UTAH BANKERS ASSOCIATION

Cares Act of 2020
Relief for Large and Mid-Sized Businesses

The CARES ACT of 2020 provides $500 billion to Treasury's Exchange Stabilization Fund to provide liquidity to eligible businesses, states and municipalities related to losses incurred as a result of coronavirus by providing loans, loan guarantees and other investments in accordance with the Federal Credit Reform Act of 1990. (Sec 4003)

The funds will be available as follows:

(1) Direct lending through the Treasury Department, including:

- Up to $25 billion for passenger air carriers; eligible businesses approved to perform inspection, repair, replace or overhaul services; and ticket agents.
- Up to $4 billion for cargo air carriers.
- Up to $17 billion for businesses important to maintaining national security.

(2) Lending by the Treasury Department to support Federal Reserve programs and facilities, including:

- At least $454 billion (as well as any amounts remaining from the direct lending for passenger air, cargo air and national security-related businesses) for loans, loan guarantees and investments in support of Federal Reserve lending facilities established to provide liquidity to eligible businesses, states and municipalities.
- This may be done by:
    - Purchasing obligations directly from issuers.
    - Purchasing obligations in secondary markets.
    - Making loans, including securitized loans or other advances.

Broad Agency Discretion
The Treasury Secretary has broad discretion to make loans, loan guarantees and investments as he determines appropriate, as well as setting the rate for those obligations.

Timeline and Terms
For the direct lending programs for airlines, air cargo and national security-related businesses, the Secretary is required to publish application procedures and requirements within 10 days of the law's enactment.

None of the loans issued under these Treasury or Federal Reserve programs are eligible for loan forgiveness.

Loans shall be treated as indebtedness for tax purposes.

For one year following repayment of any obligation under these programs, borrowers will be restricted from engaging in stock repurchases or issuing of dividends.

There are also substantial restrictions on executive compensation for borrowers under these programs and facilities that last for one year following repayment of any obligation under these programs.

Federal Reserve Facility for Mid-Sized Businesses
The law encourages the Secretary to work with the Federal Reserve to establish a new facility that would provide financing to banks and other lenders to make direct loans to businesses with between

500 and 10,000 employees. Those loans would have an annualized rate no greater than two percent and with no principal or interest due for at least six months.

Borrowers under this program must certify that:

- "Uncertainty of economic conditions" requires a loan to support ongoing operations.
- The funds received will be used to retain 90 percent of the recipient's workforce, at full compensation and benefits, until September 30, 2020.
- The borrower intends to restore 90 percent of the workforce that existed as of February 1, 2020, and to restore all compensation and benefits to workers no later than four months after the termination of the current public health emergency.
- The borrower is domiciled in the U.S. and has significant operations and a majority of its employees in the U.S.
- The borrower is not a debtor in bankruptcy proceedings.
- Borrowers will not engage in stock buybacks, unless contractually obligated, or pay dividends until the loan obligation is satisfied.
- The borrower will not outsource or offshore jobs for the term of the loan plus an additional two years.
- The borrower will not abrogate existing collective bargaining agreements for the term of the loan plus an additional two years.
- The borrower will remain neutral in any union organizing effort for the term of the loan.

Terms and Conditions for Loans Through and By the Federal Reserve
As with loans to air carriers and national security-related businesses, the law places conditions on businesses that avail themselves of Treasury-supported programs and facilities at the Federal Reserve. These include the restrictions noted above on stock repurchases, dividends and executive compensation. Further, support is only available to businesses "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."

The law also makes clear that the Fed retains the discretion also to establish a "Main Street Lending Program" that would support lending to small and mid-sized businesses on terms consistent with the Federal Reserve's authority under Section 13(3) of the Federal Reserve Act.

Terms and Conditions for Loans to Air Carriers and National Security-Related Businesses
While the law is designed to provide broad lending authority to the Secretary, there are substantial conditions attached to any loan or loan guarantee to air carriers or national security-related businesses. In the case of a publicly traded company, loans and guarantees come with a requirement that the government takes an equity interest in the business. In the case of a non-publicly traded business, either an equity interest or senior debt interest can serve as collateral for the loan.

All direct lending to these businesses are subject to the following conditions:

- Alternative financing is not reasonably available.
- The assistance being sought is "prudently incurred."
- The loan or guarantee is secured or made at an interest rate that reflects the risk of the loan and, if possible, not less than an interest rate based on market conditions for comparable obligations prior to the coronavirus pandemic.
- The duration of the loan shall be as short as possible and not exceed five years.
- Borrowers must, until September 30, 2020, maintain employment levels as of March 24, 2020, "to the extent practicable," and at minimum, employment cannot decrease by more than 10 percent from the level as of March 24, 2020.
- A borrower must certify that it is domiciled in the U.S. and has significant operations and a majority of its employees based in the U.S.

- The continued operations of the business are jeopardized by losses related to the coronavirus pandemic.