

To: Main Street Lending Staff Group  
Board of Governors of the Federal Reserve System

From: Mark Carey  
co-President, GARP Risk Institute

Date: April 14, 2020

RE: Comments and Suggestions on Main Street Loan Facilities Announced April 9

Thank you so very much for your recent forthright, timely and constructive actions to preserve the financial system and economic activity.

Comments herein are focused on limiting losses borne by the proposed Main Street New Loan Facility and Main Street Expanded Loan Facility (jointly the “Facilities”). It is best in the long run if the Treasury and Federal Reserve bear few or no net losses associated with the Facilities. Market participants are likely to press for an easing of terms, but the Facilities should be backstops and should not lend to extremely risky firms.

Comments and suggestions relevant to both the New Loan Facility and the Expanded Loan Facility:

- Item 5 under “Eligible Loans” in the Term Sheets uses a ratio of debt-to-EBITDA to control loan size and risk. The Term Sheets should state that EBITDA must be calculated according to generally accepted accounting principles (GAAP). In the leveraged loan market, the majority of loan agreements now allow borrowers wide latitude in calculation of EBITDA-based measures used in covenants. Unless GAAP is specified, some market participants may use “adjusted” or “enhanced” measures of EBITDA, which can differ importantly from GAAP measures. Permitting this latitude would, in all probability, substantially increase losses borne by the Facilities by permitting lending to firms with GAAP debt-to-EBITDA ratios much higher than the specified limits.
  - If you wish to limit the use of Facility loans to support the foreign operations of firms headquartered abroad, the Term Sheets should specify that EBITDA include only cash flow for foreign firms’ U.S. subsidiaries that are loan obligors, not EBITDA of the consolidated global firm.
  - Stating that “Eligible Borrower” includes only affiliates and subsidiaries that are obligors under the loan contract would help limit padding of debt-to-EBITDA ratios. Guarantors should not be included in Eligible Borrower.
- Item 5 under “Eligible Loans” in the Term Sheets mentions “...the Eligible Borrower’s 2019 (EBITDA)...” Instead, the term sheets should specify “...the Eligible Borrower’s EBITDA calculated for the four fiscal quarters ending before March 1, 2020...” Borrowers with fiscal years not coincident with the calendar year may interpret “2019” as “fiscal 2019” and may choose to use estimates of cash flow for fiscal quarters not yet completed, which could increase loan sizes for risky borrowers and thus losses borne by the Facilities. EBITDA for “calendar 2019” might be difficult for some borrowers to calculate.

- The Term Sheets should forbid any transfers of assets out of corporate units that are Facility loan obligors or guarantors and any issuance of debt of equal or higher priority (“incremental debt”) (apart from drawdowns on existing lines of credit). The Facilities cannot rely upon covenants in loans made by the private sector to accomplish such restrictions. Many loan agreements allow asset transfers and issuance of incremental debt. Failure of the Term Sheets to forbid asset transfers and incremental debt could allow equity holders to preserve their own value in bankruptcy while leaving the Facilities with few assets as a basis for recovery. In addition to protecting the Facilities, the suggested limitations will incentivize prepayment of Facility loans, which is desirable.
- The second attestation in each Term Sheet permits repayment of outstanding debt in the case of “mandatory principal payments.” The Term Sheets should state that repayments of maturing drawdowns on lines of credit are not “mandatory principal payments.” (As you may know, drawdowns have a fixed maturity date and, in normal times, are routinely rolled over.) Otherwise borrowers may use funds obtained under the Facilities to repay substantial amounts of pre-existing debt.
- Do not weaken or remove provisions of the Term Sheets related to compensation, stock repurchases, and capital distributions. Such provisions are likely to provide powerful incentives to prepay loans made by the Facilities, which is desirable.
- Term Sheets should require borrowers to promptly inform lenders and the Facilities if any attestations prove to be incorrect (for example, after audits are completed). You should consider whether the Facilities should have the option to call the loans in such cases. And, to hold corporate officers personally liable if the attestations are found to be intentionally false or misleading.
- Answers to the following questions are likely to be important information in the eyes of borrowers and Eligible Lenders, so including such information in the Term Sheets would be helpful:
  - In Item 3 under Eligible Loans, the Term Sheets specify that the interest rate paid by the borrower is SOFR + 250-400 basis points.
    - Within the range 250 to 400 basis points, who chooses the interest rate spread for loans advanced by the Facilities? Is it solely the Eligible Lender’s choice, or must the Facility agree?
  - Will the SPV make all underwriting decisions or delegate such decisions to the Eligible Lenders, accepting any loan that Eligible Lenders state is consistent with the Term Sheets?
    - What is the Eligible Lender’s liability in case of errors?

Comments and suggestions relevant only to the Expanded Loan Facility:

- The opening language of Eligible Loans specifies that “An Eligible Loan is a term loan made by an Eligible Lender(s)...” In the leveraged loan market, many term loans originated by a bank do not remain on the bank’s books but are held by nonbanks. Clarity in the Term Sheets would be helpful about how much, if any, of a term loan originated by a bank must remain on a bank’s books for the term loan to be eligible for upsizing under the Expanded Loan Facility. If any must remain, the set of Eligible Borrowers may be much smaller than may be intended. Relatedly, may an Eligible

Lender distribute the Facility's upsized portion of the loan to nonbanks, or must all remain on the bank's books?

- In Item 5 of Eligible Loans, a portion of the language specifying maximum loan size is unclear. Does "...30% of the Eligible Borrower's existing outstanding and committed but undrawn bank debt" mean:
  - a) "...30% of the Eligible Borrower's existing outstanding **debt** and committed but undrawn bank debt", or
  - b) "...30% of the Eligible Borrower's existing outstanding **bank debt** and committed but undrawn bank debt" (bolded words added)?

a) and b) are not the same even if the borrower has only leveraged loans outstanding because the majority of leveraged-loan debt is held by nonbanks.
- In the Term Sheet under Loan Participations, the reference to "...share risk on a pari passu basis" should specify that the Facility will have the same covenant rights as are granted in the loan agreement for the loan being upsized and that the Facility will have voting rights on modifications in proportion to the Facilities' holdings. Otherwise, after origination of Facility participations, the Eligible Lender and borrower could change the terms of the loan in ways that increase risk to the Facility without the Facility's permission.

April 15, 2020

## **Public Comments Re: Main Street Lending**

The National Council of Nonprofits – the nation’s largest network of charitable organizations – writes to express concern that the Main Street Loan Facilities announced 4/9 fail to extend essential relief to nonprofit organizations. If the programs are intended to satisfy the mandates in CARES Act §4003(c)(3)(D), significant changes must be made to comply with the law. If the Secretary intends to create a different loan program to extend credit to mid-size nonprofits, it is imperative that the Treasury and the Fed communicate this intention immediately to stem the furloughs of nonprofit employees while the needs for their services are growing exponentially.

As Treasury and the Fed work to create a program under §4003(c)(3)(D) providing financing to lenders to make loans to nonprofits and other employers with up to 10,000 employees, the program should include the following terms to satisfy the requirements of the CARES Act:

- Include an interest rate of 0.50% (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 and require lenders to make a proportionate number and value of loans to nonprofits to prevent the crowding out that is being seen in the Paycheck Protection Program
- Set a date certain for when employee retention provisions should begin
- Payments shall not be due until two years after a direct loan is made

We also ask that Treasury and the Fed utilize all authority to establish protocols to convert loans under this program into grants, similar to the terms established for the Paycheck Protection Program. Regardless of size, the needs and realities of nonprofits on the frontlines are the same. Loan programs should provide equal treatment.

Regards,



David L. Thompson  
Vice President of Public Policy

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**From:** Office\_of\_Secretary@FRB.GOV  
**Sent:** Thursday, April 16, 2020 2:14 PM  
**To:** Main-Street-Business-Lending-Program  
**Subject:** Fw: MainStreet Lending Forward  
**Attachments:** 20200415162542910200\_attachment0000.png.final.pdf; 20200415162542910200\_attachment0001.DOCX.final.pdf

----- Forwarded Message -----

From: Jennifer Gallagher [jennifer.c.gallagher@frb.gov]  
To: Office\_of\_Secretary@FRB.GOV  
Date: 4/15/2020 4:25:47 PM  
Subject: MainStreet Lending Forward

NONCONFIDENTIAL // EXTERNAL

From: Ellis Rochkind, Dina [dinaellis@paulhastings .com]  
Sent: Wednesday, April 15, 2020 3:44 PM  
To: Jennifer Gallagher [jennifer.c.gallagher@frb.gov]  
Subject: RE: OTG Group

NONCONFIDENTIAL // EXTERNAL

Jen,

Know you must be going crazy but attached is the comment letter that we submitted to the Fed. on behalf of OTG.  
Thanks, Dina

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[logoredesign][<http://www.paulhastings.com/>]

Dina Rochkind | Of Counsel, Corporate Department Paul Hastings LLP | 875 15th Street, N.W., Washington, DC

On behalf of our clients, we hope that the Federal Reserve and the Treasury recognize that businesses vary widely in their financing needs and will adjust or expand on the programs for mid-sized businesses. We further request implementation of additional programs for mid-sized businesses as specifically described in 4003(c)(3)(D)(i) of the CARES Act.

We note that the term sheets for the Main Street Loan Facilities currently do not adequately address the needs of mid-sized companies adversely affected by the COVID-19 crisis for the following reasons.

First, the loan facilities are likely unavailable under the MSNLF and definitely unavailable under the MSELF to borrowers that do not have existing credit facilities with banks. Many mid-sized businesses obtain credit from business development companies or non-bank specialty finance companies.

Second, blanket restrictions on debt refinancing are problematic. Some businesses have a pre-existing need to refinance credit prudently obtained prior to the pandemic due to near term maturities. Companies that could have refinanced that debt absent economic disruption and resulting catastrophic revenue declines need a refinancing solution, not more debt. These companies expect to repay all amounts borrowed plus interest.

Third, the maximum loan sizes are too small for companies in need of a refinancing solution.

Fourth, the leverage conditions will automatically and indiscriminately eliminate aid to too many credit worthy borrowers.

Relief under the current Main Street programs may be non-existent for credit worthy mid-sized companies with a current need to refinance pre-existing debt owed to non-bank lender and that, absent the current economic crises, could have refinanced that debt.

- (1) **Eligible Lenders**: Please clarify that the US branches of foreign banks regulated by the Fed may serve as Eligible Lenders if such a bank is an administrative agent for the Eligible Loan.
- (2) **Eligible Borrowers**: Please clarify how to calculate whether a majority of employees are based in the U.S. If the borrower is otherwise a U.S. entity for eligibility purposes, please clarify that such employees of the US entity are determined by calculating the employees of such entity plus any foreign employees of any business entity that is a subsidiary of the US entity, provided that neither the U.S. entity nor any direct or indirect subsidiary of such entity makes any distributions to a foreign entity.
- (3) **Eligible Loans**:
  - a. Paragraph 5(ii): Clarify to confirm that the term “outstanding” refers to drawn term loan and revolver (i.e., “30% of existing outstanding and committed but undrawn bank debt). This will provide access to the required amounts of liquidity for most companies looking to bridge the current crisis.
  - b. Paragraph 5(iii):
    - i. Allow netting of existing cash in the calculation of the leverage ratio. This change is required to ensure that the ratios reflect appropriate leverage.
    - ii. Allow the leverage ratio to be calculated including only the other debt that is of similar or higher priority as the new upsized tranche. For example, to the extent the existing loan facility is a first lien secured priority, allow a similarly secured upsizing tranche to the extent the borrower’s aggregate first lien secured leverage will remain below 6x 2019 EBITDA. This will ensure appropriate priority and protection for the government while also providing flexibility for borrowers to access these needed loans.
    - iii. Clarify to confirm that EBITDA is to be calculated in the manner calculated under the existing credit agreement. We recommend using EBITDA as determined under the existing credit agreement as that calculation has already been the subject of a negotiation with a counterparty that understands industry standards and its lending responsibilities. This will ensure that the Main Street Loan Facilities can be accessed on an industry agnostic basis, using the most appropriate measure for a borrower’s current earnings.
    - iv. Although we assume “2019 EBITDA” is intended to be based off of 2019 year end financials, please clarify that if the borrower has more recent financials available for the last twelve months and the EBITDA number is higher, they may optionally use the more recent financial information for purposes of leverage calculations. In addition to the clarification as to the use of only *pari passu* debt requested in (ii) above, please further clarify that debt levels at the time of the new financing should be used and also calculated in compliance with the borrower’s existing credit agreement.

(4) **Required Attestations**:

- a. Clarify that proceeds of the upsized tranche can be used to repay drawn revolver borrowings so long as pay down does not result in a permanent reduction of availability. The Fed would recognize the benefits of paying down drawn revolvers while still providing access for future use as this will free up liquidity for the banks.

- b. Allow leverage ratios of less than 6x calculated by including only the debt of similar or higher priority to the upsized tranche (e.g., first lien secured leverage) to satisfy the leverage condition. See (3)(b)(2) above. Clarify that the leverage ratio calculation should not include as “committed but undrawn” debt certain delayed draw term loans that require contingencies be met in order to access the funds, such as using proceeds for acquisitions. This will provide greater flexibility on the utilization of the facility by needed borrowers to ensure access by not artificially inflating leverage ratios.
- c. Clarify that tax customary distributions may still be made despite CARES Act restrictions on dividends. Tax customary distributions should not be considered as dividends that are restricted under the CARES Act. The Main Street Expanded Loan term sheet refers to the section on prohibition on dividends for companies that receive relief under authorized Fed programs that provide direct loans. However, the statutory language included in the Mid-Size Businesses program in the CARES Act has a similar prohibition in 4003(c)(3)(D)(i)(VII), except that the language includes the following exception, which we believe would allow these customary distributions: “except to the extent required in a contractual obligation that is in effect as of the date of enactment of this Act.” The Main Street Lending Facility should adopt a similar exception and clarify that it permits tax customary distributions.
- d. Clarify that limitations on stock buybacks will not prevent the sale of all or any portion of the borrower during the covered period. A sale may be the most likely means of repayment of the government loan for some businesses. Any dividend or stock repurchase done in connection with a change of control that results in repayment in full of the government loan should be permissible.

Contact:

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[jmcmillen@akingump.com](mailto:jmcmillen@akingump.com)  
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Larry D. Cannon

April 15, 2020

To whom it may concern:

On behalf of the American Heart Association, thank you for the opportunity to comment on the Main Street Lending Program. We respectfully request that 501 (c)(3) nonprofits be expressly included in the Program and that the Treasury:

- Include a 0% interest rate (nonprofits are structurally different than for-profits) or, at most, a .50% rate (50 basis points) for 501(c)(3) nonprofits at a 5 year amortization
- Prioritize 501(c)(3) nonprofits responding to COVID-19 relief efforts
- Defer payments until two years after a direct loan is made
- Begin employee retention provisions on the date loan funding is received by the borrower
- Define "workforce" as full-time employees or full-time equivalents in any workforce restoration and retention provisions

Many nonprofits employ more than 500 employees and cannot access the Paycheck Protection Program, which contains critical loan forgiveness provisions necessary to help ensure they will be able to continue to provide services during the crisis and assist with our nation's recovery efforts. Economic recovery will take years and nonprofits require more time to begin repayment, especially those more reliant on charitable donations.

Charitable nonprofits are the 3<sup>rd</sup> largest employer in our nation's economy. The recommendations above will help to keep our organization financially strong and allow us to continue to meet the immediate and future needs of our communities. The AHA has already committed \$2.5 million in rapid response research awards to better understand COVID and has also developed the first

COVID-focused registry to aggregate data and aid in disease research. To ensure our continued service and commitment to our communities, the AHA urges you to adopt these recommendations.

If you have questions, please contact Tyler Hoblitzell, Regulatory Affairs Manager, at [tyler.hoblitzell@heart.org](mailto:tyler.hoblitzell@heart.org) or 202-785-7901.



April 15, 2020

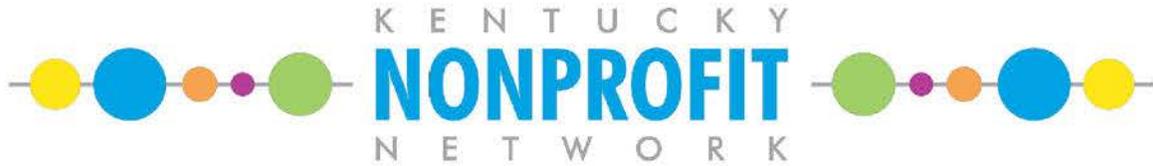
## RE: Comments on the Main Street Lending Program

Like other businesses, Community Health Centers (CHCs), which are non-profit businesses, are experiencing huge financial losses because of COVID-19. On average CHCs are seeing a drop in primary care visits of 50%. While the situation continues to evolve on the ground, data projections for California's CHCs suggests a shortfall of at least \$1 billion in revenue over the next three months. If such a reality were to come to pass, the ability to provide access to 7.2 million Californians will be at risk.

Nationally, CHCs are the Health Homes for 29 million patients. We were viewed as the frontline in the U.S. health care delivery system long before COVID-19 arrived and will remain at the frontline long after it is gone. At this critical juncture, it is imperative that CHCs maintain their operations and staffing levels, both to keep our patients healthy, and to assist with diverting our patients from already over-burdened hospitals.

The SBA Payroll Protection Loan is a valuable resource many CHCs are applying for; however, with **its 500-employee limit it is out of reach for 22 CHCs in California alone.** These CHCs serve the largest number of patients are at the greatest risk of closing. **Not only will they suffer the greatest revenue losses, ranging from \$5M-9M per entity, per month;** they are also forced to endure this pandemic without the financial support that their smaller counterparts have access to, through SBA loans.

We respectfully request CHCs with 500 or more employees be included to receive direct financial support via **the Main Street Lending Program.** Our CHCs need an immediate infusion of cash to guarantee safety-net health care is available tomorrow, for the most vulnerable.



## Public Comments Re: Main Street Lending

Kentucky Nonprofit Network is concerned that the Main Street Loan Facilities announced 4/9 fail to extend essential relief to nonprofit organizations. To satisfy the mandates in CARES Act, significant changes must be made to comply with the law. If a different loan program to extend credit to mid-size nonprofits is planned, this must be communicated immediately to stem the furloughs of nonprofit employees while the needs for services grows exponentially.

As Treasury and the Fed work to create a program under §4003(c)(3)(D) providing financing to lenders to make loans to nonprofits and others with up to 10,000 employees, the program should include the following to satisfy the requirements of the CARES Act:

- Include an interest rate of 0.50% (50 basis points) for 501(c)(3) nonprofits at a 5 year amortization
- Provide priority to 501(c)(3) nonprofits responding to COVID-19 relief efforts and require lenders to make a proportionate number and value of loans to nonprofits to prevent the crowding out occurring in the PPP
- Set a date certain for when employee retention provisions should begin
- Payments shall not be due until two years after a direct loan is made

We ask that Treasury and the Fed utilize all authority to establish protocols to convert loans under this program into grants, similar to the terms of the PPP. Regardless of size, the needs and realities of nonprofits on the frontlines are the same. Loan programs should provide equal treatment.

Sincerely,

A handwritten signature in black ink that reads "Danielle Clore".

Danielle Clore  
CEO



April 15, 2020

Re: Main Street Lending

On behalf of Colorado Nonprofit Association and our 1,400 nonprofit members, I write to express our concern and disappointment that the Main Street Loan Facilities announced on April 9<sup>th</sup> fail to provide essential relief to nonprofit organizations and appear inconsistent with the requirements of §4003(c)(3)(D) of the CARES Act.

If the Secretary has omitted nonprofits from these facilities 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 nonprofits' services is growing exponentially.

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 efforts;
- 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.

I ask that Treasury and the Fed exercise 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,

Mark Turner, Senior Director of Public Policy

April 16, 2020

Re: Main Street Lending

On behalf of the Arc Thriftstores of Colorado, a **52 year old non profit which funds advocacy for persons with intellectual disabilities and is also one of the largest employers of persons with intellectual disabilities in Colorado**, 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 appear 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 nonprofits' services is growing exponentially.

Our 52 year old non profit has been **SEVERELY impacted** by the COVID-19 crisis, and we have been forced to **furlough 700 of our 1,800 employees given a reduction of \$2 million PER WEEK in revenue, with a corresponding 25% reduction in services** to persons and their families with intellectual disabilities. In fact, **our very survival is now at stake**, with a severe risk **we may have to furlough the remainder of our employees** without support from the Treasury and Fed.

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.

I ask that Treasury and the Fed exercise 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,

Lloyd Lewis

President/CEO

Arc Thriftstores of Colorado



**Susan N. Dreyfus**  
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Mary Hollie  
*Secretary*

April 15, 2020

Re: Main Street Lending

The Federal Reserve  
20<sup>th</sup> Street and Constitution Avenue NW  
Washington D.C. 20551

To Whom It May Concern,

I am writing on behalf of the Alliance for Strong Families and Communities, a membership network of over 350 community based human service organizations around the country. These are the organizations that are currently providing food distribution, homeless shelters, domestic violence shelters, child welfare services, mental health, and more to their communities during this crisis.

Our sector is in a state of disarray. Our larger organizations are not eligible for the Paycheck Protection Program because they exceed the number of employee cap. Without immediate support, these critical organizations could begin closing their doors soon.

According to research by Sea Change Capital Partners, "the precarious financial condition of large nonprofits is not a function of inefficiency or poor management, it is the inevitable consequence of the context in which they operate." For example, government contracts don't cover the full cost of doing the associated work and cause cash flow issues since payment is subject to long and unpredictable delays. Large organizations have fixed costs such as real estate. Cash is always an issue for large nonprofits, but unlike large for-profits, they do not have access to the capital markets, cannot easily unlock illiquid assets, and cannot use bankruptcy to restructure<sup>i</sup>.

As the Treasury Department works to create a program as directed under the CARES Act section 4003(c)(3)(D) 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 request 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

Many nonprofits employ more than 500 employees and have not been able to access the Paycheck Protection Program, which contains loan forgiveness provisions which are critical to these organizations and necessary to help ensure they will be able to continue to provide services during the crisis and assist with our nation’s recovery efforts when the crisis is over.

Charitable nonprofits play the third largest employer in our nation’s economy and as valued problem solvers. The recommendations above will help to keep these organizations financially strong and allow them to continue to meet the immediate needs of their communities while planning for the future when many of their services will be needed most. Nonprofit organizations are our country’s only institutions solely focused on making communities stronger. In the toughest times, we do the toughest work. When it’s time to restore and repair our wellbeing, these community based institutions need to be equipped to do that as well and their unique needs should not be overlooked.

Thank you for your consideration of our comments.

Sincerely,

*Ilana Levinson*

Ilana Levinson  
Senior Director, Government Relations  
Alliance for Strong Families and Communities  
[ilevinson@alliance1.org](mailto:ilevinson@alliance1.org)

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<http://gd7xi2tioeh408c7o34706rc-wpengine.netdna-ssl.com/wp-content/uploads/2020/04/Too-Big-To-Fail.pdf>



April 15, 2020

Board of Governors of the Federal Reserve System  
20<sup>th</sup> 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 Chiropractic College (NYCC), 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 Chiropractic 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. In New York, private not-for-profit colleges and universities have a nearly \$90 billion economic impact and support more than 415,600 jobs.

Room and board refunds alone are a significant new expense. Colleges across the country expect to refund nearly \$8 billion in room and board charges alone. 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 instruction 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 New York Chiropractic 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 New York Chiropractic 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 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 Chiropractic 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 New York Chiropractic 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,

A handwritten signature in black ink, appearing to read 'J. Todd Knudsen', followed by a horizontal line extending to the right.

J. Todd Knudsen, DC  
Vice President for Institutional Advancement and Special Projects

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**From:** Office\_of\_Secretary@FRB.GOV  
**Sent:** Thursday, April 16, 2020 2:20 PM  
**To:** Main-Street-Business-Lending-Program  
**Subject:** Fw: Main Street Lending  
**Attachments:** 20200415235258755263\_attachment0002.PDF.final.pdf

----- Forwarded Message -----

From: Sirisha Bandla [Sirisha.Bandla@virginorbit.com]  
To: Office\_of\_Secretary@FRB.GOV  
Date: 4/15/2020 11:53:13 PM  
Subject: Main Street Lending

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Hello,

We respectfully submit the attached comments on the Main Street Lending Facility. We are happy to discuss any of the comments further.

All the best,

Sirisha

[cid:image003.png@01D3C521.50ED2DB0]&lt;http://www.virginorbit.com/&gt; SIRISHA BANDLA DIRECTOR

GOVERNMENT AFFAIRS

1800 M STREET NW, SUITE 4525S

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## **Open the Main Street Lending Facility Loans to All American Businesses to Expedite Economic Health & Recovery**

**The MSLF should employ metrics that allow advanced manufacturing/technology companies and those in the pre-revenue stage access to loans.**

### **ISSUE**

As currently written, many companies do not qualify for a loan through the Main Street Lending Facility (MSLF). Currently, the MSLF:

- Employs EBITDA for determining the maximum loan amount; this does not necessarily provide an apples-to-apples comparison of the health of a company, and a different metric should be used to open loan access to high tech pre-revenue companies.
- Dictates an interest rate higher than that stipulated in the CARES Act. Loans should in this program should not exceed an interest rate of 2 percent.
- Uses a loan maximum that is too low for companies in the advanced manufacturing sector or others who incur high overheads and employ a highly-skilled and highly-competitive workforce.

### **BACKGROUND**

The COVID-19 pandemic has caused the largest crisis in the American workforce in history. The U.S. employment rate is now the worst since the Great Depression, and more than 17 million Americans have filed for unemployment benefits in the past four weeks. The financial uncertainty and market volatility caused by the pandemic have forced employers to reduce staff, hours, and/or compensation in order to remain financially solvent.

This is especially true for small and medium-sized businesses, which typically do not enjoy the financial reserves or large sources of revenue as larger businesses. However, these firms employ nearly 60 percent of the American workforce. The current economic challenge is especially compounded for businesses in critical infrastructure and advanced manufacturing sectors, which often have high overhead because of the capital intensive nature of their work and their highly-skilled, highly-competitive workforce. These companies are especially important as they generate more employment, and more employment means an improved economy. Innovative manufacturing/technology companies also spur innovation and inject highly competitive thinking into the marketplace.

### **RECOMMENDATIONS**

*Recommendation - Focus on American Employment:*

**Maximum loan size that is the lesser of (i) \$150 million or (ii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed one time the Eligible Borrower's 2019 annual U.S. employee payroll, including associated employer payroll taxes and benefits paid on behalf of US based employees.**

Eligible borrowers in the MSLF are defined as "businesses with up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues." However, the terms of the loan paint a different picture. The features of a loan through the MSLF require that the Eligible Borrower's maximum loan "...does not exceed four times the Eligible Borrower's 2019 earnings before interest, taxes,

*depreciation, and amortization (“EBITDA”);*” This requirement does not allow any company in the pre-revenue or late R&D stages to apply for a loan. Furthermore, EBITDA may not accurately reflect the health of a company, and can make completely unprofitable firms appear to be fiscally healthy. In addition, the metric can be easily manipulated by the accounting practices of a company.

The use of EBITDA to determine maximum loan disqualifies many mid-sized businesses that were about to bring innovative products and solutions to market before the pandemic hit. Many of these companies are currently operating with uncertain income due to the effects of COVID-19, but were well funded before the COVID-19 crisis – with a record of healthy capital investment, some in the hundreds of millions of dollars. Access to these loans would allow them to weather this uncertain period where investment may be scarce, and keep their employees on payroll. Not helping these key businesses also negatively impacts innovation and the leadership role that the US holds in several key sectors.

*Recommendation - Increase Loan Maximum to Maintain a Robust Manufacturing Industrial Base:*

**Maximum loan size should be increased from \$25M to \$150M, consistent with the Main Street Expanded Lending Facility Program.**

For many mid-sized companies – especially those in the advanced manufacturing sector, or those with employee counts in the thousands – \$25M will not provide adequate assistance to offset their overhead costs. As many companies are applying for assistance to keep their employees on payroll during this time of uncertainty, the current loan amount will not result in more than 3 months of assistance. Without knowing how long the pandemic will last, the possibility of a second wave, and needing time for the economy to recover – the loan maximum amount should be higher, and enough to assist a company through a minimum of 6 months of uncertainty.

