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**MAIN STREET LENDING  
PROGRAM: NEW GUIDANCE  
UNDERSTANDING THE EFFORTS TO  
PROVIDE SUPPORT TO SMALL AND  
MEDIUM-SIZED BUSINESSES**

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May 1, 2020

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### **CORONAVIRUS COVID-19**

### **ADDRESSING TODAY'S CRISIS, TOMORROW'S LEGAL CHALLENGES**

As the coronavirus COVID-19 crisis rapidly evolves, global companies are looking for resources to protect their people and their businesses. Morgan Lewis lawyers are providing guidance on healthcare provider issues, business supply chain disruption, data privacy concerns, employer questions, energy and environmental industry ramifications, financial services guidelines, immigration status requirements, life sciences protocols, tax implications, and ongoing government guidance from around the world.

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#### PRIMARY CONTACTS



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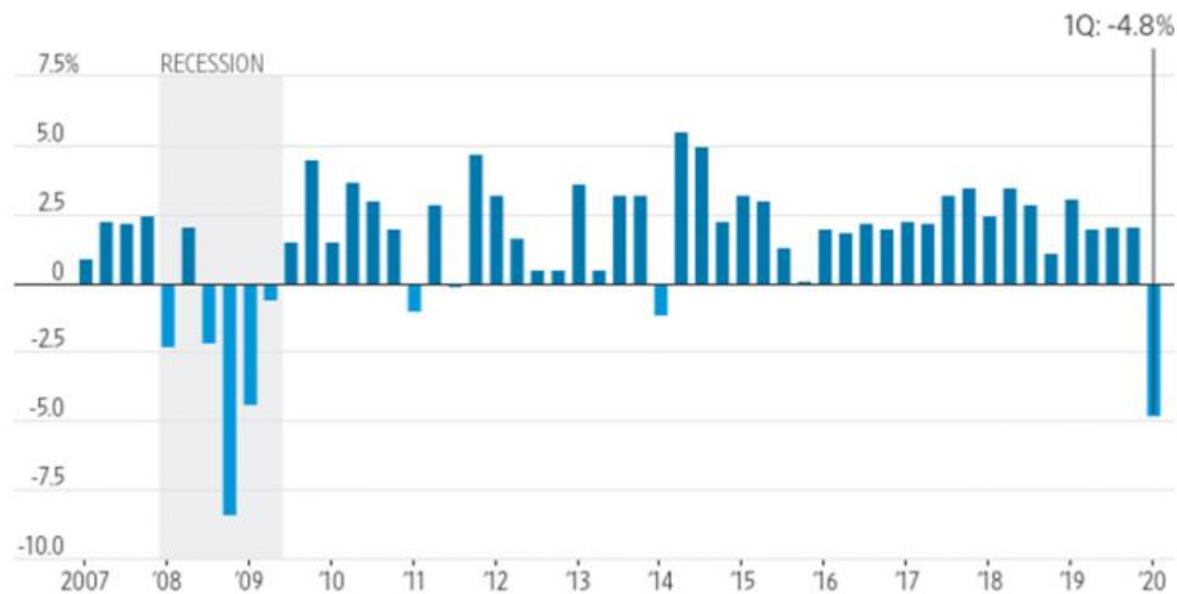


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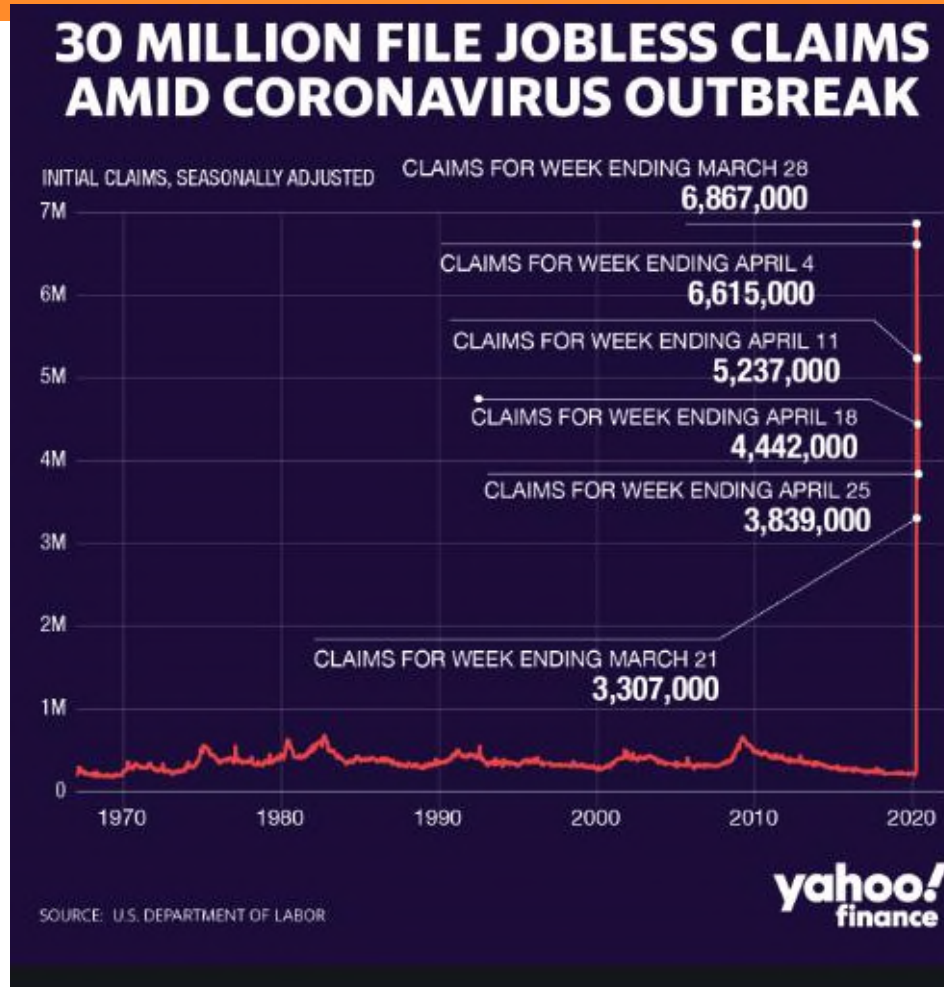
# US GDP 4.8% Q1 Contraction – Q2 data will make this look small.

