

Frequently Asked Questions (FAQs) on Key Provisions of the CARES Act

The following document provides a high-level overview of key provisions under the [CARES Act](#) which provides hundreds of billions of dollars that will be administered by various government agencies to help stabilize the US economy over the coming weeks and months. While this document covers provisions from the legislative text, 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 (SBA) and the Federal Reserve. This document is intended to accompany the summary chart and provide more detailed information regarding specific questions you may have about a particular program under the CARES Act. For any additional questions please speak with your business contacts at Goldman Sachs.

Small Business Assistance under the Paycheck Protection Program

Q: How much is allocated to small business assistance?

- The legislation allots almost **\$380bn** in loans and grants from the SBA
 - **\$349 billion** is available through 7(a) loans from the SBA for the Payroll Protection Program
 - An additional **\$27 billion** was added in emergency grants to aid in servicing existing SBA loans

Q: Who is eligible under the Paycheck Protection Program?

- In addition to “traditional” small businesses, assistance will be provided to non-profits, sole proprietors, independent contractors, self-employed individuals and “gig” workers
- Small businesses will be eligible if they have **500 or fewer employees**, unless the SBA has established a higher size threshold for the relevant industry
- The employee figure is expected to take into account affiliates, determined using the SBA’s affiliate rules (e.g., **if your business is a portfolio company affiliated with a private equity or other firm, your business may need to count all employees of the private equity or other firm**)
- However, in determining the number of employees, the legislation waives the affiliation rules of the SBA (which count affiliates of an entity in determining the number of employees) for certain sectors such as hotel and restaurant sectors (see below)

Q: Which types of businesses are exempt under the CARES Act from the SBA affiliation rules?

- The following businesses are exempt under the CARES Act from the SBA affiliation rules, which means that if your business qualifies as any of the below, you may be considered a small business under this section even if you have more than 500 employees when counted with your affiliate(s):
 - U.S. business in the hospitality and restaurant industries, including 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
 - U.S. businesses that are SBA recognized franchises
 - U.S. businesses that receive financial assistance from an SBIC with fewer than 500 employees

Q: What is the window of coverage?

- The program will apply retroactively to February 15 and extend hardship criteria through June 30

Q: How much will the business receive?

- The maximum loan amount is calculated as 2.5 times the recipient's average total monthly "payroll costs", which exclude the portion of an individual's annual salary above \$100,000 as prorated from February 15 to June 30, 2020
- This prorated amount is included in "payroll costs", which is then multiplied by 2.5 to determine the maximum loan amount (capped at \$10mm total)
- Note that "payroll costs" include more than annual salaries (e.g., group healthcare insurance premiums, retirement benefits, and vacation, paternal, family, medical and sick leave payments)
- The loan proceeds may be used beyond payroll costs to cover "salaries, commission or similar compensation" – as well as utilities, lease payments, mortgage interest payments (but not prepayment of or payment of principal), and payments of interest on other debt obligations – but these expenses are not included in the calculation of "payroll costs" to determine the loan amount

Q: How are "payroll costs" defined and calculated?

- Payroll costs for businesses include salaries, wages, cash tips, payments for vacation, parental, family, medical, or sick leave, and group health care benefits, as well as certain other employment-related expenses
- Payroll costs for sole proprietors and independent contractors include wages and net earnings from self-employment
- Payroll costs exclude compensation to an individual in excess of \$100,000 annually (prorated for the window of coverage), compensation to employees principally residing outside the United States, certain taxes, and qualified sick leave and family wages that receive a tax credit under the Families First Coronavirus Response Act, the second emergency legislation enacted
- The average payroll will be calculated over (i) the year prior to the loan origination, (ii) for seasonal employers, the period between February 15, 2019 through June 30, 2019 or, at the election of the borrower, March 1, 2019 through June 30, 2019, or (iii) the period between January 1, 2020 and February 29, 2020 for businesses not in operation during the period between February 15, 2019 and June 30, 2019

Q: Can payments be deferred?

- Yes. The SBA will require lenders to defer payments of principal and interest for loans under the Payroll Protection Program for at least six months and not more than one year

Q: How are loans forgiven?

- Borrowers will be eligible for loan forgiveness equal to the amount spent during an 8-week period after the origination date of the loan on:
 - payroll costs,
 - interest payment on any mortgage incurred prior to February 15,
 - payment of rent on any lease in force prior to February 15, and
 - payment on any utility for which service began before February 15

Q: Are there reductions in forgiveness based on layoffs and wage reductions?

- Loan forgiveness will be reduced for a business that reduces its employees or employee pay (or has done so since February 15, 2020), unless the business, as applicable, rehires the employees or eliminates the salary reductions by June 30, 2020

Q: How and when will we get additional details about the Payroll Protection Program?

