

The CARES Act Makes Available Economic Relief for Midsize and Large Businesses

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On March 27, 2020 Congress passed and the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act provides immediate relief to businesses suffering from the economic impacts associated with the COVID-19 pandemic. Title I provides aid to small businesses and other small entities through the creation of the Paycheck Protection Program. You can find more information about the Paycheck Protection Program in [this alert](#). But in addition to the loans and programs in Title I for at small businesses, the CARES Act also created a more broadly applicable emergency relief fund that should result in loans for medium and large businesses impacted by COVID-19. Title IV gives an outline of these provisions, but the Treasury Secretary and Federal Reserve are expected to issue further guidance over the coming weeks to clarify their implementation.

Under Title IV of the CARES Act, the Treasury Secretary is broadly authorized to make up to \$500 billion in loans, loan guarantees, and other investments in support of “eligible businesses.” An “eligible business” is “a United States business that has not otherwise received adequate economic relief” under other provisions of the CARES Act. Businesses and other organizations that qualify for and receive loans under the Title I programs described above would most likely not qualify for these Title IV funds, unless they could show they did not receive adequate economic relief through those other programs. Furthermore, unlike some of the SBA loans available under Title I, these Title IV loans cannot be forgiven.

\$46 Billion To Certain Industries

\$46 billion of these funds are allocated for direct loans to specific industries, i.e. passenger air carriers (\$25 billion), cargo air carriers (\$4 billion), and businesses critical to maintaining national security (\$17 billion). To qualify, the applicant must be a US business that has incurred or is expected to incur losses due to the COVID-19 pandemic that jeopardize its continued business operations. The applicant must also show that credit is not reasonably available at the time of the

transaction. The loan must be “sufficiently secured” or set at a rate that adequately reflects the loan’s risk, and its duration must be as short as practicable and in any event not longer than five (5) years.

To receive a Treasury direct loan, an applicant must agree to certain conditions, such as

- not engaging in any stock buybacks or paying any shareholder dividends until one year after the loan is repaid,
- maintaining, until September 30, 2020, employment levels as of March 24, 2020 to the extent practicable and in any event not reducing its employment by more than 10%, and
- generally capping executive salaries at 2019 levels.

The CARES Act requires the Treasury Secretary to publish application procedures and requirements as soon as possible, but no later than, ten (10) days after enactment, i.e. by April 6, 2020.

\$454 Billion For Federal Reserve Programs and Facilities

The remaining \$454 billion (plus any of the \$46 billion described above that goes unused) is allocated for the Treasury Secretary to make loans, loan guarantees, and other investments in programs and facilities created by the Federal Reserve to support lending to eligible U.S. businesses. This Treasury support will allow the Federal Reserve, by some estimates, to issue nearly \$4 trillion in loans and debt guarantees to US businesses.

Midsize Business Loan Program

The Federal Reserve has not yet announced the details of the loan programs and/or credit facilities it will create. However the CARES Act does require the Treasury Secretary to ask the Federal Reserve to create a special direct loan program for businesses and nonprofit organizations with between 500 and 10,000 employees. The interest rate on such loans would be capped at 2% per annum, and for the first six (6) months no principal or interest would be due. Applicants would have to certify that

- they are a U.S. business with significant operations in the United States,
- they are not a debtor in a bankruptcy proceeding,
- the uncertain economic conditions created by the COVID-19 pandemic make the loan necessary to support ongoing operations,
- it will use the loan to bring its employment levels back to no less than 90% of its workforce as it existed on February 1, 2020, and that it will maintain such levels until September 30, 2020,
- it will not outsource or offshore jobs until at least 2 years after the loan is repaid,
- it will not abrogate existing collective bargaining agreements for the same period,
- it will remain neutral in any union organizing effort during the term of the loan, and
- it will agree to the dividend, stock buyback, and executive compensation restrictions described above.

The dividend, stock buyback, and executive compensation restrictions can be waived if the Treasury Secretary determines that a waiver is necessary to protect the Government's interests. But if a waiver is granted, the Treasury Secretary must appear before certain Senate and House committees to explain the rationale for the waiver.

Oversight

While the CARES Act grants the Treasury Secretary significant discretion in determining eligibility for and awarding loans, loan guarantees, and investments in Federal Reserve programs, it does contain oversight provisions. The Act creates a Special Inspector General for Pandemic Recovery responsible for oversight and investigation into the making and management of the loan programs created under Title IV. The CARES Act also creates a Congressional Oversight Commission tasked with overseeing the implementation of Title IV's loan programs.

Vorys is actively monitoring the ongoing development of these programs, including the Treasury Secretary's and Federal Reserve's development of the application guidelines and requirements. Please contact Drew Parobek, Marty Gates, or your regular Vorys attorney with questions or for assistance.

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VORYS COVID-19 TASK FORCE

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.