

# Main Street for Nonprofit Organizations

## Part of the Main Street Lending Program

### Frequently Asked Questions

This document is intended to address frequently asked questions (**FAQs**) about the Main Street Lending Program (**Main Street** or **Program**) facilities for nonprofit organizations, including the Nonprofit Organization New Loan Facility (**NONLF**) and the Nonprofit Organization Expanded Loan Facility (**NOELF**). A separate document, available [here](#), is intended to address FAQs about Program facilities applicable to for-profit businesses: the Main Street New Loan Facility (**MSNLF**), the Main Street Priority Loan Facility (**MSPLF**), and the Main Street Expanded Loan Facility (**MSELF**). The Federal Reserve will periodically update these FAQs. Please check the [website](#) of the Federal Reserve Bank of Boston (**FRB Boston**) for new FAQs or revisions to previously issued FAQs.

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## **A. Purpose and Design**

### **A.1. Why is the Federal Reserve expanding the Program to include nonprofit organizations?**

The spread of COVID-19 has harmed communities and substantially disrupted many sectors of the economy, including the nonprofit sector. In many cases, the disruptions have heightened the demand for nonprofit organization services and the need for such organizations to obtain financing. Nonprofit organizations are critical parts of the economy, employing millions of people, providing essential services to communities, and supporting innovation and the development of a highly skilled workforce.

The Main Street Lending Program Nonprofit Organization New Loan Facility (**NONLF**) and Nonprofit Organization Expanded Loan Facility (**NOELF**) are designed to provide support to small and medium-sized nonprofit organizations and their employees across the United States during the current period of financial strain by supporting the provision of credit to such organizations. The availability of additional credit is intended to help nonprofit organizations that were in sound financial condition prior to the onset of the COVID-19 pandemic maintain their operations and payroll until conditions normalize.

### **A.2. How is the Department of the Treasury supporting the Program?**

The Department of the Treasury (**Treasury Department**) will make a \$75 billion equity investment in a Special Purpose Vehicle (**Main Street SPV**) in connection with the Main Street Lending Program, which includes the nonprofit facilities. The funds invested by the Treasury Department were appropriated to the Exchange Stabilization Fund under section 4027 of the Coronavirus Aid, Relief, and Economic Security Act (**CARES Act**).

### **A.3. Are loans that are originated or upsized in connection with the Program forgivable?**

No. Main Street loans are full-recourse loans and are not forgivable. Under section 4003(d)(3) of the CARES Act, the principal amount of a Main Street loan cannot be reduced through loan forgiveness.

### **A.4. What are the differences between the NONLF and the NOELF?**

Main Street includes two facilities designed for nonprofit organizations, each of which was authorized by the Board of Governors of the Federal Reserve System (**Board**) under section 13(3) of the Federal Reserve Act. Both facilities use the same Eligible Lender and Eligible Borrower criteria, and have many of the same features, including the same maturity, interest rate, deferral of principal for two years, deferral of interest for one year, and ability of the borrower to prepay without penalty.

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Other features of the loans extended in connection with each facility differ, including with respect to the loan size and its relationship to existing debt.

- **NONLF:** Eligible Lenders extend new five-year term loans to Eligible Borrowers ranging in size from \$250,000 to \$35 million. The maximum size of a loan made in connection with the NONLF cannot exceed the Eligible Borrower's average 2019 quarterly revenue. The loans must not be, 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. The unique features of loans originated in connection with the NONLF (**NONLF Loans**) are provided in the [NONLF term sheet](#).
- **NOELF:** Eligible Lenders increase (or "upsized") an Eligible Borrower's existing term loan or revolving credit facility. The upsized tranche is a five-year term loan ranging in size from \$10 million to \$300 million. The maximum size of a loan made in connection with the NOELF cannot exceed the Eligible Borrower's average 2019 quarterly revenue. At the time of upsizing and at all times thereafter, the upsized tranche must be 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. The features associated with tranches of loans that are upsized in connection with the NOELF (**NOELF Upsized Tranches**) are outlined in the [NOELF term sheet](#).

#### A.5. How long will the Program be in effect?

The Program was established to respond to uncertainty related to the COVID-19 pandemic and is authorized to purchase participations in NONLF Loans and NOELF Upsized Tranches until December 31, 2020. The Main Street SPV will cease purchasing loan participations on December 31, 2020, unless the Program is extended by the Board and the Treasury Department. The FRB Boston will continue to operate the SPV after such date until the Main Street SPV's assets mature or are sold.

#### A.6. Is there a limit to the size of the Program?

The Main Street SPV will purchase up to \$600 billion of participations in eligible loans across all Main Street Program facilities. The Federal Reserve and the Treasury Department have assessed this amount to be appropriate in light of the current financial strains facing Eligible Borrowers. The Federal Reserve and the Treasury Department will continue to assess the situation and needs of Eligible Borrowers and may adjust the Program's size in the future.

#### A.7. What are the differences between the Program and the Payroll Protection Program and Primary Market Corporate Credit Facility?

Similar to the Payroll Protection Program (**PPP**) and the Primary Market Corporate Credit Facility (**PMCCF**), Main Street was created to assist companies that have been adversely

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affected by the COVID-19 pandemic. Each of these programs, however, was developed to provide liquidity to companies of different sizes:

- **PPP:** The PPP was established by the CARES Act and implemented by the Small Business Administration (**SBA**) to support the payroll and operations of small businesses (including small nonprofit organizations) through the issuance of government-guaranteed loans that include a forgiveness feature for borrowers that satisfy the requirements of the PPP.
- **Main Street:** The Federal Reserve designed Main Street to support small and medium-sized for-profit businesses and nonprofit organizations that were unable to access the PPP or that require additional financial support after receiving a PPP loan. Main Street loans are not forgivable.
- **PMCCF:** The Federal Reserve established the PMCCF to support large companies through the purchase of eligible corporate bonds from, and lending through syndicated loans to, large companies. PMCCF loans are not forgivable.

#### **A.8. What provisions of the CARES Act apply to the Program?**

Under section 4003(b)(4) of the CARES Act, the Secretary of the Treasury (**Secretary**) is authorized to make loans and loan guarantees to, and other investments in, programs or facilities established by the Board for the purpose of providing liquidity to the financial system that supports lending to eligible businesses (including, for these purposes, eligible nonprofits), states, or municipalities. The Secretary has committed \$75 billion of the funds appropriated under Title IV of the CARES Act in the Main Street SPV in support of the Program. The following restrictions of the CARES Act have been incorporated into the design of the Program:

- **Eligible Business Definition:** Section 4002(4) of the CARES Act prevents a business from participating in the Program if it has “otherwise received adequate economic relief in the form of loans or loan guarantees provided under [the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act)].” Consistent with this restriction, businesses that are receiving “specific support” pursuant to section 4003(b)(1)-(3) are not eligible for the Program.
- **Direct Loans:** Eligible Borrowers must commit to comply with the restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act.
- **U.S. Business Requirement:** Under section 4003(c)(3)(C) of the CARES Act, Eligible Borrowers must be “businesses that are created or organized in the United States or under the laws of the United States and that have significant operations in and a majority of its employees based in the United States.”
- **Loan Forgiveness Prohibition:** Under section 4003(d)(3), the principal amount of the portion of any NONLF Loan, or NOELF Upsized Tranche that is participated to the Main

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Street SPV cannot be reduced through loan forgiveness. See question [A.10](#) for more information about this requirement.

- **Conflicts of Interest:** Under section 4019 of the CARES Act, Eligible Lenders and Eligible Borrowers will be required to certify that no “Covered Individual” owns, controls, or holds 20% or more (by vote or value) of any class of equity ownership interest in the business.<sup>1</sup> “Covered Individuals” include the President, the Vice President, the head of any Executive Department, any Member of Congress, and certain immediate family members of the foregoing.

### A.9. What are the conflicts of interest provisions of the CARES Act?

Section 4019 of the CARES Act prohibits entities in which certain government officials ([list here](#)) and some of their immediate family members have a “controlling interest” from participating in certain government programs, including Main Street. Each participating entity, both Eligible Lenders and Eligible Borrowers, will be required to certify that the entity is not a “covered entity” as defined in section 4019 of the CARES Act. Detailed instructions are provided in the [Lender Registration Certifications and Covenants](#) and the [NONLF](#) and [NOELF](#) Borrower Certifications and Covenants.

### A.10. Can the principal amount of loans extended under Main Street be reduced?

Main Street is not a grant program and is subject to the prohibition on loan forgiveness in section 4003(d)(3) of the CARES Act. In the event of restructurings or workouts, the Main Street SPV may agree to reductions in interest (including capitalized interest), extended amortization schedules and maturities, and higher priority “priming” loans.

## B. NONLF Loans

### B.1. How does the NONLF work?

Eligible Lenders may extend a new NONLF Loan to an Eligible Borrower and sell a 95% participation in that NONLF Loan to the Main Street SPV at par value. All such sales will be structured as “true sales” and must be completed expeditiously after the origination of the NONLF Loan. The Eligible Lender must retain 5% of the NONLF Loan until (i) it matures or (ii) neither the Main Street SPV nor a Governmental Assignee holds an interest in NONLF Loan in any capacity, whichever comes first. The Main Street SPV and the Eligible Lender would share in any losses on the NONLF Loan on a pari passu basis.

The Eligible Borrower must have been in sound financial condition prior to the onset of the COVID-19 pandemic. In order for an Eligible Borrower to receive a NONLF Loan, any existing

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<sup>1</sup> For purposes of the NONLF and NOELF, an Eligible Borrower alternatively would be permitted to certify that the Eligible Borrower does not have and cannot issue equity interests, such that Section 4019(c) of the CARES Act is inapplicable.

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loan it had outstanding with the Eligible Lender as of December 31, 2019, must have had an internal risk rating (based on the Eligible Lender’s risk rating system) that was equivalent to a “pass” in the Federal Financial Institutions Examination Council’s (FFIEC) supervisory rating system as of that date.

## B.2. What are the terms of NONLF Loans?

The NONLF term sheet is available on the Board’s [Main Street page](#). More information will be made available on that page regarding loan participation terms, credit administration, and loan servicing.

## B.3. What is the effect of the requirement that NONLF Loans not be “contractually subordinated in terms of priority” to other loans or debt instruments?

An NONLF Loan, at the time of origination or at any time during its term, may not be contractually subordinated in terms of priority to the Eligible Borrower’s other loans or debt instruments. This means that an NONLF Loan may not be junior in priority in bankruptcy to the Eligible Borrower’s other unsecured loans or debt instruments.<sup>2</sup> This provision does not prevent:

- the issuance of an NONLF Loan that is a secured loan (including in a second lien or other capacity) to an Eligible Borrower, whether or not the Eligible Borrower has an outstanding secured loan of any lien position or maturity;
- the issuance of an NONLF Loan that is an unsecured loan to an Eligible Borrower, regardless of the term or secured or unsecured status of the Eligible Borrower’s existing indebtedness; or
- the Eligible Borrower from taking on new secured or unsecured debt after receiving an NONLF Loan, provided the new debt would not have higher contractual priority in bankruptcy than the NONLF Loan.

## B.4. Can an Eligible Lender make an NONLF Loan to a new customer?

Yes. Eligible Lenders should follow their normal policies and procedures for originating a loan to a new customer, including Know Your Customer procedures. In addition, when determining borrower eligibility, the Eligible Lender must require the Eligible Borrower to use an adjusted EBIDA methodology that is based on a methodology that the Eligible Lender has previously required to be used to adjust EBIDA when extending credit to similarly situated borrowers on or before June 15, 2020. The Eligible Lender should calculate operating revenue as unrestricted

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<sup>2</sup> For the avoidance of doubt, prohibitions on contractual subordination with respect to Main Street loans do not prevent the incurrence of obligations that have mandatory priority under the Bankruptcy Code or other insolvency laws that apply to entities generally.

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operating revenue, excluding funds committed to be spent on capital, and including a proxy for endowment income in place of unrestricted investment gains or losses. The methodology used by the Eligible Lender to calculate the proxy for endowment income must be the methodology it has used for similarly situated borrowers on or before June 15, 2020.

## C. [Reserved]

## D. NOELF Upsized Tranches

### D.1. How does the NOELF work?

Eligible Lenders that have extended an existing term loan or revolving credit facility to an Eligible Borrower may increase (or “upsized”) that extension of credit, by adding a new increment (or “tranche”). Eligible Lenders may sell a 95% participation in the NOELF Upsized Tranche to the Main Street SPV at par value. All such sales will be structured as “true sales” and must be completed expeditiously after the upsizing. The Eligible Lender must retain 5% of the NOELF Upsized Tranche until (i) it matures or (ii) neither the Main Street SPV nor a Governmental Assignee holds an interest in the NOELF Upsized Tranche in any capacity, whichever comes first. The Eligible Lender must also retain its interest in the underlying loan until (i) that loan matures, (ii) the NOELF Upsized Tranche matures, or (iii) neither the Main Street SPV nor a Governmental Assignee holds an interest in the NOELF Upsized Tranche in any capacity, whichever comes first. The Main Street SPV and the Eligible Lender would share in any losses on the NOELF Upsized Tranche on a pari passu basis. Any collateral that secures the underlying loan must secure the upsized tranche on a pari passu basis.

To be eligible for “upsizing,” the existing term loan or revolving credit facility must have been originated on or before June 15, 2020, and must have a remaining maturity of at least 18 months. The Eligible Lender may extend the maturity of an existing loan or revolving credit facility at the time of upsizing in order for the underlying instrument to satisfy the 18-month remaining maturity requirement.

The Eligible Borrower must have been in sound financial condition prior to the onset of the COVID-19 pandemic. The existing loan or revolving credit facility must have had a risk rating, based on the Eligible Lender’s internal rating system, equivalent to a “pass” in the FFIEC’s supervisory rating system as of December 31, 2019.

### D.2. What are the terms of NOELF Upsized Tranches?

The NOELF term sheet is available on the Board’s [Main Street page](#). More information will be made available on that page regarding loan participation terms, credit administration, and loan servicing.

**D.3. Under the NOELF, can an Eligible Lender sell a participation in an upsized tranche of a loan that was originated as part of a multi-lender facility?**

If the loan underlying an NOELF Upsized Tranche is part of a multi-lender facility, the Eligible Lender must be one of the lenders that holds an interest in the underlying loan at the date of upsizing. Only the Eligible Lender for the NOELF Upsized Tranche is required to meet the Eligible Lender criteria. Other members of the multi-lender facility are not required to be Eligible Lenders.

More than one lender under an existing multi-lender facility may choose to “upsized” the existing facility to originate an NOELF Upsized Tranche. Such NOELF Upsized Tranches should be separately submitted to the SPV for the sale of a participation interest. However, the Eligible Borrower’s aggregate borrowing is constrained by the NOELF maximum loan size test and, therefore, the Eligible Borrower’s aggregate borrowing cannot exceed \$300 million or its average 2019 quarterly revenue.

**D.4. Does the Eligible Lender for the NOELF Upsized Tranche need to be the same Eligible Lender that originated the underlying loan?**

No. The Eligible Lender is not required to have been the Eligible Lender that originally extended the loan underlying an NOELF Upsized Tranche. If the Eligible Lender purchased the interest in the underlying loan as of December 31, 2019, the Eligible Lender must have assigned an internal risk rating to the underlying loan equivalent to a “pass” in the FFIEC’s supervisory rating system as of that date. If the Eligible Lender purchased the interest after December 31, 2019, the Eligible Lender should use the internal risk rating given to that loan at the time of purchase to determine whether the loan is eligible for upsizing under the NOELF.

The position that an Eligible Lender relies upon to upsized a loan in connection with the NOELF may have been purchased from an Eligible Lender or a non-eligible lender.

**D.5. If an existing multi-lender facility loan does not have an “opening” or “accordion” clause, can it still be eligible for upsizing under the NOELF?**

Yes. The Eligible Borrower, Eligible Lender(s), and any other required parties must amend the underlying credit agreements as needed to comply with the requirements set out in the [NOELF term sheet](#).

**D.6. What requirements exist for the loan underlying an NOELF Upsized Tranche?**

The loan underlying an NOELF Upsized Tranche can be a secured or unsecured term loan or revolving credit facility that:

- was made by an Eligible Lender(s) to an Eligible Borrower;

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- is currently held, at least in part, by an Eligible Lender;
- was originated on or before June 15, 2020;
- has a remaining maturity of at least 18 months (taking into account any adjustments made to the maturity of the loan after June 15, 2020, including at the time of upsizing); and
- received an internal risk rating equivalent to a “pass” in the FFIEC’s supervisory rating system by the Eligible Lender, as of December 31, 2019, or otherwise satisfies the criteria set out in question [D.10](#).

Any collateral securing the Eligible Loan (at the time of upsizing or on any subsequent date) must secure the NOELF Upsized Tranche on a pari passu basis.

#### **D.7. Why is the minimum loan size for an NOELF Upsized Tranche \$10 million, rather than \$250,000 in the NONLF?**

The NOELF was designed to meet the needs of borrowers with existing loan arrangements, particularly those with larger and more complex existing loans, where pre-existing loan documentation can be used. As a result, the minimum loan size for an NOELF Upsized Tranche is \$10 million.

The Federal Reserve will continue to evaluate whether the loan amounts allowed under the Program should be adjusted to enhance the Program’s efficacy. Any such adjustments would be communicated well in advance of their effective date to ensure that Eligible Lenders and Eligible Borrowers are not adversely affected.

#### **D.8. Can the Eligible Lender that sells a participation to the Main Street SPV share its 5% retention of the NOELF Upsized Tranche with other members of a multi-lender facility?**

No. The Eligible Lender must retain 5% of the NOELF Upsized Tranche, even when the underlying loan is part of a multi-lender facility. The Eligible Lender must retain 5% of the NOELF Upsized Tranche until (A) the NOELF Upsized Tranche matures or (B) neither the Main Street SPV nor a Governmental Assignee holds an interest in the loan in any capacity, whichever occurs first.

#### **D.9. What if no EBIDA methodology or proxy for endowment income methodology was used when originating or amending the loan underlying an NOELF Upsized Tranche?**

If the Eligible Borrower’s EBIDA or proxy for endowment income were not calculated or included in the loan documentation or internal risk analysis when originating the loan or revolving credit facility that would underlie an NOELF Upsized Tranche, the Eligible Lender must



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require the Eligible Borrower to calculate its adjusted EBIDA or a proxy for endowment income using a methodology that the Eligible Lender has required to be used in other contexts for the Eligible Borrower or, if there is no such calculation, for similarly situated borrowers. See questions [G.13](#) and [G.14](#) for more information.

**D.10. How can the “pass” criterion be satisfied if the loan underlying an upsized tranche was originated or purchased by an Eligible Lender after December 31, 2019?**

If an existing loan was originated or purchased by an Eligible Lender after December 31, 2019, the Eligible Lender should use the internal risk rating given to that loan at origination or purchase (as applicable) to determine whether the loan satisfies the “pass” criterion for upsizing under the NOELF.

**D.11. What does it mean for an NOELF Upsized Tranche to be “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”?**

NOELF Upsized Tranches must be 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 (the **NOELF Priority and Security Requirement**). The NOELF Priority and Security Requirement is designed to prevent NOELF Upsized Tranches from being subordinated or otherwise disadvantaged in terms of priority or security in relation to the other Loans or Debt Instruments of the Eligible Borrower, except for Mortgage Debt.

For purposes of the NOELF Priority and Security Requirement:

- **“Loans or Debt Instruments”** means debt for borrowed money and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, and all guarantees of the foregoing.
- **“Mortgage Debt”** means (i) debt secured only by real property at the time of the NOELF Upsized Tranche’s origination; and (ii) limited recourse equipment financings (including equipment capital or finance leasing and purchase money equipment loans) secured only by the acquired equipment.

**Time of Origination:** To comply with the NOELF Priority and Security Requirement at the time of origination, Eligible Lenders and Eligible Borrowers must apply the following guidance:

- **Secured Loans:** The NOELF Upsized Tranche must be secured if, at the time of origination, the Eligible Borrower has any other secured Loans or Debt Instruments, other than Mortgage Debt. The NOELF Upsized Tranche must be secured by the collateral (including, if applicable, any Mortgage Debt) securing any other tranche of the underlying credit facility on a pari passu basis. Eligible Lenders and Eligible Borrowers may add new collateral to secure the loan (including the NOELF Upsized Tranche on a

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pari passu basis) at the time of upsizing. If the underlying credit facility includes both term loan tranche(s) and revolver tranche(s), the NOELF Upsized Tranche needs to share collateral on a pari passu basis with the term loan tranche(s) only. Secured NOELF Upsized Tranches must not be contractually subordinated in terms of priority to any of the Eligible Borrower's other Loans or Debt Instruments.

- **Unsecured Loans:** The NOELF Upsized Tranche can be unsecured only if the Eligible Borrower does not have, as of the date of origination, any secured Loans or Debt Instruments (other than Mortgage Debt that does not secure any other tranche of the underlying credit facility). Unsecured NOELF Upsized Tranches must not be contractually subordinated in terms of priority to the Eligible Borrower's other unsecured Loans or Debt Instruments. See question [B.3](#) for more information on contractual subordination.

