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Treasury and Federal Reserve Financial Assistance in Title IV of the CARES Act (P.L. 116-136)

Updated August 5, 2020

Congressional Research Service
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R46329

CRS REPORT
Prepared for Members and
Committees of Congress

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SUMMARY

R46329

August 5, 2020

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Treasury and Federal Reserve Financial Assistance in Title IV of the CARES Act (P.L. 116-136)

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act; H.R. 748) was signed into law as P.L. 116-136 on March 27, 2020, to assist those affected by the economic impact of Coronavirus Disease 2019 (COVID-19). This assistance is targeted to consumers, businesses, and the financial services sector. A key part of this assistance is provided to eligible businesses, states, and municipalities in Division A, Title IV of the CARES Act.

Title IV allocates $500 billion to the Department of the Treasury, through the Exchange Stabilization Fund (ESF), to make loans and guarantees for three specified industries—passenger airlines, cargo airlines, and businesses critical to national security—and to support Federal Reserve lending facilities. Some have characterized this as a "bailout" of private industry; others assert it is necessary to avoid employment losses and maintain economic stability. Of the $500 billion, Treasury can make up to $25 billion available to passenger airlines, up to $4 billion to cargo airlines, and up to $17 billion to businesses critical to maintaining national security. Treasury can make the remainder—up to $454 billion, plus whatever is not used to assist the specified industries—available to the Federal Reserve. Recipients are legally required to repay assistance with interest, although the ultimate subsidy involved will not be known until terms, such as interest rates and fees, have been decided.

Most funding under Title IV has been used to backstop a series of Federal Reserve emergency programs created in response to COVID-19. These programs assist affected businesses or markets by making loans or purchasing assets. To date, $215 billion of ESF funding has been made available by the Treasury to reimburse the Federal Reserve for potential losses on any transactions in these programs. However, the Fed does not appear to be classifying all of this funding as CARES Act funding. In testimony on June 30, 2020, Chair Powell identified five programs as having $195 billion in CARES Act funding backing them. These programs support markets for corporate bonds, municipal bonds, and asset-backed securities, as well as a loan program to help businesses with under 10,000 employees or under $2.5 billion in revenues maintain employment. In addition, Treasury has announced one loan of $700 million to a trucking company under the national security program and letters of intent with ten major airlines, which may result in future loans. The authority to enter into new transactions terminates on December 31, 2020.

Title IV also provides up to $32 billion to continue payment of employee wages, salaries, and benefits at airline-related industries. The Treasury Secretary has discretion to determine what compensation to seek for this assistance and has reportedly chosen not to seek compensation from smaller recipients. According to the Treasury Secretary's statement on June 30, 2020, Treasury has approved over $27 billion in payroll assistance to more than 500 airlines and other aviation businesses, including passenger airlines, cargo carriers, and eligible contractors.

This assistance carries a number of terms and conditions. All funding faces certain conditions, such as limiting eligibility to U.S. businesses, as defined by the act, and following rules to avoid conflicts of interest. Firms receiving loans, loan guarantees, or grants directly from Treasury must maintain at least 90% of March 24, 2020, employment levels; face controls placed on share buybacks, dividends, and executive salaries; and must provide Treasury specific compensation (e.g., warrants or equity). In addition, Title IV establishes a special inspector general and a Congressional Oversight Commission to oversee the operations carried out under the title. Finally, the key agencies involved in providing this assistance (i.e., the Federal Reserve and Treasury) and the Government Accountability Office must make available to the public and Congress a series of reports on operations under Title IV of the act.

Going forward, Congress may consider changing the expiration date on these funds or reallocating unused funds to other industries or for unrelated uses. Less than half of the funding available under Title IV has been pledged, to date.

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Introduction[1]

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; H.R. 748) into law as P.L. 116-136. The CARES Act is a wide-ranging act to provide relief to consumers, small businesses, and certain industries amid the economic fallout of COVID-19.[2] The law contains two divisions. Division A contains six titles aimed at making funds available to different entities through various programs, including rebate checks to taxpayers; loans to small businesses for payroll; protections for consumers with outstanding payments (e.g., mortgages, student loans, and rental and health care payments); loans and loan guarantees and other investments to help the financial industry and other selected industries; and other public funds for federal, state, local, and tribal government programs aimed at managing the disaster recovery from the national health crisis. Division B provides FY2020 supplemental appropriations for federal agencies to respond to COVID-19.[3] (Hereinafter, title and section references in this report refer to Division A, unless otherwise specified.)

Title IV of the CARES Act contains numerous provisions aimed broadly at stabilizing the economy and helping affected households and businesses. It has received considerable attention for containing funding for industry and financial services.[4] Specifically, Section 4003 directs the Department of the Treasury (Treasury) and the Federal Reserve (Fed) to make up to $500 billion available to support various businesses in the aviation sector, as well as the financial system. Some have characterized this as a "bailout" of private industry; others assert it is necessary to avoid employment losses and maintain economic stability—the two views are not necessarily mutually exclusive.

Title IV also permits federal guarantees for uninsured bank deposits and money market funds, which are beyond the scope of this report.[5] In addition to the financial assistance provided in Title IV, the CARES Act provides financial assistance to small businesses in Title I (including the Payroll Protection Program) and assistance to states and municipalities in Title V. See CRS Report R46284, *COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options*, by Robert Jay Dilger, Bruce R. Lindsay, and Sean Lowry for information specifically about assistance targeting small businesses found in Title I of the CARES Act.

This report provides an overview of Section 4003 and related provisions and explains the terms and conditions associated with the assistance. The report's **Appendix** compares these provisions to the 2008 Troubled Asset Relief Program (TARP).

[1] This section was written by Andrew Scott.

[2] Access to all the current CRS products pertaining to different aspects of the COVID-19 pandemic can be found at https://www.crs.gov/resources/coronavirus-disease-2019.

[3] For a list of CRS experts on various parts of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136), congressional clients may see CRS Report R46299, *Coronavirus Aid, Relief, and Economic Security (CARES) Act: CRS Experts*, by William L. Painter and Diane P. Horn.

[4] For more on Title IV of the CARES Act, see CRS Report R46301, *Title IV Provisions of the CARES Act (P.L. 116-136)*, coordinated by Andrew P. Scott.

[5] For more information, see CRS Insight IN11307, *The CARES Act (P.L. 116-136) Section 4008: FDIC Bank Debt Guarantee Authority*, by David W. Perkins; and CRS In Focus IF11320, *Money Market Mutual Funds: A Financial Stability Case Study*, by Eva Su.

Financial Assistance in Division A, Title IV[6]

Title IV provisions provide funding for eligible businesses, states, and municipalities, as defined by the act.[7] In particular, Section 4027 appropriates $500 billion to the Exchange Stabilization Fund (ESF) for use by the Treasury Secretary,[8] and Section 4003 allows Treasury to use the $500 billion to support eligible businesses, states, and municipalities that have suffered losses due to COVID-19.[9] As discussed in the next section, Section 4003 allocates up to $46 billion for Treasury to directly provide loans and loan guarantees as follows: (1) not more than $25 billion for passenger air carriers (and certain related businesses), (2) not more than $4 billion for cargo air carriers, and (3) not more than $17 billion for businesses critical to maintaining national security. Treasury may make funds from the remaining $454 billion, plus any unpledged funding from the $46 billion, available to support Fed facilities to provide liquidity to the financial system through lending to eligible businesses, states, and municipalities (described in the "Federal Reserve Emergency Facilities Backed by the ESF" section, below).

Section 4029 terminates this authority on December 31, 2020, and allows outstanding loans and guarantees to be modified, restructured, or otherwise amended, subject to a restriction: the duration of assistance to the passenger air industry cannot be extended beyond five years from the initial origination date.

Section 4003 requires recipients to repay this assistance with interest, fees, and in some cases, compensation in the form of warrants, equity, or senior debt. Under the Federal Credit Reform Act (FCRA; P.L. 101-508), the Office of Management and Budget and the Congressional Budget Office are to estimate the subsidy associated with this assistance based on the difference between the present discounted value of both the assistance and income received by Treasury from principal and interest payments (along with other forms of compensation).[10] The ultimate size of this subsidy will not be known until terms, such as interest rates and fees, have been decided and it becomes clear to what extent firms are able to repay.[11] By contrast, Sections 4112, 4113, and

[6] This section was written by Andrew Scott.

[7] *Eligible businesses* are defined by the act as air carriers and U.S. businesses "that ha[ve] not otherwise received adequate economic relief in the form of loans or loan guarantees provided under this Act." *States* are defined by the act as including the District of Columbia, U.S. territories, multistate entities, and Indian Tribes.

[8] The original purpose of the Exchange Stabilization Fund (ESF) was to allow the Department of the Treasury (Treasury) to intervene in foreign exchange markets to stabilize the value of the dollar, but the Treasury Secretary has broad discretion on when it can be used. It has been used in response to the 2008 financial crisis and COVID-19. For more information, see CRS In Focus IF11474, *Treasury's Exchange Stabilization Fund and COVID-19*, by Marc Labonte, Baird Webel, and Martin A. Weiss.

