

## The Main Street Business Lending Program – Forms and Agreements

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On May 27, 2020, the Federal Reserve Bank of Boston (FRBB)[1] released several forms, agreements and instructions (Required Documentation) for Eligible Lenders[2] and Eligible Borrowers pertaining to the Main Street Business Lending Program (Main Street Program).

The Main Street Program was initially announced on April 9, 2020 and the release of an original set of “Frequently Asked Questions” (Original FAQs) was published on April 30, 2020. On May 27, 2020, the FRBB released an updated set of “Frequently Asked Questions” (Updated FAQs) that supplemented the Original FAQs. We invite our clients and friends to review our related client alerts that outline the basic terms of the Main Street Program, the Original FAQs and the Updated FAQs .

The information provided below is intended to offer lenders and borrowers with a step-by-step guide to the Required Documentation under the Main Street Program. In addition to the guide offered below, the FRBB has provided “Main Street Lending Program Instructions for Lender Required Documentation.”

We anticipate that the Federal Reserve will officially launch the Main Street Program shortly.

### **LENDER REGISTRATION DOCUMENTS**

#### **Lender Registration Certifications and Covenants**

This document must be signed and submitted by the Eligible Lender at the time of its registration with the Main Street Program special purpose vehicle (SPV). It must be signed by the Eligible Lender’s CEO and CFO (or officers performing similar functions). The Lender Registration Certifications and Covenants requires that the lender make certifications and covenants specifically relating to its status as an Eligible Lender, its eligibility under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) conflicts of interest prohibition and its solvency.

#### **Lender Wire Instructions**

Eligible Lenders must complete and submit this document providing wire instructions for the bank account into which the Main Street Program SPV will transfer the purchase amount, servicing fees, and any other payments related to the Main Street New Loan Facility (MSNLF), Main Street Priority Loan Facility (MSPLF), or Main Street Expanded Loan Facility (MSELF) transactions.

## **DOCUMENTS REQUIRED AT THE TIME A LOAN PARTICIPATION IS SOLD TO THE MAIN STREET PROGRAM SPV**

### **Loan Participation Agreement**

The Loan Participation Agreement is the agreement under which the Main Street Program SPV purchases a participation in an Eligible Loan<sup>[3]</sup> from the Eligible Lender. The Loan Participation Agreement is made up of two separate legal documents:

- **Participation Agreement under the Main Street Lending Program – Transaction Specific Forms (Transaction Specific Terms):** The Eligible Lender must complete, sign, and submit the Transaction Specific Terms in order to effect the sale of a loan participation to the Main Street Program SPV.
- **Participation Agreement under the Main Street Lending Program – Standard Terms and Conditions (Standard Terms and Conditions):** This document sets out the terms and conditions for all Main Street Program loan participations and is incorporated into the Transaction Specific Terms. Eligible Lenders do not need to submit a copy of this document when selling a loan participation to the Main Street Program SPV.

Under the Loan Participation Agreement, the Main Street Program SPV may only sell its participation interest with the consent of the Eligible Lender, and can only cause an assignment of the Eligible Loan with the consent of both the Eligible Borrower and Eligible Lender; provided, however, that upon a payment default by the Eligible Borrower, the Main Street Program SPV may sell its participation or cause an assignment of the Eligible Loan without consent.

### **Servicing Agreement**

The Eligible Lender must complete, sign, and submit the Servicing Agreement at the time a loan participation is sold to the Main Street Program SPV. The Servicing Agreement sets forth the terms and conditions under which the Eligible Lender will service the Eligible Loan on behalf of the Main Street Program SPV, collecting annual and quarterly financial reporting from the Eligible Borrower, as more fully-described on Schedule 1 of the Servicing Agreement.

### **Assignment-in-Blank**

An Assignment-in-Blank must be completed, signed, and submitted by the Eligible Lender to the Main Street Program SPV at the time a loan participation is sold to the Main Street Program SPV. The Eligible Borrower must also sign this document. Eligible Lenders should reference the specific instructions on the Assignment-in-Blank's cover pages to determine how to properly complete this agreement. Note that for existing multi-lender facilities in relation to the MSELF, the form assignment-in-blank that must be submitted to the Main Street Program SPV is not the form linked above. Instead, the form would come from the documentation for the existing multi-lender facility.

