



Alerts

Main Street Lending Program Expanded for Nonprofit Organizations

July 29, 2020
Hinshaw Alert

The Main Street Lending Program has been modified by the Federal Reserve Board (Board) to provide new access to credit for nonprofit organizations such as educational institutions, hospitals, and social service organizations.

The Board approved two new loan options to provide support to a broad set of nonprofit organizations that were in sound financial condition prior to the pandemic through a special purpose vehicle (SPV) established by the Federal Reserve Bank of Boston (Reserve Bank). To qualify, an organization must be a tax-exempt organization as described in Section 501(c)(3) or 501(c)(19) of the Internal Revenue Code (IRC).

The two new loan options generally mirror those for Main Street for-profit business loans, including the interest rate, principal and interest payment deferral, five-year term, and minimum and maximum loan sizes. We analyzed the for-profit programs in client alerts on [May 8, 2020](#) and [June 15, 2020](#).

The following table summarizes the terms applicable to both loan options.

Forms and other documents to support loan under the Nonprofit Facilities are being developed and will be posted to the [Reserve Bank's website](#) when available. The Reserve Bank has also addressed a number of [FAQs](#) about the Facilities for nonprofit organizations.

Common Features of the Nonprofit Organization Expanded Loan Facility and New Loan Facility

Under the Nonprofit Organization Expanded Loan Facility (Expanded Facility) and the Nonprofit Organization New Loan Facility (New Facility), the Federal Reserve will commit to lend to a single SPV on a recourse basis. The SPV will purchase 95% participations in the New Facility Loans and the upsized tranche of Expanded Facility Loans from Eligible Lenders. Eligible Lenders will retain 5% of the upsized tranche of each Expanded Facility Eligible Loan or the principal amount of each New Facility Eligible Loan.

For purposes of either Facility, a Nonprofit Organization is a tax-exempt nonprofit organization as described in Section 501(c)(3) of the IRC, or a tax-exempt veterans' organization as described in Section 501(c)(19) of the IRC.

Attorneys

Timothy M. Sullivan

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The Board may allow other forms of organization to participate as a Nonprofit Organization.

Under Section 501(c)(3) of the IRC, public hospitals, as well as public colleges and universities, may not be recognized as tax-exempt organizations. They may, however, qualify as tax-exempt under another provision of the IRC. Additionally, such institutions may be considered an organization under Section 501(c)(3) of the IRC, and thus be recognized as "Nonprofit Organizations" for purposes of the New Facility and the Expanded Facility Programs. The organization must reasonably determine—in a written record maintained by the organization—that it is an organization under Section 501(c)(3) of the IRC.

Eligible Lenders

An Eligible Lender is a U.S. federally insured depository institution—including a bank, savings association, or credit union; U.S. branch or agency of a foreign bank; U.S. bank holding company; U.S. savings and loan holding company; U.S. intermediate holding company of a foreign banking organization; or a U.S. subsidiary of any of the foregoing.

Eligible Borrowers

An Eligible Borrower is a Nonprofit Organization that:

1. has been in continuous operation since January 1, 2015;
2. is not an [Ineligible Business](#);
3. meets at least one of the following two conditions:
 1. has 15,000 employees or fewer, or
 2. had annual revenues of \$5 billion or less in 2019 (both as determined as described below);
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 earnings before interest, depreciation, and amortization (EBIDA, as calculated as described below) 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 the origination of the New Facility Loan or the upsized tranche of the Expanded Facility Loan to (ii) average daily expenses over the previous year, equal to or greater than 60 days;
9. at the time of the origination of the New Facility Loan or the upsized tranche of the Expanded Facility Loan, has 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 Centers for Medicare and Medicaid Services Accelerated and Advance Payments, that is greater than 55%;
10. is created or organized in the U.S. or under the laws of the U.S., with significant operations in, and a majority of its employees based in, the U.S.;
11. does not also participate in any other Main Street Lending Program, 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).

An Ineligible Business is a type of business listed in the SBA's regulations (13 CFR 120.110(b)-(j) and (m)-(s)), as modified by regulations implementing the Paycheck Protection Program (PPP) established by Section 1102 of the CARES Act on or before April 24, 2020. An Eligible Lender may rely on the borrowers representation that it is an Eligible Business. The application of these restrictions to either Facility may be further modified at the discretion of the Board.

As was [noted above](#), to be an Eligible Borrower, a Nonprofit Organization must meet at least one of the following two conditions:



1. the Nonprofit Organization has 15,000 employees or fewer, or
2. the Nonprofit Organization has 2019 annual revenues of \$5 billion or less.