[9] Up to $100 million of the total may be used on administrative costs.

[10] If the former were greater than the latter, the assistance would be deemed to have been provided with a positive subsidy; if the latter were greater than the former, it would be a negative subsidy.

[11] The act specifies that the assistance should be recorded in the budget under the Federal Credit Reform Act (FCRA; P.L. 101-508), which means that the subsidy value of the assistance—as opposed to the total funds provided—is recorded as spending in the federal budget. Some argue that the present discounted value calculation underestimates the size of the subsidy because it is calculated using the government's borrowing cost instead of a private borrowing rate that includes risk. In its cost estimate of the CARES Act, the Congressional Budget Office (CBO) estimated a subsidy cost of $1 billion for the assistance to specified industries and zero subsidy cost for assistance to Federal Reserve programs. CBO assumed that only half of the funds available for specific industries would be lent out at a 10% subsidy rate and the Fed programs would not be subsidized because the Fed's 2008 programs did not suffer losses. However, as discussed below, the terms and purposes of some of the Fed's COVID-19 programs are fundamentally different from its 2008 programs. CBO, H.R. 748, *CARES Act*, P.L. 116-136 April 16, 2020, at https://www.cbo.gov/publication/56334. For more information, see CRS Report R44193, *Federal Credit Programs: Comparing Fair Value and the Federal Credit Reform Act (FCRA)*, by Raj Gnanarajah.

4120 provide up to $32 billion in grants to continue payment of employee wages, salaries, and benefits at airline-related industries. The Treasury Secretary has discretion whether to seek compensation for these grants.

Treasury has broad discretion to decide how much of each part of the funding to make available to the specified industries or the Fed, in what form, and for what purpose. These funds are made available with certain terms and conditions, however (as discussed in the "Terms and Conditions" section, below). For example, Section 4004 sets executive compensation limits on certain companies receiving assistance; Section 4019 restricts eligible recipients of assistance to avoid conflicts of interest; Sections 4114 and 4116 limit recipient firms from taking certain actions; and Sections 4025 and 4115 prohibit conditioning assistance on entering into collective bargaining negotiations.

In addition, several provisions provide enhanced oversight for the Title IV funding programs. Sections 4018 and 4020 establish a Special Inspector General and a Congressional Oversight Commission to monitor activities made pursuant to provisions in Title IV, and Section 4026 requires reports from the key agencies—namely Treasury and the Fed—on their Title IV activities.

The next two sections focuses on the financial assistance provisions granted to specified industries and for Fed programs, updated as of July 27, 2020.

Loans, Loan Guarantees, and Other Support for Selected Industries[12]

Congress chose to make direct Treasury support available to three specific industries (passenger and cargo airline industries, as well as certain national security businesses) that it deemed particularly in need of support. This assistance may not meet certain statutory requirements for a Fed program (i.e., that Fed assistance be broadly based and not for the purpose of avoiding bankruptcy),[13] and it comes with more terms and conditions than assistance for recipients of Fed programs supported by the CARES Act. The Title IV support for these industries comes in three main forms: loans and loan guarantees, tax holidays for certain excise taxes, and payroll grants for air carrier workers.

Loans and Loan Guarantees

Section 4003 makes up to $46 billion available for federal loans and loan guarantees directly from Treasury to the aviation sector and to businesses critical to maintaining national security:

- not more than $25 billion for passenger air carriers, eligible businesses certified to perform inspection, repair, replace, or overhaul services, and ticket agents;[14]
- not more than $4 billion for cargo air carriers; and

[12] This section was written by Rachel Tang.

[13] 12 U.S.C. §343.

[14] As defined in 49 U.S.C. §40102 (a)(45), *ticket agent* means a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation. Contingent on the Department of Transportation's (DOT's) interpretation "ticket agents" include most travel agents that negotiate and sell airline tickets as part of their travel products, including those conducting businesses online, such as expedia.com and booking.com.

- not more than $17 billion for "businesses critical to maintaining national security"—a term that the act does not further define. On April 10, 2020, the Treasury Secretary released information on which types of firms would be eligible under this definition.[15]

The Treasury Secretary is required under Section 4006 to coordinate with the Transportation Secretary to make these loans.[16] Other terms and conditions applying to this assistance are discussed in "Terms and Conditions," below.

According to the Congressional Oversight Commission (discussed below in "Oversight Provisions"), Treasury had received 260 loan applications under Subtitle A as of June 2020, but has only finalized one loan as of July 31, 2020.[17] On June 30, 2020, Treasury reached an agreement with YRC Worldwide Inc. to provide a $700 million loan in exchange for a 29.6% equity stake. Treasury indicated that its decision was based on a certification by the Secretary of Defense that YRC, a leading provider of critical military transportation and other hauling services to the federal government, is critical to maintaining national security.[18]

On July 7, 2020, Treasury announced that 10 major airlines—Alaska Airlines, American Airlines, Delta Air Lines, Frontier Airlines, Hawaiian Airlines, JetBlue Airways, Sky West Airlines, Southwest Airlines, Spirit Airlines, and United Airlines—had signed letters of intent "setting out the terms on which Treasury is prepared to extend loans under the CARES Act."[19] The letters of intent did not indicate the loan amounts that the airlines were seeking or Treasury would approve.

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[15] Treasury defined *businesses critical to maintaining national security* as those that either have the highest priority contract under the Defense Priorities Allocations System regulations or those that operate under a top secret facility security clearance under the National Industrial Security Program regulations. Treasury stated that firms that do not meet either of these definitions may still be considered for loans, however. See Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, updated as of April 10, 2020, at https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf.

Reportedly, one intended recipient at the time of enactment was the aerospace manufacturer Boeing. When asked about the use of this funding, the Treasury Secretary reportedly was quoted as saying, "Right now, Boeing is saying they don't need it." Quoted in Andrew Tangel and Doug Cameron, "Bailout Aids Boeing Even If It Doesn't Tap Funds," *Wall Street Journal*, March 28, 2020. Senator Pat Toomey reportedly was quoted as saying the $17 billion "is not meant to be exclusively for Boeing." Quoted in Gregory Wallace and Phil Mattingly, "Boeing Could Receive Billions From Stimulus Package," *CNN*, March 26, 2020. Senator Maria Cantwell reportedly said that the $17 billion was likely to be used for aerospace manufacturers, including Boeing, and their supply chain. See Dominic Gates, "Cantwell: Boeing may reject strings attached," *Seattle Times*, March 26, 2020.

[16] Treasury has issued procedures and minimum guidelines for applicants at https://home.treasury.gov/system/files/136/Procedures%20and%20Minimum%20Requirements%20for%20Loans.pdf.

[17] Congressional Oversight Commission, *The Third Report of the Congressional Oversight Commission*, July 20, 2020, p. 14, at: https://www.toomey.senate.gov/files/documents/Oversight%20Commission%20%203rd%20Report%20(FINAL)_7.20.20.pdf.

[18] Treasury, "Treasury to Provide Loan to YRC Worldwide," press release, July 1, 2020, at https://home.treasury.gov/news/press-releases/sm1049. Treasury states that YRC is a leading provider of Department of Defense (DOD) supply transportation and other delivery services for the U.S. government in its Section 4026(b)(1) report. See U.S. Treasury, "Report Under Section 4026(b)(1) of the CARES Act on Loans to Air Carriers, Eligible Businesses, and National Security Businesses," July 15, 2020, at https://home.treasury.gov/system/files/136/Section-4026b1-Loan-Report.pdf. According to the Congressional Oversight Commission, "YRC apparently did not meet either of the two national security eligibility criteria" described in the footnote above. See Congressional Oversight Commission, *The Third Report of the Congressional Oversight Commission*, July 20, 2020, p. 14, at https://www.toomey.senate.gov/files/documents/Oversight%20Commission%20-%203rd%20Report%20(FINAL)_7.20.20.pdf.

[19] Treasury, "Statement from Secretary Steven T. Mnuchin on CARES Act Loans to Major Airlines," press release, July 7, 2020, at https://home.treasury.gov/news/press-releases/sm1054.

Suspension of Aviation Excise Taxes

Section 4007 institutes a suspension of excise taxes, including taxes on airline passenger ticket sales, segment fees, air cargo fees, and aviation fuel taxes paid by both commercial and general aviation aircraft, until December 31, 2020. These taxes and fees have been the primary revenue sources for the federal Airport and Airways Trust Fund, which supports multiple federal aviation programs.[20]

The congressional Joint Committee on Taxation estimated the tax revenue foregone as a result of the authorized suspension to be over $4.3 billion.[21] However, it is not possible to know the amount of aviation taxes that would have been collected without the suspension, given the steep decline in air travel as a result of the pandemic.[22]

Air Carrier Worker Support

Section 4120 appropriates $32 billion to assist aviation workers. From this amount, Section 4112 allows the Treasury Secretary to provide

- up to $25 billion for passenger air carriers,
- up to $4 billion for cargo air carriers, and
- up to $3 billion for contractors who provide ground services—such as catering services or on-airport functions—directly to air carriers.