**Life of the Loan:** In order to comply with the NOELF Priority and Security Requirement during the term of the NOELF Upsized Tranche after the date of origination, the loan documentation for the NOELF Upsized Tranche must:

- ensure that the NOELF Upsized Tranche does not become contractually subordinated in terms of priority to any of the Eligible Borrower's other Loans or Debt Instruments;
- ensure that the NOELF Upsized Tranche remains secured on a pari passu basis by the collateral securing the underlying credit facility, as described in the "time of origination" section above; and
- contain a lien covenant or negative pledge that is of the type – and contains exceptions, limitations, carve-outs, baskets, materiality thresholds, and qualifiers – that are consistent with those used by the Eligible Lender in its ordinary course lending to similarly situated borrowers.
  - [Appendix B](#) contains a model lien covenant that Eligible Lenders should reference when drafting NOELF loan documentation.
  - With respect to an underlying credit facility that has more than one lender, any lien covenant that was negotiated in good faith prior to June 15, 2020, as part of any underlying NOELF Loan, is sufficient to satisfy this requirement.

See question [G.14](#) for more information on identifying similarly situated borrowers. See the [NOELF Borrower Certifications and Covenants](#) and [NOELF Lender Transaction Specific Certifications and Covenants](#) for more information about the responsibilities that Borrowers and Lenders have in relation to the NOELF Priority and Security Requirement.

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## D.12. Are Eligible Lenders required to hold all of their positions in the credit facility underlying an NOELF Upsized Tranche for the life of the loan?

After originating an NOELF Upsized Tranche, the Eligible Lender must retain its interest in the credit facility underlying an NOELF Upsized Tranche until (i) the underlying credit facility matures, (ii) the NOELF Upsized Tranche matures, or (iii) neither the Main Street SPV nor a Governmental Assignee holds an interest in the NOELF Upsized Tranche in any capacity, whichever comes first.<sup>3</sup> This requirement is intended to apply to position(s) that an Eligible Lender holds in the underlying credit facility for investment purposes, and is not generally intended to extend to the purchase or sale of short-term positions by an Eligible Lender's trading desk with unaffiliated parties for market-making purposes. In order to be treated as a market-making position under this exemption, the following conditions must be met:

- (i) the position *cannot* be the position the Eligible Lender relied upon in order to upsize the loan (*i.e.*, it cannot be an Eligible Lender's only position in the underlying credit facility);
- (ii) the position must be purchased or sold by a trading desk in a transaction with an unaffiliated party, and must be segregated from the position the lender relied upon to upsize the loan; and
- (iii) the position must be held in an available-for-sale capacity in anticipation of reasonably expected near term demand.

If an Eligible Lender comes into possession of additional positions in the underlying credit facility after the upsizing of such facility in connection with the NOELF, it is not required to retain such new positions.

## E. Borrower Eligibility

### E.1. Which entities are eligible to borrow under the Program?

To be eligible to borrow under the Program, a nonprofit organization must satisfy certain eligibility criteria, as set out in the [NONLF](#) and [NOELF](#) term sheets and described further below. The Eligible Borrower criteria are the same across both facilities that facilitate lending to nonprofit organizations.

- (1) **The Nonprofit Organization must have been in continuous operation since January 1, 2015.** A Nonprofit Organization has been in "continuous operation" if that organization, or a predecessor organization, was established on or before January 1, 2015, and has been engaged in activities in furtherance of its tax-exempt purpose since that date.<sup>4</sup> In addition, the Nonprofit Organization must have been formed

<sup>3</sup> For the avoidance of doubt, the Eligible Lender may sell down part of its interest in the underlying credit facility before originating the NOELF Upsized Tranche.

<sup>4</sup> Entities that are currently tax-exempt but were previously for-profit businesses that engaged in the same activities during both periods may include that full history when assessing years of continuous operation.

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under the laws of the United States, one of the several states, the District of Columbia, any of the territories and possessions of the United States, or an Indian Tribal government.

- (2) **The Nonprofit Organization must not be an Ineligible Business.** Ineligible Businesses include Businesses listed in [13 CFR 120.110\(b\)-\(j\), \(m\)-\(s\)](#), as modified and clarified by SBA regulations for purposes of the PPP on or before April 24, 2020. Such modifications and clarifications include the SBA's recent interim final rules available at [85 Fed. Reg. 20811](#), [85 Fed. Reg. 21747](#), and [85 Fed. Reg. 23450 \(released by the SBA on April 24, 2020\)](#). In addition, the Federal Reserve has incorporated the SBA's Interim Final Rules published in the Federal Register on June 18, 2020 ([85 Fed. Reg. 36717](#)) and June 26, 2020 ([85 Fed. Reg. 38301](#)), which amended the SBA's earlier Interim Final Rule published in the Federal Register on April 15, 2020 ([85 Fed. Reg. 20811](#)). The Federal Reserve may further modify the application of these restrictions to Main Street.
- (3) **The Nonprofit Organization must meet at least one of the following two conditions: (a) the Nonprofit Organization has 15,000 employees or fewer, or (b) the Nonprofit Organization has 2019 annual revenues of \$5 billion or less.** To determine how many employees a Nonprofit Organization has or a Nonprofit Organization's 2019 revenues, the employees and revenues of the Nonprofit Organization must be aggregated with the employees and revenues of its affiliated entities.
- (4) **The Nonprofit Organization must have at least 10 employees.** Nonprofit Organizations must have at least 10 employees at the time of origination of the NONLF Loan or NOELF Upsized Tranche. The requirement that the Nonprofit Organization has at least 10 employees applies to the Nonprofit Organization with its affiliated entities. See [E.3](#) for definition of employee.
- (5) **The Nonprofit Organization must have an endowment of less than \$3 billion.** The size of the endowment should be calculated as of the date of origination of the NONLF Loan or NOELF Upsized Tranche.
- (6) **The Nonprofit Organization must have total non-donation revenues equal to or greater than 60% of expenses for the period from 2017 through 2019.** Non-donation revenues equal gross revenues minus donations. Donations include proceeds from fundraising events, federated campaigns, gifts, donor-advised funds, and funds from similar sources, but exclude (i) government grants, (ii) revenues from a supporting organization, (iii) grants from private foundations that are disbursed over the course of more than one calendar year, and (iv) any contributions of property other than money, stocks, bonds, and other securities (noncash contributions), provided that such noncash contribution is not sold by the organization in a transaction unrelated to the organization's tax-exempt purpose. Expenses equal total expenses minus

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depreciation, depletion, and amortization. See question E.16 for more detail on this calculation.

- (7) **The Nonprofit Organization must have a ratio of adjusted 2019 earnings before interest, depreciation and amortization (EBIDA) to unrestricted 2019 operating revenue, greater than or equal to 2%.** The methodology used by the Eligible Lender to calculate adjusted 2019 EBIDA must be the methodology it has previously used for adjusting EBIDA when extending credit to the Eligible Borrower or similarly situated borrowers on or before June 15, 2020 (with respect to the NONLF), or when originating or amending the underlying loan on or before June 15, 2020 (with respect to the NOELF). The Eligible Lender should calculate “operating revenue” as unrestricted operating revenue, excluding funds committed to be spent on capital, and including a proxy for endowment income in place of unrestricted investment gains or losses. The methodology used by the Eligible Lender to calculate the proxy for endowment income must be the methodology it has used for the Eligible Borrower or similarly situated borrowers on or before June 15, 2020.
- (8) **The Nonprofit Organization must have a ratio (expressed as a number of days) of (i) liquid assets at the time of origination of the loan or Upsized Tranche to (ii) average daily expenses over the previous year, equal to or greater than 60 days.** “Liquid assets” is defined as unrestricted cash and investments that can be accessed and monetized within 30 days. An organization may include in “liquid assets” the amount of cash receipts it reasonably estimates to receive within 60 days related to the provision of services, facilities, or products, or any other program service that exceed its reasonably estimated cash outflows payable within the same 60-day period.
- (9) **The Nonprofit Organization at the time of origination of the loan or Upsized Tranche must have a ratio of (i) unrestricted cash and investments to (ii) existing outstanding and undrawn available debt, plus the amount of any loan under the Facility, plus the amount of any CMS Accelerated and Advance Payments, that is greater than 55%.**
- (10) **The Nonprofit Organization must be organized under the laws of the United States.** Under section 4003(c)(3)(C) of the CARES Act, Eligible Borrowers must be Businesses that were created or organized in the United States or under the laws of the United States with significant operations in and a majority of their employees based in the United States.
- (11) **The Nonprofit Organization may only participate in one of the Main Street facilities (NONLF, NOELF, MSNLF, MSPLF, MSELF) and must not also participate in the PMCCF or the Municipal Liquidity Facility (MLF).** An Eligible Borrower may only participate in one of the Main Street facilities: the MSNLF, the MSPLF, the MSELF, the NONLF, or the NOELF. In addition, a Business is not an Eligible Borrower if it participates in the PMCCF or MLF.

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- (12) **The Nonprofit Organization must not have received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act).** A Nonprofit Organization is not eligible if it has received support pursuant to section 4003(b)(1)-(3) of the CARES Act.
- (13) **The Nonprofit Organization must be able to make all of the certifications and covenants required under the Program.** See the [NONLF](#) and [NOELF](#) Borrower Certifications and Covenants for more information.

Borrowers that satisfy all criteria above may apply to an Eligible Lender for a Main Street loan. In the case of multi-borrower loans, each borrower must meet borrower eligibility criteria. See question [H.24](#) for more information. The Eligible Lender is expected to conduct an assessment of each potential borrower's pre-pandemic financial condition and post-pandemic prospects to determine whether the loan is approved.

For the avoidance of doubt, a Nonprofit Organization that has received PPP loans, or that has affiliates that have received PPP loans, is permitted to borrow under Main Street, provided that the Nonprofit Organization is an Eligible Borrower. Borrowers that are not eligible for a Main Street loan should consult the [Treasury Department](#) and [SBA](#) to determine if they are eligible for other relief programs.

## E.2. How is "Nonprofit Organization" defined?

A Nonprofit Organization is a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code ("IRC") or a tax-exempt veterans' organization described in section 501(c)(19) of the IRC.

- **Section 501(c)(3)**: Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.
- **Section 501(c)(19)**: A post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—
  - A. organized in the United States or any of its possessions,

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- B. at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, widowers, ancestors, or lineal descendants of past or present members of the Armed Forces of the United States or of cadets, and
- C. no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Other forms of organization may be considered for inclusion as an Eligible Borrower under the Program at the discretion of the Federal Reserve.

### **E.3. How should a Nonprofit Organization count employees for purposes of determining eligibility under the Program?**

To be an Eligible Borrower, a Nonprofit Organization must meet at least one of the following two conditions: (a) the Nonprofit Organization has 15,000 employees or fewer, or (b) the Nonprofit Organization has 2019 annual revenues of \$5 billion or less. In addition, a Nonprofit Organization must have at least 10 employees. To determine how many employees a Nonprofit Organization has, it should follow the framework set out in the SBA's regulation at [13 CFR 121.106](#). As set out in 13 CFR 121.106, the Nonprofit Organizations should count as employees all full-time, part-time, seasonal, or otherwise employed persons, excluding volunteers and independent contractors. A Nonprofit Organization that is an institution of higher education must exclude student workers participating in a Federal Work Study Program, on the same basis as, and subject to the same conditions and requirements of, the SBA's regulations at 85 Fed. Reg. 27287-90 (May 8, 2020). Nonprofit Organizations should count their own employees and those employed by their affiliates. In order to determine the applicable number of employees, Nonprofit Organizations 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 Main Street loan.

### **E.4. How should a Nonprofit Organization calculate 2019 revenues for purposes of determining eligibility under the Program?**

To be an Eligible Borrower, a Nonprofit Organization must meet at least one of the following two conditions: (a) the Nonprofit Organization has 15,000 employees or fewer, or (b) the Nonprofit Organization has 2019 annual revenues of \$5 billion or less. To determine its 2019 annual revenues, Nonprofit Organizations must aggregate their revenues with those of their affiliates. Nonprofit Organizations may use either of the following methods to calculate 2019 annual revenues for purposes of determining eligibility:

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- (1) A Nonprofit Organization may use its (and its affiliates') annual "revenue"<sup>5</sup> per its 2019 U.S. Generally Accepted Accounting Principles-based (**U.S. GAAP**) audited financial statements; or
- (2) A Nonprofit Organization may use its (and its affiliates') annual receipts for the fiscal year 2019, as reported to the Internal Revenue Service. For purposes of the Program, the term "receipts" has the same meaning used by the SBA in [13 CFR 121.104\(a\)](#).
- (3) If a potential borrower (or its affiliate) does not yet have audited financial statements or annual receipts for 2019, the borrower (or its affiliate) should use its most recent audited financial statements or annual receipts.

For the avoidance of doubt, the calculation of 2019 annual revenues includes all revenues, including restricted revenues and non-cash revenues. This method of calculating 2019 revenues should also be used for the purposes of calculating the Nonprofit Organization's "average 2019 quarterly revenue" when determining the maximum loan size under the NONLF or NOELF.

Please see question [H.10](#) with regard to financial records required for other Borrower Certifications and Covenants. Please see [Appendix C](#) for the financial records requirements for ongoing financial reporting.

#### **E.5. Which entities are a Nonprofit Organization's affiliates for purposes of the employee and revenue eligibility criteria?**

To determine eligibility, a Nonprofit Organization's employees and 2019 revenues are calculated by aggregating the employees and 2019 revenues of the Nonprofit Organization itself with those of the Nonprofit Organization's affiliated entities in accordance with the affiliation test set forth in 13 CFR 121.301(f) ([1/1/2019 ed.](#)).

**E.6. [Reserved.]**

**E.7. [Reserved.]**

#### **E.8. What does "significant operations in the United States" mean?**

To determine if an Eligible Borrower has "significant operations" in the United States, the Nonprofit Organization's operations should be evaluated on a consolidated basis together with its subsidiaries, but not its parent companies or sister affiliates. For example, an Eligible Borrower has significant operations in the United States if, when consolidated with its subsidiaries, greater than 50% of the Eligible Borrower's:

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<sup>5</sup> If a borrower's GAAP-compliant financial statements do not include a line item for revenue, but instead include a similar line item (such as "revenue and other forms of support"), the borrower may elect to use such similar line item to calculate its revenues to determine its eligibility and maximum loan size.



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- assets are located in the United States;
- annual net income is generated in the United States;
- annual net operating revenues are generated in the United States; or
- annual consolidated operating expenses (excluding interest expense and any other expenses associated with debt service) are generated in the United States.

This is a non-exhaustive list of examples that reflects the principles that should be applied by a potential borrower when evaluating its eligibility under this criterion.

#### **E.9. Can a Nonprofit Organization that is a subsidiary of a foreign company qualify as an Eligible Borrower?**

An Eligible Borrower must be created or organized in the United States or under the laws of the United States. For the avoidance of doubt, an Eligible Borrower may be a subsidiary of a foreign entity, provided that the borrower itself is created or organized in the United States or under the laws of the United States, and the borrower on a consolidated basis has significant operations in and a majority of its employees based in the United States. However, an Eligible Borrower that is a subsidiary of a foreign entity must use the proceeds of a Main Street loan only for the benefit of the Eligible Borrower, its consolidated U.S. subsidiaries, and other affiliates of the Eligible Borrower that are U.S. businesses. The proceeds of a Main Street loan may not be used for the benefit of the activities conducted by such Eligible Borrower's foreign affiliates or subsidiaries.

#### **E.10. Can an otherwise eligible Nonprofit Organization borrow if its affiliate has already borrowed under a Main Street Facility, the MLF, or the PMCCF?**

An affiliated group of entities can participate in only one Main Street facility, and cannot participate in both a Main Street facility and the MLF or the PMCCF. Therefore, borrowers that are otherwise eligible are subject to the following restrictions:

- If any affiliate of the Nonprofit Organization has participated in the MLF or the PMCCF, the Nonprofit Organization may not borrow under any Main Street facility.
- If an affiliate has previously participated, or has a pending application to participate, in a Main Street facility, the Nonprofit Organization can only participate in Main Street by using the same Main Street facility accessed by its affiliate. For example, if an Eligible Borrower's affiliate has participated in the NONLF, then the Eligible Borrower would only be able to participate in the NONLF and would be prohibited from participating in the NOELF.
- In no case could the affiliated group's total participation in a single Main Street facility exceed the maximum loan size that the entire affiliated group is eligible to receive on a

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consolidated basis. For example, in the case of the NONLF, the Eligible Borrower's maximum loan size would be the lesser of:

- (1) \$35 million (less any amount extended to an affiliate of the Eligible Borrower under the NONLF);
- (2) the Eligible Borrower's average 2019 quarterly revenue; or
- (3) the Eligible Borrower's affiliated group's average 2019 quarterly revenue.

For the avoidance of doubt, if an Eligible Borrower is the only entity in its affiliated group that has sought funding through Main Street, its affiliated group's average 2019 quarterly revenue is not relevant to determining whether that Nonprofit Organization can qualify, except to the extent that the Borrower's subsidiaries are consolidated into its financial statements. (See question [H.10](#) for more information on consolidated financial statements.) If the Eligible Borrower has an affiliate(s) that has *previously* borrowed or has an application pending to borrow from a Main Street facility, then *the entire* affiliated group's average 2019 quarterly revenue is relevant to the determining the Eligible Borrower's maximum loan size.

For more information on how to identify an Eligible Borrower's affiliates, see question [E.5](#) above.

E.11. [Reserved.]

E.12. [Reserved.]

E.13. Are Eligible Lenders required to adopt any special compliance procedures to verify that a Borrower is not an "Ineligible Business" under 13 CFR 120.110(o)?

No. The terms of the Program do not impose any verification or other obligations on an Eligible Lender specifically in relation to [13 CFR 120.110\(o\)](#). As a general matter, Eligible Lenders that are subject to regulations designed to prevent improper insider lending (e.g., the Board's Regulation O ([12 CFR part 215](#))) should maintain compliance with those pre-existing rules and regulations without exception or modification for Main Street.

Under the standard of reasonable, good-faith diligence specified in the Borrower Certifications and Covenants, each prospective Main Street borrower is expected to review the list of Ineligible Businesses in [13 CFR 120.110\(b\)-\(j\), \(m\)-\(s\)](#), and make a reasonable, good-faith effort to determine if its activities or ownership would cause it to be classified within one of the listed ineligible categories, including [13 CFR 120.110\(o\)](#).

**E.14. [Reserved.]**

**E.15. How are “total expenses” and “average daily expenses” calculated for purposes of determining Nonprofit Organization eligibility?**

Total expenses are equal to total expenses as defined in IRS Form 990 Part IX Line 25 minus depreciation, depletion and amortization as defined in IRS Form 990 Part IX Line 22. A Nonprofit Organization that has not yet filed, or is not required to file, IRS Form 990 reflecting its 2019 financial information may calculate 2019 total expenses either (i) using 2019 audited financial statements that are in accordance with U.S. GAAP or (ii) as described above in accordance with the instructions to the Form 990.

For purposes of the ratio of liquid assets to average daily expenses, a Nonprofit Organization should calculate average daily expenses as its total expenses for 2019, as described above, divided by 365.

**E.16. How is “non-donation revenues” calculated for purposes of determining whether a Nonprofit Organization has total non-donation revenues equal to or greater than 60% of expenses for the period from 2017 through 2019?**

Nonprofit organizations may refer to the Instructions to IRS Form 990 for purposes of calculating whether they meet the eligibility criteria for non-donation revenues. For purposes of these eligibility criteria, “non-donation revenues” is defined as all of the revenue items described on Part VIII of the IRS Form 990 except revenue from: (i) fundraising events; (ii) federated campaigns; (iii) membership dues; (iv) any contributions from donor advised funds described in line 1d of Part VIII;<sup>6</sup> and (v) all other contributions, gifts, grants, and similar amounts in line 1f of Part VIII except for (A) grants from private foundations that are disbursed over the course of more than one calendar year and (B) specified property. “Specified property” for this purpose is any property contributed to the Nonprofit Organization other than money, stocks, bonds, and other securities, provided that such specified property is not sold by the Nonprofit Organization in a transaction unrelated to its tax-exempt purpose.

The following examples illustrate how different kinds of revenues would be treated for purposes of the non-donation revenues calculation:

- Donations of noncash contributions as described in IRS Form 990:
  - A Nonprofit Organization receives clothing donations from members of the public that it sells in stores it operates and that primarily form the basis of the Nonprofit Organization’s exemption from tax. The sale of these items would generate either program service revenues or gross sales of inventory revenues—both separately reported revenue sources on IRS Form 990—for the Nonprofit

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<sup>6</sup> For the avoidance of doubt, only the component of line 1d of Part VIII that consists of contributions from donor advised funds must be excluded from non-donation revenues.

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Organization. The fair market value of the property in this case would be included in non-donation revenues.

- Private grants:
  - A Nonprofit Organization receives a grant from a private foundation that provides for a recurring distribution of funds from 2018 through 2021, to allow the Nonprofit Organization to conduct activities in connection with its charitable purpose. Because this grant is a multi-year grant from the private foundation, it would be included in non-donation revenues.
  - A Nonprofit Organization receives a one-time grant from a private foundation. While the private foundation may provide grants to the Nonprofit Organization in the future, the grant itself pertains only to a single cash gift that is contributed in full to the Nonprofit Organization. Because this grant is not a multi-year grant from the private foundation, it would be excluded from non-donation revenues.
- Membership Dues:
  - A Nonprofit Organization charges membership dues. These membership dues consist of both (1) an amount equal to the fair market value of goods and services provided (for example, access to an athletic facility operated by the Nonprofit Organization), and (2) a charitable contribution, specifically, the amount of the membership dues that exceed the fair market value of the goods and services provided in connection with the membership fee. On IRS Form 990, the amount paid for goods and services would be reported as Program Service Revenues, while the excess amount would be reported as a membership fee. The amount reported as Program Service Revenues would be included in non-donation revenues, while the excess amount—the charitable contribution—would be excluded from non-donation revenues.

