

COVID-19 NEWS OF INTEREST

Treasury Issues Initial Guidance on Title IV \$500 Billion Lending, But Many Questions Remain

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The U.S. Department of the Treasury has issued initial guidance on \$46 billion in lending programs for air carriers and business critical to maintaining national security under Title IV of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act” or the “Act”), but has yet to provide any detailed guidance regarding eligibility or the application process for the more general \$454 billion fund for lending and investment programs to support U.S. businesses.

The fund created by Title IV is broken down into two different segments: \$46 billion to support air carriers and businesses critical to maintaining national security (the “Specific Industry Segment”), and \$454 billion and any leftover funds from the Specific Industry Segment to support lending to eligible businesses, states, or municipalities (the “General Fund Segment”). The Act mandated that no later than April 6, the Secretary of the Treasury (the “Secretary”) publish procedures for applying for relief and the minimum requirements for making loans, guarantees, or other investments under the Specific Industry Segment of Title IV.¹ On March 30, the Secretary published Preliminary Procedures and Requirements (the “Specific Industry Segment Guidance”) regarding the Specific Industry Segment.²

The Secretary is currently in negotiations with the airlines regarding the final terms and conditions to supplement the Specific Industry Segment Guidance, and more details on the Specific Industry Segment are expected in the coming days. No formal timeline was provided in the CARES Act regarding the launch of the General Fund Segment. However,

¹ Section 4003(c)(1)(B).

² 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), available [here](#) (last visited: April 7, 2020).

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the existing Specific Industry Segment Guidance does provide some indication of the requirements and processes for the General Fund Segment, allowing businesses to begin preparing for the next phase of lending programs.

The Specific Industry Segment Guidance was drafted with large, well-established companies in mind, such as American Airlines, Inc. and The Boeing Company. Thus, the eventual terms, conditions, regulations, and procedures for the General Fund Segment, which will include relatively smaller, less-established entities than the Specific Industry Segment within its scope, will likely differ somewhat from the Specific Industry Segment Guidance of the Specific Industry Segment and include exceptions to account for those entities.

Statutorily Required Terms, Conditions, and Certifications

Overall, the CARES Act mandates that interested borrowers certify to certain terms and conditions in order to receive a loan under Title IV.

- In order for a borrower to participate, the borrower must have been created or organized in the United States and have significant operations in and the majority of its employees based in the United States.³
- The borrower must certify that it will not buy back stock or pay out dividends on stock until at least 12 months after the date the loan is satisfied.⁴
- Recipients of loans made under Title IV are subject to limitations on executive total compensation.⁵

Additional Information Requests

The Specific Industry Segment Guidance presents several items of information that prospective borrowers must present in a loan application under the Specific Industry Segment. Only a few of these items pertain specifically to air carriers and businesses critical to national security, suggesting the rest may also apply to loans under the General Fund Segment.

- 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;
- 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

³ Section 4003(c)(2)(H) and Section 4003(c)(3)(D)(i)(IV).

⁴ Sections 4003(c)(2)(E) and (F).

⁵ Section 4004(a) and Section 4003(c)(3)(A)(ii)(III).

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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;
- 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;
- 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; and
- 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.

While we do expect some deviation from these items in the final guidelines for the General Fund Segment, we do anticipate that potential borrowers having this information at least at the ready will help facilitate the loan process when it goes live. Furthermore, the Specific Industry Segment Guidance is set to be supplemented with additional program rules and policies, certifications and disclosures, and application forms and instructions. This additional information could provide more clarity regarding the General Fund Segment process.

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