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CLIENT ALERT

CARES Act Loans for Aviation Related Businesses – Update

Apr.17.2020

The CARES Act created a $46 billion pool of funds for loans and loan guarantees for the aviation industry and national security-related businesses. The total amount is further allocated to three separate buckets:

- $25 billion for passenger air carriers, eligible Part 145 Repair Stations (*i.e.*, maintenance and repair organizations) and eligible ticket agents;
- $4 billion for cargo air carriers; and
- $17 billion for businesses critical to maintaining national security.

Air Carriers, repair stations, and ticket agents should submit their loan applications to Treasury as soon as possible and before 5PM on Friday, April 17th to receive expedited review. The application can be accessed here. Applications received after 5 PM on Friday, April 17th will be considered but may be delayed in processing due to the number of applications expected. Applications received after April 30th may not be considered.

This deadline does not apply to businesses critical to maintaining national security. Based on recent Treasury guidance, businesses that fall in this category are those that, unless otherwise approved, are at the time of the business's application:

- performing under a "DX"-priority rated contract or order under the Defense Priorities and Allocations System regulations (15 CFR part 700); or
- operating under a valid top secret facility security clearance under the National Industrial Security Program regulations (32 CFR part 2004).

Applicants that do not satisfy the above criteria may be considered for a loan if based on a recommendation and certification by the Secretary of Defense or the Director of National Intelligence that the applicant business is critical to maintaining national security, the Secretary of the Treasury determines that the applicant business is critical to maintaining national security.

Treasury is expected to provide additional guidance for national security-related businesses soon.

A detailed summary of eligibility and the terms and conditions of the program is below.

Eligibility*:* In order to receive a loan or loan guarantee under the program recipients must be US businesses with significant operations in and a majority of employees based in the US, must have incurred or expect to incur losses due to COVID-19 that jeopardize continued operations, and must be unable to obtain regular credit as a result of the pandemic.

In addition, the CARES Act expressly states that Part 145 Repair Stations and ticket agents are only eligible to receive funds under this program if they are not receiving funds from other pools of money, such as the large or mid-sized business relief pools (*i.e.*, "double dipping" is not permitted).

Terms and Conditions:The vast majority of relief under this program will likely be in the form of direct loans from Treasury. The terms of the loans will be as short as practical (in any event not exceeding five (5) years in duration), and loans under this program are not subject to reduction by loan forgiveness. Once an eligible recipient has been approved to receive a loan, the recipient will enter into an agreement with Treasury identifying the terms and conditions of the specific loan. While Treasury will define the terms on a case-by-case basis, guidance indicates that Treasury will base the terms on the risk of the particular loan and on the current average yield on outstanding marketable obligations in the US of comparable maturity. All recipients must agree, for the period of the loan and for 12 months thereafter, to:

- maintain their employment levels at the levels as of March 24, 2020, to the extent practicable, and not reduce employment levels by more than 10% of the levels as of that date;
- not engage in stock buy-backs, pay dividends, or make other capital distributions; and
- not increase compensation or severance payments for certain highly compensated employees.

Air carriers providing scheduled air service may also be required by the Department of Transportation (DOT) to maintain such service at points served by the carrier prior to March 1, 2020.

Recipients that are publicly traded companies must also provide Treasury with a warrant or equity interest in the company. For recipients that are not publicly traded companies, Treasury reserves the right, but is not obligated, to receive a warrant, equity interest, or senior debt instrument in the company. Current guidance indicates that borrowers will be required to identify the financial instruments they propose to issue to the Treasury in their loan applications. However, Treasury has not commented on what would constitute an acceptable instrument for a privately held company, and it remains to be seen what standards Treasury or banking institutions will use in evaluating whether an applicant's proposed instrument is acceptable. Treasury recently eliminated a similar requirement for a financial instrument under the Aviation Payroll Support Program for applicants that are passenger air carriers receiving $100 million or less in assistance. Treasury has not indicated whether it will extend a similar exemption under the loan and loan guarantee program.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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