



The Real Estate Roundtable

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# Coronavirus Aid, Relief, and Economic Security (CARES) Act and Implications for U.S. Real Estate

## Federal Reserve 13(3) Lending Programs and Facilities in the CARES Act

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# CORONAVIRUS ECONOMIC STABILIZATION ACT OF 2020

## SECTION 4003: EMERGENCY RELIEF AND TAXPAYER PROTECTIONS SECTION 4004: LIMITATION ON CERTAIN EMPLOYEE COMPENSATION

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This summary is based on The Real Estate Roundtable's preliminary analysis of the CARES Act. It is subject to change.

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### WHAT ARE THE VARIOUS FEDERAL RESERVE LENDING FACILITIES OR PROGRAMS ESTABLISHED UNDER SEC. 13(3) OF THE FEDERAL RESERVE ACT THAT PROVIDE LIQUIDITY TO THE FINANCIAL SYSTEM?<sup>1</sup>

- Treasury will use the \$454 billion to capitalize one or more Federal Reserve lending facilities or programs. Specifically, Treasury will contribute the “equity” (i.e. the first loss position on the portfolio of loans made by the fund) and the Federal Reserve will supply leverage at a multiple of the Treasury contribution that corresponds to the credit risk of the loan portfolio. If this fund is used to loan only to investment-grade borrowers, the Federal Reserve's contribution will be much larger (perhaps around \$3 trillion) than if the fund loans to borrowers with a BB credit rating or below. Any Federal Reserve lending facility or program must also comply with Sec. 13(3) requirements related to loan collateralization, taxpayer protection, and borrower solvency.
- Within the \$454 billion made available to provide liquidity to the financial system by supporting lending to eligible businesses, the CARES Act states that the Treasury Secretary “shall endeavor to seek the implementation of a program or facility” that provides financing to banks and other lenders that make direct loans to businesses and nonprofit organizations with 500 to 10,000 employees.
- Unlike the small business emergency loans for businesses with 500 or fewer employees, there is no direct appropriation for the Mid-Sized Lending Facility, and there is no authorization for loan forgiveness. Implementation of the program is essentially at the discretion of the Treasury Secretary.

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<sup>1</sup> CARES Act, Section 4003.



- The Fed facilities established/named to date are listed and linked below:
  1. [Commercial Paper Funding Facility \(CPFF\)](#)
  2. [Primary Dealer Credit Facility \(PDCF\)](#)
  3. [Money Market Mutual Fund Liquidity Facility \(MMLF\)](#)
  4. [Primary Market Corporate Credit Facility \(PMCCF\)](#)
  5. [Secondary Market Corporate Credit Facility \(SMCCF\)](#)
  6. [Term Asset-Backed Securities Loan Facility \(TALF\)](#)
  7. Main Street Business Lending Program (pending establishment)

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## WHAT IS THE MAIN STREET LENDING PROGRAM?<sup>2</sup>

- The Federal Reserve is also authorized to establish a Main Street Lending Program or similar facility or program to support lending to small and mid-sized businesses on terms and conditions set by the Fed consistent with Sec. 13(3).
- Impact: Provides substantial financial assistance for distressed areas of the economy through loan, loan guarantees, and investment either directly by Treasury or through a facility or program run by the Federal Reserve. Treasury has broad authority to determine who receives loans or loan guarantees, loan amounts, and other terms of such loans. Each relief provision also requires recipients to abide by certain terms and conditions for either the duration of their loan or a certain affixed time.

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## WHAT BUSINESSES ARE ELIGIBLE FOR THESE LENDING FACILITIES?<sup>3</sup>

- Businesses receiving funds through a program or facility must be created or organized in the United States, has significant operations in the United States, and a majority of its employees are based in the United States. The principal amount of any obligation cannot be reduced through loan forgiveness. Recipients must comply with the executive compensation limits in Sec. 4004 unless the Treasury secretary waives such requirement if it is necessary to protect the interests of the federal government. Treasury has the authority to require terms and conditions, as well as any covenants, representations, warranties and requirements (including requirements for audits) as deemed appropriate for any loan, loan guarantee or other investment.

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<sup>2</sup> Ibid.

<sup>3</sup> CARES Act, Section 4003.



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## WHAT IS THE PROCEDURE FOR A BUSINESS TO RECEIVE FUNDS THROUGH ONE OF THESE LENDING FACILITIES?<sup>4</sup>

- Treasury must publish procedures for application and minimum requirements within 10 days of enactment. Additional requirements for direct loans by Treasury made as part of a Federal Reserve Program or Facility include:
- During the duration of the loan plus 12 months after the loan is no longer outstanding, the borrower: (i) cannot repurchase its own equity or its parent company's equity that is listed on a national securities exchange unless contractually required before enactment of the Act, and (ii) cannot pay dividends or make other capital distributions on its common stock.

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## WHAT CONDITIONS AND LIMITATIONS ARE ATTACHED TO LOANS ASSOCIATED WITH THESE PROGRAMS?<sup>5</sup>

- Businesses eligible for loans and loan guarantees under Secs. 4003(b)(1) through (3) must agree to limitations on total compensation (salary, bonuses, stock awards, and other financial benefits) paid to officers and employees whose total compensation was more than \$425,000 in 2019.
- For the period beginning on the date of a loan agreement or loan guarantee and ending one-year after the loan agreement or guarantee is no longer outstanding:
  - No officer or employee whose total compensation in 2019 was more than \$425,000 can receive:
    - during any 12-consecutive-month period, total compensation in excess of the employee's total compensation for 2019; or
    - severance that is more than twice the employee's total compensation for 2019; and
    - o If an employee's total compensation for 2019 exceeded \$3 million, then for any 12 -consecutive-month period, the employee's total compensation cannot exceed \$3 million plus 50% of the employee's total compensation for 2019 in excess of \$3 million.
  - These limitations do not apply to union employees under collective bargaining agreements entered into prior to March 1, 2020.
- Impact: Requires businesses that are receiving loans under Sec. 4003 to limit total compensation paid to high earners and encourage businesses to put the borrowed funds into their employee base and other business purposes.

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<sup>4</sup> Ibid.

<sup>5</sup> CARES Act, Section 4004.