Congressional Research Service
Informing the legislative debate since 1914

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

Updated January 6, 2021

Congressional Research Service
https://crsreports.congress.gov
R46329

CRS REPORT
Prepared for Members and
Committees of Congress

Congressional Research Service
Informing the legislative debate since 1914

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

SUMMARY

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). 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 that it was 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. The authority to enter into new transactions terminated on December 31, 2020. After the end of the year, remaining funds can still be used to support existing transactions until 2026. Recipients are legally required to repay assistance with interest. The ultimate subsidy involved will not be known until loans and investments have been repaid, but Treasury has recorded subsidies of $19 billion so far.

As of the end of 2020, Treasury had approved over $21.1 billion in loans to 24 air carriers, repair station operators, and ticket agents and almost $736 million in loans to companies deemed critical to national security, including a $700 million loan to a trucking company. 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. The Treasury made $195 billion available under the CARES Act to reimburse the Federal Reserve for potential losses on these programs. These programs supported markets for corporate bonds, municipal bonds, and asset-backed securities and also included a "Main Street Lending" program to help businesses and nonprofits with under 15,000 employees or $5 billion in revenues maintain employment. The Treasury Secretary decided against extending these programs past the end of 2020. The Fed had outstanding assistance of $41.1 billion at the end of 2020.

Title IV also provides up to $32 billion to continue payment of employee wages, salaries, and benefits at passenger and cargo air carriers and certain contractors. These grants do not need to be repaid, but Treasury determined that larger recipients are required to provide Treasury with financial instruments as appropriate compensation. As of the end of 2020, Treasury had approved almost $25 billion in payroll assistance to 352 passenger airlines, $828 million to 39 cargo airlines, and $2.4 billion to 220 contractors. P.L. 116-260, enacted on December 27, 2020, provided an additional $16 billion for payroll support.

Title IV 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 pre-pandemic 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 a series of reports on operations under Title IV.

Most of the money available under Title IV was unused or unneeded when authority expired at the end of 2020. P.L. 116-260 rescinded $429 billion, prohibited the Fed from providing further assistance under programs backed by the CARES Act, and prohibited the use of ESF funds to reopen the Fed's facilities for corporate bonds, municipal bonds, and Main Street Lending.

R46329

January 6, 2021

Andrew P. Scott, Coordinator
Analyst in Financial Economics

Marc Labonte
Specialist in Macroeconomic Policy

Rachel Y. Tang
Analyst in Transportation and Industry

Ben Wilhelm
Analyst in Government Organization and Management

Contents

Tables

Contacts

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, which featured unprecedented business disruptions.[2]

Title IV of the CARES Act contains numerous provisions aimed broadly at stabilizing the economy and helping affected households and businesses.[3] 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 that it is necessary to avoid employment losses and maintain economic stability—the two views are not necessarily mutually exclusive. Section 4112 directs Treasury to provide $25 billion to continue payment of employee wages, salaries, and benefits at passenger air carriers; $4 billion for similar purposes at cargo air carriers; and $3 billion for employees of certain contractors that provide direct services to air carriers.

Authority to use these funds expired at the end of 2020. P.L. 116-260, enacted on December 27, 2020, rescinded $429 billion from Title IV, prohibited the Fed from providing further assistance under programs backed by the CARES Act, and prohibited Exchange Stabilization Fund (ESF) funds from being used to reopen the Fed's facilities for corporate bonds, municipal bonds, and Main Street Lending.

This report provides an overview of Section 4003 and related provisions and explains the terms and conditions associated with the assistance. Additionally, it discusses the funds made available in Section 4112 of Title IV for worker support at air carriers and related businesses.

Financial Assistance in Division A, Title IV[5]

Title IV provisions provide funding for eligible businesses, states, and municipalities as defined by the act.[6] In particular, Section 4027 appropriates $500 billion to the ESF for use by the

---

1 This section was written by Andrew Scott.

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

3 The CARES Act also 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; and CRS Report R46298, *The Coronavirus Relief Fund (CARES Act, Title V): Background and State and Local Data*, by Grant A. Driessen.

4 Title IV also permits federal guarantees for uninsured bank deposits and money market funds, which are beyond the scope of this report. 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. 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 This section was written by Andrew Scott.

6 *Eligible businesses* is defined by the act as air carriers and U.S. businesses that have "not otherwise received adequate

Treasury Secretary,[7] 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.[8] 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 CARES Act Funding" section, below).

Section 4029 terminates this authority on December 31, 2020, and allows outstanding loans and guarantees to be modified, restructured, or otherwise amended after that date 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 4027 allows funding to be used for those and a limited number of other purposes after 2020. Because loans and investments will not mature for several years, Section 4027 does not return unused funding to the Treasury general fund until January 1, 2026, at which point it can be used only for deficit reduction.

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 (CBO) 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).[9] The ultimate size of this subsidy will not be known until it becomes clear to what extent firms are able to repay assistance.[10] To date, Treasury has estimated subsidies of about $20 billion.[11] By contrast, Sections 4112, 4113, and 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

economic relief in the form of loans or loan guarantees provided under this Act." *States* is defined by the act as including the District of Columbia, U.S. territories, multistate entities, and Indian tribes.

[7] The original purpose of the ESF was to allow the Treasury to intervene in foreign exchange markets to stabilize the value of the dollar, but the Treasury Secretary has broad discretion on when and how 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.

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

[9] 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.

[10] The act specifies that the assistance should be recorded in the budget under 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, CBO estimated a subsidy cost of $1 billion for the assistance to specified industries and zero subsidy cost for assistance to Fed programs. CBO assumed that only half of the funds available for specific industries would be lent out at a 10% subsidy rate and that 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, 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.

[11] U.S. Treasury, *Exchange Stabilization Fund Statement of Financial Position*, October 31, 2020, footnote 1, https://home.treasury.gov/system/files/206/ESF-Monthly-FS-October-2020.pdf.

discretion whether to seek compensation for this assistance and has sought compensation only for larger grant recipients.

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 focus on the financial assistance provisions granted to specified industries and for Fed programs, updated as of December 30, 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 Federal Reserve program (i.e., that Federal Reserve 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 Federal Reserve programs supported by the CARES Act. The Title IV support for these industries comes in three main forms: loans and loan guarantees, suspension of certain aviation excise taxes,[14] 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;[15]

[12] This section was written by Rachel Tang.

[13] 12 U.S.C. §343.

[14] 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. For details about the trust fund revenue sources, see CRS Report R42781, *Federal Civil Aviation Programs: In Brief*, by Bart Elias and Rachel Y. Tang.

[15] 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

- not more than $4 billion for cargo air carriers; and
- 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.[16]

The Treasury Secretary is required under Section 4006 to coordinate with the Transportation Secretary to make these loans.[17] Other terms and conditions applying to this assistance are discussed in "Terms and Conditions," below.

