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Main Street Lending Program for Nonprofit Organizations

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A subset of the Main Street Lending Program (Program) is intended to facilitate lending to nonprofit organizations that were in sound financial condition prior to the onset of the COVID 19 pandemic. The aspects of the Program for nonprofit organizations became fully operational on September 4, 2020.

The two facilities for nonprofit organizations under the Program are the Nonprofit Organization New Loan Facility (New Loan Facility) and the Nonprofit Organization Expanded Loan Facility (Expanded Loan Facility).

This alert summarizes and compares these two facilities and reflects guidance through the most recent FAQ of November 25, 2020. The Program also features three facilities for for-profit businesses, which facilities are covered here.

Two of the biggest differences between the Program for nonprofit organizations compared to that for-profit businesses are:

- The eligibility criteria for borrowers; and
- The method of calculating the maximum loan amount is based on average 2019 quarterly revenue instead of a leverage test.

The actual operation of the Program for nonprofit organizations is similar to that for for-profit businesses: Under the Program, eligible lenders will originate new term loans (or expand the size of an existing credit facility) to eligible borrowers. A special purpose vehicle (SPV) funded by the Federal Reserve Bank of Boston (Reserve Bank) will then purchase a 95 percent participation in such loans (or the upsized tranches). Lenders will retain 5 percent of each such loan (or each upsized tranche).

In all, the SPV will purchase up to $600 billion in participations. The Program is scheduled to terminate on December 31, 2020. The latest guidance suggests that eligible loans should be submitted to the SPV on or before December 14, 2020, in order to provide time for the Federal Reserve to review the loan documents and other required documentation.

The Program differs from the Paycheck Protection Program (PPP) in many ways.

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Most significantly, the Program does not feature a loan forgiveness component.

Eligible Borrowers. An eligible borrower is a Nonprofit Organization[note]A “Nonprofit Organization” is a tax-exempt nonprofit organization described in section 501(c)(3) of the Internal Revenue Code (IRC) or a tax-exempt veterans' organization described in section 501(c)(19) of the IRC.[/note] that:

1. Has been in continuous operation since January 1, 2015;
2. Is not an Ineligible Business;[note]An “Ineligible Business” is a type of business listed in 13 CFR 120.110(b)-(j) and (m)-(s) (as modified by certain regulations implementing the PPP) – for example, banks and other lenders, life insurance companies and more.[/note]
3. Meets at least one of the following two conditions: (i) has 15,000 employees or fewer; or (ii) 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 percent of expenses for the period from 2017 through 2019;
7. Has a ratio of adjusted 2019 earnings before interest, depreciation and amortization (EBIDA) to unrestricted 2019 operating revenue, greater than or equal to 2 percent;
8. Has a ratio (expressed as a number of days) of (i) liquid assets at the time of the origination of the eligible loan (or the upsized tranche) 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 eligible loan (or the upsized tranche), has a ratio of (i) unrestricted cash and investments to (ii) existing outstanding and undrawn available debt, plus the amount of any Main Street loan, plus the amount of any accelerated or advance payments from the Centers for Medicare & Medicaid Services, that is greater than 55 percent;
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;

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11. Does not also participate in one of the other facilities under the 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) (but an eligible borrower that has received a PPP loan may still participate in the Program).

The U.S. Small Business Administration (SBA) affiliation regulations apply for purposes of calculating a Nonprofit Organization's employees and 2019 revenues, so the employees and revenues of the borrower must be aggregated with the employees and revenues of its affiliated entities. These regulations specify that companies are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both.

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

Direct lenders (that is, non-bank lenders) are not eligible to lend under the Program.

Eligible Loans. Each loan (or upsized tranche) must be made by an eligible lender to an eligible borrower and satisfy the following criteria.

