

New York Forward Loan Program Overview

May 29, 2020 | **CLIENT ALERTS**

On May 26, 2020, the New York Forward Loan Program (NYFLP) began accepting pre-applications for certain small businesses located in New York State. The NYFLP has been designed to assist small businesses materially impacted by the state-mandated shut down of certain businesses due to the COVID-19 pandemic. The applications will then be reviewed on a rolling basis beginning on June 1, 2020 making this a first-come, first-served process. The NYFLP loans will NOT be eligible for forgiveness.

Who is eligible to participate in the NYFLP?

The NYFLP is available to three types of entities: (i) Small Businesses; (ii) Nonprofits, and (iii) Landlords. The goal of the NYFLP intends to reserve 65% of the total \$100 million program for Small Businesses, 30% for Landlords, and 5% for Nonprofits. The following requirements must be met no matter which entity type a borrower falls under:

- The borrower must not have received a Paycheck Protection Program (PPP) or an Economic Injury Disaster Loan (EIDL) from the federal government;
- The COVID-19 pandemic, and the subsequent shut down of New York State to certain businesses, materially affected the borrower's operations;
- The borrower must have been in business for at least 1 year prior to its application for the NYFLP; and
- The borrower's business must be located in New York State.

The three entity types also have specific requirements in order for a borrower to be eligible for the NYFLP. If the borrower classifies as a Small Business, the borrower must:

- Have 20 or fewer full-time employees (FTEs); and
- Have a gross revenue that is less than \$3 million per year.

If the borrower classifies as a Nonprofit, the borrower must:

- Be classified as a 501(c)(3) nonprofit organization or be a faith-based organization;
- Have 20 or fewer FTEs;
- Have an operating budget of less than \$3 million; and
- Provide direct services to New York State residents.

If the borrower classifies as a Landlord, the borrower must:

- Own no more than 200 units, and no single property can have more than 50 units;
- Certify that all properties are located in a low- or moderate-income census tract, or meet a test that they

otherwise would qualify for a low- or moderate-income census tract;

- Have had positive cash flows for 12 months prior to their application for the NYFLP;
- Have an active forbearance agreement, or proof they have not missed a mortgage payment in the last 12 months;
- Be current on property taxes through March 2020;
- Attest that they will not evict any COVID-impacted tenants; and
- Demonstrate their property(s) are in good repair.

What are the terms of a NYFLP loan?

The NYFLP loans have both distinct and common terms for the loan depending on which entity type the borrower falls under. The common terms of the loan are as follows:

- 5 year term;
- In Year 1 of the loan, the borrower will only make interest payments monthly, while in Years 2 through 5 the borrower will make monthly principal and interest payments;
- Loan proceeds must be used for working capital purposes, with a specific preference on the proceeds being used to implement social distancing protocols required by New York State;
- Borrower must detail anticipated uses of loan proceeds in their application;
- No previously outstanding debt may be refinanced;
- No collateral is required from the borrower; and
- No repayment penalty.

The NYFLP also has specific terms depending on which entity type the borrower is classified as. If the borrower is a Small Business, these specific terms shall apply:

- The maximum loan amount shall be the lesser of (i) \$100,000; or (ii) up to 100% of the borrower's average monthly revenues in a 3-month period prior to COVID-19; and
- Interest rate of 3%.

If the borrower is classified as a Nonprofit, these specific terms shall apply:

- The maximum loan amount shall be the lesser of (i) \$100,000; or (ii) up to 100% of the borrower's average monthly expenses in a 3-month period prior to COVID-19; and
- Interest rate of 2%.

If the borrower is classified as a Landlord, these specific terms shall apply:

- The maximum loan amount shall be the lesser of (i) \$100,000; or (ii) the projected reduction in of 3 months net operating income based on the actual reduction of net operating income in April or May 2020
- Interest rate of 3%.

The 3-month measuring period for average monthly revenue for Small Businesses or the average monthly expenses for Nonprofits may be calculated using any consecutive 3-month period from 2019, or January through March 2020.

Are there any businesses that do not qualify for the NYFLP?

Yes, there are businesses that do not qualify for the NYFLP, including, but not limited to:

- Corporate-owned franchises;
- Not-for-profit social clubs;
- Branch banks;
- Pay day loan stores;
- Pawn shops;
- Astrology, palm reading;
- Liquor stores, night clubs;
- Adult bookstores, massage parlors, strip clubs;
- Track wagering facilities;
- Trailer-storage yards;
- Marijuana dispensaries.

What information will be required from the borrower to apply for the NYFLP?

Small Businesses that wish to apply for the NYFLP should expect to provide the following:

- Most recently filed tax returns, if available and required by the lender; if not available, internally generated financial statements or other documentation used to determine cash flows;
- Schedule of ownership (name, address, Social Security number, phone number, email, percentage ownership, photo ID for any owners with more than 20% ownership);
- Brief description of COVID-19 impacts on jobs and revenues;
- Evidence of legal formation of business entity (Articles of Incorporations and/or Bylaws); and
- Personal Credit Report (if applicable).

Nonprofits that wish to apply for the NYFLP should expect to provide the following:

- Most recent audited or reviewed financial statements, as applicable, and most recent internal financial statements, if available;
- Most recently filed IRS form 990;
- Proof of IRS nonprofit status;
- Evidence of legal formation of nonprofit entity (Articles of Incorporations and/or Bylaws);
- Information of the nonprofit's executive team member signing (name, address, Social Security number, phone number, email, photo ID);
- Brief description of COVID-19 impacts on jobs and revenues; and
- Nonprofit board approval and resolution.

Landlords that wish to apply for the NYFLP should expect to provide the following:

- Most recently filed tax returns, if available and required by the lender;
- 2019 Income and Expense statement;

- Property Rent Roll showing economic impact;
- Schedule of ownership (name, address, Social Security number, phone number, email, percentage ownership, photo ID for any owners with more than 20% ownership);
- Hardship Letter specifying COVID-19 impacts on jobs and revenues;
- Forbearance Disclosure Statement;
- Evidence of legal formation of business entity (Articles of Incorporations and/or Bylaws); and
- Personal Credit Report (if applicable).

If you have any questions about applying for the NYFLP, or any other government loan program available to small businesses due to the COVID-19 pandemic, please call the attorney you work with at Lippes Mathias or 716.853.5100.