underwriting standards — The lender will determine whether the borrower is approved for a loan — The official launch date remains TBD

Illustrative Structure of the Main Street Lending Program



BORROWERS | LENDERS | LOANS

KEY BORROWER ELIGIBILITY CRITERIA

- — Has 15,000 employees or fewer or had 2019 annual revenues of $5 billion or less; must aggregate subsidiaries, parent companies and affiliates
- — No minimum credit rating required
  - But 4x-6x debt-to-EBITDA ratio may operate as a constraint
  - And any of the borrower’s outstanding loans with the lender as of December 31, 2019 must have had an internal risk rating equivalent to “pass” in the FFIEC’s supervisory rating system as of that date (for the MSELF, this requirement applies only to the loan that would be upsized)
- — 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., but may be a subsidiary of a foreign company
  - Aggregate subsidiaries (do not aggregate parent companies and affiliates)
  - Significant operations in the United States generally linked to at least 50% assets in the U.S., or net income, operating revenues or operating expenses generated in the U.S.

BORROWERS | LENDERS | LOANS

KEY BORROWER ELIGIBILITY CRITERIA (CONT’D)

— Must not be an ineligible business under the SBA’s rules as modified and clarified for purposes of the PPP, i.e., private equity funds, pyramid sale distribution plans, passive businesses owned by developers and landlords that do not actively use or occupy the assets involved in the loan, private clubs, etc.

— Has not received loans or loan guarantees under CARES Act provisions for the aviation industry or national security-critical businesses (PPP loans and tax benefits do not make a borrower ineligible)

— Neither the borrower nor any of its affiliates has participated in the PMCCF or another Main Street facility

BORROWERS | LENDERS | LOANS

BORROWER CERTIFICATIONS AND COVENANTS

— Is not insolvent, has a reasonable basis to believe that 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

— Unable to secure adequate credit accommodations from other banking institutions

— Not seek to <u>cancel or reduce</u> any of its committed lines of credit with any lender

— Use of proceeds to <u>prepay</u> (i.e., refinance) other loan balances:

- MSNLF & MSELF: Not permitted
- MSPLF: <u>May</u> refinance existing debt owed to a different lender (allows MSPLF borrowers rationalize their capital structure)

— Abide by CARES Act restrictions on share repurchases, capital distributions and executive compensation for the time the loan is outstanding plus one year; exception for capital distributions by S corporations or pass-through entities if reasonably required to cover tax obligations

— Abide by the CARES Act conflicts of interest restrictions

— Numerous other certifications in recently released Program documents

EMPLOYEE RETENTION

— A borrower must make “commercially reasonable efforts” to maintain payroll and retain employees, meaning good-faith efforts in light of its capacities, the economic environment, available resources and business need for labor

BORROWERS | **LENDERS** | LOANS

ELIGIBLE LENDERS

— U.S. federally insured depository institution
  - Bank
  - Savings association
  - Credit union

— U.S. branch/agency or IHC of a foreign banking organization

— U.S. BHC or SLHC

— U.S. subsidiary of any of these institutions

BORROWERS | **LENDERS** | LOANS

LENDER CERTIFICATIONS AND COVENANTS

— Not request that the borrower repay debt extended by the lender to the borrower until the loan is repaid in full, unless the debt or interest payment is mandatory and due

— Not cancel or reduce an existing credit line for the borrower

— Use a methodology for calculating adjusted 2019 EBITDA consistent with the FAQs (see Slide 13)

— Abide by the CARES Act conflicts of interest provisions

— Numerous other certifications required under recently released Program documents; many allow reliance on certifications by a borrower

BORROWERS | LENDERS | **LOANS**

	New	Priority	Expanded
Term	4 years		
Minimum Loan Size	$500,000		$10 million
Maximum Loan Size (Each measured in aggregate with affiliates)	The lesser of $25 million or an amount that, when added to outstanding and undrawn available debt, does not exceed <u>4.0x</u> adjusted 2019 EBITDA	The lesser of $25 million or an amount that, when added to outstanding and undrawn available debt, does not exceed <u>6.0x</u> adjusted 2019 EBITDA	The lesser of $200 million, 35% of existing outstanding and undrawn available debt, or an amount that, when added to outstanding and undrawn available debt, does not exceed <u>6.0x</u> adjusted 2019 EBITDA
Risk Retention	5%	15%	5%
Payment	Year 1: Deferred Years 2-4: 33.33% each	Year 1: Deferred Years 2-3: 15% each Year 4: 70%	
Interest Rate	LIBOR + 300 bps		