### **E.17. Can a public hospital or a public college or university that is not recognized as tax-exempt under section 501(c)(3) of the IRC qualify as a Nonprofit Organization?**

Public hospitals and public colleges and universities may not be recognized as tax-exempt organizations under section 501(c)(3) of the IRC, but may qualify as tax-exempt under another provision of the IRC. These organizations may qualify as an organization described in section 501(c)(3) of the IRC, and thus be considered “Nonprofit Organizations,” for purposes of the NONLF and NOELF. To establish eligibility as a Nonprofit Organization, a public hospital or

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public college or university must reasonably determine, in a written record maintained by the organization, that it is an organization described in section 501(c)(3) of the IRC.<sup>7</sup>

This guidance is solely for purposes of qualification as a “Nonprofit Organization” under the Program and related purposes of the Program, and does not have any consequences for federal tax law purposes.

### **E.18. Is a hospital owned by governmental entities considered an Ineligible Business?**

Under 13 CFR 120.110(j), “Government-owned entities (except for businesses owned or controlled by a Native American tribe)” are considered Ineligible Businesses. However, a hospital that is otherwise an Eligible Borrower is not rendered ineligible due to ownership by a state or local government if the hospital receives less than 50% of its funding from state or local government sources, exclusive of Medicaid. This exception to the general ineligibility of government-owned entities is consistent with the approach adopted by the SBA for determining PPP eligibility of hospitals.

### **E.19. How should a Nonprofit Organization calculate its non-donation revenues and expenses for the period from 2017 through 2019 if it does not have audited financial statements or annual receipts for fiscal year 2019 reported to the IRS?**

To be eligible under the NONLF and NOELF, a Nonprofit Organization must have average total annual non-donation revenues equal to or greater than 60% of average annual expenses over the three fiscal years that ended in 2017, 2018, and 2019. If a Nonprofit Organization does not have audited financial statements or tax returns that include information on non-donation revenues and expenses for fiscal year 2019, it may calculate its compliance with the non-donation revenues test using information available for 2017 and 2018.

## **F. Application Process**

### **F.1. How can I apply for a Program loan?**

To obtain a loan under the Program, an Eligible Borrower must submit an application and any other documentation required by an Eligible Lender to such Eligible Lender. Eligible Borrowers should contact an Eligible Lender for more information on whether the Eligible Lender plans to

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<sup>7</sup> This determination need not account for the ancillary conditions set forth in section 501(r) of the Internal Revenue Code and elsewhere associated with securing the tax exemption under that section. Section 501(r) states that a hospital organization shall not be treated as described in section 501(c)(3) unless it meets certain community health and other requirements. However, Nonprofit Organization is defined solely by reference to section 501(c)(3), and section 501(r) does not amend section 501(c)(3). Therefore, for purposes of the NONLF and NOELF, the requirements of section 501(r) do not apply to the determination of whether an organization is “described in section 501(c)(3).”

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participate in the Program and to request more information on the application process. For a list of Eligible Lenders that are currently accepting applications from new customers, see [here](#). Updates regarding the Program will be made available on the Board's [Main Street page](#).

#### **F.2. Is a Nonprofit Organization eligible to borrow if it receives a PPP loan or Economic Injury Disaster loan (EIDL)?**

A Nonprofit Organization that receives a loan through the SBA's PPP or EIDL program can be an Eligible Borrower under Main Street if it meets the Eligible Borrower criteria.

#### **F.3. Do Eligible Borrowers qualify automatically for a loan under the Program?**

No. The Main Street facility term sheets contain requirements that must be satisfied for a loan to be eligible for participation by the Main Street SPV. At the time of the potential borrower's application, an Eligible Lender is expected to assess each borrower's pre-pandemic financial condition and post-pandemic prospects, while also taking into account the payment deferral features in Main Street loans. An Eligible Lender may require additional information and documentation in making this evaluation and will ultimately determine whether an Eligible Borrower is approved for a Program loan in light of these considerations. Nonprofit Organizations that otherwise meet the Eligible Borrower requirements may not be approved for a loan or may not receive the maximum allowable amount.

#### **F.4. Can an Eligible Borrower apply for a Main Street loan through multiple Eligible Lenders?**

An Eligible Borrower may submit applications for a Main Street loan to more than one Eligible Lender. However, an Eligible Borrower is required to notify each Eligible Lender to which it submits an application of any other pending or accepted applications. This requirement is reflected in Section 5.E of the Borrower Certifications and Covenants.

If an Eligible Borrower's application for a Main Street loan is declined by an Eligible Lender, the Eligible Borrower may apply through a different Eligible Lender.

### **G. Terms and Conditions**

#### **G.1. How will adjusted 2019 EBIDA be calculated?**

See response to [E.1](#) above.

#### **G.2. How will "existing outstanding and undrawn available debt" be calculated?**

"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, regardless

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of its position in the borrower's capital structure.<sup>8</sup> It also includes all unused commitments under any loan facility, excluding (1) any undrawn commitment that serves as a backup line for commercial paper issuance, (2) any undrawn commitment that is used to finance receivables (including seasonal financing of inventory), (3) any undrawn commitment that cannot be drawn without additional collateral, and (4) 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.

### G.3. Why are Program loans based on LIBOR rather than SOFR?

The Federal Reserve received feedback from potential participants that quickly implementing new systems to issue loans based on SOFR would require diverting resources from challenges related to the pandemic. Although financial institutions are transitioning to more robust reference rates, LIBOR remains the most common base rate used in business lending, even though firms cannot rely on LIBOR being published after the end of 2021. Consistent with the recommendations of the Alternative Reference Rates Committee, Eligible Lenders and Eligible Borrowers should include fallback contract language to be used should LIBOR become unavailable during the term of the loan.

### G.4. When do I need to start paying interest and principal on my loan?

No payments of principal will be required for the first two years of a NONLF Loan or NOELF Upsized Tranche, and no payments of interest will be required during the first year of a NONLF Loan or NOELF Upsized Tranche. Unpaid interest will be capitalized in accordance with the Eligible Lender's customary practices for capitalizing interest (e.g., at quarter-end or year-end). After the first year interest will be payable in accordance with the loan agreement for the NONLF Loan or NOELF Upsized Tranche.

### G.5. How will principal be amortized after the second year?

No principal is paid in the first or second year. The loan will be amortized over the remaining term of the loan, with 15% of principal due at the end of year 3, 15% of principal due at the end of year 4, and a balloon payment of 70% of principal due at maturity at the end of year 5.

For purposes of this question, principal includes capitalized interest. Eligible Lenders will provide Eligible Borrowers with payment information during the Program loan origination process.

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<sup>8</sup> For example, subordinated debt and debt with deferred principal and interest payments should be included in the definition of debt and, therefore, covered under this FAQ.

## G.6. Is collateral required for Main Street loans?

NONLF Loans and NOELF Upsized Tranches may be secured or unsecured, although collateral may be required for NOELF Upsized Tranches due to the Eligible Borrower's other loans and debt instruments, as explained further in question [D.11](#).

An NOELF Upsized Tranche must be secured if the underlying loan is secured. In such case, any collateral securing the underlying loan (at the time of upsizing or on any subsequent date) must secure the NOELF Upsized Tranche on a pari passu basis. Under such an arrangement, if the borrower defaults, the SPV and lender(s) would share equally in any collateral available to support the loan relative to their proportional interests in the loan (including the NOELF Upsized Tranche). Eligible Lenders can require Eligible Borrowers to pledge additional collateral to secure an NOELF Upsized Tranche as a condition of approval.

## G.7. Are there fees associated with Main Street loans?

Yes, there are fees associated with the NONLF and NOELF.

- **NONLF:** Eligible Lenders will pay the Main Street SPV a transaction fee of 100 basis points of the principal amount of the NONLF at the time of origination, and may pass on this fee to Eligible Borrowers.<sup>9</sup> In addition, the Eligible Borrower will pay the Eligible Lender a fee of up to 100 basis points of the principal amount of the NONLF Loan at the time of origination. Eligible Lenders have discretion over whether and when to charge Eligible Borrowers this fee.
- **NOELF:** Eligible Lenders will pay the Main Street SPV a transaction fee of 75 basis points of the principal amount of the NOELF Upsized Tranche at the time of upsizing, and may choose to pass on any portion of this fee to Eligible Borrowers. In addition, the Eligible Borrower will pay an Eligible Lender a fee of up to 75 basis points of the principal amount of the NOELF Upsized Tranche at the time of upsizing. Eligible Lenders have discretion over whether and when to charge Eligible Borrowers this fee.

The SPV will pay an Eligible Lender 25 basis points of the principal amount of its participation per annum for loan servicing.

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<sup>9</sup> The transaction fee will be based on the principal amount of the NONLF Loan or NOELF Upsized Tranche at the time a loan participation is submitted for sale to the Main Street SPV. Where deferred interest has been capitalized and added to the principal amount and purchase amount, the transaction fee will be based on the principal amount including such capitalized interest. As indicated in question [G.4](#), unpaid interest should be capitalized in accordance with the Eligible Lender's customary practices for capitalizing interest (e.g., at quarter-end or year-end). The Federal Reserve does not expect that interest would be capitalized more frequently than monthly, and thus only expects capitalized interest to affect this calculation where loans were extended at least one month prior to the date upon which the Main Street portal begins accepting submissions of NONLF and NOELF loans for sale of participation interests.



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### G.8. What constitutes “reasonable efforts” to maintain payroll and retain employees?

Eligible Borrowers should make reasonable efforts to retain employees during the term of the NONLF Loan or NOELF Upsized Tranche. Specifically, an Eligible Borrower should undertake good-faith efforts to maintain payroll and retain employees, in light of its capacities, the economic environment, its available resources, and the need for labor. Borrowers that have already laid off or furloughed workers as a result of the disruptions from COVID-19 are eligible to apply for Main Street loans.

### G.9. Can an Eligible Borrower receive more than one Main Street loan?

An Eligible Borrower may only participate in one of the Main Street facilities: the NONLF, the NOELF, the MSNLF, the MSPLF, or the MSELF. However, an Eligible Borrower may receive more than one loan under a single Main Street facility, provided that the sum of NONLF Loans cannot exceed \$35 million; and the sum of NOELF Upsized Tranches cannot exceed \$300 million.

### G.10. Can an Eligible Borrower receive a loan if its maximum loan size under a facility’s term sheet test is below the minimum loan size for the same facility?

No, borrowers may not receive a loan that is below the minimum loan size, which is \$250,000 for NONLF Loans, and \$10 million for NOELF Upsized Tranches.

### G.11. How can an Eligible Borrower determine if its existing loans had an internal risk rating equivalent to a “pass” in the FFIEC’s supervisory rating system on December 31, 2019?

If an otherwise Eligible Borrower applies for a loan at an Eligible Lender with which it has an outstanding loan, the Eligible Lender will make the determination of whether the borrower’s existing loans have an internal risk rating that meets the requirements in the Main Street term sheets. The Eligible Lender will also assess the potential borrower’s pre-pandemic financial condition and post-pandemic prospects at the time of the application.

### G.12. Can a Lender charge a Borrower additional fees above the Main Street origination fee and/or an interest rate above LIBOR + 300 basis points?

Eligible Lenders are allowed to charge Eligible Borrowers a one-time origination fee as set out in the Main Street term sheets. In addition, Eligible Lenders may also require Eligible Borrowers to pay the transaction fee, which the Eligible Lenders must in turn pay to the Main Street SPV. Eligible Lenders are not permitted to charge Eligible Borrowers any additional fees, except de minimis fees for services that are customary and necessary in the Eligible Lender’s underwriting of loans to similar borrowers, such as appraisal and legal fees. Eligible Lenders may also charge customary consent fees if such fees are necessary to amend existing loan

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documentation in the context of upsizing a loan in connection with the NOELF. Eligible Lenders should not charge servicing fees to Eligible Borrowers.

Main Street loans must have an interest rate of LIBOR (1 month or 3 month) + 300 basis points.

### G.13. What methodology should be used to adjust EBIDA if an Eligible Lender has used a range of methods in the past with respect to a single Eligible Borrower or similarly situated borrowers?

An Eligible Lender should require the Eligible Borrower to adjust its 2019 EBIDA by using the methodology that the Eligible Lender has previously required for EBIDA adjustments when extending credit to the Eligible Borrower or, if the Eligible Borrower is a new customer, to similarly situated borrowers on or before June 15, 2020. If an Eligible Lender has used multiple EBIDA adjustment methods with respect to the Eligible Borrower or similarly situated borrowers (e.g., one for use within a credit agreement and one for internal risk management purposes), the Eligible Lender should choose the most conservative method it has employed. In all cases, the Eligible Lender must select a single method used at a point in time in the recent past and before June 15, 2020. The Eligible Lender may not “cherry pick” or apply adjustments used at different points in time or for a range of purposes. The Eligible Lender should document the rationale for its selection of an adjusted EBIDA methodology.

### G.14. For purposes of adjusting EBIDA, how does an Eligible Lender identify “similarly situated borrowers”?

Similarly situated borrowers are borrowers in similar sectors with comparable risk and size characteristics. Eligible Lenders should document their process for identifying similarly situated borrowers when they originate a NONLF Loan.

### G.15. Why is the Federal Reserve allowing adjustments to EBIDA for purposes of Main Street when it has noted supervisory concerns with these adjustments in the past? Is there a limit to how much EBIDA can be adjusted?

It is normal industry practice for lenders and borrowers to agree to adjust a borrower’s EBIDA to accommodate differences in operating models across sectors and to accommodate one-time events that may positively or negatively impact a borrower’s earnings. When applied prudently, these adjustments may provide a lender with a more accurate representation of a Nonprofit Organization’s earnings capacity over time.

While the Main Street term sheets do not include limits on how much EBIDA can be adjusted, there are important features of the Program that are designed to limit excessive risk-taking. First, EBIDA adjustments must be of the type the Eligible Lender has previously (and recently) required for the Eligible Borrower or similarly situated borrowers. The Eligible Lender should

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document the rationale for its selection of an adjusted EBIDA methodology. See questions [G.13](#) and [G.14](#) above for more information.

In addition, the requirement that an Eligible Borrower must have a ratio of adjusted EBIDA to unrestricted 2019 operating revenue greater than or equal to 2% should be viewed as a minimum requirement for the Program. Eligible Lenders are expected to conduct an assessment of each potential borrower's pre-pandemic financial condition and post-pandemic prospects at the time of the borrower's application.

Finally, the Program requires that a Main Street loan have an internal risk rating from the Eligible Lender equivalent to a "pass" in the FFIEC's supervisory rating system as of December 31, 2019. Loans that were criticized in the past for excessive adjustments would not be eligible for the Program.

#### **G.16. Do PPP loans count as "outstanding debt" for purposes of Main Street?**

Yes. The portion of any outstanding PPP loan that has not yet been forgiven is counted as outstanding debt for the purposes of the requirement that the Nonprofit Organization at the time of origination of the loan or Upsized Tranche must have a ratio of (i) unrestricted cash and investments to (ii) existing outstanding and undrawn available debt, plus the amount of any loan under the Facility, plus the amount of any CMS Accelerated and Advance Payments, that is greater than 55%.

#### **G.17. How will Eligible Borrower prepayments of a Main Street loan be applied against the principal amount due and future amortization payments?**

Prepayment of principal is permitted without penalty and will reduce future payments in the manner specified in the underlying loan documents. While lenders have flexibility in specifying these terms, they should make efforts to align their approach with the expected amortization schedule specified for each loan type. For example, applying prepayments to the next scheduled principal payment due would maintain the alignment of later payments with the amortization schedule and allow for the intended deferment of some portion of payments to later years.

#### **G.18. Can permissible fees charged at the time of origination be included in the principal amount of a Main Street loan?**

Yes. As indicated in questions [G.7](#) and [G.12](#), Eligible Lenders may charge certain fees to Eligible Borrowers at the time of origination. Eligible Lenders may include such fees in the principal amount of the Main Street loan, provided that the total Main Street loan amount, including such fees, may not exceed the maximum loan size permitted for the Eligible Borrower under the relevant Main Street facility.

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### G.19. Are Eligible Lenders allowed to include a LIBOR floor in the interest rate on a Main Street Loan?

NONLF and NOELF must be adjustable-rate five-year term loans with an interest rate of 1-month or 3-month LIBOR plus 300 basis points. LIBOR floors are not permissible.

### G.20. [Reserved.]

### G.21. Are there any prohibitions on the use of proceeds of a Main Street loan?

The Program is intended to help nonprofit organizations that were in sound financial condition prior to the onset of the COVID-19 pandemic maintain their operations and payroll until conditions normalize. An Eligible Borrower must use the proceeds of a Main Street loan only in furtherance of the Eligible Borrower's tax-exempt purpose as conducted by the Eligible Borrower, its consolidated U.S. subsidiaries, and other affiliates of the Eligible Borrower that are U.S. businesses. Program loans may not be used for:

- with respect to an Eligible Borrower that is a subsidiary of a foreign entity, for the benefit of an Eligible Borrower's foreign affiliates or subsidiaries (see question [E.9](#)); or
- to refinance or accelerate payment of existing debt, except under the limited exception for mandatory and due debt and interest payments after the origination of the Main Street loan (see question [H.3](#)).

In addition, under the Program an Eligible Borrower may not use any funds (including the proceeds of a Main Street loan) during the term of the loan (and, in some cases, for 12 months after the Main Street loan is repaid) for the following reasons:

- paying dividends, distributing capital, repurchasing equity, or paying compensation over specified thresholds, except as provided under section 2.D, E, and F of the NONLF or NOELF Borrower Certifications and Covenants or these FAQs (see question [H.2](#)); or
- repaying other debt ahead of schedule (see section 5.A of the NONLF or NOELF Borrower Certifications and Covenants and question [H.3](#)).

### G.22. Is an Eligible Lender restricted from setting monthly or quarterly interest payments after the first year, or will interest be required to be payable annually along with amortization payments of principal?

After the first year of the loan, an Eligible Lender may require the payment of interest at the frequency it would ordinarily require payment with respect to loans made to similarly situated borrowers (e.g., quarterly or annually). The Federal Reserve does not expect that the frequency would ever be more than monthly.

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**G.23. Can an Eligible Lender require an Eligible Borrower to provide collateral or guarantees solely with respect to the Eligible Lender's 5% retained portion of a Main Street loan?**

No. The Eligible Lender and Main Street SPV must share losses on a pari passu basis (i.e., ratably, without preference). Any collateral pledged or guarantees made in connection with a Main Street loan must apply to the entire NONLF Loan or NOELF Upsized Tranche.

**G.24. Are personal guarantees required and/or permitted?**

Personal guarantees are not required under Program terms. However, an Eligible Lender may require a guarantee as part of its own underwriting process. As with collateral providing security for a Main Street loan, guarantees must extend to the entire loan such that the Main Street SPV and Eligible Lender share losses on a pari passu basis.

**G.25. If an Eligible Borrower's outstanding debt is maturing within 90 days, can a Main Street loan be used to refinance such debt at the time of origination?**

No. While Eligible Borrowers are permitted to refinance debt that is maturing within 90 days during the life of a Main Street loan, it may not be done at origination.

**G.26. Can an Eligible Lender or Eligible Borrower hedge interest rate and credit risk in connection with Main Street loans?**

Yes. Eligible Lenders and Eligible Borrowers may hedge interest rate risk associated with Main Street loans. Eligible Lenders may also hedge credit risk associated with a Main Street borrower's industry, but may not engage in borrower name specific hedging of a Main Street loan.

**G.27. Can Eligible Lenders and Eligible Borrowers agree to include cash collateral deposits, compensating balances, cash reserve accounts, or cash escrow accounts at origination or during the life of a Main Street loan as part of the loan terms?**

Yes, but there are limits to this practice.

- **Cash Balances for Purposes of Collateral or Loan Payments.** The Federal Reserve and Treasury Department do not encourage the practice of requiring an Eligible Borrower to maintain cash balances that are restricted to serving as collateral or paying principal or interest on the Main Street loan when mandatory and due (e.g. compensating balances, cash collateral or cash escrow accounts). Eligible Lenders and Eligible Borrowers may, however, agree to include these features at origination or during the life of a Main Street loan as part of the loan terms if such terms are a normal component of the Eligible Lender's underwriting practices for similarly situated borrowers and do not

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exceed 15% of the outstanding balance of the Main Street Loan. Further, such balances should not be used to prepay principal or interest of the Main Street loan, except at the option of the Eligible Borrower during the life of the loan. Eligible Lenders should make every effort to minimize such requirements and align their approach with the expected interest payment and principal amortization schedule specified for Program loans.

