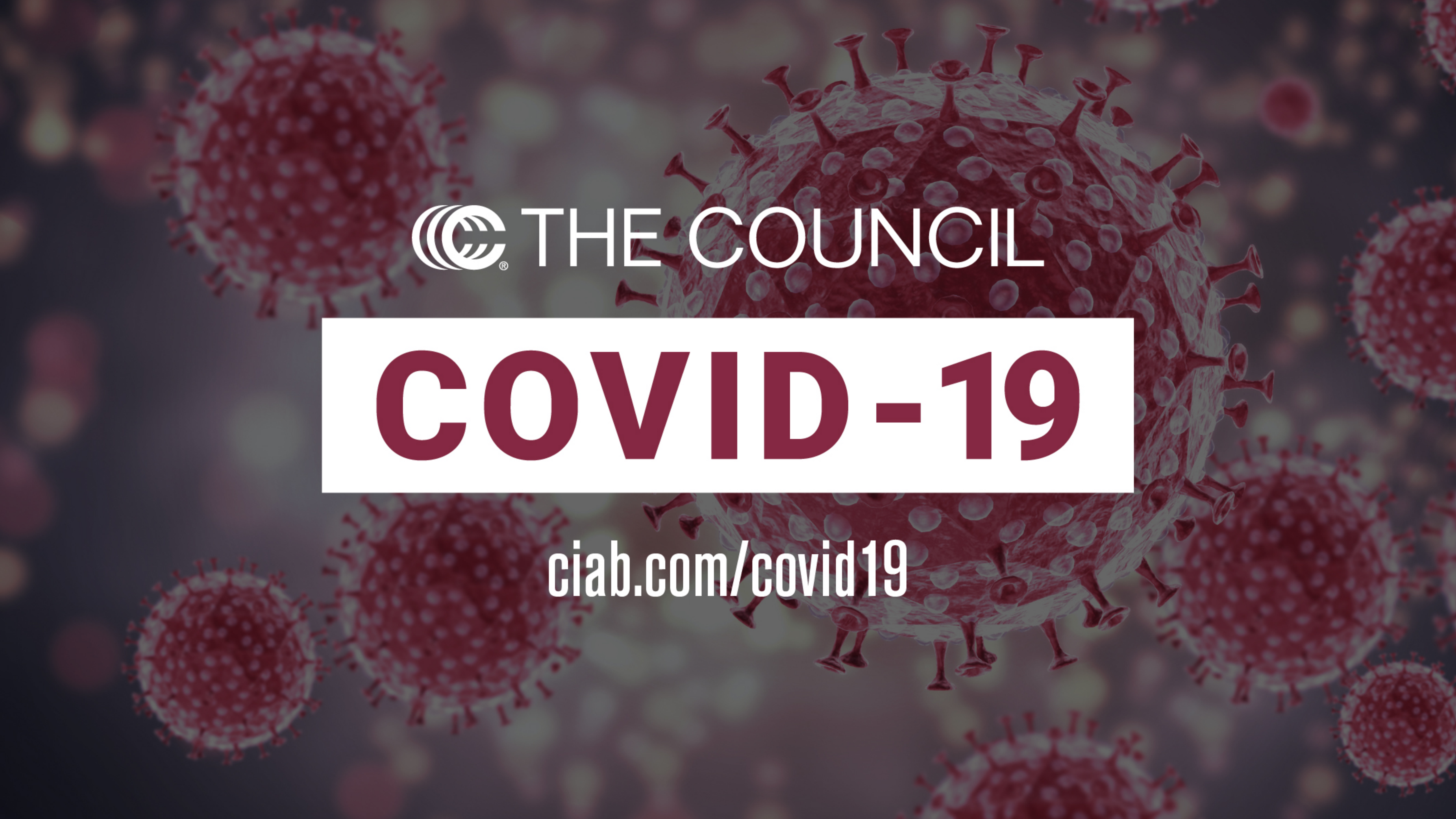
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MAIN STREET LENDING PROGRAM (& BRIEF PPP UPDATE)

Scott Sinder
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Steptoe

PPP UPDATE

Still a Moving Target

KEY PPP RULE & SAFE HARBOR UPDATES

- May 18 deadline for general necessity certification safe harbor (give the $$ back)

- New bright line rule as of May 13 regarding necessity certification:
  - ✓ "Any borrower that, together with its affiliates, received a [PPL] with an **original** principal amount of less than $2 million will be deemed to have made the required certification concerning the necessity of the loan request in good faith."
  - ✓ Forgiveness application suggests that affiliates are not considered for those with affiliation rule waivers
  - ✓ Only extends to necessity certification – not eligibility certifications, loan amount calculations, etc.
  - ✓ For borrowers above $2 million, will receive additional scrutiny. If SBA disagrees on necessity, will not pursue further penalties if borrower repays the loan (timing unclear)

- May 18 final rule: will not find **pre-May 5** applicants ineligible for PPL or in violation of eligibility certification based on exclusion of non-U.S. employees (i.e., foreign affiliates) if borrower had 500 or fewer employees in U.S.

