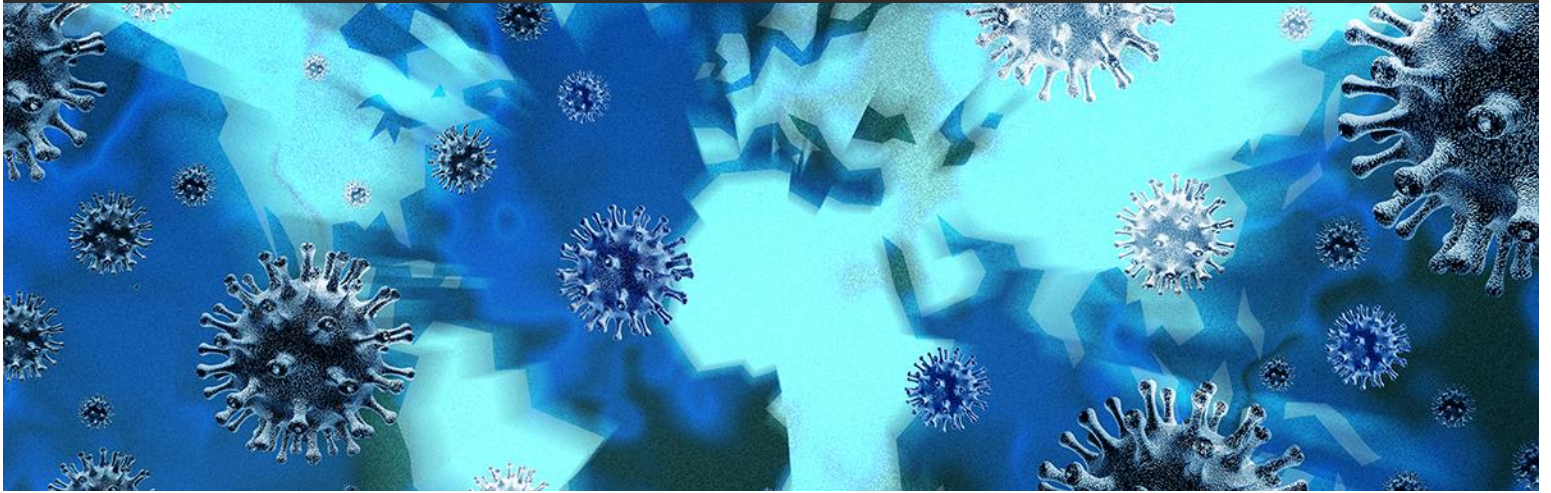


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



March 28, 2020

COVID-19 Federal Legislative and Regulatory Economic Stabilization Programs – What Your Business Needs to Know

As the Coronavirus Disease 2019 (COVID-19) pandemic continues in the United States, the U.S. Congress and the U.S. federal financial regulatory agencies – the Federal Reserve, U.S. Department of the Treasury, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, National Credit Union Administration, and the Consumer Financial Protection Bureau (collectively, the Financial Agencies) – have introduced a number of financial stimulus programs or provided guidance designed to stabilize the U.S. economy and provide relief to U.S. debtors, both corporate and individual.

Each of the stimulus programs is outlined below.

Title IV of the CARES Act

On March 27, 2020, the President of the United States signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Title IV of the CARES Act titled, “Economic Stabilization and Assistance to Severely Distressed Sectors of the United States Economy,” includes several financial stimulus programs for U.S. businesses, other than programs earmarked by Title I of the CARES Act for

small businesses.¹ Some of the key financial stimulus programs of the CARES Act include: ***U.S. Department of the Treasury Direct Support (Including Legislative Authority to Establish Facilities)***

The CARES Act authorizes the U.S. Department of the Treasury (Treasury) to make up to \$500 billion of emergency loans, loan guarantees, or investments to be allocated as follows:

- Up to **\$25 billion** in loans and guarantees will be allocated for **passenger air carriers**;
- Up to **\$4 billion** in loans and guarantees will be allocated for **cargo air carriers**;
- Up to **\$17 billion** in loans and guarantees will be allocated for businesses critical to maintaining **national security** (the foregoing, Specific Industry Assistance); and
- Up to **\$454 billion** for loans, loan guarantees, and investments will be allocated to facilities established by the Federal Reserve to support lending to **eligible businesses, states,² and municipalities** ((b)(4) Assistance).