U.S. gross domestic product, change from prior quarter



Note: Inflation and seasonally adjusted annual rate  
Source: Commerce Department

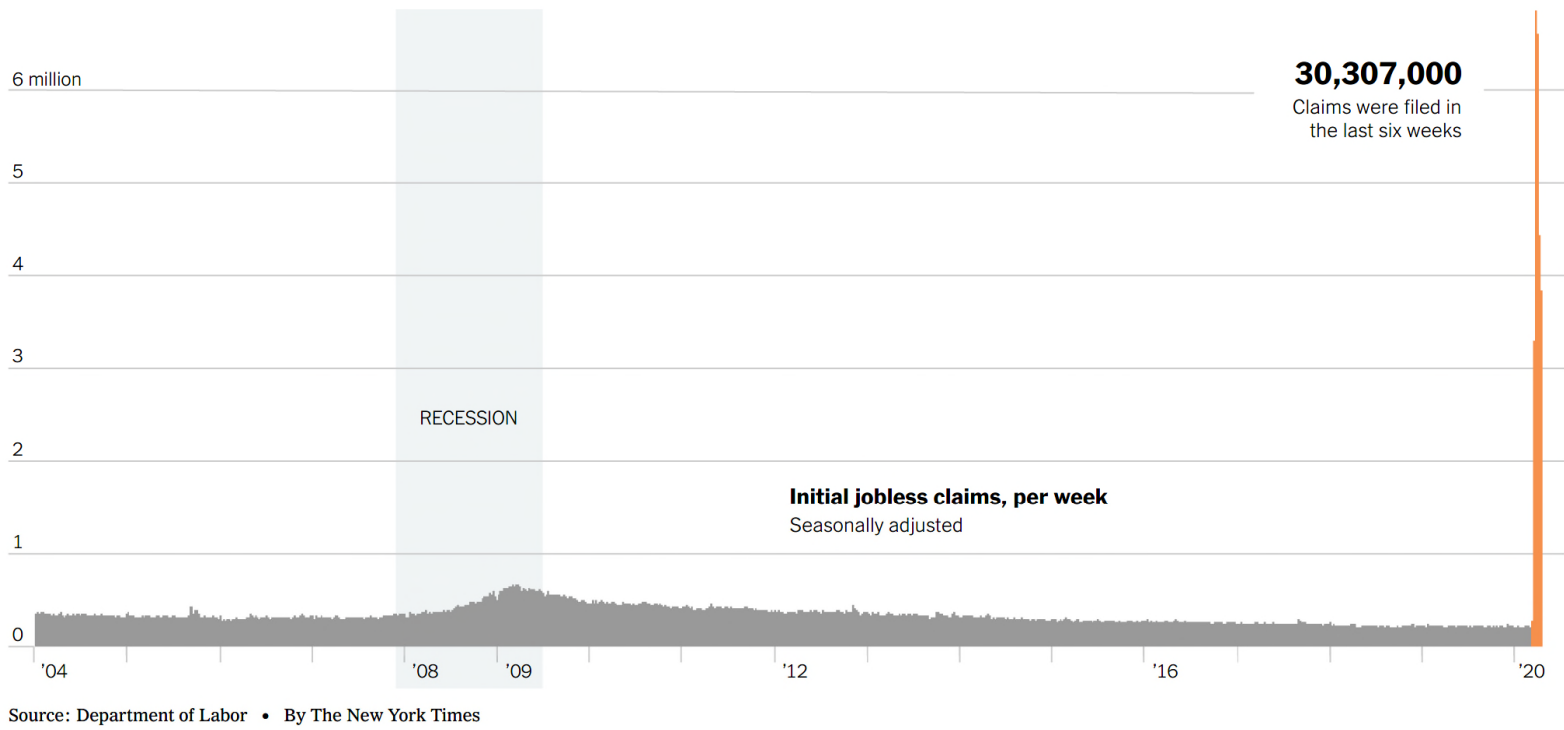
# 6 week unemployment claims hit 30 million.



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# Unprecedented shock to the labor force with real pain and suffering.



