

Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses Updated as of April 10, 2020

GENERAL

1. What is this loan program?

The Coronavirus Aid, Relief and Economic Security (CARES) Act provides funding for up to \$46 billion in loans to certain eligible businesses related to losses incurred as a result of coronavirus. Eligible businesses include:

- passenger and cargo air carriers;
- U.S. businesses that have not otherwise received adequate economic relief in the form of loans or loan guarantees provided under the CARES Act that are
 - certified under 14 CFR Part 145 and approved to perform inspection, repair, replace, or overhaul services (“Part-145 certified repair station operators”);
 - ticket agents as defined in 49 U.S.C. § 40102; or
 - businesses critical to maintaining national security.

Specifically, \$25 billion is available for loans to passenger air carriers, Part-145 certified repair station operators, and ticket agents; \$4 billion is available for loans to cargo air carriers; and \$17 billion is available for loans to businesses critical to maintaining national security.

2. What is the purpose of the loan program?

Borrowers can apply for loans to obtain liquidity to offset covered losses, which include losses incurred directly or indirectly as a result of the coronavirus pandemic, as determined by the Treasury Department.

ELIGIBILITY, TIMING, AND MECHANICS

3. When can companies apply for loans?

For air carriers, Part-145 certified repair station operators, and ticket agents, the Treasury Department has released a draft loan application form for informational purposes, to enable potential applicants to begin preparing the required information. As of April 6, 2020, the Treasury Department has not yet begun accepting applications. In the coming days, the Treasury Department will provide a web-based form for application submissions.

For businesses critical to maintaining national security, the Treasury Department is developing guidance and application materials and expects to release these materials in the near future.

4. What is “a business critical to maintaining national security”?

A business critical to maintaining national security is one that, unless otherwise approved as set forth below, is at the time of the business’s application:

- (1) performing under a “DX”-priority rated contract or order under the Defense Priorities and Allocations System regulations (15 CFR part 700); or
- (2) operating under a valid top secret facility security clearance under the National Industrial Security Program regulations (32 CFR part 2004).

Applicants that do not satisfy either of these two criteria may be considered for loans if, based on a recommendation and certification by the Secretary of Defense or the Director of National Intelligence that the applicant business is critical to maintaining national security, the Secretary of the Treasury determines that the applicant business is critical to maintaining national security. Businesses that do not meet these criteria may nonetheless be eligible for assistance under other CARES Act programs.

5. When and how will the loans be approved and disbursed?

After the Treasury Department receives loan applications from potential borrowers, the Treasury Department will evaluate the application, communicate with applicants as appropriate, and make determinations regarding the timing of loan approvals and disbursements.

PROGRAM REQUIREMENTS AND RESTRICTIONS

6. Are there any requirements placed on borrowers?

To receive a loan, a borrower must agree that:

- It will maintain employment levels as of March 24, 2020 to the extent practicable, and in any case not reduce its employment levels by more than 10 percent from the levels on such date, at least until September 30, 2020.
- Neither the borrower nor any affiliate of the borrower may purchase an equity security of the borrower or any parent company that is listed on a national securities exchange. This restriction does not apply if the borrower or affiliate is required to purchase such a security under a contractual obligation in effect as of March 27, 2020.
- It will not pay dividends or make other capital distributions with respect to the borrower’s common stock until 12 months after the borrower has repaid the loan.

7. Are there restrictions on certain officers’ or employees’ compensation?

Yes. Borrowers receiving a loan must agree to certain limits on the total compensation of certain officers and employees. These limits are described in Section 4004 of the CARES Act. These restrictions will end 12 months after repayment of the loan.

8. Will there be service requirements for air carriers receiving a loan?

Yes. The CARES Act authorizes the Secretary of Transportation to require air carriers receiving loans under this program to maintain certain scheduled air transportation. For more

information, see <https://www.transportation.gov/coronavirus>.

TAXPAYER PROTECTIONS

9. How will taxpayer funds be protected?

The CARES Act generally requires that the Treasury Department receive a warrant or equity instrument in the borrower if the borrower is a public company, or a warrant, equity instrument, or senior debt instrument if the borrower is a private company. Applicants will be invited to submit proposals on the form and amount of taxpayer protections they propose to provide. Together with the other data and information provided in the applications, the

Treasury Department will develop standards for adequate and appropriate taxpayer protections.

AVAILABILITY OF ALTERNATIVE FINANCING

10. What evidence does the Treasury Department seek from applicants to demonstrate that credit is not reasonably available elsewhere?

Under Section 4003(c)(2)(A) of the CARES Act, the Treasury Department may lend to eligible businesses for which credit is not reasonably available at the time of the transaction.

The Treasury Department and its financial and legal advisors will take into account evidence from the prospective borrower's particular circumstances, including its relationships with existing and potential creditors, as well as general market conditions.

AVAILABLE FUNDS

11. What happens if the total requests for loans exceed the maximum amounts of funds available under the CARES Act?

The Treasury Department will use the data and information provided by applicants to determine how to allocate the funds available for loans in a fair and equitable fashion.

COLLECTIVE BARGAINING AGREEMENTS

12. Are there any limitations on loan conditions related to collective bargaining agreements?

Yes. Under Section 4025(a) of the Act, the Treasury Department shall not condition the issuance of a loan on a borrower's implementation of measures to enter into negotiations with the certified bargaining representative of a craft or class of employees of the borrower under the Railway Labor Act or the National Labor Relations Act regarding pay or other terms and conditions of employment.

CONFIDENTIALITY

13. Will the Treasury Department make a public statement acknowledging receipt of applications and naming applicants?

From time to time, the Treasury Department may make public statements concerning the implementation of this program. The Treasury Department is not identifying specific applicants at this time.

14. Will the applications be made public or will they remain confidential?

The Treasury Department does not intend to make applications publicly available, except as required by law. The Treasury Department may disclose applications as necessary to fulfill obligations under the CARES Act or other applicable law, including disclosure to:

- the Department of Transportation, to coordinate concerning the implementation of the Loan program; and
- the Treasury Department Office of Inspector General.

The Treasury Department will also respond to requests for agency records as appropriate under the Freedom of Information Act (FOIA), including FOIA's provisions related to confidential business information.

For further details and application forms, please see the [Procedures and Minimum Requirements for Loans to Air Carriers and Eligible Businesses and National Security Businesses](#).