

**Questions
About the CARES Act's \$500 Billion Emergency Economic
Stabilization Funds**

The First Report of the Congressional Oversight Commission

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INTRODUCTION

We are in the midst of an unprecedented public health and economic crisis. In recent months, the novel coronavirus (COVID-19) has swept across the globe. More than one million Americans have been infected and more than 87,000 Americans have died.¹ The COVID-19 crisis has also brought much of the U.S. economy to a halt.

The first U.S. case of COVID-19 was identified in January 2020.² As the virus spread, economic activity slowed down: businesses limited operations to reduce the risk of infections, consumers pulled back as they adhered to Center for Disease Control and Prevention (CDC) guidelines to limit their exposure to the virus and struggled with job losses or reduced wages, and most states instituted stay-at-home and business shutdown orders in March and April 2020 in an effort to slow the spread of the disease and prevent hospital systems from becoming overwhelmed with critically ill patients.³

The American people have suffered substantial economic harm as a result. More than one quarter of the U.S. economy has been idled—a fall in output equivalent to what occurred between 1929 and 1933 during the Great Depression.⁴ Many industries have been particularly hard-hit. For example, retail sales in March fell by \$46.2 billion, an amount almost equal to the entire decline over the full 16 months of the Great Recession, and in April they fell by \$79.6 billion.⁵ Manufacturing production suffered its largest monthly decline in March since 1946.⁶

America's 30 million small businesses have faced particular trouble. Some of the hardest hit segments in small business include food and beverage, salon and spa, sports and recreation,

¹ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19) Cases in the U.S., <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited May 17, 2020).

² Michelle L. Holshue et al, *First Case of 2019 Novel Coronavirus in the United States*, N. Engl. J. Med. 382 (10): 929–936, Mar. 5, 2020, available at <https://www.nejm.org/doi/full/10.1056/NEJMoa2001191>.

³ Board of Governors of the Federal Reserve System, Beige Book, Apr. 15, 2020, <https://www.federalreserve.gov/monetarypolicy/beigebook202004.htm>; Erin Schumaker, *Here are the states that have shut down nonessential businesses*, ABC News, Apr. 3, 2020, <https://abcnews.go.com/Health/states-shut-essential-businesses-map/story?id=69770806>; Patricia Cohen & Jim Tankersley, *America's Economy Begins to Shut Down as Pandemic Measures Take Hold*, The New York Times, Mar. 16, 2020, <https://www.nytimes.com/2020/03/16/business/economy/coronavirus-us-economy-shutdown.html>.

⁴ Josh Mitchell, *State Shutdowns Have Taken at Least a Quarter of U.S. Economy Offline*, The Wall Street Journal, Apr. 5, 2020, <https://www.wsj.com/articles/state-coronavirus-shutdowns-have-taken-29-of-u-s-economy-offline-11586079001>.

⁵ Lucia Mutikani, *U.S. Retail Sales, Factory Output Sink as Coronavirus Batters Economy*, Reuters, Apr. 15, 2020, <https://www.reuters.com/article/us-usa-economy/coronavirus-seen-knocking-u-s-retail-sales-in-march-idUSKCN21X0EL>; U.S. Census Bureau, *Advance Monthly Sales for Retail and Food Services*, April 2020, May 15, 2020, https://www.census.gov/retail/marts/www/marts_current.pdf.

⁶ Lucia Mutikani, *U.S. Retail Sales, Factory Output Sink as Coronavirus Batters Economy*, Reuters, Apr. 15, 2020, <https://www.reuters.com/article/us-usa-economy/coronavirus-seen-knocking-u-s-retail-sales-in-march-idUSKCN21X0EL>.

arts and entertainment, and retail.⁷ There have been a number of recent polls of small business owners gauging their response to the pandemic and their plans to bring back laid-off or furloughed employees and to return to generating sales. On May 5, the U.S. Chamber of Commerce and MetLife released a poll indicating that “79% of small businesses anticipate bringing back most of their employees.”⁸ Some 48% of small businesses (an 11% drop from the previous month) stated that “they still feel comfortable with their cash flow,”⁹ yet, troublingly, more than one in five stated they are “two months or less from closing permanently.”¹⁰

Nationally, millions of Americans have lost their jobs. The U.S. Department of Labor reported that total nonfarm payroll employment fell by 20.5 million in April, and the unemployment rate rose to 14.7%.¹¹ The job loss numbers are significantly worse when factoring in unemployment claims. Over the eight weeks ending on May 9, 36.5 million Americans filed unemployment claims.¹² When this number is combined with the 7.1 million Americans already unemployed as of March 13, the total equals more than 40 million.¹³ Between people who are unemployed and underemployed, some experts estimate that the real unemployment rate is actually 22.8% or as high as 25%.¹⁴

While few have been spared from the effects of this crisis, lower-income workers and people of color have suffered an outsized blow. A Federal Reserve (the “Fed”) survey found that “[a]mong people who were working in February, almost 40 percent of those in households making less than \$40,000 a year had lost a job in March.”¹⁵ In a recent survey, Black and

⁷ Daniel Sternberg, *Analyzing Small Business Trends in the Quarantine Economy*, Gusto, Apr 8, 2020, <https://gusto.com/company-news/covid-19-small-business-trends-march-2020>.

