



TO: NAW Direct Members

FROM: NAW Government Relations Team

## 1. Federal Reserve Main Street Lending Program (MSLP)

Neither the Fed nor Treasury has released any additional information or guidance on the newly launched lending facilities. Based on what NAW and our colleagues have learned from our combined resources, it takes time for the Fed to stand up a new lending facility and additional guidance will be made available next week.

In the interim, we are working with our colleagues in the S Corp Association to address a potential problem in the new lending program for pass-through businesses. The Fed Main Street Lending Program (links to relevant documents were included in yesterday's update) requires a borrower to *"attest that it will follow compensation, stock repurchase and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act."*

The statute mandates that borrowers agree *"(II) until the date 12 months after the date on which the direct loan is no longer outstanding, not to pay dividends or make other capital distributions with respect to the common stock of the eligible business ..."*

The statute and MSLP rules almost certainly make S Corps ineligible for a loan if they distribute funds to their owners to pay taxes, as they normally do. But the CARES Act gives the Fed broad authority to write any rules they deem appropriate for the MLSP, and in fact the Fed appears to have used their discretion to leave out of their program the CARES Act requirement that a borrower remain neutral in any union organizing campaign.

Our colleagues in the S Corp Association determined that an easy remedy to this presumably unintentional glitch would be for the Fed to adjust the attestation provisions to make an exception to the prohibition on capital distributions for those distributions made solely for the purpose of paying taxes. They sent a letter to the Treasury

Secretary and Assistant Secretary for Tax Policy this afternoon urging that fix. You can read the letter here:

<https://s-corp.org/wp-content/uploads/2020/04/4-10-2020-Letter-to-Mnuchin-Kautter-1.pdf>

As we await further guidance from the Fed, you might find an analysis of the Fed's actions prepared by the Covington law firm useful. Go to:

<https://covcommunicate.com/42/3047/uploads/federal-reserve-announces-main-street-lending-program-and-other-facilities-to-provide-credit-to-businesses--states--and-municipalities-impacted-by-covid-19.pdf>

### **Other useful resources:**

The IRS has now released guidance on the Net Operating Loss provisions in the CARES Act, which you can access here:

<https://www.irs.gov/newsroom/irs-provides-guidance-under-the-cares-act-to-taxpayers-with-net-operating-losses>

In addition, the IRS has extended to July 15<sup>th</sup> the deadlines for nearly 300 tax filings and payments. You can access the IRS notice here:

<https://www.irs.gov/pub/irs-drop/n-20-23.pdf>

## **2. Update on CISA's Memorandum on Identification of Essential Critical Infrastructure Workers**

As we have previously reported, the Cybersecurity and Infrastructure Security Agency (CISA) is maintaining a *Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response*.

This CISA memorandum is meant to help state and local officials determine how to protect their communities while also ensuring the security and resiliency of critical infrastructure. Ultimately state governors and local official guidance will vary based on state and region. NAW continues to work closely with CISA to ensure that the needs of wholesaler-distributors are adequately included in this guidance to ensure the delivery of critical supplies across the nation during this pandemic.

As part of NAW's efforts working with CISA, we have been informed by our contacts at the agency that CISA is currently working on version 2.5 of the guidance as the COVID-19 responses continue to evolve. NAW has not been told when the final version of the

updated guidance will be released, but we are in active conversations with the agency to safeguard the provisions that apply to the wholesale distribution industry.

**Now Available for Purchase On Demand: "Distribution Industry: Navigating the Crisis" with Alan Beaulieu:** <https://www.naw.org/navigating-the-crisis/>

*Scroll down for links to Critical Updates sent previously.*

Many thanks—

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*The above information and links to other information has been prepared by NAW for the general information of NAW members. It is not intended to, and does not, provide tax, legal or professional advice concerning any specific matter. You should not act on the information without first obtaining professional advice and counsel.*

Critical Update Number 22 on April 9 at 12:00 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-22.pdf>

Critical Update Number 21 on April 7 at 5:00 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-21.pdf>

Critical Update Number 20 on April 6 at 4:00 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-20.pdf>

Critical Update Number 19 on April 4 at 4:00 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-19.pdf>

Critical Update Number 18 on April 3 at 5:00 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-18.pdf>

Critical Update Number 17 on April 2 at 4:30 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-17.pdf>

Critical Update Number 16 on April 1 at 4:00 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-16.pdf>

Critical Update Number 15 on March 31 at 3:30 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-15.pdf>

Critical Update Number 14 on March 30 at 4:00 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-14.pdf>

Critical Update Number 13 on March 29 at 3:45 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-13.pdf>

Critical Update Number 12 on March 29 at 12:00 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-12.pdf>

Critical Update Number 11 on March 28 at 3:30 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-11.pdf>

Critical Update Number 10 on March 27 at 3:00 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-10.pdf>

Critical Update Number 9 on March 26 at 5:30 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-9.pdf>

Critical Update Number 8 on March 26 at 10:45 AM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-8.pdf>

Critical Update Number 7 on March 25 at 6 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-7.pdf>

Critical Update Number 6 on March 25 at 1 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-6.pdf>

Critical Update Number 5 on March 24 at 3 PM:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-5.pdf>

Critical Update Number 4 on March 23:  
<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-4.pdf>

Critical Update Number 3 on March 23:

<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-3.pdf>

Critical Update Number 2 on March 21:

<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-2.pdf>

Critical Update Number 1 on March 20:

<https://www.naw.org/wp-content/uploads/2020/04/Critical-Update-1.pdf>