

**The Sixth Report of the Congressional Oversight Commission**

**October 29, 2020**

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## INTRODUCTION

This is the sixth report of the Congressional Oversight Commission (“Commission”) created by the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).<sup>1</sup> The Commission’s role is to conduct oversight of the implementation of Division A, Title IV, Subtitle A of the CARES Act (“Subtitle A”) by the U.S. Department of the Treasury (“Treasury”) and the Board of Governors of the Federal Reserve System (“Federal Reserve”). Subtitle A provides \$500 billion to the Treasury for lending and other investments “to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus.”<sup>2</sup>

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 inspect, 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.”<sup>3</sup> Any unused portions of this \$46 billion, and the remaining \$454 billion, may be used to support emergency lending facilities established by the Federal Reserve.

The CARES Act charges the Commission with submitting regular reports to Congress on:

- The Federal Reserve’s use of its authority under Subtitle A, including 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 U.S. economy.
- 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 in minimizing long-term costs to the taxpayers and maximizing the benefits for taxpayers.<sup>4</sup>

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<sup>1</sup> CARES Act, Pub. L. No. 116-136, § 4020, 134 Stat. 281 (2020).

<sup>2</sup> *Id.* § 4003(a).

<sup>3</sup> *Id.* § 4003(b). 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. Subtitle B is not within the jurisdiction of the Commission.

<sup>4</sup> *Id.* § 4020.

In its first report to Congress on May 18, 2020, the Commission stated that it is responsible for answering two basic questions:

- What are the Treasury and the Federal Reserve doing with \$500 billion of taxpayer money?
- Who is that money helping?<sup>5</sup>

At this time, the emergency lending facilities established by the Federal Reserve that are receiving CARES Act funds are:

Primary Market Corporate Credit Facility (“PMCCF”) and Secondary Market Corporate Credit Facility (“SMCCF”): Through a special purpose vehicle (“SPV”), the PMCCF enables the Federal Reserve to purchase newly issued corporate bonds and portions of syndicated loans, and the SMCCF enables the Federal Reserve to purchase previously issued corporate bonds and exchange-traded funds (“ETFs”) that invest in corporate bonds.<sup>6</sup> The Treasury has announced it intends to make a total equity investment of \$75 billion in the SPV, which can collectively support up to \$750 billion in purchases.<sup>7</sup> As of October 28, 2020, the Treasury had invested \$37.5 billion.<sup>8</sup> As of the last disclosure, there had been no purchases by the PMCCF.<sup>9</sup> As of October 28, 2020, the SMCCF had an outstanding amount of bond ETFs and individual corporate bond purchases of \$13.4 billion.<sup>10</sup>

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<sup>5</sup> Congressional Oversight Commission, *Questions About the CARES Act’s \$500 Billion Emergency Economic Stabilization Funds*, May 18, 2020, at 5, [https://coc.senate.gov/sites/default/files/2020-08/20200518\\_Congressional\\_Oversight\\_Committee\\_1st\\_Report.pdf](https://coc.senate.gov/sites/default/files/2020-08/20200518_Congressional_Oversight_Committee_1st_Report.pdf).

<sup>6</sup> Board of Governors of the Federal Reserve System, *Primary Market Corporate Credit Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a9.pdf>; Board of Governors of the Federal Reserve System, *Secondary Market Corporate Credit Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a1.pdf>.

<sup>7</sup> Board of Governors of the Federal Reserve System, *Secondary Market Corporate Credit Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a1.pdf>.

<sup>8</sup> Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 29, 2020, at n.14, <https://www.federalreserve.gov/releases/h41/>. The SPV for the PMCCF and the SMCCF is Corporate Credit Facilities LLC.

<sup>9</sup> Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act*, Oct. 7, 2020, <https://www.federalreserve.gov/publications/files/pdcf-mmlf-cpff-pmccf-smccf-talf-mlf-ppplf-msnlf-mself-msplf-nonlf-noelf-10-8-20.pdf#page=3>.

<sup>10</sup> Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 29, 2020, at n.4, <https://www.federalreserve.gov/releases/h41/>. The SPV is the Corporate Credit Facilities LLC.