⁸ U.S. Chamber of Commerce & MetLife, *Small Business Coronavirus Impact Poll*, May 5, 2020, <https://www.uschamber.com/report/small-business-coronavirus-impact-poll>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ U.S. Bureau of Labor Statistics, *Employment Situation Summary*, May 8, 2020, <https://www.bls.gov/news.release/empsit.nr0.htm>.

¹² U.S. Department of Labor, *Unemployment Insurance Weekly Claims Data*, May 14, 2020; Lance Lambert, *3 million more unemployment claims as real jobless rate soars to Great Depression levels*, Fortune, May 14, 2020, <https://fortune.com/2020/05/14/us-unemployment-rate-numbers-claims-this-week-total-job-losses-may-14-2020-benefits-claims/>.

¹³ Lance Lambert, *Real Unemployment Rate Soars Past 24.9%—and the U.S. Has Now Lost 33.5 Million Jobs*, Fortune, May 7, 2020, <https://fortune.com/2020/05/07/unemployment-33-million-coronavirus/>.

¹⁴ U.S. Bureau of Labor Statistics, *Employment Situation News Release*, May 8, 2020 (listing U6 unemployment rate as 22.8% for April 2020), https://www.bls.gov/news.release/archives/empsit_05082020.htm; Ann Saphir, *Fed's Kashkari: real unemployment rate is 24%-25%, need more fiscal help*, Reuters, May 14, 2020 (reporting that Minneapolis Federal Reserve Bank President Neel Kashkari believes the true U.S. jobless rate is probably 24% or 25%), <https://www.reuters.com/article/usa-fed-kashkari/feds-kashkari-real-unemployment-rate-is-24-25-need-more-fiscal-help-idUSU5N2BQ005>.

¹⁵ Jerome Powell, *Current Economic Issues*, Board of Governors of the Federal Reserve System, May 13, 2020, <https://www.federalreserve.gov/newsevents/speech/powell20200513a.htm>.

Hispanic respondents were more likely than white respondents to say that they or someone in their family had been laid off or taken a cut in pay because of the COVID-19 crisis.¹⁶

Congress has responded to the economic and public health crises with four economic stabilization and health funding bills, which the President signed into law:

- The Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, enacted March 4, provided \$8.3 billion in emergency funding for public health measures, including funding for state and local health departments, emergency preparedness and response activities such as the procurement of medical supplies, increased access to testing, and the development of a vaccine or treatment.¹⁷
- The Families First Coronavirus Response Act, enacted March 18, required many employers to provide working Americans with COVID-19 related paid sick and family leave, enhanced unemployment benefits, expanded food security initiatives, and increased federal Medicaid funding by 6.2%, an increase of approximately \$35 billion annualized.¹⁸
- The Coronavirus Aid, Relief, and Economic Security (CARES) Act, enacted March 27, provided \$2.2 trillion in relief, including direct cash payments for individuals and families, expanded unemployment benefits—including unemployment assistance for freelancers, contractors, and the self-employed—funding for hospitals, transit agencies, and schools, \$150 billion in direct aid and grants for state and local governments, \$349 billion of forgivable loans for small businesses through a newly created Small Business Administration (SBA) Paycheck Protection Program (PPP), and an additional \$500 billion for lending to businesses and to state and local governments.¹⁹
- The Paycheck Protection Program and Health Care Enhancement Act, enacted April 24, increased the funding of the PPP by \$321 billion to a total of \$670 billion, and provided supplemental funding for health care providers and increased funding for COVID-19 testing.²⁰

¹⁶ Kim Parker, Juliana Menasce Horowitz & Anna Brown, *About Half of Lower-Income Americans Report Household Job or Wage Loss Due to COVID-19*, Pew Research Center, Apr. 21, 2020, <https://www.pewsocialtrends.org/2020/04/21/about-half-of-lower-income-americans-report-household-job-or-wage-loss-due-to-covid-19/>.