- The legislation provides that federal agencies, including the SBA and the Treasury, will issue regulations and/or guidance to implement the Payroll Protection Program, and the SBA is required to issue regulations under emergency rulemaking authority by **April 11, 2020**

Unemployment / Individual Provisions

Q: How will unemployment benefits be structured?

- The bill provides for **\$600 weekly payments** in addition to regular unemployment compensation
- Individuals may **not receive more than 39 weeks** of combined unemployment assistance between state and local resources for this year
- Only available between January 27, 2020 and December 31, 2020 unless extended

Q: What is the threshold for cash payments?

- Individuals making up to **\$75,000**, heads of households up to **\$112,500** and joint filers up to **\$150,000** will receive a **\$1,200 check**, or **\$2,400** in the case of eligible individuals filing a joint return
 - Children of qualifying individuals / families will also receive **\$500**
 - Therefore, a family of 4 up to this threshold could receive **\$3,400** total
- Phase out schedule: The payments begin to phase out above \$75,000 / \$150,000 so that payments would decrease at a rate of \$5 for every additional \$100 in income
- Cut off threshold: It would phase out entirely by **\$99,000** for individuals and **\$198,000** for joint filers

Business / Tax Provisions

Q: How does the payroll tax credit and deferral work?

- One new provision is a refundable payroll tax credit for 50 percent of wages paid by eligible employers to certain employees, paid after March 12, 2020 and before January 1, 2021
 - The credit is available to employers, including non-profits, whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings
 - The credit is also provided to employers who have experienced a greater than 50 percent reduction in quarterly receipts, measured on a year-over-year basis until quarterly receipts are back at above 80 percent measured on a year-over-year basis.
 - If an eligible employer had on average more than 100 full-time (i.e., avg. 30+ hours/week) employees during 2019, the credit is available with respect to wages paid to employees who are **not** providing services due to the circumstances described above
 - The amount of the credit is based on wages paid to an employee during a specified period and the credit per employee is capped at \$5,000
- Separately, employers are able to defer their portion of the payroll tax through the end of 2020. The deferred payments can be split into two tranches to be paid in 2021 and 2022

Q: Were changes made to the 2017 Tax Cuts and Jobs Act?

- The legislation also modifies the 2017 tax changes by expanding the limitation on net operating losses (NOLs) to five years, starting in 2021
 - Recall that the 2017 TCJA eliminated the ability to carry back NOLs to prior taxable years
 - Taxpayers that have NOLs from 2018 can amend prior returns to carry back 2018 NOLs and receive immediate refund for prior taxes overpaid
 - Many taxpayers will have significant NOLs in 2020
 - NOLs carried back to pre-2017 TCJA tax years will offset 35% of taxable income rather than 21% applicable to post-2017 TCJA tax years
 - Interaction with other provisions of the tax code, in particular GILTI and BEAT provisions, may reduce the taxpayers' benefit from the modifications to the NOL provisions

Health Care Provisions / Hospital Funding

Q: The cornerstone of the title is increased funding for hospitals. Can you explain how hospitals and other eligible healthcare providers get these funds?

- The legislation includes a host of changes and additional funding to help support the healthcare sector and establishes a \$100 billion fund to support healthcare
- These funds are available for “eligible healthcare providers” which includes:
 - Public entities, Medicare or Medicaid enrolled suppliers and providers
 - Other U.S. entities and nonprofits specified by the HHS Secretary that provide diagnoses, testing, or care for individuals with possible or actual cases
- HHS will review applications and make payments on a rolling basis in order to get money into the health system as quickly as possible

Q: How will the money be used?

- HHS will be given significant flexibility in determining how the funds are allocated
- Reimbursements, through grants or other mechanisms, for necessary healthcare-related expenses
 - 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
 - Lost revenue (e.g., forgone revenue from cancelled procedures) attributed to coronavirus is also a qualified expense
 - However, any expenses reimbursed or obligated to be reimbursed by insurance or other mechanisms are not eligible
 - HHS Secretary will also be required to establish a reconciliation process under which payments will have to be returned to the fund if other sources provide reimbursement for expenses

The Coronavirus Economic Stabilization Act of 2020 (CESA)

Q: How is this the money allocated?

