

Locke Lord QuickStudy: Help for Main Street: Federal Reserve Announces Expansion of Main Street Lending Program to Provide Greater Access to Credit for Nonprofits through Two New Credit Facilities

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The Main Street Lending Program (“MSLP”), established pursuant to Title IV of the Coronavirus Aid, Relief, and Economic Security Act, or “CARES Act” and Section 13(3) of the Federal Reserve Act, was created to provide up to \$600 billion to small and mid-sized businesses (including nonprofits) through its credit facilities. On July 17, 2020, the Federal Reserve Board (the “Federal Reserve”) released term sheets for two additional facilities, the Nonprofit Organization New Loan Facility (“NONLF”) and the Nonprofit Organization Expanded Loan Facility (“NOELF”), which expand MSLP loans to nonprofit hospitals, universities, and social service organizations that were in sound financial condition prior to the pandemic. The additional facilities will provide loans of at least \$250 thousand (for NONLF loans) or \$10 million (for NOELF loans) and up to \$300 million to eligible nonprofits that, among other requirements, have more than 10 employees, less than \$3 billion in endowment, and have been in continuous operation since 2015.¹ Although forms and other documents to support NONLF and NOELF loans have not yet been released, nonprofits can still prepare by familiarizing themselves with the two NONLF and NOELF loan options, as described below.

The Main Street New Loan Facility (“MSNLF”) and Main Street Expanded Loan Facility (“MSELF”), in addition to the NONLF and NOELF, comprise the MSLP facilities (for more information on the MSNLF and MSELF facilities, see this [link](#)). Eligible Lenders (defined below) may offer loans to qualifying businesses through the MSLP facilities. These loans will then be participated by the lender with a special purpose vehicle (the “SPV”) established by a Federal Reserve Bank for the purpose of purchasing participations in such loans (as further described below).

An Eligible Borrower (defined below) may choose to participate in one of the MSLP facilities (it cannot avail itself of more than one), and further, an Eligible Borrower that participates in a MSLP facility may not also (i) participate in the Primary Market Corporate Credit Facility (for more information on this program, see this [link](#)), (ii) participate in the Municipal Liquidity Facility (for more information on this program, see this [link](#)), or (iii) have received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020. Participation by an Eligible Borrower in the Paycheck Protection Program (“PPP”) does not, however, preclude it from also participating in one of the MSLP facilities (for more information on this program, see this [link](#)).

Terms of NONLF and NOELF Facilities

The following is a summary of the terms of the NONLF and NOELF facilities, as set forth in the term sheets released by the Federal Reserve:

Eligible Lenders. U.S. insured depository institutions, bank holding companies, and savings and loan holding companies.

Eligible Borrowers. Each Eligible Borrower must be created or organized in the United States or under the laws of the United States with significant operations, and a majority of its employees based in, the United States. In addition, 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
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% of expenses for the period from 2017 through 2019;
7. Has a ratio of adjusted 2019 earnings before interest, taxes, depreciation, and amortization. ("EBIDA") (used as an indicator of the overall profitability of a business) 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 upsized tranche in the case of NOELF loans) to (ii) average daily expenses over the previous year, equal to or greater than 60 days; and
9. At the time of the origination (of the upsized tranche in the case of NOELF loans), 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 & Medicaid Services (CMS) Accelerated and Advance Payments, that is greater than 55%.

Eligible Loans. Eligible Loans under the NONLF are secured or unsecured term loans made after June 15, 2020. Eligible Loans under NOELF are secured or unsecured term loans or credit revolving facilities made after June 15, 2020 that have a remaining maturity of at least 18 months. In addition, an Eligible Loan must have 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 month) + 300 basis points;
5. Prepayment permitted without penalty;
6. Minimum loan size for:
 - (a) NONLF Loans: \$250 thousand
 - (b) NOELF Loans: \$10 million

7. Maximum loan size for:
 - (a) NONLF Loans: lesser of (i) \$35 million or (ii) the Eligible Borrower's average 2019 quarterly revenue
 - (b) NOELF Loans: lesser of (i) \$300 million or (ii) the Eligible Borrower's average 2019 quarterly revenue
8. Loan Risk:
 - (a) NONLF Loans: the loan is not, at the time of origination or at any time during the terms of the Eligible Loan, contractually subordinated in terms of priority to any of the Eligible Borrower's other loans or debt instruments
 - (b) NOELF Loans: at the time of upsizing and at all times the upsized tranche is outstanding, the upsized tranche is 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.