¹⁷ Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Pub. L. No. 116-123, 134 Stat. 146 (2020).

¹⁸ Families First Coronavirus Response Act, Pub. L. No. 116-127, 134 Stat. 178 (2020).

¹⁹ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).

²⁰ Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, 134 Stat. 620 (2020).

The focus of this report is the CARES Act’s provision of \$500 billion to the Treasury Department (the “Treasury”) for lending to businesses and to state and local governments to help support and stabilize the economy. Division A, Title IV, Subtitle A of the CARES Act (“Subtitle A”) authorized the Treasury to make loans, loan guarantees, and other investments to provide liquidity “to eligible businesses, [s]tates, and municipalities related to losses incurred as a result of coronavirus.”²¹

Of this amount, \$46 billion is set aside for the Treasury itself to provide loans or loan guarantees to certain types of companies. Up to \$25 billion is available for passenger air carriers, eligible businesses certified to perform inspection, repair, replace, or overhaul services, and ticket agents. Up to \$4 billion is available for cargo air carriers. And up to \$17 billion is available for businesses “critical to maintaining national security.”²²

Any unused portions of this \$46 billion, and the remaining \$454 billion, may be used to support emergency lending facilities established by the Fed. Among other legal restrictions, these lending facilities must be “broad-based” (allowing at least five entities to participate), must not provide loans to “insolvent” companies, and must be secured by collateral “sufficient to protect taxpayers from losses.”²³ The Fed can leverage the taxpayer money in these facilities, giving it the ability to inject several trillion dollars into the economy through this program.

The CARES Act imposed a number of restrictions on the use of this money. For example, none of the \$500 billion can go to support an entity in which top Executive Branch officials, Members of Congress, or certain members of their families have a controlling interest. In addition, any Fed lending facility that relies on money from the CARES Act can “only purchase obligations or other interests (other than securities that are based on an index or that are based on a diversified pool of securities) from, or make loans or other advances to, businesses that are created or organized in the United States or under the laws of the United States and that have significant operations in and a majority of its employees based in the United States.”²⁴

The CARES Act established this Congressional Oversight Commission (the “Commission”) to conduct oversight of the implementation of Subtitle A by the Treasury and the

²¹ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4003, 134 Stat. 281 (2020).

²² In addition, Division A, Title IV, Subtitle B of the CARES Act (“Subtitle B”) authorized the Treasury to provide up to \$32 billion in financial assistance to passenger air carriers, cargo air carriers, and certain airline industry contractors that must be exclusively used for the continuation of payment of employee wages, salaries, and benefits. Of this amount, up to \$25 billion is available for passenger air carriers; up to \$4 billion is available for cargo air carriers; and up to \$3 billion is available for certain airline industry contractors. The Treasury has begun to provide some of this financial assistance. Subtitle B is not within the jurisdiction of the Congressional Oversight Commission (the “Commission”).

²³ 12 U.S.C. § 343; 12 C.F.R. § 201.4; Congressional Research Service, *Federal Reserve: Emergency Lending*, Mar. 27, 2020, <https://crsreports.congress.gov/product/pdf/R/R44185>.

²⁴ Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, Pub. L. No. 116-123, § 4003, 134 Stat. 146 (2020).

Fed, submit regular reports to Congress, and review the implementation of Subtitle A by the federal government. It is a five-member panel, one of whom serves as chairperson. To date, four members have been appointed; a chairperson has not yet been named.

By law, the Commission must submit reports to Congress every 30 days that address:

- The use by the Fed of authority under Subtitle A, including with respect to the use of contracting authority and administration of the provisions of Subtitle A.
- The impact of loans, loan guarantees, and investments made under Subtitle A on the financial well-being of the people of the United States and the United States economy, financial markets, and financial institutions.
- The extent to which the information made available on transactions under Subtitle A has contributed to market transparency.
- The effectiveness of loans, loan guarantees, and investments made under Subtitle A of minimizing long-term costs to the taxpayers and maximizing the benefits for taxpayers.²⁵

In short, this Commission is responsible for answering two basic questions:

- What are the Treasury and the Fed doing with \$500 billion of taxpayer money?
- Who is that money helping?

INITIAL REPORT

This is the first report of the Commission. In it, we review the actions that the Treasury and the Fed have taken to implement Subtitle A to date, including the design of lending programs and facilities, and outline preliminary questions based on those actions.

