



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

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The Honorable Jerome Powell
Chairman
Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

The Honorable Steven T. Mnuchin
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Chairman Powell and Secretary Mnuchin:

The U.S. Chamber of Commerce's ("the Chamber") Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on programs announced by the Federal Reserve Board ("Federal Reserve"), with the support of the Treasury Department ("Treasury"), to promote liquidity to different corners of the economy. These programs are extremely important to support businesses struggling with the cashflow challenges caused by the coronavirus pandemic. The guiding principle of the U.S. Chamber of Commerce ("the Chamber") during this crisis is that no family and no business should go bankrupt because of the financial hardships caused by the coronavirus pandemic.

The uncertainty that has been thrust upon the business community by the pandemic has required the private sector to turn to the federal government to provide resources and reassurances in the short-term so our financial markets can function efficiently. Liquidity in many corners of our financial markets have dried up in recent weeks as issuers and investors grapple with understanding their individual circumstances and the direction overall economy. The Federal Reserve will, and already is, playing a key role for restoring confidence to the business community and financial markets.

The comments in this letter reflect the Chamber's view on the Paycheck Protection Program Lending Facility (PPPLF), the Term Asset-Backed Securities Loan Facility (TALF), the Primary Market Corporate Credit Facility (PMCCF), the Secondary Market

Corporate Credit Facility (SMCCF), the Municipal Liquidity Facility (MLF), the Commercial Paper Funding Facility (CPFF), and liquidity challenges for mortgage servicers. The Chamber is providing feedback on the Main Street Lending Program under separate cover.

Paycheck Protection Program Lending Facility

We commend the Federal Reserve and Treasury for authorizing the Paycheck Protection Program Lending Facility (PPPLF). The effectiveness of the Small Business Administration's Paycheck Protection Program (PPP) is a top priority of the Chamber. The PPP is a lifeline for countless small businesses, and it is therefore appropriate the Federal Reserve would offer liquidity to financial institutions issuing these loans. The below recommendations are intended to enhance the impact of the PPPLF.

The Federal Reserve should clarify "eligible borrowers" for the purposes of the PPPLF. The term sheet notes that all depository institutions that originate PPP loans are eligible and that the Board is "working to expand eligibility" to other lenders that originate PPP loans. Non-depository lenders approved by the Small Business Administration (SBA) to issue PPP loans should automatically gain access to the PPPLF.

The Federal Reserve should facilitate the secondary market by addressing eligibility for depository institutions that are not PPP approved lenders. The PPPLF term sheet appears to only contemplate the pledging of PPP loans by the lenders that originate them, excluding the ability of non-originating depository institutions from holding loans, loan participations, or other securitization interests to access the PPPLF by pledging those instruments. Such a narrow approach would inhibit the robust development of a secondary market in PPP loans, which is necessary in order to fully allow all PPP lenders (particularly non-bank lenders who are currently unable to directly access the PPPLF) to maximize their balance sheet and maximize PPP lending to small businesses in need of funds on an urgent basis.

The PPPLF should contemplate additional guidance on SBA affiliation rules under the PPP. The Chamber has advocated for clarification of these rules, including for borrowers backed by angel investors, venture capital and private equity, so more businesses can access the loans available under the PPP.¹

¹ U.S. Chamber of Commerce, other trade associations, Small Business Administration Affiliation Rules Applicability to Paycheck Protection Program [Letter written April 10, 2020 to the Small Business Administration and Treasury Department] available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2020/04/200410_Coalition_PPPAffiliationRules_Fed_Treasury_SBA.pdf?#

Finally, the Federal Reserve should clarify available relief from applicable leverage and capital requirements for depository institutions that hold PPP loans on their balance sheet. The risk weight of PPP loans under the CARES Act is zero. And, on April 9, 2020, the federal banking regulators issued an interim final rule to allow banking organizations to neutralize the effect of PPP loans financed under the PPPLF on leverage capital ratios, but this would effectively require lenders to pay 35 basis points for regulatory relief. However, if the lender funds the loan the risk, weighting is zero but there is no relief for leverage. The Federal Reserve should reconcile this discrepancy for regulatory relief in order to encourage banks to use the PPPLF.

Term Asset-Backed Securities Loan Facility

The Chamber supports the Federal Reserve establishing a Term Asset-Backed Securities Loan Facility (TALF). The Federal Reserve announced the establishment of the TALF on March 23, 2020,² wherein it noted it would lend up to \$100 billion on a non-resource basis – an amount equal to the market value of the asset-backed securities (ABS) less a haircut – to holders of certain AAA-rated ABS backed by newly and recently originated consumer and small business loans. This announcement noted that eligible securities will include those backed by student loans, auto loans, credit card loans, loans guaranteed by the SBA, and other certain asset classes – all of which support critical aspects of our economy.

