

## Federal Reserve Issues New Main Street Lending Program Guidance in Amended Frequently Asked Questions

July 16, 2020

On July 15, 2020, the Federal Reserve published a number of changes to the Main Street Lending Program's [frequently asked questions, which FAQs](#) were amended to provide further guidance on a number of issues. The Federal Reserve Bank of Boston MSLP web page has links to clean and redline versions of the new FAQs: <https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/information-for-lenders/docs.aspx>

In its announcement, the Federal Reserve noted the following specific changes:

- Waiver of CARES Act capital distribution restrictions with respect to tribal businesses paying dividends to tribal governments (FAQs H.15, H.2) and otherwise clarifying the tribal business concern definition (A tribal business concern must be a separate and distinct legal entity organized or chartered by the tribe, Federal, or state authorities, and must determine that it does not have, or has waived, sovereign immunity in regard to matters arising from the MSLP.). (FAQ E.2);
- Incorporated recent changes made by the Small Business Administration to its Ineligible Business definition in relation to the Paycheck Protection Program (FAQ E.1) and otherwise clarifying the application of the “Ineligible Business” definition by stating that there no specific verification or other obligations on an Eligible Lender in regard to entities in which the Eligible Lender or its Associates hold an equity interest, instead setting forth a reasonable, good-faith diligence standard (FAQ E.13);
- Removed the requirement that the “Eligible Lender must have purchased its interest in the underlying loan by April 24, 2020” with respect to MSELF Upsized Tranches (FAQ D.4);
- Provided guidance regarding a number of issues – specifically,
  - Inclusion of fees in the principal amount of loan - now allowed provided that the total loan amount does not exceed permitted limits (FAQ G.18),
  - LIBOR floors – not allowed (FAQ G.19),

- Financial requirements for businesses established in 2020, including the use of financial information from predecessor or acquired businesses (FAQ G.20),
- Fiscal year 2019 financial data may be used if the Eligible Borrower’s fiscal year 2019 does not match calendar year 2019 (FAQ H.10),
- Permitted uses of loan proceeds from Main Street loans, reiterating previous limitations (FAQ G.21),
- Eligibility of sole proprietorships, by stating that sole proprietorships are not eligible unless they meet the definition of a “Business” under FAQ E.2 (“Businesses must be legally formed entities that are organized for profit as a partnership; a limited liability company; a corporation; an association; a trust; a cooperative; a joint venture with no more than 49% participation by foreign business entities; or a tribal business concern.” The Federal Reserve may consider other types of business arrangements at its discretion.) (FAQ E.14), and
  - Hedging credit and interest rate risk (FAQ G.26);
- Clarified Portal information security measures (FAQ L.10);
- Provided links to example legal documents completed for a hypothetical company (FAQ M.5); and
- Clarified the mortgage debt exception for the MSPLF and MSELF, by stating that “mortgage debt” means debt secured solely by real property. (FAQs C.5 and D.11).

The amended FAQs addressed:

- Calculation of the transaction fee when deferred interest has been capitalized, and reiterating that deferred interest should be capitalized consistent with the Eligible Lender’s customary practices (FAQ G.7).
- An Eligible Lender may require interest payments in the same time periods as it does for loans to similarly situated borrowers, but the Federal Reserve does not expect frequency to ever be more than monthly (FAQ G.22).
- Any required collateral or guarantee must apply to the entire loan, not just to the Eligible Lender’s 5% interest (FAQ G.23).
- Personal guarantees are not required, but are permitted in accordance with the Eligible Lender’s underwriting process (FAQ G.24).

- An Eligible Borrower's existing debt (including debt that is maturing with 90 days of loan origination) may be refinanced at time of origination of the MSLP Loan only under an MSPLF loan, and then only if the existing debt is owed to a different lender (FAQ G.25).
- An Eligible Lender or Eligible Borrower may hedge interest rate risk associated with an MSLP loan, and the Eligible Lender may hedge credit risk as to the borrower's industry but not borrower-specific hedging of an MSLP loan.

Buchalter's Commercial Finance Practice Group has organized its attorneys to create in-depth expertise in every aspect and requirement of the Main Street Lending Program. Buchalter's Commercial Finance Practice Group is comprised of attorneys with extensive transactional and regulatory expertise, and is one of the largest creditor-focused practice on the West Coast. Thus, our commercial finance attorneys are uniquely positioned to advise clients on the MSLP and help structure and document any of the three credit facilities that are offered under the program. Please feel free to contact any of the attorneys in Buchalter's Commercial Finance Group if you have questions regarding the MSLP or would like to discuss the various options and details under the program.

**Robert Gillison**

Commercial Finance, Practice Chair  
(213) 891-5014  
[rgillison@buchalter.com](mailto:rgillison@buchalter.com)

**Matthew Kavanaugh**

Shareholder  
(213) 891-5449  
[mkavanaugh@buchalter.com](mailto:mkavanaugh@buchalter.com)

**William Schoenholz**

Shareholder  
(213) 891-5004  
[wschoenholz@buchalter.com](mailto:wschoenholz@buchalter.com)

**Michael C. Flynn**

Mortgage Banking Practice Co-Chair  
(213) 891-5262 or  
[mflynn@buchalter.com](mailto:mflynn@buchalter.com)

**Robert J. Davidson**

Shareholder  
(213) 891-5023  
[rdavidson@buchalter.com](mailto:rdavidson@buchalter.com)

**Robert A. Willner**

Shareholder  
(213) 891-5107  
[rwillner@buchalter.com](mailto:rwillner@buchalter.com)

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