April 16, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Comments on the Main Street Lending Program

To Whom It May Concern:

On behalf of Saint Joseph's University, we are seeking clarification from the Federal Reserve related to the Main Street Lending Program.

Access to low-interest loans is critical to non-profit colleges and universities, including ours. Our institution is facing an unprecedented financial crisis because of the pandemic, yet we continue to prioritize educating and assisting our students and employing our faculty and staff.

Today, we are writing to ask that the Federal Reserve provide guidance to clarify that non-profit private institutions are eligible for the Main Street Lending program. [In addition, we also ask that student workers be exempted for the purposes of the employee threshold for eligibility requirements.

Saint Joseph's University is a significant employer in our local community and we are facing a major cash flow crisis due to the reduced revenue and increased expenses imposed by the COVID-19 pandemic. Our university expects to refund nearly $7 million room and board charges alone. Our anticipated sources of auxiliary revenue have dried up as campus events and summer programs have been canceled. In this uncertain time, we are facing additional costs—such as deep cleaning campus buildings and increased security expenses. We project our estimated revenue loss to be approximately $15 million.

We will need to seek low-cost loans to help address the financial impact of the COVID-19 crisis and are interested in accessing the credit and loans available under the Main Street Lending program, recently announced by the Federal Reserve. We are concerned that this program might not be available to us and seek clarification on the following issues:

- There is confusion about the Main Street Lending program and whether non-profits are eligible, because current guidance does not comment on this matter. We ask that the Federal Reserve update the guidance to clarify that non-profit private and public institutions of higher education, with direct borrowing authority, are eligible for the Main Street Lending program. We believe this to be an important clarification given that institutions of higher education are often the largest, or one of the largest, employers within their community and region.

- We also ask that student workers be exempted for the purposes of the employee threshold for eligibility (businesses with under 10,000 employees) and hope that future guidance from the Federal Reserve will make it clear that our institutions can exempt student workers from the employee count. Many of our institutions employ student workers across campus as a part of their overall financial support, which helps students pay for college and provide students with work experiences, while keeping them close to campus for the purposes of their education. Given that the majority of our campuses are closed for the spring semester and have transitioned to virtual learning, all or most of these student employees have left campuses, and therefore should not be included for the purposes of the employee threshold.

At Saint Joseph's University, we are doing all that we can to support our campus community during this crisis, and need assistance from the federal government to continue doing so. Ensuring our eligibility for the Main Street Program would be a lifeline in allowing us to continue to educate, employ and economically support our community. We look forward to working with you on this and other important loan programs as the Federal Reserve responds to the COVID-19 crisis. Thank you for your consideration.

Sincerely,

Wadell Ridley, Jr.
Assistant Vice President for
Government & Community Relations

SOUTHEASTERN UNIVERSITY

Kent J. Ingle, DMin
President

April 16, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Comments on the Main Street Lending Program

To Whom It May Concern:

I writing on behalf of Southeastern University, a private, non-profit university that in normal times educates about 3,000 students on campus and thousands more via on-line learning. The COVID-19 novel coronavirus has forced us to cease normal classroom activity on our campus and shift to on-line learning only for the duration of the emergency caused by the pandemic. This has created a substantial burden on our students, faculty and staff, but also has led to financial pressures that no one could have anticipated as we have been required to refund room and board funds and incur unbudgeted technology expenses. We are mid-sized university with 650 employees plus a complement of over 1,000 students and grad assistants, but we are an important employer in the city of Lakeland, Florida, and are an essential part of our local economy. We are compelled to request assistance in order to reduce the probability of a significant and permanent disruption to our educational programs and services as a result of these historical events.

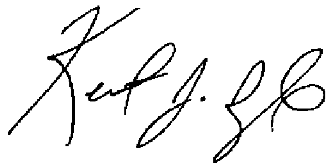
Therefore, we ask that the Federal Reserve clarify that non-profit, private institutions of higher education are eligible for the Main Street Lending program. Such low-cost loan assistance would be extremely helpful to our ability to continue offering the high-quality education that our economy will need more than ever as we recover from the economic disruptions caused by the pandemic. We expect to refund about $2.1 million for room and board charges alone. At the same time, we have had to cancel spring sports and other events on campus, removing an expected source of revenue. Our on-campus summer programs have also been curtailed, reducing another expected source of revenue.

Meanwhile, we have incurred the extra cost of deep cleaning campus facilities and acquiring technology that has allowed us to expand our on-line offerings to include our residential students and faculty. In all, we estimate that the combination of unexpected costs and reduced revenues will reduce our budget for the current year. With the fall semester uncertain, we must accommodate a reduced enrollment and increased financial aid to offset what has been a challenging time for student families. Our operating costs will also increase as an emphasis on sanitizing and maintaining distance is likely to continue many months into the new academic year. Additional funding that can be paid back over a handful of years will thus be needed to support our operations through the period of economic uncertainty.

However, there is uncertainty as to whether institutions like ours are eligible for the Main Street Lending Program because the current guidance is silent on the matter.   We ask that the Federal Reserve update the guidance to clarify that non-profit, private institutions of higher education, with direct borrowing authority, are eligible for the Main Street Lending Program.

Our institution has an 85-year-long history of serving our students and community, and we are expecting a bright future, but we are facing unprecedented difficulties as we try to continue to do what is best for our students and seek to retain our employees. Low-cost financing such as that available via the Main Street Lending Program would be most helpful at this time. I would be happy to answer any questions, and I look forward to a positive outcome.

With Regards,



Kent J. Ingle

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Executive Director

April 16, 2020

Federal Reserve System
regs.comments@federalreserve.gov

RE: CRC Comments on Main Street Lending Program

To Whom It May Concern:

The California Reinvestment Coalition (CRC) submits these comments on the Federal Reserve System (Fed)'s proposed Main Street Lending Program.

We urge the Fed to make the following changes to this proposal:

1. Make nonprofit organizations eligible for loans;
2. Lower the minimum loan size to $100,000 or change the name of the program;
3. Authorize CDFIs to participate as lenders, or create a new SPV to purchase CDFI loans;
4. Track the race, ethnicity, gender and census tract of loans made under the Program; and
5. Impose restrictions on corporations benefiting from the program so that they cannot engage in problematic conduct in pursuit of private gain while taking advantage of public subsidy.

The California Reinvestment Coalition.

The California Reinvestment Coalition builds an inclusive and fair economy that meets the needs of communities of color and low-income communities by ensuring that banks and other corporations invest and conduct business in our communities in a just and equitable manner.

We envision a future in which people of color and low-income people live and participate fully and equally in financially healthy and stable communities without fear of displacement, and have the tools necessary to build household and community wealth. For over 30 years CRC and our 300 organizational members have worked to stabilize, fight displacement from, and build wealth in California communities.

1. **The Main Street Lending Program should be accessible to nonprofit organizations which continue to serve local communities during this critical and challenging period, even while they face severe economic challenges of their own.**

The Federal Reserve System recently announced the outlines of its Main Street Lending Program, which promises to make up to $600 Billion in much needed capital available to small and mid-sized businesses. But unlike the Paycheck Protection Program in the latest stimulus package, which has since run out of funds, financing through the Main Street Lending Program is not available to nonprofit organizations or certain institutions of higher learning. This is so despite the fact that nonprofit organizations are foundational community institutions, providing critically needed services and support such as through jobs, housing, counseling and education, food and medical assistance, and lending to the most underserved of small businesses and residents. The exclusion of nonprofit organizations from eligibility should be removed from the Program. CRC thanks Speaker Pelosi for her leadership on this issue.[1]

2. **The Main Street Lending Program should lower the minimum loan size. In the alternative, the name of the program should be changed to The Non-Bank Lender, Servicer, Private Equity Lending Program, to reflect who the true beneficiaries of this loan program may be.**

Over 95% of businesses, 97% of minority owned businesses, and 98% of women owned businesses have less than $1 million in revenue,[2] and need financing under $100,000.[3] In imposing a minimum loan size of $1 million, the Fed is essentially saying this is not a lending program for small, minority owned or women owned businesses. We already know the PPP was not accessible to most small businesses, and it is running out of funds. The Fed needs to lower the minimum loan size in this program so that it serves the needs of small businesses and, hopefully, nonprofits, or the Fed should stop pretending that this is a lending program for small businesses. We are concerned that private equity funds, and non-bank lenders and loan servicers are lining up to borrower from this program. These are not the businesses that most Americans think of as located on and serving Main Streets in our communities.

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[1] See, Nancy Pelosi, Speaker of the House, Press Release, "Dear Colleague on Urging Federal Reserve to Include Nonprofits and Universities in CARES Act Lending Facilities," April 14, 2020, available at: https://www.google.com/url?q=https://www.speaker.gov/newsroom/41420&source=gmail&ust=1586981730872000&usg=AFQjCNF5nQz3WEM6AX5-DEVUNUtRkZoJDQ

[2] Consumer Financial Protection Bureau, [Docket No.: CFPB-2017-0011] Request for Information Regarding the Small Business Lending Market, 82 Fed. Reg 22319 (May 15, 2017). citing U.S. Census Bureau, Statistics for All U.S. Firms by Industry, Gender, and Receipts Size of Firm for the U.S. and States: 2012 More Information 2012 Survey of Business Owners, American Fact Finder (last visited April 12, 2017), available at https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=SBO_2012_00CSA05&prodType=table

[3] Federal Reserve Banks of Atlanta, Boston, Chicago, Cleveland, Dallas, Kansas City, Minneapolis, New York, Philadelphia, Richmond, St. Louis, and San Francisco, "Small Business Credit Survey: 2019 Report on Employer Firms," which found that 57% of the 6,614 employer firm small business respondents to the survey sought financing of $100,000 or less. Presumably, small business owners with no employees, who were not surveyed for this report, might need small dollar small business loans to a greater extent, and they would be even more poorly served by a proposal that incentivizes banks to originate larger loans to larger businesses.

3. **The Main Street Lending Program should allow Community Development Financial Institutions to participate as lenders, or another special purpose vehicle must be created.**

As proposed, loans to small and medium sized business would be originated by banks. A similarly narrow definition of authorized lenders has plagued the PPP. Many small businesses in neighborhoods of color and in rural communities face historic and continuing challenges in accessing credit from commercial banks. Nonprofit CDFIs have helped to narrow this gap by serving the small businesses that are most impacted by the current crisis. Yet these same businesses, which hire locally and serve local communities, are doubly excluded by driving federal COVID-19 relief through the banking institutions that have historically excluded them. Such efforts run the risk of reinforcing redlining abuses.

In order to move towards equity, the Fed must include CDFIs as authorized originators of Main Street Lending Program loans, and set aside at least 10% of funding for these nonprofit lenders and minority owned financial institutions. If the Fed is not prepared to make this small business lending program accessible to small businesses in this way, it should develop another Special Purpose Vehicle designed exclusively to purchase existing and new loans originated by CDFIs and other community lenders that are making the very loans to businesses of color, in neighborhoods of color and in rural communities, that are being passed over by mainstream banks and the federal relief efforts that rely upon them. The Fed should also work with the Treasury Department to secure funds to further capitalize CDFIs so they have the capacity to originate additional loans to businesses that otherwise will not be served.

4. **The Main Street Lending Program, as with all federal, state, local and private COVID-19 relief efforts, should track who is getting relief and where, in order to ensure compliance with fair lending and equal access laws and principles.**

We strongly urge the Federal Reserve to require that all funding through the Main Street Lending Program, and other Fed programs, tracks the race, ethnicity, gender, and census tract of borrowers and other recipients. Evidence is mounting that communities of color and people of color are most vulnerable to, and most impacted by, the current COVID-19 crisis.[4] It would be scandalous, though not surprising, if the relief provided by the federal (and other levels of) government continued to avoid these same communities. We witnessed a similar dynamic during the foreclosure crisis, and we cannot allow this cycle to continue. CRC and allies have sued to compel the Consumer Financial Protection Bureau (CFPB) to develop similar data collection rules, as mandated by the Wall Street Reform Act,[5] but during this extraordinary time, we cannot wait for the federal government to distribute relief now and figure out how to determine where the relief went later. Please start immediately to require the collection of race, ethnicity, gender and census tract data in all loan applications in order to inform policy decisions and to ensure we are living up to our societal commitments to fair lending and equal

[4] See, CRC, "Advocates Call for Monitoring to Ensure Relief is Reaching Immigrant-Owned and Small Businesses of Color, Press Release, April 14, 2020, available at: http://calreinvest.org/press-release/advocates-call-for-monitoring-to-ensure-relief-is-reaching-immigrant-owned-and-small-businesses-of-color/

[5] See, CRC, "Breaking Lawsuit Compels Trump Administration to Commit to Finalizing Protections Against Lending Discrimination, press release, February 26, 2020, available at: http://calreinvest.org/press-release/breaking-lawsuit-compels-trump-administration-to-commit-to-finalizing-protections-against-lending-discrimination/

access. There should also be a post crisis study of the race, ethnicity and gender of the business owners and neighborhoods that received relief under this Main Street Lending Program, and other relief efforts.

5. **The Main Street Lending program should tie corporate participation to certain restrictions on problematic corporate conduct.**

One of the many unheeded lessons of the foreclosure crisis is that public subsidy must come with public obligation. Left to their own devices, corporation executives will put corporate, shareholder and individual interests above that of the public. The Main Street Lending Program cannot enable a reprise of such behavior. We agree with the Americans for Financial Reform Education Fund that participation in the program must come with additional restrictions, including: requiring employment to be maintained at 90% with full compensation and benefits; paring back excessive executive compensation beyond the millions of dollars currently deemed permissible by the CARES Act; imposing prohibitions against outsourcing and offshoring of jobs; enforcing neutrality in union organizing; and maintaining collective bargaining agreements.

Again, we urge the Fed to make these recommended reforms so that the Main Street Lending Program can live up to its name and serve small and local businesses and their communities which are hurting right now, and which deserve access to relief commensurate with the harm they are suffering. Please do not implement another program that favors big business, private equity and the wealthy, all in the name of serving small business on Main Street.

Thank you for your consideration of our views. If you have any questions about these comments, please feel free to contact me at kstein@calreinvest.org.

Very Truly Yours,

Kevin Stein
Deputy Director

April 16, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Comments on the Main Street Lending Program

To Whom It May Concern:

Low-cost loans like the Main Street Lending Program could offer vital assistance to Dominican College as we struggle to address the financial impact of the COVID-19 outbreak. Therefore, on behalf of Dominican College, I am requesting that the Federal Reserve update guidance to specify that private, not-for-profit colleges and universities are eligible for the Main Street Lending program.

Dominican College and other private, not-for-profit colleges and universities are facing a major cash flow crisis caused by reduced revenue and increased spending resulting from the COVID-19 crisis. Our College anticipates that we will refund $1.8 million to students for room and board – an expense that could not have been anticipated. In addition to having to refund money, the College has had to cancel several fundraising events, as well as other revenue-generating opportunities, further compounding our financial difficulties.

As I'm sure you are aware, private, not-for-profit colleges and universities are major employers with significant economic impact in our communities. Dominican College employs about 400 people and has a $236 million annual impact on Rockland County, NY. Our survival is critical to the financial health of the county and the communities we serve.

We respectfully request that you update your guidance to specify that private, not-for-profit colleges and universities, with direct borrowing authority, are eligible for the Main Street Lending Program and other loan programs offered by the federal government.

Low-interest loans will provide vital support to private, not-for-profit colleges and universities like Dominican College that are working to continue to fulfill their educational missions and support their communities despite the severe financial impacts of the pandemic. We look forward to working with you on this and other loan programs as the Federal Reserve responds to the COVID-19 crisis.

Sincerely,

Sr. Mary Eileen O'Brien

Sr. Mary Eileen O'Brien, O.P., Ph.D.
President

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5500 Campanile Drive
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Fax: 619-594-8894

THE PRESIDENT

April 16, 2020

To whom it may concern:

On behalf of the San Diego State University (SDSU), I submit the following comments with respect to the "Main Street Lending" facility.

By way of background, San Diego State University is a major public research institution that provides transformative experiences, both inside and outside of the classroom, for its more than 36,000 students. The university offers bachelor's degrees in 96 areas, master's degrees in 80 areas and doctorates in 22 areas. Students participate in research, international experiences, sustainability and entrepreneurship initiatives, internships and mentoring, and a broad range of student life and leadership opportunities. The university's rich campus life features opportunities for students to participate in, and engage with, the creative and performing arts, a Division I athletics program and the vibrant cultural life of the San Diego region.

As with many entities across the country, the current health crisis combined with steps taken to reduce the spread of COVID-19 have taken a tremendous financial toll on SDSU. We have incurred significant costs to quickly move all our classes to online and virtual instruction, and at the same time, revenue streams have decreased significantly and refunds have been made to students in a number of areas, including student housing, parking, and student dining. Fixed monthly costs remain, even though revenue is no longer generated.

In order to meet these challenges and keep personnel employed, public universities and non-profit entities will require access to low-cost capital, such as that envisioned by the Main Street Lending facility. The California State University, in particular, notes:

1. There has been confusion about the Main Street Lending program and the eligibility of public universities and non-profits because the current guidance is silent. We ask that the Federal Reserve update the guidance to clarify that non-profit entities and public institutions of higher education with direct borrowing authority are eligible for the Main Street Lending program; and

2. Clarity is needed with respect to the definition of employment of student workers. Specifically, we ask that student workers be exempted for the purposes of the employee threshold for eligibility (businesses with under 10,000 employees). We hope that future guidance from the Federal Reserve will make it clear that institutions can exempt

student workers from the employee count. Many of our campuses employ student workers as a part of overall student financial support to help pay for college and to provide students with work experiences while keeping them close to campus. With our campuses closed, all or most of these student employees are no longer present, and therefore should not be included for the purposes of the employee threshold.

Thank you in advance for your attention to these comments.

Sincerely,

Adela de la Torre, Ph.D.
President
San Diego State University

April 16, 2020

Via federalreserve.gov

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: Main Street Lending Program

The National Automobile Dealers Association (NADA) represents more than 16,000 franchised automobile and truck dealers who sell and finance new and used motor vehicles and engage in service, repair and parts sales. Together they employ over 1,100,000 people nationwide, most of which are small businesses as defined by the Small Business Administration. We write to thank the Board of Governors of the Federal Reserve System (Federal Reserve) for the multiple actions it has taken to help small businesses survive the COVID-19 crisis and to request that the Federal Reserve exercise its discretion to improve a problematic limitation contained in the Main Street Lending Program.

On April 9, 2020, the Federal Reserve announced that the Main Street Lending Program would include a New Loan Facility (MSNLF) and an Expanded Loan Facility (MSELF) to enhance support for small and mid-sized businesses.[1] Under authorization from the Coronavirus Aid, Relief and Economic Security (CARES) Act, these loan programs are designed to provide much needed liquidity to small and medium-sized businesses. NADA appreciates and supports the government's efforts to increase the availability of capital and to assist automobile and truck dealers in weathering the current crisis; however, one discrete provision in the MSNLF and MSELF term sheets could reduce – not enhance – liquidity to these businesses and thus undermine their intended value to small and mid-sized businesses.

The Federal Reserve's term sheets for these facilities impose several conditions on the business activity of MSNLF and MSELF loan recipients. One such condition states:

> "The Eligible Borrower must attest 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."

[1] https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm

Among the restrictions is that borrowers must agree "until the date 12 months after the date on which the direct loan is no longer outstanding, not to pay dividends or make other capital distributions with respect to the common stock of the eligible business."[2]

An unfortunate consequence of this restriction is that it precludes borrowers from making distributions for the purpose of covering tax liabilities incurred in the standard operation of their businesses.

Most small and medium-sized dealers are organized as pass-through business entities in which dealership income and the related income tax obligations flow through to the owners' individual tax returns. For these businesses to avail themselves of the benefits that these loan facilities are designed to create, it is essential that they be permitted to make distributions to satisfy shareholder income tax obligations incurred from the pass-through taxable income. **Accordingly, we urge the Federal Reserve to remove unnecessary restrictions on pass-through entities that are currently contained in the MSNLF and MSELF term sheets, including the restriction on the payment of dividends and other capital distributions to satisfy tax liabilities.**

Thank you for the opportunity to comment on this matter. Please contact our office at (703) 821-7040 if we can provide you with any additional information.

Respectfully submitted,

/s/

Paul D. Metrey
Vice President, Regulatory Affairs
Chief Regulatory Counsel,
Financial Services, Privacy, and Tax

[2] CARES Act, § 4003(c)(3)(A)(ii)(II).

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April 16, 2020

By electronic submission to regs.comments@federalreserve.gov

Re: Comments on April 9, 2020 Term Sheets for Main Street New Loan Facility ("New Loan Facility") and Main Street Expanded Loan Facility ("Expanded Loan Facility")

Introduction

Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul, Weiss") welcomes the opportunity to comment on the Main Street lending initial term sheets released by the Board of Governors of the Federal Reserve System (the "Federal Reserve") in consultation with the U.S. Department of the Treasury (the "Treasury"). We are a global law firm that has worked with a variety of "growth" equity investors for over forty years. We understand that some of the comments previously submitted to the Federal Reserve and the Treasury have emphasized the importance of private equity-owned companies to the U.S. economy in general and the need to ensure that such companies are not denied access to the Main Street lending programs merely because of the identity of their owners. We agree with many of these comments and respectfully request that the Federal Reserve and the Treasury consider them carefully. However, we also think it important to highlight the concerns of companies backed by growth equity investors.

Growth equity investors focus on investing in and building early-stage companies in the United States and around the world. They identify the sectors likely to produce the most significant growth and the leading companies in those sectors, and they partner with the entrepreneurs behind those companies to drive innovation and business expansion, frequently by investing in new jobs. For instance, one such growth investor alone has over 100,000 people employed by U.S. companies in which it has invested and over 400,000 people employed by all of the companies in which it has invested globally.

Companies in this stage of development tend to utilize less leverage than more mature companies so as not to constrain their growth prospects, including their ability to increase

employee headcount. When they do take advantage of leverage, growth companies are often active participants in the syndicated Term Loan B market, which enables them to invest their cash flow against their growth plans rather than debt amortization, and includes both traditional bank and non-bank participants as lenders.

As with many businesses across the country, growth companies are experiencing numerous challenges during the COVID-19 pandemic. The Federal Reserve's Main Street lending programs are a lifeline for many of these businesses. This capital can help quickly bridge needs created by necessary closures and enable a faster return to normal business and employment conditions.

There currently exists, however, a great deal of uncertainty about these programs and we believe they can be clarified and strengthened. Below we have detailed our questions, concerns and suggestions for improving these essential initiatives.

1. Eligible Lenders: "Eligible Lenders" are limited to U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies. This may disqualify many borrowers that have existing credit agreements with non-bank or multinational lenders from the Expanded Loan Facility. It is also unclear whether a borrower with a non-U.S. agent in its credit facility or a syndicated loan may qualify for the program at all, and, if so, whether a non-U.S. agent or ineligible lenders in the syndicate will be disqualifying. Expanding the definition of Eligible Lenders to include other classes of lenders would enable more businesses with existing credit facilities to access the Expanded Loan Facility, and also increase access for all borrowers by enhancing market bandwidth for processing these loans.

2. EBITDA-Based Leverage Tests:

    - *EBITDA Definition*. EBITDA is not defined in the term sheets, and it is unclear whether customary add-backs specific to each borrower included in most credit facilities would be recognized under these programs. In the Expanded Loan Facility, differing definitions between the upsized tranche and the original loan would significantly increase the time and transaction costs of participating in this program for both lenders and borrowers. We believe that the Federal Reserve and the Treasury should accept these definitions of EBITDA that are common in the commercial marketplace, but confirmation on this point is important.

    - *Growth Businesses*. Businesses in their growth stages frequently have low (or even negative) EBITDA as they incur substantial expenses in order to fuel their growth; therefore, many of them would be shut out of these programs based on the EBITDA leverage tests. Lending on the basis of a conservative debt to enterprise value ratio would allow these companies to benefit from the programs.

3. Loan Terms and Documentation:

    - *New Loan Facility*. Standard form documents should be published by the Federal Reserve and the Treasury for use by lenders and borrowers, which would increase speed and efficiency in accessing credit.

    - *Expanded Loan Facility*. The upsized tranche should be permitted to carry the same general terms as the existing underlying agreements already in place between a borrower and its lenders (other than those terms expressly required by the Expanded Loan Facility), as they are reflective of "ordinary course" dealings between borrowers and lenders and will streamline loan processing.

4. Equity Compensation Limits: Further guidance is needed regarding the timing and valuation of stock awards for purposes of the compensation limits so that borrowers can properly ensure and monitor compliance. In addition, appropriate carve-outs from the compensation limits should be implemented in respect of proceeds of stock awards payable in connection with a sale of a business (including a new owner of the business not being subject to these limits), other liquidity transactions or departure of an award holder. For example, absent such carve-outs, sale transactions that would result in repayment of these loans will be more challenging to execute.

5. Non-U.S. Parent Companies: Like U.S.-owned businesses, U.S. subsidiaries of non-U.S. parent companies further the programs' objectives of assisting businesses operating in the U.S. and seeking to retain their U.S. based employees. As such, and in light of the many U.S. businesses owned by foreign parent companies, we interpret the term sheets to mean that U.S. subsidiaries that otherwise satisfy a program's requirements will be eligible to participate, but confirmation of this interpretation is important.

6. Loan Amount:

    - *Existing Debt Calculation*. Borrowers determining their eligibility and maximum loan amount would benefit greatly from clarification of whether the phrase "existing outstanding and committed but undrawn debt" in the term sheets means (i) the sum of the outstanding principal amount of debt plus the aggregate amount of committed and undrawn funding commitments or (ii) only undrawn debt that is outstanding and committed. Note that if the former is the correct interpretation, a significant number of appropriately-leveraged businesses will be precluded from participating.

    - *Bank Debt vs. Debt*. Clarification is also needed in respect of the definitions of "debt" and "bank debt," as the Expanded Loan Facility term

sheet references "bank debt" in one loan amount governor whereas the other loan amount governors in both term sheets refer simply to "debt."

- *Gross vs. Net Debt.* Most credit agreements measure total debt on a "net debt" basis, adding back cash. Clarification is needed as to whether "debt" in the Expanded Loan Facility is measured in this customary way.

7. Loan Repayment Priority and Restrictions:

    - *Ranking.* The programs' restrictions on repayment of pari passu or junior debt should be clarified, including by describing in detail how loans made under these programs will rank relative to preexisting debt. This will be very important to borrowers with existing credit agreements in determining whether they can borrow under these programs without breaching any provisions in those existing agreements.

    - *Loan Repayment Restrictions.* Participants should be permitted to repay both principal and interest on revolving credit facilities and other types of working capital loans, as well as use loan proceeds to pay debt servicing fees (including fees charged on loans made under these programs). These sorts of revolving loans are used by businesses of all sizes and credit profiles as a necessary part of their ordinary course cash flow management activities.

8. Restrictions on Distributions:

    - *Certain Distributions.* Tax and other ordinary course distributions (e.g., franchise taxes, corporate overhead and audit expenses) are common for many borrowers that are not publicly traded, particularly those businesses structured as "pass-throughs" for tax purposes, and are intended to cover taxes and certain costs incurred elsewhere in a business's structure. These types of distributions should be permitted so that some businesses are not effectively locked out of the programs.

    - *Sale Transactions.* Restrictions on distributions should terminate simultaneously with the consummation of a sale transaction in which the loan is repaid. Absent this change, (i) sale transactions (and loan repayments) would be inhibited due to potential acquirers not wanting to inherit these restrictions for the first year thereafter, and (ii) certain businesses would be unable to execute sale transactions altogether (e.g., in the case of asset sales that generate proceeds for distribution).

9. Alternative Structures: Certain businesses' existing loan agreements may limit or prohibit new borrowings, including loans made through these programs. For businesses in those circumstances, borrowing should be permitted at a holding

company level so that loans can be made without delay (e.g., due to existing lenders exercising consent or other rights under existing loan agreements).

10. Interest Rate: Most loans similar to those that will be made under the Main Street programs use LIBOR, and many lenders have not yet incorporated SOFR into their processing and servicing systems. Given the delays and challenges lenders and borrowers would face from altering their customary interest rate practices at this time, these programs should permit the use of LIBOR until SOFR is widely used.

11. Required Attestations:

    - *Maintaining Employment.* Borrowers will benefit from clarification of what is required to comply with the attestation that borrowers will "make reasonable efforts" to retain employees and maintain payroll, including how this requirement will be applied to businesses that have suspended operations or reduced their workforce or compensation levels prior to borrowing.

    - *Impact of COVID-19.* Additional guidance is also needed to help borrowers understand what constitutes their "requir[ing] financing" under these programs due to the COVID-19 pandemic, particularly if any financial tests will be applied.

Paul, Weiss thanks the Federal Reserve and the Treasury for their consideration of our comments. If you have any questions, please contact Matthew W. Abbott at (212) 373-3402 or Neil Goldman at (212) 373-3176.

Yours,

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

By: Matthew W. Abbott

DELAWARE STATE UNIVERSITY

Office of the President

April 16, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Comments on the Main Street Lending Program

To Whom It May Concern:

I write to submit the following comments regarding the Main Street Lending program. Specifically, Delaware State University asks that the Federal Reserve update the guidance to clarify that non-profit public institutions, including the University, are eligible for the Main Street Lending program.

Delaware State University is Delaware's only Historically Black College and Universities (HBCU) and a significant contributor to Delaware's economy, more than $260 million annually. That means for every $1 invested in the University, there is a $6 return.

The COVID-19 pandemic has wrought significant lost revenue and unexpected expenses across our campus. These impacts range from Cost of Attendance Credits (COAC) to students and expenses associated with the rapid transition to online learning. Although we still house about 200 students with no other residential option at this time, our normal anticipated sources of auxiliary revenue have also dried up as our campus is closed to the public indefinitely.

While we are still determining the financial impact on our University, we are interested in the opportunity to access the credit and loans available under the Main Street Lending program, recently announced by the Federal Reserve. Unfortunately, we are concerned with one major barrier keeping the University from accessing these programs:

- There has been confusion about the Main Street Lending program and whether non-profits are eligible because the current guidance is silent. We ask that the Federal Reserve update the guidance to clarify that non-profit private and public institutions of higher education, with direct borrowing authority, are eligible for the Main Street Lending program.

We look forward to working with you on this and other essential loan programs as the Federal Reserve responds to the COVID-19 crisis. Thank you in advance for your consideration.

Sincerely,

Tony Allen, Ph.D.
President

cc: The Honorable Lisa Blunt-Rochester
United State Congress

April 16, 2020

Board of Governors
Federal Reserve System
via email: regs.comments@federalreserve.gov

RE: Main Street Lending Program

MidFirst Bank supports the objectives of the Main Street Lending Program and appreciates the opportunity to provide comments. MidFirst's understanding of the program is based on the limited information provided in the Term Sheets for Main Street New Loan Facility (the "MSNLF") and Main Street Expanded Loan Facility (the "MSELF") published on the Federal Reserve's website. The following are comments regarding the program as we understand it and questions MidFirst is seeking clarification on.

Eligible Borrowers

1. Are there any restrictions on industry type, loan product type, or borrower type? Since no limitations were identified, can banks assume the program is available without these restrictions?

2. Eligible Borrowers are businesses with up to 10,000 employees or up to $2.5 billion in 2019 annual revenues. Does that mean the borrower may have more than 10,000 employees as long as revenues are no more than $2.5 billion, or are both intended to be caps (i.e., is the appropriate intent "and" not "or")?

Eligible Loans

3. Can the bank impose additional underwriting criteria other than what is stated in the Term Sheets?

4. Could the bank institute loan covenants for the MSNLF (New Loan Facility)? Can banks introduce new covenants for the MSELF (Expanded Loan Facility) other than covenants already existing?

5. Would the MSNLF (New Loan Facility) be cross-defaulted with a bank's existing credit facilities?

6. When determining loan sizing under the 4x EBITDA for MSNLF and 6x EBITDA for MSELF, is the requirement inclusive of all debt (sub-debt, mezzanine debt, second lien debt), and inclusive of non-bank debt?

7. The Term Sheets reference a maturity of 4 years. Are shorter maturity periods allowed?

8. What is the amortization period? Is it at the bank's discretion? Are loans expected to be fully amortizing within the loan term, or are balloon maturities contemplated?

9. What dictates the interest rate? Do banks have the ability to choose within the 250-400 basis point range?

10. What is the Adjustable Rate adjustment period? Is it at the bank's discretion?

11. Do banks have the option to assign the interest rate to an index other than SOFR? A SOFR index may be problematic as many bank loan systems are not targeting a transition date away from LIBOR until December 2021. Additionally, many important issues related to a SOFR index remain unresolved. A LIBOR based index, with standard fallback language, would seem more appropriate and acceptable to banks.

12. Is the MSELF (Expanded Loan Facility) only for secured credit, or could an existing unsecured credit facility also be upsized through an additional unsecured tranche?

Participation Structure

13. When will the proposed participation agreement language be published and will banks have the ability to modify the language to unique circumstances?

14. The dilutive effect of the collateral sharing requirement under the MSELF (Expanded Loan Facility) could present a meaningful deterrent to bank participation in the Main Street Lending Program. Banks could be faced with unacceptable risk acceptance by diluting collateral positions and may therefore not pursue a MSELF (Expanded Loan Facility) loan for a borrower that could otherwise benefit from the program. The dilutive effect of the collateral sharing requirement will also require 100% consent from other bank participants. Has the Fed considered any other structure that would accomplish the goals of the program while still presenting acceptable risk to both the banks and Federal Reserve, such as accepting a second lien position in pre-existing collateral as opposed to sharing in all collateral on a pro-rata basis?

15. Are the banks to assume the Fed will purchase a participation in a loan as long as it meets the conditions in the Term Sheets published by the Fed? Or will the Fed approve each loan participation individually and have input in structuring the individual loan? Reputational risk to the banks may exist if the Fed ultimately may have a differing view on a particular transaction or decline to approve.

16. What are the voting rights of the Fed? Specifically, in default events will the banks be in a lead position and who (what type of resource) at the Fed would the banks be working with? This will be a particularly important issue when other bank participants may be involved in MSELF loans or other previously existing MSNLF loans.

17. Is there a Facility Fee payable to the Fed on the MSELF (Expanded Loan Facility), similar to the MSNLF (New Loan Facility)?

Required Attestations

18. The Eligible Lender must attest that the proceeds of the Eligible Loan will not be used to repay or refinance pre-existing loans or lines of credit made by the Eligible Lender to the Eligible Borrower, but the borrower may use the Eligible Loan proceeds to make mandatory principal payments. Does the prohibition prevent the Eligible Lender from receiving mandatory principal payments, until the Eligible Borrower has first repaid the Eligible Loan in full? It seems this would not be the intent, but banks need clarity on this issue. Also, what is considered a mandatory principal payment, is it inclusive of all of the following: scheduled principal and interest payments, payments due under balloon maturities, mandatory resizing of borrowing base loans, mandatory resizing required by asset sales or divestitures?

19. The requirement for banks to attest to the borrower's eligibility to participate in a loan facility is beyond the customary agent bank/participant bank representations. These borrower attestations include that Main Street funds will not be used to reduce outstanding debt with any lender other than mandatory principal payments and the borrower will comply with CARES Act restrictions on compensation, stock repurchase, and dividends. Can the Fed provide more clarity on what is required of banks to document compliance with these ongoing requirements or the implications should a borrower not fulfill a requirement?

Other Considerations

20. Will the Federal Reserve work with other primary regulators regarding the acknowledgment that the proposed structure may be considered liberal underwriting and could result in possible leveraged loan designation?

Thank you for consideration of these questions and comments. MidFirst would be happy to discuss any comments in further detail should the Federal Reserve wish to do so.

Respectfully,

L. Randall Peck
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COMMENTS TO THE FEDERAL RESERVE
REGARDING MAIN STREET LENDING PROGRAM TERM SHEETS

Submitted by SHEPPARD MULLIN

April 16, 2020

1. Borrower eligibility

- Regarding a borrower's eligibility for Main Street Loans:
    - Please confirm that the borrower's ownership structure will not be relevant (e.g., that having a sole proprietor, disregarded entity (for tax purposes), special purpose entity, or foreign ownership will not be disqualifying).
    - Please confirm that there will not be any consolidation of the borrower (for purposes of the maximum employee count or revenue calculation) with parent companies, non-majority owned subsidiaries or sister companies.
    - Please confirm whether and how a borrower should count employees held by or revenue generated by its majority-owned subsidiaries.

  If the Fed contemplates ownership or affiliation requirements, those requirements should be easily understood and applied, and preferably not akin to the restrictive and complex affiliation rules that apply in the SBA context.

- At what date is the employee count measured for purposes of determining borrower eligibility? The borrower eligibility employee count test should have the flexibility to use different measurement dates, including the date of the Main Street loan application (which would meet the business where it presently stands as a result of the COVID-19 impact it has experienced).