*Recommendation - Cap the Loan Interest at 2%:*

**Set a “not to exceed” amount of 2% on interest per the direction of the CARES Act, and reduce Facility Fee and Loan Origination Fee for Eligible Borrowers.**

The interest on the loan, among other features, may be a determining factor for a company applying through the MSNLF. The alternative choice for a company during this uncertain time may be to downsize or furlough their employees. The Federal Reserve should be incentivizing companies to take advantage of funding to endure the pandemic’s effects so that our nation can emerge on the other end with a chance for an expedited recovery. Loss of companies and American workers, especially in the technology sector could be a devastating blow for American competitiveness and our nation’s industrial base. The MSNLF states that a feature of the loan shall be an “[a]djustable rate of SOFR + 250-400 basis points.” This translates to potential interest rate on a loan between approximately 2.5% and 4.3%.

This range is higher than stipulated in the CARES Act. Furthermore, the requirements add an additional 2% to the overall cost of the loan with the Facility Fee and Loan Origination Fee.

## **JUSTIFICATION**

One of the purposes of the Federal Reserve is to “conduct the nation's monetary policy by influencing money and credit conditions in the economy in pursuit of full employment and stable

prices<sup>1</sup>.” As we prepare policies and programs to help our nation and our economy weather the pandemic, we must also focus on the importance of corporations in continuing to employ Americans, as it will help expedite our economic recovery. Across the Atlantic, many European nations have concentrated on programs for employment. This has resulted in smaller changes in unemployment in those nations during the COVID-19 crisis compared to the record numbers Americans are seeing. For example, the Ifo Institute for Economic Research predicts the unemployment rate in Germany will peak around 5.9 percent midyear before subsiding, whereas JPMorgan Chase estimates unemployment could hit 20% in the U.S. in the second quarter<sup>2</sup>. We ask that the Treasury continue to implement policies to help and incentivize U.S. corporations to continue to employ our nation’s workers in this difficult time; this includes access to loans for employee retention for as many U.S. corporations as possible.

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<sup>1</sup> “What is the purpose of the Federal Reserve System?” November 2016. [Link](#).

<sup>2</sup> Washington Post. “How Europe manages to keep a lid on coronavirus unemployment while it spikes in the U.S.” April 2020. [Link](#).

April 16, 2020

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

**Re: Comments on the Main Street Lending Program**

To whom it may concern:

On behalf of Cazenovia 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 Cazenovia 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. Cazenovia has a \$63 million economic impact on our community and we support 207 full and part-time jobs.

Room and board refunds alone are a significant new expense, Cazenovia College anticipates that we will refund \$1,547,000 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 – currently a loss of \$151,127 before canceling Summer College or our high school summer programming.

Meanwhile, costs related to the pandemic are rising. Our pivot to remote instruction 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 Cazenovia 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 Cazenovia 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 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. Cazenovia 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 Cazenovia 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,

Julie Palmer  
Executive Director of Development/Chief Advancement Officer

## Main Street Lending – Feedback Form

Grant Thornton LLC recognizes the Federal Reserve's Main Street Lending Program's support for small and mid-sized businesses that require financing as a result of the coronavirus disease 2019 ("COVID-19"). Per review of the Main Street New Loan Facility (MSNLF) and Main Street Expanded Loan Facility (MSELF), Grant Thornton and our clients have identified the following areas in which clarification may be required.

### General

- **Question:** Could the Federal Reserve please provide clarification on the relationship between the CARES Act and the Federal Reserve term sheets, including, but not limited to, the Main Street Lending Program's MSNLF and MSELF?
- **Question:** Do the restrictions referenced under 4003(c)(3)(D)(i) apply to the Federal Reserve's term sheets, including, but not limited to, the Main Street Lending Program's MSNLF and MSELF?

### Debt & Prepayment

- According to the MSNLF Eligible Loans Section 5, "Maximum loan size that is the lesser of (i) \$25 million,(ii) 30% of the Eligible Borrower's existing outstanding but undrawn bank debt, or (iii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed six times the Eligible Borrower's 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA")."
- According to the MSELF Eligible Loans Section 5, "Maximum loan size that is the lesser of (i) \$150 million,(ii) 30% of the Eligible Borrower's existing outstanding but undrawn bank debt, or (iii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt, does not exceed six times the Eligible Borrower's 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA")."
  - **Question:** As such, can it be understood to mean that firms must max out their potential debt draws before they are eligible?
  - **Question:** As such, if current debt alone already exceeds the amount noted in clause (i), can it be understood to mean that firms are not eligible for the MSLP?
  - **Question:** As such, can it be understood to mean that EBITDA negative firms are not eligible for the MSLP?
  - **Question:** As such, can it be understood to mean the six times EBITDA leverage covenant applies to all types of debt, including mortgage debt for firms with real estate assets?

### Organizational Structures

- According to the MSELF/MSNLF Required Attestations Section, "The Eligible Borrower must attest that it requires financing due to the exigent circumstances presented by the coronavirus disease 2019 ("COVID-19") pandemic, and 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."
  - **Question:** Can you please define what it means for a company to "make reasonable efforts to maintain its payroll and retain its employees"?
    - How do such efforts pertain to hourly employees?
    - How do such efforts pertain employees who have already been laid off or partially furloughed?
- According to the MSELF/MSNLF Eligible Borrowers Section, "each Eligible Borrower must be a business that is created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States."

- o **Question:** As such, can this be understood to mean United States' businesses with offshore companies are not considered separate entities?
- o **Question:** How is the "business of lobbying" defined?
  - If the primary function of the organization is lobbying, are they in the "business of lobbying"?
  - If a trade association has a lobbyist on staff, but their organization's primary function is not lobbying, are they eligible?

#### Use of Eligible Loan

- According to the Federal Reserve's April 9th, 2020 press release on the Main Street Lending Program, "The Federal Reserve established the Main Street Lending Program to enhance support for small and mid-sized businesses that were in good financial standing before the crisis...Firms seeking Main Street loans must commit to make reasonable efforts to maintain payroll and retain workers. Borrowers must also follow compensation, stock repurchase, and dividend restrictions that apply to direct loan programs under the CARES Act."
  - o **Question:** As such, can this be understood to mean Eligible Borrowers are not permitted to use Eligible Loans to make acquisitions?
- According to the MSELF/MSNLF Required Attestations Section, "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"
  - o **Question:** As such, can this be understood to mean there are no exceptions for tax distributions of Eligible Borrowers who may be S-corporations or other pass-through businesses?

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**From:** Office\_of\_Secretary@FRB.GOV  
**Sent:** Thursday, April 16, 2020 2:24 PM  
**To:** Main-Street-Business-Lending-Program  
**Subject:** Fw: Main Street Lending  
**Attachments:** 20200416094559663808\_attachment0000.pdf.final.pdf

----- Forwarded Message -----

From: "Laird, Betsy" [blaird@ICSC.com]  
To: Office\_of\_Secretary@FRB.GOV  
Date: 4/16/2020 9:46:01 AM  
Subject: Main Street Lending

NONCONFIDENTIAL // EXTERNAL

Please find attached comments on the Main Street Lending Program from the International Council of Shopping Centers. Our member network of nearly 70,000 represents the entire spectrum of the shopping center/retail real estate industry, which has been severely impacted by necessary closures due to the COVID-19 pandemic. Thank you for the opportunity to provide input.

Betsy Laird  
Senior Vice President, Global Public Policy International Council of Shopping Centers  
555 12th Street, N.W. | Suite 660 | Washington DC | 20004 | United



# Main Street Lending Comments

## Access to Main Street Lending Facilities

### (1) Waiver of Dividend Distributions Restriction

ICSC, on behalf of our members organized as a real estate investment trust (REIT), requests a waiver for REITs from the dividend restriction requirement that applies to direct loan programs under Section 4003(c)(3)(A)(ii) of the CARES Act. REITs are required by law to annually distribute their taxable income each year to their shareholders to qualify as a REIT.

ICSC members, regardless of structure, are facing severe economic challenges due to the COVID-19 pandemic. Without a waiver on dividend distributions, REITs must seek assistance from other programs that require ratings by major nationally recognized rating organizations – a requirement not met by many REITs.

### (2) Borrowers Without Existing Eligible Loans

Many U.S. businesses that would otherwise be Eligible Borrowers cannot qualify for the Main Street Expanded Loan Facility (MSELF) because they do not have an existing Eligible Loan that can be upsized. In some cases, this is because the borrower's existing lender is not an Eligible Lender. In others, it is because the borrower relies on financing other than a term loan (for example, by using a revolving loan). Such borrowers are not able to access the MSELF based on the existing term sheets, and consequently are forced to rely on the Main Street New Loan Facility (MSNLF), which has a much smaller maximum loan size and more expensive fees.

We request that the MSELF be made available to all Eligible Borrowers with an existing loan originating before April 8, 2020, regardless of whether (i) the loan is a term loan or (ii) the applicable lender meets the definition of an Eligible Lender. In the alternative, we request that the maximum loan size for the MSNLF be increased to the maximum loan size available under the MSELF.

### (3) Borrowers With Existing Loans With Loan Covenants Prohibiting Non-Subordinated Debt

Many Eligible Borrowers have existing loans in place that contain loan covenants prohibiting them from taking on additional debt that is not subordinated to the existing loan. These Eligible Borrowers may be unable to obtain consents or waivers from the existing lenders for these covenants. Therefore, in order to allow such Eligible Borrowers to access the MSNLF, we request that the Federal Reserve specify that Eligible Loans under the MSNLF are subordinated, in addition to being unsecured.

ICSC understands it is unlikely that the Federal Reserve would mandate that senior lenders consent or provide waivers with respect to loan covenants that would otherwise prohibit Eligible Borrowers from accessing the Main Street Lending Facilities. We note that while Eligible Lenders may be incentivized to provide these consents or waivers with respect to an upsized tranche of a loan under the MSELF, as noted in our request (2) above many otherwise Eligible Borrowers will not be eligible for the MSELF without our proposed changes.

#### **(4) Borrowers With No Employees**

The Main Street Lending Facilities have been made available to a broad number of companies that occupy a range of industries, including retail, real estate, energy, manufacturing and hospitality. This wide range of companies may use a variety of corporate structures such as LLCs or LLPs to enable financing of their operations, including establishing financing vehicles that are separate legal entities from their parent companies or operating companies that may employ the business's employees and conduct other operations.

ICSC requests the Federal Reserve clarify that an entity will meet the definition of Eligible Borrower even if the entity itself does not have any employees, provided that the business enterprise of which it is a part would collectively meet the Eligible Borrower definition, including having significant operations and a majority of its employees in the United States and having up to 10,000 employees or \$2.5 billion in 2019 annual revenues. This clarification is necessary in order to allow companies across a range of industries that may make use of complex corporate structures for various tax, administrative or other reasons, to access the Main Street Lending Facilities, as intended by Congress.

#### **Relief for the Commercial Mortgage-Backed Securities (CMBS) Markets**

ICSC urges the Treasury and the Federal Reserve to recognize the \$135.8 billion in outstanding debt underlying CMBS owed by shopping centers and other retail real estate owners and establish a program within the Main Street Lending Facilities or another emergency lending program utilizing the remaining funding allocated to the Treasury Department under Title IV of the CARES Act to support those borrowers.

The shopping center/retail industry has been devastated by mandated closures necessary for public safety. The latest Census figures indicate a \$46.2 billion drop in total retail and food services sales from February to March 2020, or 8.7%. ICSC estimates a \$20 billion loss in retail real estate rent in April with the number in May looming even larger. With businesses shuttered and retail tenants unilaterally stopping payment of contractually obligated rent, shopping center owners are facing mounting challenges in meeting their mortgage obligations. In the absence of regulatory flexibility that allows CMBS servicers and borrowers to work out potential solutions during this challenging time, we believe the market relief fund option warrants serious consideration. ICSC requests immediate action to address the CMBS crisis and prevent an economic collapse.

For more information please contact Betsy Laird at [blaird@icsc.com](mailto:blaird@icsc.com).

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**From:** Office\_of\_Secretary@FRB.GOV  
**Sent:** Thursday, April 16, 2020 2:26 PM  
**To:** Main-Street-Business-Lending-Program  
**Subject:** Fw: Main Street Lending  
**Attachments:** 20200416102748804482\_attachment0001.pdf.final.pdf

----- Forwarded Message -----

From: Erik Hansen [EHansen@ustravel.org]  
To: Office\_of\_Secretary@FRB.GOV  
Date: 4/16/2020 10:27:58 AM  
Subject: Main Street Lending

NONCONFIDENTIAL // EXTERNAL

Hello:

Please find attached questions and comments re: the Main Street Lending Program from the U.S. Travel Association and its membership. Please let us know if we can provide any additional information or clarifications regarding this document.

Thank you for your continued work to provide financial relief to impacted businesses and accelerate economic recovery.

Erik Hansen | Vice President, Government Relations U.S. Travel Association 1100 New York Avenue, NW | Suite 450 | Washington, D.C. 20005 T 202.408.2184 LEARN MORE [ustravel.org](http://www.ustravel.org) | [travelcoalition.org](http://www.travelcoalition.org) | [FOLLOW US Facebook](https://www.facebook.com/U.S.TravelAssociation) | [Twitter](https://twitter.com/USTravel) | [LinkedIn](https://www.linkedin.com/company/ustravelassociation) [U.S. Travel Association]

## Comments and Questions Regarding Federal Reserve Programs and Facilities

### Main Street Lending Program

1. Will the minimum loan size under and terms of the loan under the MSLP be flexible to account for the needs and circumstances of each borrower, or will the program use a one-size-fits-all model?
  - **U.S. Travel comments:** We believe lenders should be able to provide loans as low as \$250,000 under the MSLP, with terms for maturity as short as 2 years. This would allow more businesses, including small businesses, to access the loans without taking on more debt than is needed to get through this crisis.
  
2. Are U.S.-based nonprofit organizations (as described in section 501(c) of the Internal Revenue Code of 1986) with less than 10,000 employees or less than \$2.5 billion in revenue considered eligible borrowers under the MSLP?
  - **U.S. Travel comments:** In section 4002(4)(B) of the CARES Act, the term “*eligible business*” is broadly defined as “a United States business that has not otherwise received adequate economic relief in the form of loans or loan guarantees. . .” This definition does not preclude nonprofits, regardless of size, from receiving assistance enabled through the Exchange Stabilization Fund. Further, section 4003(c)(3)(D)(i) of the CARES Act encourages financing to lenders to provide direct loans to “eligible businesses including, to the extent practicable, nonprofit organizations...” *implying* that Congressional intent is for the term “*eligible business*” to be inclusive of nonprofits generally.

Destination Marketing Organizations (DMOs), which are typically small 501(c)(6) or 501(c)(4) nonprofits with a North American Industry Classification System code of 561591, provide critical economic development, convention sales and management, and tourism promotion services for cities and towns across the U.S. The vast majority of DMOs are funded through a combination of local lodging taxes and private sector membership dues or contributions.

The sharp drop in hotel occupancy and a liquidity crunch in the travel industry as a result of COVID-19 have decimated DMO revenue, halting their operations and forcing them to layoff thousands of workers. DMOs are in desperate need of financial assistance to keep workers employed and maintain operations in order to help power the economic recovery.

The U.S. Travel Association encourages the Federal Reserve and Treasury Department to clarify that small nonprofits, such as DMOs, are eligible borrowers under the MSLP.

3. Is a small business borrower eligible to receive a loan through the Main Street New Lending Program if it has also received a loan through the Paycheck Protection Program (PPP) or the Economic Injury Disaster Loan (EIDL), provided that the proceeds of the

MSLP loan are not used to pay off the PPP or EIDL loan or provide overlapping coverage of the same expenses?

- **U.S. Travel comments:** In section 4002(4)(B) of the CARES Act, the term “*eligible business*” is broadly defined as a “business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under [the Act].” Given the limitations of the EIDL and PPP – including a maximum loan calculation of only 2.5x average monthly payroll, a 25% cap on loan forgiveness used for eligible nonpayroll expenses, and a covered period ending June 30 – these programs should not be considered sufficient for providing adequate relief to travel-dependent small businesses.

The U.S. Travel Association encourages the Federal Reserve and the Treasury Department to continue to ensure that any small business that has received either a PPP loan, an EIDL, or both are still eligible to receive a loan through the MSLP if they still have outstanding expenses.

4. The MSNLF term sheet states that an eligible borrower must attest that it will make “reasonable efforts” to maintain its payroll and retain employees during the repayment period. Is the Federal Reserve required under the CARES Act to develop more specific attestations for borrowers regarding the use of loan proceeds to maintain payroll and employment? Will the Federal Reserve and/or the Treasury Department develop more detailed guidance or threshold on what constitutes “reasonable efforts” by the borrower to maintain payroll and payroll?

- **U.S. Travel comments:** Travel-dependent businesses (e.g. hotels, car rentals, theme parks, restaurants, entertainment, etc.) are either closed or empty because of public health measures restricting domestic and international travel, requiring social distancing or limiting large gatherings. Without sufficient customers or revenue, these businesses cannot rehire or maintain employment at pre-coronavirus levels until consumer demand returns to pre-coronavirus levels.

Any borrower requirements or attestations to maintain employment and payroll must take into consideration the unique circumstances for travel-dependent businesses that will not have the consistent liquidity or consumer demand to rehire and maintain employment until public health restrictions are eased and consumer demand returns.

5. With respect to a holding company with controlling interests in smaller businesses, a multi-business partnership, or a business concern with multiple establishments:
  - a. How will the Federal Reserve or lenders apply the eligibility requirements for borrowers with less than 10,000 employees or up to \$2.5 billion in 2019 revenue? Will these limits be determined by aggregating total employment and revenue across all physical establishments of a business concern, any establishment partially owned through a partnership, or subsidiaries of a holding company?
  - b. Will individual establishments or subsidiaries with less than 10,000 employees or \$2.5 billion in 2019 revenue be eligible to receive loans through the MSNLF or

- MSELF, if its parent company or a controlling interest has a total number of employees or annual 2019 revenues that exceed these limits?
- c. If an eligible borrower at the property- or establishment-level receives a loan through the MSLP, will the attestations regarding dividends, stock repurchasing, and executive compensation apply to its parent companies or controlling interests, as well?
  - d. If a holding company or business concern with multiple establishments receives a loan through the MSNLF, will its subsidiaries or individual establishments be unable to participate in the MSELF?
  - e. How will franchisees and franchisors be treated in terms of the 10,000-employee or \$2.5 billion limits?
- o **U.S. Travel comments:** Many travel-dependent businesses are organized as partnerships between several different, but sometimes related, entities. Many establishments do not have a simple vertical ownership structure, but they often each have separate Employer Identification Numbers (EINs). Therefore, applying program requirements at the parent- or holding company-level might prevent many locally operated businesses from gaining relief through the program.

### **Municipal Liquidity Facility**

1. If an eligible city or county government assesses a local hotel tax and uses that revenue, either in whole or in part, for the purpose of funding a nonprofit Destination Marketing Organization (e.g. a convention and visitors bureau), can the city or county government issue MLF bonds backed by the hotel tax revenue and use the bond proceeds to help with cash flow issues of the nonprofit Destination Marketing Organization?
  - o **U.S. Travel Comments:** Destination Marketing Organizations (DMOs), which are typically classified as small 501(c)(6) or 501(c)(4) nonprofits, provide critical economic development, convention sales and management, and tourism promotion services for cities and counties across the U.S. The vast majority of nonprofit DMOs receive funding from hotel taxes assessed by a city or county government. In many cases, the nonprofit DMOs were also established through enabling legislation passed by a city or county government.

COVID-19 has led to a sharp drop in hotel occupancy along with a liquidity crunch among travel industry partners, decimating DMO revenue, halting their operations and forcing them to layoff thousands of workers. DMOs are in desperate need of financial assistance to keep workers employed and maintain operations in order to help power the economic recovery.

Given the direct funding relationship between city or county governments and DMOs, and the DMOs' direct reliance on funding from hotel taxes assessed at the local level, we urge the Federal Reserve to allow city or county governments to issue bonds backed by hotel tax revenue and permit the use of the bond proceeds for funding the operations of DMOs that would have otherwise received the lodging tax revenue.

2. Will maturity be extended beyond 2 years?
  - **U.S. Travel comments:** We believe a two-year maturity period is far too short for the communities most in need of assistance, particularly those that rely on robust travel spending to support their economies, their budgets and the operation of tax-supported entities, like Destination Marketing Organizations. *A 2-year maturity date doesn't give issuers enough time to restore their economies to full strength and generate the revenue needed to pay back the bonds. Further, under many projections, it'll take an extended amount of time for social distancing precautions to fully recede and longer still for consumer demand to pick up. As such, the revenue generated through travel-related taxes, such as hotel occupancy and rental car taxes, will not likely fully rebound within the next two years, with depressed collections remaining a strain on issuers—which will be compounded by the need to repay the bond within two years.*
  
3. Will bond pricing consider the credit rating of the issuer before the crisis hit?
  - **U.S. Travel comments:** The interim guidance provided by the Federal Reserve states that *"pricing will be based on an Eligible Issuer's rating at the time of purchase with details to be provided later."* However, many state and local governments are facing extreme financial stress due to the unexpected cost of COVID-19 on health-related expenditures, social safety nets, and tax revenue—which may impact their credit rating and ultimately the bond's cost (i.e. yield). Therefore, we believe pricing should be based on the best credit rating the issuer received over the previous 3 years, with the expectation that the bonds will enable issuers and the communities they serve to return to full financial strength on a sustainable basis. A high yield will make it harder to return to that strength in the shortest amount of time.
  
4. Will U.S. territories be able to participate in the Municipal Liquidity Facility?
  - **U.S. Travel comments:** The guidance provided by the Federal Reserve only lists the District of Columbia as an eligible state-equivalent participant, but U.S. territories have similar needs to U.S. states and are experiencing similar stresses. Therefore, they should be given equal treatment within the Municipal Liquidity Facility.
  
5. Will the aggregate bond limit only be based on the general and utility revenue of the issuer in fiscal year 2017, or can the issuer elect other years that more accurately reflect its financial needs?
  - **U.S. Travel comments:** Many states, territories, counties, and cities have gone through drastic changes in recent years, including the establishment of new agencies, partnerships, and services that derive their revenue from hotel taxes and other new or modified taxes and fees. Restricting revenue considerations to only fiscal year 2017 may distort and minimize the real challenges faced by states, territories, counties, and cities to make up for lost revenue and meet the needs of their residents. To account for this, issuers should be able to elect any fiscal year within the last 5 years (including FY2020 based on the most recent revenue projections available before the crisis hit) to determine the appropriate aggregate bond limit.

**6. Can the Federal Reserve change the population requirements for eligible issuers in the Municipal Liquidity Facility to be below 1 million residents for cities and below 2 million residents for counties?**

- **U.S. Travel comments:** We believe any municipality or county government with bonding authority should be able to participate in the MLF. Many cities and counties that do not meet the respective resident thresholds will be disadvantaged by having to compete for funds at the State level, even if their budgets were not previously dependent on the State for primary funding. Even though States are able to request an increase in their aggregate limit to account for the needs of political subdivisions and instrumentalities that are not eligible for the MLF, the extra step may act as an impediment for political subdivisions and instrumentalities that do not have strong relationships with State officials.



# ROBERTS WESLEYAN COLLEGE

April 16, 2020

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

## **Re: Comments on the Main Street Lending Program**

To whom it may concern:

On behalf of Roberts Wesleyan 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 Roberts Wesleyan 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. Roberts Wesleyan has a \$121.3M annual economic impact on our community and we support over 800 jobs, including full- and part-time faculty and staff, adjuncts and student employees.

Room and board refunds alone are a significant new expense, Roberts Wesleyan College anticipates lost revenue of just over \$1.2M in room and board, a huge cost that could not have been anticipated. Additionally, we have seen our auxiliary sources of revenue stop as campus 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 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 Roberts Wesleyan 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 Roberts Wesleyan 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 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. Roberts Wesleyan College



# ROBERTS WESLEYAN 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 Roberts Wesleyan 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,

Laurie J. Leo  
Chief Financial Officer



EXECUTIVE VICE PRESIDENT—  
CHIEF FINANCIAL OFFICER

OFFICE OF THE PRESIDENT  
1111 Franklin Street, 6<sup>th</sup> Floor  
Oakland, California 94607-5200  
510/987-9029

April 16, 2020

Board of Governors of the Federal Reserve System  
20<sup>th</sup> 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 California (UC), we submit the following comments in response to a request for input as detailed in the Federal Reserve's April 9, 2020 press release announcing the establishment of the Main Street Lending Program: Main Street New Loan Facility (MSNLF) and Main Street Expanded Loan Facility (MSELF), initiated by the Federal Reserve pursuant to H.R. 748, the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

The University of California requests that the Federal Reserve updates the guidance to clarify that non-profit private and public institutions of higher education, regardless of how many employees they have, are eligible for the Main Street Lending Program. In addition, we also ask that the Federal Reserve implements the Main Street Lending Program in a manner that allows for individual UC campuses to be eligible to apply for these loans.

With more than 285,000 students and 227,000 faculty and staff the University of California is vital to the California economy and each of the ten UC campuses are major employers in their communities, and an integral part of the regional economies in which they participate. As a healthcare system, a research institution, and a major employer, the University of California is on the frontlines of the COVID-19 crisis, treating patients, finding innovative ways to continue to educate our students, researching diagnostics, tests and vaccines and protecting our students and workforce. UC is extremely grateful to Congress and the Federal Reserve for their swift action in response to the pandemic, and for providing much needed resources to address the crisis.

The University notes that even with the relief Congress has already appropriated to respond to COVID-19, the UC system continues to be significantly impacted financially and estimates that for our academic health systems alone, the direct and indirect costs associated with responding to the COVID-19 epidemic could easily exceed \$1 billion by the end of our fiscal year in June.

As the Federal Reserve moves towards implementing the Main Street Lending Program, we ask that you take the necessary steps to ensure that non-profit private and public higher

education institutions, like UC and our campuses, have access to the valuable and much needed resources of the Federal Reserve. UC campuses would benefit from being eligible to apply for 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. In order to ensure our campuses can access these loans, the University of California asks that you support the following requests:

- UC asks that the Federal Reserve update its guidance regarding the Main Street Lending Program to clarify that non-profit private and public institutions of higher education, regardless of how many employees they have, are eligible to apply for loans and other financial tools made available under the program.
- UC also specifically requests that non-profit private and public institutions of higher education be made eligible for participation in the Main Street Lending Program without having to meet the eligibility requirement established for businesses, of having fewer than 10,000 employees, or meeting certain annual income requirements. Non-profit private and public higher education institutions may have more than 10,000 employees, especially if they are part of a large public university system, such as UC, and would benefit from being eligible to participate in programs such as the Main Street Lending Program as part of their response efforts to COVID-19.
- UC also asks that as guidance is developed for these programs, the Federal Reserve consider the positive impact Main Street Lending Program loans could have for individual UC campuses in bolstering their efforts to cover operating costs and payroll expenses. We request that the Federal Reserve implements the Main Street Lending Program in a manner that allows for individual UC campuses to be eligible for these loans.

Thank you for consideration of our requests. We look forward to working with the Federal Reserve as it implements the Main Street Lending Program and other important loan programs established to respond to the COVID-19 crisis. If you have any questions regarding the University of California's specific requests, please contact Chris Harrington at (202) 997-3150.

Sincerely,



Paul Jenny  
Interim Executive Vice President-Chief Financial Officer

Cc: Associate Vice President Arrivas  
Associate Vice President Harrington



Office of the Senior Vice President  
for Finance and Administration  
715 North Avenue  
New Rochelle, NY 10801

April 15, 2020

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

**Re: Comments on the Main Street Lending Program**

To whom it may concern:

On behalf of Iona 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 Iona College 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 not-for-profit colleges and universities have a nearly \$90 billion economic impact and support more than 415,600 jobs.

