Summary of Recent Government Actions Supporting U.S. Businesses

Updated Through March 30th, 2020

Working Draft – Subject to Update and Correction

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Actions Being Taken to Support U.S. Businesses

Overview

- Since early March, the government has taken several actions to support U.S. businesses through legislation as well as direct actions by the Federal Reserve and Treasury Department
- This document highlights the programs we believe are most salient to our clients, including:

Program	Most Applicable To[1]	Overview	Page
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Economic Injury Disaster Loan / Grant	Businesses <500 Employees	Low Interest Loans / Grants	7
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Net Operating Losses ("NOLs")	Businesses with NOLs	Extend Carryback / Fully Offset Income	22

- *Important: Only **bolded items are currently operational**. In addition, details for all programs are subject to future guidance and modifications by the administration and / or Federal Reserve. As a result, this document is subject to update and change as terms become more clear*

1) *Note these are simplistic guidelines. Further detail on eligibility can be found on the following pages.*

Expected Operational Date:
To Be Determined

Paycheck Protection Program

Paycheck Protection Program
("PPP")

Overview

- PPP allows businesses, 501(c)(3)non-profits, tribal businesses, sole proprietors, contractors and veteran's organizations impacted by COVID-19 to borrow up to $10mm in forgivable loans to cover payroll and/or interest, rent and utility expenses
  - Program is administered by SBA lenders and runs through June 30th, 2020

Eligibility

- Public and private businesses as well as 501(c)(3)s operating in the U.S. and in business since February 15th, 2020 with either fewer than 500 full, part time or other employees or[1]:
  - Meeting the SBA's NAICs-based size standards, available at: https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019.pdf
  - Having <$15mm of tangible net worth AND <$5mm of average earnings in last 2 years
  - Note, a hospitality and dining firm in NAICS code 72 with more than 1 location can qualify if the number of employees at each location is less than 500
- The CARES Act does not appear to have overridden the SBA"s "affiliation" rules[1]
  - Entities are "affiliates" when they are controlled by or under common control of another entity. This generally includes private equity owners
  - Business cannot exceed the size thresholds for either the primary industry of the business alone or the industry of the business and its affiliates, whichever is greater
  - For groups of affiliates that do not operate in same industry (often the case with private equity), industry code is based on the primary income producing entity
- The CARES Act creates 3 exceptions to these affiliate rules for the PPP:
  - Hospitality and dining firms in NAICS codes 72 with less than 500 employees
  - Franchises that are assigned a franchise identification code by the SBA
  - Businesses receiving assistance from a Small Business Investment Company
  - *Portfolio companies falling within these exceptions as well as those not deemed to be an affiliate (e.g., certain minority investments) may be able to take advantage of a loan*

1) *There is some ambiguity in the Act as to how affiliation rules apply to the PPP and it is possible that the SBA will issue more favorable guidance. Further detail on affiliation rules are available at: https://www.sba.gov/sites/default/files/2018-09/2018-07-13%20AFFILIATION%20GUIDE_Updated%20%281%29.pdf*

Paycheck Protection Program
("PPP")

Borrower Certification

- Borrowers must make a good faith certification that:
  - Loan is necessary to support the business through environment created by COVID-19
  - Funds will be used to retain workers and maintain payroll or make mortgage interest payments, lease payments and utility payments
  - They have not otherwise received funds or have an application pending under the Paycheck Protection Program
- Do <u>not</u> need to demonstrate that credit is otherwise unavailable to the borrower

Loan Amount

- Loan amounts are formulaically determined and equal to the lesser of $10mm or the sum of any outstanding COVID-19 Emergency Injury Disaster Loan ("EIDL")[1] plus:
  - For non-seasonal employers, 2.5x the average monthly payroll over the last year
  - For seasonal firms, 2.5x the average monthly payroll for 12-week period starting ether February 15th, 2019 or March 1st, 2019 (at the election of the borrower)
  - For businesses without a full year of payroll history, 2.5x the average monthly payroll from January 1st, 2020 to February 29th, 2020
- Payroll includes salaries (capped at $100k per employee), tips, insurance, retirement benefits, etc.

Interest and Fees

- Maximum interest rate is 4%
- Borrowers will not be charged any participation fees or prepayment fees[2]

Collateral and Guarantees

- No collateral or personal guarantees are required
- SBA will have no recourse unless loans are used for purpose other than authorized

1) Borrowers may elect to refinance an existing COVID-19 EIDL.
2) Banks will receive a processing and servicing fee from the SBA.

