

## Main Street Lending Program Summary for Prospective Borrowers

The Federal Reserve Bank (the “Fed”) and the U.S. Department of the Treasury (the “Treasury”) announced preliminary details for the Main Street Lending Program (the “MSLP”) on April 9, 2020. Additional details and guidance as well as updated terms were subsequently provided by the Fed on April 30, 2020, on May 27, 2020 and on June 8, 2020. Under the MSLP, three new loan facilities (the “Facilities”) will be created that will enable lending to small and medium-sized businesses by eligible lenders. The combined size of the three new Facilities will be up to \$600 billion. The following is a Q&A summary addressing questions that prospective borrowers might have about the MSLP. The MSLP is not yet open for loan applications. The terms of the MSLP remain subject to ongoing adjustments by the Fed and the Secretary of the Treasury (the “Secretary”).

**OVERVIEW:** *How does the MSLP provide relief in terms of loan offerings?*

- A special purpose vehicle (the “SPV”) will be established to purchase 95% participations in eligible loans from eligible lenders. Eligible lenders making loans under the MSLP will retain the remaining 5% participation in the loans. The SPV will cease purchasing loans on September 30, 2020 (unless extended by the Fed and the Treasury).
- The SPV will be funded by loans made available by the Fed pursuant to the Facilities, and a \$75 billion equity investment from the Treasury made from funds appropriated under the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”).

**ELIGIBLE BORROWERS:** *What businesses are eligible to borrow under the MSLP?*

- “Eligible Borrowers” are U.S. businesses<sup>1</sup> formed, incorporated or organized prior to March 13, 2020 with:
  - 15,000 or fewer employees (including full-time, part-time, seasonal or otherwise employed persons), or

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<sup>1</sup> To be considered a U.S. business, the business must (i) have been created or organized in the United States or under the laws of the United States, (ii) have significant operations in the United States and (iii) have a majority of its employees based in the United States. When evaluating whether a business has sufficient operations and employees in the United States, the business should be evaluated on a consolidated basis together with its subsidiaries, but not its parent companies or sister affiliates.

- \$5 billion or less in 2019 annual revenues (calculated based on revenue reported in 2019 GAAP audited financial statements of the business, or 2019 annual receipts as reported to the IRS).
- A U.S. subsidiary of a foreign company may be a borrower under the MSLP if such subsidiary is otherwise eligible, provided that it must commit that it will use the proceeds of the MSLP loan only for the benefit of borrower, its consolidated U.S. subsidiaries, and other of its affiliates that are U.S. businesses.
- The Fed has advised that the SBA's affiliate aggregation rules will be applied to calculate the business's number of employees and 2019 revenues for purposes of determining eligibility for MSLP loans (as discussed in "Potential Impediments" below). These rules require that an applicant for an MSLP loan aggregate all of its employees and revenues together with all of the employees and revenues of "affiliated" businesses for purposes of determining whether the applicable employee or revenues cap are satisfied. The affiliation rules were a disqualifying factor for many portfolio companies of private equity firms when reviewing eligibility for loans under the Paycheck Protection Program ("PPP") of the CARES Act. However, given the higher employee and revenue caps in the MSLP, more portfolio companies may be eligible for MSLP loans in spite of this affiliation requirement.
- To be eligible, a business cannot have received specific support pursuant to Section 4003(b)(1) through (3) of the CARES Act (support for passenger air carriers and certain related businesses, cargo air carriers, and businesses critical to maintaining national security). Businesses that have received PPP loans or Economic Injury Disaster Loans are eligible for MSLP loans.
- A business is ineligible to borrow under the MSLP if it engages in the types of "ineligible business activities" listed under 13 CFR 120.110(b)-(j), (m)-(s), as modified and clarified by SBA regulations issued on or before April 24, 2020.<sup>2</sup> This limitation expressly incorporates the SBA's guidance regarding ineligible business activities published in connection with PPP, which notes that private equity and hedge funds are ineligible businesses because they are "primarily engaged in investment or speculation." The Fed notes, however, that a portfolio company of a private equity fund can be an eligible borrower if it can satisfy all of the other eligibility criteria.<sup>3</sup>

