

CARES Act and Relief for Mid Sized Businesses

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) is to provide relief for mid-sized businesses under Sections 4003(b)(1)-(4). Under the CARES Act, mid-sized businesses are defined as “businesses, including, to the extent practicable, nonprofit organizations, with between 500 and 10,000 employees.” The CARES Act appropriates a total of \$500 billion for this portion of the Act with \$454 billion for application by the U.S. Department of the Treasury through Federal Reserve emergency lending programs for businesses, states, and municipalities. The legislation does not specify which business sectors the U.S. Department of the Treasury and the Federal Reserve are to target or what portion of the \$454 billion will be available to specific types of businesses. The remaining appropriation of \$46 billion is targeted to airlines and national security businesses, with any unused amount from those industries being added back to the \$454 billion remaining general pool. With the Federal Reserve’s involvement in the program, Treasury Secretary Mnuchin has indicated that much of the \$500 billion under Sections 4003(b)(1)-(4) of the CARES Act will be leveraged in Federal Reserve credit facilities such that the total available liquidity under Section 4003 of the CARES Act could reach nearly \$4 trillion.

Terms of Lending for Mid-Sized Businesses Under the CARES Act

The legislation provides that loans to mid-sized businesses will bear an interest rate not higher than 2% per year, and that for the first six months after any such loan is made, or for such longer period as the Secretary of Treasury may determine, no principal or interest shall be due and payable. The CARES Act does not specify a maximum loan amount or the term of loans made to mid-sized businesses. Unlike the loans under the Paycheck Protection Program of the Cares Act, no debt forgiveness is afforded to mid-size businesses.

Restrictions Imposed on and Certifications Required of Mid-Sized Businesses to Qualify

The CARES Act restricts stock buybacks and dividends and capital contributions by a loan recipient for specified periods, and may limit compensation increases and severance payments for officers, and employees of loan recipients who received total compensation in excess of \$425,000 in calendar year 2019. These

conditions may, however, be waived by U.S. Department of the Treasury.

Any eligible borrower applying for a loan under the mid-sized business lending program will be required to certify in good faith to the following items, which include, workforce preservation commitments, restrictions on outsourcing and protections for unions, and unionizing:

- The uncertainty of economic conditions as of the date of the application makes necessary the loan to support the ongoing operations of the recipient;
- The funds it receives will be used to retain at least 90% of the recipient’s workforce, at full compensation and benefits, until September 30, 2020;
- The recipient intends to restore not less than 90% of the workforce of the recipient that existed as of February 1, 2020, and to restore all compensation and benefits to the workers of the recipient no later than four months after the termination date of the coronavirus public health emergency declared by the Secretary of Health and Human Services on January 31, 2020;
- The recipient is an entity or business that is domiciled in the United States with significant operations and a majority of its employees based in the United States;
- The recipient is not a debtor in a bankruptcy proceeding;
- The recipient will not outsource or offshore jobs for the term of the loan and two years after completing repayment of the loan;
- The recipient will not abrogate existing collective bargaining agreements for the term of the loan and two years after completing repayment of the loan and will remain neutral in any union organizing effort for the term of the loan;
- The recipient will not pay dividends with respect to the common stock of the eligible business, or purchase an equity security that is listed on a national securities exchange of the recipient, or any parent company of the recipient while the direct loan is outstanding, except to the extent required under a contractual obligation that is in effect as of the date of enactment.

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Regulatory Uncertainty

The application procedures and terms and conditions of programs and facilities under Section 4003 of the CARES Act must be published by U.S. Department of the Treasury and or the Federal Reserve before eligible businesses may apply for loans under the program. The U.S. Department of the Treasury published preliminary application procedures and minimum requirements in late March, which will likely be supplemented with additional requirements for direct lending under Sections 4003(b)(1), (2), and (3) of the CARES Act for the \$46 billion targeted to air carriers and businesses related to national security. It is currently not known when the U.S. Department of the Treasury will have regulations in place for the acceptance of loan applications under the program for mid-sized businesses covered by Section 4003(b)(4) of the CARES Act. Further, it is not yet known whether or not loans to the mid-sized businesses will be required to be collateralized. The CARES Act states that loans made with CARES Act funds under the Federal Reserve emergency lending programs must comply with Federal Reserve Act requirements regarding collateralization. Federal Reserve regulations for prior emergency lending programs require that all credit extended under such a program be secured to the satisfaction of the lending Federal Reserve Bank.

Additionally, the CARES Act states that the mid-sized business loan program will provide financing to banks and other lenders that make direct loans to eligible businesses. However, as noted above, the legislation also states that such loans will be part of the Federal Reserve emergency lending program, which operates through the Federal Reserve Banks. It is not yet known whether the immediate lender to borrowers under the mid-sized business loan program will be a Federal Reserve Bank or a broader group of banks and lenders.

Once the regulatory issues regarding the implementation of Section 4003(b)(4) become transparent, we will make you aware of those requirements.



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