Main Street Lending Program (“MSLP”): The MSLP is comprised of five facilities—three dedicated to for-profit businesses and two dedicated to non-profit organizations. The Federal Reserve, through an SPV, acquires loans issued by lenders to small and medium-sized businesses and non-profit organizations with up to 15,000 employees or 2019 revenues of \$5 billion or less. The Treasury announced it intends to make an equity investment of \$75 billion in this program, which can support up to \$600 billion in lending.<sup>11</sup> All MSLP facilities are operational and are able to purchase eligible loans submitted by lenders registered to participate in the program. As of October 15, 2020, 602 lenders had registered to participate in the program.<sup>12</sup> Of those, only 191 have publicized that they are accepting loan applications from new for-profit customers and only 149 have publicized that they are accepting loan applications from new non-profit customers.<sup>13</sup> As of October 28, 2020, the Treasury had invested \$37.5 billion.<sup>14</sup> As of October 28, 2020, the Federal Reserve held \$3.7 billion in loan participations purchased under the MSLP.<sup>15</sup>

Municipal Liquidity Facility (“MLF”): Announced on April 9, 2020, the MLF enables the Federal Reserve, through a SPV, to purchase short-term notes issued by state and local governments. The Treasury announced it intends to make an equity investment of \$35 billion in the SPV, which can support up to \$500 billion in lending.<sup>16</sup> As of October 28, 2020, the Treasury invested \$17.5 billion.<sup>17</sup> As of October 28, 2020, the MLF has

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<sup>11</sup> Federal Reserve Bank of Boston, *Main Street Lending Program For-Profit Businesses Frequently Asked Questions*, July 31, 2020, <https://www.bostonfed.org/mslp-faqs>; Federal Reserve Bank of Boston, Aug. 6, 2020, <https://www.bostonfed.org/-/media/Documents/special-lending-facilities/mslp/legal/frequently-asked-questions-faqs-nonprofit.pdf>.

<sup>12</sup> The lender registration summary data was provided by the Federal Reserve on October 26, 2020. Registered lenders that are accepting new applicants are listed on a state-by-state basis at: <https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/information-for-borrowers.aspx>.

<sup>13</sup> *Id.*

<sup>14</sup> Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 29, 2020, at n.14, <https://www.federalreserve.gov/releases/h41/>. The SPV for the MSLP is MS Facilities LLC.

<sup>15</sup> *Id.* at table 4.

<sup>16</sup> Board of Governors of the Federal Reserve System, *Municipal Liquidity Facility Term Sheet*, Aug. 11, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200811a1.pdf>; Federal Reserve Bank of New York, *FAQs: Municipal Liquidity Facility*, Aug. 11, 2020, <https://www.newyorkfed.org/markets/municipal-liquidity-facility/municipal-liquidity-facility-faq>.

<sup>17</sup> Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 29, 2020, at n.14, <https://www.federalreserve.gov/releases/h41/>. The SPV for the MLF is Municipal Liquidity Facility LLC.

purchased \$1.65 billion in municipal notes.<sup>18</sup>

Term Asset-Backed Securities Loan Facility (“TALF”): The TALF enables the Federal Reserve, through an SPV, to make loans to U.S. companies secured by asset-backed securities (“ABS”) backed by student loans, auto loans, credit card loans, commercial mortgages, leveraged loans, loans guaranteed by the Small Business Administration, and certain other assets.<sup>19</sup> The Treasury’s \$10 billion equity investment in this facility<sup>20</sup> can provide up to \$100 billion in lending.<sup>21</sup> TALF had a total outstanding amount of \$3.1 billion in loans as of October 28, 2020.<sup>22</sup>

### The Treasury’s Loans for National Security Businesses

The Treasury also has \$17 billion available to make loans to businesses critical to maintaining national security under Subtitle A. As of October 29, 2020, it has provided a national security loan to one business—YRC Worldwide Inc. (“YRC”).<sup>23</sup> On July 8, 2020, the Treasury finalized a \$700 million loan to YRC.<sup>24</sup>

### The Treasury’s Loans for the Airline Industry

In addition, the Treasury has available \$29 billion to make loans to the airline industry under Subtitle A, with \$25 billion available to passenger air carriers, including related businesses, and \$4 billion available to cargo air carriers.<sup>25</sup> As of October 29, 2020, it has provided twelve such loans to companies the Treasury characterizes as airlines, ticket agents, a

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<sup>18</sup> *Id.* at table 4.

