

## Insights

# ECONOMIC STIMULUS UNDER THE U.S. CORONAVIRUS ECONOMIC STABILIZATION ACT OF 2020

Mar 27, 2020

The Coronavirus Economic Stabilization Act of 2020, Title IV of the Coronavirus Aid, Relief, and Economic Security, or “CARES Act”—the third emergency bill that Congress has passed in response to the novel coronavirus (COVID-19) pandemic—was signed into law on Friday, March 27, 2020. This portion of the CARES Act provides, among other things, \$500 billion to the U.S. Treasury’s Exchange Stabilization Fund to provide loans, loan guarantees, and other investments in support of eligible businesses, States and municipalities and subsidies necessary for such loans, loan guarantees and other investments.

Bryan Cave Leighton Paisner lawyers have been analyzing the bill, scouring its relevant provisions, and stand ready to advise clients on what impact it may have on their businesses and whether those businesses may be eligible for assistance.

Highlights of the program are as follows:

- **General Terms –**
  - The U.S. Treasury has until December 31, 2020 to deploy capital;
  - Any loans made by the Secretary of the U.S. Treasury (the “**Secretary**”) shall be at a rate determined by the Secretary based on the risk and the current average yield on outstanding US debt of comparable maturity;
  - No loan or loan guarantee under this program will have a duration of longer than five years;
  - The principal amount of any loan or loan guarantee issued under this program may not be forgiven. Please note this provision applies to loans under the Stabilization Act, and not other sections of the Cares Act; and
  - The Secretary is directed to establish procedures for application for Investments as soon as practicable, but in no case later than 10 days after the enactment of the Stabilization Act.

- **Note:** The scope of the Stabilization Act is quite broad. Any United States business that has not “otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act” is an “eligible business” and losses covered by the Stabilization Act include “losses incurred directly or indirectly as a result of coronavirus, as determined by the Secretary.”
  
- **Direct Lending to Specified Industries** – Up to \$46 billion will be available for direct lending to certain industries as follows:
  - \$25 billion for loan and loan guarantees for passenger air carriers, eligible businesses that provide inspection, repair, replace, or overhaul services, and ticket agents;
  - \$4 billion for loans and loan guarantees to cargo air carriers; and
  - \$17 billion for loans and loan guarantees to critical national security businesses.
  
- **Qualifying for Direct Lending in Specified Industries** – A business in the three specified industries that satisfy the following criteria, as determined by the Secretary under the Secretary’s discretion, would be eligible for direct lending:
  - Credit is not otherwise reasonably available to the borrower;
  - The obligation under the loan is “prudently incurred” by the borrower;
  - The loan is sufficiently secured or is made at a rate that (i) reflects the risk or the loan or loan guarantee; and (ii) is to the extent practicable, not less than an interest rate based on market conditions for comparable obligations prevalent prior to the outbreak of COVID–19;
  - The loan is as short as practicable and in no event longer than five years;
  - Stock or equity buybacks by the borrower or its affiliates of an equity security, listed on a national securities exchange, of the borrower (or any parent company of the borrower) is expressly prohibited during the term of the loan and the 12 months following the termination of the loan, other than to the extent required under a contractual obligation incurred prior to the extension of the loan;
  - Dividends and other capital distributions with respect to the borrower’s common stock are expressly prohibited during the term of the loan and the 12 months following the termination of the loan;
  - Until September 30, 2020, the borrower must maintain employment levels consistent with its March 24, 2020 employment levels to the extent practicable, and in no event reduce its

employment levels to less than 90% of the March 24, 2020 employment levels;

- The borrower has certified that its business is domiciled in the U.S. and has “significant operations in and majority of its employees based in” the U.S.;
  - The borrower must have incurred or are expected to incur losses that jeopardize the continued operations of its business as determined by the Secretary; and
  - If the borrower has issued securities that are traded on a national securities exchange, the Secretary receives a warrant or equity interest in the eligible business (and if not so traded the Secretary receives either a warrant or equity interest in the eligible business or a senior debt instrument issued by the eligible business).
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- **Liquidity for Eligible Businesses in Non-Specified Industries** – Up to the sum of \$454 billion *plus* any unused amounts of the direct lending tranche (discussed above) will be available to make loan and loan guarantees to, and other investments in, programs or facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, States or municipalities, by either (i) direct lending, including secured loans, or (ii) by purchasing related obligations and interests directly from issuers or in secondary markets.
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- **Conditions of Direct Lending in Non-Specified Industries** – During the term of a loan and the 12 months following the date upon which the loan is no longer outstanding:
    - Buybacks by the borrower of an equity security, listed on a national securities exchange of the borrower (or any parent company of the borrower) are expressly prohibited, other than to the extent required under a contractual obligation incurred prior to the extension of the loan;
    - Dividends and other capital distributions with respect to the borrower’s common stock are expressly prohibited are prohibited; and
    - The Secretary may waive these requirements upon a determination that such waiver is necessary to protect the interests of the Federal Government.
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- **Conditions of All Direct Lending** – During the term of a direct loan and the 12 months following the date upon which the loan is no longer outstanding:
    - No non-union officer or employee of the borrower whose total 2019 compensation exceeded \$425,000 can receive increased compensation during any 12 consecutive months of such period, or receive severance pay and other termination benefits which exceeds twice their total 2019 compensation; and

