GOODWIN

CLIENT ALERT

June 1, 2020

U.S. FEDERAL RESERVE ANNOUNCES CHANGES TO, PROVIDES GUIDANCE ON, AND POSTS ADDITIONAL DOCUMENTS WITH RESPECT TO THE MAIN STREET LENDING PROGRAM

On May 27, 2020, the U.S. Federal Reserve ("Fed") announced additional changes to the Main Street Lending Program ("MSLP"), while also providing additional guidance through an updated FAQ and posting documents for MSLP to the Federal Reserve Bank of Boston's website, available here. While certain changes helped clarify certain gray areas of the existing MSLP terms, there were certain changes that further restricted the use of MSLP for companies and there were also certain areas of the MSLP terms which were not addressed if the MSLP is to be made available to certain companies, such as negative EBITDA companies. The below chart provides the highlights with respect to the changes and guidance, and describes the effects of any such changes (and non-changes) and guidance on borrowers. For a summary of the changes to MSLP that were made on April 30, 2020, please see Goodwin's May 2, 2020 client alert here.

MSLP Facilities	New Loan Facility ("NLF")	Priority Loan Facility ("PLF")	Expanded Loan Facility ("ELF")	Description of Changes/ Issues from a ***Borrower's*** Perspective
(blue font: good change/purple font: somewhat neutral change/red font: negative change/green font: prior issue not addressed)				
Minimum Loan Size	$500K	$500K	$10MM	The Fed did not address further lowering the minimum loan size amount, so that MSLP would be available to more smaller businesses that may be shut out of PPP (or need more support in addition to PPP).
Maximum Loan Size	Least of (i) $25MM (less any amount extended to an affiliate of borrower under a NLF), (ii) an amount when added to existing outstanding and undrawn available debt of borrower, is ≤ 4x adjusted 2019 EBITDA of borrower, (iii) if one or more of borrower's affiliates previously participated, or has applied to participate, in a NLF, an amount when added to existing outstanding and undrawn available debt of borrower and its affiliates, is ≤ 4x adjusted 2019 EBITDA of borrower and its affiliates, and (iv) if borrower is a holding company (i.e., all or substantially all of	Least of (i) $25MM (less any amount extended to an affiliate of borrower under a PLF), (ii) an amount when added to existing outstanding and undrawn available debt of borrower, is ≤ 6x adjusted 2019 EBITDA of borrower, (iii) if one or more of borrower's affiliates previously participated, or has applied to participate, in a PLF, an amount when added to existing outstanding and undrawn available debt of borrower and its affiliates, is ≤ 6x adjusted 2019 EBITDA of borrower and its affiliates, and (iv) if borrower is a holding company, an	Least of (i) $200MM (less any amount extended to an affiliate of borrower under an ELF), (ii) 35% of existing outstanding and undrawn available debt of borrower that is pari passu in priority with ELF and equivalent in secured status (i.e., secured or unsecured), (iii) an amount when added to existing outstanding and undrawn available debt of borrower, is ≤ 6x adjusted 2019 EBITDA of borrower, (v) if one or more of borrower's affiliates previously participated, or has applied to participate, in a PLF, an amount when added to existing outstanding	1. The Fed added the requirement that an affiliated group of companies (see below in the "Size-Based Eligible Borrower Test" for more details on how the term "affiliates" is defined) can only participate in MSLP by using the same MSLP facility accessed by its affiliate (e.g., if a borrower's affiliate has participated (or has applied to participate) in a NLF, then such borrower would only be able to participate in the NLF and would be prohibited from participating in PLF or ELF). Further, the Fed provided that the maximum loan size amount in prong (i) and the leverage/ EBITDA test have to factor in the borrower's affiliates (the FAQs and the Lender Transaction Specific Certifications and Covenants did not make clear whether affiliates have to be factored into the leverage/EBITDA test (a) only when affiliates are also participating (or applying to participate) in MSLP or (b) regardless of whether such affiliates are participating or not). This is likely going to be an issue for PE funds seeking to have more than one of its portfolio companies participate in MSLP, but not VC funds (assuming the VC funds portfolio companies are EBITDA positive) because the Fed stated that the waivers of affiliation under 13 CFR 121.103(b) apply with respect to such affiliation rules, which there is a waiver under such statute for VCOCs.

	its assets comprise equity interests in other entities), an amount when added to existing and undrawn available debt of borrower's subsidiary guarantors (i.e., "Selected Subsidiaries"), is ≤ 4x adjusted 2019 EBITDA of the Selected Subsidiaries	amount when added to existing and undrawn available debt of Selected Subsidiaries, is ≤ 6x adjusted 2019 EBITDA of the Selected Subsidiaries	and undrawn available debt of borrower and its affiliates, is ≤ 6x adjusted 2019 EBITDA of borrower and its affiliates, and (iv) if borrower is a holding company, an amount when added to existing and undrawn available debt of Selected Subsidiaries, is ≤ 6x adjusted 2019 EBITDA of the Selected Subsidiaries. The Fed clarified that the standard for determining the type of debt covered by clause (ii) above is (a) if the ELF is part of a secured loan, then all secured debt for borrowed money that has not been made junior in priority through contractual subordination should be included in such calculation, regardless of the value or type of collateral, and (b) if the ELF is part of an unsecured loan, then all unsecured debt for borrowed money that has not been made junior in priority through contractual subordination should be included in such calculation.	2. The Fed still did not address the issue with including undrawn debt in the leverage ratio numerator for the most part. 3. No changes to this test were made to help growth companies with negative EBITDA, which means currently some of these companies (especially those that are VC-backed and could not meet either the affiliation test or necessity test under PPP) may not be eligible for MSLP or PPP. The Fed did mention that it will be evaluating the feasibility of an alternative to the EBITDA leverage test for non-profit organizations. 4. The Fed did not address the fact that asset-based borrowers are generally evaluated on a test other than EBITDA leverage. The Board continues to mention that it will be evaluating the feasibility of an alternative test to EBITDA leverage for asset-based borrowers. 5. The Fed noted that a borrower is subject to the MSLP maximum loan size limitations on an entity-basis, rather than on a loan basis (i.e., if a borrower receives more than one loan under MSLP, the sum of those loans cannot exceed the permissible maximum loan size of the applicable MSLP). 6. The Fed mentioned mentioned that the methodology a MSLP lender requires an borrower to use to calculate adjusted EBITDA for a borrower, (a) with respect to an NLF and PLF, must be a methodology such MSLP lender previously required to be used for adjusting EBITDA when extending credit to a borrower or to similarly situated borrowers on or before 4/24/20, and (b) with respect to an ELF, must be the methodology such MSLP lender previously required to be used for adjusting EBITDA when originating or

				amending the existing loan (or if there is no such methodology previously used when originating or amending the existing loan, then the methodology that such MSLP lender has required to be used in other contexts for such borrower or, if there is no such calculation, for similarly situated borrowers) on or before 4/24/20. If a MSLP lender has used multiple EBITDA adjustment methods with respect to a borrower or similarly situated borrowers (e.g., one for use within a credit agreement and one for internal risk management purposes), the MSLP lender should choose the most conservative method it has employed. In all cases, the MSLP lender must select a single method used at a point in time in the recent past and before 4/24/20 and may not "cherry pick" or apply adjustments used at different points in time or for a range of purposes. The MSLP lender is to document the rationale for its selection of an adjusted EBITDA methodology. For purposes of adjusting EBITDA, "similarly situated borrowers" are borrowers in similar industries with comparable risk and size characteristics. MSLP lenders are to document their process for identifying similarly situated borrowers when they originate a NLF or PLF. 7. The Federal Reserve noted in its 5/29/20 presentation that an outstanding PPP loan should be counted in the "existing outstanding and undrawn available debt" amount in the numerator of the leverage ratio, even if the borrower expects the entire PPP loan amount to later be forgiven. The Fed mentioned that compliance with the limits on the MSLP loan amount is determined as of the date thereof and that later expected increases in the principal amount of the MSLP loan (e.g., for capitalized interest) shall not be taken into account.

