Expansion of Main Street Lending Program to Certain Nonprofit Organizations

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On July 17, 2020, the Federal Reserve expanded its Main Street Lending Program (the Program) to support lending to small and medium-sized nonprofit organizations. The availability of additional credit through the Program is intended to help small and medium-sized nonprofit organizations that were in sound financial condition prior to the onset of the COVID-19 pandemic maintain their operations and payroll until conditions normalize.

The Program consists of two components (or "facilities") available to nonprofit organizations: the Nonprofit Organization New Loan Facility (NONLF) and the Nonprofit Organization Expanded Loan Facility (NOELF).

Eligible lenders may originate new loans (under the NONLF) to new or existing customers or increase the size of ("upsize") existing loans (under the NOELF) made to eligible borrowers. Eligible lenders include U.S. federally insured depository institutions (including banks, savings associations, and credit unions), as well as a U.S. branch or agency of a foreign bank.

Loan amount

Under the NONLF, eligible lenders may extend to eligible borrowers new five-year term loans ranging in size from $250,000 to $35 million. The maximum size of the loan cannot exceed the eligible borrower's average 2019 quarterly revenue.

Under the NOELF, eligible lenders may "upsize" a loan to an eligible borrower that was originated on or before June 15, 2020, and that has a remaining maturity of at least 18 months, provided that the upsized tranche of the loan is a term loan with the terms/features described below. An eligible lender may extend the maturity of an existing loan at the time of upsizing in order to satisfy the 18-month remaining maturity requirement. NOELF loans may range in size from $10 million to $300 million. The maximum size of the loan cannot exceed the eligible borrower's average 2019 quarterly revenue.

Terms/features of the loan

NONLF loans and the upsized portion of NOELF loans have a five-year maturity; deferral of principal payments for two years; deferral of interest payments for one year; 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; an adjustable interest rate of LIBOR (1 or 3 month) plus 300 basis points; and borrowers may also pre-pay the loans without penalty.

For NONLF loans, the loan must not, at the time of origination or any time during the term of the loan, be contractually subordinated in terms of priority to any of the eligible borrower's other loans or

debt instruments. For NOELF loans, at the time of upsizing and at all times the upsized tranche is outstanding, the upsized tranche must be senior to or pari passu (on equal footing) with, in terms of priority and security, the eligible borrower's other loans or debt instruments, other than mortgage debt.

Qualifications for eligibility for NONLF and NOELF loans

To be eligible for a loan under the NONLF and NOELF programs, a nonprofit organization must meet the following qualifications:

1. It must be a §501(c)(3) tax-exempt organization or a §501(c)(19) tax-exempt veterans' organization. Other types of nonprofit organizations may be considered for inclusion at the discretion of the Federal Reserve.

2. It must have been in sound financial condition prior to the onset of the COVID-19 pandemic, as evidenced by the fact that any existing loan it had outstanding with an eligible lender as of December 31, 2019, must have had an internal risk rating (based on the eligible lender's rating system) that was equivalent to a "pass" in the Federal Financial Institutions Examination Council's supervisory rating system as of that date.

3. It must have been in continuous operation since January 1, 2015.

4. It must not be an "ineligible business."

    a. "Ineligible businesses" include financial businesses primarily engaged in lending activities, passive businesses such as real estate leasing businesses, life insurance companies, businesses located in foreign countries, pyramid sale distribution plans, businesses engaged in any illegal activity, private clubs and businesses which limit the number of memberships for reasons other than capacity, government-owned entities, businesses primarily engaged in political or lobbying activities, businesses receiving illegal gaming revenue, and certain businesses owned by individuals who are convicted felons.

5. It must meet at least one of the following two conditions:

    a. Have 15,000 or fewer employees, or

    b. Had 2019 annual revenues of $5 billion or less.

6. It must have at least 10 employees.

7. It must not have an endowment that is $3 billion or greater.

8. It must have total "non-donation revenues" equal to or greater than 60% of expenses for the period from 2017 through 2019.

    a. For this purpose, "non-donation revenues" means gross revenue 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 that such noncash contribution is not sold by the organization in a transaction unrelated to the organization's tax-exempt purpose.

b. For this purpose, "expenses" means total expenses minus depreciation, depletion, and amortization.

9. It must have a ratio of adjusted 2019 earnings before interest, depreciation, and amortization (EBIDA) to unrestricted 2019 operating revenue greater than or equal to 2%.

   a. Eligible lenders are instructed to 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 and losses.

10. It must have 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.

    a. For this purpose, the term "liquid assets" means unrestricted cash and investments that can be accessed and monetized within 30 days. An organization may include in "liquid assets" the amount of cash receipts it 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.

11. At the time of loan origination, it must have a ratio of (i) unrestricted cash and investments to (ii) existing outstanding and undrawn available debt, plus the amount of any loan made under this Program, plus the amount of any "CMS Accelerated and Advance Payments," that is greater than 55%.

12. It must have been 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.

13. It must not also participate in any of the Federal Reserve's other Main Street lending programs, the Primary Market Corporate Credit Facility, or the Municipal Liquidity Facility.

14. It must not have received specific support pursuant to Subtitle A of Title IV of the CARES Act.

    a. The guidance makes it specifically clear that nonprofit organizations that have received Paycheck Protection Program (PPP) loans are permitted to borrow under the NONLF and NOELF (provided they meet the other qualifications noted above).

    b. The specific support making an organization ineligible relates primarily to loans and loan guarantees made to passenger air carriers, cargo air carriers, and businesses critical to maintaining national security (under Section 4003(b)(1)-(3) of the CARES Act).

In addition to the above requirements, eligible borrowers must also make the following certifications and covenants (in addition to other certifications required by applicable statutes and regulations):

1. 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.

2. 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.

3. The eligible borrower must 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.

4. The eligible 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.

5. The eligible borrower must certify that it is eligible to participate in the Program, including in light of the conflicts of interest prohibition in section 4019 of the CARES Act (related to certain affiliations with certain government officials).

The guidance further indicates that eligible borrowers should make reasonable efforts to maintain its payroll and retain its employees during the time the eligible loan is outstanding.

Certain transaction, loan origination, and servicing fees may also be required to be paid in connection with the loans.

Additional information related to the Nonprofit Main Street Lending Program can be found in the FAQs issued by the Federal Reserve, found here.

BMWL Can Help

BMWL's COVID-19 Task Force is ready, willing, and able to help our clients navigate the Nonprofit Main Street Lending Program. Nonprofit organizations that would like the assistance of our Task Force in addressing the Program should contact us at C19TaskForce@nonprofitcpa.com.

