

Coronavirus



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For more information,
contact:

Lawrence T. Yanowitch
+1 703 245 1001
lyanowitch@kslaw.com

Charles W. Katz
+1 703 245 1005
ckatz@kslaw.com

Zack Harmon
+1 202 626 5594
zharmon@kslaw.com

King & Spalding

Washington, D.C.
1700 Pennsylvania Avenue,
NW
Washington, D.C. 20006-
4707
Tel: +1 202 737 0500

Industry-Focused CARES Act Summary

Businesses Critical to Maintaining National Security

The “Coronavirus Economic Stabilization Act of 2020” (CARES Act) provides sub-limits for passenger and cargo air carriers and businesses “critical to maintaining national security” in the authorization of the Secretary of the Treasury to make up to \$500 billion in loans, loan guarantees, and other investments. On March 30, 2020, the Department of Treasury (Treasury) set forth Procedures and Minimum Requirements for Loans pursuant to this program.

Treasury has not yet defined what businesses are “critical to maintaining national security” and will likely use the general definition as a means to get funds to businesses that they deem essential on a case-by-case basis. We have a leading group of national security attorneys who can work with to analyze whether a business is likely to qualify under this definition.

Aggregate Amounts Available for Loans: The CARES Act authorizes the Treasury to make loans, loan guarantees, and other investments to provide liquidity to eligible businesses related to losses incurred as a result of coronavirus. Such loans, loan guarantees, and other investments will be in such form and on terms and conditions as Treasury determines appropriate. The applicable sub-limit under the \$500 billion general program is up to \$17 billion for businesses “critical to maintaining national security”.

ELIGIBILITY CRITERIA

- *U.S. Company:* The business must certify that it is organized in the United States, have significant operations in the United States and have a majority of its employees based in the United States.
- *No Credit Elsewhere:* The business is an eligible business for which credit is not reasonably available at the time of the transaction.
- *Prudent Borrowing:* The obligation is prudently incurred.



- *Covered Losses:* The business has incurred or is expected to incur losses which jeopardize the continued operations of the business.

TERMS AND CONDITIONS TO THE LOAN

- *Term:* The duration of the loan will be no more than 5 years, and will be as short as practicable. No loan forgiveness is permitted.
- *Security/Interest Rate:* The loan is sufficiently secured or is made at a rate that reflects the risk of the loan. The rate, to the extent practicable, will be at an interest rate based upon the market conditions for comparable obligations prior to the outbreak of the coronavirus disease in 2019.
- *Maintenance of Employment:* The business must maintain employment until September 30, 2020 at its March 24, 2020 levels “to the extent practicable” and in any case shall maintain employment levels of no less than 90% of the levels as of March 24, 2020.
- *No Buybacks or Dividend Payments:* The business and its affiliates will be prohibited from any repurchases of equity securities of the business or its parent company, in each case if such securities are listed on a national exchange. That prohibition will last from incurrence of the financial assistance through the date which is 12 months after the payment in full of the loan. The same terms will apply to the payment of dividends or capital distributions by the eligible business on its common stock (with no limitation on parent dividends).
- *Compensation Limits:* For the period beginning on the date of execution of an agreement and ending one year after maturity, no officer or employee whose total compensation exceeded \$425,000 in calendar year 2019 can receive (1) compensation in excess of what was received in 2019 for any 12 month period or (2) severance pay or other benefits upon termination which exceeds twice the maximum total compensation received in calendar year 2019. There is an exception for compensation determined by a collective bargaining agreement entered into prior to March 1, 2020. Compensation in excess of \$3 million is subject to additional limitations.
- *Financial Protection for the Government:* No loan will be issued to (i) an eligible borrower that is listed on a national securities exchange, unless Treasury received a warrant or equity interest in the borrower or (ii) any other borrower unless Treasury receives, in its discretion, a warrant or other equity interest in the borrower, or a senior debt security. Treasury will be prohibited from exercising any voting power over any common stock received.

APPLICATION REQUIREMENTS

Treasury has not yet finalized the information that will be required to apply for loans under this program, but has encouraged businesses interested in participating to begin compiling the following information in order to be able to submit the application once it becomes available:

- *Debt and Equity:* A description of the borrowers’ existing secured and unsecured debt, credit lines with outstanding balances and debt limits, and major classes of existing security holders and creditors.
- *Debt Service:* A schedule of borrower’s debt service obligations for the next 3 years.
- *Employment Levels:* The borrower’s employment levels, by head count and total compensation, as of March 24, 2020 and any proposed changes relative to such amount during 2020.



- **Financial Statements:** Consolidated financial statements for the borrower and any parent for the previous 3 years, including any audited financial statements (with the related notes to such financial statements).
- **Covered Losses:** A description of the losses that the borrower has incurred or will incur as a result of coronavirus, by line item detailing the cause of the loss.
- **Lack of Available Credit:** Evidence that the borrower cannot reasonably obtain credit elsewhere, for example market conditions, borrower’s existing debt obligations, relationships with creditors, or additional medical expenses.
- **Security:** A description of the type and value of all security available to be pledged by borrower or its subsidiaries, on both a senior and subordinated basis.
- **Use of Proceeds:** Purposes for use of loan proceeds.
- **Financial Needs:** Quantitative information on the borrower’s needs for the remainder of 2020, including expected revenues, operating costs and credit, including a description on how the loan, along with other sources of funds, will address those needs.
- **Operating Plan:** A description of the borrower’s operation plan for the remainder of 2020 if the loan is received, including how the loan works within the plan and an analysis showing that the loan is prudent.
- **Cost Restructuring:** A description of any plans that borrower has to restructure operations to improve the borrower’s financial condition.

Additional procedures and rules will be issued in the near future by Treasury and we will endeavor to supplement this alert with such information including a link to the application when it becomes available.

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