Freshfields Bruckhaus Deringer US LLP

TREASURY AND FEDERAL RESERVE FINANCING PROGRAMS IN RESPONSE TO THE CORONAVIRUS

COMPARISON BY TOPIC

Topic	Primary Market Corporate Credit Facility (“***PMCCF***”)	Commercial Paper Funding Facility (“***CPFF***”)	Loans to Passenger Air Carriers, Cargo Air Carriers and Businesses Critical National Security (collectively, “***Threatened Businesses***”)	Loans to Medium-Sized Businesses	Paycheck Protection Program (“***PPP***”)
What type of business is eligible?	Issuer that is rated investment grade (BBB/Baa3 or above)	Issuer of CP (including asset-backed CP (“***ABCP***”)) that is rated at least A-1/P-1/F-1	Issuers that are: Passenger Air Carriers Cargo Air Carriers Businesses Critical to National Security [Which businesses? Treasury has significant discretion. Aimen Mir, our partner who was the deputy assistant Treasury Secretary for investment security responsible for implementing the Treasury’s role as the chair of CFIUS, suggests that it could at a minimum mean critical infrastructure companies. https://www.cisa.gov/critical-infrastructure-sectors]	Issuer with 500 to 10,000 employees	Issuer with no more than 500 employees (or such greater number as specified by SBA size standards)—includes non-full-time employees Subject to SBA affiliation rules, but with certain exceptions (including by Treasury). [Under SBA regulations, businesses are affiliated when “one controls or has the power to control the other.” Many private equity firms and their portfolio companies would not qualify on this basis. In addition, affiliation rules result in companies with minority investors having negative control being deemed to be controlled by those investors. Difficult even for venture capital. Standards set forth at 13 CFR 121.301.]
Must business be located in the US?	U.S. companies headquartered in the United States and with material operations in the United	Eligible issuers are U.S. issuers of CP, including U.S. issuers with a foreign parent company (probably as	US companies, except perhaps US subsidiaries of foreign companies that are critical to national security	Borrowers are businesses (including subsidiaries of foreign parents) that are created or organized in, or	Excludes compensation paid to employees residing outside the United States.

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	States. Subject to possible expansion. Could be a U.S. subsidiary of a foreign parent whose obligations are guaranteed by the foreign parent.	guarantor)		under the laws of, the United States and that have significant operations in and a majority of its employees based in the United States.	
What key economic terms apply?	Maturity up to four years; interest at market rates; callable at any time at par	OIS plus 1.10% for three-month non-interest-bearing commercial paper rated in highest category, with 10 basis point step up for next lowest subcategory	As short as practicable and in any case not longer than 5 years The loan or loan guarantee is sufficiently secured or is made at a rate that— (i) reflects the risk of the loan or loan guarantee; and (ii) is to the extent practicable, not less than an interest rate based on market conditions for comparable obligations prevalent prior to COVID	Interest rate determined based on the risk plus the current average yield on Treasuries of comparable maturity. Interest rate capped at 2%.	Loans bear interest at a rate equal to 1%, with all loans guaranteed by the federal government. Loans not forgiven are payable in two years. Loans may be prepaid without premium or penalty at any time. No collateral or personal guarantee. Lending is on a nonrecourse basis, i.e., no recourse to any shareholder, partner, member, etc. absent misuse of the loan proceeds. No requirement that an eligible recipient be unable to obtain credit elsewhere (a requirement that would otherwise apply). Loans are disbursed on a first-come, first served basis.
Any fees or other non-	1%	.10% of maximum purchase	Treasury must receive the	None	None

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interest consideration payable?		amount	following consideration: (a) the business has issued securities that are traded on a national securities exchange and Treasury receives a warrant or equity interest in the business; or (b) otherwise, Treasury receives, in its discretion—(i) a warrant or equity interest in the business; or (ii) a senior debt instrument issued by the business. Terms to provide for a reason able participation by Treasury, for the benefit of taxpayers, in equity appreciation in the case of a warrant or other equity interest, or a reasonable interest rate premium, in the case of a debt instrument. For the primary benefit of taxpayers, Treasury may sell, exercise, or surrender a warrant or any senior debt instrument received by Treasury. Treasury will not exercise voting power with respect to any shares of common stock		

