

## CARES Act: Coronavirus Economic Stabilization Act (CESA) of 2020

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March 27, 2020

On March 27, 2020, Congress passed and President Donald Trump signed into law the \$2.2 trillion "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act) legislation aimed to provide economic relief from coronavirus effects on individuals, families, small businesses and severely impacted sectors of the U.S. economy.

The CESA authorizes the Secretary of the Treasury (Secretary) to make loans, loan guarantees, other investments and subsidies to provide liquidity for losses incurred as a result of coronavirus to air carriers (as defined under Title 49 of the United States Code), U.S. businesses, states and municipalities.

### **Available Funding under the CESA and Purposes:**

A total of **\$500 billion** has been allocated under the CESA:

- **\$25 billion** For loan and loan guarantees to passenger air carriers, eligible businesses certified to perform inspection, repair and maintenance services and ticket agents
- **\$4 billion** For loan and loan guarantees to cargo air carriers
- **\$17 billion** For loan and loan guarantees to businesses critical to maintaining national security
- **\$454 billion** Plus any amounts not used as described above, for loans, loan guarantees, and other investments for programs or facilities established by the Board of Governors of the Federal Reserve System for eligible businesses, States and municipalities

### **Which businesses and governmental entities are eligible for assistance under the CESA?**

- **Air carriers** (as defined under title 49 of the United States Code)
- **U.S. businesses** that have not otherwise received adequate economic relief from loans and loan guarantees provided under the CARES Act
- **States** (including the District of Columbia, US territories and possessions and Indian Tribes) and municipalities (political subdivisions or instrumentalities of a State)

### **Are there other eligibility requirements?**

The Secretary will determine whether (a) the applicant is an eligible business for which credit is not reasonably available; (b) the loan obligations are prudently incurred by the applicant and (c) the loan is sufficiently incurred or made at a rate that reflects the risk of the loan or loan guarantee and is not less than an interest rate based on market conditions prior to the outbreak of COVID-19 to the extent practicable. These determinations are to be made in the Secretary's discretion.

For loan and loan guarantees available to passenger air carriers and eligible businesses providing support services to them, cargo air carriers and national security eligible businesses (eligible air carrier and national security businesses), the business must have incurred losses as a result of coronavirus (covered losses) jeopardizing continued operations of the business. The Secretary is to make these determinations.

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The loan or loan guarantee agreement is required to include certifications to the effect that the eligible business is organized in the U.S. and has significant operations and a majority of its employees based in the U.S.

### **What are the terms and conditions of the loans, loan guarantees and other investments?**

*Forms, terms and conditions of loans and loan guarantees:* The Secretary will determine the forms, terms and conditions of the loans and loan guarantees. The interest rate is to be not less than a rate determined by the Secretary based on the risk and current yield on outstanding marketable obligations of the United States of comparable maturities. The duration of the loan or loan guarantee is to be as short as practicable but not longer than five years.

*Limitations on buy-back of listed equity securities of the eligible borrower or parent company:* The loan or loan guaranty agreement must provide that, for a period of 12-months after the loan or loan guaranty is no longer outstanding, the borrower and affiliates may not purchase any listed equity security of the eligible business or parent company except to the extent required under a contractual obligation in effect as of the enactment date of the CARES Act.

*Limitations on the payment of dividends:* The loan or loan guaranty agreement must provide that, for a period of 12-months after the loan or loan guaranty is no longer outstanding, that the eligible business may not pay dividends on or otherwise make capital distributions based upon common stock of the entity.

*Maintenance of Employment Levels:* The loan or loan guaranty agreement must provide that, until September 30, 2020, the eligible business will maintain its March 24, 2020 employment levels to the extent practicable and in any case not reduce them by more than 10%.

### *Additional requirements for loans and loan guarantees to eligible air carrier and national security businesses:*

These additional requirements apply only in the case of loans and loan guarantees for eligible air carrier and national security businesses. The eligible air carrier and national security businesses must:

- Provide warrants, equity interests or senior debt instruments designed for the reasonable participation, for the benefit of taxpayers, in equity appreciation or reasonable interest rates premiums
- Limit compensation and termination payments to highly compensated officers and employees

The terms and conditions of any warrant, equity interest or senior debt instrument to be issued by an eligible business will be set by the Secretary and be designed to provide for reasonable participation equity appreciation (in the case of warrants or other equity interests) or a reasonable interest rate premium (in the case of a debt instrument).

