

# Federal Non-SBA Loans and Loan Guarantees Under the CARES Act

Article

*Amundsen Davis Financial Services Alert*

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Title IV of the CARES Act authorizes the Secretary of the Treasury (the “Secretary”) to provide up to an aggregate of \$500 billion of liquidity to eligible businesses, states, and municipalities related to losses incurred as a result of coronavirus in the form of loans, loan guarantees and other investments.

## **Allocation of Funds**

The \$500 billion authorized under the Act will be allocated among different program recipients as follows: (i) up to \$25 billion may be used to make loans and loan guarantees for passenger air carriers, eligible businesses that are certified under 15 CFR Part 145 and approved to perform inspection, repair, replace, or overhaul services, and ticket agents; (ii) up to \$4 billion may be used to make loans and loan guarantees for cargo air carriers; (iii) up to \$17 billion may be used to make loans and loan guarantees for businesses critical to maintaining national security; and (iv) up to the sum of \$454 billion and any amounts not used as described above may be used to make loans, loan guarantees and other investments in programs and facilities established by the Board of Governors of the Federal Reserve System (the “Board”) for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, states and municipalities. Within 10 days after enactment of the CARES Act, the Secretary must publish procedures for application and minimum requirements.

## **Conditions for Loans to Passenger Air Carriers and Related Businesses, Cargo Air Carriers, and Businesses Critical to Maintaining National Security**

To be eligible for a loan or guarantee under this provision, the borrower must show:

- credit is not otherwise reasonably available;
- the loan obligation is prudently incurred;
- the loan will be sufficiently secured or made at (i) a rate reflecting the risk of the loan or guarantee, and, (ii) if practicable, a rate not less than an interest rate for a comparable obligation prior to the coronavirus outbreak;

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Larry Tomlin  
Partner

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- the duration of the loan or guarantee is as short as practicable, but in no case longer than 5 years;
- the agreement provides that, until the date 12 months after the loan or loan guarantee is no longer outstanding, (i) neither the borrower nor any of its affiliates may repurchase its securities listed on a national securities exchange unless obligated to do so is by a contract in effect prior to the effective date of the Act, and (b) the eligible business shall not pay dividends or make other capital distributions with respect to its common stock;
- the agreement provides that, until September 30, 2020, the borrower will maintain its employment levels as of March 24, 2020, to the extent practicable, and in any case shall not reduce its employment levels by more than 10 percent from the levels on such date;
- the agreement includes a certification by the borrower that it is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States; and
- the borrower must have incurred or is expected to incur covered losses such that the continued operations of the business are jeopardized.

In order to receive such a loan or a loan guarantee, the borrower must agree that, until one year after the loan or loan guarantee is no longer outstanding, officers and employees whose total compensation exceed the threshold amounts of \$425,000 and \$3,000,000 will be subject to limits with respect to the compensation and severance that they may receive from the borrower.

To ensure that the federal government is compensated for the risk which it incurs as a result of making and guaranteeing loans, the Secretary is not authorized to make a loan or guarantee a loan to an eligible business unless the eligible business (i) grants the Secretary a warrant or another equity interest in the business in the case of eligible businesses with securities listed on a national securities exchange, or (ii) grants the Secretary a warrant or another equity interest in the business, or a senior debt instrument issued by the business in the case of eligible businesses whose securities are not listed on a national securities exchange.

### **Federal Reserve Programs or Facilities**

Under the authority granted to it, the Board may establish an assistance program for mid-sized businesses and a Main Street Lending Program. The assistance program for mid-sized businesses will provide financing to banks and other lenders that loan money to eligible businesses with between 500-10,000 employees. The loans will be at a rate of interest no greater than 2 percent per annum and no principal or interest shall be due for, at a minimum, the first 6 months after the loan is made. The Main Street Lending Program will support lending to small to mid-sized businesses on such terms and conditions as the Board may determine.

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A borrower under the assistance program for mid-sized businesses must make a good faith certification that:

- the uncertainty of economic conditions makes necessary the loan request to support its ongoing operations;
- it will use the funds that it receives to retain at least 90% of its workforce, at full compensation and benefits, until September 30, 2020;
- it intends to restore not less than 90% of its workforce that existed as of February 1, 2020, and to restore all compensation and benefits to the workers no later than 4 months after the termination of the public health emergency declared by the Secretary of Health and Human Services on January 31, 2020;
- it is domiciled in the United States and has significant operations and employees located in the United States;
- it is not a debtor in a bankruptcy proceeding;
- it was created or organized in the United States or under the laws of the United States and that has significant operations in and a majority of its employees based in the United States;
- except to the extent required by a contractual obligation in effect as of the date of enactment of the Act, it will not, while the direct loan is outstanding, pay dividends with respect to its common stock or repurchase an equity security of its own or a parent that is listed on a national securities exchange;
- it will not outsource or offshore jobs for the term of the loan and for a period of 2 years after completing repayment of the loan;
- it will not abrogate existing collective bargaining agreements for the term of the loan and for a period of 2 years after completing repayment of the loan; and
- it will remain neutral in any union organizing effort for the term of the loan.

#### **Prohibition on Loan Forgiveness**

The principal amount of any obligation issued by an eligible business under any of the programs described above may not be reduced through loan forgiveness.

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