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Alerts

Federal Reserve Board Expands Scope and Eligibility of Main Street Lending Program

May 8, 2020
Hinshaw Alert

On April 30, 2020 the Federal Reserve Board (the "Board") announced an expansion of the scope and eligibility for its Main Street Lending Program.

Under the three Facilities—the Main Street New Loan Facility (the "New Facility"), the Main Street Priority Loan Facility (the "Priority Facility"), and the Main Street Expanded Loan Facility (the "Expanded Facility")—the Federal Reserve Bank of Boston (the "Reserve Bank") will commit to lend to a single common special purpose vehicle ("SPV") which will purchase participations in Eligible Loans issued by Eligible Lenders.

The Board expanded the loan options available to businesses and increased the maximum size of businesses eligible for support under the program. The changes include:

- creating a third loan option, with increased risk sharing by lenders for borrowers with greater leverage;
- lowering the minimum loan size for certain loans to $500,000; and
- expanding the pool of businesses eligible to borrow.

Under the new loan option (the Priority Facility), lenders would retain a 15% share on loans that when added to existing debt does not exceed six times a borrower's 2019 earnings, adjusted for interest payments, taxes, and depreciation and other appropriate adjustments. This is comparable to the two existing loan options where lenders retain a 5% share on loans.

Businesses with up to 15,000 employees or $5 billion in annual revenues are now eligible to participate. Previously, under the initial program terms, companies with up to 10,000 employees and $2.5 billion in annual revenues were able to participate. The minimum loan size for two of the options (the New Facility and the Expanded Facility) was also lowered from $1 million to $500,000. A start date for the program will be announced soon.

The term sheets for each of these Facilities are discussed below. The Board and the U.S. Secretary of the Treasury may make adjustments to the terms and conditions for the three Facilities. Any changes will be announced on the Board's website.

Attorneys

Timothy M. Sullivan

Service Areas

Business & Commercial Transactions

The following table compares each of the options and their differences.

The Facility loans are full-recourse loans and not forgivable. As described in Section 4003(d)(3) of the CARES Act, the principal amount of a loan made through one of these three Facilities cannot be reduced through loan forgiveness.

A business may only participate in one of the three Facilities. If a business participates in one of the three Facilities, they cannot participate in the Board's Primary Market Corporate Credit Facility.

However, an Eligible Borrower may receive more than one loan under a single Facility, provided that the sum of New Facility loans or Priority Facility loans received by a single borrower do not exceed $25 million or four times 2019 adjusted EBITDA; and the sum of Expanded Facility upsized tranches received by a single borrower do not exceed $200 million or six times 2019 adjusted EBITDA.

Regulatory Capital Treatment

The treatment described below only applies to Eligible Lenders subject to the federal banking agencies' capital rule. Credit unions that participate in the program are subject to any capital requirements implemented by the National Credit Union Administration.

The portion of an Eligible Loan that is retained by an Eligible Lender should be assigned the risk weight applicable to the counterparty for the loan—generally a 100% risk weight for a corporate exposure.

For purposes of the risk-based capital and leverage rules, the exposure amount for Priority Facility loans is 15% of the outstanding Priority Facility loan balance; the exposure amount for New Facility loans and Expanded Facility upsized tranches is 5% of the New Facility loan balance or Expanded Facility upsized tranche balance, respectively. As for Expanded Facility loans, this treatment only applies to the outstanding Expanded Facility upsized tranche balance. The underlying loan or line of credit would be subject to the capital treatment that applied prior to the sale of the participation to the SPV.

Secured Eligible Loans are eligible for the credit risk mitigation treatment in the standardized approach, provided that any collateral securing the loan is eligible financial collateral. Eligible Lenders are not permitted to recognize collateral attributable to the SPV's interest for purposes of the credit risk mitigation treatment under the capital rule.

Main Street New Loan Facility

Under the Main Street New Loan Facility (the "New Facility"), the SPV will purchase 95% participations in Eligible Loans originated by Eligible Lenders after April 24, 2020. Eligible Lenders will retain 5% of each Eligible Loan.