All such assistance must be used exclusively for continuing the payment of employee wages, salaries, and benefits. Section 4117 gives the Treasury Secretary discretion to determine what compensation to seek for this assistance. Treasury announced it would not seek compensation from recipients receiving less than a minimum amount under the program.[23] The Treasury Secretary is required to coordinate with the Transportation Secretary in implementing the relief for aviation workers.

Section 4113 indicates that eligible airlines or contractors would receive an amount equal to their 2019 second- and third-quarter (from April 1, 2019, through September 30, 2019) salaries and benefits. The law required the Treasury Secretary to publish streamlined and expedited procedures no later than 5 days from the enactment date and to make initial payments within 10

[20] CRS Report R42781, *Federal Civil Aviation Programs: In Brief*, by Bart Elias and Rachel Y. Tang

[21] The Joint Committee on Taxation, JCX-11R-20, April 23, 2020, at https://www.jct.gov/publications.html?func=startdown&id=5255.

[22] It is almost impossible to estimate the amount of tax revenues that would have been collected in the absence of the suspension, without detailed knowledge of, for example, the number of revenue (ticketed) passengers, ticket prices (7.5% ticket tax), the number of connections (segment tax), and the number of international passengers (international departure/arrival tax). Projections are based on pre-pandemic numbers, thus it is difficult to parse the impact on air travel demand. Moreover, other factors such as border restrictions and quarantine measures have considerable effect on air travel as well.

[23] Treasury announced that cargo air carriers receiving less than $50 million and cargo air contractors receiving less than $37.5 million would not be required to provide compensation. See Treasury, "Treasury Implementing CARES Act Programs for Aviation and National Security Industries," press release, April 25, 2020, at https://home.treasury.gov/news/press-releases/treasury-implementing-cares-act-programs-for-aviation-and-national-security-industries. Reportedly, passenger air carriers receiving less than $100 million would not be required to provide compensation, whereas "Major airlines must repay 30% of the funds in low-interest loans and grant Treasury warrants equal to 10% of the loan amount." See David Shepardson, "U.S. Treasury releases $2.9 billion in airline support, finalizes payroll agreements," *Reuters*, April 20, 2020, at https://www.reuters.com/article/us-health-coronavirus-usa-airlines/u-s-treasury-releases-2-9-billion-in-airline-support-finalizes-payroll-agreements-idUSKBN22301Z.

days from enactment to air carriers and contractors whose requests for such assistance are approved.[24] If it were determined that the aggregate amount of eligible financial assistance exceeds the amount available, the Treasury Secretary would provide the available aid on a pro rata basis.

In his statement before the House Committee on Financial Services on June 30, 2020, Treasury Secretary Steven Mnuchin reported that over $27 billion in payroll assistance had been approved to be disbursed to more than 500 airlines and other aviation businesses, including passenger airlines, cargo carriers, and eligible aviation-sector contractors.[25]

CARES Act Funding Available to the Federal Reserve[26]

The Federal Reserve, as the nation's central bank, was created as a "lender of last resort" to the banking system when private sources of liquidity become unavailable.[27] This role is minimal in normal conditions but has been important in periods of financial instability, such as the 2007-2009 financial crisis. Less frequently throughout its history, the Fed has also provided liquidity to firms that were not banks. In the financial crisis, the Fed created a series of temporary facilities to lend to or purchase securities of nonbank financial firms and markets under emergency authority found in Section 13(3) of the Federal Reserve Act (12 U.S.C. §343). It has begun to do so again in response to COVID-19, even before enactment of the CARES Act. For more information, see CRS Report R46411, *The Federal Reserve's Response to COVID-19: Policy Issues*, by Marc Labonte.

Although the CARES Act does not preclude the Fed from independently responding to COVID-19 using its own funds, it is left to the Treasury Secretary to decide whether and how much of the CARES Act funds to provide to the Fed and on what general terms. After deducting assistance provided to the three specified industries, the remainder of the $500 billion—at least $454 billion—is available for Treasury to make loans, loan guarantees, or investments in programs or facilities established by the Fed to "provid(e) liquidity to the financial system that supports lending to eligible businesses, states, or municipalities." As noted in the "Financial Assistance in Division A, Title IV" section, eligible businesses and states are defined by the act. The Fed's facilities may make loans, purchase newly issued obligations (e.g., debt securities) directly from issuers in primary markets, or purchase seasoned obligations from investors in secondary markets.

The act provides Treasury and the Fed broad discretion on how to structure these programs or facilities. (Terms and conditions applying to this assistance are discussed in the section titled "Terms and Conditions.") Theoretically, the transactions could be structured in many different

[24] The procedures were published on March 30, 2020. See Treasury, Guidelines and Application Procedures for Payroll Support to Air Carriers and Contractors under Division A, Title IV, Subtitle B of the Coronavirus Aid, Relief, and Economic Security Act, at https://home.treasury.gov/system/files/136/Guidelines%20and%20Procedures%20for%20Payroll%20Support%20to%20Air%20Carriers%20and%20Contractors.pdf.

[25] Treasury, "Statement of Secretary Steven T, Mnuchin Before the House Committee on Financial Service," press release, June 30, 2020, at https://home.treasury.gov/news/press-releases/sm1046. More detailed payroll support program data, including a list of participants and amounts of assistance provided, is available on the Treasury website at https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-payments.

[26] This section was written by Marc Labonte.

[27] For background on the Fed, see CRS In Focus IF10054, *Introduction to Financial Services: The Federal Reserve*, by Marc Labonte.

ways. In practice, Treasury has used CARES Act funding to make equity investments in Fed facilities as a backstop to cover any future losses, as described below.

Federal Reserve Emergency Facilities Backed by the ESF

In response to COVID-19, the Fed has created the following temporary emergency programs that are backed by Treasury investments from the ESF:[28]

- **Commercial Paper Funding Facility (CPFF).** The CPFF purchases newly issued commercial paper from all types of U.S. issuers who cannot find private-sector buyers.[29] *Commercial paper* is short-term debt issued by financial firms (including banks), nonfinancial firms, and "asset backed" pass-through entities that purchase loans.[30]
- **Money Market Fund Liquidity Facility (MMLF).** The MMLF makes nonrecourse loans to financial institutions to purchase assets that money market funds are selling to meet redemptions.[31] This reduces the probability of runs on money market funds caused by a fund's inability to liquidate assets.[32]
- **Primary Market Corporate Credit Facility (PMCCF) and Secondary Market Corporate Credit Facility (SMCCF).** The Fed created two new facilities to support corporate bond markets—the PMCCF to purchase newly issued corporate debt or syndicated loans from issuers and the SMCCF to purchase existing corporate debt or corporate debt exchange-traded funds on secondary markets.[33] The issuer must have material operations in the United States and cannot receive direct federal financial assistance related to COVID-19.
- **Term Asset-Backed Securities Loan Facility (TALF).** The TALF makes nonrecourse, three-year loans to private investors to purchase newly issued, highly rated asset-backed securities (ABS) backed by various nonmortgage loans.[34] Eligible ABS include those backed by certain auto loans, student loans, credit card receivables, equipment loans, floorplan loans, insurance premium finance loans, small business loans guaranteed by the Small Business Administration (SBA), commercial real estate, leveraged loans, or servicing advance receivables.

[28] The Fed also created emergency facilities in response to COVID-19 that did not involve CARES Act funding. For information on those facilities, see CRS Insight IN11327, *Federal Reserve: Emergency Lending in Response to COVID-19*, by Marc Labonte.

[29] Federal Reserve, "Federal Reserve Board Announces Establishment of a Commercial Paper Funding Facility (CPFF) to Support the Flow of Credit to Households and Businesses," press release, March 17, 2020, at https://www.federalreserve.gov/newsevents/pressreleases/monetary20200317a.htm.

[30] For more on commercial paper, see CRS Insight IN11332, *COVID-19: Commercial Paper Market Strains and Federal Government Support*, by Rena S. Miller.

[31] Federal Reserve, "Federal Reserve Board broadens program of support for the flow of credit to households and businesses by establishing a Money Market Mutual Fund Liquidity Facility (MMLF)," press release, March 18, 2020, at https://www.federalreserve.gov/newsevents/pressreleases/monetary20200318a.htm.

[32] For more on money market mutual funds, see CRS In Focus IF11320, *Money Market Mutual Funds: A Financial Stability Case Study*, by Eva Su.

[33] Federal Reserve, "Federal Reserve Announces Extensive New Measures to Support the Economy," press release, March 23, 2020, at https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm (hereinafter cited as Federal Reserve, "New Measures to Support the Economy").

[34] Federal Reserve, "New Measures to Support the Economy."