**ELIGIBLE LENDERS:** *What financial institutions are eligible to lend under the MSLP?*

- "Eligible Lenders" are U.S. insured depository institutions, U.S. branches or agencies of

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<sup>2</sup> These types of ineligible business activities include: life insurance companies, financial businesses primarily engaged in lending, businesses engaged in illegal activities, businesses which present live performance of a prurient or sexual nature, government owned entities, private clubs, certain gambling businesses, lobbying or political businesses, etc.

<sup>3</sup> See Section E.12. of the Frequently Asked Questions published by the Fed on June 8, 2020 (the "FAQ").

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. At this time, non-bank financial institutions are not considered “Eligible Lenders” under the MSLP. However, the Fed has advised that it is considering options to expand the list of “Eligible Lenders” in the future.

- In the case of an Existing Loan (as defined in “Terms of Eligible Loans” below), the Eligible Lender must have purchased its interest in the underlying loan before April 24, 2020. The 5% retention of an upsized tranche of an Existing Loan cannot be shared among multiple lenders in the underlying facility; however, if more than one lender in the underlying Existing Loan qualifies as an “Eligible Lender” under the MSLP, then each such Eligible Lender may originate an upsized tranche under the Existing Loan for the benefit of the borrower, provided that each such upsized tranche must be separately submitted to the SPV for sale of a participation interest, and the aggregate amount of all such upsized tranches will be subject to the borrower’s maximum loan amount.
- An Eligible Lender must retain its participation in a MSLP loan until the loan matures or such time as neither the SPV nor any governmental assignee holds an interest in the MSLP loan, whichever happens first (and, in the case of an Existing Loan, the Eligible Lender must also retain its participation in the underlying Existing Loan until the upsized tranche matures or such time as neither the SPV nor any governmental assignee holds an interest in the MSLP loan, whichever happens first).

**TERMS OF ELIGIBLE LOANS:** *What are the terms of the loans that qualify under the MSLP?*

- The MSLP provides for purchase of 95% of (a) new secured or unsecured loans that were originated after April 24, 2020 (a “New Loan”), (b) new secured or unsecured loans that were originated after April 24, 2020 (a “Priority Loan”), or (c) an upsized tranche of term loans or revolving credit facilities that were originated on or prior to April 24, 2020, and that has a remaining maturity of at least 18 months (“Existing Loans”).<sup>4</sup>
- To be eligible for the MSLP, New Loans, Priority Loans or the upsized tranche of Existing Loans must have the following terms and features:<sup>5</sup>

|                       | <b>New Loans</b> | <b>Priority Loans</b> | <b>Upsized Tranche of Existing Loans</b> |
|-----------------------|------------------|-----------------------|--|
| <b>Term</b>           | 5 years          |                       |  |
| <b>Minimum Amount</b> | \$250,000        | \$250,000             | \$10,000,000                             |

<sup>4</sup> The calculation of remaining maturity on Existing Loans takes into account any amendments made to extend the loan’s maturity beyond the 18-month deadline, including if made at the time of the upsizing.

<sup>5</sup> The Fed has provided model language for certain such provisions. See Appendix B of the FAQ.

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|                                      | <b>New Loans</b>   | <b>Priority Loans</b>   | <b>Upsized Tranche of Existing Loans</b>   |
|--------------------------------------|--|---|--|
| <b>Maximum Loan Size<sup>6</sup></b> | Lesser of (i) \$35M and (ii) 4x 2019 adjusted EBITDA <sup>7</sup> when taken together with borrower’s existing outstanding and undrawn available debts <sup>8</sup>  | Lesser of (i) \$50M and (ii) 6x 2019 adjusted EBITDA when taken together with borrower’s existing outstanding and undrawn available debts | Lesser of (i) \$300M and (ii) 6x 2019 adjusted EBITDA when taken together with borrower’s existing outstanding and undrawn available debts |
| <b>Payment</b>                       | <p>Year 1: All principal and interest payments deferred (unpaid interest will be capitalized)</p> <p>Year 2: All principal payments deferred</p> <p>Years 3-4: 15% principal due at the end of each year</p> <p>Year 5: 70% principal due at the end of the year</p> |   |  |
| <b>Prepayment</b>                    | Permitted without penalty  |   |  |