According to the Government Accountability Office (GAO), Treasury received 267 loan applications and approved 35 loans under Title IV.[18] Expedited loan applications were due in April or May, the first loan was made in July, and most loans were not made until October 2020. No loan guarantees have been made under Title IV. Direct loans approved under Title IV are summarized in **Table 1**. As of the end of 2020, the Treasury had approved over $20.9 billion in loans to 22 passenger air carriers, repair station operators, and ticket agents and $0.2 billion to two cargo air carriers.[19] Although Treasury cannot make new loans after the end of 2020, companies can draw on approved loan balances until March 26, 2021. As of December 5, 2020, the largest borrowers, accounting for most of the total amount approved, had drawn down only a small fraction of their approved loan amounts.[20]

With regard to the loan program for businesses critical to national security, as of the end of 2020, the Treasury had approved $736 million to 11 businesses under this program.[21] Of particular note, on June 30, 2020, the Treasury reached an agreement with YRC Worldwide, a trucking company, to provide a $700 million loan in exchange for a 29.6% equity stake.[22] 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

travel products, including those conducting businesses online, such as expedia.com and booking.com.

[16] 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. However, Boeing has not drawn a loan under Title IV.

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

[18] According to GAO, some applications were withdrawn by the applicant and some were rejected or deemed ineligible by Treasury. See GAO, *Financial Assistance: Lessons Learned from CARES Act Loan Program for Aviation and Other Eligible Businesses,* GAO-21-198, December 10, 2020, https://www.gao.gov/assets/720/711174.pdf.

[19] Treasury, "Loans to Air Carriers, Eligible Businesses, and National Security Businesses," data current as of December 30, 2020, https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses.

[20] Treasury, *Report Under Section 4026(b)(1)(C) of the CARES Act*, December 5, 2020, https://home.treasury.gov/system/files/136/4026b1C-Loan-Report-12-05-2020.pdf.

[21] Treasury, "Loans to Air Carriers, Eligible Businesses, and National Security Businesses," data current as of December 15, 2020.

[22] Treasury, "UST Tranche A Term Loan Credit Agreement," July 7, 2020, https://home.treasury.gov/system/files/136/YRC-Documentation.pdf.

loans, however.[23] For example, YRC Worldwide did not meet either definition, but the Treasury stated 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.[24] Although the public disclosures do not state on what grounds Treasury identified a business to be critical to national security, the Congressional Oversight Commission reports that only five out of 11 recipients met one of Treasury's two explicit criteria, and the rest were approved at Treasury's discretion.[25]

Proponents argued that these loans were important for maintaining U.S. jobs. In the transaction summaries, Treasury reported the number of employees at these companies, which varied from two to 157,000. **Table 1** shows the range of loan amounts, terms, and employees at companies that received assistance. Section 4003 requires the Secretary to set the terms of the loans such that the interest rate reflects the loan's risk but is not less than comparable interest rates before the pandemic. To that end, the Secretary selected an adjustable rate with a markup on the London Interbank Offered Rate (LIBOR),[26] a commonly used reference rate. The markup varies based on the Treasury's perception of the loan's riskiness. Section 4003 also requires financial protection in the form of a warrant or equity interest in the case of a publicly traded company or a warrant, equity interest, or senior debt instrument in the case of a company that is not publicly traded. Except for YRC, Treasury accepted common stock warrants equal to 10% of the loan amount drawn or 3% payment-in-kind annual interest.[27]

Table 1. Direct Loans Under Title IV

Data as of December 2020

Company	Loan Amount Approved ($ millions)	Interest Rate	Other Compensation	Number of Employees
Passenger Air, Repair, and Ticket Agents ($20.9 billion of $25 billion approved)				
American Airlines	$7,500.0	LIBOR+3.5%	common stock warrants equal to 10% of loan drawn	157,000
United Airlines	$5,170.0	LIBOR+3%	common stock warrants equal to 10% of loan drawn	93,000
JetBlue	$1,948.0	LIBOR+2.75%	common stock warrants equal to 10% of loan drawn	23,000
Alaska Airlines	$1,928.0	LIBOR+2.5%	common stock warrants equal to 10% of loan drawn	22,000

[23] See Treasury, *Q&A: Loans to Air Carriers and Eligible Businesses and National Security Businesses*, updated as of April 10, 2020, https://home.treasury.gov/system/files/136/CARES-Airline-Loan-Support-Q-and-A-national-security.pdf.

[24] According to the Congressional Oversight Commission, "YRC apparently did not meet either of the two national security eligibility criteria." 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.

[25] Congressional Oversight Commission, *The Eighth Report of the Congressional Oversight Commission*, December 31, 2020, pp. 10-11, https://coc.senate.gov/sites/default/files/2021-01/COMMISSION%20December%20Report%2012-31%20FINAL%2C%20appendix.pdf.

[26] LIBOR is a short-term interbank borrowing rate.

[27] The value of these warrants to Treasury depends on the exercise price. CRS could not locate any information on the terms of the exercise price.

Company	Loan Amount Approved ($ millions)	Interest Rate	Other Compensation	Number of Employees
SkyWest	$725.0	LIBOR+3%	common stock warrants equal to 10% of loan drawn	15,000
Hawaiian Airlines, Inc.	$622.0	LIBOR+2.5%	common stock warrants equal to 10% of loan drawn	7,400
Republic Airways	$58.0	LIBOR+3.5%	common stock warrants equal to 10% of loan drawn	6,700
Frontier Airlines	$574.0	LIBOR+2.5%	common stock warrants equal to 10% of loan drawn	5,000
Mesa Airlines, Inc.	$195.0	LIBOR+3.5%	common stock warrants equal to 10% of loan drawn	3,540
Sun Country	$45.0	LIBOR+3.5%	3% payment-in-kind annual interest	1,630
Southern Airways Express, LLC	$1.8	LIBOR+3.5%	3% payment-in-kind annual interest	458
Ovation Travel Group	$20.0	LIBOR+5.5%	3% payment-in-kind annual interest	250
Caribbean Sun Airlines, Inc.	$6.8	LIBOR+3.5%	3% payment-in-kind annual interest	173
Eastern Airlines, LLC	$15.0	LIBOR+3.5%	3% payment-in-kind annual interest	137
Elite Airways LLC	$2.6	LIBOR+3.5%	3% payment-in-kind annual interest	110
American Jet International Corp.	$1.2	LIBOR+3.5%	3% payment-in-kind annual interest	44
Allflight Corp.	$4.7	LIBOR+3.5%	3% payment-in-kind annual interest	35
Timco Engine Center, Inc.	$8.4	LIBOR+3.5%	3% payment-in-kind annual interest	25
Thomas Global Systems LLC	$1.4	LIBOR+3.5%	3% payment-in-kind annual interest	20
Bristin Travel	$0.5	LIBOR+3.5%	3% payment-in-kind annual interest	12
Aviation Management & Repairs, Inc.	$4.0	LIBOR+3.5%	3% payment-in-kind annual interest	6
Aero Hydraulics	$0.5	LIBOR+5.5%	3% payment-in-kind annual interest	2
Cargo Air Carriers ($0.2 billion of $4 billion approved)				
Legacy Airways	$1.8	LIBOR+5.5%	3% payment-in-kind annual interest	19
Island Wings, Inc.	$0.3	LIBOR+3.5%	3% payment-in-kind annual interest	n/a
Businesses Critical to National Security ($0.7 billion of $17 billion approved)				