Room and board refunds alone are a significant new expense, Iona College anticipates that we will 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 instruction 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 Iona 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 Iona 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 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. Iona 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 Iona 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,

*Anne Marie Schettini-Lynch*

Anne Marie Schettini-Lynch  
Senior Vice President for Finance and Administration  
[aschettinilynch@iona.edu](mailto:aschettinilynch@iona.edu)  
914-633-2468



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101 N Front Street Harrisburg, PA 17101 | (717) 232-8649

April 15, 2020

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

**Re: Main Street Lending Program**

To whom it may concern:

We write on behalf of the 90+ independent, non-profit colleges and universities in Pennsylvania, who serve 291,000 students. This student body includes 39% of all first generation students in post-secondary institutions in PA, 44% of all Pell-eligible students seeking four year degrees, 48% of all STEM students, 49% of all working age adult students and 50% of all minority students in four year institutions. According to an independent study completed just a year ago, these 90+ independent, non-profit schools contribute \$48B to the PA GNP every year, are responsible for over 195,000 family-sustaining jobs, pay \$1.1B in state and local taxes and contribute well over 5M hours in volunteer service in all 67 counties in this state every year.

We write today to ask that the Federal Reserve update its guidance to clarify that independent, non-profit higher education 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).

Institutions of higher education in Pennsylvania, which are often one of the top ten employers in their local communities, face a major cash flow crisis in light of the reduced revenue and increased expenses imposed by this pandemic. Schools expect to refund millions in room and board charges alone. Anticipated sources of auxiliary revenue have dried up as campus events have been canceled and summer programs which provide critical budget-balancing revenue to many institutions also have been canceled. These sources of revenue greatly assist these schools with their bottom line.

At the same time, institutions are facing additional costs including deep cleaning campus buildings, increased security expenses, paying for student transportation, returning items to students' homes and ramping up to 100% on-line instruction. They continue to offer safe living spaces to vulnerable student populations in the midst of transitioning to online delivery methods. Other schools have increased costs because they have opened their facilities to help medical personnel and first responders as well as donated thousands of medical supplies to health care facilities. All of this occurs before we experience an expected minimum 10% decline in enrollment next fall, a direct result of the pandemic.

Many of our colleges and universities are seeking 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. Unfortunately, we are concerned about two major barriers that will prevent our institutions from accessing these programs:

Institutions of higher education are often one of the largest, employers within their community and larger region. There has been confusion about the Main Street Lending program and whether or not non-profits are eligible, because the current guidance is silent. We ask that the Federal Reserve update the guidance to clarify that ***independent, non-profit institutions of higher education, with direct borrowing authority, are eligible for the Main Street Lending program.***

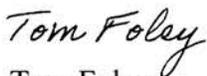
We also ask that ***student workers be exempted for the purposes of the employee threshold for eligibility*** (businesses with under 10,000 employees). We hope that future guidance from the Federal Reserve will make it clear that our institutions can exempt student workers from the employee count. Many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

There are federal precedents for excluding student workers in employee counting throughout federal agencies. For example, the Internal Revenue Service (IRS) generally exempts student workers from being defined as employees under IRS regulations implementing the Student FICA and the Federal Unemployment tax exceptions. The Department of Labor's Wage and Hour Division creates special exceptions for students under the Fair Labor Standards Act, and the Department of Education's Integrated Postsecondary Education Data System (IPEDS) does not include student employees in an institution's employee count. We ask the Federal Reserve to follow these precedents.

It is vital to provide this access to low-interest loans to independent, non-profit colleges and universities financially devastated by the pandemic and struggling to continue to educate and assist students and employ the hundreds of thousands of faculty and staff who work on both public and independent non-profit campuses around the Commonwealth.

Thank you for all you are doing in regards to this and other important loan programs as the Federal Reserve responds to the COVID-19 crisis.

Sincerely,



Tom Foley

Association of Independent Colleges and Universities of Pennsylvania (AICUP)



## MID-SIZE BANK COALITION OF AMERICA

Via Electronic Mail

Re: Main Street Loan Program

Ladies and Gentlemen:

The Midsize Bank Coalition of America<sup>1</sup> submits this letter on behalf of our 102 member banks in response to your request for comments about the two Main Street Lending program (MSL) term sheets published on April 9<sup>th</sup>. Our member banks applaud the Federal Reserve's goal of launching the MSL in a deliberate – and yet still timely manner. Although MBCA is very supportive of the MSL's objectives, our member banks believe that refinements to the term sheets – including FAQs clarifying terms – would encourage America's banks to participate and to recommend their clients participate. We have organized our comments to align with the topic headings in the two MSL term sheets:

### Eligible Borrowers

- 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)?

### Eligible Loans

- Must the loan be first lien secured, or just secured (for extended MSL program)? For instance, if a client asks to expand an existing Term Loan that sits behind an asset based loan (ABL), would this kind of collateral arrangement (i.e. 2nd position behind ABL lender) qualify? Would a loan secured by a collateral pool comprised of a mix of assets variously subject to first or second liens be acceptable?

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<sup>1</sup> Founded in 2010, the MBCA is a distinct and singularly focused “self-help” organization for mid-size banks that has the direct involvement of each of its member banks’ CEOs and most of their management committee members. MBCA’s 100 member banks average approximately \$20 billion in size and collectively serve customers and communities through more than 13,000 branches in all 50 states, Washington, DC, and three U.S. territories. The MBCA’s member banks currently have combined assets exceeding \$2 trillion, deposits of nearly \$1.7 trillion, and total loans of more than \$1.4 trillion. Thirty of MBCA’s members are the largest independent institutions headquartered in their respective states. For example, MBCA member banks in Arkansas, Connecticut, Hawaii, Mississippi, Oklahoma, Oregon, Tennessee, Virginia and Wisconsin are both headquartered in and the largest independent institutions serving those states.

- Our members have multiple questions about EBITDA measurement:
  - EBITDA definition – 2019 “reported” EBITDA - What if the borrower doesn’t have a 2019 audit?
  - Inclusivity of debt in the Debt to EBITDA ratio? Are all classes of debt included? (second lien, mezzanine, subordinated debt, etc).
  - More clarity on EBITDA calculations; does this mean GAAP EBITDA? Is there a potential for add backs and if so what percentage would be acceptable for the MSL program?
  - Are bank loans ever acceptable based on non-EBITDA metrics because the borrower is not EBITDA positive (recurring revenue, TCF, etc.) or because the loan is an ABL facility. An example of a non-EBITDA borrower is a film company (which may have significant EBITDA losses in 2019 due to timing of film releases, etc.)?
  - “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?
- Will the Fed (and other prudential regulators) apply leveraged lending guidelines to MSL loans?
- SOFR...Is this only option? Although our member banks are preparing for a non-LIBOR future, many members report that their current systems cannot handle some or all SOFR rates. We suggest consideration of a LIBOR option to address operational concerns some banks might 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. Our member banks have noted that SOFR is not representative of their cost of funds and many support the Ameribor rate instead. 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 member bank concerns about whether their systems can 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?

### Loan Participations

- Voting Rights – What is Fed’s expectation about its SPV’s holdings? The sooner the Fed publishes its form of 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 other loan participants (typically other banks) that our members partner with. How will required amendments of existing facilities be handled while loan is outstanding?
- Process – if banks underwrite to the parameters outlined, is the Fed committed to fund their portion? How will banks 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 a bank's commitment to its client subject to advance Fed approval?

### Required Attestations

- 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?
- Our members are concerned that the current term sheets effectively subordinate pre-existing loans and lines of credit 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) – Will banks view the required attestations sufficiently burdensome as to require the consent of other lenders to the borrower prior to making MSL loans? (We recognize that this answer will depend on whether the MSL loans falls within the existing incremental and new debt negative covenants built into the existing document). 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. A lender making a MSL loan to its borrower will be disadvantaged compared to other banks and nonbanks lending to same borrower; these other lenders can withhold consent to the MSL loan if their documents give them that power and in any event can require timely repayment of their loans. Moreover, although the term sheets permit borrowers to make mandatory principal payments, there is no exception for making the interest portion of payments due to lenders...the nonpayment of which would create contractual defaults.
  - Lenders extending RLOCs will be reluctant to make MSL installment loans. These lines often have annual terms and renewals are subject to credit underwriting. In addition, these are often controlled by formulas or borrowing bases. RLOCs are frequently set up as sweep arrangements, paid down or paid off overnight via incoming deposits to the borrowers DDA accounts. We 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 banks be able to take additional 5% stakes in borrowers if the credit is already a criticized credit?

#### Loan Originations and Servicing

- We recommend that the Fed provide its desired form of promissory note, including whatever wording it desires in the note (or a loan agreement) to evidence other borrower attestations or covenants.
- To administer the loan, must the lender be the incumbent Administrative Agent on the Borrower’s existing credit facility? Could a bank arrange a new loan for a company that currently has a credit facility with a non-bank?
- Management of the facility with the SPV as a 95% participant – voting rights, default situations, structure, information flow – what are the Fed’s expectations. 1
- What will the take out commitment look like from Fed. Our members want to ensure bank reputational risk with our clients will be taken into account...for example, a bank approves but then Fed does not approve.

#### Facility Termination

- Are there any mandatory prepayment conditions?
- Can proceeds from PMCCF be used to take out MSLs without penalty?

The MBCA appreciates this opportunity to comment on the Federal Reserve’s Main Street lending programs. Our member banks look forward to assisting America’s businesses survive this difficult period and welcome the opportunity to deliver Main Street loans in the near future. If you have any questions, please do not hesitate to contact me by phone at 213-335-4344 or by e-mail [brent.tjarks@midsizebanks.com](mailto:brent.tjarks@midsizebanks.com).

Sincerely,



Brent Tjarks  
Executive Director  
The Mid-Size Bank Coalition of  
America  
1049 South Serenade Avenue  
West Covina, CA 91790

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## MID-SIZE BANK COALITION OF AMERICA MEMBERS

1. Ameris Bank (Moultrie, GA)
2. Apple Bank (New York, NY)
3. Arvest Bank (Fayetteville, AR)
4. Associated Bank (Green Bay, WI)
5. Atlantic Union Bank (Richmond, VA)
6. BancorpSouth (Tupelo, MS)
7. Banner Bank (Walla Walla, WA)
8. BankUnited (Miami Lakes, FL)
9. Banc of California (Santa Ana, CA)
10. Bank of Hope (Los Angeles, CA)
11. Bank Leumi USA (New York, NY)
12. Bank of Hawaii (Honolulu, HI)
13. Bank OZK (Little Rock, AR)
14. Berkshire Bank (Pittsfield, MA)
15. BOK Financial (Tulsa, OK)
16. Bremer Bank (Saint Paul, MN)
17. Busey Bank (Champaign, IL)
18. Cadence Bank (Houston, TX)
19. Cathay Bank (Los Angeles, CA)
20. Cenlar FSB (Ewing, NJ)
21. Centennial Bank (Conway, AR)
22. CenterState Bank (Winter Haven, FL)
23. Central Bancompany (Jefferson City, MO)
24. CIT Bank (Pasadena, CA)
25. Citizens Business Bank (Ontario, CA)
26. City National Bank (Los Angeles, CA)
27. City National Bank of Florida (Miami, FL)
28. Columbia Bank (Tacoma, WA)
29. Commerce Bank (Kansas City, MO)
30. Community Bank (De Witt, NY)
31. Cullen/Frost Bankers (San Antonio, TX)
32. Customers Bank (Phoenixville, PA)
33. Dollar Bank (Pittsburgh, PA)
34. EagleBank (Bethesda, MD)
35. Eastern Bank (Boston, MA)
36. East West Bank (Pasadena, CA)
37. F.N.B. Corporation (Pittsburgh, PA)
38. FirstBank Holding Company (Lakewood, CO)
39. First Citizens Bank (Raleigh, NC)
40. First Financial Bank (Cincinnati, OH)
41. First Financial Bankshares (Abilene, TX)
42. First Hawaiian Bank (Honolulu, HI)
43. First Horizon Bank (Memphis, TN)
44. First Interstate Bank (Billings, MT)
45. First Merchants Bank (Muncie, IN)
46. First Midwest Bank (Itasca, IL)
47. First National Bank of Omaha (Omaha, NE)
48. Flagstar Bank (Troy, MI)
49. Fulton Financial (Lancaster, PA)
50. Glacier Bank (Kalispell, MT)
51. Great Western Bank (Sioux Falls, SD)
52. Hancock Whitney Bank (Gulfport, MS)
53. Heartland Financial (Dubuque, IA)
54. Hilltop Holdings (Dallas, TX)
55. Independent Bank (McKinney, TX)
56. International Bancshares (Laredo, TX)
57. Investors Bank (Short Hills, NJ)
58. IBERIABANK (Lafayette, LA)
59. Mechanics Bank (Richmond, CA)
60. MidFirst Bank (Oklahoma City, OK)
61. NBT Bank (Norwich, NY)
62. New York Community Bank (New York, NY)
63. Northwest Bank (Warren, PA)
64. Old National Bank (Evansville, IN)
65. Opus Bank (Irvine, CA)
66. Pacific Premier Bank (Irvine, CA)
67. PacWest Bank (Beverly Hills, CA)
68. People's United Bank (Bridgeport, CT)
69. Pinnacle Bank (Lincoln, NE)
70. Pinnacle Financial Partners (Nashville, TN)
71. Popular Community Bank (New York, NY)
72. Provident Bank (Iselin, NJ)
73. Raymond James Bank (Saint Petersburg, FL)
74. Renasant Bank (Tupelo, MS)
75. Rockland Trust (Rockland, MA)
76. Sandy Spring Bank (Olney, MD)
77. SeaCoast Bank (Palm Beach, FL)
78. ServisFirst Bank (Birmingham, AL)
79. Signature Bank (New York, NY)
80. Silicon Valley Bank (Santa Clara, CA)
81. Simmons Bank (Pine Bluff, AR)
82. South State Bank (Columbia, SC)
83. Sterling National Bank (Montebello, NY)
84. Stifel Bank & Trust (Saint Louis, MO)
85. Synovus Bank (Columbus, GA)
86. TCF Bank (Sioux Falls, SD)
87. Texas Capital Bank (Dallas, TX)
88. Third Federal Savings (Cleveland, OH)
89. TIAA Bank (Jacksonville, FL)
90. TowneBank (Portsmouth, VA)
91. Trustmark (Jackson, MS)
92. UMB Financial (Kansas City, MO)
93. Umpqua Bank (Roseburg, OR)
94. United Community Bank (Blairsville, GA)
95. United Bankshares (Charleston, WV)
96. Valley (Wayne, NJ)
97. Veritex Community Bank (Dallas, TX)
98. WaFd Bank (Seattle, WA)
99. Webster Bank (Waterbury, CT)
100. WesBanco Bank (Wheeling, WV)
101. Western Alliance Bank (Phoenix, AZ)
102. Wintrust Financial (Rosemont, IL)

April 16, 2020

**To: The Federal Reserve - Mainstreet Lending Comments - via [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)**

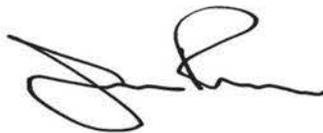
On behalf of the League of American Orchestras, we thank the Federal Reserve for this comment opportunity.

We request immediate revisions to enable 501(c)(3) nonprofit eligibility for the Mainstreet Lending facilities and adoption of loan calculations suitable to nonprofits. This near-term opportunity for businesses of up to 10,000 employees could provide a critical form of support for nonprofit organizations unable to access the Paycheck Protection Program, and in urgent need of resources to support their workforce and services to the public.

We also request that future lending programs created in response to Section 4003(c)(3)(D) of the CARES Act:

- Include a 0% interest rate or, at most, a .50% rate (50 basis points) for 501(c)(3) nonprofits at a 5-year amortization
- Defer payments until two years after a direct loan is made
- Require lenders to make a proportionate number and value of loans available to nonprofits
- Begin any employee retention provisions on the date loan funding is received by the borrower
- Define “workforce” as full-time employees or full-time equivalents in any workforce restoration and retention provisions.

As a vibrant part of the charitable sector, our nation’s more than 1,600 nonprofit orchestras rely on philanthropy and event-dependent income to fuel programs that serve community needs and support a dynamic workforce. Both sources of revenue are severely constricted in the wake of the COVID-19 crisis. We urge consideration of loan eligibility – and forgivability - as the Federal Reserve takes further action. Orchestras and the broader nonprofit sector are critical partners in jump-starting local, state, and national recovery efforts during and after COVID-19, and should be supported by all forms of relief.



Jesse Rosen,  
President & CEO

ALVERNO COLLEGE  
BELLIN COLLEGE  
BELOIT COLLEGE  
CARDINAL STRITCH UNIVERSITY  
CARROLL UNIVERSITY  
CARTHAGE COLLEGE  
CONCORDIA UNIVERSITY  
EDGEWOOD COLLEGE  
HERZING UNIVERSITY  
HOLY FAMILY COLLEGE  
LAKELAND UNIVERSITY  
LAWRENCE UNIVERSITY



WISCONSIN'S PRIVATE, NONPROFIT COLLEGES AND UNIVERSITIES  
WORKING TOGETHER FOR EDUCATIONAL OPPORTUNITY

MARIAN UNIVERSITY  
MARQUETTE UNIVERSITY  
MEDICAL COLLEGE OF WISCONSIN  
MILWAUKEE INSTITUTE OF ART & DESIGN  
MILWAUKEE SCHOOL OF ENGINEERING  
MOUNT MARY UNIVERSITY  
NASHOTAH HOUSE  
NORTHLAND COLLEGE  
RIPON COLLEGE  
ST. NORBERT COLLEGE  
VITERBO UNIVERSITY  
WISCONSIN LUTHERAN COLLEGE

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 24 private nonprofit colleges and universities that are members of the Wisconsin Association of Independent Colleges and Universities (WAICU) and their 56,000 students, I am writing you today to request that guidance be issued to confirm that colleges and universities, including private, nonprofit colleges and universities, are eligible for the Main Street Lending program.

Institutions of higher education, often the largest or one of the largest employers in their local communities, are facing a major financial crisis as a result of the reduced revenue and increased expenses rising out of the COVID-19 pandemic. Wisconsin's private, nonprofit institutions expect to refund nearly \$24 million in room and board charges alone. Some institutions have also refunded tuition payments. Anticipated sources of auxiliary revenue have dried up as campus events have been canceled. Summer programs which provide revenue to many institutions also have been canceled. At the same time, institutions are facing additional costs—such as deep cleaning campus buildings, translating the entire curriculum to digital formats, and increased security expenses. Colleges have absorbed these increased costs even as they have opened their facilities to help medical personnel and first responders.

Specifically, on behalf of Wisconsin's private, nonprofit institutions, I request that the Federal Reserve update the guidance to clarify that colleges and universities are eligible for the Main Street Lending Program. In addition, I ask that student workers be exempted for the purposes of the employee threshold for eligibility requirements (under 10,000 employees). With the majority of our campuses closed for the spring semester and transitioned to online learning, all or most of these student employees have left campuses, and therefore should not be included for the purposes of the employee threshold. It is vital to provide this access to low-interest loans to non-profit colleges and universities financially devastated by the pandemic and struggling to continue to educate and assist students.

Board of Governors of the Federal Reserve System  
Re: Comments on the Main Street Lending Program  
Page Two  
April 16, 2020

It is estimated that our institutions have already experienced over \$76 million in expenses directly related to the COVID-19 crisis. Many of our colleges and universities are seeking low cost loans, to help address the financial impact of the COVID-19 crisis and would benefit from the credit and loans available under the Main Street Lending program.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rolf Wegenke', with a stylized flourish at the end.

Rolf Wegenke, Ph.D.  
President

**Office of Federal Relations**

444 N. Capitol Street NW, Suite 207  
Washington, DC 20001  
202.434.8060

[www.calstate.edu](http://www.calstate.edu)

April 16, 2020

Board of Governors of the Federal Reserve  
20<sup>th</sup> Street and Constitution Avenue NW  
Washington, DC 20551

Re: Comments on “Main Street Lending”

On behalf of the California State University (CSU), 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. Half of the CSU's students transfer from California community colleges. Created in 1960, the mission of the CSU is to provide high-quality, affordable education to meet the ever-changing needs of California. With its commitment to quality, opportunity, and student success, the CSU is renowned for superb teaching, innovative research and for producing job-ready graduates. Each year, the CSU awards more than 127,000 degrees. One in every 20 Americans holding a college degree is a graduate of the CSU and our alumni are 3.8 million strong.

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 and its campuses. 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:

**CSU Campuses**

Bakersfield  
Channel Islands  
Chico  
Dominguez Hills  
East Bay

Fresno  
Fullerton  
Humboldt  
Long Beach  
Los Angeles  
Maritime Academy

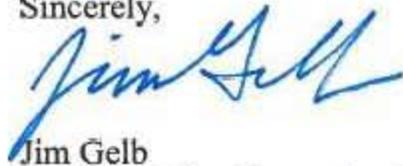
Monterey Bay  
Northridge  
Pomona  
Sacramento  
San Bernardino  
San Diego

San Francisco  
San José  
San Luis Obispo  
San Marcos  
Sonoma  
Stanislaus

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.

Sincerely,



Jim Gelb

Assistant Vice Chancellor for Federal Relations

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:

The Main Street Lending Program, created under authorization from Section 4003(c)(3)(D)(ii) of the Coronavirus Aid, Relief and Economic Security (CARES) Act, is designed to help entities during the ongoing COVID-19 crisis and accompanying economic downturn. San José State University submits the following comments in regard to the Program and asks that the Federal Reserve update the guidance to clarify that nonprofit private and public higher education institutions are eligible. In addition, we ask that student workers be exempted for the purposes of the employee threshold for eligibility requirements (under 10,000 employees).

Institutions of higher education, many of which are significant employers in their communities, are experiencing devastating financial impacts due to the COVID-19 pandemic. According to recent estimates from SJSU's Division of Administration and Finance, our own university will be absorbing nearly \$16 million in costs and losses through May 2020 alone. This total likely will increase in the coming months as a result of additional distance learning costs, decreased enrollments for upcoming summer and fall terms, and losses by campus auxiliaries, among many other factors.

Many colleges and universities are seeking 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. The Program will provide much-needed support of up to \$600 billion in bank lending to small and mid-sized businesses, including new loans of \$1 million to \$25 million or expansion of a business's existing loan with a bank to up to \$150 million.

Unfortunately, it is currently unclear whether institutions of higher learning and Minority-Serving Institutions like SJSU are eligible to participate in the Program. Potential exclusion from this program would have a compounding effect, when considering that SJSU is also ineligible for the Paycheck Protection Program implemented by the Small Business Administration.

We are concerned with two major barriers keeping our institution from accessing these programs:

1. Institutions of higher education are often the largest, or one of the largest, employers within their community and larger region. There has been confusion about the Main Street Lending program and whether or not nonprofits are eligible, because the current guidance is silent. We ask that the Federal Reserve update the guidance to clarify that nonprofit private and public institutions of higher education, with direct borrowing authority, are eligible for the Main Street Lending program.

2. We also 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 our institution can exempt student workers from the employee count. SJSU employs student workers across our campus as part of their overall financial support to help pay for college and provide students with work experiences while keeping them close to campus for the purposes of their education. Since our campus has transitioned to online learning, all or most of these student employees have left our campus, and therefore should not be included for the purposes of the employee threshold.

As Silicon Valley's public university, SJSU has both unique opportunities and challenges that can affect the long-term economic prosperity of our state and our region. We need to continue to enroll students from a wide variety of backgrounds; make essential investments for our campus to improve the learning environment; support student well-being; and ensure a well-educated workforce vital for our future.

At SJSU, we transform the lives of our students and open the doors of social mobility. Nearly a third of our students are the first in their families to attend college and about half are eligible for Pell grants. More than 40 percent of incoming freshmen and 35 percent of incoming transfer students identify as an underrepresented minority. We are proud of our designation as both a Hispanic-Serving Institution and an Asian American and Native American Pacific Islander-Serving Institution.

More than two out of three of our undergraduate students are from the Bay Area. The vast majority of our graduates stay and work in the region, and SJSU sends more college graduates into the Silicon Valley workforce than any other institution. This includes business, engineering and science graduates, in addition to degree holders in education, social sciences, arts and humanities and the health and human sciences.

It is vital to provide this access to low-interest loans to non-profit colleges and universities like SJSU that are financially devastated by the pandemic and struggling to continue to educate and assist students and employ the millions of faculty and staff who work on campuses around the country.

If I can answer any questions, provide additional context, or be of assistance in any way, please feel free to reach out to me directly.

Sincerely and with appreciation,



Mary A. Papazian, Ph.D.  
President



## XAVIER UNIVERSITY OF LOUISIANA

**Dr. Reynold Verret**  
*President*

April 16, 2019

### **Re: Comments on the Main Street Lending Program**

To Whom It May Concern:

Xavier University of Louisiana submits these comments pertaining to the **Main Street Lending Program**. Specifically, we ask that the Federal Reserve update the guidance to clarify that non-profit-private and public institutions (in particular colleges and universities) be eligible for the Main Street Lending program. We are asking also that student workers be exempted for the purposes of the employee threshold for eligibility requirements (under 10,000 employees).

Institutions of higher education such as Xavier rank among the largest employers in their local communities and are key drivers of job creation in their local economies. Such institutions face a major cash flow crisis due to reduced revenue and expenses arising from the immediate response to the COVID-19 pandemic. These institutions are refunding nearly room and board charges, amounting to millions of dollars per school. Some schools have also refunded tuition payments. Other costs are anticipated, including lost revenue from summer programs, deep cleaning of campus and other needed services.

Xavier University of Louisiana educates more African Americans who become physicians than any other higher education institution in the nation. As we grapple with the disparate impact of the COVID-19 pandemic on African Americans and other underrepresented populations, the graduates of Xavier University of Louisiana and of HBCUs and other minority serving institutions will be essential to our management through the epidemic and our subsequent recovery as a nation. It is vital to the nation that such institutions have access to the Main Street Lending program.

Colleges and universities are seeking low cost loans to address the financial impact of the COVID-19 crisis. They must have access to credit and loans available under the Main Street Lending program. Unfortunately, we are concerned with two major barriers keeping our institutions from accessing these programs:

- There is confusion about the Main Street Lending program as to whether or not non-profits are eligible. The current guidance is silent.
- Most colleges and universities employ students on campus as part of their overall financial support to make their study affordable. Student workers must be exempted for the purposes of the employee threshold for eligibility (businesses with under 10,000 employees). This needs to be clarified in Federal Reserve guidance.

Thus we ask that Federal Reserve guidance be updated to grant to allow direct borrowing authority to non-profit private and public institutions of higher education under the Main Street Lending program.

We hope that future guidance exempts student workers from the employee count and that they not be included for the purposes of the employee threshold.

Institutions are vital elements of the economy of their communities and region. They are key elements of economic development and workforce formation. Support of these institutions is to avoid the loss of a generation due to the pandemic. We look forward to working with the Federal Reserve on this and other initiatives as responds as a nation to the COVID-19 pandemic.

Sincerely,

A handwritten signature in black ink, appearing to read "Reynold Verret". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Reynold Verret  
President  
Xavier University of Louisiana

16 April 2020

Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue NW  
Washington, DC 20551  
By e-mail

**Re: Comments on the Main Street Lending Program**

Dear Sir or Madam:

On behalf of Fordham University, we write to request 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, we ask that guidance be updated so that student workers are exempted for the purpose of the employee threshold.

Private, not-for-profit colleges and universities like Fordham University are major employers with significant economic impact in our communities. We are facing a major cash flow crisis caused by reduce revenue and increased spending resulting from the COVID-19 pandemic. Fordham University has an economic impact of more than \$1.4B in the New York metropolitan area and we support more than 8,000 direct and indirect jobs.

Room and board refunds alone are a significant new expense; colleges across the country expect to refund nearly \$8 billion in room and board charges alone. 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 instruction 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 Fordham University 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 Fordham University, 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. Fordham University 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 Fordham University that are working to continue to fulfill our educational missions and support our 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.

If you have any questions, or if we may be of assistance with this or any other matter, please do not hesitate to contact us.