<sup>6</sup> With respect to a borrowers that are members of an affiliated group, the total participation in the MSLP loans by all such affiliates cannot exceed the maximum loan size that the affiliated group would be eligible to receive on a consolidated basis. See Section E.10. of the FAQ, and “Other Impediments” below.

<sup>7</sup> With respect to New Loans and Priority Loans, the calculation of 2019 EBITDA of a borrower must follow a methodology that the applicable eligible lender previously used for adjusting EBITDA when extending credit to such borrower or to similarly situated borrowers on or before April 24, 2020.

With respect to the upsized tranche of Existing Loans, the calculation of 2019 EBITDA of a borrower must follow the methodology that the applicable eligible lender previously used for adjusting EBITDA of the borrower when originating or amending the underlying loan on or before April 24, 2020. See Section G.1.of the FAQ.

If a lender has utilized a range of methodologies for adjusting EBITDA with respect to a particular borrower or similarly situated borrowers, the lender should lender should choose the most conservative methodology it has employed, but may not cherry pick among different precedents See Section G.13. of the FAQ.

<sup>8</sup> A borrower’s “existing outstanding and undrawn available debt” includes all amounts borrowed under any loan facility, including unsecured or secured loans from any bank, non-bank financial institution, or private lender, as well as any publicly issued bonds or private placement facilities. It also includes all unused commitments under any loan facility, excluding undrawn commitment that (i) serves as a backup line for commercial paper issuance, (ii) is used to finance receivables (including seasonal financing of inventory), (iii) cannot be drawn without additional collateral, (iv) 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. See Section G.2. of the FAQ.

|  | New Loans   | Priority Loans  | Upsized Tranche of Existing Loans   |
|--|---|---|---|
| <b>Interest Rate</b> <sup>9</sup>            | Adjustable rate of LIBOR + 3%   |   |   |
| <b>Priority</b>                              | Must not be contractually subordinated to any of the borrower's other debt instruments at any time  | Must be senior to or pari passu with the borrower's other debt instruments, in priority and security (other than mortgage debt) | Must be senior to or pari passu with the borrower's other debt instruments, in priority and security (other than mortgage debt) |
| <b>Collateral</b>                            | If secured, collateral should be described in accordance with lender's ordinary practices in its loan documentation   |   |   |
| <b>Cross Acceleration</b>                    | Must include a cross acceleration provision   |   |   |
| <b>Borrower Certifications and Covenants</b> | Must include a Borrower Certifications and Covenants material breach mandatory prepayment provision (in the case of an Existing Loan, where feasible in light of existing voting arrangements). |   |   |
| <b>Financial Reporting</b>                   | Must include a quarterly financial reporting covenant requiring information set out in Appendix C of the FAQ  |   |   |

**LIEN AND PAYMENT PRIORITY OF MSLP LOANS:** *What are the requirements of priority and security for loans issued under the MSLP?*

- **New Loans.** Must not be contractually subordinated to any of the borrower's other debt instruments at any time. The Fed advises this means that a New Loan may not be junior in priority in bankruptcy to the borrower's other unsecured loans or debt instruments.<sup>10</sup>
- **Priority Loans and the Upsized Tranche of Existing Loans.** Must be senior to or pari passu with the borrower's other "Loan or Debt Instruments,"<sup>11</sup> in priority and security (other than real property mortgage debt and limited recourse equipment financing).

