

**(7) Municipality**

The term “municipality” includes—

- (A) a political subdivision of a State, and
- (B) an instrumentality of a municipality, a State, or a political subdivision of a State.

**(8) National securities exchange**

The term “national securities exchange” means an exchange registered as a national securities exchange under section 78f of this title.

**(9) Secretary**

The term “Secretary” means the Secretary of the Treasury, or the designee of the Secretary of the Treasury.

**(10) State**

The term “State” means—

- (A) any of the several States;
- (B) the District of Columbia;
- (C) any of the territories and possessions of the United States;
- (D) any bi-State or multi-State entity; and
- (E) any Indian Tribe.

**(11) Aerospace-related businesses critical to maintaining national security**

The term “businesses critical to maintaining national security” means those businesses that manufacture or produce aerospace-related products, civil or defense, including those that design, integrate, assemble, supply, maintain, and repair such products, and other businesses involved in aerospace-related manufacturing or production as further defined by the Secretary, in consultation with the Secretary of Defense and the Secretary of Transportation. For purposes of the preceding sentence, aerospace-related products include, but are not limited to, components, parts, or systems of aircraft, aircraft engines, or appliances for inclusion in an aircraft, aircraft engine, or appliance.

(Pub. L. 116-136, div. A, title IV, §4002, Mar. 27, 2020, 134 Stat. 469; Pub. L. 116-260, div. N, title IV, §412(c), Dec. 27, 2020, 134 Stat. 2061.)

**Editorial Notes**

## REFERENCES IN TEXT

This part, referred to in text, was in the original “this subtitle”, meaning subtitle A (§§4001-4029) of title IV of div. A of Pub. L. 116-136, known as the Coronavirus Economic Stabilization Act of 2020, which is classified principally to this part. For complete classification of subtitle A to the Code, see section 4001 of Pub. L. 116-136, set out as a Short Title note under section 9001 of this title, and Tables.

This Act, referred to in par. (4)(B), probably means subtitle A (§§4001-4029) of title IV of div. A of Pub. L. 116-136, known as the Coronavirus Economic Stabilization Act of 2020, which is classified principally to this part. For complete classification of this Act to the Code, see section 4001 of Pub. L. 116-136, set out as a Short Title note under section 9001 of this title, and Tables.

The Railway Labor Act, referred to in par. (5)(B), is act May 20, 1926, ch. 347, 44 Stat. 577, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

## AMENDMENTS

2020—Par. (11). Pub. L. 116-260 added par. (11).

**§ 9042. Emergency relief and taxpayer protections****(a) In general**

Notwithstanding any other provision of law, to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus, the Secretary is authorized to make loans, loan guarantees, and other investments in support of eligible businesses, States, and municipalities that do not, in the aggregate, exceed \$0 and provide the subsidy amounts necessary for such loans, loan guarantees, and other investments in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

**(b) Loans, loan guarantees, and other investments**

Loans, loan guarantees, and other investments made pursuant to subsection (a) shall be made available as follows:

(1) Not more than \$0 shall be available to make loans and loan guarantees for passenger air carriers, eligible businesses that are certified under part 145 of title 14, Code of Federal Regulations, and approved to perform inspection, repair, replace, or overhaul services, and ticket agents (as defined in section 40102 of title 49).

(2) Not more than 0<sup>1</sup> shall be available to make loans and loan guarantees for cargo air carriers.

(3) Not more than 0<sup>1</sup> shall be available to make loans and loan guarantees for businesses critical to maintaining national security.

(4) Not more than the sum of \$0 and any amounts available under paragraphs (1), (2), and (3) that are not used as provided under those paragraphs shall be available to make loans and loan guarantees to, and other investments in, programs or facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, States, or municipalities by—

(A) purchasing obligations or other interests directly from issuers of such obligations or other interests;

(B) purchasing obligations or other interests in secondary markets or otherwise; or

(C) making loans, including loans or other advances secured by collateral.

**(c) Terms and conditions****(1) In general****(A) Forms; terms and conditions**

A loan, loan guarantee, or other investment by the Secretary shall be made under this section in such form and on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate. Any loans made by the Secretary under this section shall be at a rate determined by the Secretary based on the risk and the current average yield on outstanding marketable ob-

<sup>1</sup> So in original. Probably should be preceded by a dollar sign.

ligations of the United States of comparable maturity.