PPP FORGIVENESS APPLICATION & INSTRUCTIONS

- Retains “75% on payroll costs” requirement
- **Eligibility for forgiveness based on rules/guidance in place at the time of forgiveness application** – keep track of new developments!
- Some flexibility in 8-week forgiveness period for payroll cost, FTE, and salary reduction determinations
- $2 million+ loan recipients check a special box (do not include affiliates if you have waiver)
- “Incurred and paid” clarifications
- 2 permissible methods for calculating FTEs:
  - ✓ Average # of hours paid per week, divided by 40 (round to nearest 10th; maximum for each employee = “1”)
  - ✓ Optional simplified method: “1” for anyone working 40 hours or more; “0.5” for anyone under 40 hours
- FTE penalty exceptions: good faith efforts to rehire, dismissals for cause, voluntary departures, and requested reductions in hours

MAIN STREET LENDING PROGRAM

WHAT IS THE MAIN STREET LENDING PROGRAM?

AN EFFORT TO SUPPORT SMALL AND MID-SIZED BUSINESSES THAT WERE IN GOOD FINANCIAL STANDING BEFORE THE CRISIS.

On April 30, the Federal Reserve announced three new programs:

Main Street New Loan Facility (MSNLF)

Main Street Priority Loan Facility (MSPLF)

Main Street Expanded Loan Facility (MSELF)

"A start date for the program will be announced soon"

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MAIN STREET BASICS

Intended for businesses with up to 15,000 employees <u>or</u> up to $5 billion in annual revenue that were either unable to access the Small Business Administration's Paycheck Protection Program (PPP) or that require additional financial support after receiving a PPP loan. Importantly, Main Street loans (as opposed to PPP loans) are not forgivable.

Private Loan Program: Borrowers should contact their bank lender.

More details to follow, particularly for lenders:

- Operational date
- Model loan participation agreement
- Borrower/lender certifications
- Form agreements

Find more information <u>here</u>.

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MAIN STREET - THREE OPTIONS

Main Street Lending Program Loan Options	New Loans	Priority Loans	Expanded Loans
Term	4 years	4 years	4 years
Minimum Loan Size	$500,000	$500,000	$10,000,000
Maximum Loan Size*	The lesser of $25M or an amount that, when added to outstanding and undrawn available debt, does not exceed 4.0x adjusted 2019 EBITDA	The lesser of $25M or an amount that, when added to outstanding and undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA	The lesser of $200M, 35% of existing outstanding and undrawn available debt, or an amount that, when added to outstanding and undrawn available debt, does not exceed 6.0x adjusted 2019 EBITDA
Risk Retention	5%	15%	5%
Payment (year one deferred for all)	Years 2-4: 33.33% each year	Years 2-4: 15%, 15%, 70%	Years 2-4: 15%, 15%, 70%
Rate	LIBOR + 3%	LIBOR + 3%	LIBOR + 3%

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LOAN FEATURES

4 YEAR MATURITY

MINIMUM NEW/PRIORITY LOAN SIZE = $500,000

LIBOR (1 OR 3 MONTH) + 3.00%

MINIMUM EXPANDED LOAN SIZE = $10 MILLION

PREPAYMENT WITHOUT PENALTY

AMORTIZATION OF PRINCIPAL AND INTEREST DEFERRED FOR 1 YEAR

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MAXIMUM LOAN SIZE

NEW LOANS

The lesser of (i) $25 million or (ii) an amount that, when added to the borrower's existing outstanding and committed undrawn debt, does not exceed **four times** the borrower's 2019 EBITDA.

PRIORITY LOANS

The lesser of (i) $25 million or (ii) an amount that, when added to the borrower's existing outstanding and committed undrawn debt, does not exceed **six times** the borrower's 2019 EBITDA.

EXPANDED LOANS

The lesser of (i) $200 million, (ii) 35% of the borrower's existing outstanding and committed but undrawn bank debt, or (iii) an amount that, when added to the borrower's existing outstanding and committed undrawn debt, does not exceed **six times** the borrower's 2019 EBITDA.