<sup>9</sup> The Fed decided to avoid the difficulty of implementing new systems to issue loans based on SOFR. The Fed advises that lenders and borrowers should include fallback contract language to be used should LIBOR become unavailable during the term of the loan.

<sup>10</sup> The Fed further clarified that such requirement does not prevent: (i) the issuance of a New Loan that is a secured loan (including in a second lien or other capacity) to the borrower, whether or not the borrower has an outstanding secured loan of any lien position or maturity; (ii) the issuance of a New Loan that is an unsecured loan to the borrower, regardless of the term or secured or unsecured status of the borrower's existing indebtedness; or (iii) the borrower from taking on new secured or unsecured debt after receiving a New Loan, provided the new debt would not have higher contractual priority in bankruptcy than the New Loan. See Section B.3. of the FAQ.

- The Fed advises that to comply with this requirement, a Priority Loan or the upsized tranche of an Existing Loan can be unsecured only if, as of the date of origination, the borrower has no other secured Loan or Debt Instruments (other than real property mortgage debt and limited recourse equipment financing that, in the case of an Existing Loan, does not secure any other tranche of the underlying credit facility). In such case, the unsecured Priority Loan or upsized tranche of the Existing Loan may not be contractually subordinated in terms of priority to the borrower's other unsecured Loan or Debt Instruments (as discussed above with respect to priority of New Loans).
- If at the time of origination of a Priority Loan or an upsized tranche of an Existing Loan the borrower has any other secured Loan or Debt Instruments (other than real property mortgage debt and limited recourse equipment financing), then the Priority Loan or the upsized tranche of an Existing Loan must be secured. Such loans may not be contractually subordinated in terms of priority to any of the borrower's other Loan or Debt Instruments, and must be secured by adequate collateral. In the case of an upsized tranche of an Existing Loan, such collateral will be the collateral in place for the Existing Loan (including, if applicable, any real property mortgage debt or equipment financing), whether pledged originally or at the time of upsizing, which must secure the loan on a pari passu basis (i.e., the upsized tranche must be pari passu with the Existing Loans in lien priority); in the case of a Priority Loan, adequate collateral will be calculated utilizing collateral coverage ratios published by the Fed.<sup>12</sup> The lender's lien on collateral securing the MSLP loan must be and remain senior to or pari passu with the liens that any other creditor may have on such collateral.
- The use of the term "borrower" raises a question of whether the priority requirements applicable to Priority Loans and Existing Loans are intended to cover structurally subordinated debt as well. Further guidance from the Fed may be needed in connection with this issue.

**FEES:** *Are there fees associated with MSLP loans?*

- Lenders are authorized to charge borrowers origination fees, and the SPV is authorized to charge transaction fees, in each case at rates set by the Fed. The SPV will also pay lenders annual servicing fees at rates set by the Fed.<sup>13</sup> In respect of Existing Loans, lenders are authorized to charge customary consent fees to amend the Existing Loans.

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<sup>11</sup> As used throughout the MSLP documents the defined term "Loan 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.

<sup>12</sup> See Section C.5. of the FAQ.

<sup>13</sup> For New Loans and Priority Loans, a borrower must pay the eligible lender an origination fee of up to 100 basis points of the principal amount of the New Loan or Priority Loan, as applicable, and the eligible lender must pay (or cause the borrower to pay) the SPV a transaction fee of 100

**POTENTIAL IMPEDIMENTS AND OTHER CONSIDERATIONS:** *What are the key potential impediments, limitations, or other considerations facing borrowers seeking loans under the MSLP?*