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			acquired. If Treasury determines that the business cannot feasibly issue warrants or other equity interests, Treasury may accept a senior debt instrument in an amount and on such terms as Treasury deems appropriate.		
Is there a maximum program size?	Total amount of facility depends upon combination of (a) loss coverage from $10 billion equity investment in the SPV from the Treasury's Exchange Stabilization Fund plus (b) additional leverage provided by Federal Reserve	Total amount of facility depends upon combination of (a) loss coverage from $10 billion equity investment in the SPV from the Treasury's Exchange Stabilization Fund plus (b) additional leverage provided by Federal Reserve	<u>*Passenger Air Carriers*</u> $25 billion <u>*Cargo Air Carriers*</u> $4 billion to make loans <u>*Businesses Critical to National Security*</u> $17 billion	$454 billion and any amounts allocated to Threatened Businesses that are not used, together with leverage provided by Federal Reserve	$349 billion

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What is the maximum amount available per Issuer?	Depending upon where in the four highest categories of ratings, a percentage of the issuer's maximum outstanding bonds and loans during year ended March 22, 2020: 140%, 130%, 120% and 110%	In general, total CP outstanding to all investors (including under program) capped at the greatest amount of US dollar-denominated CP the issuer had outstanding during year ended March 16, 2020 Limits ability to establish new CP issuers.	Treasury's discretion	Not specified in CARES Act; likely to be included in Treasury rules	Loan amounts up to the lesser of (i) $10 million and (ii) 2.5 times average monthly payroll costs incurred in the one-year period before the loan is made (or shorter period in case of seasonal business or employer that was not in business between February and June 2019), plus the amount necessary to refinance any outstanding amount under any EIDL loan received after January 31, 2020.

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Any limitations on use of proceeds?	None	Purchase of commercial paper	None	None	Proceeds may be used for payroll costs; costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums; employee salaries, commissions, or similar compensations; payments of interest on any mortgage obligation; rent; utilities; and interest on any other debt obligations incurred prior to the PPP coverage period. Payroll costs are capped at $100,000 on an annualized basis for each employee. Expected that not more than 25% of the forgiven amount may be for non-payroll costs.
Any requirements concerning employment?	None	None	Until September 30, 2020, the business shall maintain its employment levels as of March 24, 2020, to the extent practicable, and in any case shall not reduce its employment levels by more than 10% from the levels on such date	Borrower must retain at least 90% of the borrower's workforce, at full compensation and benefits, until September 30, 2020. Date on which this is tested is unclear. Is it a fixed date or the date the loan is made or something else? Borrower must intend to	See loan forgiveness below Otherwise, covered by use of loan proceeds.

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				restore not less than 90% of the workforce of the borrower that existed as of February 1, 2020, and to restore all compensation and benefits to the workers of the borrower no later than 4 months after the termination date of the COVID-19 public health emergency. Borrower cannot outsource or offshore jobs for the term of the loan and 2 years after completing repayment of the loan. Borrower cannot abrogate existing collective bargaining agreements for the term of the loan and 2 years after completing repayment of the loan. Borrower must remain neutral in any union organizing effort for the term of the loan.	
Any caps on employee compensation?	None	None	Until the date that is 1 year after the date on which the loan or loan guarantee is no longer outstanding: (a) no officer or employee of	Same as for “Loans to Passenger Air Carriers, Cargo Air Carriers and Businesses Critical National Security”	None

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			the business whose total compensation exceeded $425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 1, 2020): (i) will receive from the business total compensation which exceeds, during any 12 consecutive months of such period, the total compensation received by the officer or employee from the business in calendar year 2019; or (ii) will receive from the business severance pay or other benefits upon termination of employment with the business which exceeds twice the maximum total compensation received by the officer or employee from the business in calendar year 2019; and (b) no officer or employee of the business whose total compensation exceeded $3 million in calendar year 2019		