Sincerely,

Lesley A. Massiah Arthur  
Associate Vice President and Special Assistant  
to the President for Government Relations  
massiah@fordham.edu

Bill Colona  
Director, Government Relations  
Federal and Urban Affairs

CC: Joseph M. McShane, SJ, President  
Marco A. Valera, Vice President for Administration



# ST. FRANCIS COLLEGE

THE SMALL COLLEGE OF BIG DREAMS

## Office of the President

April 16, 2020

Board of Governors of the Federal Reserve System  
20<sup>th</sup> 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. Francis College in Brooklyn New York, 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 St. Francis College are 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. In New York, private not-for-profit colleges and universities have a nearly \$90 billion economic impact and support more than 415,600 jobs.

Room and board refunds alone are a significant new expense. Colleges across the country expect to refund nearly \$8 billion in room and board charges alone. 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 instruction 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 St. Francis 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 St. Francis 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 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. St. Francis 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 St. Francis College that are working to continue to fulfill their educational missions and support their communities despite the severe financial impacts of the pandemic. In addition to providing our students an innovative online higher education experience, we are offering free online classes to senior citizens living in the community and providing free virtual events from film festivals and webinars to support local businesses. We look forward to working with you on this and other loan programs as the Federal Reserve responds to the COVID-19 crisis.

In Peace and Friendship,



Miguel Martinez-Saenz  
President

April 16, 2020

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

Re: Main Street New Loan Facility and Main Street Expanded Loan Facility

Submitted by electronic delivery to: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

To Whom It May Concern:

On behalf of the National Association of Home Builders (NAHB)<sup>1</sup>, I am writing to thank you for the opportunity to offer our input as you establish programs or facilities to provide liquidity to the financial system that will support lending to businesses, States or municipalities as provided for in the Coronavirus Aid, Relief and Economic Stimulus (CARES) Act. Providing financing to small and mid-sized businesses has significant potential to sustain businesses that are the backbone of the country's economy and will be critical to leading the country to an economic recovery. In particular, NAHB is interested in the parameters of the Main Street Lending Program's New Loan Facility and Expanded Loan Facility and ensuring the availability of these facilities to our members.

As the Board of Governors of the Federal Reserve (Federal Reserve) considers the details of the Main Street New Loan and Expanded Loan Facilities, NAHB urges the agency to specify that home builders, remodelers, multifamily builders and property owners, land developers and property managers are eligible to access and utilize the program. Making emergency financing available to these businesses will help prevent a reoccurrence of the devastating losses experienced by the housing industry during the Great Recession and will be key to a quicker economic recovery as the coronavirus abates in the United States.

A new study from NAHB shows that housing stands poised to lead the economic rebound once social distancing and other virus mitigation efforts show success in containing the coronavirus pandemic. Building 1,000 average single-family homes creates 2,900 full-time jobs and generates \$110.96 million in taxes and fees for all levels of government to support police, firefighters and schools, according to NAHB's National Impact of Home Building and Remodeling report.<sup>2</sup> Similarly, building 1,000 average rental apartments generates 1,250 jobs and \$55.91 million in taxes and revenue for local, state and federal government. Moreover, \$10 million in remodeling expenditures creates 75 jobs and nearly \$3 million in taxes.

The inclusion of home builders, remodelers, multifamily builders and property owners, land developers and property managers is especially important in light of the major flaw in the Small Business Administration's (SBA) interim final rule, "Business Loan Program Temporary Changes; Paycheck Protection Program," issued on April 2, 2020 by U.S. Department of the Treasury (Treasury) and SBA. Specifically, the interim final rule appears to exclude many home builders as well as land developers and multifamily property owners from eligibility in the

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<sup>1</sup> NAHB is a Washington DC-based trade association representing, among others, companies involved in the development and construction of for-sale single-family homes, including homes for first-time and low- and moderate-income homebuyers, as well as the production and management of multifamily rental housing.

<sup>2</sup> <https://www.nahbclassic.org/generic.aspx?sectionID=734&genericContentID=272642&channelID=311>

## Main Street Lending Program

April 16, 2020

Page 2

Paycheck Protection Program (PPP). These businesses have qualified payroll expenses, mortgage and rent obligations, utility payments and other eligible costs that would appear to make them eligible for the program except for the prohibition as found in SBA's Standard Operating Procedure (SOP) 50 10, Subpart B, Chapter 2.

Many of NAHB's members are small to mid-sized businesses, meeting the profile of those the Main Street Program is intended to support. However, many of these companies will not be willing or able, or even need, to borrow \$1 million. We ask that the Federal Reserve consider lowering the minimum loan amount or consider a program that would allow two or more companies to form a coalition and apply for a joint loan.

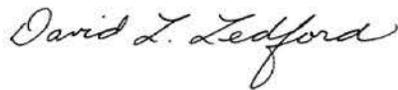
All U.S. federally insured depositories, banking holding companies and savings and loan holding companies should be eligible to provide the loans and loan guarantees to the small and mid-sized businesses. NAHB requests the Federal Reserve clearly state there is no minimum asset level of eligible lenders. Many home builders, remodelers, multifamily builders and developers rely on their community banks for financial services. Many may not have relationships with large, commercial lenders.

We understand that qualified payroll expenses apply only to employees as defined in the National Labor Relations Act and do not include payments to subcontractors. However, home builders, remodelers, multifamily builders and developers rely on subcontractors to perform many critical components of building single-family homes and multifamily projects. To be responsive to the financial responsibilities of these businesses, we ask that the Federal Reserve consider how certain jobs performed by subcontractors could be valued as though performed by employees when calculating the maximum loan amount and these dollars be allowed to pay subcontractors. We believe supporting subcontractors who would not have the means to take on debt with the features required by the Main Street Lending Program is as critical to sustaining a builder's and developer's business as maintaining W-2 employees.

Last, NAHB urges the Federal Reserve to consider working with Treasury to allow the portion of the loan that is used toward payroll and related expenses to be forgiven.

Thank you for considering our recommendations. Please contact Becky Froass, Director, Financial Institutions and Capital Markets, at [rfroass@nahb.org](mailto:rfroass@nahb.org) or 202-266-8259 with any questions.

Sincerely,



David L. Ledford  
Executive Vice President  
Housing Finance and Regulatory Affairs



**COLLEGE OF  
MOUNT SAINT VINCENT**

OFFICE OF THE PRESIDENT

April 16, 2020

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

**Re: Comments on the Main Street Lending Program**

To whom it may concern:

I write to ask that the Federal Reserve update guidance to clarify that private, not-for-profit colleges and universities, including the College of Mount Saint Vincent, 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.

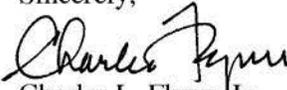
Private, not-for-profit colleges and universities like Mount Saint Vincent are major employers with significant economic impact in their communities. We are facing a major cash flow crisis caused by reduce revenue and increased spending resulting from the COVID-19 pandemic. The College has an economic impact of \$127,800,000 on our community, a part of the \$90 billion New York's private not-for-profit colleges and universities contribute to the economy.

Our revenue streams have dried up. Cohorts of international students and second-degree students slated for this summer have been cancelled, as have auxiliary programs. These losses, plus the reduction in assets from market fluctuations represent more than 20 percent of the College's annual operating budget. Meanwhile, costs related to the pandemic are rising. Our pivot to remote instruction required an unanticipated investment in technology and we are also facing costs including deep cleaning campus buildings and increased security expenses. The College's

Low-cost loans like the Main Street Lending program would help the College and other institutions of higher learning address the financial impact of the COVID-19 crisis without comprising their educational mission or service the students with limited means. 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 College of Mount Saint Vincent, 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. 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.

We look forward to working with you on this and other loan programs as the Federal Reserve responds to the COVID-19 crisis.

Sincerely,  
  
Charles L. Flynn, Jr.

---

**From:** Office\_of\_Secretary@FRB.GOV  
**Sent:** Thursday, April 16, 2020 2:56 PM  
**To:** Main-Street-Business-Lending-Program  
**Subject:** Fw: Main Street Lending -- White Paper  
**Attachments:** 20200416144059077050\_attachment0000.png.final.pdf; 20200416144059077050\_attachment0001.pdf.final.pdf

----- Forwarded Message -----

From: [keller.troy@dorsey.com]  
To: Office\_of\_Secretary@FRB.GOV  
Date: 4/16/2020 2:41:01 PM  
Subject: Main Street Lending -- White Paper

NONCONFIDENTIAL // EXTERNAL

Attached please find a short white paper about the main street lending facilities. This paper describes two mid-sized companies headquartered in Utah and some of the reasons why the Main Street Lending program does not currently present sufficient incentive to accomplish its objective of enabling companies like them to maintain their employee base during the COVID-19 crisis. We believe that not much would be needed to tip the scales. For one, the program could offer more capacity under the new facility option. More significantly, it could provide meaningful economic incentives. We suggest below-market interest rates, for instance, such as below the 2% per annum cap referenced in the CARES Act. Another option could be deferral of interest accrual for a year, as opposed to deferral of payment.

Don't hesitate to reach out with questions or if you would like to discuss.

Troy M. Keller  
Of Counsel  
[Description: cid:736091019@03082011-0D5D]

DORSEY & WHITNEY LLP  
111 S. Main Street, Suite 2100 | Salt Lake City, UT 84111-2176  
1401 New York Ave, N.W., Suite 900 | Washington, D.C. 20005-2102  
P: 801.933.4073 Cell Phone Number

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Thank you.

## The Main Street Lending Program Can do More

After analyzing the terms of the Main Street Lending Facilities (MSLF), some mid-sized companies find themselves faced with a difficult choice. Do they respond to the economic conditions they are faced with and adapt as they would in the ordinary course, such as by making tough decisions like scaling back operations, deferring investment in new facilities and equipment, postponing earned bonus payments, and worst of all, furloughing employees and deferring compensation? Or alternatively, do they take on the additional debt burden (and accompanying operating restrictions) of the MSLF and use those proceeds to maintain their employee base during the crisis?

The first option would in effect transfer the employee cost burden to state and federal governments in the form of unemployment benefits and stimulus payments. This money of course will never be repaid to the government. Under the second option, companies would take the loans offered by the MSLF and retain the workforce, albeit on a significantly less productive basis, given sales and/or operations will have been impacted by the crisis. In this scenario, companies would be paying full salaries and benefits, while risking the long-term viability of their business to operate with the additional debt burden.

From a government perspective, state and local governments would seem to benefit greatly by companies taking the MSLF. Governments would still receive the tax revenue from payroll taxes associated with the retained employees' salaries and would pay out less in unemployment benefits. Clearly, this is a better scenario fiscally for the government. The companies would not only be required to repay the loans, but be subject to operating restrictions, and the senior employees (many of whom have already deferred compensation) are prohibited from being rewarded through increased compensation for a year after the money is repaid if they manage the company through this crisis successfully.

This is not an attractive option for the companies. CEOs and CFOs are already trying to make the right decisions to make their companies successful for employees, shareholders, vendors, customer and community. They want to find a responsible way to keep their employee base intact. But as the terms of the MSLF currently stand, the pathway it offers would ordinarily be considered a bad business decision, i.e., by retaining staff and incurring additional inefficient debt, to avoid having the unemployment and stimulus mechanisms that are already in place, take responsibility for what they were designed for.

Two mid-sized companies in Utah are facing this choice.

Confidential Business Information



Confidential Business Information



While in concept intriguing, the MSLF as it is currently structured is not overly attractive. The interest rates offered are, depending on credit profiles, similar to prevailing market rates, and availability is based on relatively conservative debt-to-ebitda ratios using an EBITDA measure that has not been clearly defined. (For example, it is unclear whether stock compensation and other non-cash infrequent items will be added back to EBITDA for the calculation). The loans are also accompanied by meaningful operating restrictions on things like executive pay, shareholder dividends, debt paydowns and stock buybacks. Further, borrowers in most cases will need to incur costly waivers and consents from existing lenders in order to incur the additional debt.

Since it is intended that the proceeds of the MSLF will be used to bridge payroll obligations—as opposed to traditional uses of funds, such as refinancing pre-existing debt or making capital improvements—the liquidity offered by the MSLF will turn into a burden in future years when borrowers are left with higher debt levels and ongoing operating restrictions. Given this reality, if the goal of the MSLF is to help (and encourage) companies like Confidential Business Information maintain their employee base, the MSLF needs to offer more. Not much would be needed to tip the scales. For one, the MSLF could offer more capacity under the new facility option. More significantly, it could provide meaningful economic incentives. We suggest below-market interest rates, for instance, such as below the 2% per annum cap referenced in the CARES Act. Another option could be deferral of interest accrual for a year, as opposed to deferral of payment. Some flexibility on the executive compensation restrictions in the out years of the loans should also be afforded, or companies will struggle to retain talent.

We understand the Fed's need to leverage the capital Treasury is providing under the CARES Act, and as a result it needs to make loans that are ultimately repaid. However, the Fed has the flexibility to do more than what it has proposed. Companies like Confidential Business Information can probably weather the storm by contracting their operations and slashing strategic plans, but more attractive loan terms would help them maintain employment levels—all without the MSLF becoming a grant program.

# LE MOYNE

Office of the President

April 16, 2020

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

## **Re: Comments on the Main Street Lending Program**

To whom it may concern:

On behalf of Le Moyne 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 Le Moyne College are major employers with significant economic impact in their communities. We are facing significant loss of revenues and COVID-19 related costs, and some colleges will likely face major cash flow crises caused by these financial impacts. In New York, private not-for-profit colleges and universities have a nearly \$90 billion economic impact and support more than 415,600 jobs. In Central New York, Le Moyne College generates an economic impact (direct and indirect) of more than \$223 million annually.

Room and board refunds alone are a significant loss of revenues and Le Moyne College credited about 22% (or approximately \$4.3 million) of our annual room and board revenues back to students' accounts, a huge cost that could not have been anticipated. We understand that Colleges across the country expect to refund nearly \$8 billion in room and board charges alone. Additionally, we have seen our other auxiliary sources of revenue substantially reduced or eliminated as campus 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 and we are also facing costs including deep cleaning campus buildings and increased security expenses. We will continue to experience significant costs as we prepare for remote education for our summer and prepare for social distancing protocols on campus in the fall (if not also continuing remote education for some or all of our fall semester).

Low-cost loans like the Main Street Lending program could help Le Moyne College address the financial impact of the COVID-19 crisis if we were to face additional substantial costs/losses in the 2020-2021 academic year. 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 Le Moyne 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 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). While this is less important to Le Moyne College in this particular case as we have approximately 700 full and part-time employees excluding student employees, such a clarification would be critically important to other institutions where the inclusion of student workers in determining the employee threshold now precludes them from participating in the loan program. We hope that future guidance from the Federal Reserve for all stimulus grant and loan programs will make it clear that institutions like ours can exempt student workers from the employee count. Le Moyne 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 could provide vital support to private, not-for-profit colleges and universities 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,



Linda M. LeMura, Ph.D.  
President

Greatness Meets Goodness



1228 Euclid Avenue, 4<sup>th</sup> Floor  
Cleveland, Ohio 44115  
Phone: 216.475.8900  
Fax: 216.475.0700  
[www.nrpgroup.com](http://www.nrpgroup.com)

April 15, 2020

Federal Reserve  
Washington, DC

Re: Main Street Lending Program

To Whom It May Concern,

I appreciate the opportunity to provide some thoughts for your consideration concerning the Main Street Lending Program announced on April 9<sup>th</sup> to assist businesses that are coping with the economic impacts brought about by the spread of the coronavirus. The NRP Group was founded in 1994 with a goal to develop, construct, manage and own apartment communities that support residents' lifestyles and give them homes of which they can be proud. We are one of the largest developers of affordable housing in the country, with just over 15,100 affordable units under construction or in operation, along with another 7,900 units of market rate housing under construction or in operation as of March 31st. We have projects located in twelve states, with our primary investments in Texas, Ohio, Florida and North Carolina.

NRP Enterprises, LLC (NRP), our parent company, is structured as a state law limited liability company ("LLC") that is treated as a partnership for federal income tax purposes. This is a common structure in the real estate business and in some other industries.

I am seeking guidance as to how the various limitations associated with the Main Street Lending Program will be applied to so-called "flow through entities," including partnerships and LLCs that are taxed as partnerships, which are not themselves subject to federal income taxes, but which "pass through" their income and other tax items to their owners.

Section 4003(c)(3)(A)(ii)(II) of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") provides that until the date that is 12 months after the date on which the direct loan is no longer outstanding, no dividends or other capital distributions with respect to the common stock of the eligible business are to be paid. Partnerships and LLCs do not issue stock, but they do make distributions to their partners and members (hereinafter, collectively referred to as "partners"). I understand and can implement a limitation on the distribution of profits to partners which are similar to dividend payments made by corporations. However, there should be an exception to allow partnerships and LLCs taxed as partnerships (hereinafter, collectively referred to as

“partnerships”) to distribute cash to partners to enable the partners to pay the tax liability associated with the income that is allocated to the partners on their Schedule K-1 each year. Since a corporation is not a flow through entity, the tax liability is paid by the corporate entity and funds from operations can be used to pay such liability. Contrast this with a partnership where an entity level tax is not imposed, but rather, the tax is imposed at the partner level as income is allocated to the partner. Not allowing for income tax distributions to cover federal, state and sometimes local tax liabilities will be a hardship on partners who may not be otherwise able to satisfy their tax obligations.

Section 4004 of the CARES Act provides for a limit on compensation paid to certain officers and employees whose total compensation exceeds either \$425,000 in calendar year 2019 or \$3,000,000 in calendar year 2019. Guidance is needed to understand how these limitations will apply, if at all, to a partner in a partnership. Guaranteed payments for services understandably could reasonably be included in determining compensation paid to a partner. However, for partnerships that do not pay guaranteed payments (and for amounts of partnership income that are in excess of guaranteed payments), it would not be appropriate to treat a partner’s share of distributable income as compensation as there is no way to apply a limit to this income allocation under current partnership law.

Thank you for your consideration of these items. Please contact me at (216) 584-0969 if you should have any questions or need any additional information.

Sincerely,



James W. Finnerty  
Vice President - Tax

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**From:** Office\_of\_Secretary@FRB.GOV  
**Sent:** Friday, April 17, 2020 10:51 AM  
**To:** Main-Street-Business-Lending-Program  
**Subject:** Fw: Main Street Lending  
**Attachments:** 20200416152528424693\_attachment0000.docx.final.pdf

----- Forwarded Message -----

From: "Wiles, David R." [DWiles@GOULSTONSTORRS.com]  
To: Office\_of\_Secretary@FRB.GOV  
Date: 4/16/2020 3:25:30 PM  
Subject: Main Street Lending

NONCONFIDENTIAL // EXTERNAL

Attached for your consideration are some questions, issues and comments regarding the new Main Street Lending Facilities.

Thank you.

David R. Wiles  
(212) 878-5150 (office)  
Cell Phone Number

## **Questions and Issues on the Main Street Lending Facilities program.**

In counseling business clients on the new Main Street Lending Facilities program (the Program), and in discussions with other industry participants including the LSTA, we have encountered a number of issues that raise the need for guidance and flexibility. These issues include the following:

1. **Who is the Borrower.** How will a "borrower" be decided or determined in each loan? E.g., will each bank be able to use its customary credit practices to determine whether one or more entities qualify as a "borrower" or, collectively, as "borrowers" together?
  - a. In many loan transactions, there may be several borrowers (who may be jointly and several liable), and/or a principal borrower with a parent entity guarantor and subsidiary guarantor. If there are such guarantors, would they be included in the concept of "borrower" – for purposes of calculating EBITDA, for example?
  - b. In addition, in many businesses may operate through multiple legal entities with different regions, lines of business or service roles in the group.
2. **Distributions for Taxes.** Many business entities, including LLCs, partnerships and S-corporations, are disregarded entities for tax purposes, and thus pass-through entities that do not pay taxes (and they pass through distributions to cover all taxes due and payable by their investors). Will such pass-through entities be permitted to make distributions to their investors to cover tax liabilities? This seems critical to make this Program work in practice, and effectively function for many of the real businesses that will be in dire need of additional business funding due to the current pandemic.
3. **Interest.** Are there limitations on how interest will accrue and be paid on Program loans? Can borrowers "PIK" some interest, by adding them to the loan principal, if that is agreed with the bank lender(s)?
4. **Calculation of EBITDA for Loan Size.** Will EBITDA in each calculation be limited strictly to "earnings before interest, taxes, depreciation and amortization"? Or, as is very common in business loan agreements, or will other add-backs or adjustments be permitted – such as for unusual, non-recurring or similar costs or losses?
5. **Calculation of Debt.** How will the Fed calculate or define "debt" for purposes of the Program, including in determining the maximum loan size?

6. **Use of Proceeds.** Other than a prohibition on usage of proceeds to repay existing debt, there is no express restriction on how a borrower may use loan proceeds under the Program. Will the Fed be providing further guidance on how loan proceeds may be used?
7. **Intercreditor Agreements.** Will the SPV plan to address intercreditor agreements in either new or expanded loans?
  - a. For any new loan to a Borrower, if that Borrower has other existing loans or lines of credit, the existing bank lenders will insist on an intercreditor agreement to work out any issues – especially if the existing loan is secured by collateral, and the new loan is unsecured.
  - b. The same could be true for expanded loans as well. Banks will need to address intercreditor issues, unless perhaps the expanded loan is made by the identical bank lenders that hold the existing loan (to be upsized).
8. **Banks and other Lenders.** If there is a syndicate of lenders, which includes both U.S. banks and other non-bank lenders (or foreign banks) in the syndicate, would that lender group be considered eligible, as an “Eligible Lender,” to make a new or expanded loan under the Program? Does it matter if the majority of the existing or new loans are held by U.S. banks?
9. **Banks holding 5% interest.** Can a bank sell its 5% interest in a Program loan?
10. **Documentation of Program loans.** Will the SPV be involved in the documentation of each new or expanded loan under the Program – that is, in the key terms and negotiation of each loan agreement or credit agreement?
11. **Participation Agreements.** How will the 95% participation of the SPV in each Program loan be documented? Will there be standard form or forms of participation agreement to be used for all loans?
12. **Voting Rights and Management of the Loans.** Will the SPV be involved in day to day decisions affecting each new or expanded loan under the Program? Will the SPV exercise any voting rights under a participation agreement, and will it be involved in loan defaults and enforcement matters?
13. **Real Estate Businesses.** In many real estate related transactions, there are management companies that collect fees and help manage various real estate projects (each of which may be owned by a separate single-use entity), and those management companies will have some employees. There may also be service companies involved, which provide

employees and their services to various affiliated projects. Is there any reason that a real estate management company, or service company, could not be a Borrower under a Program loan?

14. **Employees and Affiliation rules.** Will there be any affiliation rules or aggregation of related entities, when it comes to counting the number of employees of, or involved in, a certain business?



Submitted via email to: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

16 April 2020

## **Main Street Lending Program and Term Asset-Backed Securities Loan Facility**

The Alternative Credit Council<sup>1</sup> welcomes the Federal Reserve's announcement of the Main Street Lending Program (MSLP)<sup>2</sup> and recent broadening of the Term Asset-Backed Securities Loan Facility (TALF)<sup>3</sup>. We commend the speed at which the Federal Reserve's has initiated these programs to mitigate the immediate liquidity needs faced by some firms due to the public health measures enacted in response to the COVID-19 pandemic. The MSLP and TALF will provide U.S. businesses and their workforces with great assurance that they will be able to access the financial support they need to get through the COVID-19 crisis.

Our members are significant providers of credit to mid-market businesses and, based on discussions with those firms, we wish to offer the following comments to ensure the MSLP and TALF will successfully achieve their objectives.

### **Main Street Lending Program**

#### Eligible lenders:

- Non-bank lenders are significant lenders to businesses across the U.S., however the definition of "eligible lender"<sup>4</sup> does not appear to include these entities. This will potentially restrict the ability of borrowers to benefit from the scheme where their primary lending relationship is with a non-bank entity. We would therefore recommend that the definition of eligible lender is amended to allow non-bank lenders to participate in the scheme either directly or indirectly by collaborating with eligible lenders as their agents.
- While a borrower with an existing credit agreement with non-bank lenders could simply invite an eligible lender to join the lending syndicate (making the Expanded Loan Facility available), any rights of first offer or similar provisions that require any incremental term loan be offered to existing lenders prior to being offered to new lenders, might restrict this option.
- It is unclear how the "eligible lender" requirement would affect borrowers with syndicated term loans that have been arranged by eligible lenders but have been sold, all or in part, to ultimate holders that are not eligible lenders.

#### Eligible loans:

- Our members would welcome greater clarification on how EBITDA should be calculated for the purposes of the maximum loan size for eligible loans. This should confirm that the calculation

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<sup>1</sup> The ACC currently represents over 170 members that manage over \$400bn of private credit assets. The ACC's core objectives are to provide direction on policy and regulatory matters, support wider advocacy and educational efforts, and generate industry research with the view to strengthening the sector's sustainability and wider economic and financial benefits.

<sup>2</sup> <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>

<sup>3</sup> <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm>

<sup>4</sup> Eligible Lenders are U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies.

of EBITDA can incorporate any adjustments that the lender and borrower would normally make to reflect the unique facts and circumstances of that businesses. Any EBITDA 'certification' can be done through auditors, last filed accounts or certificates from CFOs.

- A secondary issue relates to the reference to "bank debt" within the definition of eligible loans. A narrow interpretation of this term would preclude any borrower whose credit facilities are with non-bank lenders from participating in this program. This is unlikely to be the intention but clarification on this point would be helpful.

#### Eligible Borrowers:

- Clarification should be provided on how the definition of "eligible borrowers" should be applied to international businesses with large U.S. subsidiaries or branches. Such businesses should not be unduly restricted from accessing the scheme to ease their immediate liquidity needs.

#### Amortization:

- The required level of amortization has not been specified in the definition of eligible loans. This may create an issue for borrowers with existing credit agreements that have a longer weighted average life to maturity than the loans to be obtained under the Expanded Loan Facility. Accordion provisions will typically require that any incremental term loan have a weighted average life to maturity that is no shorter than the weighted average life to maturity of the existing term loans. As a result, if the amortization of the loans results in a shorter weighted average life to maturity than any existing term loan, participation in the Expanded Loan Facility will likely not be permitted absent an "inside maturity" basket or consent of the borrower's existing lenders.

#### Facility Termination:

- Clarification on the timing of and how any decision to extend the Facility would be confirmed by the Board and the Treasury Department would be helpful.

### **Term Asset-Backed Loan Facility (TALF)**

#### Eligible Borrower and Issuers

- The latest term sheet describes Eligible Borrowers as needing to be "a U.S. company is defined as a business that is created or organized in the United States or under the laws of the United States and that has significant operations in and a majority of its employees based in the United States." On a narrow reading of this definition, many customary investment fund arrangements managed by U.S. entities would not fall within the definition of an eligible borrower. We would therefore welcome a clarification that the Eligible Borrower category also includes investment funds that are U.S.-organized and managed by an investment manager that has its principal place of business in the U.S. Similarly, we would argue that limiting eligible issuers to narrowly defined U.S. companies would preclude a large number of issuers from participating in the program.

Eligible Collateral

- The term sheet states that “to be eligible collateral, all or substantially all of the underlying credit exposures must be newly issued”. We believe that this restriction will significantly reduce the effectiveness of the program as there are many pre-existing loans that may need to be included in newly issued CLOs. We would suggest that the Federal Reserve provides for an appropriate look-back period to allow such existing loans to qualify.

CLO loan substitution

- We strongly support the inclusion of leveraged loans and CLOs in the category of Eligible Collateral. However, we would argue that actively managed CLOs, should be also considered for inclusion in the program. Managed CLOs are the predominant form of securitization in the market. Active management is generally restricted and permits only limited discretion on the part of the CLO manager with a view to ensure better risk management of the CLO. As a minimum, we would ask that the Federal Reserve clarifies that sales of problem or defaulted loans and reinvestment of the proceeds of such sales is possible under the program.

We believe that clarification on these points will ensure that the MSLP and TALF will meet their objectives. We would welcome the opportunity to discuss these comments further at your convenience.