Company	Loan Amount Approved ($ millions)	Interest Rate	Other Compensation	Number of Employees
SemahTronix, LLC	$2.0	LIBOR+3.5%	3% payment-in-kind annual interest	172
Wiser Imagery Services, LLC	$3.1	LIBOR+5.5%	3% payment-in-kind annual interest	135
SpinLaunch, Inc.	$2.5	LIBOR+3.5%	3% payment-in-kind annual interest	66
Semantic AI, Inc.	$0.5	LIBOR+3.5%	3% payment-in-kind annual interest	51
Map Large, Inc.	$10.0	LIBOR+5.5%	3% payment-in-kind annual interest	37
Core Avionics & Industrial, Inc.	$6.0	LIBOR+5.5%	3% payment-in-kind annual interest	25
Meridian Rapid Defense Group, LLC	$7.1	LIBOR+5.5%	3% payment-in-kind annual interest	14
Visual Semantics, Inc.	$1.1	LIBOR+5.5%	3% payment-in-kind annual interest	9
Channel Logistics, LLC	$2.5	LIBOR+3.5%	3% payment-in-kind annual interest	6
oVio Technologies, Inc.	$1.2	LIBOR+5.5%	3% payment-in-kind annual interest	6
YRC Worldwide	$700.0	LIBOR+3.5%	29.6% of common stock	n/a

Source: U.S. Treasury, various transaction summaries, at https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/loans-to-air-carriers-eligible-businesses-and-national-security-businesses.

Notes: All information as reported by Treasury. Recipients have until March 26, 2021, to draw the full amount of the loan approved. LIBOR is the London Interbank Offered Rate, a short-term interbank borrowing rate.

Air Carrier Worker Support[28]

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. However, Treasury determined that passenger air carriers receiving payroll support of more than $100 million, cargo

[28] For detailed analysis of the payroll support program, see CRS Insight IN11482, *CARES Act Payroll Support to Air Carriers and Contractors*, by Rachel Y. Tang.

air carriers receiving more than $50 million, and eligible contractors receiving more than $37.5 million are required to provide financial instruments as appropriate compensation. For compensation, a fraction of the support above the minimum value must be repaid over 10 years with a 1% interest rate for the first five years (and an adjustable interest rate thereafter).[29] Compensation also included 3% payment-in-kind interest for privately held companies and warrants for publicly held companies that would have value to the Treasury only if the recipient's share price rises above its value on April 9, 2020 during the next five years.[30] 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. 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.

As of the end of 2020, more than $28 billion in payroll support had been approved for disbursement to 611 recipients—nearly $25 billion to 352 passenger air carriers (some operating unscheduled service), $828 million to 38 cargo carriers, and over $2.4 billion to 220 aviation-sector contractors. Of these, 32 recipients, receiving $26 billion of the payroll support, were required to provide compensation.[31] Authority to issue payroll grants has not expired. However, the funding available for passenger air was nearly depleted by October, and the statutory requirement that recipients refrain from involuntary furloughs or pay-rate reductions expired on September 30, 2020.

CARES Act Funding Available to the Federal Reserve[32]

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.[33] This role is minimal in normal conditions but has been important in periods of financial instability. Less frequently throughout its history, the Fed has also provided liquidity to firms that were not banks. In the 2007-2009 financial crisis, the Federal Reserve 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.[34] It did so again in response to COVID-19, even before enactment of the CARES Act.[35]

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

---

[29] Loans were set equal to 30% of any amount a passenger airline received above $100 million, 56% of any amount a cargo airline received above $50 million, and 44% of any amount a contractor received above $37.5 million.

[30] Terms and transaction information is available at https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-payments.

[31] As of December 31, 2020, the most recent data on Treasury's website is as of November 16, 2020. As Treasury is required to report new transactions on its website within 72 hours, this suggests that no new transactions have occurred in the intervening weeks. CRS calculations based on Treasury, "Payroll Support Program Payments," https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry/payroll-support-program-payments.

[32] This section was written by Marc Labonte.

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

[34] 12 U.S.C. §343.

[35] For more information, see CRS Report R46411, *The Federal Reserve's Response to COVID-19: Policy Issues*, by Marc Labonte.

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 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.

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 and 10,000 employees, including nonfinancial businesses. Prior to the pandemic, the Fed had not lent to or purchased the securities of nonfinancial businesses and states and municipalities since the 1930s.[36] 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.

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 below), but the terms differ.

Federal Reserve Emergency Facilities Backed by CARES Act Funding

In response to COVID-19, the Fed created several temporary emergency programs under Section 13(3) backed by Treasury investments using CARES Act funding. These facilities became fully operational between May 12, 2020, and September 4, 2020.[37] On November 19, 2020, Treasury Secretary Mnuchin effectively terminated the facilities at the end of 2020.[38] The facilities were:[39]

---

[36] 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, https://www.minneapolisfed.org/publications/the-region/lender-of-more-than-last-resort; James Dolley, "The Industrial Advance Program of the Federal Reserve System," *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, https://www.federalreserve.gov/pubs/feds/2004/200440/200440pap.pdf.

[37] GAO, Federal Reserve Lending Programs: Use of CARES Act-Supported Programs Has Been Limited and Flow of Credit Has Generally Improved, GAO-21-180, December 10, 2020, https://www.gao.gov/assets/720/711141.pdf.

[38] Treasury Secretary Mnuchin, letter to Federal Reserve Board Chairman Powell, November 19, 2020, https://home.treasury.gov/system/files/136/letter11192020.pdf. Later, the MSLP was extended until January 8 in order to allow loan applications received before December 14 to be processed. See the section below entitled "Winding Down CARES Act Programs."

[39] U.S. Treasury, *Exchange Stabilization Fund Statement of Financial Position*, October 31, 2020, footnote 2. In addition, the Fed created two facilities backed by ESF funding that are not identified as subject to the CARES Act—the

- **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 and syndicated loans from issuers and the SMCCF to purchase existing corporate debt or corporate debt exchange-traded funds on secondary markets.[40] The issuer was required to have material operations in the United States and could not receive direct federal financial assistance related to COVID-19. The SMCCF began purchasing securities in May with the goal of holding a broad portfolio. In its last monthly report to Congress, the Fed stated that the PMCCF had not purchased any debt as of November 30.[41]
- **Term Asset-Backed Securities Loan Facility (TALF).** To support asset-backed securities (ABS) markets, the TALF made nonrecourse, three-year loans to private investors to purchase newly issued, highly rated ABS backed by various types of nonmortgage loans.[42] Eligible ABS included 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, or leveraged loans or servicing advance receivables.
- **Main Street Lending Program (MSLP).** The MSLP bought new or expanded loans from depository institutions that were five-year loans to businesses and nonprofits with up to 15,000 employees or up to $5 billion in revenues. The loans deferred principal for two years and interest repayment for one year, and borrowers had to make a "reasonable effort" to retain employees. This program was particularly attractive to businesses too large to qualify for SBA assistance, such as the Paycheck Protection Program.[43] The MSLP consisted of five facilities. Eligibility for each facility depended on the type of loan and type of borrower. "Medium-sized" businesses may have been too small to issue publicly traded debt securities that the Fed was purchasing through the PMCCF and SMCCF and too large to qualify for SBA assistance provided by the CARES Act, such as the Payroll Protection Program.[44]
- **Municipal Liquidity Facility (MLF).** The MLF purchased shorter-term state and municipal debt in response to higher yields and reduced liquidity in that market. The facility purchased only tax or revenue anticipation debt of states,

---

Commercial Paper Funding Facility and the Money Market Liquidity Facility. 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.