<sup>19</sup> Board of Governors of the Federal Reserve, *Term Asset-Backed Securities Loan Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a6.pdf>.

<sup>20</sup> Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 29, 2020, at n.14, <https://www.federalreserve.gov/releases/h41/>.

<sup>21</sup> Board of Governors of the Federal Reserve, *Term Asset-Backed Securities Loan Facility Term Sheet*, July 28, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200728a6.pdf>.

<sup>22</sup> Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 29, 2020, at table 4, <https://www.federalreserve.gov/releases/h41/>.

<sup>23</sup> U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, last visited Oct. 29, 2020, <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses>.

<sup>24</sup> *Id.*

<sup>25</sup> CARES Act § 4003. Related businesses are eligible businesses that are certified under part 145 of title 14, Code of Federal Regulations, and approved to perform inspection, repair, replace, or overhaul services, and ticket agents (as defined in Section 40102 of Title 49 of the United States Code).

repair station, and a cargo air carrier.<sup>26</sup> Those loans total \$16.9 billion and Treasury expects that amount will increase to \$20.7 billion, subject to certain conditions and satisfactory documentation.<sup>27</sup>

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In this report, we provide updates regarding recent key actions taken by the Treasury and the Federal Reserve regarding each of the above lending programs and facilities under Subtitle A, as well as updates regarding the Commission’s oversight activities.

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<sup>26</sup> U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, last visited Oct. 29, 2020, <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses> (see “Transaction Summary” of each transaction for more details).

<sup>27</sup> *Id.* The loan amounts to three passenger air carriers can be increased: Alaska Airlines’ loan can be increased to \$1.93 billion (from \$1.3 billion), Jet Blue Airways’ loan can be increased to \$1.95 billion (from \$1.14 billion), and United Airlines’ loan can be increased to \$7.5 billion (from \$5.17 billion).

## EXECUTIVE SUMMARY

This sixth report of the Commission provides updates regarding the Treasury, Federal Reserve, and Commission's activities since the Commission's last report, which was issued on October 15, 2020. Since then:

- The SMCCF balance has increased by \$158 million.<sup>28</sup>
- The PMCCF still has not announced any purchases.
- MSLP purchases increased by \$714 million.<sup>29</sup>
- No new MLF purchases have been made.<sup>30</sup>
- The outstanding TALF balance has decreased slightly, by \$28 million,<sup>31</sup> and the Federal Reserve received its first request for TALF funding to purchase ABS backed by leveraged loans.<sup>32</sup>
- The Commission received the Department of Defense's responses to the Commission's letter regarding the YRC national security loan.
- The Treasury has increased the loan to American Airlines by \$2.02 billion and its loan to Hawaiian Airlines by \$200 million, under existing agreements, and announced five loans to airline industry companies totaling \$67.8 million.

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<sup>28</sup> Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 29, 2020, at n.4, <https://www.federalreserve.gov/releases/h41/>. The SPV is the Corporate Credit Facilities LLC. The Fifth Report of the Congressional Oversight Commission, Oct. 15, 2020, [https://coc.senate.gov/sites/default/files/2020-10/15Oct2020\\_The%20Fifth%20Report%20FINAL%20Updated%20Appendix%2010-20%20update.pdf](https://coc.senate.gov/sites/default/files/2020-10/15Oct2020_The%20Fifth%20Report%20FINAL%20Updated%20Appendix%2010-20%20update.pdf).

<sup>29</sup> Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 29, 2020, at n.4, <https://www.federalreserve.gov/releases/h41/>. The SPV for the MSLP is MS Facilities LLC. The Fifth Report of the Congressional Oversight Commission, Oct. 15, 2020, [https://coc.senate.gov/sites/default/files/2020-10/15Oct2020\\_The%20Fifth%20Report%20FINAL%20Updated%20Appendix%2010-20%20update.pdf](https://coc.senate.gov/sites/default/files/2020-10/15Oct2020_The%20Fifth%20Report%20FINAL%20Updated%20Appendix%2010-20%20update.pdf).

