

July 22, 2020

Main Street Lending Program Now Provides Opportunities for Nonprofits



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Litigation

Nearly three months after its initial announcement, on June 15, 2020, the Federal Reserve launched its Main Street Lending Program (MSLP), offering additional support for small and mid-size businesses struggling as a result of the COVID-19 pandemic. On Friday, July 17, 2020, the Fed modified the MSLP to provide loan facilities for non-profit organizations, such as educational institutions, hospitals, and social services organizations. Until now, only businesses that were organized for-profit were eligible for the MSLP.

Nonprofits will be eligible for two loan options: the Nonprofit Organization New Loan Facility (NONLF) and the Nonprofit Organization Expanded Loan Facility (NOELF). Though terms sheets are now available for the NONLF and the NOELF, these facilities are not yet operational but are expected to launch soon.

The terms of the MSLP nonprofit loans generally mirror the loans benefitting for-profit businesses:

- Adjustable interest rate of LIBOR (1 or 3 months) plus 300 basis points;
- Principal and interest payment deferral;
- Five-year term; and
- No prepayment penalty.

Eligible borrowers for the NONLF and NOELF must be a U.S., tax-exempt nonprofit organization described in Section 501(c)(3) or Section 501(c)(19) of the Internal Revenue Code of 1986, as amended, that has not participated in or received specific support pursuant to the CARES Act, and meets the following criteria:

1. has been in continuous operation since January 1, 2015;
2. is not one of the ineligible businesses listed in 13 C.F.R. 120.110(b)-(j) and (m)-(s), as modified by the regulations implementing the Paycheck Protection Program;
3. has 15,000 employees or fewer **or** had 2019 annual revenues of \$5 billion or less;
4. has at least 10 employees;
5. has an endowment of less than \$3 billion;
6. has total non-donation revenues equal to or greater than 60% of expenses for the period from 2017 through 2019;
7. has a ratio of adjusted 2019 EBIDA to unrestricted 2019 operating revenue greater than or equal to 2%;
8. has a ratio (expressed as a number of days) of (i) liquid assets at the time of loan origination to (ii) average daily expenses over the previous year, equal to or greater than 60 days;

9. at the time of loan origination, has a ratio of (i) unrestricted cash and investments to (ii) existing outstanding and undrawn available debt, plus the amount of any loan under a MSLP facility, plus the amount of any CMS Accelerated and Advance Payments, that is greater than 55%;
10. is created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States;
11. does not also participate in the NOELF, the MSNLF, the MSPLF, the MSELF, the Primary Market Corporate Credit Facility, or the Municipal Liquidity Facility; and
12. has not received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act).

Like other MSLP loans, principal payments are deferred during the first two years and interest payments are deferred during the first year. Principal payments will be amortized such that 15% will be due at the end of each of the third and fourth years of the loan, with a balloon payment of 70% due at maturity at the end of the fifth year.

Loans issued under NONLF will range in size from \$250,000 to the lesser of \$35 million or the borrower's average 2019 quarterly revenue and may not be contractually subordinate to any of the borrower's other loans and debt instruments, in terms of priority. Borrowers can increase existing debt under NOELF by borrowing an additional \$10 million to the lesser of \$300 million or the borrower's average 2019 quarterly revenue. The upsized tranche must at all times be senior to or pari passu with all of the borrower's other loans and debt instruments (other than mortgage debt) in terms of both priority and security.

As with other MSLP loans, non-profit borrowers will be required to make certain certifications and covenants:

- borrower must commit not to prepay other debt before the MSLP loan is repaid in full, the absence of a conflict of interest,
- the borrower must certify that it has a reasonable basis to believe that it will be able to meet its financial obligations for at least the next 90 days after the loan origination and does not expect to file for bankruptcy during that time period.
- Borrower must commit that it will not seek to cancel or reduce any of its committed lines of credit with the MSLP Eligible Lender or any other lender; and
- borrower must commit 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.

Unlike loans under the Paycheck Protection Program, none of the loans are eligible for forgiveness but there is no requirement that funds received from a MSLP loan be used only for payroll, mortgage interest, rent, and utilities. While borrowers should make commercially reasonable efforts to maintain payroll and retain employees, borrowers that have already reduced their workforce will not be barred from participating in the program for that reason.

If you have any questions or want to discuss these matters further, please don't hesitate to contact the Gould & Ratner attorney with whom you work regularly, or any of the lawyers in our [Coronavirus/COVID19 Resources Team](#).