- **Main Street Lending Program (MSLP).** The MSLP buys new or expanded loans from banks or credit unions to businesses and nonprofits with up to 15,000 employees or up to $5 billion in revenues. These loans are to be five-year loans with deferred principal repayment for two years and interest repayment for one year, and the businesses would have to make a "commercially reasonable effort" to retain employees. This program may be particularly attractive to businesses too large to qualify for SBA assistance.
- **Municipal Liquidity Facility (MLF).** The MLF purchases shorter-term state and municipal debt in response to higher yields and reduced liquidity in that market. The facility purchases only debt in anticipation of taxes or dedicated revenues of states, larger counties (with at least 500,000 residents), and larger cities (with at least 250,000 residents). However, states without at least two counties and cities that meet the minimum population limit can designate any combination of their two largest counties or cities to participate.

Some programs were announced with an overall size limit (see **Table 1**). During the 2008 financial crisis, however, actual activity typically did not match the announced size. These facilities extend the Fed's traditional "lender of last resort" role for banks to be the "buyer of last resort" for broad segments of financial markets that have become illiquid due to COVID-19 and "lender of last resort" for nonfinancial firms. To extend its traditional role, the Fed has used its Section 13(3) emergency lending authority. The Fed also used this authority to assist nonbank financial firms and markets in the 2008 financial crisis. The 2020 facilities go beyond the scope of the 2008 facilities by purchasing loans of nonfinancial businesses and debt of states and municipalities. In some programs, the Fed purchases securities in affected markets directly. In other programs, the Fed makes loans to financial institutions or investors to intervene in affected markets; these loans are typically made on attractive terms to incentivize activity, including by shifting the credit risk to the Fed.

By law, the Fed must structure these facilities to avoid expected losses, and the facilities charge users interest and/or fees as compensation. To that end, Treasury has pledged ESF funds for each of these facilities to protect the Fed from future losses—although these losses would still be borne by the federal government.[35] The Treasury Secretary approved each facility.

The loans and asset purchases of the facilities are funded by the Fed using its resources but are backed by the ESF in the event of losses. Before enactment of P.L. 116-136, Treasury had already made equity investments through the ESF in some Fed emergency programs created in response to COVID-19. The MSLP and the MLF were created after the CARES Act's enactment; the other facilities were created or announced before the CARES Act. Because the CARES Act appropriated $500 billion to the ESF, there is ambiguity about which of these programs backed by ESF funding are subject to CARES Act requirements.[36] The Fed has not provided consistent or centralized information on which programs are subject to the CARES Act in its reporting to the

[35] The ESF was not used to backstop 13(3) programs in 2008, but some programs were backed by other Treasury funds.

[36] The ESF held $93 billion in assets before enactment of the CARES Act. It is unclear to what extent these assets could hypothetically be used to support Fed programs in excess of the CARES Act funding.

public or Congress.[37] **Table 1** is based on how the programs were characterized in testimony by Fed Chair Jerome Powell on June 30, 2020.[38]

Table 1 summarizes how much CARES Act funding has been pledged to each facility. In total, $215 billion has been pledged to date, but if limited to the programs identified as CARES Act programs by Chair Powell, that total is $195 billion. As long as there are unpledged CARES Act and non-CARES Act funds remaining within the ESF—and less than half the amount authorized under the CARES Act has been pledged to date under either measure—this distinction does not limit the Fed's future response. The distinction does determine which programs are subject to the terms and conditions of the CARES Act, however, which are summarized in **Table 2**.

Table 1. Federal Reserve COVID-19 Emergency Programs Backed by CARES Act Funding

(billions of dollars)

	Announced Size Limit	ESF Funds Pledged	Chair Powell Identified as CARES Act?
Facilities Created Prior to Enactment of CARES Act			
Commercial Paper Funding Facility	n/a	$10	N
Money Market Fund Liquidity Facility	n/a	$10	N
Primary Market Corporate Credit Facility/Secondary Market Corporate Credit Facility	$750	$75	Y
Term Asset-Backed Securities Loan Facility	$100	$10	Y
Facilities Created Since Enactment of CARES Act			
Main Street Lending Program	$600	$75	Y
Municipal Liquidity Facility	$500	$35	Y
Total	**n/a**	**$215**	**$195**

Source: Congressional Research Service (CRS).

Note: See the "Federal Reserve Emergency Facilities Backed by the ESF" section for details.

[37] For example, the Fed appears to consider the PMCCF and SMCCF to be CARES Act programs, but the term sheets for those programs do not identify them as such. Further, in one of the press releases announcing the disclosures referenced by Chair Powell, the Fed stated that "... information it will publicly disclose for the TALF and the Paycheck Protection Program Liquidity Facility (PPPLF) on a monthly basis.... The disclosures are similar to those announced in April for the Board facilities that utilize CARES Act funds." (See Federal Reserve, "Federal Reserve publishes updates to the term sheet for the Term Asset-Backed Securities Loan Facility (TALF) and announces information to be disclosed monthly for the TALF and the Paycheck Protection Program Liquidity Facility," press release, May 12, 2020, at https://www.federalreserve.gov/newsevents/pressreleases/monetary20200512a.htm.) This announcement would seem to suggest that the Fed does not consider TALF to be subject to the CARES Act.

[38] U.S. Congress, House Committee on Financial Services, *Oversight of the Treasury Department's and Federal Reserve's Pandemic Response*, Statement by Jerome H. Powell, Chair of the Board of Governors of the Federal Reserve System, 116th Cong., 2nd sess., June 30, 2020, at https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-powellj-20200630.pdf.

There has been talk of how the Fed can "leverage" the CARES Act funding of $454 billion (or more) into greater amounts of assistance by combining it with the Fed's funds.[39] Although the use of this term is more colloquial than technical from a financial perspective, **Table 1** illustrates how this is accomplished. For example, the MLF is planned to purchase up to $500 billion of assets using $35 billion of CARES Act funding.

Tracking CARES Act Funding for Federal Reserve Programs

As required by law, the Fed has issued monthly reports to Congress describing the purpose and details of each facility.[40] In these reports and accompanying transaction records, the Fed has disclosed "names and details of participants in each facility; amounts borrowed and interest rate charged; and overall costs, revenues, and fees for each facility."[41] Total loans or asset purchases through the facilities are published weekly as part of the Fed's balance sheet.[42] The Fed also provides details on emergency facilities' activities in quarterly reports.[43] As of July, outstanding assistance under the facilities has been small relative to 2008 financial crisis facilities, but several of the facilities were only recently opened and have not ramped up activity yet.

Assistance to States and Municipalities and Medium-Sized Businesses

The act envisions the Fed using CARES Act funding to help two broad groups that had not been the targets of Fed emergency lending programs up to that point: (1) states (as defined by the act) and municipalities; and (2) *medium-sized businesses*, defined as those with between 500-10,000 employees, including nonfinancial businesses. The Fed has not lent to or purchased the securities of nonfinancial businesses and states and municipalities since the 1930s.[44] "Medium-sized" businesses may be too small to issue publicly-traded debt securities that the Fed is purchasing through the PMCCF and SMCCF and too large to qualify for SBA assistance provided by the

[39] See, for example, Jeanna Smialek, "How the Fed's Magic Money Machine Will Turn $454 Billion Into $4 Trillion," *New York Times*, March 26, 2020, at https://www.nytimes.com/2020/03/26/business/economy/fed-coronavirus-stimulus.html.

[40] See Federal Reserve, "Reports to Congress Pursuant to Section 13(3) of the Federal Reserve Act in response to COVID-19," available at https://www.federalreserve.gov/publications/reports-to-congress-in-response-to-covid-19.htm.

[41] Federal Reserve, "Federal Reserve Board outlines the extensive and timely public information it will make available regarding its programs to support the flow of credit to households and businesses and thereby foster economic recovery," press release, April 23, 2020, at https://www.federalreserve.gov/newsevents/pressreleases/monetary20200423a.htm. For emergency facilities that are not identified as CARES Act facilities in **Table 1** (with the exception of the Paycheck Protection Program Liquidity Facility), the Fed has not provided monthly transaction records. However, these facilities are subject to Dodd-Frank disclosure requirements, under which the Fed must publicly disclose transaction data a year after a facility is terminated or two years after lending ceases, whichever comes first.

[42] See Federal Reserve, "Factors Affecting Reserve Balances - H.4.1," available at https://www.federalreserve.gov/releases/h41/.

[43] See Federal Reserve, "Quarterly Report on Federal Reserve Balance Sheet Developments," available at https://www.federalreserve.gov/monetarypolicy/quarterly-balance-sheet-developments-report.htm.

[44] Howard Hackley, *Lending Functions of the Federal Reserve Banks*, Federal Reserve, 1973, p. 130. See also David Fettig, *Lender of More than Last Resort*, Federal Reserve Bank of Minneapolis, December 1, 2002, at https://www.minneapolisfed.org/publications/the-region/lender-of-more-than-last-resort; James Dolley, "The Industrial Advance Program of the Federal Reserve System," *The Quarterly Journal of Economics*, vol. 50, no. 2 (February 1936) p. 229; and David H. Small and James A. Clouse, *The Scope of Monetary Policy Actions Authorized under the Federal Reserve Act*, Federal Reserve, Working Paper, July 19, 2004, at https://www.federalreserve.gov/pubs/feds/2004/200440/200440pap.pdf.

