

Main Street Lending Program: Federal Reserve Posts Amended Transaction Documents and Frequently Asked Questions

August 4, 2020

On July 31st the Federal Reserve posted amended versions of a number of Main Street Lending Program (MSLP) transaction documents, including the Frequently Asked Questions (FAQs) and Term Sheets for MSLP. Many of the changes reflect recent announcements, such as the expansion of the program to include the Nonprofit Organization New Loan Facility (NONLF) and the Nonprofit Organization Expanded Loan Facility (NOELF). Other changes, particularly to the FAQs, provide new guidance. Links to redlined versions of these documents, compared to their previous versions, can be found at:

<https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/information-for-lenders/docs.aspx>

Specific changes to each document are set forth below. The major types of changes or guidance provided include:

- The Federal Reserve is adding both NONLF and NOELF loans for nonprofits.
- Facilities are not yet available for multiple-borrower loans or loans to non-profits.
- Servicing Agreement Schedule I clarifies that if the Borrower is multiple entities, reporting is to be consolidated.
- Servicing Agreement Tables III and IV as to nonprofits' data and reporting requirements.
- Co-Lender Agreement clarified that all guarantors are to sign.
- Co-Lender Agreement now provides a joint and several liability provision for multiple Borrowers, and provides that any Borrower may give or receive notices.

Changes to Specific Documents

FAQs

- The FAQs are updated to reference the December 31, 2020 extended deadline for MSLP.
- C.5 clarifies that mortgage debt collateral does not apply in regard to the requirement that MSLP loans also be secured if other loans are secured.

- D.4 clarifies that the position an Eligible Lender relies upon to upsize a loan through Main Street Expanded Loan Facility (MSELF) may have been purchased from either an Eligible Lender or a non-Eligible Lender.
- D.12 is added to clarify that for a MSELF loan, the Eligible Lender is required to retain its participation position for the life of that loan, with limited exceptions for trading-desk transactions (trades not related to the original MSELF position of the Eligible Lender).
- E.2 sets forth the eligibility criteria that must be met by tribal economic enterprises that do not have a separate legal personality from the related tribal government.
- F.4 adds that an Eligible Borrower may submit MSLP applications to more than one Eligible Lender but must inform each Eligible Lender of the application submissions to other Eligible Lenders. Additionally, if an Eligible Borrower's application is denied by one Eligible Lender, it may apply to a different Eligible Lender.
- G.21 clarifies that if the Eligible Borrower is a subsidiary of a foreign parent, MSLP proceeds are not to be used to benefit the foreign parent, or any foreign affiliates or subsidiaries.
- H.15 provides that transfers from a tribal economic enterprises that do not have a separate legal personality from the related tribal government to the tribal government are not considered to be dividends, and are allowed to the extent permitted by the loan agreement.
- H.16 sets out how an Eligible Borrower organized as a partnership, limited liability company, S-corporation, or similar tax pass-through entity is to comply with restrictions on compensation and capital distributions under the direct loan restrictions.
- H.17 confirms that the statutory obligation of an ESOP to repurchase the shares of an Eligible Borrower that is a non-public company held by a retiring or terminated employee is not prohibited, and also confirms that the MSLP rules that prohibit a borrower from paying dividends or distributions on its equity interests apply to equity interests of a borrower held by an ESOP, unless both the equity interest and the obligation to pay dividends or distributions existed as of March 27, 2020.
- H.18 clarifies that the Borrower Certifications and Covenants apply to successors of the Eligible Borrower when, due to and acquisition or other merger, the resulting entity assumes all rights and obligations of the Eligible Borrower.
- H.19 sets forth that compensation, capital distributions and stock repurchase restrictions apply to all multiple borrowers when more than one entity from an organization becomes an Eligible Borrower under MSLP loans.
- I.13 permits an Eligible Lender that is a depository institution to pledge its 5% interest in an MSLP loan to its local Federal Reserve Bank as collateral if it otherwise qualifies as collateral.
- K.4 references the updated federal supervisory approach for assessing the safety and soundness of institutions given the ongoing impact of the COVID-19 pandemic, as outlined in SR Letter 20-15, Interagency Examiner Guidance for Assessing Safety and Soundness Considering the Effect of the COVID-19 Pandemic on Institutions (<https://www.federalreserve.gov/supervisionreg/srletters/sr2015.htm>).

- K.6 and K.7 describe how, in relation to MSLP loans, federally insured credit unions are to comply with institutional lending limits and lending limits per member.
- L.11 sets out documentation guidance for an Eligible Lender that uses the Condition of Funding Model (described in FAQ L.4) for its MSLP loans, such as using the Credit Agreement Effective Date (rather than the date of funding of the MSLP loan) for completing the loan documents and submitting them to the MSLP Portal (including as to determination of interest rates and interest periods).
- L.12 states that in regard to multiple borrower loans, the Federal Reserve MSLP Special Purpose Vehicle (SPV) is not yet operationally able to accept such applications, but the template documents have been updated to provide for such loans and the SPV will be able to accommodate such loans in the near future (single-borrower, multi-guarantor loans can be accommodated now).
- Appendix C, III.A clarifies that for the required cross-acceleration provision, “indebtedness” includes “all debt for borrowed money and any obligations evidenced by a bond, debenture, note, loan agreement or other similar instrument, and any guarantee of any of the foregoing.”

Instructions for Lender Required Documentation

- A new definition of Credit Agreement Date provides that the Effective Date of the Credit Agreement will generally be the date it is signed.
- A new definition of Execution states that the Portal will present the loan agreement to the Lender for execution after the Participation Request is submitted.
- The previous version of the Assignment Executed in Blank may be submitted until August 14, but the new version must be used after that date.

Lender Registration Certificates and Covenants Instructions and Guidance

- Now includes NONLF and NOELF loans.

Participation Agreement Transaction Specific Terms; Participation Agreement Standard Terms and Conditions

- Provides that the Participation Agreement now also applies to NONLF and NOELF loans.

Servicing Agreement

- Schedule I sets forth Servicer document and data collection requirements in regard to NONLF and NOELF loans.
- Schedule I clarifies that if the Eligible Borrower consists of multiple entities, reporting is to be consolidated.
- Tables III and IV set forth the data and documents that the Servicer is to collect quarterly and annually from a nonprofit Eligible Borrower.

Assignment and Assumption

- Non-substantive clarifications.

Co-Lender Agreement and Co-Lender Agreement Standard Terms and Conditions

- Clarifies that all co-Eligible Borrowers and all guarantors are to sign.
- Provides a joint and several liability provision for multiple Eligible Borrowers, and provides that any Eligible Borrower may give or receive notices.
- Provides for NONLF and NOELF loans.

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 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



Matthew Kavanaugh

Shareholder
(213) 891-5449
mkavanaugh@buchalter.com



William Schoenholz

Shareholder
(213) 891-5004
wschoenholz@buchalter.com



Michael C. Flynn

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



Robert J. Davidson

Shareholder
(213) 891-5023
rdavidson@buchalter.com



Robert A. Willner

Shareholder
(213) 891-5107
rwillner@buchalter.com

This communication is not intended to create or constitute, nor does it create or constitute, an attorney-client or any other legal relationship. No statement in this communication constitutes legal advice nor should any communication herein be construed, relied upon, or interpreted as legal advice. This communication is for general information purposes only regarding recent legal developments of interest, and is not a substitute for legal counsel on any subject matter. No reader should act or refrain from acting on the basis of any information included herein without seeking appropriate legal advice on the particular facts and circumstances affecting that reader. For more information, visit www.buchalter.com.