# Fed Chairman Jerome Powell's 4/29 Press Conference

- "All of us are affected, but the burdens are falling most heavily on those least able to carry them. It is worth remembering that the measures we are taking to contain the virus represent an investment in our individual and collective health. As a society, we should do everything we can to provide relief to those who are suffering for the public good."
- "The effects on the economy are severe. Millions of workers are losing their jobs."
- "Household spending has plummeted as people stay home, and measures of consumer sentiment have fallen precipitously. Hotels, airlines, restaurants, department stores and other retailers have been particularly hard-hit."
- "Manufacturing output fell sharply in March and is likely to drop even more rapidly this month as many factories have temporarily closed."
- "Overall, economic activity will likely drop at an unprecedented rate in the second quarter."

# Fed Preserving the Flow of Credit

- “Without access to credit, families can be forced to cut back on necessities and could lose their homes. Businesses can be forced to downsize or close, resulting in further losses of jobs and incomes and worsening the downturn. **Preserving the flow of credit is thus essential for mitigating the damage to the economy and setting the stage for the recovery.**”
- “We are also undertaking programs to provide stability to the financial system and to more directly support the flow of credit in the economy for households, for businesses of all sizes, and for state and local governments. These programs benefit the economy by providing financing where it is not otherwise available. In addition, by serving as a backstop to key credit markets, the programs can improve market functioning by increasing the willingness of private lenders to extend credit.”
- “We will continue to use these powers forcefully, proactively and aggressively until we're confident that we are solidly on the road to recovery.”

# Trust in the future and credit enable modern economy.

The Entrepreneur's Dilemma



The Magic Circle of the Modern Economy

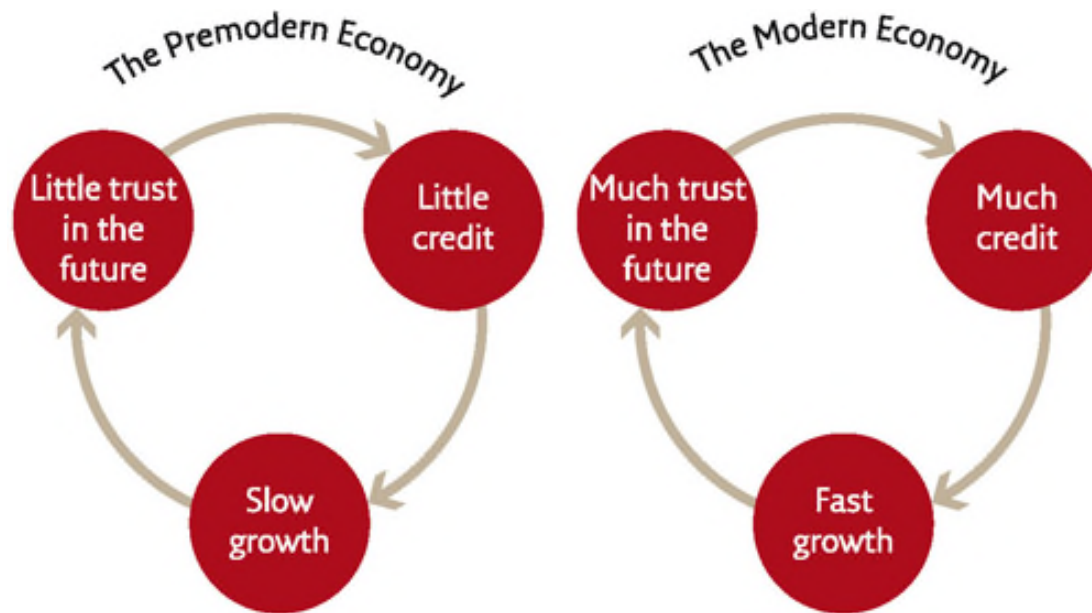


Yuval Noah Harari, *Sapiens: A Brief History of Humankind* (New York: HarperCollins Publishers, 2015), 309.

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# The Economic History of the World in a Nutshell



Yuval Noah Harari, *Sapiens: A Brief History of Humankind* (New York: HarperCollins Publishers, 2015), 311.

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## Lending vs. Spending

- “I would stress that these are lending powers and not spending powers. The Fed cannot grant money to particular beneficiaries. We can only make loans to solvent entities that the—with the expectation that the loans will be repaid.”
- “The Federal Reserve Act . . . does require that we be secured to our satisfaction and we can't lend it to insolvent companies. It's clear these are lending powers, and we are ultimately bound to implement the laws that Congress gives us. We do not make grants. We can't make grants.”
- “Many borrowers will benefit from our programs, as will the overall economy, but for many others, getting a loan that may be difficult to repay may not be the answer. In these cases, direct fiscal support may be needed.”

## Credit, Capitalism & Science

- “And I would point to a couple of risks to the outlook that we were thinking of. First is just the virus. How long will it take to get it under control? Will there be additional outbreaks, will there be drugs that can either treat it or a vaccine of some kind? So all of that is very much shrouded in uncertainty.”
- “The second issue, and this is a very substantial one, is just the possibility of damage to the productive capacity of the economy through a couple of channels.”
- “You know, these thousands of great medium- and small-size businesses that we have all over the country, they're worth so much more to the economy than the sum of their net assets, they contain, you know, they're job creators. They are really important.”

