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Federal Reserve Expands Main Street Lending Program to Include Nonprofit Organizations as Borrowers

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The Federal Reserve 's Main Street Lending Program has recently been expanded to add two potential loan options, which will enable nonprofit organizations such as educational institutions, social service organizations and hospitals to receive financial support in addition to the previously announced programs benefiting for-profit entities. As described in a press release issued by the Federal Reserve dated July 17, 2020, the two potential loan options include (i) the Nonprofit Organization New Loan Facility ("***NONLF***"), pursuant to which nonprofit borrowers may request new single-lender loans and (ii) the Nonprofit Organization Expanded Loan Facility ("***NOELF***"), which is intended to "upsize" existing term loans or revolving credit facilities of nonprofit organizations and may also apply to lenders' interests in syndicated loan facilities. Term sheets for the NONLF and NOELF were released by the Federal Reserve (through the Federal Reserve Bank of Boston, which is implementing the program) (the "***Federal Reserve***") on July 17, 2020. Following that release, the Federal Reserve published on July 23, 2020 its initial Frequently Asked Questions document relating to those facilities (the "***Nonprofit Businesses' FAQ***").

The NONLF and NOELF are not yet operational, but the launch date is expected to be announced soon. The Federal Reserve is working to create the infrastructure, including legal documents and certifications, necessary to make the nonprofit facilities fully operational. The key terms of the NONLF and NOELF are provided below:

	Nonprofit Organization New Loan Facility (NONLF)	**Nonprofit Organization Expanded Loan Facility (NOELF)**
Borrower Customer Status:	New or existing	Upsizing of Existing Loans Only
Term	5 years	5 years
Minimum Loan Size	$250,000	$10 Million
Maximum Loan Size	Lesser of (i) $35M or (ii) Borrower's average 2019 quarterly revenue	Lesser of (i) $300M or (ii) Borrower's average 2019 quarterly revenue
Eligible Lender Risk Retention	5%	5%
Principal Repayment Schedule (years one and two deferred for all loans)	Years 3 and 4: 15% Year 5: 70%	Years 3 and 4: 15% Year 5: 70%
Interest Repayment Schedule:	Deferred for 1 year	Deferred for 1 year

Interest Rate	LIBOR + 3%	LIBOR + 3%
Fees:	Lender pays SPV 100 bps (1.0%) of the principal amount of the Loan and may pass this cost on to Borrower; AND Borrower pays Lender up to 100 bps (1.0%) of principal amount of the Loan at time of origination (Lender's discretion over whether and when to charge this fee.)	Lender pays SPV 75 bps (0.75%) of the principal amount of the Upsized Tranche and may pass this cost on to Borrower; AND Borrower pays Lender up to 75 bps (0.75%) of principal amount of the Upsized Tranche at time of upsizing (Lender's discretion over whether and when to charge this fee.)
Program Expiration Date:	December 31, 2020, pursuant to extension announced by The Federal Reserve on 7/28/20	December 31, 2020, pursuant to extension announced by the Federal Reserve on 7/28/20

The initial Nonprofit Businesses' FAQ includes the following relevant information:

1. Structure and Overview. Many business sectors have faced financial hardship in the wake of the COVID-19 pandemic, including the nonprofit sector, whose services and assistance are at a heightened demand. The Federal Reserve has resolved to expand the Main Street Lending Program to include financings to small and medium-sized nonprofit organizations that were in sound financial condition prior to the onset of the COVID-19 pandemic. The Federal Reserve has confirmed that the Main Street Lending Program would be effectuated only through eligible lenders with respect to nonprofit businesses (similar to the for-profit businesses under the program), and no direct loans from the Federal Reserve will occur. The Federal Reserve further confirms that unlike the Paycheck Protection Program ("***PPP***"), the Main Street Lending Program will not contain any form of loan forgiveness (other than reductions in interest, extensions of repayment schedules or similar relief in the event of a restructuring or workout scenario) for nonprofit business participants.