Eligible Lenders

An Eligible Lender is a U.S. federally insured depository institution (including banks, savings associations, or credit unions), a U.S. branch or agency of a foreign bank, a U.S. bank holding company, a U.S. savings and loan holding company, a U.S. intermediate holding company of a foreign banking organization, or a U.S. subsidiary of any of the foregoing.

Eligible Borrowers

An Eligible Borrower is a Business that:

1. was established prior to March 13, 2020;
2. is not an Ineligible Business;

3. meets at least one of the following two conditions: (i) has 15,000 employees or fewer, or (ii) had 2019 annual revenues of $5 billion or less (see below for how to count employees);
4. is created or organized in the U.S. or under the laws of the U.S. with significant operations in, and a majority of its employees based in, the U.S.;
5. does not also participate in the Priority Facility, the Expanded Facility, or the Primary Market Corporate Credit Facility; and
6. has not received specific support pursuant to the Subtitle A of Title IV of the CARES Act.

Businesses that have received paycheck protection program (PPP) loans are permitted to borrow under the New Facility, provided that they are Eligible Borrowers.

Under the three Facilities, a Business is an entity that is organized for profit as a partnership; a limited liability company; a corporation; an association; a trust; a cooperative; a joint venture with no more than 49% participation by foreign business entities; or a tribal business concern as defined in 15 U.S.C.§ 657a(b)(2)(C), except that "small business concern" in that Section should be replaced with "Business" as defined herein. Other forms of organization may be considered for inclusion as a Business under this Facility at the discretion of the Federal Reserve.

In addition, the three Facilities define an Ineligible Business as a type of business listed in the SBA rules at 13 CFR 120.110(b)-(j) and (m)-(s), as modified by regulations implementing the PPP established by Section 1102 of the CARES Act on or before April 24, 2020. The application of these restrictions to any of the three Facilities may be further modified at the discretion of the Federal Reserve.

Businesses must meet at least one of two conditions specified in the third list item of the Eligible Borrower definition above, but are not required to meet both.

When counting employees, a Business should follow the framework outlined in the SBA's regulation at 13 CFR 121.106. Under this regulation, the Business should count all full-time, part-time, seasonal, or otherwise employed persons—excluding volunteers and independent contractors—as employees. Businesses should also count employees employed by their affiliates. In order to determine the applicable number of employees, Businesses should use the average of the total number of persons employed by the Eligible Borrower and its affiliates for each pay period over the 12 months prior to the origination or upsizing of the Facility loan.

Eligible Loans

An Eligible Loan is a secured or unsecured term loan made by an Eligible Lender to an Eligible Borrower that was originated after April 24, 2020, provided that the loan has all of the following features:

1. 4 year maturity;
2. principal and interest payments deferred for one year (unpaid interest will be capitalized);
3. adjustable rate of LIBOR (1 or 3 month) + 300 basis points;
4. principal amortization of one-third at the end of the second year, one-third at the end of the third year, and one-third at maturity at the end of the fourth year;
5. minimum loan size of $500,000;
6. maximum loan size that is the lesser of (i) $25 million or (ii) an amount that, when added to the Eligible Borrower's existing outstanding and undrawn available debt (as defined below), does not exceed four times the Eligible Borrower's adjusted 2019 earnings, before interest, taxes, depreciation and amortization (EBITDA);
7. is not, at the time of origination or at any time during the term of the Eligible Loan, contractually subordinated in terms of priority to any of the Eligible Borrower's other loans or debt instruments; and
8. prepayment permitted without penalty.

In processing an application for an Eligible Loan, Eligible Lenders are expected to:

- conduct an assessment of each potential borrower's financial condition at the time the borrower submits the application; and
- when evaluating the financial condition and creditworthiness of a borrower to apply their own underwriting standards.

An Eligible Lender may require additional information and documentation in making this evaluation. The decision as to whether an Eligible Borrower should receive an Eligible Loan in light of these considerations is solely up to the Eligible Lender. As a consequence, businesses that otherwise meet the Eligible Borrower requirements may not be approved for a loan or may not receive the maximum allowable amount.

When calculating adjusted 2019 EBITDA, an Eligible Lender must use the methodology the lender previously used for adjusting EBITDA when extending credit to the Eligible Borrower or similarly situated borrowers on or before April 24, 2020.

