

COVID-19 – The Main Street Lending Program: Federal Reserve Proposes Expansion to Non-Profit Organizations

June 30, 2020

The Main Street Lending Program (the “Program”) is a financial assistance program established by the Federal Reserve System to support small and medium-sized businesses affected by the COVID-19 pandemic. The Program authorizes eligible lenders to originate up to \$600 billion in eligible loans through three separate facilities - the Main Street New Loan Facility (the “New Facility”), the Main Street Priority Loan Facility (the “Priority Facility”), and the Main Street Expanded Loan Facility (the “Expanded Facility”). A special purpose vehicle (“SPV”) formed by the Federal Reserve will purchase 95% participations in these loans. Please consult our previous Client Alerts on the [April 30th Program Guidance](#), [May 27th Program Guidance](#) and [June 8th-11th Program Guidance](#) for additional details on the Program terms previously announced.

On June 15th, the Federal Reserve announced a proposal to expand the Program to small and medium-sized nonprofits that were in sound financial condition before the COVID-19 pandemic. Two loan options were proposed – a nonprofit new loan facility and a nonprofit expanded loan facility. Under the proposed terms sheets, these nonprofit facilities would differ from their corresponding for-profit Main Street facilities as follows:

FEATURE	NONPROFIT NEW LOANS	NONPROFIT EXPANDED LOANS
LOAN TERMS		
Origination Date	On or after June 15, 2020	Upsizing on or after June 15, 2020 of a loan made before June 15, 2020 and that has a remaining maturity of at least 18 months (includes any extensions pursuant to the upsizing).
Maximum Loan Size	The lesser of \$35M, or borrower's average 2019 quarterly revenue.	The lesser of \$300M, or borrower's average 2019 quarterly revenue.
ELIGIBILITY REQUIREMENTS		
Nonprofit Organization	Must be a tax-exempt organization described in sections 501(c)(3) or 501(c)(19) of the Internal Revenue Code. Other forms of organization may be considered for inclusion at the discretion of the Federal Reserve.	
Years in Operation	Must have been established prior to January 1, 2015, and have been in continuous operation since that time.	
Minimum Employees	Must have at least 50 employees.	
Revenue Source	Must have less than 30% of its 2019 Revenues sourced from donations. ¹	
Endowment Cap	Must have a maximum of \$3 billion in endowments.	

¹ “Donations” include proceeds from fundraising events, federated campaigns, gifts, and funds from similar sources.

FEATURE	NONPROFIT NEW LOANS	NONPROFIT EXPANDED LOANS
Financial Ratios	<p>Must satisfy each of the following financial ratios:</p> <ul style="list-style-type: none"> • Ratio of (i) adjusted 2019 earnings before interest, depreciation, and amortization (“<u>EBIDA</u>”)² to (ii) unrestricted 2019 operating revenue³ - must be at least 5%. • Ratio (expressed as a number of days) of (i) liquid assets⁴ at the time of loan origination to (ii) average daily expenses over the previous year - must be at least 90 days. • Ratio of (i) unrestricted cash and investments to (ii) the sum of (a) existing outstanding and undrawn available debt, plus (b) the amount of any Main Street loans, plus (c) the amount of any Centers for Medicare & Medicaid Services (“<u>CMS</u>”) Accelerated and Advance Payments⁵ - must be greater than 65% at the time of the Main Street loan origination. 	

The other nonprofit facility terms appear to generally be identical to those applicable to the corresponding for-profit Main Street facility.⁶

***Observation:** The Priority Facility is the only Program option which allows a for-profit business to refinance existing debt. There is no proposed priority loan facility for non-profit borrowers, and it appears that they would not be permitted to use a Main Street loan to refinance existing debt.*

The public comment period ended on June 22nd and the Federal Reserve is expected to issue a final proposal based on the feedback in the near future.

² In calculating adjusted 2019 EBIDA, the lender must use the same methodology it previously used for adjusting EBIDA when extending credit to the borrower or similarly situated borrowers on or before June 15, 2020.

³ The lender should calculate operating revenue as unrestricted operating revenue, excluding funds committed to be spent on capital, and including a proxy for endowment income in place of unrestricted investment gains or losses. The methodology used by the lender to calculate the proxy for endowment income must be the methodology it used for the borrower or similarly situated borrowers on or before June 15, 2020.

⁴ For purposes of this requirement, “liquid assets” is defined as unrestricted cash and investments that can be accessed and monetized within 30 days.

⁵ The CMS Accelerated and Advance Payments Program is a loan program designed to increase cash flow to Medicare providers and suppliers, and was temporarily expanded in response to the COVID-19 pandemic.

⁶ This includes, among other things, the terms regarding: (i) minimum loan size; (ii) loan amortization, payment deferrals, prepayments, maturity and interest rate; (iii) lender retention of a 5% participation; (iv) loan priority and security requirements; (v) borrower size requirements (i.e., must have either less than 15,000 employees or less than \$5 billion in 2019 revenues); (vi) borrower U.S. business requirements; (vii) borrower financial condition and solvency requirements; (viii) the restrictions on borrower participation in other Main Street facilities and CARES Act programs; (ix) the borrower conflicts of interest prohibitions under section 4019(b) of the CARES Act; (x) the required lender and borrower certifications and covenants (including restrictions on payment of other debt and cancelling or reducing lines of credit and the CARES Act restrictions on dividends, stock repurchases and compensation); (xi) the reasonable efforts that the borrower should make to maintain its payroll and retain its employees; (xii) lender eligibility requirements; and (xiii) Program fees.

The terms of the Loan Facilities are subject to further rulemaking and guidance from the Federal Reserve System and the Federal Reserve Bank of Boston. We will continue to monitor developments and provide additional details as they become available. In the meantime, please feel free to contact us if you have any questions about the Program.

CONTACT

Please do not hesitate to contact your Windels Marx relationship lawyer or a member of our [Financial Transactions Practice Group](#) with any questions or comments.

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