# Scientific collaboration & public-private partnerships

HEALTH

## Oxford University, AstraZeneca Join Forces for Coronavirus Vaccine

Drug giant agrees to manufacture promising candidate if proved to work



Microbiologist Elisa Granato receives an injection as part of the University of Oxford's human trials for a potential coronavirus vaccine.

PHOTO: POOL/ASSOCIATED PRESS

By *Denise Roland*

Updated April 30, 2020 10:24 am ET

**AstraZeneca** [AZN 3.08%](#) ▲ PLC has agreed to manufacture and distribute an experimental **coronavirus** vaccine from the University of Oxford—one of the most advanced candidates—in a partnership aimed at accelerating the widespread availability of the shot if it proves effective.

Roland, Denise. "Oxford University, AstraZeneca Join Forces for Coronavirus Vaccine." *The Wall Street Journal*, April 30, 2020, <https://www.wsj.com/articles/oxford-university-astrazeneca-join-forces-for-coronavirus-vaccine-11588249734>. 30 April 2020.

THE VACCINE RACE, EXPLAINED

## What you need to know about the COVID-19 vaccine

Humankind has never had a more urgent task than creating broad immunity for coronavirus.

By **Bill Gates** | April 30, 2020 • 10 minute read



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One of the questions I get asked the most these days is when the world will be able to go back to the way things were in December before the coronavirus pandemic. My answer is always the same: when we have an almost perfect drug to treat COVID-19, or when almost every person on the planet has been vaccinated against coronavirus.

The former is unlikely to happen anytime soon. We'd need a miracle treatment that was at least 95 percent effective to stop the outbreak. Most of the **drug candidates** right now are nowhere near that powerful. They could save a lot of lives, but they aren't enough to get us back to normal.

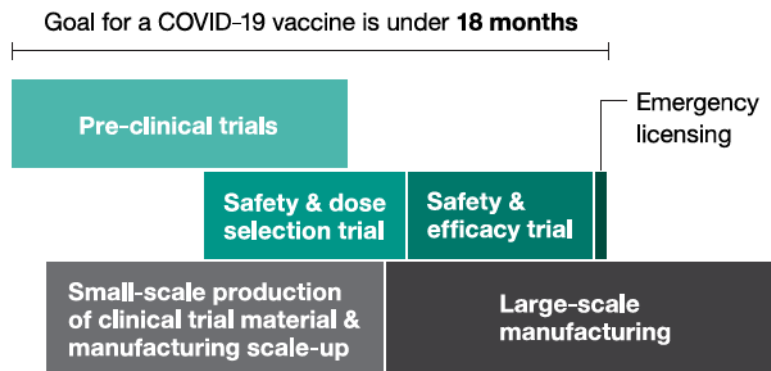
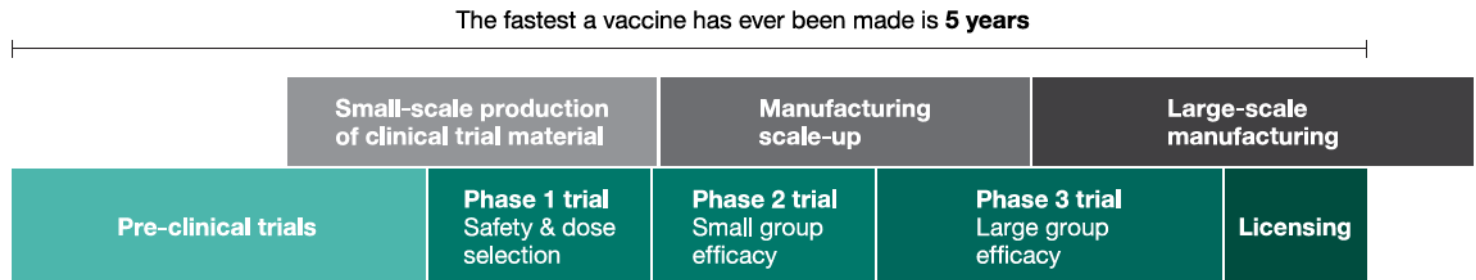
Which leaves us with a vaccine.

Gates, Bill. "What you need to know about the COVID-19 vaccine." *GatesNotes: The Blog of Bill Gates*, April 30, 2020, [https://www.gatesnotes.com/Health/What-you-need-to-know-about-the-COVID-19-vaccine?WT.mc\\_id=20200430165006\\_COVID-19-vaccine\\_BG-LI&WT.tsrc=BGLI&linkId=87665528](https://www.gatesnotes.com/Health/What-you-need-to-know-about-the-COVID-19-vaccine?WT.mc_id=20200430165006_COVID-19-vaccine_BG-LI&WT.tsrc=BGLI&linkId=87665528). 30 April 2020.

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# How soon will a vaccine be ready?

All vaccines go through a rigorous process to make sure they're safe and effective.



Governments will need to expedite their usual drug approval processes in order to deliver the vaccine to over 7 billion people quickly.



# Main Street Lending Program 4/30 Announcement

## Press Release

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April 30, 2020

### Federal Reserve Board announces it is expanding the scope and eligibility for the Main Street Lending Program

For release at 10:00 a.m. EDT

Share 

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The Federal Reserve Board on Thursday announced it is expanding the scope and eligibility for the Main Street Lending Program. As part of its broad effort to support the economy, the Federal Reserve developed the Main Street Lending Program to help credit flow to small and medium-sized businesses that were in sound financial condition before the pandemic.