- **Delayed Draw Balances.** In addition, Eligible Lenders and Eligible Borrowers may agree to place a portion of the proceeds of a Main Street loan in an account held at the Eligible Lender and delay draw on those funds until certain conditions related to the Eligible Borrower's operations are met. Such conditions may include requirements that Eligible Borrowers provide documentation or other evidence that loan proceeds are being withdrawn to fund pre-agreed activities or purchases by the Borrower, or that the Eligible Borrower pledge additional collateral to secure the Main Street loan that is not available at the time of origination. Any restriction must be substantially similar to a condition placed on similarly situated borrowers by the Eligible Lender in the course of its ordinary underwriting (see question [1.4](#)). In addition, Eligible Lenders may not use such loan features for the purpose of ensuring funds are available for mandatory and due payments on other debt owed by the Eligible Borrower. In any case, such conditions must be included in the loan agreement at origination and must be fully transparent to the Eligible Borrower. For the avoidance of doubt, the quantitative 15% limit would not apply to such loan features.

## H. Certifications and Covenants

### H.1. Are the required certifications and covenants under the NONLF and the NOELF the same?

The certifications for Lenders and Borrowers vary by Main Street facility and are available below:

- [NONLF Borrower Certifications and Covenants](#)
- [NOELF Borrower Certifications and Covenants](#)
- [NONLF Lender Transaction Specific Certifications and Covenants](#)
- [NOELF Lender Transaction Specific Certifications and Covenants](#)

### H.2. What compensation, stock repurchase and capital distributions restrictions apply?

The compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act apply under each of the NOELF and NOSNLF. Detailed instructions are provided in the [NONLF](#) and [NOELF](#) Borrower Certifications and Covenants.

### H.3. What restrictions are placed on the Eligible Borrower's ability to repay existing debt?

The restrictions on repaying debt are similar for the NONLF Loan and NOELF Upsized Tranche. The Eligible Borrower must commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the NONLF Loan or the NOELF Upsized Tranche is repaid in full, unless the debt or interest payment is mandatory and due. The Eligible Borrower must also 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.

These covenants would not prohibit an Eligible Borrower from undertaking any of the following actions during the term of the NONLF Loan or NOELF Upsized Tranche:

- repaying a line of credit (including a credit card) in accordance with the Eligible Borrower's normal course of business usage for such line of credit;
- taking on and paying additional debt obligations required in the normal course of business and on standard terms, including inventory and equipment financing, provided that such debt is secured only by the newly acquired property (e.g., inventory or equipment), and, apart from such security, is of equal or lower priority than the NONLF Loan or the NOELF Upsized Tranche; or
- refinancing debt that is maturing no later than 90 days from the date of such refinancing.<sup>10</sup>

### H.4. Is an Eligible Lender permitted to accept partial repayment of an Eligible Borrower's existing line of credit with the Eligible Lender?

The Eligible Lender would not be prevented from accepting repayments on a line of credit from an Eligible Borrower in accordance with the Eligible Borrower's normal course of business usage for such line of credit.

### H.5. What restrictions are placed on an Eligible Lender's ability to cancel or reduce any existing committed lines of credit outstanding?

An Eligible Lender must commit that it will not cancel or reduce any existing committed lines of credit outstanding to the Eligible Borrower, except in an event of default. This requirement does not prohibit the reduction or termination of uncommitted lines of credit, the expiration of existing lines of credit in accordance with their terms, or the reduction of availability under

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<sup>10</sup> Eligible Lenders and Eligible Borrowers are expected to act in good faith with respect to this requirement and in light of the goals of Main Street. In particular, Eligible Borrowers and Eligible Lenders are discouraged from originating Main Street loans for the purpose of funding debt payments that are, or are presently expected to become, mandatory by operation of a debt covenant or mandatory prepayment provision.

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existing lines of credit in accordance with their terms due to changes in borrowing bases or reserves in asset-based or similar structures.

#### H.6. What is the Eligible Lender's role in verifying certifications and covenants?

An Eligible Lender is required to collect the required certifications and covenants from each Eligible Borrower at the time of origination or upsizing. Eligible Lenders may rely on an Eligible Borrower's certifications and covenants, as well as any subsequent self-reporting by the Eligible Borrower. The Eligible Lender is not expected to independently verify the Eligible Borrower's certifications or actively monitor ongoing compliance with covenants required for Eligible Borrowers under the Main Street term sheets. If an Eligible Lender becomes aware that an Eligible Borrower made a material misstatement or otherwise breached a covenant during the term of a NONLF Loan or NOELF Upsized Tranche, the Eligible Lender should notify the FRB Boston. For more detail, please see the [NONLF](#) and [NOELF](#) Lender Transaction-Specific Certifications and Covenants.

#### H.7. What debt and interest payments are considered "mandatory and due"?

The debt repayment covenants generally prohibit an Eligible Borrower from repaying the principal balance of, or paying any interest on, any debt until the Main Street loan is repaid in full, unless the principal or interest payment is "mandatory and due." With respect to debt that predates the Main Street loan, principal and interest payments are "mandatory and due":

- on the future date upon which they were scheduled to be paid as of the date of origination of the Main Street loan, or
- upon the occurrence of an event that automatically triggers mandatory prepayments under a contract for indebtedness that the Eligible Borrower executed prior to the date of origination of a Main Street loan, except that any such prepayments triggered by the incurrence of new debt can only be paid if such prepayments are de minimis.

For the avoidance of doubt, under the Program, Eligible Borrowers may continue to pay, and Eligible Lenders may request that Eligible Borrowers pay, interest or principal payments on outstanding debt on (or after) the payment due date, provided that the payment due date was scheduled prior to the date of origination of a Main Street loan. Eligible Borrowers may not pay, and Eligible Lenders may not request that Eligible Borrowers pay, interest or principal payments on such debt ahead of schedule during the life of the Program loan, unless required by a mandatory prepayment clause as specifically permitted above.

For future debt incurred by the Borrower in compliance with the terms and conditions of the Program loan, principal and interest payments are "mandatory and due" on their scheduled dates or upon the occurrence of an event that automatically triggers mandatory prepayments.

See question [H.3](#) above for more information about the debt payment covenants generally, including with respect to treatment of lines of credit.



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#### H.8. Can an Eligible Borrower receive a NONLF Loan or a NOELF Upsized Tranche if its existing debt arrangements require prepayment of an amount that is not de minimis upon the incurrence of new debt?

If an Eligible Borrower has an existing debt arrangement that requires prepayment of more than a de minimis amount upon the incurrence of new debt, the Eligible Borrower cannot receive a NONLF Loan or a NOELF Upsized Tranche unless such requirement is waived or reduced to a de minimis amount by the relevant creditor.

#### H.9. How must a Main Street borrower demonstrate that it is “unable to secure adequate credit accommodations from other banking institutions”?

Being unable to secure adequate credit accommodations does not mean that no credit from other sources is available to the borrower. Rather, the borrower may certify that it is unable to secure “adequate credit accommodations” because the amount, price, or terms of credit available from other sources are inadequate for the borrower’s needs during the current unusual and exigent circumstances. Borrowers are not required to demonstrate that applications for credit had been denied by other lenders or otherwise document that the amount, price, or terms of credit available elsewhere are inadequate. See the [NONLF](#) and [NOELF](#) Borrower Certifications and Covenants for details.

#### H.10. How should Eligible Borrowers prepare financial records and make financial calculations in connection with section 4.A of the Borrower Certifications and Covenants?

Under section 4.A of the Borrower Certifications and Covenants for the NONLF and NOELF, the Eligible Borrower must certify that (i) it has provided financial records to the Eligible Lender and a calculation of the Borrower’s (and, if relevant, the Borrower’s affiliates’) unrestricted 2019 operating revenue, adjusted 2019 earnings before interest, debt, and amortization (“EBIDA”) and the proxy for endowment income, reflecting only those adjustments permitted pursuant to the methodology that the Borrower agreed upon with the Eligible Lender; (ii) it has provided to the Eligible Lender financial records and a calculation of the Borrower’s (and, if relevant, the Borrower’s affiliates’) average 2019 quarterly revenue and eligibility criteria described in subparts (7) - (9) of question [E.1](#); and (iii) such financial records fairly present, in all material respects, the financial condition of such entities for the period covered thereby in accordance with U.S. GAAP (if applicable), consistently applied, and that such adjusted EBIDA calculations are true and correct in all material respects. A Borrower should prepare the required financial calculations in a manner consistent with past practice, to the extent applicable. Eligible Borrowers are expected to submit statements to their Eligible Lender as follows.<sup>11</sup>

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<sup>11</sup> The same framework should be applied to affiliates or “Selected Subsidiaries” (as defined in the Borrower Certifications and Covenants) of the Eligible Borrower, where applicable.

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- **U.S. GAAP Compliance:** Eligible Borrowers that are subject to U.S. GAAP reporting requirements or that already prepare their financials in accordance with U.S. GAAP must submit U.S. GAAP-compliant financial records in connection with this certification. Eligible Borrowers that do not have to comply with U.S. GAAP and that do not typically prepare their financials in accordance with U.S. GAAP are not required to submit U.S. GAAP-compliant financials.
- **Financial Statements:** Eligible Borrowers that typically prepare audited financial statements must submit audited financial statements. Otherwise Eligible Borrowers should submit reviewed financial statements or financial statements prepared for the purpose of filing returns with appropriate tax authorities. If an Eligible Borrower does not yet have audited or reviewed financial statements for 2019, the Eligible Borrower should use its most recent audited or reviewed financial statements. If an Eligible Borrower's fiscal year 2019 does not coincide with calendar year 2019, it may use its 2019 fiscal year, unless otherwise required by the Eligible Lender.
- **Consolidation:** Eligible Borrowers that typically prepare financial statements that consolidate the Eligible Borrower with its subsidiaries (but not its parent companies or sister affiliates)<sup>12</sup> must submit such consolidated financial statements. If an Eligible Borrower does not typically prepare consolidated financial statements, it is not required to do so, unless so required by the Eligible Lender.

The relevant inputs to the Eligible Borrower's EBIDA calculation, which will reflect adjustments permitted pursuant to the methodology to which the Eligible Borrower agreed with the Eligible Lender, should come from the Eligible Borrower's financial statements, as outlined above.

Please see question [E.4](#) with regard to financial records required to calculate 2019 revenues for purposes of determining eligibility under the Program. Please see [Appendix C](#) for the financial records requirements for ongoing financial reporting.

#### H.11. In certifying that an Eligible Borrower or Eligible Lender is not a "covered entity" under the conflicts of interest certification, what level of reasonable diligence is required with regard to equity interests (including non-voting preferred stock) held by financial intermediaries?

Section 4019(c) of the CARES Act requires each Eligible Borrower and Eligible Lender to certify to the Secretary and the Board that it is not an entity in which the President, Vice President,

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<sup>12</sup> Please see question [E.10](#) for instances where the Eligible Borrower will separately need to calculate the average 2019 quarterly revenue of its entire affiliated group. In addition, the Borrower Certifications and Covenants require Eligible Borrowers that are holding companies, all or substantially all of the assets of which comprise equity interests in other entities, to calculate the average 2019 quarterly revenue of "Selected Subsidiaries" as defined in the Borrower Certifications and Covenants.

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head of an executive department, member of Congress, or certain immediate family members of such government officials (each, a Covered Individual) directly or indirectly holds a “controlling interest.” In light of limited public information on ownership interests of government officials and their family members, the instructions to the conflicts of interest certification prescribe the level of diligence required to make a conflicts of interest certification in good faith. The reasonable diligence standard establishes a standard that is both necessary and sufficient for the entity to undertake in making the conflicts of interest certification, and is consistent among all Federal Reserve lending programs and facilities that involve funds invested by the Treasury Department under authority provided by the CARES Act. An Eligible Borrower or Eligible Lender may choose, but is not required, to take additional steps in conducting diligence.

To be an Eligible Borrower, a Nonprofit Organization must either (i) certify that the Nonprofit Organization is not a “covered entity” within the meaning of section 4019(c) of the CARES Act, or (ii) certify that the Nonprofit Organization does not have and cannot issue equity interests, such that section 4019(c) of the CARES Act is inapplicable.

- **For a Nonprofit Organization that certifies it is not a “covered entity” within the meaning of section 4019(c):**
  - The reasonable diligence standard applies to all types of equity interests, as defined by section 4019(a)(6) of the CARES Act, including common stock, preferred stock, and equivalent interests in limited liability companies or partnerships. In all cases, an Eligible Lender or Eligible Borrower must consider its actual knowledge, determine whether beneficial owners of any 5% or greater equity interest are Covered Individuals and, if necessary, ask the beneficial owners to confirm whether they are Covered Individuals. If information regarding beneficial ownership has been disclosed pursuant to sections 13(d) and 13(g) of the Securities Exchange Act of 1934 (Exchange Act), the Eligible Borrower or Eligible Lender may rely on this information in addition to its actual knowledge.
  - Beneficial owners may hold their positions through financial intermediaries (e.g., broker-dealers, custodians, and investment funds). As with all types of equity interests, to satisfy the reasonable diligence standard discussed above and set out in the certification instructions, the Eligible Borrower or Eligible Lender must consider, with respect to equity interests held by financial intermediaries, its actual knowledge (including information contained in Exchange Act beneficial ownership disclosures, if available) and, based on this information, determine whether any identified beneficial owners of any 5% or greater equity interest are Covered Individuals.
  - For example, Lender A has 100 shares of non-voting preferred stock outstanding for which the Exchange Act does not require beneficial ownership disclosure.

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Fifteen percent of Lender A's preferred shares are held by a financial intermediary. With respect to these shares, Lender A considers its actual knowledge, including all information it has regarding beneficial ownership of its preferred shares (recognizing that there are no Exchange Act section 13(d) or 13(g) disclosures). In this case, Lender A is not required to take further action and has satisfied the reasonable diligence standard.

- **For a Nonprofit Organization that does not have and cannot issue equity interests:**
  - For a Nonprofit Organization that does not have and cannot issue equity interests, section 4019(c) of the CARES Act would be inapplicable. Because such Nonprofit Organizations do not have and cannot issue equity interests, they cannot be “covered entities” in which government officials and their family members own a controlling interest. These entities would not need to engage in any due diligence with respect to ownership due to the legal impossibility of being “covered entities” for purposes of the CARES Act.

## H.12. How should Eligible Borrowers calculate “total compensation” for purposes of complying with limits on compensation under the direct loan restrictions?

Total compensation is defined as salary, bonuses, awards of stock, and other financial benefits provided by the Eligible Borrower and its affiliates to an officer or employee of the Eligible Borrower, but does not include the value of severance pay or other benefits paid in connection with a termination of employment. The following framework, which is represented in [this flowchart](#), should be used by the Eligible Borrower to calculate total compensation.

An Eligible Borrower may choose to calculate total compensation in a manner consistent with the federal tax rules if the Eligible Borrower meets the criteria described in (a) or (b) below. An Eligible Borrower that does not choose to calculate compensation in a manner consistent with the federal tax rules must calculate total compensation according to the methodology set out in item 402(c) of the Securities and Exchange Commission's Regulation S-K (**item 402(c)**) ([17 CFR 229.402\(c\)\(2\)](#)). Eligible Borrowers must choose which approach to use upon disbursement of the Main Street loan and apply it for as long as the Main Street loan is outstanding and for 12 months thereafter. However, as described in Question [H.13](#) below, an Eligible Borrower that has chosen to use the federal tax rules may later be required to switch to using item 402(c).

- (a) **Small Eligible Borrowers.** An Eligible Borrower that had gross revenues for its financial year ending in 2019 of less than or equal to \$10,000,000, may calculate total compensation in a manner consistent with the federal tax rules.
- (b) **Officers and Employees that receive limited deferred compensation.** An Eligible Borrower that had gross revenues for its financial year ending in 2019 of greater than

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\$10,000,000, may calculate compensation in a manner consistent with the federal tax rules for all officers or employees who are not Significant Deferred Compensation Recipients. A **Significant Deferred Compensation Recipient** means an officer or employee who, during any 12-month period beginning January 2019 and until 12 months after the date on which the Main Street loan is no longer outstanding, has total compensation that exceeds \$425,000, out of which the fair value of deferred compensation granted to such officer or employee exceeds 30 percent.

Deferred compensation is a legally binding right to receive compensation awarded to an officer or employee in one taxable year but not payable until a later taxable year. Eligible Borrowers should use U.S. GAAP to determine which of its officers and employees are Significant Deferred Compensation Recipients.

Eligible Borrowers that choose to calculate total compensation according to the federal tax rules must use the timing and valuation methodology, including the valuation of fringe benefits and bonuses, that apply for purposes of determining when amounts are treated as wages under [Internal Revenue Code section 3401\(a\)](#) for income tax withholding. In addition, total compensation as calculated under the federal tax rules includes commissions, educational assistance, and benefits or wages that are paid in kind (such as meals or lodging) if they would be treated as taxable compensation subject to federal income tax withholding under [Internal Revenue Code section 3401\(a\)](#) applicable to U.S. citizen employees in a state or the District of Columbia (regardless of whether the compensation paid to the individual is actually subject to federal income tax withholding, and whether or not tax is actually withheld).<sup>13</sup>

**H.13. What if an Eligible Borrower chooses, at the time of disbursement of the Main Street loan, to calculate total compensation using the federal tax rules for all officers or employees that were not Significant Deferred Compensation Recipients (as defined in question H.12), and the Eligible Borrower later increases the amount of deferred compensation so that one or more of these individuals become Significant Deferred Compensation Recipients?**

An Eligible Borrower described in (b) of question [H.12](#) must begin calculating total compensation according to item 402(c) immediately with respect to any officer or employee that becomes a Significant Deferred Compensation Recipient, and continue doing so for the remaining period that the Main Street loan is outstanding and for 12 months thereafter. In such cases, the Eligible Borrower must include in any such officer's or employee's total compensation calculated according to item 402(c) any deferred compensation that was granted but not paid in the preceding 90-day period. An Eligible Borrower that meets the criteria under

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<sup>13</sup> See e.g., Internal Revenue Service Publication [15](#), Publication [15-A](#), and Publication [15-B](#), which provide a summary of the rules applicable to employers for reporting wages, including fringe benefits.

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(a) of question [H.12](#) (i.e., had gross revenues for its financial year ending in 2019 of less than or equal to \$10,000,000) at the time of loan disbursement and chooses to use the federal tax rules to calculate total compensation is not required to use item 402(c) for any employee or officer that is or becomes a Significant Deferred Compensation Recipient at any time.

H.14. [Reserved.]

H.15. [Reserved.]

H.16. [Reserved.]

H.17. [Reserved.]

H.18. Do certifications and covenants apply to successors?

An Eligible Borrower also must commit to comply with certifications and covenants included in the Borrower Certifications and Covenants, including repurchase, capital distribution, and compensation restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act. If a Borrower is acquired or otherwise merged into another business, the acquiring or resulting entity would generally assume all rights and obligations of the Borrower, including the rights and obligations of the predecessor entity under a Main Street loan.<sup>14</sup>

H.19. How do the compensation, capital distribution, and stock repurchase restrictions apply to an organization in which more than one entity borrows from the Main Street Lending Program?

The restrictions on compensation, stock repurchase, and capital distributions apply to the Eligible Borrower. Accordingly, if two affiliates borrow from the Main Street Lending Program each would be subject to the restrictions on compensation, capital distributions, and stock repurchases. Note that some restrictions also affect affiliates that are not borrowers. For example, the calculation of total compensation includes salary, bonuses, and other financial benefits received by an officer or employee from the Eligible Borrower and its affiliates.

For additional information on aggregation rules for other criteria (e.g., employees and revenues) see questions [E.5](#) and [E.10](#).

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<sup>14</sup> Borrowers should ensure that any such transaction complies with their loan agreement, and that all required consents or waivers are obtained.

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H.20. [Reserved]

H.21. [Reserved]

## H.22. Do restrictions on compensation apply to loans made by an Eligible Borrower to an employee or officer of such Eligible Borrower?

In determining whether a loan by an Eligible Borrower to its employee or officer is compensation and therefore subject to the restrictions on compensation under section 4003(c)(A)(ii) of the CARES Act, the Borrower is required to review and consider the instructions to the Borrower Certifications and Covenants, these FAQs (including the definition of total compensation in question [H.12](#)), as well as the purpose of and economic result of the transaction. As described in question [H.12](#), Eligible Borrowers must calculate total compensation according to item 402(c) unless the Eligible Borrower meets the criteria and chooses to calculate total compensation according to the federal tax rules. An Eligible Borrower is required to determine whether a loan, or whole or partial forgiveness or discharge of a loan, would be considered compensation to an officer or employee according to these rules.<sup>15</sup> Under the federal tax rules, for example, the whole or partial forgiveness or discharge of a loan may be included in total compensation. Similarly, the amount of the canceled debt, interest or principal, generally is considered income and reported for the year the cancellation occurs. In addition, an individual who receives a loan with a below market interest rate may have imputed compensation determined in accordance with the federal tax rules.

Transactions that circumvent or evade the restrictions that apply under section 4003(c)(3)(A)(ii) of the CARES Act will be viewed as a violation of these restrictions.

H.23. [Reserved]

## H.24. How should I read the term “Borrower” in the Borrower Certifications and Covenants for multi-borrower loans?

Each co-borrower in a multi-borrower loan must deliver to the Eligible Lender a set of Borrower Certifications and Covenants for the appropriate Main Street facility, which must be completed and signed by such co-borrower’s principal executive officer and principal financial officer. If, for example, there are three co-borrowers, each with the same principal executive officer and principal financial officer, three sets of Borrower Certifications and Covenants must be executed by the same officers in respect of the three different co-borrowers.