<sup>30</sup> Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 29, 2020, at n.4, <https://www.federalreserve.gov/releases/h41/>. The SPV for the MLF is Municipal Liquidity Facility LLC. The Fifth Report of the Congressional Oversight Commission, Oct. 15, 2020, [https://coc.senate.gov/sites/default/files/2020-10/15Oct2020\\_The%20Fifth%20Report%20FINAL%20Updated%20Appendix%2010-20%20update.pdf](https://coc.senate.gov/sites/default/files/2020-10/15Oct2020_The%20Fifth%20Report%20FINAL%20Updated%20Appendix%2010-20%20update.pdf).

<sup>31</sup> Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 29, 2020, at n.4, <https://www.federalreserve.gov/releases/h41/>. The SPV is for the TALF is TALF II LLC. The Fifth Report of the Congressional Oversight Commission, Oct. 15, 2020, [https://coc.senate.gov/sites/default/files/2020-10/15Oct2020\\_The%20Fifth%20Report%20FINAL%20Updated%20Appendix%2010-20%20update.pdf](https://coc.senate.gov/sites/default/files/2020-10/15Oct2020_The%20Fifth%20Report%20FINAL%20Updated%20Appendix%2010-20%20update.pdf).

<sup>32</sup> Federal Reserve Bank of New York, *Term Asset-Backed Securities Loan Facility Rates*, <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-rates> (last visited Oct. 29, 2020).



## TREASURY AND FEDERAL RESERVE RECENT DEVELOPMENTS

Since the Commission’s last report on October 15, 2020, the Treasury and the Federal Reserve took a number of actions under Division A, Title IV, Subtitle A of the CARES Act. We describe the key recent developments below. Because the Federal Reserve issues transaction-specific disclosures only monthly, in this report we provide only updated aggregate figures from the Federal Reserve’s weekly H.4.1 release (where applicable).

### **Primary Market Corporate Credit Facility (“PMCCF”)**

There have been no new Federal Reserve announcements regarding the PMCCF. As of the Federal Reserve’s last disclosure, the PMCCF has not made any purchases.

### **Secondary Market Corporate Credit Facility (“SMCCF”)**

Since the Commission’s last report, the total outstanding amount of SMCCF asset purchases has increased by \$158 million, from \$13.2 billion on October 14, 2020 to \$13.4 billion on October 28, 2020.<sup>33</sup> The Commission’s last report recommended that the SMCCF cease making purchases at this time.<sup>34</sup>

On September 9, 2020 and October 23, 2020, the Federal Reserve Bank of New York announced its selection of fourteen additional eligible sellers for the SMCCF,<sup>35</sup> several months after it first announced that it would expand counterparties and agents “to further [the Bank’s] mandate to support equal opportunity and diversity in the operation of these facilities” and to “increase the New York Fed’s operational capacity and access to, and the reach of, the

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<sup>33</sup> Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 14, 2020, at table 4, <https://www.federalreserve.gov/releases/h41/20201015/>; Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 29, 2020, at table 4, <https://www.federalreserve.gov/releases/h41/current/>.

<sup>34</sup> The Fifth Report of the Congressional Oversight Commission, Oct. 15, 2020, at 43, [https://coc.senate.gov/sites/default/files/2020-10/15Oct2020\\_The%20Fifth%20Report%20FINAL%20Updated%20Appendix%2010-20%20update.pdf](https://coc.senate.gov/sites/default/files/2020-10/15Oct2020_The%20Fifth%20Report%20FINAL%20Updated%20Appendix%2010-20%20update.pdf).

<sup>35</sup> Federal Reserve Bank of New York, *New York Fed Selects Additional Firms to Broaden its Counterparty Base for CPFF and SMCCF*, Oct. 23, 2020, <https://www.newyorkfed.org/newsevents/news/markets/2020/20201023>; Federal Reserve Bank of New York, *New York Fed Announces the First Wave of Firms Selected To Broaden its Counterparty Base for CPFF and SMCCF*, Sept. 9, 2020, <https://www.newyorkfed.org/newsevents/news/markets/2020/20200909>.

facilities.”<sup>36</sup> The Federal Reserve Bank of New York states that the fourteen new sellers “represent a diverse range of market participants in terms of firm size, business model, and ownership, including Minority, Women, and Veteran Business Enterprises.”<sup>37</sup>

### **Main Street Lending Program (“MSLP”)**

From October 14, 2020 to October 28, 2020, the total outstanding amount of MSLP purchases increased by \$714 million, from \$3.0 billion to \$3.7 billion.<sup>38</sup>