Yours sincerely,



Jiri Krol  
Global Head  
Alternative Credit Council

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**From:** Office\_of\_Secretary@FRB.GOV  
**Sent:** Friday, April 17, 2020 10:52 AM  
**To:** Main-Street-Business-Lending-Program  
**Subject:** Fw: Main St Lending Advocacy  
**Attachments:** 20200416160037451425\_attachment0000.docx.final.pdf

----- Forwarded Message -----

From: Arthur Hughes [awhughesiii@gmail.com]  
To: Office\_of\_Secretary@FRB.GOV  
Date: 4/16/2020 4:00:39 PM  
Subject: Main St Lending Advocacy

NONCONFIDENTIAL // EXTERNAL

The non-profit agency I help lead has a 100 year history of helping families in Massachusetts. Last year, we delivered home visiting services to over 15,000 infants and toddlers. Our skilled staff of 864 professionals made this possible. And yet, because there are more than 500 of us, we were left without support for sick leave, paycheck protection, and forgivable loans. We are held to different criteria for the employee retention credit. We are left out of the economic stimulus that is essential for our organization's survival.

The lack of cash flow to our agency, and others like ours, is leading to job loss. Without revenue from service delivery, we cannot pay staff. The longer term impact is that families and our service sector will suffer for decades. Across the country, programs like ours are closing, furloughing staff, and stopping services to children who need our help.

With access to favorable lending terms and with the same stimulus funding that was offered to smaller non-profits, we can continue to employ our staff of nurses, therapists, speech-language pathologists, educators, and other skilled specialists. We can continue to support children and families. We can avoid an erosion of our social service sector. We need immediate action. Non-profit agencies of our size must be included in the Main Street Lending Program and any subsequent mid-size loan programs.

April 16, 2020

Board of Governors  
Federal Reserve System  
Washington, DC 20551

Re: Main Street Lending

To Whom It May Concern:

LNG Allies (The USLNG Association) represents numerous U.S. firms that are developing facilities for the liquefaction and export of natural gas from the United States. Several of these firms urgently require financing due to the exigent circumstances presented by the coronavirus disease 2019 (“COVID-19”) pandemic and desire to receive loans from eligible lenders under the new “Main Street Lending” program to maintain payroll and retain employees during this difficult time. These are also businesses that are created or organized in, or under the laws of, the United States, with significant operations in and with a majority of employees based in the United States.

Unfortunately, one of the requirements in the Main Street Lending program could be problematic for certain U.S. LNG export project developers. As stated in the term sheet, the maximum loan size is based on a formula that factors in a company’s earnings before interest, taxes, depreciation, and amortization (EBITDA) for 2019. As currently stated, this formula does not allow for additional adjustments to EBITDA, including the exclusion of various non-cash or non-recurring charges (such as stock-based compensation) which startup companies often do when reporting their metrics. Moreover, the formula factors in a company’s existing outstanding but undrawn debt. Because most U.S. LNG development companies are not EBITDA positive (and many also have outstanding indebtedness), this formula is particularly problematic and could cause them not to qualify for a Main Street loan.

The U.S. LNG export industry is still in a start-up stage. While six projects are operating and another two are under construction, a dozen more projects (and three existing project expansions) have received their requisite federal authorizations but have not yet taken a final investment decision. These 15 new and expanded projects could expand the existing U.S. LNG industry by as much as 165% and would create hundreds of thousands of jobs and trillions of economic activity. It would be truly tragic if some of the pre-revenue or early revenue U.S. LNG project developers were not able to survive the COVID-19 pandemic because of an inability to tap into the Main Street Lending program. For this reason, we urge you to modify the program accordingly.

*Specific recommendation: Provide flexibility in EBITDA limitations for small companies, where EBITDA could be replaced with “tangible net worth” metrics, allowing growth businesses to qualify for relief yet also protect the fiscal basis for the loan. Other metrics are also available to give these businesses the flexibility needed.*

Thank you for the opportunity to present these comments.

Sincerely,



Fred H. Hutchison  
President & CEO

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**From:** Office\_of\_Secretary@FRB.GOV  
**Sent:** Friday, April 17, 2020 10:54 AM  
**To:** Main-Street-Business-Lending-Program  
**Subject:** Fw: Main Street Lending  
**Attachments:** 20200416161024807559\_attachment0000.pdf.final.pdf

----- Forwarded Message -----

From: "Ivashina, Victoria" [vivashina@hbs.edu]  
To: Office\_of\_Secretary@FRB.GOV  
Date: 4/16/2020 4:10:32 PM  
Subject: Main Street Lending

NONCONFIDENTIAL // EXTERNAL

Please find attached comments concerning Main Street Lending Program.

Best regards,  
Victoria

Victoria Ivashina  
Lovett-Learned Professor  
Harvard Business School  
Baker Library 233, Boston, MA 02163  
Phone: (617) 495-8018  
<http://www.hbs.edu/vivashina>

# When a Pandemic Collides with a Leveraged Global Economy

Mike Harmon and Victoria Ivashina<sup>1</sup>

April 16, 2020

*Over the decade since the end of the Global Financial Crisis, a low interest rate environment has attracted both borrowers and investors to aggressively participate in buoyant leveraged credit markets. This resulted in these markets reaching an unprecedented level of size and risk that had largely avoided disruption for many years. COVID-19 and the associated global response has delivered a severe economic shock, which is novel in its nature including the depth, breadth, and speed of its impact. Its collision with a highly leveraged corporate sector has created unique financial problems that remain largely unaddressed by the current proposals for federal assistance.*

Financial frictions were at the heart of the 2008 crisis. Then, a relatively small initial shock triggered a devastating chain reaction that a year later brought to a halt a weak, interdependent and obscure banking system. The shock we experience today is fundamentally more economic, directly impacting virtually all firms, consumers, and investors at their very core and with unprecedented speed. While the role of financial fragility is not the centerpiece of today's challenges, there are important financial frictions that are affecting a significant part of the corporate sector and, if not addressed, could amplify the initial economic shock and slow down economic recovery.

The problem is that the global corporate sector has been caught in the COVID-19 shock with unprecedented levels of financial leverage. This has emerged over more than a decade long environment of low interest rates and elevated risk-taking. Global debt on non-financial corporations was \$71 trillion at the end of 2018, according to S&P, up 15% from 2008 and representing 93% of global GDP. Of this, we estimate that almost \$6 trillion sits on the balance sheets of companies that would be characterized as highly leveraged.<sup>2</sup> This segment represents the most troubling financial battleground of the pandemic crisis, as high leverage threatens to amplify distress and impede access to new capital.

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<sup>1</sup> Mike Harmon (gaviotaadvisors@gmail.com) is the Managing Partner at Gaviota Advisors, LLC; his previous experience includes over twenty years as a special situations investor with Oaktree Capital Management. Victoria Ivashina (vivashins@hbs.edu) is the Lovett-Learned Professor at Harvard Business School and a research associate at the National Bureau of Economic Research.

We are very grateful to several colleagues and professionals at Credit Suisse, Debtwire, Harvard University, Latham & Watkins, Lazard, Morgan Stanley, LSTA, Oaktree Capital Management, Reorg.com, Stanford University, and UBS for their comments and assistance with this article.

<sup>2</sup> Includes leveraged loans, high yield debt, and private debt and is based on estimates provided by UBS research.

Notably, the risk profile of debt in the leveraged credit segment has increased since the last downturn, as reflected in higher leverage ratios and lower credit ratings. (Figure 1 summarizes some of the key metrics in the U.S. leveraged loan market.) During prior cycles, such a deterioration forced the weakest companies to restructure, mostly due to actual or impending breaches in credit agreement covenants.<sup>3</sup> But the last decade of robust debt markets came hand-in-hand with looser creditor governance terms and weaker covenants. Among other signs of contractual weakness, the share of so-called “covenant-lite” leveraged loans roughly quadrupled to about 80%, essentially stripping the early warning system away from most credit agreements. Borrowers have also been able to artificially inflate their earnings for loan tests and debt incurrence through more liberal “EBITDA addbacks”. Thus, in this up-cycle, even as credit quality has deteriorated, defaults have remained below long-term averages and many weaker firms were able to avoid restructuring their debt when they underperformed.<sup>4</sup> These so-called “zombie firms”, which are overleveraged and in some cases insolvent, are significantly more vulnerable to a shock like the one we face today.

This is the background against which the firms are facing the main financial challenge of an unforgivingly severe and rapid pandemic: how to source enough liquidity, and how to source it quickly.

Step one for many firms has been to draw as much as they can from their revolving lines of credit to fund a portion of these needs. According to JP Morgan, as of the end of March, over \$207 billion (77% of the funds available in the facilities) had been borrowed by large companies through revolver drawdowns, of which borrowings by below investment grade firms accounted for about half.<sup>5,6</sup> For structural reasons, revolving lines are mostly funded by banks. Thanks to better governance, and stricter regulatory and supervisory pressures from the last decade, banks are confronted this shock from a much more stable position. In 2008, given the fragility of the banking sector, a key motive for drawdowns on revolving lines was the lack of confidence in the continuity of the banking system.<sup>7</sup> This time around, the large drawdowns are more of a reflection of the depth of the economic problem. But will the revolver draws be enough to bridge these

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<sup>3</sup> “European Restructuring Report: Default, Restructuring and Recoveries in 2008-2010,” by A. Takacs, Debtwire.

<sup>4</sup> In the recent years, all of these factors have raised red flags for economists, global leaders and regulatory bodies. In December 2019, before the virus emerged as a serious economic threat, the Financial Stability Board issued a warning regarding the increased vulnerabilities of the leveraged loan markets to macroeconomic shocks. See “Vulnerabilities associated with leveraged loans and collateralized loan obligations (CLOs)”, Financial Stability Board, December 18, 2019.

<sup>5</sup> <https://www.zerohedge.com/markets/revolver-run-banks-suffer-record-200bn-outflows-frenzied-companies-draw-down-revolvers>.

<sup>6</sup> Note however that effective drawdown capacity is also capped below the line limit by several constraints. For example, for a large fraction of firms, significant draws could activate maintenance covenants.

<sup>7</sup> Ivashina, V. and Scharfstein D., 2010, “Bank Lending during the Financial Crisis of 2008,” *Journal of Financial Economics*, p. 319-338.

leveraged borrowers through the crisis? If these drawdowns are insufficient, the structure of the leveraged credit markets presents several challenges for those firms facing large and prolonged liquidity needs.

One factor to consider is that a decade of weakening lending standards will allow some leveraged companies to take advantage of the flexibility afforded to them by their liberal credit agreements. This may enable the transfer of assets into new entities outside of their collateral pool to secure new financing arrangements, like the 2017 restructuring of J.Crew, and several others that followed. However, this technology has practical relevance only in those bespoke situations where valuable collateral can be separated from the business.

Overall, many firms require considerable cash investments within a short period of time to bridge them through supply chain disruptions, demand shocks, and wholesale operational shut-downs that are occurring in conjunction with the pandemic response. Some of this investment may come from equity owners, but significant capital will likely be required from lenders. One barrier to raising this capital is the challenge of producing financial forecasts, given the extreme economic uncertainty. Additionally, as we will illustrate, the sheer levels of debt, as well as certain technical and structural issues associated with it, might challenge firms' ability to resolve impending liquidity needs in a timely and cost-effective manner. If highly leveraged companies are unable to source sufficient capital out-of-court, it may force many of them into more expensive and economically damaging "free-fall" bankruptcy processes as a means to raise the required capital.

#### *CLO Constraints*

The rise of speculative-grade corporate leverage in the past ten years to a large degree has been fueled by the leveraged loan market, which is a corporate debt segment funded primarily by non-bank financial institutions. The largest institutional group in this segment is collateralized loan obligations (CLOs), which are structured credit vehicles that use funds received from the issuance of multiple tranches of debt and equity to acquire a diverse portfolio of leveraged loans. According to S&P, between 2015 and 2019, 58.4% of the primary origination was funded by CLOs and 18.7% by mutual funds specializing in investing in high-yield loans. As CLOs currently comprise close to 60% of the leveraged loan market outstanding, any assessment of the impact of the pandemic on this market requires an understanding of the contractual incentives that drive CLO managers.

CLO structures have evolved over the years, but at their core, they are designed to protect their investors, with preference to those at the senior end of their capital hierarchy. To accomplish this, CLO agreements contain a series of protective covenants that place guardrails on portfolio construction, and control risk-taking by the manager whose incentives are otherwise aligned with equity performance. The net effect of all of these provisions is to establish strong disincentives for CLO managers to hold or invest in non-conforming assets, such as CCC+ or lower rated loans, defaulted loans, bridge loans, subordinated debt, or equity.

For example, eligibility requirements and collateral quality tests control the investments that CLOs can make. If a CLO runs afoul of these, the covenants guide any future investments until the collateral pool is in compliance. Of particular relevance in the current context is the maximum CCC loan rating bucket which is typically set at 7.5% of the portfolio. Coverage tests measure the amount of collateral and cash flow coverage they have, relative to their obligations. Here, there are generally stiffer penalties for violations. Cash flows will typically get redirected from the equity tranche (typically about 8.5% of the structure<sup>8</sup>) to the most senior tranches until the structure is back in compliance. Importantly, the excess amount of CCC collateral is marked-to-market for purposes of the overcollateralization test. Once the overcollateralization tests become binding, any drop in market price would be effectively taken out of equity value.

As we have entered the pandemic crisis, CLO managers have found themselves overweight in the lower quality end of the market. Where single-B rated loans comprised 56% of the U.S. leveraged loan market in 2019, they comprised 70% of syndicated CLO portfolios. Single B- loans comprised approximately 29% of these loans.<sup>9</sup> As the pandemic has unfolded, the rating agencies have been downgrading at an unprecedented pace, and S&P has already issued 547 negative rating actions related to the coronavirus in the speculative grade market across the globe.<sup>10</sup> This has pushed many of these B- loans into the CCC category, and now CCC assets have increased to 9% across CLO structures on average, putting many CLOs in violation of the 7.5% threshold.<sup>11</sup>

When companies seek liquidity, as we expect they will on an increasing basis during the current crisis, they typically look to their existing lenders to provide it. This is because current lenders already have access to the company's information, and they own the rights to the company's collateral. However, with the largest category of leveraged lenders, CLOs, pressured against covenant constraints, many of their managers may be reluctant, if not prohibited, to extend any additional capital which does not conform to their eligibility requirements. Deluxe Entertainment and Acosta are two recent debt restructuring transactions requiring capital where CLOs declined to participate proportionately.

In addition, CLOs can be both the cause and the victim of lower loan prices. In the instances where they dominate the ownership of a lower-rated credit, and may be net sellers due to concerns with their covenants, this can put downward pressure on the loan prices of that credit. The lower loan prices can, in turn, further impair their coverage test, making it more difficult for them to recover equity value and potentially leading to a debt overhang problem.

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<sup>8</sup> "Understanding Collateralized Loan Obligations", Guggenheim Investments, May 2019.

<sup>9</sup> Morgan Stanley research.

<sup>10</sup> Through April 2, 2020.

<sup>11</sup> "S&P puts 48 triple C-heavy CLOs on negative watch," *Creditflux*, April 6, 2020.

Overall, downgrades of a subset of borrowers have implications for the broader universe of the leveraged loan borrowers, as the effect of these downgrades is amplified through the balance sheet of the CLO structures.

#### *Effects of Uncertainty and Price Pressure in the Loan Market*

As of April 15, prices in the U.S. leveraged loan market are down an average of 9% year-to-date, with the CCC portion of the market down an average 21%.<sup>12</sup> To a large degree, this is expected, as markets factor in future uncertainty and economic disruption. Our concern is that certain structural and contractual aspects of these loans and their holders may amplify the supply-demand imbalance, pushing loan prices down in a way that may impede efficient restructuring and capital raising efforts. (In this context, “supply” refers to the supply of investment opportunities in both the secondary market and new capital, and “demand” refers to demand for investments in these opportunities.)

Part of the supply pressure may come from selling off CLOs exiting positions to avoid triggering the internal covenants described previously. Patient CLO managers may elect to wait the cycle out, but others may not. One helpful factor is that, compared with 2008, fewer CLOs have “mark-to-market” warehouse lines of credit that could trigger forced loan sales. That said, the unprecedented volume of CLO holdings of lower rated assets causes concern that their selling activity could continue to put considerable downward pressure on the prices of leveraged loans.

Another culprit on the supply side is leveraged loan funds, who have experienced approximately \$14 billion of outflows since the beginning of the year.<sup>13</sup> Although these funds are not leveraged, and represent a smaller percentage of the market than they did in 2008, the largely illiquid nature of their assets makes them fundamentally fragile. This is a problem we have been well aware of, but had diminished in importance as multiple instances of funds’ outflows and subsequent forced sales in the past decade were easily absorbed by the thriving CLO market. Until now.

On the demand side, we note that there is over \$1.5 trillion of dry powder within funds that could access this opportunity, including private debt, debt-oriented hedge strategies, distressed debt, and private equity. We also expect that new flexible vehicles will be raised to respond to the crisis. While some of these players can be disruptive in restructuring situations, they typically have more flexibility than CLOs, banks, or mutual funds to provide creative debt and equity capital to restructuring companies in need of liquidity. These funds have grown considerably over the last decade, but the question remains whether their dry powder will be sufficient to meet the size of the emerging opportunity.

For investors in both secondary market loans and new liquidity, there is also the issue of timing. As we have seen in past recoveries, capital will eventually flow to where there is economic opportunity and the potential for financial returns. The question is whether it will happen rapidly

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<sup>12</sup> S&P Global Market Intelligence, LCD News, April 15, 2020.

<sup>13</sup> S&P Global Market Intelligence, LCD News via Twitter, April 9, 2020.

enough to meet the urgent needs of borrowers in this crisis. As loans and their issuers are very complex and diverse, investments in this area will require substantial due diligence and review. This process may be facilitated in some instances where private equity funds, CLOs, and flexible capital funds are managed under common control. Yet, even in an unlikely scenario where capital managers have perfect visibility into loan quality, the additional capital they might be willing to deploy in the loan market might not be sufficient to offset the supply pressure in the short term.

Loan prices have implications for companies that are restructuring or raising capital. In a nutshell, if loan prices for an issuer are near par, lenders are more likely to lend to that company at a reasonable cost. If loans are volatile and trade at a steep discount, lenders are less likely to lend money to the company unless the capital can be structured senior to the discounted loans, which is difficult to accomplish without going into an expensive bankruptcy process. Several factors contribute to this. First, as already mentioned, discounted loans erode CLO incentives to participate in restructuring related capital. Second, many leveraged loans are comprised of large disparate groups. According to S&P, in the primary loan market, an average leveraged loan has about fifty different non-bank creditors. While some creditors might see low loan valuations as temporary dislocation, reaching broad agreement among the creditors of a widely-syndicated loan might be difficult. Finally, lenders are reluctant to commit capital worth 100 cents to a new loan when they have an opportunity to buy loans with equal priority at discounted levels.

### *The Middle Market*

Small and mid-cap enterprises (SMEs) have also participated in the global leverage binge, but they are less visible due to the private nature of the bulk of this market. CLOs are not a major player in this segment, however over the past decade, a desire for yield has attracted other providers of risky debt capital to the balance sheet of SMEs. By the end of 2019, business development companies (BDCs)—publicly quoted investment funds specializing in loans to SMEs—were holding about \$110 billion in SME debt.<sup>14</sup> An even larger amount—\$600 billion by some informal estimates—is held by a wide variety of private investment funds.

Although it is difficult to obtain data on SME balance sheets, we would expect a proportion of these companies to be reasonably highly leveraged, given the environment and the availability of credit. It is also unclear whether existing creditors have the funds and flexibility to inject additional capital; given the inevitable downturn in the value of their existing loans to SMEs following the pandemic, at least some of these investment funds will be facing pressures that would stand in the way of them acting as liquidity providers to their stranded borrowers. In any event, many SMEs will have little available collateral to offer lenders and face more

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<sup>14</sup> S&P Global Market Intelligence, U.S. Middle Market Coverage.

uncertain commercial futures than their larger competitors, who benefit from relatively large and stable market shares and can access more efficient capital markets.

### **The U.S. Government Response**

On March 27, President Trump signed the CARES Act, a bill which includes, among other central provisions, up to \$849 billion – \$349 billion Small Business Administration’s Paycheck Protection Program (PPP), and up to \$500 billion of assistance to large and mid-sized companies – to back emergency loans and assistance to businesses impacted by the pandemic. In connection with the CARES Act, on April 9, the Federal Reserve and the Treasury Department announced the Main Street Lending Program (MSLP) to ensure credit flows to mid-sized businesses during the crisis.<sup>15</sup>

The CARES Act and associated programs represent a swift and bold response which should bring liquidity to many important parts of the economy. However, as the details of this legislation are being finalized, we raise several concerns and propose potential solutions to ensure that the Act and its associated programs function as they are intended.

#### *Shortcomings of the CARES programs*

There are three broad areas where we believe the CARES programs should be improved: (1) they should provide more liquidity assistance to the companies facing fewer financing choices, (2) they should use less taxpayer money, where private capital is available, and (3) they should better address the “moral hazard” problem that comes from a government bailout of shareholders in leveraged companies. We elaborate on these in detail below.

First, the limitations of the CARES programs as they pertain to reaching the most leveraged companies are as follows:

- The MSLP program excludes borrowers with revenues over \$2.5 billion, and a mechanism under Title IV of the CARES Act to reach larger companies has yet to be defined.
- The Act contains affiliate restrictions in the PPP portion of the package, which effectively exclude most small companies that are backed by private equity firms from the \$349 billion of unsecured aid.
- Loans under the MSLP are constrained to 6x EBITDA total leverage, which excludes the most leveraged companies that are already exceeding this level.
- The MSLP effectively limits the amount of assistance to the amount of “baskets”, that is, remaining secured leverage capacity under the current credit agreements.
- Companies must not be undergoing solvency proceedings to access most of these programs.

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<sup>15</sup> See <https://www.federalreserve.gov/monetarypolicy/mainstreetlending.htm>.

- The only lenders eligible to participate in the MSLP are financial institutions supervised by the Federal Reserve System.

Second, we are concerned about the significant direct government financing associated with these programs. The U.S. Treasury Department and the Federal Reserve are committing an unprecedented \$4.5 trillion to support the CARES Act and related lending and loan-buying programs. Additional fiscal stimulus and Fed involvement will almost certainly be necessary over the coming months, with the magnitude being heavily reliant upon the length of the government pandemic response. While it is hard to know where the “limits” of government intervention lie, we do know that there are limits, or – at the very least – significant consequences of unmeasured government spending. With that as a backdrop, we are concerned that, in areas where the programs do apply, they may unnecessarily direct scarce government capital into areas where private capital can help solve the problem. For example, under the MSLP, eligible lenders are only putting 5% of the capital, requiring Treasury and the Fed to fund the balance. In addition, the criteria for the MSLP favors healthier companies, which may already have access to solutions where they could source 100% of their capital needs in the private market.

Finally, the current design of the CARES programs does little to mitigate the “moral hazard” problem. As highlighted earlier, the widespread leverage spree is one of the hallmark problems of the past decade which now amplifies the current pandemic effect. The equity holders of many companies chose to overleverage their balance sheet during the up cycle in order to buy back shares or pursue acquisitions. They did so with the purpose of increasing equity profits in an upside scenario, while increasing the probability of peril for the overall businesses in the event of a downturn. Current proposals under CARES sort companies in two categories. The first of these are qualifying firms which face no direct costs for equity holders who might have taken on aggressive leverage in the past and who elect to utilize these programs. In fact, for these qualifying companies, the MSLP provides an equity bailout by enabling the borrower to receive credit terms that would not be available from private solutions. It also allows shareholders to avoid putting up their own capital to solve the problem. The second category are non-qualifying firms, in which case *all* of their stakeholders are forced to endure the consequences of facing the pandemic shock with high leverage.

#### *Proposed solutions*

In light of these considerations, we believe that several amendments should be considered:

- **Expand the use of bank and private capital.** The program should leverage the abundance of capital and expertise available in bank and private markets by: (1) opening the programs to non-banks and (2) allowing banks and private capital providers to take the lead on negotiating and providing capital solutions. This way, the government would be a true emergency liquidity provider, filling capital gaps or providing credit enhancement in financing processes that fall short of target. This would significantly reduce the level of direct government funding into these CARES programs, while facilitating the flow of

capital into situations where the market otherwise might not sufficiently meet a borrower's needs due to the timing, complexity, and uncertainty.

- **Relax certain requirements of the programs.** For certain large businesses (over \$2.5 billion in revenue), inclusion in the MSLP should be considered on a case-by-case basis. As Figure 2 illustrates, over 40% of the borrowers that issued leveraged loan debt in 2019 would not qualify under this constraint, thus a significant share of the firms in need would be left without liquidity assistance.<sup>16</sup>

The program should also be expanded to include loans on a junior lien basis in certain circumstances, in order to navigate the legal barriers associated with secured creditor's rights. This will enable the flow of capital to those highly leveraged companies that do not have unpledged collateral, and have limited capacity to raise additional secured debt under their current credit agreements.

For small companies backed by private equity, the affiliate exclusion from the Small Business Assistance provisions of the Act should be removed, subject to certain conditions described below. These companies are as much part of the fabric of the US economy, employing people and generating economic growth, as any other small companies. Singling out firms backed by private equity is an arbitrary rule that makes businesses and their employees casualties in a campaign to punish the private equity industry for the past negative actions of some of its players.

- **Recognize and address the moral hazard problem.** To ensure that this assistance does not amount to a bail out of those equity holders which elected to leverage the companies in the first place, access to loans in these programs should have a real direct cost for them. Under the PPP, the program could require that—when applied to private equity backed companies—such loans be matched with an equal amount of new equity capital provided by the owners. To further limit abuse of the assistance, repayment of the loans could be required, rather than forgiven as with other SBA provisioned loans. Defaults on payment could result in a forced conversion into a majority of the equity of the company.

Under the MSLP, by allowing the private sector to negotiate terms, which may include higher interest rates and equity warrants, it will impose costs upon the equity holders of companies that elect to use these programs.

- **Extend the program to companies in bankruptcy.** Government does not tend to lend to companies in bankruptcy proceedings. That said, companies often enter Chapter 11 bankruptcy proceedings as part of a standard, pre-planned capital restructuring, from which they can exit in as little as a few days. Some loans made to the company while it is in Chapter 11 can be structured as super senior debt, taking precedence over all other company obligations. As an alternative to subordinated lending, therefore, we suggest

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<sup>16</sup> This estimate was constructed using S&P LCD and Compustat data.

that the Fed be permitted to participate alongside the private capital in loans to companies that are entering bankruptcy as part of an orderly capital restructuring. For this to be a feasible source of liquidity financing, the Act would need to enable streamlining of the bankruptcy process so as to permit more “pre-packaged” bankruptcy proceedings that could be filed and confirmed quickly.

One downside of the approach that we recommend is that it will require significantly more active management by the U.S. Treasury Department than contemplated by the current programs. As our proposal does not apply a strict formulaic approach, active management would be important in determining which financing processes should be eligible for the government participation provided by the programs. While this is not ideal, we want to also highlight that by engaging private capital on a competitive basis, and by structurally mitigating the risk of the resulting government portfolio through correctly aligned incentives, the costs of internal management should be substantially mitigated.