Each set of certifications should accurately identify the relevant co-borrower in the “Name of the Borrower” field. References to “Borrower” throughout the [NONLF](#) and [NOELF](#) Borrower

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<sup>15</sup> See section 2.D of the [NONLF](#) and [NOELF](#) Borrower Certifications and Covenants for a definition of “officer or employee.”

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Certifications and Covenants mean *only* the co-borrower identified in the “Name of the Borrower” field in such document, except that:

- i. a co-borrower that is a wholly owned subsidiary of a parent Nonprofit Organization:
  - (A) may elect, with its parent Nonprofit Organization, to supply consolidated, parent-level financial records related to the borrower eligibility criteria described in subparts (7)-(9) of question [E.1](#), where permitted by the Eligible Lender, and such consolidated eligibility criteria will be deemed the eligibility criteria for each co-borrower subsidiary and its parent Nonprofit Organization;
  - (B) must, if it is not recognized as tax-exempt under section 501(c)(3) independently from its parent, reasonably determine, in a written record maintained by the organization, that it is an organization described in section 501(c)(3) of the IRC; and
  - (C) must ascertain its eligibility under criteria (1)-(2) of question [E.1](#) on a standalone basis, and under criteria (5)-(6) on a consolidated basis with its parent Nonprofit Organization.
- ii. a co-borrower that is not a wholly owned subsidiary of a parent Nonprofit Organization, or that has not elected to supply consolidated, parent-level financial records related to the borrower eligibility criteria described in subparts (7)-(9) of question [E.1](#), must supply standalone financial records related to such borrower eligibility criteria.

## H.25. How should I read the term “Borrower” in the Lender Transaction Specific Certifications and Covenants for multi-borrower loans?

In the [NONLF](#) and [NOELF](#) Lender Transaction Specific Certifications and Covenants, “Name of the Borrower” will be populated by the Portal to include the name of *each and every* co-borrower identified in the Portal. References to the “Borrower” throughout the document will be understood to mean “collectively, the co-borrowers named in the Lender Transaction Specific Certifications and Covenants,” with the following exceptions:

- i. **Section 1.A – Nonprofit Status and Due Inquiry with Respect to Formation.** Each co-borrower must be a Nonprofit Organization that has been in continuous operation since January 1, 2015. The Eligible Lender must receive documentation from each co-borrower evidencing that co-borrower’s legal formation certified by the appropriate governmental authority, and take those steps to verify such formation as are required under the Eligible Lender’s ordinary underwriting policies and procedures.
- ii. **Section 1.B – Delivery of Borrower Certifications and Covenants:** Each co-borrower must submit its own Borrower Certifications and Covenants. References to the Borrower Certifications and Covenants throughout the Lender Transaction Specific Certifications and Covenants should be read to include each co-borrower’s Borrower Certifications and Covenants.



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- iii. **Section 2.G, 2.I, and 2.J – Maximum Loan Size:** Each co-borrower must submit financial information and a calculated 2019 revenue for such co-borrower, except that co-borrowers may elect to aggregate their financials and 2019 revenue, if permitted by the Eligible Lender.<sup>16</sup>
- iv. **Section 2.H:** Each co-borrower must submit financial information and records to determine compliance with the borrower financial eligibility criteria described in subparts (7)-(9) of question [E.1](#), except that a co-borrower that is a wholly owned subsidiary of a parent Nonprofit Organization may elect to provide consolidated, parent-level financial records related to the borrower eligibility criteria described in subparts (7)-(9) of question [E.1](#).

For the avoidance of doubt, a notice or report made to an Eligible Lender by any co-borrower is a notice or report made by “the Borrower.”<sup>17</sup> Further, requirements referencing the other loans, obligations, or “Loans or Debt Instruments” of “the Borrower” include the other loans, obligations, or Loans or Debt Instruments, of all co-borrowers in any capacity, and not solely the other loans, obligations, or Loans or Debt Instruments, jointly shared by the co-borrowers.<sup>18</sup> Finally, acceleration of a loan made to any of the co-borrowers should trigger the cross-acceleration clause required under section 2.N of the Lender Transaction Specific Certifications and Covenants.

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<sup>16</sup> While co-borrowers may individually submit financial information and 2019 revenue calculations, the maximum loan size must be determined in reference to the average 2019 quarterly revenue of “the Borrower” (i.e., collectively, all of the co-borrowers). The Eligible Lender should use (or should require the co-borrowers to use, as applicable) its typical practices in order to aggregate financial information in a manner that accounts for transactions between the co-borrowers and accurately reflects the financial position of the co-borrowers and their ability to repay the loan (e.g., in a manner that avoids double counting of revenues, assets, or liabilities).

Therefore, to calculate maximum loan size, the aggregate average 2019 quarterly revenue of “the Borrower” should be used for section 2.G of the [NONLF](#) and [NOELF](#) Lender Transaction Specific Certifications and Covenants; the aggregate average 2019 quarterly revenue of “the Borrower” and its affiliates should be used for section 2.I of the [NONLF](#) and [NOELF](#) Lender Transaction Specific Certifications and Covenants; and, if, on an aggregated basis, all or substantially all of the assets of the Borrower comprise equity interests in other entities, then the Borrower must identify Selected Subsidiaries and the maximum loan size would be constrained by such Selected Subsidiaries’ aggregate average 2019 quarterly revenue.

<sup>17</sup> See, e.g., sections 2.G, or 2.I of the [NONLF](#) and [NOELF](#) Lender Transaction Specific Certifications and Covenants, section 5.B of the [NONLF](#) Lender Transaction Specific Certifications and Covenants, and section 6.B of the [NOELF](#) Lender Transaction Specific Certifications and Covenants.

<sup>18</sup> See section 2.K of the [NONLF](#) and [NOELF](#) Lender Transaction Specific Certifications and Covenants, section 3 of the [NOELF](#) Lender Transaction Specific Certifications and Covenants, and section 4.A. of the [NONLF](#) Lender Transaction Specific Certifications and Covenants.

## **I. Lender Information**

### **I.1. Which financial institutions are eligible to make loans under the Program?**

U.S. federally-insured depository institutions (including banks, savings associations, and credit unions), U.S. branches or agencies of foreign banks, U.S. bank holding companies, U.S. savings and loan holding companies, U.S. intermediate holding companies of foreign banking organizations, or any U.S. subsidiary of any of the foregoing are eligible to participate in the Program. At this time, nonbank financial institutions are not considered Eligible Lenders for purposes of the Program. However, the Federal Reserve is considering options to expand the list of Eligible Lenders in the future.

### **I.2. How should an Eligible Lender evaluate an Eligible Borrower's creditworthiness?**

The eligibility criteria in the Main Street facility term sheets must be satisfied for a loan to be eligible for participation by the Main Street SPV. In addition, at the time of the potential borrower's application, an Eligible Lender is expected to conduct an assessment of each potential borrower's pre-pandemic financial condition and post-pandemic prospects, taking into account the payment deferral features of Main Street loans. An Eligible Lender may require additional information and documentation in making this evaluation and will ultimately determine whether an Eligible Borrower is approved for a Program loan in light of these considerations. Nonprofit Organizations that otherwise meet the Eligible Borrower requirements may not be approved for a loan or receive the maximum allowable amount.

### **I.3. Can multiple affiliated Eligible Lenders participate in Main Street?**

Yes. Multiple affiliated entities may register as Eligible Lenders under the Program.

### **I.4. Will standard loan documents be provided for Main Street loans, or should Eligible Lenders use their own loan documentation?**

Each participating Eligible Lender should use its own loan documentation in relation to Main Street loans. Such documentation should be substantially similar, including with respect to required covenants, to the loan documentation that the Eligible Lender uses in its ordinary course lending to similarly situated borrowers, adjusted only as appropriate to reflect the requirements of the Program. [Appendix A](#) contains a checklist of the items that must be reflected in the loan documentation in order for the Main Street SPV to purchase a participation in a loan. [Appendix B](#) includes certain model covenants that Eligible Lenders can elect to reference when drafting their loan documentation in order to satisfy the [Appendix A](#) requirements. [Appendix C](#) includes a list of the financial information that Eligible Lenders must require Eligible Borrowers to provide on an ongoing basis until the loans mature

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### **I.5. How should an Eligible Lender account for the transfer of an undivided participation interest in the loan to the Main Street SPV?**

The transfer of an undivided participation interest in a NONLF Loan or a NOELF Upsized Tranche is structured with the intent to (a) meet the accounting definition of a participating interest; (b) qualify as a true sale under the Bankruptcy Code; and (c) meet the criteria for sale accounting outlined in ASC 860, Transfers and Servicing.

The Federal Reserve expects that an Eligible Lender would generally be able to support the conclusion that the transfer of a participation interest in a NONLF Loan or a NOELF Upsized Tranche made in accordance with the Program requirements qualifies for sale accounting under ASC 860. However, an Eligible Lender will need to evaluate any entity-specific considerations in determining the appropriate conclusion.

For the NOELF, the accounting considerations described above relate to situations where an Eligible Lender has appropriately concluded that the NOELF Upsized Tranche is a separate and distinct unit of account for accounting purposes. This conclusion will vary depending on transaction-specific considerations as an Eligible Lender has the ability to customize certain details that may be pertinent to the unit of account analysis. Factors that an Eligible Lender should consider in evaluating whether the NOELF Upsized Tranche can be considered a separate and distinct unit of account, apart from the existing term loan or revolving credit facility, for accounting purposes include, but are not limited to:

- the characteristics of the NOELF Upsized Tranche compared to the characteristics of the existing term loan or revolving credit facility (e.g., maturity date, amortization schedule, collateral requirement, payment date, and interest rate); and
- how an Eligible Lender operationalizes the NOELF Upsized Tranche, including whether scheduled principal and interest payments are commingled with payments on the existing term loan or revolving credit facility, whether the payments made by the Eligible Borrower clearly indicate which loan the payment is intended to settle, and whether the Eligible Lender separately maintains detailed record-keeping.

Federal Reserve staff has discussed the broad terms and intent of the Program with staff of the SEC's Office of the Chief Accountant (**OCA**). OCA staff have indicated they are available for consultation on an entity's specific facts and circumstances as needed.

### **I.6. Do the participation interests purchased by the Main Street SPV under the Program constitute "true participations"?**

The Federal Reserve has designed the legal forms and agreements to facilitate a determination that the participation interests purchased by the Main Street SPV in NONLF Loans or NOELF Upsized Tranches are "true participations." As such, the participation interests by the Main

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Street SPV have characteristics of true participations under the Bankruptcy Code, including the following:

- Sections 2.1(c) and 4.3 of the [Participation Agreement](#) explicitly reflect the intention of the parties to effect a true sale. Section 2.1(b) of the Participation Agreement provides that it is the parties' intent to sell an undivided participation interest in 95% of an NONLF Loan or an NOELF Upsized Tranche. Further, sections 4.3 and 5.3 of the Participation Agreement state that there is a complete and irrevocable transfer by the Eligible Lender of the rewards and risks of ownership of the participation interest. Further, section 2.1(d) makes clear that the participation interest cannot be put-back, voided, or rescinded. While the Eligible Lender will retain bare legal title to the portion of the NONLF Loan or NOELF Upsized Tranche underlying the participation interest, retention of title in this manner is not inconsistent with the sale of a participation interest in a loan.
- The Eligible Lender does not guarantee repayment of the participation interest or the NONLF Loan or NOELF Upsized Tranche underlying the participation interest, nor is there any other recourse inconsistent with a sale of the participation interest.
- Sections 2.1(b) and 8 of the Participation Agreement provide for a pure pass-through to the Main Street SPV of amounts paid by the Eligible Borrower under an NONLF Loan or an NOELF Upsized Tranche, excluding the Eligible Lender's retained beneficial interest (a 5% beneficial interest in each NONLF Loan or NOELF Upsized Tranche). The proceeds of the participation interest will not be commingled with the Eligible Lender's funds for any significant period of time. Pursuant to Section 8.1 of the Participation Agreement, (i) the Eligible Lender will accept and hold any distributions that the Eligible Lender receives in respect of the participation interest for the account and sole benefit of the Main Street SPV, (ii) the Eligible Lender has no equitable or beneficial interest in such distributions, which are property of the Main Street SPV, and (iii) the Eligible Lender is required to deliver any distribution to the Main Street SPV promptly.
- The participation interest will also have the same duration as the underlying NONLF Loan or NOELF Upsized Tranche.
- Pursuant to the [Servicing Agreement](#), the Eligible Lender will provide Enhanced Reporting Services (as defined in the Servicing Agreement) to the Main Street SPV with respect to the participation interest. As compensation for the Enhanced Reporting Services, the Main Street SPV will pay the Eligible Lender a servicing fee in the amount of 0.25% per annum of the total principal amount of the participation interest. The Federal Reserve believes that the terms of the Servicing Agreement are commercially reasonable and comparable to terms that unaffiliated third parties would accept to provide Enhanced Reporting Services, under the terms and conditions set out in the Servicing Agreement, with respect to the participation interest.

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- By agreeing to borrow in connection with the Program, each Eligible Borrower must consent to the Eligible Lender's sale of the participation interest in the NONLF Loan or NOELF Upsized Tranche, as applicable, to the Main Street SPV.
- The Eligible Lender has agreed to act on behalf of the Main Street SPV with respect to the Main Street SPV's participation interest in the NONLF Loan and the NOELF Upsized Tranche. With respect to Core Rights Acts, Section 11.1 of the Participation Agreement provides that the Eligible Lender shall only take (or refrain from taking) Core Rights Acts in accordance with the prior instructions of the Main Street SPV. Pursuant to Section 12.1 of the Participation Agreement, the Eligible Lender will not be held to the standard of care of a fiduciary, but will exercise the same duty of care with respect to the administration and enforcement of the participation interest as it would exercise if it held the participation interest solely for its own account.
- Sections 11.1(c), 15.1 and 15.2 of the Participation Agreement provide elevation rights for the Main Street SPV, which establish circumstances under which the Main Street SPV can request the Eligible Lender to use best efforts or commercially reasonable efforts, as applicable, to effectuate a full assignment of the legal title to the portion of the NONLF Loans or NOELF Upsized Tranche underlying the participation interest.

#### **I.7. Does the sale of participation interests to the Main Street SPV meet the criteria for a true sale under the Bankruptcy Code?**

The sale of a participation interest in an NONLF Loan or an NOELF Upsized Tranche is structured to be a true sale, and the Program transaction terms are consistent with a true sale, including:

- The express language in section 2.1(b) of the [Participation Agreement](#) reflecting the intent of the parties to sell an undivided participation interest in 95% of an NONLF Loan or an NOELF Upsized Tranche.
- The economic substance of the transfer of the participation interest from the Eligible Lender to the Main Street SPV under the Participation Agreement is a sale.
- The language in sections 4.3 and 5.3 of the Participation Agreement providing for a complete and irrevocable transfer by each Eligible Lender of the rewards and risks of ownership of the participation interest, as well as the language in section 2.1(d) making clear that the participation interest cannot be put-back, voided, or rescinded.
- Any change in the value of the participation interest will not be for the benefit or loss of the Eligible Lender.
- The Eligible Lender will receive the entire consideration for the participation interest representing at least the fair market value for the participation interest on the applicable closing date. There will not be any post-closing adjustment of the purchase

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price, and the Eligible Lender does not have any right or obligation to transfer additional property to the Main Street SPV.

- The Participation Agreement makes explicit the parties' intention for the Eligible Lender to relinquish the benefits and risks associated with ownership of the participation interest.

In addition to the above, the Federal Reserve Bank of Boston agrees that it will not assert in any proceeding that the sales of the participation interests are other than true sales constituting true participations.

While not inconsistent with a true sale of participation interests, the Program does have certain unique features including the following:

- Each Eligible Lender under the Program must retain its 5% of the NONLF Loan or NOELF Upsized Tranche until (A) the underlying NONLF Loan or NOELF Upsized Tranche matures or (B) neither the Main Street SPV nor a Governmental Assignee holds an interest in the loan in any capacity, whichever occurs first.
- Under the NOELF, each Eligible Lender must also retain its interest in the underlying loan until (A) such underlying loan matures, (B) the NOELF Upsized Tranche matures or (C) neither the Main Street SPV nor a Governmental Assignee holds an interest in the loan in any capacity, whichever occurs first.

It is important to note, however, that the Eligible Lender's retained interest in the NONLF Loan, NOELF Upsized Tranche, or NOELF underlying loan will be pari passu with the Main Street SPV's participation interest. Thus, the Eligible Lender's retained interest in the NONLF Loan, NOELF Upsized Tranche, or NOELF underlying loan does not provide credit support for the related participation interest(s). As noted above, the material terms of the NONLF and NOELF are consistent with a true sale determination.

#### **I.8. Does the Main Street SPV have the right to put back the participation interests to the Eligible Lender?**

Neither the Eligible Lender nor any of its affiliates will have any right or obligation to purchase, repurchase, acquire, or reacquire the participation interest or to substitute other assets for the participation interest subsequent to sale to the Main Street SPV, or any right of first refusal, last look, or other similar right with respect to a purchase of the participation interest, or any obligation to pay any amount in connection with a loss of value with respect to the participation interest once it has been sold to the Main Street SPV. Further, under section 2.1(d) of the Participation Agreement, the Main Street SPV has no right to put the participation interest back to the Eligible Lender.

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**I.9. Do the participation interests purchased by the Main Street SPV potentially qualify for a “safe harbor” in relation to FDIC resolution proceedings?**

The Federal Reserve has structured the transfer of the interests in financial assets under the Participation Agreement from the Eligible Lender to the Main Street SPV with the intent that it would qualify for the safe harbor regulations adopted by the Federal Deposit Insurance Corporation, under [12 CFR 360.6\(d\)\(1\)](#), regarding the treatment of financial assets transferred in connection with a participation. This safe harbor provides protection to the transfer of financial assets by an insured depository institution under a properly structured participation without recourse that satisfies the safe harbor’s requirements by providing, in general, that the Federal Deposit Insurance Corporation (as conservator or receiver of the institution) will not reclaim or recover any such transferred financial assets, provided that such transfer satisfies the conditions for sale accounting treatment under U.S. GAAP, other than the legal isolation condition that is addressed by the safe harbor. The Federal Reserve has structured the Program with the intent that participations purchased by the Main Street SPV should qualify as “participations” within the meaning of [12 CFR 360.6\(a\)\(7\)](#), as they are sales of an undivided interest in a NONLF Loan or a NOELF Upsized Tranche, without recourse to the Eligible Lender. Staff of the Federal Deposit Insurance Corporation were consulted in preparing this response.

**I.10. Do the participation interests purchased by the Main Street SPV potentially qualify for a “safe harbor” in relation to NCUA resolution proceedings?**

The Federal Reserve has structured the transfer of the interests in financial assets under the Participation Agreement from the Eligible Lender to the Main Street SPV with the intent that it would qualify for the safe harbor regulations adopted by the Board of the National Credit Union Administration regarding the treatment of financial assets transferred in connection with a participation, under [12 CFR 709.9\(d\)\(1\)](#). This safe harbor provides protection to the transfer of financial assets by a federally insured credit union under a properly structured participation without recourse that satisfies the safe harbor’s requirements by providing, in general, that the Board of the National Credit Union Administration (as conservator or receiver of the institution) will not reclaim or recover any such transferred financial assets, provided that such transfer satisfies the conditions for sale accounting treatment under U.S. GAAP, other than the legal isolation condition that is addressed by the safe harbor. The Federal Reserve has structured the Program with the intent that participations purchased by the Main Street SPV should qualify as “participations” within the meaning of [12 CFR 709.9\(a\)](#), as they are sales of an undivided interest in a NONLF Loan or a NOELF Upsized Tranche, without recourse to the Eligible Lender. Staff of the National Credit Union Administration were consulted in preparing this response.

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I.11. Does the Servicing Agreement contemplated between the Eligible Lender and the Main Street SPV impact whether the sale of participation interests can be considered a “true sale”?

No, the Federal Reserve believes that the terms of the [Servicing Agreement](#) are commercially reasonable and comparable to terms to which unaffiliated third parties would agree to provide Enhanced Reporting Services (under the terms and conditions set out in the Servicing Agreement) with respect to the participation interest. The Servicing Fee does not represent any type of recourse or credit support for the participation interest, given that the fee is being paid by the Main Street SPV to the Eligible Lender. The Main Street SPV may also terminate the Servicing Agreement and remove the Eligible Lender as servicer at any time for “Cause,” as such term is defined in the Servicing Agreement.”

I.12. Will payment-in-kind (“PIK”) interest that has accrued (but has not yet been capitalized to principal) during the period of time starting on the date when the loan agreement is funded to the date when the loan participation purchase is funded be allocated to the Seller (i.e., the Eligible Lender)?

No. Under the [Participation Agreement](#), all accrued, but uncapitalized PIK Interest on the Purchase Amount of the loan that is participated is for the account of the Main Street SPV (as the Buyer), regardless of when such interest accrued. Further, the Purchase Price is determined based upon the Purchase Amount of the participation interest as of the effective date of the Participation Agreement. Therefore, the Participation Agreement does not require the Main Street SPV to pay for the accrued, but uncapitalized interest, if the interest has not yet been added to the principal amount as of the effective date of the Participation Agreement.

I.13. Can an Eligible Lender that is a depository institution pledge its 5% of a Main Street loan to a Federal Reserve Bank as collateral?