Midsized Business Lending Program

The CARES Act authorizes Treasury to endeavor to implement a program or facility of (b)(4) Assistance to provide funds to banks and other lenders to make direct loans to non-profit organizations and businesses between 500 and 10,000 employees. Loan interest cannot exceed 2% per year and no principal or interest payments will be due for the first six months (or such longer period as determined by Treasury). To qualify, the eligible borrower must self-certify in good faith to Treasury, among other things, that:

- the loan is necessary to support the borrower's ongoing operations because of the uncertainty of the economic conditions as of the date of the loan application;
- the borrower will retain at least 90% of its workforce at full compensation and benefits until September 30, 2020;
- the borrower intends to restore (x) at least 90% of the workforce of the borrower as it existed as of February 1, 2020 and (y) all compensation and benefits to the workers of the borrower no later than four months after the termination of the public health emergency declared by the U.S. Secretary of Health and Human Services;
- the borrower is domiciled in the United States with "significant operations and employees" in the United States;
- the borrower is not a debtor in bankruptcy proceedings;
- the recipient 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 are located in, the United States;
- the borrower will not pay dividends with respect to its business or repurchase an equity security listed on a national securities exchange of itself or its parent company unless required by existing contractual arrangements;

¹ Programs to be implemented by the Small Business Administration pursuant to Title I of the CARES Act are addressed in a [separate Alert](#).

² This includes U.S. territories or possessions and Indian Tribes.

- the borrower will not outsource or offshore jobs for a period of time ending two years after repayment of the loan;
- the recipient will not abrogate existing collective bargaining agreements during the term of the loan and for two years thereafter; and
- the borrower will remain neutral in any union-organizing effort.

Main Street Lending Program

The CARES Act does not limit the discretion of the Federal Reserve to establish a “Main Street Lending Program” or other similar program or facility that supports lending to small- and mid-sized businesses on terms consistent with the authority given to the Federal Reserve by Section 13(3) of the Federal Reserve Act.

State and Municipal Borrower Lending Program

The CARES Act directs Treasury to endeavor to implement a program or facility that provides liquidity to the financial system by lending to states³ and municipalities.

Conditions on Specific Industry Assistance Programs

The Act directs Treasury to publish procedures for applications and minimum requirements for Specific Industry Assistance not more than 10 days after the date of enactment of the CARES Act (*i.e.*, by April 6, 2020). Loans and guarantees under this program are conditioned on Treasury determining that:

- the borrower is an eligible business for which credit is not otherwise reasonably available at the time of the transaction;
- the intended obligation by the borrower is prudently incurred;
- the loan or guarantee is sufficiently secured or made at a rate that reflects the risk of the loan or guarantee and, to the extent practicable, is not less than the interest rate based on market conditions for comparable obligations prior to the COVID-19 outbreak;
- the duration of the loan or guarantee is as short as practicable and not longer than five years;
- neither the borrower nor its affiliates may purchase an equity security that is listed on a national securities exchange of the borrower or its parent, except pursuant to existing contractual obligations for 12 months after the loan or guarantee is no longer outstanding;
- the borrower cannot pay dividends or make other capital distributions on its common stock for 12 months after the loan or guarantee is no longer outstanding;
- the borrower must maintain its employment levels as of March 24, 2020, to the extent practicable, and in any case cannot reduce its employment levels by more than 10% from the levels on such date;
- the borrower must certify that 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 employees based in, the United States;

³ For purposes of the CARES Act, “state” includes U.S. territories and possessions and Indian Tribes.

- the borrower must have incurred or is expected to incur covered losses, as defined in the CARES Act, such that the continued operations of the business are jeopardized, as determined by Treasury;
- the borrower must comply with the limitations on certain employee compensation set forth below; and
- if the business has securities that are traded on a national securities exchange, Treasury must receive a warrant or other equity interest in the eligible business or, in the case of any other eligible business, Treasury can receive, in its discretion, a warrant or equity interest in the business or a senior debt instrument issued by the eligible business. The terms and conditions of these instruments will be set by Treasury and must meet the requirements set forth in the CARES Act.