[40] 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").

[41] Federal Reserve, Periodic Report: Update on Outstanding Lending Facilities Authorized by the Board Under Section 13(3) of the Federal Reserve Act, September 7, 2020, https://www.federalreserve.gov/publications/files/pdcf-mmlf-cpff-pmccf-smccf-talf-mlf-ppplf-msnlf-mself-mslpf-nonlf-noelf-9-8-20.pdf#page=3. The Fed's weekly disclosures do not include a breakdown of activity between the PMCCF and SMCCF.

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

[43] For more information, see CRS In Focus IF11632, *The Federal Reserve's Main Street Lending Program*, by Marc Labonte and Lida R. Weinstock.

[44] For CARES Act assistance to small businesses through SBA 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.

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 met the minimum population limit could designate any combination of their two largest counties or cities to participate.[45]

Table 2 summarizes how much CARES Act funding was pledged to each facility. In total, $195 billion was pledged.[46] Several modifications were made to the facilities over the course of their operation to make them more attractive to recipients. Nevertheless, when the facilities closed at the end of 2020, outstanding assistance was small ($41.1 billion) relative to their announced size (a combined $1.95 trillion). As discussed below, the Fed and Treasury agreed to reduce this amount because it exceeds potential losses.

Table 2. Federal Reserve COVID-19 Emergency Programs Backed by CARES Act Funding

(billions of dollars)

	Federal Reserve Funds		Treasury (ESF)
	Announced Size Limit	**Assistance Outstanding 12/30/20**	**CARES Funds Pledged**
Facilities Announced Prior to Enactment of CARES Act			
Primary Market Corporate Credit Facility/Secondary Market Corporate Credit Facility	$750	$14.1	$75
Term Asset-Backed Securities Loan Facility	$100	$4.1	$10
Facilities Announced Since Enactment of CARES Act			
Main Street Lending Program[a]	$600	$16.5	$75
Municipal Liquidity Facility	$500	$6.4	$35
Total	**$1,950**	**$41.1**	**$195**

Source: CRS based on various Federal Reserve documents and U.S. Treasury, *Exchange Stabilization Fund Statement of Financial Position*, July 31, 2020, footnote 2, https://home.treasury.gov/system/files/206/ESF_July_Trunc_Footnotes-82720.pdf.

Note: See the "Federal Reserve Emergency Facilities Backed by CARES Act Funding" section for details.

a. There are five facilities under the Main Street Lending Program—the Main Street New Loan Facility, the Main Street Priority Loan Facility, the Main Street Expanded Loan Facility, the Nonprofit Organization New Loan Facility, and the Nonprofit Organization Expanded Loan Facility.

These facilities extended 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. 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

[45] For more information, see CRS In Focus IF11621, *COVID-19: The Federal Reserve's Municipal Liquidity Facility*, by Grant A. Driessen and Marc Labonte.

[46] An additional $20 billion in ESF funding was pledged for Fed programs not subject to the CARES Act.

markets; these loans are typically made on attractive terms to incentivize activity, including by shifting the credit risk to the Fed.

The loans and asset purchases of the facilities are funded by the Fed using its resources. By law, the Fed must structure these facilities to avoid expected losses, and the facilities charge users interest and/or fees as compensation.[47] 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.[48] Because of the long maturity of some of these transactions, losses, if any, will not be realized for some time after the facilities have expired. The Treasury Secretary approved the creation of each facility. The facilities have been structured as special purpose vehicles (SPVs) created and controlled by the Fed. This structure facilitates the pooling of Fed and Treasury funds and avoids legal restrictions on the purchase of assets that are ineligible for purchase under the Federal Reserve Act, such as corporate debt. Although legally separated from the Fed, income and losses from the SPVs still flow to the Fed (and Treasury, in cases where ESF funds are pledged), and the SPVs appear on the Fed's consolidated balance sheet.

The Fed created similar emergency facilities, some backed by ESF, that are not subject to the CARES Act during the pandemic.[49] This distinction determines which programs are subject to the terms and conditions of the CARES Act, however, which are summarized in **Table 3**.

There was talk of how the Fed could "leverage" the CARES Act funding of $454 billion (or more) into greater amounts of assistance by combining it with the Fed's funds.[50] Although the use of this term is more colloquial than technical from a financial perspective, **Table 2** illustrates how this was accomplished. For example, the MLF had planned to purchase up to $500 billion of assets using $35 billion of CARES Act funding.

Terms and Conditions[51]

Title IV 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 3** compares and contrasts the various terms and conditions for each of these programs. Oversight and reporting requirements associated with the assistance are discussed in more detail in the section titled "Oversight Provisions."

[47] 12 U.S.C. §343.

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

[49] Fed facilities have not been identified as subject to the CARES Act based on when the facility was announced or whether it is backed by ESF funding. 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 announced after the CARES Act's enactment. All other facilities were created or announced before the CARES Act.

[50] 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.

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

Table 3. Comparison of Terms and Conditions Applying to the $500 Billion Provided to the Exchange Stabilization Fund (ESF)

Term	Specified Industry Assistance/Air Carrier Worker Support	Federal Reserve Programs	Section(s) of the CARES Act
Treasury may make loans or loan guarantees	Applies to specified industry loans	Applies	4003
Treasury may make investments	Does not apply	Applies	4003
Eligible borrowers affected by COVID-19	Businesses related to air carriers, cargo air carriers, or businesses critical to maintaining national security; worker support applies to certain air carriers and contractors	As defined, eligible businesses, states, and municipalities	4003(b) 4013
Secretary sets terms, conditions, etc. on CARES Act funding	Applies to specified industry loans and air carrier worker support	Applies	4003(c)(1) 4113
10-day deadline for releasing application procedures	Applies to specified industry loans	Does not apply	4003(c)(1)
Secretary determination that credit is not available, assistance is prudent, firm has losses; interest rate reflects risk and market rates before crisis	Applies to specified industry loans and guarantees	Does not apply	4003(c)(2)
Duration is as short as practicable and no more than five years	Applies to specified industry loans and guarantees	Does not apply	4003(c)(2)
Share buybacks/dividends prohibited until 12 months after repayment	Applies to specified industry loans for 12 months after repayment;[c] applies to air carrier worker support through September 2021	Applies to direct loans only, Secretary may waive[b]	4003(c)(2) 4003(c)(3)
Maintaining employment levels required	Applies to specified industry loans up to 4 months after pandemic;[d] applies to air carrier worker support through September 2020[a]	Does not apply[b]	4003(c)(2) 4114
Limited to U.S. businesses	Applies to specified industry loans[e]	Applies	4003(c)(3)
Equity, warrants, or other compensation to government	Required for loans to specified industries; at Treasury's discretion for air carrier worker support	Does not apply	4003(d) 4117
Assistance ineligible for loan forgiveness	Applies to specified industry loans	Applies	4003(d)
Order of priority on repayment of funds	Applies to specified industry loans	Applies	4003(e)