- The borrower eligibility revenue test should have the flexibility to use either 2019 annual revenues or the trailing twelve months revenues (as of the date of its Main Street loan application). This measurement would meet the business where it presently stands as a result of the COVID-19 impact it has experienced.

- Will an eligible borrower under Section 4003(b)(1), (2) or (3) of the CARES Act also be eligible to receive Main Street loans?

- Assuming a borrower meets the other eligibility requirements established, please confirm that an Eligible Borrower can be any type of US entity form such as a trust (e.g., a REIT or a business trust), limited liability company, partnership, joint venture, quasi-governmental entity, nonprofit entity or tribal entity.

2. Lender and Loan eligibility

- A significant number of the target businesses for the Main Street Loan program access credit from non-Eligible Lenders. Completely excluding non-Eligible Lenders from the Main Street Loan program will significantly hamper the program's impact on the target market. To increase accessibility of the Main Street Loan program in a manner that balances the Fed's other considerations, please consider the following changes:

    - An otherwise Eligible Loan should not be tainted because some or all of it passes through a non-Eligible Lender. Instead, consider eliminating or de-emphasizing the identity of the underlying loan originator so long as an Eligible Lender leads the expanded loan (which loan would be subject to the collateral sharing requirements described in the term sheets). However, if the Fed chooses not to eliminate the Eligible Lender origination requirement entirely, it should, at a minimum, loosen the requirement by allowing the following loans as Eligible Loans in the Main Street Expanded Loan Facility:
        - A loan that was originated by a non-Eligible Lender but was assigned in whole or in part to an Eligible Lender.
        - A loan that was originated by a syndicate of lenders that includes one or more non-Eligible Lenders and one or more Eligible Lenders.
        - A loan that was originated by an Eligible Lender that syndicated or assigned some or all of that loan to a non-Eligible Lender.

    .

    - Similarly, please clarify the rules that apply to lender roles after a Main Street New Loan or Main Street Expanded Loan is funded such as:
        - Allowing either an Eligible Lender or a non-Eligible Lender to acquire an assignment or participation interest in a Main Street New Loan or Main Street Expanded Loan.
        - Allowing loan servicing responsibilities to be performed only by another Eligible Lender
        - Confirming that the SPV's 95% risk participation in each Main Street New Loan or Main Street Expanded Loan is an undivided interest such that an assignment by an Eligible Lender of all or a portion of its loan will include a ratable assignment of the 95% risk participation.

3. Loan approval and closing/ Role of SPV.

- To increase certainty and reduce transaction costs in the application process (which will increase overall accessibility of the Main Street Loan program):

    - The term sheets seem to describe underwriting standards in the form of the Eligible Loan definition, the collateral requirements (applicable to the Main Street Expanded Loan Facility), and the loan repayment and priority restrictions. However,

it is highly likely that lenders will apply their own additional underwriting standards to the Main Street Loan program. To promote predictability, efficiency and accessibility of the Main Street Loan program, the term sheets and related Fed and Treasury public guidance should clearly articulate the Main Street Loan program underwriting standards and consider what incentives or support the Fed and Treasury can provide to encourage lenders to exclusively use those underwriting standards. The Fed and Treasury should consider that the same need exists for underwriting standards to smooth the borrower's process for obtaining consent from those existing lenders needed in order for the Main Street Loan to proceed.

  - Lenders and borrowers otherwise should be allowed to prepare and negotiate the loan document on their own terms.
  - What will the finalization process be for the loan closing, e.g., would the borrower and lender send finalized documents to the SPV for funding and what would be the expected timing for loan funding?

- It is important for the parties to understand what consent rights the SPV will retain under its participation agreement after the Main Street loan has been funded. Would those consent rights be limited to:

  - increasing the Main Street principal loan amount
  - changing the maturity date
  - extending the principal or interest holiday
  - reducing the interest rate
  - allowing proceeds to be used to repay or refinance pre-existing loans or lines of credit
  - allowing the borrower to repay other debt of equal or lower priority with the exception of mandatory principal repayments
  - releasing collateral without a corresponding principal repayment of the senior debt secured by such collateral (except, for purposes of the Main Street Expanded Loan Facility, as otherwise agreed in an Eligible Loan prior to April 8, 2020)
  - changing or waiving the compensation, stock repurchase or capital distribution restrictions.

- A related matter to clarify is the degree of flexibility that the private lenders will have in dealing with the borrower in a post-default workout or restructuring situation.

4. Maximum Loan Size

- For purposes of the maximum loan size calculation, debt should be defined as senior debt for borrowed money only and expressly exclude:
  - Undrawn letters of credit.

- o Capital leases (including as characterized pursuant to ASC 842).
- o Potentially forgivable loans under the CARES Act or other governmental loan programs relating to the COVID-19 crisis.
- o Acquisition earnout obligations.
- o Unsecured loans or intercompany or other debt that in each case, would be subordinated to the Main Street Loans.
- o Mandatory redemption of preferred stock.

- Is the date of the Main Street Loan application considered the measurement date for the debt size limitations?

- The debt size limitations--4x EBITDA for Main Street New Loans and 6x EBITDA for Main Street Expanded Loans--are too limiting for most small and mid-sized businesses and should be increased. In addition, counting undrawn debt in the debt sizing calculation can significantly hamper a business's accessibility to Main Street Loans. This can be especially punishing to businesses that also cannot meet the terms for accessing their undrawn debt. Therefore, the Main Street Loan program should not count (and does not need to count) undrawn debt in the debt sizing calculation. The same drawing requirements that regulate (on a real-time basis) the accessibility to undrawn debt protect both the existing and Main Street lenders. Before a business can draw down on the undrawn debt in the future, it will need to satisfy the commercially-determined conditions to that debt incurrence.

- The EBITDA calculation should allow standard addbacks as agreed between the borrower and lender (such as nonrecurring or unusual expenses), and in fact the parties should be encouraged to use the EBITDA calculation contained in the borrower's other loan documents.

- Will a borrower have the ability to count as earnings in its EBITDA calculation any cash equity investments made in 2019 or in 2020 up to the date of the Main Street loan funding (i.e., including an equity investment made contemporaneous with the Main Street loan) thereby enabling the borrower to obtain a larger Main Street loan? In addition, or alternatively, will a borrower have the ability to provide valuable collateral for such purpose to provide asset-based support? This could be a very valuable feature for businesses whose 2019 EBITDA was not high but underlying fundamentals nonetheless are strong as evidenced by equity holders' willingness to make an additional investment.

- Many borrowers possess valuable assets but may not have had significant 2019 EBITDA and therefore would qualify for only a small loan (e.g., infrastructure businesses). Adding a loan to value test (in a secured loan transaction) as an alternative to the EBITDA test for maximum loan sizing would greatly increase the accessibility of the Main Street loan program without increasing exposure to the Fed or Eligible Lender (and in many cases, this might reduce exposure).

5. Facility Uses & Payment Terms

- We would expect the need for amendments, consents and waivers relating to existing debt whether or not it is being expanded under Main Street Loan program. It would be very helpful for the Fed and Treasury to endorse lender flexibility in the amendment and consent process to enable borrowers to access these loans and consider the extent to which lenders' fees will limit access to the program.

- The Main Street Loan should have a 4 year maturity except to the extent an earlier maturity is needed to comply with covenants contained in the borrower's existing debt.

- Since it will be difficult to return to "business as usual" until after the COVID-19 emergency declaration is terminated, the principal and interest accrual/ payment holiday should extend until the later of (a) one year after loan issuance and (b) six months after the termination of COVID-19 emergency declaration.

- Please confirm that Main Street Loan proceeds can be used for interest payments on existing debt.

- Please clarify that all mandatory principal payments are permitted whether required due to an amortization schedule or special triggers such as asset dispositions, casualty events or excess cash flow or overadvances.

- Please confirm that a deferred payment obligation to an employee or service provider (whether or not evidenced by a note) can be repaid with the Main Street Loan proceeds. Such a repayment should be permitted as it is tantamount to an expense payment.

- The principal amortization on the Main Street Loans should not be more onerous from a borrower perspective than straight line annual amortization starting at the end of the principal amortization holiday (i.e., using the holiday described in the term sheet, the borrower would not be required to make principal reductions of more than one-third of the original principal amount in Year 2, one-third of the original principal amount in Year 3 and one-third of the original principal amount in Year 4).

- Is there a one year holiday on interest accrual or on interest payments? We assume that the lender and borrower will have broad flexibility to structure payment terms for that deferred interest and all interest, including structures that would minimize or eliminate potential tax consequences associated with imputed interest.

- As a practical matter, it appears that many otherwise eligible lenders will not be able to operationalize loans using SOFR as the interest rate reference index within this time-frame:

  - SOFR remains an emerging index with many different calculation methods and significant associated volatility and uncertainty. Furthermore, there would need to be a mechanism to amend the rate to implement another reference rate option if SOFR is not available, workable, etc.
  - Most existing loans use LIBOR (and/or other rates, such as a Prime Rate-based rate, a fixed rate or a competitive bid set rate) and introducing a different index makes it more complex to calculate, hedge, maintain spread between the different classes of debt and maintain preferred pricing arrangements in existing loan documents.

- Please confirm that a borrower will be allowed to make elective payments on a revolver.

- Please consider the need to allow for some debt forgiveness such as in the case of post-default workouts and restructurings where lenders typically can reorganize, reduce or forgive the outstanding debt. We recognize the concern about the prohibition on loan forgiveness in Section 4003(d)(3) of the CARES Act. However, that could be interpreted as applying only to the extent of direct loans made by Treasury (and Treasury's participation in the Main Street program might not even be considered a direct loan under the CARES Act), and not as a prohibition on the Fed's authority to design the loan programs.

6. Negative covenants

- Please clarify that distributions by tribal entities, quasi-governmental entities and other entities who do not have common stock and whose dividends or distributions are not for personal or private profit (e.g., returns on capital) will be allowed under the Main Street Loan programs.

  - Here is some further detail on tribal gaming operations: whether organized as Section 17 corporations, tribal corporations, tribal limited liability companies, chartered governmental authorities or instrumentalities, these gaming operations are considered part of an essential governmental function of federally recognized Indian tribes. Tribal gaming is regulated by federal law, the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 et seq. ("IGRA"). IGRA requires that a Tribe have the sole proprietary interest in its gaming operation (25 U.S.C. § 2710 (b)(2)(A)). The concept that the Tribal government have the sole proprietary interest in the gaming operation contradicts any concept that tribal casino entity has the ability to issue "common stock," even if such tribal casino entity may be organized as a tribal corporation, tribal limited liability company or a Section 17 cor-

poration. IGRA also requires under 25 U.S.C. § 2710(b)(2)(B) that net revenues from the gaming operation be used solely for the following five purposes: (i) to fund tribal government operations or programs; (ii) to provide for the general welfare of the Indian tribe and its members; (iii) to promote tribal economic development; (iv) to donate to charitable organizations; or (v) to help fund operations of local government agencies. As evidenced by the required uses of gaming revenues under federal law, tribal casino operations are not designed to operate for personal or private profit of the entity.

- Please confirm that distributions to disregarded (or pass-through) entities (such as S-Corps, limited liability companies and partnerships) that enable equity holders to pay taxes associated with the Eligible Borrower's business activity will be allowed. Since a tax distribution is not a return of capital and only is being made to enable an equity holder to comply with his legal obligation to pay taxes (and in doing so protects the US Treasury), this should not be considered a dividend on common stock (or is permitted as a contractually mandated payment) within the meaning of Section 4003(c)(3)(A)(ii) of the CARES Act. Using a similar analysis, please confirm that the same answer applies to a tax distribution to a holding company that is the tax paying entity.

- Please confirm that equity owners in pass through entities (such as S Corps and LLCs) who, in accordance with past conduct, receive their employment compensation in the form of distributions will not be considered dividends on common stock within the meaning of Section 4003(c)(3)(A)(ii) of the CARES Act. That type of distribution is not a return of capital and is a payment pursuant to a contractual obligation (for employment).

- Please confirm that dividends or distributions to holding company entities to pay overhead and related administrative expenses associated with the Eligible Borrower's business activity will not be considered dividends on common stock within the meaning of Section 4003(c)(3)(A)(ii) of the CARES Act.

- Please confirm that dividend payments by subsidiaries of an Eligible Borrower will be permitted.

- Please clarify how the dividend and compensation restrictions would apply for an Eligible Borrower whose common stock is acquired by another entity or an Eligible Borrower that is merged into another entity.

- Will dividends or distributions on common stock that are paid in kind be allowed?

- Please confirm that the compensation of a new employee hired in 2020 or later will not be subject to the compensation restrictions in Section 4004 of the CARES Act.

- Please confirm that expense reimbursements (e.g., travel, meals and entertainment) do not constitute "other financial benefits" treated as employee compensation within the meaning of Section 4004 of the CARES Act.

7. Collateral and intercreditor issues

- The requirement that the Eligible Borrower must commit to refrain from repaying other debt "of equal or lower priority" until the Eligible Loan is repaid in full (even with an exception for mandatory prepayments) creates difficult intercreditor issues. The following clarifications and changes would ease this problem:
    - A loan of "equal priority" should mean (1) in the case of Main Street New Loans, any unsecured debt whether existing at the Main Street closing or incurred thereafter that is not contractually subordinated to the Main Street New Loan and (2) in the case of Main Street Expanded Loans, (i) the existing loan that is being upsized and (ii) if the existing loan that is being upsized is unsecured, any unsecured debt whether existing at the Main Street Loan closing or incurred thereafter that is not contractually subordinated to the existing loan (as expanded by the Main Street Loan). Any other loan would be of higher or lower priority than the Main Street loan.
    - Repayments and prepayments of debt of equal priority with the Main Street loan (as applicable, the "Program Loan") should be permitted so long as the payments are shared between the Program Loan and the equity priority debt on a pro rata basis. Requiring borrowers to keep all of their debt outstanding until all of it can be paid off at the same time may be unduly expensive and counterproductive. Assuming that loans from employees or deferred payments to service providers are considered debt to which these restrictions apply, repayments should be permitted in any event without the need for pro rata treatment as that is tantamount to an expense payment.
    - A secured loan that is not part of the Program Loan (to be referred to here as "Secured Loan 2") should have higher priority than the Program Loan (1) in its entirety if the Program Loan is unsecured or (2) with respect to its priority collateral if the two loans are secured by different collateral or if the two are secured by the same collateral but the lender of Secured Loan 2 has higher priority in that collateral (e.g., by virtue of having a purchase money security interest or by virtue of any contractual subordination). Since Secured Loan 2 has higher priority, the borrower should be allowed to repay Secured Loan 2 in whole or in part at any time. This should apply:
        - for any Secured Loan 2 that was incurred before April 8, 2020 and
        - for any Secured Loan 2 that was incurred on or after April 8, 2020 so long as:
            - both (i) new borrowed money was provided and (ii) the borrower complies with the EBITDA test as then re-measured; or

        - such Secured Loan 2 is purchase money secured debt, a capital lease (including as so characterized pursuant to ASC 842) or a sale/ leaseback.
    - The collateral value should not matter in the seniority classification—the fact that a lender may be undersecured should not affect its seniority.

- Clarify that, when an upsized tranche of a Main Street Expanded Loan is secured by collateral because the prior tranche was secured, any release by the existing lenders of their liens will extend to the liens securing the upsized tranche as well.

Contact:

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Association for Corporate Growth

Via: Electronic Feedback Submission

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, D.C. 20551

RE: Comments of the Association for Corporate Growth on "Main Street Lending Program"

The Association for Corporate Growth (ACG) represents 15,000 professionals who operate within the middle market, comprised of 200,000 companies that employ 45 million Americans. ACG received the news of the Main Street Lending Program with optimism because it appeared to be more broadly available to private equity-sponsored businesses than the PPP. America cannot afford the continued exclusion of middle market companies from federal relief programs.

We appreciate the opportunity to comment on the Main Street Lending Program. ACG urges the Federal Reserve to be liberal in its administration of the Main Street Lending Program and recommends the following solutions:

EBITDA Loan Sizing Test

- **Problem** – Unclear whether EBITDA is meant to be unadjusted without any addbacks or pro forma impacts included. Calculating EBITDA without taking into account adjustments and pro forma impact would prevent many companies from meeting the leverage tests as virtually all loan facilities provide for EBITDA on an adjusted basis. For companies that have made acquisitions or dispositions, this creates uncertainty in how EBITDA should be calculated.
- **Solution** – For the Expanded Loan Facility (ELF) leverage sizing test, have EBITDA include the same adjustments and pro forma treatment as under the existing loan facility. For the New Loan Facility (NLF) leverage sizing test, allow the lender and the company to agree on the addbacks and pro forma treatment to be included in EBITDA.
- **Problem** – Because many growth companies do not have positive EBITDA, without another test, most growth companies will be excluded from Main Street Loan Facility (MSLF).
- **Solution** – For private growth companies, provide a test that looks to a percentage of the most recent 409(A) valuation or post-money valuation from the most recent financing round. For public growth companies, provide a test that looks to a percentage of 52-week average market capitalization with the end date for the period covered by such test being a date before the start of the pandemic.

Meaning of "Bank Debt" in the 30% Size Limiting Test for ELP

- **Problem** – It is unclear what "bank debt" is meant to pick up. If this term is to pick up all debt of any kind with banks, cash management arrangements could limit borrowing. If this term was to pick up only debt of banks, then companies that only have debt with a non-bank lender would not be able to take advantage of a MSLF.
- **Solution** – Clarify that this term is meant to include "all loans, notes and loan commitments" with "any lender".

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Meaning of "Committed but Undrawn Debt" in the Leverage Size Limiting Test

- **Problem** – The language "committed but undrawn debt" is problematic. It is not typical for undrawn debt to be picked up in a leverage test. It also sends the signal that the company is required to draw on every last dollar available. If this program is to provide companies needed liquidity, this would cause the company to put itself in a very vulnerable situation. The term sheets provide that no existing debt may be reduced or terminated, so even if a company looks to reduce its undrawn commitment to satisfy the leverage test, it cannot do so. Second, it is unclear what "debt" is meant to pick up.
- **Solution** – First, have such leverage test for availability only pick up amounts outstanding and not amounts that are committed but undrawn. Second, clarify that such leverage test only includes loans and notes.

Maturity for Expanded Loan Facility

- **Problem** – Most existing credit agreements prevent new loans to mature inside the maturity of existing loans as existing lenders do not want new loans get paid off before the existing loans.
- **Solution** – Allow for the maturity date of an ELF to be the later of (i) four years and (ii) the latest maturity date of any of the existing loans under the existing loan facility.

Eligible Lenders

- **Problem** – Limits the lenders eligible to participate in MSLF to only US banks and US SLHCs. With many non-bank lenders and foreign lenders in the lending market and that are existing lenders under the ELF, this is going to exclude many lenders and overwhelm the US banks that are eligible.
- **Solution** – Include direct/non-bank lenders and foreign lenders (and clarify that US branches of foreign banks) as eligible lenders.

Distribution/Equity Repurchase Issues

- **Problem** – Unclear whether the distribution restriction would block distributions from acquisition or IPO activity for up to 12 months after repayment of the loan.
- **Solution** – Provide clarity that distributions to equity holders from an acquisition or IPO will be permitted, subject to full repayment of the MSLF loan prior to distributions.
- **Problem** – The restriction on distributions prohibits public companies to repurchase the equity of officers, directors and estates upon termination of employment, death, etc., especially with respect to officers and directors that enter into agreements with a company after the closing of the loan facility.
- **Solution** – Provide a carve-out from the distribution restriction for such equity buybacks.
- **Problem** – The restriction on distributions does not provide for (i) tax distributions or (ii) distributions for fees or expenses that need to be paid by holding companies.
- **Solution** – Allow for (i) tax distributions and (ii) distributions covering fees and expenses that are to be paid by a holding company.

Issues with Restriction on Ability to Repay "Other Debt of Equal or Lower Priority"

- **Problem** – The restrictions on debt of equal or lower priority creates ambiguity that apparently does not allow for revolving loan repayments. Also, unclear whether existing mandatory **pre**payments are permitted.
- **Solution** – Clarify that (i) revolving loans may be repaid at any time and (ii) mandatory **pre**payments (in addition to scheduled amortization payments) are permitted.
- **Problem** – Causes issues for any seller notes and other debt in effect prior to the closing of the MSLF that have repayments due during the term of the MSLF.
- **Solution** – Allow for repayments, including prepayments, required under any agreements that were in effect prior to the closing of the MSLF.
- **Problem** – Does not clarify what is meant by "debt" and whether such term includes items such as earnouts and holdbacks.
- **Solution** – Clarify that the term "debt" in such restriction means only loans and notes.

Interest Rate Issues

- **Problem** – NLF and ELF only provides a SOFR interest rate option. Many lenders are still developing SOFR procedures and language to implement in their loan documents. Also, there is no base rate option, even in a situation where SOFR is unavailable for any reason.
- **Solution** – Allow also for a base rate option to address these issues. In an ELF, permit the reference rate, including alternate rate provisions related to the end of LIBOR, to be the same as the existing loan.

Foreign Ownership

- **Problem** – Does not provide whether foreign ownership of US companies is permitted or whether non-US subsidiaries may be co-borrowers or guarantors (e.g., where they are part of a credit group in an existing loan facility).
- **Solution** – Clarify that foreign ownership of US companies is allowed and non-US co-borrowers and guarantors are allowed in an ELF to the extent that they are obligors under the existing loan.

Practical Access to ELF

- **Problem** – Existing lenders not providing loans under an ELF may have no incentive to consent, especially where there is no debt flexibility under the existing credit agreement and considering the new loans would be secured by the same collateral on a pari passu basis.
- **Solution** – Have the SPV pay a fee to any existing lenders whose consent is needed that consent to the ELF.
- **Problem** – Many of the terms for an ELF will make it hard to utilize the program due to difficulties with including a new tranche in the existing loan facility or providing the ability to have a new tranche in separate loan documentation. The issues include: (i) requirement to secure an ELF by the same collateral, which can present intercreditor issues, (ii) potentially using a different interest rate in SOFR before LIBOR is phased out or (iii) amortization potentially being different than the existing loans.

- **Solution** – One option would be to allow for a holdco structure where the debt is above the entity level where the existing loans sit (and clarify that the borrower does not need to be an operating company).

COVID-19 forces companies to face a profound confluence of concerns daily, at the forefront is the livelihood of their employees. The Federal Reserve is the fabric that keeps this U.S. economy together - wedding consumer and business interests to make it stable and vibrant. We urge the Federal Reserve to be liberal in allowing access to the relief loans intended to keep people employed and businesses operating, and to respect the judgement of business leaders who are willing to assume debt as a means to survive this crisis. Consumer confidence will never rebound if Americans are not gainfully employed.

Respectfully,

Thomas Bohn
President and CEO
Association for Corporate Growth

Policy Center
Public Health & Safety

April 16, 2020

The Policy Center for Public Health & Safety (PH&S) and the American Trade Association of Cannabis and Hemp (ATACH) support efforts to help U.S. businesses, large and small, continue to operate during this public health crisis. Repairing the economy during these uncertain times is critically important regardless of the ongoing policy discussion of cannabis legalization.

Recently announced lending programs, including the Paycheck Protection Program (PPP) and the Main Street Lending Program (MSLP), will go lengths to ensure the liquidity necessary for companies to weather this unprecedented economic shock. Most governors and mayors across the nation have deemed cannabis dispensaries and cultivation facilities as "essential" business functions and the economic benefits from these taxes and employment-generating businesses stand to assist in keeping the economy running in many areas.

However, cannabis businesses as well as ancillary businesses who support them, have been excluded from the original *CARES Act* based upon earlier guidance prohibitions from the SBA. Across the country, many industry operators are suffering and without access to these federal lending programs could be forced to close or lay-off employees. At the same time, the greatest inequity is that these same companies are required to abide by the regulations stemming from the *Cares Act*.

The cannabis industry generates billions of dollars in tax revenues, which lawmakers rely on, and almost 300,000 direct and indirect jobs. As being designated essential services, these operations are in many cases filling the void with tax revenues and employment opportunities while more traditional businesses are unable to maintain either in many cases.

Please consider inclusion of the cannabis industry as eligible for Main Street Lending loans. We would also encourage that the minimum loan size be decreased to $500,000, allowing for a more conservative capital structure for smaller businesses.

Fred Niehaus, PH&S Chairman

Michael Bronstein, ATACH President

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April 16, 2020

Board of Governors of The Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

U.S. Department of the Treasury
The Treasury Building
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Re: Comments to Federal Reserve Main Street Lending Program

Dear Sir/Madam,

We are sending this letter to you in response to the solicitation of comments on the Main Street Lending Program announced by the Federal Reserve and the U.S. Department of the Treasury on April 9, 2020 and the related Main Street New Loan Facility and Street Expanded Loan Facility term sheets. Troutman Sanders and Pepper Hamilton have agreed to merge effective July 1, 2020. We are responding in our joint capacity as law firms that once combined, will have over 1,100 attorneys and 23 offices in the United States with extensive experience representing both lenders and middle market borrowers in a wide variety of debt financings and loan transactions. We are, consequently, quite familiar with customary terms and provisions in lending facilities as well as the issues and concerns lenders and mid-size businesses seeking to participate in the Main Street Lending Program face.

We applaud the efforts the Federal Reserve and U.S. Treasury Department have taken to bolster the economy and ensure that credit continues to flow to small and mid-sized businesses in these unprecedented times. Below are our comments to certain items contained in the Main Street New Loan Facility and Street Expanded Loan Facility term sheets that we believe need clarification and / or modifications.

1. EBITDA and Size Limitations

a. EBITDA

As currently written, the amount eligible borrowers would be entitled to borrow under the Main Street Program is to be determined in part on eligible borrowers' pro forma leverage. We believe that, especially if EBITDA is calculated strictly for purposes of these thresholds, many potential borrowers will not be eligible or will be eligible for much smaller amounts than are necessary to achieve the goals of the Main Street Lending Program. Many middle market businesses that are eagerly hoping for a lifeline from this Program will already have leverage ratios in excess of the proposed limits even if the customary add-backs to EBITDA in addition to just interest, taxes, depreciation and amortization commonly included in most credit agreements are permitted. And in certain industries it is not uncommon to have zero or negative EBITDA, making them ineligible at any leverage level used as a basis for determining financing availability. Consequently, we believe the leverage caps should be significantly increased or dropped altogether allowing eligible lenders to determine the appropriate leverage underwritten for loans based on eligible borrowers' particular facts and circumstances and credit profiles as they would ordinarily. We also believe the Federal Reserve should consider providing an alternative standard so that otherwise sound companies are not excluded. We believe the requirement that eligible lenders retain a 5% interest in eligible loans will provide a sufficient mechanism to maintain prudent lending standards while providing the necessary flexibility to account for the wide variety of borrower profiles.

In addition, if leverage ratios are utilized, we do not believe the leverage ratio limitations should be so drastically different in size for new loans and upsized tranche loans. Instead we believe they should be similar or alternatively a secured leverage ratio could be applied for any secured loan and a total leverage ratio could be applied for any unsecured loan to better address the different risk profiles between new unsecured term loans and upsized tranche loans that may or may not be secured.

b. Upsized Tranche Loan Borrowing Capacity

As currently written, the amount of upsized tranche loans eligible borrowers would be entitled to borrow is limited to 30% of the eligible borrowers existing outstanding and committed but undrawn "bank" debt. As the alternative lending industry makes up a significant portion of middle market lending, many borrowers' lenders are often not banks. We believe the final rules should clarify that loans from non-bank lenders should be taken into account in this component of the limitation on the size of upsized tranche loans.

2. Upsized Tranche Loan Eligibility

The Main Street Expanded Loan Facility permits borrowers with term loans "made by" eligible lenders that was originated before April 8, 2020 to obtain upsized tranche loans to their existing term loans. We believe the final rules should confirm that this requirement does not disqualify eligible borrowers who have existing loans with a syndicate consisting of both eligible and ineligible lenders which is common in the alternative lending industry. We also believe that eligible borrowers with

revolving credit facilities that have a term loan accordion feature should be entitled to obtain upsized tranche loans even if their term loan accordion was not utilized before April 8, 2020.

Finally, we believe the requirement that borrowers' existing term loans were "made by" eligible lenders needs to be clarified. Specifically, if an ineligible lender originated a loan that was assigned or participated to an eligible lender prior to April 2020 we believe that loan should qualify the eligible borrower to obtain an upsized tranche loan. We believe the requirement that upsized tranche loans only be made by eligible lenders will provide the Federal Reserve the needed protection to ensure a bank that it regulates underwrites the loan that is being participated to the Federal Reserve.

3. Eligible Lenders

We believe the eligible lender definition should be expanded to include the Farm Credit Banks and other lending institutions overseen by the Farm Credit Administration.

4. Size and U.S. Eligibility Components

In order to obtain a loan under the Main Street Lending Program an eligible borrower must have (1) either no more than 10,000 employees or had no more than $2.5 billion in 2019 annual revenue and (2) significant operations and a majority of its employees based in the United States. The Main Street New Loan Facility and Street Expanded Loan Facility term sheets are silent as to how to count the number of employees and whether any affiliate aggregation rules will apply either for purposes of the 10,000 employee test, the $2.5 billion annual revenue test, or the U.S. employee majority test.

The SBA's affiliate aggregation rules have resulted in most portfolio companies of private equity sponsors being ineligible to participate in the Paycheck Protection Program. These portfolio companies make up a large percentage of the middle market companies the Main Street Lending Program is designed to support. Accordingly, we do not believe that the SBA's affiliate aggregation rules should apply to the Main Street Lending Program's eligibility requirements. Instead, we believe a bright line rule should be applied to ensure certainty and suggest these eligibility requirements be based on the rules for filing a consolidated U.S. federal tax return.

5. Exceptions to Dividend Restrictions

Eligible borrowers participating in the Main Street Lending Program are prohibited from paying dividends or making capital distributions with respect to their common stock while the loan is outstanding and for 12 months thereafter. Many middle market companies are organized as "pass through" entities for tax purposes. Tax on the earnings of these entities is owed and paid by their equity holders rather than by the entity itself, as is the case with most corporations. As a result, these entities need to make tax distributions to their equity holders in order for their equity holders to

satisfy those tax obligations. If the prohibition on dividends and distributions does not contain an exception for these dividends and distributions for tax obligations, then these "pass through" entities will for all practical effect be precluded from participating in the Main Street Lending Program. We believe there should be a limited exception for such "pass through" entities to make tax distributions so that they are able to participate.

In addition, real estate investment trusts (REITs) are required to distribute substantially all of their income each year. Accordingly, an exception to the dividend restrictions would be necessary for REITs to be able to participate in the Main Street Lending Program.

6. Lender Attestations

The Main Street Lending Program requires eligible lenders to agree not to cancel or reduce any existing lines of credit outstanding to the eligible borrower. As written, this requirement could be construed to preclude lenders from calling a default or cancelling an outstanding line of credit or an existing term loan for legitimate business reasons following a default or event of default even if the eligible loan and other indebtedness of the borrower were being accelerated and remedies were being exercised. We believe the final rules should clarify that this is not the case as such a requirement would likely deter most lenders from participation.

7. Voting Rights

Pursuant to the Main Street New Facility term sheet and the Main Street Expanded Loan Facility term sheet, eligible lenders will sell a 95% participation interest in eligible loans to a newly established special purpose vehicle (SPV) established by the Federal Reserve. Holders of participation rights do not generally have the right to exercise or to cause the selling lender of the participation to exercise voting rights in respect of the loan, except as to certain customary high-level material matters. We believe the Federal Reserve should confirm that will be the case for the SPV's 95% participation in eligible loans.

8. Assignability

Neither the Main Street New Facility term sheet nor the Main Street Expanded Loan Facility term sheet address whether eligible lenders are entitled to assign or sell participation interests in the 5% of eligible loans not participated to the Federal Reserve. We believe they should be entitled to do so (at least to eligible lenders at a minimum) so that the secondary market in loans made under the Main Street Lending Program remains liquid. To the extent necessary to ensure that the record holder of its participation interest who is servicing its participation interest has an economic interest in the loan, the Federal Reserve could require that any such assignment be made together with the SPV's 95% participation interest.

9. Lender Liability and Certainty

In order to ensure lenders are willing to participate in the Main Street Lending Program, we believe the Federal Reserve should expressly confirm that, like Paycheck Protection Program loans, lenders are not liable for the required borrower attestations and instead may rely on them without being required to perform any cumbersome verification procedures. In addition, we believe the Federal Reserve needs to provide clarity to eligible lenders regarding what, if any, their liability will be to the Federal Reserve in the event eligible borrowers default on loans underwritten by eligible lenders. We believe the Federal Reserve needs to provide clarity to eligible lenders as to what rights, if any, eligible lenders may exercise if borrowers fail to comply with their attestations.

Finally, we believe the Federal Reserve should provide clear, "bright line" procedures and requirements in how the participation process will work so that eligible lenders have the certainty they need when making eligible loans that the Federal Reserve SPV will purchase its 95% participation interest in the loan from the lender.

Please contact either Scott R. Saks of Pepper Hamilton LLP (212.808.2734; sakss@pepperlaw.com) or Hazen H. Dempster of Troutman Sanders (404.885.3126; hazen.dempster@troutman.com) if you have any questions about any of our comments.

Very truly yours,

PEPPER HAMILTON LLP TROUTMAN SANDERS LLP

LAICU
Louisiana Association of Independent Colleges & Universities
P.O. Box 3332, Baton Rouge, LA 70821
Phone (225) 389-9885

April 16, 2020

I am writing on behalf of the Louisiana Association of Independent Colleges and Universities (LAICU) as we submit comments on the Main Street Lending Program. Higher Education is amid very challenging times due to the COVID-19 crisis. Louisiana colleges and universities have worked collaboratively to arrive at solutions to meet the ever changing needs of the communities they serve. Louisiana's private nonprofit colleges and universities have led through these unprecedented times remaining committed to collaboration and committed to the communities they serve. The economic realities during this crisis have had a significant impact on LAICU institutions. All campuses shifted to on-line instruction and telework for all non-essential employees. Some campuses have had to furlough employees or freeze hiring on their campuses. Unexpected costs due to the shifts in workforce have resulted in additional strain on campus budgets.

"The impact to the workforce has been systemic and varied. As of 4.10.20, approximately 15% of our benefits eligible employees have utilized the temporary COVID-19 emergency paid leave incurring $170,000 unexpected expense and another 20% of our employees unable to work from home based on the nature of their job. We anticipate a high-level estimate of our institution's exposure to the COVID-19 risk in self-insurance in 2020 could be in the range of 2.4% to 7.3% of total claims costs, or $973,000 to $2,900,000 with 10% of our Campus Security has tested positive." *LAICU Member Institution*

Students, faculty and staff have adapted to the new norm and in many instances, this has caused stress and anxiety for those populations as they worked to seamlessly transition to an all on-line community. Families faced with lay-offs and the strain of the economic downturn are struggling to stay afloat financially, let alone, be able to afford to continue to support their student's education. Most students have returned home, leaving campus facilities empty and end of the year activities and celebrations postponed to later in the year. Auxiliary services have been affected, endowments have dropped, Spring in person recruitment activities cancelled and philanthropic events and activities halted. All the aforementioned factors have resulted in additional, unexpected costs and losses of revenue thawill continue to have a major impact on how our institutions sustain themselves moving forward.

LAICU member institutions report a combined $64,759,732 projected loss in revenue due to the impact of COVID-19 on our campuses. Louisiana higher education is an essential part of the state's growth and economy. Specifically, Louisiana private nonprofit higher education imports talent and retains talent in the over 28,000 students we enroll; LAICU employees are a dynamic workforce of 8,673 dedicated individuals across the state and our institutions generate $1,335,350,490 in total expenditures to the state annually. Through it all our campuses have remained committed to their missions to deliver learning, drive research and innovation and to serve their communities with compassion, even as everything around them is changing rapidly. Furthermore, we have embraced this challenge as an opportunity to re-imagine the path forward and how we will continue to contribute to the revitalization of Louisiana and the nation. Access to capital to ensure that our institutions remain a central part of driving Louisiana's economy is now more important than ever.

Therefore, we are sharing these comments illustrate our position and to request greater clarification about the Main Street Lending program and whether non-profits are eligible, because the current guidance is ambiguous. We request the guidance be updated by the Federal Reserve to clearly include private nonprofit colleges and universities as eligible. Additionally, we request that there be greater flexibility with the employee threshold criteria, by exempting student workers from the criteria. Since many of our campuses closed and student workers have returned home for the remainder of the Spring and Summer sessions, they are not on campus to work and should not be counted for the employee threshold. The financial gap between where our campuses are now and what it will take to meet our current and impending economic concerns is broad so it is imperative that our colleges and universities have access to low-interest loans so that we can continue to support and educate our students and provide employment opportunities for our faculty, staff and administrators. Thank you in advance for your consideration of these comments and we look forward to learning more and working with you in responding to the COVID-19 crisis.