2. Borrower Eligibility: NONLF and NOELF each share the same criteria for determining an Eligible Borrower:

    a. Date of Creation. The borrower must have been in "continuous operation" since on or before January 1, 2015, meaning the organization or its predecessor has been engaged in the activities justifying its tax-exempt status on or before this date.

    b. Size of Borrower. The borrower must have 15,000 employees or fewer or have had 2019 annual revenues of $5 billion or less. At the time of origination of the NONLF loan or NOELF upsized tranche, the nonprofit organization must have at least 10 employees. When determining whether a business fits under the 15,000 employee limit or 2019 annual revenue cap of $5 billion for purposes of eligibility for the Main Street Lending Program, the affiliation rules set forth in 13 CFR 121.301(f) and used in determining eligibility under PPP will similarly apply.[1]

c. Traditional SBA Rules on Ineligible Businesses Apply. Ineligible Businesses include those businesses listed in 13 CFR 120.110(b)-(j), (m)-(s), as modified and clarified by recent SBA regulations promulgated through April 24, 2020.[2]

d. Endowment. As of the date of origination of the NONLF loan or NOELF upsized tranche, the size of the borrower's endowment must not exceed $3 billion.

e. Financial Condition.

   i. The nonprofit organization must have total non-donation revenues equal to or greater than 60% of expenses for the period from 2017 through 2019. Expenses equal total expenses minus depreciation, depletion and amortization. Sections E.15 and E.16 of the Nonprofit Businesses' FAQ provide further guidance on these calculations.

   ii. The nonprofit organization must have a ratio of adjusted 2019 EBIDA to unrestricted 2019 operating revenue greater than or equal to 2%.

   iii. The nonprofit organization must have a ratio (expressed as a number of days) of (i) liquid assets at the time of the origination of the loan or upsized tranche to (ii) average daily expenses over the previous year, equal to or greater than 60 days. "Liquid assets" is defined as unrestricted cash and investments that can be accessed and monetized within 30 days.

   iv. At the time of origination of the loan or upsized tranche, the nonprofit organization must have a ratio of (i) unrestricted cash and investments to (ii) existing outstanding and undrawn available debt, plus the amount of any loan under the Facility, plus the amount of any CMS Accelerated and Advance Payments, that is greater than 55%.

f. U.S. Based Organization. The CARES Act provides that borrowers must be created or organized in the United States or under the laws of the United States with significant operations in and a majority of their employees based in the United States. The requirements for non-profit organizations to participate in the Main Street Lending Program contain the same limitations. Section E.8 of the Nonprofit Businesses' FAQ clarifies the meaning of "significant operations in the United States" for purposes of these requirements.

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[1] According to the Federal Reserve, "the SBA affiliation exceptions in 13 CFR 121.103(b) apply to the Program" including the exception for businesses owned "in whole or substantial part" by a Small Business Investment Company (SBIC). (FAQ E.12, FN 3).

[2] *See* 85 Fed. Reg. 20811, 85 Fed. Reg. 21747, and 85 Fed. Reg. 23450. Note that Chapter 2, Section III of the SBA's Standard Operating Procedure 50 10 5(k) contains additional guidance concerning the SBA's eligibility rules. See also 85 Fed. Reg. 3617 and 85 Fed. Reg. 38301, which amends the SBA's earlier Interim Final Rule published in the Federal Register on April 15, 2020.

g. Facility Participation. The nonprofit organization may only participate in one of the Main Street Lending Program facilities (NONLF, NOELF, MSNLF, MSPLF, MSPLF, MSELF) and may not also participate in the PMCCF or the Municipal Liquidity Facility (MLF).

h. Certifications. The nonprofit organization must be able to make all of the certifications and covenants required under the program.

3. Eligible Lenders.

   a. Affiliated Lenders May Participate. According to Nonprofit Businesses' FAQ I.3, multiple affiliated entities may register as participating lenders under the Main Street Lending Program.

