

H.R. 748, the “CARES Act”
Select Financial Services Provisions
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<https://www.congress.gov/116/bills/s3548/BILLS-116s3548is.pdf>

Sec. 4003. Emergency relief and taxpayer protections.

- *\$500 Billion to the Treasury’s Exchange Stabilization Fund.* The Secretary of Treasury is authorized to make up to \$500 billion in loans, loan guarantees and other investments, in aggregate, to assist eligible businesses, States, and municipalities with losses incurred as a result of the coronavirus and related losses. Of this amount, Treasury may provide loans and loan guarantees to passenger air carriers as well as to entities certified under 14 CFR Part 145 (repair stations), or approved to perform inspections, repairs, replacements, overhaul services or ticket agents up to \$25 billion in aggregate and for cargo air carriers up to \$4 billion in aggregate. Loans and loan guarantee for businesses critical to maintaining national security may be provided up to \$17 billion in aggregate. Treasury may use the remaining \$454 billion and any amounts not provided to passenger or cargo air carriers, or businesses critical to maintaining national security, to programs and facilities established by the Federal Reserve Board to support eligible businesses, States, or municipalities through purchasing obligations and interests from issuers directly or through the secondary markets, or making loans, including loans or other advances secured by collateral. In theory, the Secretary could allocate the entire \$500 billion in loans and loan guarantees to the liquidity facilities, but that is not expected. The bill also clarifies that the requirements under section 13(3) of the 12 Federal Reserve Act (12 U.S.C. 343(3)), including requirements relating to loan collateralization, taxpayer protection, and borrower solvency, apply to the Federal Reserve Board’s facilities or programs under the Act.

- *Eligible Entities.*
 - Loans and loan guarantees from Treasury are available to passenger airlines, cargo airlines, and national security businesses, provided:
 - Credit is not reasonably available to the applicant;
 - The intended obligation is prudently incurred;
 - The loan or loan guarantee is sufficient secured or made at an interest rate that reflects the risk and is not less than the market rate for comparable obligations prior to the COVID-19 crisis;
 - The maturity is 5 years or less (should be as short as possible);
 - The business agrees to restrictions on equity buybacks, dividends, and capital distributions
 - Recipients, and their affiliates, may not purchase an equity security of the recipient’s or the recipient’s parent company listed on a national securities exchange or pay dividends or make capital distributions on common stock while the loan or guarantee is outstanding (absent a pre-existing contractual obligation to the

contrary) or for 12 months after the loan or guarantee has been made

- The business maintains payroll at March 24, 2020 levels until September 30, 2020 and maintain 90 percent of payroll;
- The business certifies it is created or organized in the U.S. or under the laws of the U.S., has significant operations in the U.S., and a majority of its employees are based in the U.S.;
- The business agrees to restrictions on compensation and severance (Described in Section 4004);
- The business must have issued securities traded on a national securities exchange and the Treasury Department must receive a warrant or equity interest in the business, or the Treasury Department must be given a warrant or equity interest or senior debt instrument for recipients who have not issued securities traded on a national securities exchange;
- The business has incurred or is expected to incur losses that would jeopardize continued operation; and
- The business has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under the Act.
- Loans, loan guarantees, or other investments by Treasury for a Federal Reserve program can be provided as direct loans to a business if the business:
 - Agrees to restrictions on equity buybacks, dividends, and capital distributions;
 - Recipients, and their affiliates, may not purchase an equity security of the recipient's or the recipient's parent company listed on a national securities exchange or pay dividends or make capital distributions on common stock while the loan or guarantee is outstanding (absent a pre-existing contractual obligation to the contrary) or for 12 months after the loan or guarantee has been made. The Secretary may waive this requirement for any liquidity facility if doing is "not necessary to protect" the federal government's interests.
 - Agrees to restrictions on compensation and severance (Described in Section 4004); and
 - Was created or organized in the U.S. or under the laws of the U.S., has significant operations in the U.S., and a majority of its employees are based in the U.S.
 - This restriction also applies to issuers of obligations an FRB program or will facility will purchase directly or on the secondary market, other than securities based on an index or are based on a diversified pool of securities.
 - Has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under the Act.
- *Liquidity Facility for Non-profits and Mid-sized Businesses.* Treasury and the Federal Reserve will endeavor to establish a liquidity facility that will enable banks and other lenders to make direct loans to non-profits and businesses with 500 to 10,000 employees.