To determine how many employees a Nonprofit Organization has, it should follow the framework set out in the SBA's regulations (13 CFR 121.106). All full-time, part-time, seasonal, or otherwise employed persons—excluding volunteers and independent contractors—should be counted as employees. Student workers participating in a Federal Work Study Program must be excluded, on the same basis as, and subject to the same conditions and requirements of, the SBA's regulations. The borrower should count its employees and those employed by its affiliates. They should use the average of the total number of persons employed by the borrower and its affiliates for each pay period over the 12 months prior to the origination of the New Facility Loan or the upsizing of the Expanded Facility Loan.

To determine its 2019 annual revenues, a borrower must aggregate its revenues with those of its affiliates and may use one of the following methods to calculate 2019 annual revenues:

1. It may use its (and its affiliates') annual "revenue" per its 2019 U.S. GAAP audited financial statements;
2. It may use its (and its affiliates') annual receipts for the fiscal year 2019, as reported to the IRS. For purposes of the Program, the term "receipts" has the same meaning used by the SBA in (13 CFR 121.104(a)); or
3. If potential borrower (or its affiliate) does not yet have audited financial statements or annual receipts for 2019, the borrower (or its affiliate) should use its most recent audited financial statements or annual receipts.

For purposes of [item six](#) above, the following definitions apply:

- "non-donation revenues" equal gross revenues minus donations;
- "donations" include proceeds from fundraising events, federated campaigns, gifts, donor-advised funds, and funds from similar sources, but exclude:
 - government grants;
 - revenues from a supporting organization;
 - grants from private foundations that are disbursed over the course of more than one calendar year; and
 - any contributions of property other than money, stocks, bonds, and other securities (noncash contributions), provided such noncash contribution is not sold by the organization in a transaction unrelated to the organization's tax exempt purpose; and
- "expenses" equal total expenses minus depreciation, depletion, and amortization.

When calculating adjusted 2019 EBIDA (see [item seven](#) above), an Eligible Lender must use the methodology it has previously used for adjusted EBIDA when extending credit to the Eligible Borrower or similarly situated borrowers on or before June 15, 2020.

The Eligible Lender should calculate operating revenue (see [item seven](#) above) 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 Eligible Lender to calculate the proxy for endowment income must be the methodology it has used for the Eligible Borrower—or similarly situated borrowers—on or before June 15, 2020.

For purposes of [item eight](#) above, "liquid assets" are defined as unrestricted cash and investments that can be accessed and monetized within 30 days. Liquid assets may also include the amount of cash receipts an organization reasonably estimates to receive within 60 days related to the provision of services, facilities, or products, or any other program service that exceed its reasonably estimated cash outflows payable within the same 60 day period.

The phrase "existing outstanding and undrawn available debt" (see [item nine](#) above) refers to all amounts borrowed under any loan facility, including unsecured or secured loans from any bank, non-bank financial institution or private lender, as well as any publicly issued bonds or private placement facilities. It also includes all unused commitments under any loan facility excluding any undrawn commitment that:



- serves as a backup line for commercial paper issuance;
- is used to finance receivables—including seasonal financing of inventory;
- cannot be drawn without additional collateral; and
- is no longer available due to change in circumstance.

Any existing outstanding and undrawn available debt should be calculated as of the date of the loan application.

Nonprofit Organizations that have received PPP loans are permitted to borrow under either Facility, provided that they are Eligible Borrowers. However, when calculating outstanding debt (see [item nine](#) above), the portion of any outstanding PPP loan that has not yet been forgiven is counted as outstanding debt for the purposes of determining the maximum New Facility or Expanded Facility loan size.

Retaining Employees

An Eligible Borrower should undertake good-faith efforts to maintain payroll and retain employees, in light of its capacities, the economic environment, its available resources, and the need for labor. Borrowers that have already laid off or furloughed workers as result of the disruptions from COVID-19 are eligible to apply for New Facility or Expanded Facility Loans.

Loan Classification

The underlying loan from an upsized tranche of an Expanded Facility Loan must have had an internal risk rating equivalent to a "pass" in the Federal Financial Institutions Examination Council's (FFIEC) supervisory rating system as of December 31, 2019.

For a New Facility loan, if the Eligible Borrower had other loans outstanding with the Eligible Lender as of December 31, 2019, such loans must have had an internal risk rating equivalent to a "pass" in the FFIEC's supervisory rating system on that date.

