

Insights

BOSTON FED RELEASES PROGRAM DOCUMENTATION AND UPDATED FAQs FOR MAIN STREET LENDING PROGRAM

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SUMMARY

On May 27, 2020, The Federal Reserve Bank of Boston (the “**Boston Fed**”) released [documentation and additional details](#) with respect to the Federal Reserve’s Main Street Lending Program (“**MSLP**”). This release, along with recent statements made by Federal Reserve Chair Jerome Powell, Treasury Secretary Steven Mnuchin, and Boston Fed President Eric Rosengren, indicate that the program will go live in early to mid June.

The Main Street Lending Program is fully operational as of July 6, 2020. The links and some details in this post have been updated since publication. For more recent thought leadership on the program, please visit the post published on June 17, 2020.

The newly available MSLP materials include:

- **Updated FAQs:** The updated set of FAQs answer many open questions with respect to borrower eligibility (including application of affiliation rules), calculation of loan size under each facility, required certifications, covenants and restrictions associated with the program, and the mechanics of the government participation in loans. Appendix A to the FAQs includes a checklist of items that must be reflected in the loan documentation in order to qualify under the MSLP; Appendix B lists the covenants and provisions required to be incorporated into the loan documents; and Appendix C sets forth a list of financial information that Eligible Borrowers must be required to provide during the term of the loan.
- **Instructions:** The Instructions document sets out a road map for lender and borrower participation in the MSLP.
- **Lender Registration Materials and Wire Instructions:** In order to participate in MSLP, an Eligible Lender must first register by completing and submitting the documents included at this link (note that this registration need not be repeated each time an Eligible Loan is made).

- **Participation Agreement – [Transaction Specific Terms](#) and [Standard Terms and Conditions](#):**
The Eligible Lender must complete and submit the Transaction Specific Terms, which incorporate by reference the Standard Terms and Conditions. These documents contain the economic details and substantive contractual provisions of the MSLP SPV's participation in MSLP.^[1]
- **Co-Lender Agreement – [Transaction Specific Terms](#), [Standard Terms and Conditions](#), and [Assignment-in-Blank](#):** Intended for use in bilateral loan transactions, the Co-Lender Agreement is not effective at closing of the Eligible Loan but contains the terms and conditions that would become effective if the MSLP SPV becomes a direct lender pursuant to the Participation Agreement by elevating its participation interest to a loan assignment under limited circumstances, such as a payment default or a bankruptcy event. Similarly, the Assignment-in-Blank is executed, but not effective, at closing (and provides advance consent by the Eligible Lender and Eligible Borrower) and would become effective if the MSLP SPV elevates its position to a loan assignment or if it assigns its participation interest under the limited circumstances contemplated by the Participation Agreement, such as a payment default or a bankruptcy event.^[2] In a loan under the MSLP that is documented at origination as a syndicated loan, an assignment and assumption would be executed in blank at closing, but the form would be the form included as part of the underlying loan documentation.
- **[Servicing Agreement](#):** The Eligible Lender that originates the loan must complete this document, which governs its role as the servicer of an Eligible Loan.
- **[Borrower Transaction Specific Certifications and Covenants for MSNLF, MSELF, and MSPLF](#):**
The Eligible Borrower must complete, and the Eligible Lender must submit the document applicable to the facility under which the Eligible Loan is made. These forms set forth the certifications and covenants that are required for the Eligible Borrower for each category of facility.
- **[Lender Transaction Specific Certifications and Covenants for MSNLF, MSELF, and MSPLF](#):**
The Eligible Lender must complete and submit the document applicable to the facility under which the Eligible Loan is made. These forms set forth the certifications and covenants that are required for the Eligible Lender for each category of facility.

Other Loan Documents: Lenders are expected to use their own loan documentation for MSLP loans, which should be substantially similar, including with respect to required covenants, to the loan documentation that such lender uses in its ordinary course lending to similarly situated borrowers, adjusted only as appropriate to reflect the requirements of the applicable MSLP program.

For our previous alerts relating to the MSLP facilities, please visit BCLP's previously published thought leadership [here](#) and [here](#).

Like with other programs implemented by the CARES Act, BCLP is tracking these developments closely, and will continue to publish additional guidance over the coming weeks. In particular, we anticipate publishing later this week further guidance with respect to the updated FAQs and documentation described in this alert. You can also view other thought leadership, guidance, and helpful information on BCLP's dedicated COVID-19 / Coronavirus resources page at <https://www.bclplaw.com/en-GB/topics/covid-19/coronavirus-covid-19-resources.html>.

[1] A special purpose vehicle, capitalized with funds from the Treasury Department and loans from the Fed, will purchase 95% participations in Eligible Loans under MSNLF, MSPLF (up from the previously suggested 85%), and MSELF.

[2] See FAQ J.4 for the full list of the limited circumstances under which the SPV can assign its participation interest or elevate its participation interest to an assignment.

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