Federal Reserve Lending Programs to Support U.S. Economy During COVID-19 Pandemic

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Skadden

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Background

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) became law on March 27, 2020. The economic stimulus package in the CARES Act includes federal funding for business stimulus across three broad categories: (i) grants and direct lending dedicated to specific sectors, such as airlines and national security businesses; (ii) expanded eligibility and payroll support for small businesses through programs administered by the Small Business Administration (SBA); and (iii) Treasury funding for several lending programs administered with the Federal Reserve. More than $450 billion of the allocated funds is directed toward this last category, which is the focus of this summary. The table below summarizes eight programs recently announced, expanded or expected by the Federal Reserve in response to the COVID-19 pandemic.

Implementation

The terms of most of these programs are outlined publicly only at a high level through some combination of press release, one-page term sheet or general text in the CARES Act. The CARES Act requires the Department of the Treasury to promulgate regulations by April 6, 2020, to implement some of these stimulus initiatives. However, the Treasury and Federal Reserve face the daunting task of standing up multiple, complex programs, in a short time, with scrutiny and second-guessing both in real time and in hindsight — all while the agency staff are themselves facing challenging work conditions. Thus, we expect the implementation of these programs will be uneven and iterative, with questions and ambiguities being addressed over time rather than in a single set of comprehensive final regulations to be issued in the next week or two.

Generally Applicable Conditions

The lending programs summarized below are generally available only if the recipient is solvent and unable to secure adequate credit from other banking institutions. The Federal Reserve has discretion to make a determination of inadequate credit availability based on generally applicable considerations related primarily to market conditions — rather than on an individual recipient basis.

If a lending program below derives any portion of its funding from Treasury under the CARES Act, then the recipient must be a business that (i) is created or organized in the United States or under the laws of the United States; (ii) has significant operations in the United States; (iii) has a majority of its employees based in the United States; (iv) has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under the CARES Act; and (v) is consistent with certain conflict-of-interest provisions prohibiting participation by entities in which elected federal officials, the heads of executive branch departments or their family members have a controlling influence.

Additional Conditions for Direct Loan Programs

If a lending program below derives any portion of its funding from Treasury under the CARES Act and the program provides "direct loans" (a term defined in the CARES Act), then the recipient must also meet the two additional conditions below.

Prohibition on Certain Buybacks and Capital Distributions. First, the recipient will be prohibited, until 12 months after the loan is no longer outstanding, from (i) repurchasing equity securities of itself or its parent that were listed on a national exchange while the loan is outstanding, except as otherwise contractually required; or (ii) paying dividends or making other capital distributions on common stock.

Limits on Compensation. Second, the recipient must comply with the following compensation limitations until one year after the loan is no longer outstanding.

- An officer or employee of the recipient whose total compensation exceeded $425,000 in calendar year 2019 may not receive (i) total compensation from the recipient during any 12 consecutive month period that exceeds the total compensation that individual received in calendar year 2019 or (ii) severance pay or other benefits upon termination of employment that exceed twice the total compensation that individual received in calendar year 2019. This limitation does not apply to employees whose compensation is determined through an existing collective bargaining agreement entered into prior to March 1, 2020.
- An officer or employee of the recipient whose total compensation exceeded $3 million in calendar year 2019 may not receive total compensation from the recipient during any 12 consecutive month period in excess of the sum of $3 million plus 50% of the total compensation over $3 million the individual received in calendar year 2019.

What is the program?	Who is eligible?	How will it work?	Additional information
PMCCF **Primary Market Corporate Credit Facility**	- U.S. companies that (i) are headquartered in the United States; (ii) have "material operations" in the United States; and (iii) are rated investment-grade (at least BBB-/Baa3 by a major nationally recognized statistical rating organization (NRSRO) and, if rated by multiple major NRSROs, rated at least BBB-/Baa3 by two or more NRSROs) in each case subject to review by the Federal Reserve. - Companies that are expected to receive direct financial assistance under the CARES Act are not eligible. - Eligibility may be expanded in future.	- Program will extend credit to eligible companies by investing in new bonds and/or making loans. - Federal Reserve and Treasury will fund a special purpose vehicle (SPV), which will (i) purchase qualifying bonds directly from eligible issuers and/or (ii) make loans to eligible issuers. - Interest rate to be "informed by market conditions." - Maturity less than four years. - Bonds and loans under program may be called by borrower at par at any time. - Maximum borrowings under program are based on a percentage of the borrower's maximum amount of bonds and loans outstanding on any one day from March 22, 2019, to March 22, 2020; percentage varies from 110-140% based on borrower's rating. - Commitment fee of 100 bps.	- Federal Reserve term sheet released March 23, 2020.