An Eligible Lender that is a depository institution may pledge its 5% of a Main Street loan, provided that the loan meets the collateral eligibility requirements of its local Federal Reserve Bank. General acceptance criteria for loans can be found in the Federal Reserve Collateral Guidelines. A depository institution should contact its local Reserve Bank to discuss specific questions regarding collateral eligibility or pledging procedures. The “Federal Reserve Collateral Guidelines” and toll-free phone numbers and other contact information of each Reserve Bank can be found on [www.frbdiscountwindow.org](http://www.frbdiscountwindow.org).



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I.14. Does a lender registered with the Program for purposes of the MSNLF, MSELF, and MSPLF need to re-register to become an Eligible Lender for purposes of the NONLF and NOELF?

A lender that has completed the lender registration process for participation in the Program, including by submitting Lender Registration Certifications and Covenants, need not re-register to become an Eligible Lender for purposes of the NONLF and NOELF, provided the lender remains an Eligible Lender as defined in the Lender Registration Certifications and Covenants.

I.15. Must Main Street loan documents be governed by U.S. law?

Yes. Main Street loan documents must be governed by the laws of any of the several states, the District of Columbia, or any of the territories of the United States.

## **J. Loan Participation**

J.1. What loan documentation is required to sell a participation to the Main Street SPV under the Program?

The Federal Reserve Bank of Boston's [Legal Forms and Agreements website](#) includes the form loan participation agreement, borrower and lender certifications and covenants, and other related documentation necessary to effect the sale of a qualifying participation interest to the Main Street SPV. See question [I.4](#) for information about the underlying loan documentation.

J.2. What loan-level information will the SPV collect for credit monitoring purposes?

See [Appendix C](#).

J.3. Is there a limit to the volume of participations the Main Street SPV can purchase from a single Eligible Lender?

Apart from the Program's size and time limitations, there is no limit on the amount of participations the Main Street SPV can purchase from a single Eligible Lender.

J.4. Under the Loan Participation Agreement, when can the Main Street SPV sell its loan participation or elevate its loan participation into an assignment?

Under the Loan Participation Agreement, the Main Street SPV is generally permitted to sell its participation (without elevating) only with the contemporaneous consent of the Eligible Lender. In addition, it is generally permitted to elevate its participation into an assignment only with the contemporaneous consent of the Eligible Borrower, the Eligible Lender, and other necessary parties (i.e., the administrative agent in a multi-lender facility). However, the SPV may do the following without such contemporaneous consent:

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- It may sell or transfer its loan participation in full, but not in part, without elevating, at any time to any Federal Reserve Bank, any vehicle authorized to be established by the Board or any Federal Reserve Bank, any entity created by an act of Congress, or any vehicle established or acquired by the Department of the Treasury or any other department or agency of the federal government. These transfers cannot be undertaken to effect a securitization.
- It may sell or transfer its loan participation, or elevate its participation to an assignment (to itself or a third-party), upon the following events:
  - at the option of the Main Street SPV, if the Eligible Borrower has failed to make any payment due under its loan contract with the Eligible Lender and the applicable grace period has elapsed;
  - at the option of the Main Street SPV, if the Eligible Borrower or the Eligible Lender has become the subject of bankruptcy or other insolvency proceedings;
  - automatically, if the Eligible Lender would take, or refrain from taking, an action that would result in impermissible forgiveness of principal of the portion of the Program loan beneficially owned by the Main Street SPV (to prevent a violation of section 4003(d)(3) of the CARES Act); and
  - if required to do so by a statute or court.

Please see the form [Loan Participation Agreement Standard Terms and Conditions](#) for more detail regarding the above.

#### **J.5. What role will the Main Street SPV play in the event an Eligible Borrower enters distress?**

Prior to an Eligible Borrower entering distress, the Main Street SPV will rely on the Eligible Lender to service each Main Street loan in accordance with the standard of care set out in the Loan Participation Agreement and in light of the duties of the Eligible Lender under the Servicing Agreement. Except as set out in question [J.4](#), the Main Street SPV cannot elevate its interest during this time without the contemporaneous consent of the Eligible Borrower and the Eligible Lender, and typically would not seek to do so.

Once an Eligible Borrower misses a mandatory and due payment on the Program loan (beyond the applicable grace period), or the Eligible Borrower or Eligible Lender enters into bankruptcy or other insolvency proceedings, the Main Street SPV will have the option to elevate its participation to an assignment to be in privity with the Eligible Borrower. However, the Federal Reserve does not expect the Main Street SPV to use this right as a matter of course. Rather, the Federal Reserve would expect Eligible Lenders to follow market-standard workout processes and to exercise the standard of care set out in the Loan Participation Agreement (i.e., to exercise the same duty of care in approaching such proceedings as it would exercise if it retained a beneficial interest in the entire loan). In general, the Federal Reserve expects that

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the Main Street SPV generally would not expect to elevate and assign except in situations where (i) the economic interests of the Eligible Lender and the Main Street SPV are misaligned, or (ii) the loan amount is relatively large in comparison to other loans in the Main Street SPV's portfolio of participations.

**J.6. How will the Main Street SPV approach decision-making with respect to its voting rights under the Loan Participation Agreement or Co-Lender Agreement?**

Main Street is an emergency lending program, not a grant program. Consistent with Section 13(3) of the Federal Reserve Act and the Federal Reserve's obligations under the CARES Act, the Main Street SPV will make commercially reasonable decisions to protect taxpayers from losses on Main Street loans and will not be influenced by non-economic factors when exercising its voting rights under the [Loan Participation Agreement](#) or the [Co-Lender Agreement](#), including with respect to a borrower that is the subject of a workout or restructuring.

**J.7. Will the Main Street SPV assert special administrative priority under Section 507(a)(2) of the Bankruptcy Code for its claims against an Eligible Borrower in bankruptcy proceedings?**

No. Under the [Loan Participation Agreement](#) and [Co-Lender Agreement](#), the Main Street SPV (and any other entity that steps into its shoes) has waived and disclaimed its right to assert special administrative priority under Section 507(a)(2) of the Bankruptcy Code. The Federal Reserve believes that waiving and disclaiming its right to such priority will enhance the efficacy of the Program and provide certainty to Eligible Lenders and Eligible Borrowers, without compromising taxpayer protection.

- **Taxpayer Recovery.** The Federal Reserve has determined that failing to waive and disclaim its right to assert this special priority may trigger technical cross-defaults related to an Eligible Borrower's other existing debt obligations, and could prevent Eligible Borrowers from securing new debt, including potential Debtor-in-Possession financing. Such consequences would undermine the Main Street SPV's efforts to maximize recovery for taxpayers, including in the case of an Eligible Borrower's restructuring or workout. Further, the assertion of this special priority could require costly litigation in the case of any Eligible Borrower bankruptcy, which would limit net recovery.
- **Limited Scope of the Special Priority.** Special priority is likely to improve taxpayer recoveries only in limited situations. In general, special priority would enhance the Federal Reserve's recoveries only in some situations where the Main Street SPV is one of multiple unsecured creditors of the Eligible Borrower at the time of

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its bankruptcy, and only to the extent the SPV would not have to share its special recoveries with other creditors due to underlying inter-creditor agreements.

- **Efficacy of Main Street.** The Federal Reserve also believes that failing to waive or disclaim its rights to assert special priority may limit the efficacy of the Program, because Eligible Lenders likely would be hesitant to use a Program that would effectively subordinate the credit they have already extended to an Eligible Borrower.
- **Other Taxpayer Protections.** The NONLF and NOELF include features that are intended to mitigate risk to the Federal Reserve and taxpayers. For example, Eligible Lenders are required to retain a portion of each loan’s risk and Eligible Borrowers are constrained in their ability to prepay other existing debts. Further, an Eligible Borrower’s loans outstanding with the Eligible Lender must have received an internal FFIEC “pass” rating, as of December 31, 2019. Together, the Federal Reserve believes that these and other design features are sufficient to protect taxpayers from losses.

## **K. Regulatory Treatment**

### **K.1. What is the regulatory capital treatment for the interest in a Main Street loan retained by an Eligible Lender?**

The interest in the portion of a Main Street 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 under the standardized approach.<sup>19</sup> For purposes of risk-based capital rules and leverage rules, the exposure amount for NONLF Loans and NOELF Upsized Tranches is 5% of the NONLF Loan balance or NOELF Upsized Tranche balance, respectively. With respect to the NOELF, this treatment applies only to the outstanding NOELF 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 Main Street SPV.

Secured Main Street 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 Main Street SPV’s interest for purposes of the credit risk mitigation treatment under the capital rule.

The treatment described above applies only to Eligible Lenders that are 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.

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<sup>19</sup> In view of the diversity of legal and organizational structures used by nonprofit organizations, the risk weight applicable to the Eligible Lender’s interest under the capital rule should be determined by the Eligible Lender based on the facts and circumstances of the Eligible Borrower.

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## K.2. How will Program loans be treated for supervised firms subject to stress testing?

The capital planning guidance issued by the Federal Reserve in 2015 ([SR 15-18](#) and [SR 15-19](#)) includes supervisory expectations for capital planning and stress testing for certain supervised firms. Such firms should continue to reference that guidance when evaluating Program loans for capital planning and stress testing purposes. Eligible Lenders subject to capital planning guidance should evaluate only the retained portion of Program loans for capital planning and stress testing purposes, as the sale of participations to the SPV will be structured as “true sales.”

The supervisory stress test methodology to assign losses to and revenues stemming from different types of exposures is publicly available and described in “[Dodd-Frank Act Stress Test 2020: Supervisory Stress Test Methodology.](#)”

## K.3. Are Main Street loans for existing customers considered new accounts for FinCEN Rule CDD purposes? Are lenders required to collect, certify, or verify beneficial ownership information in accordance with the rule requirements for existing customers?

FinCEN has provided the following guidance to the Board with respect to this question: If the Main Street loan is being made to an existing customer and the necessary information was previously verified, you do not need to re-verify the information. Furthermore, if Eligible Lenders for purposes of the Program have not yet collected beneficial ownership information on existing customers, such institutions do not need to collect and verify beneficial ownership information for those customers applying for new Main Street loans, unless otherwise indicated by the Eligible Lender’s risk-based approach to Bank Secrecy Act compliance.

## K.4. How will federal supervisors treat loans extended through the Main Street program?

Given the severe economic dislocations caused by the COVID-19 pandemic, many Main Street loan applicants may be experiencing temporary cash flow disruptions. Supervisors acknowledge the high degree of uncertainty in predicting COVID-19’s economic impact and effect on individual borrowers. Eligible Lenders are encouraged to work with borrowers affected by COVID-19 and may originate or expand loans to such borrowers under the Main Street Program.

Supervisors will not criticize Eligible Lenders for originating Main Street loans in accordance with the Program’s requirements, including cases when such loans are considered non-pass at the time of origination, provided these weaknesses stem from the pandemic and are expected to be temporary or if such loans are part of a bank’s prudent risk mitigation strategy for an existing borrower.

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The supervisory approach for assessing the safety and soundness of institutions given the ongoing impact of the COVID-19 pandemic is outlined in [SR 20-15](#).

**K.5. For an Eligible Lender that is a national bank or savings association, do lending limits apply to the entire size of a Main Street loan, or only the percentage of a loan that is retained by the Eligible Lender?**

Loans made under the Main Street lending program apply towards an Eligible Lender's lending limit.

**From the OCC:** For Eligible Lenders that are national banks, federal savings associations, and state savings associations, the Main Street loan should be treated as follows:

1. **Funded Loan:** If the Eligible Lender funded a NONLF Loan or a NOELF Upsized Tranche to an Eligible Borrower before seeking to sell a participation to the Main Street SPV (under the "Funded Loan" method described in question [L.4](#)), the full amount of the loan would be treated as a loan by the Eligible Lender to the relevant Eligible Borrower and would count towards the Eligible Lender's lending limit. The full amount of the loan will count towards the Eligible Lender's lending limit until such time as the Main Street SPV has purchased the participation (i.e., once the Eligible Lender has received full payment by the Main Street SPV for the participation). After the purchase of the participation by the Main Street SPV, the portion of the loan that has been sold as a participation to the Main Street SPV would no longer be treated as a loan to the relevant Eligible Borrower for purposes of the OCC's lending limit regulations.
2. **Condition of Funding:** Under the Program, the Eligible Lender has the option of entering into a loan agreement to extend a NONLF Loan or a NOELF Upsized Tranche to an Eligible Borrower, for which the funding of such loan is contingent on the Eligible Lender receiving a binding commitment from the Main Street SPV to purchase a participation in the loan (as discussed under the "Condition of Funding" method described in question [L.4](#)). If the Eligible Lender chooses this option and provides a Funding Notice to the Main Street SPV by the specified deadline, the Eligible Lender need only include the retained percentage of the loan when calculating its lending limit to the Eligible Borrower. Loans extended in this manner are structured to be exempt loan participations under the OCC's regulation ([12 CFR 32.2\(q\)\(2\)\(vi\)\(A\)-\(B\)](#)). The Main Street SPV will generally be able to advance funds to purchase the participation within one business day of receiving notice from the Eligible Lender that it has funded the loan, if such notice is received before 7 p.m. ET. In instances where funding from the Main Street SPV occurs more than one business day after the loan is funded by the Eligible Lender, provided such delays were outside of the Eligible Lender's control, the entirety of the loan will be treated as a loan to the relevant Eligible Borrower and count towards the Eligible Lender's lending limit, but any amount of the loan exceeding the Eligible Lender's lending limit will not be considered a violation and will instead be treated as

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nonconforming for the interim period under [12 CFR 32.2\(g\)\(2\)\(vi\)\(B\)](#). Once the Eligible Borrower receives full payment from Main Street SPV for the portion of the loan that has been sold as a participation to the Main Street SPV, that portion of the loan will no longer be treated as a loan to the relevant Eligible Borrower for purposes of the OCC's lending limit regulations.

Federal Reserve staff have consulted with staff of the OCC and the FDIC in providing this response. OCC staff have indicated they are available for consultation on a national bank's or federal savings association's specific facts and circumstances, as needed. FDIC staff have indicated they are available for consultation on a state savings association's specific facts and circumstances, as needed.

Eligible Lenders that are state-chartered banks should review applicable state law to determine to what extent a Main Street loan applies to its lending limit. State member and nonmember banks should consult with their state banking supervisor.

**K.6. For Eligible Lenders that are federally insured credit unions, does the member business loan limit apply to the entire size of a Main Street loan, or only the percentage of a loan that is retained by the Eligible Lender?**

Under the Federal Credit Union Act, federally insured credit unions (whether federally or state chartered) that are not exempt by statute are subject to an aggregate limit on "member business loans" set forth in [12 U.S.C. § 1757a\(a\)](#). The aggregate limit applies to all member business loans made by a federally insured credit union under the Program, irrespective of any advance commitment to purchase a participation interest prior to funding the loan. However, when a participation interest in the Program loan is actually purchased and transferred to the SPV, without recourse and qualifying for true sale accounting under U.S. GAAP, the portion of the loan that has been sold as a participation shall no longer count toward the aforementioned aggregate limit on member business loans. Other exceptions to and exclusions from the member business loan limit are set forth in [12 U.S.C. § 1757a](#) and [12 CFR 723.8](#).

Federal Reserve staff have consulted with staff of the NCUA in drafting this response. NCUA staff have indicated they are available for consultation on a federally insured credit union's specific facts and circumstances as needed.

**K.7. For Eligible Lenders that are federally insured credit unions, does the limit on commercial loans to one member apply to the entire size of a Main Street loan, or only the percentage of a loan that is retained by the Eligible Lender?**

Under the NCUA's regulations, the aggregate dollar amount of commercial loans to any one borrower or group of associated borrowers may not exceed the greater of 15% of the federally insured credit union's net worth or \$100,000, plus an additional 10% of the credit union's net

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worth if the amount that exceeds the credit union's 15% general limit is fully secured at all times with a perfected security interest by readily marketable collateral as defined in [12 CFR 723.2](#). Such limitation applies to all commercial loans made by a federally insured credit union under this Program, irrespective of any advance commitment to purchase a participation interest in the funded loan. Provided, however, that when the participation interest in the Program loan is actually purchased and transferred to the SPV, the portion of the loan that has been sold as a participation shall no longer count toward the aforementioned limit on commercial loans to one borrower.

Federal Reserve staff have consulted with staff of the NCUA in drafting this response. NCUA staff have indicated they are available for consultation on a federally insured credit union's specific facts and circumstances as needed.

Eligible Lenders that are state chartered credit unions should also review applicable state law to determine to what extent a Main Street loan applies to any lending limit under state law.

## **L. Operational Details**

### **L.1. How will the Federal Reserve administer the Program?**

The Program will be administered by the FRB Boston, which has established the Main Street SPV to purchase loan participations from Eligible Lenders in any of the twelve Federal Reserve districts.

### **L.2. What information will the Federal Reserve disclose regarding the Main Street facilities?**

The Federal Reserve will disclose information regarding the NONLF and NOELF during the operation of the facilities, including information regarding names of lenders and borrowers, amounts borrowed and interest rates charged, and overall costs, revenues and other fees.

Loans made under the NONLF and NOELF will affect the size and composition of the Federal Reserve's balance sheet. Balance sheet items related to the NONLF and NOELF will be reported weekly, on an aggregated basis, on the H.4.1 statistical release titled "Factors Affecting Reserve Balances of Depository Institutions and Condition Statement of Federal Reserve Banks," published by the Federal Reserve. In addition, the Federal Reserve will disclose to Congress information pursuant to Section 13(3) of the Federal Reserve Act, as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, and the Board's Regulation A. These disclosures are available [here](#).

Under section 11(s) of the Federal Reserve Act, the Federal Reserve also will disclose information concerning the facilities one year after the effective date of the termination by the Board of the authorization of the facilities. This disclosure will include names and identifying details of each participant in the facilities, the amount borrowed, the interest rate or discount



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paid, and information concerning the types and amounts of collateral pledged or assets transferred in connection with participation in the facilities.

### L.3. How will the remaining capacity of the Program be communicated?

The Federal Reserve will provide periodic reports on the size of the Program and its remaining capacity.

### L.4. Are Eligible Lenders required to commit and pre-fund loans under the Program before the SPV has committed to purchase its participation in a Program Loan?

No. Eligible Lenders have two options for funding loans under the Program:

1. **Funded Loan:** An Eligible Lender may extend a NONLF Loan or a NOELF Upsized Tranche to an Eligible Borrower and fund such loan. The Eligible Lender, if registered with the Program, can then seek to sell a participation in such loan to the Main Street SPV by submitting all of the required documentation, completed and signed, for processing. Upon determining that such paperwork is complete and consistent with Program requirements (see FAQ [L.7](#)), the Main Street SPV would purchase a participation in such loan by dating and countersigning the Participation Agreement and returning it to the Eligible Lender.

In general, Eligible Lenders using this option must submit the loan to the Main Street SPV for sale of a participation interest expeditiously (i.e., no later than 14 days) after the closing of such loans. However, for the first 14 days that the SPV purchases participations in NONLF and NOELF loans, it will accept submissions of any NONLF Loan or NOELF Upsized Tranche for sale of a participation interest, provided that such NONLF Loan or NOELF Upsized Tranche was originated after June 15, 2020 and before the date that the relevant Main Street facility begins purchasing participations in NONLF and NOELF loans.

2. **Condition of Funding:** An Eligible Lender may also extend a NONLF Loan or a NOELF Upsized Tranche to an Eligible Borrower, but make the funding of such loan contingent on a binding commitment from the Main Street SPV that it will purchase a participation in the loan. Under this option, the Eligible Lender, if registered with the Program, would submit all of the required documentation, completed and signed, for processing, but would indicate in its submission that the loan has not yet been funded. The Main Street SPV would review the required documentation and, if complete and consistent with Program requirements (see FAQ [L.7](#)), would provide the Eligible Lender with a binding commitment to purchase the loan after it is funded (**Commitment Letter**). The Commitment Letter ([template available here](#)) will indicate that (i) the Eligible Lender is required to fund the loan within three business days of the date of the Commitment Letter and (ii) the Eligible Lender must then provide notice to the Main Street SPV of the

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date the funding occurred (**Funding Notice**) by entering the date in the appropriate field in the Main Street Portal.<sup>20</sup> The Main Street SPV will generally be able to advance funds to purchase the participation within one business day of receiving the Funding Notice, if the Funding Notice is received before 7 p.m. ET. If the Funding Notice is submitted by the Eligible Lender on or after 7 p.m. ET, the notice will be treated as if it were received the next business day.

The Main Street SPV will then process its purchase of a participation in such loan on the basis of the previously received paperwork. The Eligible Lender will not need to submit the required documentation a second time. If Eligible Lenders elect to use this option, the loan documentation should include language similar to the model provision below.

*In the “Conditions to All Borrowings” section:*

“(i) the [Eligible Lender] shall have received a commitment letter from MS Facilities LLC that it will purchase a participation interest in \$[PRINCIPAL AMOUNT TO BE PARTICIPATED] aggregate principal amount of the [APPLICABLE LOAN DEFINITION] under the Main Street Lending Program”

L.5. [Reserved.]

L.6. [Reserved.]

L.7. What conditions will the Main Street SPV place on purchasing participations in Program loans?