- Eligibility for the Potential Non-profit and Mid-sized Business Liquidity Facility.* To receive support, applicants must be domiciled in the U.S., created or organized in the U.S. or under U.S. law and have significant operations and a majority of its employees located in the U.S. Moreover, they must certify in good faith that the loans are necessary to support ongoing operations due to the ongoing economic uncertainty and (1) use the funds to retain at least 90 percent of the recipient’s workforce at full compensation and benefits through September 30, 2020; (2) not outsource or offshore jobs for the term of the loan plus two additional years; (3) not abrogate any existing collective bargaining agreements for the term of the loan plus two additional years; (4) remain neutral in any union organizing effort for the term of the loan; and (5) restore 90 percent or more of its workforce as of February 1, 2020 and to restore all compensation and benefits to them within 4 months of termination of the public health emergency declared by the Department of Health and Human Services. No principal or interest is due on such loans for the first 6 months of the term, or for longer if the Secretary of Treasury so decides. Moreover, the recipient may not be a debtor in bankruptcy and is subject to the same US-based requirements as other recipients.
- Discretion for Additional Liquidity and Lending Facilities.* The Federal Reserve also may establish a facility or lending program for “small and mid-sized” businesses. Additionally, the Secretary of Treasury will endeavor to implement a program or facility to provide liquidity to financial systems that support lending to States and municipalities.
- Interest Rate; No Loan Forgiveness.* Loans, guarantees, and other investments must be made at an interest rate determined by the Secretary in light of risk and the current average yield on outstanding U.S. obligations of the same maturity. Interest rates on loans or guarantees that would be made through a potential non-profit and mid-sized business facility may not be higher than 2 percent per annum on an annualized rate. The federal government may not offer loan forgiveness to reduce the principal amount of the obligations that the federal government obtains through the liquidity facilities.
- Application Process.* The Secretary will publish the application process for obtaining a loan, loan guarantee, or other investment within 10 days of enactment of the bill.
- Tax Implications.* All loans, loan guarantees, and obligations are indebtedness for tax purposes.
- Financial Interest of the U.S.* The Secretary must protect the financial interests of the federal government by ensuring the compensation it receives through the liquidity facilities is commensurate with the risk.
- Financial Agents.* The Secretary may designate financial institutions (such as depository institutions, brokers, dealers, and others) as financial agents of the Department to “perform all reasonable duties the Secretary determines necessary to respond to the coronavirus” in exchange for compensation.

Sec. 4004. Limitation on certain employee compensation.

- Passenger and cargo carriers, businesses critical to the maintenance of national security, and entities supported through the Federal Reserve's lending program or facilities who accept a loan, loan guarantee, or other investment from Treasury directly or through a Federal Reserve liquidity facility may not pay any employee or officer whose total compensation exceeded \$425,000 in calendar year 2019 more than that amount during any 12 consecutive month period for one year after the date on which the loan or guarantee is no longer outstanding. (unless the compensation is determined via pre-existing collective bargaining agreements) or pay such a person severance or other benefits upon termination twice the maximum total compensation received in calendar year 2019 for one year after the date on which the loan or guarantee is no longer outstanding. Total compensation includes salary, bonuses, stock, and other financial benefits. Officers or employees making over \$3 Million in calendar year 2019 would also be prohibited from earning more than \$3 Million plus fifty percent of the amount their compensation in calendar year 2019 that exceeded \$3 Million.

Sec. 4008. Debt guarantee authority.

- *FDIC Guarantee Program.* The Federal Deposit Insurance Corporation may establish a program to guarantee obligations of solvent insured depository institutions or solvent depository institution holding companies, including the affiliates of such institutions or holding companies, until December 31, 2020 for their noninterest-bearing transaction accounts. The FDIC must establish a maximum guarantee amount. Moreover, guarantees of deposits in non-interest bearing accounts held by insured depository institutions now may be treated as a debt guarantee program.
- *NCUA Protection on Noninterest Bearing Transaction Accounts.* The National Credit Union Administration may increase the share insurance coverage of the National Credit Union Share Insurance Fund on any noninterest bearing transaction account in any federally insured credit union to any amount, included unlimited coverage, until December 31, 2020.

Sec. 4011. Temporary lending limit waiver.

- This section would enable the OCC to approve loans to nonbank financial companies for exemption from the lending cap for national banks. The limit for fully secured loans to any one person or entity is 10% of the unimpaired capital and unimpaired surplus of the bank. For non-fully secured loans, the limit is 15%. This authority would terminate on the earlier of December 31, 2020 or the termination of the national emergency declared by the President.

Sec. 4012. Temporary relief for community banks

- This section would require the Federal banking regulators to issue an interim final rule setting the Community Bank Leverage Ratio at 8%, which would be in effective until

December 31, 2020 or the termination of the national emergency declared by the President, whichever ends sooner. A “reasonable grace period” for community banks that fall below the 8% threshold would be included in the new rule. During the reasonable grace period, the qualifying community bank would be presumed to satisfy its risk-based capital and leverage requirements. A qualifying community bank is a depository institution or holding company with total consolidated assets of less than \$10 billion and who is not determined to be too risky by the appropriate federal banking regulator.