<table>
<tr><th>Criteria</th><th>New Loan Facility</th><th>Expanded Loan Facility</th></tr>
<tr><td>Type of Loan</td><td>Term loan</td><td>The underlying loan may be a term loan or a revolving credit facility; the upsized tranche must be a term loan
Note: The underlying loan must have 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)
Note: The eligible lender must hold an interest in the underlying loan on the date of upsizing</td></tr>
<tr><td>Secured or Unsecured</td><td>Secured or unsecured</td><td>The underlying loan and the upsized tranche may be secured or unsecured
Note: If the underlying loan is secured, the upsized tranche must be secured
Note: An eligible lender can require the pledge of additional collateral</td></tr>
<tr><td>Origination Date</td><td>After June 15, 2020</td><td>The underlying loan must have been originated on or before June 15, 2020</td></tr>
<tr><td>Maturity</td><td colspan="2">Five years</td></tr>
<tr><td>Payment Deferral</td><td colspan="2">Principal payments deferred for two years
Interest payments deferred for one year (unpaid interest will be capitalized)</td></tr>
<tr><td>Amortization</td><td colspan="2">Principal amortization of 15 percent at the end of the third year, 15 percent at the end of the fourth year, and a balloon payment of 70 percent at maturity at the end of the fifth year</td></tr>
<tr><td>Interest Rate</td><td colspan="2">Adjustable rate of LIBOR (1 or 3 month) + 3 percent</td></tr>
<tr><td>Minimum Loan Amount</td><td>$100,000</td><td>$10 million</td></tr>
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Criteria	New Loan Facility	Expanded Loan Facility
Maximum Loan Amount	Lesser of (i) $35 million; or (ii) average 2019 quarterly revenue	Lesser of (i) $300 million; or (ii) average 2019 quarterly revenue
Priority Requirement	May not include any provisions that would cause the eligible loan (or the upsized tranche) to be contractually subordinated to other debt in or outside of bankruptcy	
Security Requirement	None	Must include a standard lien covenant or negative pledge that is of the type and that contains the exceptions, limitations, carveouts, baskets, materiality thresholds and qualifiers that are consistent with those used by the eligible lender in its ordinary course lending to similarly situated borrowers 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
Prepayment Penalty	No prepayment penalty	

Borrower Certifications and Covenants. In addition to other certifications required by applicable law, the eligible borrower must make certain certifications and covenants under each facility.

Topic	New Loan Facility	Expanded Loan Facility
Repayment of other debt	The 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	Same, but refers to the upsized tranche: The eligible borrower must commit to refrain from repaying the principal balance of, or paying any interest on, any debt until the upsized tranche is repaid in full, unless the debt or interest payment is mandatory and due
Cancellation or reduction of existing lines	The eligible borrower must 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	
Ability to meet financial obligations	The eligible borrower must certify that it has a reasonable basis to believe that, as of the date of origination of the eligible loan (or the date of upsizing) and after giving effect to such loan (or 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	
Solvency	The eligible borrower must certify that it is not currently in bankruptcy and that it was not "generally failing to pay undisputed debts as they become due" during the 90 days preceding the date of borrowing	
Compensation, stock purchase and distribution restrictions	The eligible borrower must commit that it will follow the compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under section 4003(c)(3)(A)(ii) of the CARES Act	
Eligibility	The eligible borrower must certify that it is eligible to participate in the facility, including in light of the conflicts of interest prohibition in section 4019 of the CARES Act	

Each facility further contains a safe harbor allowing a borrower to refinance debt that is maturing no later than 90 days from the date of such refinancing.

Finally, each eligible borrower that participates in the Program is expected to make reasonable efforts to maintain its payroll and retain its employees during

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the time the eligible loan (or the upsized tranche) is outstanding. This requires the borrower to make 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.

Lender Certifications and Covenants. In addition to other certifications required by applicable law, the eligible lender must make certain certifications and covenants under each facility.