Term	4 years	4 years	4 years	Still could present an issue in an ELF for existing loans with a maturity longer than 4 years where there are other lenders in addition to the ELF lender.
Principal Amortization (P + I deferred for year 1; amortization to include PIK'd interest from year 1)	Years 2-4: 33.33% each year	Years 2-4: 15%/ 15%/70%	Years 2-4: 15%/ 15%/70%	Clarified the amount of principal amortization each year. There still remains the issue for an ELF where an ELF loan's larger amortization can present issues for existing lenders not participating in the ELF where their existing loans are amortizing at a much lower amount.
Principal and Interest Deferral	1 year	1 year	1 year	No change
Capitalization of Unpaid Interest	Yes	Yes	Yes	No change
Interest Rate	LIBOR (1 or 3 months) + 3%	LIBOR (1 or 3 months) + 3%	LIBOR (1 or 3 months) + 3%	1. The Fed mentioned that the interest rate must be the specified amount and a borrower cannot be charged a higher interest rate. 2. The Fed stated that (a) this requirement does not prohibit additional default interest from accruing after the occurrence and during the continuance of an event of default, (b) interest rate or applicable margin levels that fluctuate based on borrower performance metrics or any other metrics is not permitted, and (c) customary fallback language for LIBOR unavailability, LIBOR illegality and determination by a MSLP lender that LIBOR does not adequately reflect its cost of funding is permitted.

Loan Origination Fee	Up to 100 bps	Up to 100 bps	Up to 75 bps	The Fed made clear that a MSLP lender cannot charge to a borrower (a) any fees other than the transaction fee, the origination fee and de minimis fees for services that are customary and necessary in the lender's underwriting of commercial and industrial loans to similar borrowers (such as appraisal and legal fees) or (b) any servicing fees.
Transaction Fee (while this fee is paid by MSLP lender to the MSLP SPV, MSLP lender may pass on to borrower) – paid at closing	100 bps	100 bps	75 bps	No changes
Loan Servicing Fee Paid by the MSLP SPV (not Borrower) to MSLP Lender	25 bps per annum	25 bps per annum	25 bps per annum	No changes
Prepayments	Permitted without premium	Permitted without premium	Permitted without premium	The Fed make clear that the payment of accrued interest on such prepaid amounts and interest rate breakage costs (if any) on such prepaid amounts is permitted.
Forgivable?	No	No	No	The Fed stated that while loan forgiveness under MSLP is prohibited, the MSLP SPV may agree to reductions in interest (including capitalized interest), extended amortization schedules and maturities and higher priority "priming" loans in restructurings or workouts.
Can MSLP Facility Be Obtained in Addition to PPP Loan?	Yes	Yes	Yes	No changes
Can MSLP Facility Be Obtained in Addition to EIDL?	Yes	Yes	Yes	No changes
How Many of the 3 MSLP Facilities and the Primary Market Corporate Credit Facility	1	1	1	The Fed included a new requirement that an affiliates group of companies (with affiliates of a borrower being determined the same as directly below in the Size-Based Eligible Borrower Test)

Can be Used by a Borrower and its Affiliates?				can only participate in MSLP by using the same MSLP facility accessed by its affiliate (e.g., if a borrower's affiliate has participated (or has applied to participate) in NLF, then such borrower would only be able to participate in the NLF and would be prohibited from participating in PLF or ELF. As mentioned above in the "Maximum Loan Size" section, this is likely going to be an issue for PE funds that want more than one of their portfolio companies to participate in MSLP, especially where some of those portfolio companies have existing loan facilities that would need to use ELF and other portfolio companies do not have existing loan facilities and need to use NLF or PLF instead. Also, the affiliated group's total participation in a single MSLP facility cannot exceed the maximum loan size that the affiliated group is eligible to receive on a consolidated basis, as further discussed above.

Size-Based Eligible Borrower Test	1. Must <u>either</u> have no more than 15K employees <u>or</u> $5B in 2019 annual revenues 2. Includes borrower's "affiliates" in both tests (similar affiliation rules applied for PPP, which also applies (a) the waivers of affiliation under 13 CFR 121.103(b) (e.g., for <u>venture capital operating companies</u>, SBIC-supported companies, etc.), but (b) does not include the waivers of the affiliation rules in 13 CFR 121.103 for hospitality business and franchises in 15 U.S.C. 636(a)(D)(iv), as added by the CARES Act, which apply to PPP but do not apply to MSLP (note the SBIC-supported companies affiliation waiver standard is a little different for PPP than it is for MSLP, as it is easier to meet the standard for PPP under the CARES Act in 15 U.S.C. 636(a)(D)(iv)(III) than it is for MSLP in 13 CFR 121.103(b)(1), which the former requires a company to only "receives financial assistance from" an SBIC whereas the latter requires a company to be "owned in whole or substantial part by" an SBIC) 3. For employee test, (i) count all full-time, part-time, seasonal or otherwise employed persons, excluding volunteers and independent contractors and (ii) calculate number by taking average total number for each pay period of TTM period prior to origination. 4. For revenue test, borrower may either use (i) 2019 GAAP audited financials or (ii) annual "receipts" (as defined in 13 CFR 121.104(A)) for FY2019 as reported to the IRS. If no 2019 GAAP audited financials or annual receipts, borrower shall use the most recent audited financials or annual receipts	1. The issue remains of having the affiliation standard similar to the PPP apply to the employee and revenue size-based eligible borrower test, which could eliminate several companies from MSLP that are owned or controlled by large PE funds. 2. The Fed provided that the waivers of affiliation under 13 CFR 121.103(b) apply with respect to the affiliation rules, which there is a waiver under such statute for VC operating companies. Therefore, VC funds will not be affected by the affiliation rules like large PE funds could be for the employee and revenue size-based eligible borrower test.

Notable Eligible Borrower Criteria	1. Must be organized "for profit" 2. Must be formed in US (or under US law) before 3/13/20 3. Must have "significant operations" in US 4. Must have majority of employees based in US 5. Must not be an Ineligible Business under 13 CFR 120.110(b)-(j) and (m)-(s) (as modified by SBA regulations for PPP on or before 4/24/20) 6. Cannot have received support pursuant to section 4003(b)(1)-(3) of the CARES Act (i.e., support received by (i) passenger air carriers, eligible businesses under 14 CFR 145, and approved to perform inspection, repair, replace or overhaul services, and ticket agents (as defined in 49 USC 40102), (ii) cargo air carriers and (iii) businesses critical to maintaining national security) 7. Must be of "sound" financial condition prior to COVID- 19 pandemic 8. If borrower had an existing loan with MSLP lender that was outstanding on 12/31/19, it must have an internal risk rating (based on such lender's risk rating system) that was a "pass" in the Federal Financial Institutions Examination Council's ("FFIEC") supervisory system as of such date 9. Must have a reasonable basis to believe that, as of the date of 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 and does not expect to file for bankruptcy during that time period 10. Must certify that it is eligible to participate in the MSLP, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act (e.g., US President, US VP, the head of any US Executive Department, any member of US Congress or certain immediate family members of the foregoing cannot own, control or hold 20% or more (by vote or value) of any class of equity ownership in the borrower) 11. Must certify that it is not "Insolvent" as such term is used in 12	1. No changes, but, as noted above in the "Maximum Loan Size" section, the Fed is still considering evaluating the feasibility of adjusting borrower eligibility criteria and loan eligibility metrics of MSLP for non-profit organizations 2. No changes 3. The Fed clarified that a borrower may be a subsidiary of a foreign company, so long as such borrower itself (i) is created or organized in the US or under the laws of the US, (ii) meets the requirements regarding operations and employee locations in #3 and #4 of the column immediately to the left of this column in this row, and (iii) uses the proceeds of a MSLP loan only for the benefit of such borrower, its consolidated US subsidiaries and other affiliates of such borrower that are US businesses (i.e., the proceeds of a MSLP loan may not be used for the benefit of such borrower's foreign parents, affiliates or subsidiaries) 4. Fed mentioned that to determine this, a borrower's operations should be evaluated on a consolidated basis together with its subsidiaries, but not its parent companies or sister affiliates. A borrower should count as employees all full-time, part-time, seasonal or otherwise employed persons, excluding volunteers and independent contractors. In order to determine the applicable number of employees, a borrower should use the average of the total number of persons employed by a borrower and its affiliates for each pay period over the 12 months prior to the origination of the MSLP loan. Most of this was already covered under the employee sized-based eligible borrower test (see immediately preceding row), but the details were not previously provided with respect to the US-