Assessment of Financial Condition

Eligible Lenders must conduct an assessment of each potential borrower's financial condition at the time of the borrower's application. In processing an application, Eligible Lenders are expected to:

- conduct an assessment of each potential borrower's financial condition at the time the borrower submits the application; and
- when evaluating the financial condition and creditworthiness of a borrower, to apply their own underwriting standards.

An Eligible Lender may require additional information and documentation in making this evaluation.

The decision as to whether an Eligible Borrower should receive an Eligible Loan in light of these considerations is solely up to the Eligible Lender. Consequently, organizations that otherwise meet the Eligible Borrower requirements may not be approved for a loan, or may not receive the maximum allowable amount.

Facility Termination

Unless the Board and the Department of the Treasury extend the Facility, the SPV will cease purchasing participations in Eligible Loans on December 31, 2020. The Reserve Bank will continue to fund the SPV after such date, until the SPV's underlying assets mature or are sold.



Compliance with Section 4003(c)(3)(A)(ii) of the CARES Act

Under the New Facility and the Expanded Facility, an Eligible Borrower must comply with Section 4003 (c)(3)(A)(ii) of the CARES Act. Two of the three restrictions outlined below address repurchases of a borrower's stock and the payment of dividends and capital distributions. Notably, it is unlikely that these provisions will apply to a Nonprofit Organization but they are included below.

This Section of the CARES Act requires an Eligible Borrower to agree that:

- Until the date 12 months after the date on which the Eligible Loan is no longer outstanding, it will not repurchase an equity security that is listed on a national securities exchange of the Eligible Borrower—or any parent company of the Eligible Borrower—while the Eligible Loan is outstanding, except to the extent required under a contractual obligation that is in effect as of the date of enactment of CARES Act.
- Until the date 12 months after the date on which the Eligible Loan is no longer outstanding, it will not pay dividends or make other capital distributions with respect to the common stock of the Eligible Borrower, subject to distributions to an S corporation or another pass-through entity.
- It will comply with the limitations on compensation set forth in Section 4004 of the CARES Act.

Section 4004 of the CARES Act provides that an Eligible Borrower must agree that:

- Until the date 12 months after the date in which the Eligible Loan is no longer outstanding, no officer or employee of the Eligible Borrower whose total compensation exceeded \$425,000 in 2019—other than an employee whose compensation is determined through an existing collective bargaining agreement entered into before March 1, 2020—will receive from the Eligible Borrower:
 - total compensation, which exceeds during any 12 consecutive months of such period the total compensation received such officer or employee from the Eligible Borrower in 2019; or
 - severance pay or other benefits upon termination of employment with the Eligible Borrower which exceeds twice the maximum total compensation received by the officer or employee from the Eligible Borrower in
- Until the date 12 months after the date in which the Eligible Loan is no longer outstanding, no officer or employee of the Eligible Borrower whose total compensation exceeded \$3,000,000 in 2019 may receive during any 12 consecutive months of such period total compensation in excess of the sum of:
 - \$3,000,000; and
 - 50% of the excess over \$3,000,000 of the total compensation received by the officer or employee from the Eligible Borrower in 2019.

The term "total compensation" includes salary, bonuses, awards of stock, and other financial benefits provided by an Eligible Borrower to an officer or employee of the Eligible Borrower.

Compliance with Section 4019(b) of the CARES Act

Each Eligible Borrower and Eligible Lender must comply with the conflicts of interest provisions of Section 4019(b) of the CARES Act. This requires the principal executive officer and principal financial officer of an Eligible Borrower or an Eligible Lender to certify that it is not a Covered Entity when entering into a transaction described in Section 4003 of the CARES Act.

A "Covered Entity" is an entity in which a Covered Individual directly or indirectly holds a Controlling Interest. For the purpose of determining whether an entity is a Covered Entity, the securities owned, controlled, or held by two or more individuals who are related (as described in the second bullet point of the definition of a Covered Individual) shall be aggregated.

A "Covered Individual" is:



- The President, Vice President, head of an Executive department, or a Member of Congress; and
- The spouse, child, son-in-law, or daughter-in-law, as determined under applicable common law, of an individual described above.

The term "Controlling Interest" means owning, controlling, or holding not less than 20%, by vote or value, of the outstanding amount of any class of equity interest in an entity.

The term "equity interest" means:

- A share in an entity, without regard to whether the share is:
 - transferable; or
 - classified as stock or anything
- A capital or profit interest in a limited liability company or partnership; or
- warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share or interest described in either of the two preceding bullet points.

Nonprofit Organization Expanded Facility Loans

In addition to the criteria set forth in the common features discussed above, an Expanded Facility Loan must also comply with the items outlined below.