- **Affiliate Aggregation.** As discussed above, when determining eligibility for MSLP loans, affiliate aggregation rules will be applied to the calculation of a prospective borrower's number of employees and 2019 annual revenue. "Affiliate" for this purpose is broadly defined. (See 13 CFR 121.301(f).) Applicants that are part of a 'large' affiliated group, including portfolio companies of private equity firms, may have unexpected challenges meeting eligibility criteria as a result.
- **No Other Facilities.** An affiliated group of companies may only participate in one of the three MSLP Facilities, and will be ineligible to participate in the MSLP if any member of such affiliated group participates in the Primary Market Corporate Credit Facility, a program established by the Fed on March 23, 2020 to support credit to employers through new bond and loan issuances. However, businesses that have received PPP loans or Economic Injury Disaster Loans are eligible for MSLP loans.
- **Maximum Loan Amount.** If multiple businesses that are part of an affiliated group apply for MSLP loans, the maximum loan amount made available to such businesses will be calculated on a consolidated basis taking into consideration (and reflecting the lowest available capacity determined by) the leverage of the individual borrower, the leverage of the affiliated group, and the amount of any MSLP loan previously extended to a member of the affiliated group. "Affiliate" for this purpose uses the same broad definition utilized for calculation of employee and revenue thresholds. (See 13 CFR 121.301(f).) Note that the portion of any outstanding PPP loan that has not yet been forgiven is counted as outstanding debt for the purposes of the maximum loan size calculation. Applicants that are part of large affiliated groups, including portfolio companies of private equity funds, may experience challenges in determining loan availability under this formulation.
- **Intercreditor Issues.** Absent capacity under the negative covenants of a borrower's existing credit facilities (e.g., indebtedness and liens covenants), required lien and payment priority of MSLP loans will require potential engagement and negotiations with the borrower's existing lenders.

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basis points of the principal amount of the New Loan or Priority Loan, as applicable, at the time of origination. For an upsized tranche of Existing Loans, the borrower must pay the eligible lender a fee of up to 75 basis points of the principal amount of the upsized tranche of the Existing Loans, and the eligible lender must pay (or cause the borrower to pay) the SPV a transaction fee of 75 basis points of the principal amount of the upsized tranche of the Existing Loans at the time of upsizing. Under any MSLP loan (whether a New Loan, a Priority Loan, or an upsized tranche of an Existing Loan), the SPV will pay the eligible lender an annual loan servicing fee of 25 basis points of the principal amount of the SPV's participation in the MSLP Loan.

- **Holding Company.** If the borrower is a holding company, the MSLP loan must be guaranteed on a joint and several basis by one or more operating subsidiaries which are themselves eligible to borrow under the criteria of an MSLP loan. The borrower will be required to provide adequate financial information with respect to such operating subsidiaries. In such circumstances, the EBITDA of any such subsidiaries must be used to calculate the borrower's maximum loan size.
- **Disclosure.** The Fed will disclose information regarding the operation of the MSLP, including names of lenders and borrowers and amounts borrowed. To the extent a business has concerns regarding such disclosure (including the potential of news media learning of the business' participation in the MSLP), alternative financing sources should be considered.
- **Limitations on Business Operations.** In order to receive loans under the MSLP, eligible borrowers must agree to a number of restrictions on the operation of their business, the overall impact of which may be unpalatable for some companies (and/or their existing lenders). Applicable restrictions include the following:
  - the eligible borrower cannot repay any principal or interest on any debt, other than mandatory payments, until the MSLP loan has been repaid in full or neither the SPV nor any other governmental assignee holds an interest in the MSLP loan in any capacity; provided that, solely with respect to Priority Loans, a borrower may, at the time of origination of the Priority Loan, refinance existing debt owed by the borrower to a lender that is not the eligible lender providing the Priority Loan;<sup>14</sup>
  - borrowers may not seek to cancel or reduce any outstanding lines of credit until the MSLP loan has been repaid in full or neither the SPV nor any other governmental assignee holds an interest in the MSLP loan in any capacity (this does not restrict repaying a line of credit, such as a credit card, in the ordinary course of the borrower's business);

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<sup>14</sup> A "mandatory" payment for this purpose means any mandatory principal or interest payment with respect to indebtedness that predates the MSLP loan (i) that was scheduled to be paid on a future date as of the date of origination of the MSLP loan, or (ii) that is automatically triggered by the occurrence of an event under a contract for indebtedness that was executed prior to the date of origination of the MSLP loan; provided, that any such payments triggered by the incurrence of new debt can be paid only if such payments are de minimis, or under a Priority Loan at the time of origination. See Section H.7. of the FAQ.