As defined, the phrase "existing outstanding and undrawn available debt" includes all amounts borrowed under any loan Facility, including unsecured or secured loans from any bank, non-bank financial institution or private lender, as well as any publicly issued bonds or private placement Facilities. It also includes all unused commitments under any loan Facility, excluding:

- any undrawn commitment that serves as a backup line for commercial paper issuance;
- any undrawn commitment that is used to finance receivables (including seasonal financing of inventory);
- any undrawn commitment that cannot be drawn without additional collateral; and
- any undrawn commitment that is no longer available due to change in circumstance.

Existing outstanding and undrawn available debt should be calculated as of the date of the loan application.

Loan Classification

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

Loan Participations

The SPV will purchase at par value a 95% participation in the Eligible Loan. The risk in the Eligible Loan will be shared on a pari passu basis by the SPV and the Eligible Lender.

The Eligible Lender must retain its 5% of the Eligible Loan until it matures or the SPV sells all of its participation, whichever comes first.

The sale of a participation in the Eligible Loan to the SPV must be completed expeditiously after the Eligible Loan's origination and will be structured as a "true sale."

Required Lender Certifications and Covenants

In addition to other certifications required by applicable statutes and regulations, an Eligible Lender must:

- Commit that it will not request that the Eligible Borrower repay debt extended by the Eligible Lender to the Eligible Borrower, or pay interest on such outstanding obligations, until the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration.
- Commit that it will not cancel or reduce any existing committed lines of credit to the Eligible Borrower, except in an event of default.

- Certify that the methodology used for calculating the Eligible Borrower's adjusted 2019 EBITDA for the leverage requirement above in Section 6(ii) of the Eligible Loan paragraph above is the methodology it has previously used for adjusting EBITDA when extending credit to the Eligible Borrower or similarly situated borrowers on or before April 24, 2020.
- Certify that it is eligible to participate in the New Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act (see Compliance with Section 4019(b) of the CARES Act, below).

In addition to other certifications required by applicable statutes and regulations, an Eligible Borrower must:

- Commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due.
- Commit that it will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender.
- Certify that it has a reasonable basis to believe that, as of the date of origination of the Eligible Loan and after giving effect to such loan, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period.
- Commit that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act (see Compliance with Section 4003(c)(3)(A)(ii) of the CARES Act, below), except that an S corporation or other tax pass-through entity that is an Eligible Borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings.
- Certify that it is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act (see Compliance with Section 4019(b) of the CARES Act, below).

The Eligible Lender should collect these certifications from the Eligible Borrower at the time of origination of the Eligible Loan. Eligible Lenders may rely on an Eligible Borrower's certifications and covenants, as well as any subsequent self-reporting by the Eligible Borrower.

Retaining Employees

An Eligible Borrower should undertake good-faith efforts to maintain payroll and retain employees—which could be up to four years—in light of its capacities, the economic environment, its available resources, and the business need for labor.

Borrowers that have already laid-off or furloughed workers as a result of COVID-19 are eligible to apply for Facility loans.

Transaction Fee

At the time of origination of the Eligible Loan, an Eligible Lender will pay the SPV a transaction fee of 100 basis points of the principal amount of the Eligible Loan.

The Eligible Lender may require the Eligible Borrower to pay this fee.

Loan Origination and Servicing Fees

At the time of origination of the Eligible Loan, an Eligible Borrower will pay an Eligible Lender an origination fee of up to 100 basis points of the principal amount of the Eligible Loan.

To pay for loan servicing, the SPV will pay annually to an Eligible Lender 25 basis points of the principal amount of the SPV's participation in the Eligible Loan.

Further information regarding credit administration and loan servicing will be made available on the Board's website.

New Facility Termination

Unless the Board and the Department of the Treasury extend the New Facility, the SPV will cease purchasing participations in Eligible Loans on September 30, 2020. The Reserve Bank will continue to fund the SPV after such date until the SPV's underlying assets mature or are sold.

Main Street Expanded Loan Facility

Program

Under the Main Street Expanded Loan Facility (the "Expanded Facility"), the SPV will purchase 95% participations in the upsized tranche of Eligible Loans from Eligible Lenders. Eligible Lenders will retain 5% of the upsized tranche of each Eligible Loan.