Conditions on (b)(4) Assistance Programs

Recipients of direct loans from lenders under (b)(4) Assistance programs must agree:

- not to purchase an equity security that is listed on a national securities exchange of the borrower or its parent, except pursuant to existing contractual obligations for 12 months after the direct loan is no longer outstanding;
- not to pay dividends or make other capital distributions on its common stock for 12 months after the direct loan is no longer outstanding, unless waived by Treasury upon a determination that a waiver is necessary to protect the interests of the Federal Government; and
- to comply with the limitations on certain employee compensation set forth below.

Employee Compensation Limitations on Specific Industry Assistance and (b)(4) Assistance

The CARES Act places limitations on compensation of certain employees of eligible businesses receiving Specific Industry Assistance and (b)(4) Assistance. These limits require the eligible business to agree to cap all employee compensation (including salary, stock, bonuses, and other financial benefits) for a period ending one year after the loan is repaid. For employees receiving more than \$425,000 per year: (i) these employees cannot receive more compensation than they received in 2019; and (ii) severance pay or other benefits upon termination cannot exceed twice the 2019 compensation amount. Officers or employees receiving more than \$3 million per year cannot receive total compensation more than the sum of (i) \$3 million plus (ii) 50% of the excess over \$3 million.

Public Reporting Requirement

The CARES Act requires Treasury to publish on its website a plain language description about each loan and loan guarantee within 72 hours of the transaction, including the date of application, date of application approval, and identity of the counterparty. Additionally, Treasury and the Federal Reserve must report to the relevant congressional committees on transactions and the authorization of new facilities, respectively. In other words, Title IV-authorized financing transactions will not be confidential.

Continuation of Certain Air Service or Air Carrier Borrowers

The CARES Act requires the U.S. Secretary of Transportation to require, to the extent feasible, that loan or loan guarantee recipient air carriers maintain their scheduled air transportation until March 1, 2022, taking into consideration the air transportation needs of small and remote communities and the need to maintain well-functioning health care and pharmaceutical supply chains.

Unlimited Deposit Insurance Coverage on Transactional Deposit Accounts Through December 31, 2020

The CARES Act amends Section 1105 of the Dodd-Frank Act of 2010 and authorizes the Federal Deposit Insurance Corporation (FDIC) to guarantee, through December 31, 2020, the obligations of solvent insured depository institutions and their affiliates, including noninterest-bearing demand deposit accounts, **without limit**. This provision effectively resurrects the Transaction Account Guarantee Program of the FDIC, which the FDIC launched in October 2008 at the start of the Great Recession. The CARES Act would also give the National Credit Union Administration (NCUA) authority to increase share insurance coverage on noninterest-bearing demand deposit accounts at federally insured credit unions through December 31, 2020.

Temporary Capital Ratio Reduction for Community Banks

The CARES Act authorizes federal banking regulators to issue an interim rule that reduces the community bank leverage capital ratio from 9% to 8% and obligates regulators to provide a reasonable grace period for a qualifying community bank that falls out of compliance to regain compliance with the ratio requirements.

Temporary Relief from Troubled Debt Restructurings

The CARES Act temporarily relieves insured depository institutions from categorizing loan modifications related to the COVID-19 disease as troubled debt restructurings for purposes of compliance with the requirements of the Federal Deposit Insurance Act of 1933, as amended (12 U.S.C. §§ 1811 *et seq.*), until such time and under such circumstances as the appropriate federal banking agency or the NCUA determines appropriate. This provision in Title IV provides statutory endorsement to the short-term loan modification guidance published by the Financial Agencies on March 23, 2020, as discussed more fully in the next section of this Alert.

Temporary Lending Limit Waiver

The CARES Act will allow the Office of the Comptroller of the Currency (OCC) to temporarily waive the applicable loan limits for loans to non-bank financial companies (as defined in the Dodd-Frank Act) until the earlier of the: (i) the date on which the designated national emergency period terminates; and (ii) December 31, 2020.

Temporary Relief from Current Expected Credit Losses (CECL)

The CARES Act temporarily relieves insured depository institutions, bank holding companies, and any affiliates from complying with the Financial Accounting Standards Board Accounting Standards Update No. 2016–13 (Measurement of Credit Losses on Financial Instruments), including the CECL methodology for estimating allowances for credit losses, until the earlier of: (i) the date on which the designated national emergency period terminates, and (ii) Dec. 31, 2020.

