



Federal Reserve Releases Additional Updates to the Main Street Lending Program FAQs

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The Federal Reserve recently released a further revised version of the FAQs promulgated in connection with the Main Street Lending Program, which has now been operational for two weeks.

The Main Street Lending Program was established to support lending to small and mid-sized businesses that may have been ineligible for PPP loans or otherwise unable to secure adequate credit accommodations from other banking institutions. The Main Street Lending Program currently operates through three facilities: [the Main Street New Loan Facility \(MSNLF\)](#), [the Main Street Priority Loan Facility \(MSPLF\)](#) and [the Main Street Expanded Loan Facility \(MSELF\)](#).^[1] More information about the specific terms and conditions applicable to each of these three facilities can be found in this [comparison chart](#) developed by Frost Brown Todd's [Financial Services Industry Team](#).

The revised FAQs include the following updates and clarifications:

- The prohibition against using MSPLF loan proceeds to refinance existing debt that is outstanding and owed to the eligible lender that originates the MSPLF loan extends to the originating lender's affiliates as well.
- The definition of "mortgage debt" refers to debt that is *solely* secured by real property; however, MSPLF and MSELF loans that were extended in good faith on or before July 17, 2020 that do not reflect this clarification are not adversely affected by the clarification.
- Eligible lenders originating MSELF upsized tranches are no longer required to have purchased their interests in the underlying loans before April 24, 2020.
- The reference to ineligible businesses was updated to incorporate the SBA's recently amended Interim Final Rules and to clarify that eligible lenders are not required to adopt

any special compliance procedures to verify that a borrower is not an ineligible business under 13 CFR 120.110(o) (businesses in which the lender or CDC, or any of its associates owns an equity interest).

- Sole proprietorships are expressly excluded as eligible borrowers.
- Eligible lenders must determine, based on their own due diligence and advice from experienced in-house or outside counsel, that any eligible tribal business borrower either does not have or has effectively waived sovereign immunity such that U.S. federal courts, in addition to any state court as may be agreed, may be among courts of competent jurisdiction for matters resulting from the Main Street loan transaction.
- The transaction fee will be based on the principal amount of the MSNLF loan, MSPLF loan or MSELF upsized tranche at the time a loan participation is submitted for sale to the Main Street special purpose vehicle (SPV), including any deferred interest that has been capitalized in accordance with the eligible lender's customary practices for capitalizing interest (e.g., at quarter-end or year-end). The Federal Reserve does not expect that interest would be capitalized more frequently than monthly, and thus only expects capitalized interest to affect this calculation where loans were extended at least one month prior to July 6, 2020 – the date upon which the Main Street Portal began accepting submissions of loans for sale of participation interests.
- Eligible lenders may charge certain customary fees to eligible borrowers at the time of origination and include such fees in the principal amount of the Main Street loan, provided that the total Main Street loan amount, including such fees, may not exceed the maximum loan size permitted for the eligible borrower under the relevant Main Street facility.
- Eligible lenders are not allowed to include a London Inter-bank Offered Rate (LIBOR) floor in the interest rate on a Main Street loan.
- If an eligible borrower's fiscal year 2019 does not coincide with calendar year 2019, it may use its 2019 fiscal year, unless

otherwise required by the Eligible Lender.

- If an otherwise eligible borrower was established before March 13, 2020, but does not have a financial history sufficient to establish that it was in sound financial condition before the onset of the pandemic (i.e., using an adjusted 2019 earnings before interest, taxes, depreciation and amortization (EBITDA) that covers at least part of the calendar year 2019), it will not qualify for a Main Street loan unless such entities have clear predecessors or subsidiaries that can be referenced to calculate adjusted 2019 EBITDA.
- After the first year of the loan, an eligible lender may require the payment of interest at the frequency it would ordinarily require payment with respect to loans made to similarly situated borrowers (e.g., quarterly or annually). The Federal Reserve does not expect that the frequency would ever be more than monthly.
- An eligible lender cannot require an eligible borrower to provide collateral or guarantees solely with respect to the eligible lender's 5% retained portion of a Main Street loan; rather, any collateral pledged or guarantees made in connection with a Main Street loan must apply to the entire loan or upsized tranche.
- While eligible borrowers are permitted to refinance debt that is maturing within 90 days during the life of a Main Street loan, it may not be done at origination unless it is a qualifying MSPLF refinancing.
- Eligible lenders and Eligible borrowers may hedge interest rate risk associated with Main Street loans. Eligible lenders may also hedge credit risk associated with a Main Street borrower's industry but may not engage in borrower name specific hedging of a Main Street loan.
- The restrictions on dividends and other capital distributions will not apply to distributions made by a qualified tribal business to a tribal government owner. The term "tribal government" refers to a federally or state recognized Indian tribe and does not include Alaska native corporations.

Additionally, the revised FAQs include detailed information about the type of data security in place with respect to the Main Street Portal and provide example templates of the Main Street Lending Program documentation to show how they would be completed for a hypothetical company. The Federal Reserve also indicated in the revised FAQs that, in cases where the Program term sheets, legal forms and the FAQs do not explicitly address a specific set of facts and circumstances, eligible borrowers should work with eligible lenders and legal counsel to make informed, reasonable, good-faith applications of the Program's terms and conditions to their individual facts and circumstances.

Since the Main Street Lending Program was initially announced in early April, Frost Brown Todd's Financial Services Industry Team has published several articles [tracking the Program's progress](#) and analyzing borrower eligibility and other Program requirements. Frost Brown Todd is committed to helping lenders and borrowers navigate the registration, application, underwriting, documentation and compliance processes.

For more information on the Main Street Lending Program and other financial assistance under the CARES Act, please contact [Becky Moore](#), [Amanda England](#), [Maria Kroeger](#), [Meghan Jackson Tyson](#) or any attorney in Frost Brown Todd's [Financial Services](#) Industry Team.

^[1] The Federal Reserve also recently announced an expansion of the Main Street Lending Program to include two additional facilities that will be available to nonprofit organizations: the Nonprofit Organization New Loan Facility (NONLF) and the Nonprofit Organization Expanded Loan Facility (NOELF). While term sheets for the NONLF and the NOELF have been released, these two additional facilities are not yet operational.

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