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INSIGHT

Restrictions on Compensation Under the CARES Act

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The Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) was enacted to assist those affected by the economic impact of Coronavirus Disease 2019 (COVID-19). A key part of this assistance is provided to eligible businesses, states, and municipalities in Division A, Title IV of the act. Section 4003 allocates $500 billion to the Department of the Treasury (Treasury) to make loans or loan guarantees to certain industries and to support Federal Reserve lending facilities. Section 4112 allocates $32 billion to Treasury to provide financial assistance to the aviation industry for employee wages, salaries, and benefits. Some have characterized these provisions as a "bailout" of private industry; others assert they are necessary to avoid employment losses and maintain economic stability. For more information, see CRS Report R46329, *Treasury and Federal Reserve Financial Assistance in Title IV of the CARES Act (P.L. 116-136)*, coordinated by Andrew P. Scott.

Recipient firms of this financial assistance must meet a number of requirements. In some cases, these include restrictions on compensation at firms receiving assistance under Title IV of the act. This Insight gives an overview of those restrictions.

Treasury and Federal Reserve Programs Subject to Compensation Restrictions

In Section 4003, Congress made direct Treasury support available to three sectors that it deemed particularly in need of such support. This provision makes available up to $46 billion for federal loans and loan guarantees directly from Treasury to the aviation sector and to businesses critical to maintaining national security. The $46 billion is apportioned as follows:

- 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.

This assistance is subject to the compensation restrictions prescribed in Section 4004.

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Of the $500 billion, Treasury can make the remainder—up to $454 billion, plus whatever is not used to assist the specified industries—available to the Federal Reserve. The Federal Reserve created the Main Street Lending Program (MSLP) based on its existing authority and funds made available through the CARES Act. The MSLP acquires five-year loans made by banks and credit unions to businesses with up to 15,000 employees or annual revenues of up to $5 billion. The authority to enter into new transactions under the aforementioned Treasury and Federal Reserve programs terminates on December 31, 2020. MSLP assistance is also subject to the compensation restrictions in Section 4004.

Section 4112 makes an additional $32 billion available to Treasury to provide payroll support to the aviation industry. The payroll support authorization terminates on September 30, 2020. The $32 billion is apportioned as follows:

- up to $25 billion available to passenger airlines,
- up to $4 billion to cargo airlines, and
- up to $3 billion to aviation contractors.

This assistance is subject to the compensation restrictions in Section 4116, which are similar to the Section 4004 compensation restrictions.

Compensation Restrictions

As previously discussed, under Section 4003, firms receiving direct Treasury support are in the passenger and cargo aviation sectors and businesses critical to national security. Through the funding provided by Section 4003, the MSLP provides support to many other firms. Required compliance with the employee compensation provisions begins when a company's loan or loan guarantee agreement with Treasury is executed and ends one year after the date on which the loan or loan guarantee is no longer outstanding (the covered period). All are subject to Section 4004 compensation restrictions as follows:

- **Compensation over $425,000.** Except for employees covered by collective bargaining agreements, no officer or employee of the business whose total compensation (including, but not limited to, salary, bonuses, and awards of stock) exceeded $425,000 in the calendar year 2019 may receive
  - total compensation, during any 12 consecutive months of the covered period, that exceeds the total compensation received by that officer or employee from the business in the calendar year 2019; or
  - severance pay or other benefits upon termination of employment that exceed twice the maximum total compensation received by the officer or employee from the business in the calendar year 2019.
- **Compensation over $3,000,000.** No officer or employee of the business whose total compensation exceeded $3,000,000 in the calendar year 2019 may receive, during any 12 consecutive months of the covered period, total compensation that exceeds the sum of
  - $3,000,000 and
  - 50% of the compensation that officer or employee received over $3,000,000 in 2019.

The Treasury Secretary may waive the compensation limits if the Secretary determines "that such waiver is necessary to protect the interests of the Federal Government."

Aviation-based firms who receive support under the Section 4112 worker payroll support program are subject to the compensation restrictions under Section 4116. The compensation requirements are identical to the aforementioned requirements for firms under Section 4004—except the Treasury Secretary may not waive the compensation limits, and the covered period is defined as the "2-year period beginning March 24, 2020, and ending March 24, 2022." Total compensation for the chief executive officers of the largest domestic passenger airlines, by revenue, ranged from $3.2 million to $17.3 million in FY2019.

Conceptually, some have compared the compensation restrictions under Division A, Title IV of the CARES Act with the pay structures imposed on financial firms whose troubled assets were purchased under the Troubled Assets Relief Program (TARP). The TARP was established by the Emergency Economic Stabilization Act of 2008 (EESA; P.L. 110-343) to help return stability to the financial system during the 2007-2009 financial crisis. Its executive compensation requirements were strengthened in the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5). All TARP recipients were subject to executive compensation restrictions under EESA and ARRA until they satisfied their obligations to Treasury and exited the program. For example, financial institutions were prohibited from using a tax deduction for compensation in excess of $500,000.

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