The Treasury has not disbursed any of the \$46 billion it can use to provide loans and loan guarantees to the airline industry and businesses critical to maintaining national security. The Treasury published procedures and minimum requirements for making these loans and loan

²⁵ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4020, 134 Stat. 281 (2020).

guarantees, along with corresponding applications for those loans and loan guarantees in March and April 2020.²⁶

The initial deadline to apply for loans for the airline industry was April 17. The initial deadline to apply for loans for businesses critical to maintaining national security was May 1. The Treasury has received applications for these loans and is in the process of reviewing them. The Treasury has not yet made any loans to the airline industry and businesses critical to national security under these applications. Accordingly, the Treasury has not publicly reported and disclosed information regarding the loans, as it must do under the CARES Act. The Treasury has, however, issued grants and loans to the airline industry under the Payroll Support Program under Division A, Title IV, Subtitle B of the CARES Act.²⁷ The terms of those grants may provide the Commission insight into issues that may arise concerning loans made to the airline industry under Subtitle A.

On April 9, the Treasury and the Fed announced that the Treasury *will* use money from the CARES Act to invest in several facilities established by the Fed.²⁸ But, to date, the Treasury has only disbursed \$37.5 billion of CARES Act funds, which were invested in the Fed's Secondary Market Corporate Credit Facility (SMCCF) on May 11.

According to this April 9 announcement, the Treasury intends to use CARES Act funding to make equity investments in special-purpose vehicles (SPVs) created by the Fed to provide lending. If the SPV suffers any losses on this lending, those losses are borne by the taxpayer money invested by the Treasury. The Fed only bears losses if the Treasury's investment of taxpayer money in the SPV is exhausted. By structuring the lending this way, the Fed complies with the Federal Reserve Act's requirement that emergency lending be adequately secured.²⁹

The Treasury and the Fed's April 9 announcement described five lending facilities that would include equity investments provided by the Treasury using CARES Act funding. The Fed

²⁶ U.S. Department of the Treasury, *Procedures and Minimum Requirements for Loans to Air Carriers and Eligible Businesses and National Security Businesses under Division A, Title IV, Subtitle A of the Coronavirus Aid, Relief, and Economic Security Act*, Mar. 30, 2020, <https://home.treasury.gov/system/files/136/Procedures%20and%20Minimum%20Requirements%20for%20Loans.pdf>; U.S. Department of the Treasury, *Treasury Loan Application Form for Air Carriers and Certain Eligible Businesses*, Apr. 8, 2020, <https://forms.treasury.gov/caresact/LoanRequestForAirCarriers>; U.S. Department of the Treasury, *Treasury Loan Application Form for Businesses Critical to Maintaining National Security*, Apr. 23, 2020, <https://forms.treasury.gov/caresact/NationalSecurityLoanRequest>.

²⁷ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).

²⁸ Board of Governors of the Federal Reserve System, *Federal Reserve takes additional actions to provide up to \$2.3 trillion in loans to support the economy*, Apr. 9, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>.

²⁹ Congressional Research Service, *The Federal Reserve's Legal Authorities for Responding to the Economic Impacts of COVID-19*, Mar. 27, 2020, <https://crsreports.congress.gov/product/pdf/LSB/LSB10435>.

and the Treasury have subsequently modified some of these facilities after receiving comments about them from borrowers, lenders, experts, industry groups, and others.

Main Street Lending Program:

These facilities (the “Main Street facilities”) are intended to facilitate lending by banks to small and medium-sized businesses. As originally announced, businesses with up to 10,000 employees or up to \$2.5 billion in 2019 annual revenues were eligible to receive loans under these facilities.

Through the **Main Street New Loan Facility**,³⁰ the Fed, through an SPV, originally announced it would purchase a 95% stake in a loan originated on or after April 8, 2020 if: the loan has a 4-year maturity; amortization of principal and interest is deferred for one year; the loan size is between \$1 million and the lesser of \$25 million or four times the borrower’s 2019 earnings before interest, taxes, depreciation, and amortization (EBITDA); the interest rate is between 250 and 400 basis points above the Secured Overnight Financing Rate (SOFR); and the loan permits prepayment without a penalty.

Through the **Main Street Expanded Loan Facility**,³¹ the Fed, through an SPV, originally announced it would purchase a 95% stake in a loan originated on or before April 8, 2020 with the same terms as through the Main Street New Loan Facility, except that the maximum loan size is the lesser of \$150 million, 30% of the borrower’s existing outstanding and committed but undrawn bank debt, or six times the borrower’s 2019 EBITDA.

