



June 22, 2020

Federal Reserve Board of Governors  
Constitution Ave NW &, 20th St NW  
Washington, DC 20551

**Comments of Independent Sector regarding the proposed Main Street Lending Program for nonprofit organizations – NONLF and NOELF**

Independent Sector—a national coalition of nonprofits, foundations, and corporations whose members represent tens of thousands of organizations and individuals committed to advancing the common good—appreciates the opportunity to submit comments to the Federal Reserve about the Nonprofit Organization Loan Facilities. This proposal is targeted at transactional nonprofits such as hospitals and institutions of higher education than at nonprofits who have a larger reliance on donations from the public to support their missions. Indeed, many nonprofits pride themselves on offering their services at no charge. Recognizing that their business models are different, even if both types of charities are inherently organized around a public mission, many of the financial requirements included in this proposal simply are not applicable to organizations that rely on donations. With that in mind, Independent Sector respectfully requests the Federal Reserve to address the concerns and proposed changes outlined below.

**1. Congress Must Act to Ensure Mid-Sized Nonprofits are Eligible for Loan Forgiveness**

Congress must ensure that mid-sized nonprofits have access to loan forgiveness. While it is a welcome development to see the Federal Reserve making its Main Street lending program available to some nonprofits, this assistance still falls short of what is most needed by nonprofit organizations – a provision that makes these loans forgivable.

In this critical time, nonprofits have stepped up to meet the unprecedented level of need in our country due to the COVID-19 pandemic. Even though they face many of the same economic challenges as other industries, nonprofits are not shutting down. Rather, they are straining to meet increasing demands in our communities on the frontlines, caring for the sick, feeding families, and keeping our communities connected. Furthermore, they will play an integral role as our nation recovers – providing childcare, job training, and other core supports.

Charitable nonprofits of all sizes and focus areas are struggling to maintain mission-critical operations despite enormous economic challenges. [Data released by Independent Sector](#) shows that nonprofits with between 500 to 5,000 employees, key to scaling relief efforts across the nation, have been severely impacted by this health and economic crisis. When asked “What types of additional assistance would be most helpful to your organization?” organizations overwhelmingly (92% of responses) suggested

government support in the form of forgivable loans. Smaller nonprofits throughout the country have been hit equally hard.

Nonprofit organizations need funding so they can continue to meet the needs of their communities. Many charitable organizations do not have steady streams of commercial income and have little capacity for loan and interest repayment. Furthermore, nonprofits are the third largest employment sector and many hope to hire more workers as their organizations recover. America cannot afford to leave out such a vital part of the economy.

**Recommendation:** Congress must recognize the vital services nonprofits provide to communities and the economy by including loan forgiveness, in the next round of COVID-19 relief legislation.

## **2. The Fed’s Proposal to Limit Loans to Mid-Size Nonprofits with Less than 30% of Revenue from Donations Disqualifies Many in Charitable Sector**

The Federal Reserve’s requirement that nonprofit organizations must have less than 30% of their revenue derive from donations disqualifies many charities who in order to retain their tax-exempt status, under Section 501(c)(3) of the Internal Revenue Code, must meet a “public support” test showing they receive at least a third of their revenues from contributions from the general public, grants from other public charities, or from governmental agencies. If a charitable nonprofit fails to do so, then it carries the added burden of providing additional facts and circumstances to prove that it is a publicly supported organization.

This loan requirement seems more applicable to for-profit entities, as well as educational institutions and nonprofit hospitals, but not to most charitable nonprofits who provide critical services in their communities during these challenging times. Human service organizations, as well as food banks and pantries are excluded from this lending program based on the percentage of their revenue that is generated by donations.

**Recommendation:** Eliminate the requirement that no more than 30 percent of an organization’s 2019 revenues come from donations.

## **3. The Fed Needs to Make Loan Terms More Favorable to Charitable Organizations**

The draft Nonprofit Loan Facility imposes certain liquidity, asset, and reserve requirements that are not required in Main Street New Loan Facilities available to for-profit businesses.