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A BORROWER MUST BE FOR-PROFIT

Eligible businesses must be legally formed, for-profit entities that are organized as:

- a partnership;
- a limited liability company;
- a corporation;
- an association;
- a trust;
- a cooperative;
- a joint venture with no more than 49% percent participation by foreign business entities; or
- a tribal business concern.

Non-profit organizations are currently not eligible businesses.

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BORROWER ELIGIBILITY

A business with **up to 15,000 employees** or **up to $5 billion in 2019 annual revenues**.

A business that is **created or organized in the United States** or under the laws of the United States **with significant operations in and a majority of its employees based in the United States**.

Established prior to **March 13, 2020**.

Not an **ineligible business** (i.e., ineligible to receive a loan under the PPP).

Permitted to take out both PPP and Main Street loans.

May only participate in **one** of the Main Street facilities and cannot also participate in the Primary Market Corporate Credit Facility (PMCCF).

Cannot have received specific support under Title IV of the CARES Act.

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COUNTING EMPLOYEES

To determine how many employees a business has, it should count:

- All full-time, part-time, seasonal, or otherwise **employed persons** as employees, excluding volunteers and independent contractors.
- Its own employees and those employed by its **affiliates**.

Use the average of the total number of persons employed by the business and its affiliates for each pay period over the 12 months prior to the origination or upsizing of the program loan.

Use the SBA affiliation **test** at 13 CFR 121.301(f).

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DETERMINING 2019 REVENUES

To determine its 2019 annual revenues, a business must **aggregate its revenues** with those of its affiliates.

May use **either** of the following methods:

- Its (and its affiliates') annual "**revenue**" per its 2019 GAPP audited financial statements.

- Its (and its affiliates') annual **receipts** for the fiscal year 2019, as reported to the IRS. "Receipts" has the same meaning used by the SBA.

If a potential borrower (or its affiliate) does not yet have audited financial statements or annual receipts for 2019, the borrower (or its affiliate) should use its most recent audited financial statements or annual receipts.

"COMMERCIALLY RESONABLE EFFORTS"

Borrower should make "commercially reasonable efforts" to retain employees during the term of the loan.

- A borrower should undertake good-faith efforts to maintain payroll and retain employees, in light of:
  - its capacities
  - its available resources
  - the economic environment
  - the business need for labor
- A borrower that has already laid-off or furloughed workers as a result of the disruptions from COVID-19 is still eligible to apply.

BORROWER CERTIFICATIONS AND COVENANTS

Borrower must commit to refrain from repaying the principal balance of, or paying any interest on, any debt until loan (for MSELF, upsized tranche of the loan) is repaid in full, unless the debt or interest payment is mandatory and due.

For MSPLF loans, the borrower may refinance existing debt owed to a different lender.

Borrower must commit that it will not seek to cancel or reduce any of its committed lines of credit with the lender or any other lender.

Borrower must certify that it has a reasonable basis to believe that, as of the date of origination of the 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.

BORROWER CERTIFICATIONS AND COVENANTS

Borrower must commit to follow certain compensation, stock repurchase, and capital distribution restrictions.

- Executive compensation restrictions for the term of the loan plus one year:
    - Employees who made > $425,000 in 2019 cannot receive a raise, nor can severance be more than double maximum compensation.
    - Executives who made > $3 million in 2019 cannot make more than $3 million plus half of the amount over $3 million in 2020.
- Borrower may not buy back stock or pay dividends for a period of time that extends one year beyond the term of the loan.
    - However, an S corporation or other tax pass-through entity that is a borrower may make distributions to the extent reasonably required to cover its owners' tax obligations related to the entity's earnings.

Borrower must certify that it is not an entity in which the President, Vice President, the head of an Executive Department, or a Member of Congress (or a family member of any of them) directly or indirectly holds a controlling interest.

NO AUTOMATIC QUALIFICATION

Lenders are expected to conduct an assessment of each potential borrower's financial condition at the time of the potential borrower's application.

Lenders will apply their own underwriting standards in evaluating the financial condition and creditworthiness of a potential borrower.

Lenders may require additional information and documentation in making this evaluation and will ultimately determine whether a borrower is approved for a Main Street loan in light of these considerations.

Businesses that otherwise meet the Eligible Borrower requirements may not be approved for a loan or receive the maximum allowable amount.