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			may receive during any 12 consecutive months of such period total compensation in excess of the sum of— (A) $3 million; and (B) 50% of the excess over $3 million of the total compensation received by the officer or employee from the business in calendar year 2019. “Total compensation” includes salary, bonuses, awards of stock, and other financial benefits provided by a business to an officer or employee of the business.		
Any limitations on dividends/stock buybacks/etc.?	None	None	Until the date 12 months after the date the loan or loan guarantee is no longer outstanding: (a) neither the business nor any affiliate of the business may purchase an equity security that is listed on a national securities exchange of the business or any parent company of the business, except to the extent required under a contractual obligation in effect as of the date of enactment of the CARES	Until the date 12 months after the date on which the direct loan is no longer outstanding, borrower cannot: (a) repurchase an equity security that is listed on a national securities exchange of the borrower or any parent company of the borrower while the direct loan is outstanding [read literally, the parent company can effect a repurchase, but the borrower cannot be the source of funding; in addition, “while the direct	None

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			Act; and (b) the business shall not pay dividends or make other capital distributions with respect to the common stock of the business.	loan is outstanding is inconsistent with the preamble"—Treasury will presumably clarify], except to the extent required under a contractual obligation that is in effect as of the date of enactment of the CARES Act; and (b) pay dividends or make other capital distributions with respect to the common stock of the borrower.	
How would the loans be treated for compliance purposes with existing credit documentation?	Would have to be incurred without breach of any applicable covenants under existing debt documents	CP program is presumably conducted in compliance with covenants under existing debt documents	Would have to be incurred without breach of any applicable covenants under existing debt documents	Loan likely to be secured by unencumbered assets and also by a subordinate lien on other assets. Limitations on dividends could violate upstreaming covenant. Query how additional secured loans may be incurred if that would result in violation of a debt or lien covenant in an existing debt document?	Given that the loans are subject to forgiveness, are they debt for accounting and covenant compliance purposes?

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Any requirement regarding availability of other credit?	No	No	Must be a business for which credit is not reasonably available at the time of the transaction [does this translate into a requirement that other sources of credit have been fully drawn or are unavailable?] Business must have incurred or is expected to incur covered losses such that the continued operations of the business are jeopardized, as determined by Treasury.	Borrower with access to funds from other sources that are sufficient to continue operations is likely excluded. Does this include parent? Does this include private equity sponsor? How tested?	No
Are the loans eligible for forgiveness?	No	No	No	No	The portion of loans used to cover payroll, mortgage, rent or utility costs from February 15 to June 30, 2020 are eligible for forgiveness, with the forgiven amount nontaxable. In order to incentivize the retention of employees at existing salaries, the amount of loan forgiveness is subject to reduction based on reductions in employment, salary or wages.

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Are payments subject to deferral?	Borrower can elect PIK interest for up to 6 months, extendable at the discretion of Federal Reserve Board. But making this election means not paying dividends or making stock buybacks during the PIK period.	No	No	No	Lenders are required to defer payments on PPP loans for between six months and one year, with the Small Business Administration to issue deferment guidance to lenders within 30 days of enactment.
Other Material Conditions?	Not eligible if it receives CARES Act financing.	None	The intended obligation by the applicant is prudently incurred	Borrower cannot be a debtor in a bankruptcy proceeding. Not a replacement for DIP financing.	Recipient must: (i) be in operation on February 15, 2020; (ii) have employees to which it paid salaries and for which it paid payroll taxes, or that paid independent contractors; and (iii) meet employ size standard described above. Borrowers also need to make good-faith certifications: (a) that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the borrower;[1]

[1] As noted above, no requirement that an eligible recipient be unable to obtain credit elsewhere (a requirement that would otherwise apply).

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					(b) acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments; (c) that the borrower does not have an application pending for an SBA loan under the PPP for the same purpose and duplicative of amounts applied for or received under a covered loan; and (d) during the period beginning on February 15, 2020 and ending on December 31, 2020, that the borrower has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

April 6, 2020