(Continued on next page)

Federal Reserve Lending Programs to Support U.S. Economy During COVID-19 Pandemic

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Assistance for Midsized Businesses	- Borrower must be a business or nonprofit organization that has 500 to 10,000 employees. - Borrower must certify in good-faith that: (i) the uncertainty of economic conditions as of the date of the application makes necessary the loan request to support its ongoing operations; (ii) the funds it receives will be used to retain at least 90% of its workforce at full compensation and benefits until September 30, 2020; (iii) it intends to restore at least 90% of its workforce that existed as of February 1, 2020, and to restore all compensation and benefits to workers no later than four months after termination of the national public health emergency; (iv) it is an entity or business that is domiciled in the United States with significant operations and employees located in the United States; (v) it is not a debtor in a bankruptcy proceeding; (vi) it is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States; (vii) it will not pay common stock dividends or repurchase equity listed on a national securities exchange of itself or parent while loan is outstanding, except as otherwise contractually required; (viii) it will not outsource or offshore jobs for the term of the loan and two years after completing repayment; (ix) it will not abrogate existing collective bargaining agreements for the term of the loan and two years after completing repayment; and (x) it will remain neutral in any union organizing effort for the term of the loan. - To the extent practicable, nonprofit organizations are expected to be eligible.	- Program would involve Federal Reserve and Treasury financing for "banks and other lenders" to make direct loans to eligible borrowers. - Interest rate would not exceed 2% per annum. - For first six months (or longer period determined by Treasury), no principal or interest due.	- Federal Reserve term sheet released March 23, 2020.

(Continued on next page)

Federal Reserve Lending Programs to Support U.S. Economy During COVID-19 Pandemic

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MSBLP **Main Street Business Lending Program**	- Expected to be for small- and medium-sized businesses. - Eligibility criteria and conditions not yet announced. - CARES Act does not require that a Main Street Business Lending Program impose conditions similar to those under the Assistance for Midsized Businesses described above; however, the Federal Reserve and/or Treasury may choose to do so.	- In a press release on March 23, 2020, the Federal Reserve stated: "[T]he Federal Reserve expects to announce soon the establishment of a Main Street Business Lending Program to support lending to eligible small- and medium-sized businesses, complementing efforts by the SBA."	- Details not yet announced.
SMCCF **Secondary Market Corporate Credit Facility**	- U.S. businesses that (i) have "material operations" in the United States; and (ii) have investment-grade corporate bonds (at least BBB-/Baa3 by a major NRSRO and, if rated by multiple major NRSROs, rated at least BBB-/Baa3 by two or more NRSROs) in each case subject to review by the Federal Reserve. - Companies that are expected to receive direct financial assistance under the CARES Act are not eligible.	- Program will support credit markets by providing liquidity for outstanding corporate bonds of eligible companies. - Federal Reserve and Treasury will fund a SPV, which will (i) purchase qualifying bonds in the secondary market of eligible companies and/or (ii) purchase U.S.-listed exchange traded funds (ETFs) whose investment objective is broad exposure to U.S. investment-grade bonds (it is not clear, however, if such purchases will be of securities issued by ETFs or of their underlying assets). - Maximum amount of bonds of a particular eligible company that will be purchased under this program is capped at 10% of the company's maximum amount of bonds outstanding on any day from March 22, 2019, through March 22, 2020. The facility will "not purchase more than 20% of the assets" of any particular ETF as of March 22, 2020. - The facility will purchase eligible corporate bonds at fair market value in the secondary market. The facility will not purchase shares of eligible ETFs when they trade at prices that materially exceed the estimated net asset value (NAV) of the underlying portfolio.	- Federal Reserve term sheet released March 23, 2020.

