

Nonprofit, Multi-Borrower Loans and Other Updates to the Main Street Lending Program

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Who Needs to Know

Lenders and potential borrowers considering making loans or borrowing under the MSLP.

Why It Matters

In the month of September, the Federal Reserve Bank of Boston (Boston Fed) released multiple revisions to the business loans MSLP Frequently Asked Questions (FAQs) to provide practical guidance for for-profit borrowers and lenders and also officially expand the MSLP program to include multi-borrower facilities.

MSLP Facilities for For-Profit Businesses

During the month of September, the Boston Fed updated the business MSLP FAQs (released on September 18) with some additional details and clarifications. Significant changes and additions to the existing FAQs for MSLP facilities for-profit Eligible Borrowers include:

- As of September 21, the Main Street SPV now accepts loans made to multiple borrowers, but it remains very cumbersome relative to having a single borrower with other entities as guarantors. For MSLP loans made to multiple co-borrowers:
 - Each co-borrower must be a business established prior to March 13, 2020;
 - Each co-borrower must deliver a separate Borrower Certification;
 - Each co-borrower must submit its own financial information and calculated 2019-adjusted EBITDA, except if the Eligible Lender allows the co-borrowers to aggregate their financials and 2019 EBITDA;
 - Financial reporting under the Servicing Agreement for multi-borrower loans must show the borrower's consolidated financial statements; and
 - Each co-borrower must submit its own Lien and Collateral Value Report, except if the Eligible Lender allows the co-borrowers to aggregate the report.
- Regarding the prohibition against capital contributions by Eligible Borrowers and the compensation limitations under the MSLP, the updated FAQs contain the following noteworthy changes:
 - After the origination of a MSLP loan to an Eligible Borrower, a loan made by the Eligible Borrower to an equity owner of the Eligible Borrower will be presumed to be a capital distribution unless such loan is (1) bona fide and (2) repaid according to its terms, or the Eligible Borrower exercises its rights as a creditor upon default.^[1] Only loans subject to a written instrument with a stated interest rate and maturity date, terms at least as favorable for the Eligible Borrower as market terms for similar loans, a reasonable expectation of repayment and no payment deferral, enforceable under state law, and with remedies available upon default for the Eligible Borrower are considered bona fide. Any such loan made before the MSLP's origination that is forgiven or discharged (in whole or in part) or in which the Eligible Borrower does not exercise remedies will be considered a capital distribution.
 - After the origination of a MSLP loan, an Eligible Borrower's repayment of a loan made by an equity owner of

the Eligible Borrower is not considered a capital distribution if the loan is bona fide (based on the criteria above) and repaid when mandatory and due.

- An MSLP Eligible Borrower's forgiveness of all or any portion of a loan made to an equity owner of the Eligible Borrower may be considered compensation and may be subject to the restrictions on compensation imposed under the CARES Act.
- Capital distributions by an MSLP Eligible Borrower that is a pass-through entity to an equity owner of the Eligible Borrower made for the purposes of allowing the equity owner to cover its tax obligations are permissible under the MSLP, but subject to an annual reconciliation process. Such payments are reconciled with the equity owner's tax liability, and any surplus or deficiency will be deducted from or added to distributions, as applicable, in the following year.
- MSLP loan documents must be governed by the law of a U.S. state, the District of Columbia, or any U.S. territory.
- Eligible Lenders who originate MSLP loans, even when the loans may not pass regulatory scrutiny at the time of origination, will not be criticized by federal supervisors so long as the financial weaknesses of the Borrower stem from the pandemic and are expected to be temporary or if the loans are otherwise part of the Eligible Lender's prudent risk mitigation strategy for an existing borrower.

MSLP Facilities for Nonprofit Businesses

After initially announcing the nonprofit facilities under the MSLP in July, the Boston Fed officially announced on September 4 that the MSLP was fully operational for loans to nonprofit organizations.

This alert is not a substitute for reading the FAQs and other terms and conditions of the MSLP in full. We encourage readers to review the materials on the Boston Fed's website in its entirety or to contact a Troutman Pepper attorney for additional information.

[1] The FAQ does not directly address the timing issue inherent in this guidance, but we presume that a loan meeting the standards for a bona fide loan is not considered a distribution at that time. However, if the MSLP borrower as lender does not enforce its rights, then this would constitute a distribution at that time.

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