



March 27, 2020

The CARES Act: Title IV Overview on Economic Recovery for Distressed Sectors

Subtitle A (Coronavirus Economic Stabilization Act of 2020 (“Act”)): This extensive Act within the CARES Act principally provides \$500 billion to the Department of the Treasury’s (“Treasury”) Exchange Stabilization Fund for emergency relief to distressed industries, including airlines, businesses important to maintaining national security, and other eligible businesses. Of the \$500 billion, the Treasury will directly lend \$25 billion for passenger airlines, \$4 billion for cargo air carriers, and \$17 billion for businesses deemed important to maintaining national security. Terms and conditions include: that credit is not reasonably available to borrowers, loan terms of five years or less, limits on certain employee compensation, prohibitions on stock buybacks or pay dividends, maintenance of employment levels, and prohibitions on loan forgiveness. In exchange for a loan, Treasury must receive a warrant, equity interest or a senior debt instrument. Certain aviation excise taxes are also suspended to help this distressed sector.

- Special Considerations for Air Carriers:
 - Air carriers that receive loans under this section may be required to maintain scheduled air transportation service.
 - Subtitle B of Title IV provides for additional financial assistance for employee wages, salaries and benefits for air carriers and airline contractors. Such available financing may impair airlines’ ability to receive Treasury funding under this Title because credit must not be reasonably available to borrowers.
- Additional small business funding in Title I:
 - Title I also provides for nearly \$377 billion in assistance for small businesses, including a \$350 billion paycheck protection program through small business loans and loan guarantees and \$10 billion in funds for Economic Injury Disaster Loan (EIDL) grants. Such available financing may impair small businesses’ ability to receive Treasury funding under this Title because credit must not be reasonably available to borrowers.
- How to apply: Treasury will publish application procedures and minimum requirements within 10 days of enactment.

The remaining \$454 billion will be used to capitalize the Federal Reserve’s lending facilities to support eligible businesses, states and municipalities, and Federal Reserve liquidity facilities that support critical financial markets. The law requires Treasury to “endeavor to seek the implementation of” a program or facility with the Federal Reserve that is targeted at businesses, including nonprofits, with between 500 and 10,000 employees. Corporate borrowers will be subject to the following covenants unless they are waived by the Treasury Secretary: (i) no stock buybacks or dividends

while the loan is outstanding plus 12 months thereafter; and (ii) certain executive compensation restrictions.

- How to apply: Loan agreements will be entered into and funds disbursed through commercial banks. The program overall will be administered by the New York Reserve Bank.
- Other Federal Reserve facilities: Utilizing its preexisting authority under Section 13(3) of the Federal Reserve Act, the Federal Reserve has already announced the establishment of several facilities to provide liquidity to different sectors of the market. They include:
 - The Primary Market Corporate Credit Facility (PMCCF), which will buy newly issued bonds or make loans to companies that are rated at least BBB-/Baa3. This is the loan facility that will receive the bulk of the \$454 billion in credit support. Under present rules, announced March 23, 2020, businesses are not eligible to participate in the facility if they are expected to receive direct financial assistance under “pending legislation,” a reference to the CARES Act. These program rules, including eligibility, are subject to change.
 - The Secondary Market Credit Facility, which will purchase existing corporate debt and exchange traded funds with corporate bond portfolios in the secondary markets.
 - The Term ABS Loan Facility (TALF), which will provide liquidity to newly issued asset-backed securities (ABS) that are backed by auto loans, student loans, credit card receivables, equipment loans, floorplan loans, insurance premium finance loans, certain small business loans guaranteed by the SBA, and eligible servicing advance receivables. The types of eligible ABS collateral may increase; the inclusion of non-Agency commercial mortgage-backed securities (CMBS) and unsecuritized commercial real estate assets is also in play.
 - Commercial Paper Funding Facility, which will purchase three-month commercial paper for issuers rated A1/P1 as of March 17, 2020. If the issuer’s rating decreases, the issuer can make a onetime sale provided that the rating is not less than A2/P2.