(Continued on next page)

Federal Reserve Lending Programs to Support U.S. Economy During COVID-19 Pandemic

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TALF **Term Asset-Backed Securities Loan Facility**	– Borrowers that are (i) a U.S. business entity organized under the laws of the United States or a political subdivision or territory thereof (including such an entity that has a non-U.S. parent company), or a U.S. branch or agency of a foreign bank; (ii) own eligible collateral; and (iii) maintain an account relationship with a primary dealer.	– Program will help meet the credit needs of consumers and small businesses by facilitating the issuance of asset-backed securities and improving the market for asset backed securities (ABS) more generally. – Federal Reserve and Treasury will fund a SPV, which will make three-year loans to eligible borrowers that are nonrecourse and fully secured by eligible consumer and business ABS. – Eligible collateral must be USD-denominated cash ABS that (i) have a credit rating in the highest long-term or highest short-term investment-grade rating category from at least two eligible NRSROs and no rating below the highest investment grade rating category from an eligible NRSRO; and (ii) all or substantially all of the underlying credit exposure (a) was originated by a U.S. company (b) was issued on or after March 23, 2020 and (c) is limited to ABS backed by auto loans and leases, student loans, credit card receivables (both consumer and corporate), equipment loans, floorplan loans, insurance premium finance loans, certain small business loans that are guaranteed by the SBA, or eligible servicing advance receivables.	– Federal Reserve term sheet released March 23, 2020. – Skadden client alert dated March 24, 2020.

(Continued on next page)

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CPFF **Commercial Paper Funding Facility**	- U.S. issuers of commercial paper (including municipal issuers and U.S. issuers with a foreign parent company) that (i) meet certain ratings requirements; and (ii) have issued asset-backed commercial paper to institutions other than the sponsoring institution for any consecutive period of three months or longer between March 16, 2019, and March 16, 2020.	- Program will support issuance of term commercial paper by supporting purchases of eligible commercial paper. - Primary dealers will purchase from eligible issuers three-month USD-denominated commercial paper. - The amount of commercial paper of a particular issuer that may be purchased under this program depends in part on the issuer's rating. - Pricing for commercial paper that is rated A1/P1/F1 will be based on the then-current three-month overnight index swap rate plus 110 basis points (or in the case of downgraded issuers who still qualify, 200 basis points). - Issuers are required to pay a facility fee equal to 10 bps of the maximum amount of commercial paper such issuers can sell to the SPV.	- Federal Reserve term sheet, FAQs and other materials.
MMFL **Money Market Mutual Fund Liquidity Facility**	- U.S. depository institutions, U.S. bank holding companies (parent companies incorporated in the United States or their U.S. broker-dealer subsidiaries) or U.S. branches and agencies of foreign banks that purchase eligible collateral from eligible money market mutual funds.	- Program will support the market for assets that underlie money market mutual funds. - Federal Reserve will extend credit to eligible banking organizations that are secured by assets purchased by the banking organization from eligible money market mutual funds. - Eligible collateral includes U.S. treasuries, asset-backed commercial paper that has certain short-term ratings, certain municipal variable demand notes, certain bank certificates of deposit, etc., that were purchased from eligible money market funds. - Eligible money market fund must be a fund that identifies itself as a Prime, Single State or Other Tax-Exempt money market fund on Securities and Exchange Commission Form N-MFP. - The rate of the loan will depend on the collateral securing the loan.	- Federal Reserve term sheet, FAQs and other materials.

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PDCF **Primary Dealer Credit Facility**	– Primary dealers of the Federal Reserve Bank of New York that have eligible collateral.	– Program will help primary dealers support smooth market functioning by providing primary dealers with short-term loans. – Federal Reserve will offer overnight and term funding with maturities up to 90 days to primary dealers with eligible collateral. – Eligible collateral includes collateral eligible for pledge in open market operations, investment grade corporate debt securities, international agency securities, commercial paper, municipal securities, etc. – Loans will be made at a rate equal to the primary credit rate in effect at the Federal Reserve Bank of New York offered to depository institutions via the Discount Window.	– Federal Reserve term sheet, FAQs and other materials.