	CFR 201.4(d)(5)(iii) (i.e., if a borrower 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 (as defined in paragraph B(ii) of section 13(3) of the Federal Reserve Act), or if it was "generally failing to pay undisputed debts as they become due" during the 90 days preceding the date of borrowing (i.e., is when a borrower is behind on its debts for reasons other than disruptions to its business resulting from the COVID-19 pandemic)) 12. Must certify that it is "unable to secure adequate credit accommodations from other banking institutions"	majority requirement. Note the difference in treatment for subsidiaries versus affiliates in the maximum size test versus the majority US-based test. 5. No changes (other than as mentioned in the red font below in this #5). This requirement removes the same companies from MSLP that were ineligible for the PPP. Keep in mind that this requirement does not exclude (a) a company that grows, produces, processes, distributes or sells products made from hemp (although most cannabis companies would otherwise be excluded) or (b) a legal gaming company. The Fed stated that a PE fund is ineligible to be a borrower under MSLP, because the SBA has determined that they are primarily engaged in investment or speculation; therefore, such businesses are Ineligible Businesses under 13 CFR 120.110(s). 6. No changes 7. There is still no description or meaning provided for "sound", which likely means that it will end up being determined by the MSLP lender considering the MSLP lender is required to conduct an assessment of the borrower's financial condition at the time of the borrower's MSLP application 8. No changes 9. The Fed mentioned that, in order to make this certification, a borrower must determine that, in addition to the items mentioned in #9 of the column directly to the left in this row, after receiving the MSLP loan, such borrower expects to be able to pay its undisputed debts that (a) are due as of the date of origination and (b) become due during the 90 days following the date or origination.

		10. No changes 11. The Fed mentioned that that a borrower would not be (a) Insolvent or "generally failing to pay its undisputed debts as they become due" if it is behind on its debts because of reduced business activity resulting for stay-at-home, shelter-in-place, social distancing or other similar orders or recommendations by federal, state or local government authorities related to the COVID-19 pandemic, or (b) Insolvent if expected and routine sources of funding were unexpectedly unavailable due to market conditions resulting from the COVID-19 pandemic. If, however, a borrower is failing to pay its undisputed debts as they become due for reasons unrelated to the COVID-19 pandemic, then such borrower is insolvent. 12. The Fed provided that provide that this requirement does not mean that no credit from other sources is available to the a borrower, but, rather, a 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 such 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. While this language provided by the Fed is helpful, this requirement is likely to cause borrowers some concern just like the "necessary" certification did for PPP loan borrowers.

Notable Borrower Covenants	(C) Must refrain from repaying the principal balance of, or paying any interest on, any debt until the MSLP loan is repaid in full (or until neither the MSLP nor a Governmental Assignee holds an interest in the MSLP in any capacity), unless the debt or interest payment is mandatory and due. Notwithstanding the foregoing, (A) revolver repayments in the normal course of business usage on a line of credit are allowed, but the facilities cannot be terminated nor the commitment reduced, and (B) reductions of availability under existing lines of credit in accordance with their terms due to changes in borrowing bases or reserves in ABL or similar structures are permitted, (C) taking on and paying additional debt required in the normal course of business and on standard terms (such as PMSI debt) is allowed, (D) refinancing debt that is maturing no later than 90 days from the date of such refinancing is OK, and (D) for PLF only, the borrower is allowed to refinance existing debt owed to a lender that is not the PLF lender at the time the PLF is originated. "Governmental Assignee means any of the following entities, if the MSLP SPV's interest in the MSLP loan is transferred or assigned to such entity: any Federal Reserve Bank, any vehicle authorized or to be established by the Federal Reserve Board or any Federal Reserve Bank, any entity created by an act of the US Congress, or any vehicle established or acquired by the Treasury or any other department or agency of the US Federal government. 2. Must not seek to cancel or reduce any of its committed lines of credit with the MSLP lender or any other lender until (a) the MSLP facility is repaid in full or (b) neither the MSLP SPV nor a Governmental Assignee holds an interest in the MSLP facility in any capacity 3. Until 12 months after the MSLP loan is no longer outstanding, must not (i) repurchase an equity security listed on a national securities exchange of borrower (or parent company of borrower) while the MSLP loan is outstanding, except as required under a contractual obligation that is in effect as of 3/27/20, or (ii) pay dividends or make other capital distributions with respect to the common stock of borrower, except that an S corporation or other tax pass-through entity that is an Eligible Borrower may make distributions to the extent reasonably required to cover its owners' tax obligations in respect of the entity's earnings 4. Until 12 months after the MSLP loan is no longer outstanding, (a) no officer or employee whose total compensation (i.e., salary, bonuses, awards of stock and other financial benefits) exceeds $425K in CY 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to 3/1/20) will	1. There is still the issue with the language "and due", which if taken literally could mean a borrower would have to wait to make a principal or interest payment until its actual due date (and could not even pay it one day early). The Fed mentioned that principal and interest payments are "mandatory and due" (and, therefore, are permitted to made): (a) with respect to debt that predates a MSLP loan, (i) on the future date upon which they were scheduled to be paid as of 4/24/20, or (ii) upon the occurrence of an event that automatically triggers mandatory prepayments under a debt document executed by a borrower prior to 4/24/20, except that any such prepayments triggered by the incurrence of new debt can only be paid (A) if such prepayments are de minimis or (B) under the PLF at the time of origination of a PLF loan, and (b) with respect to future debt incurred in compliance with the terms and conditions of the MSLP loan, (i) on their scheduled dates or (ii) upon the occurrence of an event that automatically triggers mandatory prepayments. A borrower may not pay, and MSLP lenders may not request that a borrower pay, interest or principal payments on outstanding debt ahead of schedule during the life of the MSLP loan, unless required by a mandatory prepayment clause as specifically permitted above in this column of this row. Further, a borrower cannot receive a NLF or an ELF if an existing debt arrangement requires prepayment thereof by more than a de minimis amount upon the incurrence of the NLF or ELF, unless such requirement is waived or reduced to a de minimis amount by the applicable creditor. 2. See #1 directly above. 3. No changes. There is still no carve-out for distributions for holdco expenses for pass-