As noted in the Commission’s last report, as of September 30, 2020, nearly two-fifths of the loans were issued by one bank, City National Bank of Florida, representing nearly a quarter of total loan proceeds.<sup>39</sup> The Wall Street Journal reports that City National Bank of Florida was especially proactive about participating in the MSLP, having “made an early decision to sign up for the program, translating the Fed’s lengthy details into easy guides for customers,” and with the bank’s loan officers frequently conferring with Federal Reserve staff about the program over the summer.<sup>40</sup> According to Forbes, City National Bank of Florida put in place “technology-

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<sup>36</sup> Federal Reserve Bank of New York, *New York Fed Looks to Expand 13(3) Facilities Counterparties and Agents for CPFF, SMCCF and TALF*, July 23, 2020, <https://www.newyorkfed.org/newsevents/news/markets/2020/20200723>.

<sup>37</sup> Federal Reserve Bank of New York, *New York Fed Selects Additional Firms to Broaden its Counterparty Base for CPFF and SMCCF*, Oct. 23, 2020, <https://www.newyorkfed.org/newsevents/news/markets/2020/20201023>; Federal Reserve Bank of New York, *New York Fed Announces the First Wave of Firms Selected To Broaden its Counterparty Base for CPFF and SMCCF*, Sept. 9, 2020, <https://www.newyorkfed.org/newsevents/news/markets/2020/20200909>.

<sup>38</sup> Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 14, 2020, at table 4, <https://www.federalreserve.gov/releases/h41/20201015/>; Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 29, 2020, at table 4, <https://www.federalreserve.gov/releases/h41/current/>.

<sup>39</sup> Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Oct. 8, 2020, <https://www.federalreserve.gov/publications/files/mslp-transaction-specific-disclosures-10-8-20.xlsx>.

<sup>40</sup> Orla McCaffrey, *Banks Have Barely Touched the Fed’s Main Street Lending Program. Except This One*, Wall Street Journal, Oct. 10, 2020, <https://www.wsj.com/articles/banks-have-barely-touched-the-feds-main-street-lending-program-except-this-one-11602322201>.

driven systems” that enable the bank to remotely process loans, with underwriting taking 4-6 weeks and expected funding in 7-10 weeks.<sup>41</sup>

Although the latest disclosure provides that there were 252 MSLP borrowers,<sup>42</sup> the Commission notes that the Federal Reserve does not report on whether borrowers are affiliated and/or co-borrowers. The Commission believes the Federal Reserve’s disclosures should indicate whether borrowers are related.

On October 8, 2020, the Federal Reserve Bank of Boston added to its website a MSLP Dashboard that provides a visual depiction of the geographic and loan-type distributions of MSLP loans. The MSLP Dashboard is available at <https://www.bostonfed.org/supervision-and-regulation/supervision/special-facilities/main-street-lending-program/dashboard.aspx>.

### **Municipal Liquidity Facility (“MLF”)**

As of October 28, 2020, the Federal Reserve has purchased two notes through the MLF—one from the State of Illinois, and the other from New York’s Metropolitan Transportation Authority (“MTA”).<sup>43</sup> On June 5, 2020, Illinois borrowed \$1.2 billion from the MLF through the sale of a one-year note with an interest rate of 3.36%.<sup>44</sup> On August 18, 2020, the MTA borrowed

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<sup>41</sup> David W. McCombie III, *Main Street Lending Explained by the Banker Responsible for 40% of These Loans Nationally*, Forbes, Oct. 23, 2020, <https://www.forbes.com/sites/davidwmccombie/2020/10/23/main-street-lending-explained-by-the-banker-responsible-for-40-of-these-loans-nationally/#471e32f041e8>.

<sup>42</sup> Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Oct. 8, 2020, <https://www.federalreserve.gov/publications/files/mslp-transaction-specific-disclosures-10-8-20.xlsx>.

<sup>43</sup> Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 29, 2020, at table 4, <https://www.federalreserve.gov/releases/h41/20201015/>; Board of Governors of the Federal Reserve System, *Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board under Section 13(3) of the Federal Reserve Act (Transaction-specific Disclosures)*, Oct. 8, 2020, <https://www.federalreserve.gov/publications/files/mlf-transaction-specific-disclosures-10-8-20.xlsx>.

