

BREAKING DOWN THE CARES ACT'S \$500 BILLION ECONOMIC STABILIZATION PLAN

March 2020

On March 27, President Trump signed into law the \$2 trillion “**Coronavirus Aid, Relief, and Economic Security Act**” (**CARES Act**) in order to provide “*emergency assistance and health care response for individuals, families and businesses affected by the 2020 coronavirus pandemic.*” The largest rescue package in American history, this historic piece of legislation includes a number of programs designed to offset the severe economic losses incurred from the COVID-19 global pandemic.

The economic stabilization plan of the CARES Act authorizes the Secretary of the Treasury to make loans, loan guarantees and other investments of up to \$500 billion to eligible businesses operating in severely distressed sectors of the economy, states and municipalities. The \$500 billion will be allocated as follows:

- **\$25 billion** for passenger air carriers
- **\$4 billion** for cargo air carriers
- **\$17 billion** for businesses “critical to maintaining national security”
- **\$454 billion** for other eligible businesses, states, and municipalities

Unlike the CARES Act’s forgivable loan program for small businesses, these loans must be paid back and come with public disclosure requirements.

Key Terms and Conditions of the Loans

This CARES Act provides specific terms and conditions related to any loan, loan guarantee or other investment(s) provided to entities. The legislation makes a delineation in these provisions between the \$46 billion for air carriers and businesses deemed critical to national security, and the \$454 billion allocated for other businesses, states and municipalities.

1) For passenger air carriers, cargo air carriers, and businesses critical to maintaining national security: Economic aid may be provided under this section of the CARES Act if the Secretary of the Treasury determines (at its discretion) that each of the following have been met:

- The business is created and organized in the U.S. and has the majority of its employees and significant operations in the U.S.
- The business has, or is expected to, incur covered losses such that its continued operations are jeopardized.
- The business must maintain its employment levels that existed as of March 24, 2020 through September 30, 2020 (to the extent practicable) and not reduce levels by more than 10% during this period.
- Duration of the loan or loan guarantee is no longer than five years.
- The intended obligation by the applicant is prudently incurred.
- The applicant is an eligible business for which credit is not reasonably available at the time of the transaction.
- The loan or loan guarantee is sufficiently secured or is made at a rate that reflects the risk of the loan or loan guarantee.

2) All other businesses beyond air carriers and national security businesses as mentioned above: Economic aid will be provided via programs and facilities established by the Board of Governors of the Federal Reserve System—which means requirements relating to loan

collateralization, taxpayer protection and borrower solvency under the Federal Reserve Act also apply. Additional terms and conditions include the following:

- The eligible business is domiciled in the U.S.
- The current economic uncertainty requires a loan request to maintain ongoing operations.
- Funds received will be used to retain at least 90% of the eligible business's workforce, and the eligible business intends to restore at least 90% of the recipient's workforce as of Feb. 1, 2020.
- The recipient is not a debtor in a bankruptcy proceeding.
- During the loan term and for 2 years following loan repayment, the eligible business will not:
 - Outsource/offshore jobs.
 - Repeal existing collective bargaining agreements.
 - The recipient must remain neutral in union organizing efforts during the loan term.

All eligible businesses cannot do the following with loan proceeds for a period of 12 months after the date of the loan or loan guarantee:

- Buy back its own stock.
- Pay dividends or make other capital distributions.

Procedures for Applying

The specific procedures to apply for these loans have not yet been disclosed, but, according to the legislative text, will be published within 10 days after enactment. The Secretary of the Treasury will also release more detailed requirements for eligibility.

Oversight

The President will appoint a Special Inspector General for Pandemic Recovery who will be responsible for conducting, supervising, and coordinating audits and investigations of the making, purchase, management and sale of loans, loan guarantees and other investments made by the Secretary under this legislation. The Special Inspector General may also obtain services from experts and consultants in connection with carrying out its administrative duties.

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- We can anticipate that the loan application process will require companies to provide the loan administrator with a number of documents, schedules and analyses. This may include an analysis to demonstrate the economic losses sustained from the COVID-19 disruption and continuing operations are at risk. Other documents may include, among others, financial statements, employee headcount details and payroll records. The application may also call for companies to show that the requested loan is sufficiently secured through company assets or other collateral as well as company financial projections demonstrating the ability to repay the loan within 5 years.
- How the Treasury deems what businesses are "critical to managing national security" is likely to align with the 16 critical infrastructure sectors as outlined in the Cybersecurity and Infrastructure Security Agency Act (CISA) of 2018. The Act defines critical infrastructure as any business "vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety."

- While many of the requirements for eligibility are currently unknown, we expect this will be a very far reaching loan program with a significant percentage of the market being able to apply for and secure loans.

To discuss your organization's eligibility and learn more about the loan application process for the CARES Act, reach out:

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