CARES Act, such as the Payroll Protection Program.[45] The act encourages, but does not require, the Fed to work with the Treasury Secretary to create programs assisting these two groups and does not limit Fed assistance to these two groups only.

In particular, Section 4003 presents a detailed proposal for assisting businesses with 500-10,000 employees. This proposal is not required by the act, but the Treasury Secretary "shall endeavor to seek the implementation of" a Fed facility that provides financing to banks and other lenders to make direct loans to U.S. "eligible businesses" (as defined) and nonprofits at an interest rate not higher than 2% and with no principal or interest due for six months to retain their workforces. There are a series of restrictions on the borrower.

Since enactment, the Fed has created programs to aid states and municipalities (the MLF) and small- to medium-sized businesses (the MSLP). The intended recipient (medium-sized businesses) and purpose (to maintain employment) of the proposed facility are similar to the Fed's MSLP (described above), but the terms differ. Section 4003 states that the medium-sized business proposal outlined does not preclude the Fed from separately establishing the MSLP.

Terms and Conditions[46]

Section 4003 sets forth a number of terms and conditions for the assistance provided. Some of these provisions apply broadly to both assistance extended to the Fed and the specified industries, and others apply only to specified industries. **Table 2** compares and contrasts the various terms and conditions for each of these programs. In addition, there are oversight and reporting requirements associated with the assistance, which are detailed in the section titled "Oversight Provisions."

Table 2. Comparison of Terms and Conditions Applying to the $500 Billion Provided to the Exchange Stabilization Fund (ESF)

Term	Specified Industry Assistance	Federal Reserve Programs
Eligible borrowers affected by COVID-19	Businesses related to air carriers, cargo air carriers, or businesses critical to maintaining national security	As defined, eligible businesses, states, and municipalities
Secretary sets terms, conditions, etc. on CARES Act funding	Applies	Applies
10-day deadline for releasing application procedures	Applies	Does not apply
Treasury may make loans or loan guarantees	Applies	Applies
Treasury may make investments	Does not apply	Applies
Secretary determination that credit is not available, assistance is prudent, firm has losses; interest rate reflects risk and market rates before crisis	Applies	Does not apply

[45] For CARES Act assistance to small businesses through Small Business Administration programs, see CRS Report R46284, COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options, by Robert Jay Dilger, Bruce R. Lindsay, and Sean Lowry.

[46] This section was written by Andrew Scott, Marc Labonte, and Rachel Tang.

Term	Specified Industry Assistance	Federal Reserve Programs
Duration is as short as practicable and no more than five years	Applies	Does not apply
Share buybacks/dividends prohibited until 12 months after repayment	Applies	Applies to direct loans only, Secretary may waive[a]
Maintaining employment levels required	Applies	Does not apply[a]
Limited to U.S. businesses	Applies	Applies
Executive compensation restrictions	Applies	Applies to direct loans only, Secretary may waive
Firm must issue equity, warrants, or other compensation to government	Applies	Does not apply
Assistance ineligible for loan forgiveness	Applies	Applies
Order of priority on repayment of funds	Applies	Applies
Administrative authority	Applies	Applies
Use of private financial agents	Applies	Applies
Tax treatment for recipient	Applies	Applies
Special Inspector General jurisdiction	Applies	Applies to Treasury activities
Conflicts of interest	Applies	Applies
Congressional Oversight Commission jurisdiction	Applies	Applies
Reporting, testimony requirements	Applies	Applies (subject to 12 U.S.C. §343(3) requirements)
Public release of assistance or administrative contract agreements	Applies	Does not apply
Government Accountability Office studies	Applies	Applies
Treasury funding appropriated to ESF	Applies	Applies
Rule of construction	Applies	Applies

Source: CRS analysis of terms and conditions found in Sections 4003, 4004, 4018, 4019, 4020, 4026, 4027, 4028, and 4029.

Notes: "Secretary" refers to Treasury Secretary. "Specified industries" refer to firms that are related to commercial airlines, cargo airlines, or those "critical to maintaining national security." Descriptions are summarized—see the main text of this report for more detail.

a. The table does not include a number of restrictions that apply only to a Fed facility for mid-size businesses.

Loan and Loan Guarantee Terms and Conditions for Specified Industries

In an effort to ensure assistance is used to maintain employment levels and the ongoing viability of the recipient, Section 4003 loans and loan guarantees must satisfy several terms and conditions. To approve the loans, the Treasury Secretary must determine that other credit is not reasonably available to the applicant at the time of the transaction. The intended obligation must be prudently incurred by the borrower, and the loan must be sufficiently secured or made at a rate that reflects the risk of the loan or loan guarantee—to the extent practicable—and not less than an interest rate based on market conditions for comparable obligations prevalent prior to the outbreak of COVID-19. The duration of the loan must be as short as practicable—not to exceed

five years. Further, Treasury may not issue a loan or loan guarantee unless it receives warrants,[47] senior debt, or equity in the borrower.

Additional terms and conditions apply to the loan or loan guarantee recipient. The agreement must provide that neither the borrower nor any affiliate may engage in stock buybacks, unless contractually obligated to do so, or pay dividends until 12 months after the date the loan is no longer outstanding. Until September 30, 2020, the borrower must maintain its employment levels as of March 24, 2020, to the extent practicable, and may not reduce its employment levels by more than 10% from the levels on that date. The borrower must certify that it is a U.S.-domiciled business with significant operations in and a majority of its employees based in the United States. The borrower must have incurred or must expect to incur covered losses such that the continued operations of the business are or would be jeopardized, as determined by the Treasury Secretary.

Section 4004 states that Treasury may enter into an agreement to make a loan only if the borrower agrees to specified limitations on the compensation and severance pay of executives and employees whose total compensation exceeded $425,000 in calendar year 2019. Total compensation, as defined in the act, is capped at the individual's 2019 compensation level, or if compensation exceeds $3 million, it is also capped at $3 million plus 50% of the 2019 compensation level above $3 million. Further, severance pay for those individuals is capped at twice the individual's 2019 compensation level.

Section 4005 establishes an air carrier's service obligation. It requires an air carrier receiving financial assistance under the act to maintain scheduled air transportation service, as the Transportation Secretary deems necessary, to ensure services to any point served by that air carrier before March 1, 2020, taking into consideration the air transportation needs of small and remote communities and the needs of health care and pharmaceutical supply chains.[48] Such authority and any requirements issued shall terminate on March 1, 2022.

Section 4019 establishes that certain entities are ineligible to participate in Section 4003 transactions. An ineligible entity is a covered individual who owns a *controlling interest* in that entity (defined as "not less than 20 percent, by vote or value, of the outstanding amount of any class of equity interest in an entity"). Covered individuals are the President, the Vice President, an executive department head, a Member of Congress, or the spouse, child, or spouse of a child of any of those individuals.

Section 4115 protects collective bargaining agreements for a period lasting from the time financial assistance is issued and ending on September 30, 2020.[49]

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[47] Warrants give the government the option to buy common stock in a company in the future at a predetermined price. If the government does not wish to exercise that option in the future, it can sell the warrants back to the firm or to a third party. If the company's stock price subsequently rises (falls), the value of the warrant rises (falls). Warrants give the government some upside profits if the stock price rises, while limiting the government's exposure (the value of a warrant cannot fall below zero) if the stock price falls. The value of the warrants depends primarily on their number and the negotiated purchase price of the stock, both of which are at the discretion of the Treasury Secretary to negotiate.

[48] See DOT, *Final Order: Continuation of Certain Air Service Under* P.L. 116-136 *§§ 4005 and 4114(b)*, Order 2020-4-2, April 7, 2020, at https://www.transportation.gov/sites/dot.gov/files/2020-04/CARES%20Final%20Order%20FINAL.PDF.

[49] Section 4115 prohibits Treasury and other federal agencies from conditioning the provision of payroll support payments on the applicant's "implementation of measures to enter into negotiations with the certified bargaining representative of a craft or class of employees of the applicant under the Railway Labor Act (45 U.S.C. §151 et seq.) or the National Labor Relations Act, (29 U.S.C. §151 et seq.) regarding pay or other terms or conditions of employment," through September 30, 2020.

Terms and Conditions for Air Carrier Worker Support

To be eligible for grants to cover employee salaries under Section 4113, an air carrier or contractor must agree to

- refrain from conducting involuntary furloughs or reducing pay rates and benefits until September 30, 2020;
- refrain from stock buybacks and dividends through September 30, 2021;
- comply with CARES Act provisions to protect collective bargaining agreements regarding pay or other terms of employment for a period lasting from the time financial assistance is issued and ending on September 30, 2020; and
- comply with limits on compensation of highly paid employees, similar to those described above for airline loans, for a two-year period from March 24, 2020, to March 24, 2022.

