

Coronavirus Aid, Relief, and Economic Security Act (CARES): Title IV – Assistance to Severely Distressed Sectors of the United States Economy

Article
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On March 25, 2020, the United States Senate approved the Coronavirus Aid, Relief and Economic Security Act (the “**CARES Act**”), a \$2 trillion stimulus deal that aims to provide emergency assistance and health care response for individuals, families and businesses affected by the 2020 coronavirus pandemic. As expected, the CARES Act includes a fiscal stimulus to severely distressed sectors of the U.S. economy due to the COVID-19 pandemic, including transportation, health care and education (the “**Coronavirus Economic Stabilization Act of 2020**”) (hereinafter, the “**Act**”). This article highlights some of the major points of the Act relating to severely distressed sectors of the U.S. economy.

The Act authorizes \$500 billion in emergency relief to severely distressed industries through loan, loan guarantee, and other investment programs. The Act aims to aid air carriers and other U.S. businesses that have not otherwise received adequate economic relief (“**Eligible Businesses**”) by authorizing the U.S. Secretary of the Treasury to make loans, loan guarantees and other investments in amounts up to \$500 billion, in the aggregate.

Loans, Loan Guarantees, and Other Investments:

Under the Act, the loans, loan guarantees and investments (collectively, the “**Assistance**”) are permitted as follows:

- \$25 billion of Assistance for passenger air carriers and related services;
- \$4 billion of Assistance for cargo air carriers;
- \$17 billion of Assistance for business critical to maintaining national security; and
- \$454 billion (and any amounts available under the Act that are not used above) of Assistance to programs or facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing

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liquidity to the financial system that supports lending to eligible businesses, States, or municipalities by either making loans or loan guarantees, or purchasing obligations or other interests.

Loans to Airlines and Businesses Critical to National Security

The terms and conditions of the Assistance, including application procedures, loan eligibility requirements, and interest rates, will be published by the Secretary within 10 days of the enactment of the Act. The Act provides that the Assistance will be provided to businesses in exchange for a warranty, equity interest or senior debt instrument, and that the principal balance of any loan issued under the Act will not be forgiven.

The Secretary is given considerable discretion in determining the terms and conditions of the Assistance, subject to some general restrictions, which include, but are not limited to the following:

- Loans must be short-term (less than 5 years);
- Loans must be to U.S. domestic businesses with their primary operations and workforce located within the U.S.;
- Loans will be issued to businesses that incurred or expect to incur losses in the amounts that continued operation of the business is at jeopardy;
- Loans will be appropriately secured or include an appropriate interest rate;
- Loan terms will require the business to maintain employment levels (to the extent practicable, but not reduced by more than 10%) existing as of March 24, 2020 until September 30, 2020; and
- Loan terms will prohibit businesses from issuing dividends or buying stock of itself or of its parent during the term of the loan (and 12 months after termination).

Federal Reserve Programs or Facilities

Under the Act, the Board of Governors of the Federal Reserve System are to establish programs or facilities for the purposes of “providing liquidity to the financial system that supports lending, eligible businesses, States, and municipalities.” The Act allocates \$454 billion plus amounts not used under other provisions of this Act to achieve this purpose. The Act does not specifically identify entities that qualify for loans at this time, but we expect the Board of Governors to provide guidelines and application procedures under the programs or facilities it establishes.

The Act does, however, provide restrictions and conditions that eligible businesses must meet to receive loans under the Board of Governors’ programs or facilities, including the following:

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- Businesses must be U.S. domestic businesses with their primary operations and workforce located within the U.S.;
- Businesses must agree to not repurchase their own equity securities, or the equity securities of a parent entity listed on the national stock exchange during the term of the loan and for 12 months following (unless contractually obligated prior to the date of this Act);
- Businesses must agree to not pay dividends or make capital distributions during the term of the loan and for 12 months following; and
- Businesses must comply with certain officer and employee compensation limitations as set forth in the Act.