FEES AND LOAN SUBORDINATION

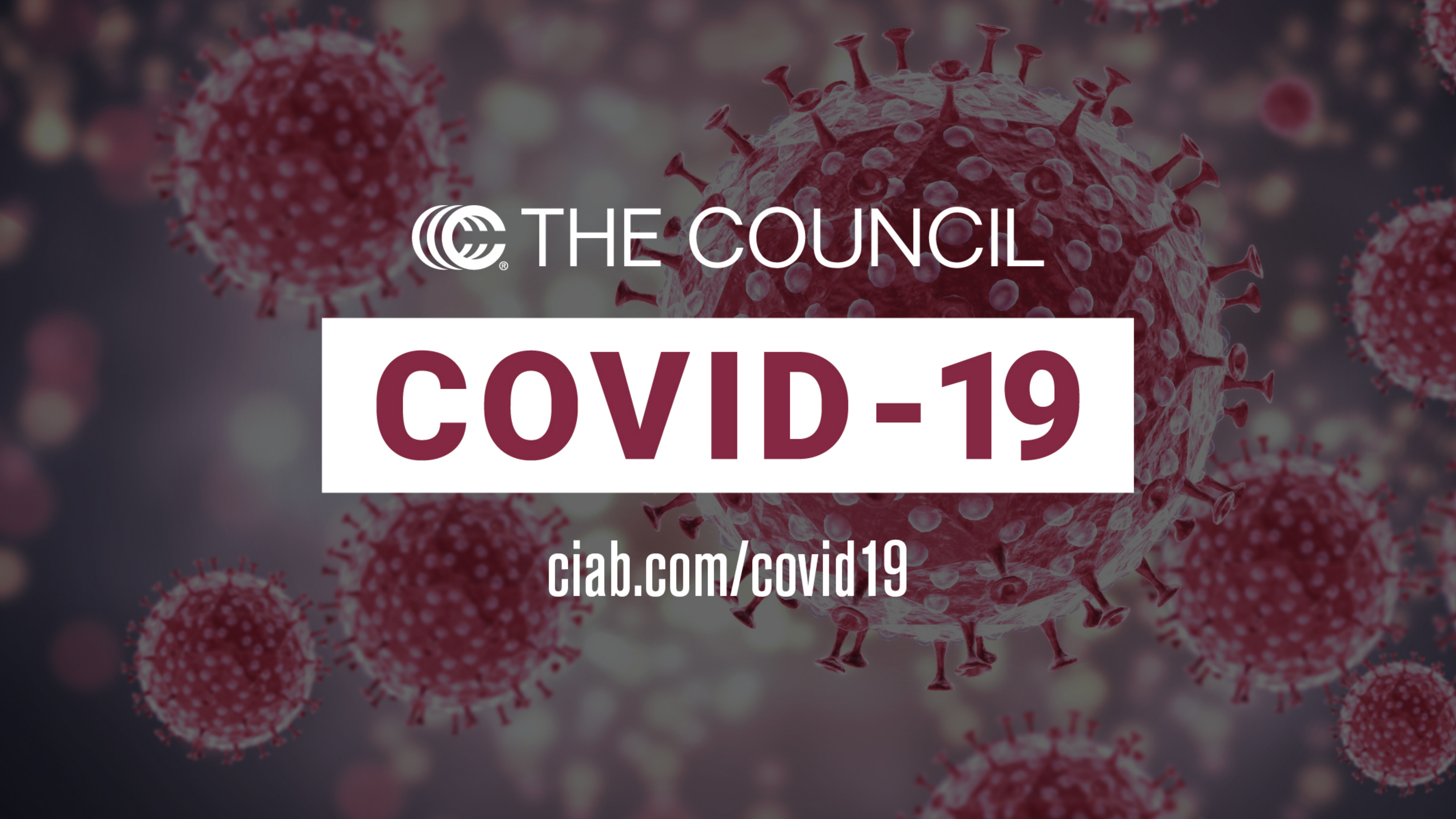
Transaction Fees		
New Loan	Priority Loan	Expanded Loan
Lender will pay SPV 1% (May require borrower to pay this fee)	Lender will pay SPV 1% (May require borrower to pay this fee)	Lender will pay SPV 0.75% (May require borrower to pay this fee)
Origination/Upsizing Fees		
New Loan	Priority Loan	Expanded Loan
Borrower will pay up to 1% SPV will pay 0.25%	Borrower will pay up to 1% SPV will pay 0.25%	Borrower will pay up to 0.75% SPV will pay 0.25%
Loan Subordination		
New Loan	Priority Loan	Expanded Loan
May not be contractually subordinated	Must be senior to or pari passu with the borrower's other loans or debt instruments, other than mortgage debt	Must be senior to or pari passu with the borrower's other loans or debt instruments, other than mortgage debt

QUESTIONS?

MATT KULKIN

SCOTT SINDER

KATE JENSEN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