Eligible Lenders

An Eligible Lender is a U.S. federally insured depository institution (including banks, savings associations, or credit unions), a U.S. branch or agency of a foreign bank, a U.S. bank holding company, a U.S. savings and loan holding company, a U.S. intermediate holding company of a foreign banking organization, or a U.S. subsidiary of any of the foregoing.

Eligible Borrowers

An Eligible Borrower is a Business (as defined above in Main Street New Loan Facility – Eligible Borrowers) that:

1. was established prior to March 13, 2020;
2. is not an Ineligible Business (as defined above in Main Street New Loan Facility – Eligible Borrowers);
3. meets at least one of the following two conditions: (i) has 15,000 employees or fewer, or (ii) had 2019 annual revenues of $5 billion or less (for counting employees see, Main Street New Loan Facility – Eligible Borrowers, above);
4. is created or organized in the U.S. or under the laws of the U.S. with significant operations in, and a majority of its employees based in, the U.S.;
5. does not also participate in the New Facility, the Priority Facility, or the Primary Market Corporate Credit Facility; and
6. has not received specific support pursuant to the Subtitle A of Title IV of the CARES Act.

Businesses that have received PPP loans are permitted to borrow under the Expanded Facility, provided they are Eligible Borrowers.

Eligible Loans

An Eligible Loan is a secured or unsecured term loan or revolving credit Facility made by an Eligible Lender to an Eligible Borrower that was originated on or before April 24, 2020, and has a remaining maturity of at least 18 months—taking into account any adjustments made to the maturity of the loan after April 24, 2020, including at the time of upsizing—provided that the upsized tranche of the loan is a term loan that has all of the following:

1. 4 year maturity;
2. principal and interest payments deferred for one year (unpaid interest will be capitalized);

3. adjustable rate of LIBOR (1 or 3 month) + 300 basis points;
4. principal amortization of 15% at the end of the second year, 15% at the end of the third year, and a balloon payment of 70% at maturity at the end of the fourth year;
5. minimum loan size of $10 million;
6. maximum loan size that is the lesser of (i) $200 million, (ii) 35% of the Eligible Borrower's existing outstanding and undrawn available debt (as defined above in Main Street New Loan Facility – Eligible Loans) that is pari passu in priority with the Eligible Loan and equivalent in secured status (i.e., secured or unsecured), or (iii) an amount that, when added to the Eligible Borrower's existing outstanding and undrawn available debt, does not exceed six times the Eligible Borrower's adjusted 2019 EBITDA (as defined above in Main Street New Loan Facility—Eligible Loans);
7. at the time of upsizing and at all times the upsized tranche is outstanding, the upsized tranche is senior to or *pari passu* with, in terms of priority and security, the Eligible Borrower's other loans or debt instruments, other than mortgage debt; and
8. prepayment permitted without penalty.

See Main Street New Loan Facility – Eligible Loans (above) for a discussion of the Eligible Lender's obligations when processing an Eligible Loan application.

Loan Classification

The Eligible Loan must have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system as of December 31, 2019.

Loan Participations

The SPV will purchase at par value a 95% participation in the upsized tranche of the Eligible Loan, provided that it is upsized on or after April 24, 2020. The risk in the upsized tranche will be shared on a *pari passu* basis by the SPV and the Eligible Lender.

The Eligible Lender must be one of the lenders that holds an interest in the underlying Eligible Loan at the date of upsizing.

The Eligible Lender must retain its 5% portion of the upsized tranche of the Eligible Loan until the upsized tranche of the Eligible Loan matures or the SPV sells all of its 95% participation, whichever comes first.

Further, the Eligible Lender must retain its interest in the underlying Eligible Loan until the underlying Eligible Loan matures, the upsized tranche of the Eligible Loan matures, or the SPV sells all of its 95% participation, whichever comes first.

Any collateral securing the Eligible Loan—at the time of upsizing or on any subsequent date—must secure the upsized tranche on a *pro rata* basis.

The sale of a participation in the upsized tranche of the Eligible Loan to the SPV must be completed expeditiously after the Eligible Loan's upsizing and will be structured as a "true sale."