In addition, the Transportation Secretary is authorized to require, to the extent practicable, that an air carrier receiving this support continue services to any point served by that carrier before March 1, 2020, considering factors similar to those described above for airline loans under Section 4005.

To compensate the government for this assistance, Section 4117 provides that the Treasury Secretary may receive warrants, options, stock, and other financial instruments from recipients, as determined appropriate by the Secretary. (See the "Air Carrier Worker Support" section for more on Treasury's determination for receiving compensation.)

Terms and Conditions and Restrictions for the Federal Reserve Facilities

As shown in **Table 2**, some, but fewer, of the terms and conditions and restrictions placed on the industry assistance also apply to the Fed. Fed assistance may go only to U.S. businesses (as defined), and the conflict of interest and reporting requirements also apply to the Fed. Restrictions on executive compensation and capital distributions (stock buybacks and dividends) do not apply to Fed programs unless the Fed is providing direct loans to recipients; in the case of the Fed programs, the Treasury Secretary may waive these requirements "to protect the interests of the Federal Government." To date, these restrictions have been applied only to the Main Street Lending Program. Likewise, requirements to provide the government with warrants or other forms of compensation do not apply to the Fed programs. Fewer restrictions may have been placed on Fed programs than industry assistance because of the Fed's independence from Congress and the Administration, and because most of the Fed programs are not intended to prevent recipients' imminent failure.[50]

In addition to the conditions and restrictions in the CARES Act, the Fed typically has extended assistance to nonbank entities under its emergency authority found in Section 13(3) of the Federal Reserve Act. This authority places a number of restrictions on the Fed's activities, many of which were added or augmented by the Dodd-Frank Act (P.L. 111-203).[51] For example, actions taken under Section 13(3) must be broadly based and "for the purpose of providing liquidity to the financial system, and not to aid a failing financial company." Actions must also provide security (e.g., collateral) that is sufficient to protect the taxpayer and is based on sound risk management practices. Unlike financial firms, some entities impacted by COVID-19 may not have securities

[50] If the Fed were to create the medium-sized business lending program envisioned in Section 4003, additional terms and restrictions would apply to that facility.

[51] For more information, see CRS Report R44185, *Federal Reserve: Emergency Lending*, by Marc Labonte.

that can be posted as collateral. The CARES Act only states that "any applicable requirements under section 13(3) … shall apply" to Fed programs created under the act. Nevertheless, after the enactment of the CARES Act, the Fed created the MSLP and MLF under Section 13(3).

Oversight Provisions[52]

To provide oversight of Title IV, the CARES Act created a special inspector general, Congressional Oversight Commission, and various reporting requirements.

Special Inspector General for Pandemic Recovery[53]

Section 4018 establishes a Special Inspector General for Pandemic Recovery (SIGPR) within Treasury. The SIGPR is nominated by the President with the advice and consent of the Senate[54] and may be removed from office in the manner prescribed in Section 3(b) of the Inspector General Act of 1978.[55] The SIGPR is tasked with conducting audits and investigations of Treasury's activities pursuant to the CARES Act, including collecting and summarizing the following information regarding loans provided by Treasury:

- "A description of the categories of the loans guarantees, and other investments made by the Secretary";
- "A listing of eligible businesses receiving loan, loan guarantees, and other investments" by category;
- An explanation and justification for each loan or loan guarantee;
- Biographical information about each person hired to manage or service the loans, loan guarantees, and other investments; and
- Financial information, including the total amount of each loan, loan guarantee, and other investment and the repayment status and any gains or losses.

The SIGPR is empowered to hire staff, enter into contracts, and broadly exercise the same authority and status as inspectors general under the Inspector General Act of 1978.[56] The SIGPR is required to report to the appropriate committees of Congress within 60 days of Senate confirmation, and quarterly thereafter, on the activities of the office over the preceding three months, including detailed information on Treasury loan programs.[57] The SIGPR position terminates five years after the enactment of the CARES Act (i.e., March 27, 2025).

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[52] This section was written by Ben Wilhelm and William Egar. For more on the CARES Act oversight provisions, see CRS Report R46315, *Congressional Oversight Provisions in the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136)*, by Ben Wilhelm and William T. Egar.

[53] For more on the Special Inspector General for Pandemic Recovery (SIGPR), please see CRS Insight IN11328, *Special Inspector General for Pandemic Recovery: Responsibilities, Authority, and Appointment*, by Ben Wilhelm.

[54] The current SIGPR is Brian D. Miller, who was nominated by President Trump on April 6, 2020, and confirmed by the Senate on June 2, 2020. He formerly served as a senior associate counsel in the Office of the House Counsel.

[55] 5 U.S.C. Appendix.

[56] See also CRS Report R45450, *Statutory Inspectors General in the Federal Government: A Primer*, by Kathryn A. Francis.

[57] The SIGPR is also required under §4020(e)(4)(B) to report to the appropriate committees "whenever information or assistance requested by the Special Inspector General is, in the judgment of the Special Inspector General, unreasonably refused or not provided." The Administration objected to this provision in a signing statement, available at https://www.whitehouse.gov/briefings-statements/statement-by-the-president-38/.

From the $500 billion appropriated in Title IV, Section 4018 directs that $25 million shall be made available to the SIGPR as a nonexpiring appropriation.

Congressional Oversight Commission[58]

Section 4020 establishes a five-member Congressional Oversight Commission in the legislative branch. The commission is directed to oversee implementation of Subtitle A of Title IV by the federal government and to issue regular reports to Congress.

The commission is directed to report to Congress "not later than 30 days after the first exercise by the Secretary and the Board of Governors of the Federal Reserve System of the authority under this subtitle and every 30 days thereafter." Such reports must include

> (i) The use by the Secretary and the Board of Governors of the Federal Reserve System of authority under this subtitle, including with respect to the use of contracting authority and administration of the provisions of this subtitle.
>
> (ii) The impact of loans, loan guarantees, and investments made under this subtitle on the financial well-being of the people of the United States and the United States economy, financial markets, and financial institutions.
>
> (iii) The extent to which the information made available on transactions under this subtitle has contributed to market transparency.
>
> (iv) The effectiveness of loans, loan guarantees, and investments made under this subtitle of minimizing long-term costs to the taxpayers and maximizing the benefits for taxpayers.[59]

The commission is authorized to hold hearings and gather evidence, obtain data and other information from federal agencies upon request, hire staff, obtain the services of outside experts and consultants, request the detail of federal employees, and enter into contracts to discharge its duties.

Members of the commission are to be appointed by the Speaker of the House, the Senate majority leader, the House minority leader, and the Senate minority leader.[60] Appointed commissioners who are not federal employees are to be paid "at a rate equal to the daily equivalent of the annual rate of basic pay for level I of the Executive Schedule for each day (including travel time) during which such member is engaged in the actual performance of duties vested in the Oversight Commission" and reimbursed for travel expenses. For FY2020, Level I of the Executive Schedule is $219,200 annually.[61]

Funding for the commission's expenses is to be derived in equal amounts from the contingency fund of the Senate and an "applicable" account of the House. The Treasury Secretary and the Federal Reserve Board of Governors are instructed to "promptly" transfer funds to such accounts for the reimbursement of commission expenses.

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[58] For more on the Congressional Oversight Commission, please see CRS Insight IN11304, *COVID-19 Congressional Oversight Commission (COC)*, by Jacob R. Straus and William T. Egar.

[59] §4020(b)(2)(A).

[60] The Speaker of the House, Senate majority leader, House minority leader, and Senate minority leader are each authorized to appoint one member of the Congressional Oversight Commission. A fifth member is to be appointed jointly by the Speaker and Senate majority leader, after consultation with the House and Senate minority leaders; this member is to serve as chairperson of the commission.

[61] U.S. Office of Personnel Management, "Salary Table No. 2020-EX," at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/EX.pdf.

Schedule for Reports, Disclosures, and Testimony

In addition to the establishment of the SIGPR and the Congressional Oversight Commission, Title IV requires the Treasury Secretary and the Fed Chair to issue reports, make disclosures, and provide testimony before congressional committees for a number of specified purposes. Collectively, these provisions require disclosure to Congress and the public of financial and other details on each transaction under Section 4003(b). These requirements are detailed in **Table 3**.