Eligible Expanded Facility Loan

An Eligible Expanded Facility Loan is a secured or unsecured term loan or revolving credit facility made by an Eligible Lender(s) to an Eligible Borrower that originated on or before June 15, 2020, and that has a remaining maturity of at least 18 months—taking into account any adjustments made to the maturity of the loan after June 15, 2020, including at the time of upsizing—provided that the upsized tranche of the loan is a term loan that has all of the following features:

1. 5 year maturity;
2. principal payments deferred for two years and interest payments deferred for one year (unpaid interest will be capitalized);
3. principal amortization of 15% at the end of the third year, 15% at the end of the fourth year, and a balloon payment of 70% at maturity at the end of the fifth year;
4. adjustable rate of LIBOR (1 or 3 months) + 300 basis points (LIBOR floors are not permitted);
5. minimum loan size of \$10 million;
6. maximum loan size that is the lesser of (i) \$300 million or (ii) the Eligible Borrower's average 2019 quarterly revenue;
7. at the time of upsizing and at all times the upsized tranche is outstanding, the upsized tranche is senior to or *pari passu* with, in terms of priority and security, the Eligible Borrower's other loans or debt instruments, other than mortgage debt; and
8. prepayment permitted without penalty.

Loan Participations

The SPV will purchase at par value a 95% participation in the upsized tranche of the Eligible Loan, provided that it is upsized on or after June 15, 2020. The SPV and the Eligible Lender will share risk in the upsized tranche on a *pari passu* basis.

The Eligible Lender must be one of the lenders that holds an interest in the underlying Eligible Loan at the date of upsizing. Additionally, the Eligible Lender must retain its 5% portion of the upsized tranche until the upsized tranche matures or the SPV sells all of its 95% participation, whichever comes first. Further, the Eligible Lender must also retain its interest in the underlying Eligible Loan until the underlying Eligible Loan matures, the upsized tranche matures, or the SPV



sells all of its 95% participation, whichever comes first.

Any collateral securing the Eligible Loan—at the time of upsizing or on any subsequent date—must secure the upsized tranche on a *pro rata* basis. The sale of a participation in the upsized tranche of the Eligible Loan to the SPV will be structured as a "true sale" and must be completed expeditiously after the Eligible Loan's upsizing.

Transaction Fee

An Eligible Lender will pay a transaction fee of 75 basis points of the principal amount of the upsized tranche of the Eligible Loan to the SPV at the time of upsizing. The Eligible Lender may require the Eligible Borrower to pay this fee.

Loan Upsizing and Servicing Fees

An Eligible Borrower will pay an origination fee of up to 75 basis points of the principal amount of the upsized tranche of the Eligible Loan to the Eligible Lender at the time of upsizing.

Eligible Lenders may not charge Eligible Borrowers any additional fees, except *de minimis* fees for services that are customary and necessary in the Eligible Lender's underwriting of loans to similar borrowers, such as appraisal and legal fees. Eligible Lenders may also charge customary consent fees if such fees are necessary to amend existing loan documentation in the context of upsizing a loan in connection with an Expanded Facility Loan. Eligible Lenders should not charge servicing fees to Eligible Borrowers.

The SPV will pay to an Eligible Lender an annual servicing fee of 25 basis points of the principal amount of its participation in the upsized tranche of the Eligible Loan each year.

Required Lender Certifications and Covenants

In addition to other certifications required by applicable statutes and regulations, an Eligible Lender must:

- Commit that it will not request that the Eligible Borrower repay debt extended by the Eligible Lender to the Eligible Borrower, or pay interest on such outstanding obligations, until the upsized tranche of the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration.
- Commit that it will not cancel or reduce any existing committed lines of credit to the Eligible Borrower, except in the event of a default.
- Certify that the methodology used for calculating the Eligible Borrower's adjusted 2019 EBIDA and operating revenue in [item seven](#) of the Eligible Borrower requirements is the methodology it has previously used for adjusting EBIDA when originating or amending the Eligible Loan on or before June 15, 2020—except with respect to the [EBIDA methodology instructions](#) discussed above.
- Certify that it is eligible to participate in the Facility, including adherence to the conflicts of interest prohibition in Section 4019(b) of the CARES Act.

Required Borrower Certifications and Covenants

In addition to other certifications required by applicable statutes and regulations, an Eligible Borrower must:

- Commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the upsized tranche of the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due.
- Commit that it will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender.
- Certify that it has a reasonable basis to believe that as of the date of upsizing of the Eligible Loan—and after giving effect to such upsizing—it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period.