The Main Street SPV intends to purchase 95% participations in any NONLF Loan or NOELF Upsized Tranche that is submitted to the SPV for purchase, provided that (i) the required documentation is complete and properly executed, and (ii) the required documentation evidences that the loan is consistent with the relevant Main Street facility’s requirements. If these requirements are met, the Main Street SPV intends to purchase the loan without additional conditions.

L.8. What financial information is an Eligible Borrower required to submit to an Eligible Lender at the time of origination of a Main Street loan? What Eligible Borrower financial information is an Eligible Lender required to submit to the Main Street Portal with other loan participation documentation?

An Eligible Borrower is required to provide an Eligible Lender with two sets of financial information at the time of origination:

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<sup>20</sup> The Main Street Portal can be found [here](#).

**1. 2019 Financial Information and Financial Information Related to Eligibility Criteria:**

- **Data Requirements:** As required under section 4.A of the Borrower Certifications and Covenants, the Eligible Borrower must submit its 2019 financial records and financial records related to the borrower eligibility criteria described in subparts (7) – (9) of question [E.1](#) to its Eligible Lender (see question [H.10](#) for more information).
- **Portal Input Requirements:** The Eligible Lender must submit all 2019 financial data and financial records related to the borrower eligibility criteria described in subparts (7) – (9) of question [E.1](#) described above in the Main Street Portal with other loan participation documents at the time a loan is submitted to the Main Street SPV for sale of a participation. Specifically, the Eligible Lender must:
  - input the Eligible Borrower’s (1) 2019 revenues; (2) adjusted 2019 EBIDA; (3) unrestricted 2019 operating revenue; (4) liquid assets at the time of origination of the loan or Upsized Tranche; (5) average daily expenses over the previous year; (6) unrestricted cash and investments; (7) existing outstanding and undrawn available debt; (8) amount of any loan under the Facility; (9) outstanding amount of any CMS Accelerated and Advance Payments received by the Eligible Borrower;<sup>21</sup> and the Eligible Borrower’s total assets, current assets, and current liabilities as of December 31, 2019,<sup>22</sup> into the Main Street Portal’s data fields;<sup>23</sup> and
  - upload all other required 2019 financial data and financial records related to the borrower eligibility criteria described in subparts (7) – (9) of question [E.1](#) (in the format in which the Eligible Borrower delivered it to the Eligible Lender) to the Main Street Portal.

**2. Most Recent Quarter Available at Time of Origination:**

- **Data Requirements:** The Eligible Borrower must also submit financial data consisting of all of the data fields required in Table II of [Appendix C](#) to these

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<sup>21</sup> See [E.1](#).

<sup>22</sup> As indicated in FAQ [H.10](#), if an Eligible Borrower typically prepares audited or reviewed financial statements and does not yet have audited or reviewed financial statements for 2019, the Eligible Borrower should use its most recent audited or reviewed financial statements. Eligible Borrowers that do not typically prepare audited or reviewed financial statements should submit financial statements prepared for the purpose of filing taxes.

<sup>23</sup> Except to the extent set forth in any separate certifications, covenants, or agreements provided by the Eligible Lender (e.g., the Lender Transaction Specific Certifications and Covenants), and any standard of care or standard of inquiry of the Eligible Lender set forth in those documents, the Lender assumes no obligation or liability with respect to the accuracy and completeness of Eligible Borrower financial information provided or the failure of the Eligible Borrower to provide such information.

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FAQs (which vary by Main Street facility) for the most recent quarter available at the time of origination of the Main Street loan.

- **Portal Input Requirements:** The Eligible Lender must input all of the data fields set out in Table II of [Appendix C](#) to these FAQs into the Main Street Portal at the time the other required documentation to sell a loan participation is submitted.<sup>24</sup>

Finally, for all Main Street loans, in addition to the above, Eligible Lenders may require other financial information as appropriate under their underwriting practices. All data collected by the Eligible Lender, including the data described above and any additional data collected, should be uploaded to the Main Street Portal (in the format in which the Eligible Borrower delivered it to the Eligible Lender) when the other required documentation to sell a loan participation is submitted.

### L.9. What information is an Eligible Lender required to submit to the Main Street Portal in connection with the submission of the documentation required to sell a loan participation to the Main Street SPV?

As set out in question [L.8](#) above, an Eligible Lender must submit certain Eligible Borrower financial information at the time a loan is submitted to the Main Street SPV for sale of a participation. In addition, Eligible Lenders are required to input the following fields into the Main Street Portal in order to complete their submission to sell a loan participation to the Main Street SPV:

<b>Borrower Identification</b>	<ul style="list-style-type: none"><li>• Borrower Name</li><li>• Borrower Address (street address, city, state/territory, and zip code)</li><li>• Borrower Primary Contact (name, email and phone number)</li><li>• Borrower ID (i.e., Dunn &amp; Bradstreet Data Universal Numbering System (DUNS) number (if applicable))</li><li>• Borrower North American Industry Classification System (NAICS) Industry Code</li><li>• Borrower Legal Entity Type (i.e., type of “Business” (see FAQ E.2))</li><li>• Borrower Employer Identification Number</li><li>• <i>Optional:</i> Borrower Ultimate Parent (name, Employer Identification Number)</li><li>• <i>Optional:</i> Borrower Parent (name, Employer Identification Number)</li></ul>
<b>Select Borrower Characteristics</b>	<ul style="list-style-type: none"><li>• 2019 Adjusted EBIDA</li></ul>

<sup>24</sup> The change in the requirement for submission of such data (made August 24, 2020) is to ensure that the Federal Reserve has the information it requires to monitor its portfolio from the time of funding a participation, and in light of the fact that bulk-upload functionality is now available in the Portal to ease data-entry burden. It does not indicate a change in policy regarding how loans submitted to the Portal will be assessed prior to purchase of a loan participation. For loans made to multiple borrowers, the Eligible Lender must enter aggregate 2019 revenue, reflecting all co-borrowers collectively. See footnote 16 for more information.

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	<ul style="list-style-type: none"> <li>• 2019 Revenues<sup>25</sup></li> <li>• Total Outstanding and Undrawn Debt</li> <li>• Borrower Accounting Convention Information (accounting basis, fiscal year-end, whether assets and liabilities are recorded at fair value on balance sheet)</li> <li>• 2019 Select Balance Sheet Information (total assets, current assets and current liabilities)</li> </ul>
<b>Loan Characteristics</b>	<ul style="list-style-type: none"> <li>• Loan Type (i.e., NONLF or NONELF)</li> <li>• Total Loan Amount (for NONLF)</li> <li>• Upsized Tranche Amount (for NOELF)</li> <li>• Lender Loan Number</li> <li>• Loan Origination Date</li> <li>• Loan Maturity Date</li> <li>• Prior Loan Maturity Date and Origination Date (for NOELF)</li> <li>• Loan Interest Rate and Interest Rate Index (i.e., LIBOR 1-month or LIBOR 3-month)</li> <li>• Interest Accrual Convention (i.e., 30/360; Act/360; Act/365; Act/Act)</li> <li>• Interest Accrual and Interest Capitalization Accrual Month (i.e., month that interest begins accruing and capitalizing)</li> <li>• Interest Capitalization Frequency (i.e., annual, monthly, quarterly, semiannual)</li> <li>• Interest Payment Frequency and Payment Day of Month</li> <li>• Principal Amortization Schedule</li> <li>• Lien Position (i.e., first, second, third, N/A)</li> <li>• Guarantor (yes or no; if yes, provide name, email address and Tax Identification Number)</li> <li>• Collateral Type and Value, and Location if Collateral Type is Real Property (if applicable)</li> <li>• Lender Contact Information (Mailing address, contact person, telephone, facsimile, email)</li> <li>• Syndicated Loan (yes or no)</li> <li>• Secured Loan (yes or no)</li> <li>• Origination Fee (dollars and basis points)</li> <li>• If Borrower Paid Transaction Fee (yes or no)</li> <li>• Covenant Status including Default Date, Nature of Default, and Date of Covenant Cure (if applicable)</li> <li>• Default Interest Spread</li> <li>• Senior Debt Balance</li> </ul>
<b>Legal Agreements and Certifications</b>	<ul style="list-style-type: none"> <li>• Title and Description of Credit Agreement</li> <li>• Description of Tranche in the Credit Agreement</li> <li>• Bilateral Facility</li> <li>• Agent</li> <li>• Elevation Transfer Fee Amount</li> <li>• Whether the Loan is Funded (yes or no)</li> </ul>

<sup>25</sup> For loans made to multiple borrowers, the Eligible Lender must enter the aggregate 2019 revenue of the co-borrowers, collectively. See footnote 16 for more information.

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In addition to the information that must be input, the Eligible Lender is required to upload the following documents:

- an [Assignment Executed-in-Blank](#), completed and executed in accordance with the [Main Street Lending Program Instructions for Lender Required Documentation](#);
- for bilateral facilities, a Co-Lender Agreement ([Transaction-Specific Terms](#) only), completed and executed in accordance with the [Main Street Lending Program Instructions for Lender Required Documentation](#);
- Borrower Certifications and Covenants ([NONLF](#) or [NOELF](#), as applicable), completed and executed in accordance with the [Main Street Lending Program Instructions for Lender Required Documentation](#);
- the credit agreement documenting the Main Street loan and other related credit documents (e.g., intercreditor agreements, subordination agreements, security agreements, etc.);
- any financial information that the Eligible Borrower provided to the Eligible Lender, in the format in which the Eligible Borrower provided it (see also FAQ [L.8](#));<sup>26</sup> and
- if applicable, documentation of nonprofit organization status (see [E.17](#)).

The Main Street Legal Forms and Agreements can be found on the [FRB Boston's website](#).

#### L.10. What type of Lender Portal security is in place, such that lenders and borrowers can be assured that their data will be maintained securely?

Information security is central to the design, implementation, and ongoing operation of the Main Street Portal. This starts with the hosting environment; the Main Street Portal is hosted on a platform that maintains a [FedRAMP Moderate](#) Authority to Operate (ATO). During the Main Street Portal design and implementation, control requirements defined in the National Institute of Standards and Technology (NIST) Special Publication [800-53](#) (Rev. 4) were adhered to closely.

Detailed secure coding standards specific to the underlying platform informed the development process. Robust application security testing was used to identify code quality issues and prior to each major release, the Main Street Portal was subject to in depth penetration testing.

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<sup>26</sup> This obligation extends to financial records, including balance sheets, income statements, statements of cash flows, or other similar financial statements of a general nature that are of the type required to be delivered by an Eligible Borrower to an Eligible Lender under section 4.A of the Borrower Certifications and Covenants. The Eligible Lender is not required to upload other information provided by the Eligible Borrower at the time of origination. However, the Main Street SPV retains the option to collect from the Eligible Lender any additional information provided by the Borrower at a later date.

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Secure operation and risk minimization were guiding principles throughout the process of establishing the Main Street Portal.

**L.11. If an Eligible Lender uses the Condition of Funding Model in Question L.4, how should loan documents be prepared to reflect the required maturity period, interest rate, deferral and accrual, principal amortization, and loan number?**

If an Eligible Lender elects to use the Condition of Funding Model set out in question [L.4](#), the credit agreement and other loan documents for a particular loan will need to be completed and executed prior to submission to the Portal and funding of the loan. The Federal Reserve suggests that Eligible Lenders refer to the following guidance for structuring loan documentation to comply with Program requirements when using this model:

- **Maturity and Payment Dates**: Eligible Lenders should select a maturity date that is five years from the date of the credit agreement (i.e., the **Effective Date**) to satisfy the five year maturity requirement. The Eligible Lender should also select a principal and interest payment schedule that is set based on the Effective Date. While the principal amount of the loan will be outstanding for slightly less than five years due to the delay in funding the loan, this will provide greater clarity to the Eligible Borrower, Eligible Lender, and other parties regarding a date certain for the loan’s maturity and dates of payment.
- **Interest Rate**: Eligible Lenders should identify the applicable reference rate (1 month or 3 month LIBOR) in the loan documents on the Effective Date and indicate in the Portal the calculated interest rate, based upon the reference rate plus 300 basis points. While the calculated rate may differ at the time of funding, identifying the applicable reference rate in the loan documents on the Effective Date provides clarity as to how the rate will be calculated.
- **Interest Deferral, Accrual, and Capitalization**: Eligible Lenders should measure interest deferral and set an interest capitalization schedule based on the Effective Date of the loan. However, the Eligible Borrower should not accrue interest until the loan is funded by the Eligible Lender.
- **Lender Loan Number**: It is preferred that the Lender create a “Lender Loan Number” at the time the credit agreement is written, even though the loan will not have been funded at that time. If an Eligible Lender is unable to provide a “Lender Loan Number” for the loan prior to funding, the Eligible Lender may use a temporary Lender Loan Number and subsequently update such number in connection with its submission of Eligible Borrower financial information on a quarterly basis, as required under the Servicing Agreement.

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## L.12. Can a single Main Street loan be made to multiple co-borrowers?

Yes. The Main Street SPV expects to begin accepting loans made to multiple co-borrowers in the week of September 21, 2020. For information on how to read the Borrower Certifications and Covenants and Lender Transaction-Specific Certifications and Covenants in the multi-borrower context, please see questions [H.24](#) and [H.25](#), respectively. Please also reference the [Instructions for Lender Required Documentation](#) for instructions on completing documentation for multi-borrower loans.

## M. Other Information

### M.1. Where should questions regarding the Program be directed?

Inquiries can be submitted by email to [mslp@bos.frb.org](mailto:mslp@bos.frb.org).

### M.2. How can I receive updates regarding changes to the Program?

The terms of the Program are available on the Board's [website](#) and will be updated to reflect modifications as they are made. Interested parties can sign up for alerts [here](#).

### M.3. Will the Federal Reserve provide further guidance on how to apply the terms of the Program to individual borrowers?

The Federal Reserve and Treasury Department have designed Main Street to facilitate the provision of credit to Eligible Borrowers of varying sizes, across a broad range of non-profit sectors, in every state and territory of the United States. While the Federal Reserve will continue its efforts to provide answers to questions of broad applicability, we are unable to provide guidance with respect to an individual business's financial, credit, or legal analysis or decisions, which may be fact-specific or contingent on the applicable state's or territory's laws. In cases where the Program term sheets, legal forms and agreements, and these FAQs do not explicitly address a specific set of facts and circumstances, Eligible Borrowers should work with Eligible Lenders and legal counsel to make informed, reasonable, good-faith applications of the Program's terms and conditions to their individual facts and circumstances.

### M.4. Are recordings of Main Street webinar sessions available?

Yes. The Federal Reserve has held webinars intended for potential Main Street borrowers and lenders, as well as legal counsel. The webinars have been recorded and are [posted on the FRBB's website](#), along with downloadable versions of the presentations, which are available after signing into a recorded webinar.



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## M.5. Where can I find instructions for how to complete the Main Street legal forms and agreements?

Instructions for completing the Main Street legal forms and agreements can be found [here](#). Example templates of the Main Street Lending Program documentation that must be uploaded into the Portal are available below for reference.

The following templates have been filled in to show how they would be completed for an MSNLF loan made by a single lender to a single borrower (Hypo123 Company, Inc.):

- [Example](#) Assignment Executed-in-Blank for Hypo123 Company, Inc.
- [Example](#) Co-Lender Agreement Transaction-Specific Terms for Hypo123 Company, Inc.
- [Example](#) Borrower Certifications and Covenants for Hypo123 Company, Inc.
- [Example](#) of fields that are auto-populated into the Loan Participation Agreement, Servicing Agreement, and Lender Transaction Specific Certifications and Covenants via the Portal for Hypo123 Company, Inc.

While these examples relate to a for profit loan, the fields would need to be completed in the same manner for loans made to nonprofit organizations.

The following templates have been filled in to show how they would be completed for a NONLF loan made by a single lender to five co-borrowers:

- [Example](#) Assignment Executed-in-Blank for NONLF loan to five co-borrowers.
- [Example](#) Co-Lender Agreement Transaction-Specific Terms for NONLF loan to five co-borrowers.
- [Example](#) Borrower Certifications and Covenants for NONLF loan to five co-borrowers.
- [Example](#) of fields that are auto-populated into the Loan Participation Agreement, Servicing Agreement, and Lender Transaction Specific Certifications and Covenants via the Portal for NONLF loan to five co-borrowers.

The Main Street legal forms and agreements can be found [here](#).

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## Appendix A: Loan Document Checklist

Each participating Eligible Lender should use its own loan documentation in relation to Main Street loans. Such documentation should be substantially similar, including with respect to required covenants, to the loan documentation that the Eligible Lender uses in its ordinary course lending to similarly situated borrowers, adjusted only as appropriate to reflect the requirements of the Program. In order for the Main Street SPV to participate in a loan, the loan documentation must reflect the required components set out in the charts below.

	Term	NONLF	NOELF	
			Upsized Tranche	Underlying Loan
1	Maturity	5 years	5 years	remaining maturity of at least 18 months (taking into account any adjustments made to the maturity of the underlying loan after June 15, 2020, including at the time of upsizing)
2	Principal Deferral	2 years	2 years	no requirements applicable under the Program
3	Interest Deferral	1 year	1 year	no requirements applicable under the Program
4	Capitalization of Unpaid Interest	Yes	Yes	no requirements applicable under the Program
5	Interest Rate	adjustable rate of LIBOR (1 or 3 month) + 300 basis points	adjustable rate of LIBOR (1 or 3 month) + 300 basis points	no requirements applicable under the Program
6	Principal Amortization Schedule	15% at the end of the third year, 15% at the end of the fourth year, and a balloon payment of 70% at maturity at the end of the fifth year	15% at the end of the third year, 15% at the end of the fourth year, and a balloon payment of 70% at maturity at the end of the fifth year	no requirements applicable under the Program
7	Minimum Loan Size	\$250,000	\$10 million	no requirements applicable under the Program
8	Maximum Loan Size	the lesser of (i) \$35 million or (ii) the Eligible Borrower's	the lesser of (i) \$300 million or (ii) the Eligible Borrower's average 2019 quarterly revenue;	no requirements applicable under the Program

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	Term	NONLF	NOELF	
			Upsized Tranche	Underlying Loan
		average 2019 quarterly revenue;		
9	Priority / Security Requirement	May not include any provisions that would cause the NONLF Loan to be contractually subordinated to other debt in or outside of bankruptcy.	<p>May not include any provisions that would cause the NOELF Upsized Tranche to be contractually subordinated to other debt in or outside of bankruptcy.</p> <p>Must include a standard lien covenant or negative pledge that is of the type and that contains the exceptions, limitations, carve-outs, baskets, materiality thresholds, and qualifiers that are consistent with those used by the Eligible Lender in its ordinary course lending to similarly situated borrowers.</p> <ul style="list-style-type: none"> <li>• See Appendix B for a model covenant.</li> <li>• For NOELF Upsized Tranches where the underlying loan is part of a multi-lender facility, any lien covenant or negative pledge that was negotiated in good faith prior to June 15, 2020, as part of the underlying loan shall be deemed sufficient.</li> </ul>	
10	Prepayment	permitted without penalty	permitted without penalty	no requirements applicable under the Program
11	Type	term loan	term loan	term or revolving credit facility
12	Origination Date	after June 15, 2020	after June 15, 2020	on or before June 15, 2020
13	Borrower Certifications and Covenants Material Breach Mandatory Prepayment	Must include a Borrower Certifications and Covenants material breach mandatory prepayment provision (see model provision in Appendix B).	Must include a Borrower Certifications and Covenants material breach mandatory prepayment provision to the extent feasible in light of existing voting arrangements (see Appendix B for more information).	
14	Cross-Acceleration Provision	Must include a cross acceleration provision (see model provision in Appendix B).	<p>Must include a cross acceleration provision (see model provision in Appendix B).</p> <p>For NOELF Upsized Tranches where the underlying loan is part of a multi-lender facility, any cross-default or cross-acceleration provision that was negotiated in good faith prior to June 15, 2020, as part of the underlying loan shall be deemed sufficient.</p>	

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	Term	NONLF	NOELF	
			Upsized Tranche	Underlying Loan
15	Collateral	If secured, collateral should be described in accordance with the bank’s ordinary practices in its loan documentation.	If secured, collateral should be described in accordance with the bank’s ordinary practices in its loan documentation	
16	Financial Reporting	Must include a quarterly financial reporting covenant requiring the financial information set out in Appendix C (see model covenant in Appendix B)	<p>Must include a quarterly financial reporting covenant requiring the financial information set out in Appendix C (see model covenant in Appendix B).</p> <p>For NOELF Upsized Tranches where the underlying loan is part of a multi-lender facility, any financial reporting provision that was negotiated in good faith prior to June 15, 2020, as part of the underlying loan shall be deemed sufficient.</p>	

In addition to the above, any Eligible Lender that elects to make receipt of a binding commitment letter from the Main Street SPV a condition of closing (see question [L.4](#) above), should include language similar to the model provision below in its loan documentation:

*In the “Conditions to All Borrowings” section:*

“(i) the [Eligible Lender] shall have received a commitment letter from MS Facilities LLC that it will purchase a participation interest in \$[PRINCIPAL AMOUNT TO BE PARTICIPATED] aggregate principal amount of the [APPLICABLE LOAN DEFINITION].