Term	Specified Industry Assistance/Air Carrier Worker Support	Federal Reserve Programs	Section(s) of the CARES Act
Administrative authority	Applies to specified industry loans	Applies	4003(f)
Use of private financial agents	Applies to specified industry loans	Applies	4003(g)
Tax treatment for recipient	Applies to specified industry loans	Applies	4003(h)
Executive compensation restrictions	Applies to specified industry loans through 12 months after receipt of loan; applies to air carrier worker support through March 24, 2022[f]	Applies to direct loans only, Secretary may waive	4004 4116
Air carrier's continued service obligation	Applies to specified industry loans[g]	Does not apply	4005 4113
Special inspector general jurisdiction	Applies to specified industry loans	Applies to Treasury activities	4018
Conflicts of interest	Applies to specified industry loans[h]	Applies	4019
Congressional Oversight Commission jurisdiction	Applies to specified industry loans	Applies	4020
Collective bargaining agreements	Applies to specified industry loans[i] and air carrier worker support programs[j]	Does not apply	4025 4115
Reporting, testimony requirements	Applies to specified industry loan programs and air carrier worker support programs	Applies (subject to 12 U.S.C. §343(3) requirements)	4026 4118
Public release of assistance or administrative contract agreements	Applies to specified industry loans	Does not apply	4026
Government Accountability Office studies	Applies to specified industry loans	Applies	4026
Appropriations	Section 4027 of the CARES Act appropriates funds to ESF for Treasury loans; Section 4119 appropriates funds for the air carrier worker support program	Section 4027 of the CARES Act appropriates funds to ESF for Treasury investments in Fed facilities	4027 4119
Limits terms and conditions to be in federal government's self interest	Applies to specified industry loans	Applies	4028
Termination of authority	New loans and guarantees cannot be made after 2020		4029

Source: CRS analysis of terms and conditions found in Title IV of the CARES Act.

Notes: *Secretary* refers to Treasury Secretary. *Specified industries* refers to firms that are related to commercial airlines, cargo airlines, or those "critical to maintaining national security." Descriptions in the first column would also apply to loan guarantees, but no loan guarantees were made under Title IV. Descriptions are summarized—see the table notes for more detail.

a. 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.

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

c. 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.

d. 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.

e. 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

f. 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.

g. Section 4005 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. Such authority and any requirements issued shall terminate on March 1, 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.

h. 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.

i. Section 4025 prohibits any federal entity from conditioning the issuance of a loan or loan guarantee under provisions in Section 4003 on an air carrier's or eligible business's implementation of measures to enter into negotiations with the certified bargaining representative of a craft or class of employees of the air carrier or eligible business 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 and conditions of employment.

j. 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 and Restrictions for the Federal Reserve Facilities

As shown in **Table 3**, 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." These restrictions were 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.[52]

In addition to the conditions and restrictions in the CARES Act, Section 13(3) of the Federal Reserve Act places a number of restrictions on the Fed's facilities, many of which were added or augmented by the Dodd-Frank Act (P.L. 111-203).[53] 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, which is why the Fed requested CARES Act funding to backstop the facilities. Unlike financial firms, some entities impacted by COVID-19 may not have securities that can be posted as collateral.

Oversight Provisions[54]

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[55]

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[56] and may be removed from office in the manner prescribed in Section 3(b) of the Inspector General Act of 1978.[57] The SIGPR is tasked with conducting audits and investigations of Treasury's activities pursuant to the CARES Act, including collecting and summarizing information regarding loans provided by Treasury.

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.[58] 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.[59] The SIGPR position terminates five years after the enactment of the CARES Act (i.e., March 27, 2025).

---

[52] 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.

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

[54] This section was written by Ben Wilhelm. 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.

[55] 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.

[56] 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.

[57] 5 U.S.C. Appendix.

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

[59] The SIGPR is also required under Section 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[60]

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."

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.[61] To date, congressional leaders have not appointed a head of the commission.

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.

Schedule for Reports, Disclosures, and Testimony

COC and the SIGPR are now operational and, together with GAO, have begun to provide required reports to Congress.

- **GAO.** GAO has issued four reports as of December 2020.[62] These reports have focused on issues including improvements to data being provided by the Treasury and strengthening planning and coordination for elements of the federal response.
- **COC.** The COC has issued seven reports since its creation,[63] the most recent of which was released November 30, 2020.[64] COC has provided both general reports on the activities of the Treasury and the Fed and more detailed reports on individual transactions.
- **SIGPR.** The SIGPR recently launched its website, which includes links to reports, news releases on SIGPR activity, and contact information, including a

[60] 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.

[61] 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.

[62] Available at https://www.gao.gov/coronavirus/newest_covid-related_reports.

[63] Available at https://coc.senate.gov/.

[64] Congressional Oversight Commission, *The Sixth Report of the Congressional Oversight Commission*, October 29, 2020, https://coc.senate.gov/sites/default/files/2020-10/The%20Sixth%20Report_Final%20%28002%29_0.pdf.

hotline for individuals to report information to the office.[65] The SIGPR submitted its most recent report to Congress on September 30, 2020,[66] and noted that the office has already opened 21 preliminary investigations and is actively working with other inspectors general to investigate allegations of improper activity.[67] The report also offered two recommendations for Congress. First, the SIGPR recommended passage of the SIGPR Expedited Hiring Authorities Act of 2020.[68] Second, the SIGPR recommended that Congress adjust the due date for its reports to Congress to "30 days after the end of a calendar quarter" to align with submission schedules for other inspector general offices.[69]

In addition to the establishment of the SIGPR and the COC, 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:

- The Fed has issued monthly reports to Congress describing the purpose and details of each facility.[70] 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."[71] Total loans or asset purchases through the facilities are published weekly as part of the Fed's balance sheet.[72] The Fed also provides details on emergency facilities' activities in quarterly reports.[73]
- Treasury reports monthly on its investment of ESF funds in the Fed's programs.[74] In addition, the CARES Act requires Treasury to publish a description of assistance on its website within 72 hours, a report every 14 days for one year following enactment and every 30 days thereafter summarizing actions in that period, and summaries on loan and guarantee programs every 30 days.[75]

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 4**.

[65] https://www.sigpr.gov/.

[66] SIGPR, *Quarterly Report to Congress*, September 30, 2020, https://www.sigpr.gov/sites/sigpr/files/2020-09/SIGPR-Quarterly-Report-to-Congress-September-30-2020_0.pdf.

[67] SIGPR, *Quarterly Report to Congress*, September 30, 2020, p. 7.