The commercial real-estate industry has faced a number of unexpected yet severe headwinds in recent weeks as a result of the pandemic. In general, tenants that were otherwise creditworthy before the crisis are unable to pay rent due to disruptions in their business including government orders to limit their operations. The cashflow challenge is especially acute for nonbank lenders that depend on lines of credit and repurchase agreements with depository institutions that are oftentimes secured by assets with valuations tied to commercial real-estate; the liquidity challenges for these lenders appear to be compounded by the simultaneous demand for liquidity by nearly every sector of the economy.

The Federal Reserve's April 9, 2020 announcement, which includes changes to the TALF term sheet, while positive, appears to fall short of ameliorating major liquidity issues. Importantly, the updated term sheet indicates that TALF-eligible collateral will now include

² Board of Governors of the Federal Reserve System, Federal Reserve announces extensive new measures to support the economy (March 23, 2020), available at <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm>

the AAA rated tranches of both outstanding commercial mortgage-backed securities (CMBS) and newly issued collateralized loan obligations (CLOs). There is evidence to suggest that the announcement to add AAA legacy CMBS to the program has already improved liquidity in the sector. The Chamber supports this expansion of TALF, which we believe would help alleviate the extreme funding pressures in the commercial real-estate market during this period of uncertainty.

The Chamber recommends further expansion of the eligible collateral that may be pledged by borrowers under TALF. First, it should be expanded to include new issue conduit CMBS. Second, it should be expanded to include conduit and single asset single borrower (SASB) securities. The Federal Reserve should consider the merits of expanding TALF to non-investment grade securities that support the commercial real-estate market to ensure liquidity is available where it is needed the most without exposing itself to credit losses that would cause a net loss for the program. Furthermore, to the degree possible, information made available to the public about participants in the program should distinguish the credit risk and performance of pledged assets.

The Chamber also broadly supports the Federal Reserve providing liquidity to the secondary market for consumer debt via TALF. At least one asset class that merits clarification is those securities backed by student loans. This market can generally be classified as 1) Federal Family Education Loan Program (FFELP) loans; 2) in-school private student loans; and 3) refinanced private student loans; all of which have distinct characteristics and credit risk. For example, FFELP loans include a guarantee from the federal government, and in-school generally have a higher credit quality than other student loans. Therefore, these securities should be itemized separately and provided the appropriate collateral treatment in order to maximize liquidity for this market.

Additionally, the Federal Reserve should consider simplified customer agreements and documentation requirements for participating in TALF. One of the most time-consuming aspects of the TALF program announced in 2008 was the time it took to get investors onboarded and ready to participate in the program.

Finally, the Federal Reserve should clarify that a U.S. branch or agency of a foreign bank is eligible to participate in TALF. Any limitation would undermine the intent of the CARES Act, which is to quickly provide lending and liquidity to businesses in the U.S., many of which choose to bank with a U.S. branch or agency of a foreign bank. The term sheet released on March 23, 2020, notes “A U.S. company would be 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.” The revised April 9, 2020 term sheet removes the explicit reference to a U.S. branch or agency of a foreign bank.

Primary Market Corporate Credit Facility

The Chamber commends the Federal Reserve, with the support of Treasury, for providing up to \$750 billion in combined support to eligible lenders through both the Primary Market Corporate Credit Facility (PMCCF) and the Secondary Market Corporate Credit Facility (SMCCF). We support the PMCCF as it will provide an important source of liquidity to companies navigating business challenges as a result of the pandemic. The PMCCF, by directly purchasing corporate debt of eligible domestic investment grade issuers, will serve as an important backstop for corporate debt. However, the Chamber encourages the Federal Reserve to bring greater clarity to the terms and conditions surrounding limits per issuer, the eligibility of issuers, and the documentation, disclosures, and operational mechanics required to access the PMCCF.

Limits per issuer

According to the PMCCF term sheet, the maximum amount of outstanding bonds or loans of an eligible issuer that borrows from the facility may not exceed 130% of the issuer’s maximum outstanding bonds or loans on any day between March 22, 2019 and March 22, 2020. Given the importance of the 130% test to issuers as they consider their funding plans, we believe greater clarity is required to address the following questions.

- Is the 130% test applicable only while the issuer has bonds / loans held by the facility?
- Is this percentage a maintenance or incurrence test?
- What are the repercussions of breaching the 130% limit?
- Is the 130% test based on notional value, balance sheet value or another methodology?

Eligibility considerations

The PMCCF is an important component of the Federal Reserve’s actions to support businesses during this unprecedented time. However, a number of unanswered questions remain as to eligibility for the PMCCF as pertains to affiliate issuers, holding companies, U.S. subsidiaries of foreign parents, and ratings considerations.