Non-Applicability of Restrictions on Exchange Stabilization Fund (ESF) During National Emergency

The CARES Act temporarily suspends the restrictions of the Emergency Economic Stabilization Act of 2008 on Treasury's use of the ESF from the date of the enactment of this Act until Dec. 31, 2020. Any

guarantee that is established under this provision will be limited to a guarantee of the total value of a shareholder's account in a participating fund as of the close of business on the day before the announcement of the guarantee. The guarantee must also terminate by Dec. 31, 2020.

Temporary Credit Union Provisions

The CARES Act broadens the definition of the kinds of credit unions to beyond only those serving “natural persons” and the eligibility requirements for those institutions to receive assistance from the Central Liquidity Facility of the NCUA. Specifically, a credit union may access liquidity if the value of such obligation does not exceed 16 times the subscribed capital stock and surplus of the facility itself. The present restriction is 12 times the capital stock and surplus. These restrictions expire Dec. 31, 2020.

Inspector General for Pandemic Recovery

Similar to the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) created by Congress at the start of the Great Recession, the CARES Act establishes within Treasury an Office of the Special Inspector General for Pandemic Recovery, appointed by the President and confirmed by the Senate. The Office will function for five years and has been granted a \$25 million budget. The Special Inspector General is tasked with conducting, supervising, and coordinating audits and investigations of the making; purchase, management, and sale of loans; loan guarantees; and other investments made by the Treasury Secretary. The Special Inspector General must file quarterly reports with Congress that provide the details of all loans, loan guarantees, and other investments.

Credit Protection During COVID-19

The CARES Act amends the Fair Credit Reporting Act's duties of furnishers of information to consumer reporting agencies. It specifically applies to the reporting obligations of creditors that provide an “accommodation” to a consumer on a credit obligation or account during the covered period of the COVID-19 pandemic. The covered period began on Jan. 31, 2020 and ends 120 days after the later of (a) enactment of the CARES Act (*i.e.*, July 26, 2020) or (b) termination of the President's COVID-19 outbreak national emergency proclamation.

Foreclosure Moratorium and Consumer Right to Request Forbearance

The CARES Act permits a borrower “experiencing a financial hardship” due to the COVID-19 emergency to request forbearance of a “federally backed mortgage loan,” regardless of delinquency status. The section applies to qualifying 1- to 4-family residential real property including individual condo and coop units. The borrower can receive two 180-day forbearances. The section also includes a moratorium on the initiation or moving forward on judicial or non-judicial foreclosures for not less than 60 days beginning March 18, 2020 (*i.e.*, May 27, 2020).

Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans

The CARES Act permits a borrower “experiencing a financial hardship” due to the COVID-19 to request forbearance of a federally backed multi-family loan (5 or more units) if the loan was current as of Feb. 1, 2020. The borrower may submit an oral or written request to its servicer for forbearance of up to three 30-day periods. A borrower receiving forbearance may not evict or initiate eviction of a tenant solely for nonpayment of rent or other charges nor assess any late fees or other penalties for a tenant's late payment

of rent. Upon expiration of the applicable period of forbearance, the borrower must provide a tenant with a 30-day notice to vacate.

Temporary Moratorium on Eviction Filings

The CARES Act imposes a moratorium on lessors to initiate legal action to recover possession of a “covered dwelling” for nonpayment of rent or other charges for the 120-day period from enactment (*i.e.*, until July 26, 2020). A covered dwelling is property (a) participating in certain Violence against Women Act housing programs or the rural voucher program, or (b) has a federally backed mortgage loan or federally backed multifamily mortgage loan. During the moratorium period, a covered dwelling lessor cannot impose any fees, penalties, or other charges to a tenant related to nonpayment of rent. Additionally, upon expiration of the moratorium period, the lessor of a covered dwelling must provide a tenant with at least 30-days notice to vacate.

