Updates on NFP Main Street Lending Program

On August 6, 2020, the Federal Reserve Bank of Boston (BOS) released an updated Frequently Asked Questions (FAQ) document updating several details on the two programs specifically designed for not-for-profit (NFP) organizations: Nonprofit Organization New Loan Facility (NONLF) and Nonprofit Organization Expanded Loan Facility (NOELF). The changes relate to the calculation of total compensation and timing of loan participation purchase. The FAQ can be found on the BOS website, which also includes a state-by-state list of lenders approved for issuing NFP Main Street loans that is updated regularly as additional lenders complete the registration process.

On July 29, 2020, the program's expiration date was extended from September 30 to December 31, 2020.

Lenders will assess NFPs for a Main Street loan based on meeting the program terms and the lenders' own underwriting standards. Lenders' loan approvals are contingent on those factors.

NFPs that have received Paycheck Protection Program (PPP) loans are eligible for Main Street loans, if all other program requirements are met.

Eligibility

An eligible NFP must be a tax-exempt 501(c)(3) or a 501(c)(19) organization and meet the following criteria:

- Established prior to, and in continuous operation since, January 1, 2015
- Meet at least one of the following two conditions:
  - 15,000 employees or fewer
  - 2019 annual revenues of $5 billion or less
- At least 10 employees
- Endowment of less than $3 billion
- Total nondonation revenues equal to or greater than 60 percent of expenses for the period from 2017 to 2019
  - Nondonation 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. Expenses equal total expenses minus depreciation, depletion, and amortization
- 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
  - Lenders must use the same EBIDA methodology they used on or before June 15, 2020. Lenders should 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 or losses. The methodology used to calculate the proxy for endowment income must be the same methodology the lender used on or before June 15, 2020
- The ratio (in number of days) of liquid assets at loan origination to average daily expenses over the previous year, equal to or greater than 60 days
  - Liquid assets are defined as unrestricted cash and investments that can be accessed and monetized within 30 days. NFPs may include in liquid assets the amount of cash receipts they reasonably estimate to receive within 60 days related to the provision of services, facilities, or

products, or any other program service that exceeds its reasonably estimated cash outflows payable within the same 60-day period

- The ratio of unrestricted cash and investments to existing outstanding and undrawn available debt, plus any Main Street loan, plus the amount of any CMS Accelerated and Advance Payments, is greater than 55 percent at loan origination
- 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 United States
- Does not also participate in other Federal Reserve liquidity facilities
- No other specific support from the *Coronavirus Aid, Relief, and Economic Security Act* (does not include PPP loans)

<table>
<tr><th colspan="3">Main Street Loan Details – NFPs</th></tr>
<tr><th></th><th>NONLF</th><th>NOELF</th></tr>
<tr><td>Interest Rate</td><td colspan="2">LIBOR +3%</td></tr>
<tr><td>Term</td><td colspan="2">Five years</td></tr>
<tr><td>Years in Operation</td><td colspan="2">At least five years</td></tr>
<tr><td>Principal Repayments</td><td colspan="2">Deferred for two years</td></tr>
<tr><td>Interest Repayments</td><td colspan="2">Deferred for one year – interest capitalized</td></tr>
<tr><td>Principal Repayment</td><td colspan="2">Repayment years three to five, 15 percent, 15 percent, 70 percent</td></tr>
<tr><td>Minimum Loan Size</td><td>$250,000</td><td>$10 million</td></tr>
<tr><td>Maximum Loan Size</td><td>The lesser of $35 million or the borrower’s average 2019 quarterly revenue</td><td>The lesser of $300 million or the borrower’s average 2019 quarterly revenue</td></tr>
<tr><td>Prepayment</td><td colspan="2">No prepayment penalty</td></tr>
<tr><td>Loan Origination Fee</td><td colspan="2">100 basis points of principal amount of loan at origination</td></tr>
<tr><td>Lender Risk Retention</td><td colspan="2">5%</td></tr>
<tr><td>Loan Classification</td><td colspan="2">Any existing loans with lender must have had an internal risk rating equivalent to “pass” as of December 31, 2019</td></tr>
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Borrower Certifications & Restrictions

All programs funded by the ESF come with numerous restrictions. For the NFP Main Street programs, only the limits on executive compensation, conflicts of interest, and employee retention apply.