- Are affiliate issuers with the same parent able to access the PMCCF if they independently meet the criteria? Is an issuer rating sufficient or must individual bonds be rated?

- If the holding company is assumed to be the issuer, how does the issuer account for bonds and loans issued to third parties via subsidiaries? Is an issuer rating sufficient or must individual bonds be rated?
- For split-rated issuers, should the higher or lower rating be referenced?
- Are U.S. subsidiaries of foreign parents, with operations primarily in U.S., eligible?
- Is eligibility impacted if an issuer is either (i) owned by a foreign parent or (ii) receives a guarantee from a foreign parent of a U.S. issuer?
- Do secured forms of debt / loans qualify? Do subordinated bonds / loans qualify?
- Will the Federal Reserve consider amending the ratings eligibility to include additional issuers?

Documentation, disclosures, and operational mechanics

Several key implementation questions remain outstanding as issuers consider accessing the PMCCF.

- Who is responsible for setting and approving the list of participants?
- What documentation, disclosures or other readiness must be undertaken by participants?
- Is there a date by which participants need to sign up to access this facility?
- Is the PMCCF available to participants during an issuer's blackout periods?
- Does the facility intend on lending out the securities at a future date?

Secondary Market Corporate Credit Facility

The Chamber supports the Secondary Market Corporate Credit Facility (SMCCF) as it will provide an important source of liquidity in the secondary market to companies navigating business challenges as a result of the pandemic. The SMCCF, by directly purchasing corporate bonds and corporate bond portfolio ETFs, will serve as an important backstop for corporate debt markets. However, the Chamber encourages the Federal Reserve to consider (1) certain modifications to eligible assets and limits per issuer to improve access to the SMCCF and (2) clarifying the terms surrounding eligible issuers, pricing and limits per issuer/ETF, eligible sellers, and documentation, disclosures, and operational mechanics required to access the SMCCF.

Modifications to eligible assets and limits per issuer

The SMCCF has the capacity to help a large portion of the market. However, we are concerned that given the terms and conditions of the facility only a small portion of the

market that requires assistance will actually be able to avail themselves of the SMCCF. To ensure that the facility is as impactful as intended, we recommend that the Federal Reserve consider increasing from 5 to 10 years the final maturity of eligible bonds to expand the reach of the program. We also recommend an increase from 1.5% to 2.0% the per issuer cap of the total program size to accommodate issuers with larger debt footprints in the market.

Other eligibility, pricing, and limits per issuer / ETF considerations

We believe greater clarity is required to address the following additional eligibility, pricing, and limits questions.

- Who is responsible for setting and approving the list of participants?
- Are U.S. investors with a foreign parent considered eligible sellers?
- How will “fair market value” pricing be determined?
- Could issuers sell their own debt to the facility that have been purchased in the secondary markets through the ordinary course of market-making?
- How will the Fed allocate the capacity firms could utilize by issuer or seller?

Participation of U.S. branch or agency of a foreign bank

The revised term sheet published on April 9, 2020, now includes a definition of eligible seller.³ The eligibility of a branch or agency of a foreign bank should be clarified.⁴

Documentation, disclosures, and operational mechanics

Several key implementation questions remain outstanding as issuers consider accessing the SMCCF.

- What documentation, disclosures or other readiness must be undertaken by participants?
- Is there a date by which participants need to sign up to access this facility?
- Does the facility intend on lending out the securities at a future date?
- Does the Fed intend on holding these purchased assets to maturity?

³ The term sheet for the SMCCF now notes “[e]ach institution from which the Facility purchases securities must be a business that is created or organized in the United States or under the laws of the United States with significant U.S. operations and a majority of U.S.-based employees.”

<https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a2.pdf>

⁴ See similar comments above regarding the eligibility of a U.S. branch or agency of a foreign bank to participate in TALF

Municipal Liquidity Facility

The Chamber supports the Federal Reserve establishing the Municipal Liquidity Facility (MLF). The facility will purchase up to \$500 billion of short-term notes directly from U.S. states (including the District of Columbia) and certain cities and counties. The revenue disruption caused by the coronavirus crisis has severely strained the short-term finances of state and local governments. Businesses of all sizes depend on the critical services provided by state and local governments – maintaining roads, public safety, healthcare, etc. – to operate their businesses. The continuity of these critical services is especially important during this time of uncertainty. The below recommendations are intended to enhance the MLF.

Expand to more issuers

The Municipal Liquidity Facility is restricted to only the largest issuers.⁵ This means the vast majority of cities and counties will be ineligible for their debt to be purchased by the MLF. It appears that independent authorities and nonprofit entities are also excluded from the definition of eligible issuer, but this is not clear on the term sheet.