Sec. 4013. Temporary relief from troubled debt restructurings.

- Financial institutions would be able to suspend GAAP requirements for loan modifications related to COVID-19 that would otherwise be categorized as a troubled debt restructuring (“TDR”). Additionally, institutions would also be able to suspend any determinations that a COVID-19 loan modification is a TDR. The suspensions would be limited to loans that were not delinquent as of December 31, 2019 and applicable for the duration of the modification. Qualifying modifications must occur between March 1, 2020 and 60 days after the end of the national emergency declared by the President.
- For temporary suspension of TDR disclosures in the small business context, please see Sec. 1102, “Paycheck protection program.”

Sec. 4014. Optional temporary relief from current expected credit losses.

- The required implementation of the Current Expected Credit Loss accounting standard (“CECL”) for insured depository institutions, federally insured credit unions, bank holding companies, and these entities’ affiliates would be delayed until the earlier of the end of the national emergency declared by the President or December 31, 2020. This section does not appear to affect the implementation deadline of January 1, 2023 for smaller reporting companies and non-public companies.

Sec. 4015. Non-applicability of restrictions on ESF during national emergency.

- This section would nullify the requirement that the Treasury Department reimburse the Exchange Stabilization Fund (“ESF”) for any funds used through the Treasury Department’s Money Market Funds Guaranty Program to assist the money market mutual funds market, and lift the prohibition on the Treasury Department’s authority to use the ESF to establish a guaranty program for money market mutual funds, from the enactment of the bill through December 31, 2020. Any guarantee must be limited to the total value of a shareholder’s account in a participating fund as of the close of business on the day before the guarantee was announced. After December 31, 2020, the Treasury Department would be required to reimburse the ESF for any funds used through the Money Market Funds Guaranty Program with funds not otherwise appropriated to the extent a claim payment exceeds the fees collected by the ESF.

Sec. 4016. Temporary credit union provisions.

- This section would expand the scope and size of the extension of credit facilitated by the NCUA’s central liquidity facility by modifying the definition of “liquidity needs” to mean “the needs of credit unions” as opposed to “the needs of credit unions primarily serving natural persons.” Moreover, credit unions that primarily serve other credit unions can be Agent members of the liquidity facility by subscribing to the capital stock of the facility in a specified amount of the paid-in and unimpaired capital of credit unions as determined by the NCUA board rather than of the credit unions that are members of the prospective Agent member.
- With respect to scope, it would allow members of the facility to apply for credit from the facility to meet their liquidity needs without having to first demonstrate it made reasonable efforts to use primary liquidity sources, and expands NCUA’s authority on behalf of the liquidity facility to borrow from any source provided the total face value of the obligations does not exceed 16 times the capital stock and surplus rather than 12 times.

Sec. 4021. Credit protection during COVID-19

- This section would allow a consumer and a person who furnishes information to consumer reporting agencies to make “accommodations” to defer payments, forbear delinquent amounts, modify loans, or provide other assistance to consumers affected by COVID-19. Payments in compliance with the accommodation will not negatively affect the consumer’s credit report. The credit protection created by this section would end on the latter of 120 days after enactment or 120 days after the COVID-19 national emergency ends. This section does not appear to prohibit negative reporting if the consumer fails to comply with the accommodation.

Sec. 4022. Foreclosure moratorium and consumer right to request forbearance

- This section would allow borrowers experiencing COVID-19 related hardship to request forbearance on Federally-backed mortgages. The initial forbearance will be up to 180 days and can be extended up to an additional 180 days, upon request. Interest and fees will not accrue during the forbearance.
- Mortgage servicers would be prohibited from initiating, continuing, or executing a foreclosure during the 60-day period beginning March 18, 2020.

Sec. 4023. Forbearance of residential mortgage loan payments for multifamily properties with federally backed loans.

- For multifamily properties, borrowers experience COVID-19 related hardship can request forbearance. The initial period will be up to 30 days with the possibility of two additional 30-day extensions upon timely request. During such forbearance, the borrower cannot evict tenants or accrue fees for a tenant’s failure to pay rent.

- This section would expire on the latter of December 31, 2020 or the end of the COVID-19 national emergency.

Sec. 4024. Temporary moratorium on eviction filings.

- For 120 days after enactment, lessors cannot initiate eviction proceedings against tenants for nonpayment of rent or other fees. This section is not limited to nonpayment related to the COVID-19 national emergency.
- Lessors must provide eviction notices at least 30 days in advance of the eviction date and may not issue a notice during the 120-day moratorium period.