**(B) Procedures**

As soon as practicable, but in no case later than 10 days after March 27, 2020, the Secretary shall publish procedures for application and minimum requirements, which may be supplemented by the Secretary in the Secretary's discretion, for making loans, loan guarantees, or other investments under paragraphs (1), (2) and (3) of subsection (b).

**(2) Loans and loan guarantees**

The Secretary may enter into agreements to make loans or loan guarantees to 1 or more eligible businesses under paragraphs (1), (2) and (3) of subsection (b) if the Secretary determines that, in the Secretary's discretion—

(A) the applicant is an eligible business for which credit is not reasonably available at the time of the transaction;

(B) the intended obligation by the applicant is prudently incurred;

(C) the loan or loan guarantee is sufficiently secured or is made at a rate that—

(i) reflects the risk of the loan or loan guarantee; and

(ii) is to the extent practicable, not less than an interest rate based on market conditions for comparable obligations prevalent prior to the outbreak of the coronavirus disease 2019 (COVID-19);

(D) the duration of the loan or loan guarantee is as short as practicable and in any case not longer than 5 years;

(E) the agreement provides that, until the date 12 months after the date the loan or loan guarantee is no longer outstanding, neither the eligible business nor any affiliate of the eligible business may purchase an equity security that is listed on a national securities exchange of the eligible business or any parent company of the eligible business, except to the extent required under a contractual obligation in effect as of March 27, 2020;

(F) the agreement provides that, until the date 12 months after the date the loan or loan guarantee is no longer outstanding, the eligible business shall not pay dividends or make other capital distributions with respect to the common stock of the eligible business;

(G) the agreement provides that, until September 30, 2020, the eligible business shall maintain its employment levels as of March 24, 2020, to the extent practicable, and in any case shall not reduce its employment levels by more than 10 percent from the levels on such date;

(H) the agreement includes a certification by the eligible business that it is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States; and

(I) for purposes of a loan or loan guarantee under paragraphs (1), (2), and (3) of subsection (b), the eligible business must have incurred or is expected to incur covered losses such that the continued operations of

the business are jeopardized, as determined by the Secretary.

**(3) Federal reserve programs or facilities**

**(A) Terms and conditions**

**(i) Definition**

In this paragraph, the term “direct loan” means a loan under a bilateral loan agreement that is —

(I) entered into directly with an eligible business as borrower; and

(II) not part of a syndicated loan, a loan originated by a financial institution in the ordinary course of business, or a securities or capital markets transaction.

**(ii) Restrictions**

The Secretary may make a loan, loan guarantee, or other investment under subsection (b)(4) as part of a program or facility that provides direct loans only if the applicable eligible businesses agree—

(I) until the date 12 months after the date on which the direct loan is no longer outstanding, not to repurchase an equity security that is listed on a national securities exchange of the eligible business or any parent company of the eligible business while the direct loan is outstanding, except to the extent required under a contractual obligation that is in effect as of March 27, 2020;

(II) until the date 12 months after the date on which the direct loan is no longer outstanding, not to pay dividends or make other capital distributions with respect to the common stock of the eligible business; and

(III) to comply with the limitations on compensation set forth in section 9043 of this title.

**(iii) Waiver**

The Secretary may waive the requirement under clause (ii) with respect to any program or facility upon a determination that such waiver is necessary to protect the interests of the Federal Government. If the Secretary exercises a waiver under this clause, the Secretary shall make himself available to testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the reasons for the waiver.

**(B) Federal Reserve Act taxpayer protections and other requirements apply**

For the avoidance of doubt, any applicable requirements under section 13(3) of the Federal Reserve Act (12 U.S.C. 343(3)), including requirements relating to loan collateralization, taxpayer protection, and borrower solvency, shall apply with respect to any program or facility described in subsection (b)(4).

**(C) United States businesses**

A program or facility in which the Secretary makes a loan, loan guarantee, or

other investment under subsection (b)(4) shall only purchase obligations or other interests (other than securities that are based on an index or that are based on a diversified pool of securities) from, or make loans or other advances to, businesses that are created or organized in the United States or under the laws of the United States and that have significant operations in and a majority of its employees based in the United States.

