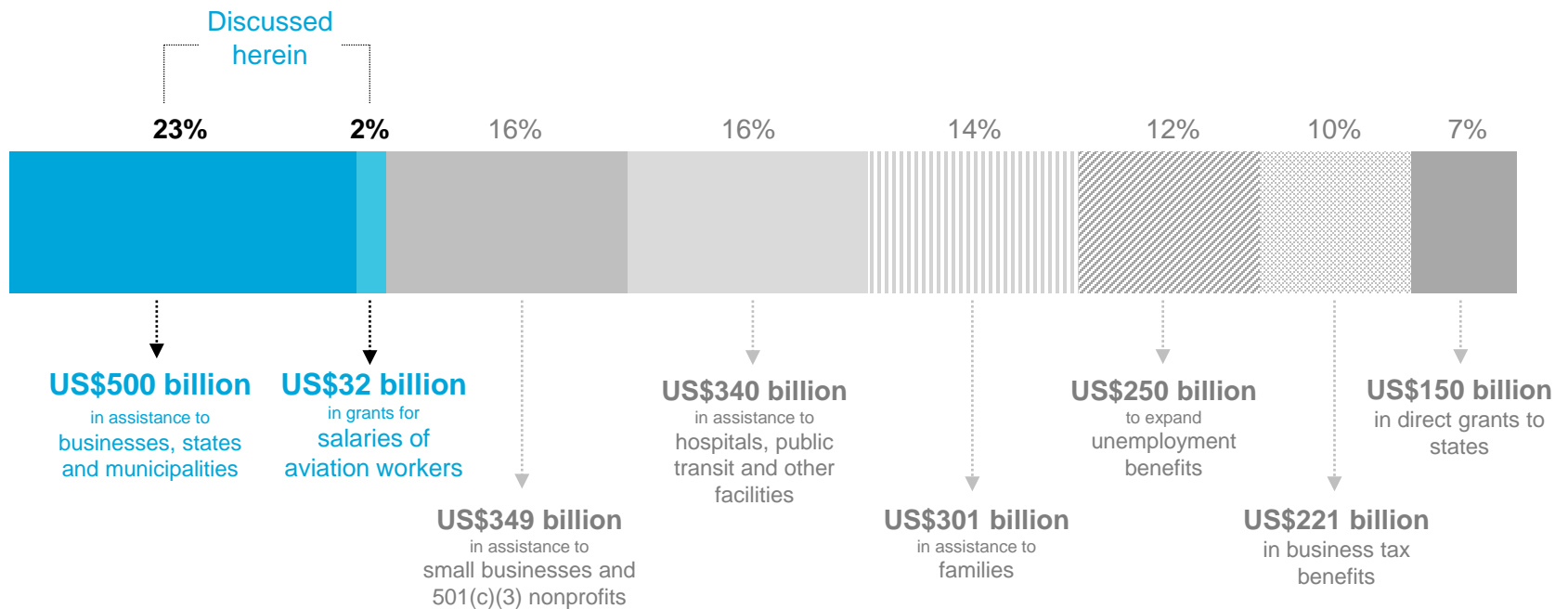


Coronavirus Aid, Relief, and Economic Security (CARES) Act

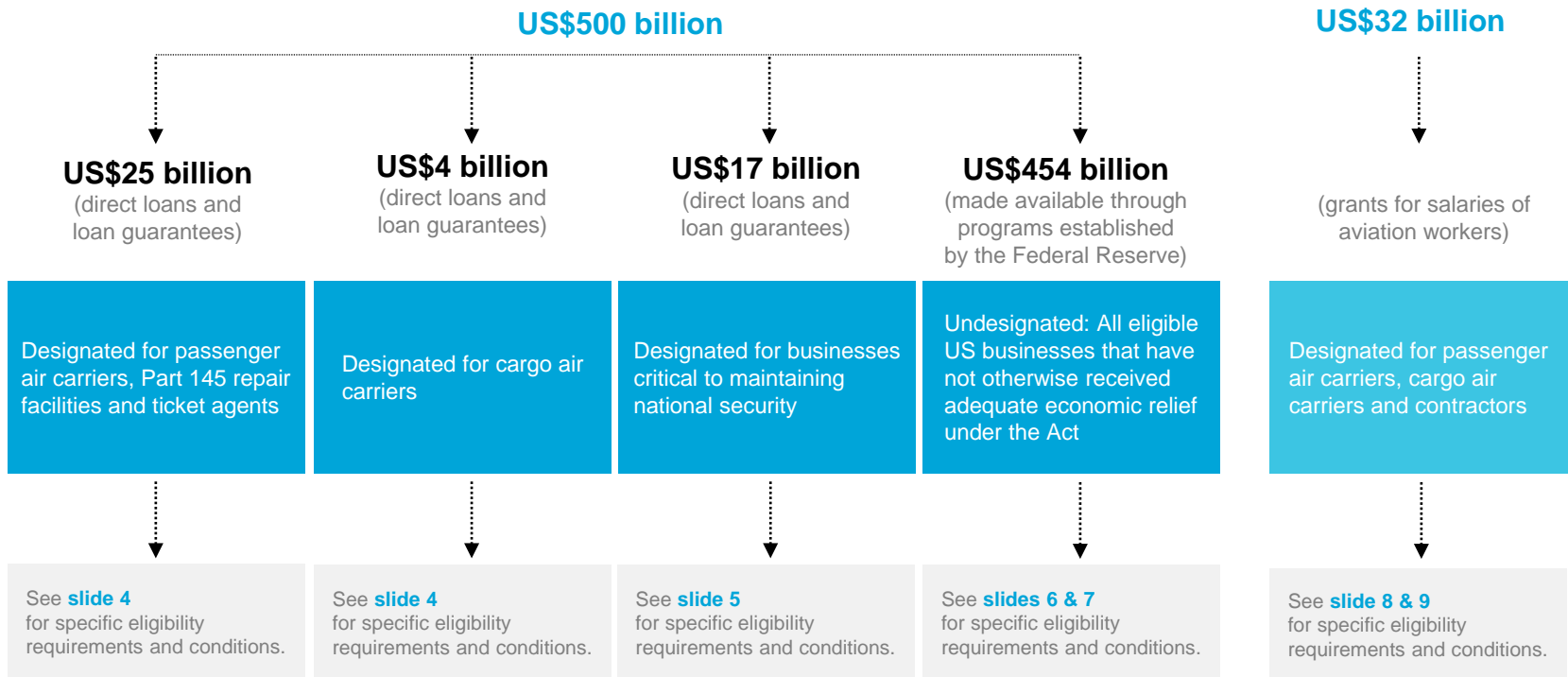
Decision Tree: Title IV Loans and Loan Guarantees and Payroll Grants