Required Lender Certifications and Covenants

In addition to other certifications required by applicable statutes and regulations, an Eligible Lender must:

- Commit that it will not request that the Eligible Borrower repay debt extended by the Eligible Lender to the Eligible Borrower, or pay interest on such outstanding obligations, until the upsized tranche of the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration.
- Commit that it will not cancel or reduce any existing committed lines of credit to the Eligible Borrower, except in an event of default.

- Certify that the methodology used for calculating the Eligible Borrower's adjusted 2019 EBITDA for the leverage requirement above in Section 6(iii) of the Eligible Loan paragraph above is the methodology it previously used for adjusting EBITDA when originating or amending the Eligible Loan on or before April 24, 2020.
- Certify that it is eligible to participate in the Expanded Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act (see Compliance with Section 4019(b) of the CARES Act, below).

Required Borrower Certifications and Covenants

In addition to other certifications required by applicable statutes and regulations, an Eligible Borrower must:

- Commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the upsized tranche of the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due.
- Commit that it will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender.
- Certify that it has a reasonable basis to believe that, as of the date of upsizing of the Eligible Loan and after giving effect to such upsizing, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period.
- Commit that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act (see Compliance with Section 4003(c)(3)(A)(ii) of the CARES Act, below**)**, except that an S corporation or other tax pass-through entity that is an Eligible Borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings.
- Certify that it is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act (see Compliance with Section 4019(b) of the CARES Act, below).

The Eligible Lender should collect the certifications from the Eligible Borrower at the time of origination of the Eligible Loan. Eligible Lenders may rely on an Eligible Borrower's certifications and covenants, as well as any subsequent self-reporting by the Eligible Borrower.

Retaining Employees

An Eligible Borrower should undertake good-faith efforts to maintain payroll and retain employees—for as long as four years—in light of its capacities, the economic environment, its available resources, and the business' need for labor.

Borrowers that have already laid-off or furloughed workers as a result of COVID-19 are eligible to apply for Facility loans.

Transaction Fee

At the time of upsizing of the Eligible Loan, an Eligible Lender will pay the SPV a transaction fee of 75 basis points of the principal amount of the upsized tranche of the Eligible Loan. The Eligible Lender may require the Eligible Borrower to pay this fee.

Loan Upsizing and Servicing Fees

At the time of upsizing of the Eligible Loan, an Eligible Borrower will pay an Eligible Lender an origination fee of up to 75 basis points of the principal amount of the upsized tranche of the Eligible Loan.

To pay for loan servicing, the SPV will pay annually to an Eligible Lender 25 basis points of the principal amount of the SPV's participation in the upsized tranche of the Eligible Loan.

Further information regarding credit administration and loan servicing will subsequently be made available on the Board's website .

Expanded Facility Termination

Unless the Board and the Department of the Treasury extend the Expanded Facility, the SPV will cease purchasing participations in Eligible Loans on September 30, 2020. The Reserve Bank will continue to fund the SPV after such date until the SPV's underlying assets mature or are sold.

Main Street Priority Loan Facility

Under the Main Street Priority Loan Facility (the "Priority Facility"), the SPV will purchase 85% participations in Eligible Loans from Eligible Lenders. Eligible Lenders will retain 15% of each Eligible Loan.

Eligible Lenders

An Eligible Lender is a U.S. federally insured depository institution—including banks, savings associations, or credit unions), a U.S. branch or agency of a foreign bank, a U.S. bank holding company, a U.S. savings and loan holding company, a U.S. intermediate holding company of a foreign banking organization, or a U.S. subsidiary of any of the foregoing.

Eligible Borrowers

An Eligible Borrower is a Business (as defined above in Main Street New Loan Facility—Eligible Borrowers) that:

1. was established prior to March 13, 2020;
2. is not an Ineligible Business (as defined above in Main Street New Loan Facility—Eligible Borrowers);
3. meets at least one of the following two conditions: (i) has 15,000 employees or fewer, or (ii) had 2019 annual revenues of $5 billion or less (for counting employees see, Main Street New Loan Facility—Eligible Borrowers, above);
4. is created or organized in the U.S. or under the laws of the U.S. with significant operations in, and a majority of its employees based in, the U.S.;
5. does not also participate in the New Facility, the Expanded Facility, or the Primary Market Corporate Credit Facility; and
6. has not received specific support pursuant to the Subtitle A of Title IV of the CARES Act.