The Act also includes assistance to mid-sized businesses, which include those businesses with between 500 and 10,000 employees. This provision is designed to provide financing to banks and lenders that can make direct loans to eligible mid-sized businesses. The direct loans are intended to have annual interest rates below 2% and the repayment of loans is to be deferred for six months, or longer as determined by the Secretary. Eligible Businesses seeking direct loans will have to make good faith certifications to their lender. These certifications will be similar to those required from Eligible Businesses seeking Assistance (as described above), including: restoration of the businesses' workforce (i.e., employee numbers, compensation and benefits), bankruptcy proceedings, offshore jobs, and collective bargaining and union organizing efforts.

Current Loan Obligation Relief; Foreclosures; Evictions:

In addition to authorizing direct loans and other assistance to businesses, States, and municipalities; the Act offers relief to borrowers with current loan obligations and to tenants that are struggling to make ends meet.

Foreclosure Moratorium and Consumer Right to Request Forbearance

Under the Act, borrowers with Federally backed mortgage loans (loans secured by liens on 1-4 family occupancies) that are experiencing financial hardship arising from the coronavirus may request forbearance of such loans (regardless of delinquency status) for a period of 60 days, which period may be extended for an additional 4 periods of 30 days each at the request of the borrower, provided such request is made prior to the earlier of the termination of the coronavirus national emergency or December 31, 2020. To request such forbearance, a borrower need only submit a request to the borrower's lender and affirm that the borrower is experiencing a financial hardship due to the novel coronavirus pandemic. No additional fees, penalties, or interest beyond the amounts already scheduled are allowed during the period of forbearance.

Lenders of federally backed mortgage loans are advised that they must notify their borrowers with each periodic statement provided to a borrower and in any oral or written communications by the lender to a borrower of a borrower's right

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to request forbearance. Written notices must be provided in English, Spanish, and any additional languages in which the lender communicates, and must be stated clearly and conspicuously.

In addition to the relief provided under the forbearance provisions, above, and except for vacant or abandoned property, lenders of Federally backed mortgage loans cannot initiate foreclosure processes or execute a foreclosure-related eviction or foreclosure for a period of 60 days beginning as of March 18, 2020.

Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans

Borrowers that were current with loan payments on federally backed multifamily mortgage loans (loans secured by liens on 5 or more family occupancies, excluding temporary financing) as of February 1, 2020, and that are now experiencing financial hardship arising from the coronavirus, may request forbearance of such loans for a period of up to 30 days, which period may be extended for an additional 2 period of 30 days each at the request of the borrower, provided such request is made prior to the earlier of the termination of the coronavirus national emergency or December 31, 2020, and such request is made at least 15 days prior to the end of the then current forbearance period.

During a forbearance period, a borrower cannot evict or initiate any eviction of a tenant for purposes of nonpayment of rent or other fees or charge any penalties or late fees to its tenants. Borrowers benefitting from forbearance also cannot issue notices to their tenants to vacate the premises until after the end of the forbearance period, and cannot require tenants to vacate until 30 days after providing such notice.

Temporary Moratorium on Eviction Filings

For a period of 120 days from the date of the Act, landlords with federally backed mortgage loans, federally backed multifamily mortgage loans, and those participating in certain housing programs cannot commence any legal action to recover possession of such premises for failure to pay rent or other fees, and cannot charge additional fees, penalties or other charges to tenants for failing to pay rent. Such landlords also cannot issue notices to their tenants to vacate the premises until after the end of such 120-day period, and cannot require tenants to vacate until 30 days after providing such notice.

Impact on Businesses and Consumers:

The Act provides much needed relief to businesses, such as airlines, businesses critical to maintaining national security, businesses qualifying for programs or facilities established by the Board of Governors of the Federal Reserve, States and municipalities. It also aims to provide relief to mid-sized businesses (500-10,000 employees) that might not receive assistance from other sources. The loans provided under the distressed business sectors section of the Act are

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intended to help businesses maintain their workforce and business operations through these unprecedented times. Further guidance from the Secretary and Federal Reserve System will likely provide more information describing eligible businesses that qualify for Assistance and the application procedures to obtain such relief.

We are continuously monitoring this rapidly evolving impact to provide our clients with the most updated guidance on how best to safeguard their workforce while maintaining business operations. Please watch for updated guidance and recommendations for employers to consider in response to this ever-changing pandemic.

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