The April 9 term sheets for these facilities required a borrower to make certain attestations. These included that it “requires financing due to the exigent circumstances presented” by the COVID-19 pandemic; that it “will make reasonable efforts to maintain its payroll and retain its employees during the term” of the loan; that it will not use the proceeds of the loan to repay or refinance certain existing debts; and that it will follow executive compensation, stock repurchase, and capital distribution restrictions required under the CARES Act during the loan term and one year thereafter.³²

The Fed’s April 9 announcement stated that “businesses vary widely in their financing needs, particularly at this time” and that as the Main Street Lending Program was “being

³⁰ Board of Governors of the Federal Reserve System, *Main Street New Loan Facility Term Sheet*, Apr. 9, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a7.pdf>.

³¹ Board of Governors of the Federal Reserve System, *Main Street Expanded Loan Facility Term Sheet*, Apr. 9, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a4.pdf>.

³² *Id.*; Board of Governors of the Federal Reserve System, *Main Street New Loan Facility Term Sheet*, Apr. 9, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a7.pdf>.

finalized” it would “continue to seek input from lenders, borrowers, and other stakeholders to make sure the program supports the economy as effectively and efficiently as possible while also safeguarding taxpayer funds.”³³ On April 30, the Treasury and the Fed announced that they would expand and otherwise modify these Main Street facilities. Among other changes, the April 30 announcement:

- Eliminated the requirement that companies attest that they require financing “due to the exigent circumstances presented” by COVID-19.
- Modified the requirement that companies make “reasonable efforts” to maintain payroll and retain employees during the term of the loan to a requirement that they make “commercially reasonable efforts” to do so.
- Increased the maximum loan size in the Main Street Expanded Loan Facility to the lesser of \$200 million, 35% of the borrower’s existing outstanding and committed but undrawn bank debt, or six times the borrower’s adjusted 2019 EBITDA.
- Decreased the minimum loan size in the Main Street New Loan Facility to \$500,000.
- Gave banks more flexibility in calculating EBITDA for the purposes of the maximum loan size.
- Modified the interest rate to 300 basis points above the London Interbank Offered Rate (LIBOR) (1 or 3 months).
- Changed the loan origination reference date to April 24, 2020.
- Expanded the businesses eligible to receive loans under these facilities to businesses with up to 15,000 employees or up to \$5 billion in 2019 annual revenues.

On April 30, the Treasury and the Fed also announced the creation of a new Main Street facility: the **Main Street Priority Loan Facility**.³⁴ Through this facility, the Fed, through an SPV, will purchase an 85% stake in new loans that generally meet the criteria of the Main Street New Loan Facility. A key difference is that the new loan proceeds can be used to refinance existing debt owed by the company to a lender other than the bank providing the new loan. The

³³ Board of Governors of the Federal Reserve System, *Federal Reserve takes additional actions to provide up to \$2.3 trillion in loans to support the economy*, Apr. 9, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200409a.htm>.

³⁴ Board of Governors of the Federal Reserve System, *Main Street Priority Loan Facility Term Sheet*, Apr. 30, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200430a2.pdf>.

maximum loan size is the lesser of \$25 million or six times (not four times) the borrower's adjusted 2019 EBITDA.

The Treasury intends to invest \$75 billion in these Main Street facilities, which can support up to \$600 billion in lending.

Municipal Liquidity Facility:³⁵

This facility is intended to help state and local governments manage cash flow problems relating to the COVID-19 crisis. In the initial version of this facility, the Fed, through an SPV, committed to purchase notes from states and counties with a population exceeding two million residents and cities with a population exceeding one million residents. The facility would purchase notes that matured in no more than two years and that represented no more than 20% of the entity's fiscal year 2017 general revenue and utility revenue.

The Treasury and the Fed subsequently expanded the Municipal Liquidity Facility.³⁶ They announced that the facility would purchase notes from counties with a population of at least 500,000 residents (instead of two million residents), cities with a population of at least 250,000 residents (instead of one million residents), and certain multi-state entities. They also agreed to purchase notes that mature within at least three years, instead of two years.

The Treasury intends to invest \$35 billion in this facility, which can support up to \$500 billion in lending.

Primary Market Corporate Credit Facility (PMCCF):³⁷

This facility is intended to support credit to businesses by serving as a "funding backstop" for corporate debt.³⁸ The Fed, through an SPV, will be the sole purchaser of newly issued corporate bonds or purchase portions of bonds or syndicated loans, at issuance, from corporations rated investment grade as of March 22, 2020. The pricing of the bonds will be "issuer-specific, informed by market conditions."³⁹ The Treasury intends to invest \$50 billion in this facility, which can support up to \$500 billion in lending.

³⁵ Board of Governors of the Federal Reserve System, *Municipal Liquidity Facility Term Sheet*, Apr. 9, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a3.pdf>.

³⁶ Board of Governors of the Federal Reserve System, *Federal Reserve Board announces an expansion of the scope and duration of the Municipal Liquidity Facility*, Apr. 27, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200427a.htm>.