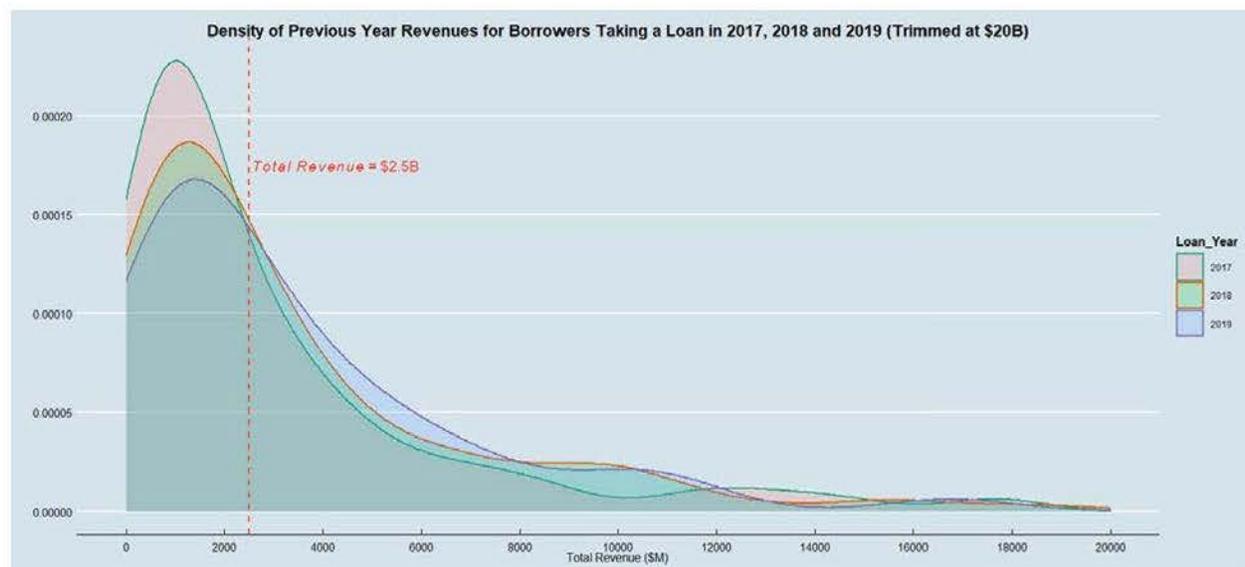
The pandemic is a rapid and severe external shock that affects nearly every company. But the economic shock is not the only factor that is creating stress among U.S. businesses. The structures that channeled yield-searching capital to the companies over the past decade, are not the structures that can necessarily assist them with the urgent and deep liquidity needs. At the same time, debt markets are complex and heavily segmented. Relying on private markets alone in the short-term will only put more companies out of business and more people out of jobs. However, the government should also stop short of trying to replace private markets. The interventions we advocate here are intended to leverage the resources and skills available in the financial markets, while facilitating their ability to reach the most severe problems more quickly. This will enable the economy to emerge less damaged as the shock subsides and markets return to normal.

Figure 1 – U.S. Leverage Loan Market, Core Statistics

US Leveraged Loans	YE 2008	March 2020
Outstanding	\$594 billion	\$1,173 billion
LTM CLO Allocations	52%	71%
Covenant Lite	15%	82%
Rated B and Below	36%	64%
Leverage	5.0x	5.4x

Note: Data is compiled from S&P Global Market Intelligence.

Figure 2 – Revenue Distribution of Borrowers in the Leveraged Loan Market, 2017-2019



Note: Data for the graph is compiled from S&P, LCD Loan Pipeline and Compustat.

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**From:** Office\_of\_Secretary@FRB.GOV  
**Sent:** Friday, April 17, 2020 10:54 AM  
**To:** Main-Street-Business-Lending-Program  
**Subject:** Fw: MAIN STREET FW: additional comment letter we filed on behalf of OTG  
**Attachments:** 20200416161051142207\_attachment0000.DOCX.final.pdf; 20200416161051142207\_attachment0001.png.final.pdf

----- Forwarded Message -----

From: Jennifer Gallagher [jennifer.c.gallagher@frb.gov]  
To: Office\_of\_Secretary@FRB.GOV  
Date: 4/16/2020 4:10:56 PM  
Subject: MAIN STREET FW: additional comment letter we filed on behalf of OTG

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From: Ellis Rochkind, Dina [dinaellis@paulhastings .com]  
Sent: Thursday, April 16, 2020 3:53 PM  
To: Jennifer Gallagher [jennifer.c.gallagher@frb.gov]; Madelyn Marchessault [madelyn.s.marchessault@frb.gov]; Mackenzie Gross [mackenzie.a.gross@frb.gov]  
Subject: additional comment letter we filed on behalf of OTG

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Fyi – would be great if you can forward this as well. Thank you, Dina

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This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

We write to provide feedback sought by the Federal Reserve in its announcement of additional actions on April 9, 2020 to address the significant unmet needs of mid-sized companies, many of which will suffer catastrophic effects from the COVID-19 crises.

Mid-sized companies frequently cannot obtain credit from banks, which often seek to minimize their risk profile by lending only to established organizations or entities not engaged in activities that many mid-sized entities engage in. As a result, many mid-sized companies need to obtain credit from non-bank specialty finance companies that have emerged to meet the unmet demand for credit. Limiting participation in the Main Street programs to only banks fails to address the financial needs of many mid-size companies.

Similarly, given that the terms of the facilities require a bank to retain a 5% participation in any loan it originates, banks with credit policies that preclude lending to mid-sized companies or those engaged in specific industries will not be willing to originate loans under the program, failing to address the financial needs of mid-sized companies.

Accordingly, we request the Federal Reserve modify the Main Street Facilities to (i) allow non-banks to participate; and (ii) eliminate the need for originating lenders to retain 5% of any loan originated under the program. Both modifications will preserve mid-sized companies and their employees.



*The following comments are submitted on behalf of Furniture.com, Inc. d/b/a Blueport Commerce. Blueport is an ecommerce platform that enables retail furniture chains to serve and sell to their customers online.*

Blueport is at risk of being existentially damaged by the COVID-19 crisis. While our mission to provide digital channels to retailers has never been more vital – we are currently the only revenue channel for most of the retailers using our platform – these customers’ ability to pay the fees that fund our business is critically compromised. Indeed, a significant Blueport customer, a 100-year-old family-owned furniture retailer in Pennsylvania and Ohio has already filed for liquidation.

Blueport is in every way a small business – 52 employees in a company Confidential Business Information fees annually by supporting hundreds of millions of dollars in online and offline sales for brick and mortar retailers. The Paycheck Protection Program (PPP) appeared to us to be a well-targeted and much needed bridge, allowing us to retain our staff and serve our retailers until their businesses and our revenue streams return to stability.

As it stands, we are ineligible. We have taken investment from family offices related to some of the retail businesses we serve. As such, we fall afoul of the SBA’s affiliation rules, despite the fact that these investors’ resources are already strained by the challenge of keeping their retail businesses alive.

It is unfathomable that we are not eligible for small business aid while some of the largest fast food or hotel companies – each of which has many hundreds of times our revenue – have been granted a waiver from the SBA’s traditional affiliation rules.

The existing affiliation guidance creates a dangerous void. Companies like ours fuel significant parts of the economy, drive innovation, and account for many jobs in the U.S., providing flexible, good paying employment for local workers. While we understand the desire not to fund companies that have alternative sources of funding, the current affiliation rules are a poor test of whether this is the case, Blueport being a prime example.

From this perspective, we submit the following commentary on the matters currently under 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.
3. **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 are allowed to 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](mailto:srossetti@me.com) at (240)401-4521.

Respectfully submitted,

Carl Prindle  
CEO and Founder  
April 16, 2020



April 16, 2020

**Girl Scouts of the USA  
Public Policy & Advocacy**

816 Connecticut Ave NW  
Third Floor  
Washington, DC 20006  
202-659-3780  
advocacy@girlscouts.org

Girl Scouts of the USA (GSUSA) and our 111 councils have been hit hard by COVID-19. Social distancing has derailed troop meetings, council events, and plans for summer camp. GSUSA and our councils have quickly launched virtual activities for girls and their families, but the pandemic has interrupted a primary source of revenue – Girl Scout Cookie sales – as well as fundraising and sponsorships. Without greater access to capital, GSUSA and our councils will be forced to slash programming, staff, and scholarships just as communities need Girl Scouts the most.

Many nonprofits have been unable to access the Paycheck Protection Program and its loan forgiveness that would allow us to provide services during the crisis and support our nation’s recovery. Further, as the full impact of the pandemic is realized, nonprofit borrowers will need more flexibility and coverage than the Paycheck Protection Program provides.

As the Treasury Department works to make loans available to nonprofits and mid-sized businesses under section 4003(c)(3)(D) of the CARES Act, including the Main Street Lending Program, we respectfully request the following:

- Eliminate the 500-employee minimum for 501(c)(3) organizations seeking mid-sized business loans;
- Open the Main Street Lending Program to 501(c)(3) organizations contributing to COVID-19 relief efforts;
- Include a 0.50% interest rate for 501(c)(3) organizations with a minimum 5-year amortization;
- Defer payments until at least two years after a direct loan is made; and
- Base any employee retention provisions on the date of the loan’s origination.

Our recommendations will allow nonprofits to meet the immediate needs of our communities as well as plan for the future when many of our services will be needed most.

Sincerely,

A handwritten signature in black ink that reads "Sue Santa".

Sue Santa  
Vice President  
Public Policy and Advocacy



**PACE UNIVERSITY**  
ONE PACE PLAZA NEW YORK, NY 10038

Marvin Krislov  
*President*

(212) 346-1098  
Fax: (212) 346-1384  
mkrislov@pace.edu

April 16, 2020

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

**Re: Comments on the Main Street Lending Program**

To whom it may concern:

On behalf of Pace University, 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 Pace 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. Pace has a more than \$1 billion economic impact<sup>i</sup> on our community and we support 3,300 jobs.<sup>ii</sup>

Room and board adjustments alone are a significant new expense. Pace anticipates that we will send over \$6 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 instruction 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 Pace 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 Pace, 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. Pace 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 Pace 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,



Marvin Krislov  
President

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<sup>i, ii</sup> Making an Impact in the Community. Pace University, 2019. [www.pace.edu/sites/default/files/files/economic-impact-report/pace-impact-in-the-community-2019.pdf](http://www.pace.edu/sites/default/files/files/economic-impact-report/pace-impact-in-the-community-2019.pdf)



**TECHNET OFFICIAL COMMENTS ON THE FEDERAL RESERVE'S MAIN STREET LOAN FACILITIES**  
**April 16, 2020**

Thank you for the Federal Reserve's dedication to providing emergency economic relief to employers of all sizes during this challenging time.

Since **the Fed's Main Street New Loan and Expanded Loan Facility programs** were announced on April 9, several of TechNet's smaller member companies have raised concerns that need to be addressed, including **the requirement that applicants need to have been "EBITDA-positive" in 2019 in order to qualify. This would indiscriminately exclude many promising, high-quality, and credit-worthy businesses, including fast growing startups.**

**To illustrate the problem, here are a few examples of why the "EBITDA-positive in 2019" requirement would leave out many worthy businesses that are now being challenged by the coronavirus' impact:**

- A company that had been profitable from 2015-2018 but decided to expand into new work in 2019 and was intentionally EBITDA negative in 2019.
- A new business that required significant investment at the start of 2019 but grew to profitability by the end may not have been EBITDA positive for all of 2019.
- An investor-backed start-up that decided 2019 was a year to invest in growth and may not have been EBITDA positive in 2019.

**To fix this and other concerns with these vital emergency loan programs, we encourage the Federal Reserve to consider the following suggestions:**

1. Set loans at a fraction of 2019 gross profit.
  - For companies that were not EBITDA-positive in 2019, something would need to replace the loan maximum that is currently a multiple of 2019 EBITDA. Gross profit reflects a company's profit before operating expenses, such as salaries and rent, and for some companies, it therefore more reasonably reflects the amount of a loan that would be helpful to cover exactly those operating expenses during this challenging time.
2. Increase the maximum loan size.
  - The "New Loan" term sheet should say: "Maximum loan size that is the greater of (i) \$25 million or (ii) an amount that, when added to the Eligible Borrower's existing outstanding and committed but undrawn debt minus cash on hand (restricted and unrestricted), does not exceed four times the Eligible Borrower's 2019 earnings before interest, taxes, depreciation and amortization ("EBITDA"), adjustment for non-cash items (e.g. stock-based compensation) is allowed."

- The “Expanded Loan” term sheet should say: “Maximum loan size that is the greater of (i) \$150 million, (ii) 30% of the Eligible Borrower’s existing outstanding and committed but undrawn bank debt, or (iii) an amount that, when added to the Eligible Borrower’s existing outstanding and committed but undrawn debt, minus cash on hand (restricted and unrestricted), does not exceed six times the Eligible Borrower’s 2019 earnings before interest, taxes, depreciation, and amortization (“EBITDA”), adjustment for non-cash items (e.g. stock-based compensation) is allowed.”
3. Expand eligible loans to bonds issued on or prior to April 8, 2020.
  4. Remove limitation to repay or refinance existing debt. Companies’ inability to tap this facility to repay debt, especially near-term maturities, would have the same impact to the companies in terms of having sufficient liquidity to run their businesses and maintain employment in the U.S.

In closing, we again thank you for your efforts and for considering our perspective on this important issue. If you have any questions or if we can be a resource going forward, please do not hesitate to reach out to Alex Burgos (Senior Vice President of Federal Policy, Government Relations, and Communications) at [aburgos@technet.org](mailto:aburgos@technet.org) or Peter Chandler (Director of Federal Policy and Government Relations) at [pchandler@technet.org](mailto:pchandler@technet.org).

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy. Our diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over three million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

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**From:** Office\_of\_Secretary@FRB.GOV  
**Sent:** Friday, April 17, 2020 10:56 AM  
**To:** Main-Street-Business-Lending-Program  
**Subject:** Fw: Main Street Lending  
**Attachments:** 20200416164006055875\_attachment0000.jpg.final.pdf; 20200416164006055875\_attachment0001.docx.final.pdf

----- Forwarded Message -----

From: "Roman, Brandon" [brandon.roman@squirepb.com]  
To: Office\_of\_Secretary@FRB.GOV  
Date: 4/16/2020 4:40:08 PM  
Subject: Main Street Lending

NONCONFIDENTIAL // EXTERNAL

To Whom It May Concern:

By way of follow-up to our comments submitted at 4:30pm today, April 16, 2020, please find attached additional information on behalf of the non-bank financial firm industry in support of their comments on the Main Street Lending Program.

Many thanks,  
Brandon

[cid:image001.jpg@01D51D22.763ADB80]

Brandon C. Roman  
Senior Associate  
Squire Patton Boggs (US) LLP  
2550 M Street, NW  
Washington, DC 20037  
T +1 202 457 5330  
O +1 202 457 6000  
F +1 202 457 6315  
brandon.roman@squirepb.com[mailto:brandon.roman@squirepb.com] | squirepattonboggs.com[http://www.squirepattonboggs.com/]

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45 Offices in 20 Countries.

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#US

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A new 13(3) facility is required to assist non-bank financial firms (NBFFs) in continuing to extend credit to millions of Americans. The terms of the MSLP effectively prevent NBFFs from accessing the liquidity they desperately need, and none of the other current 13(3) facilities meet NBFFs' unique liquidity needs.

- The maximum loan size limitations of 4x MSNLF and 6x MSELF EBITDA minus outstanding debt and committed, undrawn facilities provide no incremental capital to NBFFs. NBFFs require significantly more debt for each dollar of equity to fund consumer loans efficiently.
- The \$25M MSNLF/\$150M MSELF maximum loan limitations are inadequate for NBFFs whose primary capital need is for continued funding of consumer loans.
- The requirement that MSELF loans be in place prior to April 8 significantly limits the utility of the program. NBFFs typically fund their business with receivables-based loans, with limited, or no, corporate indebtedness.
- The 5% participation requirement for MSLP eligible lenders limits expansion of borrowing capacity. Most companies will have fully drawn on existing credit capacity in anticipation of a business disruption, and lenders are unlikely to increase their exposure to facilitate new loans.
- Including undrawn lines of credit in the maximum loan size calculation further limits NBFFs total borrowing capacity and ignores that these lines are at significant risk of being terminated.
- The term loan structure requires companies to draw funds today without regard to the timing of the need for capital. This increases the borrowing cost and limits the ability of the facility to meet future needs as they arise.
- Consumer loan funding is NBFFs' principal need for capital and is inadequately addressed by the MSLP.

# SHELTERING ARMS

Children and Family Services

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*Embracing Hope and Building Futures for Generations*

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As the Treasury Department works to create a program as directed under the CARES Act section 4003(c)(3)(D) 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 request 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

Sheltering Arms is one of the City’s largest providers of education, youth development, and community and family well-being programs in New York City. We serve nearly 15,000 children and families each year, and employ more than 1,200 staff, making us ineligible for the federal Paycheck Protection Program that is currently available to nonprofit organizations.

Federal support through the Main Street Lending program must be made available to large nonprofits like Sheltering Arms in order to ensure that we can continue to meet the immediate needs of our communities while planning for the future when our services will be needed most. The recommendations above will help to keep organizations like Sheltering Arms financially strong and ensure we are setup to help our communities through the long recovery to come.

Charitable nonprofits are the third largest employer in our nation’s economy and are valued problem solvers. Nonprofit organizations are our country’s only institutions solely focused on making communities stronger. In the toughest times, we do the toughest work. When it’s time to restore and repair our communities’ well-being, community-based institutions like Sheltering Arms need to be equipped to do that, and our unique needs cannot be overlooked.

Sincerely,



Elizabeth McCarthy  
Chief Executive Officer

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main: 212.675.1000    fax: 212.989.1132    305 7th Avenue, New York NY 10001

ShelteringArmsNY.org     ShelteringArmsNY     @ShelteringArmsNY

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**From:** Office\_of\_Secretary@FRB.GOV  
**Sent:** Friday, April 17, 2020 10:57 AM  
**To:** Main-Street-Business-Lending-Program  
**Subject:** Fw: Main Street Loan Comments and Exhibits-Enesco, LLC  
**Attachments:** 20200416164436080083\_attachment0000.pdf.final.pdf; 20200416164436080083\_attachment0001.pdf.final.pdf

----- Forwarded Message -----

From: Matt Myren [mmyren@enesco.com]  
To: Office\_of\_Secretary@FRB.GOV  
Date: 4/16/2020 4:44:42 PM  
Subject: Main Street Loan Comments and Exhibits-Enesco, LLC

NONCONFIDENTIAL // EXTERNAL

Enesco, LLC provided comments through the Main Street Loan website at <https://www.federalreserve.gov/apps/contactus/feedback.aspx?refurl=/main/>. The below is an expansion on those comments, and attached are exhibits that will serve as background/conformational data regarding the website submission and the extended commentary and requests provide below. If there are comments or questions please reach out to me at my contact information below, or to Robin Nourmand (copied) by email or by phone at 310-963-4499.

CONTEXT: Enesco, LLC is a 62-year-old, profitable, gift wholesaler. Confidential Business Information

In 2019, its then-dormant subsidiary acquired the assets of a 53-year-old retailer of engraved gifts Things Remembered, Inc. (TR) out of bankruptcy in a transaction that saved 1000+ jobs (Ex1) and merited a Distressed Transaction of the Year award (Ex2). Enesco capitalized TR with no debt of its own.

The first comment is to ensure Enesco can receive a loan (TR lost money in 2019, the year it emerged from BK; it too has been decimated by Covid-19.) The second is to include appropriate nuance in the definition of "debt" to account for the dramatic seasonality in net working capital (and therefore, debt) in businesses that are in the retail industry, weather sensitive, etc.:

1. ALLOW PARENT TO DECONSOLIDATE A SUBSIDIARY THAT INCURRED STARTUP LOSSES IN 2019: Please confirm a Parent (Enesco's) ability to exclude a subsidiary (TR) or sister company, which incurred startup losses in 2019, from the EBITDA/leverage analysis (as opposed to requiring Enesco + TR to submit one application on a consolidated basis.) If TR is consolidated with its parent, its startup losses would disqualify Enesco from receiving a loan. Please confirm that Enesco can apply without giving effect to TR's losses.
2. ADJUST FOR SEASONAL FLUCTUATIONS IN DEBT: For the purpose of calculating debt in seasonal businesses, please allow for factoring in the timing of the loan application within the calendar year. We propose an alternative concept (to the notion of debt at the time of application) in businesses affected by consumer/retail, weather, etc: Replace the debt calculation with the (i) average debt balance over the last 12 month ends +/- (ii) the change in the applicant's net working capital the borrower vs 12 months prior to the application date. This would prevent distortions where leverage ratios may vary dramatically depending on whether an application is filed in May vs. in September.

Respectfully submitted,

Matt Myren  
Legal Counsel  
Enesco, LLC  
225 Windsor Dr., Itasca, IL 60143  
Email: mmyren@enesco .com[mailto :mmyren@enesco .com], Phone: (630) 875-5447, Cell Phone Number

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From: Robin Nourmand [rnourmand@balmoralfunds .com]  
Sent: Thursday, April 16, 2020 2:14 PM  
To: Todd Mavis [todd.mavis@enesco .com]; Bruce Myers [bmyers@enesco .com]; Matt Myren [mmyren@enesco .com]  
Cc: Jonathan Victor [jvictor@balmoralfunds.coFrom mmyren@enesco .com Thu Apr 16 16:44:36 2020  
Return-Path: [mmyren@enesco .com]  
X-Original-To: regcomments@m-ipear.frb.gov  
Delivered-To: regcomments@m-ipear.frb.gov  
Received: from m1-smtp02.frb.gov (secondary.frb.gov [10.26.128.21]) by m-ipear.frb.gov (Postfix) with ESMTP id 001BE20A19 for [regcomments@m-ipear.frb.gov]; Thu, 16 Apr 2020 16:44:35 -0400 (EDT)  
Received: by m1-smtp02.frb.gov (Postfix) id D4F1940804E4; Thu, 16 Apr 2020 16:44:35 -0400 (EDT)  
Delivered-To: regs .comments@frb.gov  
Received: from fireeye-ex1.frb.gov (fireeyeex-1.frb.gov [198.35.160.62]) by m1-smtp02.frb.gov (Postfix) with ESMTP id AAC1340804E2 for [regs .comments@frb.gov]; Thu, 16 Apr 2020 16:44:35 -0400 (EDT)  
Received: from localhost.localdomain (localhost [127.0.0.1]) by fireeye-ex1.frb.gov (Postfix) with SMTP id 493B6W4gNmz2MqGn for [regs .comments@frb.gov]; Thu, 16 Apr 2020 16:44:35 -0400 (EDT)  
Received: from fedmail01.iss.frb.gov (fedmail01.iss.frb.gov [198.35.161.36]) by fireeye-ex1.frb.gov (Postfix) with ESMTP id 493B500DMJz2MqGV for [regs .comments@frb.gov]; Thu, 16 Apr 2020 16:43:16 -0400 (EDT)  
Received: from outmail01.federalreserve.gov (outmail01.iss.frb.gov [198.35.161.45]) by fedmail01.iss.frb.gov (Postfix) with ESMTP id EC796C10C7A8 for [regs .comments@federalreserve.gov]; Thu, 16 Apr 2020 16:43:15 -0400 (EDT)  
Received-SPF: Pass (outmail01.federalreserve.gov: domain of mmyren@enesco .com designates 40.107.93.94 as permitted sender) identity=mailfrom; client-ip@.107.93.94; receiver=outmail01.federalreserve.gov; envelope-from="mmyren@enesco .com"; x-sender="mmyren@enesco .com"; x-conformance=spf\_only; x-record-type="v=spf1"; x-record-text="v=spf1 ip4:40.92.0.0/15 ip4:40.107.0.0/16 ip4:52.100.0.0/14 ip4:104.47.0.0/17 ip6:2a01:111:f400::/48 ip6:2a01:111:f403::/48 -all"  
Received-SPF: Pass (outmail01.federalreserve.gov: domain of postmaster@NAM10-DM6-obe.outbound.protection.outlook .com designates 40.107.93.94 as permitted sender) identity=helo; client-ip@.107.93.94; receiver=outmail01.federalreserve.gov; envelope-from="mmyren@enesco .com"; x-sender="postmaster@NAM10-DM6-obe.outbound.protection.outlook .com"; x-conformance=spf\_only; x-record-type="v=spf1"; x-record-text="v=spf1 ip4:40.92.0.0/15 ip4:40.107.0.0/16 ip4:52.100.0.0/14 ip4:104.47.0.0/17 ip6:2a01:111:f400::/48

## CONTEXT:

Enesco is a 62-year-old, profitable, gift wholesaler.

Confidential Business Information

In 2019, its then-dormant subsidiary acquired a 53-year-old retailer of engraved gifts (TR) out of bankruptcy in a transaction that saved 1000+ jobs (THIS IS THE SOURCE DOCUMENT\*) and merited a Distressed Transaction of the Year award (SEE NEXT ATTACHMENT).

Enesco capitalized TR with no debt of its own. TR (the subsidiary) lost money in 2019.

Confidential Business Information

## JOB-SAVING TURNAROUNDS:

We respectfully request that applicants be permitted to either:

- 1) use "3 x ( 2019 avg mo. payroll + 2019 avg mo. rent )" instead of 2019 EBITDA or
- 2) add back "6 x 2019 avg mo. payroll" to its EBITDA to account for the social benefit of the jobs it has saved.

We propose this alternative only in the limited cases where 2 conditions are met:

- A) Company was a bona fide purchaser of third-party assets in a bankruptcy that can be demonstrated to have saved 500+ jobs in 2019 and incurred startup losses in so doing and/or
- B) Majority of the subject company's operations have been substantially shut down in March through May 2020 due to a stay at home orders (e.g., retail cannot open).

## ALLOW PARENT TO DECONSOLIDATE A SUBSIDIARY THAT INCURRED STARTUP LOSSES IN 2019:

Please confirm a Parent (Enesco's) ability to exclude a subsidiary (TR) or sister company, which incurred startup losses in 2019, from the EBITDA/leverage analysis (as opposed to requiring Enesco + TR to submit one application on a consolidated basis.) If TR is consolidated with its parent, its startup losses would disqualify Enesco from receiving a loan. Please confirm that Enesco can apply without giving effect to TR's losses.

\* Source: [http://www.tmajcr.org/journalofcorporaterenewal/nov\\_dec\\_2019/MobilePagedReplica.action?pm=2&folio=6#pg8](http://www.tmajcr.org/journalofcorporaterenewal/nov_dec_2019/MobilePagedReplica.action?pm=2&folio=6#pg8)

creditors' committee, the U.S. Trustee, landlords, and other parties in interest with one particular goal—saving the business, which would maximize value for stakeholders and preserve as many jobs as possible.

### Identifying a Crisis

Since 2010, a number of macroeconomic factors, including changes in consumer preferences and the shift to online retailers, have contributed to declining sales by traditional retailers. By 2018, these macroeconomic factors and certain microeconomic issues specific to Things Remembered's business had led to an untenable liquidity situation for the company.

Recognizing that a restructuring transaction was necessary to save the business, the company sought to address its near-term liquidity crunch and quickly initiated discussions with its secured lenders. The company, in consultation with its secured lenders, determined not to repay its revolving credit facility at year-end, providing Things Remembered with sufficient liquidity to fund its restructuring efforts and a potential Chapter 11 filing.

Recognizing the need to explore strategic alternatives, Things Remembered quickly began to canvas the market for a potential going concern buyer. With its advisors, the company contacted 28 potentially interested strategic and financial parties, three of whom ultimately submitted proposals.

The first two proposals only contemplated acquiring the company's direct business—its e-commerce website and business-to-business operations. Both of these proposals contemplated that all of the company's approximately 400 stores would close, resulting in large-scale job losses. Things Remembered was unable to reach an agreement with either party sufficient to establish one of them as a stalking horse bidder.

The company continued preparations for a Chapter 11 filing, including the possibility of a full-scale liquidation.

In the week leading up to its Chapter 11 filing, Things Remembered received the third proposal, this one from a strategic buyer offering to acquire

the direct business, customer data, and as many as 150 profitable stores. The company and its advisors were prepared to quickly negotiate, reach an agreement on material terms and move toward definitive documentation. This flexibility allowed Things Remembered to complete extensive negotiations and due diligence efforts in a compressed time frame. The company ultimately completed its prepetition marketing process in 50 days, resulting in a stalking horse bid that kept stores open and saved hundreds of jobs.

But with an eye on the quickly approaching spring retail season, the strategic buyer premised the deal on completing an in-court sale in 30 days. The buyer had made clear that if it could not capture the sales of the company's "second season," which benefited from gift giving around spring weddings, graduations, and religious holidays, the deal was not worth doing. With little margin for error, Things Remembered needed to execute several steps to close the going concern sale. Critically, Things Remembered needed to retain employees, whose skills and knowledge were critical to operating the business as a going concern, maximize asset value, and somehow find more runway to close an asset purchase agreement while on a compressed timeline.

### Saving Stores

Things Remembered understood that its store footprint was unsustainable in light of its strained liquidity—some stores would have to close. The success of any going concern sale hinged on motivating its employees to stay committed to the business. If the company's employees left, store performance would deteriorate and buyer interest would fade. Things Remembered, in consultation with its advisors, took several key steps to retain its employees both during the uncertain marketing process before securing a strategic buyer and through the closing of the transaction.

