

April 16, 2020

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

Re: Federal Reserve Funding Facilities

Dear Chairman Powell:

The American Financial Services Association (AFSA)¹ commends the Federal Reserve for its rapid response to the economic crisis caused by the coronavirus pandemic. The Federal Reserve established several funding facilities to assist households and employers of all sizes to bolster the ability of state and local governments to deliver critical services during this crisis.

We are asking that the Federal Reserve make some key changes to the funding facilities so that they will serve a broader sector of the American economy and help more consumers. Below, we have outlined the changes that we are hoping the Federal Reserve will consider for each funding facility. We have also submitted these requests by facility on the Federal Reserve's feedback form.

I. Term Asset-Backed Securities Loan Facility (TALF)

The TALF has the potential to provide a much-needed jumpstart to the asset-backed securities market. The sooner TALF is operational, and the more asset-classes that are included, the better. We recommend that the Federal Reserve:

- Expedite the operational start by eliminating time-consuming requirements;
- Expand eligible collateral to include unsecured consumer installment loans and non-purchase finance automotive-secured loans;
- Expand required credit ratings to all investment grade ratings;
- Allow private ABS and structured finance securities to be eligible;
- Allow eligible ABS to participate with a single qualifying rating from a nationally recognized statistical rating organization;
- Allow underlying securitized assets originated some period of time prior to creation of the TALF 2020 program to be eligible assets;
- Expand TALF to allow substitution of equivalent collateral during the term of the loan; and
- Allow ABS investors to borrow under the TALF after the closing date of the ABS issuance.

¹ Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

II. Primary Market Corporate Credit Facility (PMCCF)

To be an eligible issuer under the PMCCF, an entity must not have received specific support pursuant to the CARES Act or any subsequent federal legislation. This prohibition has raised a couple of questions that we hope the Federal Reserve will answer. We respectfully request that the Federal Reserve clarify that: (1) taking advantage of the delay in payroll tax payments, or (2) being designated as a Paycheck Protection Program lender by the Small Business Administration does not disqualify an entity from qualifying as an eligible issuer.

In addition, on April 9, the updated PMCCF Term Sheet excluded depository institutions and depository institution holding companies (as such terms are defined in the Dodd-Frank Act) from eligibility. We ask that the Federal Reserve clarify that this revision was not intended to exclude certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities.

Furthermore, we ask that the Federal Reserve expand the PMCCF to include issuers with a non-investment grade credit rating, clarify the section 4019 conflict-of-interest provisions (section 4019 takes a broad approach to defining the term “equity interest,” which includes a share in an entity regardless of whether it is transferable or classified as stock), and clarify whether “maximum amount of outstanding bonds or loans of an eligible issuer” includes committed but undrawn amounts.

III. Secondary Market Corporate Credit Facility (SMCCF)

On April 9, the updated SMCCF Term Sheet excluded depository institutions and depository institution holding companies (as such terms are defined in the Dodd-Frank Act) from eligibility. We request that the Federal Reserve clarify that this revision was not intended to exclude certain savings and loan holding companies that are substantially engaged in insurance underwriting or commercial activities.

Furthermore, as with the PMCCF, we ask that the Federal Reserve expand the SMCCF to include issuers with a non-investment grade credit rating, clarify the section 4019 conflict-of-interest provisions, and clarify whether “maximum amount of outstanding bonds or loans of an eligible issuer” includes committed but undrawn amounts.

IV. Paycheck Protection Program Lending Facility (PPPLF)

First, we ask that the Federal Reserve expand eligibility requirements to allow non-bank consumer lenders to participate as lenders.

Second, we request that the Federal Reserve clarify that an electronic collateral origination process that complies with the Electronic Signatures in Global and National Commerce Act, the Uniform Electronic Transactions Act, and Uniform Commercial Code § 9-105 (Control of Electronic Chattel Paper) satisfies the pledging collateral requirements at each Federal Reserve Bank for e-loans.

V. Main Street Lending Program (MSLP)

While appropriate for a number of industries, the proposed debt-to-EBITDA metrics mean that many finance companies will fail to qualify for the MSLP.

Many financial services companies raise the majority of their debt via securitization. Issuers can essentially choose to account for securitizations as on-balance sheet debt or as a sale in which the assets leave the balance sheet and, therefore, no debt appears on the balance sheet. Finance companies generally ensure that they account for securitization as debt so as to avoid gain-on-sale accounting.

For finance companies that account for their securitizations as on-balance sheet transactions, debt-to-EBITDA measures are typically quite high. Lenders are leveraged entities, and the amount of leverage suitable for lenders is generally higher than the amount of leverage tolerated in other sectors. EBITDA, in fact, is not a metric used by bankers who cover the lending sector – money is a lender’s primary raw material, so talking about earnings before interest (the cost of that raw material) is rather like talking about a chair manufacturer’s earnings before cost of wood, fabric, and nails.

We ask that the Federal Reserve either: (1) recognize that securitization debt is non-recourse to the issuer and, therefore, does not need to be counted in the calculation, or (2) require an alternative leverage metric and/or threshold that is more suitable for the financial services sector.

We also request that the Federal Reserve issue an FAQ to provide additional clarity. In the FAQ, the Federal Reserve could clarify the following:

- Eligibility requirements – The Federal Reserve has not defined how the employee thresholds should be calculated, or whether the thresholds require prospective borrowers to aggregate their employee or revenue levels with those of their affiliated entities.
- Clarify acceptable uses for the loan proceeds – Currently, the term sheet merely states to refrain from paying “other loan balances.”
- Clarify the “reasonable efforts” standard that a borrow must satisfy in its efforts to maintain payroll and retain workers. The Federal Reserve should consider establishing specific levels.
- Further define eligibility and underwriting criteria related to the borrower’s financial condition. The term sheet merely states that the borrow must attest that they require financing due to the exigent circumstances presented by the COVID-19 pandemic and they are not insolvent.
- Clarify the “reasonable efforts” standard that a borrow must satisfy in its efforts to maintain payroll and retain workers. The Federal Reserve should consider establishing specific levels.

VI. Commercial Paper Funding Facility (CPFF)

By ensuring the smooth functioning of this market, particularly in times of strain, the CPFF will support families, businesses (particularly small businesses), and jobs across the economy.

In order to do so, though, the CPFF must be expanded. Currently, the SPV will only purchase U.S. dollar-denominated commercial paper (including asset-backed commercial paper) that is rated at least A-1/P-1/F-1 by a major nationally recognized statistical rating organization (NRSRO) and, if rated by multiple major NRSROs, is rated at least A-1/P-1/F-1 by two or more major NRSROs, in each case subject to review by the Federal Reserve.

As the CPFF is structured right now, many vehicle finance companies cannot access this line of credit as they do not qualify under the credit rating limitation. Many vehicle finance companies are Tier II/III issuer (A-2/P-3) rated companies. However, they still have solid credit and may be in the greatest need of assistance.

In addition, there is a need to increase the CPFF limit beyond the commercial paper that was issued in the year prior to the crisis. Many issuers limited their drawings in the last year, as commercial paper is sometimes used last when times were good. Those companies should not now be punished for not drawing heavily on those lines. Commercial paper may have been a backstop that was not really used extensively until recently and those issuers should not be so limited in their use of this program.

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Thank you for considering these recommendations. Please contact me at 202-776-7300 or cwinslow@afsamail.org with any questions.

Sincerely,



Celia Winslow
Senior Vice President
American Financial Services Association