Table 3. Reporting, Disclosure, and Testimonial Requirements in Title IV

Section	Requirement	Due Date	Submitted By	Submitted To
4026(a)	Online publication of information about each transaction under §4003(b)(1), (2), or (3).	Within 72 hours after any covered transaction	Secretary of the Treasury	Online publication
4026(b)(1)(A)	A summary report about transactions to passenger air, cargo air, and national security industries.	Within seven days after a covered transaction	Secretary of the Treasury	Chairs and ranking members of (1) House Financial Services Committee; (2) House Ways and Means Committee; (3) Senate Banking, Housing, and Urban Affairs Committee; and (4) Senate Finance Committee
4026(b)(1)(B) and 4026(b)(1)(C)	Summary reports about each loan and loan guarantee made to passenger air, cargo air, and national security industries.	Within 7 days of reporting to Congress and every 30 days	Secretary of the Treasury	Online publication
4026(b)(2)(A)(i) and 4026(b)(2)(A)(ii)	Reports with all the information required by 12 U.S.C. §343(3)(C)(i) for transactions involving Federal Reserve.	Within 7 days after a covered transaction and every 30 days	Federal Reserve	(1) House Financial Services Committee; and (2) Senate Banking, Housing, and Urban Affairs Committee
4026(b)(2)(B)	Publication of reports under §4026(b)(2)(A)(i) or §4026(b)(2)(A)(ii).	Within seven days of reporting to Congress	Federal Reserve	Online publication
4026(c)	Testimony on assistance program.	Quarterly	Secretary of the Treasury and Federal Reserve Chair	(1) House Financial Services Committee; and (2) Senate Banking, Housing, and Urban Affairs Committee
4026(d)	Guidance and application materials for loans and loan guarantees to passenger air, cargo air, and national security industries.	No explicit deadline	Secretary of the Treasury	Online publication

Section	Requirement	Due Date	Submitted By	Submitted To
4026(e)	Publication of relevant contracts.	Not more than 24 hours after entering into a covered contract	Secretary of the Treasury	Online publication
4026(f)	Comptroller General report on economic relief program.	December 27, 2020, and annually thereafter	Comptroller General of the United States	(1) Appropriations Committees; (2) Budget Committees; (3) House Financial Services Committee; (4) House Transportation and Infrastructure Committee; (5) Senate Banking, Housing, and Urban Affairs Committee; and (6) Senate Commerce, Science, and Transportation Committee
4118	Report on air carrier worker support.	November 1, 2020, and March 27, 2021 (updated report)	Secretary of the Treasury	(1) House Energy and Commerce, Science, Space, and Technology, and Transportation and Infrastructure Committees; and (2) Senate Banking, Housing, and Urban Affairs Committee

Source: CRS review of the CARES Act (P.L. 116-136).

Potential Legislative Changes to Title IV Financial Assistance

As the nation continues to grapple with the ongoing pandemic, the largest questions facing Title IV financial assistance moving forward are

- when should the authority to provide assistance expire?
- what should be done with unused funds?

Both policy considerations can be viewed in the context of what actions have been taken so far under Title IV and what needs might arise in the future. When the CARES Act was enacted, Congress faced great uncertainty about how long the economic disruption caused by the pandemic would last, and how extensive it would be. Economic disruptions are arguably persisting for longer than many observers would have anticipated in March. In contrast, financial market conditions have improved since then, so some firms have found private credit easier to access.

Unlike some provisions of the CARES Act, authority to make new loans, loan guarantees, or investments under Title IV is not tied to the end of the national emergency; instead, the authority expires at the end of 2020. Congress could consider changing the expiration date or tying it to the end of the national emergency in future legislation. One argument in favor of such a change is

that pandemic disruptions have lasted longer than expected. An argument against such a change is that this assistance was meant to address temporary dislocations, and extending such assistance could have negative effects on the efficient allocation of capital by favoring certain industries over others.

About four months after enactment, less than half of the $500 billion has been pledged.[62] With record budget deficits and other spending priorities stemming from the pandemic, Congress may consider whether some of the unpledged funding could be reallocated to other uses.[63] Congress may consider extending eligibility for Treasury loans and loan guarantees under Title IV to other affected industries or mandating the creation of new Fed facilities to assist specific groups. For example, the House passed the HEROES Act (H.R. 6800), which includes provisions requiring the Fed to create certain new emergency facilities backed by CARES Act funding.[64]

Alternatively, Congress could shift the unused funds to unrelated uses. For example, Congress might reduce the amount authorized under Title IV and attempt to use it as a budgetary offset (or "pay for") for new initiatives. Due to scoring conventions, the Congressional Budget Office (CBO) is unlikely to score such a proposal as significantly reducing the budget deficit, however. In its cost estimate of the CARES Act, CBO estimated that the $500 billion authorized in Title IV would increase the budget deficit by only $1 billion.[65] Therefore, reducing authorized funding would likely lead to a similar proportional reduction in the deficit.

Further, not all of the funding pledged to the Federal Reserve may ultimately be needed. Those funds are needed only to cover future losses on Fed programs, and they will eventually be returned to the Treasury if future losses end up being smaller than pledged funds. To date, pledged funds far exceed total activities of the programs. Although some programs started operations relatively recently and may still be ramping up activities, if programs continue to be small relative to pledged funds, Congress could consider whether currently pledged levels are necessary.

With the pandemic and recession still unfolding, there is the possibility that economic conditions could get worse (or better) between now and the end of the year. One drawback to reducing the amounts available under Title IV now is that new economic problems could arise that Treasury believes require new loan, loan guarantees, or Fed programs to be initiated. Note that the Fed would still have authority to initiate new programs without using Title IV funding or authority—it apparently already has initiated several programs without it—but these programs might have to be structured with higher interest rates or tighter eligibility criteria in that scenario.

[62] It is not known how much funding has been pledged based on Treasury's letters of intent with the airlines. However, even if the entire $25 billion available for airline assistance was pledged, less than half of the $500 billion would be pledged overall. In addition, Treasury has received Title IV loan applications that it has not acted on, to date.

[63] Similarly, Congress eventually reduced the size of the Troubled Asset Relief Program from $700 billion to $475 billion. See the **Appendix** for more details.

[64] See CRS Insight IN11404, *HEROES Act (H.R. 6800): Selected Federal Reserve Provisions*, by Marc Labonte.

[65] CBO, H.R. 748, *CARES Act*, P.L. 116-136 April 16, 2020, at https://www.cbo.gov/publication/56334.

Appendix. Comparisons to the Troubled Asset Relief Program (TARP)[66]

Over a decade ago, in the financial crisis and recession of 2007-2009, businesses and individuals in the United States and across the globe faced financial uncertainty unparalleled for a generation. Although the cause of the financial uncertainty differed greatly between the current circumstances as a consequence of Coronavirus Disease 2019 (COVID-19) and the financial crisis of 2007-2009, in each instance Congress has chosen to proactively assist in economic recovery.

As the financial crisis reached near panic proportions in fall 2008, Congress created the $700 billion Troubled Asset Relief Program (TARP) through the enactment in October 2008 of the Emergency Economic Stabilization Act (EESA; P.L. 110-343). Subsequently, Congress passed the $787 billion American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5), which provided relief to certain parts of the economy.[67] The CARES Act combines elements of both aforementioned acts. Title IV of the CARES Act, with its assistance for firms and support of Federal Reserve financial-sector facilities, more closely resembles TARP; a summary of aspects of TARP that parallel Title IV is the focus of this appendix.

For a broader overview of the financial sector and industry assistance during the 2007-2009 financial crisis, please see CRS Report R43413, *Costs of Government Interventions in Response to the Financial Crisis: A Retrospective*, by Baird Webel and Marc Labonte. For a comparison of TARP and Title IV of the CARES Act, see **Table A-1**.

Implementation

The EESA authorized the Treasury Secretary to either purchase or insure up to $700 billion in troubled assets owned by financial firms. The general concept was that by removing such assets from the financial system, confidence in counterparties would be restored, and the system could resume functioning. This authority granted in the EESA was broad. In particular, the definitions of both *troubled assets* and *financial institutions* allowed the Secretary wide latitude in deciding what assets might be purchased or guaranteed and what might qualify as a financial institution.[68] In practice, most TARP funding was not used to purchase troubled assets, instead being dedicated to capital injections for financial institutions, loans to the auto industry, and assistance for homeowners at risk of foreclosure. In a limited number of cases, TARP and Federal Reserve funds were used together. The EESA was later amended to reduce the authorized amount to $475 billion, when it became clear that the amount used would not exceed this amount.[69]

[66] This section was authored by Baird Webel and Raj Gnanarajah. For more information, see CRS Report R41427, *Troubled Asset Relief Program (TARP): Implementation and Status*, by Baird Webel.

[67] Felix Reichling, *Estimated Impact of the American Recovery and Reinvestment Act on Employment and Economic Output in 2014*, CBO, February 2015, at https://www.cbo.gov/publication/49958.

[68] The definition for *financial institution* gives examples, such as banks and credit unions, but specifically does not limit the definition to the types of firms named. The definition of *troubled asset* includes "any financial instrument" determined by the Secretary, in consultation with the Chairman of the Federal Reserve, the purchase of which would promote financial stability.

[69] P.L. 111-203, §1302.

