

SELECTED REQUIREMENTS OF THE ECONOMIC STABILIZATION PROVISIONS OF THE U.S. CARES ACT

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As discussed in BCLP's recent client alert, the CARES Act provides broad relief to a cross section of the country. Title IV, focused on economic stabilization, has particular relevance to public and other larger companies. We highlight some of the noteworthy requirements below.

Conditions of Loans and Loan Guarantees. As discussed in our alert, the Treasury Department is authorized to make loans, loan guarantees and other investments in eligible businesses where credit is not otherwise reasonably available, including: air carriers, ticket agents and aircraft services companies; cargo airlines; and "businesses critical to maintaining national security," .

Federal Reserve Programs. Additional funds will be available to Treasury to make loans and loan guarantees to, and other investments in, programs or facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, States or municipalities. Eligible businesses must be organized and conduct significant operations, and have a majority of their employees, in the U.S. The Act directs Treasury to seek implantation of a program to finance lenders to make direct loans, to the extent practicable, to mid-sized companies (including many nonprofits) with between 500 and 10,000 employees, with interest no higher than 2% per annum and no payment obligation during the initial months.

Selected Conditions. Under both the Treasury and Federal Reserve programs, until one year after any loan is repaid:

- ***No Stock Repurchases.*** The company (and, under the Treasury program, its affiliates) cannot repurchase any equity security listed on a national securities exchange of the company or its parent, except to the extent required under a pre-existing contractual obligation;
- ***No Dividends.*** Dividends and other capital distributions with respect to common stock are expressly prohibited;
- ***Restrictions on Compensation.*** No non-union officer or employee of the borrower whose total 2019 compensation exceeded \$425,000 can receive increased compensation during any 12

consecutive months of such period, or receive severance pay and other termination benefits which exceeds twice their total 2019 compensation; and

No officer or employee of the company whose total 2019 compensation exceeded \$3 million may receive during any 12 consecutive months of such period total compensation in excess of the sum of \$3 million and 50% of the excess of such officer or employee's 2019 compensation over \$3 million.

In some cases, the Secretary may waive these requirements upon a determination that such waiver is necessary to protect the interests of the Federal Government and makes himself available to testify before Congress.

Under the Treasury program, companies are subject to the following additional requirements, among others:

- ***Maintenance of Employment.*** Until September 30, 2020, the company is required to maintain its employment levels as of March 24, 2020, to the extent practicable, and in any case not to reduce its employment levels by more than 10 percent from the levels on such date;
- The company must certify that it is organized and conducts significant operations, and has a majority of its employees, in the U.S.
- ***Continued Operation.*** The company must have incurred or expect to incur losses that jeopardize the continued operations of its business .

Under the mid-sized companies program to be implemented by the Treasury, companies applying for direct loans will also be required to make a good-faith certification that, among others:

- the loan is necessary to support the ongoing operations of the borrower;
- the funds they receive will be used to retain at least 90% of their workforce, at full compensation and benefits, until September 30, 2020;
- they intend to restore not less than 90% of the workforce that existed as of February 1, 2020, and restore all compensation and benefits no later than four months following the termination of the COVID-19 public emergency;
- they are not currently in bankruptcy;
- they will not outsource or offshore jobs for the term of the loan or guarantee and for two years thereafter;
- they will not abrogate existing collective bargaining agreements for the term of the loan and for two years thereafter; and

- they will remain neutral in any union organizing effort for the term of the loan.

It is possible that the Treasury may elect to implement at least some of the programs through loan guarantees to commercial lenders. While waiting for the release of formal rules or guidance from the Treasury, companies that are interested in participating may want to contact their lenders to start discussions.

Please refer to BCLP's recent [client alert](#) for additional information about the Act.

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MEET THE TEAM



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