Respectfully,

Kenya Messer Ed.D.
President and CEO

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Spartan Shops, Inc.
Administration & Finance

San Jose State University
One Washington Square
San Jose, CA 95192-0153

TEL: 408-924-1901
www.spartanshops.com

April 16, 2020

To whom it may concern:

On behalf of Spartan Shops Inc., a California Nonprofit Public Benefit Corporation, and an auxiliary organization as specified in California Education Code, Section 89901 and in Title 5 of the California Code of Regulations, Section 42400 for San Jose State University, I submit the following comments with respect to the "Main Street Lending" facility.

By way of background, the CSU is the largest system of four-year higher education in the country, with 23 campuses, 53,000 faculty and staff and 482,000 students. The auxiliary organizations are nonprofit organizations that are authorized to provide supplemental services and support to the campus of the California State University.

As with many entities across the country, the current health crisis combined with steps taken to reduce the spread of COVID-19 have taken a tremendous financial toll on the CSU, its campuses, and its auxiliary organizations. Across the university system, CSU campuses have moved classes to online instruction, which is one of many factors driving significant cost increases in providing a high-quality postsecondary education. At the same time, revenue streams have decreased significantly and refunds have been made to students in a number of areas, including student housing, parking, and student dining. Maintenance and debt service for unused facilities continues, even though revenue is no longer generated. In order to meet these challenges and keep personnel employed, public universities and non-profit entities will require access to low-cost capital, such as that envisioned by the Main Street Lending facility. The CSU notes:

1. There has been confusion about the Main Street Lending program and the eligibility of public universities and non-profits because the current guidance is silent. We ask that the Federal Reserve update the guidance to clarify that non-profit entities and public institutions of higher education with direct borrowing authority are eligible for the Main Street Lending program; and

2. Clarity is needed with respect to the definition of employment of student workers. Specifically, the CSU asks that student workers be exempted for the purposes of the employee threshold for eligibility (businesses with under 10,000 employees). We hope that future guidance from the Federal Reserve will make it clear that institutions can exempt student workers from the employee count. Many of our campuses employ student workers as a part of overall student financial support to help pay for college and to provide students with work experiences while keeping them close to campus. With

our campuses closed, all or most of these student employees are no longer present, and therefore should not be included for the purposes of the employee threshold.

Thank you in advance for your attention to these comments.

Charlie Faas
Interim Board Chair
Spartan Shops, Inc

Metals Service Center Institute
100 YEARS **STRONG**

M. Robert Weidner, III CAE
President and Chief Executive Officer

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April 16, 2020

To Whom It May Concern,

On behalf of the Metals Service Center Institute's (MSCI) more than 250 member companies, which have more than 2,300 locations across North America, I am grateful for the opportunity to respond to your request for information on the Main Street Lending Program.

The leverage restrictions included in Section 5(ii) of the Main Street New Loan Facility term sheet and 5(iii) of the Main Street Expanded Loan Facility term sheet, both published on April 9, 2020, appear to unfairly exclude several MSCI member companies that rely solely, or predominantly on asset-based revolving credit facilities. According to the term sheets, the calculation of Maximum Loan Size for both New Loan facilities and Expanded Loan Facilities, borrowers must include "committed but undrawn debt" as a component of leverage.

As you know, undrawn commitments are generally not accessible. They represent surplus collateral, or cushion, and banks impose significant penalties if this surplus is drawn down. Therefore, these commitments should not count as debt. While companies with conservative capital structures may qualify under the higher leverage limit on the Expanded Loan Program, this puts them in a position of having to modify already complex, secured loan agreements with terms significantly different from those described in the term sheets.

MSCI member companies represent irreplaceable parts of the industrial metals supply chain. They need working capital facilities to fund the restart of the U.S. economy. Left as is, the term sheets would preclude many metals service centers from participating in the Main Street Lending Program. That obviously was not the intent of Congress.

The industrial metals industry may be uniquely impacted by the "committed but undrawn debt" restriction because use of that credit method is widely used to finance inventory, and we would therefore ask that you consider removing that condition in its entirety from the term sheets. Absent that, we urge the Federal Reserve to consider modifying the Loan Facility Term sheets to allow borrowers to calculate their loan amounts using only the amount of "committed but undrawn debt" that is available to them without punitive bank responses.

To address this, we recommend two options:

Option 1:

- Substitute "available" for "committed" in item 5. (Both terms are universally understood terms in asset-based lending, but they mean two very different things.)
- Add the following clarifying language: "For purposes of determining the eligible loan amount (or, for purposes of this provision), an eligible borrower's existing outstanding and available but undrawn bank debt does not include any amount that, if drawn, would cause the Borrower to suffer fees, penalties, restrictions, or limitations on its operations. Lease financing obligations are also excluded."

Option 2:

- No change to the term committed in item 5.
- Add the following clarifying language: "For purposes of determining the eligible loan amount (or, for purposes of this provision), an eligible borrower's existing outstanding and committed but undrawn bank debt does not include any amount that is not currently available under the terms of the facility, nor does it include any amount that, if drawn, would cause the Borrower to suffer fees, penalties, restrictions, or limitations on its operations. Lease financing obligations are also excluded."

This matter is not a small one. Companies in the metals supply chain would be adversely impacted by these provisions. These businesses operate in every state and collectively employ millions of workers. If the loans offered under the Main Street Loan Facilities are not able to provide them with a lifeline, these companies are in danger of closing for good.

Thank you for your consideration of this matter.

Sincerely,

Bob

M. Robert Weidner, III
President & CEO, Metals Service Center Institute

SARAH
LAWRENCE
COLLEGE

THE PRESIDENT

April 16, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Comments on the Main Street Lending Program

To whom it may concern:

On behalf of Sarah Lawrence College, I write to ask that the Federal Reserve update guidance to clarify that private, not-for-profit colleges and universities are eligible for the Main Street Lending program. In addition, I ask that guidance be updated so that student workers are exempted for the purpose of the employee threshold (under 10,000 employees).

Private, not-for-profit colleges and universities like Sarah Lawrence College are major employers with significant economic impact in their communities. We are facing a major cash flow crisis caused by reduced revenue and increased spending resulting from the COVID-19 pandemic. Sarah Lawrence College has a $200 million economic impact on our community and we support 2,000 jobs.

Room and board refunds alone are a significant new expense, Sarah Lawrence has refund $4 million to students, a huge cost that could not have been anticipated. Additionally, we have seen our auxiliary sources of revenue dry up as campus events and summer programs are cancelled.

Meanwhile, costs related to the pandemic are rising. Our pivot to remote learning required an unanticipated investment in technology and we are also facing costs including deep cleaning campus buildings and increased security expenses.

Low-cost loans like the Main Street Lending program would help Sarah Lawrence College address the financial impact of the COVID-19 crisis. However, there are two major barriers to our ability to access this and other loan programs offered by the federal government:

- Although private, not-for-profit colleges and universities, including Sarah Lawrence College, are often some of the largest employers in their communities, there is confusion about whether non-profits are eligible for the Main Street Lending program. We ask that the Federal Reserve update the guidance to clarify that public and private nou-profit colleges and universities, with direct borrowing authority, are eligible for the Main Street Lending program.

- We ask that student workers be exempted for the purpose of the employee threshold for eligibility (businesses with under 10,000 employees). We hope that future guidance from the Federal Reserve will make it clear that institutions like ours can exempt student workers from the employee count. Sarah Lawrence College employs student workers across campus as a part of their overall financial support to help pay for college and to provide students with valuable work experiences. With campus closed for the spring semester, these employees have left campus and should not be counted toward the employee threshold.

Low-interest loans will provide vital support to private, not-for-profit colleges and universities like Sarah Lawrence College that are working to continue to fulfill their educational missions and support their communities despite the severe financial impacts of the pandemic. We look forward to working with you on this and other loan programs as the Federal Reserve responds to the COVID-19 crisis.

Sincerely,

Cristle Collins Judd
President

April 16, 2020

Re: Main Street Lending

On behalf of the Colorado Behavioral Healthcare Council, which is Colorado's membership association for Community Mental Health Centers (CMHCs), Managed Service Organizations, and two specialty clinics, I write to express our concern that the Main Street Loan Facilities announced on April 9th fails to provide essential relief to nonprofit organizations and appears inconsistent with the requirements of §4003(c)(3)(D) of the CARES Act.

If the Secretary has omitted nonprofits with the intent of creating a separate Mid-Size loan program to extend credit to nonprofits, then the Treasury and the Fed should communicate this immediately to prevent more furloughs of nonprofit employees at a time that demand for the services provided by nonprofits is growing exponentially.

Across Colorado, CMHCs and other essential nonprofit community healthcare providers of all sizes are on the frontlines of the COVID-19 response while simultaneously preparing for the potentially devastating aftermath of reduced revenue due to social distancing guidelines and the overall impact of those guidelines on our economy and state budget. Many of these organizations employ hundreds of essential and clinical professionals to provide the care and services upon which communities rely. The threat of furloughs for this workforce will further exacerbate and prolong the impacts of this pandemic, especially in the behavioral health field as the need and demand for care continues to grow each day.

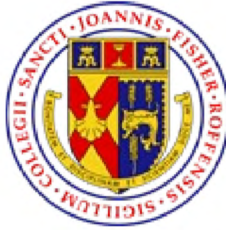
A program that provides financing for loans to nonprofits with 500 to 10,000 employees and meets the requirements of §4003(c)(3)(D) of the CARES Act should include the following terms:

- Include an interest rate of 0.50% (50 basis points) for 501(c)(3) charitable nonprofits at a 5 year amortization;
- Make it a priority to support 501(c)(3) charitable nonprofits responding to COVID-19 relief effort;
- Require lenders to make a proportionate number and value of loans to nonprofits in order to prevent the crowding-out effect seen in the Paycheck Protection Program;
- Set a date certain for commencement of employee retention provisions; and
- Require payments not to be due until two years after a direct loan is made.

CBHC requests that the Treasury and the Fed exercise their authority to convert loans under this program into grants, similar to the terms of the Paycheck Protection Program. Nonprofits are on the front lines of responding to COVID-19. The Mid-Size Loan program should treat larger nonprofits equitably as they face the same challenges as smaller nonprofits with respect to COVID-19.

Sincerely,

Moses Gur
Director of Policy & Member Engagement, Colorado Behavioral Healthcare Council
mgur@cbhc.org | 720-573-9368



OFFICE OF THE PRESIDENT

April 16, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Comments on the Main Street Lending Program

To whom it may concern:

On behalf of St. John Fisher College, I write to ask that the Federal Reserve update guidance to clarify that private, not-for-profit colleges and universities are eligible for the Main Street Lending program. In addition, I ask that guidance be updated so that student workers are exempted for the purpose of the employee threshold (under 10,000 employees).

Private, not-for-profit colleges and universities like Fisher are major employers with significant economic impact in their communities. We are facing a major cash flow crisis caused by reduced revenue and increased spending resulting from the COVID-19 pandemic. Fisher has a $252 million economic impact on our community and we support 877 jobs.

Room and board refunds alone are a significant new expense, Fisher anticipates that we will refund $3.1 million to students, a huge cost that could not have been anticipated. Additionally, we have seen our auxiliary sources of revenue significantly decrease as campus events and summer programs are canceled.

Meanwhile, costs related to the pandemic are rising. Our pivot to online instruction required an unanticipated investment in technology and we have also incurred additional costs including facilities cleaning and increased security expenses.

Low-cost loans like the Main Street Lending program would help Fisher address the financial impact of the COVID-19 crisis. However, there are two major barriers to our ability to access this and other loan programs offered by the federal government:

- Although private, not-for-profit colleges and universities, including Fisher, are often some of the largest employers in their communities, there is confusion about whether non-profits are eligible for the Main Street Lending program. We ask that the Federal Reserve update the guidance to clarify that public

and private non-profit colleges and universities, with direct borrowing authority, are eligible for the Main Street Lending program.
- We ask that student workers be exempted for the purpose of the employee threshold for eligibility (businesses with under 10,000 employees). We hope that future guidance from the Federal Reserve will make it clear that institutions like ours can exempt student workers from the employee count. Fisher employs student workers across campus as a part of our overall financial support to help pay for college and to provide students with valuable work experiences. With campus closed for the spring semester, these employees have left campus and should not be counted toward the employee threshold.

Low-interest loans will provide vital support to private, not-for-profit colleges and universities like Fisher that are working to continue to fulfill their educational missions and support their communities despite the severe financial impacts of the pandemic. We look forward to working with you on this and other loan programs as the Federal Reserve responds to the COVID-19 crisis.

Sincerely,

Gerard J. Rooney, Ph.D.
President

FINANCIAL SERVICE CENTERS OF AMERICA, INC.
A NATIONAL TRADE ASSOCIATION

April 16, 2020

Via Email to regs.comments@federalreserve.gov
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

RE: Main Street New Loan Facility

Dear Sir/Madam:

The Community Financial Services Association of America, Ltd. (CFSA) [1] and Financial Service Centers of America, Inc. (FISCA) [2] submit these comments regarding the Federal Reserve System's Main Street New Loan Facility ("Facility"). We are pleased that the Federal Reserve is offering a program intended to facilitate lending to small and medium-sized businesses, which would include our associations' respective members. This program could be an important financial credit option to businesses struggling to continue operations during this difficult pandemic.

Members of our two associations are all licensed and regulated non-depository financial businesses that offer important financial services and products to millions of Americans every year. Our members have been deemed to be "essential" businesses by governors and regulators throughout the country and are part of the financial services sector identified as Critical Infrastructure by the Department of Homeland Security. Our members have endeavored to stay open to serve customers while adhering to CDC and other public health guidelines.

In order to continue to operate during this difficult pandemic, businesses need as many loan and grant options as possible. In light of the funding issues and prohibitive requirements associated with the Small Business Administration's Paycheck Protection Program and the Economic Injury Disaster Loan, we would ask that the agency eliminate certain restrictions that would serve to limit program access. For example, we ask that the minimum loan size of $1 million be removed and that businesses at all employment levels receive full consideration.

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[1] CFSA's member companies represent approximately half of all traditional small-dollar loan storefronts across the country, in more than 30 states. CFSA members provide credit to more than 19 million households, as well as a wide range of other financial products and services, including check cashing, installment and auto title loans, prepaid debit cards, as well as bill payment and tax preparation services. CFSA members' storefront locations put us in the heart of many financially underserved communities.

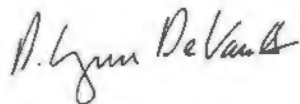
[2] FiSCA represents more than 4,000 neighborhood financial service center locations throughout the U.S. offering a wide array of regulated financial products and services, including check cashing, money orders, electronic bill payments, money transfers, ATM access, government benefit and payroll payments, tax preparation, prepaid debit cards, deposit acceptance services, and small dollar loans where permitted by state law.

Additionally, since the implementation of the Paycheck Protection Program (PPP) that was created under the CARES Act has become inordinately restrictive through the imposition by the U.S. Small Business Administration of the SBA 7(a) program, an interpretation that was not intended by Congress, we submit that it is imperative that ample additional funding be made available to ALL small and medium-sized businesses, not just those that meet the requirements of the 7(a) program. Finally, in light of the funding issues with the PPP, we would ask that the Fed implement a similar loan forgiveness characteristic to the Main Street program for small businesses.

Thank you for your consideration of these comments.

Very truly yours,

COMMUNITY FINANCIAL SERVICES
ASSOCIATION OF AMERICA



D. Lynn DeVault
Chair, Board of Directors

FINANCIAL SERVICE CENTERS
OF AMERICA

Ed D'Alessio
Executive Director

Post Office Box 1600
San Antonio, Texas
78296-1600

April 16, 2020

Via Electronic Mail

Re: *Main Street Loan Program*

Ladies and Gentlemen:

Frost Bank submits this letter in response to your request for comments about the two Main Street Lending program (MSL) term sheets published on April 9th. We respect the Federal Reserve's goal of launching the MSL in a deliberate and thoughtful – and yet still timely manner. While Frost is very supportive of the MSL's objectives, we believe that refinements to the term sheets – including FAQs clarifying terms – would encourage Frost to participate in the program and offer it to our clients as a meaningful solution. Our comments are organized to align with the topic headings in the two MSL term sheets

<u>Eligible Borrowers</u>

- What about businesses that meet the Eligible Borrowers definition, but which are incorporated in non US jurisdictions for tax or other reasons? Are US subsidiaries of foreign domiciled borrowers eligible?
- Does the Fed intend to apply affiliation rules to count employees or measure annual revenues?
- Will eligibility guidelines align with PPP (including not-for-profits)?
- Will bank insiders as defined by Regulation O be eligible?

<u>Eligible Loans</u>

- Must the loan be first lien secured, or just secured (for extended MSL program)? Would a loan secured by a collateral pool comprised of a mix of assets variously subject to first or second liens be acceptable?

- Guidance and clarity with regards to the EBITDA measurement:
  - o EBITDA definition – 2019 "reported" EBITDA - What if the horrower doesn't have a 2019 audit?
  - o Totality of debt in the Debt to EBITDA ratio? Are all classes of debt included? (secoud lieu, mezzanine, subordinated debt, convertible debt etc).
  - o More clarity on EBITDA calculations; does this mean GAAP EBITDA? Is there a potential for add hacks and if so what percentage would be acceptahle for the MSL program?

Frost Bank is a subsidiary of Cullen/Frost Bankers, Inc. NYSE Symbol: CFR, a Texas financial services company offering banking, investments and insurance.

  - "Bank debt" versus "debt" when sizing the potential facility and leverage metrics at the time of underwriting. The MSL new facility term sheet says "debt" but the add-on MSL facility term sheet uses the term "bank debt." Could we have clarity on why the difference and how to account for "non" bank debt like mezzanine debt, etc.
- Is the leverage test (4x or 6x) based on lease adjusted leverage?
- How will the interest accruing during the one year payment deferral period be calculated and payable? Is 12 months of interest due when contractual payments commence?
- Will the Fed apply leveraged lending guidelines to MSL loans?
- SOFR…Is this only option? Frost is actively preparing for a non-LIBOR future, like many banks our current systems cannot handle the compounding of interest required with SOFR rates. We suggest consideration of another rate options to address operational concerns we face with a SOFR only MSL program. The promissory notes could include the standard fallback language to address the unavailability of LIBOR in the future. It is also meaningful to note that SOFR is not representative of our cost of funds and that we are proponents of the Ameribor rate. Regardless of the rate used for the MSL notes, we suggest an interest index rate floor (before addition of the spread points) of no less than zero, to address operational concerns with our systems with its inability handle negative interest rates.
- Term sheets indicate that the loans may have maturities of up to 4 years, but will facilities that are much shorter in tenure allowable? What type of amortization is anticipated… monthly, quarterly, etc.?

<u>Loan Participations</u>

- Voting Rights – What is Fed's expectation about its SPV's holdings? The sooner the Fed publishes its form of a Participation Agreement for review and comment the better. Fed control of 95% of the loan balance of new loans under the MSL program is problematic, because it lacks the track records built by experience with other loan participations with other banks. How will required amendments of existing facilities be handled while loan is outstanding? Rules of engagement need to clear and understood.
- Process – if we underwrite to our standards incorporating the parameters outlined, is the Fed committed to fund their portion? How will Frost know when the MSL pipeline of available funding is nearing exhaustion? Will the Fed or the SPV need to opine on/approve the structure and underwriting of the loans? Is our commitment to its client subject to advance Fed approval?

<u>Required Attestations</u>

- Although loan proceeds cannot be used to refinance existing debt, are all other uses permissible? For example, can a borrower use proceeds to consummate acquisitions? Make capital expenditures?
- Based on our understanding of the current term sheets, existing loans and lines of credit are effectively subordinated or diluted to MSL loans. We understand that Fed's objective is to prevent banks from refinancing current bank debt, but we ask that the Fed clarify that normal course repayments/reductions are permissible. Moreover, there will be asset

sales which should trigger a reduction of prior debt (especially if the asset was the collateral for the prior debt).

  - Impact of new MSL debt on syndicated and participated deals (SNCs and non-SNCs) – The consent of other lenders to the borrower will be required prior to making MSL loans. Must all other lenders participate in the 5% risk share or can one or more of the lenders take larger shares so that the total lender share satisfies the 5% risk share?
  - The term sheets' prohibition of repayment/cancellation of any debt will cause challenges to normal operations by both banks and their borrowers. Without reasonable guidance, banks will be concerned about future defaults on small dollar maturities as well as limitations on their ability to restructure debts.
  - It is suggest that repayment prohibitions not apply to ordinary course operation of RLOCs, should not require lenders to renew RLOCs and not prohibit borrowers from repaying, or lenders from accepting payments on, RLOCs when contractually due (including at maturity).
- We suggest clarification that the certification relating to "reasonable effort to maintain payroll" does not prevent the Borrower from doing necessary restructurings while the MSL facility is outstanding. The pandemic has disrupted many business models and will likely require changes in payrolls to permit business to survive.
- With respect to the borrower's required certification that "exigent circumstances presented by the coronavirus disease 2019 ("COViD-19") – if the borrower was stressed before, and COVID made it worse, can the borrower be an eligible borrower? Will we be able to take additional 5% stakes in borrowers if the credit is already a criticized credit? More important, is the Fed willing to purchase 95% of a criticized credit?

Loan Originations and Servicing

- We recommend that the Fed provide its desired form of Promissory Note and supporting documents, including whatever wording it desires in the note and loan agreement, if one is appropriate, to evidence other borrower attestations or covenants.
- Management of the facility with the SPV as a 95% participant – voting rights, default situations, structure, information flow – what are the Fed's expectations?
- What will the take out commitment look like from Fed.? For example, a bank approves but then Fed does not approve. What happens? Approvals will need to be subject to Fed purchasing 95% of the commitment. Is Fed funding simultaneously with bank funding?

Facility Termination

- Are there any mandatory prepayment conditions?
- What if default, bankruptcy or other debilitating financial event occurs?

Frost bank appreciates this opportunity to comment on the Federal Reserve's Main Street lending programs. We look forward to assisting America's businesses survive this difficult period. If you have any questions, please do not hesitate to contact me by phone at 210 220-4834 or by e-mail bperotti@frostbank.com.

Sincerely,

William L Perotti
Frost Bank
Group EVP and Chief Credit Officer
bprerotti@frostbank.com
(210) 220-4834

NEW YORK INSTITUTE OF TECHNOLOGY
Office of the President

April 14, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Comments on the Main Street Lending Program

To Whom It May Concern:

On behalf of New York Institute of Technology, I write to ask that the Federal Reserve update guidance to clarify that private, not-for-profit colleges and universities are eligible for the Main Street Lending program. In addition, I ask that guidance be updated so that student workers are exempted for the purpose of the employee threshold (under 10,000 employees).

Private, not-for-profit colleges and universities like New York Institute of Technology (New York Tech) are major employers with significant economic impact in their communities. We are facing a major cash flow crisis caused by reduce revenue and increased spending resulting from the COVID-19 pandemic. In New York, private non-for-profit colleges and universities have a nearly $90 billion economic impact and support more than 415,600 jobs. New York Tech's economic impact in New York State is more than $ 634 million (direct and indirect) and we support, directly and indirectly, close to 5,150 jobs.

We have seen our auxiliary sources of revenue dry up as campus in-person events and summer programs are cancelled. Meanwhile, costs related to the pandemic are rising. Our pivot to remote instruction required an unanticipated investment in technology infrastructure and we are also facing costs including deep-cleaning campus buildings and increased security expenses.

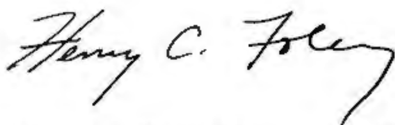
Low-cost loans like the Main Street Lending program would help New York Tech address the financial impact of the COVID-19 crisis. However, there are two major barriers to our ability to access this and other loan programs offered by the federal government:

- Although private, not-for-profit colleges and universities, including New York Tech, are often some of the largest employers in their communities, there is confusion about whether non-profits are eligible for the Main Street Lending program. We request that the Federal Reserve update the guidance to clarify that public and private non-profit colleges and universities, with direct borrowing authority, are eligible for the Main Street Lending program.

- We ask that student workers be exempted for the purpose of the employee threshold for eligibility (businesses with under 10,000 employees). We hope that future guidance from the Federal Reserve will make it clear that institutions like ours can exempt student workers from the employee count. New York Tech employs student workers across two New York campuses as a part of their overall financial support to help pay for college and to provide students with valuable work experiences. With campuses closed for the spring semester, these employees have left campus and should not be counted toward the employee threshold.

Low-interest loans will provide vital support to private, not-for-profit colleges and universities like New York Institute of Technology that are working to continue to fulfill their educational missions and support their communities despite the severe financial impacts of the pandemic. We look forward to working with you on this and other loan programs as the Federal Reserve responds to the COVID-19 crisis.

Sincerely,



Henry C. "Hank" Foley, Ph.D.
President

California State University
SAN MARCOS

CSUSM
Corporation

CSUSM Corporation California State University San Marcos 333 S. Twin Oaks Valley Rd. San Marcos, CA 92078
Tel: 760.750.4700 **Fax:** 760.750.4710 corp@csusm.edu www.csusm.edu/corp

April 16, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 20551

To whom it may concern:

On behalf of the California State University San Marcos Corporation (CSUSM Corporation), I submit the following comments with respect to the "Main Street Lending" facility.

By way of background, CSUSM Corporation is a non-profit, separately organized legal entity of California State University San Marcos (CSUSM). CSUSM Corporation with its 205 staff and 186 student employees plays an important role in the campus community, existing to provide support, advance the purpose and goals, and meet the evolving needs and educational mission of CSUSM and the 17,000 students it serves. CSUSM Corporation operations include administration of sponsored programs, human resource and payroll services, management of commercial enterprises, childcare services, campus dining, catering, university store operations, student housing, summer conferencing, real estate development, property management and entrepreneurial operations.

As with many entities across the country, the current health crisis combined with steps taken to reduce the spread of COVID-19 have taken a tremendous financial toll on CSUSM Corporation and the students we serve. Last month, CSUSM moved quickly to transition all instruction at the university to a virtual learning environment, one of many factors driving significant cost increases for CSUSM Corporation. In fairness to students and their families, the university has issued refunds to students in a number of areas, including housing, parking, and dining. Additionally, other revenue streams have decreased significantly for CSUSM Corporation, even though maintenance and debt service for unused facilities continues.

In order to meet these challenges and keep personnel employed, public universities and non-profit entities will require access to low-cost capital, such as that envisioned by the Main Street Lending facility. The CSUSM Corporation notes:

1. There has been confusion about the Main Street Lending program and the eligibility of public universities and non-profits because the current guidance is silent. We ask that the Federal Reserve update the guidance to clarify that non-profit entities and public institutions of higher education with direct borrowing authority are eligible for the Main Street Lending program; and

2. Clarity is needed with respect to the definition of employment of student workers. Specifically, CSUSM Corporation asks that student workers be exempted for the purposes of the employee threshold for eligibility (businesses with under 10,000 employees). We hope that future guidance from the Federal Reserve will make it clear that institutions can exempt student workers from the employee

count. Many of our campuses employ student workers as a part of overall student financial support to help pay for college and to provide students with work experiences while keeping them close to campus. With our campuses closed, all or most of these student employees are no longer present, and therefore should not be included for the purposes of the employee threshold.

Thank you in advance for your attention to these comments.

Sincerely,

Bella Newberg
Executive Director, CSUSM Corporation
AVP Business Development

MAYACAMAS VINEYARD

1155 LOKOYA ROAD

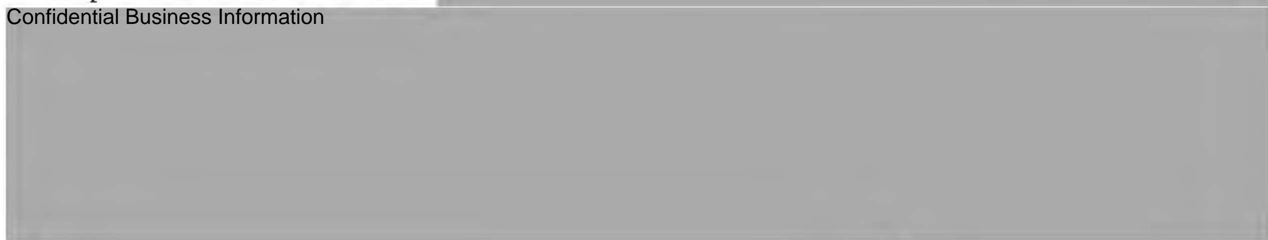
NAPA CA 94558

Mayacamas Vineyard ("Mayacamas") is a Grape Grower, Wine Producer, and Winery, in Napa Valley, California, founded in 1889. Mayacamas currently employs 14 full time employees.

Mayacamas is at risk of being significantly damaged by the COVID-19 shutdowns – because revenue has been abruptly shut off in regard to our winery tours and tasting room, as well as our retail wine business. Since March 16th, our winery and tasting rooms have been shut down. The government relief provided to date fails to adequately account for our circumstances.

The problem for us is material. Confidential Business Information

Confidential Business Information



Confidential Business Information We are not even eligible for the same aid as the largest fast food or hotel companies - each of which has many times our revenue – simply because hotels and restaurants were granted a waiver from the traditional affiliation rules applicable to SBA loans under the Payment Protection Program.

The existing legislation creates a dangerous void. Retail and tourism companies like us are a necessity, we fuel significant parts of the economy and account for many jobs in the U.S.

Therefore, we are respectfully requesting that Lenders provide borrowers an opportunity for a forbearance including the waiver of defaults, late fees and cash traps for a term of at least one hundred eighty (180) consecutive days for said loan.

1. **Paycheck Protection Program and Affiliation Rules.** The Paycheck Protection Program (PPP) was conceived to provide direct funding to small businesses to keep their workers on the payroll. Unfortunately, the SBA's affiliation rules prevent many small businesses from accessing this program. While there has been significant discussion about how these rules exclude many investments in small business made by private equity and venture capital firms, there has been little or no discussion about family-owned businesses that cannot apply for relief. Stores are not making sales, property owners are not receiving rents, vendors are not being paid, businesses are seeking relief from lenders, and employees are being asked to take pay reductions or furloughs until we can recover and reopen.

Families own many small businesses. In fact, many families own multiple small businesses that operate independently of one another despite common family ownership or officers. Many of these families structure their ownership in businesses through trusts. The SBA affiliation rules cause family-owned businesses to be aggregated although there is no practical way for capital to be shared by those businesses. Each business has a duty to its stakeholders – its workers, its customers, and its owners. These businesses do not have a duty to each other. Trust ownership of business presents a unique problem in a crisis such as this. The fiduciary of the trust has a duty to the trust first. Should a family that owns (via trust or otherwise) multiple small businesses and is an active job creator in each of these businesses be penalized by having these businesses precluded from accessing the PPP funding designed specifically to maintain and preserve jobs? Absent a modification, the affiliation rules as presently written do just that by aggregating commonly owned but independent small businesses resulting in an inability for these businesses to access the PPP capital needed, and intended for, the very purpose of job preservation.

We ask our leaders to get relief for as many as possible as soon as possible. Accessing PPP funding will allow small businesses to prepare for the "New Reality." Workers can be put back to work cleaning and preparing for business to reopen. The affiliation rules must be relaxed for small businesses to provide funding for a reopening.

We ask that the SBA waive all affiliation rules for entities operating across one or more unrelated NAICS codes but who meet the size standards for each NAICS code. We also ask that the SBA allow subsidiaries and divisions of a parent corporation to consider the function performed by each to determine the proper NAICS code to apply for a PPP loan.

In addition, the size and length of the program will need to be increased and extended should these recommendations be considered and adopted.

2. **Provide relief to impacted commercial property owners on the condition that such relief be shared with retail tenants.** Provide relief to impacted commercial property owners on the condition that such relief be shared with retail tenants. Implementing the CARES Act's relief for homeowners and renters, the Federal Home Financing Authority provided multifamily borrowers forbearance of their mortgage payments with the condition that they also agree to the suspension of all evictions for renters unable to pay rent due to of COVID-19. Under the terms of Fannie Mae's program, for example, mortgage loan payments are suspended for a period up to 90 days and affected tenants must be permitted to repay missed payments over a period of no more than 12 months, without late charges (in addition to the tenant's regular monthly rent). In Ohio, Governor Mike DeWine signed Executive Order 2020-08D, which requests that landlords and lenders provide Ohio commercial borrowers and small-business tenants facing "financial hardship due to the COVID-19 pandemic" with a 90-day reprieve on rent or mortgage payments and evictions. Municipalities in California have issued restrictions on

commercial eviction and foreclosure actions. Multiple other states' courts have simply suspended all foreclosure and eviction proceedings. This patchwork approach adds tremendous uncertainty to the markets and heightened inequality among retail tenants, commercial property owners, and lenders resulting entirely from state and local leaders' attention to the issue. The impact of COVID-19 does not discriminate between residential and commercial properties or property owners, and the relief available should not either. According to analysis from Fitch Ratings, more than 2,600 commercial real estate borrowers — representing over $49 billion in mortgage loans — sought potential debt relief in the first two weeks of the U.S. COVID-19 outbreak alone. Those relief requests reportedly have been focused in large part on loan payment forbearance. Retailers fully support these forbearance efforts. However, the terms of any relief provided to commercial real estate borrowers should be modeled after the CARES Act such that any relief must be provided on the condition that all eviction and foreclosure action against retail tenants be similarly suspended with repayment terms for the missed payments that can extend over no more than 12 months.

3. **Main Street Lending Program.** The Federal Reserve's stated purpose of the Main Street Lending (MSL) Program is to "[e]nsure credit flows to small and mid-sized businesses." However, to meet that goal, the following clarifications should be provided in the Program rules:

   A. <u>Calculating EBITDA</u>. Maximum loan amounts are calculated, in part, using the borrower's 2019 EBITDA. To maximize the amount of credit available to eligible businesses, borrowers should receive the benefit of non-GAAP add-backs to EBITDA, including equity in earnings of unconsolidated affiliates as well as adjustments for one-time and non-recurring items.

   B. <u>How to count employees</u>. The Program refers to "reasonable efforts" to maintain payroll and retain workers, but many organizations were forced to furlough or lay-off employees weeks ago. Therefore, the relevant employee retention level should be as of the date of the loan application, if at all. Further, an entity that does not have employees but otherwise satisfies the definition of an eligible borrower also should be permitted to participate.

   C. <u>Attestation by borrowers regarding debt</u>. Borrowers must commit to refrain from using MSL funds to repay other "debt of equal or lower priority." This restriction on payment of debt should not include mortgages existing as of March 13, 2020.

   D. <u>Maximum Loan Size</u>. Loan size ranges from a minimum of $1 million to a maximum of $25 million or four times 2019 EBITDA for the Main Street New Loan Facility or six times 2019 EBITDA for the Main Street Expanded Loan Facility (when aggregated with the borrower's existing outstanding and committed but undrawn debt). Borrower's existing outstanding and committed but

undrawn debt should not include mortgages or capitalized lease obligations when calculating maximum loan size. These items should be considered operating costs for calculating maximum loan size.

E. What constitutes "good prior credit before the crisis." The Federal Reserve press release notes that this program is available for businesses that were "in good financial standing before the crisis." The rules should make clear that borrowers satisfy this condition if they were not a debtor in a bankruptcy proceeding as of March 13, 2020.

F. No additional restrictions on borrowers. Borrowers under the MSL Program must agree to the compensation, stock repurchase, and dividend restrictions that apply to direct loan programs under the CARES Act. However, the rules should clarify that capital distributions for flow-through entities who must make distributions to owners for taxes are permitted.

4. **Net Operating Loss Carryback**. The CARES Act allows companies to use Net Operating Losses (NOL) recorded during 2020 to reclaim taxes paid in prior years. As currently structured, those refunds will be received by companies in mid- to late-2021. That is, the relief will arrive in 12-15 months – not now, when that liquidity is urgently needed. Further, companies that did well in prior years are at a material disadvantage through no fault of their own. For companies that may have recorded a loss in 2019 with profits in earlier years, they have an ability to request a refund and can use the IRS digital filing system to expedite such refund. Without the fixes below, companies that have done well in prior years are unfairly denied the same immediate access to cash. To resolve these inherent inequities, we propose:

   A. Allow companies to use 1st quarter results and estimated full year taxable income to immediately file for 2020 loss carrybacks, gaining immediate access to approximately 80% of the funds. Drawing 80% of the funds provides the government a buffer to use against quarterly true ups with actual 2020 net operating losses reconciled as a part of 2020 tax filings, **or**

   B. Allow funds already allocated to be lent to companies at attractive rates as an advance on estimated NOL carryback refunds.

For questions contact srossetti@me.com at (240)401-4521.