Equity Compensation for Treasury

Equity warrants in return for government assistance were specifically provided for in the TARP statute.[70] The warrants were expected to provide a positive financial upside to the taxpayer if the private companies' fortunes improved as a result of the government assistance. Although resulting in positive returns for the government, the amount recouped through warrants ($9.58 billion) was less than through interest and dividends ($24.38 billion).[71] The act did not specifically call for the government to receive large holdings of common stock. In several cases, however, the government ended up with large, sometimes controlling, equity positions in private companies.[72] The government generally exercised little of the ownership control inherent in these large stakes. Common equity in companies was typically accepted in return for TARP assistance in order to strengthen the companies' capital positions. Such equity also provided a financial upside to the taxpayers when firms recovered, but it also had a potential downside when firms did not recover strongly.

Termination Date

The EESA granted the purchase authority for a maximum of two years from the date of enactment, meaning it expired on October 3, 2010. Commitments made under this authorization, however, could continue after this date, with no limit on how long assets purchased under TARP could be held by the government. At present, there continues to be funding disbursed under the housing assistance program[73] and a small amount ($0.04 billion) of bank capital assistance outstanding.[74]

Limits on Compensation and Labor Reduction

The EESA included limits on executive bonuses and golden parachutes and provided for possible compensation clawbacks. The EESA was later amended by ARRA[75] to expand these limits and add additional corporate governance reforms, thus placing additional restrictions on participating banks in existing Capital Purchase Program contracts. The act amending the EESA also allowed for early repayment and withdrawal from the program without financial penalty. With the advent of more stringent requirements for TARP recipients, many banks began to repay, or attempt to repay, TARP funds. There was no employee retention requirement with TARP.

[70] P.L. 110-343, §113.

[71] Treasury, *Monthly TARP Update*, April 1, 2020, at https://www.treasury.gov/initiatives/financial-stability/reports/Documents/2020.03%20March%20Monthly%20Report%20to%20Congress.pdf (hereinafter cited as Treasury, *Monthly TARP Update*, April 2020).

[72] These cases included AIG, Citigroup, Chrysler, General Motors, and Ally Financial. The common equity holdings typically resulted from the conversion of loans or preferred equity. See CRS Report R41427, *Troubled Asset Relief Program (TARP): Implementation and Status*, by Baird Webel, Table 5.

[73] See Treasury, *Monthly Report to Congress: March 2020*, April 10, 2020, pp. 3-4, at https://www.treasury.gov/initiatives/financial-stability/reports/Documents/2020.03%20March%20Monthly%20Report%20to%20Congress.pdf.

[74] Treasury, *Monthly TARP Update*, April 2020.

[75] P.L. 111-5, Title VII.

Congressional Oversight

The EESA included a number of oversight mechanisms and reporting requirements.[76] Similar to the CARES Act, it created a TARP Congressional Oversight Panel.[77] The TARP Oversight Panel was a five-member, independent entity established in the legislative branch, appointed by congressional leadership, and directed to submit regular reports to Congress. In exercising its duties, the TARP Congressional Oversight Panel issued 30 reports and held 26 hearings between December 2008 and March 2011, according to its final report. The panel employed a total of 46 staff, used 3 detailees, and expended approximately $10.7 million through April 3, 2011.[78] The five-member panel was appointed by the House and Senate leadership.

The EESA also required the Treasury Secretary to provide periodic updates to Congress, with both monthly overall reports and individual reports detailing "all transactions" made under TARP.[79] The Comptroller General was specifically tasked with oversight responsibilities and regular audits, with the Secretary directed to provide appropriate facilities, funding, and access to records to facilitate this oversight.[80]

Special Inspector General

The EESA created the Special Inspector General for TARP (SIGTARP) position with an initial $50 million in funding, which has been continued in annual appropriations since. The SIGTARP was provided similar powers and authorities as other inspectors general to conduct audits and investigations of TARP and issue quarterly reports until all assets held or insured by Treasury under TARP were disposed of. The SIGTARP issued its first report in 2010, with its latest report covering the last quarter of 2019.[81] Congress appropriated $22 million in the Consolidated Appropriations Act, 2020 (P.L. 116-93) for the SIGTARP position in FY2020.

Conflicts of Interest

The EESA required the Secretary to issue regulations or guidelines to "address, manage or prohibit"[82] conflicts of interest arising in TARP, including the purchase and management of assets and the selection of asset managers and post-employment restrictions.

Minimizing Costs to Taxpayers

The EESA directed the Secretary to minimize the negative impact on taxpayers, including both direct and long-term costs and benefits. Market mechanism and private-sector participation in operating the program were encouraged. The terms and conditions of Treasury asset purchases

[76] Treasury continues to publish TARP reports at https://www.treasury.gov/initiatives/financial-stability/reports/Pages/default.aspx. Monthly overall reports are required under §105(a) of the EESA (P.L. 110-343).

[77] P.L. 110-343, §125. For more on the Congressional Oversight Panel in the CARES Act and in TARP, see CRS Insight IN11304, *COVID-19 Congressional Oversight Commission (COC)*, by Jacob R. Straus and William T. Egar.

[78] See the TARP Congressional Oversight Panel's final report at https://www.govinfo.gov/content/pkg/CHRG-112shrg64832/pdf/CHRG-112shrg64832.pdf.

[79] P.L. 110-343, §125.

[80] P.L. 110-343, §116.

[81] See TARP Special Inspector General reports at https://www.sigtarp.gov/Pages/Reports-Testimony-Home.aspx.

[82] P.L. 110-343, §108.

were to be designed to provide recompense to the taxpayer, including participation in the equity appreciation of a firm following Treasury asset purchases.

Table A-1. Comparison of the CARES Act, Title IV, and TARP

	CARES Act, Title IV	TARP
Amount Provided	$500 billion to the Exchange Stabilization Fund.	Up to $700 billion for the newly created Troubled Asset Relief Program (TARP); a subsequent act (P.L. 111-203) reduced this to $475 billion.
Enacted	March 27, 2020.	October 3, 2008.
Expiration of Authority	December 31, 2020, and allows outstanding loans and guarantees to be modified, restructured, or otherwise amended after that date. Assistance to the air industry is not to extend beyond the initial five-year origination date.	October 3, 2010. Commitments made under TARP authorized to continue after this date.
Beneficiaries	For direct loans or loan guarantees: passenger airlines, cargo airlines, and businesses critical to national security. For Federal Reserve (Fed) emergency facilities: eligible businesses, states, and municipalities.	Financial institutions, auto industry, and homeowners at risk of foreclosure.
Methods of Assistance	Treasury may make loans or loan guarantees directly to firms or the Fed. In addition, it may make "other investments" in Fed programs.	Purchase or insurance of troubled assets.
Minimizing Cost to Taxpayers	Prohibition on loan forgiveness; loans and loan guarantees to specified industries must be prudent, sufficiently secured, and made at a rate that reflects risk.	Directs the Treasury Secretary to minimize the negative impact on taxpayers, including both direct and long-term costs and benefits.
Equity Compensation	For specified industries, warrants, equity, or senior debt required.	For asset purchases, warrants, equity, or senior debt required.
Limits on Compensation	Limits on executive compensation for specified industries.	The Emergency Economic Stabilization Act (EESA; P.L. 110-343), as amended, included limits on executive bonuses and golden parachutes and provided for possible compensation clawbacks.
Conflicts of Interest	Businesses owned by certain members of the Administration or Members of Congress, or their family members, cannot be recipients.	EESA required the Treasury Secretary to issue regulations or guidelines to "address, manage or prohibit" conflicts of interest.
Limits on Dividend and Stock Buyback	Stock buyback and dividend restrictions apply to specified firms that receive assistance for 12 months after repayment. For Fed programs involving direct lending, Treasury may restrict.	EESA did not include limits on company dividends and stock buybacks.
Employee Retention	Specified industries receiving direct loans and loan guarantees must maintain minimum employment levels.	EESA did not include an employee retention requirement.
Government Budgeting	Record outlays as subsidy costs (no market risk adjustment).	Record outlays as subsidy costs with market risk adjustment.

	CARES Act, Title IV	TARP
Special Inspector General	Special Inspector General for Pandemic Recovery (SIGPR) within Treasury. From the $500 billion, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) directs $25 million to SIGPR. The SIGPR terminates five years after the enactment of the CARES Act (i.e., March 27, 2025).	Special Inspector General for TARP (SIGTARP) within Treasury until all assets held by Treasury are disposed of. Funded through congressional appropriations; most recently, $22 million in FY2020.
Congressional Oversight	Five-member Congressional Oversight Commission established in the legislative branch to be appointed by House and Senate leadership.	Five-member TARP Congressional Oversight Panel established in the legislative branch, appointed by House and Senate leadership.
GAO	Annual report required.	Periodic investigation and reporting required.
Reports, Disclosures, and Testimony	The CARES Act requires the Treasury Secretary and Federal Reserve Chair to issue reports, make disclosures, and provide testimony before congressional committees.	EESA required the Treasury Secretary to provide periodic updates to Congress with monthly overall reports and individual reports that detailed all transactions made under TARP. Periodic reports were also required from the Office of Management and Budget and the Congressional Budget Office.

Source: CRS.

Note: "Specified industries" refer to firms that are related to commercial airlines, cargo airlines, or those "critical to maintaining national security."

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