



June 22, 2020

The Honorable Jerome Powell
Chair
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave NW
Washington, DC 20551

Re: The Nonprofit Organization Loan Eligibility Proposal

Dear Chairman Powell:

The American Lung Association appreciates the opportunity to submit comments to the Federal Reserve Board regarding the Nonprofit Organization Loan Eligibility Proposal.

The American Lung Association is the oldest voluntary public health association in the United States, currently representing the nearly 37 million Americans living with lung diseases including asthma, lung cancer and COPD. As such, the Lung Association is uniquely positioned to comment on the impact this proposed rule will have on our organization's ability to carry out our mission to save lives by improving lung health and preventing lung disease. Since the start of the COVID-19 pandemic, the American Lung Association has worked to educate the public, advocated on behalf of lung disease patients and promoted research on treatment cures.

The American Lung Association appreciates the opportunity to submit comment to the Federal Reserve about the Nonprofit Organization Loan Facilities. This proposal is aimed more at transactional nonprofits such as hospitals and institutions of higher ed. Many nonprofits like the Lung Association that have a larger reliance on donations from the public to support their missions are not eligible under the proposed terms. Indeed, many nonprofits pride themselves on offering their services at no charge. Recognizing that our 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, the Lung Association respectfully requests the Federal Reserve to address the concerns and proposed changes outlined below.

1. Mid-Sized Nonprofits Must be Eligible for 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. Congress must act ensure that mid-sized nonprofits have access to loan forgiveness.

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: Vital services nonprofits provide to communities and the economy by including loan forgiveness. We urge the Federal Reserve to support loan forgiveness for nonprofits 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 criteria that organizations must have revenues from donations that are less than 30% disqualify many charities, including the Lung Association. Overall, this loan facility seems more applicable to for-profit entities, as well as educational institutions and nonprofit hospitals, but not most charitable organizations. The Lung Association received 60% from donations in 2019.

The thirty percent criteria is also inconsistent with current tax law for charitable organizations: to retain tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, charitable nonprofits must meet a “public support” test showing they receive at least a third of their revenues via contributions from the general public, contributions or grants from other public charities, or from governmental agencies.

We raise money and receive donations from the public, foundations, corporations and others to fund research for treatments and cures for lung diseases, efforts to keep kids off tobacco, including e-cigarettes, and advocating for laws that protect the air we all breathe, and receive very little revenue from direct services. Charitable organizations play a fundamental role in strengthening civil society. Our organizations provide vital services for people with or at risk for lung disease, and pride ourselves on the donations we receive rooted in the trust and support that the public has of the sector.

Recommendation: Eliminate the requirement that no more than 30 percent of an organization’s 2019 revenues come from donations, and instead make 501(c)(3) organizations that are otherwise meet the employee size are eligible.

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 disastrous 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 so 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 in regard to 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.

Additional Recommendations and Requests for Clarification

The American Lung Association 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?
- **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

The American Lung Association appreciates the opportunity to submit comments on this important proposal and urge you to keep the people we serve at the forefront as you finalize these requirements.

Sincerely,



Harold P. Wimmer
National President and CEO