Respectfully submitted,

Joseph Schottenstein
President
April 16, 2020

ASCENT GLOBAL LOGISTICS

COMMENTS TO FED RE MAIN STREET LENDING PROGRAM

April 16, 2020

We appreciate the opportunity to submit comments on the Main Street Lending Program. Ascent Global Logistics ("Ascent") is a U.S.-based global logistics provider that has averaged more than Confidential Business Information revenues over the last three years. Ascent is a portfolio company of Roadrunner Transportation Systems, Inc. ("Roadrunner"), a holding company for multiple transportation companies. Ascent plays a vital role in our national supply chain by providing mission critical services to support companies such as General Motors, Ford Motor Company, General Electric, 3M, John Deere, Tyson and Smithfield Foods. Our trucks keep America's grocery stores stocked with food, our planes carry ventilators for 3M, and our teams work to keep some of America's largest factories open and operating by ensuring critical supplies are there when needed. Ascent is seeking clarification on two issues. First, we want to confirm our understanding that we may apply for a Main Street loan in our own name. Second, we want to urge the Federal Reserve Board ("Fed") to give financial institutions flexibility to determine the 12-month period in which to consider earnings before interest, taxes, depreciation and amortization (EBITDA) to obtain the most representative picture of our performance as a means of calculating loan eligibility and size.

I. Definition of Eligible Business

Ascent is seeking clarification that we can apply for a Main Street loan in our own name. The Main Street Lending Program defines eligible borrower as a U.S. business that satisfies certain specified requirements regarding the maximum number of employees or 2019 revenues. The term sheets for the Main Street Loan programs appear to provide flexibility for either a portfolio company or corporate parent to apply for a loan, assuming the borrower has EBITDA and otherwise can satisfy the requirements of the program.

Roadrunner portfolio companies have separate management teams, pursue separate financing arrangements, have separate financial statements and separately report EBITDA. Each company has different earnings profiles, operating strategies and financial outlooks. It, therefore, is rational and consistent with the intent of the program that Ascent be able to apply for a loan in its own name.

Roadrunner is investing in "Main Street" businesses consistent with the intent of the loan program. While Ascent is a successful business with a history of positive EBITDA before COVID-19, Roadrunner's Less than Truckload (LTL) business has not had positive cash flow and Roadrunner is in the process of making operational improvements and investments to turnaround the business. Ascent should be eligible to secure a well-sized loan under the Main Street Loan program based on our leverage calculation as set forth in the Program term sheets. If Roadrunner were required to apply for the loan in its own name and take into account the financials of all of its portfolio businesses, the EBITDA of the LTL business when factored into Roadrunner's EBITDA would negatively affect Ascent's ability to receive a loan. This is contrary to the intent of the Main Street Loan Program and the CARES Act, which should

reward businesses like Roadrunner for investing in businesses and providing needed funding to a business like Ascent that but for COVID-19 would have a positive cash position.

We are seeking clarification that our understanding of the program allowing a portfolio company to apply for a loan is accurate.

II. Calculation of EBITDA

We also want to urge the Fed to provide flexibility to financial institutions making loans to determine the period for which they will measure a prospective borrower's EBITDA. While the Main Street Loan Program term sheets require financial institutions to use a borrower's 2019 EBITDA to determine the size of a loan (or whether a borrower can even qualify for a loan), there may be circumstances where 2019 EBITDA does not provide representative measure of a business's performance or earnings potential. For example, our 2019 EBITDA was negatively affect by the General Motors strike, a ransomware attack and the impact from the 2019 global trade war. In that case, it would be prudent for a financial institution to consider our 2018 EBITDA as a more accurate reflection of performance. Rather than requiring financial institutions to use 2019 EBITDA in calculating a loan, financial institutions should be able to exercise discretion and consider 2018 EBITDA or some other snapshot that will enable the bank to make a reasonable assessment of a business's EBITDA for purposes of calculating the size of a loan and protecting against risk of default.

We appreciate your consideration of our comments. We would be pleased to answer any questions you may have.

Comments of Sunrun Inc. in Response to
U.S. Federal Reserve Board and U.S. Department of the Treasury on the
Main Street Expanded Loan Facility, Main Street Lending Program
April 16, 2020

Submitted via E-mail: regs.comments@federalreserve.gov

I. INTRODUCTION

Sunrun Inc. is the nation's leading home solar, battery storage, and energy services company with over 4,000 employees and 285,000 customers in 22 states, Washington DC and Puerto Rico. Founded in 2007, Sunrun pioneered home solar service plans to make local clean energy more accessible to everyone for little to no upfront cost. Sunrun's innovative home battery solution, Brightbox, brings families affordable, resilient, and reliable energy. The company can also manage and share stored solar energy from the batteries to provide benefits to households, utilities, and the electric grid. At December 31, 2019, Sunrun owned solar facilities with a book value Confidential Business Information

Sunrun Inc. offers the following recommendations to ensure that the Main Street Expanded Loan Facility ("Facility") does not unreasonably exclude businesses whose business models are based on assets with long-term income which can reasonably support higher leverage ratios than typical companies. In no case do we believe that the Board or Treasury must mandate the below treatments. Rather, we request that the Board and Treasury simply recognize an Eligible Lender's authority to adopt these interpretations when making a loan to an Eligible Borrower under the Facility. We believe lenders will be supportive of these requested interpretations, which are customary in traditional credit evaluation.

II. RECOMMENDED INTERPRETATIONS

A. Definition of EBITDA

1. Allow customary add-backs for non-cash items. It is customary for lenders to allow borrowers to add back stock-based compensation and other non-recurring, below-the-operating-line non-cash items (e.g., loss on early extinguishment of debt arising from a refinancing). The Board and Treasury should recognize this practice and Eligible Lenders should have the discretion to allow add-backs for non-cash items under the Facility.

2. Allow lenders to use trailing twelve months EBITDA. To the extent total debt is measured at the time the loan is originated rather than as of December 31, 2019, the debt/EBITDA calculation may use EBITDA for the twelve months ending March 31, 2020, rather than December 31, 2019. Using trailing twelve months EBITDA is customary for bank underwriting, and we suspect the Board may have specified FY2019 to

help companies that are reporting poor Q1 2020 results. However, the timing of serious impacts from the COVID-19 pandemic did not impact many businesses until late Q1 and early Q2 depending on geography and business model.

B. **Definition of Debt**

1. When calculating total debt, do not include debt that cannot be drawn but for incurring expenses that add to EBITDA. The calculation of *total debt* should include committed and undrawn debt only to the extent it is available to be drawn. Companies like Sunrun that do asset-level finance, such as automobile and aircraft lenders, often have large debt commitments in warehouse facilities, but can only draw on them to the extent they incur capital expense to build new assets, which would necessarily both add to EBITDA and require incurring more capital expense than received in drawn debt.

2. When calculating total debt, exclude debt that is collateralized by cash that can only be used for debt repayment ("Restricted Cash"). Lenders should have discretion to exclude debt that is collateralized by restricted cash that is committed for debt repayment. Such restricted cash is unavailable for any other use that would decrease corporate liquidity.

C. **Size Limit of Upsized Tranche**

1. The 30% size limitation for upsized tranche should be based on consolidated debt. Lenders should limit loan sizes to 30% of consolidated debt and not based on parent-only debt or the amount of the loan that is being expanded. Because the indebtedness test includes all consolidated debt, we assume this criteria also includes all consolidated debt. Any company with subsidiary level debt or non-recourse debt may require this treatment.

D. **Temporary Repayment of Revolving Parri Passu Debt**

1. Lenders should have discretion to allow Eligible Borrowers to repay a *revolving* Eligible Loan before the upsized tranche. To the extent the Eligible Loan is revolving and the upsized tranche is not, a borrower may voluntarily repay the Eligible Loan before the upsized tranche if the Borrower maintains the ability to redraw the Eligible Loan. (In the alternative, allowing Eligible Lenders to structure the upsized tranche such that it can revolve would also solve this problem.) Flexibility to repay revolving Eligible Loans will accommodate business models with lumpy cash flows which can save interest expenses by periodically repaying and

reborrowing from a revolving Eligible Loan. This will also avoid unnecessarily reducing a borrower's bank lending capacity.

E. **Eligible Lenders for Upsized Tranches:**

1. The Board and Treasury should allow Eligible Lenders who did not originate an Eligible Loan to issue an upsized tranche provided that the existing lender(s) in the Eligible Loan consent to its upsizing. The Term Sheet states that: "An Eligible Loan is a term loan made by an Eligible Lender(s) to an Eligible Borrower that was originated before April 8, 2020…" This appears to imply that only the original lender of an Eligible Loan may upsize the loan. In some cases, the original lender may not be a "Eligible Lender" and/or may not want to issue an upsized tranche, but would allow a different lender to do so. Therefore, if the terms of an otherwise Eligible Loan allows for a new lender to upsize the loan, the Board and Treasury should grant such discretion to ensure broader participation in the Facility.

Submitted by:

Danny Abajian
Senior Vice President, Project Finance
Sunrun Inc.
danny@sunrun.com
(415) 580-6869

Rensselaer

April 16, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Comments on the Main Street Lending Program

To whom it may concern:

On behalf of Rensselaer Polytechnic Institute, I write to ask that the Federal Reserve provide updated guidance to clarify that private, not-for-profit colleges and universities are eligible for the Main Street Lending program. In addition, I ask that student workers be exempted for the purpose of the employee threshold (under 10,000 employees).

Rensselaer Polytechnic Institute is a major employer with significant economic impact in our community. With an economic impact of nearly $1 billion in our community, we support over 2,000 employees that live and work in our community.

We face a cash flow crisis caused by reduced revenue and increased spending resulting from the COVID-19 pandemic. Room and board refunds alone are a significant new expense, and we anticipate that we will credit or refund in excess of $5 million to students, a huge cost that could not have been anticipated. NY Pause has also resulted in an additional loss of nearly $6 million of room and board revenues related to the Summer 2020 semester. Meanwhile, costs related to the pandemic are rising. Remote instruction required an unanticipated investment in technology, and we are also facing costs including deep cleaning campus buildings.

Although private, not-for-profit colleges and universities are often some of the largest employers in their communities, there is confusion about whether not-for-profits are eligible for the Main Street Lending program.

There are two major barriers to our ability to access this and other loan programs offered by the federal government:

- We ask that the Federal Reserve update the guidance to clarify that public and private non-profit colleges and universities, with direct borrowing authority, are eligible for the Main Street Lending program.
- We ask that student workers be exempted for the purpose of the employee threshold for eligibility (businesses with under 10,000 employees). With campus closed for the spring semester, these student employees have left campus and should not be counted toward the employee threshold.

Low-cost loans like the Main Street Lending program would help Rensselaer Polytechnic Institute address the financial impact of the COVID-19 crisis. These loans would assist Rensselaer as the university continues to fulfill its educational mission and support our community despite the severe financial impacts of the pandemic. We look forward to working with you on this and other loan programs as the Federal Reserve responds to the COVID-19 crisis.

Sincerely,

Barbara Hough

Barbara Hough
Vice President for Finance and Chief Financial Officer
Rensselaer Polytechnic Institute

The following comments are submitted on behalf of SB360 Holdings LLC and Subsidiaries

SB360 Holdings LLC and Subsidiaries ("SB360"). SB360 assists retail companies in the maximization of the value of their assets primarily through event driven sales and promotions held at retail store locations. In addition, SB360 provides asset-based loans to the consumer product segment (primarily small to middle market retailers and wholesalers). SB360 currently employs 20 full-time employees with annual revenue of Confidential Business Information

SB360 has experienced, and expects to continue to experience, a significant disruption in revenue as a result of its business concentration in retail stores. SB360 cannot perform any of its services for its clients while retail stores are closed and will only be able to perform such services on a very limited basis until consumer retail shopping returns to some semblance of normalcy, which is nearly impossible to project at the present time. Furthermore, SB360's exposure to loan losses relating to loans it has provided to retailers has greatly increased as a result of the COVID-19 shutdowns and increases with each passing day.

The government relief provided to date fails to adequately account for SB360's circumstances as the SBA's affiliation rules prevent SB360 from accessing the Payroll Protection Program. SB360 is a limited liability company ("LLC") which is partially owned by a family office that has holdings in other companies. While the family office owns the largest percentage of SB360, it does not own a majority percentage, however it has certain major decision approval rights that is typical in LLC operating agreements amongst multiple members. The other two members of SB360, who collectively own a majority of the business and also have major decision approval rights, are not owners, officers, board members or have any vested interest in any of the other family office affiliated companies. The SBA affiliation rules requires SB360's business to be aggregated with the other affiliates of the family office due to "common management" even though there is no legal and practical way for capital and other resources to be shared amongst these "affiliated" entities. As important, the family office cannot access capital through from SB360 without the approval of the other two members who do not have any ownership in, and receive no economic benefit from, any affiliated companies. SB360 is the primary source of income for the other two members, yet their ability to access the Payroll Protection Program to cover critical payroll and other approved expenses for its primary business is being impacted by a technicality in the affiliation rules. We ask the affiliation rules be waived to allow inclusion for small family-owned businesses such as SB360 to provide funding for retaining employees during the Coronavirus crisis. We submit the following comments for your consideration:

1. **Paycheck Protection Program and Affiliation Rules.** The Paycheck Protection Program (PPP) was conceived to provide direct funding to small businesses to keep their workers on

the payroll. Unfortunately, the SBA's affiliation rules prevent many small businesses from accessing this program. While there has been significant discussion about how these rules exclude many investments in small business made by private equity and venture capital firms, there has been little or no discussion about family-owned businesses that cannot apply for relief. Stores are not making sales, property owners are not receiving rents, vendors are not being paid, businesses are seeking relief from lenders, and employees are being asked to take pay reductions or furloughs until we can recover and reopen.

Families own many small businesses. In fact, many families own multiple small businesses that operate independently of one another despite common family ownership or officers. Many of these families structure their ownership in businesses through trusts. The SBA affiliation rules cause family-owned businesses to be aggregated although there is no practical way for capital to be shared by those businesses. Each business has a duty to its stakeholders – its workers, its customers, and its owners. These businesses do not have a duty to each other. Trust ownership of business presents a unique problem in a crisis such as this. The fiduciary of the trust has a duty to the trust first. Should a family that owns (via trust or otherwise) multiple small businesses and is an active job creator in each of these businesses be penalized by having these businesses precluded from accessing the PPP funding designed specifically to maintain and preserve jobs? Absent a modification, the affiliation rules as presently written do just that by aggregating commonly owned but independent small businesses resulting in an inability for these businesses to access the PPP capital needed, and intended for, the very purpose of job preservation.

We ask our leaders to get relief for as many as possible as soon as possible. Accessing PPP funding will allow small businesses to prepare for the "New Reality." Workers can be put back to work cleaning and preparing for business to reopen. The affiliation rules must be relaxed for small businesses to provide funding for a reopening.

We ask that the SBA waive all affiliation rules for entities operating across one or more unrelated NAICS codes but who meet the size standards for each NAICS code. We also ask that the SBA allow subsidiaries and divisions of a parent corporation to consider the function performed by each to determine the proper NAICS code to apply for a PPP loan.

In addition, the size and length of the program will need to be increased and extended should these recommendations be considered and adopted.

2. **Main Street Lending Program.** The Federal Reserve's stated purpose of the Main Street Lending (MSL) Program is to "[e]nsure credit flows to small and mid-sized businesses." However, in order to meet that goal, the following clarifications should be provided in the Program rules:

   A. Calculating EBITDA. Maximum loan amounts are calculated, in part, using the borrower's 2019 EBITDA. In order to maximize the amount of credit available to eligible businesses, borrowers should receive the benefit of non-GAAP add-backs to EBITDA, including equity in earnings of unconsolidated affiliates as well as adjustments for one-time and non-recurring items.

B. How to count employees. The Program refers to "reasonable efforts" to maintain payroll and retain workers, but many organizations were forced to furlough or lay-off employees weeks ago. Therefore, the relevant employee retention level should be as of the date of the loan application, if at all. Further, an entity that does not have employees but otherwise satisfies the definition of an eligible borrower also should be permitted to participate.

C. Attestation by borrowers regarding debt. Borrowers must commit to refrain from using MSL funds to repay other "debt of equal or lower priority." This restriction on payment of debt should not include mortgages existing as of March 13, 2020.

D. Maximum Loan Size. Loan size ranges from a minimum of $1 million to a maximum of $25 million or four times 2019 EBITDA for the Main Street New Loan Facility or six times 2019 EBITDA for the Main Street Expanded Loan Facility (when aggregated with the borrower's existing outstanding and committed but undrawn debt). Borrower's existing outstanding and committed but undrawn debt should not include mortgages or capitalized lease obligations when calculating maximum loan size. These items should be considered operating costs for calculating maximum loan size.

E. What constitutes "good prior credit before the crisis." The Federal Reserve press release notes that this program is available for businesses that were "in good financial standing before the crisis." The rules should make clear that borrowers satisfy this condition as long as they were not a debtor in a bankruptcy proceeding as of March 13, 2020.

F. No additional restrictions on borrowers. Borrowers under the MSL Program must agree to the compensation, stock repurchase, and dividend restrictions that apply to direct loan programs under the CARES Act. However, the rules should clarify that capital distributions for flow-through entities who must make distributions to owners for taxes are permitted.

For questions contact srossetti@me.com at (240)401-4521.

Respectfully submitted,

Kevin Dooley
COO
April 16, 2020

The following comments are submitted on behalf of SB Logistics LLC

SB Logistics LLC ("SB Logistics") which is 100% owned by an entity that is owned by two members, one of which is a family office that owns multiple businesses. SB Logistics processes and resells retailer customer returns, defective merchandise, end-of-season clearance, obsolete merchandise, and overstocks providing retailers an alternative to turn problem inventory into cash. The customers of SB Logistics are comprised largely of small to medium-sized wholesalers and jobbers that generally sell the inventory purchased from SB Logistics to small and medium-sized "off-price" retailers. SB Logistics currently employs 27 full-time employees with annual revenue of Confidential Business Information Because of the shutdown related to COVID-19, SB Logistics has furloughed 25 employees, but is continuing to pay the medical insurance premiums for these employees so that employees and their families can have medical coverage during these challenging times.

SB Logistics has experienced, and expects to continue to experience, a significant disruption in revenue as a result of its reliance on the retail supply chain being open for business. Its warehouse is full of inventory that cannot be sold and will eventually have to be sold at substantial discounts, if at all, once the supply chain commences operations and the spigot is opened. Since our customers are solely dependent on the demand of retail companies requiring product, of which there is zero demand right now, we are substantially overstocked in inventory and have no revenue to pay expenses. Some of this inventory is seasonal in nature (i.e. Spring) and the longer the shutdown continues, the less this inventory is worth, if anything at all. Our fixed costs are primarily payroll and related expenses and occupancy and related expenses, exactly the classification of expenses that the Payroll Protection Program ("PPP") is intended to assist small businesses in covering.

Unfortunately, the government relief provided to date fails to adequately account for our circumstances as the SBA's affiliation rules prevent SB Logistics from accessing the Payroll Protection Program. While the family office effectively owns greater than 50% of SB Logistics, it is subject to governance restrictions and certain major decision approval rights that is typical in LLC operating agreements. The other member of the entity that owns SB Logistics is not an owner, officer, board member and does not have any vested interest in any of the other family office affiliated companies. The SBA affiliation rules require SB Logistics to be aggregated with the other affiliates of the family office due to "common ownership" even though there is no legal and practical way for capital and other resources to be shared amongst these "affiliated" entities. As important, the family office cannot access capital through from SB Logistics without the approval of the other member who does not have receive any economic benefit from any affiliated companies. SB Logistics is an independently operating, small business that has been and will continue to be adversely affected by COVID-19, yet their ability to access the Payroll Protection Program to cover critical payroll and other approved expenses for the benefit of its employees and stakeholders is being impacted by an unintended consequence in the affiliation rules. We ask the affiliation rules be waived to allow inclusion for small family-owned businesses such as SB Logistics to provide funding

for retaining employees during the Coronavirus crisis. We submit the following comments for your consideration:

1. **Paycheck Protection Program and Affiliation Rules.** The Paycheck Protection Program (PPP) was conceived to provide direct funding to small businesses to keep their workers on the payroll. Unfortunately, the SBA's affiliation rules prevent many small businesses from accessing this program. While there has been significant discussion about how these rules exclude many investments in small business made by private equity and venture capital firms, there has been little or no discussion about family-owned businesses that cannot apply for relief. Stores are not making sales, property owners are not receiving rents, vendors are not being paid, businesses are seeking relief from lenders, and employees are being asked to take pay reductions or furloughs until we can recover and reopen.

   Families own many small businesses. In fact, many families own multiple small businesses that operate independently of one another despite common family ownership or officers. Many of these families structure their ownership in businesses through trusts. The SBA affiliation rules cause family-owned businesses to be aggregated although there is no practical way for capital to be shared by those businesses. Each business has a duty to its stakeholders – its workers, its customers, and its owners. These businesses do not have a duty to each other. Trust ownership of business presents a unique problem in a crisis such as this. The fiduciary of the trust has a duty to the trust first. Should a family that owns (via trust or otherwise) multiple small businesses and is an active job creator in each of these businesses be penalized by having these businesses precluded from accessing the PPP funding designed specifically to maintain and preserve jobs? Absent a modification, the affiliation rules as presently written do just that by aggregating commonly owned but independent small businesses resulting in an inability for these businesses to access the PPP capital needed, and intended for, the very purpose of job preservation.

   We ask our leaders to get relief for as many as possible as soon as possible. Accessing PPP funding will allow small businesses to prepare for the "New Reality." Workers can be put back to work cleaning and preparing for business to reopen. The affiliation rules must be relaxed for small businesses to provide funding for a reopening.

   We ask that the SBA waive all affiliation rules for entities operating across one or more unrelated NAICS codes but who meet the size standards for each NAICS code. We also ask that the SBA allow subsidiaries and divisions of a parent corporation to consider the function performed by each to determine the proper NAICS code to apply for a PPP loan.

   In addition, the size and length of the program will need to be increased and extended should these recommendations be considered and adopted.

2. **Main Street Lending Program.** The Federal Reserve's stated purpose of the Main Street Lending (MSL) Program is to "[e]nsure credit flows to small and mid-sized businesses." However, in order to meet that goal, the following clarifications should be provided in the Program rules:

A. Calculating EBITDA. Maximum loan amounts are calculated, in part, using the borrower's 2019 EBITDA. In order to maximize the amount of credit available to eligible businesses, borrowers should receive the benefit of non-GAAP add-backs to EBITDA, including equity in earnings of unconsolidated affiliates as well as adjustments for one-time and non-recurring items.

B. How to count employees. The Program refers to "reasonable efforts" to maintain payroll and retain workers, but many organizations were forced to furlough or lay-off employees weeks ago. Therefore, the relevant employee retention level should be as of the date of the loan application, if at all. Further, an entity that does not have employees but otherwise satisfies the definition of an eligible borrower also should be permitted to participate.

C. Attestation by borrowers regarding debt. Borrowers must commit to refrain from using MSL funds to repay other "debt of equal or lower priority." This restriction on payment of debt should not include mortgages existing as of March 13, 2020.

D. Maximum Loan Size. Loan size ranges from a minimum of $1 million to a maximum of $25 million or four times 2019 EBITDA for the Main Street New Loan Facility or six times 2019 EBITDA for the Main Street Expanded Loan Facility (when aggregated with the borrower's existing outstanding and committed but undrawn debt). Borrower's existing outstanding and committed but undrawn debt should not include mortgages or capitalized lease obligations when calculating maximum loan size. These items should be considered operating costs for calculating maximum loan size.

E. What constitutes "good prior credit before the crisis." The Federal Reserve press release notes that this program is available for businesses that were "in good financial standing before the crisis." The rules should make clear that borrowers satisfy this condition as long as they were not a debtor in a bankruptcy proceeding as of March 13, 2020.

F. No additional restrictions on borrowers. Borrowers under the MSL Program must agree to the compensation, stock repurchase, and dividend restrictions that apply to direct loan programs under the CARES Act. However, the rules should clarify that capital distributions for flow-through entities who must make distributions to owners for taxes are permitted.

For questions contact srossetti@me.com at (240)401-4521.

Respectfully submitted,

Kevin Dooley
COO
April 16, 2020

2301 Mission Street, Suite 301, San Francisco, CA 94110
Tel (415) 282-3334 • Fax (415) 282-3320 • www.medasf.org

April 16, 2020

Federal Reserve System
regs.comments@federalreserve.gov

RE: MEDA Comments on Main Street Lending Program

To Whom It May Concern:

The Mission Economic Development Agency (MEDA) submits these comments on the Federal Reserve System (Fed)'s proposed Main Street Lending Program. We are a member of the California Reinvestment Coalition (CRC) which has sent you a letter covering many of the same points. We support CRC in their efforts and submit this separate letter to highlight the experience of our nonprofit organization in informing these requests.

We urge the Fed to make the following changes to the Main Street Lending Program proposal:

1. Make nonprofit organizations eligible for loans;
2. Lower the minimum loan size to $100,000 or change the name of the program;
3. Authorize CDFIs to participate as lenders, or create a new SPV to purchase CDFI loans;
4. Track the race, ethnicity, gender and census tract of loans made under the Program at the time of application, not after the fact.

About Mission Economic Development Agency

Rooted in the Mission District of San Francisco, MEDA's mission is to strengthen low- and moderate-income Latino families by promoting economic equity and social justice through asset building and community development. Unfortunately, because of deep existing inequities, the economic impacts to Latino and immigrant communities in the Bay Area will be deeper and longer than the impacts on the general population. MEDA is an anchor institution assisting in the economic recovery of our community, and for 47 years MEDA has been the go-to organization for Latino small business owners in San Francisco. We are also a vital lender to Latino-owned small businesses in the Bay Area through our CDFI affiliate, Fondo Adelante. Since launching in 2015, MEDA's CDFI, Fondo Adelante, has provided more than $3.7 million to over 100 small businesses in the San Francisco Bay Area.

One of our highest priorities is to meet the economic needs of our Latino- and immigrant-owned small businesses and their employees, who are fighting to survive in this moment of crisis. In a survey we conducted in the first two weeks of the Bay Area's shelter-in-place order, *85% of our small businesses have experienced a revenue drop of more than 75%, and several are already contemplating the possibility of permanent closure.* As the crisis has deepened over the last month, the threats to our small businesses'

survival have only grown. For this reason, we are urging the several important changes to ensure the Main Street Lending Program lives up to its name and mission.

1. **The Main Street Lending Program should be accessible to nonprofit organizations like MEDA which continue to serve local communities during this critical and challenging period, even while they face severe economic challenges of their own.**

The Federal Reserve System recently announced the outlines of its Main Street Lending Program, which promises to make up to $600 Billion in much needed capital available to small and mid-sized businesses. But unlike the Paycheck Protection Program (PPP) in the latest stimulus package, which has since run out of funds, financing through the Main Street Lending Program is not available to nonprofit organizations like MEDA and our community partners or certain institutions of higher learning. This is so despite the fact that nonprofit organizations like MEDA are foundational community institutions, providing critically needed services and support such as through jobs, housing, counseling and education, food and medical assistance, and lending to the most underserved of small businesses and residents. The exclusion of nonprofit organizations from eligibility should be removed from the Program. We thank Speaker Pelosi for her leadership on this issue.[1]

2. **The Main Street Lending Program should lower the minimum loan size. In the alternative, the name of the program should be changed to The Non-Bank Lender, Servicer, Private Equity Lending Program, to reflect who the true beneficiaries of this loan program may be.**

Over 95% of businesses, 97% of minority owned businesses, and 98% of women owned businesses have less than $1 million in revenue,[2] and need financing under $100,000.[3] This is certainly true for the overwhelming majority of small businesses that we serve in San Francisco. In imposing a minimum loan size of $1 million, the Fed is essentially saying this is not a lending program for small, minority owned or women owned businesses. We already know the PPP has not been accessible to most small businesses, and has now run out of funds. The Fed needs to lower the minimum loan size in this program so that it serves the needs of small businesses and, hopefully, nonprofits, or the Fed should stop representing that this is a lending program for small businesses. We are concerned that private equity funds, and non-bank lenders and loan servicers are lining up to borrower from this program. These are not the businesses that most Americans think of as located on and serving Main Streets in our communities.

3. **The Main Street Lending Program should allow Community Development Financial Institutions (CDFIs) like our own Fondo Adelante to participate as lenders, or another special purpose vehicle must be created.**

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[1] See, Nancy Pelosi, Speaker of the House, Press Release, "Dear Colleague on Urging Federal Reserve to Include Nonprofits and Universities in CARES Act Lending Facilities," April 14, 2020, available at: https://www.google.com/url?q=https://www.speaker.gov/newsroom/41420&source=gmail&ust=1586981730872000&usg=AFQjCNF5nQz3WEM6AX5-DEVUNUtRkZoJDQ

[2] Consumer Financial Protection Bureau, [Docket No.: CFPB-2017-0011] Request for Information Regarding the Small Business Lending Market, 82 Fed. Reg 22319 (May 15, 2017). citing U.S. Census Bureau, Statistics for All U.S. Firms by Industry, Gender, and Receipts Size of Firm for the U.S. and States: 2012 More Information 2012 Survey of Business Owners, American Fact Finder (last visited April 12, 2017), available at https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=SBO_2012_00CSA05&prodType =table

[3] Federal Reserve Banks of Atlanta, Boston, Chicago, Cleveland, Dallas, Kansas City, Minneapolis, New York, Philadelphia, Richmond, St. Louis, and San Francisco, "Small Business Credit Survey: 2019 Report on Employer Firms," which found that 57% of the 6,614 employer firm small business respondents to the survey sought financing of $100,000 or less. Presumably, small business owners with no employees, who were not surveyed for this report, might need small dollar small business loans to a greater extent, and they would be even more poorly served by a proposal that incentivizes banks to originate larger loans to larger businesses.

As proposed, loans to small and medium sized business would only be originated by banks. A similarly narrow definition of authorized lenders has plagued the PPP. Many small businesses in neighborhoods of color like the Mission District and in rural communities face historic and continuing challenges in accessing credit from commercial banks. Nonprofit CDFIs like our own CDFI, Fondo Adelante, have helped to narrow this gap by serving the small businesses that are most impacted by the current crisis. Yet these same businesses, which hire locally and serve local communities, are doubly excluded by driving federal COVID-19 relief through the banking institutions that have historically excluded them. Such efforts run the risk of reinforcing redlining abuses.

In order to move towards equity, the Fed must include CDFIs – including small loan funds like our own Fondo Adelante – as authorized originators of Main Street Lending Program loans, and set aside at least 10% of funding for CDFI nonprofit lenders and minority owned financial institutions. If the Fed is not prepared to make this small business lending program accessible to small businesses in this way, it should develop another Special Purpose Vehicle designed exclusively to purchase existing and new loans originated by CDFIs and other community lenders that are making the very loans to businesses of color, in neighborhoods of color and in rural communities, that are being passed over by mainstream banks and the federal relief efforts that rely upon them. The Fed should also work with the Treasury Department to secure funds to further capitalize CDFIs so we have the capacity to originate additional loans to businesses that otherwise will not be served.

4. **The Main Street Lending Program, as with all federal, state, local and private COVID-19 relief efforts, should track who is getting relief and where, in order to ensure compliance with fair lending and equal access laws and principles.**

We strongly urge the Federal Reserve to require that all funding through the Main Street Lending Program, and other Fed programs, tracks the race, ethnicity, gender, and census tract of borrowers and other recipients. Evidence is mounting that communities of color and people of color are most vulnerable to, and most impacted by, the current COVID-19 crisis.[4] It would be scandalous, though not surprising, if the relief provided by the federal (and other levels of) government continued to avoid these same communities. We witnessed a similar dynamic during the foreclosure crisis, and we cannot allow this cycle to continue. Our allies within the California Reinvestment Coalition have sued to compel the Consumer Financial Protection Bureau (CFPB) to develop similar data collection rules, as mandated by the Wall Street Reform Act,[5] but during this extraordinary time, we cannot wait for the federal government to distribute relief now and figure out how to determine where the relief went later. Please start immediately to require the collection of race, ethnicity, gender and census tract data in all loan applications in order to inform policy decisions and to ensure we are living up to our societal commitments to fair lending and equal access. There should also be a post crisis study of the race, ethnicity and gender of the business owners and neighborhoods that received relief under this Main Street Lending Program, and other relief efforts.

Again, we urge the Fed to make these recommended reforms so that the Main Street Lending Program can live up to its name and serve small and local businesses and their communities which are hurting right now, and which deserve access to relief commensurate with the harm they are suffering. Please do not

[4] See, CRC, "Advocates Call for Monitoring to Ensure Relief is Reaching Immigrant-Owned and Small Businesses of Color, Press Release, April 14, 2020, available at: http://calreinvest.org/press-release/advocates-call-for-monitoring-to-ensure-relief-is-reaching-immigrant-owned-and-small-businesses-of-color/

[5] See, CRC, "Breaking Lawsuit Compels Trump Administration to Commit to Finalizing Protections Against Lending Discrimination, press release, February 26, 2020, available at: http://calreinvest.org/press-release/breaking-lawsuit-compels-trump-administration-to-commit-to-finalizing-protections-against-lending-discrimination/

implement another program that favors big business, private equity and the wealthy, all in the name of serving small business on Main Street.

Thank you for your consideration of our views. If you have any questions about these comments, please feel free to contact me at ngarcia@medasf.org.

Sincerely,

/s/
Norma P. Garcia
Director, Policy and Advocacy

Mission Economic Development Agency (MEDA)
2301 Mission St., Ste. 301
San Francisco, CA 94110

ngarcia@medasf.org

Youth VILLAGES.
The force for families

April 16, 2020

Board of Governors of the Federal Reserve System
The Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC

Re: Response to Request for Public Comments on the Main Street Lending Program

To Whom it May Concern:

My name is Pat Lawler, CEO of Youth Villages, a national nonprofit based in Tennessee. Youth Villages is a national leader in children's mental and behavioral health committed to building strong families, delivering effective services and significantly improving outcomes for children, families and young people involved in child welfare and juvenile justice systems across the country.

With a presence in 21 states and the District of Columbia, Youth Villages employs over 3,000 individuals, and in 2019 we were able to serve over **30,000 people across our spectrum of services including foster care, mental health services, therapeutic residential care, older youth services, and other community supports.**

As the Treasury Department works to create a program to provide financing to banks and other lenders to make loans to nonprofits and other mid-size business of between 500-10,000 employees, we ask that the program:

- Include a 0.50% interest rate (50 basis points) for 501(c)(3) charitable nonprofits at a 5 year amortization.
- Provide priority to 501(c)(3) charitable nonprofits responding to COVID-19 relief efforts.
- Payments shall not be due until two years after a direct loan is made.
- Employee retention provisions should begin on the date that loan funding is received by the borrower.
- In implementing any workforce restoration and retention provisions, "workforce" should be defined as full-time employees or full-time equivalents.

Nonprofits are the third largest employer in our nation's economy. The recommendations above will help to keep organizations financially strong and allow us to continue to meet the immediate needs in our communities while planning for the future. In the toughest times, we do the toughest work. When it's time to repair our nation, we need to be equipped to do that and our unique needs should not be overlooked.

Allowing larger nonprofits like Youth Villages to access the Paycheck Protection Program is critical to ensuring that during and after the COVID-19 crisis we are able to meet the needs of those we serve and maintain the infrastructure and workforce to do so effectively. I would be happy to share more about our work in Tennessee and across the country.

Sincerely,

Patrick W. Lawler
Chief Executive Officer
Youth Villages

Comments Regarding the Federal Reserve Main Street Lending Program

Submitted by James K. Hildreth, M.D., Ph.D.
President and CEO, Meharry Medical College

April 16, 2020

Meharry Medical College is the nation's largest private, independent, historically black, global academic health sciences center. For 143 years, Meharry has played a significant role in providing access to quality health care to the indigent, uninsured, underinsured and those who have limited access to medical and dental care. This has been part of the institution's mission since its founding in 1876. At the same time, Meharry has contributed significantly to the economy of Tennessee, its home state, as an employer, a not-for-profit institution of higher education, research institution and health system.

Meharry's work with the state's most vulnerable populations has laid bare the disparities in the federal response to COVID-19 and particularly, the disproportionately higher rates of infections and deaths among the African American community. For African Americans living in the North Nashville area, the social determinants of health -- poverty, lack of insurance, overcrowded living conditions, lack of access to health care, paired with co-morbid conditions, including obesity, diabetes, cardiovascular disease -- are contributors to the higher mortality rates for African Americans during the Coronavirus Pandemic.

Of the estimated 171,000 African Americans who live in Nashville, 66,000 are over the age of 60. Many work in service-sector jobs and live in conditions requiring them to be in close contact with others. Therefore, the emerging racial/ethnic narrative suggest that African Americans are more likely to contract and succumb to this highly contagious virus.