Topic	New Loan Facility	Expanded Loan Facility
Repayment of other debt extended by the eligible lender	The 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 (or the upsized tranche) is repaid in full, unless the debt or interest payment is mandatory and due, or in the case of default and acceleration	
Cancellation or reduction of existing lines	The eligible lender must commit that it will not cancel or reduce any existing committed lines of credit to the eligible borrower, except in an event of default	
Adjusted EBIDA	The eligible lender must certify that the methodology used for calculating the eligible borrower's adjusted 2019 EBIDA and operating revenue is the methodology it has previously used when extending credit to the eligible borrower or similarly situated borrowers on or before June 15, 2020	The eligible lender must certify that the methodology used for calculating the eligible borrower's adjusted 2019 EBIDA and operating revenue is the methodology it previously used for adjusting EBIDA when originating or amending the underlying loan on or before June 15, 2020
Eligibility	The eligible lender must 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	

Moreover, the guidance specifies that, at the time of the potential borrower's application, an eligible lender is expected to conduct an assessment of the potential borrower's pre-pandemic financial condition and post-pandemic prospects, while also taking into account the payment deferral features of Main Street loans. Banking supervisors will not criticize a lender for originating a Main Street loan in accordance with the Program's requirements.

Note that the eligible lender is tasked with collecting the eligible borrower's required certifications and covenants at the time of origination of the eligible loan (or the time of upsizing). Eligible lenders are entitled to rely on the eligible borrower's certifications and covenants, as well as any subsequent self-reporting by the eligible borrower.

Finally, the guidance has a requirement as to risk rating classification.

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

Fees. The guidance sets forth the following fees for the Program:

Fee	New Loan Facility	Expanded Loan Facility
Transaction Fee	If the initial principal amount of the eligible loan is $250,000 or greater: An eligible lender will pay the SPV a transaction fee of 100 basis points of the principal amount of the eligible loan at the time of origination *Note:* The eligible lender can require the eligible borrower to pay this fee If the initial principal amount of the eligible loan is less than $250,000: No transaction fee will be imposed	An eligible lender will pay the SPV a transaction fee of 75 basis points of the principal amount of the upsized tranche at the time of upsizing *Note:* The eligible lender can require the eligible borrower to pay this fee

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Fee	New Loan Facility	Expanded Loan Facility
Loan Origination Fee	If the initial principal amount of the eligible loan is $250,000 or greater: An eligible borrower will pay an eligible lender an origination fee of up to 100 basis points of the principal amount of the eligible loan at the time of origination If the initial principal amount of the eligible loan is less than $250,000: An eligible borrower will pay an eligible lender an origination fee of up to 200 basis points of the principal amount of the eligible loan at the time of origination	An eligible borrower will pay an eligible lender an origination fee of up to 75 basis points of the principal amount of the upsized tranche at the time of upsizing
Servicing Fee	If the initial principal amount of the eligible loan is $250,000 or greater: The SPV will pay an eligible lender 25 basis points of the principal amount of its participation in the eligible loan per annum for loan servicing If the initial principal amount of the eligible loan is less than $250,000: The SPV will pay an eligible lender 50 basis points of the principal amount of its participation in the eligible loan per annum for loan servicing	The SPV will pay an eligible lender 25 basis points of the principal amount of its participation in the upsized tranche per annum for loan servicing

Loan Participations. As mentioned above, the SPV will purchase participations in the eligible loans (or in the upsized tranches).

Criteria	New Loan Facility	Expanded Loan Facility
Participation Percentage	The SPV will purchase at par value a 95 percent participation in the eligible loan (or the upsized tranche)	

Criteria	New Loan Facility	Expanded Loan Facility
Retention	The eligible lender must retain its 5 percent of the eligible loan until it matures or the SPV sells all of its participation, whichever comes first	Same, but refers to the upsized tranche: The eligible lender must retain its 5 percent of the upsized tranche until it matures or the SPV sells all of its participation, whichever comes first *Note:* The eligible lender must retain its interest in the underlying loan until the underlying loan matures, the upsized tranche matures, or the SPV sells all of its participation, whichever comes first
Risk Sharing	The SPV and the eligible lender will share risk in the eligible loan (or the upsized tranche) on a *pari passu* basis	
Existing Collateral	N/A	Any collateral securing the underlying loan (at the time of upsizing or on any subsequent date) must secure the upsized tranche on a *pari passu* basis
Structure	True sale	
Timing of Sale	To be completed expeditiously after the eligible loan's origination (or upsizing)	

If you have any questions about the Main Street Lending Program or your eligibility to participate as a borrower or a lender, please contact Bob Heinrich or your Reinhart attorney.