[68] S. 3751 (116th Congress).

[69] SIGPR, *Quarterly Report to Congress*, September 30, 2020, p. 8.

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

[71] 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, https://www.federalreserve.gov/newsevents/pressreleases/monetary20200423a.htm. For emergency facilities that are not identified as CARES Act facilities in **Table 2** (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.

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

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

[74] Reports are available at https://home.treasury.gov/policy-issues/international/exchange-stabilization-fund/esf-reports.

[75] A list of reports and transaction summaries can be found on Treasury's website at https://home.treasury.gov/policy-issues/cares/preserving-jobs-for-american-industry.

Table 4. 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
4026(e)	Publication of relevant contracts.	Not more than 24 hours after entering into a covered contract	Secretary of the Treasury	Online publication

Section	Requirement	Due Date	Submitted By	Submitted To
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 Division A of the CARES Act (P.L. 116-136).

Winding Down CARES Act Programs[76]

As noted above, the Treasury Secretary cannot make any new loans, loan guarantees, or investments in Fed programs after the end of 2020. Given that the pandemic was ongoing and worsening at the end of 2020, Members of Congress debated whether this deadline should be changed, whether Fed programs backed by CARES funds should be extended after the end of the year, and whether the permitted uses of Title IV funds after 2020 should be modified.

Some Members argued that the Fed programs should not be extended on the grounds that financial stability has been restored, and if Fed emergency facilities are extended too long, they may crowd out private credit.[77] To that end, these Members also wanted to withdraw CARES funds pledged to Fed programs that were no longer needed. Other Members supported extending the programs because they thought it was premature to terminate the Fed's facilities when the pandemic was worsening, which could potentially cause economic conditions to deteriorate in 2021.[78] Further, they wanted to leave already-pledged funds in place because they did not want to unduly constrain the next Treasury Secretary's actions. Section 4027 allows funding to be used

[76] This section was written by Marc Labonte and Andrew Scott.

[77] See, for example, Senate Committee on Banking, Housing, and Urban Affairs, "Crapo Statement at CARES Act Oversight Hearing," press release, December 1, 2020, https://www.banking.senate.gov/newsroom/majority/crapo-statement-at-cares-act-oversight-hearing.

[78] See, for example, House Financial Services Committee, "Waters Calls Out Mnuchin for Prematurely Ending Essential Emergency Lending Programs," press release, December 2, 2020, https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=407043.

after the end of 2020 for loan modifications, restructuring, and other amendments; the exercise of options, warrants,[79] or other investments made in 2020; or administrative costs. If inadequate funding remained after funding was withdrawn, then these functions could not be carried out. Further, if the Treasury Secretary and Fed decided to revive these programs in the future, a reduction in CARES funding could potentially limit the future size and scope of the programs.

Secretary Mnuchin's Decision to Allow the Fed's CARES Programs to Expire

On November 19, 2020, Treasury Secretary Mnuchin wrote a letter to Fed Chairman Powell, effectively terminating the Fed's CARES Act facilities at the end of 2020[80] and asking the Fed to return the unused funds to the Treasury.[81] In his opinion, by setting a December 31 termination date on Title IV funding, Congress signaled that it did not wish for these Fed facilities to continue providing assistance after that date. In this letter, the Treasury Secretary estimated $455 billion of the original $500 billion to have been unused. This comprises $429 billion in unused funds for Federal Reserve facilities, as well as $26 billion in unused funds marked for Treasury direct loans.[82] The Secretary contends that the Federal Reserve returning the funds it has received and does not need would allow the unused funding to return to the Treasury's general fund. Congress, he argues, could then re-appropriate the $455 billion for other purposes. However, Section 4027 states that none of the unused funding can be returned to the general fund until 2026.[83] On November 20, Chairman Powell agreed to work with Treasury to return the unneeded funds.[84] (As discussed in the next section, the overall budget deficit would be the same whether or not the unused funds are returned to the general fund.)

The decision to extend the termination date on the facilities is governed by Section 13(3) of the Federal Reserve Act, not the CARES Act, and requires only a finding by five Fed governors of "unusual and exigent circumstances" and Treasury Secretary approval.[85] (Non-CARES Act Fed emergency programs have already been extended into 2021 based on such a finding.) The CARES Act, by contrast, prevents the Treasury from providing further investments to backstop these facilities after the end of 2020. However, in practice the Fed would not need any further

[79] The warrants taken were not exercised in 2020.

[80] By regulation, the expiration date of Fed facilities cannot be extended without approval by the Treasury Secretary. Later, the MSLP was extended until January 8 in order to allow loan applications received before December 14 to be processed.

[81] Mnuchin, letter to Powell.

[82] CRS calculations based on publicly available data at the time indicate that slightly less than $454 billion was unused at the time if one includes the pledged direct loan amounts and Fed assistance outstanding under its facilities backed by the CARES Act.

[83] This apparent contradiction between the law and the Secretary's stated intentions might be explained by budget accounting rules under FCRA. Treasury has interpreted FCRA as requiring the subsidies on its loans and investments to be financed out of the $500 billion appropriated under the CARES Act and the unsubsidized portion of its loans and investments to be financed through ESF borrowing from the Treasury. When the Fed has returned CARES Act funding invested in its facilities to the ESF, those loans financing the unsubsidized portion of the investments would be repaid, and the proceeds would return to the general fund. However, the repayment of those loans would not necessarily affect the ESF's access ability to use up to $500 billion from 2021 to 2026 for the purposes in Section 4027. See U.S. Treasury, *Exchange Stabilization Fund Statement of Financial Position*, October 31, 2020.

[84] Federal Reserve Chairman Powell, letter to Treasury Secretary Mnuchin, November 20, 2020, https://www.federalreserve.gov/foia/files/mnuchin-letter-20201120.pdf.

[85] Under law, the programs cannot be permanent, and under regulation, the Fed may extend the programs six months at a time with Treasury approval.

CARES investments to reopen the facilities and provide further assistance at a future date because the facilities had only $41 billion in assistance outstanding at the end of 2020.[86] Pledged assistance could be reduced from $195 billion to $41 billion and there would still be enough CARES Act funds to cover losses if the Fed lost 100% of the value of its loans and investments. Realistically, the maximum potential loss rate is much smaller than 100%. Originally, the Fed was willing to provide assistance of up to $1.95 trillion through these four programs with the $195 billion backing of the CARES Act, implying a maximum overall potential loss rate of 10%.

P.L. 116-260, discussed in the next section, sustained the Secretary's decision to allow these programs to expire at the end of the year and withdrew the unused funding.

How P.L. 116-260 Changed Title IV of the CARES Act[87]

Because the Treasury's ability to make new loans, loan guarantees, and investments under Title IV expired at the end of 2020 and much of the funding was not used, several proposals to use that funding for other purposes or change the terms of the funding saw legislative action in the 116th Congress.[88]

In December 2020, Congress agreed to another coronavirus relief package, which was signed into law as part of P.L. 116-260. This package included two titles that modified Title IV of the CARES Act.