The eligible air carrier and national security businesses must also agree in the loan or loan guarantee agreement to the following limitations on compensation and termination benefits to officers and employees during the period beginning on the execution date of the agreement and ending one year after the date the loan or loan guaranty is no longer outstanding (covered period):

- Any officer or employee of the eligible business whose total compensation in the 2019 calendar year exceeded \$425,000 (excluding any employee whose compensation is determined through a collective bargaining agreement entered into before March 1, 2020) (highly compensated officer or employee) will not exceed such person's total 2019 compensation in any 12 consecutive months during the covered period

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- Any severance pay of other termination of employment benefits paid to any highly compensated officer or employee will not exceed twice the maximum total compensation received in 2019
- Any officer or employee of the eligible business whose total compensation in the 2019 calendar year exceeded \$3,000,000 will not exceed an amount equal to \$3,000,000 and 50% of the excess over \$3,000,000 of the total compensation received from the eligible borrower in calendar 2019 in any 12 consecutive months during the covered period

For these purposes, total compensation includes salary, bonuses, awards of stock and other financial benefits provided by the eligible business.

An eligible air carrier that received a loan or loan guaranty may also be required, as deemed necessary or advisable by the Secretary of Transportation, to maintain scheduled flights to any point serviced by the carrier before March 1, 2020 through March 1, 2022.

No forgiveness of obligations issued by eligible businesses, States or municipalities: The CESA prohibits any loan forgiveness of principal of any obligation issued by an eligible business, State or municipality under a loan program authorized by the CESA.

### **How can eligible businesses apply for loans and loan guarantees?**

The Secretary is required to publish procedures for application and minimum requirements for making the loans and loan guarantees within 10 days after the enactment of the CARES Act.

### **Federal Reserve programs and facilities under the CESA:**

#### Federal Reserve programs and facilities generally:

The CESA permits the Secretary to make loans, loan guarantees and other investments in programs or facilities established by the Board of Governors of the Federal Reserve System that make loans to eligible businesses, States and municipalities.

In the case of loans, loan guarantees or other investments as part of a Federal Reserve program or facility that provides direct loans to eligible business borrowers, the eligible business must agree to the listed equity security buy-back, dividends and compensation limitations described above. The Secretary is authorized to waive these requirements if determined to be necessary to protect the interests of the Federal Government.

A Federal Reserve program or facility receiving loans, loan guarantees or other investments under the CESA may only make loans or other advances to, or purchase obligations or other interests (excluding, for this determination, indexed securities or those based on a diversified pool) from, businesses that are organized in the U.S. and have significant operations and a majority of its employees based in the U.S.

All requirements under section 13(3) of the Federal Reserve Act, including those relating to loan collateralization, taxpayer protection and borrower solvency, apply to the Federal Reserve programs and facilities participating under the CESA.

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### Federal Reserve programs and facilities for mid-sized businesses:

The Secretary is to endeavor to seek implementation of Federal Reserve programs and facilities for financing to banks and other lenders to make direct loans to eligible businesses including, to the extent practicable, nonprofit organizations, with 500 – 10,000 employees.

The interest rate on direct loans under such a program, should it be implemented, would not be higher than 2% per annum and principal and interest would not be payable during the first six months of the loan or such longer period as the Secretary may determine. In addition, any eligible borrower would be required to certify that:

- The loan request is necessary to support ongoing operations due to the uncertainty of economic conditions
- The borrowed funds will be used to retain at least 90% of the borrower's workforce at full compensation and benefits until September 30, 2020
- The recipient intends to restore not less than 90% of its February 1, 2020 workforce and restore all compensation and benefits within four months of the termination date of the January 31, 2020 COVID-19 public health emergency declaration by the Secretary of Health and Human Services
- The recipient is domiciled in the U.S. with significant operations and employees in the U.S.
- The recipient is not a debtor in a bankruptcy proceeding
- The recipient is organized in the U.S. and has significant operations and a majority of its employees based in the U.S.
- The recipient will not pay common stock dividends or repurchase any listed equity security of the recipient or parent company while the direct loan is outstanding except as required under a contractual obligation in effect on the enactment date of the CARES Act
- The recipient will not outsource or offshore jobs during the term of the loan and for two years after repayment of the loan
- The recipient will not abrogate existing collective bargaining agreements for the term of the loan and for two years after repayment of the loan
- The recipient will remain neutral in any union organizing effort during the term of the loan

### Main street lending programs:

The Secretary may make loans, loan guarantees and other investments in "Main Street Lending Programs" or similar programs or facilities established by the Federal Reserve to support lending to small and mid-sized businesses on terms and conditions consistent with section 13(3) of the Federal Reserve Act.

### Federal reserve programs and facilities for States and municipalities:

The CESA requires the Secretary to endeavor to implement a Federal Reserve program or facility that will provide liquidity to the financial system that supports lending to States and municipalities.

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