- No officer or employee of the borrower whose total 2019 compensation exceeded \$3 million may receive during any 12 consecutive months of such period total compensation in excess of the sum of \$3 million and 50% of the excess of such officer or employee's 2019 compensation over \$3 million.
  
- **Assistance for Mid-Sized Businesses** – The Secretary is obligated to endeavor seek to implement programs or facilities to provide financing to banks and other lenders to eligible businesses (including, to the extent practicable, nonprofit organizations, but excluding those in the specified industries) with between 500 and 10,000 employees subject to the conditions that (i) interest rates on the financing be no higher than 2% per annum and (ii) for the first 6 months (or longer, as determined by the Secretary), no principal or interest may be due and payable. Such a borrower under this program must make a good-faith certification that:
  - The loan is necessary to support the ongoing operations of the borrower;
  - The funds it receives will be used to retain at least 90% of the borrower's workforce, at full compensation and benefits, until September 30, 2020;
  - The borrower intends to restore not less than 90% of its February 1, 2020 workforce and restore all compensation and benefits within four months of the declaration of the termination of the COVID-19 crisis;
  - Its business is domiciled and created or organized in the U.S. and has "significant operations in and a majority of its employees based in" the U.S.;
  - The borrower is not currently in bankruptcy;
  - Dividends with respect to the borrower's common stock, or buyback of an equity security, listed on a national securities exchange, of the borrower (or any parent company of the borrower) is expressly prohibited until the complete repayment of the loan, other than to the extent required under a contractual obligation incurred prior to the extension of the loan;
  - The borrower will not outsource or offshore jobs during the term of the term of the loan and the two years after completing repayment of the loan;
  - The borrower will not abrogate existing collective bargaining agreements for the term of the loan and two years after completing repayment of the loan; and
  - The borrower will remain neutral in any union organizing efforts for the term of the loan.
  
- **Eligibility/Conflicts of Interest** – Notwithstanding compliance with other eligibility requirements set forth above, certain entities are not eligible to participate in the assistance

program described in this article to avoid potential conflicts of interest.

- The principal executive officer and the principal financial officer (or individuals performing similar functions) of an entity seeking to participate in the program must certify that the entity is eligible, including that a no covered individual holds, directly or indirectly, 20% or more of any class of equity interest (including profits interests and warrants or other rights to purchase or sell shares) in the entity.
- Covered individuals include (A) the President, Vice President, the head of an Executive department (e.g., the Department of State, Department of Defense, the Department of the Treasury, or any other department listed in 5 U.S.C § 101 ), or a Member of Congress, and (B) the spouse, child, son-in-law, or daughter-in-law, of an individual in part (A).
- For purposes of determining eligibility, the equity interest held by two or more individuals who are related as described in part (3)(B) (e.g., the head of an Executive department and their spouse) are aggregated.
- **Oversight** – A Congressional Oversight Commission (the “**Commission**”) will be established and be consisted of five members: a member appointed by the Speaker of the House of Representatives, a member appointed by the minority leader of the House of Representatives, a member appointed by the majority leader of the Senate, a member appointed by the minority leader of the Senate, and a member appointed as “Chairperson” by the Speaker of the House of Representatives and the majority leader of the Senate, after consultation with the minority leaders of the House of Representatives and the Senate. The Commission will provide oversight of the implementation of this legislation by the U.S. Treasury and the Federal Reserve System by holding hearings, taking testimony, procuring from any federal department or agency information necessary to carry out its responsibility, and submitting to Congress reports every 30 days. Such reports of the Commission will include:
  - The impact of the loans, loan guarantees, and investments made under this program on the financial well-being of the people, economy, financial markets, and financial institutions of the U.S.;
  - The extent to which the information made available on transactions under this program has contributed to market transparency; and
  - The effectiveness of the loans, loan guarantees, and investments made under this program in minimizing long-term costs to and maximizing the benefits for taxpayers.
  - The Commission will terminate on September 30, 2025.

## Other CARES Act Provisions

Bryan Cave Leighton Paisner's legislative affairs team has provided an overview of the CARES Act and other congressional emergency measures [here](#). An in-depth description of the CARES Act and the SBA can be found <https://www.bclplaw.com/en-US/thought-leadership/what-businesses-and-lenders-need-to-know-about-the-cares-act-sba-lending-and-loan-forgiveness.html>

## RELATED CAPABILITIES

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