	receive (i) total compensation which exceeds, during any 12 consecutive month period, the total compensation received by the officer or employee in CY2019, or (ii)business severance pay or other benefits upon termination of employment with the eligible business which exceeds twice the maximum compensation received by the officer or employee in CY2019, and (b) no officer or employee whose total compensation exceeded $3MM in CY2019 may receive during any 12 consecutive month period total compensation in excess of the sum of (i) $3MM and (ii) 50% of the excess over $3MM of the total compensation received by the officer or employee in CY2019 5. Use "commercially reasonable efforts" to maintain its payroll and retain its employees during the time the MSLP is outstanding (but borrowers that have already laid-off or furloughed workers as a result of the disruptions from COVID-19 are still eligible to apply for MSLP). Notwithstanding the foregoing, RIFs and salary reductions made prior to the MSLP loan closing do not disqualify a company from MSLP. "Commercially reasonable efforts" will be determined based in light of the borrower's capacities, economic environment, available resources and the business need for labor.	through companies or sponsor management fees or public company equity buybacks, and it still limits the way a company can structure an exit (e.g., if consideration would be in the form of distributions). 4. No changes. There is still no solution for the issue that this restriction seems to include equity compensation arrangements (not through a collective bargaining agreement) entered into prior to the MSLP origination, which could lead to extreme compensation limitations based on illiquid equity and could cause certain companies that were likely intended to be eligible for MSLP to be excluded. 5. No changes
Eligible MSLP Lender Criteria	1. Must be US federally-insured depository institutions (including banks, savings associations and credit unions), US branches or agencies of foreign banks, US bank holding companies, US savings and loan holding companies, US intermediate holding companies of foreign banking organizations or any US subsidiary of any of the forgoing. There is no limit on the amount of participations that the MSLP SPV can purchase from a single MSLP lender. 2. Requires MSLP lender to certify that it is eligible to participate in MSLP, including in light of the conflicts of interest prohibition in section 4019(b) of the CARES Act (e.g., US President, US VP, the head of any US Executive Department, any member of US Congress or certain immediate family members of the foregoing cannot own, control or hold 20% or more (by vote or value) of any class of equity ownership in the MSLP lender). 3. Eligible Lender (i) must commit that it will not (A) request that the borrower repay debt extended by the Eligible Lender, or pay interest on such outstanding obligations, until the earlier of (y) loan is repaid in full and (z) neither the MSLP SPV nor a Governmental	1. The Fed continued to leave out direct and other non-bank lenders to be MSLP lender options for borrowers. This excludes a large amount of available lenders that companies (including PE and VC firms) have relationships with and that currently provide credit facilities to such companies (or other portfolio companies of PE and VC firms). This also presents an issue where all of the lenders in an existing credit facility are non-bank lenders (non-bank lenders have a very large presence in the existing credit facility market) – it essentially means that a MSLP loan cannot be provided through an existing credit facility. In addition, this means that banks are likely to be overwhelmed and similar problems that were experienced in the PPP could be experienced with MSLP, especially considering that the MSLP term

	Assignee holds an interest in the MSLP facility in any capacity, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration, or (B) cancel or reduce any existing commitment lines of credit outstanding to the borrower, earlier of (y) loan is repaid in full and (z) neither the MSLP SPV nor a Governmental Assignee holds an interest in the MSLP facility in any capacity, except, in the case of this clause (B), (1) in an event of default and (2) such requirement does not prohibit (x) the reduction or termination of uncommitted liens of credit, (y) the expiration of existing lines of credit in accordance with their terms or (z) the reduction of availability under existing lines of credit in accordance with their terms due to changes in borrowing bases or reserves in ABL or similar structures, and (ii) is not prevented from accepting repayments on a line of credit from a borrower in accordance with the borrower's normal course of business usage for such line of credit. For PLF only, a borrower is allowed to refinance existing debt owed to a lender that is not the PLF lender at the time the PLF is originated. 4. A MSLP lender must certify that it is not "Insolvent" as such term is used in 12 CFR 201.4(d)(5)(iii) (i.e., if a MSLP lender 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 (as defined in paragraph B(ii) of section 13(3) of the Federal Reserve Act), or if it was "generally failing to pay undisputed debts as they become due" during the 90 days preceding the date of borrowing).	sheets provide the "minimum" requirements for a MSLP facility and that lenders have to apply their own underwriting standards in evaluating a borrower's eligibility for a MSLP loan. It has been mentioned that the Fed continues to leave out non- bank lenders because banks are subject to more regulations and the Fed is generally more familiar with banks' procedures and processes than non-bank lenders. The Fed mentioned that it is still considering options to expand the list of eligible MSLP lenders. 2. No changes 3. No changes other than those mentioned in purple and blue font. The deletion of the "regularly scheduled, periodic" language is helpful. 4. The Fed is requiring a MSLP lender to commit to notifying the MSLP SPV and the Fed promptly, and to cease engaging in new transactions with the MSLP, if, at any time prior to 9/30/20, or such later date to which any of the MSLPs are extended by the Federal Reserve Board and the Secretary, as applicable such MSLP lender becomes Insolvent.

MSLP Lender Loan Risk Retention Until Earlier of (a) Maturity and (b) Neither the MSLP SPV nor a Governmental Assignee Holds an Interest in the MSLP Loan in Any (and, (c) Solely for ELF, the Existing Loan Maturity)	5%	15%	5% (this percentage is solely with respect to the ELF lender's ELF interest; with respect to the ELF lender's existing loan interest, 100% of its existing loan interest must be retained until such time)	No change, but the issue remains with the PLF option that the PLF lender has to retain 15% (i.e., 10% more than for NLF and ELF), which may mean a MSLP lender may not make available (or may prefer to not have borrower use) the PLF option as it will require more exposure for the MSLP lender and will require a higher percentage of the loan to be subject to the MSLP lender's risk calculations and regulations, especially considering currently MSLP lenders cannot be non-bank lenders (non-bank lenders are much more unregulated than banks). The Fed stated that the reason a MSLP lender must maintain 15% of a PLF vs. (a) NLF is because of the increased leverage permitted with respect to a PLF, and (b) ELF is because of (i) the additional maximum loan size test that the ELF may not exceed 35% of the borrower's existing outstanding and undrawn available debt that is pari passu in priority with the underlying loan and equivalent in secured status and (ii) any ELF loan shares in security associated with the underlying loan that is being upsized as part of an ELF. The Fed mentioned that a MSLP lender shall not sell or transfer its 5% (for NLF and ELF) or 15% (for PLF) direct ownership share in the applicable MSLP loan, including to a subsidiary or an affiliate of such MSLP lender.
Collateral Description	If secured, collateral should be described in accordance with a MSLP lender's ordinary practices in its loan documentation.			This is just a clarification that was made by the Fed.

Collateral/Rank/ Subordination (NLF, PLF and ELF may be secured or unsecured; <u>provided</u> that ELF must be secured if the existing loan is secured)	Cannot be contractually subordinated (whether inside or outside bankruptcy) in terms of priority (i.e., junior in priority in bankruptcy) to other unsecured debt or debt instruments, but does not prohibit: (1) issuance of NLF that is secured on a junior basis or other capacity (regardless of whether a borrower has an outstanding secured loan of any lien position or maturity), (2) issuance of NLF on an unsecured basis (regardless of term or secured/ unsecured status of existing debt) or (3) additional secured or unsecured debt after closing of NLF, so long as new additional debt does not have a higher contractual priority in bankruptcy	1. At the time of origination and at all times thereafter, must be senior to or pari passu with, in terms of priority (i.e., PLF must not be contractually subordinated (whether in or outside bankruptcy) in terms of priority to any below-defined Loans or Debt Instruments other than the below-defined Mortgaged Debt) and security, all other debt for borrowed money and all obligations evidenced by bonds, debentures, notes, loan agreements or similar instruments (and all guarantees of the foregoing) (such debt, obligations and guarantees, collectively, "Loans or Debt Instruments"), except for debt secured by real property at the time of the PLF loan's origination ("Mortgaged Debt") 2. A PLF loan must be secured if, at the time of origination, a borrower has any other secured Loans or Debt Instruments, other than Mortgaged Debt 3. With respect to the requirement in #1 above that a PLF must be senior or pari passu in terms of security, if a PLF loan is	1. At all times must be senior to or pari passu with, in terms of priority and security, all other Loans or Debt Instruments, except for mortgage debt. The provisions in #1 and #2 in the column directly to the left of this column in this row also apply here to ELF. 2. Collateral that secures existing loan must secure ELF on a pari passu basis (this is the case even if the existing loan is not secured at closing of the ELF but later receives collateral or security). New Collateral may be added to secure the existing loan and the ELF on a pari passu basis at the time of closing of the ELF. If the existing loan facility includes both a term loan tranche and a revolver tranche, the ELF needs to share collateral on a pari passu basis with the term loan tranche only. If the existing loan matures before the ELF, then the ELF shall retain a	The Fed still did not address the issue for ELFs where collateral securing the existing loan had to secure the ELF loan on a pari passu basis, which can present intercreditor agreement related issues and actually made this requirement worse by having it apply to new collateral added at the time of the closing of an ELF (this issue could potentially be solved w/r/t a PLF by having the option to pay off an existing lender that is not a PLF lender with the proceeds of the PLF loan – this option is not available under an ELF).