# FACILITIES

The Main Street Lending Program consists of the following three facilities:

- **New Loan Facility**
- **Expanded Loan Facility**
- **Priority Loan Facility**

# ELIGIBLE BORROWER

- If the borrower is a business (i.e., a for profit entity or a tribal business concern) that, among other things:
  1. was established prior to March 13, 2020;
  2. is not an Ineligible Business (applying SBA rules);
  3. meets at least one of the following two conditions:
    1. Has 15,000 employees or fewer; or
    2. Had 2019 annual revenues of \$5 billion or less;
  4. is created or organized in the US or under laws of US with significant operations in and a majority of its employees based in the US; and
  5. has not received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (but may have received PPP loans).
- Borrower must have been in sound financial condition prior to the onset of the COVID-19 pandemic.

# EMPLOYEE, AFFILIATION AND REVENUE REQUIREMENTS

- Employee Count - To determine number of employees, borrowers will need to count their own employees as well as employees of **affiliates**.
  1. Average of the total number of persons employed by the borrower and its affiliates for **pay period over the 12 months prior to the origination or upsizing of the applicable loan.**
  2. Employees include all full-time, part-time, seasonal, or otherwise employed persons (excluding volunteers and independent contractors).
- Affiliation – Compliance with affiliation rules set forth in federal regulations is required to determine borrower eligibility.
- Revenue – One of the following methods may be used to calculate 2019 annual revenues of borrower and its affiliates:
  1. Annual “revenue” per borrower’s 2019 GAAP-based audited financial statements; **or**
  2. Annual receipts for the fiscal year 2019, as reported to the IRS, or in reliance on most recent audited financial statements or tax returns if 2019 statements or returns are not available. Receipts has the same meaning used by the SBA in 13 CFR 121.104(a).

## ELIGIBLE LENDERS

- Eligible Lender means any of the following:
  1. US federally insured depository institutions (including banks, savings associations, or credit unions),
  2. US branch or agency of a foreign bank,
  3. US bank holding company,
  4. US savings and loan holding company
  5. US intermediate holding company of a foreign banking organization, or
  6. US subsidiary of any of the foregoing.
- Eligible Lenders may originate new Main Street loans or use Main Street loans to increase size of existing loans to eligible businesses.
- Lenders may apply their own underwriting standards in evaluating an eligible borrower's eligibility for a Main Street loan.

## NEW LOAN FACILITY

- Originated on or after April 24, 2020.
- Minimum term loan size is \$500,000.
- Maximum term loan size is the lesser of (i) \$25 million or (ii) an amount that, when added to the borrower's existing outstanding and undrawn available debt, does not exceed **four times** the borrower's adjusted 2019 earnings before interest, taxes, depreciation, and amortization ("EBITDA").
- Loans may be secured or unsecured.
- At time of origination or at any during term of the loan, must not be contractually subordinated in terms of priority to any of the borrower's other unsecured loans or debt instruments.



## EXPANDED LOAN FACILITY

- Existing term loan or revolving credit facility originated on or before April 24, 2020, and has a remaining maturity of at least 18 months.
- Minimum term loan size is \$10 million.
- Maximum loan size is the lesser of (i) \$200 million, (ii) 35% of the borrower's existing outstanding and undrawn available debt that is pari passu in priority with the eligible loan and equivalent in secured status (i.e., secured or unsecured), or (iii) an amount that, when added to the borrower's existing outstanding and undrawn available debt, does not exceed **six times** the borrower's adjusted 2019 EBITDA.
- Loans may be secured (on a pro rata basis) or unsecured. Lenders may require additional collateral to secure the upsized tranche as a condition of approval.
- At the time of upsizing and at all times the upsized tranche is outstanding, it must be senior to or pari passu with, in terms of payment priority and lien priority, the borrower's other loans or debt instruments (other than mortgage debt).

## PRIORITY LOAN FACILITY

- Originated after April 24, 2020.
- Minimum term loan size is \$500,000.
- Maximum loan size is the lesser of (i) \$25 million, or (ii) an amount that, when added to the borrower's existing outstanding and undrawn available debt, does not exceed **six times** the borrower's adjusted 2019 EBITDA.
- Loans may be secured or unsecured.
- At all times the loan is outstanding, the loan must be senior to or pari passu with, in terms of payment priority and lien priority, the borrower's other loans or debt instruments (other than mortgage debt).
- Borrowers may, at time of origination of loan, refinance existing debt owed to a lender that is not an eligible lender.

# EBITDA

- EBITDA is key underwriting metric, not an asset-based test, though this is under review by the Federal Reserve and the Department of Treasury.
- Lenders may calculate **adjusted** 2019 EBITDA in a manner consistent with previous adjusted EBITDA calculations for the same borrower, or in a manner consistent with adjusted EBITDA calculations for similarly situated borrowers, in each case, applicable prior to April 24, 2020.