**(D) Assistance for mid-sized businesses**

**(i) In general**

Without limiting the terms and conditions of the programs and facilities that the Secretary may otherwise provide financial assistance to under subsection (b)(4), the Secretary shall endeavor to seek the implementation of a program or facility described in subsection (b)(4) that provides financing to banks and other lenders that make direct loans to eligible businesses including, to the extent practicable, nonprofit organizations, with between 500 and 10,000 employees, with such direct loans being subject to an annualized interest rate that is not higher than 2 percent per annum. For the first 6 months after any such direct loan is made, or for such longer period as the Secretary may determine in his discretion, no principal or interest shall be due and payable. Any eligible borrower applying for a direct loan under this program shall make a good-faith certification that—

(I) the uncertainty of economic conditions as of the date of the application makes necessary the loan request to support the ongoing operations of the recipient;

(II) the funds it receives will be used to retain at least 90 percent of the recipient's workforce, at full compensation and benefits, until September 30, 2020;

(III) the recipient intends to restore not less than 90 percent of the workforce of the recipient that existed as of February 1, 2020, and to restore all compensation and benefits to the workers of the recipient no later than 4 months after the termination date of the public health emergency declared by the Secretary of Health and Human Services on January 31, 2020, under section 247d of title 42 in response to COVID-19;

(IV) the recipient is an entity or business that is domiciled in the United States with significant operations and employees located in the United States;

(V) the recipient is not a debtor in a bankruptcy proceeding;

(VI) the recipient is created or organized in the United States or under the laws of the United States and has significant operations in and a majority of its employees based in the United States;

(VII) the recipient will not pay dividends with respect to the common stock of the eligible business, or repurchase an equity security that is listed on a na-

tional securities exchange of the recipient or any parent company of the recipient while the direct loan is outstanding, except to the extent required under a contractual obligation that is in effect as of March 27, 2020;

(VIII) the recipient will not outsource or offshore jobs for the term of the loan and 2 years after completing repayment of the loan;

(IX) the recipient will not abrogate existing collective bargaining agreements for the term of the loan and 2 years after completing repayment of the loan; and

(X) that the recipient will remain neutral in any union organizing effort for the term of the loan.

**(ii) Main street lending program**

Nothing in this subparagraph shall limit the discretion of the Board of Governors of the Federal Reserve System to establish a Main Street Lending Program or other similar program or facility that supports lending to small and mid-sized businesses on such terms and conditions as the Board may set consistent with section 13(3) of the Federal Reserve Act (12 U.S.C. 343(3)), including any such program in which the Secretary makes a loan, loan guarantee, or other investment under subsection (b)(4).

**(E) Government participants**

The Secretary shall endeavor to seek the implementation of a program or facility in accordance with subsection (b)(4) that provides liquidity to the financial system that supports lending to States and municipalities.

**(d) Financial protection of government**

**(1) Warrant or senior debt instrument**

The Secretary may not issue a loan to, or a loan guarantee for, an eligible business under paragraph (1), (2), or (3) of subsection (b) unless—

(A)(i) the eligible business has issued securities that are traded on a national securities exchange; and

(ii) the Secretary receives a warrant or equity interest in the eligible business; or

(B) in the case of any eligible business other than an eligible business described in subparagraph (A), the Secretary receives, in the discretion of the Secretary—

(i) a warrant or equity interest in the eligible business; or

(ii) a senior debt instrument issued by the eligible business.

**(2) Terms and conditions**

The terms and conditions of any warrant, equity interest, or senior debt instrument received under paragraph (1) shall be set by the Secretary and shall meet the following requirements:

**(A) Purposes**

Such terms and conditions shall be designed to provide for a reasonable participation by the Secretary, for the benefit of tax-

payers, in equity appreciation in the case of a warrant or other equity interest, or a reasonable interest rate premium, in the case of a debt instrument.

**(B) Authority to sell, exercise, or surrender**

For the primary benefit of taxpayers, the Secretary may sell, exercise, or surrender a warrant or any senior debt instrument received under this subsection. The Secretary shall not exercise voting power with respect to any shares of common stock acquired under this section.

**(C) Sufficiency**

If the Secretary determines that the eligible business cannot feasibly issue warrants or other equity interests as required by this subsection, the Secretary may accept a senior debt instrument in an amount and on such terms as the Secretary deems appropriate.

**(3) Prohibition on loan forgiveness**

The principal amount of any obligation issued by an eligible business, State, or municipality under a program described in subsection (b) shall not be reduced through loan forgiveness.

