

CARES ACT EXCHANGE STABILIZATION FUND ASSISTANCE CORPORATE GOVERNANCE AND OTHER REQUIREMENTS



CENTER FOR CAPITAL MARKETS
COMPETITIVENESS

*On Friday, March 27, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law. This bipartisan legislation package provides **\$500 billion** in relief for American companies impacted by COVID-19 through the Exchange Stabilization Fund. Relief will be disbursed through programs implemented by the Treasury Department and the Federal Reserve.*

The following is a guide to help businesses navigate the requirements and restrictions that come with accepting relief through loans or loan guarantees under Section 4003 of the CARES Act. As further guidance is issued by Treasury and the Federal Reserve, this document will be updated accordingly.

AIR TRANSPORTATION AND NATIONAL SECURITY SECTORS

Amount

Loan amounts in this section include up to:

- **\$25 billion** of loans and loan guarantees for air carriers, air maintenance, and ticket agents.
- **\$4 billion** of loans and loan guarantees for cargo air carriers.
- **\$17 billion** of loans and loan guarantees for businesses critical to maintaining national security.

Conditions

For publicly traded companies:

- Loans or loan guarantees may not be issued unless Treasury receives warrants or equity.

For private companies:

- Loans or loan guarantees may not be issued unless Treasury receives warrants, equity or senior debt.

Eligibility

Must meet the following requirements:

- Applicant must be an eligible business for which credit is not reasonably available at the time of transaction.
- Intended obligation by the applicant must be prudently incurred.

- Loan or loan guarantee must be sufficiently secured or made at a rate that reflects the risk of the loan or loan guarantee and, to the extent practicable, not less than an interest rate based on market conditions for comparable obligations prevalent prior to the outbreak of the coronavirus.
- Duration of the loan or loan guarantee must be as short as practicable and not longer than **five years**.
- Eligible business must be created or organized in the U.S. with significant operations and the majority of its employees based in the U.S.
- Eligible business must have incurred or expect to incur losses as a result of the coronavirus, jeopardizing the continued operations of the business.

Requirements

Must meet the following requirements:

- Companies receiving assistance may not engage in stock buybacks or dividends for the duration of the loan plus one year.
- Companies receiving assistance must maintain employment levels as of March 24, 2020, until September 30, 2020, and cannot reduce employment levels by more than **10%** from the levels on such dates.



EMERGENCY RELIEF LOAN REQUIREMENTS

Programs for Companies Affected by the Coronavirus

The requirements for companies receiving loans or loan guarantees from the **\$454 billion** package is as follows:

- No stock buybacks or dividends for the duration of the loan plus **one year** as well as certain executive compensation restrictions (listed below).
 - » The Treasury Secretary may waive this requirement upon determining that a waiver is necessary to protect the interests of the federal government but must testify before Congress if using the waiver.

Emergency relief loans are only for businesses created or organized in the U.S. and that have significant operations and a majority of its employees in the U.S.

Limitations on employee compensation

For all companies receiving financial assistance through loans or loan guarantees provided by Treasury or the Federal Reserve lending facilities in Section 4003, for one year after the term of the loan or loan guarantee:

- No officer or employee whose total compensation exceeded **\$425,000** in 2019 will receive any pay increase from 2019 levels or severance pay upon termination that exceeds twice the maximum compensation received by the employee in 2019.
- No officer or employee whose total compensation exceeded **\$3 million** in 2019 will receive compensation in excess of the sum of **\$3 million** and 50% of the excess over **\$3 million** that such employee received in 2019.

FEDERAL RESERVE LENDING FACILITIES

The Federal Reserve is permitted to use its Section 13(3) authority as part of the **\$454 billion** provided under the Exchange Stabilization Fund and provide lending facilities for eligible businesses, states, and municipalities. There are two such facilities permitted under the legislation.



Mid-sized business lending facility

The CARES Act states that, without limiting terms and conditions for other programs and facilities the Treasury Secretary may otherwise provide, the Treasury Secretary “shall endeavor” to create a lending facility for businesses and nonprofits with between **500** and **10,000 employees** with the following terms and requirements:

- Direct loans with an interest rate not higher than **2%**, and no principal or interest due for the first **six months**.
- Businesses applying are required to make a good-faith certification that:
 - » Uncertainty of the economic conditions makes the loan necessary to support ongoing operations.
 - » Funds will be used to retain at least **90%** of the workforce at full compensation and benefits until September 30, 2020.
 - » Recipient intends to restore not less than **90%** of the workforce who existed as of February 1, 2020, and all compensation and benefits to workers no later than **four months** after termination of public health emergency.
 - » Business must be domiciled in the U.S. with significant operations and employees located in the U.S.
 - » No outsourcing or offshoring of jobs is allowed for the term of the loan plus **two years**. No abrogating existing collective bargaining agreements is allowed for the term of the loan plus **two years**.
 - » Business must remain neutral in any union organizing effort for the term of the loan.

Main Street Lending Program

The CARES Act states that nothing in the act limits the discretion of the Federal Reserve to establish a Main Street Lending Program, which they said it had been creating before passage of CARES, to support lending to small and midsize businesses. The U.S. Chamber anticipates that the Federal Reserve can use its discretion to potentially offer funding to midsize businesses under this program, without the full extent of restrictions under the Midsize Business Lending Facility described earlier.

*For more information, please contact
Erik Rust, Director at erust@USChamber.com*