# MAXIMUM LOAN AMOUNT CALCULATION

In calculating the maximum loan size, “existing outstanding and undrawn available debt” includes:

1. all amounts borrowed under any loan facility, including unsecured or secured loans from any bank, non-bank financial institution, or private lender,
2. any publicly issued bonds,
3. private placement facilities, and
4. all unused commitments under any loan facility (with certain exceptions)

## LOAN TERMS APPLICABLE TO ALL FACILITIES

- Four year maturity.
- Interest rates will equal LIBOR (1 or 3 month) plus 300 basis points.
- Principal and interest payments to be deferred for one year (unpaid interest for the first year to be capitalized).
- Prepayment of loans is permitted without penalty.

# AMORTIZATION

- New Loan Facility – 1/3<sup>rd</sup> at the end of each year commencing with the second year.
- Expanded Loan Facility – 15% at the end of the second year, 15% at the end of the third year, and 70% at the end of the fourth year.
- Priority Loan Facility - 15% at the end of the second year, 15% at the end of the third year, and 70% at the end of the fourth year.



## BORROWER PARTICIPATION

- Borrowers may participate in **one** of the **three** Main Street lending facilities even if Borrowers have received a loan under the Paycheck Protection Program.
- Borrower may only participate in one of the following facilities:
  1. New Loan Facility;
  2. Expanded Loan Facility; or
  3. Priority Loan Facility.
- If a borrower participates in the Primary Market Corporate Credit Facility, it **may not** participate in any of the facilities under the Main Street Lending Program.

# LENDER ATTESTATIONS

## **Lenders will be required to make the following attestations:**

- Lender will not request that borrower repay principal of the debt extended by such lender to the borrower, or pay interest on such outstanding obligations, until the eligible loan is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of an event of default and acceleration.
- Lender will not cancel or reduce any existing committed lines of credit outstanding to the borrower, except upon the occurrence of an event of default.
- Lender will certify as to the methodology of calculation of adjusted 2019 EBITDA for the applicable leverage condition.
- No member of Congress, head of an Executive Department, the President, Vice President, or family members of any of these individuals, has a controlling interest in the lender (Section 4019(b) of the CARES Act) (“Conflict of Interest Prohibitions”).

# BORROWER ATTESTATIONS

**The borrower is required to make certain attestations, including:**

- It will make **commercially reasonable efforts** to maintain its payroll.
- It will not use loan proceeds to repay other loan balances.
- It will not cancel or reduce any of its committed lines of credit.
- It has a reasonable basis that it has the ability to meet its financial obligations for at least 90 days after date of loan and does not expect to file for bankruptcy during that time period.

## RESTRICTIONS

- Borrowers shall use **commercially reasonable efforts** to maintain payroll and retain employees during the time the applicable loan is outstanding.
- During the term of the loan (and a year after) under any Main Street Lending Program, borrowers generally cannot do the following:
  1. Stock buybacks
  2. Dividends and capital distributions, except an S-corp 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.
  3. Executive bonuses

# PARTICIPATION, FEES AND TERMINATION

- A Federal Reserve Bank SPV will purchase 95% participations in Main Street Loans under the New Loan Facility and the Expanded Loan Facility, with lenders retaining 5%.
- A Federal Reserve Bank SPV will purchase 85% participations in Main Street Loans under the Priority Loan Facility, with lenders retaining 15%.
- Prohibition on assignment of the loans by the originating lender until the SPV sells its entire participation interest. With respect to any loans under the Expanded Loan Facility, prohibition on assignments of the loans is the earlier of the underlying eligible loan maturing or the SPV selling its entire participation interest.
- Fees:
  - Transaction Fees
  - Loan Origination and Servicing Fees
- Facility Termination – September 30, 2020.