Nonprofit organizations typically provide services with low-profit margins. Indeed, social service organizations report an average aggregate margin of 1.5%. According to a [recent report by Seachange Capital Partners](#), the median social services nonprofit has a margin of 1.0%, receives 3.6% of its revenue from philanthropy (including investment income), has total financial assets (including endowments and other assets that are subject to legal restrictions) equal to 1.9 months of expenses, and operating reserves of less than one month of expenses. Less than 20% of large nonprofits have 6 months or more of operating reserves, a widely accepted standard for “financial strength” for nonprofits. Social services organizations are the most fragile, with fewer than 10% reaching this standard.

The statistics above should not be viewed as an indictment of the efficiencies or management policies of nonprofits. It is important to note that the vast majority of social service nonprofit funding comes from government grants contracts, recognizing the key role such organizations play in serving the most vulnerable. Numerous studies confirm that government funding seldom covers the full cost of providing

contracted work, which inhibits nonprofits from accumulating reserves through surpluses. In many instances, government grant/contract work creates cash-flow challenges since it is paid after the work has been completed and can be subject to significant delays in payment.

**Recommendation:** Recognizing the unique nature of nonprofit operations and their importance in continuing to provide vital services as partners on the front lines of the COVID-19 crisis, we urge the Federal Reserve to eliminate borrower requirements 7 and 8. If this is not possible, we alternatively ask that the requirements be lessened significantly to reflect the economic realities of nonprofit operations, for example by requiring only 30 days cash on hand, and bringing the loan origination ratio of 40-50% (down from 65% as proposed).

We are also concerned that certain eligible loan features are too onerous for nonprofit organizations and are less favorable than those offered in other government programs. Specifically, the interest rate of LIBOR plus 300 basis points is significantly higher than that offered for Paycheck Protection Program (“PPP”) Loans (1.0%) and that for Economic Injury Disaster Loans (2.75%). In addition, the imposition of loan origination and service fees adds to the cost under the Nonprofit Facility. Finally, the notion that nonprofits would be faced with a 70% balloon payment at the end of the fifth year of the loan would be off-putting for many nonprofits. Nonprofits with existing loans with balloon payments are usually provided an opportunity to renegotiate such loans at prevailing market rates.

**Recommendation:** We urge that the loan terms including interest rate and balloon payments be revisited and recommend the lowest permissible rate such as the 0.5% rate initially proposed for PPP loans. In addition, we urge some flexibility in the balloon payment requirement to afford the opportunity for renegotiation. If the 5-year amortization were extended to 7 years, this could lessen the balloon payment. We request that the borrower have access to engage with derivatives (change to a fixed rate) without the minimum swap requirements.

#### **4. The Ratio of Adjusted 2019 Earnings before “EBIDA” Should Be Revised**

In the “Draft for Public Consultation,” for both the Nonprofit Organization New Loan Facility and the Nonprofit Organization Expanded Loan Facility, one of the eligibility criteria for borrowers is that they must have “a ratio of adjusted 2019 earnings before interest, depreciation, and amortization (“EBIDA”) to unrestricted 2019 operating revenue, greater than or equal to 5%.” (#6) In the context of nonprofit operations, this threshold is too high and would make many, if not most, nonprofits ineligible based on these criteria alone, which seems written more in the context of for-profit businesses as opposed to nonprofit organizations.

It may certainly be prudent and necessary to have a positive ratio of adjusted earnings; however, nonprofits generally run on a small margin, both out of necessity and also as to not leave excess surpluses that could be used for fulfilling their missions. Moreover, at times a nonprofit may have a planned and manageable deficit as part of a strategic plan—a negative ratio at one isolated point is not always an indication of instability.

Furthermore, the footnotes for criteria #6 clarify that “The Eligible Lender should calculate operating revenue as unrestricted operating revenue, excluding funds committed to be spent on capital...” Many nonprofits have “restricted revenue” through grants and contracts built into their operating budgets. Excluding this revenue would compound the problem of meeting the 5% ratio. Although it would be sensible to exclude contributions raised for a “capital campaign,” excluding other capital funds included in an annual budget for maintenance and planned upgrades would further decrease the required ratio.

