

Potential Financial Assistance for Companies under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

This document provides a high-level overview of potential options to see if you are able to seek financial assistance under the CARES Act, which was signed into law on March 27, 2020. The [law](#) provides hundreds of billions of dollars for loan programs that will be available to businesses, states and municipalities and which will be administered by various government agencies. **Importantly, many of the parameters of the assistance authorized by the CARES Act will be determined in coming days and weeks in regulatory action by Treasury, the Small Business Administration and the Federal Reserve.** Accompanying this document are Frequently Asked Questions that you may find to be helpful for detail on specific provisions of the bill, as relevant to your company.

- **If you are a small business (under 500 employees):** The bill includes a Paycheck Protection Program that, in general, will provide financial support to small businesses with 500 or fewer employees in an amount generally equal to 2.5x the borrower's monthly payroll costs (up to \$10mn) under Section 7(a) of the Small Business Act (individual employee compensation is capped at a \$100k annual salary). **The employee figure is expected to take into account affiliates,** determined using the SBA's affiliate rules (e.g., if your business is a company affiliated with a private equity or other firm, you may need to count all employees of the private equity or other firm to determine if you are eligible for assistance). However, these affiliation rules are expressly waived for hotel and food services industries, franchise and businesses that receive assistance from SBICs [See page 2 for further information.](#)
- **If you are an air carrier, air cargo or business critical to maintain national security:** Treasury can provide a direct loan or loan guarantee to passenger air carriers, cargo air carriers and businesses "critical to maintaining national security." In order to receive such funding, you must agree to a number of restrictions when borrowing money and while the direct loan is outstanding (e.g., prohibition on stock buybacks and dividends, employee maintenance requirements and compensation restrictions). [See page 3 for further information.](#)
- **If you are a mid-sized business (500 – 10,000 employees): While details are not yet available,** the legislation encourages the Federal Reserve to create a program that provides financing to banks and other lenders that make direct loans to mid-sized businesses, including nonprofits, with 500 – 10,000 employees. The interest rate of the loan cannot be higher than 2% per year, and there is forbearance on principal and interest for at least the first 6 months (though no loan forgiveness). This program can include small businesses / portfolio companies that are considered small businesses (above) or otherwise are companies with fewer than 10,000 employees. You would be required to provide good-faith certification to a list of conditions (e.g., borrowers maintaining employment, not offshoring, collective bargaining, union activities). [See page 4 for further information.](#)
- **If you are a municipality, state or other U.S. business that has significant operations in and a majority of employees based in the U.S.:** Treasury is authorized to provide loans, guarantees and other investments in programs or facilities established by the Federal Reserve to provide liquidity to U.S. businesses that have not otherwise received adequate economic relief in loans and guarantees under the Act. In order to receive such funding, you must agree to a number of restrictions when borrowing money and while the direct loan is outstanding (e.g., prohibition on stock buybacks, dividends, employee limits and compensation), though certain restrictions can be permitted under contractual arrangements or waived by Treasury. There is also no loan forgiveness (i.e., reductions in principal). [See page 5 for further information.](#)
- **If you are a healthcare provider:** HHS is authorized to reimburse eligible healthcare providers, through grants or other instruments, for up to \$100bn of healthcare-related expenses and losses that are attributable COVID-19. Reimbursable expenses and losses include those related to construction of temporary structures, property leases, medical supplies and equipment, testing supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities and surge capacity. [See page 6 for further information.](#)

For US Small Businesses: SBA Payroll Protection Program

In order to get funding under the SBA Payroll Protection Program, you must be a:

- “Small business concern” (as defined by SBA)
- U.S. business with 500 or fewer employees (expected to be subject to very broad SBA affiliation rules)
- U.S. business (i) in the hospitality and restaurant industries,¹ (ii) are SBA recognized franchises, or (iii) receive financial assistance from an SBIC with fewer than 500 employees (not subject to SBA affiliation rules), or
- U.S. business in the hospitality and restaurant industries that have 500 or fewer employees per physical location