³⁷ Board of Governors of the Federal Reserve System, *Primary Market Corporate Credit Facility Term Sheet*, Apr. 9, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a5.pdf>.

³⁸ *Id.*

³⁹ *Id.*

Secondary Market Corporate Credit Facility (SMCCF):⁴⁰

This facility is intended to support credit to businesses by providing liquidity to the market for outstanding corporate bonds. The Fed, through an SPV, will purchase corporate debt issued by corporations rated investment-grade as of March 22, 2020 on the secondary market, as well as purchase U.S.-listed exchange-traded funds (ETFs) that themselves invest in a broad range of corporate bonds. The Treasury intends to invest \$25 billion in this facility. Together, the PMCCF and SMCCF can support up to \$750 billion in total lending and purchases. On May 11, the Treasury disbursed \$37.5 billion to an SPV for the SMCCF, and on May 12 the SPV began to make purchases of ETFs.

The Treasury and the Fed have announced these facilities but, with the exception of the SMCCF, the Treasury has not invested in them yet, nor has the Fed put them into operation. Their size and scope may also grow as the Treasury has only pledged \$185 billion of the \$454 billion appropriated in the CARES Act for investments in Fed lending facilities.

On April 23, the Fed announced it would provide certain information about the lending facilities that the Treasury will invest in using CARES Act funding. Specifically, the Fed announced that it will publish every 30 days the: (a) names and details of participants in each facility; (b) amounts borrowed and interest rates charged; and (c) overall costs, revenues, and fees for each facility.⁴¹

Although the Fed has not lent money or purchased securities from the facilities it announced on April 9 (with the exception of the SMCCF, which began operating on May 12), the announcement itself was followed by dramatic changes in the markets. Between April 8, the day before the announcement, and April 29, the S&P 500 Index rose 6.9% and the Dow Jones Industrial Average rose 5.1%. Corporate bond spreads relative to the 10-Year Treasury yield were down 17.7% over the same time period.⁴² In April, U.S. corporate bond issuance, including investment grade and high-yield bonds, totaled \$296 billion, which is almost three times the amount that was issued in April 2019.⁴³

⁴⁰ Board of Governors of the Federal Reserve System, *Secondary Market Corporate Credit Facility Term Sheet*, Apr. 9, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200409a2.pdf>.

⁴¹ Board of Governors of the Federal Reserve System, *Federal Reserve Board outlines the extensive and timely public information it will make available regarding its programs to support the flow of credit to households and businesses and thereby foster economic recovery*, Apr. 23, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200423a.htm>.

⁴² Federal Reserve Bank of St. Louis, ICE BofA BBB U.S. Corporate Index Option-Adjusted Spread, <https://fred.stlouisfed.org/series/BAMLC0A4CBBB>. Calculation based on the Option-Adjusted Spread (OAS) of the ICE BofA BBB U.S. Corporate Index, a subset of the ICE BofA U.S. Corporate Master Index tracking the performance of U.S. dollar denominated investment grade rated corporate debt publicly issued in the U.S. domestic market.

⁴³ Securities Industry and Financial Markets Association, *US Corporate Bond Issuance*, May 1, 2020, <https://www.sifma.org/resources/research/us-corporate-bond-issuance/>.

Before the passage of the CARES Act, the Fed and the Treasury set up several other facilities using non-CARES Act funding to provide market liquidity. While not currently within the jurisdiction of the Commission, these facilities included the Term Asset-Backed Securities Loan Facility (TALF), the Commercial Paper Funding Facility (CPFF), the Money Market Mutual Fund Liquidity Facility (MMLF), and the Primary Dealer Credit Facility (PDCF). In addition to the aforementioned actions by Congress, these early actions of the Fed and the Treasury resulted in reduced market volatility, greater liquidity, a narrowing of spreads, and some recovery in equity prices.

Based on the Treasury and the Fed’s initial actions to implement the CARES Act, there are some initial general and specific questions that we intend to consider in our future work. These preliminary questions, which are listed below, are not meant to be comprehensive and will not prevent the Commission from reviewing other matters in the future.