Things Remembered implemented a program to provide severance to employees who were not offered comparable employment by the strategic buyer, which incentivized employees to remain through store closing instead of immediately seeking alternative employment. As part of this severance program,

Things Remembered also paid for outplacement services to help employees land on their feet following their termination.

Things Remembered optimized store performance during the store-closing process by continuing to provide commissions and quality bonuses to employees, contingent upon their remaining through store closings. To further incentivize store-level employees, Things Remembered increased wages for hourly employees during the store closing process. Collectively, these actions helped maintain employee loyalty and retention during the store-closing process and maximized the value of closing stores.

Concurrently with its prepetition marketing efforts, Things Remembered conducted an extensive store-by-store performance analysis to determine which stores could be profitable for a going concern buyer. While the company's buyer was willing to purchase 150 or more stores, it was only obligated to buy approximately 50 stores under the purchase agreement.

Considering the tight timeline to consummate the transaction and maximize the value of going-out-of-business (GOB) sales at the stores, Things Remembered created a novel two-phase GOB process. In the first phase, the company closed stores that were unprofitable in any scenario and which the buyer had no interest in acquiring. The company immediately began the GOB process for these stores, even before filing for Chapter 11, to maximize their liquidation value.

Things Remembered continued to operate store locations that it had allocated to phase two. This provided additional time for the buyer to evaluate these stores and negotiate rent concessions from landlords. Things Remembered would quickly transition to GOB sales at phase-two stores that were not acquired.

The two-phase GOB sales provided Things Remembered with crucial liquidity during the early stages of its restructuring by promptly liquidating unprofitable stores. But more importantly, it maximized value and saved jobs by allowing more time

for the buyer to evaluate whether the remaining stores were viable on a go-forward basis. Things Remembered and the buyer were able to negotiate favorable lease terms with landlords at these second-phase locations thanks to the leverage created by the two-phase GOB process. Ultimately, the buyer purchased approximately 170 stores, far more than it was required to buy under the purchase agreement.

### Expedited Timeline

Typically, after a bankruptcy filing, in-court going concern sales require from 45 to 60 days to close to allow bankruptcy judges, the U.S. Trustee, and other stakeholders a period of time to vet potential transactions. Because Things Remembered's strategic buyer premised the sale on closing the transaction within 30 days, the retailer needed to convince a bankruptcy court judge, as well as its other stakeholders, that this was an appropriate timeline on the first day of the case. If the deal was not closed in 30 days, the buyer could walk.

Things Remembered took several steps to convince the bankruptcy judge and other stakeholders that 30 days was an appropriate timeline in this particular case. The potential going concern sale contemplated the sale of valuable customer data, which typically requires the appointment of

a consumer privacy ombudsman in the later stages of a bankruptcy case to evaluate privacy concerns associated with the sale of consumer data. Because Things Remembered could not afford to have the sale delayed, the company gave advance notice of the need to appoint a consumer privacy ombudsman and proactively requested that the judge appoint one on the first day of the case.

Things Remembered also engaged the U.S. Trustee, who courts heavily rely on to vet a debtor's compliance with the Bankruptcy Code, before the petition date to stress the importance of quickly consummating the transaction, considering the unique risk to the business. Ultimately, Things Remembered's purposeful actions provided the time and transparency needed for the U.S. Trustee to support this novel first day relief.

Another strategically important step was the prepetition marketing process. Things Remembered conducted a robust prepetition marketing process prior to filing for Chapter 11, so it was well-positioned to address inevitable concerns about a short in-court process. As further support, Things Remembered and its investment bankers filed numerous declarations that detailed the holistic and comprehensive marketing process and emphasized

that the proposed transaction was the best possible deal.

Critically, Things Remembered also acknowledged the importance of the creditors' committee's support, including the positive signal such support sends. Mere hours after the newly formed creditors' committee retained professionals, Things Remembered signaled its commitment to collaboration by opening a dialogue, providing detailed diligence packages, and scheduling weekend calls. These deliberate efforts helped the committee understand the benefits of the expedited going concern sale and ultimately led to the full support of the creditors' committee.

Due to their extensive retail experience, Delaware bankruptcy judges understand how rare it is for a debtor, stalking horse bidder, U.S. Trustee, unsecured creditors' committee, and secured lender group to line up in support of a shortened sale timeline. This consensual alignment was attributable to Things Remembered's proactive collaboration with its stakeholders and full transparency with all parties involved.

### Conclusion

To consummate a transaction with such speed and in such an uncertain operating environment,

# Navigating Rough Waters in Chapter 11

BY BOB DUFFY, MANAGING DIRECTOR & BRETT WITHERELL, DIRECTOR, BRG CORPORATE FINANCE

The retail industry continues to feel the pain of intense competitive pressure and challenging business dynamics. Changes in recent years have resulted in an unprecedented number of store closings and Chapter 11 filings, with many of the country's most recognizable brands shutting down operations.

Chapter 11 is obviously a difficult process and in many cases results in complete liquidation of the business. There are exceptions, however, as the recent situation with Things Remembered illustrates. This case demonstrates the positive results that can be achieved in Chapter 11 when stakeholders and advisors work collaboratively and aggressively to transform the business and enhance capabilities to move forward in an omnichannel environment.

In February 2019, Things Remembered filed for Chapter 11 bankruptcy. At that time, the company operated more than 400 stores in 43 states and employed more than 4,000 people. The difficulties experienced by mall-based retailers like Things Remembered are well documented, malls across the country have suffered severe declines in customer traffic caused in large part by increased online shopping and a drastic change in customer shopping preferences. Things Remembered was no exception to the trend. When it filed for Chapter 11 protection, the company

was on the verge of liquidation—obviously the least desirable outcome.

Within Chapter 11, substantially all of the company's assets were sold to a strategic buyer, allowing the company to survive and prosper as a more financially sound and strategically capable entity. For professionals and stakeholders involved in the Things Remembered bankruptcy case, the process serves as a reminder of the positive results that can occur when advisors, company management, lenders, and other involved parties work together in an aggressive and transparent process to drive positive change.

As the effort to restructure Things Remembered took shape, objectives were established, and an aggressive approach was employed to help carve out a successful Chapter 11 process. Stores and jobs would be cut, but the team developed a go-forward business plan that would preserve at least 50 stores and would establish a foundation for success for Things Remembered as an omnichannel retailer. In the end, 175 stores survived, more than 1,000 jobs were preserved, and the brand survived as a viable entity. This was not by chance. There were many key drivers of this successful transformation.

### Early Engagement of Critical Stakeholders

In situations like this, it is critical to

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work closely with key constituencies to stabilize the business and position the company for go-forward transformation and value creation for all parties.

At Things Remembered, the board of directors and lenders were kept apprised of the situation and progress on key aspects of the process. Transparency was nonnegotiable. This created a high level of trust among financial advisors, lenders, the board, and company management.

The authors' firm was engaged by the company from January 2017 to April 2018 and reengaged in October 2018 to begin Chapter 11 preparations. The firm assisted the company through a CEO transition, which created a strong working relationship and level of trust when the new executive came on board. The firm had a continual on-site presence within the finance department that led to strong working relationships and high levels of trust with executives, midlevel managers, and company staff. This enabled efficient and aggressive development of data collection and analyses with a team of only two to three people from the firm. The analytics proved invaluable as the Chapter 11 process moved forward.

Eventually, individuals from the firm filled the roles of CFO and CFO. The strong relationships that had already been developed allowed them to step quickly into

these interim management roles in advance of the bankruptcy filing.

### Alternative Go-Forward Business Plans

Development of wide-ranging options relating to go-forward business plans allowed the company to market to and attract a range of potential acquirers. Options included plans for an internet-only business, a store-centric/smaller footprint business approach, and a larger store-footprint option with new investment, among others.

In the end, three bids were received: two were e-commerce-only bids, and the other was a smaller footprint, store-focused bid, which the company accepted after all options were evaluated.

Flexibility in the bidding process enabled the company to carve out nonessential assets (e.g., home office building) and allowed the potential buyers to focus on the core assets they required for future opportunities. This maximized the recovery value to creditors while increasing the likelihood of completing a successful deal.

The development of wide-ranging options for the emergent business also served to drive an extremely fast sale process, thus minimizing the risk to the acquirer and increasing the likelihood of the deal closing. It took just 30 days from bankruptcy filing to 363 sale close.

### Store-by-Store Due Diligence

A key objective in the Things

Remembered Chapter 11 process was to maximize the number of physical stores that could continue operating post-bankruptcy. To this end, the stalking-horse buyer ran secondary store-by-store diligence in parallel with the liquidation process. Stores began going-out-of-business (GOB) sales prefilling in some cases, but the buyer had an option to purchase additional stores beyond its minimum commitment for 50 stores.

The buyer's ultimate acquisition of 175 stores was due in large part to establishing the minimum store commitment at a low enough level and quickly initiating GOB sales. This helped the buyer to negotiate new leases with landlords, ultimately allowing for a far greater number of stores to be sold and to survive. A mechanism in the sale contract allowed for purchase price adjustments based on the ultimate number of stores acquired, so an increased store count was in both the buyer's and seller's interests.

All parties involved wanted to see a sale, not a liquidation, of the 50-year-old brand. By increasing the number of stores it acquired, contingent on rent reductions from landlords, the buyer would obtain a larger company positioned for higher EBITDA. Because Things Remembered provided severance and outplacement services to employees who lost their jobs in the transition, the company avoided some severance and winddown



(GOB) sales, liquidation, large-scale job losses, and vacant retail stores.

Things Remembered's acquisition earlier this year by Enesco, a creator and distributor of giftware and home and garden décor, along with its sponsor, Balmoral Partners, suggests that smaller retailers with solid customer value propositions can still find success in difficult markets, even with little time to execute a sale process. These types of expedited deals can happen as long as professionals work together to streamline their efforts, stick to targeted messaging, and anticipate and address process concerns.

As a transaction with a strategic buyer, Things Remembered's acquisition followed the course of several other retail restructuring processes, such as Gymboree and Gordmans, in which these operations

found strategic buyers when little financial investor interest existed.

### Sizing up the Situation

The strategic marketing process for Things Remembered faced extraordinary headwinds. Many distressed-oriented investors have elected to steer clear of the sector and its dynamics. Many other retailers have prioritized addressing their own issues over acquisitions and expansions. Like many other distressed retail opportunities, Things Remembered would be going through a restructuring process for a second time. While the case was not a "Chapter 22" because the first restructuring occurred out of court, the business was well-shopped.

Though the prior out-of-court restructuring did not afford the opportunity to reject leases, Things Remembered's store footprint had

The current M&A environment for distressed retailers is as tough as it gets when it comes to completing going concern transactions. The majority of recent retail bankruptcies have resulted in going-out-of-business

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## **14<sup>TH</sup> ANNUAL TURNAROUND AWARD WINNERS**

### **I. SECTOR AWARD CATEGORY**

#### **CONSUMER DISCRETIONARY DEAL OF THE YEAR**

##### **Sale of Sawmill Creek**

MelCap Partners, LLC  
Sawmill Creek Resort  
Cedar Fair LP

Allen Stovall Neuman Fisher & Ashton, LLC  
Meaden & Moore

#### **CONSUMER STAPLES DEAL OF THE YEAR**

##### **The Sale of Lucky Vitamin, LLC**

SSG Capital Advisors LLC  
Holland & Knight LLP  
Ropes & Gray LLP

RAS Management Advisors, LLC  
Womble Bond Dickinson (US) LLP

#### **ENERGY DEAL OF THE YEAR**

##### **Restructuring of Integrated Equipment's existing debt and the private placement of a credit facility with Veritas Financial Partners and placement of equity with private investors**

Chiron Financial  
Integrated Equipment

Veritas Financial Partners

#### **FINANCIALS DEAL OF THE YEAR**

##### **Restructuring of Ditech Holding Corporation**

Epiq  
Pachulski Stang Zeihl & Jones LLP  
Weil, Gotshal & Manges LLP

AlixPartners  
Houlihan Lokey Capital, Inc.

#### **INDUSTRIALS DEAL OF THE YEAR**

##### **Acquisition of Systron Donner Inertial by an Affiliate of Resilience Capital Partners**

Resilience Capital Partners  
Carlyle Group  
PAI Partners  
InnoVista Sensors  
Tucker Ellis LLP

KippsDeSanto & Co.  
CliftonLarsonAllen  
Aon  
Zieleniec HR Solutions  
Ramboll

#### **INFORMATION TECHNOLOGY DEAL OF THE YEAR**

##### **Acquisition of Windward Software by Volaris Group a subsidiary of Constellation Software**

Madison Street Capital

Volaris Group

**V.** [Redacted]

[Redacted]

[Redacted]

Stifel Financial	Balmoral Funds
Miller Buckfire	Kirkland & Ellis LLP
[Redacted]	Landis Rath & Cobb LLP
Things Remembered, Inc.	Province
Pachulski Stang Ziehl & Jones	Keen-Summit Capital Partners
Berkeley Research Group, LLC	

**DISTRESSED M&A DEAL OF THE YEAR (\$25MM to \$50MM)**

**Sale of Kane Beef to JDH Capital**

Gordian Group	Kirkland & Ellis LLP
The Claro Group	Okin Adams
JDH Capital	Judge Richard Schmidt

**DISTRESSED M&A DEAL OF THE YEAR (\$50MM to \$75MM)**

**Acquisition of B&G Crane Services by Maxim Crane Works**

FTI Consulting	Stifel Financial
Weil, Gotshal & Manges LLP	PwC
Apollo Management	Paul Weiss

**DISTRESSED M&A DEAL OF THE YEAR (\$75MM to \$100MM)**

**Acquisition of Open Road Films by Raven Capital Management**

FTI Consulting	Klee Tuchin Bogdanoff & Stern
Raven Capital Management	Greenberg Traurig
DLA Piper	

**DISTRESSED M&A DEAL OF THE YEAR (\$100MM or more)**

**Sale of Payment Alliance International to Further Global Capital Management**

Raymond James	Inverness
Further Global Capital Management	

**SEC.363 SALE OF THE YEAR (\$10MM to \$25MM)**

**Sec.363 Sale of Schramm Inc.**

FocalPoint Partners	FocalPoint Securities
Pepper Hamilton LLP	Young Conaway Stargatt & Taylor, LLP

**SEC.363 SALE OF THE YEAR (\$25MM to \$50MM)**

**Sec. 363 Sale of Restaurants Unlimited**

Configure Partners	NXT Capital
Cole Schotz	Grant Thornton
Carl Marks	Klehr Harrison
Fortress Investment Group	Restaurants Unlimited

*The following comments are submitted on behalf of Retail Entertainment Design LLC*

Retail Entertainment Design LLC (R-E-D), founded in 2005, is a service company based in the state of Washington that primarily offers services in background music and foreground video to clients in the retail industry across the United States. R-E-D currently employs 8 full time employees with annual revenues of Confidential Business Information

R-E-D is experiencing significant disruption in revenue due to the fact its client base is concentrated in the retail industry which has been significantly impacted in a negative way by Coronavirus. Many of our clients have already experienced a sharp decline in sales which will directly impact our ability to meet our pre-Coronavirus projected level of revenues. Given our expectation of a sharp decline in revenue and the resulting cash depletion that comes with it, R-E-D will be forced to reduce payroll expenses through furloughs, reduced compensation and the like. It is clearly in R-E-D's best interest to participate in any aid available under the CARES Act to help avoid staff reductions and protect jobs.

As it stands, the existing legislation creates a dangerous void that leaves small and mid-level businesses unable to access capital/liquidity that they all desperately need right now. Small businesses, like ours, are integral parts of the communities they belong to, providing flexible employment for local workers (significantly for women and minorities) and making contributions to local initiatives. **The following comments are intended to start to level the playing field for small and mid-market companies and provide the liquidity that will allow small businesses like R-E-D to invest in our people and business now so that when we are permitted to return to our offices, we can do so safely and effectively.**

- 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 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.
3. **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](mailto:srossetti@me.com) at (240)401-4521.

Respectfully submitted,

Brian Strayton  
CFO  
April 16, 2020



***The following comments are submitted on behalf Tincati USA Inc.***

Tincati USA Inc. (Tincati), a New York Corporation founded in 2010, owns and operates a single retail store in New York City that sells men's clothing including suits, slacks, jackets, shirts, sweaters, outerwear, shoes, knits and a host of accessories. Tincati currently employs 6 full time employees and has annual revenues of Confidential Business Information

Tincati has experienced a significant disruption in its business due to the Coronavirus pandemic. New York City has been the epicenter of the pandemic in the U.S. and the Tincati store there has been closed for weeks. Tincati is a traditional small business and with a lack of any incoming revenue due to the temporary closure, the company has seen its daily sales decline to zero. It will not meet its budgeted level of sales for the year and is presently not in a position to pay its employees or vendors without incoming cash flow. Tincati has been forced to furlough all of its employees. It is clearly in Tincati's best interest to participate in any aid or relief program available under the CARES Act in order to preserve the jobs of its furloughed employees and to prepare to get them back to work when the store can reopen.

However, the existing legislation of the CARES Act creates a dangerous void that is leaving out businesses from getting the very aid that they need so desperately to preserve jobs. Small businesses, like Tincati, are integral parts of the communities in which they have grown, providing flexible employment for local workers (including predominantly minorities) and making contributions to local initiatives. **Tincati is providing the following comments in an effort to level the playing field for small and mid-market companies and provide the liquidity that will allow small businesses like Tincati to invest in our people and business now so that when we are permitted to return to our offices, we can do so safely and effectively. Tincati would like to see:**

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:
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  - 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.
3. **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 are allowed to 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](mailto:srossetti@me.com) at (240)401-4521.

Respectfully submitted,

Antonio Tincati  
President  
April 16, 2020



April 16, 2020

Federal Reserve  
VIA electronic form

Dear Sir or Madam:

Thank you for your leadership and work to implement the CARES Act provisions that provide financial support to the nation's businesses and nonprofits.

In a normal year, CAMBA serves more than 65,000 New Yorkers by taking a comprehensive approach to address poverty across six program areas: Economic Development, Education/Youth Development, Family Support, Health, Housing, and Legal Services. CAMBA Housing Ventures, Inc. (CHV) is an affiliated nonprofit supportive and affordable housing development corporation that has completed more than 2,000 units since 2005.

The number of New Yorkers in need of our services has grown significantly with the pandemic. Before COVID-19 hit, CAMBA employed approximately 2,000 individuals. To meet demand for services, we will need to hire 500 more.

With our state and local government partners facing dire shortfalls, accessing private capital will be even more important, but due to CAMBA's size, we cannot currently access the Paycheck Protection Program. That makes a workable Main Street Lending Program incredibly important. To ensure we can stretch our dollars as far as possible, we respectfully ask that you:

- Allow loan forgiveness for nonprofits or offer these organizations a 0% interest rate at a 5 year amortization;
- Ensure payments are not due until two years after a direct loan is made;
- Allow nonprofits maximum flexibility regarding the labor and collective bargaining-related certifications outlined for the program;
- Ensure employee retention provisions begin on the date the borrower receives loan funding and, in implementing workforce restoration/retention provisions, define workforce as full-time employees; and
- Give priority to 501(c)(3) nonprofits responding to COVID-19 relief efforts.

Nonprofit organizations are our country's only institutions solely focused on making communities stronger. In the toughest times, we do the toughest work. When it's time to restore and repair our wellbeing, nonprofits need to be equipped to do that and their unique needs should not be overlooked. These provisions will ensure CAMBA can continue to provide services during and after the crisis. They will help keep nonprofits financially strong, allowing us to continue to meet the immediate needs of our communities while planning for the future.

CAMBA has served New York City for more than 40 years. Our model has been, and remains, to identify emerging needs and to quickly scale programs to tackle those problems. We are working every hour to ensure the health, safety, and security of thousands of Americans and we appreciate your thoughtful consideration of our request.

Sincerely,  
Joanne M. Oplustil  
President and CEO  
CAMBA and CAMBA Housing Ventures

*The following comments are submitted on behalf of Equiant Financial Services, Inc.*

Equiant Financial Services Inc. (Equiant), an Arizona Corporation founded in 2004, is a service company that primarily offers services in loan and HOA receivables portfolios on behalf of originators in the hospitality industry in exchange for fees. Equiant currently employs 79 full time employees with annual revenues of **Confidential Business Information**

Equiant expects significant disruption in receipts due to the concentration of its business in the hospitality industry that has been significantly impacted by Coronavirus. Many of our clients have already experienced a sharp decline in sales which will impact our ability to maintain our projected revenues prior to Coronavirus. Given the expectation of a sharp decline in revenue causing cash depletion, Equiant will be forced to reduce compensation or furlough employees. It is clearly in Equiant's best interest to participate in any aid or relief available under the CARES Act to help avoid staff reductions.

The existing legislation creates a dangerous void. Small businesses, like us, are integral parts of the communities in which they have grown, providing flexible employment for local workers (predominantly women and significantly people of color) and making contributions to local initiatives. While we appear to be small, we are not eligible to participate in many of the relief programs currently offered due to restrictions on affiliations, distributions, and other ambiguities. Further, although widespread relief is provided to businesses operating in NAICS code 72, companies such as Equiant who provide services to gather the revenue needed to operate the hospitality industry may not survive. **The following comments are intended to start to level the playing field for all companies and provide the liquidity that will allow small businesses like Equiant to invest in our people and business now so that when we are permitted to return to our offices, we can do so safely and effectively.**

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, 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. 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 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.

3. **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](mailto:srossetti@me.com) at (240)401-4521.

Respectfully submitted,



Frank Morrisroe

President

April 16, 2020



***The following comments are submitted on behalf of Kroehler Furniture Manufacturing Company, Inc.***

Kroehler has been manufacturing upholstered living room furniture by hand since 1969. Located in Conover, North Carolina, the company employs 200 workers. Due to a drastic drop in retail demand, all operations have been suspended and nearly all 200 workers have been furloughed without pay.

Kroehler Furniture Manufacturing Company, Inc. is at risk of being permanently shuttered by the COVID-19 shutdowns – not only because retail revenue has been abruptly shut off but also because the government relief provided to date fails to adequately account for our circumstances. Put simply, some small businesses were extended aid, large businesses were extended loans, and many like us were left out.

The problem is material, especially in discretionary and retail manufacturing segments. We had revenue more than Confidential Business Information and employ a considerable number of people in our community – both of which we are proud but seem to have removed us from the analysis for those needing relief to date. Our profit margins are not large enough to weather this storm and bring our people back to work without additional support. Companies like us are the companies and brands that customers see every day. The reopening of stores will be a major milestone in the return to normalcy for Americans.

In the CARES Act, though, some small businesses have been left out. 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 Paycheck Protection Program (PPP).

The existing legislation creates a dangerous void. Companies like us fuel significant parts of the economy and account for many jobs in the U.S. Small businesses have become integral parts of the communities in which they have grown, providing flexible employment for local workers (predominantly women and significantly people of color) and making contributions to local initiatives.

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, 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. 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 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.
3. **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.
4. **Duty Deferral & Extended Repayment.** There exists strong bipartisan support for duty deferral, ranging from 90 to 180 days. As the shutdowns linger, the need for deferral grows. However, to be effective, any deferral must come with a reasonable repayment structure; otherwise, deferral merely creates an overwhelming bill due in just a few months, when consumer confidence and discretionary spending habits

may not have returned to pre-COVID-19 levels. A repayment structure that allows deferral over two years – much like the payroll tax deferral – is a necessary and appropriate companion to duty deferral.

For questions contact [srossetti@me.com](mailto:srossetti@me.com) at (240)401-4521.

Respectfully submitted,

Eric Jackson  
CFO  
April 16, 2020

# LUXURY DELIVERY SERVICE, INC.

4300 East Fifth Avenue, Columbus OH 43219

*The following comments are submitted on behalf of Luxury Delivery Service, Inc.*

Luxury Delivery Service, Inc. has been operating as an over-the-road trucking and logistics company for over 20 years. The company employs over 80 drivers and moves over 27,000 trailers of cargo annually. The retail closures based on stay-at-home orders have led to a drastic reduction in volume, resulting in unpaid furloughs for 25% of the company's employees.

Luxury Service, Inc. is at risk of being excessively damaged by the COVID-19 shutdowns – not only because retail revenue has been abruptly shut off, but also because the government relief provided to date fails to adequately account for our circumstances. Put simply, some small businesses were extended aid, large businesses were extended loans, and many like us were left out.

The problem is material, especially in discretionary and retail transportation segments. We had revenue of Confidential Business Information and employ a sizeable number of people in our community – both of which we are proud but seem to have removed us from the analysis for those needing relief to date. Our profit margins are not large enough to weather this storm and bring our people back to work without additional support. Companies like us are the businesses that people rely on every day. The reopening of stores will be a major milestone in the return to normalcy for Americans.

In the CARES Act though, some small businesses have been left out. 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 Paycheck Protection Program (PPP).

The existing legislation creates a dangerous void. Companies like us fuel significant parts of the economy and account for many jobs in the U.S. Small businesses have become integral parts of the communities in which they have grown, providing flexible employment for local workers (predominantly women and significantly people of color) and making contributions to local initiatives.

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, 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. 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 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.
3. **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**
2. 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](mailto:srossetti@me.com) at (240)401-4521.

Respectfully submitted,

Jeff Swanson  
President  
April 16, 2020

April 16, 2020

Submitted electronically.

Re: Comments on the Main Street Lending Program

The Global Business Alliance ("**GBA**") exclusively represents the U.S. operations of many of the world's leading international companies. International companies operating in the United States support millions of high-paying U.S. jobs, produce over a quarter of U.S. goods exports, and help broaden America's economy and open new markets.

GBA's mission is to ensure that policymakers at the federal, state and local level understand the critical role that foreign direct investment plays in America's economy. GBA advocates for fair, non-discriminatory treatment of foreign-headquartered companies and promotes policies that will encourage them to establish U.S. operations.

Under the April 9, 2020 term sheets for the Main Street New Loan Facility ("**MSNLF**") and the Main Street Expanded Loan Facility ("**MSELF**"), "Eligible Lenders" in each facility were defined as "U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies."

Further, under the March 23, 2020 term sheet for the Term Asset-Backed Securities Loan Facility ("**TALF**"), "Eligible Borrowers" were described as follows: "All U.S. companies that own eligible collateral and maintain an account relationship with a primary dealer are eligible to borrow under the TALF. A U.S. company would be defined as a U.S. business entity organized under the laws of the United States or a political subdivision or territory thereof (including such an entity that has a non-U.S. parent company), or a U.S. branch or agency of a foreign bank." However, as revised on April 9, 2020, the TALF term sheet no longer includes the explicit reference to "a U.S. branch or agency of a foreign bank."

GBA requests that the Federal Reserve confirm that U.S. branches and agencies of non-U.S. banks (collectively referred to as "**U.S. branches**") qualify as "U.S. businesses" and are able to act as intermediaries for their customers with regard to these facilities. The Federal Reserve appears to have read the U.S. business provision in CARES Act § 4003(c)(3)(C) as also applying to an intermediary that is facilitating a loan to or purchase from a U.S. business. That interpretation is inconsistent with congressional intent expressed in Section 4003. Regardless, U.S. branches of non-U.S. banks would still qualify as U.S. businesses that meet the requirements of Section 4003(c)(3)(C).

U.S. branches are U.S. operating businesses that engage in financial transactions, provide financial services to U.S. customers and jobs to U.S. workers. Further, a branch is "created"

under either federal or state law via a state or federal license which allows it to be established as an entity and to exist. Likewise, U.S. branches have “significant operations . . . in the United States”. The operations of a U.S. branch are in the United States and operations outside the United States of other branches or affiliates are not part of the operations of the U.S. branch. Finally, a U.S. branch has “a majority of its employees based in the United States.” Employees are hired and compensated by the U.S. branch and are U.S. taxpayers.

If U.S. branches are excluded from the Federal Reserve’s implementation of Title IV programs and facilities, it would unnecessarily hamper American businesses that are severely affected by the economic slowdown from reaching the capital they need to survive this crisis. This outcome would undermine the effectiveness of the CARES Act programs and place a burden on those U.S. customers (and their employees) who have well established pre-existing banking relationships with U.S. branches.