Businesses that have received PPP loans are permitted to borrow under the Priority Facility, provided they are Eligible Borrowers.

Eligible Loans

An Eligible Loan is a secured or unsecured term loan made by an Eligible Lender to an Eligible Borrower that was originated after April 24, 2020, provided that the loan has all of the following features:

1. 4 year maturity;
2. principal and interest payments deferred for one year (unpaid interest will be capitalized);
3. adjustable rate of LIBOR (1 or 3 month) + 300 basis points;
4. principal amortization of 15% at the end of the second year, 15% at the end of the third year, and a balloon payment of 70% at maturity at the end of the fourth year;
5. minimum loan size of $500,000;

6. maximum loan size that is the lesser of (i) $25 million or (ii) an amount that, when added to the Eligible Borrower's existing outstanding and undrawn available debt (see, Main Street New Loan Facility—Eligible Loans, above) does not exceed six times the Eligible Borrower's adjusted 2019 EBITDA (as defined above in Main Street New Loan Facility—Eligible Loans**)**;
7. at the time of origination and at all times the Eligible Loan is outstanding, the Eligible Loan is senior to or *pari passu* with, in terms of priority and security, the Eligible Borrower's other loans or debt instruments, other than mortgage debt; and
8. prepayment permitted without penalty.

See Main Street New Loan Facility-Eligible Loans (above) for a discussion of the Eligible Lender's obligations when processing an Eligible Loan.

Loan Classification

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

Loan Participations

The SPV will purchase at par value an 85% participation in the Eligible Loan. The risk in the Eligible Loan will be shared on a *pari passu* basis by the SPV and the Eligible Lender.

The Eligible Lender must retain its 15% of the Eligible Loan until it matures or the SPV sells all of its participation, whichever comes first. The sale of a participation in the Eligible Loan to the SPV must be completed expeditiously after the Eligible Loan's origination and will be structured as a "true sale."

Required Lender Certifications and Covenants

In addition to other certifications required by applicable statutes and regulations, an Eligible Lender must:

- Commit that it will not request that the Eligible Borrower repay debt extended by the Eligible Lender to the Eligible Borrower, or pay interest on such outstanding obligations, until the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration.
- Commit that it will not cancel or reduce any existing committed lines of credit to the Eligible Borrower, except in an event of default.
- Certify that the methodology used for calculating the Eligible Borrower's adjusted 2019 EBITDA for the leverage requirement in section 6(ii) of the Eligible Loan paragraph above is the methodology it has previously used for adjusting EBITDA when extending credit to the Eligible Borrower or similarly situated borrowers on or before April 24, 2020.
- Certify that it is eligible to participate in the Priority Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act (see Compliance with Section 4019(b) of the CARES Act, below).

Required Borrower Certifications and Covenants

In addition to other certifications required by applicable statutes and regulations, an Eligible Borrower must:

- Commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due. However, the Eligible Borrower may, at the time of origination of the Eligible Loan, refinance existing debt owed by the Eligible Borrower to a lender that is not the Eligible Lender.

- Commit that it will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender.
- Certify that it has a reasonable basis to believe that, as of the date of origination of the Eligible Loan and after giving effect to such loan, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period.
- Commit that it will follow compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act (see Compliance with Section 4003(c)(3)(A)(ii) of the CARES Act, below), except that an S corporation or other tax pass-through entity that is an Eligible Borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings.
- Certify that it is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act (see Compliance with Section 4019(b) of the CARES Act, below).

The Eligible Lender should collect the required certifications from the Eligible Borrower at the time of origination of the Eligible Loan. Eligible Lenders may rely on an Eligible Borrower's certifications and covenants, as well as any subsequent self-reporting by the Eligible Borrower.

Retaining Employees

An Eligible Borrower should undertake good-faith efforts to maintain payroll and retain employees—which could be up to four years—in light of its capacities, the economic environment, its available resources, and the business' need for labor.