Federal Reserve Stimulus Programs

Independent of the Title IV programs discussed above, the Federal Reserve has implemented or are implementing various measures designed to provide liquidity and stability to financial institutions and certain sectors of the capital markets.⁴ These initiatives include the following⁵:

The Money Market Mutual Fund Liquidity Facility (MMLF)

The MMLF is intended to provide liquidity to Money Market Mutual Funds (Funds). The Federal Reserve Bank of Boston will lend to eligible borrowers, taking as collateral certain types of assets purchased by the borrower from Funds. Eligible borrowers are all 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. The applicable Funds must identify as a Prime, Single State, or Other Tax-Exempt money market fund under item A.10 of Securities and Exchange Commission Form N-MFP. Borrowings under the MMLF will mature at the lesser of 12 months and the maturity date of the pledged collateral. Collateral that is eligible for pledge to the MMLF must be one of the following types:

- U.S. Treasuries & Fully Guaranteed Agencies.
- Securities issued by U.S. Government Sponsored Entities.
- Asset-backed commercial paper, unsecured commercial paper, or a negotiable certificate of deposit that is issued by a U.S. issuer, and that has a short-term rating at the time purchased from the Fund or

⁴ This Alert does not address the independent efforts of various state legislative and state regulatory authorities to provide relief to individual and corporate borrowers whose personal finances or businesses have been adversely affected by COVID-19. For instance, on March 21, 2020, New York Governor Andrew Cuomo signed an Executive Order, No. 202.9, *Continuing Temporary Suspension and Modification of Laws Relating to Disaster Emergency* (the Executive Order). It modifies Section 39(2) of the New York Banking Law to provide that it is an unsafe and unsound business practice for any New York-licensed bank **not** to grant a 90-day forbearance to any person or business who has a financial hardship as a result of the COVID-19 pandemic. On March 24, 2020, the New York Department of Financial Services (NYDFS) adopted regulations pursuant to the Executive Order requiring NYDFS-regulated institutions to make applications for forbearance of any payment due on a New York residential mortgage available to any New York resident and who demonstrates financial hardship as a result of the COVID-19 pandemic.

⁵ Of the five programs discussed in this section, MMLF, CPFF, TALF, PMCCF and SMCCF, only MMLF has published regulations. The others exist as term sheets, dated March 23, 2020, on the Federal Reserve’s website, which can be found here: <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm>.

pledged to the Reserve Bank in the top rating category (e.g., not lower than A1, F1, or P1, as applicable) from at least two major nationally recognized statistical rating organizations (NRSRO) or, if rated by only one major NRSRO, is rated within the top rating category by that NRSRO;

- U.S. municipal short-term debt (excluding variable rate demand notes) that:
 - Has a maturity that does not exceed 12 months; and
 - At the time purchased from the Fund or pledged to the Reserve Bank:
 - Is rated in the top short-term rating category (e.g., rated SP1, MIG1, or F1, as applicable) by at least two major NRSROs or if rated by only one major NRSRO, is rated within the top rating category by that NRSRO; or
 - If not rated in a short-term rating category, is rated in one of the top two long-term rating categories (e.g., AA or equivalent or above) by at least two major NRSROs or if rated by only one major NRSRO, is rated within the top two rating categories by that NRSRO.
- Variable rate demand notes that:
 - Have a demand feature that allows holders to tender the note at their option within 12 months; and
 - At the time purchased from the Fund or pledged to the Reserve Bank:

Interest rates under the MMLF depend on the type of pledged collateral. If the loan is:

- Secured by U.S. Treasuries & Fully Guaranteed Agencies or Securities issued by U.S. Government Sponsored Entities, the interest rate is equal to the primary credit rate in effect at the Reserve Bank that is offered to depository institutions at the time the advance is made; and
- Secured by U.S. municipal short-term debt, including variable rate demand notes, the interest rate is equal to the primary credit rate in effect at the Reserve Bank that is offered to depository institutions at the time the advance is made *plus* 25 bps.

All other advances will be made at a rate equal to the primary credit rate in effect at the Reserve Bank that is offered to depository institutions at the time the advance is made *plus* 100 bps. Collateral will be valued on either an amortized cost or fair value basis. For asset-backed commercial paper, unsecured commercial paper, negotiable certificates of deposit, and U.S. municipal short-term debt, including variable rate demand notes, the valuation will be amortized cost. Loans under the MMLF will be in a principal amount equal to the value of the collateral pledged to secure the advance. Loans made under the MMLF are made without recourse to the Borrower.

Regarding the regulatory capital treatment of loans under the MMLF, on March 19, 2020, the Federal Reserve, the OCC and the FDIC [issued an interim final rule](#) to allow banking organizations to neutralize the effects of purchasing assets through the program on risk-based and leveraged capital ratios.