- 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.
- Certify that it is eligible to participate in the Facility, including adherence to the conflicts of interest prohibition in Section 4019(b) of the CARES Act.

The Eligible Lender should collect these certifications from the Eligible Borrower at the time of the upsizing of the Eligible Loan. Eligible Lenders may rely on an Eligible Borrower's certifications, as well as any subsequent self-reporting by the Eligible Borrower.

Nonprofit Organization New Loan Facility

In addition to the criteria set forth in the common features explored above, a New Facility Loan must also comply with the items addressed below.

Eligible New Facility Loans

An Eligible New Facility Loan is a secured or unsecured term loan made by an Eligible Lender(s) to an Eligible Borrower that originated after June 15, 2020, provided that the loan has all the following features:

1. 5 year maturity;
2. principal payments deferred for two years and interest payments deferred for one year (unpaid interest will be capitalized);
3. principal amortization of 15% at the end of the third year, 15% at the end of the fourth year, and a balloon payment of 70% at maturity at the end of the fifth year;
4. adjustable rate of LIBOR (1 or 3 months) + 300 basis points (LIBOR floors are not permitted);
5. minimum loan size of \$250,000;
6. maximum loan size that is the lesser of (i) \$35 million or (ii) the Eligible Borrower's average 2019 quarterly revenue;
7. is not, at the time of origination or at any time during the term of the Eligible Loan, contractually subordinated in terms of priority to any of the Eligible Borrower's other loans or debt instruments; and
8. prepayment permitted without penalty.

Loan Participations

The SPV will purchase at par value a 95% participation in the Eligible Loan. Additionally, the SPV and the Eligible Lender will share risk in the Eligible Loan on a *pari passu* basis. The Eligible Lender must retain its 5% until the Eligible Loan matures or the SPV sells all of its participation, whichever comes first.

The sale of a participation in the Eligible Loan to the SPV will be structured as a "true sale" and must be completed expeditiously after the Eligible Loan's origination.

Transaction Fee

An Eligible Lender will pay a transaction fee of 100 basis points of the principal amount of the Eligible Loan to the SPV at the time of origination. The Eligible Lender may require the Eligible Borrower to pay this fee.

Loan Origination and Servicing Fees

An Eligible Borrower will pay an origination fee of up to 100 basis points of the principal amount of the Eligible Loan to the Eligible Lender at the time of origination.



Eligible Lenders may not charge Eligible Borrowers any additional fees, except *de minimis* fees for services that are customary and necessary in the Eligible Lender's underwriting of loans to similar borrowers, such as appraisal and legal fees. Eligible Lenders should not charge servicing fees to Eligible Borrowers.

The SPV will pay to an Eligible Lender an annual loan servicing fee of 25 basis points of the principal amount of its participation in the Eligible Loan.

Required Lender Certifications and Covenants

In addition to other certifications required by applicable statutes and regulations, an Eligible Lender must:

- Commit that it will not request that the Eligible Borrower repay debt extended by the Eligible Lender to the Eligible Borrower, or pay interest on such outstanding obligations, until the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration.
- Commit that it will not cancel or reduce any existing committed lines of credit to the Eligible Borrower, except in the event of a default.
- Certify that the methodology used for calculating the Eligible Borrower's adjusted 2019 EBIDA and operating revenue in [item seven](#) of the Eligible Borrower paragraph above is the methodology it has previously used when extending credit to the Eligible Borrower, or similarly situated borrowers, on or before June 15, 2020—except with respect to the methodology instructions specified above in [item five](#).
- Certify that it is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in Section 4019(b) of the CARES Act.

Required Borrower Certifications and Covenants

In addition to other certifications required by applicable statutes and regulations, an Eligible Borrower must:

- Commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the Eligible Loan is repaid in full, unless the debt or interest payment is mandatory and due.
- Commit that it will not seek to cancel or reduce any of its committed lines of credit with the Eligible Lender or any other lender.
- Certify that it has a reasonable basis to believe that, as of the date of origination of the Eligible Loan and after giving effect to such loan, it has the ability to meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period.
- 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.
- Certify that it is eligible to participate in the Facility, including in light of the conflicts of interest prohibition in Section 4019(b) of the CARES Act.

An Eligible Lender should collect these certifications from the Eligible Borrower at the time of the origination of the Eligible Loan. Eligible Lenders may rely on an Eligible Borrower's certifications, as well as any subsequent self-reporting by the Eligible Borrower.