Paycheck Protection Program
("PPP")

Loan Forgiveness

- Loans are eligible for forgiveness up to the principal balance[1]. The amount of forgiveness is calculated as the sum of amounts paid in the 8 weeks following loan origination for:
  - a) Payroll (as defined on prior page), b) mortgage interest (excluding pre-payments or overpayments), c) rent (including rent under a lease agreement) and d) utilities
- Forgiveness amount will be reduced:
  - Proportionally by any reduction in full-time equivalent employees ("FTE") in the period from February 15th, 2020 to June 30th, 2020 as compared to by average monthly FTEs from either February 15th, 2019 to June 30th, 2019 or from January 1st, 2020 to February 29th, 2020 (borrower can choose comparison period)
  - By any decrease in wages beyond 25% for employees earning less than $100k per year occurring February 15th, 2020 to June 30th, 2020 relative to wages in 4Q19
    - *To encourage rehiring and pay raises, borrowers bringing employee and salary levels to where they were at February 15th, 2020 will not be penalized by these reductions*
  - By any funds received under an EIDL Emergency Grant (see next section)
- Cancelled indebtedness will not be included in borrowers' taxable income

Maturity and Payments

- Balances remaining after loan forgiveness will have a max maturity of 10 year
- Loan and interest payments are deferred for at least 6 months but no more than 1 year

Interaction with Other Programs

- Borrowers may apply for Paycheck Protection loans and other SBA financial assistance, including EIDLs, however they cannot use the loans for the same purpose
  - For example, if you use Paycheck Protection Loan to cover payroll for the 8-week covered period, you cannot use a different SBA loan to make payroll for that same period, although you could use it for a different period

1) *If full principal is repaid, borrower will not be responsible for the interest accrued in the 8-week period.*

Expected Operational Date:
Operational Now

Economic Injury Disaster Loans and Grants

Economic Injury Disaster Loans
("EIDL")

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Overview

- EIDLs allow small businesses, tribal businesses, cooperatives, ESOPs, non-profits, sole proprietors and contractors with fewer than 500 employees that are impacted by COVID-19 to receive loans up to $2mm to pay debts, make payroll and meet other expenses
  - In addition, CARES created new "Emergency Grants" of up to $10k available to EIDL applicants that are disbursed within 3 days and are not required to be repaid
  - EIDL loans can be applied for directly with the SBA at *https://disasterloan.sba.gov/ela/*

Business Eligibility

- Businesses with less than 500 employees or, if more lenient, meeting the SBA small business definition outlined in the prior PPP section, operating since January 31st, 2020
- Do not need to demonstrate that credit is otherwise unavailable to the borrower

Interest and Fees

- 3.75% for small businesses and 2.75% for non-profits
- Borrowers will not be charged any participation fees or prepayment fees

Loan Amount, Underwriting and Term

- For the remainder of 2020, SBA can approve based solely on credit score, without the need for a borrower's tax return. It may also choose to use an alternativel~~y~~ method
- Loan amount is determined by the SBA based on economic injury / need up to $2mm
- Maximum term of loan is 30 years

Guarantees and Collateral

- Guarantees are required for loans >$200k and collateral is required if loan is >$25k
  - Real estate is preferred, but a loan will not be declined for lack of collateral. Any available collateral will be taken. SBA lien is subordinate to any existing liens

Emergency Grants

- Borrowers can receive up to a $10,000 grant within 3 days after applying for an EIDL loan
  - If the application is denied, the applicant is not required to repay the grant

Expected Operational Date:
To Be Determined

SBA Loan Subsidy

SBA Loan Subsidy

Overview

- CARES Act requires the SBA to pay on behalf of borrowers all principal, interest and fees related to eligible SBA loans for six months
  - Note the mechanism for effecting this rule has not yet been determined by the SBA

Eligible Loan Types

- All outstanding loans or loans made within 6 months of the passage of CARES under:
  - The SBA Business Loan Program, including Community Advantage and 7(a) loans
  - Title 5 of the Small Business Act
  - SBA's Microloan Program
- **EIDL loans and Paycheck Protection Loans are not eligible**

SBA Payments

- The SBA will pay the principal, interest, and any associated fees that are owed on the covered loans for a six month period starting on the next payment due date
  - For loans already on deferment, SBA will make six months of payment beginning with the first payment after the deferral
  - For loans made within 6 months of the passage of the CARES Act, SBA will make first six months payment following disbursement of loan

