

# KIRKLAND & ELLIS

Blog Post

## Guidelines Released for New Domestic Loan Program at U.S. International Development Finance Corporation

22 June 2020

A new and still largely underreported U.S. government program offering loans to companies impacted by COVID-19 has recently opened for business and is accepting [applications](#). Under the program (the “DPA Loan Program”), the U.S. International Development Finance Corporation (“DFC”) will provide loans to domestic industries supporting the national response and recovery to the COVID-19 outbreak and to bolster relevant domestic supply chains. The DPA Loan program could be a better fit for many energy and infrastructure companies than the higher-profile U.S. Treasury Main Street lending facility and the Small Business Administration’s Payment Protection Program (the “PPP”) due to flexible terms and lack of restrictions on ownership by private equity funds.

### Authorization

The DFC-DPA Loan Program is authorized pursuant to Section 302 of the Defense Production Act (“DPA”) and Executive Order 13922 (EO-13922), together directing the DFC – formed in 2019 in large part from the exclusively internationally focused Overseas Private Investment Corporation (“OPIC”) – to implement DPA authorized loans on behalf of the Department of Defense. The DPA Loan Program is intended to be temporary, lasting only during the nearly two-year period that EO-13922 permits. As such, DFC has in short order developed [guidance](#) and a fast-tracked application and underwriting process in order to more quickly review and make commitments to eligible parties.

### Targeted Industries and Eligible Borrowers and Uses

The language authorizing the DPA Loan Program is broad and allows funding for an array of U.S. industries considered essential to the national defense (broadly construed) that have suffered supply or production strains as a result of the social and economic upheaval caused by the COVID-19 outbreak. The DPA Loan Program guidelines do not provide for a list of qualifying industries, but the program appears particularly well-suited for pharmaceutical, medical device, microchip and other technology companies. In the energy and infrastructure space, the DPA Loan Program could be used, for instance, to support the domestic production of renewable energy equipment or for chemical or refinery projects. DPA Loan Program guidelines do stress the linkage of the funding need for the business to the impact of the outbreak itself. A borrower must satisfy the condition that without the DPA Loan Program's financing, the related U.S. industry (as a whole) cannot reasonably be expected to timely provide the needed industrial output. Few other industry-specific limitations are laid out in the program guidelines or internal protocols; instead, the program will generally track traditional DFC lending policy overseas.

The DPA Loan Program applies a similarly flexible approach to borrower eligibility. Borrower ownership can be both foreign or domestic, public or private, greenfield specially purposed vehicles or operating conglomerates with large balance sheets. The key is for the specific operational activity of a borrower to be performed within the U.S. and its territories.

Importantly, and unlike the PPP and Main Street facility, there is no limitation on participation of private equity in the ownership of a borrower. Financing of equity at the fund level is also possible under the program, provided the fund's investments are focused toward the COVID-19-linked industrial criteria. Proceeds of loans may also be applied toward a variety of uses, including acquisition, development, construction, operations and working capital.

## Structuring and Underwriting Process

Loan structuring, underwriting and conditionality under the DPA Loan Program is intended to be consistent with traditional DFC loan program outlays but conducted by a specifically designated credit team. The aggregate amount of loans available from the program is not subject to an official cap but is limited by portfolio risk policies consistent with DFC's other programs. DFC is open to tickets of between \$10 million and \$1 billion, with a uniform underwriting process applicable to that range. As with traditional DFC lending, a "credit-elsewhere" test is applied, requiring that the borrower

must be unable to obtain financing on reasonable terms through other means. Co-participation, however, from commercial lenders taking comfort from a DFC commitment, is encouraged. In accordance with standing DFC practice, general information relating to underwritten commitments will be announced publicly, though sensitive commercial information would remain subject to existing U.S. legal protections.

Also unlike the Main Street Lending program or the PPP, loans under the DPA Loan Program are not required or expected to have uniform maturity, pricing or other terms. Loans are generally not permitted to exceed 80% of a project's value, though equity commitments satisfying the un-financed portion can be provided in-kind. Maturities as long as 25 years are also possible, with interest tied in each case to the average yields on outstanding U.S. Treasury obligations of comparable tenor to the loan. Collateral requirements would be consistent with current DFC secured lending practices, and DFC requires at least *pari passu* senior ranking vis-à-vis other creditors.

## Open for Business

We expect that the buzz around the DPA Loan Program will grow as investors and companies (including those in the energy and infrastructure space) understand the potential for the program.

The DFC through its legacy lending agencies has a long history of funding complex transactions in the international space – and with a separate team dedicated to the DPA Loan Program, the DFC appears well positioned among U.S. government agencies to quickly deploy funds to COVID-19 impacted borrowers. The more flexible business terms compared to CARES Act programs such as the Main Street Lending Facility and the PPP will make the program attractive to investors. We encourage interested energy and infrastructure investors to review the guidance and other materials on the DFC website and reach out to us with any questions regarding the DPA Loan Program.

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