The MLF term sheet suggests eligible issuers may provide liquidity to other issuers.⁶ We welcome this suggestion, but it is not immediately clear to us that that eligible issuers would make use of this option. Using eligible issuers as intermediaries is impractical and would likely distort the market. Most states and large cities – the eligible issuers – are facing their own fiscal challenges and thus will not likely be completely ameliorated by the MLF. Therefore, it is highly unlikely they would provide liquidity to other issuers. Furthermore, this would require eligible issuers to assume the credit risk of non-eligible issuers, which seems unlikely given the economic uncertainty. Additionally, it is unclear how many states have the authority in their constitutions to lend to cities and municipalities. It is also not immediately clear if eligible issuers have the operational capability to facilitate liquidity for other issuers, but it is reasonable to conclude they would endeavor to do so if provided additional funding.

⁵ MLF term sheet states Eligible issuers include “U.S. states, counties with a population of at least two million residents, and U.S. cities with a population of at least one million residents.”

<https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a3.pdf>

⁶ Ibid. “An Eligible Issuer may use the proceeds of the notes purchased by the SPV to purchase similar notes issued by, or otherwise to assist, political subdivisions and instrumentalities of the relevant State, City, or County for the purposes enumerated in the prior sentence.”

The MLF should include an additional allocation of funds to eligible issuers providing liquidity to other issuers. In other words, eligible issuers should be permitted to sell notes to the MLF from other issuers that do not count towards the cap of “up to an aggregate amount of 20% of the general revenue ... for fiscal year 2017.” Otherwise, it seems unlikely that eligible issuers will allocate funding away from their own financing challenges.

Clarify the funding rate

The term sheet does not describe the interest cost to the issuer. The term sheet simply states that “Pricing will be based on an Eligible Issuer’s rating at the time of purchase with details to be provided later.” The MLF’s required return will clearly determine how much it is used by issuers compared to other funding options.

Commercial Paper Funding Facility

The Chamber wrote to the Federal Reserve Board and the Treasury Department on March 31, 2020, regarding the Commercial Paper Funding Facility. Our letter requested the CPFF be expanded to include Tier 2 issuers and split issuers of commercial paper in order to promote more liquidity in this market without subjecting the facility to substantially higher credit risk.⁷ The Federal Reserve – including in its April 9, 2020 announcement regarding other 13(3) facilities – has not indicated if the CPFF will be expanded.

Mortgage Servicing Liquidity

Notably absent from the Federal Reserve’s announcement is a liquidity facility to manage the challenges facing servicers in the mortgage market. The federal government has instituted broad forbearance policies but has not provided any liquidity backstop to support the market. Forbearance imposed by the federal government temporarily disrupts the necessary cashflow to for payments that are obligated to investors. The Chamber recommends the Federal Reserve work with the Treasury Department reduce the uncertainty that is currently plaguing this market by providing a liquidity backstop through the creation of an additional 13(3) facility.

⁷ U.S. Chamber of Commerce, Commercial Paper Funding Facility issuer eligibility, [Letter written March 31, 2020 to the Federal Reserve Board and Treasury Department] available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2020/04/200331_CoalitionComments_CommercialPaperFundingFacility_Fed_Treasury-Final-3.31.20.pdf?#

This facility should not include any of the corporate governance restrictions that are described in the CARES Act. The CARES Act does not specifically contemplate a mortgage servicing liquidity facility and therefore there is no clear direction from Congress about imposing restrictions on the firms that may elect to use this funding source. Furthermore, where the CARES Act does contemplate corporate governance restrictions (which the Treasury Secretary authority has the authority to waive), they are only applicable to *lending* programs; they are not applicable to *securities*.

Closing

Thank you for considering our input regarding liquidity challenges in our financial markets and our comments on the programs you have proposed to ameliorate these issues. The Chamber is supportive of your efforts and stands ready to assist you with maximizing the benefits of these programs.

The Chamber supports the Federal Reserve providing short-term liquidity during this time of crisis, but we believe it is important that the private market remain the long-term provider of liquidity to the economy. The Federal Reserve serves a vital role as the lender of last resort, which is absolutely required under current economic conditions. Private capital should not be crowded in the long run including when the market is not demonstrating signs of severe stress.

Finally, we are prepared to work with the Treasury Department and the Federal Reserve to request more funding from Congress to backstop 13(3) programs if it becomes clear the liquidity challenges facing the market are more severe than have been previously contemplated.

Very Respectfully,

A handwritten signature in black ink, appearing to read 'T. Quadman', with a long, sweeping horizontal stroke extending to the right.

Tom Quadman

Cc: Peter Phelan, Deputy Assistant Secretary, U.S. Department of the Treasury