The upward trend in COVID-19 cases among this community is just the tip of the problem and reflects the lack of access to medical care and the maldistribution of healthcare that African Americans and other vulnerable communities disproportionately experience. These same factors contribute to the community spread of the virus and epidemiologic data underscore the need for more pervasive testing and contact tracing within all racial/ethnic communities to prevent and stem the virus' transmission and save lives.

Unfortunately, institutions like Meharry have been overlooked by the CARES ACT and like our patients, the medical institution continues to shoulder the burden of the coronavirus pandemic and the devastation of the resulting economic downturn. This in turn has threatened Meharry's economic stability at a time when its community needs it most. Currently, Meharry contributes to Tennessee's economic vitality and quality of life through its educational opportunities, research, clinical care and medical services. Approximately 1,426 Meharry-educated physicians, dentists, and health scientists graduates remain in the state of Tennessee, including 571 physicians and dentists who lived and practiced in Davidson and surrounding counties. Moreover, its graduates have established practices in 34 out of the 95 medically underserved and rural counties in Tennessee.

The distribution formula under the CARES Act did not take into account institutions like Meharry Medical College. As a consequence, each dollar lost as a result of the coronavirus has had a rippling effect throughout the Nashville community and surrounding counties, within the state of Tennessee. The resulting drop in revenue will have long lasting effects on Meharry Medical College as an historic institution that contributes to increasing and diversifying the

health care workforce needed in the United States. It will negatively affect Tennessee, too. Using the multiplier concept, it is estimated that Tennessee will lose approximately $460 million in revenue as a result of COVID-19-related losses incurred by Meharry. Additionally, our committed faculty and staff fulfill the paramount mission of the College: to serve medically underserved communities by providing professional services for Nashville General Hospital at Meharry, a safety net hospital.

Therefore, as President and CEO of Meharry Medical College, I am requesting both short- and long-term financial support to be included in the Department's next distribution of emergency funds. This will enable banks in Tennessee to make an equitable loan to the College and ensure its survival and ability to continue to provide critical support for its patients, employees, and students during this unprecedented period. It will also ensure Meharry can continue to train the next class of physicians, dentists, physician assistants, biomedical scientists, and public health professions who will be on the frontlines serving vulnerable populations in urban, inner-city and rural communities across this nation as well as Tennessee.

Short- and long-term financial support from local banks and the federal government will help stabilize and support Meharry's financial infrastructure as it continues to provide critical care for the most vulnerable patients during and beyond this pandemic period.
Providing emergency funding to Meharry Medical College under the CARE Act would allow the institution to accomplish the following:

1. Implement an aggressive community rapid COVID-19 testing plan in African American and other vulnerable communities in the North Nashville-Davidson County area;
2. Increase contact tracing by using a social network analysis and GIS mapping to identify hotspots;
3. Implement several levels of community outreach using the Doxy-me platform or similar platforms to contact patients using telehealth, while employing traditional means such as door-to-door canvasing to reach African Americans and others with limited internet or no technology access who are in the risk population;
4. Use telehealth technology to assess and treat the physical symptoms and mental health effects associated with the coronavirus, including anxiety, depression, and substance abuse;
5. Support the local health department by training community residents to assist with contact-tracing;
6. Use existing networks of local community and faith-based agencies to provide wraparound services (e.g., health, mental health, and social services) for particularly vulnerable persons, including persons experiencing homelessness, persons affected by HIV and other chronic diseases such as diabetes, cardio-vascular diseases, and hypertension;
7. Use a patient-centered approach and care coordinators to get patients into immediate acute treatment and prevent death;
8. Use our Mobile Unit as a rolling "rapid testing center" to reach individuals, families, and patients, with limited mobility and transportation. The mobile unit staff will coordinate with the churches and other community health organizations during the "stay and sheltered" time;
9. To conduct rapid testing routinely in nursing homes and assisted care centers to prevent community spread among the elderly; and
10. Establish an oversight committee that will include the leadership of Meharry Medical College, the Meharry Medical Group, health care providers from across the city, leadership of the Nashville government, state government, local nursing home and

assisted care agencies to monitor community spread of the coronavirus and to other emerging infectious diseases that will put the general public at risk.

Total request: Meharry is seeking long-term financial support in the amount of $ Confidential Business Information Confidential Business Information This financial support will assist with the access-to-care strategies for saving lives while training and deploying staff to conduct health education about a possible resurgence of COVID-19. It would also financially support the development of educational tools to help low-resourced African American families to become better prepared for future pandemics.

Short term Costs: Resources to conduct Rapid Testing and Contact Tracing and treat uninsured and underinsured African Americans in Nashville Confidential Business Information

Long Term Costs: We request Confidential Business Information in combination of bank loans for costs to double the number of healthcare professionals to be deployed in underserved, inner-city, and rural communities.

Currently, Meharry trains 800 medical and dental students, along with 118 medical residents in family medicine, internal medicine, psychiatry, and preventive, occupational and sport medicine. By 2030, Tennessee will need 1,107 primary care physicians, due to projected retirements in the medical profession, and an aging and growing population. We propose to meet the front-line needs and to address the health professional shortages by increasing the class size of students in the Schools of Medicine, Dentistry, and Graduate Studies (biomedical sciences, and public health) by 30 percent each year over the next 10 years.

Via Electronic Mail

April 16, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, D.C. 20551

Company Background

Alorica Inc. is a US registered company headquartered in Irvine, CA. Our Company is a Business Process Outsourcing ("BPO") company primarily providing Contact Center services to the US Fortune 500 Companies. Alorica employs more than 34,000 workers in the US, over 89,000 worldwide and is the largest Contact Center company in the US. Alorica takes pride in hiring and training unskilled and low-skilled workers. In 2019 alone, Alorica hired over 20,000 workers from the Federal Targeted Jobs Groups (i.e. Military Veterans, Unemployed, Temporary Assistance for Needy Families, Food Stamp Recipients, Vocational Rehabilitation, etc.). During COVID-19, Alorica has increased its Work at Home (WAH) division for our employees to be able to serve several federal and state governments with the processing of loans, filing and processing of unemployment claims and other critical services necessary in this time of crisis. Alorica conducts business in all 50 states plus Washington DC.

Alorica is also the largest minority owned BPO in the US and services the Essential Critical Industry Sectors as defined by the Department of Homeland Security including Wireless Telecom, Banking & Financial Services, Healthcare, Retail, Transportation, Energy & Utilities and Hospitality. In fact, Alorica represents 70% of the Global 500 Brands, 4 of the top 5 wireless telecom companies, 6 of the 10 largest banks on the Fortune 500, 3 of the world's largest car manufacturers, 50% of the Fortune 50 healthcare companies, 5 of the world's largest retailers, 3 of the largest consumer electronics manufacturers and the largest airline on the Fortune 500. In 2019, Alorica managed over 600 million customer calls, emails, chats and other customer-facing interactions.

The extraordinary fact about Alorica's clients is that 97% are US Companies and almost all of our client's customers are US citizens and/ or residents. Our US parent company contract with our clients and we are paid in the US in US dollars for our services. 93% of our revenue is reported in the US. The Company has total revenue Confidential Business Information Since our Company is in the very labor-intensive services sector our margins are relatively low. Thus, work stoppages as a result of COVID-19 is extremely difficult for companies similar to ours to overcome without any Federal assistance. Our debt is in the US with US lenders.

Impact of COVID-19

Employees

The Company was severely impacted by COVID-19. As of today, we moved half our US employees and agents from our "brick and mortar" offices to WAH as various state governments mandated "Stay at Home" orders. We are continually looking to increase our WAH headcount due to COVID-19. Also, under the 14-day quarantine policy, workers were not allowed to report to their respective places of business. The Company purchased thousands of laptops and headsets for our employees and is currently reimbursing our employees for some of the at home costs incurred (e.g. broadband internet connection). This allows the employees the flexibility to continue to earn their wages. The Company incurred these additional costs in order to continue to serve their existing US Customer base as well as to keep the agents gainfully employed.

During 2017, our Company was comprised of approximately 65% US based employees and 35% near-shore or off-shore workers. During 2018 and 2019, the US economy was at an all-time high and the US unemployment rate was at an all-time low (<2% prior to COVID-19). While the demand for our employees in the US was high, this unfortunately created a labor shortage for us when the available population of US candidates became almost non-existent. Therefore, the Company had no option but to look outside the US to fill the demand of our clients and to cater to our growth. Additionally, our multi-national US Fortune 500 clients were demanding more bi-lingual and multi-lingual skills, which also required us to employ non-US workers in order to accommodate our clients demands.

The Federal government added a $600 supplement to the State Unemployment Compensation which inadvertently caused harm to our business. The federal and State unemployment compensation is greater than the wages our unskilled and low-skilled workers normally earn. The Federal supplement, all created with the best intentions, created conflict with applicants deciding to work or to continue receiving unemployment compensation at a greater amount. Unemployment Compensation is not subject to FICA tax and the income is not taxed in most states. In most cases, the employee can make more by not working than by working. We have been able to add 4,000 employees during the last several weeks due to an increase in the demand for our services, however, we continue to discover labor shortages because of this disincentive for low-skilled laborers to work.

Clients

Many of our clients have also been severely impacted as a result of the government mandated policy to "Stay at Home". Airline travel (we provide the ticketing services) is at an all-time low, Hotel stays (we provide the reservation systems and customer support) is virtually non-existent. Retail (those shut down completely as a "non-essential" business) have seen their businesses plummet. And, auto manufacturers have been hit hard since car showrooms have been shut down. As our clients' demands have decreased sharply since the beginning of COVID-19, their requests and consumption of our services have also been sharply curtailed. This coupled with trying to keep our employees currently employed during this Pandemic, has created us to experience severe cash shortfalls during this National Emergency.

Main Street Expanded Loan Facility

Alorica is the #1 BPO Company in the US employing over 34,000 workers from the unskilled & low-skilled labor markets and in the Federal Targeted Jobs Groups (i.e. Military Veterans, Unemployed, Temporary Assistance for Needy Families, Food Stamp Recipients, Vocational Rehabilitation, etc.). The Main Street Expanded Loan Facility ("MSELF") was drafted to pertain to US Companies similar in status to our Company. We have significant operations in the US, we are Confidential Business Information however we currently do not maintain a majority of our employees in the US. As previously stated, the reason why we don't maintain a majority of our employees in the US is due to: 1) unemployment shrinking to an all-time low in the US (<2%) in 2018 and 2019, therefore resulting is lack of an available labor pool in the US to hire from; 2) we are following the demands of our US Fortune 500 based clients as they sell product and services overseas; and 3) our US based companies requiring bilingual & multi-lingual capabilities to support the products and services that are sold globally.

To accomplish the Federal Reserve Bank's directives, we would suggest incorporating into the Term Sheet or allowing for Waivers to the Term Sheet, to provide flexibility to eligible borrowers. Consideration should be given to companies who have significant operations in the US, while maintaining substantial employment (especially the employing the Targeted Jobs Groups) in the US regardless if a majority of workers are maintained in the US. Each week unemployment continues to skyrocket while labor shortages for certain classes of workers continue to exist. Struggling companies similar to ours who provide services to deemed essential critical Industries or to federal or state government agencies to assist them during the time of COVID-19 need the availability of government funds as our client's businesses have been partially shut down or closed. As a company with significant employment in the US, we ask the Federal Reserve Bank to look at Companies similar to ours that will provide a boost to reducing US unemployment while continuing to service the essential critical industries.

Thank you.

Independent Film & Television Alliance®

10850 Wilshire Boulevard / 9th Floor
Los Angeles, CA 90024-4321
310-446-1000 TEL / 310-446-1600 FAX
www.ifta-online.org / info@ifta-online.org

Submitted April 16, 2020 to the United States Federal Reserve

Re: Independent Film & Television Alliance's Comments to the Term Sheets of the Main Streeting Lending Program

IFTA is the trade association for the independent film and television industry, representing more than 140 companies, the majority of which US SMEs. These companies finance, produce and license programming worldwide, producing more than 70% of U.S. films. They rely heavily on bank financing of production costs, secured by revenues receivable under licensing agreements with third party distributors throughout the world.

Current conditions have disrupted film production and commercial exploitation of existing films, and delayed the payment of license fees. The loans available under the Main Street Program would serve as a vital stopgap to allow the industry to rebuild and employ workers. However, certain loan qualification criteria are ill-suited to this industry because companies typically have significant existing credit facilities secured by their productions or receivables.

IFTA recommends that the Main Street Term Sheets are revised to (1) include an alternate test for the maximum loan amount which eliminates from consideration existing loans for which the bank is fully secured against license receivables; (2) avoid any requirement existing secured credit facilities be subordinated to these loans; (3) specify that amortization of film production costs are added back to earnings for purposes of computing EBITDA and establishing the maximum loan amount; and (4) provide qualification flexibility for recently established companies. See also Solstice Studios' Comment.

Respectfully submitted by IFTA,

Jean M. Prewitt
President & CEO

Susan Cleary
Vice President & General Counsel

Memorandum

From: Michael Best Strategies

Subject: **Correction Needed to Main Street Lending Program Eligibility to Account for No EBIDTA**

We represent numerous small and medium sized businesses that have been impacted by both the COVID-19 pandemic and the USTR's Section 301 tariffs. They have no choice other than to source their products from China, and the costs of the tariffs have been devastating for their business. They have been paying millions of dollars in tariffs with no alternative sourcing options, and no possible way of passing the cost on to their customers. Unfortunately, the tariffs have forced them to reduce their headcount in order to keep their company healthy. In 2019, these businesses filed applications through the USTR's formal exclusion process to seek relief from the tariffs. However, in the final months of 2019, they were completely denied for all exclusion applications submitted.

Some of these companies were finally about to turn a profit. But after the tariffs hit, and they were given no relief, they experienced zero (0) EBIDTA in 2019. For instance, one such company (unnamed due to business confidentiality) had 700 employees in 2019 with 52% of them being part-time associates. As of April, because of the tariffs and now the COVID-19 pandemic, they are down to 300 employees. Unfortunately, due to headcount requirements, this makes them ineligible to seek relief through the SBA's Payroll Protection Program. **Additionally, due to the need of a correction and clarification from the Federal Reserve, they are ineligible to seek relief from the Main Street Lending Program (MSLP).**

Under guidance issued by the Federal Reserve on the Main Street Expanded Loan Facility and Main Street New Loan Facility, authorized under section 13(3) of the Federal Reserve Act, it states: "An Eligible Loan is an unsecured term loan made by an Eligible Lender(s) to an Eligible Borrower that was originated on or after April 8, 2020, provided that the loan has the following features: 1. 4 year maturity; 2. Amortization of principal and interest deferred for one year; 3. Adjustable rate of SOFR + 250-400 basis points; 4. Minimum loan size of $1 million; **5. Maximum loan size that is the lesser of (i) $25 million or (ii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed four times the Eligible Borrower's 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA");** and 6. Prepayment permitted without penalty."

These provisions create a challenge for companies experiencing zero EBITDA solely because of the severe financial impact of the Section 301 tariffs. **We recommend that the certification at 5(ii) be changed to reflect that if the company's EBITDA is zero, the maximum loan size should be $1 million, the same as the minimum loan size.** Unless the MSLP eligibility certification is corrected, these small and medium-sized business cannot qualify for this relief program. These companies are relying on this program because they cannot get relief elsewhere. The loan is essential as they try to support their workforce during this dire time.

mwe.com

Samuel Dewey
Attorney at Law
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April 16, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, D.C. 20551

Re: Comment to the Main Street New and Extended Lending Facilities

To Whom It May Concern:

We write in response to your request for comments on the Main Street New Loan Facility ("MSNLF") and Main Street Expanded Loan Facility ("MSELF") (collectively, the "Programs"). We request that Board of Governors of the Federal Reserve System (the "Board") provide clarification to the programs in the following areas.

I. Definition of "EBITDA."

Both programs contain limitations on loan size (and thereby eligibility) which are keyed to leverage ratios of "existing outstanding and committed but undrawn debt" as to "the 'Eligible Borrower's 2019 earnings before interest, taxes, depreciation, and amortization ('EBITDA')." In our view, the Program's functionality requires a precise definition of EBITDA.

MSNLF. In setting a precise definition for the MSNLF, we urge the Board to incorporate sufficient offsets and adjustments to reflect the real world nature of EBITDA. As an initial matter, the complexity of the modern economy necessities a more nuanced definition of EBITDA to factor out economic "noise." At some level, an adjusted EBITDA has become the norm precisely because it can produce a more accurate financial picture. To that point, an enhanced, but reasonable EBITDA is the predominant financial metric in many markets. Take for example middle market lending—there a reasonable enhanced EBITDA is the norm. Transactions utilize that metric, financial projections are viewed through that lens, and financial planning drives from that benchmark. To impose a more stringent view of EBITDA is to upset the norm and to put market participants in the untenable position of having to adjust the most responsible of contingency planning to an entirely new lodestar. Accordingly, we suggest that the MSNLF incorporate a balanced approach to EBITDA, using a definition such as that attached in Exhibit A.

MSELF. In defining EBITDA for this facility, we suggest utilizing the definition of EBITDA in the original "Eligible Loan" being upsized. While this would introduce some level of variability into leverage ratios, this variability is justified by the nature of the program—adding a tranche specific to a loan which is *already* unique. The MSELF already reflects this variability, for example the collateral of the underlying loan is extended across the new tranche, meaning upsize tranches will be secured on a widely variable basis reflecting the structure of the individual deal and individualized lender risk metric, appetite, and tolerance. (Indeed, the definition of EBITDA within the Eligible Loan may very well be part of this calculus).

II. Treatment of Acquisitions Subsequent to 2019.

Companies in all sectors continued robust mergers and acquisition activity into calendar year 2020. This was particularly the case in the middle-market sector where acquisitions are still being closed. At times, these acquisitions can significantly impact a company's overall financial picture such that reliance on 2019 EBITDA can be decidedly inaccurate. While we appreciate the intent to use 2019 EBITDA so as to avoid any COVID-19 related "noise," some mechanism should exist to account for major 2020 developments that dramatically affect EBITDA. A trailing period or trigger for inclusion may be appropriate.

III. Restricting "Eligible Lenders" to Traditional Financial Institutions.

The restriction of "Eligible Lenders" to "U.S. insured depository institutions," "U.S. bank holding companies," and "U.S. savings and loan holding companies" ("Traditional Financial Institutions") may have the effect of excluding large (vital) segments of the American economy. Subsequent to the 2008 Financial Crisis there was a recognized contraction in lending by Traditional Financial Institutions which led to many sectors of the economy relying on alternate sources. This was particularly the case in the middle-market. Alternative private lenders filled this vacuum by providing the necessary financing to spur economic growth within the middle-market. As a result, many existing facilities are with such alternative private lenders and not with Traditional Financial Institutions.

As structured, the Programs may very well shut out a significant portion of the middle-market borrowers who rely on these sources of alternative private capital because of this historical financial trend. Middle-market borrows will be unable to negotiate credit extensions in a familiar environment interacting with trusted private lending partners who have relevant knowledge, expertise, and experience. This alone can restrict liquidity. This is exacerbated by the fact that requiring middle-market borrowers to layer financing from a Traditional Financial Institution overtop of borrowing from private lenders (who may resent being locked out of the Programs) may lead to intercreditor issues among "Eligible Lenders" and existing private lenders. If borrowers with existing credit facilities are forced

to look to other "Eligible Lenders" for "new" term loans under the Program, they can expect extensive negotiations of amendments to their existing facilities which will be costly and counterproductive to the underlying policy goals of the Program.

These restrictions have particular impact by limiting the pool of term loans that can be "upsized" under the MSELF. There, the simple choice in pre-existing lenders render eligible those sectors of the market who rely on Traditional Financial Institutions for borrowing while categorically rendering ineligible all other market sectors who rely on other lenders. Indeed, the MSELF's requirement that loans to be upsized must be originated from a Traditional Financial Institution prior to April 8, 2020 would even prevent a scenario where a willing private lender sells a loan to a Traditional Financial Institution to facilitate upsizing.

In our view the restriction of "Eligible Lenders" to Traditional Financial Institutions will cause the economic relief offered by the Program to fall short of its full potential and will prevent a large portion of otherwise "Eligible Borrowers" that the Program is intended to benefit from receiving the opportunity to receive funding. It would also be more efficient to run the Program through these existing alternative private lenders that already have the knowledge, experience, and expertise that derives from years of working with these types of borrowers. The Program would have a greater likelihood of success as these private lenders have the resources necessary to provide valued intellectual, as well as financial, capital to the middle-market borrowers. Finally, the "Eligible Lender" limitations in the Program inherently discourage future private lending, which could have long-term negative effects on middle-market liquidity in a post COVID-19 era.[1]

Sincerely,

Samuel Everett Dewey

[1] To be sure, expanding the Program to lenders who may be outside the Board's prudential supervision could expand program risk. But this risk is minimized by the fact that the lender is making virtually no judgements as to acceptable risk levels or mitigation. That is set by the Board under the structure of the programs and the entire point of Section 13(3) of the Federal Reserve Act is at some point to inject liquidity in extraordinary situations directly to institutions beyond traditional prudential supervision.

Exhibit A

"**Consolidated EBITDA**" shall mean, for any period, with respect to the borrower and its consolidated subsidiaries (collectively, the "Companies") (a) the consolidated net income (or loss) of the Companies determined on a consolidated basis in accordance with GAAP (the "Consolidated Net Income") for such period, adjusted by *adding thereto* (b) in each case, only to the extent (and in the same proportion) deducted in determining such Consolidated Net Income and without duplication:

(i) the total consolidated interest expense of the Companies for such period determined on a consolidated basis in accordance with GAAP, including imputed interest on capital lease obligations and similar obligations, commissions, discounts, premiums, financing and other fees and charges owed by the Companies with respect to letters of credit securing financial obligations, bankers' acceptance financing and receivables financings for such period,

(ii) the amortization expense of the Companies for such period, determined on a consolidated basis in accordance with GAAP (including amortization of intangible assets and amortization of deferred financing fees and costs),

(iii) the depreciation expense of the Companies for such period, determined on a consolidated basis in accordance with GAAP,

(iv) the tax expense of the Companies, for such period, determined on a consolidated basis in accordance with GAAP,

(v) out-of-pocket costs and expenses directly incurred in connection with any amendment, modification or waiver (whether or not consummated) in respect of any financing documentation,

(vi) the aggregate amount of all other non-cash expenses, losses and charges reducing Consolidated Net Income for such period,

(vii) all reasonable and documented out-of-pocket costs, fees, expenses, charges and any one time payments made to third parties that are not affiliates of the Companies related to any permitted acquisition, joint venture, permitted sale leaseback, issuance of equity, recapitalization, reorganization, asset ale, or issuance of indebtedness for such period, in each case, whether or not consummated,

(viii) any losses from the sale or other disposition of property other than in the ordinary course of business,

(ix) reasonable board of director (or other governing body) fees and expenses,

(x) the aggregate amount of all nonrecurring losses, charges or expenses, net of any related tax effect of such losses, charges or expenses, recorded or recognized by any Company for such period (other than such related tax effects included in clause (iv) above),

(xi) non-cash losses arising from hedge agreements for the Companies for such period, determined on a consolidated basis in accordance with GAAP, and

(xii) any costs or expense incurred by any Company pursuant to any management or employee equity plan or stock option plan or any other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of any Company or net cash proceeds of an issuance of equity interests of any Company, and

subtracting therefrom

(c) the aggregate amount of (i) all non-cash items increasing Consolidated Net Income (other than the accrual of revenue, recording of receivables and reversals of reserves that reduced Consolidated Net Income, in each case, in the ordinary course of business) for such period, including the aggregate amount of all non-cash extraordinary or nonrecurring gains, together with any related provision for taxes on such gains, recorded or recognized by any Company for such period and (ii) to the extent increasing Consolidated Net Income, without duplication, tbe sum of (A) any one-time extraordinary gains during such period, *plus* (B) any gains from the sale or other disposition of property other than in the ordinary course of business during such period, *plus* (C) non-cash gains arising from hedge agreements for the Companies for such period, determined on a consolidated basis in accordance with GAAP.

For purposes of this definition, in the event of any acquisition or asset sale, Consolidated EBITDA and the amount of indebtedness incurred or retired in connection therewith shall be calculated on a pro forma basis as if such entity or assets had been acquired or disposed of as of the first day of such period, adjusted in a manner consistent with this definition of "Consolidated EBITDA", with such pro forma calculations determined in a manner consistent with Regulation S-X promulgated under the Securities Act or any other regulation or policy of the Securities and Exchange Commission related thereto.

April 16, 2020

To: Staff Groups for Primary and Secondary Market Corporate Lending Facilities, Main Street Lending Facilities, Municipal Lending Facility, and Term Asset Lending Facility

From: Americans for Financial Reform Education Fund

Re: Comments on Primary and Secondary Market Corporate Lending Facilities, Main Street Lending Facilities, Municipal Lending Facility, and Term Asset Lending Facility

To Whom It May Concern:

The Americans for Financial Reform Education Fund ("AFR") appreciates the opportunity to comment on the term sheets of the Federal Reserve facilities referenced above. Members of AFR Education Fund include consumer, civil rights, investor, retiree, community, labor, faith based, and business groups.[1]

On April 9th the Federal Reserve announced six new facilities, financed by taxpayer equity investment, that could support potentially $2.3 trillion in "real economy" lending. Below, we offer specific comments on terms offered in six of those facilities: the two facilities supporting corporate securities markets, the two Main Street lending facilities, the Municipal Liquidity Facility, and the Term Asset Lending Facility (TALF).

Before offering these specific comments, we offer the following general observations on three areas in which these lending interventions need substantial improvement.

- **Conditions and requirements for receipt of funding**: The facilities are notably lacking in requirements or conditions that would link funding to the creation of social benefit, the maintenance of employment, or response to the Coronavirus pandemic. This is most evident in the case of the two secondary market corporate credit facilities. Public financing from these facilities could apparently be used for deal funding such as leveraged buyouts or dividend recapitalizations, and there are apparently no requirements whatsoever for companies that benefit from these facilities to maintain employment or payroll or limit executive compensation. Even conditions on the Main Street Lending Facilities are inadequate and fall short of statutory CARES Act requirements. Since there are no limits on the types of entities that could use these facilities, we expect that highly aggressive and sophisticated entities such as large private equity firms will seek out opportunities to channel funding to reward capital owners instead of supporting workers and the pandemic response.

[1] A list of coalition members is available at: http://ourfinancialsecurity.org/about/our-coalition/

We appreciate that the Board faces some practical barriers in monitoring and enforcing requirements for lending facilities. But we believe that much stronger conditions could be put in place and offer specific recommendations below.

- **The importance of disclosure**: Under the CARES Act, disclosure requirements for these programs are governed by Section 13(3)(C) and (D) of the Federal Reserve Act. We understand that under a common interpretation of this statute, the seven day disclosure requirement in Section 13(3)(C) requires only a general statement as to the rules of the facility, its general terms, and the type of borrowers that would be eligible, with no transaction-level disclosures of the identity of actual borrowers or the terms of specific loans. The thirty day disclosure requirement in Section 13(3)(D) would appear to require only updates on the total collateral, revenues, and risks of the facility, again with no information on specific transactions. **We believe it would be a grave error for the Federal Reserve to attempt to withhold transaction level information on the identity of borrowers and the details of specific loans.** Instead, detailed transaction-level disclosures should include the identity of borrowers (including beneficial owners of legal entities), the terms of the loans, and copies of the underlying deal documents. A failure to disclose how taxpayer dollars and other benefits are being used would severely undermine public trust in the Federal Reserve as an institution. Further, making such information public is one of the best ways to ensure that borrowers use the funds to genuinely support the economy rather than simply seek profits for capital owners. Public transparency will help limit the extent to which companies can misuse funds. We provide specific disclosure recommendations for each facility below.

- **Moral hazard and incentive effects of misdirected support for high-risk credit**: These facilities will provide funding to a much wider range of borrowers and credit quality than the Federal Reserve has ever interacted with before. Multiple facilities will lend to companies or support credit that is below investment grade, either at the time the loan is made or even before the current pandemic crisis began. We believe it is consistent with the intent of Congress that the Federal Reserve support a wide range of credit quality for the purpose of maintaining employment and, where appropriate, business operations during the current pandemic crisis period. However, an unconditional subsidy to high-risk credit could easily result in the use of public funds to further inflate a corporate credit bubble that was already identified by experts and regulators as a major source of systemic risk before this crisis began. Especially given the lack of conditions for funding, this can act as a subsidy to the same parties that created conditions of excessive corporate leverage, leading to obvious issues of moral hazard, systemic unfairness that contributes to growing economic inequality, and future risk to the economy. Preventing corporate bankruptcy should not be an end in itself. U.S. Chapter 11 bankruptcy is intended to support the ongoing operations of a company and maintain employment while debt is renegotiated.

Taking operational steps to impose conditions on the use of loans and avoid creating long-term moral hazard and systemic risk will require the Board to make policy choices concerning the

social goals of lending programs. Unfortunately, Congress in the CARES Act did not always provide clear guidance on those goals. But Section 2A of the Federal Reserve Act did provide such guidance through its mandate that:

> "The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates."

These programs will have clearly have an enormous impact on the growth of monetary and credit aggregates in the economy. It is the clear statutory responsibility of the Board to manage such increases in a manner that effectively promotes maximum employment and stable long-term economic growth. This cannot be done without making substantive policy choices concerning the distribution of this credit.

Several of the recommendations above, especially stronger conditions on receipt of funds and increased public disclosure, are likely to be opposed by some potential borrowers. Companies may claim that they will be reluctant to access credit if they are required to use funding in particular ways, or the nature and extent of their funding is made public. We urge the Federal Reserve to resist such claims. If a company feels that using funding to maintain the employment and benefits of its workforce, or revealing the existence of funding to the public, are too high a price to pay to receive public support, then perhaps it does not actually need such support.

Below, we provide comments on specific facilities. Because of the extremely deadline (one week) provided for these comments, they are not exhaustive as to our views regarding potential shortcomings in the facilities. They may be supplemented at a later date.

Comments on Specific Facilities

Municipal Lending Facility

The Municipal Lending Facility is an important step that we strongly support. We are particularly supportive of the high cap on total borrowing (up to one-fifth of 2017 revenues) and the fact that the list of permissible uses for funds in the Term Sheet include addressing "all potential reductions of tax and other revenues or increases in expenses related to or resulting from the COVID-19 pandemic". We note that this range of uses exceeds traditional narrow definitions of revenue anticipation borrowing and recommend that this be reflected in the definition of "eligible notes" elsewhere in the term sheet.

However, we have the following recommendations for improvements to the facility. We believe that these recommendations are very important to permit the facility to properly support state and local activity that will be crucial both to containing the health impacts of the pandemic and allowing for a faster and more widespread recovery.

First, eligibility criteria are much too narrow. Current rules limit direct lending to only 76 total eligible borrowers. There are no sub-state borrowers at all eligible for the facility in large, populous, and diverse states like e.g. Ohio, Michigan, Wisconsin, and Massachusetts. It would be a mistake for the Federal Reserve to rely exclusively on state governments to on-lend these funds rapidly and efficiently to all areas of need in the state. The racial equity implications of these limitations are also disturbing. According to the Brookings Institution, none of the 35 cities in the country with the highest proportion of black residents are directly eligible for this program under the current rules.[2] The program should be opened directly to a much larger set of participants.

Second, the two year maturity maximum for the loan should be extended, or, alternatively, the facility should provide a low-cost mechanism for rolling over loans well past the two year point. It is likely that the economic fallout from this crisis will still be felt two years from now. The need to refinance or repay loans at that date will put significant fiscal stress on governments at a time when the economy is still recovering. This could contribute to states and localities acting as a drag on economic growth. The simultaneous private refinancing of all loans from this facility just two years from now could also create significant stress on municipal finance markets. We note that the other private sector programs discussed in this comment provide four year financing, even though private sector borrowers are historically riskier than states and localities.

Third, loan pricing should reflect at most the very low spreads over the Federal Funds rate that were available in the municipal markets in early 2020. Pricing should not rely primarily on NRSRO ratings, but on historical default rates. Ratings agencies have been shown to discriminate against public borrowers by issuing ratings that do not reflect the extremely low (almost non-existent) default probabilities of general obligation municipal credit as compared to private credits.[3] It has also been shown that these ratings significantly increase credit costs for municipalities.[4] Loan pricing should be based on the actual past default rates of general obligation municipal borrowers, which justifies rates at or close to the Federal Fund rate.

A mechanism should also be found to give access to this facility for U.S. territories, especially Puerto Rico. It is true that Puerto Rico presents unique underwriting and governance issues due to its current quasi-bankruptcy situation, in which it is not accessing general debt markets. However, Puerto Rico is like any other jurisdiction in that it may be impacted by the revenue interruptions and other financial and human costs of the Covid-19 pandemic. Further, Puerto Rico is within the district of the Federal Reserve Bank of New York which is the largest and most sophisticated regional bank and the best equipped to manage and analyze issues associated

[2] Klein, Aaron and Camille Bussette, "Improving the Equity Impact of the Federal Reserve's Municipal Lending Facility", Center on Regulation and Markets, Brookings Institution, available at https://brook.gs/2VF6NSu

[3] Jess N. Cornaggia, Kimberly J. Cornaggia, John E. Hund, Credit Ratings Across Asset Classes: A Long-Term Perspective, Review of Finance, Volume 21, Issue 2, March 2017, Pages 465–509, available at https://doi.org/10.1093/rof/rfx002

[4] Jess Cornaggia, Kimberly J. Cornaggia, Ryan D. Israelsen, Credit Ratings and the Cost of Municipal Financing, The Review of Financial Studies, Volume 31, Issue 6, June 2018, Pages 2038–2079, available at https://doi.org/10.1093/rfs/hhx094

with assisting Puerto Rico. It is not equitable or appropriate to simply omit Puerto Rico and its population of over 3 million people from all support for revenue anticipation borrowing.

Regarding disclosure, we believe that the Federal Reserve should publicly disclose its reasoning and supporting evidence in cases where municipal applications to borrow from the facility are rejected upon review.

Beyond this facility, we also believe that additional assistance is needed through a future municipal facility financed through a share of remaining CARES Act money. An additional facility should support issuance of more conventional longer-term municipal finance during the period of economic recovery from the current downturn, in order to ensure that municipal fiscal pressures do not act as a drag on long term economic recovery.

Primary and Secondary Market Corporate Credit Facilities

The Primary and Secondary Market Corporate Credit Facilities (PMCCF and SMCCF) will purchase debt securities issued by corporations, both new issues and existing secondary market instruments, as well as shares in Exchange Traded Funds (ETFs) backed by corporate credit and shares of syndicated corporate loans.

PMCCF

There are no apparent conditions placed on the use of proceeds from the PMCCF facility, and no attempt to limit or even prioritize lending based on the use of proceeds. This means that bonds could be issued to finance pure financial engineering transactions such as leveraged buyouts or dividend recapitalizations, and they would be financed on an equal basis with issuances intended to support needed investment, maintenance of employment, or support for ongoing operations. There are also no requirements for companies benefiting from selling new issuances to this facility to maintain their employment or business operations, or to rehire workers.

The PMCCF should require any corporations financed by the facility, whether through purchase of new bond issuances or syndicated loans, to clearly state and attest to the intended use of proceeds from the loan. The PMCCF should aggressively prioritize lending where the proceeds are intended to support employment or payroll, ongoing operations, and pandemic-related investment including in worker safety or in response to new health or economic needs related to the pandemic. Such prioritization should be reflected in both the ease and rapidity of obtaining loans and the pricing of the loan. Lending that will go to finance unproductive financial engineering should not be financed at all.

In addition, at minimum companies benefiting from PMCCF funding should be required to maintain their workforce and payroll as of the time the loan was received. As discussed in the section on Main Street Lending Facilities, it should be possible at a later date to obtain a fairly accurate estimate as to whether employment was maintained. This could be done by simply using payroll tax data as reported through the payroll tax system, with individual wages capped

at a reasonable level, and comparing total payroll after the loan was funded to total payroll before it was funded.

We are also puzzled as to why the PMCCF does not include the restrictions on capital distributions and executive compensation that are attached to the Main Street Lending Program. The purchase of a new bond issuance is similar in economic substance to a loan, so it appears that it should also be subject to similar restrictions on diverting proceeds to capital distributions or increases in executive compensation. We urge the Board to extend these restrictions to the PMCCF. Since the PMCCF will likely have a smaller number of users than the Main Street Lending Facilities, and more will be public companies, it should be easier to monitor and enforce such restrictions. Finally, similar to our recommendation for the Main Street Lending Programs, to prevent diversion of funds we recommend that private equity companies making use of the program be required to stop charging dividends and monitoring fees to portfolio companies.