Expected Operational Date:
To Be Determined

Mid-Sized Business Program

Mid-Sized Business Program

Overview	▪ CARES Act encourages the Federal Reserve to establish a facility to provide financing to lenders to make loans to businesses and non-profits with 500 to 10,000 employees – *Note the CARES Act specifically allows the Federal Reserve to establish a similar "Main Street Lending" program without the same certifications requirements noted below. We expect the Federal Reserve to implement such a program*
Interest and Payments	▪ Maximum interest rate of 2% ▪ For the first 6 months after a direct loan is made – or potentially longer based on the direction of the Secretary of Treasury – all principal and interest payments are deferred
Borrower Certification	▪ Borrower must certify that: – It is an entity or business domiciled in the U.S. with significant U.S. operations – It is not in bankruptcy proceedings – COVID-19 and the general economy requires the business to borrow to maintain operations – Funds will be used to retain at least 90% of workforce until September 30th, 2020 – Will restore at least 90% of the workforce that existed on February 1st, 2020 – Will restore all compensation and benefits to employees no later than 4 months after the end of the COVID-19 emergency – Will not pay common stock dividends or repurchase equity during the term of the loan – Will not outsource or offshore jobs for the term of the loan and 2 years after repayment – Will not abrogate existing collective bargaining agreements for the term of the loan and 2 years after repayment – Will remain neutral in any union organizing effort for the term of the loan

Expected Operational Date:
Expected Mid-April

Commercial Paper Funding Facility

Commercial Paper Funding Facility
("CPFF")

Overview

- The CPFF is a liquidity backstop that will purchase term commercial paper ("CP") from eligible issuers to support the flow of credit to households and businesses
  - Under CPFF, the Federal Reserve will establish an SPV to purchase eligible CP through the New York Federal Reserve's primary dealers starting in mid-April, 2020
  - The Treasury will invest $10 billion in the SPV to cover potential losses

Eligible Assets

- CPFF will purchase U.S. denominated three-month CP (including asset-backed commercial paper ("ABCP")) from eligible issuers that meet the following criteria:
  - Issued by a U.S. firm or municipality, including U.S. issuers with a foreign parent
  - Paper is rated at least A1/P1/F1 by an NRSRO or, if rated by multiple NRSROs, is rated at least A1/P1/F1 by two or more, in each case subject to review by the Fed
    - An issuer that, on March 17th, 2020, was (a) rated at least A1/P1/F1 or, if rated by multiple NRSROs, was rated at least A1/P1/F1 by two or more; and (b) is subsequently downgraded, will be able to make a one-time sale of CP to the SPV so long as the issuer is rated at least A2/P2/F2 or, if rated by multiple NRSROs, is rated at least A2/P2/F2 by two or more, in each case subject to Fed review
  - SPV will not purchase ABCP from issuers that did not issue ABCP to institutions other than the sponsoring institution for any 3 month or greater consecutive period between March 16th, 2019 and March 16th, 2020

Pricing and Fees

- For CP rated A1/P1/F1 will be OIS+110bps. For CP rated A2/P2/F2, will be OIS+200bps
- At time of registration, issuers must pay a 10bps fee on the maximum amount of the issuers CP that the SPV may own

NRSRO = Nationally Recognized Statistical Rating Organization. Includes Moody's, S&P, among others.

Commercial Paper Funding Facility
("CPFF")

Limits	▪ The maximum amount of an issuer's CP the SPV may own will be the greatest amount of U.S. dollar-denominated CP the issuer had on any day between March 16th, 2019 and March 16th, 2020 – The SPV will not purchase additional CP from an issuer whose total CP outstanding to all investors (including the SPV) equals or exceeds the issuer's limit – For an issuer that was downgraded as noted above, the maximum amount of the issuer's CP that the SPV will purchase is the amount of U.S. dollar CP the issuer had outstanding the day before it was downgraded
Additional Details	▪ Additional details available at: *https://www.newyorkfed.org/markets/commercial-paper-funding-facility/commercial-paper-funding-facility-faq*

Expected Operational Date:
To Be Determined

Term Asset-Backed Securities Loan Facility

Term Asset-Backed Securities Loan Facility
(“TALF”)

Overview	▪ TALF is a credit facility to facilitate the issuance of asset-backed securities (“ABS”) and improve market conditions for ABS more generally – Under TALF, the Federal Reserve is establishing an SPV to make up to $100 billion of loans (up to 3-year term) backed by eligible ABS. The loans are non-recourse (i.e., borrower bears no credit risk beyond the pledged ABS). – Treasury will make a $10bn investment in the SPV to cover potential losses
Eligible Borrowers	▪ All U.S. companies, as well as U.S. branches or agencies of foreign banks and U.S. organizations with foreign parents, that own eligible collateral and maintain an account relationship with a primary dealer are eligible to borrow under the TALF
Eligible Assets	▪ Eligible collateral includes U.S. dollar denominated cash ABS that have a credit rating in the highest long-term or the highest short-term investment-grade rating category from at least two NRSROs and do not have a credit rating below the highest investment-grade rating category from an eligible NRSRO – Substantially all of the credit exposures underlying eligible ABS must have been originated by a U.S. company and the ABS must be issued on or after March 23rd, 2020 ▪ Eligible collateral is 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 and floorplan loans – Insurance premium finance loans – Certain small business loans that are guaranteed by the Small Business Administration – Eligible servicing advance receivables

NRSRO = Nationally Recognized Statistical Rating Organization. Includes Moody’s, S&P among others.
1) Cannot include exposures that are themselves cash ABS or synthetic ABS.

