

# DFC-DPA Loan Program: New Federal Loan Program for Critical Projects

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One of the less-discussed but significant federal relief programs that has been enacted over the past several months is the DFC-DPA Loan Program, which is being administered through the United States International Development Finance Corporation (DFC). This program was officially enacted on May 14, 2020, when the White House issued Executive Order 13922 delegating authority under Title III of the Defense Production Act of 1950 (DPA) to the Chief Financial Officer of the DFC in order to permit the DFC to, among other things, lend to companies engaged in the domestic production of strategic resources to respond to the COVID-19 pandemic (DFC-DPA Loan Program). Executive Order 13922 was the first of several authorizations, agreements and understandings related to the program - the most recent of which is a [Memorandum of Agreement](#) signed by the DFC and US Department of Defense on June 22, 2020, which formalized the relationship between the two organizations.

By way of background, the DFC was created in 2019 through the Better Utilization of Investments Leading to Development Act of 2018, which consolidated the Overseas Private Investment Corporation and the Development Credit Authority of the US Agency for International Development. The DFC's traditional mandate is to facilitate "market-based private sector development and inclusive economic growth in less developed countries through the provision of credit, capital, and other financial support." However, Executive Order 13922 expanded the DFC's authority to permit it to extend loans to domestic projects that "create, maintain, protect, expand, or restore the domestic industrial base capabilities supporting: (i) the national response and recovery to the COVID-19 outbreak; or (ii) the resiliency of any relevant domestic supply chains."

According to a recent [interview](#) with the DFC's CEO, Adam Boehler, the program has already received a number of proposals and letters of understanding that could be signed in the coming weeks. According to Boehler, the initial interest is primarily from companies interested in reshoring production "on the personal protection equipment side and within the pharmaceutical supply chains." However, the program is not limited to those purposes; it also includes the financing of domestic (and the reshoring of foreign-based) projects in the healthcare, infrastructure, technology or food security sectors. Even more interest is expected in the program if Congress approves a proposed "reshoring fund" to further incentivize companies, primarily through tax breaks and subsidies, to move supply

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chains in certain industries (e.g., pharmaceutical and food production) from China to the United States.

You can find up-to-date information about the programs on the DFC's website [here](#). PDFs of the most recent documents can be found at the following links:

- [Memorandum of Agreement between DFC and US Department of Defense](#) (June 22, 2020)
- [DFC-DPA Loan Program Guide](#)
- [DFC-DPA Loan Program Request for Proposals](#)
- [DFC-DPA Loan Program Application](#) (Form DFC-014)

This Client Alert summarizes the most recent terms of the DFC-DPA Loan Program.

## **DFC-DPA Loan Program Summary**

### ***What projects are eligible?***

Eligible projects are those that “create, maintain, protect, expand, or restore the domestic industrial base capabilities supporting: (i) the national response and recovery to the COVID-19 outbreak; or (ii) the resiliency of any relevant domestic supply chains.”

Specifically, and as set forth in the most recent Request for Applications released by the DFC, “the DFC-DPA Loan Program seeks to finance commercially viable private sector projects in the United States that support the domestic response to and recovery from COVID-19 with investments in any of the following:

- health supply chains (including the production and distribution of PPE, ventilators, therapeutics, diagnostics, vaccines, and other medical supplies);
- innovative care delivery systems;
- digital health and related IT systems;
- data science innovations;
- medical technology and devices;
- pharmaceuticals;
- life sciences; and
- other investments in materials or technologies in relevant supply chains (including electronics, manufacturing, machine tools, industrial controls, raw materials, and advanced technology).”

### ***Are there any additional eligibility requirements?***

Loans may only be granted if financial assistance is not reasonably available from a private source and, according to the DFC-DPA Loan Program Guide:

- (a) “the loan supports the production or supply of an industrial resource, critical technology item, or material that is essential to the national defense;
- (b) without the loan, the US industry cannot reasonably be expected to provide the needed capacity, technological processes, or materials in a timely manner without the loan;
- (c) the loan is the most cost-effective, expedient, and practical alternative method for meeting the need;
- (d) the prospective earning power of the applicant and the character and value of the collateral security provide a reasonable assurance of repayment of the loan in accordance with the terms of the loan; and
- (e) the loan bears interest at a rate determined by the Secretary of the Treasury to be reasonable, taking into account the then-current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of the loan.”

***What is the anticipated loan size?***

The amount of the loan is determined on a case by case basis, but will not be more than 80% of the total project cost.

***Are there any restrictions on the use of proceeds?***

A loan may be used for any of the following:

- (a) acquisition, development, construction, ownership or operation of facilities or equipment;
- (b) working capital; and
- (c) other costs associated with an approved project.

***What are the other basic terms?***

The below chart summarizes the additional basic terms and conditions of the DFC-DPA Loan Program:

Structuring of Loan Facility	Loans can be structured as corporate loans or project financing facilities
Maturity Date	Up to 25 years (to be determined on a project-by-project basis)
Interest Rate	As determined by the Treasury Secretary on a project-by-project basis while also considering “the current average yield on outstanding obligations of the US with remaining periods of maturity comparable to the maturity of the DFC

	loan”
<b>Collateral</b>	DFC typically requires a collateral package tailored to the risks of a project. These can include pledges of equity, liens on assets, guaranties, letters of credit, debt service reserve accounts, life insurance policies and other collateral.
<b>Fees</b>	Are not specified, but <i>may</i> be collected

### ***How does a company apply for the loan?***

Interested applicants should complete and submit the [DFC-DPA Loan Program Application Form](#), which will be screened for the eligibility requirements discussed above. In addition, before or after applying, applicants may request (or DFC may send) a letter of interest indicating the DFC’s interest in discussing the DFC-DPA Loan Program.

### ***What is the evaluation process?***

Environmental, financial and legal due diligence will likely be required during the evaluation process and DFC may request applicants retain outside consultants to review certain loan requirements. If a project is deemed eligible, the loan application is submitted to the CEO of the DFC for approval, at which stage the parties may sign a commitment letter based on an approved term sheet.

After approval, the parties will negotiate and sign a financing agreement setting out the terms of the transaction.

## **Conclusion**

Because the eligibility requirements are quite broad, many US businesses in the health care, pharmaceutical, food security, technology, and manufacturing sectors will be eligible to participate in the program. US-based companies considering reshoring or expanding production in those areas should review the terms of the DFC-DPA Loan Program to see if they may benefit from the program.

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