We appreciate that the CARES Act did not grant the Federal Reserve new enforcement or monitoring tools to pursue penalties for violating conditions on the use of financing, and that the Federal Reserve may lack the administrative capacity to perform all of these tasks. However, simply having legally binding attestations and requirements on record will significantly impact company behavior and greatly facilitate any future effort, including by other government agencies, to penalize the misuse of public monies. Requiring attestations as to the use of proceeds in advance should not be administratively challenging, since such information is routinely included in new bond issuance documents. Similarly, informing companies that they are responsible for maintaining their payroll employment and avoiding layoffs while in receipt of public money is not administratively challenging. While some companies may refuse loans if required to follow these straightforward requirements, the financing of such companies is unlikely to bring large social benefits.

In terms of disclosure, the PMCCF should publicly disclose:

- The identity of the borrower, including the legal entity and beneficial owner.
- The terms of the loan, including price, repayment provisions, covenants, penalties, and time period.
- Copies of the underlying deal documents.
- The stated/intended use of the proceeds.

SMCCF

The SMCCF will purchase secondary market corporate credit, including ETF shares. There is a lack of clarity in the term sheet as to the goals of these purchases. This is particularly concerning since the purchase of some of these instruments, such as ETF shares backed by high-yield bonds or corporate bonds rated below investment grade, will expose the public to significant credit risk. It is appropriate to take such credit risks to address the real effects of the current pandemic crisis, but it is unclear exactly how supporting prices in secondary bond and ETF markets contributes to

this goal. This is especially true since the PMCCF will support new issuance, making secondary market prices less significant to the real economy in the short run.

The lack of clarity as to goals makes it difficult to assess how or why funding from the SMCCF will be allocated. In its April 9th press release the Board stated that the goal of both the PMCCF and SMCCF is to "increase the flow of credit to households and businesses through capital markets". But secondary trading markets do not directly provide credit to households and businesses. If the goal is to protect the payments system by ensuring that price shocks for longer-term corporate credit do not somehow impact short-term credit markets in ways that are not addressed by the existing Commercial Paper, Money Market, and Primary Dealer credit facilities, then this would call for only narrow, selective, and targeted interventions.

We urge the Board to clarify the goals of the SMCCF. These goals should prioritize clear assistance to the real economy and avoid supporting secondary market prices in a way that could contribute to long-term moral hazard and capital misallocation. Interventions that benefit already wealthy investors and fund managers without effectively addressing the impact of the crisis for ordinary workers and communities must be avoided.

We also recommend that the following information be disclosed for SMCCF transactions:

- The identity of the issuer of any secondary market instruments purchased.
- The CUSIP of any bonds purchased.
- The portfolio holdings of any ETF purchased.
- The owner ("authorized seller") of any bonds or ETF shares purchased, including both the legal entity and the beneficial owner.

Main Street Lending Facilities

Main Street New Loan Facility (MSNLF)

This facility supports bank loans to companies with fewer than 10,000 employees or $2.5 billion in revenues, who are not also benefiting from the Paycheck Protection Program (PPP). The loans are supported by purchasing 95% of the loan from the originating bank, leaving 5% of the loan with the bank as an underwriting incentive. Loan sizes are capped at $25 million and may not cause the borrower's leverage to exceed four times Earnings Before Taxes Interest and Depreciation and Amortization (EBITDA).

The conditions on MSNLF loans are significantly more extensive than conditions in the various corporate credit facilities. We particularly support the restrictions on refinancing transactions and capital distributions during the term of the loan.

However, MSNLF restrictions still fall far short of the conditions laid out in the CARES Act. In particular, the CARES Act has a numerical requirement to maintain at least 90% of the current workforce through September 30th 2020, and to rehire at least 90% of the workforce that was on payroll as of February 1, 2020 by a date no later than four months after the end of the pandemic emergency is declared. The MSNLF term sheet replaces these concrete requirements with a

much vaguer requirement to for the borrower to attest that "using the proceeds of the Eligible Loan, it will make reasonable efforts to maintain its payroll and retain its employees during the term of the Eligible Loan." These employment requirements are inadequate and are not justified by administrative or implementation concerns. It is unclear what is meant by "reasonable effort". It is also unclear whether the qualification "using the proceeds of the eligible loan" means that a business could lay off or cut salaries of a significant portion of its workforce so long as the full proceeds of the loan were used to pay salaries for the remaining workers.

We urge the Board to restore the clear and concrete employment requirements in the CARES Act as a precondition for receiving MSNLF loans. The extent to which these terms were met could easily be checked at a later date through the use of payroll tax records. The Board may not be the appropriate entity to monitor for compliance with employment terms or levy penalties for breaking employment commitments. But simply having on record an attestation to abide by these clear and specific terms would greatly improve company compliance and greatly facilitate any later effort by government entities to monitor compliance or charge penalties for lack of compliance. (For example, Treasury would have the technical capacity to check compliance through IRS access to employment tax records). Simply requiring agreement to these terms as a precondition for the initial loan would not be an administrative burden on the Board.

We are also concerned that the lack of restrictions on users of the program means that very sophisticated and aggressive entities such as private equity firms may make use of these funds. A private equity firm using this program could divert ordinary portfolio firm revenues to pay dividends or monitoring fees to the general partners of the parent fund, while using loan proceeds for payroll. This tactic would effectively divert public financing away from workers and business operations to general partners of the fund. But it may not technically be covered by current restrictions on use of funds for capital distributions and loan refinancing, although it achieves similar goals. Such behavior should be banned, by requiring that any private equity funds using the program cease charging dividends, monitoring fees, or similar expenses to portfolio companies for any period in which credit is outstanding.

It also appears possible that the MSNLF could be used to obtain funding for a leveraged buyout by a private equity firm. This use of funds should be banned.

The following information should be publicly disclosed for MSNLF transactions:

- The identity of the borrower, including legal entity and beneficial owner.
- The identity of the lending bank.
- The terms of the loan, including price, repayment provisions, covenants, penalties, and time period.
- The text of any attestations made in connection with the loan.
- The intended use of loan proceeds.

Main Street Extended Loan Facility (MSELF)

The MSELF supports banks in expanding existing loans to mid-sized companies. Except for the requirement that an upsized tranche of a pre-existing loan be financed, instead of an entirely new loan, the MSELF is similar to the MSNLF and raises similar issues. All of our substantive and disclosure recommendations above for the MSNLF also apply to the MSELF.

Another way in which the MSELF differs from the MSNLF is that companies may be levered at up to six times EBITDA through the MSELF, while the MSNLF is capped at four times EBITDA. We have significant concerns regarding the use of EBITDA as an underwriting mechanism for this program and the MSNLF, and our concerns are still greater for this program because of the higher level of leverage permitted. The EBITDA measure is a model-based estimate which can be manipulated through model assumptions. It is particularly difficult to accurately forecast earnings at times of high economic uncertainty such as the present. In addition, EBITDA has notoriously been manipulated by the private equity industry as it is a non-GAAP figure not subject to audit. Private equity firms have frequently used adjustments known as "EBITDA add-backs" to add pro-forma projections following a leveraged buyout to artificially boost earnings higher. A six times EBITDA limit, calculated under significant economic uncertainty, may lead to a situation where numerous small and medium sized companies are excessively leveraged on emergence from the pandemic crisis.

It may be appropriate in certain situations to finance high levels of leverage when such leverage is necessary to maintain payroll, finance safety precautions, or undertake important new investments. However, the presumption should be for lower levels of leverage. In addition, leverage should be checked by a mechanism less susceptible to model manipulation than EBITDA. We thus recommend that the Board institute a rebuttable presumption that MSELF leverage be limited to four times EBITDA and allow banks and borrowers to apply for higher leverage based on a specific set of background circumstances and planned uses for the proceeds. We further recommend that companies be required to meet both an EBITDA cap and a cap based on a simple multiple of free cash flow during a period prior to the pandemic crisis.

Term Asset Lending Facility (TALF)

The TALF supports securitization of consumer and business loans through purchase of senior tranches of such loans. TALF credit is extended to a number of sectors involving high-risk credit, including subprime auto loans, leveraged corporate loans, and commercial real estate loans. An underwriting restriction in the program, which we strongly support, is that no underlying securitization collateral may consist of other securitizations or synthetic securitizations (derivatives). Synthetic securitizations and re-securitizations have performed very poorly in periods of economic stress. In addition, such securitizations do not directly support real economy lending. We urge the Board to maintain the restriction that synthetic securitizations and re-securitizations are not supported by the TALF. We also support the exclusion of single-asset,

single-borrower commercial real estate transactions from TALF financing, and the restriction to static CLOs.

We believe that it is important that the underlying loan collateral for securitizations include borrower protections. The facility is to some degree protected from losses through the limitation to purchases of senior securitization tranches, but the end borrower is not protected from the fallout from excessive leverage or exploitative lending. Guaranteed purchase of the senior tranches effectively subsidizes the issuance of the underlying loans, and exploitative credit should not be subsidized. We recommend that the Board take the following steps:

- The TALF should not permit support for subprime auto loans, student loans, and credit card loans that are designed without regard to consumer ability to repay.
- Lenders and loan originators benefiting from TALF support for consumer loans should agree to not garnish wages or seize property during the pandemic crisis period.
- Limit excessive leverage it facilitates at companies receiving the leveraged corporate loans that underlie new issuances of Collateralized Loan Obligations (CLOs). These leverage limits should be similar to the leverage limits in the Main Street Lending Facilities, and should incorporate the recommendations made above regarding leverage in those facilities.

The following information should be publicly disclosed for TALF transactions:

- All securitization disclosures for all tranches of the securitization (including the junior tranches).
- Look-through disclosure of the identity of end borrowers for the loan collateral for any securitization that provides business loans, in particular CLOs and CMBS / commercial real estate securitizations.
- The financing terms for senior tranches and the specific tranches financed.
- The identity of the securitization manager and / or arranger selling to the facility.

Thank you for the opportunity to comment on these facilities. Should you have questions, please contact Marcus Stanley, the Policy Director of the AFR Education Fund, at 202-674-9885 or marcus@ourfinancialsecurity.org.

Sincerely,

Americans for Financial Reform Education Fund

American Express Company
200 Vesey Street
New York, NY 10285

April 16, 2020

Via Electronic Delivery

Board of Governors of the Federal Reserve System
20th Street & Constitution Ave., NW
Washington, DC 20551

Re: Proposed Federal Reserve Main Street Lending Program

Ladies and Gentlemen:

American Express appreciates the opportunity to comment on the Federal Reserve's proposed Main Street Lending Program ("MSLP"). We have a long history of strongly supporting small and medium-sized businesses and we support the efforts of Treasury and the Federal Reserve to establish the MSLP. Our comments below focus on expanding eligibility.

- The minimum loan size should be lowered to $250k.
  - Currently, thousands of small and medium-size businesses will otherwise be ineligible for the MSLP because their maximum EBITDA-based loan size is below the $1M minimum.
  - If the minimum loan size were $500k, up to an additional 174k American Express customers with average revenues of $15M would qualify for the program. Many of these same customers could be ineligible for the SBA's Paycheck Protection Program ("PPP") because they are too large.
  - Even more small and medium-sized businesses would qualify – with likely greater demand – if the minimum loan size were set to $250k.
    - For example, under the PPP, approx. 85% of the loans have been for less than $350k, and approx. 70% for less than $150k.
- The permitted term of the loan should be 1-4 years, as appropriate for the borrower.
  - A fixed 4-year term may be inappropriate for borrowers that, for business or other reasons, do not need a 4-year term. For example, merchant financing-type

arrangements typically last 18-24 months, and borrowers in need of such financing may not need or want to carry these loans for 4 years.

  - A single maturity for a program expected to issue a large volume of loans within a short period could also create a destabilizing refinancing demand in 2024 as approximately $600b in loans mature within weeks.

- Loans should be able to be used to bring a borrower's account into "current status." Catching up on a loan is very different than paying off a loan and staying current on outstanding debts aligns with the goals of the MSLP.
- The MSLP should allow the borrower and lender to agree to use a more commonly understood reference rate like Fed funds to provide greater transparency and certainty.
- Eligible lenders should be able to seek approval to use an existing lending product under the MSLP, even if it differs in maturity, rate, or other terms

* * *

Thank you for considering our comment. We appreciate the opportunity to share our views with the Federal Reserve and would be happy to discuss further at your convenience.

April 16, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Comments on the Main Street Lending Program

To Whom It May Concern:

On behalf of The University of Scranton, we are seeking clarification from the Federal Reserve related to the Main Street Lending Program.

Access to low-interest loans is critical to non-profit colleges and universities. Although we don't expect to utilize the loans ourselves, we know this is a critical issue for many of our higher education colleagues. Higher education institutions are facing an unprecedented financial crisis because of the pandemic, yet we continue to prioritize educating and assisting our students and employing our faculty and staff.

Today, we are writing to ask that the Federal Reserve provide guidance to clarify that non-profit private institutions are eligible for the Main Street Lending program. In addition, we also ask that student workers be exempted for the purposes of the employee threshold for eligibility requirements (under 10,000 employees).

The University of Scranton is a significant employer in our local community and we are facing a major cash flow crisis due to the reduced revenue and increased expenses imposed by the COVID-19 pandemic. Our university expects to refund nearly $9 million in room and board charges alone. Our anticipated sources of auxiliary revenue have dried up as campus events and summer programs have been canceled. In this uncertain time, we are facing additional costs—such as deep cleaning campus buildings and increased security expenses. We project our estimated revenue loss to be approximately $10 million by the end of the year.

Many colleges and universities are interested in accessing the credit and loans available under the Main Street Lending program, recently announced by the Federal Reserve. We are concerned that this program might not be available to higher education institutions and seek clarification on the following issue[s]:

- There is confusion about the Main Street Lending program and whether non-profits are eligible, because current guidance does not comment on this

matter. We ask that the Federal Reserve update the guidance to clarify that non-profit private and public institutions of higher education, with direct borrowing authority, are eligible for the Main Street Lending program. We believe this to be an important clarification given that institutions of higher education are often the largest, or one of the largest, employers within their community and region.

- We also ask that student workers be exempted for the purposes of the employee threshold for eligibility (businesses with under 10,000 employees) and hope that future guidance from the Federal Reserve will make it clear that our institutions can exempt student workers from the employee count. Many of our institutions employ student workers across campus as a part of their overall financial support, which helps students pay for college and provide students with work experiences, while keeping them close to campus for the purposes of their education. Given that the majority of our campuses are closed for the spring semester and have transitioned to virtual learning, many of these student employees have left campuses, and therefore should not be included for the purposes of the employee threshold.

At The University of Scranton, we are doing all that we can to support our campus community during this crisis, and need assistance from the federal government to continue doing so. Ensuring non-profit private college and university eligibility for the Main Street Program would be a lifeline in allowing our higher education colleagues to continue to educate, employ and economically support our community. We look forward to working with you on this and other important loan programs as the Federal Reserve responds to the COVID-19 crisis. Thank you for your consideration.

Sincerely,

Edward J. Steinmetz, CPA
Senior VP for Finance & Administration

From: Office_of_Secretary@FRB.GOV
Sent: Monday, April 20, 2020 12:59 PM
To: Main-Street-Business-Lending-Program
Subject: Fw: RE: ABA Comments on the Main Street Lending Program
Attachments: 20200418103418611358_attachment0000.PDF.final.pdf

----- Forwarded Message -----
From: Shaun Kern [skern@aba.com]
To: Office_of_Secretary@FRB.GOV
Date: 4/18/2020 10:34:25 AM
Subject: RE: ABA Comments on the Main Street Lending Program

NONCONFIDENTIAL // EXTERNAL

Good morning.

Attached is a slightly updated version of ABA's submission, which reflects a minor but important revision regarding our characterization of PPP.

Please consider this our official entry, not the letter from last night.

Thank you,

Shaun

From: Shaun Kern
Sent: Friday, April 17, 2020 9:07 PM
To: regs .comments@federalreserve.gov
Subject: ABA Comments on the Main Street Lending Program

To Whom it May Concern:

The attached document reflects the initial views of ABA's membership as it pertains to the design of the Main Street Lending Program. Thank you for all that you are doing in this uncertain time.

Warm regards,

Shaun Kern
Senior Counsel
Prudential Regulation and Asset Management American Bankers Association Building Success. Together.

T: 202.663.5253 | E: skern@aba .com[mailto :skern@aba .com]

American Bankers Association

Building Success. Together.

Submitted via: regs.comments@federalreserve.gov

April 17, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: The Main Street Lending Program

Ladies and Gentlemen:

The American Bankers Association (ABA)[1] appreciates the opportunity to offer feedback on the Federal Reserve's proposed terms for the Main Street Lending Program (MSLP) which are found in the Main Street New Loan Facility (MSNLF)[2] and the Main Street Expanded Loan Facility (MSELF).[3] ABA supports the Federal Reserve's expansive efforts to partner with banks of all sizes to assist our nation's small and medium-sized businesses as they grapple with the many challenges that accompany our collective effort to stem the COVID-19 pandemic.

The Federal Reserve's action to develop the MSLP through its Section 13(3) emergency lending authorities has been swift by necessity. After previewing the development of the MSLP in a late March press release,[4] the Federal Reserve announced the MSNLF and MSELF term sheets on April 09, 2020.[5] ABA's feedback is intended to support the MSLP, recognizing that the details and incentive structures that flow from the MSLP must be well designed and calibrated to ensure that the program's $600 billion in loans backstopped by $75 billion in funds from the U.S. Treasury flow quickly to the businesses that need it most.

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[1] The American Bankers Association is the voice of the nation's $18.6 trillion banking industry, which is composed of small, regional and large banks. Together, America's banks employ more than 2 million men and women, safeguard $14.5 trillion in deposits and extend more than $10.5 trillion in loans.
[2] See Main Street Loan Facility, Term Sheet (2020), https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a7.pdf.
[3] See Main Street Expanded Loan Facility, Term Sheet (2020), https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a4.pdf.
[4] See Press Release, Bd. of Governors of the Fed. Reserve Sys., Federal Reserve Announces Extensive New Measures to Support the Economy (Mar. 23, 2020), https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm.
[5] See Press Release, Bd. of Governors of the Fed. Reserve Sys., Federal Reserve Takes Additional Actions to Provide Up to $2.3 Trillion in Loans to Support the Economy (Apr. 9, 2020), https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm.

I. Overview

ABA believes that the rapid development and launch of the Federal Reserve's lending program is critical to reducing the COVID-19 pandemic's economic damage. However, to help ensure that the U.S. banking industry can effectively deploy MSLP to assist small and medium-sized businesses in need, we offer suggestions and seek clarifications below.

a) Affirm the essential role of bank underwriting;
b) Provide greater reference rate flexibility;
c) Allow a range of tenors for MSLP loans;
d) Reduce the minimum permitted loan size;
e) Provide greater flexibility in setting the maximum loan size and other loan terms;
f) Allow greater flexibility in the required attestations;
g) Clarify the future supervisory treatment of MSLP loans;
h) Clarify and expand the scope of Eligible Lenders; and
i) Preserve pre-COVID regulatory tailoring categorizations.

II. Discussion

Below, we further elaborate on the positions outlined above. We believe these suggestions will strengthen the MSLP by increasing bank and lender participation, which will assist in the national effort to reduce the COVID-19 pandemic's economic damage.

a) Affirm the Essential Role of Bank Underwriting

The MSLP was developed after many healthy small and medium-sized businesses were required to cease operations temporarily to combat the spread of a deadly pandemic. The MSLP is designed to encourage banks to increase lending to new and existing customers. However, the MSLP is also structured to ensure that participating banks assess the creditworthiness of businesses seeking to become new borrowers or current bank customers looking to increase their borrowings.

To align incentives and minimize unnecessary loss, the MSLP requires banks to retain a portion of the risk for each loan extended. Designed properly, this requirement can help ensure that credit flows to well-run businesses facing temporary hardship. Banks are well suited to assist in that effort, as measuring and assuming risk is central to the business of banking. The MSLP's risk retention features have the potential to provide greater protection to the Federal Reserve as a loan participant and as a lender backstopped by taxpayer funds. However, these protections are premised on participating banks being thoughtful risk underwriters that make sound lending decisions.

In this respect, the MSLP is distinct from other programs launched to address the economic impact of the COVID-19 pandemic, such as the Paycheck Protection Program (PPP). Under PPP, the banking industry has played a key role in distributing government guaranteed forgivable loans. However, by its terms, PPP does not expose participating banks to credit risk and PPP does not ask banks to make underwriting decisions or similar judgments.

The risk retention aspects of the MSLP reflect different considerations and objectives than PPP. The Federal Reserve should promote public understanding of this important distinction.

ABA suggests that the Federal Reserve publicly and clearly acknowledge the role of banks as underwriters of MSLP loans.

b) Provide Greater Reference Rate Flexibility

Both the MSNLF and MSELF require banks to set an adjustable rate tied to the Secured Overnight Financing Rate (SOFR). However, the transition away from the London Inter-Bank Offered Rate (LIBOR) and toward a different reference rate such as SOFR was not expected until LIBOR's publication ceased after December 2021.

Lenders and borrowers already faced the need for an orderly transition to a different reference rate such as SOFR, but necessary borrower analyses and lender systems adjustments are still underway. In the midst of a pandemic, with diverse demands on finite management resources, such an abrupt transition to SOFR would deter participation in the MSLP.

The Federal Reserve is familiar with the operational challenges that a transition from LIBOR to SOFR presents, and it has played a leading role, along with the Alternative Reference Rates Committee (ARRC) in addressing these complex issues.

The Federal Reserve's deep involvement in this transition has illuminated the need for lenders and borrowers to have sufficient time to make necessary adjustments. Transitions within loan administration, servicing, and risk management are necessary to successfully execute and administer a large program of SOFR-based commercial loans. Furthermore, until there is a robust and liquid market for hedging instruments tied to SOFR, risk management strategies for banks and borrowers will be hampered. The market for these hedging instruments is progressing, but at present it remains relatively unfamiliar to many small and medium-sized businesses.

The ARRC has recommended robust contract language to address the risks of LIBOR termination in new commercial loans based on LIBOR. The Federal Reserve should affirm the ARRC's recommended language and attendant transition timeline, while permitting immediate implementation of SOFR for prepared borrowers and lenders.

However, it is also true that community banks need further reference rate optionality under the MSLP. Often, community banks lend to small and medium-sized businesses at rates tied to a publicly available version of a base or prime rate, such as that published in The Wall Street Journal. Community bank customer familiarity with this rate will be particularly useful in facilitating MSLP loans and should bolster participation. We do not believe that the use of such a rate would increase systemic risk, which the Federal Reserve and other supervisors have rightfully sought to mitigate in promoting an orderly transition away from LIBOR.

ABA suggests that the Federal Reserve permit the initial, short-term use of LIBOR so long as the lending agreements contain fallback language consistent with either of the two transition approaches recommended by the ARRC. Furthermore, the Federal Reserve should also permit

other rates, such as a publicly-quoted prime or base rate, when that alternative best fits the borrower's needs.

c) Allow a Range of Tenors for MSLP Loans

Both the MSNLF and MSELF facilities contemplate loans with a fixed four-year maturity, which do not reflect the tenor needs of all borrowers. At the outset, some borrowers may simply be unable to service a loan of the size their business needs over a three-year amortization period (taking into account the one-year deferral of principal and interest). Though flexibility in amortization terms (e.g., less than full amortization based on level payments through maturity) could solve this problem in some cases, other borrowers would face the risk of refinancing in market conditions that are now impossible to predict. More broadly, full participation in the MSLP's two facilities could lead to considerable future loan refinancing demand over a short period if all MSLP loans mature four years from now.

Other borrowers will face different concerns that could be mitigated by a shorter maturity loan. For instance, the MSLP's required attestations limiting payments on other debt will inevitably require borrowers with other debt to negotiate concessions with their other lenders.[6] These borrowers will have to convince their other lenders that the benefits of new MSLP funds outweigh any perceived increased risk from concessions borrowers need to comply with the MSLP's restrictions on debt repayment. A shorter tenor for the MSLP loan may present an acceptable risk to other lenders who are unwilling to limit payments for four years. The option for a shorter tenor for MSLP loans could facilitate some borrowers' participation, and in many cases may prove essential.

ABA suggests adjusting the MSNLF and MSELF to permit lenders to negotiate any tenor that matches their borrower's needs, allowing any tenor that does not exceed six years.

d) Reduce the Minimum Permitted Loan Size

In setting a minimum loan size of $1 million, both facilities may prove inaccessible to many small business borrowers in need. In the markets that community banks serve, small businesses often have borrowing needs far below $1 million, even in healthy economic conditions. Many potential borrowers with a desire to obtain MSLP funds will have needs well below the current minimum level. Accordingly, many community banks that are prepared to extend loans to customers with borrowing needs of less than $1 million would find themselves unable, or less able, to participate in the MSLP.

ABA suggests that the Federal Reserve reduce the minimum size for Eligible Loans to $50,000.

e) Provide Greater Flexibility in Setting the Maximum Loan Size and Other Terms

The MSLP's use of a borrower's 2019 EBITDA to limit the maximum loan size for both the MSELF (6x EBITDA) and MSNLF (4x EBITDA) sets parameters that are not appropriate for many types of businesses. In the hospitality industry, which has been particularly hard hit by COVID-19, normal EBITDA calculations are often not the right measures for operating

[6] Other concerns about the MSLP's required attestations are discussed in more detail below.

condition and performance. A test setting maximum loan size based on net operating income would better fit some business models. In other cases, such as restaurants, use of lease-adjusted leverage would be more appropriate. In still other cases, a debt-service coverage ratio or (in the case of loans under the MSELF, which may be secured) loan-to-value ratio, would be best.[7]

Consideration of these different approaches, which are familiar to lenders and borrowers working with these business types, will significantly facilitate participation in the program by making it easier to calculate the proper maximum loan size. Any calculation difficulty or uncertainty in setting the proper loan size will reduce program accessibility or slow the distribution of funds. Using standardized EBITDA multipliers for borrowers across every industry will necessarily reduce MSLP lending to industries that do not rely on EBITDA measures or whose credit suitability is not accurately captured by EBITDA.

Moreover, even when EBITDA is an appropriate high-level measure to apply in loan size calculations, different "add-backs" to EBITDA are customary in different industries. Both the MSELF and MSNLF should reflect these add-backs. If the MSLP terms do not take account of these variations and apply a common EBITDA formula in calculating maximum loan size, some industries may be significantly and unnecessarily disadvantaged in their access to the program. As noted above with respect to bank underwriting, banks' credit decisions in connection with MSLP loans will require careful analysis. Though use of 2019 EBITDA (to the extent EBITDA is appropriate, as discussed above) will help focus on businesses that were demonstrably healthy prior to the pandemic's onset, it may also present an incomplete picture of the borrower's current credit condition. Greater flexibility in the calculation of maximum loan size will avoid inappropriate or excessive reliance on measures that do not reflect a borrower's current condition, demand for funds, or ability to repay.

Finally, the terms of the MSELF provide that an Eligible Loan is an existing term loan. Many small and medium-sized business borrowers have existing revolving credit facilities for working capital and other purposes, but do not have existing term financing. Such borrowers otherwise suitable for the MSELF, and needing the amounts of credit it permits, would effectively be excluded from the program, or at least would receive significantly reduced funding.

ABA suggests greater flexibility in calculating EBITDA to accommodate the adjustments and add-backs appropriate to borrowers, including any present in existing lending agreements. In addition, the Federal Reserve should include existing revolving credit facilities within the MSELF.

f) Allow Greater Flexibility in the Required Attestations

The MSLP's term sheets detail highly restrictive attestations concerning repayment of borrowers' other debt of equal or lower priority, both to the Eligible Lender and to other creditors. In addition, the terms require restrictions on cancellation or reduction of other committed credit lines. These terms will obviously require the cooperation of an MSLP

[7] Particularly for the MSELF, the existing credit agreement will in many cases already include appropriate financial measures and tests for the particular borrower. These existing terms will provide a useful guide to maximum loan size calculations in those cases.

borrower's other creditors, as well as changes to the Eligible Lender's credit exposure. As noted above, a tenor as long as four years will likely cause heightened concerns among other lenders from whom borrowers require concessions in order to participate in the program.

Even with increased flexibility in MSLP loan tenors, however, the Federal Reserve should address other concerns such restrictions will raise. First, all lenders will monitor borrower financial condition and compliance with loan terms on an ongoing basis. Typical commercial loan terms provide for suspension of access to credit lines when the borrower's financial condition deteriorates and options for declaring defaults under more extreme circumstances. The MSLP terms should make clear that when such terms are triggered, lenders' options under the terms of existing credit agreements will not be constrained. The MSNLF and MSELF exceptions to permit "mandatory principal payments" are insufficient to resolve this concern.

The Federal Reserve's debt repayment restrictions appear designed to encourage small and medium-sized businesses to access new credit under MSLP while ensuring that this extraordinary support does not enable a borrower's existing lenders to withdraw from their exposure. Recognizing those aims, the Federal Reserve still needs to clarify that the attestations do not constrain the exercise of remedies under existing contracts, including those of the Eligible Lender. Any other result would effectively require subordination of all the borrower's other debt to the MSLP loan. It is not clear that the MSLP intends that result, but a lack of clarity here could severely inhibit MSLP participation.

Finally, these required attestations appear to limit dividends and similar distributions to equity holders. Though intended to maintain healthy equity levels while MSLP financing remains outstanding, such blanket limitations will impose serious hardships on owners of small and medium-sized businesses organized as partnerships, Subchapter S corporations, limited liability companies, and other pass-through structures. Owners of these businesses incur current tax liability for the entities' earnings, whether or not dividends or other distributions are declared. Typical pass-through entity documents provide for cash distributions sufficient to permit the owners to pay these taxes, which they otherwise must cover from other funds.

Because many small and medium-sized business owners depend upon their business for their livelihood, they would face hardship by being prevented from receiving the cash distributions necessary to meet their tax obligations. It is common for dividend restrictions in credit agreements to include exceptions for such tax distributions, and allowing exceptions will further the MSLP's objective of stabilizing small and medium-sized businesses as they cope with the COVID-19 pandemic. Otherwise, businesses organized as pass-through entities may effectively be excluded from the program.

ABA suggests clarifying that the required attestations concerning debt repayment do not impair existing remedies under loan contracts while also ensuring that the MSLP permits non-discretionary distributions (e.g. tax distributions) to enable broad participation for businesses that take different legal forms.

g) Clarify the Future Supervisory Treatment of MSLP Loans

Given the rapid deterioration in general economic and business conditions, some banks are concerned that any loans made in good faith to support borrowers in these particularly uncertain times will be subject to ex post criticism from bank examiners. This concern exists for both existing loans and MSLP loans, which will benefit borrowers facing clear pandemic-related stresses. The federal banking agencies have recognized this concern in other steps to address the economic hardships of the pandemic. Banks are ready to play their critical role in making MSLP funds available to their customers and communities, but they, like the supervisory agencies, recognize borrower needs will challenge many traditional supervisory practices.

ABA suggests that the Federal Reserve lead an effort to establish a public joint agency position emphasizing that loans under the MSLP will receive supervisory treatment that embraces the MSLP's policy objective of providing emergency support to borrowers as they cope with the impact of the COVID-19 pandemic.

h) Clarify and Expand the Scope of Eligible Lenders

The language of the term sheets appears to limit participation in the MSLP to U.S.-chartered depository institutions and their holding companies. Experience with the PPP demonstrates that access to the MSLP through existing bank customer relationships will be critical to swift loan funding.[8] Many small and medium-sized businesses have extensive relationships with foreign banking organizations operating in the United States through branches and agencies. Exclusion of these institutions from the scope of "Eligible Lenders" will disadvantage these businesses and frustrate the objective of the MSLP.

ABA suggests clarification or expansion of the scope of "Eligible Lenders" to ensure that U.S. branches and agencies of foreign banking organizations qualify as "U.S. businesses" and are able to act as intermediaries for their customers with regard to these facilities.

i) Preserve Pre-COVID Regulatory Tailoring Categorizations

Banks participating in the MSLP will retain new credit exposures on their balance sheets. This balance-sheet growth is an essential aspect of the program, but it will have potential regulatory consequences beyond credit exposure. In the past two years, the federal banking agencies have taken a number of important steps to implement the "tailoring" provisions of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA).[9] This important legislation made significant improvements to the regulations applicable to a variety of banking institutions, including fitting regulatory requirements to financial institutions of various classes based on size, complexity, and business model.

[8] In particular, working with existing customers immediately upon the program becoming active means that Bank Secrecy Act/Anti-Money Laundering compliance measures need not be repeated. As a result, both businesses and their wider communities receive program benefits more quickly.
[9] See Economic Growth, Regulatory Relief, and Consumer Protection Act, Pub. L. 115-174, 132 Stat. 1296 (2018) (codified at 15 U.S.C. § 1601 et seq.), https://www.congress.gov/115/plaws/publ174/PLAW-115publ174.pdf.

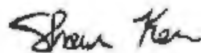
The supervisory agencies have recently taken a number of positive steps to facilitate banks' participation in programs to relieve COVID pandemic distress, such as neutralizing the capital impact of program participation.[10] As banks extend credit under the MSLP, additional loans and retained interests will have further effects on their balance sheets, which, if unaddressed, may cause a change in the applicable category under the various tailoring rules adopted pursuant to the EGRRCPA. These category changes would be unwelcome and unnecessary complications for banks that choose to support the relief effort by underwriting loans through the MSLP. Similarly, participation in any other Section 13(3) programs could lead to this same unwelcome result.

ABA suggests that the Federal Reserve and its federal banking agency counterparts confirm that balance sheet increases resulting from participation in any of the Federal Reserve's Section 13(3) programs will not trigger changes in the applicable categories under the final tailoring rules mandated by EGRRCPA.

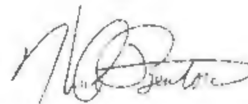
III. Conclusion

ABA appreciates the opportunity to share our views on your laudable efforts to date in constructing the Main Street Lending Program. If you would like discuss further, please contact Shaun Kern at (202) 663-5253 (skern@aba.com) or Hu Benton at (202) 663-5042 (hbenton@aba.com).

Very truly yours,



Shaun Kern
Senior Counsel
American Bankers Association



Hu A. Benton
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[10] See Regulatory Capital Rule: Paycheck Protection Program Lending Facility and Paycheck Protection Program Loans, 85 Fed. Reg. 20,387 (Apr. 13, 2020), https://www.federalregister.gov/documents/2020/04/13/2020-07712/regulatory-capital-rule-paycheck-protection-program-lending-facility-and-paycheck-protection-program.

BANK POLICY INSTITUTE

April 13, 2020

Main Street New Loan Facility and Main Street Expanded Loan Facility
Key Comments on April 9, 2020 Term Sheets

Introduction

The Bank Policy Institute[1] appreciates the opportunity to comment on the term sheets for the MSNLF and MSELF. We believe these facilities have the potential to provide significant and rapid relief to a large number of small- and medium-sized enterprises and their employees, thus furthering the policy expressed by Congress in the CARES Act to provide broad support to the real economy.

Our members have a strong interest in establishing the MSNLF and MSELF as facilities that function effectively for as large a number of eligible borrowers as possible. To that end, it will be important for the two facilities to be flexible in structure and consistent with current market practices wherever possible in order not to unnecessarily exclude otherwise eligible borrowers.

In particular, it will be important for these facilities to:

- Be available to a wide range of enterprises, including hospitals and other non-profits, as well as businesses for which an EBITDA-based leverage ratio is not an appropriate credit metric or that have credit arrangements other than term loans. Many of these businesses may be excluded from the facilities based on the April 9 term sheets. For example, many early-stage growth companies will not have EBITDA while many businesses, particularly small businesses, will not have term loan facilities, but instead have revolving credit facilities, asset-based facilities, privately placed notes, or other forms of debt financing.

- Work within the framework of borrowers' existing debt arrangements and not preclude borrowers from subsequently accessing private debt markets. Many borrowers' existing debt arrangements contain covenants that limit the ability of those borrowers to incur debt or grant liens, subject to specified exceptions. If the facilities are constituted in an overly prescriptive manner, many borrowers will not qualify for the facilities, or may need to obtain amendments or waivers in order to participate. Amendments or waivers may be difficult to obtain, particularly for borrowers with broadly syndicated loan facilities or capital markets debt.

[1] The BPI is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they make nearly half of the nation's small business loans.

- Take into account the fact that non-bank and non-U.S. institutions are active lenders to small- and medium-sized enterprises, and participate in existing loans alongside regulated lenders, or as syndication participants. In particular, borrowers should not be precluded from accessing the MSELF just because some of their existing lenders are non-bank entities.

With this background in mind, we have set forth below our key comments on the April 9 term sheets. We will follow up with further suggestions for optimizing the facilities and clarifying certain requirements by April 16.

The comments listed below are those that we believe are essential to resolve in order for the facilities to be successful. Accordingly, most of the points discussed below are directed at ensuring that the facilities are available to as broad a range of otherwise eligible borrowers as quickly and as seamlessly as possible. At the same time, the program must be transparent that underwriting by the participating lenders is an important component of the program's design with the intent of limiting taxpayer losses. Therefore, not all borrowers that meet the criteria provided in the term sheets will receive loans or receive loans for the maximum allowable amount.