		secured, then the Collateral Coverage Ratio (i.e., result of (a) the aggregate value of any relevant collateral security (including the *pro rata* value of any shared collateral), divided by (b) the outstanding aggregate principal amount of the relevant debt) for the PLF at the time of its origination must be either (i) at least 200% or (ii) not less than the aggregate Collateral Coverage Ratio for all of a borrower's other secured Loans or Debt Instruments (other than Mortgage Debt) 4. If a PLF loan is secured by the *same collateral* as any of a borrower's other Loans or Debt Instruments (other than Mortgage Debt), then the lien upon such collateral securing the PLF loan must be and remain senior to, or pari passu with, the liens of the other creditors upon such collateral 5. A PLF loan does <u>not</u> need to share in all of the collateral that secured a borrower's other Loans or Debt Instruments 6. A PLF loan can be unsecured <u>only</u> if a borrower does not have, as of the date of origination, any secured Loans or Debt	sole lien on all previously shared collateral. 3. ELFs can be unsecured only if a borrower does not have, as of the date of origination, any secured Loans or Debt Instruments (other than Mortgage Debt) (i.e., all of #6 in the column directly to the left of this column in this row applies similarly here to ELF). 4. With respect to requirements after the date of origination, all of #7 in the column directly to the left of this column in this row applies similarly here to ELF, with the following additions/ changes: a. the ELF loan documentation must also ensure that the ELF loan remains secured on a pari passu basis by the collateral securing the underlying credit facility, as described in #2 above in this column of this row; and b. with respect to any existing loan facility that has more than	

		Instruments (other than Mortgage Debt). An unsecured PLF must not be contractually subordinated in terms of priority to any of a borrower's other unsecured Loans or Debt Instruments. 7. Such requirements after the date of origination (i.e., ongoing requirements) – PLF loan documentation must: a. ensure PLF does not become contractually subordinated in terms of priority to any of a borrower's other Loans or Debt Instruments; and b. contain a lien covenant or negative pledge (including exceptions, limitations, carve-outs, baskets, material thresholds and qualifiers) that is consistent with those used by a MSLP lender in its ordinary course of lending to similarly situated borrowers. 8. With respect to the items in this column in this row, references to a borrower's other "Loans or Debt Instruments" shall be read to include the Loans or Debt Instruments of the Selected Subsidiaries, if any, on an aggregate basis.	one lender, any lien covenant that was negotiated in good faith prior to 4/24/20, as part of any existing loan, is sufficient to satisfy the lien covenant/ negative pledge requirement.	

Subsidiary Guarantors	A borrower is required to designate one or more operating subsidiaries selected by such borrower to provide a guarantee for a NLF on a joint and several basis solely in the instance that such borrower is a holding company (i.e., all or substantially all of the assets of which comprise equity interests in other entities), which (a) such subsidiaries are required to be eligible on their own to borrow under the NLF's eligibility criteria and (b) the aggregate adjusted 2019 EBITDA of such subsidiaries must be used to calculate a borrower's maximum loan size under NLF (in addition to any other applicable tests). Such a borrower is permitted to select one or more operating companies at its option (even when not required in the	Same as for NLF in the column directly to the left of this column in this row, except an additional requirement for any subsidiary guarantor subsidiary is that, if the PLF loan is secured, then the guarantee provided by such subsidiary guarantor must also be secured	Same as PLF in the column directly to the left of this column in this row	This requirement is to be expected for a holding company borrower loan where the value is in the operating company subsidiaries

	instances mentioned in the immediately preceding sentence) to guarantee the NLF on a joint and several basis, so long as clause (a) and clause (b) in the immediately preceding sentence are satisfied. Such subsidiary guarantors are called “Selected Subsidiaries” in certain MSLP-related documents and in certain places herein			
Loan Documentation	Each MSLP lender is to use its own loan documentation for a MSLP facility, which should be substantially similar (including covenants) to the loan documentation it uses in its ordinary course of lending to similarly situated borrowers, adjusted only as appropriate to reflect the requirements of MSLP. The documents that are currently posted on the Fed’s and Federal Reserve Bank of Boston’s websites that are still applicable from a loan documentation and a MSLP term and conditions perspective are (a) the three term sheets for each of NLF, PLF and ELF, (b) the Lender Registration Certifications and Covenants, (c) Lender Wire Instructions, (d) the Loan Participation Agreement (including both the Transaction Specific Terms and Standard Terms and Conditions), (e) the Servicing Agreement, (f) the Assignment-in-Blank, (g) the Co-Lender Agreement (including both the Transaction Specific Terms and the Standard Terms and Conditions), which is only required for those credit agreements that do not include customary syndicated loan facility provisions, (h) the Lender Transaction Specific Certifications and Covenants, which are in separate documents for each of NLF, PLF and ELF, (i) Borrower Certifications and Covenants, which are in separate documents for each of NLF, PLF and ELF, and (j) the FAQs, which includes as attachments thereto the Loan Document Checklist as Appendix A, the Required Covenants in Loan Documentation as Appendix B and the Required Financing Reporting as Appendix C. Please note that the aforementioned documents are in addition to the credit agreement and any other applicable ancillary documents that would be necessary or required by the MSLP lender in connection with providing any			The updated Federal Reserve FAQs provide (a) an Appendix A that contains a checklist of the items that must be reflected in the MSLP loan documentation in order for the MSLP SPV to purchase a participation in a MSLP loan, (b) an Appendix B that includes certain model covenants that MSLP lenders can elect to reference when drafting the MSLP loan documentation in order to satisfy the Appendix A requirements; <u>provided</u> that Appendix B specifically provides that MSLP lenders are (i) not required to use the model covenants set forth therein and that they serve only as examples for the convenience of MSLP lender, and (ii) permitted to use variations of such provisions to the extent they serve the same substantive purpose and are otherwise substantially similar to the provisions that the MSLP lender uses in its ordinary course lending to similarly situated borrowers, and (c) an Appendix C that includes a list of financial information that

	MSLP facility. One helpful point is that the Assignment-in-Blank does not have to be signed by the administrative agent of an ELF on the closing of an ELF, and instead the signature of such ELF administrative agent will just be obtained at a later date if such document is ever needed in connection with a permitted elevation (or elevation and assignment) of an ELF loan pursuant to the Participation Agreement.			MSLP lenders must require borrowers to provide on an ongoing basis until the MSLP loans mature. All of the new documents posted to the Federal Reserve Bank of Boston's website are governed by New York law, but they are inconsistent with the language of whether to give effect to any conflicts of law provisions thereof that would require the application of the laws of any other jurisdiction to apply. In addition, there should likely be the right to change the governing law in such MSLP documents to the extent the underlying credit agreement is governed by a law of a different jurisdiction, such an ELF credit agreement that was already in place (the same should apply with the submission to jurisdiction provisions in such documents (which use New York courts sitting in New York County and the US Courts of the Southern District of New York and any appellate court thereof) when the underlying credit agreement uses a different jurisdiction for its submission to jurisdiction provision).
Borrower Certifications and Covenants Material Breach Mandatory Prepayment Provision	If the Federal Reserve Board determines that the borrower made a material misstatement in certifications, or materially breached covenants, relating to the CARES Act, the Federal Reserve Act, or the Federal Reserve Board's Regulation A, the Federal	Same as for NLF in the column directly to the left of this column in this row	Same as for NLF and PLF in the two columns directly to the left of this column in this row with respect to ELFs where the MLSP lender is the only lender. With respect to ELFs that are part of multi-lender facilities, such a mandatory prepayment provision must be included if the percentage (or number) of lenders required to consent to a new mandatory prepayment provision under the existing loan agreement (typically a simple majority) consents to any other changes to the loan documents in the process of upsizing the existing loan or selling the participation to the MSLP SPV.	While this change is unfavorable to a borrower, it does make sense why the Fed would require this. It would be better if there was some reasonableness qualifier on such determination or that such determination would have to be done in agreement or consultation with the borrower (instead of just in consultation with the administrative agent or MSLP lender).