The Commercial Paper Funding Facility (CPFF)

The CPFF, established by the Federal Reserve Bank of New York under Section 13(3) of the Federal Reserve Act, will serve as a funding backstop to facilitate the issuance of term commercial paper by eligible issuers. A special purpose vehicle (SPV) formed for purposes of creating the CPFF will purchase from eligible issuers three-month U.S. dollar-denominated commercial paper through the New York Fed's

primary dealers. Eligible issuers are U.S. issuers of commercial paper, including municipal issuers and U.S. issuers with a foreign parent company.

Eligible issues: Except as provided in the next sentence, the SPV will only purchase U.S. dollar-denominated commercial paper (including asset-backed commercial paper (ABCP) that is rated at least A1/P1/F1 by a major nationally recognized statistical rating organization (NRSRO) or, if rated by multiple major NRSROs, is rated at least A1/P1/F1 by two or more major NRSROs, in each case subject to review by the Federal Reserve. An issuer that, on March 17, 2020, was (1) rated at least A1/P1/F1 by a major NRSRO or, if rated by multiple major NRSROs, was rated at least A1/P1/F1 by two or more major NRSROs; and (2) is subsequently downgraded, will be able to make a one-time sale of commercial paper to the SPV so long as the issuer is rated at least A2/P2/F2 by a major NRSRO or, if rated by multiple major NRSROs, is rated at least A2/P2/F2 by two or more major NRSROs, in each case subject to review by the Federal Reserve. The SPV will not purchase asset-backed commercial paper (ABCP) from issuers that were inactive prior to the creation of the CPFF. An issuer will be deemed inactive if it did not issue ABCP 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 limits per issuer: The maximum amount of a single issuer's commercial paper the SPV may own at any time will be the greatest amount of U.S. dollar-denominated commercial paper the issuer had outstanding on any day between March 16, 2019 and March 16, 2020. The SPV will not purchase additional commercial paper from an issuer whose total commercial paper outstanding to all investors (including the SPV) equals or exceeds the issuer's limit. For an issuer that, on March 17, 2020, was (1) rated at least A1/P1/F1 by a major NRSRO or, if rated by multiple major NRSROs, was rated at least A1/P1/F1 by two or more major NRSROs; and (2) is rated at least A2/P2/F2 by a major NRSRO or, if rated by multiple major NRSROs, is rated at least A2/P2/F2 by two or more major NRSROs, the maximum amount of the issuer's commercial paper that the SPV will purchase is the amount of U.S. dollar-denominated commercial paper the issuer had outstanding the day before it was downgraded.

Interest Rates and Facility Fees: For commercial paper rated A1/P1/F1, pricing will be based on the then-current 3-month overnight index swap (OIS) rate plus 110 basis points. For commercial paper rated A2/P2/F2, pricing will be based on the then-current 3-month OIS rate plus 200 basis points. At the time of its registration to use the CPFF, each issuer must pay a facility fee equal to 10 basis points of the maximum amount of its commercial paper the SPV may own.

Termination date: The SPV will cease purchasing commercial paper on March 17, 2021, unless the Board extends the facility. The New York Fed will continue to fund the SPV after such date until the SPV's underlying assets mature.

The Term Asset-Backed Securities Loan Facility (TALF)

The TALF is a credit facility authorized under section 13(3) of the Federal Reserve Act intended to help meet the credit needs of consumers and small businesses by facilitating the issuance of asset-backed securities (ABS) and improving the market conditions for ABS more generally. The loans under TALF will have a term of three years; will be nonrecourse to the borrower; and will be fully secured by eligible ABS.

Eligibility: Eligible borrowers under the TALF include all U.S. companies that own eligible collateral and maintain an account relationship with a primary dealer. A U.S. company is defined as 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.

Collateral: Eligible collateral under TALF includes U.S. dollar denominated cash (that is, not synthetic) ABS that have a credit rating in the highest long-term or the highest short-term investment-grade rating category from at least two eligible nationally recognized statistical rating organizations (NRSROs) and do not have a credit rating below the highest investment-grade rating category from an eligible NRSRO. All or substantially all the credit exposures underlying eligible ABS must have been originated by a U.S. company. Eligible ABS must be issued on or after March 23, 2020. In addition, eligible collateral must be ABS where the underlying credit exposures are one of the following:

- 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 Small Business Administration; or eligible servicing advance receivables.