PRELIMINARY QUESTIONS

I. General Questions

1. How will the Treasury and the Fed (the “agencies”) assess the success or failure of this program?
 - a. If the agencies use economy-wide metrics, like GDP growth, unemployment rates, or wage growth, how will they isolate the effects of this program from other factors, including other federal and state relief measures?
 - b. If the agencies use more narrow metrics, like bond spreads, how will they assess how changes in those metrics affect the broader economy, including the financial well-being of the people of the United States?
2. The agencies are supposed to use this program to stabilize the economy and help companies and municipalities with liquidity issues stemming from the COVID-19 crisis. How will the agencies attempt to achieve this goal while protecting taxpayer dollars? Are the agencies prepared to lose taxpayer dollars in an effort to facilitate more lending and support to a broader set of entities?
3. Do the agencies believe the Fed’s emergency lending programs are better suited to assist bigger companies that can access the capital markets than smaller firms that cannot? If not, why not? If so, what are the agencies doing to counteract that issue?
4. Will the agencies faithfully follow the statutory requirements of Subtitle A when implementing the lending programs and facilities?
5. How can the agencies best determine the lending capacity of, and Treasury investment into, each Fed lending facility under Subtitle A in order to help support and stabilize the economy?

6. How can the agencies best determine how much of the Treasury's \$454 billion in CARES Act funds to allocate among Fed lending facilities and when to allocate such funds in order to help support and stabilize the economy?
7. How can the agencies best estimate the risk of loss to taxpayer funds in each Fed lending facility?
8. How will the Fed ensure it complies with all restrictions to emergency lending under Section 13(3) of the Federal Reserve Act, including those prohibiting lending to insolvent borrowers?
9. How can the agencies best monitor compliance with and enforce the conflict of interest rules governing the agencies' lending programs and facilities?
10. How can the agencies best enforce the statutory terms and conditions for borrowers under their lending programs and facilities under Subtitle A, including the condition that borrowers are U.S. businesses, as defined by the CARES Act?
11. How will loans under these programs and facilities comply with Bank Secrecy Act (BSA) and the Anti-Money Laundering (AML) rules?
12. How will the agencies decide when to hire third parties to help manage the program or specific facilities? How will the agencies mitigate conflicts of interest these third parties might have?
13. Regarding outside services to assist the agencies to manage the programs and facilities, what is the competitive selection process for custody and fund management services? How are conflicts of interest mitigated?
14. The agencies' emergency lending programs and facilities provide lending directly through government loans and indirectly through banks and other qualified lenders. What are the trade-offs involved with these different delivery mechanisms?
15. While quickly providing lending to borrowers may result in more fraud and abuse, it may also assist many eligible borrowers that need money quickly. How should the agencies balance these trade-offs?
16. The Congressional Budget Office (CBO) recently published its preliminary estimate of the budgetary effects of the CARES Act. CBO's estimate concludes that "the income and the costs stemming from" the Fed's emergency lending facilities funded by the CARES Act "are expected to roughly offset each other." CBO notes that the Fed did "not sustain losses on similar lending . . . [d]uring the financial crisis of 2008 and 2009."⁴⁴ Do you believe CBO is correct in its assumptions of a no net cost result? In order to accomplish the goal of economic stabilization and return to economic growth, is this a reasonable assumption?

⁴⁴ Letter from Phillip L. Swagel, Director, Congressional Budget Office to U.S. Senator Mike Enzi, Apr. 27, 2020, <https://www.cbo.gov/system/files/2020-04/hr748.pdf>.

17. How can the agencies best incentivize private-sector financial institutions to help facilitate the Treasury and the Fed's lending programs and facilities to ensure credit gets to American households and businesses, while ensuring that taxpayer dollars are well spent?
18. How can the agencies best set rates and fees for the Treasury and the Fed's lending programs and facilities under Subtitle A to ensure their workability and that the federal government remains the lender of last resort?
19. What will the effect of Treasury and Fed lending be on overall employment?
20. Do the agencies believe it is appropriate to modify the facilities to ensure specific companies or industries have access to some or all of the funds? If so, how are those modifications being considered in a manner that also addresses all industries and sectors?

II. Program and Facility-Specific Questions

Primary Market Corporate Credit Facility (PMCCF)

1. When do the agencies expect the PMCCF to begin operating?
2. How did the agencies determine the eligible assets for purchase by this facility?
3. Through this facility, the Fed, through an SPV, will be purchasing new bonds from companies. Do the agencies intend to place limitations or parameters around companies receiving this support, or use of proceeds? Are such limitations workable in capital markets transactions? Do the agencies believe the proceeds of bond purchases will help stabilize the economy regardless of how the proceeds are used?
4. Why did the agencies require an issuer to be rated investment grade by the credit rating agencies as of March 22, 2020 to be an eligible issuer for this facility? What would be the implications of broadening eligibility to this facility to issuers rated non-investment grade?
5. Why did the agencies choose March 22, 2020 as the cutoff date for an issuer to be rated investment grade to be an eligible issuer for this facility? How will this date selection impact the ability of issuers that have been downgraded from investment grade to non-investment grade to access capital through this facility?
6. The Federal Reserve Bank of New York, which is implementing this facility, recently stated that a U.S. subsidiary of a foreign company can qualify for support through the facility. How does the Federal Reserve Bank of New York plan on enforcing its requirement that proceeds derived from participation in the facility may only be used for the benefit of the U.S. subsidiary issuer, its consolidated U.S. subsidiaries, and affiliates of the U.S. subsidiary issuer that are U.S. businesses, rather than for the benefit of its foreign affiliates?

