

**DELIBERATIVE AND PRE-DECISIONAL SENSITIVE
WORKING DRAFT 03/30/20**

**Procedures and Minimum Requirements for Loans to Air Carriers and Eligible
Businesses and National Security Businesses under Division A, Title IV, Subtitle A of
the Coronavirus Aid, Relief, and Economic Security Act**

March 30, 2020

INTRODUCTION

These procedures and minimum requirements provide information regarding loans the Department of the Treasury (Treasury Department) will make to passenger and cargo air carriers and eligible businesses and businesses critical to maintaining national security that have experienced losses as a result of coronavirus. These procedures are issued pursuant to the Coronavirus Aid, Relief, and Economic Security Act (Act). They are intended to allow potential borrowers to begin preparing to submit an application.

These procedures and requirements are preliminary. They will be supplemented promptly with additional terms and a loan application form. Further, they may be updated, revised, or modified at any time, and the requirements contained herein may be waived by the Treasury Department in its sole discretion to the extent permitted by law.

General Authority. Section 4003(a) of the Act authorizes the Department of the Treasury to make loans, loan guarantees, and other investments to provide liquidity to eligible businesses, states, and municipalities related to losses incurred as a result of coronavirus. Section 4003(c)(1) (A) of the Act authorizes the Treasury Department to make such loans, loan guarantees, and other investments in such form and on such terms and conditions and containing such covenants, representations, warranties, and requirements (including requirements for audits) as the Treasury Department determines appropriate.

Aggregate Amounts for Loans. Section 4003(b) of the Act provides that:

- up to \$25 billion is available for passenger air carriers; eligible businesses certified to perform inspection, repair, replace, or overhaul services; and ticket agents;
- up to \$4 billion is available for cargo air carriers; and
- up to \$17 billion is available for businesses critical to maintaining national security.

DEFINITIONS

Following are definitions that the Treasury Department will apply for purposes of these procedures and minimum requirements. These definitions supplement and interpret certain terms in the Act.

“Act” means the Coronavirus Aid, Relief, and Economic Security Act (S. 3548, 116th Cong.).

“Air carrier” has the meaning given to such term under 49 U.S.C. § 40102.

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“Borrower” means a passenger air carrier; cargo air carrier; eligible business certified by the Department of Transportation under 14 C.F.R. part 145 to perform inspection, repair, replace, or overhaul services; ticket agent; or business critical to maintaining national security, in each case that has applied to the Treasury Department for a loan under Section 4003(b)(1) of the Act or to which the Treasury Department makes a loan under Section 4003(b)(1) of the Act. “Borrower” includes the relevant entity’s subsidiaries, as the context requires.

“Cargo air carrier” will be construed to mean an air carrier that, during the time period from April 1, 2019 to September 30, 2019, derived more than 50% of its air transportation revenue from the transportation of property or mail, or both.

“Covered loss” includes losses incurred directly or indirectly as a result of coronavirus, as determined by the Treasury Department.

“Employee,” except where the context otherwise requires, has the meaning given in Section 2 of the National Labor Relations Act (29 U.S.C. § 152) and includes any individual employed by an employer subject to the Railway Labor Act (45 U.S.C. § 151 *et seq.*).

“Passenger air carrier” will be construed to mean an air carrier that, during the time period from April 1, 2019 to September 30, 2019, derived more than 50% of its air transportation revenue from the transportation of passengers.

“Ticket agent” has the meaning of such term under 49 U.S.C. § 40102.

FORM OF ASSISTANCE

Borrowers will be able to apply for a loan directly from the Treasury Department, which will disburse a loan directly to borrowers whose applications are approved by the Treasury Department.

