

June 21, 2020

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington D.C., 20551

Vince Malta
2020 President

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RE: Main Street Lending Program – NONLF and NOELF

Submitted electronically: regs.comments@federalreserve.gov and
<https://www.federalreserve.gov/apps/contactus/feedback.aspx?refurl=%2FmainLending%2F>

Dear Board of Governors:

On behalf of the 1.4 million members of the National Association of REALTORS® (NAR), I write to provide comments to the Board of Governors of the Federal Reserve System (Board) on its proposal to expand the Main Street Lending Program to provide access to credit for nonprofit organizations. We appreciate the Board's solicitation of comments on the expansion of the Main Street Lending Program to nonprofit organizations and hope that our comments will be used by the Board in finalizing the term sheets to make the program available to more types of nonprofit entities and to modify some of the existing minimum requirements that may prevent broad participation by nonprofits as a practical matter.

NAR strongly agrees with Chairman Powell's assessment that "Nonprofit organizations are critical parts of our economy, employing millions of people, providing essential services to communities, and supporting innovation and the development of a highly skilled workforce." Many types of nonprofit organizations can play a vital role in the economic recovery following the COVID-19 crisis, but until now all nonprofits have been left out of the relief options provided to businesses. In order for them to assist in rebuilding, they need to survive the crisis themselves.

As currently proposed, the term sheets for nonprofit participation in the Main Street Lending Program unduly limits the scope of the program to nonprofits that are exempt from taxation under Sections 501(c)(3) or 501(c)(19) of the Internal Revenue Code.¹ As discussed further below, we recommend the Board permit nonprofits described in Section 501(c)(6) of the Internal Revenue Code to also participate in the program.

¹ Section 501(c)(3) describes organizations such as those operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes. Section 501(c)(19) describes organizations of past or present members of the U.S. Armed Forces, including foundations to support these individuals. The requirements for the exemption established by section 501(c)(19) are explained in detail at 26 C.F.R. §501(c)-19.



The Federal Reserve has not publicly elaborated on why the Main Street loan programs will be limited to only these two types of nonprofit organizations. The Board should reconsider this limitation and expand applicability of the Main Street Lending Program to include Section 501(c)(6) organizations that support business operations in the U.S., including many small businesses and independent contractors. This extension would cover nonprofit organizations such as business leagues, chambers of commerce, real-estate boards, and boards of trade.² Section 501(c)(6) organizations provide critical services to support American businesses and are vital components to the economic recovery. Under applicable IRS regulations, the primary purpose of a Section 501(c)(6) organization must be the *improvement of business conditions for one or more lines of business*, and not the performance of services for individuals.³

In order for an organization to qualify for the tax exemption under Section 501(c)(6), the aim of the organization must be to improve conditions of a particular trade or the interests of the community. For example, promoting higher business standards and better business methods, encouraging uniformity and cooperation, educating the public on the business product or service, or compiling useful statistical information.⁴ Under the current economic conditions, these organizations have taken on entirely new roles to support and promote businesses to ensure sustainability and the livelihood of workers while the challenges posed by the ongoing pandemic continue to stall overall growth and economic recovery.

Organizations qualified for a Section 501(c)(6) exemption often provide technical assistance and marketing platforms that make it possible for businesses to operate more efficiently throughout economic cycles. They help small business owners navigate the regulatory burdens posed by federal, state, and local governments, while also promoting access to government programs, such as the Main Street program, offering financial support during unprecedented and unforeseen challenges such as the current national emergency.