BORROWERS | LENDERS | **LOANS**

<table>
<tr><th></th><th>New</th><th>Priority</th><th>Expanded</th></tr>
<tr><td rowspan="2">Subordination*</td><td rowspan="2">Loan must not be contractually subordinated in terms of priority[1] to any of the borrower’s other loans or debt instruments (with no apparent exceptions, even for mortgage debt), and must remain that way during the term of the loan</td><td colspan="2">Loan must be (and remain) senior to or pari passu with, in terms of priority and security, the borrower’s other loans or debt instruments (except for mortgage debt). Appropriate negative pledge or lien restrictions must be in loan documents.</td></tr>
<tr><td>Priority:
• Secured loans must not be contractually subordinated in terms of priority to any of the borrower’s other loans or debt instruments, other than mortgage debt
• Unsecured loans must not be contractually subordinated in terms of priority to any of the borrower’s other unsecured loans or debt instruments[1]
Security: If borrower has other secured loans (other than mortgage debt), then the loan must (1) be secured, and (2) meet a Collateral Coverage Ratio specified in the FAQs; if the loan is secured by the same collateral as other obligations, the lien securing the loan must remain senior to or pari passu with the other liens[3,4]</td><td>Priority:
• Secured upsized tranches must not be contractually subordinated in terms of priority to any of the borrower’s other loans or debt instruments, other than mortgage debt[2]
• Unsecured upsized tranches must not be contractually subordinated in terms of priority to any of the borrower’s other unsecured loans or debt instruments[1]
Security: Upsized tranche must be secured (1) if the borrower has other secured loans (other than mortgage debt), (2) by the collateral securing any other tranche of the underlying credit facility, and (3) on a pari passu basis, with any term loan tranche of the underlying facility</td></tr>
<tr><td rowspan="2">Fees*
(No additional fees permitted)</td><td colspan="2">100 bps (transaction)[5]
Up to 100 bps (origination)[6]</td><td>75 bps (transaction)[5]
Up to 75 bps (origination)[6]</td></tr>
<tr><td colspan="3">25 bps (servicing)[7]</td></tr>
</table>

* Notes appear on Slide 12

Notes to Slide 11

(1) "Not contractually subordinated in terms of priority" means that the loan may not be junior in priority in bankruptcy to the borrower's other unsecured loans or debt instruments
(2) The relevant FAQs for the MSELF do not contain an explicit exception for mortgage debt regarding contractual subordination in terms of priority to the borrower's other loans or debt instruments, implying that mortgage debt must be contractually subordinated to the upsized tranche; however, we note the purpose of the MSELF priority and security requirement may not be achieved without providing such an exception for mortgage debt
(3) The loan need not share in all of the collateral that secures the borrower's other loans or debt instruments
(4) Loan documentation must contain lien covenants or negative pledges consistent with those used by the lender in the ordinary course to similar borrowers and that are consistent with models published in Appendix B of the FAQs
(5) The transaction fee is paid by the lender to the SPV, and the lender may pass that fee on to the borrower
(6) The origination fee is paid by the borrower to the lender
(7) The servicing fee is paid by the SPV to the lender each year

BORROWER | LENDER | **LOANS**

ADJUSTED EBITDA CALCULATION

- MSNLF & MSPLF: a methodology the lender previously used for adjusting EBITDA when extending credit to the Eligible Borrower or to similarly situated borrowers on or before April 24, 2020
- MSELF: the methodology the lender previously used for adjusting EBITDA when originating or amending the underlying loan on or before April 24, 2020

OTHER CONSIDERATIONS

- Borrower may need to modify existing debt documents to accommodate requirements of Main Street loans, including in relation to extending contractual arrangements to an upsized tranche under the MSELF and in relation to minimizing prepayment triggers in other debt for all of the facilities
- Lenders should consider the requirements to retain their piece of the loan until maturity or until the Federal Reserve's SPV or government assignee no longer holds their participation
- One year after the termination of the facilities, the Federal Reserve will publicly disclose specific borrower- and loan-level information; each month, the Federal Reserve will publicly disclose aggregate information without identifying specific participants or transactions

Documentation Overview

DOCUMENT	DESCRIPTION
Lender Registration Certifications & Covenants	— Lender makes required certifications and agrees to required covenants relating to Section 13(3) of the Federal Reserve Act, the CARES Act, the Federal Reserve's regulations and the applicable lending facility term sheet
Participation Agreement	— Lender must submit this agreement, under which the SPV purchases a participation in an eligible loan — Two documents: • Transaction-specific terms that a lender must complete prior to selling a loan participation • Standardized terms that are incorporated into, and generally applicable to, each sale of a loan participation
Borrower Certifications & Covenants	— Borrower must make required certifications and agree to be bound by required covenants relating to Section 13(3) of the Federal Reserve Act, the CARES Act, the Federal Reserve's regulations and the applicable lending facility term sheet — Lender must submit the borrower certification and covenants with the rest of the transaction-specific required documents — Three varieties: one for each facility
Lender Transaction Specific Certifications & Covenants	— Lender must certify the eligibility of the loan and agree to be bound by required covenants relating to Section 13(3) of the Federal Reserve Act, the CARES Act, the Federal Reserve's regulations and the applicable lending facility term sheet — Certification required that the loan documentation meets the specific requirements in the loan documentation checklist in the FAQs — Three varieties: one for each facility
Other Documents	— *Lender Wire Instructions Direction:* Lender provides wire instructions for the bank account into which the SPV will transfer the purchase price (and any other payments related to a loan participation) — *Assignment Executed in Blank:* Used by the SPV to elevate its participation (or to elevate and transfer its participation) in limited circumstances permitted under the Participation Agreement; document is an advance consent by the lender and the borrower to a transfer — *Co-Lender Agreement (bilateral facilities only):* Provides agency/operational mechanics to accommodate multiple lenders; executed in blank by the lender and the borrower — *Servicing Agreement:* Sets forth the fees payable by the SPV to the lender and the enhanced reporting services that the lender provides to the SPV