Compensation Limits

Borrowers are prohibited from increasing the compensation of any officer or employee whose total compensation exceeds $425,000 or from offering such employees severance pay or other benefits upon termination of employment that exceeds twice the maximum total annual compensation received by that employee, until one year after the loan is no longer outstanding.

Further, officers or employees making more than $3 million in calendar-year 2019 also would be prohibited from earning more than $3 million plus 50 percent of the amount that their compensation in calendar-year 2019 (or the subsequent reference period) exceeded $3 million.

Total Compensation Calculation

Total compensation is defined as salary, bonuses, awards of stock, and other financial benefits provided by the borrower and its affiliates to a borrower's officer or employee but does not include the value of severance pay or other benefits paid in connection with employment termination. A borrower may choose to calculate total compensation in a manner consistent with federal tax rules if the borrower meets either of the following criteria:

- Small borrowers. A borrower that had gross revenues for its financial year ending in 2019 of **less** than or equal to $10 million.
- Officers and employees who receive limited deferred compensation[1]. A borrower that had gross revenues for its financial year ending in 2019 of **greater** than $10 million may calculate compensation in a manner consistent with the federal tax rules for all officers or employees who are not significant deferred compensation recipients[2] (SDCR). Borrowers should use U.S. generally accepted accounting principles to determine which of its officers and employees are SDCRs

Borrowers electing the federal tax rules must use the timing and valuation methodology (including the valuation of fringe benefits and bonuses) that apply for purposes of determining when amounts are treated as wages under Internal Revenue Code (IRC) Section 3401(a) for income tax withholding. In addition, total compensation using the federal tax rules includes commissions, educational assistance, and benefits or wages that are paid in kind (such as meals or lodging) if they would be treated as taxable compensation subject to federal income tax withholding in IRC §3401(a) regardless of whether the compensation paid to the individual is actually subject to federal income tax withholding and whether or not tax is actually withheld.

A borrower that does not choose to use the federal tax rules must use Item 402(c) to calculate total compensation.

A borrower must choose which approach to use at loan disbursement and apply it for as long as the Main Street loan is outstanding and for 12 months thereafter. For borrowers with gross revenues of greater than $10 million, if deferred compensation is subsequently increased so that one or more individuals become a SDCR, the borrower must immediately begin using Item 402(c) and must include any deferred compensation that was granted but not paid in the preceding 90-day period. A borrower with revenues of less than $10 million at the time of loan disbursement is not required to use Item 402(c) for a subsequent SDCR.

[1] *Deferred compensation is a legally binding right to receive compensation awarded to an officer or employee in one taxable year but not payable until a later taxable year.*

[2] *A SDCR means an officer or employee who, during any 12-month period beginning January 2019 and until 12 months after the date on which the Main Street loan is no longer outstanding, has total compensation that exceeds $425,000, out of which the fair value of deferred compensation granted to such officer or employee exceeds 30 percent.*

Conflicts of Interests

Borrowers may not benefit from a Main Street loan if the NFP's management includes the president, vice president, executive department head, member of Congress, or any of such individual's spouse, child, son-in-law, or daughter-in-law.

Employee Retention

NFPs should make reasonable efforts to maintain their payroll and retain their employees during the Main Street loan term.

Borrower Certifications

The following certifications and covenants will be required from borrowers:

- Refrain from repaying the principal balance of—or paying any interest on—any debt until the Main Street loan is fully repaid, unless the debt or interest payment is mandatory and due
- The NFP must commit that it will not seek to cancel or reduce any of its committed lines of credit with the Main Street lender or any other lender
- Reasonable basis to believe that, as of the loan date, it can meet its financial obligations for at least the next 90 days and does not expect to file for bankruptcy during that time period

Conclusion

BKD will continue to follow this developing situation. As with most topics related to COVID-19, changes are being made rapidly. Please note that this information is current as of the date of publication. Visit BKD's COVID-19 Resource Center to learn more. If you have questions, contact your **BKD Trusted Advisor**™ today.

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