Federally elected officials and their immediate relatives, however, are prohibited from obtaining funds from the \$500 billion program under Section 4019. The Inspector General and the Congressional Oversight Commission will audit, investigate and oversee the loans.

The Coronavirus Economic Stabilization Act contains additional provisions to assist businesses and the financial sector. It allows the FDIC to guarantee obligations of solvent insured depository institutions and solvent depository institution holding companies; extends insurance coverage to include non-interest bearing accounts in any federally insured credit union; and temporarily waives lending limits if in the public interest. Temporary relief is provided for (i) community banks; (ii) financial institutions from troubled debt restructurings; and (iii) insured depository institutions, credit unions, bank holding companies from current expected credit loss accounting rules. The Act also allows the Secretary of the Treasury to use funds to establish future guaranty programs for the U.S. money market mutual fund industry; temporarily increases resources available for credit unions to meet liquidity needs; and provides credit protection that will allow businesses to work with lenders to modify or defer obligations without negatively affecting their credit scores.

- As provided for in the Act, the accounting relief from the Financial Accounting Standards Board Accounting Standards Update No. 2016-3, which included the current expected credit loss methodology for estimating allowances for credit losses, is limited in scope and time. Only an insured depository institution, credit union, bank holding company or any affiliate thereof may elect not to comply with the standards until the earlier of Dec. 31, 2020, or the termination date of the COVID-19 emergency. Because of the short time frame for relief, it is of limited value to (i) more diversified portfolios with more commercial loans, which have a much shorter duration than consumer loans and credit cards, and therefore may opt not to switch accounting methods and (ii) small financial institutions and credit unions, which already have been afforded a delay in compliance until 2023. The accounting relief also does not apply to nonbank financial institutions. As a result, there will be less comparability

among financial institutions for investors.

This Act also includes provisions to help affected individuals. It contains provisions that will allow those affected by COVID-19 to delay mortgage payments and avoid foreclosure on their mortgages, provides relief for multifamily borrowers affected by COVID-19 to delay residential mortgage loan payments and avoid foreclosure on their mortgages, and contains a 120-day moratorium on eviction filings.

Finally, this Act removes certain requirements or restrictions to assist government in responding to the pandemic. For example, the Act provides temporary relief from certain meeting and record-keeping requirements for the Chairman of the Board of Governors of the Federal Reserve System, and suspends general hiring procedures for Housing and Urban Development and the Securities and Exchange Commission to allow the appointment of candidates to fill temporary and term appointments. It further allows for national security projects to be approved by the president without separate congressional action by increasing access to materials necessary for national security and pandemic recovery.

Subtitle B (Air Carrier Worker Support): This subtitle is dedicated to supporting workers in the aviation industry. It appropriates \$32 billion to provide financial assistance for the exclusive use of employee wages, salaries and benefits: up to \$25 billion for passenger air carriers, up to \$4 billion for cargo air carriers, and up to \$3 billion for airline contractors. The subtitle contains specific procedures for providing payroll support, which include a formula based on the salaries and benefits that must be reported by each air carrier. To be eligible for financial assistance, each air carrier must enter into an agreement with the Secretary of Transportation that prevents them from conducting involuntary furloughs, ensures that no air carrier or contractor may purchase equity security of the air carrier, and ensures that the air carrier or contractor does not pay dividends or make capital distributions. Air carriers and contractors that are receiving financial assistance also must limit employee compensation for higher earners. The Secretary of Transportation may receive warrants, options, stock and other financial instruments to provide appropriate compensation for the government for this assistance. However, the Secretary of Transportation cannot use the prospect of financial assistance to force a carrier or contractor to enter into negotiations with a certified bargaining representative regarding pay or other terms and conditions of employment.

- How to apply: The Secretary of Transportation will publish streamlined and expedited procedures to submit requests for financial assistance within five days of enactment of this Act.

Click [here](#) for a full section by section analysis.

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