Updated FAQs for Main Street Lending Program Provide Additional Clarity on a Variety of MSLP Issues

July 17, 2020

On Wednesday, July 15, the Fed released additional updates to its frequently asked questions (FAQs) for the Main Street Lending Program (MSLP) to clarify some issues. Highlights include the following:

- Explaining that, although Eligible Borrowers are permitted to use the proceeds of a MSLP loan to refinance existing debt maturing within 90 days, the borrower may only do so during the life of the MSLP loan, not at origination (unless it is a qualifying MSPLF refinancing) (FAQ G.25). (Note that Eligible Lenders and Eligible Borrowers are expected to act in good faith regarding this requirement and given the goals of the Program.) (FAQ H.3);

- Clarifying the mortgage debt exception for the MSPLF and MSELF to reflect that debt secured by real property qualifies as mortgage debt for purposes of the exception only if it is *solely* secured by real property. (Note that MSPLF loans funded or submitted to the MSLP Portal in good faith on or before July 17th that do

not reflect this clarification will not be adversely affected by this clarification.) (FAQs C.5 and D.11).

- Incorporating recent changes made by the Small Business Administration to its Ineligible Business definition concerning the Paycheck Protection Program (FAQ E.1) and otherwise clarifying the application of the Ineligible Business definition, including confirming that Eligible Lenders need not follow any special compliance procedures in verifying that a Borrower is not an Ineligible Business, but should (i) apply a standard of reasonable, good-faith diligence in determining whether a borrower's activities or ownership would cause it to be classified as an Ineligible Business and (ii) maintain compliance with any applicable regulations designed to prevent improper insider lending (FAQ E.13);
- Confirming that personal guarantees are not required under MSLP terms, although an Eligible Lender may require one as part of its own underwriting process. As with collateral providing security for a MSLP loan, any such guarantee must extend to the entire loan such that the SPV and the lender share losses pari passu (FAQ G.24);
- Noting that, with respect to interest payments charged by an Eligible Lender

after the first year of the loan, the lender may require interest payments at the frequency it would typically require payment with respect to loans made to similarly situated borrowers (e.g., quarterly or annually, but not expected ever to be more than monthly) (FAQ G.22);

- Announcing a 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 (FAQ E.2);
- Removing the "purchase by" requirement with respect to MSELF Upsized Tranches (FAQ D.4);
- Clarifying several other issues, including: The ability of Eligible Lenders to include permissible fees charged at the time of origination in the principal amount of the loan provided that the total loan amount (including such fees) may not exceed the maximum loan size for such MSLP facility (FAQ G.18),LIBOR floors, which are not permitted to be used by Eligible Lenders (FAQ G.19),Financial record requirements for businesses established in 2020 (FAQ G.20),The ability of Eligible Borrowers to use the fiscal year 2019 financial data if the borrower's fiscal year is not the 2019 calendar year (FAQ H.10),The use of proceeds under Main Street loans (FAQ

G.21),The ineligibility of sole proprietorships which are not otherwise established under law as a "Business" as defined in FAQ E.2 to qualify as Eligible Borrowers (FAQ E.14), andThe ability of Eligible Borrowers and Eligible Lenders to hedge credit and interest rate risk (FAQ G.26);

- Providing clarity on Portal information security measures (FAQ L.10); and
- Providing links to example legal documents completed for a hypothetical company (FAQ M.5).

The complete set of updated FAQs can be viewed here .