4. Eligible Loan Amounts.

   a. Minimum Loan Sizes. If a nonprofit borrower's maximum loan size under a facility's term sheet test is below the minimum loan size for the same facility (*i.e.*, $250,000 for NONLF loans and $10 million for NOELF upsized tranches), nonprofit borrowers may not participate in the Main Street Lending Program. (Nonprofit Businesses' FAQ G.10).

   b. Loan Calculation Methodology. For lenders who wish to lend to existing customers, 2019 EBIDA should be calculated by using the methodology previously used between such parties. If the borrower is a new customer, participating lenders should use the methodology used for similarly situated borrowers on or before June 15, 2020 (or if multiple methods have been used, the most conservative one). (Nonprofit Businesses' FAQ G.13).

5. Loan Priority and Security.

   a. NONLF Loans. An NONLF Loan, at the time of origination or at any time during its term, may not be contractually subordinated in terms of priority to the nonprofit borrower's other loans or debt instruments. However, (i) with respect to collateral, such loan may be in a second lien position; (ii) such loan may be an unsecured loan regardless of the term or secured or unsecured status of the borrower's existing indebtedness; and (iii) such loan won't prevent the nonprofit borrower from taking on new secured or unsecured debt, provided such debt won't have higher contractual priority in bankruptcy than the NONLF loan. (Nonprofit Businesses' FAQ B.3).

   b. NOELF Loans.

      i. *Priority*. NOELF upsized tranches must be senior to, or pari passu with, in terms of priority and security, the nonprofit borrower's other Loans or Debt Instruments, other than Mortgage Debt.

      ii. *Security*. The NOELF upsized tranche must be secured if, at the time of origination, the nonprofit borrower has any other secured Loans or Debt Instruments (other than Mortgage Debt). The NOELF upsized tranche must be secured by the collateral (including, if applicable, any Mortgage Debt) securing any other tranche of the underlying credit facility on a pari passu basis. Lenders and nonprofit borrowers may add new collateral to secure the loan (including the NOELF upsized tranche on a pari passu basis) at the time of upsizing. If the underlying credit facility includes both term loan tranche(s) and revolver tranche(s), the NOELF upsized tranche needs to share collateral on a pari passu basis with the term loan tranche(s) only. (Nonprofit Businesses' FAQ D.11).

6. Use of Loan Amounts.

    a. Permitted Debt Repayments. While the Main Street Lending program's debt repayment covenants generally prohibit a nonprofit borrower from repaying the principal balance of, or paying any interest on, any other debt until the loan under the Main Street Lending Program is repaid in full, nonprofit borrowers may make principal or interest payments that are "mandatory and due." (Nonprofit Businesses' FAQ H.3).

        i. With respect to debt that predates a loan under the Main Street Lending program, principal and interest payments are considered "mandatory and due": (A) on the future date upon which they were scheduled to be paid prior to the date of origination of the Main Street loan, or (B) upon the occurrence of an event that automatically triggers mandatory prepayments under a contract existing prior to the date of origination of the Main Street loan. (Nonprofit Businesses' FAQ H.7).[3]

        ii. For future debt incurred by the borrower in compliance with the terms and conditions of the loan, principal and interest payments are "mandatory and due" on their scheduled dates or upon a mandatory prepayment trigger (so long as the requirements regarding debt payment covenants, including with respect to lines of credit, are followed). (Nonprofit Businesses' FAQ H.7).

Given the fast pace of developments, non-profit organizations and lenders are encouraged to seek advice from qualified legal counsel before participating in the Main Street Lending program.

For more information, please see Haynes and Boone's prior alert summarizing the Main Street Lending Program (updated June 8, 2020), along with the following resources:

Main Street Lending Resources from the Federal Reserve.