Eligible collateral will not include ABS that bear interest payments that step up or step down to predetermined levels on specific dates. In addition, the underlying credit exposures of eligible collateral must not include exposures that are themselves cash ABS or synthetic ABS. To be eligible collateral, all or substantially all the underlying credit exposures must be newly issued.

Other key TALF terms include:

Collateral Valuation: The pledged eligible collateral will be valued and assigned a haircut according to a schedule based on its sector, the weighted average life, and historical volatility of the ABS. The haircut schedule will be published in the detailed terms and conditions and will be roughly in line with the haircut schedule used for the TALF Facility established in 2008.

Interest Rates and Facility Fees: For eligible ABS with underlying credit exposures that do not have a government guarantee, the interest rate will be 100 basis points over the 2-year London Inter-bank Offered Rate (LIBOR) swap rate for securities with a weighted average life less than two years, or 100 basis points over the 3-year LIBOR swap rate for securities with a weighted average life of two years or greater. The interest rate for other eligible ABS will be set forth in the detailed terms and conditions. Borrowers will be assessed an administrative fee equal to 10 basis points of the loan amount on the settlement date for collateral.

Maturity: Each loan provided under this facility will have a maturity of three years.

Prepayment: Loans made under the TALF will be pre-payable in whole or in part at the option of the borrower, but substitution of collateral during the term of the loan generally will not be allowed.

Termination: No new credit extensions will be made after Sept. 30, 2020, unless the TALF is extended by the Board of Governors of the Federal Reserve System.

Primary Market Corporate Credit Facility (PMCCF)

The PMCCF will serve as a funding backstop for corporate debt issued by eligible issuers and will be established under Section 13(3) of the Federal Reserve Act by the Federal Reserve Bank of New York. The PMCCF Facility will purchase eligible corporate bonds directly from eligible issuers and will make eligible loans to eligible issuers. Eligible corporate bonds and loans must meet each of the following criteria at the time of bond purchase or loan origination by the Facility:

- Issued by an eligible issuer.

- Issuer is rated 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; and
- Have a maturity of four years or less.

Eligible issuers are U.S. companies headquartered in the United States and with material operations in the United States. Eligible issuers do not include companies that are expected to receive direct financial assistance under pending federal legislation, including the CARES Act.

Limits: The maximum amount of outstanding bonds or loans of an eligible issuer that borrows from the Facility may not exceed the applicable percentage of the issuer's maximum outstanding bonds and loans on any day between March 22, 2019 and March 22, 2020:

- 140 percent for eligible assets/eligible issuers with a AAA/Aaa rating from a major NRSRO;
- 130 percent for eligible assets/eligible issuers with a AA/Aa rating from a major NRSRO;
- 120 percent for eligible assets/eligible issuers with an A/A rating from a major NRSRO; or
- 110 percent for eligible assets/eligible issuers with a BBB/Baa rating from a major NRSRO.

Bonds and loans under the PMCCF Facility are callable by the eligible issuer at any time at par.

Interest Rates, Fees and PIK Provisions: The PMCCF Facility will purchase bonds and make loans that have interest rates informed by market conditions. At the borrower's election, all or a portion of the interest due and payable on each interest payment date may be payable in kind for 6 months, extendable at the discretion of the Board of Governors of the Federal Reserve System. A borrower that makes a PIK election may not pay dividends or make stock buybacks during the period it is not paying interest. The commitment fee will be set at 100 bps.

Termination: The PMCCF Facility will cease purchasing eligible corporate bonds or extending loans on Sept. 30, 2020, unless the Facility is extended by the Board of Governors of the Federal Reserve System.

The Secondary Market Corporate Credit Facility (SMCCF)

Under the SMCCF, the Federal Reserve Bank of New York will establish, under Section 13(3) of the Federal Reserve Act, an SPV to purchase in the secondary market corporate debt issued by eligible issuers. The SPV will purchase eligible individual corporate bonds as well as eligible corporate bond portfolios in the form of exchange traded funds (ETFs) in the secondary market.