Finally, in addition to making sure the facilities are accessible to borrowers, it will be important for participating lenders to have clarity as to the scope of their responsibilities as originators of loans under the program and with respect to ongoing loan administration. Participating lenders will also need to understand the material terms of the participation agreement, including any obligation to reacquire the SPV's 95% risk participation.

If you have any questions or would like to discuss any of the comments below, please contact Lauren Anderson, Senior Vice President and Associate General Counsel, at lauren.anderson@bpi.com.

Key Comments

1. **Applicable Rate** – Rather than creating additional complexity for both borrowers and lenders by requiring immediate use of SOFR, we propose that eligible loans adopt the approach that is current market practice and initially use LIBOR with "fallback" provisions for transitioning to SOFR consistent with either of the ARRC's approved options. Borrowers and lenders would then set the rate, including a spread within the specified range and any applicable floor, based on the circumstances of each eligible loan.

    - The great majority of U.S. corporate loans currently use LIBOR, with provisions permitting the agent to move to a replacement rate when LIBOR is no longer published or an alternative rate (e.g., SOFR) is generally in use.

    - As a result, most borrowers are familiar with LIBOR-based lending and have not yet prepared for a transition to an alternative rate. Requiring that eligible loans use SOFR would result in a need for significant borrower education, adding

complexity at an already challenging time, and may discourage borrowers from accessing the facilities or delay their ability to do so.

- There is not yet a widely accepted SOFR rate in the corporate loan market, and hedging for simple SOFR is not readily available, which limits the ability to mitigate interest rate risk and so may discourage participation by both borrowers and lenders in the facilities.

- Furthermore, many lenders, particularly small- and medium-sized lenders, are not yet ready operationally to transition to SOFR and so would be unable to participate in the facilities. System and operational changes have been based on plans for year-end 2020, in anticipation of the December 31, 2021 date set by the official sector for LIBOR cessation, and many lenders are still in the process of integrating and testing new services from vendors for use with SOFR-based business loans. Requiring that program loans use SOFR would effectively accelerate SOFR adoption by nine months for this product. We suggest that prudential considerations weigh against a hurried alteration of system and operational plans, especially in light of the current circumstances.

- At the same time, requiring eligible loans to use the approaches proposed by the ARRC will support the policy objective of moving credit agreements to effective LIBOR replacement wording.

2. **Determinations on Borrower Creditworthiness** – Program documentation should make clear that lenders participating in the program may continue to apply lending criteria based on the relevant lender's credit analysis and underwriting standards in addition to the express requirements of the program. This approach will help to protect the taxpayer and promote institutional safety and soundness.

    - Eligible lenders should not provide funds to every borrower that satisfies the limited set of eligibility criteria set forth in the term sheets. Rather, lenders should continue to apply lending criteria and be able to include covenants and other terms that go beyond those specified in the term sheets to the extent deemed appropriate based on the relevant lender's credit analysis and underwriting standards (so long as such criteria and covenants or other terms do not expressly conflict with the term sheets). Applying such standards will serve the interest of taxpayer protection and support institutional safety and soundness.

    - Of course, although the lenders will attempt to apply underwriting standards that minimize the risk of loss on eligible loans, the policies behind the program, including funding for a wide range of borrowers, speed of execution and employee protection, will often require the application of underwriting standards that differ from those that are usual, particularly with respect to current performance and projections. Accordingly, an eligible loan to an eligible borrower that complies with the specific terms of the program should not result in liability by the lender to the Federal Reserve, Treasury or the SPV for any default on such eligible loan absent manifest willful misconduct on the part of the lender.

Note that we will be seeking additional clarification on underwriting standards in our subsequent comment letter.

- Finally, to avoid borrower confusion, we recommend that the relevant program documentation, including any application forms, make clear that receipt of funds under the program will be conditional upon satisfying applicable lending standards and that applicants may therefore not receive the maximum loan amount or indeed any funds under the program.

3. **EBITDA** – Rather than the EBITDA construct included in the term sheets, we propose that borrowers and lenders be permitted to use the metric most comparable to EBITDA in the relevant borrower's existing credit arrangements or regular financial reporting, or a metric in common use in credit arrangements in the borrower's industry to the extent more appropriate.

   - The corporate loan market generally uses an "adjusted" EBITDA framework, which permits add-backs of non-cash items and other items in order to try to establish a more accurate picture of cash flow available to service debt, with the add-backs in question tailored to each borrower based on that borrower's business. There are also sectors, such as real estate, for which EBITDA-based metrics are not commonly used.

   - The proposed EBITDA construct would not be appropriate for many borrowers and would not result in a consistent measurement of risk across borrowers in different businesses. Requiring all borrowers to use the same credit metric to determine eligibility would exclude many sound entities from the facilities, including non-profits.

4. **Leverage** – Even with the above adjustments to EBITDA, the leverage tests contemplated by the term sheets may be too restrictive for many eligible borrowers.

   - In particular, the low caps on leverage would preclude many young, innovative companies that currently have low or no income but promising growth prospects from accessing the facilities. Such firms contribute importantly to employment and productivity.

   - Furthermore, the definition of "debt" for the purpose of these leverage calculations will need clarification in order to avoid unnecessarily shrinking program availability. For example, market participants do not typically include undrawn commitments in their leverage calculations, and particularly in the current circumstances, "drawn commitments" would provide an accurate measure of a firm's likely indebtedness under stress.

   - In addition, clarity will be needed on whether "debt" will include on-balance-sheet leases and contingent obligations and whether it will be calculated net of cash, while for the MSELF, clarity will be needed on whether the 30% cap is

limited to "bank" debt or can also include other forms of debt that may be outstanding (such as bonds and loans provided by non-traditional lenders).

- Consistent with recent agency statements, we assume that the 2013 leveraged lending guidance will not be enforced as binding rules with respect to loans under the program. Not requiring strict adherence to the guidance will facilitate quicker underwriting decisions, for example by allowing lenders to forego preparation of the detailed projections suggested by the guidance. Such projections take time and would be challenging to develop accurately in the current economic environment.

5. **Tenor** – Rather than fixing the tenor at four years, the program should permit lenders and borrowers to agree to tenors for any period up to six years, with amortization schedules after the initial year of the loan to be agreed between the relevant borrower and its lenders.

    - Loans with a fixed four-year tenor are less likely to be permitted by a company's existing indebtedness, as there are frequently requirements that new debt have a tenor that matches or exceeds that of existing debt. Given that term loans frequently have a tenor of five years or longer, a significant amount of existing debt would prohibit borrowers from utilizing these facilities.

    - At the same time, even if a four-year loan were permitted under existing arrangements, it may be difficult for companies to borrow privately for longer periods of time subsequent to the COVID-19 situation resolving itself, as lenders will be reluctant to provide financing when the program loans have structural priority due to their earlier tenor.

    - A fixed four-year tenor could also result in a large number of borrowers having loans with similar maturities, resulting in a maturity wall with many borrowers needing to refinance at the same time.

6. **Amortization** – We believe there is a need for additional clarity around the operation of the one-year interest and principal deferral as well as the implications for borrowers' obligations in the post-deferral period.

    - To be able to underwrite the loans, lenders will need clarity that:

        - Amortization after the deferral period will be negotiated between the borrower and its lenders in order to best serve the borrower from a cash flow perspective.

        - Deferred interest will be accreted to principal at the relevant interest payment date, in accordance with market practice.

        - Interest will accrue on the deferred principal and deferred interest that has been accreted to principal (i.e., paid in kind).

- Lenders and borrowers may agree that interest be paid in kind for some period after the initial one-year deferral.

7. **SPV Participation** – There is a need to have clarity on the material terms of the participation agreement that addresses key issues common to all lenders.

    - Issues to address include practical matters relating to how the loan will be administered, including what rights the SPV will have as participation holder to vote or consent under the relevant loan agreement, what obligations the bank will have to the SPV and rights and responsibilities in relation to a borrower default.

    - The participation agreement will also need to include limitations on liability and other customary terms.

    - A critical unknown is whether lenders will need to sell the 95% participation to the SPV upon origination of an eligible loan or will have the option of electing to sell the participation at par for as long as the facility is open and irrespective of the relevant loan's performance over the period between loan origination and sale to the SPV. Clarity on this point is crucial because the facilities will operate significantly differently depending on which of the two alternatives is chosen.

8. **Attestation Requirements** – Lenders should be permitted to rely on each borrower's attestations as to program requirements without further verification.

    - In order to be able to participate in the facilities, lenders will need to understand what responsibility (and resulting potential liability) they have to verify or monitor borrower attestations as to program requirements, including forward-looking requirements, such as the requirement to use "reasonable efforts" to maintain payroll and retain employees. To the extent that lenders are required to verify borrower attestations, delays will occur as lenders build the requisite compliance processes, and put each potential borrower through that process.

    - Lenders will also need clarity as to where the various attestations will need to be housed (e.g., in loan applications, loan documents or separate certificates).

    - Permitting lenders to rely on borrower's attestations will facilitate a quicker roll-out of the facilities.

    - We request that the Federal Reserve Board work with the Treasury and FinCEN to provide the same relief to lenders with regard to KYC obligations for existing clients that has been provided for the Paycheck Protection Program through recent FAQs. It would also be helpful to have such relief extended to new borrowers as well to expedite the ability to provide funding to companies in need.

9. **Accounting and Capital and Regulatory Treatment** – Participating lenders will need confirmation that the SPV's participation will function as a "true sale" of 95% of the

relevant loan, so that only the 5% retained economic interest is included when a bank calculates risk-based capital and leverage ratios.

10. **Operational Issues** – There are a significant number of additional operational issues related to loan origination and documentation that will need to be worked through, on which we will be providing further comments.

April 16, 2020

Via Electronic Mail

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, D.C. 20551

Re: April 9, 2020 Term Sheets for the Main Street New Loan Facility ("MSNLF") and Main Street Expanded Loan Facility ("MSELF")

Ladies and Gentlemen:

The Bank Policy Institute[1] appreciates the opportunity to provide its more detailed comments on the April 9, 2020 term sheets for the MSNLF and MSELF. This letter supplements the list of key comments provided to the Federal Reserve on April 13, 2020. As we noted in our list of key comments, we believe the MSNLF and MSELF have the potential to provide significant and rapid relief to a large number of small- and medium-sized enterprises and their employees, thus furthering the policy expressed by Congress in the CARES Act to provide broad support to the economy.

The issues raised in our list of key comments were those that we believe must be resolved in order for the MSNLF and MSELF to be successful, with many of the comments in that list directed at ensuring that the MSNLF and MSELF can be made available to a broad range of eligible borrowers as quickly and as seamlessly as possible. The purpose of this letter is to provide a set of more detailed comments covering both suggestions for further optimizing the facilities and specific points in the April 9 term sheets that need to be clarified in order to ensure the facilities can open quickly and operate efficiently. Clarification is also important to allow borrowers and lenders to be sure that they are abiding by the requirements of the program – e.g., with respect to eligibility and maximum loan amount.

As you can see from the issues discussed below, there are numerous operational issues that must be considered if the program is to achieve its goals. In order to avoid frustration and disappointment for borrowers, it will be essential for participating lenders to be given time to prepare their systems and processes before the program goes live. Accordingly, we recommend that the final terms of the program be published not less than one week prior to the date on which the Federal Reserve and the Treasury Department direct borrowers to begin applying. Given that further operational and other questions are certain to arise as the program progresses, we recommend that the Federal Reserve establish an expedited process for soliciting and issuing future FAQs.

Finally, we would like to reiterate the importance of there being transparency from the start of the program that underwriting by participating lenders is an important component of the program's design with the intent of limiting

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1 The BPI is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

taxpayer losses, and that, as a result, not all borrowers that meet the criteria for participation in the program will receive loans under the program or receive loans for the maximum allowable amount.

With this background in mind, we have set forth below our more detailed comments on the MSNLF and MSELF term sheets of April 9, 2020, which have been grouped into the following categories: (i) definitional clarifications; (ii) loan priority and collateral issues; (iii) participation agreement and associated operational issues; (iv) processes and procedures with regard to defaulted loans; (v) operational and administrative issues; (vi) fees; and (vii) regulatory issues.

I. Definitional Clarifications

A. Eligible Borrower Requirements

- As noted in our list of key comments, one of our members' primary concerns is to ensure that appropriate government support is available during the COVID-19 crisis to as wide a range of eligible borrowers as possible. One aspect of this concern is minimizing the risk of there being gaps between the already established programs (e.g., the SBA's Paycheck Protection Program and the Federal Reserve's Primary Market Corporate Credit Facility) for supporting businesses impacted by COVID-19 and the newly established MSNLF and MSELF. While the goal of minimizing overlap between the programs is understandable, small overlaps between them may be preferable to exclusions that leave deserving businesses without support.
  - As context for how the existing MSNLF and MSELF thresholds might operate in practice, it should be noted that, based on public data, there are nearly 200 medium-sized non-investment grade borrowers that do not qualify for access to the Primary Market Corporate Credit Facility or other Federal Reserve programs and that do not currently meet the 10,000 employees/$2.5 billion revenue criteria contained in the term sheets. Relatedly, of the approximately 1,600 non-investment grade U.S. businesses that may meet the MSELF criteria, nearly 30% have public bonds and loans of greater than $1 billion,[2] indicating that the $150 million cap is potentially too restrictive. Similarly, the $25 million cap for the MSNLF may prevent a number of businesses from getting the help that they need.
    - There are a number of ways in which the MSNLF and MSELF could be adjusted to help minimize gaps between these and other programs. For example, the employee or revenue threshold requirements could be raised or the minimum and maximum loan sizes could be altered. In addition, the Federal Reserve could institute an exceptions policy, whether on an individual loan basis or for broader categories of loans, that would allow access to the MSNLF or MSELF to borrowers that do not necessarily meet the strict program criteria but would otherwise benefit from the program.
- The term sheets define "Eligible Borrowers" as "businesses" with (i) 10,000 or fewer employees or (ii) up to $2.5 billion in 2019 annual revenues.
  - *Recommendation*: Confirm that, notwithstanding the reference to "businesses," non-profits such as hospitals and similar entities, as well as businesses owned or controlled by Native American Tribes, can also qualify as Eligible Borrowers (subject to satisfaction of any other relevant requirements in the final program documentation). Many such entities are struggling with the COVID-19 crisis and could benefit from the program.

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[2] Source: FactSet, Bloomberg; illustrative analysis on the public U.S. high-yield bond and loan market, excludes Airlines & related industries.

- *Recommendation*: In order to ensure that the program is able to benefit as many borrowers as possible, confirm that the employee and revenue requirements are alternatives (such that a business with fewer than 10,000 employees but more than $2.5 billion in 2019 annual revenues would be an Eligible Borrower, as would a business with more than 10,000 employees but less than $2.5 billion in 2019 annual revenues).

- *Clarification*: Define how borrowers are to calculate their employee numbers. In particular, specify whether part-time or seasonal employees should be included (one alternative would be for borrowers to use a full-time-equivalent metric) and the dates or periods as of or for which the test should be determined.

  - The requirement could be tested as of a recent date prior to the establishment of the program or on the basis of the average number of employees over a specified period ending prior to its establishment.

- *Clarification*: Clarify whether the reference to "2019 annual revenues" may include fiscal year revenues (for borrowers that do not use the calendar year) and confirm that the revenue figure need not be audited or otherwise subject to auditor review.

➢ Further, as noted in our list of key comments, the EBITDA-based leverage metrics, the prohibition on distributions and other requirements contained in the term sheets could exclude deserving enterprises from participation.

- This concern applies, in particular, to enterprises that did not have positive income in 2019 (e.g., growth companies and startups) as well as non-profits. For example, many early-stage growth companies and startups that did not have positive income / earnings in 2019 will not be able to access the program given the EBITDA and leverage requirements. This is particularly unfortunate given that many of these businesses also are unable to receive funding under the Paycheck Protection Program due to the number of employees they have or because of the SBA's affiliation rules. Many of these businesses have promising growth prospects and help create jobs in the United States.

- In addition, S-corporations and other pass-through entities that are frequently used in middle market financings (e.g., in REIT structures and family-owned manufacturing businesses) are often required to make non-discretionary distributions, such as to satisfy tax liabilities, and so may not be able to make the necessary undertakings with respect to distribution restrictions.

- We assume that relevant exceptions will be provided to permit such enterprises to participate in the program.

  - *Recommendation*: In the case of companies for which an EBITDA or leverage test is inappropriate and that typically use other leverage and cash flow models, such as growth companies, non-profits and real estate companies, we recommend Eligible Lenders be permitted to use their existing credit underwriting standards, which may rely on another metric in common use. For example:

    - For growth companies, we would suggest Eligible Lenders be permitted to apply a requirement to have grown top line revenue by more than 20% for at least two years in a row. Using this metric would ensure that failing companies would not otherwise be permitted to receive funding under these programs.

- For non-profits such as hospitals, hospital systems, retirement communities, skilled nursing facilities, universities, colleges and other cultural institutions (e.g., religious organizations and museums), we would suggest Eligible Lenders be permitted to use a metric that uses a combination of net operating income (before debt service) and non-operating income, which would allow non-profits to include portfolio draws.

- For real estate companies, we would suggest Eligible Lenders be permitted to use a loan-to-value ratio of the type common in the sector.

- The "Eligible Borrower" definition also requires "significant operations" and a "majority of…employees" to be based in the United States.

  - *Clarification*: Clarify the "significant operations" and "majority of…employees" requirements. For example, metrics based on a percentage of a borrower's total revenues for a certain period or total assets as of a certain date could be used for the "significant operations" test, while the majority of…employees" test could be satisfied if either a simple majority of employees (i.e., more than 50%) or a plurality of employees (i.e., a greater percentage of employees than any other jurisdiction) are employed in the United States.

    - To the extent income statement or balance sheet metrics are used, please clarify whether these should be calculated in accordance with applicable accounting standards or otherwise. Guidance on the geographical assignment of revenues (e.g., by location of customer, point of receipt of payment, point of shipment, etc.) and on whether intangible assets should be included would also be appreciated.

- Finally, as noted above, it must be made clear to Eligible Borrowers that this is a loan program and not a grant program, with the loans provided under the program expected to be repaid as a matter of Federal law. As a result, Eligible Lenders are expected to apply underwriting standards and assess credit risk such that not every enterprise that otherwise meets the Eligible Borrower definition or the other program criteria will get access to program loans or receive the maximum allowable amount of program loans. Public education by the Department of the Treasury and the Federal Reserve on this point is essential.

B. Eligible Lender Requirements

- The list of "Eligible Lenders" includes U.S. insured depository institutions, U.S. bank holding companies and U.S. savings and loan holding companies.

  - *Recommendation*: Expand the definition of Eligible Lenders to include U.S. branches of foreign banks and to clarify that affiliates and subsidiaries of U.S. bank holding companies and U.S. insured depository institutions are Eligible Lenders. Doing so would allow participation by numerous deserving and eligible borrowers that would otherwise be excluded.

  - *Recommendation*: Specify that the MSELF is available as long as an Eligible Lender provides the MSELF tranche, regardless of the nature of the financing being upsized. Also, clarify that the MSELF does not have to involve "reopening" an existing tranche of a term loan, but can be provided as an additional tranche under an existing facility.

    - Under the term sheets, MSELF loans are required to be structured as an increase to a term loan provided by an Eligible Lender. This requirement would exclude many otherwise eligible borrowers that do not currently have term loans in their capital structure (e.g., companies with just a revolving facility). It would also exclude borrowers whose existing lenders are direct

lender debt funds, foreign banks and other non-bank institutions, or whose financing has been syndicated to non-bank "TLB" lenders. As noted in our list of key comments, non-traditional lenders are a critical source of capital to small- and medium-sized enterprises, and many potential borrowers have already contacted our members to express alarm about their potential exclusion.

C. Eligible Loans

- *Clarification*: If the loan size fits within the MSNLF parameters and the Eligible Lender has an existing secured loan with the borrower, can the Eligible Lender elect to use the MSNLF or will it be required to use the MSELF?

- *Clarification*: Should guidance as to reporting/risk ratings/impairments be followed for underwriting decisions under the program? Many relevant credits may have already been assigned to workout/problem asset groups, where underwriting new credit commitments would be denied under existing credit rules.

D. "Debt" Components

- For purposes of determining the maximum amount of financing available to an Eligible Borrower under the program, the term sheets use the concept of "outstanding and committed but undrawn debt." In addition, the MSELF includes the concept of "outstanding and committed but undrawn *bank* debt." While perhaps inadvertent, this distinction could unfortunately restrict access by otherwise qualified borrowers.

  - *Clarification*: Is "debt" intended to be calculated on a consolidated basis or on a standalone basis for the relevant Eligible Borrower?

  - *Recommendation*: Permit both bank and non-bank debt to be taken into account when determining loan sizing for Eligible Borrowers. As noted in our list of key comments, permitting only debt provided by regulated institutions to be taken into account could be prohibitive for borrowers with alternative capital structures (e.g., capital markets debt or "TLB" facilities).

  - *Recommendation*: "Debt" should exclude on-balance-sheet leases and other items typically excluded from debt calculations in commercial bank loans (e.g., trade payables, mortgages or deeds of trust issued by an SPV that holds real estate), and "debt" should be calculated net of cash, as is customary in commercial bank loans.

  - *Recommendation*: Provide Eligible Lenders with discretion to exclude from the "debt" calculation other items not typically included when testing leverage for purposes of extending credit to the relevant Eligible Borrower, including debt that is junior to the MSNLF or MSELF loan being extended. Doing so would expand the reach of the program and enable a great many more Eligible Borrowers to benefit. In the case of the MSELF, the definition of "debt" in the Eligible Borrower's existing documentation could be used for efficiency.

  - We noted in our list of key comments that it would be preferable to exclude undrawn commitments from leverage calculations for purposes of debt sizing. However, to the extent they remain included:

    - *Clarification*: Would the concept take into consideration the fact that certain facilities may be committed but not practically accessible by the borrower as a result of covenant restrictions or borrowing base tests?

        - *Recommendation*: Apply an "available" commitment concept to take into account the fact that committed capacity may not be currently accessible.

    - *Clarification*: Clarify that the concept of "existing outstanding and committed but undrawn debt" is intended to contemplate both drawn debt and undrawn debt (i.e., "outstanding" refers to drawn debt rather than being a further description of the undrawn commitments).

E. Attestation Requirements

- We noted in our list of key comments the need for lenders to be able to rely on borrower attestations without further verification and monitoring if delays are to be avoided. Lenders will need clarity that their responsibility in this regard will be limited and that they will not be held liable or subject to put-back risk in the event of a false statement by a borrower.

    - *Recommendation*: Borrower attestations should be made once at origination and not be subject to ongoing monitoring or verification.

- *Clarification*: There are also terms that will need to be clarified before borrowers can be comfortable providing their attestations.

    - First, what would constitute "reasonable efforts" on the part of the borrower to maintain payroll and retain employees?

    - Second, how will the compensation, stock repurchase and capital distribution restrictions be applied in the context of the program?

        - *Recommendation*: As noted above, we assume there will be exceptions to permit a subsidiary borrower to upstream cash to its parent holding company in the United States in order to meet that entity's tax obligations or other mandatory distribution obligations, and we would support exceptions of this type in order to maximize the potential reach of the program.

    - Third, what is the remedy if an Eligible Borrower breaches an attestation? Will there be a cure period?

- In addition, we are concerned that the Eligible Lender attestation regarding the proceeds of program loans not be used to repay or refinance pre-existing loans or lines of credit made by the Eligible Lender to the Eligible Borrower would be difficult for Eligible Lenders to provide as they are not in a position to know what funds a borrower is using for a repayment and so may discourage participation.

    - *Recommendation*: Remove the Eligible Lender attestation and rely on the use of proceeds covenant already contemplated by the term sheets.

II. Loan Priority and Collateral Issues

A. Ranking of Eligible Loans and Payment of Other Indebtedness

- As noted in our list of key comments, it is of primary importance that program loans be provided in a manner that works within the framework of borrowers' existing debt arrangements.

    - The term sheets contemplate that loans under the MSNLF would be provided on an unsecured basis.

- *Recommendation*: Permit MSNLF loans to be provided as subordinated to other non-affiliate indebtedness if required by an Eligible Borrower's existing debt arrangements. Doing so would alleviate (although not eliminate) many consent and waiver requirements that might otherwise exist under an Eligible Borrower's existing debt documentation.
- *Recommendation*: Similarly, permit MSNLF loans to be provided on a secured basis if there is collateral available to support such a loan. Eligible Lenders may be more willing to provide program loans if their 5% hold will be secured.
- *Recommendation*: Confirm that "unsecured" refers only to collateral security and would not preclude an Eligible Loan from benefiting from guarantees; but, at the same time guarantees should not be required.

- The term sheets prohibit the proceeds of loans under the MSNLF and MSELF from being used to (i) repay or refinance pre-existing loans or lines of credit made by the Eligible Lender to the Eligible Borrower or (ii) repay other loan balances.
  - *Recommendation*: Confirm that these prohibitions are intended to prevent prepayments of indebtedness and do not extend to the use of such proceeds to pay principal and interest that is due and payable in accordance with the existing terms of such obligations. The ability to service existing debt will be important to ensuring that Eligible Borrowers are not subject to default risk while navigating through the COVID-19 crisis and use of program funds for this purpose should be viewed favorably.
  - *Recommendation*: Define "debt" to include only borrowed money and not other items that may constitute "debt" in a broader sense, such as on-balance-sheet leases.
  - *Recommendation*: Permit Eligible Borrowers to use program loans to repay existing indebtedness, particularly any "rescue" financing incurred after mid-March 2020. This permission could also be extended to permit the use of program loans to repay other existing indebtedness coming due within 24 months.
    - Facilitating refinancings will be an important way to ensure Eligible Borrowers maintain liquidity through the COVID-19 crisis. Moreover, given the absence of available government support, many Eligible Borrowers may have been forced in recent weeks to obtain emergency funding that may be on onerous terms. Permitting Eligible Borrowers to use program loans to refinance such funding would alleviate pressure on those Eligible Borrowers and provide them more breathing room to ride out the crisis.
    - Permitting the repayment of existing debt with program loans is also another way to alleviate the risk of program loans being restricted by existing debt documentation and so the need for waivers and consents. Loan documentation frequently permits the incurrence of debt if used to refinance existing debt.
- The term sheets also require Eligible Borrowers to refrain from repaying other debt of equal or lower priority, with the exception of mandatory principal payments, unless the Eligible Borrower has first repaid the Eligible Loan in full.
  - *Recommendation*: Confirm that Eligible Borrowers are also able to (i) pay interest that is due and payable and (ii) repay principal at maturity, including principal of an upsized Eligible Loan that comes due prior to the maturity of the upsized tranche.

- *Recommendation*: Confirm that these restrictions would not prohibit Eligible Borrowers from replenishing existing lines of credit or other revolving loans, or from complying with mandatory cash sweeps in accordance with the terms of existing instruments, but rather would be limited to permanent commitment reductions in respect of such facilities. Repaying revolving balances to reduce financing costs is an important part of the liquidity management of many small- and medium-sized enterprises.

- *Recommendation*: Clarify that debt that ranks equally in right of payment but senior in right of collateral (for example because it is secured when the Eligible Loan is unsecured) would not be caught by this prohibition.

B. Prohibition on Cancelling or Reducing Existing Lines of Credit

➢ Please confirm that this requirement is not intended to prohibit:

- The Eligible Lender cancelling or reducing existing lines of credit as a result of the occurrence of a default or event of default;
- The reduction or termination of uncommitted lines of credit;
- The expiration of existing lines of credit in accordance with their terms;
- The reduction of availability under existing lines of credit in accordance with their terms due to changes in borrowing bases or reserves in asset-based and similar structures;
- Eligible Borrowers from repaying amounts outstanding under existing lines of credit in the ordinary course of business (so long as the corresponding commitments are not reduced);
- Mandatory prepayments or commitment reductions in accordance with the terms of the existing lines of credit; or
- Eligible Borrowers from refinancing an existing line of credit with a comparable (cheaper) line.

C. Derivative Agreements

➢ Please confirm that none of the prohibitions contained in the term sheets is intended to prevent Eligible Lenders from:

- Taking action with respect to derivatives tied to existing facilities, Eligible Loans, or to upsized tranches of Eligible Loans (e.g., close-outs, realization of any collateral or other actions with respect to workouts); or
- Entering into new swaps tied to Eligible Loans and sharing on a pari passu basis in any available Eligible Borrower collateral with existing secured lenders or Eligible Lenders providing program loans.

D. Collateral

➢ Another way in which the program requirements set forth in the term sheets could cut across existing debt arrangements is the requirement that the upsized tranche of Eligible Loans under the MSELF be secured on a pari passu basis with the underlying Eligible Loan. This requirement could significantly reduce the utility of the facility by disincentivizing existing creditors from providing necessary consents.

- *Recommendation*: Permit MSELF loans to be provided with a priority that is junior to the existing Eligible Loan.
    - Permitting such ranking would help to incentivize participants in the existing Eligible Loan to consent to the upsize available under the MSELF, as they may otherwise be reluctant to dilute their collateral positions by sharing their collateral with the MSELF lenders given that such dilution would increase the likelihood of a collateral deficiency upon any default.
    - In addition, having the MSELF loans be accorded secured creditor status (even one that is subordinate to other secured creditors as suggested above) implies priority of payment over all existing unsecured creditors. This could make any unsecured creditors with consent rights unwilling to provide those consents, thereby inhibiting an Eligible Borrower's ability to consummate the transaction without defaulting under such existing unsecured debt.
- *Recommendation*: Clarify whether there will be any restrictions on the type of collateral that is acceptable under the program.

III. Participation Agreement and Associated Operational Issues

A. Nature of Participation

➢ As noted in our list of key comments, Eligible Lenders will need a clear Participation Agreement.

- *Recommendation*: Adopt a standard form Participation Agreement to be used for all program loans. The Participation Agreement should be structured to ensure that:
    - The 95% participation by the SPV will be a true loan participation with "true sale" accounting treatment, rather than some other technical form of funding and risk sharing (such as a non-recourse loan from the SPV to the Eligible Lender to fund the new loans or upsized tranches).
    - Consent and approval rights, if any, are available to the SPV both before and after default, taking into account the need for flexibility and efficiency in light of the myriad waiver and amendment requests that lenders receive from borrowers in the ordinary course of loan administration.
    - Any required representations and warranties are clear.
    - There is clarity around the SPV's ability to sell its 95% participation.
        - *Recommendation*: There should be no lender repurchase obligations after the SPV has purchased its participation in a new or upsized loan.

B. Participation Operational Queries

➢ There are operational issues to be clarified in respect of the participations:

- Will the SPV fund participations individually or in bulk at some frequency?
- How fast will funding occur? Is funding the same day as close feasible? Will the program have any pre-fund diligence requirements?
- Will banks be permitted to syndicate, sell or pool their 5% holds?

- *Recommendation*: Permit Eligible Lenders originating a program loan to sell or otherwise syndicate the retained 5% to other Eligible Lenders. Permitting such activities would make participation in the program more attractive to potential Eligible Lenders and so increase the capacity of the program to assist Eligible Borrowers by providing for a path to liquidity for the originating Eligible Lender.

- *Recommendation*: Adopt clear procedures permitting groups of Eligible Lenders to provide program loans together, including on a club or syndicated basis, so that Eligible Borrowers are not required to obtain program loans simply from one Eligible Lender. Many Eligible Borrowers will have relationships with multiple Eligible Lenders, each of which may wish to support the Eligible Borrower through the COVID-19 crisis and providing for clear procedures permitting them to do so would further optimize availability of the program facilities.

- Can the 5% holds be pledged either to the Federal Reserve or the Federal Home Loan Banks? Are there any other requirements/limitations around Eligible Lenders' 5% hold positions (e.g., can Eligible Lenders purchase CDS and/or macro hedges)?

- In the case of program loans that use an administrative agent, will each Eligible Lender be expected to take its pro rata share of the 5% hold back, or will the administrative agent take the full piece and hold it on behalf of the other Eligible Lenders? If the former, do all participating Eligible Lenders need to agree?

IV. Processes and Procedures with Regard to Defaulted Loans

➢ The need to have clarity regarding the relative rights and obligations of Eligible Lenders and the SPV under the Participation Agreement is particularly acute in the context of Eligible Loans that enter default. In particular, consideration will need to be given to the following issues:

- Will an Eligible Borrower be permitted to participate in the program if it is already in default under other indebtedness or if it is in or emerging from bankruptcy?

  - *Recommendation*: Do not automatically exclude Eligible Borrowers that are otherwise in default or emerging from bankruptcy, but rather permit Eligible Lenders to take this factor into account in their underwriting processes. Many borrowers currently affected by the COVID-19 crisis face operational covenant defaults; such defaults may be addressed by an amendment or waiver in connection with a concurrent financing (whether pursuant to the CARES Act or via the capital markets).

- How would cross defaults work? Would a default on other debt necessarily result in a cross default on the Eligible Loan participated to the SPV or would this be for the Eligible Lender and Eligible Borrower to negotiate?

  - *Recommendation*: Permit the Eligible Lender and Eligible Borrower to set the terms of the relevant loan, including any cross-default provision, so long as it otherwise complies with the program criteria.

- How much control would the SPV have over problem loans, workouts and collection activities? Who would take the lead in enforcing remedies upon default, given the SPV's 95% participation? Does there need to be a mechanism to get waivers/consents to cure defaults under program loans from the SPV or will it delegate this process to the Eligible Lenders?

   - *Recommendation*: To streamline loan administration and avoid delay, delegate workout activity to the Eligible Lenders holding the 5% retained interest, while putting in place procedures to protect the SPV's 95% interest and mitigating any conflict of interest that may arise as a result of those Eligible Lenders having other, more senior, debt in the relevant borrower's capital structure.

- Would the SPV be willing to subordinate its 95% participation interest recovery to the 5% interest of the Eligible Lender?

- Would the $75 billion of equity provided by the U.S. Department of the Treasury be in the first loss position for loans under the program? Would this first loss position apply only to the 95% participations or also the Eligible Lenders' 5%?

- *Clarification*: Confirm that if the Federal Reserve receives funds from an Eligible Borrower's estate for expenses under 507(a)(2) of the Bankruptcy Code, it will distribute to the Eligible Lender the percentage representing the Eligible Lender's interest in the Eligible Loan (5%) to ensure that risk sharing with the originating lender remains on a pari passu basis at all times.

V. Operational and Administrative Issues

A. Operational

➢ We have specific operational queries on which we would like clarification:

- What reporting with respect to originations and declines, if any, will be required of Eligible Lenders by the SPV, and what level of ongoing periodic reporting will be required?

- What are the loan servicing standards and the monthly settlement processes?

- *Recommendation*: Consistent with the Paycheck Protection Program, Eligible Lenders should be exempt from beneficial ownership requirements for the MSNLF and MSELF to the extent loans thereunder are extended to existing customers, as this will help to expedite the disbursement of funds under the program.

   - *Recommendation*: In addition, provide that Eligible Lenders will not be subject to enforcement actions related to a violation of, or unsafe and unsound practice related to, the Bank Secrecy Act for failing to detect and report suspicious activity with regard to any attestations or representations made by fund recipients in connection with this program so long as they make good faith efforts to comply with financial crime expectations, including monitoring and reporting on suspicious activity based on available customer information.

B. Administration

➢ We also have specific recommendations and queries regarding the administration of the program:

- *Recommendation*: For ease of administration, there should be a single point of contact to which a loan package can be submitted for confirmation of acceptance or rejection by the SPV.

- Will loans available under this program be on a first-come-first-served basis?

   - *Recommendation*: Ensure there is a system to communicate the remaining availability under the program to Eligible Lenders in real time. This communication will be vital in order to be

able to set customer expectations and avoid Eligible Borrower disappointment, as it can take time to process an application once it has been entered into the system.

C. Standardized Documentation

➢ It will be important for Eligible Lenders to have confidence when they originate or upsize a program loan that such loan will be accepted by the SPV as an Eligible Loan. In particular, they will need to be sure that the SPV will accept the documentation pursuant to which the relevant loan has been extended.

- *Recommendation*: For new loans under the MSNLF, the Federal Reserve should adopt a standard form of note or loan agreement, as this will ensure consistency in approach and make administering the program easier, as well as reduce friction, speed up the time to market and facilitate back-end securitizations by the SPV. As Eligible Loans under the MSNLF will be unsecured, there is likely to be less need for intercreditor arrangements, although consideration will need to be given to that issue.

- *Recommendation*: For upsized loans under the MSELF, permit the upsize to be documented under the Eligible Borrower's existing documentation (for example through a short-form amendment), as this would avoid the need to spend time and effort attempting to fit a standardized document onto an existing documentation structure, which may come with a need for intercreditor arrangements and other related matters.

  - It would, however, be important for the Federal Reserve to provide a "template" of the language for the key terms that would need to be included in the loan amendment and then agree that the SPV will purchase any amendment that contained those key terms, even if it also contains additional terms.