<sup>44</sup> Board of Governors of the Federal Reserve System, *MLF Transaction-specific Disclosures*, Oct. 8, 2020, <https://www.federalreserve.gov/publications/files/mlf-transaction-specific-disclosures-10-8-20.xlsx>. Illinois reportedly was originally set to pay 3.82% on its 1-year note. See Shruti Singh & Amanda Albright, *Illinois Becomes First to Tap Fed Loans After Yields Surge*, Bloomberg, June 2, 2020, <https://www.bloomberg.com/news/articles/2020-06-02/illinois-becomes-first-to-tap-fed-loans-after-bond-yields-surge>. It appears that the revision stems from the Federal Reserve applying its revised pricing retroactively. See Board of Governors of the Federal Reserve, *Municipal Liquidity Facility Term Sheet*, Aug. 11, 2020, <https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20200811a1.pdf> (revised term sheet providing that “An Eligible Issuer that has issued Eligible Notes to the SPV may elect to reprice such Eligible Notes based on pricing revisions to Appendix B. The new pricing will be based on the applicable ratings at the time of the repricing.”).

\$450.7 million from the MLF through the sale of a three-year note with an interest rate of 1.93%.<sup>45</sup>

On September 17, 2020, the Commission held a hearing on the MLF. The Commission asked the Treasury to send a representative to testify at the hearing, but the Treasury declined to do so. Accordingly, on September 29, 2020, the Commission sent the Treasury a letter requesting information regarding the Treasury's role and perspective with respect to the MLF. The Treasury responded to those questions on October 16, 2020. On October 20, 2020, the Commission published those responses on its website at <https://coc.senate.gov/municipal-liquidity-facility>.

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

From October 14, 2020 to October 28, 2020, the total outstanding amount of TALF loans decreased by \$28 million, from \$3.127 billion to \$3.099 billion.<sup>46</sup> TALF loans requested for the October 21, 2020 subscription (which closes October 30, 2020) total \$593.9 million and encompass three sectors: commercial mortgages, small business loans, and leveraged loans.<sup>47</sup> This marks the first time TALF support has been requested for ABS backed by leveraged loans.<sup>48</sup>

On October 22, 2020, the Federal Reserve Bank of New York updated the TALF FAQs to provide that it has sole discretion to defer payment of a scheduled interest deficiency.<sup>49</sup> The updated FAQs also clarify that TALF loans, which are generally non-recourse, may be accelerated and become full recourse in the event of certain material misrepresentations.<sup>50</sup> The

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<sup>45</sup> Board of Governors of the Federal Reserve System, *MLF Transaction-specific Disclosures*, Oct. 8, 2020, <https://www.federalreserve.gov/publications/files/mlf-transaction-specific-disclosures-10-8-20.xlsx>.

<sup>46</sup> Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 14, 2020, at table 4, <https://www.federalreserve.gov/releases/h41/20201015/>; Board of Governors of the Federal Reserve System, Statistical Release H.4.1, *Factors Affecting Reserve Balances of the Depository Institutions and Condition Statement of Federal Reserve Banks*, Oct. 29, 2020, at table 4, <https://www.federalreserve.gov/releases/h41/current/>.

<sup>47</sup> Federal Reserve Bank of New York, *Term Asset-Backed Securities Loan Facility Rates*, <https://www.newyorkfed.org/markets/term-asset-backed-securities-loan-facility/term-asset-backed-securities-loan-facility-rates> (last visited Oct. 29, 2020).

<sup>48</sup> *Id.*

<sup>49</sup> Federal Reserve Bank of New York, *Revisions to Term Asset-Backed Securities Loan Facility: Frequently Asked Questions*, Oct. 22, 2020, <https://www.newyorkfed.org/medialibrary/media/markets/talfdocs/talf-faqs-marked-201022.pdf> (redline).

<sup>50</sup> *Id.*

Federal Reserve Bank of New York made corresponding changes and other clarifying changes to the TALF Master Loan and Security Agreement.<sup>51</sup>

Although in July the Federal Reserve Bank of New York's announced that it would expand TALF agents to increase diversity and operational capacity, it has not yet announced additional TALF agents.<sup>52</sup>

### **Treasury Loans for National Security Businesses**

As of October 28, 2020, the Treasury has provided a national security loan to one business—YRC Worldwide Inc. (“YRC”). On July 8, 2020, the Treasury finalized the \$700 million loan to YRC.<sup>53</sup>

The Commission's third report raised concerns regarding the loan to YRC.<sup>54</sup> In particular, the Commission questioned (1) whether YRC, a trucking service provider utilized domestically by the U.S. Department of Defense (“Department of Defense”), was appropriately designated by the Treasury and the Department of Defense as “critical to maintaining national security,” and (2) whether YRC's precarious financial condition at the time of the loan exposed taxpayers to a significant risk of loss.<sup>55</sup> The Commission is still evaluating these questions.