- The legislation allocates \$500 billion to the Treasury to use the below programs. The three programs highlighted below imposes a designation as a “covered company”

1. Up to \$25 billion in loans and loan guarantees for passenger air carriers **or** eligible businesses
2. Up to \$4 billion in loans and loan guarantees for cargo air carriers
3. Up to \$17 billion in loans and loan guarantees for businesses critical to maintaining national security

4. Up to \$454 billion plus any amounts not used under the preceding three authorities to make loans and loan guarantees to, and other investments in, eligible Federal Reserve programs or facilities for businesses, states and municipalities

- ***Importantly, the statutory restrictions imposed under this section appear to only apply to the ultimate beneficiary of any loan and not a financial intermediary. This is an important point that will need to be clarified by the Federal Reserve and Treasury as the facilities are developed***

Criteria / Parameters for \$454bn in Assistance

Q: What disclosure must be provided with respect to loans or loan guarantees to, or other investments in, Federal Reserve programs or facilities?

- The Federal Reserve must provide the disclosure required by Section 13(3) of the Federal Reserve Act within 7 days of authorizing a new facility or other financial assistance and once every 30 days with respect to outstanding loans or financial assistance
- Under Section 13(3), within 7 days of authorizing a new facility or other financial assistance, the Federal Reserve must disclose to specified congressional committees its justification for acting; the identity of recipients; the date, amount and form of assistance; and the material terms
 - This report must be published within 7 days of submission to Congress
 - Section 13(3) includes language that authorizes the Federal Reserve Chairman to require that certain information, including the identity of and amounts borrowed by participants, be kept confidential
- Under Section 13(3), every 30 days while loans or other assistance are outstanding, the Federal Reserve must provide updates specified congressional committees
 - This report must be published within 7 days of submission to Congress

Q: What type of business is eligible to receive funding under CESA?

- A U.S. “air carrier
- Any other U.S. business that has not received “adequate economic relief” in the form of loans or loan guarantees under the CARES Act. CESA does not define “adequate economic relief”

Q: What are the types of restrictions that may apply under multiple CESA authorities?

- The requirements applicable to loans, loan guarantees, and other investments differ depending on whether Treasury provides direct financing to (1) air carriers, (2) air cargo or (3) businesses critical to maintaining national security, or whether they provide funding through CESA to (4) municipalities, states or other U.S. businesses that have 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. The fourth category is referred to below as “eligible businesses”
- The restrictions listed below **may not** apply to all loans, loan guarantees, or other investments to eligible businesses and there are circumstances that could allow them to be waived

- Importantly, the statutory restrictions imposed under this section appear to only apply to the ultimate beneficiary of any loan and not a financial intermediary. Highlights include:
 1. Buyback Restriction: Until one year after the loan or loan guarantee is no longer outstanding (or while the loan is outstanding, for the mid-sized business program addressed in the next question), the eligible business may not purchase any equity security listed on a national securities exchange (e.g., NYSE, NASDAQ) of the eligible business or any parent entity **except** where required under a contractual obligation in effect at the time of enactment
 2. Dividend Restriction: Until one year after the loan or loan guarantee is no longer outstanding (or while the loan is outstanding, for the mid-sized business program addressed in the next question), the eligible business may not pay dividends or make other capital distributions to its common stock
 3. Compensation Restrictions: Until one year after the loan or loan agreement is no longer outstanding:
 - No officer or employee of the eligible business whose “total compensation” exceeded \$425,000 in 2019 (other than an employee whose compensation is determined under a preexisting collective bargaining agreement) may receive:
 - Total compensation in any 12 consecutive months that exceeds 2019 total compensation
 - Severance pay or other termination benefits that exceed twice 2019 total compensation
 - No officer or employee whose “total compensation” exceeded \$3 million in calendar year 2019 may receive total compensation in any 12 consecutive months that exceeds the sum of \$3 million plus half of any amounts by which 2019 total compensation exceeded \$3 million
 - “Total compensation” includes salary, bonuses, stock awards, and other financial benefits
- Treasury may waive any or all of the above restrictions if determined necessary to protect the interests of the Federal Government

Q: How does the mid-sized business program work?