The following additional exceptions also apply: (i) repaying a line of credit (including a credit card) in accordance with the borrower's normal course of business usage for such line of credit; (ii) 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 by newly acquired property (e.g., inventory or equipment), and, apart from such security, is of equal or lower priority than the MSLP Loan; and (iii) refinancing debt that is maturing no later than 90 days from the date of such refinancing. See Section H.3. of the FAQ.



- borrowers must use commercially reasonable efforts to maintain payroll and retain employees during the term of the MSLP loan. In that regard, the Fed advises that “good-faith efforts” to maintain payroll and retain employees in light of the borrower’s capacities, resources, business needs for labor, and the economic environment, constitute “commercially reasonable efforts” for purposes of the MSLP. The Fed further clarified that borrowers that have already laid off or furloughed workers as a result of the disruptions from COVID-19 remain eligible to apply for MSLP loans (see Section G.8. of the FAQ);
- borrowers may not repurchase their or their respective parent company’s equity securities listed on a national securities exchange until 12 months after the loan is no longer outstanding (unless repurchased pursuant to contractual obligation in effect as of March 27, 2020);
- no dividends or other capital distributions with respect to common stock (or common stock equivalents of a partnership, limited liability company, or other legal entity), preferred stock or other equity interest in borrower may be paid until 12 months after the loan is no longer outstanding except that, (i) dividends or distributions may be made with respect to preferred stock or other equity interests that provide for mandatory or preferential payments, if both the equity interest and the obligation to pay dividends or distributions existed as of March 27, 2020, and (ii) such restrictions will not apply to distributions made by an S corporation or other tax pass-through entity to the extent reasonably required to cover its owners’ tax obligations in respect of the borrower’s earnings; and<sup>15</sup>
- employee and officer compensation will be subject to certain limitations.<sup>16</sup>

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<sup>15</sup> The Instructions and Guidance to the Borrower Certifications and Covenants published by the Fed on May 27, 2020 (the “Borrower Certification Instructions”) note that, for the avoidance of doubt, repurchases and redemptions do not constitute capital distributions or dividends.

<sup>16</sup> Eligible borrowers receiving loans under the MSLP will be required to limit employee and officer compensation as follows until 12 months after the loan is no longer outstanding:

- For an employee or officer whose total compensation (including salary, bonuses, awards of stock and other financial benefits provided by the business) exceeded \$425,000, but was less than or equal to \$3,000,000, in 2019, or in any subsequent 12 month period, (i) total compensation during any 12-month period may not exceed compensation received by such person in 2019 or such subsequent 12 month period and (ii) severance pay or other benefits available upon termination may not exceed two times the total compensation received by such person in 2019 or such subsequent 12 month period.
- For an employee or officer whose total compensation exceeded \$3 million in 2019 or in any subsequent 12 month period, (i) total compensation during any 12-month period may not exceed the sum of (x) \$3 million and (y) 50% of the excess compensation over \$3 million that was received by such person in 2019 or such subsequent 12 month period, and (ii) severance pay or other benefits available upon termination may not exceed two times the total compensation received by such person in 2019 or such subsequent 12 month period.

