

Administration of Financial Relief Programs in H.R. 748, the CARES Act

Treasury Department and Federal Reserve:

Categories of Relief:

- The Treasury Secretary may authorize loans, loan guarantees, and other investments

Amount of Relief:

- Loans and loan guarantees:
 - No more than \$25 billion to passenger air carriers, repair stations, and ticket agents
 - No more than \$4 billion to cargo air carriers
 - No more than \$17 billion to national security businesses (undefined term)
 - \$454 billion, plus any additional available funds from the first three categories, to any other investments in Federal Reserve-established programs or facilities to provide liquidity to the financial system that supports lending to businesses, states, and municipalities

Process:

- To be determined. The Treasury Secretary is required to publish requirements and procedures for application no later than 10 days after enactment. (This requirement does not apply to programs to provide \$454 billion in relief.)
- The Secretary must publish details of any transaction online within 72 hours, including:
 - The amount of loan or guarantee
 - The Interest rate or material financial terms (if applicable)
 - A copy of the final term sheet (if applicable), and the contract or other relevant documentation.

Note: There are three sets of terms and conditions listed below.

The first concerns the \$46 billion directed to airlines, repair stations, ticket agents, and national security critical businesses.

The second governs the \$454 billion, plus any additional available funds as set out above.

The third governs a program for mid-sized businesses within the \$454 billion pot.

(1) Terms and conditions for loans and loan guarantees to carriers, repair stations, and ticket agents, and businesses critical to national security:

- Applicant is an eligible business for which credit is not reasonably available.
- To be eligible (other than an air carrier), the business must not have “otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act.” “Adequate” is not defined. This could make SBA loan or loan guarantee recipients ineligible for relief under this provision.
- Applicant must have incurred losses or expected to do so such that continued operations of the business are jeopardized.
- Intended obligation must be prudently incurred
- The Treasury Secretary may not issue a loan or loan guarantee unless the eligible business is publicly traded and Secretary receives warrant or equity.

- If a business is not publicly traded, the Secretary must receive a warrant, equity or senior debt instrument.
- There is no loan forgiveness included
- Loans or guarantees must be sufficiently secured, or interest rate must reflect risk
- Duration: as short as practicable, though no longer than 5 years
- Recipients may not issue stock buybacks for the life of the loan or the life of the guarantee plus one year
- Recipients may not pay dividends or make other capital distributions for the life of the loan or the life of the guarantee plus one year
- Recipients must adhere to executive compensation limits outlined in section 4004
- Recipients must maintain existing employment levels as of March 24 “to the extent practicable,” but in no case may the reduction exceed 10% from March 24 levels
 - This term lasts until September 30
- Recipients must be U.S. businesses with majority of employees based in the U.S.
- Businesses under the control (20% voting or equity) of the President, Vice-President, Department head or Member of Congress are ineligible.
- No one may condition relief on the implementation by air carriers or eligible businesses of measures to enter negotiations with a certified bargaining representative regarding pay or other terms of employment.

Secretary of Transportation terms and conditions:

- Secretary of Transportation may require an air carrier to maintain scheduled service to any route served before March 1, to the extent practicable.

(2) Terms and conditions for loans, loan guarantees, and other investments as part of a program or facility that provides direct loans, only if the eligible businesses agree to the following terms:

- To be eligible, the business must not have “otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act.” “Adequate” is not defined. This could make SBA loan or loan guarantee recipients ineligible for relief under this provision.
- Recipients may not purchase equity of an eligible business for the life of the loan or the life of the guarantee plus one year
 - The Treasury Secretary may waive if necessary to protect interests of Federal Government
- Recipients may not pay dividends or make other capital distributions with regard to common stock of eligible business for the life of the loan or the life of the guarantee plus one year
 - The Treasury Secretary may waive if necessary to protect interests of Federal Government
- Recipients must adhere to executive compensation limits outlined in section 4004
 - The Treasury Secretary may waive if necessary to protect interests of Federal Government
- No loan forgiveness
- No limit on duration of loan or loan guarantee
- The program or facility must comply with Federal Reserve Act requirements in 12 USC 343(3)
- The program of facility shall only make loans or other investments in U.S. businesses
- Businesses under the control (20% voting or equity) of the President, Vice-President, Department head or Member of Congress are ineligible.

(3) Federal Reserve may establish Main Street Lending Program or similar program. Financial assistance provided under this program will be subject to the terms and conditions in (2) above as well as the following:

This program is for mid-sized businesses (between 500 and 10,000 employees), and includes nonprofits

- Interest rate not above 2%
- No principal or interest due for first 6 months
- Borrower must provide good-faith certification that:
 - Funds will be used to retain at least 90% of workforce (no reference date), at full compensation and benefits, through September 30
 - It intends “to restore not less than 90 percent of the workforce of the recipient that existed on February 1, 2020, and to restore all compensation and benefits to the workers of the recipient no later than 4 months after the termination date” of the public health emergency declared on January 31, 2020.
 - The recipient is a U.S. business with significant operations and a majority of employees based in the U.S.
 - The recipient is not a debtor in bankruptcy
 - The recipient will not pay dividends with respect to common stock during the life of the loan
 - The recipient will not repurchase stock during the life of the loan
 - The recipient will not “outsource or offshore jobs” during the life of the loan plus 2 years
 - The recipient will not abrogate an existing collective bargaining agreement during the life of the loan and 2 years
 - The recipient will remain neutral in any union organizing effort during the life of the loan