**(e) Deposit of proceeds**

Notwithstanding any other provision of law, amounts collected under subsection (b) shall be deposited in the following order of priority:

(1) Into the financing accounts established under section 505 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661d) to implement this part, up to an amount equal to the sum of—

(A) the amount transferred from the appropriation made under section 9061 of this title to the financing accounts; and

(B) the amount necessary to repay any amount lent from the Treasury to such financing accounts.

(2) After the deposits specified in paragraph (1) of this subsection have been made, into the Federal Old-Age and Survivors Insurance Trust Fund established under section 401(a) of title 42.

**(f) Administrative provisions**

Notwithstanding any other provision of law, the Secretary may use not greater than 61,000,000<sup>1</sup> of the funds made available under section 9061 of this title to pay costs and administrative expenses associated with the loans, loan guarantees, and other investments authorized under this section. The Secretary is authorized to take such actions as the Secretary deems necessary to carry out the authorities in this part, including, without limitation—

(1) using direct hiring authority to hire employees to administer this part;

(2) entering into contracts, including contracts for services authorized by this part;

(3) establishing vehicles that are authorized, subject to supervision by the Secretary, to purchase, hold, and sell assets and issue obligations; and

(4) issuing such regulations and other guidance as may be necessary or appropriate to carry out the authorities or purposes of this part.

**(g) Financial agents**

The Secretary is authorized to designate financial institutions, including but not limited to, depositories, brokers, dealers, and other institutions, as financial agents of the United States. Such institutions shall—

(1) perform all reasonable duties the Secretary determines necessary to respond to the coronavirus; and

(2) be paid for such duties using appropriations available to the Secretary to reimburse financial institutions in their capacity as financial agents of the United States.

**(h) Loans made by or guaranteed by the Department of the Treasury treated as indebtedness for tax purposes**

**(1) In general**

Any loan made by or guaranteed by the Department of the Treasury under this section shall be treated as indebtedness for purposes of the Internal Revenue Code of 1986, shall be treated as issued for its stated principal amount, and stated interest on such loans shall be treated as qualified stated interest.

**(2) Regulations or guidance**

The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations or guidance as may be necessary or appropriate to carry out the purposes of this section, including guidance providing that the acquisition of warrants, stock options, common or preferred stock or other equity under this section does not result in an ownership change for purposes of section 382 of the Internal Revenue Code of 1986 [26 U.S.C. 382].

(Pub. L. 116-136, div. A, title IV, §4003, Mar. 27, 2020, 134 Stat. 470; Pub. L. 116-260, div. N, title X, §§1003(b)(1), 1004, Dec. 27, 2020, 134 Stat. 2146; Pub. L. 117-328, div. LL, §102(d)(1)(A), Dec. 29, 2022, 136 Stat. 6103.)

**Editorial Notes**

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (a), is title V of Pub. L. 93-344, as added by Pub. L. 101-508, title XIII, §13201(a), Nov. 5, 1990, 104 Stat. 1388-609, which is classified generally to subchapter III (§661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

This part, referred to in subsecs. (e)(1) and (f), was in the original "this subtitle", meaning subtitle A (§§4001-4029) of title IV of div. A of Pub. L. 116-136, which is classified principally to this part. For complete classification of subtitle A to the Code, see section 4001 of Pub. L. 116-136, set out as a Short Title note under section 9001 of this title, and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (h)(1), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

2022—Subsec. (f). Pub. L. 117-328 substituted "61,000,000" for "\$100,000,000" in introductory provisions.

2020—Subsec. (a). Pub. L. 116-260, §1003(b)(1)(A), substituted "\$0" for "\$500,000,000,000".

Subsec. (b)(1). Pub. L. 116-260, §1003(b)(1)(B)(i), substituted "0" for "25,000,000,000".

Subsec. (b)(2). Pub. L. 116-260, §1003(b)(1)(B)(ii), substituted “0” for “\$4,000,000,000”.

Subsec. (b)(3). Pub. L. 116-260, §1003(b)(1)(B)(iii), substituted “0” for “\$17,000,000,000”.

Subsec. (b)(4). Pub. L. 116-260, §1003(b)(1)(B)(iv), substituted “\$0” for “\$454,000,000,000” in introductory provisions.