**Recommendation:** The 5% requirement should be reduced to zero, if not eliminated. In addition, a statement of explanation of a deficit should be allowed so that a negative ratio does not mean automatic ineligibility for a nonprofit borrower. Finally, further clarification on the calculation methodology—in the context of nonprofit operating budgets—is needed regarding both restricted funding from grants in annual operating budgets, as well as capital funds for improvements that are part of an annual operating budget. This clarification would allow noted revenues to remain in calculation to ease the restriction and not further restrict eligibility.

#### **5. “Reasonable Efforts” Regarding Employee Retention Require Further Clarification**

The description of “Retaining Employees” in the draft term sheet requires refinement if the Federal Reserve expects nonprofits to take advantage of this facility. We endorse the [analysis of the National Council of Nonprofits](#) on the issue of employee retention, and recommend the following:

**Recommendation:** “Reasonable efforts” should be interpreted in the totality of the circumstances, taking into consideration not only the general economic environment in the community or communities in which the borrower operates, but also factors such as workforce, fundraising ability, revenue-generating activities, and overall demand for the services and programs the organization provides. One option would be to add the qualifier “mission-based” before “reasonable efforts.”

**Recommendation:** The terms “maintain its payroll” and “retain its employees” are vague and need further refinement. We ask the Federal Reserve to make clear that nonprofits participating in the Main Street loan program *generally* should endeavor to pay staff at the same or increased income levels and should act in good faith to keep staffing levels (measured on the basis of full-time equivalents) at the same or increased levels, both for the duration of the loan. It is also important that the loan documents expressly state that the employee retention provision begins on the date that loan funding is received by the borrower rather than at an earlier date.

**Recommendation:** We ask that the Federal Reserve adopt safe harbors of other loan programs and state clearly that nonprofit borrowers will not be penalized under the employee retention provision for the decision of employees to decline offers of rehire, or for those who are fired for cause, voluntarily resign, or voluntarily request a reduced schedule during the time that the loan is outstanding.

#### **6. Limitation of 50-Employee Minimum Should Be Removed**

The term sheet for the proposed nonprofit loan facility imposes a size minimum that is not imposed in the Main Street [New](#), [Priority](#), or [Expanded](#) Loan Facilities for for-profit businesses. There is no explanation why the Federal Reserve is proposing that nonprofits with fewer than 50 employees should not be eligible for Main Street loans for which their small business counterparts of equal size could secure lending support.

**Recommendation:** The 50-employee floor should be removed.

#### **7. Additional Recommendations and Requests for Clarification**

Independent Sector respectfully requests the Federal Reserve clarify the following issues in its final expansion notice.

- **Endowment:** What resources should be included in endowment calculations? Does it include restricted endowments? Does it extend to include cash on hand?

- **Collateral:** Flexibility on collateral is requested. The loan should be able to be approved with no more than 50% Loan to Value (LTV) if collateral is needed.
- **Other Debts:** The proposal requires that borrowers, “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.” We request that this exclude lines of credit and other debt that are assumed to provide financial liquidity related to the impact of COVID-19

### **Conclusion**

Independent Sector appreciates the opportunity to submit these comments to the Federal Reserve about the Main Street Lending Program for Nonprofits, which, in its proposed form, seems to be targeted to nonprofits such as hospitals and institutions of higher education than at charities. Independent Sector respectfully requests the Federal Reserve to address the concerns and proposed changes outlined above.

Thank you for considering these comments and recommendations. We stand ready to work with you to strengthen the Main Street Lending Program and to allow nonprofit organizations to continue serving their communities during these difficult times.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Cardinali". The signature is fluid and cursive, with a prominent initial "D" and a long, sweeping underline.

Daniel J. Cardinali  
President and CEO  
Independent Sector