## **Appendix B: Required Covenants in Loan Documentation**

Each participating Eligible Lender should use its own documentation for Main Street loans. Such documentation should be substantially similar, including with respect to required covenants, to the loan documents that the Eligible Lender uses in its ordinary course lending to similarly situated borrowers, adjusted only as appropriate to reflect the requirements of the Program. [Appendix A](#) sets out the components that must be reflected in such documentation. Model covenants are provided below in relation to #9, #13, #14, and #16 of [Appendix A](#).

*Please note:* Eligible Lenders are not required to use the model covenants provided; these are provided only as examples for the convenience of Eligible Lenders. Eligible Lenders are permitted to use variations of such provisions to the extent they serve the same substantive purpose and are otherwise substantially similar to provisions that the Eligible Lender uses in its ordinary course lending to similarly situated borrowers.

### **I. Priority and Security Covenant**

Each Main Street facility includes a requirement concerning the priority and/or security of the loan, which must be reflected in the loan documentation through the presence or absence of certain covenants.

#### **I.A. NONLF Loans**

NONLF Loans must not be, at the time of origination or at any time during the term of the NONLF Loan, contractually subordinated in terms of priority to any of the Eligible Borrower's other loans or debt instruments. See question [B.3](#) for more information about how to interpret this term. In accordance with this term, the loan documentation should not include any provisions that would cause the NONLF Loan to be contractually subordinated to any other debt whether in or outside of bankruptcy. For the avoidance of doubt, prohibitions on contractual subordination do not prevent the incurrence of obligations that have mandatory priority under the Bankruptcy Code or other insolvency laws, or other relevant law or regulation, that apply to entities generally.

#### **I.B. NOELF Upsized Tranches that are Part of Bilateral Facilities**

NOELF Upsized Tranches must be, at the time of origination and at all times thereafter, 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). See question [D.11](#) for more information about how to interpret these terms in the context of the NOELF.

In accordance with this term, the loan documentation for NOELF Upsized Tranches that are part of bilateral facilities (i.e., where the Eligible Lender is the only lender) should not include any provisions that would cause the NOELF Upsized Tranche to be contractually subordinated to

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any other debt whether in or outside of bankruptcy. See section I.A of this [Appendix B](#) for more information.

In addition, the loan documentation for NOELF Upsized Tranches that are part of bilateral facilities must contain a lien covenant or negative pledge that is of the type – and that contains exceptions, limitations, carve-outs, baskets, materiality thresholds, and qualifiers – that is consistent with those used by the Eligible Lender in its ordinary course lending to similarly situated borrowers. A model lien covenant is set out below for the convenience of Eligible Lenders.

*In the “Negative Covenants” section:*

“The Borrower will not, nor will it permit any subsidiary to, create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, securing any debt for borrowed money or any obligations evidenced by a bond, debenture, note, loan agreement or other similar instrument, or any guarantee of the foregoing, other than the following:

- (a) Liens securing obligations under the [NOELF loan];
- (b) [Liens on real property in connection with loans with respect to which substantially all of the proceeds were used for acquisition, construction, fit-out, and/or renovation of the property];
- (c) [Junior Liens securing permitted Indebtedness]; or
- (d) [Liens on receivables assets and related assets incurred in connection with a receivables facility, provided that such debt is secured only by the newly acquired property].

Lien covenants included in Main Street loan documentation may include carve-outs at the discretion of the Eligible Lender in accordance with its customary underwriting practices with respect to similarly situated borrowers. The carve-outs from the lien covenant listed above illustrate the types of carve outs, among others, that Eligible Lenders may choose to include in a Main Street loan’s lien covenant.

### **I.C. NOELF Upsized Tranches that are Part of Multi-Lender Facilities**

NOELF Upsized Tranches must be, at the time of origination and at all times thereafter, 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). See question [D.11](#) for more information about how to interpret this term.

In accordance with this term, the loan documentation for NOELF Upsized Tranches that are part of multi-lender facilities (i.e., where there are multiple lenders) should not include any provisions that would cause the NOELF Upsized Tranche to be contractually subordinated to

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any other debt whether in or outside of bankruptcy. See section I.A of this [Appendix B](#) for more information.

For NOELF Upsized Tranches that are part of multi-lender facilities, the facility must include a provision like the one described in section I.B of this [Appendix B](#), unless the loan documentation has a lien covenant that was negotiated in good faith prior to June 15, 2020.

## **II. Borrower Certifications and Covenants Material Breach Mandatory Prepayment Provision**

Each participating borrower must submit signed Borrower Certifications and Covenants in connection with the Main Street Loan. If the Board determines that the borrower made a material misstatement in certifications, or materially breached covenants, relating to CARES Act, the Federal Reserve Act, or the Board’s Regulation A, the Board will notify the Eligible Lender to trigger a mandatory prepayment requirement under the Main Street loan. To implement these measures, the Borrower Certifications and Covenants should be referenced in loan documents for Main Street loans as set out below.

### **II.A. NONLF Loans and NOELF Upsized Tranches that are Part of Bilateral Facilities**

For all NONLF Loans NOELF Upsized Tranches that are part of a bilateral facility, the loan documents must contain a mandatory prepayment provision related to a material breach of the Eligible Borrower certifications in Section 2 (CARES Act Borrower Eligibility Certifications and Covenants) and Section 3 (FRA and Regulation A Borrower Eligibility Certifications) of the Borrower Certifications and Covenants. A model provision is set out below for convenience.

*In the “Mandatory Prepayment” section:*

“If, on any date (such date, a “Trigger Date”), the Board of Governors of the Federal Reserve System or a designee thereof has, after consultation with [the Administrative Agent][the Eligible Lender], notified [the Administrative Agent][the Eligible Lender] in writing that the Borrower has materially breached, made a material misrepresentation with respect to or otherwise failed to comply with certifications in Section 2 (CARES Act Borrower Eligibility Certifications and Covenants) or Section 3 (FRA and Regulation A Borrower Eligibility Certifications) of the Borrower Certifications and Covenants in any material respect or that any such certification has failed to be true and correct in any material respect, then [the Administrative Agent][the Eligible Lender] shall promptly so notify the Borrower and the Borrower shall, no later than two (2) Business Days after such Trigger Date, prepay the [Eligible Loan] in full, along with any accrued and unpaid interest thereon.”

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## II.B. NOELF Upsized Tranches that are Part of Multi-Lender Facilities

For NOELF Upsized Tranches that are part of multi-lender facilities, a mandatory prepayment provision substantially similar to the model mandatory prepayment provision set out in section II.A of this [Appendix B](#) must be included if the percentage (or number) of lenders required to consent to a new mandatory prepayment provision under the existing agreements (typically a simple majority) consents to any other changes to the loan documents in the process of upsizing the loan or selling the participation to the Main Street SPV. Further, if 100% of the lenders agree to any other changes to the loan documents in the process of upsizing the loan or selling the participation to the Main Street SPV, this mandatory prepayment provision must be inserted into the loan documents and treated as a “sacred right,” the amendment, waiver, or modification of which would require 100% lender consent.

## III. Cross-Acceleration Provision

Each Main Street loan should contain a cross-acceleration provision that would trigger an event of default under the Main Street loan if a different loan extended to the Eligible Borrower by the Eligible Lender or the Eligible Lender’s commonly controlled affiliate is accelerated.

### III.A. NONLF Loans and NOELF Upsized Tranches that are Part of Bilateral Facilities

For all NONLF Loans and NOELF Upsized Tranches that are part of a bilateral facility, the loan documents must contain a cross-acceleration provision that would be triggered if other debt owed by the Eligible Borrower to the Eligible Lender or any commonly controlled affiliate of the Eligible Lender is accelerated. A model provision is set out below for the convenience of Eligible Lenders.

*In the “Event of Default” section:*

“(i) [the Borrower or any Subsidiary shall fail to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness under the Loan Documents) owing to the [ELIGIBLE LENDER] or any commonly controlled Affiliate of the [ELIGIBLE LENDER], in each case beyond the applicable grace period with respect thereto, if any; or (ii) the Borrower or any Subsidiary shall fail to observe or perform any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which failure to make a payment, default or other event described in cause (i) or (ii) is to cause such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity; provided that clause (ii) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is



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permitted hereunder and under the documents providing for such Indebtedness and such Indebtedness is repaid when required under the documents providing for such Indebtedness; provided that, as used in this clause, the term “Indebtedness” shall mean all debt for borrowed money and any obligations evidenced by a bond, debenture, note, loan agreement or other similar instrument, and any guarantee of any of the foregoing”

### III.B. NOELF Upsized Tranches that are Part of Multi-Lender Facilities

For NOELF Upsized Tranches that are part of multi-lender facilities, the facility must include a provision like the one described in section III.A of this [Appendix B](#), unless the loan documentation has a cross-default or cross-acceleration provision that was negotiated in good faith prior to June 15, 2020.

## IV. Financial Reporting Covenant

Each Main Street loan should contain a financial reporting covenant requiring the regular delivery of certain financial information and calculations.

### IV.A. NONLF Loans and NOELF Upsized Tranches that are Part of Bilateral Facilities

For NONLF Loans and NOELF Upsized Tranches that are part of a bilateral facility, the loan documents must contain a financial reporting covenant requiring the quarterly delivery of Borrower financial information and calculations set out in [Appendix C](#). A model covenant is set out below for the convenience of Eligible Lenders.

*In the “Affirmative Covenants” section:*

“as soon as available, but in any event within [60] days after the end of each fiscal quarter of the Borrower, the Borrower shall deliver to the [Administrative Agent] [Eligible Lender] financial reporting in a form and substance reasonably acceptable to the [Administrative Agent] [Eligible Lender] setting forth the financial information, and where applicable reasonably detailed calculations of the required data, set forth in [See [Appendix C](#) to these FAQs] as at the end of such fiscal quarter of the Borrower, which financial reporting and calculations, in each case, shall be true and accurate in all material respects and, where applicable, present fairly in all material respects the financial condition of the Borrower for the period covered thereby in accordance with GAAP, consistently applied.”

### IV.B. NOELF Upsized Tranches that are Part of Multi-Lender Facilities

For NOELF Upsized Tranches that are part of multi-lender facilities, the facility must include a provision like the one described in section IV.A of this [Appendix B](#), unless the loan documentation has a financial reporting covenant that was negotiated in good faith prior to June 15, 2020.

## Appendix C: Required Financial Reporting

Each Main Street loan should contain a financial reporting covenant requiring the regular delivery of certain financial information and calculations. The items listed in Table I below must be provided by each Main Street borrower to their Eligible Lender at least annually. The items listed in Table II must be provided by each Main Street borrower to their Eligible Lender at least quarterly; the quarterly requirements vary based on the Main Street facility in which the borrower is participating. Eligible Lenders will specify the required reporting standards and forms for each Eligible Borrower.<sup>27</sup>

Table I: Data Required <u>Annually</u> from All Nonprofit Organization Borrowers	
Required Data and Information	Definition
Total Assets	The sum of current assets, fixed assets, and other non-current assets (including, but not limited to, intangible assets, deferred items, investments, and advances).
Current Assets	Cash, accounts receivable, inventory, and other short-term assets that are likely to be converted into cash, used, sold, exchanged, or otherwise expensed in the normal course of business within one year.
Total Cash & Investments	All cash & investments - both restricted and unrestricted
Unrestricted Cash & Investments	The portion of cash and investments that are not restricted for any reason including by donor-imposed stipulations. If applicable, this includes Cash and investments (at the borrower and affiliated foundations) plus funds held in trust by others plus pledges receivable reported in permanently restricted net assets, less permanently restricted net assets.
Total Liabilities	The total amount of all outstanding obligations, both current and noncurrent.
Current Liabilities	Short term debt, accounts payable, and other current liabilities that are due within one year.
Net Assets	Total Assets less Total Liabilities - including both restricted and unrestricted assets and fund balances.
Unrestricted Net Assets	Total Assets less Total Liabilities - adjusted to exclude restricted assets & fund balances and associated liabilities.
Total Debt (Incl. Undrawn Available Lines of Credit)	Existing outstanding and committed debt (including any undrawn available amounts, unfunded pension liabilities, operating leases and guaranteed portions of off-balance sheet debt).
Total Revenue	Total income generated excluding any non-recurring items.
Operating Revenue	All unrestricted revenue (including gifts for operations and government operating appropriations), excludes funds to be spent on capital (grants, appropriations, or net assets released), and replaces unrestricted investment gains or losses with a proxy for endowment spending.

<sup>27</sup> Under the Servicing Agreement, in the case of multi-borrower loans, this information must be entered into the Portal “on a consolidated basis” (otherwise referred to in this document as on an “aggregated basis”). Eligible Lenders may elect to require reporting from the co-borrowers on an aggregated basis, or may aggregate such information after requiring individual co-borrower financial statements. If an Eligible Lender permits co-borrowers to submit aggregated financial statements, the Eligible Lender should instruct the co-borrowers to use the Eligible Lender’s typical practices to aggregate such information in a manner that accounts for transactions between the co-borrowers and accurately reflects the financial position of the co-borrowers and their ability to repay the loan (e.g., in a manner that avoids double counting of revenues, assets, or liabilities).

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<b>Table I: Data Required Annually from All Nonprofit Organization Borrowers</b>	
<b>Required Data and Information</b>	<b>Definition</b>
Gross Revenue from Medicare & Medicaid	Total income generated from Medicare and Medicaid, including Medicare and Medicaid managed care plans (if applicable).
Net Income	The income (or loss) after expenses and losses have been subtracted from all revenues and gains for the fiscal period, including discontinued operations.
Unadjusted EBIDA	Earnings before interest expense, depreciation expense and amortization expense. The starting point is net income.
Adjusted EBIDA	Unadjusted EBIDA adjusted for any non-recurring, one-time or irregular items. The Adjusted EBIDA measurement should align with the relevant facility term sheet.
Description of EBIDA Adjustments	Description of items that are added to Unadjusted EBIDA to determine Adjusted EBIDA.
Operating Cash Flow	Operating income before non-cash expenses (operating income plus depreciation and amortization).
Depreciation Expense	Non-cash expense measured based on the use of fixed assets, recognized over the useful life of the fixed assets.
Amortization Expense	Non-cash expense measured based on the use of intangible assets, recognized over the life of the intangible asset.
Interest Expense	The periodic finance expense of short term and long term debt.
Total Expenses	All money spent and costs incurred, both recurring and non-recurring, to generate revenue. Expenses exclude items capital in nature (i.e., expenses that are allowed to be capitalized and included in the cost basis of a fixed asset).
Operating Expenses	Money spent and costs incurred related to normal business operations include selling, general & administrative expenses, depreciation, and amortization (i.e. total expenses less non-recurring expenses) - excludes capital expenditures and interest expense.
Operating Income	Profit (or loss) realized from continuing operations (i.e. unrestricted revenue less operating expenses).
Capitalized Expenditures	Non-operating expenditures capitalized to fixed assets.
Guarantor Net Assets	Total assets less total liabilities of the guarantor (also referred to as net worth).
Sr. Debt Balance	Debt amount ranking senior to the Main Street loan.
Additional Pari Passu Debt Balance	Debt amount ranking pari passu to the Main Street loan.
Collateral Type (Non-Real Estate)	If the loan is secured by collateral that is not predominantly real estate, including if the collateral provided is different types, report the predominant type of collateral (e.g., inventory, receivables, securities, etc.) by aggregate value.
Collateral Type (Real Estate)	If the loan is secured by real estate collateral, indicate the property type (e.g., hotel, multifamily, residential, industrial, etc.). If the loan is secured by multiple real estate property types, report the predominant property type by aggregate value.
Collateral Value Reporting	For loans that require ongoing or periodic valuation of the collateral, report the market value of the collateral as of the reporting date.
Collateral Value Date	Define the as-of date that corresponds with the Collateral Value Reporting field.
Covenant Status (Pass / Fail)	Yes/no, indicating if the facility has satisfied covenant tests.

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Table I: Data Required <u>Annually</u> from All Nonprofit Organization Borrowers	
Required Data and Information	Definition
Date of Covenant Default	If applicable, report the date when borrower defaulted covenants.
Nature of Covenant Default	If applicable, describe the covenant default (i.e., missing financial statements, ratio trigger).
Date of Covenant Cure	If applicable, report the date when borrower cured previous defaults.

Table II: Data Required <u>Quarterly</u> from Nonprofit Organization Borrowers by Nonprofit Facility			
Required Data and Information	NOELF	NONLF	Definition
Total Assets	Yes	No	The sum of current assets, fixed assets, and other non-current assets (including, but not limited to, intangible assets, deferred items, investments, and advances).
Current Assets	Yes	No	Cash, accounts receivable, inventory, and other short term assets that are likely to be converted into cash, used, sold, exchanged, or otherwise expensed in the normal course of business within one year.
Total Cash & Investments	Yes	Yes	All cash & investments - both restricted and unrestricted.
Unrestricted Cash & Investments	Yes	Yes	The portion of cash and investments that are not restricted for any reason including by donor-imposed stipulations. If applicable, this includes Cash and investments (at the borrower and affiliated foundations) plus funds held in trust by others plus pledges receivable reported in permanently restricted net assets, less permanently restricted net assets.
Gross Revenue from Medicare & Medicaid	Yes	Yes	Total income generated from Medicare and Medicaid, including Medicare and Medicaid managed care plans (if applicable).
Total Liabilities	Yes	No	The total amount of all outstanding obligations, both current and noncurrent.
Current Liabilities	Yes	No	Short term debt, accounts payable, and other current liabilities that are due within one year.
Total Debt (Incl. Undrawn Available Lines of Credit)	Yes	Yes	Existing outstanding and committed debt (including any undrawn available amounts, unfunded pension liabilities, operating leases and guaranteed portions of off-balance sheet debt).
Total Revenue	Yes	Yes	Total income generated excluding any non-recurring items.
Net Income	Yes	No	The income (or loss) after expenses and losses have been subtracted from all revenues and gains for the fiscal period, including discontinued operations.
Unadjusted EBIDA	Yes	No	Earnings before interest expense, depreciation expense and amortization expense. The starting point is net income.
Adjusted EBIDA	Yes	Yes	Unadjusted EBIDA adjusted for any non-recurring, one-time or irregular items. The Adjusted EBIDA measurement should align with the relevant facility term sheet.
Description of EBIDA Adjustments	Yes	No	Description of items that are added to Unadjusted EBIDA to determine Adjusted EBIDA.

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<b>Table II: Data Required Quarterly from Nonprofit Organization Borrowers by Nonprofit Facility</b>			
<b>Required Data and Information</b>	<b>NOELF</b>	<b>NONLF</b>	<b>Definition</b>
Operating Cash Flow	Yes	Yes	Operating income before non-cash expenses (operating income plus depreciation and amortization).
Depreciation Expense	Yes	No	Non-cash expense measured based on the use of fixed assets, recognized over the useful life of the fixed assets.
Amortization Expense	Yes	No	Non-cash expense measured based on the use of intangible assets, recognized over the life of the intangible asset.
Interest Expense	Yes	Yes	The periodic finance expense of short term and long term debt.
Description of EBITDA Adjustments	Yes	No	Description of items that are added to Unadjusted EBITDA to determine Adjusted EBITDA.
Total Expenses	Yes	No	All money spent and costs incurred, both recurring and non-recurring, to generate revenue. Expenses exclude items capital in nature (i.e., expenses that are allowed to be capitalized and included in the cost basis of a fixed asset).
Operating Expenses	Yes	Yes	Money spent and costs incurred related to normal business operations include selling, general & administrative expenses, depreciation, and amortization (i.e. total expenses less non-recurring expenses) - excludes capital expenditures and interest expense.
Operating Income	Yes	Yes	Profit (or loss) realized from continuing operations (i.e. unrestricted revenue less operating expenses).
Capitalized Expenditures	Yes	Yes	Non-operating expenditures capitalized to fixed assets.
Guarantor Net Assets	Yes	No	Total assets less total liabilities of the guarantor (also referred to as net worth).
Sr. Debt Balance	Yes	Yes	Debt amount ranking senior to the Main Street loan.
Additional Pari Passu Debt Balance	Yes	Yes	Debt amount ranking pari passu to the Main Street loan.
Collateral Type (Non-Real Estate)	Yes	No	If the loan is secured by collateral that is not predominantly real estate, including if the collateral provided is different types, report the predominant type of collateral (e.g., inventory, receivables, securities, etc.) by aggregate value.
Collateral Type (Real Estate)	Yes	No	If the loan is secured by real estate collateral, indicate the property type (e.g., hotel, multifamily, residential, industrial, etc.). If the loan is secured by multiple real estate property types, report the predominant property type by aggregate value.
Collateral Value Reporting	Yes	No	For loans that require ongoing or periodic valuation of the collateral, report the market value of the collateral as of the reporting date.
Collateral Value Date	Yes	No	Define the as-of date that corresponds with the Collateral Value Reporting field.
Covenant Status (Pass / Fail)	Yes	Yes	Yes/no, indicating if the facility has satisfied covenant tests.

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<b>Table II: Data Required <u>Quarterly</u> from Nonprofit Organization Borrowers by Nonprofit Facility</b>			
<b>Required Data and Information</b>	<b>NOELF</b>	<b>NONLF</b>	<b>Definition</b>
Date of Covenant Default	Yes	Yes	If applicable, report the date when borrower defaulted covenants.
Nature of Covenant Default	Yes	Yes	If applicable, describe the covenant default (i.e., missing financial statements, ratio trigger).
Date of Covenant Cure	Yes	Yes	If applicable, report the date when borrower cured previous defaults.