	Reserve Board will notify the MSLP lender to trigger a mandatory prepayment requirement under the NLF loan. The NLF loan documentation is required to contain a mandatory prepayment provision related to such type of material misstatement or material breach.		Further, if 100% of the existing lenders agree to any other changes to the existing loan documents in the process of upsizing the existing loan or selling the participation to the MSLP SPV, such a mandatory prepayment provision must be inserted into the loan documents and treated as a "sacred right", with the amendment, waiver or modification thereto would require 100% lender consent.	
Is a Cross-Acceleration Provision Required?	Yes, a cross-acceleration provision should be included in the NLF loan documentation that would trigger an event of default under the NLF loan documentation if a different loan extended to the borrower by the MSLP lender or the MSLP lender's commonly controlled affiliate is accelerated	Same as for NLF in the column directly to the left of this column in this row	Same as for NLF and PLF in the two columns directly to the left of this column in this row; provided that for an ELF where the existing loan is part of a multi-lender facility, any cross-default or cross-acceleration provision that was negotiated in good faith prior to 4/24/20 as part of the existing loan shall be deemed sufficient	While this requirement is unfavorable to the borrower, it is typical for a cross-default and cross-acceleration provision to be included in loan documentation.

Financial Reporting	The NLF loan documentation must include a financial reporting covenant requiring the periodic delivery of financial information set forth in Appendix C to the updated Federal Reserve FAQs	Same as for NLF in the column directly to the left of this column in this row	Same as for NLF and PLF in the two columns directly to the left of this column in this row; provided that for an ELF where the existing loan is part of a multi-lender facility, any financial reporting provision that was negotiated in good faith prior to 4/24/20 as part of the existing loan shall be deemed sufficient	While it would be expected for certain financial deliverables to be required on a periodic basis in the MSLP loan documentation, the financial delivery requirements set forth in Appendix C to the updated Federal Reserve FAQs are much more than typically would be required in a customary loan facility, especially a non-ABL facility such as with MSLP where all loans provided are term loans
Rights of MSLP SPV to Sell Its Loan Participation or Elevate its Loan Participation into a MSLP Loan Interest or an Assignment or a MSLP Loan Interest without Borrower's and MSLP Lender's Consent	1. Generally, the MSLP SPV is permitted to sell its participation without the consent of the borrower. 2. The MSLP SPV is generally permitted to elevate its participation into a MSLP loan interest or an assignment of a MSLP loan interest only with the contemporaneous consent of the borrower (if the borrower's consent thereto is required by the MSLP credit agreement), the MSLP lender and other necessary parties (i.e., the administrative agent in a multi-lender facility), except no such consent is required upon the following events (each a "Specified Permitted Transfer"): a. if the borrower has failed to make any payment due under its loan contract with the MSLP lender (after giving effect to any grace period); b. if the borrower or MSLP lender (or any direct or indirect parent company of the MSLP lender) has (i) become subject to bankruptcy or other insolvency proceedings, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar entity charged with reorganization or liquidation of its business or assets (with respect to the MSLP lender or any direct or indirect parent company of the MSLP lender, including the FDIC, the Board of the National Credit Union Administration or any other governmental authority acting in such a capacity), or (iii) become unable, admitted in writing its inability or failed generally to pay its debts as they become due; c. automatically, if the MSLP lender would take, or refrain from taking, an action that would result in impermissible forgiveness of principal of the portion of the MSLP loan beneficially owned by the MSLP SPV (to prevent a violation of section 4003(d)(3) of the CARES Act); d. if required to do so by a statute or court; and e. in connection with a pre-elevation transfer (i.e., a sale, assignment or any other transfer of the participation, rights or interests of the MSLP SPV in the			For several PE-backed companies in middle market transactions, a borrower consent right to a lender assignment would only fall away for a payment or bankruptcy event of default, and even in that instance entities on the lender blacklist (such as competitors and vulture funds) would still apply. That same lender blacklist would apply in certain PE-backed company middle market deals for participation sales. However, it is probably unlikely that the MSLP SPV would assign, or sell participations, to a borrower's competitors or to vulture funds, although the Fed has stated that the MSLP SPV will make commercially reasonable decisions to protect taxpayers from losses on a MSLP loan and will not be influenced by non-economic factors when exercising voting rights, so the MSLP SPV could take a similar approach here and be willing to sell to a vulture fund or competitor for a discount if it preserves the maximum recovery for taxpayers. While Section J.4 of the updated Federal Reserve FAQs mention that the MSLP SPV is generally permitted to elevate its participation into an assignment of a MSLP loan only with the contemporaneous consent of the borrower, Section 15.1

	MSLP loan prior to the occurrence of an elevation) or subparticipation made (or to be made) of all (but not less than all) of the MSLP SPV's participation, rights and interests with respect to the MSLP loan to any Governmental Assignee.	(together with clause (b) of the definition of "Elevation Required Consents") in the Loan Participation Agreement provides that a consent of someone like the borrower is required only to the extent required by the MSLP loan documents; therefore, it is likely that the borrower will not be able to rely on the Loan Participation Agreement for any elevation to assignment consent rights and will need to have such borrower consent rights in the MSLP credit agreement (or any MSLP Co-Lender Agreement entered into), which typically the borrower would have some type of lender assignment consent right in a credit agreement. The Loan Participation Agreement states that any elevation transfer fee that is due in connection with an elevation (or elevation and assignment) shall be paid by the MSLP lender to the administrative agent to which such fee is owed, and the Main Street SPV will reimburse the MSLP lender in an amount equal to the lesser of (a) 100% of the such fee amount paid and (b) $5,000 (which means the transfer fee will not have to be paid by the borrower under any such circumstance).
MSLP SPV's Role if Borrower Misses a Mandatory and Due Payment on the MSLP Loan (Beyond any Applicable Grace Period) or Borrower or MSLP Lender Enters into Bankruptcy or Other Insolvency Proceedings (a "Distress Event")	1. Prior to a Distress Event, the MSLP SPV will rely on the MSLP lender to service a MSLP loan in accordance with the standard of care set out in the Loan Participation Agreement and in light of the duties of the MSLP lender under the Servicing Agreement. 2. Upon a Distress Event, the MSLP SPV will have the option to elevate its participation to an assignment to be in privity with the borrower; however, the Fed does not expect the MSLP SPV to use this right as a matter of course. Instead, the Fed would expect MSLP 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). The Fed expects that the MSLP SPV generally would not expect to elevate and assign except in situations where (a) the economic interests of the MSLP lender and the MSLP SPV are misaligned, or (b) the loan amount is	Considering this concept is only applicable in a Distress Event, it is not as big of a concern for a borrower; however, as mentioned in this column in the row directly above, the Fed has stated that the MSLP SPV will make commercially reasonable decisions to protect taxpayers from losses on a MSLP loan and will not be influenced by non-economic factors when exercising voting rights, so the MSLP could take a similar approach here and be willing to sell to a vulture fund or competitor when a Distress Event occurs if it believes that such action preserves the maximum recovery for taxpayers.