Subtitle A of Title IV of Division N of P.L. 116-260 provides $15 billion for payroll support to passenger air and $1 billion to air-related contractors. As noted above, the funding for payroll support had been virtually depleted for passenger air and mostly depleted for air-related contractors by October 2020. Recipients must recall and provide back pay to workers who were furloughed after previous payroll assistance had been exhausted, face restrictions on furloughs and pay reductions through the end of March 2021, must meet minimum air service obligations through the end of 2022, and are subject to many of the terms and conditions found in the CARES Act.

Section 1003 of Division N of P.L. 116-260 permanently rescinded $429 billion of the $500 billion, which was provided by Title IV of the CARES Act to cover credit subsidies.[89] As of

[86] This amount is expected to modestly increase after the end of the year when loans in process are finalized.

[87] This section was written by Marc Labonte and Andrew Scott.

[88] S.Amdt. 2652 to S. 178 would have reduced spending under Title IV "by an amount equal to the difference between $454,000,000,000 and the aggregate amount of loans, loan guarantees, and other investments that the Secretary has made or committed to make" on January 19, 2021. On September 10, 2020, and October 10, 2020, Senate cloture votes on S.Amdt. 2652 failed. S.Amdt. 2542 to S.Amdt. 2499 to S. 178 stated that "the Secretary shall prioritize the provision of credit and liquidity to assist eligible businesses, States and municipalities, even if the Secretary estimates that such loans, loan guarantees, or investments may incur losses." S.Amdt. 2542 to S.Amdt. 2499 to S. 178 would have prohibited the Fed from providing assistance under programs backed by CARES Act funding after January 4, 2021. S.Amdt. 2499 was withdrawn on September 8, 2020. The House passed the Heroes Act (H.R. 6800) and the second Heroes Act (H.R. 925), both of which included provisions that would have required the Fed to create certain new emergency facilities backed by CARES Act funding.

[89] It is unclear why the act rescinds $429 billion when the most recent financial statement showed $480.6 billion remaining in the balance with Treasury (to finance subsidies) as of October. Alternatively, the outstanding amount of Treasury loans and investments was $104.5 billion, so $395.5 billion of $500 billion remained as of October—less than the amount rescinded. However, the Fed and Treasury are negotiating a reduction in Treasury investments, and if they were to be reduced to outstanding Fed assistance, then about $63 billion would be needed to cover Fed assistance and Treasury loans, with about $437 billion remaining, as of the end of 2020. Perhaps coincidentally, $429 billion is equal to the amount that Secretary Mnuchin requested be rescinded from the amount available for Federal Reserve investments but not the total amount requested. The act does not rescind money allocated for any specific purpose, such

October, Treasury had estimated $19.4 billion in credit subsidies.[90] The $71 billion left after the rescission remains available to cover credit subsidy re-estimates on existing loans and investments, modify and restructure existing loans and investments, exercise warrants, cover administrative expenses, and fund the SIG and COC.

Section 1005 prohibits the Federal Reserve from providing any further assistance through its programs backed by the CARES Act after the end of 2020. As discussed in the last section, Secretary Mnuchin's decision to allow these programs to expire at the end of 2020 also prevented the Fed from providing future assistance, but since this decision was made at the Secretary's discretion, the new Treasury Secretary had the option to reverse it. The section also limits the Fed's ability to modify those programs in the future, including by reallocating CARES funding to new Fed programs. Finally, the section prohibits the Treasury Secretary from using the non-CARES Act assets of the ESF to backstop a re-established MSLP, MLF, and both corporate credit facilities. The Secretary may use those assets to backstop other Fed facilities, however, including the TALF.[91]

It was never made explicit why some Fed programs were backed by CARES Act funding and others were backed by the preexisting assets of the ESF when all of the programs were announced around the same time. But if Congress removes CARES Act funding from these programs, it follows that the Secretary cannot replace it with funds raised from the ESF's non-CARES Act assets.

Rescinding most of the Title IV funding was not necessary to prevent the Treasury Secretary from making new loans and investments in Fed programs in the future, because the Secretary's authority to do so expired at the end of 2020 under the CARES Act. Nevertheless, rescinding this funding could have at least two rationales.

First, reducing Treasury's investments in Fed programs below the amount that the Secretary had originally pledged to those programs ($195 billion) limits the potential growth of those programs if they were revived in the future for the reasons discussed in the previous section. (However, Section 1005 also prohibited the revival of those programs.)

Second, policymakers frequently argued that unused Title IV funding should be reallocated to other uses. It is true that the cost of the CARES Act was lower than expected because most Title IV funds were unused. However, the cost to the government of enacting new spending or revenue measures equal to the unused Title IV funds is the same whether or not the Title IV funds are rescinded. Because of CBO scoring conventions, a rescission of Title IV funds has not been scored as significantly reducing the budget deficit. In its score of S.Amdt. 2652, CBO estimated that the reduction in Title IV funding would have no effect on outlays or the budget deficit.[92] In fact, reusing those funds for additional spending or tax reductions would increase the recorded budget deficit because only the subsidy portion of Title IV loans and investments are recorded as spending. In its cost estimate of the CARES Act, CBO estimated that the $500 billion authorized in Title IV would increase the budget deficit by $1 billion, which was CBO's estimate of the subsidy amount, since loans and investments are eventually mostly repaid with interest. It follows that reducing this authority would also have a negligible effect on the deficit. In plain English,

---

as Federal Reserve investments.

[90] U.S. Treasury, *Exchange Stabilization Fund Statement of Financial Position*, October 31, 2020.

[91] The act may have permitted TALF to be revived in the future because it was the only program backed by CARES Act funding that was initially created in the 2007-2009 financial crisis. The act states that it does not modify or limit the Fed's authority before enactment of the CARES Act.

[92] CBO, "Estimate for Senate Amendment 2652 to S. 178, the Delivering Immediate Relief to America's Families, Schools and Small Businesses Act," October 21, 2020, https://www.cbo.gov/system/files/2020-10/sa2652.pdf.pdf.

money that was never going to be spent—because it had still not been spent shortly before the authority to spend had it expired—cannot generate savings by being taken back. Therefore, it would not serve as an offset that would reduce the overall size of a new stimulus package from a scoring perspective and would not help offset a new package's effect on the federal debt or deficit.

Preliminary Lessons Learned

Size

The amount of assistance Treasury pledged under Title IV (almost $22 billion in loans to industry and $195 billion to Fed programs) turned out to be significantly less than the $500 billion that was authorized. It also turned out to be more than was needed because the Fed provided only $41 billion to recipients in programs backed by the $195 billion, which will be used only if those programs experience losses. As a result, only a fraction of the Title IV funds pledged were needed, and P.L. 116-260 rescinded all but $71 billion of the funds.

There are at least two possible explanations for the lack of uptake. First, financial conditions, which were highly unstable early in the pandemic, normalized shortly after the CARES Act was enacted and these Fed programs were announced. Programs that might have been highly subscribed if financial instability persisted were less needed or desired once financial conditions normalized. Second, the terms and conditions of the Fed's programs were not as attractive as comparable sources of private credit, despite repeated modifications by the Fed to make them more attractive. These explanations are not mutually exclusive, because those private sources of credit might not have been available (at least on similar terms) if financial conditions had not normalized.