ELIGIBLE BORROWERS

Entities eligible to apply for a loan are:

- (1) passenger air carriers;
- (2) cargo air carriers;
- (3) businesses certified by the Department of Transportation under 14 C.F.R. Part 145 and approved to perform inspection, repair, replace, or overhaul services that have not otherwise received adequate economic relief in the form of loans or loan guarantees under other programs authorized by the Act;
- (4) ticket agents that have not otherwise received adequate economic relief in the form of loans or loan guarantees under other programs authorized by the Act; And
- (5) businesses critical to maintaining national security.

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STATUTORY ELIGIBILITY CRITERIA AND TERMS AND CONDITIONS

Under section 4003(c)(2) of the Act, the Treasury Department may enter into an agreement to make a loan to a borrower if the Treasury Department makes the following determinations, in its sole discretion.

- *No Credit Elsewhere.* The borrower is an eligible business for which credit is not reasonably available at the time of the transaction.
- *Prudent Borrowing.* The intended obligation by the borrower is prudently incurred.
- *Security/Interest Rate.* The loan is sufficiently secured or is made at a rate that reflects the risk of the loan and that is, to the extent practicable, not less than an interest rate based on market conditions for comparable obligations prevalent prior to the outbreak of the coronavirus disease 2019.
- *Term.* The duration of the loan is as short as practicable, and in any case not longer than five years.
- *No Stock Buybacks.* The agreement provides that, until the date 12 months after the date the loan is no longer outstanding, neither the borrower nor any affiliate of the borrower may purchase an equity security that is listed on a national securities exchange of the borrower or any parent company of the borrower, except to the extent required under a contractual obligation in effect as of March 27, 2020.
- *No Dividends.* The agreement provides that, until the date 12 months after the date the loan is no longer outstanding, the borrower will not pay dividends or make other capital distributions with respect to the common stock of the borrower.
- *Employment Levels.* The agreement provides that, until September 30, 2020, the borrower will maintain its employment levels as of March 24, 2020, to the extent practicable, and in any case will not reduce its employment levels by more than 10 percent from the levels on such date.
- *U.S. Business.* The agreement includes a certification by the borrower that it is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States.
- *Covered Losses.* The borrower has incurred or is expected to incur covered losses such that the continued operations of the business are jeopardized.

Loans will also be subject to the following terms and conditions set forth in the Act.

- *Financial Protection of the Government.* The Treasury Department may not issue a loan to (1) a borrower that has issued securities that are traded on a national securities exchange unless the Treasury Department receives a warrant or equity interest in the borrower, or (2)

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any other borrower unless the Treasury Department receives, in the discretion of the Treasury Department, a warrant or equity interest in the borrower, or a senior debt instrument issued by the borrower. The Treasury Department is prohibited from exercising voting power with respect to any shares of common stock acquired under Section 4003 of the Act.

- *Prohibition on Loan Forgiveness.* Under section 4003(d)(3) of the Act, the principal amount of a loan cannot be reduced through loan forgiveness.
- *Limitation on Certain Employee Compensation.* Under Section 4004 of the Act, the Treasury Department may only enter into an agreement to make a loan if the borrower agrees to specified limitations on the total compensation of certain employees.
- *Continuation of Certain Air Service.* Under Section 4005 of the Act, a borrower that is an air carrier must comply with requirements to maintain scheduled air transportation service that the Secretary of Transportation deems necessary to ensure services to any point served by that air carrier before March 1, 2020.
- *Conflicts of Interest Certification.* Under Section 4019 of the Act, the principal executive officer and the principal financial officer, or individuals performing similar functions, of a borrower must certify, before the transaction is approved, that the borrower is eligible to enter into that transaction, including that the borrower is not a covered entity, as defined in Section 4019(a)(2).

APPLICATION INFORMATION REQUIREMENTS

As part of the loan application process, borrowers will be required to provide certain information. Following is an initial list of information that will be required. Additional required information will be set forth in the supplemental procedures to be issued by the Treasury Department. Prospective borrowers are encouraged to begin compiling this information in order to expedite their ability to submit a loan application.