1. General Resources.
    a. FAQ Document (updated July 15, 2020)
    b. Loan Document Checklist (see Appendix A) (released July 15, 2020)
    c. Instructions for Lender Required Documentation (issued on July 8, 2020)
2. Main Street New Loan Facility Guidance.
    a. MSNLF Term Sheet (released June 8, 2020)
    b. MSNLF Lender Certifications and Covenants (issued June 11, 2020)
    c. MSNLF Borrower Certifications and Covenants (issued June 11, 2020)

[3] Note that prepayments triggered by the incurrence of new debt can only be made if such prepayments are *de minimis*.

3. Main Street Priority Loan Facility Resources.
    a. MSPLF Term Sheet (released June 8, 2020)
    b. MSPLF Lender Certifications and Covenants (issued June 11, 2020)
    c. MSPLF Borrower Certifications and Covenants (issued June 11, 2020)
4. Main Street Expanded Loan Facility Resources.
    a. MSELF Term Sheet (released June 8, 2020)
    b. MSELF Lender Certifications and Covenants (issued June 11, 2020)
    c. MSELF Borrower Certifications and Covenants (issued June 11, 2020)
5. Nonprofit Organization New Loan Facility
    a. NONLF Term Sheet (released July 17, 2020)
6. Nonprofit Organization Expanded Loan Facility
    a. NOELF Term Sheet (released July 17, 2020)
7. Lender Documents.
    a. Lender Registration Certifications and Covenants, to be submitted by the lender at the time of its registration with the Main Street SPV (released May 27, 2020).
    b. Lender Wire Instructions, to be submitted by the lender in connection with providing the Main Street SPV with wire instructions for transfers of loan purchase amounts, servicing fees, and other payments related to MSNLF, MSPLF, or MSELF transactions (released May 27, 2020).
8. Loan Participation and Co-Lender Documents.
    a. Loan Participation Agreement – Transaction-Specific Terms, to be submitted by participating lenders in order to effect the sale of a loan participation to the Main Street SPV (issued June 11, 2020).
        i. Standard Terms and Conditions applicable to Loan Participation Agreement, applies to all Main Street loan participations (issued June 11, 2020).
    b. Servicing Agreement, to be submitted by participating lenders at the time a loan participation is sold to the Main Street SPV (released May 27, 2020).
    c. Form of Assignment-in-Blank, to be executed by both the participating lenders and borrowers, and intended to be used by the Main Street SPV to elevate its participation to co-lender status or to elevate and transfer its participation in limited circumstances (released June 11, 2020).[4]
    d. Co-Lender Agreement – Transaction-Specific Terms, to be submitted by borrowers and lenders, and intended to be used to set forth the intercreditor arrangements for the Main Street SPV and the participating lender (released June 11, 2020).

[4] Note that for existing multi-lender facilities in respect of which MSELF loans are to be made, the form assignment-in-blank that must be submitted to the Main Street SPV is not the form provided here. Such form would come from the documentation for the existing multi-lender facility.

i. Standard Terms and Conditions applicable to Co-Lender Agreement, applicable to Co-Lender Agreement (released June 11, 2020).

Prior Haynes and Boone Guidance on the SBA Paycheck Protection Program.

1. Bridging the Gap - An Overview of SBA Loans under the Paycheck Protection Program (updated May 7, 2020)
2. Could Retention of PPP Loan Funds Create False Claims Act Liability? (updated May 6, 2020)
3. CARES Act Relief Checklist: Considerations in Deciding What Relief is Right for Your Business (April 6, 2020)
4. Relief for Employers and Workers under the CARES Act (updated March 29, 2020)
5. Full List of Haynes and Boone Alerts on PPP.

Resources on the SBA EIDL Program.

1. Looking for an Alternative to PPP? Taking a Second Look at the Economic Injury Disaster Loan Program (Haynes and Boone Alert, May 1, 2020).
2. SBA's COVID-19 Disaster Loan Program (Haynes and Boone Alert, March 24, 2020)
3. SBA EIDL Resource Page

Additional Questions? Contact a member of the Haynes and Boone Finance or Corporate Practice Groups at Haynes and Boone, including the following individuals:

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