Authorized Assistance	Requirements and Restrictions	Considerations
<ul style="list-style-type: none"> • \$349 billion for SBA 7(a) program 	<ul style="list-style-type: none"> • Applies to loans extended between Feb. 15 and June 30, 2020 • Proceeds must be used for payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments • Loans subject to maximum interest rate of 4% and subject to deferment for 6-12 months • Loan size is capped at \$10 million or average monthly “payroll costs” over the prior year multiplied by 2.5 plus certain additional amounts borrowed (see FAQs for detail) • Certification that loan is necessary due to the COVID-19; funds will be used for payroll support; and are not receiving duplicative funds for the same uses from another SBA program (e.g., disaster loan) 	<ul style="list-style-type: none"> • SBA affiliation rules may disqualify all companies with PE/VC sponsors based on 500 employee test, other than those in hospitality and restaurant industries and other limited categories where relief is provided • SBA implementing regulations required by April 11. SBA may set a higher or lower threshold for number of employees in specific industries • SBA requirement that your business is “unable to obtain credit elsewhere” is expressly waived for covered loans; eligibility based on whether your business was operational on February 15, 2020, and had employees for whom you paid salaries and payroll taxes, or a paid independent contractor rather than ability to repay <ul style="list-style-type: none"> ○ If your business is “economically dependent” on the lender, you would likely be considered an affiliate of the lender but not necessarily precluded from obtaining assistance as a result of existing leverage • Priority for small businesses in underserved and rural markets, veterans and members of the military community, small businesses owned by socially and economically disadvantaged individuals

See pages 1-2 of the FAQs for additional information

¹ Covers businesses classified under NAICS section 72 (Accommodation and Food Services), which includes hotels, motels, casino hotels, bed-and-breakfast inns, other traveler accommodation, RV parks and campgrounds, rooming and boarding houses, dormitories, workers’ camps, food service contractors, caterers, mobile food services (e.g., food trucks), drinking places, full-service and limited-service restaurants, cafeterias, buffets, and snack and nonalcoholic beverage bars.



For Air Carriers, Air Cargo and Businesses Critical to Maintaining National Security: Direct Loans and Loan Guarantees from Treasury

In order to get direct funding under this provision you must be a:

- U.S. passenger air carrier and related business, such as inspection and repair provider and ticket agent
- U.S. cargo air carrier
- Business critical to maintaining national security

Authorized Assistance	Requirements and Restrictions	Considerations
<ul style="list-style-type: none"> • \$25 billion for Passenger air carriers and related businesses • \$4 billion for cargo air carriers • \$17 billion for businesses critical to maintaining national security 	<ul style="list-style-type: none"> • Your business cannot have otherwise received “adequate economic relief” in the form of loans or loan guarantees under CARES Act (other than air carriers) • Alternative financing is not reasonably available • Obligation is “prudently incurred” by applicant • Treasury must receive a warrant or other equity interest or a senior debt instrument issued by your business • Loan or loan guarantee is “sufficiently secured” or made at a rate that (i) reflects the risk of the loan or loan guarantee and (ii) to the extent practicable, is not less than a rate based on market conditions for comparable obligations prevalent prior to the COVID-19 outbreak • Duration of the loan or loan guarantee is “as short as practicable” and, in any case, not longer than 5 years • Subject to Buyback Restriction, Dividend Restriction, Employee Maintenance Requirement, U.S. Business Requirement and Compensation Restriction (See <u>Annex</u>) • Incurred or is expected to incur losses directly or indirectly as a result of the pandemic that would jeopardize your business’s continued operations • No loan forgiveness (i.e., no reductions in principal amount through loan forgiveness are permitted) 	<ul style="list-style-type: none"> • Treasury Secretary to publish procedures for applications and minimum requirements by April 6 • Share buyback prohibition would apply to the ultimate parent of an affiliated entity of your company • If you take funding under this provision, you may have limited ability to obtain relief under multiple programs • The “prudently incurred” obligation may limit excessive leverage • The interest rate condition requiring “risk” consideration may effectively limit excessive leverage • Loans and loan guarantees under this program subject to extensive public reporting by Treasury and Congressional oversight

See page 7 of the FAQs for additional information



For Mid-Sized Businesses (500 – 10,000 Employees):
Federal Reserve Programs and Facilities Supported by Treasury Loans, Loan Guarantees and Investment