7. Why did the agencies limit eligible issuers to those rated by a major nationally recognized statistical rating organization (NRSRO) as opposed to issuers rated by other credit rating organizations?

Secondary Market Corporate Credit Facility (SMCCF)

1. Is there a concern that changes in secondary market bond prices will reduce the flow of credit to households and businesses or create risk to the financial system? If so, how and what is the strategy for using this facility to address that concern?
2. On May 4, the Federal Reserve Bank of New York announced that it plans to use this facility to purchase Exchange Traded Funds (ETFs) that may own bonds rated below investment grade. How did the Fed reach this decision, and how does it measure the trade-offs of purchasing such ETFs?
3. When do the agencies expect the SMCCF to begin making purchases beyond ETFs?
4. The Fed has hired the firm BlackRock to serve as an investment manager for this facility. How is the Fed ensuring BlackRock is acting in the best interest of the Fed and the public?

Main Street Lending Program

1. When do the agencies expect the Main Street Lending Program to begin operating?
2. Why did the agencies choose the 85% and 95% purchase rates for the SPVs in this program?
3. Why did the agencies choose the employee-size and annual revenue criteria that determine which businesses are eligible for this program?
4. How did the agencies choose the minimum loan sizes for the facilities in this program?
5. Why did the agencies decide not to create the mid-sized business lending facility that is described but not mandated in Section 4003(c)(3)(D) of the CARES Act?
6. Do the agencies plan to expand eligible lenders in this program beyond depository institutions? Why or why not?
7. What is the agencies' rationale for the adjusted earnings before interest, taxes, depreciation, and amortization (EBITDA) and leverage standards for loans in this program?
8. Between the initial announcement of the Main Street facilities on April 9 and the modifications to the facilities the Fed announced on April 30, the Fed reportedly received more than 2,200 comments from experts, industry groups, and others. Will the Fed release those comments so the public can review them?

9. As part of its April 30 revisions to the facility term sheets for this program, the agencies removed the requirement that companies attest that they require financing “due to the exigent circumstances presented by the coronavirus disease.”
 - a. Why did the agencies remove that requirement?
 - b. Without this requirement, how will the agencies ensure they are providing liquidity “to eligible businesses, [s]tates, and municipalities *related to losses incurred as a result of coronavirus*”?
10. As part of its April 30 revisions to the facility term sheets for this program, the agencies eliminated the requirement that firms attest to making “reasonable efforts” to maintain payroll and retain employees during the term of the loan and replaced it with a requirement that firms should make “commercially reasonable efforts” to maintain payroll.
 - a. Why did the agencies remove the original attestation requirement?
 - b. How do the agencies define “commercially reasonable efforts”?
 - c. How will the agencies enforce this requirement?

Municipal Lending Facility

1. When do the agencies expect the Municipal Lending Facility to begin operating?
2. How did the agencies decide which municipalities to include in this facility?
3. What is the rationale for the population-size criteria that determine the cities and counties eligible for this facility? What are the concerns, if any, about purchasing notes from cities or counties smaller than the thresholds established?
4. Why were U.S. territories excluded from this facility?
5. What conditions, if any, including those related to policies, will the agencies impose on states and municipalities that receive funding under this facility?
6. What is the rationale for the three-year repayment terms under this facility?
7. Will the agencies disclose information about any states, counties, and cities whose applications for loans from this facility are denied?

Loans for the Airline Industry and National Security Businesses Under Subtitle A

1. How many applications has the Treasury received for loans under Subtitle A?

2. How is the Treasury measuring and evaluating any proposals that loan applicants submit “on the form and amount of taxpayer protections they propose to provide” as part of their loan agreements, such as a warrant or equity instrument in an applicant’s business?
3. When does the Treasury anticipate approving and disbursing these loans?
4. Under Subtitle A, the Treasury’s loan agreements with the airline industry and businesses critical to maintaining national security must require a borrower to “not reduce its employment levels by more than 10 percent from the levels” as of March 24, 2020. How does Treasury intend to faithfully apply this statutory requirement?