Eligible Individual Corporate Bonds: The SMCCF may purchase corporate bonds that meet each of the following criteria at the time of purchase:

- Issued by an eligible issuer.
- Rated 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.
- Have a remaining maturity of five years or less.

Eligible ETFs: The SMCCF may also purchase U.S.-listed ETFs whose investment objective is to provide broad exposure to the market for U.S. investment grade corporate bonds.

Eligible issuers for direct purchases of individual corporate bonds on the secondary market are U.S. businesses with material operations in the United States. Eligible issuers do not include companies that are expected to receive direct financial assistance under pending federal legislation, including the CARES Act. The maximum amount of bonds that the SMCCF will purchase from any eligible issuer will be capped at 10 percent of the issuer's maximum bonds outstanding on any day between March 22, 2019 and March 22, 2020. The facility will not purchase more than 20% of the assets of any particular ETF as of March 22, 2020. The SMCCF will purchase eligible corporate bonds at fair market value in the secondary market. The Facility will avoid purchasing shares of eligible ETFs when they trade at prices that materially exceed the estimated net asset value of the underlying portfolio.

Termination: The SMCCF will cease purchasing eligible corporate bonds and eligible ETFs no later than Sept. 30, 2020, unless the Facility is extended by the Federal Reserve.

Actions Taken by the Financial Agencies to Encourage Lending and Facilitate Loan Modifications

In addition to the financial stimulus programs found in Title IV of the CARES Act and those launched (and in some cases re-launched) by Treasury and the Federal Reserve, the Financial Agencies have taken several piecemeal actions since the start of the crisis to encourage new lending and facilitate short-term loan modifications. These actions include:

- **Meeting the Financial Needs of Affected Borrowers.** On March 9, 2020, the Federal Reserve, FDIC, OCC, NCUA and state bank regulators issued a statement “encouraging” financial institutions to meet the financial services needs of their customers and members in areas affected by COVID-19.
- **Community Reinvestment Act Favorable Consideration.** On March 19, 2020, the Federal Reserve, FDIC, and OCC issued a joint statement on Community Reinvestment Act (CRA) consideration for activities in response to COVID-19, stating that for CRA purposes, the agencies will favorably consider retail banking and lending activities that meet the needs of affected low- and moderate-income individuals, small businesses, and small farms, consistent with safe and sound banking practices and applicable laws, including consumer protection laws. The CRA joint statement noted such activities could include offering **short-term, unsecured** credit products.
- **Short-Term Loan Modifications.** On March 23, 2020, the OCC, FDIC, NCUA, Federal Reserve, the Consumer Financial Protection Bureau and the State Conference of Bank Supervisors issued an *Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus*. The *Guidance* does two key things:
 1. Short-term loan modifications (for loans of all types) granted to borrowers that have become financially distressed as a result of economic conditions created by COVID-19 will not result in a loan being classified a troubled debt restructuring (TDR). According to U.S. GAAP, a restructuring of a loan or other credit constitutes a TDR if the lender/creditor, for economic or legal reasons related to the debtor's financial difficulties, grants a concession to the debtor that it would not otherwise consider.

The banking agencies have confirmed with staff of the Financial Accounting Standards Board that short-term (*e.g.*, **six months or less**) loan modifications made on a **good faith basis** in response to COVID-19 for borrowers who were current prior to any relief, are not TDRs. Modification actions can include **payment deferrals, fee waivers, extensions of repayment terms, or other delays in payment that are insignificant**.

2. Furthermore, bank regulators will not criticize bankers for granting short-term loan modification relief, if the action taken is done in good faith. The explicit statement in the Guidance that bankers will not be criticized by their regulators removes a significant impediment to bankers providing short-term loan modification relief – an impediment that chilled bankers in the months and years following the 2008/2009 Financial Crisis from providing such relief.

- **Small-Dollar Loans to Consumers and Small Businesses.** On March 26, 2020, the Federal Reserve, FDIC, OCC, NCUA and CFPB issued a joint statement “encouraging” banks, savings associations and credit unions to offer responsible small-dollar loans to consumers and small businesses in response to COVID-19. According to the agencies, “[s]uch loans can be offered through a variety of structures including open-end lines of credit, closed-end installment loans, or appropriately structured single payment loans.”

For more information and updates on the developing COVID-19 situation, visit [GT’s Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#) or [GT’s Economic Stimulus Team](#).

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