VI. Fees

➢ We have the following recommendations:

- *Recommendation*: Confirm that the 100 basis point facility fee is payable only in the case of the MSNLF and that it is payable only at the time the participation in the relevant Eligible Loan is purchased by the SPV. In addition, confirm that the facility fee may be net funded using the cash flows from the 95% participation purchase.

- *Recommendation*: Confirm that Eligible Lenders have discretion over whether and when to charge Eligible Borrowers the 100 basis point origination/upsizing fee.

- *Recommendation*: Confirm that the 25 basis point servicing fee paid by the SPV is paid annually in advance and is not intended to cover workouts in addition to ordinary course servicing, as workouts require special additional attention.

VII. Regulatory Issues

A. Balance Sheet

➢ *Recommendation*: For the duration of the program, Eligible Lenders should retain their respective category with respect to regulatory tailoring given that asset sizes of banks will increase dramatically as a result of this and other Federal Reserve programs aimed at supporting the market during this time.

B. Regulatory Guidance

- *Clarification*: As noted in the list of key comments, Eligible Lenders will need confirmation that only the 5% retained economic interest is to be included when they calculate risk-based capital and leverage ratios.

- *Clarification*: We would also like to clarify whether program loans will be considered reportable under the Shared National Credit Program and confirm their interaction with the Interagency Leveraged Lending Guidance (as noted in our list of key comments, we assume that these will not be enforced as binding rules with respect to Eligible Loans).

- *Clarification*: We would like to clarify whether the making of program loans would constitute a "MIRE" event for flood insurance purposes, as triggering a MIRE event can be time consuming and expensive and result in significant delay if real property is included in the collateral pool.

- Please confirm that Eligible Lenders will be permitted to use standard risk rating models and scorecards, including adversely classified ratings, when evaluating program loans and that Eligible Lenders will be permitted to exercise judgment in accordance with internal policies to potentially override a rating (provided that Eligible Borrower criteria is otherwise met).

* * * * *

We would like to reiterate that the BPI appreciates this opportunity to comment on the term sheets. If you have any questions or would like to discuss any of the comments, please contact Lauren Anderson, Senior Vice President and Associate General Counsel at (202) 737-3536 (lauren.anderson@bpi.com).

Respectfully submitted,

Lauren Anderson
Senior Vice President and Associate General Counsel
Bank Policy Institute

cc: Mark Van Der Weide
Laurie Schaffer
Michael Kiley
Molly Mahar
Kelley O'Mara
Ryan Rossner
Board of Governors of the Federal Reserve System

Adam Lerrick
Kay Turner
Eric Froman
Stephen Milligan
Michael Davey
Peter Phelan
Marina Best
United States Department of the Treasury

VICE GROUP HOLDING, INC.
49 South 2nd Street
New York, NY 11249

April 16, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 20551

To Whom it May Concern at the Board of Governors of the Federal Reserve System:

On April 9, 2020, the Federal Reserve ("Fed") announced the establishment of the Main Street New Loan Facility ("MSNLF") and the Main Street Expanded Loan Facility ("MSELF" and, together with the MSNLF, the "Main Street Program"), to support the flow of credit to small and mid-sized businesses impacted by the coronavirus pandemic (COVID-19) ("Announcement").

As a business that is affected by the coronavirus pandemic, we are writing this letter (i) to highlight that a key element of the proposed Main Street Program operates to exclude certain types of crucial American businesses who are in dire need of assistance intended to be provided by the program in order to keep their operations online and preserve jobs for their numerous employees and (ii) to provide suggestions on modifications to the program that would broaden its application to ensure that it does not exclude these types of crucial businesses, thereby achieving its intended purpose and ensuring that growth-oriented U.S. businesses with strong revenue performance do not have to furlough or layoff substantial portions of their workforce, and as a consequence, drive the American economy into a deep recession.

The Flaw in the Program: Sole Reliance on EBITDA as the Only Financial Metric

As proposed under the Main Street Program, eligibility and loan size are determined principally by reference to the applicant's 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA"). The use of an EBITDA test as the only financial metric to determine a borrower's eligibility and loan size, however, inevitably excludes the employers of millions of Americans in high growth sectors from the program, despite the program's goal to support these businesses. It wasn't long ago that Amazon and Netflix wouldn't have qualified under this test, and many other companies are excluded from the program by this approach. For example,

- Media and Production Companies. Companies in this industry are engaged in writing, developing and producing television, movies, advertisements, digital content and similar media products, and are also frequently engaged in reinvesting heavily in the business in the form of human capital, creating intellectual property or building market share among readers, consumers or viewers. It is noteworthy that human capital and the creation of intellectual property across many industries are fundamental parts of American economic strength. The business model in this industry frequently involves heavily investing first in

the product before selling it to the market, such that revenue may only be recognized after an extended number of years based on windowing content and global sales, and exploitation of the franchise over subsequent or derivative intellectual property. Profitability for a particular project can be determined only after it has been sold to the market. In 2019, this industry employed more than 2.5 million people in the U.S. according to the Motion Picture Association.[1]

- Biotech/Biopharmaceutical Companies. Companies in this industry are engaged in the discovery and development of new drugs, medical treatments and therapeutics. According to the International Trade Administration, a division of the U.S Department of Commerce,[2] more than 4.7 million jobs are supported by this industry, with 800,000 people working directly in the biopharmaceutical industry. Many of these companies typically have little or no revenue until they successfully discover and commercialize a drug or therapy (which can take years), and are focused on reinvesting all of the funds they have at their disposal into research and development, which is typically all payroll.

- Start-ups & High-Growth Companies. These companies, spread around the country, cover a wide variety of industries and affect millions of people across America's geographic and socioeconomic landscape. Many of these companies have nimbly changed focus during the crisis to shifting business models to help sustain the economy and supply chains through e-commerce, delivery services, logistics, etc., all of which will incur increased expenses to the businesses. According to the International Trade Administration, more than 40,500 technology start-ups were established in 2018, generating in excess of 2 million new jobs. A typical start-up involves heavy payroll and people costs and likely is not profitable early in its lifecycle.

- Software and Information Technology. This industry, which includes software publishers and developers, suppliers of custom computer programming services, computer systems design firms and facilities management companies, employs more than 11.8 million people in the United States, according to the International Trade Administration. These companies, many of which are small businesses, frequently are involved in substantial investment periods as they develop their information technology service and product offerings, and may experience long periods of losses or negative working capital that is generally funded by venture and other investors.

Companies in the industries described above, as well as others that are focused on rapid growth or product development, frequently do not have annual EBITDA as they typically reinvest revenue into employees and other human capital, R&D, product development and customer or product acquisition efforts. These companies measure their early success by growth in the business per key performance indicators such as achievement of technology, product or regulatory development milestones, number of users, number of page views, etc. Many of these

[1] See https://www.motionpictures.org/research-docs/the-american-motion-picture-and-television-industry-creating-jobs-trading-around-the-world/.

[2] The International Trade Administration, part of the U.S. Department of Commerce, hosts a webpage at www.selectusa.gov, where a variety of statistics about employment in different industries are provided.

promising companies have been forced to substantially curtail their operations, including reducing their staff, as a result of COVID-19.

Furthermore, businesses with less than $250,000 in annual 2019 EBITDA (even with no existing debt) are categorically ineligible for a loan under the Main Street Program because four times their EBITDA would be less than the program minimum of a $1 million loan.

This outcome seems contrary to the Fed's stated intention of enhancing support for small and mid-sized businesses that were in good financial standing before the COVID-19 pandemic. Thousands of American jobs are at risk if the Main Street Program excludes these companies.

Proposed solutions: Authorize Banks to Apply EBITDA Add-Backs for Growth-Oriented Companies and Offer Revenue-based Metrics

There are a number of paths to opening up the Main Street Program to the wider-range of companies in the sectors and circumstances described above.

One possibility would be to revise the Main Street Program methodology to determine eligibility and amount of loan size based on formulae that are more aligned with the economic reality of businesses in the United States. While a business is an earnings-driven cash flow generating company, perhaps a traditional EBITDA test is sensible. On the other hand, for companies that are in the growth stage, have not yet generated substantial earnings, or are reinvesting their revenue into further growth and development, their eligibility for the loan program and a determination of the appropriate loan size should be based on other factors. Lending banks should be authorized to apply adjustments to EBITDA-based lending programs, enabling them to craft a risk-mitigated adjusted EBITDA approach for applicants on a case-by-case basis. These adjustments to EBITDA could include:

1. human capital costs, including payroll costs to the extent they are intended to grow the business;
2. research and development/software/technology costs that do not fulfill requirements to be capitalized but are necessary in these industries, such as human capital costs which decrease EBITDA;
3. production and development costs, content amortization costs and human capital costs related to building intellectual property libraries;
4. goodwill impairments resulting from the downturn in the economy; and
5. share-based compensation expense, non-cash expenses and one-time or non-recurring cash expenses.

Alternatively, revenue-based tests could also be used by banks administering the program to ensure that companies with a proven revenue-track record, but whose liquidity is suffering from the pandemic crisis, could avail themselves of the intended benefits of the Main Street Program.

Another option would be to have funding eligibility and loan size be linked to payroll costs (similar to the Small Business Administration ("SBA") loan programs) or estimated lost revenue (as compared to a corresponding pre-existing period).

Given that each business is different, we suggest that the banks administering the program loans be given broader discretion as to which approach would be appropriate on an applicant-by-applicant basis.

Other Clarifications Needed

In addition to the foregoing, the Announcement leaves many unanswered questions regarding the finer points of the Main Street Program that would benefit from further clarification. First, certain terms used in the calculation of maximum loan size must be clarified. For example, the terms "debt," "bank debt" and "2019" are undefined, which generates uncertainty about whether "debt" includes debt with lenders and third parties that are not banks, and whether 2019 is based on a calendar year end, fiscal year end or tax year end. The resulting maximum loan amount could differ drastically for a particular company depending on which definitions of such terms are applied.

Second, clarification should be provided on whether affiliation-type rules akin to those used under the SBA's loan programs would be similarly applied for calculating employee size under the Main Street Program.

Finally, the Main Street Program seems to contemplate a single borrower, single lender structure, rather than structures where a borrower and its subsidiaries may all be parties to a single credit facility. If an applicant company has many subsidiaries, and all of the material subsidiaries are co-borrowers or guarantors with the parent, it will be critical to know if loans under the Main Street Program can be made on a consolidated basis to co-borrowers.

We recognize and appreciate the substantial unprecedented and creative efforts undertaken by the U.S. federal government, and in particular, the Fed, in supporting the economy. Our comments and suggestions today are intended only as potential improvements to the Main Street Program to allow more businesses to obtain the assistance the program was designed to provide.

Should you have any questions concerning this letter, please contact Lucinda Treat, Chief Legal Officer of Vice Group Holding, Inc., at 917-597-7936 or email to lucinda.treat@vice.com.

Sincerely,

Lucinda Treat	Hozefa Lokhandwala	Ramin Arani
Chief Legal Officer	Chief Strategy Officer	Chief Financial Officer

April 16, 2020

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Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: RSM US LLP Comments on Main Street Lending Program

Dear Ms. Misback:

As the leading provider of audit, tax and consulting services to our nation's middle market companies, RSM US LLP is in a unique position and pleased to provide the following comments regarding the Main Street Lending Program. Please note an abbreviated version of these comments has also been submitted via the Federal Reserve website.

Main Street Lending Program – RSM US LLP Comments

- **Passthrough Company Exemptions** – Clarity is needed regarding the ability for private businesses and especially flow through businesses (Partnerships, S Corps, LLCs) to make tax distributions without violating rules. Consideration should be given to allow passthrough companies to qualify for an exception to the stock dividend rules (an exemption from 4003(c)(3)(A)(ii)(II) should apply, either an exemption for a certain percentage of taxable earnings or a full exemption). Otherwise a profitable company does not have a mechanism to allow its shareholders to pay tax liabilities.

- **Loan Restriction Confirmation** – Clarification is needed that confirms CARES Act restrictions under 4003(c)(3)(D)(i) around outsourcing, collective bargaining and union organizing are not required to be met under 4003(c)(3)(A)(ii)) and are thus not applicable to either of the main street loan programs.

- **Clarity on EBITDA** – Additional EBITDA calculation guidance is needed. Consideration should be given to basing EBITDA restrictions on an average of three prior years to avoid unintended exclusion of companies that have experienced one-time, single year issues.

- **Loan Timing** – Clarification is also needed regarding at what point, or on what specific date, is the undrawn portion under the expanded loan facility measured, specifically the 30% limitation. The balances on credit lines fluctuate and change daily. Alternatively, a removal of the wording "but undrawn bank debt" in the two instances it is presented in item 5 should be considered, under both loan programs, resulting in the ceiling for loan proceeds being raised to a maximum potential of 30% (or an alternative percentage) of full credit facility commitments, rather than being based on/limited to the undrawn portion.

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- **Compensation** – An allowance for commissions or other items variable in nature, previously committed to in an employment arrangement prior to March 27, 2019 (passage of the CARES Act) that might result in an employee receiving over $425k annually, should be considered. Some of our clients' salespeople earn commissions that place them above the $425k, and without a grandfathering of these provisions, guidance will need to be provided as to whether deferral of such arrangements is acceptable, with future payment at a later date, as a possible area of settlement on this matter. In light of legally binding employment agreements, it is also not clear whether companies can fully limit or control the pay without incurring other additional costs, or without legal ramification.

- **Affiliation Rules** – Confirm no limitation preventing portfolio-backed companies from accessing the Main Street program.

- **Foreign Entities** – Confirm foreign-owned companies with a substantial number of U.S. based employees have access.

- **Small Company Access** – Continue to allow for smaller businesses and the 72 NAICS code businesses to obtain both PPP and Main Street loans.

- **Attestation** – Clarification should be provided that attestations and certifications received from borrowers should be sufficient to the lender. It is unclear whether some lenders will attempt to involve CPA firms in portions of these attestations, though typically this type of information is handled between the lender and borrower, without requiring additional CPA firm certifications. The guidance is currently silent as to how the attestations are intended to work.

Thank you,

Joseph M. Adams
Managing Partner and CEO
RSM US LLP

SQUIRE
PATTON BOGGS

April 16, 2020

Ms. Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Comment Letter on the Main Street Lending Program

Squire Patton Boggs (US) LLP ("Squire Patton Boggs") appreciates the opportunity to submit comments to the Board of Governors of the Federal Reserve System (the "Federal Reserve") in response to its request for comments regarding the Main Street Lending Program and the two related term sheets (the "Term Sheets") it published, in connection with the Main Street Expanded Loan Facility (the "MSELF") and the Main Street New Loan Facility (the "MSNLF", and together with the MSELF, collectively, the "Facilities"), which have been authorized under section 13(3) of the Federal Reserve Act and use funds appropriated to the Exchange Stabilization Fund under section 4027 of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act").

In the week since the Term Sheets were published, Squire Patton Boggs has received numerous questions from a wide range of potential borrowers and lenders. Although Squire Patton Boggs recognizes the great potential of the Facilities, the brevity of the Term Sheets leave many important aspects of the Facilities unclear or ambiguous, leaving potential borrowers and lenders unsure what businesses will be able to benefit from new loans provided with the support of the MSNLF ("New Loans") or upsized tranches provided with the support of the MSELF ("Loan Increases" and together with New Loans, "Main Street Loans").

Therefore, on behalf of our clients, Squire Patton Boggs seeks clarification of a number of potential issues or ambiguities in the Facilities, and, in the hope of making the Facilities as useful as possible for businesses suffering from the COVID-19 pandemic, offers some comments regarding the best resolution of these issues.

Eligibility Requirements for Borrowers.

One of the gating issues for businesses is whether they would qualify as an "eligible borrower" under the Facilities. Many of our clients are businesses that have significant domestic operations, with subsidiaries or parent entities organized in foreign jurisdictions. The Term Sheets are unclear (i) whether subsidiaries or other affiliates will be included in the cap on employees or 2019 revenues, (ii) whether certain "unrestricted subsidiaries" (as discussed below) may be excluded, (iii) whether the foreign operations of subsidiaries or affiliates would be considered in determining whether the Borrower's US operations are significant or whether a majority of the Borrower's employees are based in the United States, (iv) what factors will be used to determine whether an entity's operations in the United States are significant, and (v) whether eligible borrowers may be formed under the laws of any "State" as defined in Section 4002(10) of the CARES Act, such as United States territories, or under tribally enacted laws or codes. Many businesses that are important to the US economy and employ many US workers have substantial affiliated foreign operations, and we anticipate that many such businesses, and their US employees, would be

45 Offices in 20 Countries

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Please visit squirepattonboggs.com for more information.

unable to benefit from the Facilities if affiliation rules are broadly applied (as is the case in respect of PPP loans).

Calculation of EBITDA, Debt and Leverage.

Both Facilities cap the maximum loan amounts based on a ratio of debt to 2019 EBITDA (the "Maximum Leverage Tests"). Because the calculation includes debt other than the Main Street Loans, businesses that are already highly levered may not be eligible for either New Loans or Loan Increases (or may only be eligible for Loan Increases, but not have an Eligible Loan to upsize). The Term Sheets are unclear whether EBITDA may have any of the adjustments commonly found in loan agreements (and permitted under current leveraged lending guidelines). If standard adjustments to EBITDA are not permitted, many businesses— the ones perhaps most likely to need additional liquidity— will already exceed the Maximum Leverage Tests and thus not qualify for Main Street Loans. Likewise, we are unsure whether EBITDA will need to be determined in accordance with GAAP and be evidenced by audited financials (if available).

Relatedly, the Term Sheets are not clear what will constitute "debt" for purposes of the Maximum Leverage Tests, such as debt being limited to traditional "funded debt," and whether non-"bank debt", such as debt securities, deferred obligations (*e.g.,* trade payables), guaranteed debts, accrued obligations not yet due or debt owed to affiliates, will be included. A narrow definition of "debt" will provide potential borrowers more liquidity under the Facilities. In connection with the MSELF, the definition of "bank debt" is similarly unclear (*e.g.,* whether SBA loans, and loans from foreign lenders, alternative lenders, and mezzanine lenders, would be included). An expansive definition of "bank debt" will provide potential borrowers more liquidity under the MSELF.

Finally, it is unclear whether debt and 2019 EBITDA will be determined on a consolidated basis (or on a domestic consolidated basis). Many credit agreements exclude the results and debt of certain, unrestricted subsidiaries, if such credit agreements also restrict the investments, loans, and other financial accommodations made by the borrower in and to such subsidiaries ("Unrestricted Subsidiaries"). We suggest that the Federal Reserve consider including a similar, optional concept in the Facilities, along with guidance regarding permitted investments in such Unrestricted Subsidiaries.

Restrictions on other debt payments.

Both Facilities restrict the borrower from using proceeds of Main Street Loans to repay other debt of equal or lower priority, with the exception of mandatory principal payments. The Term Sheets do not specify whether "other debt" includes any interest-payment obligations and non-bank debt, e.g., deferred obligations such as trade payables, amounts guaranteed by a borrower, accrued obligations not yet due, capital lease obligations, and ordinary course intercompany obligations. The phrase "debt equal or lower priority" is also unclear. For example: will all affiliate and intercompany debt be considered of lower priority; will debt secured by assets that do not secure the Main Street Loans, or with a higher priority security interest than the one securing a Loan Increase (as in the case of swapping first liens), be deemed to be debt of a higher priority, and thus payable at any time? Moreover, many of our clients have asked whether "mandatory principal payment" includes only scheduled payments of principal (both amortizing and balloon), or whether it also encompasses mandatory prepayments that are triggered by events such as equity injections, condemnation or casualty events, asset sales, or the generation of excess cash above a certain threshold. It is also unclear if the terms of mandatory payments may be changed in anticipation or after the incurrence of a Main Street Loan.

Further, the restrictions on voluntary payments of debt seem to render ordinary course payments on revolving credit facilities impermissible if the revolver is unsecured, or secured by the same collateral as the Loan Increase. This would cause such revolving credit facilities to function abnormally, leading revolving lenders to reconsider providing Main Street Loans or, if applicable, consents thereto.

Both Facilities also forbid the borrower from using proceeds of Main Street Loans to pay other loan balances. We are unsure whether this prohibition is intended only to restrict the Borrower from replacing existing loans with Main Street Loans (as we think may be the intention), or whether the Borrowers must also segregate Main Street Loan proceeds and not use them to make mandatory or scheduled payments on existing loans, which may cause tracing issues.

Restrictions on Capital Distributions and Employee Compensation.

Both Facilities restrict capital distributions and employee compensation. The restrictions on capital distributions from the Borrowers, together with the wording of the Term Sheets, suggest that these restrictions should not apply to parent entities, but we respectfully request clarification due to the large number of questions we have received on the matter. We similarly request confirmation that the Facilities will permit subsidiaries of borrowers to make capital distributions to the borrowers.

Although loan documents typically permit pass-thru entities to make capital distributions for tax purposes, just as c-corporations are permitted to pay their taxes, the Term Sheets fail to provide such an exception (or guidance on whether such exception will be based on the highest combined applicable income tax rate or the actual amount of taxes payable by the owner). Because a majority of middle market businesses are formed as pass-thru entities, most will be unable to utilize the Facilities without such an exception for tax purposes. In addition, the Term Sheets do not clearly restrict capital distributions in respect of membership, partnership and other equity interests that are not common stock, or in respect of hybrid instruments. Further, an exemption from the stock purchase prohibition applies to stock repurchases that were contractually obligated as of March 27, 2020, but such repurchases are not explicitly exempted from the general prohibition on capital distributions.

The Term Sheets also leave several unanswered questions regarding the restrictions on employee and officer compensation, including (i) how will awards or other types of non-cash compensation be valued, (ii) whether catch-up compensation be permitted to accrue and be paid 12 months after the Main Street loan is repaid, and (iii) if/how the compensation of officers or employees hired after 2019 will be restricted.

Loan Structure: Revolving Loans, Syndicated Loans, and the SPV's Participation Rights.

Many borrowers currently only have a committed revolving credit facility, with no term loan, or have a revolving credit facility coupled with a term loan provided by non-bank or foreign lenders. Because the Term Sheets indicate that Loan Increases must be made to term loans, we request that the Federal Reserve consider permitting revolving loans to serve as the basis for a term loan made pursuant to the MSELF, or, alternatively, permit revolving loans that were funded as of April 8, 2020, to be re-characterized after April 8, at least in part, as a term loan that can be upsized as part of the MSELF. Most revolving credit facilities are provided by eligible lenders (US depositary institutions), and so permitting such a re-characterization (at least where there is no eligible term loan to upsize), would give greater flexibility to eligible lenders and borrowers, and significantly broaden the impact of the Main Street Lending Program.

Given the references in the CARES Act and the Term Sheets to "direct loans", we respectfully request confirmation that Main Street Loans do not need to be "direct loans" but may be syndicated loans, at least in connection with the MSELF. Excluding syndicated loans from the MSELF would drastically reduce its reach. Assuming syndicated loans are intended to be part of the MSELF, it is unclear whether only one lender in the syndicate would lend the upsized tranche, or if all of the lenders that provided the initial term loan would be able to co-lend and then sell participation to the SPV.

Finally, the Term Sheets do not specify what rights the SPV will possess regarding the administration of Main Street Loans, especially in relation to amendments/waivers/consents after Main Street loan origination. Although we understand that the SPV will have a significant interest to protect, if the SPV acquires voting rights for changes that are not related to the core terms set forth in the Term Sheets, Borrowers and Lenders will be more hesitant to participate in the Main Street Loan Program.

Lender Concerns.

The Facilities require an eligible borrower to make a number of attestations. Will eligible lenders have any due diligence requirements to verify such attestations? If so, what due diligence is expected by the Federal Reserve (in addition to the standard due diligence performed by a US depository institution prior to extending credit). Relatedly, will eligible lenders face any liability if a borrower is later determined to have been ineligible, or are there any safe harbors available to lenders? We also seek clarification regarding whether cross default provisions will be required or permitted, *i.e.*, whether a default under other loans will cause a default under Main Street Loans, and whether a default under Main Street Loans would be permitted to cause defaults under other loans.

Eligible lenders will likely be unwilling to make Main Street Loans without certainty that the SPV's 95% participation will be funded. What process is anticipated to give eligible lenders assurance that the participations will be funded, and, if participations are not funded immediately, will the SPV pay any interest to the lenders?

Many existing term loans were made to eligible lenders by a non-bank or U.S. branch or agency of a foreign bank. Will the Federal Reserve consider expanding the program to such lenders? If not, many otherwise eligible businesses may be excluded from taking advantage of Main Street Loans, either because their leverage will be in excess of the standard for New Loans (but not Loan Increases), or their current non-eligible lenders will not consent (without a sizeable fee) to a Main Street Loan they are not providing.

The commercial real estate finance market may be illustrative of the impact of excluding non-banks from participating in the Facilities. Per an FDIC study published last November, 50-60% of commercial real estate is financed by CMBS, insurance companies, pension funds and the other non-bank lenders. Thus a large segment of the real estate industry would not have access to borrowing money through the Facilities as currently contemplated. This will likely affect landlords' ability to be flexible with tenants (and even their ability to survive the downturn), which may yield significantly more defaults on these loans and depressed market values for real estate to the extent that these lenders foreclose. The resulting depressed real estate valuations will likely have a negative impact on real estate loans made by banks. Thus, excluding non-banks could negatively impact tenants in the building—because the financial pressures on landlord— and depress asset values as a result of landlords losing properties. The Federal Reserve should consider including non-banks as eligible lenders, even if the SPV reduces its participation

percentage to account for higher risk of lending with unregulated entities. It would also allow pressure to be applied to non-bank lenders to grant the kind of forbearance that FDIC governed banks are providing.

Finally, we note that most existing credit agreements use LIBOR and/or prime rate as the reference rate for floating interest rates. We are not sure if the market and banks ready to quickly implement SOFR based loans. It is also not clear how Loan Increases will work if the upsized tranche bears interest based on SOFR, but the existing loan currently bears interest based on LIBOR.

* * *

Squire Patton Boggs thanks the Federal Reserve for its consideration of our comments, questions and requests for clarification. If you have any questions, please do not hesitate to contact James A. Schneider (216.479.8638 or james.schneider@squirepb.com).

Respectfully,

SQUIRE PATTON BOGGS (US) LLP

By:
James A. Schneider, Jr.

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April 16, 2020

Attention to: Ms. Ann E. Misback, Secretary, **Board of Governors of the Federal Reserve System (FED)**

Email: regs.comments@federalreserve.gov

Subject: **Main Street Lending Program (MSLP), Paycheck Protection Program (PPP), Primary Market/ Secondary Market/ Term Asset-Backed Securities Loan Facilities (PMCCF / SMCCF / TALF) amid Coronavirus situation**

On behalf of **Data Boiler Technologies**, I am pleased to provide the FED with comments regarding the captioned programs and facilities. As a former G-SIB executive and currently an entrepreneurial inventor of a suite of patented solutions for the Capital Markets, I would say short-term bail-out would not be as helpful as in 2008 to restore our economy's financial strengths. Be mindful and prepare that we might be in this pandemic crisis or economy turmoil for a long time with structural shifts to our way of living. Therefore, we ought to think about better ways to delineate rights, keeping our transaction costs low, and enabling our economic production to continue from now to the next era.

Facilities	Observations
PPP	Received 9.5 years of volume in 2 weeks means the SBA-Banks-Borrowers pipes need a complete overhaul. "Plane flying while building it" simply would not work; policy makers must make hard choices on "who are the right people on the plane".[1] Absolutely no way 35 bps can cover credit losses, not including the immense amount of non-conformance/ fraud/ exploitations.
MSLP	To preserve balance sheet strengths in banks, MSNL and MSEL are structured to be past-through loans where eligible lenders only retain 5% of the risk. Concerns if banks may become paper pushers, and if borrowers aren't using the facilities as last resort funding source. Also, how MSLP is different from other countries' sweeping non-performance loans under the rug?
PMCCF	This funding backstop helps investment grade debt issuance and refinancing of certain outstanding debts. The not over 25% limit makes sense because FED doesn't want to be majority owner. The 10 to 1 leverage when acquiring corporate bonds or syndicated loans from issuers seem reasonable given the covenant of not exceeding 130% of issuer's maximum outstanding. Yet, the 7 to 1 leverage for "other eligible asset" is questionable – how the FED would review these on case-by-case basis?
SMCCF	Interesting – the corporate debt secondary market is going to be transformed not by digitization, but a pandemic pushes SMCCF + PMCCF to flood the market with $750 billion in liquidity. Blessed the US for having this might power! However, many debt products are already over-valued,[2] how the purchased assets in form of ETFs would reliably "exchange hands" is a big question.
TALF	TALF is a lot like the Troubled Asset Relief Program (TARP) by US Treasury during the 2008 crisis. Scooping up these auto/ equipment loans/ leases, student debts, credit card receivables, SBA loans, etc. are understandable way for quantitative easing. Yet, I am perturbed by its nonrecourse nature. Although it will be fully secured by eligible ABS, it is uncertain what constitutes as eligible underlying credit exposures for CMBS.

[1] Brookings' event: Government lending to small businesses during COVID-19—Why? How? And will it work?
[2] Dalio Says 'You'd Be Pretty Crazy' to Hold Bonds Right Now https://www.bloomberg.com/news/videos/2020-04-15/dalio-says-you-d-be-pretty-crazy-to-hold-bonds-right-now-video

☏ 617.237.6111 ✉ info@databoiler.com databoiler.com

Initially, I think direct payroll payment to get money in the hands of employees would be a better approach because the administration could be handled with relative ease primarily by ADP given their prominent position in the payroll processing market. Yet, I believe think-tanks (such as Brookings) and government agencies have already considered the pros and cons as well as political realities in the US, so I am not going to pursuit that direction.

Cutting to the chase for my recommendations:

1. Set a floor for eligible borrowers under PPP. Those under $2 million in annual revenue and less than 3 years in business are considered as Tier-0. Their failure rate can be in the 90% range. They don't have much long-term contractual commitment. They are more likely to exist out and reopen under different names. In my humble opinion, PPP should be for companies that are essential components of certain supply-chains to ensure price stability in market. The goal is to divert out 80% of PPP applicants, so that SBA and banks can reasonably handle the remaining 20% volume.

2. Next, let's give these Tier-0 owners some money for R&D, skills training, free access to equipment/ tools that enable them to work remote, or even vouchers/ coupons to use professional services, etc. These freebies/ reliefs may either be given direct or indirectly through nonprofit organizations that receive Federal/ State Grants are much better than giving them unsecured loans. If it is loan, they'll keep coming back again and again to ask for more. Imagine if restaurants becoming packaged meal delivery or canned food production companies in this new reality. I know this is more a thing for US Treasury or other government agencies to consider rather than the mandate of the FED, but in short, let's enable them to fish instead of giving fishes.

3. Tier-0 or other redundant employees whom collect unemployment benefits should be incentivized if they pursue entrepreneurship. Give them a bonus check 10 or 20 times of their last unemployment benefit if they start a new business and agree not to collect unemployment for a certain period of time. This might require the FED to work with the US Treasury to implement, but it will reduce unemployment rate instantly.

4. PPP for borrowers with $2 million to $50 million annual revenue (Tier 1-3) have loss norm of 35 bps in average on "secured" credit (i.e. with collateral) if not higher under normal market condition. Market stress likely exacerbates their delinquency and loss ratio exponentially. It is better to extend their loan repayment duration or give them a 3-6 months break (depended on industry sectors and other tier criteria) on repaying interests and principals than offering a low interest rate. The PPP rate for this group should at least go from double to quadruple in order to justify related risks for "unsecured" credit. Taxpayers and our next generation should not bear the adverse consequences of any miscalculated risks in PPP by the FED.

5. I would call those businesses with $50 million to $200 million as micro-/ medium-enterprise (MME). Their credit quality in average might be better than many Top-Tier conglomerates (TTC). Many MME are not listed, so they do not have the pressure to push for quarterly performance via high leverages. Indeed, market downturn is usually an ideal timing for MME to challenge the larger competitors and gain market shares. Besides, allowing MME to grow is better than over reliance on big elephants to propel fast recovery of our economy. MME would be able to recruit massive workforce laid off by TTC and mobilize them for higher value works. Therefore, let's give these MME a higher leverage ratio as well as a fair chance to excel.

6. TTC with annual revenue between $200 million to $2.S billion have multiple long-term credit relationships with banks. I envisage that MSEL would enable them to "hold-off" drastic cost-cutting exercise in the short-term. Yet, MSEL would most likely NOT be their "last resort" for funding sources. Thus, the MSLP may stuck in

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the dilemma of TTC might take maximum advantages of it, while spin the story to articulate/ defend their "reasonable" effort to "minimize" lay-off. TTC may also dispose tremendous amount of assets and/or securities to further dampen price when realigning their businesses. I believe most CFOs at TTC would have a banking or capital markets background and supported by team of lawyers, thus they'll be slick to legally exploit what permissible under the government guaranteed loan program. No standard term-sheet under MSEL would be effective to curb such behaviors. Hence, this is the time for banks to use their balance sheet and long-term relations to extend credits to these TTC, and I believe policy makers have already been kind to banks in lifting their related regulatory burden. So, instead of eligible lenders retaining 5% of the upsized tranche of each eligible MSEL loan, banks indeed should retain majority of the risks (i.e. 60% to 95% range).

7. For MSNL, I see risk retention percentage can reasonably be set between 40% to 60% range, but not 5% for eligible lenders under impending market condition. Maximum loan size of $25 million seems too little for TTC.

8. For PMCCF or SMCCF, I have no objection to the facility leverages Treasury equity at 10 to 1 when acquiring corporate bonds or syndicated loans from issuers that are investment grade at the time of purchase. Yet, I have reservation for the 7 to 1 leverage when the facility acquiring "any other type" of eligible asset (fat tail at bottom layer).

9. On the "limits per issuer" for PMCCF, I think not exceed 130 percent of the issuer's maximum outstanding bonds and loans seem unnecessarily high, cut that down by half to 65% should be sufficient to carry the issuer through this pandemic. An outside-of-the-box recommendation: I think adding convertible feature to these new debts issuance (i.e. hybrid securities) would make them more attractive.

10. For SMCCF, I commend the bold move by the FED. Blessed the US for having this might power, it will defy Ray Dalio's recent comments about "You'd Be Pretty Crazy' to Hold Bonds"[2]. To revitalize the corporate debt market and make it sustainable, I encourage policy makers to think from some Bond Kings'[3] perspective. That is, to give market participants fair chance to exploit element of certainty (e.g. credit ratings, yields, maturities, etc.) and make educated bet on uncertainty elements (e.g. direction of interest rates). At the same time, there need a monitoring mechanism to effectively curb self-dealing. After all, I hope the SPV will continue purchase of eligible notes till year 2022. Let's the ball rolling and we'll see a stronger than ever economy in the new era.

11. Regarding TALF, I get that scooping up these assets is in essence like the TARP by US Treasury during the 2008 crisis. As mentioned earlier, I don't like it being nonrecourse, and there is a question on what constitutes as eligible underlying credit exposures for CMBS. That being said, I have no objection to TALF, except a reminder that shifted risks away from banks' books should not be coming back to haunt banks. In my opinion, the industry as a whole may look into the asset gathering and fund distribution processes (e.g. monitor the banking entity's investments in, and transactions with, any covered funds), and use behavioral science to ensure "exit only, no re-entry" – like "letting go"[4] of bad habits/toxic assets.

12. Last but not least, our position regarding the Dodd-Frank Volcker Revision[5] remains unchanged – i.e. I advocate for a "Stress RENTD" condition to encourage banks to pour liquidity to market while temporarily

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[3] https://en.wikipedia.org/wiki/Bill_H._Gross; https://en.wikipedia.org/wiki/Michael_Milken
[4] https://www.bakadesuyo.com/2016/04/bad-habits/
[5] https://www.databoiler.com/index_htm_files/DataBoiler%202020Comments%20VolckerRevision.pdf

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lifting their corresponding compliance restrictions during crunch time. It is better than revising the Rule with risky carve-out of additional exclusions permanently. Besides, Volcker never prohibits banks from direct lending to small businesses. Why should there be frequent buying and selling of these SBIC funds? If banks only act as sponsors while incapable to lend directly to small businesses, does the economy still need banks to seat in the middle?![6] Therefore, it is about extending loans, not "speculating" on SBIC or other funds.

Feel free to contact us with any questions. Thank you and we look forward to engage in any opportunities where our expertise might be required. Blessing and stay well amid the Coronavirus situation.

Sincerely,

Kelvin To
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Founder and President
Data Boiler Technologies, LLC

This letter is also available at:
https://www.DataBoiler.com/index_htm_files/DataBoiler%20MSLP%20PPP%20PMCCF%20SMCCF%20TALF.pdf

[6] https://psmag.com/economics/banks-dont-much-banking-anymore-thats-serious-problem-72654