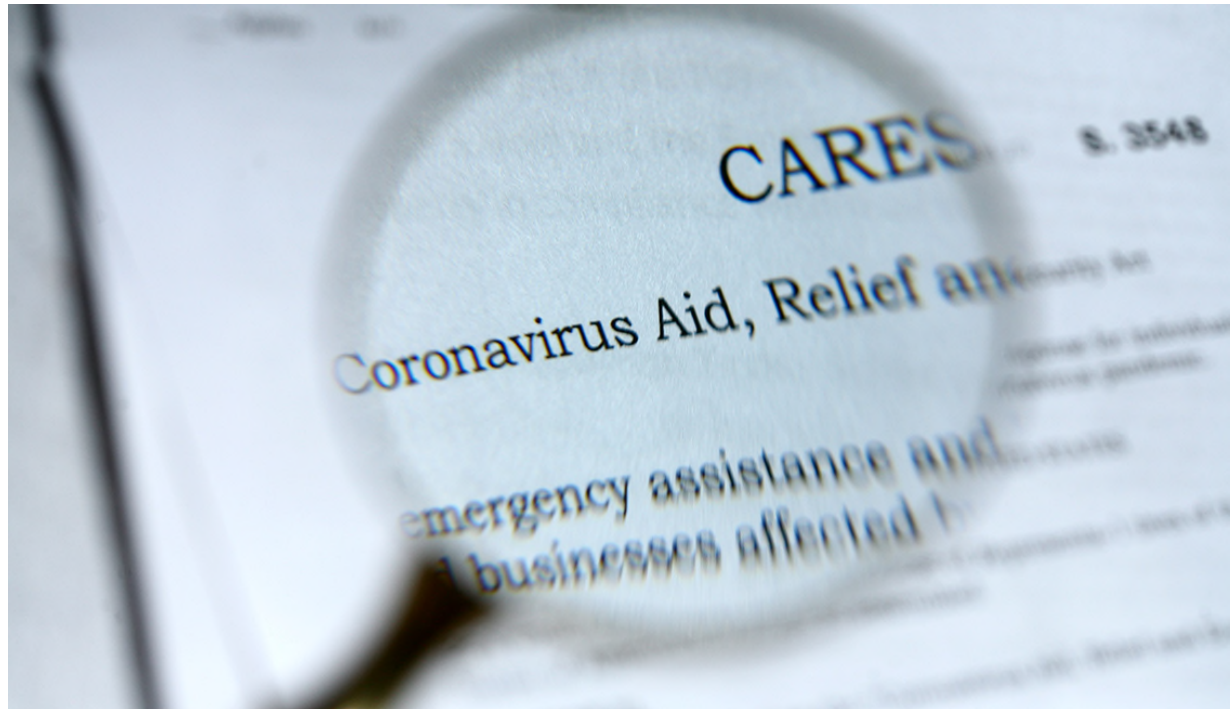
# LOAN CLASSIFICATION AND ASSESSMENT OF FINANCIAL CONDITION

- Loan Classification – If Borrower had other loans outstanding with the eligible lender as of December 31, 2019, such loans must have an internal risk rating equivalent to a “pass” in the Federal Financial Institutions Examination Council’s supervisory rating system.
- Assessment of Financial Condition – Lenders to conduct an assessment of each potential borrower’s financial condition at the time of such borrower’s application.
- Underwriting – Lenders to conduct their own underwriting. A borrower may be eligible to borrow but still not receive a loan.



# QUESTIONS & ANSWERS

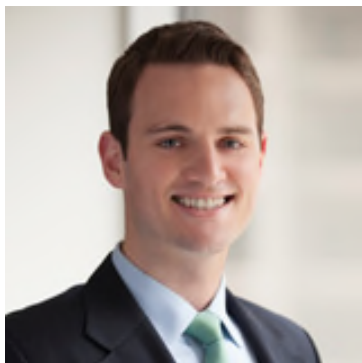
Please submit your questions to the host via the WebEx question portal. All questions will be forward to the presenters. Any questions that are not answered during the program can be emailed directly to the presenters.



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ISTOCK / GETTY IMAGES

# Biography



**Andrew T. Budreika**

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Andrew Budreika is a Partner in the Finance practice. He advises clients on private equity transactions, domestic and cross-border public and private mergers and acquisitions, debt financings, strategic investments, and other corporate transactions. Andrew also regularly counsels clients on securities law, corporate governance, and other general corporate and finance matters.

Consistent with Morgan Lewis's core principles, Andrew is committed to providing exceptional client service and building long-term strategic relationships with clients focused on communication and collaboration. Andrew seeks first to listen and understand a client's goals and the business context and then to provide insightful, creative, and tailored solutions that enable the client to achieve those goals within the client's defined parameters for success. Andrew endeavors to bring together Morgan Lewis's intellectual and global talent and resources to construct elite legal teams that deliver the best overall results and experience to clients.

Andrew is also passionate about using technology, knowledge management, legal project management, and other innovations in legal practice to provide fast, reliable, and consistent service in a cost-effective and efficient manner.

Andrew has practical experience handling a full spectrum of transactions including buyouts; platform acquisitions; exit transactions; mergers; add-ons and roll-ups; carve-outs and spin-offs; leveraged recapitalizations; and management rollovers and equity incentive structures. He also regularly works on matters involving growth equity, minority, and strategic investments; co-investments; corporate restructurings and reorganizations; and founder liquidity transactions. Additionally, Andrew advises on acquisition financings; syndicated bank loans; investment grade and high-yield bond offerings; asset-based loans; mortgage loan warehousing and repurchase facilities; and capital call lending transactions.

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# Biography



## **Mathew Edward Scherneck**

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Matthew Scherneck is a partner in the Finance Practice and serves as the New York office local practice group leader. Matthew advises direct lenders, mezzanine investment funds, and venture capital investors on loans and other investment transactions with a wide range of borrowers across industry classes and of all sizes, types, and structures. Matthew also advises private equity clients and corporate borrowers on domestic and cross-border acquisition financings, out-of-court restructurings and workouts, bankruptcy matters, and real estate financings. Matthew leads transactions spanning diverse industries, including media and telecommunications, Internet and technology, food and beverage, real estate, retail, and healthcare.

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# Biography



**Kristen V. Campana**

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Kristen Campana is a partner in the Finance practice. She represents a wide variety of direct and alternative lenders, particularly those involving private sources of capital, including private debt funds, hedge funds, specialty finance companies, business development companies, private equity investors, and issuers in domestic and cross-border financings across the capital structure in connection with acquisitions, leveraged buyouts, convertible debt, equity investments, letters of credit, and project financings.

Kristen has experience in bankruptcy reorganizations and liquidations, work-outs, and distressed debt purchases and sales, as well as second lien and mezzanine financings, and other subordinated debt financings. She represents debtors, debtor-in-possession lenders, pre-petition lenders, and unsecured creditors' committees, as well as other creditors in bankruptcy proceedings. She also advises clients on energy company and real estate restructurings, and provides general credit review analysis for lenders and potential debt purchasers.