GBA supports the longstanding U.S. policy and principles of national treatment and equality of competitive opportunity. These overarching principles dictate equal treatment for foreign and domestic banks in like circumstances. We therefore request that the Federal Reserve confirm that U.S. branches and agencies of non-U.S. banks qualify as “U.S. businesses” and are able to act as intermediaries for their customers with regard to these facilities.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Nancy McLemon', with a stylized flourish at the end.

Nancy McLemon  
President and CEO  
Global Business Alliance



## DESIGNER BRANDS

The following comments are submitted on behalf of **Designer Brands Inc. (“DBI”)**. DBI is a leading designer, producer and retailer of footwear and accessories. DBI operates more than 500 DSW Designer Shoe Warehouse retail locations in 44 states and supplies footwear to more than 100 department stores in the United States through its Affiliated Business Group. Through its Camuto Group division, DBI designs and produces footwear and accessories sold in more than 5,400 retail locations. Unfortunately, DBI has been forced to shutter more than 500 stores in the United States. As a result, more than 10,000 full- and part-time employees have been placed on temporary leave without pay.

DBI is a mid-market “non-essential” specialty and discretionary retailer. In the CARES Act, mid-market retailers like DBI are forced to compete against the biggest companies in the largest sectors for Exchange Stabilization Fund loans. These large businesses can have more than 100 times the revenue of mid-market retailers and at least five times the number of employees. At the same time, mid-market retailers are not even eligible for the same aid as the largest fast food or hotel companies – each of which has more than five times the revenue as the smallest mid-market retailer – simply because hotels and restaurants were granted a waiver from the traditional affiliation rules applicable to SBA loans under the Paycheck Protection Program (PPP). Thus, through no fault of our own, we (and potentially every other mid-market retailer) is at risk of being exponentially damaged by the COVID-19 shutdowns – not only because revenue has been abruptly shut off but also because the government relief provided to date fails to adequately account for mid-market companies’ circumstances. Put simply, small businesses were extended aid, large businesses were extended credit facilities, and mid-sized businesses were left out.

The problem for mid-market retailers like DBI is material, especially in discretionary and specialty segments. DBI had revenue in 2019 in Confidential Business Information and can employ more than 13,000 full-time and part-time employees at peak holiday season. Although those numbers are significant, given that we operated at a 3-5% operating profit margin before the pandemic, DBI simply does not compete with larger retailers even in the best-of-times. Now, as a result of the current pandemic, we are operating at a loss and will struggle to weather this storm and bring our people back to work without additional support.

The existing legislation creates a dangerous void. Middle-market companies fuel one-third of the economy and account for nearly 60% of the jobs in the U.S. Much like small businesses, middle-market companies have become integral parts of the communities in which they have grown, providing flexible employment for local workers (predominantly women and significantly people



## DESIGNER BRANDS

of color) and making contributions to local initiatives. **The following comments are intended to start to level the playing field for mid-market companies and provide the liquidity that will allow mid-market retailers like DBI to invest in our people and businesses now so that when we are permitted to re-open, we can do so safely and effectively.**

- 1. Expedite NOL Carryback Relief.** 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. Congress already made the determination that companies are entitled to this relief, but it is up to Treasury to ensure that the companies are able to obtain that relief when we actually need it (which is now). At present, there are no other government liquidity programs targeted at middle market companies (>\$2.5B / >10,000 employees), increasing the odds of a sizeable increase in corporate debt issuances at a time of limited investor demand and uncertainty in future cash flows, creating inflated borrowing rates for these employers. 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 are allowed to 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 that inherent inequity, 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. Incorporate language into the next legislative action that permits the \$500B already allocated to the U.S. Treasury's Exchange Stabilization Fund to be lent to mid-sized companies (between \$2.5-\$10B in revenue with 10K+ employees) at attractive rates as an advance on estimated NOL carryback refunds.
- 2. Employee Retention Tax Credit.** The CARES Act did not provide any material assistance to mid-sized retail employers to preserve jobs. When the CARES Act was signed by President Trump, the majority of "non-essential" retail stores already had been shuttered for more than a week, and plans already had been implemented for workers to be furloughed or laid off. Instead of assisting employers in returning unemployed workers to work, employers with over 100 employees effectively were penalized because the



## DESIGNER BRANDS

Employee Retention Tax Credit (ERTC) is available only if individuals are paid **not** to work. Some of our employees can earn as much or more through enhanced unemployment compensation. However, if employers with more than 100 employees were permitted to receive the ERTC for employees who are performing services – just as smaller employers can – we are far more likely to bring employees back sooner, which will assist us in preparing the stores for a safe and comfortable re-open and simultaneously relieve the overwhelming burden on state UI programs. In addition, the maximum wages allowed for the credit should be increased to \$20,000 per quarter.

- 3. Duty Deferral & Extended Repayment.** There exists strong bipartisan support for duty deferral, ranging from 90 to 180 days. This deferral is a straightforward fix that can help retailers like DBI, which already has reduced orders for the remainder of the year. As the shutdowns linger, the need for deferral for specialty and discretionary retailers grows. However, to be effective, any deferral must come with a reasonable repayment structure; otherwise, deferral merely creates an overwhelming bill due in just a few months, when consumer confidence and discretionary spending habits may not have returned to pre-COVID-19 levels. A repayment structure that allows deferral over two years – much like the payroll tax deferral – is a necessary and appropriate companion to duty deferral.
- 4. 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.



## DESIGNER BRANDS

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.

5. **Expanded PPP Eligibility.** Many mid-market retailers with multiple locations would benefit from changes to the PPP program that are entirely consistent with both the letter and the spirit of the Program. Specifically:
  - A. Expand the multiple locations waiver granted to hotels and restaurants (NAICS 72) with multiple physical locations but fewer than 500 employees per location to retail trades (NAICS 44-45).
  - B. In the case of entities that operate in one or more unrelated NAICS codes, waive affiliation rules for an entity that has fewer than 500 employees in a particular NAICS code.

**For questions, please contact:**

Designer Brands Inc.  
William L. Jordan  
Chief Growth Officer  
810 DSW Drive  
Columbus, Ohio 43219  
614-237-7100

# AEO INC.

The following comments are submitted on behalf of **American Eagle Outfitters, Inc. (“AEO”)**. AEO was founded in 1977 as part of a family-owned and –operated retail business and has grown into a beloved multi-brand specialty retailer. We offer a broad assortment of high quality, on-trend apparel, and accessories at affordable prices for men and women under the American Eagle brand, and intimates, apparel, and personal care products for women under the Aerie brand. We sell directly to consumers online and through our vibrant retail channel. Unfortunately, AEO has been forced to shutter every one of its 900+ stores in the United States. As a result, more than 33,000 employees have either been furloughed or laid off.

AEO is a mid-market “non-essential” specialty and discretionary retailer. In the CARES Act, mid-market retailers like AEO are treated like the biggest domestic companies. These large businesses can have more than 100 times the revenue of mid-market retailers and at least five times the number of employees. At the same time, mid-market retailers are not even eligible for the same aid as the largest fast food or hotel companies - each of which has more than five times the revenue as the smallest mid-market retailer – simply because hotels and restaurants were granted a waiver from the traditional affiliation rules applicable to SBA loans under the Paycheck Protection Program (PPP). Thus, through no fault of our own, we (and potentially every other mid-market retailer) is at risk of being exponentially damaged by the COVID-19 shutdowns – not only because revenue has been abruptly shut off but also because the government relief provided to date fails to adequately account for mid-market companies’ circumstances. Put simply, small businesses were extended aid, large businesses were extended credit facilities, and successful mid-sized businesses were left out.

The problem for mid-market retailers like AEO is material, especially in discretionary and specialty segments. AEO had revenue in 2019 in Confidential Business Information and can employ more than 40,000 full-time and part-time employees at peak holiday season. Although those numbers are significant, given that we operated at a slim 3-4% profit margin before the pandemic, AEO simply does not compete with larger retailers even in the best-of-times. Now, as a result of the current pandemic, we are operating at a loss and will struggle to weather this storm and bring our people back to work without additional support.

The existing legislation creates a dangerous void. Middle-market companies fuel one-third of the economy and account for nearly 60% of the jobs in the U.S. Much like small businesses, middle-market companies have become integral parts of the communities in which they have grown, providing flexible employment for local workers (predominantly women and significantly people of color) and making contributions to local initiatives. **The following comments are intended to start to level the playing field for mid-market companies and provide the liquidity that will allow mid-market retailers like AEO to invest in our people and businesses now so that when we are permitted to re-open, we can do so safely and effectively.**

1. **Expedite NOL Carryback Relief.** Congress already made the determination that companies are entitled to this relief, but it is up to Treasury to ensure that the companies are able to obtain that relief when we actually need it (which is now). 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. At present, there

# AEO INC.

are no other government liquidity programs targeted at middle market companies (>\$2.5B / >10,000 employees), increasing the odds of a sizeable increase in corporate debt issuances at a time of limited investor demand and uncertainty in future cash flows, creating inflated borrowing rates for these employers. 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 are allowed to 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 that inherent inequity, 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. Incorporate language into the next legislative action that permits the \$500B already allocated to the U.S. Treasury's Exchange Stabilization Fund to be lent to mid-sized companies (between \$2.5-\$10B in revenue with 10K+ employees) at attractive rates as an advance on estimated NOL carryback refunds.
2. **Employee Retention Tax Credit.** The CARES Act did not provide any material assistance to mid-sized retail employers to preserve jobs. When the CARES Act was signed by President Trump, the majority of "non-essential" retail stores already had been shuttered for more than a week, and plans already had been implemented for workers to be furloughed or laid off. Instead of assisting employers in returning unemployed workers to work, employers with over 100 employees effectively were penalized because the Employee Retention Tax Credit (ERTC) is available only if individuals are paid **not** to work. Some of our employees can earn as much or more through enhanced unemployment compensation. However, if impacted employers with more than 100 employees were permitted to receive the ERTC for employees who are performing services – just as impacted smaller employers can – we are far more likely to bring employees back sooner, which will assist us in preparing the stores for a safe and comfortable re-open and simultaneously relieve the overwhelming burden on state UI programs. In addition, the maximum wages allowed for the credit should be increased to \$20,000 per quarter.
3. **Duty Deferral & Extended Repayment.** There exists strong bipartisan support for duty deferral, ranging from 90 to 180 days. This deferral is a straightforward fix that can help retailers like AEO, which already has reduced orders at least for the remainder of the year. We have no intent, let alone ability, to increase inventory purchases during a limited deferral period, and we agree that no business should take advantage of any deferral period. However, a targeted deferral period to impacted businesses is entirely consistent with other deferrals the Administration already has extended to impacted groups, including payroll tax and student loan deferrals.

As the shutdowns linger, the need for deferral for specialty and discretionary retailers who have been impacted grows. However, to be effective, any deferral must come with a reasonable

repayment structure; otherwise, deferral merely creates an overwhelming bill due in just a few months, when consumer confidence and discretionary spending habits may not have returned to pre-COVID-19 levels. A repayment structure that allows deferral over two years – much like the payroll tax deferral – is a necessary and appropriate companion to duty deferral.

- 4. 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.

# AEO INC.

5. **Expanded PPP Eligibility.** Many mid-market retailers with multiple locations would benefit from changes to the PPP program that are entirely consistent with both the letter and the spirit of the Program. Specifically:
- A. Expand the multiple locations waiver granted to hotels and restaurants (NAICS 72) with multiple physical locations but fewer than 500 employees per location to retail trades (NAICS 44-45).
  - B. In the case of entities that operate in one or more unrelated NAICS codes, waive affiliation rules for an entity that has fewer than 500 employees in a particular NAICS code.

Respectfully submitted,



Jay L. Schottenstein  
Chief Executive Officer & Executive Chairman

Please direct communications to:  
Beth Henke, Deputy General Counsel  
412.432.3374  
HenkeB@ae.com

*The following comments are submitted on behalf JS ADL LLC (d/b/a Artisan de Luxe).*

Artisan de Luxe is a single-store clothing and accessories retailer located in Columbus, Ohio. Since the beginning of the COVID-19 pandemic Artisan de Luxe has been forced to close its store and 6 of the 7 full-time and part-time employees have either been laid-off or had their hours significantly reduced.

Artisan de Luxe is in every way a small business – 7 employees in a company generating Confidential Business Information in revenue at our single store. The Paycheck Protection Program (PPP) appeared to us to be a well-targeted and much needed bridge, allowing us to retain our staff until we could potentially re-open to the public. In the CARES Act though, some small businesses, such as ours, have been left out. 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 Paycheck Protection Program (PPP).

The existing legislation creates a dangerous void. Small businesses, like us, are integral parts of the communities in which they have grown, providing flexible employment for local workers (predominantly women and college students) and making contributions to local initiatives. **The following comments are intended to start to level the playing field for all companies and provide the liquidity that will allow small businesses like Artisan de Luxe to invest in our people and business now so that when we are permitted re-open our store, we can do so safely and effectively.**

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.

3. **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 are allowed to 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](mailto:srossetti@me.com) at (240)401-4521.

Respectfully submitted,

Jared Rubin  
CFO  
April 16, 2020

# COMPANY FINE WINE

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*The following comments are submitted on behalf Raconteur Fine Wines LLC (d/b/a Company Fine Wine).*

Company Fine Wine is a seller of wine and spirits located in Napa, CA. Company Fine Wine is at risk of being existentially damaged by the COVID-19 crisis. Due to the crisis we have seen difficulty sourcing inventory given our global supply chain as well as closure of most of our office severely affecting our ability to operate.

Company Fine Wine is in every way a small business with only 10 employees. The Paycheck Protection Program (PPP) appeared to us to be a well-targeted and much needed bridge, allowing us to retain our staff until our revenue streams return to stability. As it stands, we are ineligible as we fall afoul of the SBA's affiliation rules. It is unimaginable that we are not eligible for small business aid when some of the largest fast food or hotel companies - each of which has many hundreds of times our revenue – have been granted a waiver from the traditional affiliation rules.

The existing legislation creates a dangerous void. Small businesses, like us, are integral parts of the communities in which they have grown, providing flexible employment for local workers and making contributions to local initiatives. **The following comments are intended to start to level the playing field for all companies and provide the liquidity that will allow small businesses like Company Fine Wine to invest in our people and business now so that when we are permitted fully return to our offices, we can do so safely and effectively.**

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.

# COMPANY FINE WINE

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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

# COMPANY FINE WINE

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distributions for flow-through entities who must make distributions to owners for taxes are permitted.

3. **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 are allowed to 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.
  
4. **Duty Deferral & Extended Repayment.** There exists strong bipartisan support for duty deferral, ranging from 90 to 180 days. As the shutdowns linger, the need for deferral grows. However, to be effective, any deferral must come with a reasonable repayment structure; otherwise, deferral merely creates an overwhelming bill due in just a few months, when consumer confidence and discretionary spending habits may not have returned to pre-COVID-19 levels. A repayment structure that allows deferral over two years – much like the payroll tax deferral – is a necessary and appropriate companion to duty deferral.

For questions contact [srossetti@me.com](mailto:srossetti@me.com) at (240)401-4521.

Respectfully submitted,

Matt Wilson  
Manager  
April 16, 2020



April 16, 2020

Sent Via Email: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Board of Governors of the Federal Reserve System  
 20 Constitution Ave NW  
 Washington, DC 20551

Re: Main Street Lending – Federal Reserve Comments Submission

To whom it may concern,

**Background on Triple Five:**

Triple Five is the developer, owner and operator of two of the most important world-class, tourist-destination entertainment and retail complexes in the United States – **Mall of America (located in Minnesota)** and **American Dream (located in New Jersey)**. **Due to the coronavirus (COVID-19) pandemic, both complexes were closed in March.**

These two properties combined employ over 30,000 people, generate in excess of \$6 billion to the economies of these two states/regions and generate over \$300 million in taxes annually to state and local governments. Both properties are economic engines which provide enormous fuel and power to the tourism, hotel/hospitality, entertainment, retail and food and beverage industries of each state. Combined, the properties: (i) draw an estimated 80 million visits each year with approximately 50% of the visitors as tourists to these locations; and (ii) bring new revenues and economic activity to these states with enormous multiplier effects in their economies.

Triple Five Assets	Mall of America	American Dream	Total
<b>Current Size</b>	5.6M sf	over 5M sf	over 10.6M sf
<b># Tenants/business</b>	over 500	over 400	over 900
Confidential Business Information			
<b>Impacts</b>			
<b>Employment (on-site jobs)</b>	15,000	16,000	over 30,000
<b>Total Employment (on and off-site jobs)</b>	20,000	23,000	over 45,000
<b>Tax Revenue (annual)</b>	over \$185 million	over \$200 million	over \$385 million
<b>Visits</b>	over 40 million	40 - 50 million	over 80 million
<b>Economic Impact (annual)</b>	\$2.5 billion	\$3 billion	over \$5.5 billion
<b>Future Expansion</b>			
Confidential Business Information			
<b>Employment (construction)</b>	22,000	25,000	over 45,000
<b>Employment (permanent)</b>	8,000	10,000	over 18,000

**Main Street Extended Lending Program:**

Triple Five agrees with the Federal Reserve and the Treasury Department that businesses vary widely in their financing needs. The size of the U.S. economy is almost \$22 trillion. The Federal Reserve's lending facilities must support as many businesses as possible at this critical time, which in turn supports the economy as effectively and efficiently as possible and also safeguarding taxpayer funds.

**Current Borrower Eligibility Requirement - Maximum EBITDA Test**

The Extended Loan Facility Term Sheet issued on April 9, 2020 includes a loan eligibility criteria which excludes an entire class of real estate assets that do not meet the six (6) times EBITDA requirement. The recommended changes will help otherwise strong businesses who are experiencing even greater challenges than companies with investment grade assets that would otherwise meet the test.

Triple Five recommends that the Federal Reserve modify this requirement to allow for participation of large, institutional-quality real estate assets (which are also important regional economic generators) with debt structures that exceed this multiple, but are otherwise eligible.

**Proposed Alternative Criteria:**

Common metrics to measure debt for commercial real estate include: **Debt Yield** (Net Cash Flow/Loan Amount) and **Loan to Value** (Loan Amount/Asset Value). Based on input from The Commercial Real Estate Finance Council (CREFC), one of the most important industry organizations focused on Commercial Real Estate CMBS market, as well multiple commercial mortgage trading desks and commercial real estate brokers, loan leverage on recent originations for institutional quality real estate assets have the following characteristics, including:

**Debt Yield:** Minimum 6% debt yield (based on 2019 income in place)

**Loan to Value:** Up to 75% range, for strong, stable assets (based on 2019 value)

**We propose that the Federal Reserve modify the current eligibility requirement and:**

- 1. Adopt 6% Debt Yield and 75% Loan to Value criteria, which are within accepted industry norms for premier quality real estate assets.**

*OR*

- 2. Allow premier Commercial Real Estate Properties -- that produce substantial jobs, and other economic impacts -- to be considered and granted approval for participation, on an exception basis. This should include recently completed assets that do not have historic cash flow.**

**Mall of America:**

Mall of America (MOA) is one of the largest employers in the State of Minnesota with over 15,000 people working at the complex and thousands more working off-site in related jobs supporting the property – thousands of hotel, transportation and business suppliers. Opened in 1992, Mall of America has become the number one tourist destination in the U.S. per Time Magazine with over 40 million visits per year. It generates over \$185 million annual in tax revenues – critical to Minnesota and the entire metro area. Since 1992, the property has generated in excess of \$3 billion in federal, state and local taxes.

**Facility Request:**

These loan proceeds will be critical to allow Mall of America to quickly reopen, maintain its position as America's #1 retail & entertainment destination and to continue to be an important employment center and critical economic engine for the State of Minnesota and the entire Minneapolis-St. Paul metropolitan area. **More specifically, the addition of [Confidential Business Information] loan proceeds, provided through the Main Street Extended Loan Facility program, are essential in order to allow the property to reopen and: (a) rehire our employees (b) pay property taxes [Confidential Business Information] sales and other taxes; (c) pay debt service on [Confidential Business Information] (d) other operating shortfalls during the period the property is closed, and during period from re-opening to stabilization.**

**Mall of America is an excellent candidate to receive funds under this Program given:**

1. **MOA is an important asset for the State of Minnesota, and the Midwest** -- as a job creator and tax revenue generator; as well as an international tourist destination which supports the extensive hospitality market and other surrounding businesses. It remains the most visited tourist destination in the nation.
2. **MOA's more than 27-year track record of success with stable income stream** -- (approximately [Confidential Business Information] EBITDA in 2019) makes it one of the most important retail entertainment centers in the country.
3. **Additional Economic Benefits** -- Future expansion estimated at [Confidential Business Information] will bring an additional 22,000 construction jobs and 8,000 permanent jobs, tax revenues, tourism dollars and other economic impacts to the state and region.

**American Dream:**

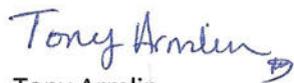
Opening initially in October 2019, this [Confidential Business Information] development, has created over 23,000 construction jobs on and off site, with over 8 million worker-hours and \$1.2 billion in wages paid to complete the project. Scheduled to open its subsequent retail and water park phases on March 19, 2020, the coronavirus (COVID-19) crisis plunged this world-class, state-of-the-art new entertainment and retail complex into perilous uncertainty. More than 16,000 employees projected to be hired in 2020 for the complex were furloughed or not hired due to the suspended opening. The center has existing debt facilities totaling [Confidential Business Information] to complete the opening and stabilization period.

1. **American Dream is an important asset for and designated project of the State of New Jersey** -- which was on-track to generate over 16,500 jobs on-site and an additional 6,700 jobs off-site prior to the coronavirus crisis. These jobs are projected to produce annual wage income for New Jersey residents totaling over \$1.08 billion. Further, this new property is conservatively projected to generate over \$2.9 Billion in annual economic output for the State and Region. With a projected 40 to 50 Million annual visits, American Dream will unquestionably be a leading tourist destination generating major economic growth for New Jersey and New York.
2. **American Dream's projected annual Tax Revenue generation for the State of New Jersey and its municipalities is slated at over \$186 Million** -- Over its first 20 years of operations, American Dream is projected to generate over \$4.4 Billion in State tax revenues alone.
3. **Additional Economic Benefits** -- Future expansion estimated at over \$2.0 billion will bring an estimated additional 25,000 construction jobs and 10,000 permanent jobs as well as additional tax revenues and tourism dollars to the state and region.

The addition of Confidential Business Information additional loan proceeds provided through the Main Street Extended Loan Facility program will provide an essential “lifeline” that will enable the property to re-open and complete its launch.

Thank you for your consideration of this urgent request.

Sincerely,



Tony Armlin  
Senior Vice President, Development



Federal Reserve Bank

April 16, 2020

Re: Main Street Lending

Elevation Resources LLC is an oil and gas exploration and production company based in Midland, Texas. We have 20 full-time employees and when we are drilling wells, have over 150 contract employees helping to drill and complete the wells. We have paid over Confidential Business Information to University Lands (UT System), severance taxes and ad valorem taxes to the State of Texas and Texas Counties in our seven-year history.

Like so many other small businesses, we have been severely impacted by government restrictions and changes in business behavior due to the coronavirus, as well as the overall weakened economy. In particular, the stay at home orders across our nation have reduced gasoline and jet fuel demand by 50% or more, which in turn has reduced oil demand and has driven the price of oil at the wellhead below \$20 per barrel. We have been paid effectively zero for our natural gas and gas liquids for the past several months. These record low commodity prices in current dollars is unsustainable and threatens the survival of our domestic oil and gas industry, including the companies that serve operators in the well construction process.

In order to keep paying and providing benefits including full healthcare coverage and 401-k matching to our employees so that they can support their families, we need access to lending under the Small Business Administration ("SBA") Paycheck Protection Program ("PPP") that is designed for businesses like ours and the Main Street Lending Program.

The recently passed Families First Coronavirus Response Act ("FFCRA") and the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") both are, at their core, efforts to mitigate the hardships that the necessary response to COVID-19 has caused small businesses and, more importantly, their employees. However, due to the different legal underpinnings of these laws, a discrepancy has arisen in the types of businesses (and their employees) who are able to take advantage of the benefits Congress had intended that these laws provide to all small businesses. One significant discrepancy relates to how the Department of Labor ("DOL") and the SBA determine who qualifies as a "small business" for purposes of each act.

To date, the SBA has stated that it intends to apply the affiliation rules under CFR 121.301(f) for the purposes of determining whether or not an employer has more than 500 employees. Under that regulation, the SBA applies broad affiliation rules, which generally require a company to aggregate employees or receipts with companies under common control with it. The SBA's normal affiliation rules are appropriate when giving normal small business loans under normal

Main Street Lending

circumstances, as these loans are focused on entities that need access to capital that may not be available from other sources. However, as the SBA and the Department of the Treasury have stated, the CARES Act and the PPP were intended to protect employees. The breadth of the SBA affiliation rules will result in a large number of employees losing their jobs because the entities they work for are disqualified from the PPP due to relationships those entities may have with investors, despite the fact that they work for businesses with less than 500 employees.

Because of the application of the SBA affiliation rules, we and thousands of small businesses like us are unable to access this program since one of the owners of our small business is a private investment firm. In our case, our primary investor has and continues to be a very supportive shareholder of our company. However, the economic impact of the current crisis is too great for any one investor to address on its own, especially when you consider the many businesses such firms invest in, each facing its own substantial financial challenges at this difficult time.

We would strongly urge Congress to, in this limited instance, adopt the same rules for determining the applicability of the FFCRA and the PPP, and clarify that an employer who has less than 500 employees under either the SBA affiliation rules or DOL integrated employer test may qualify for a PPP loan. In the DOL's Question and Answer with respect to the FFCRA, the DOL applies the "integrated employer test" under CFR 825.104 to determine whether two or more entities are separate or combined for the purposes of determining the number of employees. The integrated employer test is based on a significant body of case law rooted in Title VII of the Civil Rights Act that provides clear guidance to employers. Adopting this standard for purposes of the PPP would result in employers being able to count on one test, would eliminate the confusion for certain businesses who would qualify under the DOL test but not under the SBA test, and would benefit a larger number of employees, which at its root, is the purpose of the PPP.

As a small business with employees who reside in Midland, we beseech you and your colleagues to help us and thousands of other small businesses like us access this program. To penalize our company and our employees for accessing private capital as we have sought to build our business only hurts Texas and will extend the economic downturn. Given we are a mature business, Elevation relies on our internally generated cash flow and our reserve base loan with a group of national and local banks.

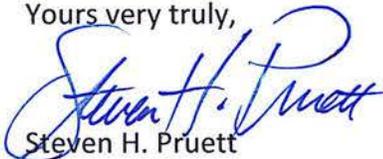
To that end, the Main Street Lending Program prohibits the use of the loan supported by the U.S. Government to repay debt other than to pay mandatory principal payments. The nature of reserve base loans which Elevation Resources and hundreds of other oil and gas producers rely upon requires our collateral value to be redetermined at least every six months based on an assessment of the reserve value that is impacted by both future volumes and costs, but importantly, by oil and natural gas price forecasts determined solely by our lenders. Given the collapse in oil and natural gas prices, oil and gas lenders have dramatically reduced their price forecasts, thus reducing the collateral value of reserves often below that of what oil and gas companies currently have borrowed. This places the borrower in a deficiency which has to be reduced to the level of the lower collateral value within three to six months to avoid foreclosure. A schedule of payments to reduce borrowings below the reduced loan commitment is developed

Main Street Lending

by the banks. I petition Congress, the Federal Reserve, the Office of the Comptroller of Currency, or any relevant governing body to clarify the interpretation of the Main Street Lending Program to enable oil and gas borrowers with borrowing base deficiencies to qualify the subject loans for use in curing borrowing base deficiencies with principal payments to enable our continued operations, employment, and payment of taxes and royalties in our communities. Once the COVID-induced petroleum product demand destruction ceases as our global economy recovers, oil and natural gas prices will recover, the banks' price forecasts will improve, and the collateral value of our oil and natural gas reserves will be restored to pre-COVID levels.

Thank you for your understanding and support. If you would like further information on our company and our current circumstances, please contact me at 432-685-7744 or [spruett@elevationres.com](mailto:spruett@elevationres.com).

Yours very truly,



Steven H. Pruett

President & CEO