Cost

The final cost to the government of Title IV assistance will not be known until loans are repaid and securities mature, which will take years. At this point, it is certain to be much lower than $500 billion, because Treasury loans and Fed assistance equaled a combined $62 billion at the end of 2020. It will also be much lower than $62 billion, because most if not all of that amount will be repaid with interest, with the exception of the (separate) $28 billion for airline payroll support provided as of the end of 2020. Still, Treasury currently estimates that the assistance was subsidized, meaning that the $500 billion will not be fully recouped in present discounted value terms.[93]

Speed

One policy goal was to make this assistance available quickly to help stabilize an economy that was rapidly deteriorating. The practical limitations of setting up new and complex programs from

[93] Treasury measures a loan to be subsidized when the present discounted value of repayments is projected to be less than the present discounted value of the principal that was extended. A subsidy could occur because the full amount of the loan is not repaid, because the interest payments and other compensation received are lower than Treasury's borrowing costs, or both. Some argue that Treasury's estimation method understates the true economic subsidy of its loans because it does not take into account any difference in terms from what a company would have been able to secure from a private lender. (Present discounted value reduces the value of future amounts compared to present amounts to adjust for the time value of money.)

scratch worked against accomplishing this goal. In addition, because of capacity constraints, Treasury chose to prioritize the implementation of several of the other urgent CARES Act programs. Similarly, the Fed had several other emergency programs not backed by the CARES Act that it rolled out first. In many cases, the overall economy was recovering by the time CARES Act assistance was received. The first direct Treasury loan was not made until July 2020, and the remaining loans were made between September 25, 2020, and November 13, 2020. Likewise, the Fed programs were fully operational between May 12, 2020, and September 4, 2020.[94]

Loans to Industry

Congress chose to make these loans available to only three industries, in contrast to the PPP, for example, which was available to all business affected by the pandemic if criteria such as eligible small business were met. At the time of enactment early in the pandemic, some viewed these industries as uniquely affected by the pandemic.[95] In hindsight, several other industries where social distancing is impractical were also severely affected by the pandemic and were unable to obtain funding through Treasury direct loans or worker assistance grants. For example, hotels and restaurants were not eligible for Title IV funding.

For two industries, passenger and cargo air, Congress was specific about which businesses would qualify. For the other industry, businesses critical to national security, Congress left it to the Treasury Secretary's discretion to determine which businesses qualify. As a result, the businesses that were granted loans (e.g., a trucking company) differed greatly from the businesses that Congress reportedly intended to receive loans (e.g., major airline manufacturers).[96] The latter group reportedly chose not to apply for loans because they could get better terms from private creditors once financial conditions had stabilized.[97]

Terms and Conditions

The CARES Act required conditions such as restrictions on executive compensation, warrants, and restrictions on share buybacks and dividends that may have been attractive only to borrowers who had no private sector alternative available to them. Whereas Congress may have envisioned that the program would serve financially healthy borrowers facing a frozen private credit market, those borrowers could instead borrow in relatively normally functioning credit markets, particularly if they could borrow in bond markets.[98] That potentially left a program that was

---

[94] GAO, Federal Reserve Lending Programs: Use of CARES Act-Supported Programs Has Been Limited and Flow of Credit Has Generally Improved, GAO-21-180, December 10, 2020, https://www.gao.gov/assets/720/711141.pdf.

[95] See, for example, David Gelles and Niraj Chokshi, "'Almost Without Precedent': Airlines Hit Hard by Coronavirus," *New York Times*, March 5, 2020, https://www.nytimes.com/2020/03/05/business/coronavirus-airline-industry.html.

[96] 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 was reportedly 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 was reportedly 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.

[97] Leslie Jones, "Boeing Raises Monster $25 Billion in Bond Offering, Rules Out Federal Aid," *CNBC*, April 30, 2020, https://www.cnbc.com/2020/04/30/boeing-raises-monster-25-billion-in-bond-offering-rules-out-federal-aid.html.

[98] See, for example, Joe Rennison, "U.S. Corporate Bond Issuance Hits $1.919tn in 2020, Beating Full-Year Record,"

primarily attractive to financially unhealthy borrowers that could not secure private credit even in normally functioning markets, which increases the risk that the program will experience future losses or will have kept inefficient producers in the marketplace.

Preserving Jobs

Preserving jobs was one major goal of Title IV, but only the direct loans and one Fed program had employee retention conditions. In the case of the Fed program, the condition was not binding—borrowers needed only to "make commercially reasonable efforts to maintain its payroll and retain its employees during the time the Eligible Loan is outstanding,"[99] and according to the COC, the Fed is not monitoring whether borrowers retain payroll.[100] Further, several of the loans had, at most, a minimal impact on overall industry employment. For example, eight of the borrowers employed fewer than 100 employees overall.

Role of Federal Reserve

The Fed's CARES Act programs assisted municipalities, nonfinancial businesses, and corporate bond markets, expanding the Fed's traditional role beyond lender of last resort to the banking system and even beyond the more expansive role it took in the 2007-2009 financial crisis. The economic disruptions caused by the public health crisis were unique and arguably called for an unprecedented policy response. But once financial conditions stabilized, policymakers faced two questions: First, how could Congress ensure that the Fed's new role did not become permanent or routine? Second, how quickly should the Fed's new role be removed—once financial conditions had stabilized or once the pandemic had ended? And what if a new bout of financial instability emerged?

In the CARES Act, Congress limited the availability of Title IV loans and investments to the end of 2020. (Notably, the expiration in Title IV funding did not require the Fed programs backed by that assistance to expire at the same time.) When this decision was made in March, few policymakers arguably expected that the pandemic would be worse when the assistance expired than it had been when it was enacted. On the other hand, financial conditions stabilized shortly after enactment of the CARES Act and have remained stable since. In the December coronavirus package (P.L. 116-260), Congress decided to maintain the year-end expiration date and permanently close down all but one of the Fed programs backed by CARES funding. In effect, those programs may be revived only by a future act of Congress and not at the Fed and Treasury Secretary's discretion. The changes in P.L. 116-260 may help avoid the potential for an inappropriate expansion of the Fed's role after the pandemic is over at the expense of limiting the Fed's ability to respond to any new crisis before or after the pandemic has ended.

Financial Times, September 2, 2020, https://www.ft.com/content/a59c2a9d-5e0b-4cbc-b69e-a138de76a776.

[99] See, for example, Federal Reserve, *Main Street New Loan Facility Term Sheet*, December 29, 2020, https://www.federalreserve.gov/newsevents/pressreleases/files/monetary20201229a1.pdf.

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

Author Information

Andrew P. Scott, Coordinator
Analyst in Financial Economics

Rachel Y. Tang
Analyst in Transportation and Industry

Marc Labonte
Specialist in Macroeconomic Policy

Ben Wilhelm
Analyst in Government Organization and Management

Acknowledgments

William Egar, formerly of CRS, was originally a co-author of this report.

Disclaimer