The Commission is in receipt of a letter from the Department of Defense dated October 22, 2020 attempting to answer questions that the Commission posed in a letter dated July 30, 2020. The Commission finds the Department of Defense's delay inexcusable and its answers incomplete. The Commission looks forward to further discussion of this matter in its November report.

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<sup>51</sup> Federal Reserve Bank of New York, *New York Fed Revises TALF Master Loan and Security Agreement*, Oct. 22, 2020, <https://www.newyorkfed.org/medialibrary/media/markets/talfdocs/talf-mlsa-summary-201022.pdf> (summary); Federal Reserve Bank of New York, *Master Loan and Security Agreement*, revised as of Nov. 5, 2020, <https://www.newyorkfed.org/medialibrary/media/markets/talfdocs/talf-mlsa-marked-201022.pdf> (redline).

<sup>52</sup> Federal Reserve Bank of New York, *New York Fed Looks to Expand 13(3) Facilities Counterparties and Agents for CPFF, SMCCF and TALF*, July 23, 2020, <https://www.newyorkfed.org/newsevents/news/markets/2020/20200723>.

<sup>53</sup> U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, last visited Oct. 29, 2020, <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses>.

<sup>54</sup> Congressional Oversight Commission, *The Third Report of the Congressional Oversight Commission*, July 20, 2020, at 15-16, 31-34, [https://coc.senate.gov/sites/default/files/2020-08/20200720\\_Congressional\\_Oversight\\_Commission\\_3rd\\_Report.pdf](https://coc.senate.gov/sites/default/files/2020-08/20200720_Congressional_Oversight_Commission_3rd_Report.pdf).

<sup>55</sup> *Id.*

## **Treasury Loans for the Airline Industry**

In July 2020, the Treasury announced that it signed letters of intent with ten passenger air carriers that set out the terms on which the Treasury is prepared to extend loans to these carriers.<sup>56</sup> Three of the ten carriers subsequently announced that they would not participate in the loan program through the Treasury: Southwest Airlines Co.,<sup>57</sup> Delta Air Lines, Inc.,<sup>58</sup> and Spirit Airlines, Inc.<sup>59</sup>

Since the Commission's last report, the Treasury has announced five additional loans—to Aero Hydraulics, Inc., Legacy Airways, LLC, Ovation Travel Group, Inc., Bristin Travel, LLC, and Sun Country, Inc.—totaling \$67.8 million.<sup>60</sup> The Treasury also revised upward the amount of the loan to American Airlines, Inc., from \$5.5 billion to \$7.5 billion, and the amount of the loan to Hawaiian Airlines, from \$420 million to \$620 million.<sup>61</sup>

As of October 29, 2020, the Treasury has made a total of twelve loans to companies the Treasury characterizes as airlines, ticket agents, a repair station, and a cargo air carrier.<sup>62</sup> Those loans total \$16.9 billion and Treasury expects that amount will increase to \$20.7 billion, subject to certain conditions and satisfactory documentation.<sup>63</sup> The Commission is currently in the

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<sup>56</sup> U.S. Department of the Treasury, *Statement from Secretary Steven T. Mnuchin on CARES Act Loans to Major Airlines*, July 2, 2020, <https://home.treasury.gov/news/press-releases/sml054>.

<sup>57</sup> Southwest Airlines Co., *Current Report (Form 8-K)*, Aug. 19, 2020, [http://www.southwestairlinesinvestorrelations.com/~media/Files/S/Southwest-IR/20200819\\_8K%20Investor%20update\\_vF.pdf](http://www.southwestairlinesinvestorrelations.com/~media/Files/S/Southwest-IR/20200819_8K%20Investor%20update_vF.pdf).

