

CARES Act Title IV Loans to Large and Midsize Businesses

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In addition to the loans being made under the CARES Act to small businesses (typically with fewer than 500 employees), Title IV Subtitle A of the Act also provides nearly \$500 billion in senior loans and guarantees to larger businesses, as well as states, municipalities and not-for-profit companies. While \$46 billion of these funds are dedicated to air carriers and businesses critical to national security, the balance of \$454 billion is available for businesses, states, municipalities and not-for-profits generally.

These loans are administered directly by the US Treasury and the Federal Reserve Bank (instead of the Small Business Administration). Unlike the small business loans, these loans are subject to section 13(3) of the Federal Reserve Act, which requires taxpayer protections with respect to repayment, including borrower solvency and collateral requirements. Loan forgiveness is not a feature of this loan program.

Funds Available to All Types of Businesses

To be eligible, a company must: (a) be domiciled in the US, (b) have significant operations in the US, and (c) have a majority of its employees in the US.

The loans will have the following terms and restrictions:

- (1) Prohibitions of stock repurchases (except to the extent contractually committed prior to the Act) and dividends while the loan is outstanding and for 12 months thereafter.
- (2) The following limitations on executive compensation while the loan is outstanding and for 12 months thereafter:
 - a. For employees whose total compensation (including bonuses and stock awards) exceeded \$425,000 for 2019, annual compensation cannot exceed 2019 total compensation and termination benefits cannot exceed 2x 2019 total compensation.
 - b. For employees whose total compensation exceeded \$3,000,000 for 2019, annual compensation cannot exceed the sum of \$3,000,000 plus 50% of the excess of total 2019 compensation over \$3,000,000.

Funds Available to Midsize Businesses

As part of the overall loan program, the Treasury and the Federal Reserve will also develop a special program for businesses and not-for-profit organizations with between 500 and 10,000 employees. These loans are generally subject to the requirements described above under "Funds Available to All Types of Businesses," but with the following additional terms and restrictions:

- (a) Annual interest rate not in excess of 2%.
- (b) No principal or interest payments required during first six months after the loan is made.
- (c) Within four months after termination of the public health emergency, the borrower must intend to restore at least 90% of its workforce as of February 1, 2020 and to restore all compensation and benefits to all its employees.
- (d) The prohibition against stock repurchases and dividends lasts only while the loan is outstanding.
- (e) The borrower will not outsource or offshore jobs while the loan is outstanding and for two years thereafter.
- (f) The borrower will not violate existing collective bargaining agreements while the loan is outstanding and for two years thereafter.
- (g) The borrower will remain neutral in any union-organizing effort while the loan is outstanding.

The Act also refers to a potential “Main Street Lending Program” that the Federal Reserve will administer to small and midsize businesses under its existing authority. While the Act provides no details, funds available under the Main Street program would presumably not be subject to the terms and requirements described above.

Funds Available to Air Carriers and Critical Businesses

In addition to the general requirements described above, to be eligible for loans from the pool of funds dedicated to air carriers and businesses critical to national security, such a company: must (a) have incurred losses as a result of COVID-19 that jeopardize its continued operation and (b) have no other reasonable source of funding. Under the Act, the Treasury must release application forms and requirements for these loans by April 6, 2020.

Loans to air carriers and business critical to national security will have the following terms and restrictions in addition to those described above under “Funds Available to All Types of Businesses”:

- (1) Either sufficient collateral or an interest rate reflecting the risk of an unsecured loan, in any event not less than the company’s similar borrowings prior to the COVID-19 outbreak.
- (2) As short a maturity as possible, not more than five years.
- (3) Through September 30, 2020 employment levels must be maintained at no less than 90% of the employment level at March 24, 2020.
- (4) The Treasury receives shares of stock in the company or a warrant to purchase stock.

General Provisions

The loan program will be overseen by a newly appointed inspector general, subject to a Congressional oversight committee.

Companies applying for these government loans must closely examine their existing debt agreements to determine whether the additional loans will be permitted by the restrictions on additional indebtedness, liens and financial ratio covenants in their existing agreements and whether a waiver or amendment from these lenders can be obtained.

For questions or to discuss these items in more detail, contact [Tom Draper](#) or [Matthew Burton](#) of Foley Hoag.

Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney.

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