- Treasury is authorized to provide financing to banks and other lenders that make direct loans to eligible businesses with between **500 and 10,000 employees**, including nonprofits. Further details on this program are expected in the coming days / weeks
- Terms and conditions: The legislation is very high-level but it notes that the following terms apply would apply for any program that the Fed is to establish:
 1. Interest rate no higher than 2%
 2. No principal or interest may be due for six months and could be extended by Treasury
- To apply for a loan as a part of this program, a borrower will need to certify:
 1. Necessity: Economic conditions make the loan request necessary to support ongoing operations
 2. Use of funds for employee retention: Funds will be used to retain at least 90% of its workforce at full compensation and benefits until September 30, 2020
 3. Restoration of workforce and compensation: restore at least 90% of its workforce as of February 1, 2020, and to restore full compensation / benefits within four months of the termination any national emergency
 4. U.S. business: The borrower and employees are located in the United States
 5. Bankruptcy: The borrower is not a debtor in a bankruptcy proceeding
 6. Buyback Restriction: While the loan is outstanding, the borrower will comply with the Buyback Restriction (see above)
 7. Dividend Restriction: While the loan is outstanding, the borrower will comply with the Dividend Restriction (see above)
 8. Compensation Restrictions: The Borrower would be subject to the Compensation Restrictions (see above)
 9. Outsourcing and offshoring: For the term of the loan plus two years after repayment, the borrower will not outsource or offshore jobs
 10. Collective bargaining agreements: For the term of the loan plus two years after repayment, the borrower will not abrogate existing collective bargaining agreements
 11. Union organizing: For the term of the loan, the borrower will remain neutral in any union organizing effort

Criteria / Parameters for Air Carriers, Air Cargo and Businesses Necessary to Maintain National Security (i.e. \$46bn in Programs 1-3)

Q: What additional requirements will covered companies be subject to?

- For loans, Treasury must set the interest rate based on the risk and the current average yield on outstanding U.S. government obligations of comparable maturity
- Treasury must publish application procedures and minimum requirements **by April 6, 2020**
- For any loan or loan guarantee, the Treasury Secretary must determine, among other things, that:
 1. Availability of credit: The applicant is an eligible business for which credit is not reasonably available
 2. Prudence: The intended obligation is prudently incurred by the applicant
 3. Security or rate: The loan or loan guarantee is **either** (i) sufficiently secured **or** (ii) made at a rate that reflects its risk and, to the extent practicable, is not less than a rate based on market conditions for comparable obligations prevalent prior to the COVID-19 outbreak
 4. Duration: No longer than 5 years
 5. Buyback Restriction: The applicant **and its affiliates** will comply with Buyback Restriction described above
 6. Dividend Restriction: The applicant will comply with the Dividend Restriction described above
 7. Employment levels: Until September 30, 2020, the applicant will maintain its employment levels as of March 24, 2020, to the extent practicable and, in any case, will not reduce its employment levels below 90% of the March 24 level
- Compensation Restrictions: Subject to the Compensation Restrictions described above
- Warrants or other instruments: For any loan or loan guarantee, the Treasury must receive:
 1. *Eligible business that **has** issued publicly traded securities*: A warrant or other equity interest in the eligible business or, if the Treasury Secretary determines the eligible business cannot feasibly issue warrants or equity interests, a senior debt instrument issued by the eligible business in an amount and on terms as deemed appropriate by the Treasury Secretary
 2. *Eligible business that **has not** issued publicly traded securities*: A warrant or other equity interest in, or a senior debt instrument issued by, the eligible business
- Treasury terms: Conditions include:
 - The terms of any equity instrument must be designed to provide for reasonable participation in equity appreciation
 - The terms of any senior debt instrument must be designed to provide a reasonable interest rate premium
 - The Treasury Secretary may sell, exercise or surrender any instrument received, but may **not** vote shares of common stock
- No Waiver: Unlike direct loans in the Federal Reserve programs, Treasury **may not waive** the Buyback Restriction, the Dividend Restriction or the Compensation Restrictions in this context

Q: What disclosure must be provided with respect to loans or loan guarantees to Covered Businesses

- Within 72 hours of a transaction, Treasury will publish:
 1. a description of the transaction, including the identity of counterparty
 2. the amount of the transaction
 3. the interest rate, conditions and other material or financial terms of the transaction
 4. the term sheet, if applicable, the contract and other relevant documentation for the transaction
- Within 7 days of a transaction, Treasury will submit reports to specified congressional committees that summarize actions taken; obligations, expenditures and disbursements; and a detailed financial statement of the Treasury Secretary's activities under these three authorities
- Made public: The report must be published within 7 days of submission to Congress
- Additional reports: Every 30 days while such a loan or loan guarantee is outstanding, Treasury will publish a report summarizing the same information required to be provided in the reports to Congress

Additional Oversight Requirements**Q: *What additional oversight is required?***

- The legislation establishes **two levels of oversight**
 1. A Congressional Oversight Commission that runs through September 30, 2025 that will conduct oversight of economic relief provisions, hold hearings, and submit monthly reports to Congress
 - The Commission is to be made up of a five-member panel selected by Senate and House majority and minority leaders
 2. Similar to the SIGTARP, the legislation establishes a special inspector general will conduct audits of the Treasury Secretary's activity
 - The new Special Inspector General will be presidentially appointed and Senate confirmed and will have a \$25 million budget and subpoena power

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.