Required Attestations. In addition to certifications required by applicable laws and regulations (including those required under Title IV of the CARES Act, more information on which can be found [here](#)), both the lender and the borrower will be required to make certain attestations, including, that (i) proceeds of the Eligible Loan will not be used to repay or refinance pre-existing loans, (ii) the borrower's existing lines of credit will not be reduced or cancelled, and (iii) the borrower will refrain from voluntarily repaying other debt of equal or lower priority (other than mandatory principal payments), unless the Eligible Loan has been paid in full. The borrower must also certify that it will make reasonable efforts to maintain its payroll and retain its employees during the term of the Eligible Loan and that it will comply with the employee compensation, stock repurchase, and capital distribution restrictions that apply to direct loan programs under Section 4003(c)(3)(A)(ii) of the CARES Act, a summary of which can be found [here](#).

Fees. Applicable fees include (i) an origination fee of 1% of the principal amount of the Eligible Loan (for NONLF loans) or 0.75% of the principal amount of the upsized tranche of the Eligible Loan (for NOELF loans) payable by the borrower to the lender, and (ii) a transaction fee of 1% of the principal amount of the Eligible Loan (for NONLF loans) or 0.75% of the principal amount of the upsized tranche of the Eligible Loan at the time of upsizing (for NOELF loans) payable by the lender to the SPV (this fee may be passed through to the borrower).

Loan Participations. Until September 30, 2020, the SPV will purchase from Eligible Lenders a 95% participation in each Eligible Loan (or, in the case of a NOELF loan, the upsized tranche of the Eligible Loan, provided that it is upsized on or after June 15, 2020) at par value (the principal amount without premium or discount), and the Eligible Lender will hold 5% of the Eligible Loan (or, in the case of a NOELF loan, its 5% portion of the upsized tranche of the Eligible Loan) until it matures or the SPV sells all of its participation, whichever comes first.

Eligible Loan. The SPV and the Eligible Lender will share risk on a pari passu basis. The SPV will pay an Eligible Lender an annual servicing fee of 0.25% of the principal amount (of the upsized tranche for NOELF loans) of its participation in each Eligible Loan. The SPV will fund purchases and fees through a recourse loan from the Federal Reserve and a \$75 billion equity investment from the Department of the Treasury.

Other Considerations. The terms of the program may not be favorable enough to be helpful to some financially stressed nonprofits. Although the Federal Reserve did provide additional flexibility to increase the universe of eligible borrowers, some nonprofits may be able to find credit from traditional sources with better terms. The interest rate for nonprofit borrowers is the same as for for-profit borrowers.

Links to the term sheets for each facility are as follows:

- [NONLF](#)

- NOELF

Locke Lord team members are closely following further developments with respect to the Main Street Lending Program and expect to publish additional guidance as further information from the Department of the Treasury and/or the Federal Reserve becomes available.

Your regular Locke Lord contact and the authors of this article would be happy to help you navigate the CARES Act and associated guidance as they relate to nonprofits.

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1 The term sheets lowered the minimum employment threshold for nonprofits from 50 employees to 10, reduced the limit on donation-based funding and adjusted several financial eligibility criteria from the proposals released for public comment on June 15, 2020.

2 For purposes of the NONLF and NOELF facilities, 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. Other forms of organization may be considered for inclusion as a Nonprofit

Organization under the Facility at the discretion of the Federal Reserve.

3 For purposes of the NONLF and NOELF facilities, an Ineligible Business is a type of business listed in 13 CFR 120.110(b)-(j) and (m)-(s), as modified by regulations

implementing the PPP established by section 1102 of the CARES Act on or before April 24, 2020. In general, subject to certain exceptions, Ineligible Businesses are lenders, passive businesses, [insurance](#) companies; businesses in foreign countries, multi-level marketing plans, businesses engaging in gambling activities, illegal activities, the sex industry, private clubs, government-owned entities, businesses engaged in inculcating religion, businesses that have [defaulted](#) on a federal loan, businesses engaged in political or lobbying activities, and certain speculative businesses. The application of these restrictions to the Facility may be further modified at the discretion of the Federal Reserve.

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