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Shah Nizami is an associate in the Finance practice. With an undergraduate degree in business administration and a concentration in financial markets, Shah M. Nizami counsels leading financial institutions and corporate borrowers that are involved in US domestic and international commercial finance transactions. He focuses on syndicated debt financings (both secured and unsecured facilities), multinational credit facilities, asset-based financings, and domestic and international debt workouts and restructurings. Shah also works on naming rights and sponsorship rights agreements..

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# Biography



**Benjamin W. Stango**

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Benjamin Stango is an Associate in the Corporate Business Transactions practice. He works with a team to counsel clients in business law matters, including mergers and acquisitions, joint ventures, financings, restructurings, and compliance with securities laws. He advises clients ranging from emerging and high-growth businesses to Fortune 500 companies. Ben also has experience in government, nonprofits, and political campaigns. With an M.B.A. from The Wharton School, Ben brings a unique perspective on business, law, and government to serve his clients' needs.

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Negin Fatahi is an associate in the Finance practice. She represents both institutional lenders and corporate borrowers in a broad range of complex debt financing transactions. Negin works with clients on secured credit facilities, acquisition financing, loan syndications, and other financial matters. Negin is fluent in Farsi and conversational in Arabic..

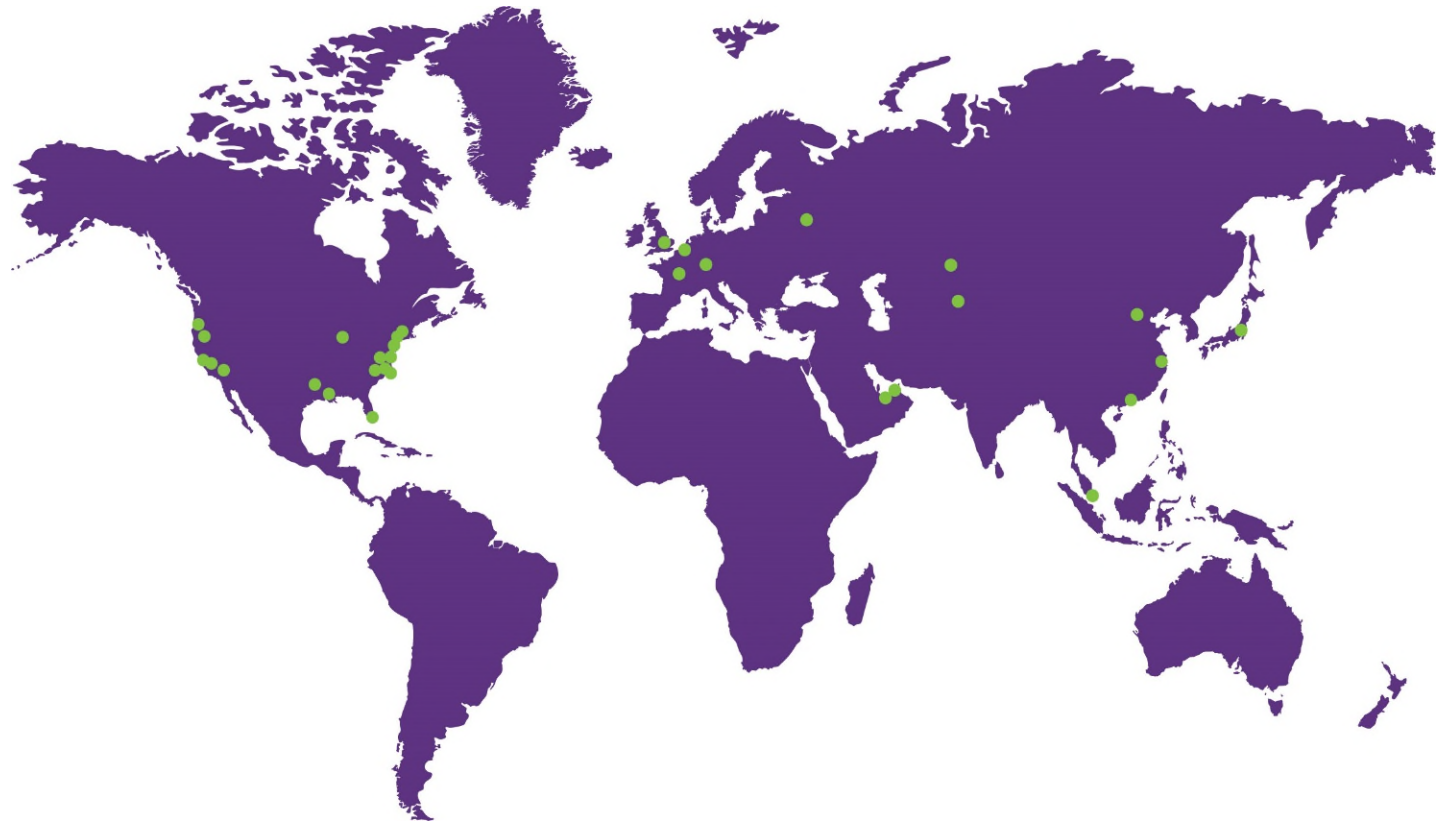
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