<sup>58</sup> Delta Air Lines, Inc., *Current Report (Form 8-K)*, Sept. 14, 2020, <https://www.sec.gov/ix?doc=/Archives/edgar/data/27904/000119312520244688/d27099d8k.htm>.

<sup>59</sup> Spirit Airlines, Inc., *Spirit Airlines Announces Closing of Private Offering by Loyalty and Brand Subsidiaries*, Sept. 17, 2020, <https://ir.spirit.com/news-releases/news-details/2020/Spirit-Airlines-Announces-Closing-of-Private-Offering-by-Loyalty-and-Brand-Subsidiaries/default.aspx>.

<sup>60</sup> U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses> (last accessed Oct. 29, 2020).

<sup>61</sup> *Id.*; The Fifth Report of the Congressional Oversight Commission, Oct. 15, 2020, at 55, [https://coc.senate.gov/sites/default/files/2020-10/15Oct2020\\_The%20Fifth%20Report%20FINAL%20Updated%20Appendix%2010-20%20update.pdf](https://coc.senate.gov/sites/default/files/2020-10/15Oct2020_The%20Fifth%20Report%20FINAL%20Updated%20Appendix%2010-20%20update.pdf).

<sup>62</sup> U.S. Department of the Treasury, *Loans to Air Carriers, Eligible Businesses, and National Security Businesses*, last visited Oct. 29, 2020, <https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses> (see “Transaction Summary” for each transaction for more details).

<sup>63</sup> *Id.* The loan amounts to three passenger air carriers can be increased: Alaska Airlines' loan can be increased to \$1.93 billion (from \$1.3 billion), Jet Blue Airways' loan can be increased to \$1.95 billion (from \$1.14 billion), and United Airlines' loan can be increased to \$7.5 billion (from \$5.17 billion).

process of reviewing these loans and will coordinate with the Treasury regarding any questions. A summary of the transactions as of October 29, 2020 is provided in the table below.

Borrower	City, State	U.S. employees, March 2020	Loan amount (\$ million)	Max amount (\$ million)	Interest rate (LIBOR+%)	Maturity date	Additional compensation for Treasury	Loan collateral
American Airlines	Fort Worth, TX	157,000	7,500	7,500	3.50%	6/30/2025	Warrants for common stock equal to 10% of loan amount.	Loyalty program.
United Airlines	Chicago, IL	93,000	5,170	7,500	3.00%	9/26/2025	Warrants for common stock equal to 10% of loan amount.	European and South American routes as well as certain aircraft.
Jet Blue Airways	Long Island City, NY	23,000	1,140	1,948	2.75%	9/29/2025	Warrants for common stock equal to 10% of loan amount.	Loyalty program as well as certain aircraft.
Alaska Airlines	Seattle, WA	22,000	1,301	1,928	2.50%	9/26/2025	Warrants for common stock equal to 10% of loan amount.	Loyalty program.
Hawaiian Airlines	Honolulu, HI	7,400	622	622	2.50%	6/30/2024	Warrants for common stock equal to 10% of loan amount.	Loyalty program as well as certain aircraft.
Frontier Airlines	Denver, CO	5,000	574	574	2.50%	9/26/2025	Warrants for common stock equal to 10% of loan amount.	Loyalty program.
Skywest Airlines	St. George, UT	15,000	573	573	3.00%	9/29/2025	Warrants for common stock equal to 10% of loan amount.	Certain engines, airframes, and rotatable parts.
Sun Country, Inc.	Minneapolis, MN	1,630	45.0	45.0	3.50%	10/26/2025	3% payment-in-kind interest.	Loyalty program.
Ovation Travel Group	New York, NY	250	20.0	20.0	5.50%	10/15/2025	3% payment-in-kind interest.	Unsecured.
Legacy Airways, LLC	Conroe, TX	19	1.817	1.817	5.50%	10/20/2025	3% payment-in-kind interest.	Unsecured.
Bristin Travel, LLC	Fayetteville, AR	12	0.5497	0.5497	3.50%	10/26/2025	3% payment-in-kind interest.	Accounts receivable.
Aero Hydraulics, Inc.	Fayetteville, GA	2	0.4500	0.4500	5.50%	10/23/2025	3% payment-in-kind interest.	Unsecured.
<b>Total</b>		<b>324,313</b>	<b>\$ 16,948</b>	<b>\$ 20,713</b>	<b>3.09%</b>			