**REQUIRED CERTIFICATIONS AND ATTESTATIONS:** *What additional certifications will be required from borrowers?*

- In addition to certifications required under applicable statutes and regulations, and attestation with respect to the matters covered above, borrowers will be required to attest or certify to the following:
  - That the borrower is not “Insolvent”,<sup>17</sup> and has reasonable basis to believe that, as of the date of the origination of the MSLP loan, and after giving effect to such loan, it has the ability to meet its financial obligations for at least the next 90 days (including paying its undisputed debts that are due as of the date of origination of the MSLP loan, and which are expected to come due during the next 90 days) and does not expect to file for bankruptcy during that time period;
  - That the borrower is eligible to participate in light of certain conflict of interest prohibitions applicable to businesses directly or indirectly controlled by the President, the Vice President, heads of executive departments, members of congress or their respective relatives (and that the borrower has undertaken sufficient diligence to determine the same);
  - That the borrower is unable to secure adequate credit accommodations from other banking institutions. The Fed advises that this does not mean there is no other credit available for the borrower, and prospective borrowers do not need to demonstrate that they have been denied credit by alternative sources, but rather can include that the borrower is unable to obtain “adequate credit accommodation” due to pricing or terms of credit available from other sources;
  - That the borrower has provided financial records to the lender, and that such financial records fairly present, in all material respects, the financial condition of the borrower for the period covered thereby. The Fed advises that borrowers: (i) that prepare their financials in accordance with U.S. GAAP must submit U.S. GAAP-compliant financials; (ii) that prepare audited financial statements must submit their most recent audited financial statement; and (iii) that prepare financial statements that consolidate the borrower with its subsidiaries must submit consolidated financial statements; and
  - With respect to Priority Loans, that the borrower has provided good faith valuations of any collateral security, and the borrower’s other Loan or Debt Instruments.

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<sup>17</sup> For these purposes, a borrower is “Insolvent” if it is in bankruptcy, resolution under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any other Federal or State insolvency proceeding, or if it was generally failing to pay undisputed debts as they become due during the 90 days preceding the date of borrowing for reasons other than disruptions to its business resulting from the COVID-19 pandemic. See Section 3.B. of the Borrower Certification Instructions.

- The borrower will be required to notify the eligible lender of any misrepresentation or breach of the certifications and covenants made by the borrower in connection with the MSLP loan application process until one year after the MSLP loan is repaid in full, or the SPV or other governmental assignee no longer holds an interest in any capacity, whichever comes first. The borrower's making of a knowing, material misrepresentation or breach of covenant regarding its eligibility for an MSLP loan will not constitute an event of default in respect of the MSLP loan but will cause repayment of the MSLP loan to accelerate. If a borrower cannot repay the accelerated MSLP loan, such failure will be an event of default under the MSLP loan and will likely be a cross default under any of the borrower's other credit facilities.
- It remains plausible that the Fed may require additional certifications in future guidance, and the Fed has indicated that the form certifications previously made available (including the Borrower Certification Instructions) are being updated. This is an area to be monitored for further updates, especially in light of the successive guidance and updates that occurred and continue to occur in connection with the PPP regulations.

**FORGIVENESS:** *Is there loan forgiveness available?*

- No, the MSLP does not contemplate forgivable loans.

**APPLICATION PROCESS/ACCESSING FUNDS:** *How do businesses apply for loans under the MSLP?*

- Businesses will make applications to participating eligible lenders and not to the U.S. government.
- Eligible borrowers will not automatically qualify for MSLP loans or qualify to receive loans of the maximum allowable principal amount. Lenders are expected to conduct a review of the eligible borrower's financial condition and creditworthiness in making loan determinations.
- The Fed advises that borrowers contact an eligible lender for more information on whether the lender plans to participate in the MSLP and to request more information on the application process.

**OPERATION:** *When is the MSLP expected to be operational?*

- On June 8, 2020 the Fed provided updates and additional guidance on the MSLP and also noted that it is currently working to create the infrastructure necessary to operate the MSLP, and that it will provide additional updates, including the official launch date of the program, in the near future.

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- Although the MSLP Facilities are not yet operational, the Fed encourages eligible lenders to begin funding MSLP loans to borrowers in advance of the opening of the MSLP facilities, and has advised that the SPV intends to purchase participations in such loans without additional conditions so long as the required documentation is complete, properly executed, and evidences a loan consistent with the relevant Facility requirements. Lenders may also extend a MSLP loan with funding thereof conditioned upon receiving a binding commitment from the SPV that it will purchase a participation in the loan.