Subsec. (e). Pub. L. 116-260, §1004, substituted “Notwithstanding any other provision of law, amounts” for “Amounts” in introductory provisions.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by Pub. L. 117-328 effective upon issuance of guidance or the promulgation of a rule by the Secretary of the Treasury, in consultation with the Secretary of Transportation, see section 102(c) of Pub. L. 117-328, set out as a note under section 802 of Title 42, The Public Health and Welfare.

##### EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. N, title X, §1003(b)(1), Dec. 27, 2020, 134 Stat. 2146, provided in part that the amendment made by section 1003(b)(1) is effective Jan. 9, 2021.

##### CONSTRUCTION OF 2020 AMENDMENT

Pub. L. 116-260, div. N, title X, §1003(b)(2), Dec. 27, 2020, 134 Stat. 2146, provided that: “The amendments made under paragraph (1) [amending this section] shall not be construed to affect obligations incurred by the Department of the Treasury before January 1, 2021.”

#### § 9043. Limitation on certain employee compensation

##### (a) In general

The Secretary may only enter into an agreement with an eligible business to make a loan or loan guarantee under paragraph (1), (2) or (3) of section 9042(b) of this title if such agreement provides that, during the period beginning on the date on which the agreement is executed and ending on the date that is 1 year after the date on which the loan or loan guarantee is no longer outstanding—

(1) no officer or employee of the eligible business whose total compensation exceeded \$425,000 in calendar year 2019 (other than an employee whose compensation is determined through an existing collective bargaining agreement entered into prior to March 1, 2020)—

(A) will receive from the eligible business total compensation which exceeds, during any 12 consecutive months of such period, the total compensation received by the officer or employee from the eligible business in calendar year 2019; or

(B) will receive from the eligible business severance pay or other benefits upon termination of employment with the eligible business which exceeds twice the maximum total compensation received by the officer or employee from the eligible business in calendar year 2019; and

(2) no officer or employee of the eligible business whose total compensation exceeded \$3,000,000 in calendar year 2019 may receive during any 12 consecutive months of such period total compensation in excess of the sum of—

(A) \$3,000,000; and

(B) 50 percent of the excess over \$3,000,000 of the total compensation received by the of-

ficer or employee from the eligible business in calendar year 2019.

##### (b) Total compensation defined

In this section, the term “total compensation” includes salary, bonuses, awards of stock, and other financial benefits provided by an eligible business to an officer or employee of the eligible business.

(Pub. L. 116-136, div. A, title IV, §4004, Mar. 27, 2020, 134 Stat. 476.)

#### § 9044. Continuation of certain air service

The Secretary of Transportation is authorized to require, to the extent reasonable and practicable, an air carrier receiving loans and loan guarantees under section 9042 of this title to maintain scheduled air transportation service as the Secretary of Transportation deems necessary to ensure services to any point served by that carrier before March 1, 2020. When considering whether to exercise the authority granted by this section, the Secretary of Transportation shall take into consideration the air transportation needs of small and remote communities and the need to maintain well-functioning health care and pharmaceutical supply chains, including for medical devices and supplies. The authority under this section, including any requirement issued by the Secretary under this section, shall terminate on March 1, 2022.

(Pub. L. 116-136, div. A, title IV, §4005, Mar. 27, 2020, 134 Stat. 477.)

#### § 9045. Coordination with Secretary of Transportation

In implementing this part with respect to air carriers, the Secretary shall coordinate with the Secretary of Transportation.

(Pub. L. 116-136, div. A, title IV, §4006, Mar. 27, 2020, 134 Stat. 477.)

#### Editorial Notes

##### REFERENCES IN TEXT

This part, referred to in text, was in the original “this subtitle”, meaning subtitle A (§§ 4001-4029) of title IV of div. A of Pub. L. 116-136, which is classified principally to this part. For complete classification of subtitle A to the Code, see section 4001 of Pub. L. 116-136, set out as a Short Title note under section 9001 of this title, and Tables.

#### § 9046. Suspension of certain aviation excise taxes

##### (a) Transportation by air

In the case of any amount paid for transportation by air (including any amount treated as paid for transportation by air by reason of section 4261(e)(3) of title 26) during the excise tax holiday period, no tax shall be imposed under section 4261 or 4271 of title 26. The preceding sentence shall not apply to amounts paid on or before March 27, 2020.

##### (b) Use of Kerosene in commercial aviation

In the case of kerosene used in commercial aviation (as defined in section 4083 of title 26) during the excise tax holiday period—

(1) no tax shall be imposed on such kerosene under—