	relatively large in comparison to other loans in the MSLP SPV's portfolio of participations.	
MSLP SPV's (a) Approach to Decision-Making w/r/t Its Voting Rights under the Loan Participation Agreement or Co-Lender Agreement and (b) Voting Rights and Certain Other Rights w/r/t the MSLP Loans and MSLP Loan Documents	The Fed stated that the MSLP SPV will make commercially reasonable decisions to protect taxpayers from losses on a MSLP loan and will not be influenced by non-economic factors when exercising its voting rights under the Loan Participation Agreement or Co-Lender Agreement, including with respect to a borrower that is subject of a workout or restructuring. Pursuant to the Loan Participation Agreement, a MSLP lender is only restricted in its voting rights and certain other actions and inactions under the MSLP loan documents where the MSLP SPV's consent would be needed to those situations that would result in a below-defined Core Rights Act (with certain carve-outs in which the MSLP SPV's consent will not be needed (i.e., except where taking such a Core Rights Act (or refraining from taking an action with respect to the Transferred Rights and Assumed Obligations (as defined below) that would constitute a Core Rights Act) would result in any Loan Forgiveness (as defined below)), (a) if the Core Rights Act involved are not divisible in respect of the participation but may be made only in respect of all loans held by the MSLP lender under the MSLP credit agreement (the "MSLP Lender's Claims"), then the MSLP lender shall take such Core Rights Act in accordance with the direction (if timely given of holders owning or holding interests representing more than 50% of the total amount of the MSLP Lender's Claims), and (b) if the Core Rights Act arises after the commencement of a bankruptcy or insolvency proceeding relating to the borrower and/or any obligor under the MSLP loan documents, and is not divisible in respect of all loans that the MSLP lender may own from time to time under the MSLP credit agreement, but is divisible in respect of all claims of the same class that the MSLP lender may have against the borrower and or any such obligor, then the MSLP lender shall take such Core Rights Act in accordance with the directions (if timely given) of the majority of holders in respect of all such claims (measured by amount of claims))). Pursuant to the Lender Participation Agreement, "Core Rights Act" generally means any action (or inaction) with respect to the rights of the MSL lender transferred to the MSLP SPV under the Lender Participation Agreement (the "Transferred Rights") and obligations of the MSLP lender assumed by the Main Street SPV under the Lender Participation Agreement (the "Assumed Obligations") to the extent such action (or inaction) would result in (i) any extension, increase or reinstatement of any commitment with respect to the Transferred Rights or Assumed Obligations, (ii) any reduction in the principal, the rate of interest or any fees or other amounts payable in respect of the Transferred Rights or Assumed Obligations, including, without limitation, any loan forgiveness under Section 4003(d)(3) of the CARES Act ("Loan Forgiveness"), (iii) any delay or postponement of any date scheduled for any payment of principal, interest, fees or other amounts payable in respect of the Transferred Rights or Assumed Obligations or any	1. Generally, the Fed seems to be taking the approach that the MSLP SPV will do whatever is commercially reasonable to maximize the largest recovery or return to taxpayers in a downside situation. This is very much a different approach than to the PPP loan process where PPP loans can be forgiven. 2. The Core Rights Act provision does not include the customary carve-outs for waiving any default interest or waiving or postponing any mandatory prepayment

	reduction in the amount of, waiver or excuse of any such payment, (iv) any change of the pro rata sharing provisions or application of proceeds provisions in the MSLP loan documents affecting the Transferred Rights or Assumed Obligations, (v) any release of all or substantially all of the collateral provided for the Transferred Rights or Assumed Obligations in any transaction or series of transactions or all or substantially all of the value of the guaranties of a borrower's obligations under the MSLP loan documents in respect of the Transferred Rights or Assumed Obligations, (vi) the waiver of any condition precedent to closing, effectiveness or funding under the MSLP credit agreement to the extent applicable to the Transferred Rights or Assumed Obligations, (vii) any amendment to, modification of, waiver of or consent to any departure from any provision in any MSLP loan document, including any mandatory prepayment, relating to the borrower's certifications and covenants in Section 2 (CARES Act Borrower Eligibility Certifications and Covenants) or Section 3 (FRA and Regulation A For Borrower Eligibility Certifications) of the Borrower Certifications and Covenants, (viii) any amendment to, modification of, waiver of or consent to any departure from any provision in any MSLP loan document requiring the periodic financial reporting by the borrower or any other obligor under the MSLP loan documents, other than any consent to the temporary delay in (but not the permanent waiver of) delivery of any such periodic financial reporting (A) originally required to be delivered on or before 9/30/30 or (B) originally required to be delivered after 9/30/20 for a period not to exceed 90 days after such original delivery requirement date, (ix) the express subordination of (A) the MSLP loan or (B) any liens or encumbrance in or over all or substantially all of the MSLP loan collateral that has been, or is purported to have been, granted (or otherwise created) to or for the benefit of the lenders under the MSLP credit agreement, (x) any greater restriction on the ability of, or any additional consent necessary for, any lender under the MSLP credit agreement to assign, participate or pledge its rights or obligations under any MSLP loan document, (xi) an adverse effect on the Transferred Rights that would be disproportionate to the effect on any other class of obligations under a MSLP loan document, (xii) any amendment to, modification of, waiver of or consent to any departure with respect to any provision in any MSLP loan document that provides a default or event of default upon the acceleration of any other indebtedness owed by the borrower to the MSLP lender or a commonly controlled affiliate of the MSLP lender (any such default or event of default, a "MSLP Lender Debt Cross-Acceleration"), (xiii) the declaration, or failure to declare, any obligations of the borrower due and payable upon the occurrence and during the continuance of a MSLP Lender Debt Cross-Acceleration, (xiv) the exercise, or failure to exercise, of any rights or remedies with respect to any of the MSLP loan collateral at any time that the MSLP lender or any commonly controlled affiliate of the MSLP lender, or any of their respective agents or representatives, is exercising rights or remedies with respect to any collateral	

	securing, or purporting to secure, any indebtedness owed by the borrower to the MSLP lender or any commonly controlled affiliate of the MSLP lender the default under which has resulted in a MSLP Lender Debt Cross-Acceleration, and (xv) any change to any lender voting approval level under or pursuant to any MSLP loan document with respect to any of the foregoing.	
Will the MSLP SPV Assert Special Administrative Priority under Section 507(a)(2) of the Bankruptcy Code for Its Claims Against a Borrower in Bankruptcy?	No, under the Loan Participation Agreement and Co-Lender Agreement, the MSLP 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.	This provides the borrower and MSLP lender more options in a bankruptcy proceeding.
Two Options for Eligible Lenders re: Approach on Commitment to Pre-fund MSLP Loan before Main Street SPV Has Committed to Purchase Its Participation in Such MSLP Loan	Two options for funding loans under a MSLP facility: (a) a MSLP lender may extend and fund a MSLP loan, and then such MSLP lender, if registered with MSLP, can seek to sell a participation in such loan to the MSLP SPV by submitting the required completed and signed documentation for processing w/in 14 days after the closing of such MSLP, or (b) make the funding contingent on a binding commitment from the MSLP SPV that it will purchase a participation in such MSLP facility.	Obviously, from a borrower's perspective, clause (a) in the column directly to the left of this one in this row is better than clause (b) thereof.
Notable Additional Items re: MSLP Loan Participation Agreement from a Borrower's Perspective	1. Does not require the consent of the borrower for amendments to the Loan Participation Agreement, even those that are materially adverse to the borrower. 2. Does not provide the borrower any third party beneficiary rights. 3. Does not allow for the Loan Participation Agreement to be shared (or its contents disclosed) to the borrower. 4. Any consent right that the borrower may have with respect to assignments needs to be set forth in the MSLP credit agreement as no consent rights exist for the borrower under the Loan Participation Agreement.	The points mentioned in the column directly to the left of this column in this row essentially means all of the provisions noted in the five sections/rows directly above this row are not that valuable as they can be stripped away from the borrower without any consent needed for the borrower unless the borrower is able to get the MSLP lender or the MSLP SPV to agree to restrict amendments and assignments with respect thereto in a MSLP loan document, a Co-Lender Agreement or a separate side letter.
Notable Items re: the Co-Lender Agreement from a Borrower's Perspective (note that the Co-Lender Agreement will only be used for MSLPs that do not have credit	1. Section 3.01(f) of the Co-Lender Agreement provides for amendments to the MSLP loan documents to be made, among other things, to carry out the purposes of the Co-Lender Agreement and the other MSLP loan documents and for lien grant, perfection and priority purposes with just the consent of the administrative agent by having the borrower and any subsidiary guarantor consent and agree upfront to any such amendments. 2. Section 4.01 of the Co-Lender Agreement states Section 4 thereof is solely for the benefit of the administrative agent and the lenders under the MSLP facility and the borrower shall not have any rights as a third-party beneficiary	The Co-Lender Agreement is administrative agent- and lender-friendly and the drafting thereof does not seem to have taken much of an eye for borrower. It is unlikely that the Fed will allow the Co-Lender Agreement to be negotiated from its form, but at this time there is no clear guidance on whether this would be permitted.