Borrowers that have already laid-off or furloughed workers as a result of COVID-19 are eligible to apply for Facility loans.

Transaction Fee

At the time of origination of the Eligible Loan, an Eligible Lender will pay the SPV a transaction fee of 100 basis points of the principal amount of the Eligible Loan. The Eligible Lender may require the Eligible Borrower to pay this fee.

Loan Origination and Servicing Fees

At the time of origination of the Eligible Loan, an Eligible Borrower will pay an Eligible Lender an origination fee of up to 100 basis points of the principal amount of the Eligible Loan.

To pay for loan servicing, the SPV will pay annually to an Eligible Lender 25 basis points of the principal amount of the SPV's participation in the Eligible Loan.

Further information regarding credit administration and loan servicing will be made available on the Board's website.

Priority Facility Termination

Unless the Board and the Department of the Treasury extend the Priority Facility, the SPV will cease purchasing participations in Eligible Loans on September 30, 2020. The Reserve Bank will continue to fund the SPV after such date until the SPV's underlying assets mature or are sold.

Compliance with Section 4003(c)(3)(A)(ii) of the CARES Act

Under the New Facility, the Expanded Facility and the Priority Facility, an Eligible Borrower must comply with Section 4003 (c)(3)(A)(ii) of the CARES Act. This Section requires an Eligible Borrower to agree that:

- until the date 12 months after the date on which the Eligible Loan is no longer outstanding, it will not repurchase an equity security that is listed on a national securities exchange of the Eligible Borrower—or any parent company of the

Eligible Borrower—while the Eligible Loan is outstanding, except to the extent required under a contractual obligation that is in effect as of the date of enactment of CARES Act; and

- until the date 12 months after the date on which the Eligible Loan is no longer outstanding, it will not pay dividends or make other capital distributions with respect to the common stock of the Eligible Borrower; and
- it will comply with the limitations on compensation set forth in Section 4004 of the CARES Act.

Section 4004 of the CARES Act provides that an Eligible Borrower must agree that:

- No officer or employee of the Eligible Borrower whose total compensation exceeded $425,000 in 2019—other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 1, 2020—will receive from the Eligible Borrower (i) total compensation, which exceeds during any 12 consecutive months of such period the total compensation received such officer or employee from the Eligible Borrower in 2019; or (ii) severance pay or other benefits upon termination of employment with the Eligible Borrower which exceeds twice the maximum total compensation received by the officer or employee from the Eligible Borrower in 2019.
- No officer or employee of the Eligible Borrower whose total compensation exceeded $3,000,000 in 2019 may receive during any 12 consecutive months of such period total compensation in excess of the sum of:
  - $3,000,000; and
  - 50% of the excess over $3,000,000 of the total compensation received by the officer or employee from the Eligible Borrower in 2019.

The term "total compensation" includes salary, bonuses, awards of stock, and other financial benefits provided by an Eligible Borrower to an officer or employee of the Eligible Borrower.

Compliance with Section 4019(b) of the CARES Act

Each Eligible Borrower and Eligible Lender must comply with the conflicts of interest provisions of Section 4019 of the CARES Act, which requires the principal executive officer and principal financial officer of an Eligible Borrower or an Eligible Lender to certify that it is not a Covered Entity when entering into a transaction described in Section 4003 of the CARES Act.

A "Covered Entity" is an entity in which a Covered Individual directly or indirectly holds a Controlling Interest. For the purpose of determining whether an entity is a Covered Entity, the securities owned, controlled, or held by two or more individuals who are related as described in the second bullet point of the definition of Covered Individual shall be aggregated.

A "Covered Individual" is:

- The President, Vice President, head of an Executive department, or a Member of Congress; and
- The spouse, child, son-in-law, or daughter-in-law, as determined under applicable common law, of an individual described above.

The term "Controlling Interest" means owning, controlling, or holding not less than 20%, by vote or value, of the outstanding amount of any class of equity interest in an entity.

The term "equity interest" means:

- A share in an entity, without regard to whether the share is:
  - transferable; or
  - classified as stock or anything similar.
- A capital or profit interest in a limited liability company or partnership; or
- warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share or interest described in either of the two preceding bullet points.