In order to get funding from the Fed under this provision, you must be a:

- U.S. business with 500 to 10,000 employees that has significant operations in and a majority of employees based in the United States

Authorized Assistance	Requirements and Restrictions	Considerations
<ul style="list-style-type: none">• Part of the \$454bn allocated (see p. 5)• Program for Mid-Sized Businesses (500 – 10,000 employees)	<ul style="list-style-type: none">• Subject to requirements below for other Federal Reserve Programs and Facilities• Interest rate of loan not higher than 2% per annum• All loan payments deferred for the first six months (subject to extension by Treasury Secretary)• Your business must make Mid-Size Business Certification (See Annex)	<ul style="list-style-type: none">• See general considerations for other Federal Reserve Programs and Facilities below• <u>Unlike the Payroll Protection Program described above, which appear to apply the broad SBA attribution rules for determining employee count except where specific relief has been provided, Mid-Size Business Program does not appear to require similar attribution when determining employee count</u>• Program does not limit the Federal Reserve's discretion to establish other similar programs or facilities to support small- and mid-size businesses (e.g., the Federal Reserve Main Street Business Lending Program, expected to come soon)

See page 6 of the FAQs for additional information

**For Municipalities, States and Other Eligible Businesses:
Federal Reserve Programs and Facilities Supported by Treasury Loans, Loan Guarantees and Investment**

In order to get funding from the Federal Reserve under this provision, you must be a:

- Municipality, state or other U.S. business that has significant operations in and a majority of employees based in the United States that has not otherwise received adequate economic relief in loans and guarantees under the CARES Act
- **Importantly, Treasury has significant discretion in how to interpret the below criteria through rulemaking and guidance. Many of the parameters of the assistance will be determined in coming days and weeks by Treasury and the Federal Reserve**

Authorized Assistance	Requirements and Restrictions	Considerations
<ul style="list-style-type: none"> • \$454bn plus unused amounts available from Direct Loans and Loan Guarantees above 	<ul style="list-style-type: none"> • Your business must not have otherwise received “adequate economic relief” in the form of loans or loan guarantees under CARES Act • The Buyback Restriction, Dividend Restriction and Compensation Restriction (see Annex) apply only to a program or facility that provides “direct loans,” <i>provided that</i>: <ul style="list-style-type: none"> ○ the Buyback Restriction does <u>not</u> apply to affiliates; it restricts the business only from repurchases of its or any parent company shares listed on a national security exchange ○ any or all of the three restrictions may be waived by Treasury Secretary with respect to any program or facility upon a determination that such waiver is necessary to protect the interests of the Federal Government • Any requirements under Section 13(3) of the Federal Reserve Act (including loan collateralization, taxpayer protection, borrower solvency) apply to the program <ul style="list-style-type: none"> ○ The CARES Act does not otherwise impose leverage limits for borrowers receiving assistance • No loan forgiveness (i.e., no reductions in principal amount through loan forgiveness are permitted) 	<ul style="list-style-type: none"> • The \$454bn that is allocated will be able to enhance the recently-announced Federal Reserve-designed lending and purchasing facilities, as well as support any new facilities designed to stabilize the broader US economy • We expect that the Federal Reserve will use leverage to increase amounts against the assets and capital of SPVs and other vehicles established for the programs • Federal Reserve may purchase obligations or other interests either directly from the issuer or on secondary markets, or by making loans • A “direct loan” is a loan through a bilateral loan agreement entered into directly with your business as borrower <ul style="list-style-type: none"> ○ Excludes syndicated loans, loans originated by a financial institution in the ordinary course and securities or capital market transactions ○ A direct purchase by an SPV under a Federal Reserve program would not be a direct loan; therefore, it does not appear that a Federal Reserve program where SPV engages in direct purchases would implicate the Buyback Restriction; Dividend Restriction and Compensation Restriction • Subject to reporting by Federal Reserve to Congress; waivers by Treasury Secretary subject to Congressional oversight

See pages 5-6 of the FAQs for additional information

For Eligible Healthcare Providers

In order to get funding from HHS under this provision, you must be a:

- Public entity, Medicare or Medicaid enrolled supplier and provider
- Other U.S. business and nonprofit specified by the HHS Secretary that provides diagnoses, testing, or care for individuals with possible or actual cases of COVID-19

Authorized Assistance	Requirements and Restrictions	Considerations
<ul style="list-style-type: none"> • \$100bn 	<ul style="list-style-type: none"> • Reimbursements, through grants or other mechanisms, for necessary expenses for healthcare-related expenses or lost revenues that are attributable to COVID-19 <ul style="list-style-type: none"> ○ Funds available for building or construction of temporary structures, leasing of properties, medical supplies and equipment (including personal protective equipment and testing supplies), increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity ○ Funds may <u>not</u> be used to reimburse expenses or losses that have been reimbursed from other sources or that other sources are obligated to reimburse (e.g., insurance) • You must provide a justification of need for the payment and a valid tax ID number 	<ul style="list-style-type: none"> • Process and timing for determination of other eligible businesses by HHS Secretary is not clear • You must submit reports and maintain documentation as the HHS Secretary are necessary to assess compliance • Subject to monitoring and auditing by HHS and reporting to Congress

See page 4 of the FAQs for additional information

Annex

Buyback Restriction: The agreement provides that, until the date that is one year after the loan or loan guarantee is no longer outstanding, your business may not purchase any equity security listed on a national securities exchange of your business, except to the extent required under a contractual obligation in effect as of the enactment of the CARES Act.

Dividend Restriction: The agreement provides that, until the date that is one year after the loan or loan guarantee is no longer outstanding, your business may not pay dividends or make other capital distributions with respect to its common stock.

Employee Maintenance Requirement: The agreement provides that, until September 30, 2020, your business must maintain its employment levels as of March 24, 2020 to the extent practicable, and, in any case, may not reduce employment levels by more than 10% from the levels as of March 24.

U.S. Business Requirement: The agreement includes a certification that your business (i) is created or organization in the United States or under U.S. law and (ii) has significant operations in, and a majority of its employees based in, the United States.

Compensation Restriction: During the period beginning on the execution of the agreement and ending one year after the date on which the loan or loan guarantee is no longer outstanding, the agreement must provide that:

- no officer or employee of your business whose total compensation—including salary, bonus, stock awards, and other financial benefits—exceeded \$425,000 in calendar year 2019 (other than an employee whose compensation would be determined under a preexisting collective bargaining agreement) may receive from the business (i) total compensation in any 12 consecutive months that exceeds his or her 2019 total compensation or (ii) severance pay or other benefits upon termination of employment that exceed twice his or her 2019 total compensation; and
- no officer or employee of your business whose total compensation exceeded \$3 million in calendar year 2019 may receive from the business total compensation in any 12 consecutive months that exceeds the sum of \$3 million plus half of any amounts by which his or her 2019 total compensation exceeded \$3 million.

Mid-Size Business Certification: To apply for a direct loan under this program, your business must make a good-faith certification that:

- the uncertainty of economic conditions as of the date of application makes the loan request necessary to support your ongoing operations;
- You will use the funds to retain at least 90% of its workforce at full compensation and benefits until September 30, 2020;
- You intend to restore at least 90% of your workforce as of February 1, 2020, and to restore full compensation and benefits to your workers, within four months of the termination of the public health emergency declared in response to the COVID-19 outbreak;
- You are an entity or business domiciled in the United States with significant operations and employees located in the United States;
- You are not a debtor in a bankruptcy proceeding;
- You satisfy the U.S. Business Requirement;
- You will comply, while the direct loan is outstanding, with the Repurchase Restrictions and the Dividend Restrictions;
- You will not outsource or offshore jobs, or abrogate existing collective bargaining agreements, for the term of the loan and for two years after completing repayment of the loan; and
- You will remain neutral in any union organizing effort for the term of the loan.



This document been prepared by Goldman Sachs and its legal counsel and is intended to serve as only a high-level summary of specific provisions of the CARES Act. This summary does not constitute advice and does not cover all aspects of the law, including provisions that may be relevant to, or apply differently to, your business, your employees and/or your shareholders. For any specific questions about the CARES Act and how it may impact your business, we strongly encourage that you contact your legal counsel and your business contacts at Goldman Sachs.