

## CARES Act Assistance for Nonprofit Employers: Update on Loans to Larger Nonprofits

April 10, 2020

On March 27, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act was signed into law. This Alert updates our [previous Alert's](#) discussion of Economic Stabilization Fund ("ESF") loans to nonprofits with more than 500 employees.

On April 9, 2020, the Federal Reserve Bank announced that it has established the Main Street Lending Program to provide the funding needed to support CARES Act lending programs for small and mid-sized businesses. This is not a new loan program. Instead it supports loan programs created under the CARES Act, including the ESF loans discussed in our previous Alert<sup>1</sup>.

The Fed's announcement on the MSLP provides further information on how ESF loans should work that may be of interest to potential nonprofit borrowers of ESF funds.

- Eligible borrowers are businesses with up to 10,000 employees or \$2.5 billion in revenue. (However, under the CARES Act, nonprofits are only eligible for ESF loans if they have between 500 and 10,000 employees.)
- Eligible loans will mature in four years. (The CARES Act did not specify a loan term.)
- Minimum loan size is \$1 million. Maximum loan size is up to \$25 million depending on the borrower's earnings and existing debt. (The CARES Act did not specify a minimum or maximum loan size.)
- Payments will be deferred for one year. (The CARES Act provided that payments would be deferred for at least six months.)
- Borrowers will apply to U.S.-insured depository institutions, bank holding companies and savings and loan holding companies. These lenders will make the loans, and the MSLP will purchase 95% of the loan amount from the lenders.

The Fed announcement states, "Firms that have taken advantage of the PPP [Paycheck Protection Program] may also take out Main Street loans." While this may be the case for businesses, absent further guidance from the government, we do not think it is true for nonprofits that have taken out PPP loans. To be eligible for a

---

<sup>1</sup> We, and others, have used the term "Economic Stabilization Fund" loans because they are included under the subtitle of the CARES Act, "Coronavirus Economic Stabilization Act of 2020" ("Stabilization Act"). The Stabilization Act includes the ESF loans under section 4003(c)(3)(D)(i) of the CARES Act which sets forth general terms for Assistance for Mid-Sized Businesses, "including, to the extent practicable, nonprofit organizations, with between 500 and 10,000 employees." Section 4003(c)(3)(D)(ii), describes the Federal Reserve's ability to support lending to small and mid-sized businesses through a Main Street Lending Program or similar program. Section 4027 of the CARES Act authorized the Treasury Department to use its existing stabilization fund to carry out the Stabilization Act.

# Caplin & Drysdale

ATTORNEYS

PPP loan, a nonprofit must have no more than 500 employees. The CARES Act provides that only nonprofits with 500 to 10,000 employees will be eligible for ESF loans.

Taking into account the parameters for ESF loans as indicated by the Fed's announcement of the MSLP, the following terms for ESF loans set forth in the CARES Act remain unchanged:

- Which nonprofits are eligible for Economic Stabilization Fund ("ESF") Loans? U.S. nonprofit organizations with between 500 and 10,000 employees.
- How does this program relate to the Paycheck Protection Loan ("PPL") program? Entities that are eligible to apply for PPLs (501(c)(3)s with 500 or fewer employees) are not eligible to apply for ESF loans due to the employee size requirements.
- What types of certification are required? Principally, that as a result of current economic conditions the requested loan is needed to support ongoing operations and that the funds will be used to retain 90% of workforce at full compensation and benefits until September 30, 2020. The borrower must also certify that it will restore not less than 90% of the workforce in place as of February 1, 2020, and restore all compensation and benefits to those workers, no later than 4 months after termination of the COVID-19 public health emergency. In addition, recipients must agree to limits on compensation and severance paid to certain employees until one year after the loan repayment.
- What are terms of repayment? The interest rate is capped at 2 percent.

For more information on this Alert or other CARES Act provisions, please contact a member of [Caplin & Drysdale's Exempt Organizations team](#).

[Meghan R. Biss](#)

202.862.7866

[mbiss@capdale.com](mailto:mbiss@capdale.com)

[William D. Fournier](#)

202.862.5079

[wfournier@capdale.com](mailto:wfournier@capdale.com)

[William M. Klimon](#)

202.862.5022

[wklimon@capdale.com](mailto:wklimon@capdale.com)

[Amanda Reed](#)

202.862.7851

[areed@capdale.com](mailto:areed@capdale.com)

[Douglas N. Varley](#)

202.862.7818

[dvarley@capdale.com](mailto:dvarley@capdale.com)

[Sharon P. Want](#)

202.862.7849

[swant@capdale.com](mailto:swant@capdale.com)

---

# Caplin & Drysdale

ATTORNEYS

# Caplin & Drysdale

A T T O R N E Y S

## About Caplin & Drysdale

Having celebrated our 50th Anniversary in 2014, Caplin & Drysdale continues to be a leading provider of legal services to corporations, individuals, and nonprofits throughout the United States and around the world. We are also privileged to serve as legal advisors to accounting firms, financial institutions, law firms, and other professional services organizations.

The firm's reputation over the years has earned us the trust and respect of clients, industry peers, and government agencies. Moreover, clients rely on our broad knowledge of the law and our keen insights into their business concerns and personal interests. Our lawyers' strong tactical and problem-solving skills - combined with substantial experience handling a variety of complex, high stakes, matters in a boutique environment - make us one the nation's most distinctive law firms.

With offices in New York City and Washington, D.C., Caplin & Drysdale's core practice areas include:

- [Bankruptcy](#)
- [Business, Investment & Transactional Tax](#)
- [Complex Litigation](#)
- [Corporate Law](#)
- [Employee Benefits](#)
- [Exempt Organizations](#)
- [International Tax](#)
- [Political Law](#)
- [Private Client](#)
- [Tax Controversies](#)
- [Tax Litigation](#)
- [White Collar Defense](#)

For more information, please visit us at [www.caplindrysdale.com](http://www.caplindrysdale.com).

**Washington, DC Office:**  
One Thomas Circle, NW  
Suite 1100  
Washington, DC 20005  
202.862.5000

**New York, NY Office:**  
600 Lexington Avenue  
21st Floor  
New York, NY 10022  
212.379.6000

## Disclaimer

This communication does not provide legal advice, nor does it create an attorney-client relationship with you or any other reader. If you require legal guidance in any specific situation, you should engage a qualified lawyer for that purpose. Prior results do not guarantee a similar outcome.

## Attorney Advertising

It is possible that under the laws, rules, or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.

© 2020 Caplin & Drysdale, Chartered  
All Rights Reserved.