For example, state and local real estate associations provide critically important services for designated members (REALTORS®), residential and commercial homebuyers and sellers, and the broader real estate industry, in support of the entire real estate market. Such services include the establishment of a code of ethics and enforceable professional standards to enhance public confidence in the 1.4 million real estate professionals, who are REALTORS®, and ensure safe and timely sales transactions. Real estate associations are also a source of key industry data and statistics, highlighting trends to inform all segments of the real estate market, such as banks, other lenders, appraisers, business owners, home builders, civic planners, and federal, state, and local government officials, among others. Moreover, local real estate associations are often responsible for the establishment of local “multiple listing services” that greatly assist REALTORS® and other real estate professionals in providing comprehensive services to consumers, help create a broader and more active competitive market for real estate sales, and provide a medium through which real estate may be efficiently marketed. The establishment and maintenance of multiple listing services are a critical component of the nation’s housing marketplace, and may themselves benefit from the Main Street Lending Program. These and other services performed by state and local real estate associations demonstrate the importance of these organizations, and why it is significantly important for the Main Street Lending Program to be open to these entities.

As noted above, the Board has not explained its determination to omit Section 501(c)(6) entities from the program, while allowing Section 501(c)(19) organizations to participate. We fully support the inclusion of veterans’ organizations as potential borrowers, but believe business organizations, such as state and local real estate associations, should also be included in the program since these organizations provide services that support the housing markets that directly and indirectly impact millions of jobs

The Paycheck Protection Program (“PPP”) is only available to two types of tax-exempt organizations: those described in Section 501(c)(3) and Section 501(c)(19).⁵ However, the Main Street Lending Program is not limited to these two categories of nonprofits, and the provisions in the PPP are not binding upon the Federal Reserve Board’s Main Street program.

Any concern that Section 501(c)(6) entities may engage in political advocacy is misplaced. Section 501(c)(3) provides that “no substantial part” of the activities of the organization may consist of “carrying on propaganda, or

² Section 501(c)(6) includes professional football leagues. We are making no recommendation on whether such leagues should be allowed to participate in the program and note that the term sheets may exclude certain entities while allowing other Section 501(c)(6) organizations to obtain Main Street loans.

³ 26 C.F.R. §501(c)(6)-1. To be exempt as a business league, an organization’s activities must be devoted to [improving business conditions](#) of one or more [lines of business](#) (as distinguished from [performing particular services](#) for individual persons). It must be shown that the conditions of a particular trade or the interests of the community will be advanced.

⁴ <https://www.irs.gov/charities-non-profits/other-non-profits/examples-of-common-business-interests>.

⁵ CARES Act §1102.

otherwise attempting to influence legislation,” and the organization may not participate in any political campaign for any candidate for public office. However, many organizations covered by section 501(c)(3)⁶ are explicitly allowed to make lobbying expenditures, up to prescribed limits, without losing their status as a tax-exempt organization.⁷ Thus, many section 501(c)(3) entities are allowed to engage in political activities, including educating voters, subject to caps. Therefore, limiting participation to Section 501(c)(3) entities does not preclude participating organizations from also exercising their rights to advocate for legislative positions or candidates.

Furthermore, if political activity is, in fact, the basis for the Board's determination not to include Section 501(c)(6) entities, the term sheets could limit such activities to the same extent as they are limited for Section 501(c)(3) organizations. Thus, these business organizations could be eligible if they conform political spending to the caps permitted for Section 501(c)(3) charitable organizations, at least while the Main Street loan is outstanding.

If the Board decides to permit access to Main Street loan programs for Section 501(c)(6) organizations, there are other provisions in the term sheets that will need to be adjusted. The term sheets limit applicants to those tax-exempt organizations with at least 50 employees. The minimum employee requirement appears to be in furtherance of the goal to provide funding to large tax-exempt organizations so that they can retain employees, and perhaps as a proxy for the size and scope of the activities of the organization. However, the number of employees is not a relevant criterion for Section 501(c)(6) organizations. These organizations typically have a smaller number of employees but provide services and assistance to a large number of member companies. The fact that a Section 501(c)(6) entity may have fewer than 50 employees does not relate to the impact this organization may have on employment. In other words, the services provided by a Section 501(c)(6) organization can directly impact the survivability of tens or hundreds of member companies, employing hundreds or thousands of individuals. The number of employees of the tax-exempt entity is simply not a good proxy for the importance of the organization in enhancing business success and thereby retaining a large number of employees.

