

TITLE IV – ECONOMIC STABILIZATION AND ASSISTANCE TO SEVERELY DISTRESSED SECTORS OF THE UNITED STATES ECONOMY

Summary of Lending Programs

Title IV of the Coronavirus Aid, Relief and Economic Security (CARES) Act provides \$500 billion in emergency relief in order to provide liquidity to eligible businesses, States, municipalities and Tribes related to losses incurred as a result of coronavirus.

The Secretary of the Treasury is authorized to make the loans, loan guarantees and other investments in support of eligible businesses, State, municipalities and Tribes.

This assistance can be made as follows, up to:

- (1) \$25 billion in loans or loan guarantees for passenger air carriers, aviation repair stations and airline ticket agents;
- (2) \$4 billion in loans or loan guarantees for cargo air carriers;
- (3) \$17 billion in loans or loan guarantees for businesses critical to maintaining national security;
- (4) \$454 billion (plus any unused amounts from the programs above) for loans, loan guarantees and other investments in support of the Federal Reserve's lending facilities that support eligible businesses, states and municipalities.

Note: Numbers 1, 2 and 3 involve loans or loan guarantees directly from Treasury with terms and conditions set forth in 4003(c)(2) and 4003(d), whereas number 4 involves loans, loan guarantee or other investments in Federal Reserve 13(3) programs or facilities. Only Federal Reserve 13(3) programs or facilities that provide loans directly to eligible businesses are subject to terms and conditions set forth in section 4003(c)(3).

Direct Lending to Airlines and Critical to National Security

Treasury may make a loan or loan guarantee under numbers 1, 2, and 3 above if the Secretary determines that:

- (A) Credit is not reasonably available to the eligible business at the time of the transaction;
- (B) The obligation is intended to be prudently incurred;
- (C) The loan or loan guarantee is sufficiently secured or at a rate reflecting the risk;
- (D) The loan or loan guarantee is as short as practicable and no longer than 5 years;
- (E) Neither the eligible business nor any of its affiliates will repurchase stock until 12 months after the loan is no longer outstanding, unless contractually obligated;
- (F) The eligible business will not pay dividends on common stock until 12 months after the loan is no longer outstanding;
- (G) The eligible business maintains certain employment levels as of given dates;

- (H) The eligible business makes certain certifications as to its geographical organization and employment base;
- (I) The eligible business has incurred or is expected to incur covered losses such that its continued operations are jeopardized.

Additionally, the Secretary may not issue a loan or loan guarantee to an eligible business under numbers 1, 2, and 3 unless the Secretary either receives warrants or equity (if the business is publicly traded) or warrants, equity or senior debt (if the business is not publicly traded.)

With regard to direct lending to airlines, the Treasury Secretary must coordinate with the Transportation Secretary.

Federal Reserve 13(3) Programs and Facilities

Only Federal Reserve programs or facilities that provide “direct loans” are subject to restrictions that are not applicable to other Federal Reserve programs or facilities. A Federal Reserve “direct loan” means a loan under a bilateral loan agreement that is both entered into directly with an eligible business as borrower, and not part of a syndicated loan, a loan originated by a financial institution in the ordinary course of business, or a securities or capital markets transaction. The restrictions to which such direct loans are subject include:

- (A) Restrictions on stock buybacks, unless contractually obligated, until 12 months after the direct loan is no longer outstanding;
- (B) Restrictions on dividend payments on common stock until 12 months after the direct loan is no longer outstanding; and
- (C) Restrictions on certain officer and employee compensation as set forth in Sec. 4004.

The Secretary may waive these restrictions on Federal Reserve direct loans upon a determination that such waiver is necessary to protect the interests of the Federal Government. The Secretary must make himself available to testify before the Senate Banking Committee and House Financial Services Committee if he exercises a waiver.

Federal Reserve 13(3) programs or facilities continue to be subject to existing requirements, including those related to loan collateralization, taxpayer protection, and borrower solvency. Title IV does not impose any stock buyback, dividend or executive compensation restrictions on Federal Reserve programs or facilities that do not provide direct loans.

Assistance for Mid-Sized Businesses

Sec. 4003 also separately states that the Secretary shall endeavor to seek the implementation of a Federal Reserve program or facility that provides financing to lenders that make direct loans to businesses and (to the extent practicable) non-profits with between 500 and 10,000 employees, with loans being subject to an annualized interest rate that is not higher than 2 percent per annum. Any eligible borrower applying for a direct loan in this specific facility is required make a good-faith certification on items (I) – (X). [Section 4003(c)(3)(D)(i)]

The Federal Reserve also has the discretion to establish a Main Street Lending Program or other similar program or facility that supports lending to small and mid-size businesses, on such terms and conditions as the Board may set consistent with section 13(3) of the Federal Reserve Act. The Federal Reserve Main Street Business Lending Program would not be required to impose the same conditions as the Assistance for Mid-Sized Businesses in Section 4003(c)(3)(D)(i), and thus may be a more flexible program. Similarly, Treasury may provide a loan, loan guarantee or other investment for such a Federal Reserve program or facility.

The principal amount of any obligation issued by an eligible business, State, municipality or Tribe under section 4003 cannot be reduced through loan forgiveness, and the duration of the loans and loan guarantees cannot be extended beyond the end of 2025 at the latest.