- *Debt.* A description of the borrower's existing secured and unsecured debt, bank and other credit lines with outstanding and maximum balances, and major classes of existing security holders and creditors.
- *Debt Service.* A description of the borrower's scheduled debt service for the next three years.
- *Employment Levels.* The borrower's employment levels, by head count and total compensation amount, as of March 24, 2020, and any proposed changes to the borrower's employment levels, relative to March 24, 2020, during 2020.

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- *Financial Statements.* The consolidated financial statements of the borrower and any corporate parents for the previous three years, including, if available, financial statements that have been audited by an independent certified public accountant, including any associated notes, and any interim financial statements and associated notes for the current fiscal year.
- *Covered Losses.* A description of the covered losses that the borrower has incurred or will incur as a result of coronavirus, by line items detailing the cause of the loss, such as reduced demand, unavailability of credit, unbudgeted medical expenses, or other causes.
- *Lack of Credit Elsewhere.* Evidence based on factors such as market conditions, the borrower's circumstances, or relationships with existing and potential creditors that the borrower cannot reasonably obtain credit elsewhere.
- *Passenger Service Operations.* For borrowers that are passenger air carriers, the borrower's available seat miles, revenue per seat mile, and cost per available seat mile for 2019, and a forecast of the same for 2020 that was prepared by or for the air carrier no earlier than October 1, 2019, including any assumptions underlying the forecast.
- *Cargo Service Operations.* For borrowers that are cargo air carriers, the borrower's available ton miles, revenue per ton mile, and cost per available ton mile for 2019, and a forecast of the same for 2020 that was prepared by or for the air carrier no earlier than October 1, 2019, including any assumptions underlying the forecast.
- *Security.* A description of the type and general value of all security, including but not limited to assets, property, and revenue streams, available to be pledged by the borrower and its subsidiaries to secure the loan, on both a senior and a subordinated basis.
- *Use of Proceeds.* The purposes for which the borrower will use the loan proceeds.
- *Financial Needs.* Quantitative information on the borrower's financial needs for the remainder of 2020, including expected revenues, operating costs, and credit, and how the loan will address those needs together with other sources of funding and financing, such as Air Carrier Worker Support payments under Division A, Title IV, Subtitle B of the Act.
- *Operating Plan.* A discussion of the borrower's operating plan for the remainder of 2020 if the loan is approved, including how the proposed loan fits within the borrower's business plan and an analysis showing that the loan is prudently incurred.
- *Cost Restructuring.* A description of any plans the borrower has to restructure its obligations, contracts, staffing, or organization to improve the borrower's financial condition.

FINANCIAL PROTECTION OF THE GOVERNMENT

As stated above, the Treasury Department may not issue a loan to (1) a borrower that has issued securities that are traded on a national securities exchange unless the Treasury Department

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receives a warrant or equity interest in the borrower, or (2) any other borrower unless the Treasury Department receives, in the discretion of the Treasury Department, a warrant or equity interest in the borrower, or a senior debt instrument issued by the borrower. The purpose of these financial instruments is to provide for a reasonable participation by the Treasury Department, for the benefit of taxpayers, in equity appreciation or a reasonable interest rate premium.

Each borrower will be required to identify the financial instruments it proposes to issue to the Treasury Department.

SUPPLEMENTAL PROCEDURES

The Treasury Department will promptly issue supplemental procedures that will include, among other information:

- Additional program rules and policies.
- Certifications and disclosures to be required of all borrowers.
- Loan terms and conditions.
- Information regarding how the principal amount of individual loans will be determined.
- An application form and instructions.
- Application evaluation criteria.

APPLICATION DECISIONS

Under Section 4006 of the Act, the Treasury Department may disclose any information submitted as part of an application to the Department of Transportation, and may consult with the Department of Transportation on any aspect of application screening or evaluation.

The Treasury Department may reject applications that do not comply with the final procedures or applicable statutes or regulations, and will approve or deny applications, based on the published evaluation criteria, in its sole discretion.