Another factor that may need to be adjusted is the requirement that 2019 revenues from donations are less than 30 percent of total 2019 revenue. It is not clear why this limitation is included in the term sheets, and more importantly, it is not clear if the term “donations” includes dues paid by member companies. Section 501(c)(6) companies are primarily funded through dues paid by member companies. If dues are considered to be voluntary donations, many Section 501(c)(6) will be excluded, notwithstanding the value they provide to our economy.

Several other factors also may be problematic: (i) the organization 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 percent; (ii) the organization must have liquid assets at the time of loan origination that is sufficient to meet 90 days of usual daily expenses; and (iii) the organization must have cash and investments that exceed 65 percent of outstanding loans and available lines of credit.

While these terms may be appropriate for larger organizations, many of the Section 501(c)(3) and Section 501(c)(6) organizations are smaller entities that may operate on a “break even” budget. For example, a business league may receive all dues income at the beginning of their fiscal year, and plan on spending down that income by the end of their fiscal year, receiving new revenue at the beginning of their next funding cycle. This organization will thus have more than 90 days of liquid assets until the fourth quarter of their fiscal year, but not meet the liquidity test for the final three months. However, the term sheet would prohibit this organization from obtaining a loan during the fourth quarter of their fiscal year, but not during the remainder of the year. This makes little sense, especially in the context of nonprofit entities that are dues funded.

The requirements based on a minimum ratio of earnings to operating revenue⁸ and the minimum ratio of cash and investments to outstanding loans and available lines of credit may be appropriate for very large non-profit corporations and for-profit entities. But again, these have little relevance in the case of smaller business leagues that are dues-based organizations and that do not engage in commercial for-profit activities. We strongly urge that the Board consider the nature of Section 501(c)(6) organizations and make appropriate adjustments to borrower requirements to take into account their business models.

⁶ Organizations allowed to make lobbying expenditures include educational nonprofits, agricultural organizations, hospitals and medical research facilities.

⁷ See Section 501(h) of the Internal Revenue Code. The limits are established by regulation at 26 C.F.R. §§ 501(h)-1 *et. seq.*

⁸ A footnote explains that operating revenue includes revenue from endowments in the case of charitable organizations. The definition of operating revenue for a Section 501(c)(6) organization may also have to be adjusted to consider their typical revenue sources.

In conclusion, the current term sheets permitting Section 501(c)(3) and Section 501(c)(19) organizations to access the Main Street lending programs should be enlarged to include Section 501(c)(6) entities. These business organizations play a vital role in sustaining their business members, educating the public about business products and services, and providing an important support during difficult economic times. While many of these organizations are not large, their services are felt broadly, and they can assist an entire industry. In particular, state and local real estate associations provide critical services to thousands of real estate professionals, and reducing costs for millions of consumers through their services, and enhancing the overall real estate economy. According to research by the National Association of REALTORS[®], every home sale generates roughly \$85,000, in economic activity and every two home sales supports one job. Nationally, real estate activity accounts for nearly 20 percent of GDP and has been a driver of nearly every economic expansion of the 20th century. The support of state and local real estate associations will therefore be particularly important in the coming months, and their services will be more crucial than ever for their member businesses and the communities they serve.

The importance of 501(c)(6) organizations should not be overlooked by the Board, and to the extent they require support, they should have access to the Main Street Lending Program. In addition, the term sheets should recognize the structure of Section 501(c)(6) entities, and modifications in required terms and conditions should be made to ensure that these organizations can participate in the loan programs as a practical matter.

If you have any questions, please contact me or Vice President of Federal Policy and Industry Relations, Joe Ventrone, at 202-383-1095 or JVentrone@NAR.REALTOR.

Sincerely,



Vince Malta
2020 President, National Association of REALTORS[®]