Working Draft – Subject to Update and Correction

Term Asset-Backed Securities Loan Facility
("TALF")

Collateral Valuation	▪ 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 ▪ 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
Pricing and Fees	▪ For ABS with a weighted average life under 2 years, will be 2-Year LIBOR swap +100bps. For ABS with an average life greater than 2 years, will be 3-Year LIBOR swap +100bps ▪ SPV will assess an administrative fee of 10bps on loan amount at settlement
Maturity and Pre-Payment	▪ All loans under TALF will have a maturity of 3 years ▪ Loans are 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.
Additional Details	▪ Additional details available at: *https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200323b3.pdf*

Expected Operational Date:
To Be Determined

Primary Market Corporate Credit Facility

Primary Market Corporate Credit Facility
(“PMCCF”)

Overview	▪ PMCCF will serve as a funding backstop for corporate debt and corporate loans made by eligible issuers – Under PMCCF, the Federal Reserve will establish an SPV to (i) purchase qualifying bonds directly from eligible issuers and (ii) provide loans to eligible issuers – The Treasury, using the Exchange Stabilization Fund, will make an initial $10 billion equity investment in the SPV to cover potential losses – BlackRock will manage the program
Eligible Assets	▪ PMCCF will purchase eligible corporate bonds and make eligible loans to issuers ▪ Eligible corporate bonds and loans must meet following criteria at time of purchase or origination: – Be issued by U.S. headquartered firms with material U.S. operations – Issuer is rated at least BBB-/Baa3 by an NRSRO and, if rated by multiple major NRSROs, rated at least BBB-/Baa3 by two or more NRSROs – Have a maturity of four years or less – *Note: Excludes issuers expected to receive direct financial assistance under the CARES Act*
Pricing and Fees	▪ Facility will purchase bonds / make loans at interest rates informed by market conditions – At borrower’s election, all or a portion of interest may be payable in kind for 6 months (extendable by the Fed). Borrowers making such an election <u>may not pay dividends or buyback stock</u> during period not paying interest ▪ Commitment fee is 100bps

NRSRO = Nationally Recognized Statistical Rating Organization. Includes Moody’s, S&P, among others.

Primary Market Corporate Credit Facility
(“PMCCF”)

Issuer Limits

- Maximum amount of outstanding bonds and loans of an issuer that borrows from the Facility may not exceed the below percent of the issuer’s max outstanding bonds and loans on any day between March 22nd, 2019 and March 22nd, 2020
  - 140% for AAA issuers
  - 130% AA issuers
  - 120% A issuers
  - 110% for BBB issuers

Call Rights

- Callable by the issuer at any time at par

Additional Details

- Additional details available at: https://www.newyorkfed.org/markets/primary-Market-corporate-credit-facility

Expected Operational Date:
Applicable Now

Payroll Tax Deferment, Income Tax Delay and Net Operating Losses

Payroll Tax Deferment and Net Operating Losses

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Payroll Tax Deferment	▪ The CARES Act allows businesses to postpone paying the employer portion of Social Security payroll taxes that would otherwise be required to be paid between the enactment of the bill and January 1st, 2021 – Deferred amounts are payable over the next two years, with 50% due December 31st, 2021 and the remaining 50% due December 31st, 2022 – *Note that businesses receiving loan forgiveness under the Paycheck Protection Program or other Treasury programs are not eligible for Payroll Tax Deferment*
Income Tax Delay	▪ The IRS has postponed the due date for payment of federal income taxes and the filing of federal income tax returns otherwise due on April 15th, 2020 until July 15th, 2020
Net Operating Losses	▪ The CARES Act allows companies to carryback corporate net operating losses from 2018, 2019 and 2020 for five years – Currently companies are not able to carryback these net operating losses ▪ The CARES Act also allows companies to fully offset their income with corporate net operating losses (without regard for 80% limit) for 2020 as well as for 2018 and 2019 ▪ Taken together, this allows companies to utilize net operating losses from 2018, 2019 and 2020 to receive refunds on taxes paid in prior years and to reduce tax payments in 2020+ – Note that net operating losses <u>cannot</u> be carried back to offset repatriation charges under section 965. However, companies can elect to exclude such tax years, allowing them to “skip” prior taxable years and reach back past the five-year limit ▪ Note, CARES Act also modifies the excess business loss limitation applicable to non-corporate taxpayers for 2018, 2019, and 2020, allowing them to offset up to 100% of their other taxable income rather than the normal $250k limit

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