### **Co-Lender Agreement<sup>[4]</sup>**

The Co-Lender Agreement is made up of two separate legal documents:

- **Co-Lender Agreement under the Main Street Lending Program – Transaction Specific Forms (Co-Lender Transaction Specific Terms):** The Eligible Lender must complete, sign, and submit the Co-Lender Transaction Specific Terms at the time a loan participation is sold to the Main Street Program SPV. The Eligible Borrower must also sign this document.
- **Co-Lender Agreement under the Main Street Lending Program – Standard Terms and Conditions (Co-Lender Standard Terms and Conditions):** This document sets out the terms and conditions for the Co-Lender Agreement and is incorporated into the Co-Lender Transaction Specific Terms. Eligible Lenders do not need to submit a copy of this document when selling a loan participation to the Main Street Program SPV.

Note that the Co-Lender Agreement only becomes effective if and when the Main Street Program SPV elevates its participation interest to an actual assignment, making the Main Street Program SPV and Eligible Lender co-lenders.

#### **Facility Transaction Specific Lender Certifications and Covenants**

The Eligible Lender must submit one of the below documents in relation to each loan participated to the Main Street Program SPV. The document must be signed by an authorized officer of the Eligible Lender. These documents vary by Main Street Program facility:

- **MSNLF Lender Transaction Specific Certifications and Covenants**
- **MSELF Lender Transaction Specific Certifications and Covenants**
- **MSPLF Lender Transaction Specific Certifications and Covenants**

The Eligible Lender must certify that the loan is an Eligible Loan for the specific loan facility under the Main Street Program that is the subject of the transaction, and that the terms of the loan documentation meet all requirements of such facility.

#### **Facility Borrower Certifications and Covenants**

The CEO and CFO (or officers performing similar functions) of the Eligible Borrower must sign one of the below documents for each loan participated to the Main Street Program SPV. The Eligible Lender must submit this document at the time a loan participation in the Eligible Borrower's loan is sold to the Main Street Program SPV. These documents vary by Main Street Facility:

- **MSNLF Borrower Certifications and Covenants**
- **MSELF Borrower Certifications and Covenants**
- **MSPLF Borrower Certifications and Covenants**

The borrower is required to certify that it is an Eligible Borrower under the terms of the Main Street Program and that it will comply with certain stock repurchase restrictions, compensation caps and capital distribution restrictions.

### Loan Document Checklist

Appendix A to the Updated FAQs sets out a checklist of items that must be included in the loan documentation for eligible loans originated by Eligible Lenders to Eligible Borrowers. Appendix B includes certain model covenants that Eligible Lenders can elect to reference when drafting their loan documentation in order to satisfy the Appendix A requirements. Appendix C includes a list of the financial information that Eligible Lenders must require Eligible Borrowers to provide on an ongoing basis until the loans mature.

The Required Documentation provides the necessary roadmap for the implementation of the Main Street Program. When reviewing the Required Documentation, Eligible Lenders and Eligible Borrowers are encouraged to contact our firm to discuss deal-specific considerations. We will continue to update clients and friends on such further guidance under the Main Street Program as it becomes available.

If you have questions or would like more information, please contact Jennifer Santangelo ([santangeloj@whiteandwilliams.com](mailto:santangeloj@whiteandwilliams.com); 215.864.7199), Ryan Udell ([udellr@whiteandwilliams.com](mailto:udellr@whiteandwilliams.com); 215.864.7152), Maulin Vidwans ([vidwansm@whiteandwilliams.com](mailto:vidwansm@whiteandwilliams.com); 215.864.6369), Adam Chelminiak ([chelminiaka@whiteandwilliams.com](mailto:chelminiaka@whiteandwilliams.com); 215.864.7078) or Patrick Haggerty ([haggertyp@whiteandwilliams.com](mailto:haggertyp@whiteandwilliams.com); 215.864.6811).

As we continue to monitor COVID-19, White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

[1] The Main Street Program is administered by the FRBB, which has established a special purpose vehicle (SPV) to purchase loan participations from Eligible Lenders across the U.S.

[2] Please review our previously published client alerts for a detailed description of the requirements for qualification as either an “Eligible Lender” or an “Eligible Borrower.”

[3] Please review our previously published client alerts for a detailed description of the requirements for qualification as an “Eligible Loan.”

[4] The Co-Lender Agreement is not required for existing multi-lender facilities.

*This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult a lawyer concerning your own situation and legal questions.*