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Second Expansion to the Federal Reserve's Municipal Lending Program: Hunton Andrews Kurth

Recap of Program

In April 2020, the Federal Reserve (the "Fed") announced the creation of a municipal lending program called the Municipal Liquidity Facility (the "MLF").1 The MLF, which became operational on May 26, 2020, is a federal loan program offering up to $500 billion in short-term direct lending to state and local governments to help manage cash flow stresses caused by the COVID-19 pandemic. All counties with a population of at least 500,000 residents and cities with a population of at least 250,000 residents are eligible to sell short-term notes (taxable or tax-exempt) directly to the MLF. The Fed maintains a list of the eligible cities and counties based on their populations.2

Program Expansion

On June 3, 2020, the Fed expanded the number of municipal entities that can access the MLF. The expanded regulations permit the governor of each state to designate up to two Revenue Bond Issuers located within such state ("Designated RBIs") for participation in the MLF. The Designated RBIs may be a state, political subdivision or a public authority, agency, or instrumentality thereof that issues bonds that are secured by revenue from a specified source that is owned by a governmental entity (such as public transit, airports, toll facilities and utilities). In addition to Designated RBIs, other governmental entities that provide essential public services on behalf of an eligible state, city, or county may participate in the MLF by borrowing through an eligible issuer.

Also under the expanded regulations, each state is now guaranteed a minimum of two "population-based" issuers. States which do not have cities/counties that meet the population thresholds are now eligible, by governor designation, to select the two most populous cities or counties to utilize the MLF. Non-qualifying cities and counties are also encouraged to utilize the MLF indirectly by borrowing through a qualifying entity.

Pursuant to the MLF's purchasing guidelines, an eligible issuer may (i) sell notes directly to the MLF, or (ii) conduct a competitive sale process in conjunction with a direct sale to the MLF. Under the competitive sale model, the MLF will serve as a backstop and agree to purchase notes that are not awarded to other bidders. The MLF will agree to purchase the notes at a price determined by the MLF's pricing model found here.

The MLF is currently operational. Any eligible issuer that wishes to utilize the MLF should complete a "Notice of Interest" application found here. Among other requirements:

- Eligible state, county or city issuers must have an investment grade rating (BBB-/Baa3) as of April 8, 2020, from at least two nationally recognized rating agencies.
- Designated RBIs must have an investment grade rating of A-/A3 as of April 8, 2020, from at least two nationally recognized rating agencies.
- Designated RBIs must provide the following in order to qualify:

1) At the time it submits a Notice of Interest application, evidence that its status of “Designated RBI” has been verified with the governor; and

2) At the time of the note sale, a certification from the governor reflecting its designation.

- Eligible issuers must provide a written certification that they are unable to secure adequate credit accommodations from other banking institutions and that they are not insolvent. In making this certification, issuers may consider economic or market conditions intended to be addressed by the MLF as compared to normal market conditions, including the availability and price of credit.3 Issuers should consider consulting with their financial advisors regarding the terms of the MLF and the comparability and viability of alternative credit accommodations.
- Eligible issuers must deliver standard legal opinions for the issuance of debt, including, but not limited to, an opinion of nationally recognized bond counsel as to the validity, enforceability and binding nature of the notes.
- The termination date for the MLF is December 31, 2020.

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