agreements that include customary syndicated loan facility provisions (including agency, assignment, sharing and other multi-lender provisions)	thereto, even though Section 4.06 thereof concerns the resignation and change of the administrative agent and Section 4.09 thereof concerns the lenders under the MSLP irrevocably authorizing the administrative agent to release liens and guaranties in certain instances, which both Sections are partially for the benefit of the borrower. Further, Section 4.10 includes provisions (including disclaimers of liability for the administrative agent and related parties) that are being specifically agreed to by the borrower. 3. The replacement of any administrative agent pursuant to Section 4.06 of the Co-Lender Agreement does not require the consent of the borrower, only that such replacement be done subject to consultation rights of the borrower. This is somewhat mitigated by the fact that the successor administrative agent has to be a bank with an office in the US or an affiliate of any such bank with an office in the US, but not all banks are created equal from a borrower-perspective. 4. The indemnification provisions in Section 6.02 (a) are lender-friendly, (b) specifically state in all caps and bolded language that administrative agent, each lender and any related parties thereof are indemnified even for actions or inactions caused by or arising, in whole or in part, from their comparative, contributory or sole negligence and (c) do not include a carve-out for a material breach by any indemnified party or for a claim between indemnified parties (for example, under the language in such indemnification provision, it could potentially be argued that the borrower would have to indemnify the MSLP SPV for any material misstatement or incorrectness of the representations and warranties that a MSLP lender makes to the MSLP SPV in the MSLP loan documents). 5. The sacred voting rights provisions in Section 7.02 do not include the typical mandatory prepayment carve-out from clause (c) thereof. 6. The sacred voting rights provision in Section 7.02(l) (which is already a lender-favorable type of provision) accidentally forgets to include which lenders' consent is needed for any change thereto. 7. The waiver of consequential damages provision is only made by the borrower and not the administrative agent or any lender. 8. Does not include a customary "yank-a-bank" provision. 9. There is no minimum MSLP loan assignment amount without the borrower's consent. 10. The borrower loses its assignment consent right for any event of default under the MSLP loan documents (even for a "foot fault" event of default), even to a competitor, and there is no lender blacklist for entities like vulture or "loan-to-own" funds. It does not seem fair that if the MSLP SPV elevates its status to a lender that it can assign to anyone when any event of default exists, but a MSLP lender can only be a bank or other similar entity regulated by the Fed and not a non-bank or direct lender. 11. The borrower has no consent rights to any participations sales, even w/r/t	

	competitors, and there is no lender blacklist concept with respect thereto. 12. Does not contain any borrower buyback or borrower-affiliated entity Dutch auction or open market purchase provisions. The Co-Lender Agreement specifically prohibits any assignments to the borrower or any of the borrower's affiliates. 13. The submission to jurisdiction provision only applies to the borrower and is not reciprocal to also apply to the administrative agent and the lenders. The administrative agent and the lenders should be OK with such provisions applying to them considering there is a sentence that provides nothing affects any right that the administrative agent or any lender may otherwise have to bring any action against the borrower or its properties in the courts of any jurisdiction. 14. Each loan party that joins a MSLP loan facility after closing has to have the joinder agreement be in form and substance reasonably satisfactory to all parties to the Co-Lender Agreement (including all the lenders). Typically, the joinder agreement would only need to be reasonably satisfactory to Borrower and the administrative agent. 15. There are several tax-related provisions in the Co-Lender Agreement and a tax attorney should be engaged to review the tax provisions therein in connection with any MSLP loan.	
MSLP Termination	The MSLP SPV will cease purchasing participations in MSLP loans on 9/30/20, unless the Board and Treasury extend MSLP. The Federal Reserve Bank will continue to fund the MSLP SPV after such date until the MSLP SPV's underlying assets mature or are sold.	No changes, but the Fed mentioned that it will provide periodic reports on the size of MSLP and its remaining capacity
Federal Reserve MSLP Disclosure Information	The Fed will disclose, among other things, (i) during the operation of the MSLP, info regarding the MSLP, including info regarding names of lenders and borrowers, amounts borrowed, interest rates charged, overall costs, revenues and other fees, and (ii) one year after the effective date of termination by the Board of the authorization of the MSLP, information concerning the MSLP, including names and identifying details of each participant in the MSLP, the amount borrowed, the interest rate or discount paid and info concerning the types and amounts of collateral pledged or assets transferred in connection with participation in the MSLP	No changes, except that several of the MSLP loan documents posted on the Federal Reserve Bank of Boston's website specifically mention the right to disclose such information publicly

Private Underwriting	MSLP lenders must apply their own underwriting standards to the MSLP deal and the borrower in addition to the minimum guidelines set forth by the Fed. Unlike PPP that had all of the borrower criteria that a PPP lender could subject a PPP borrower to (which was designed to minimize lender underwriting and to speed up the approval process), the Fed (i) has made clear that MSLP lenders must apply their own underwriting standards and diligence requirements in evaluating the financial condition and creditworthiness of a potential MSLP borrower, (ii) mentioned that the MSLP term sheets are the "minimum requirements" for MSLP (including, without limitation the EBITDA-based leverage requirements), and (iii) stated that MSLP lenders are expected to conduct an assessment of each potential borrower's financial condition at the time of the borrower's application. The Fed also stated that companies that otherwise meet the eligible MSLP borrower requirements may not be approved for a MSLP loan or may not receive the maximum allowable amount.			No changes
Notable Additional Features/Conditions:	N/A	May use PLF loan proceeds at the time of the origination thereof to refinance existing debt to a lender that is not a the PLF lender at the time the PLF is originated. This is the only one of the three MSLPs that allows for this	1. Existing facility must have (i) been originated on or before 4/24/20 and (ii) a remaining maturity of at least 18 months (which maturity condition may be satisfied by the lender extending the existing facility maturity after 4/24/20, including at the time of upsizing) 2. If the ELF is part of a multi- lender facility, the ELF lender must have an interest in the underlying loan as of 12/31/19, and such ELF lender must have assigned an internal risk rating to the underlying loan equivalent to a "pass" in the FFIEC's supervisory rating	1. The issue still remains that the requirements for the ELF will make it harder to use, as requiring existing lenders to extend their maturity could present issues unless you have enough lender support to use the "yank a bank" provision and have a lender prepared to purchase such non-consenting lender's portion and is willing to extend the maturity of their portion of the existing loan. 2. Expanding the requirement that the ELF lender must be an existing lender not only at the time of the upsizing (but instead as of the earlier date of 12/31/19) further limits the amount of lender options available to a borrower to use an ELF (and also now takes out the option of trying to have a new lender get an existing lender to sell a minimal portion of the existing loan to the potential new lender before the ELF closed). The "pass" requirement was already required in the "Notable Eligible Borrower Criteria" section above, so that is not really anything new.

			system as of that date (only applicable to the ELF lender). The Fed noted that if an existing loan was originated after 12/31/19, the ELF lender should use the internal risk rating given to that existing loan at origination to determine whether the existing loan is eligible for upsizing under ELF.	

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