US\$2.2 trillion in emergency aid

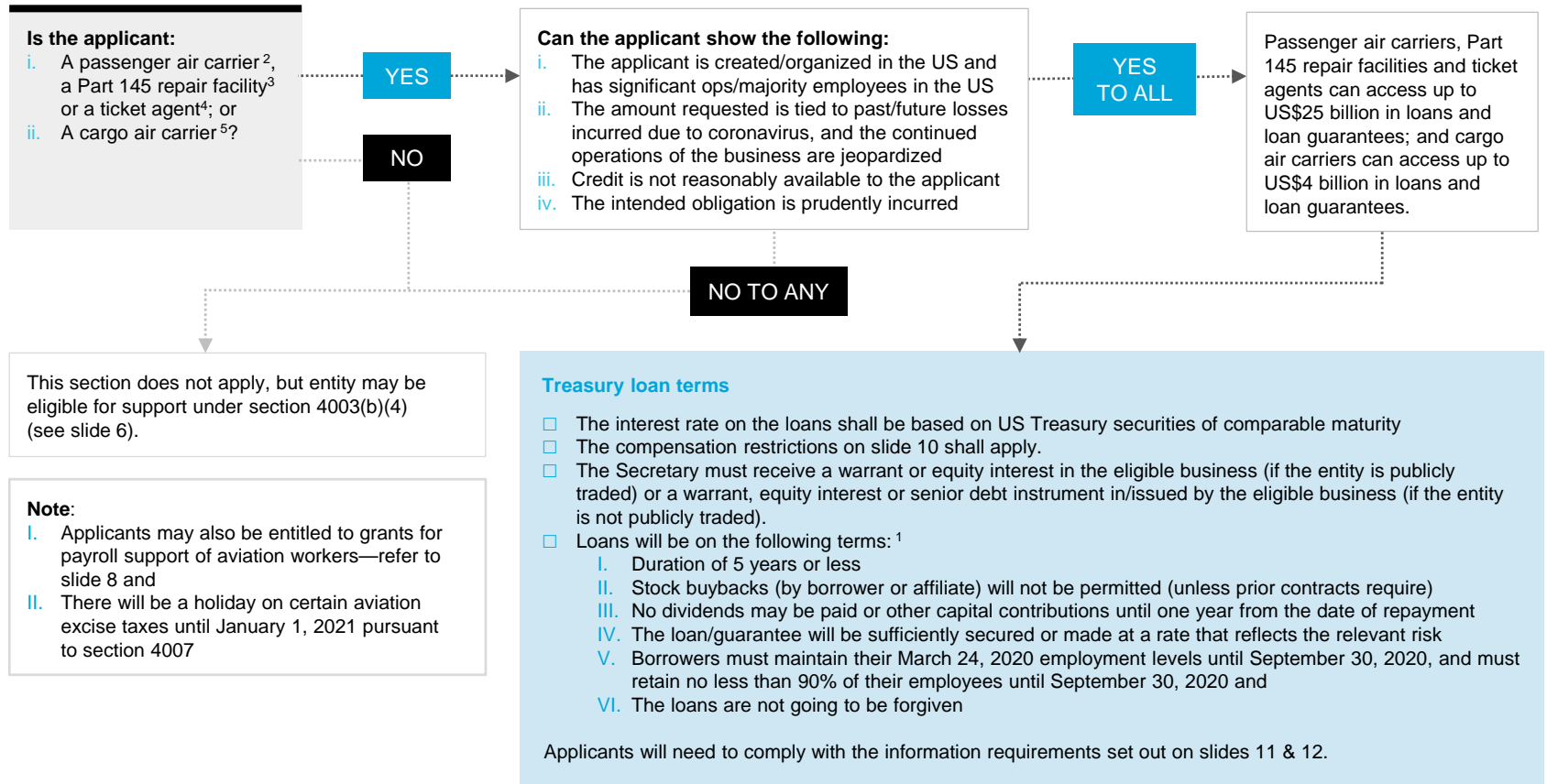
Distribution of emergency aid



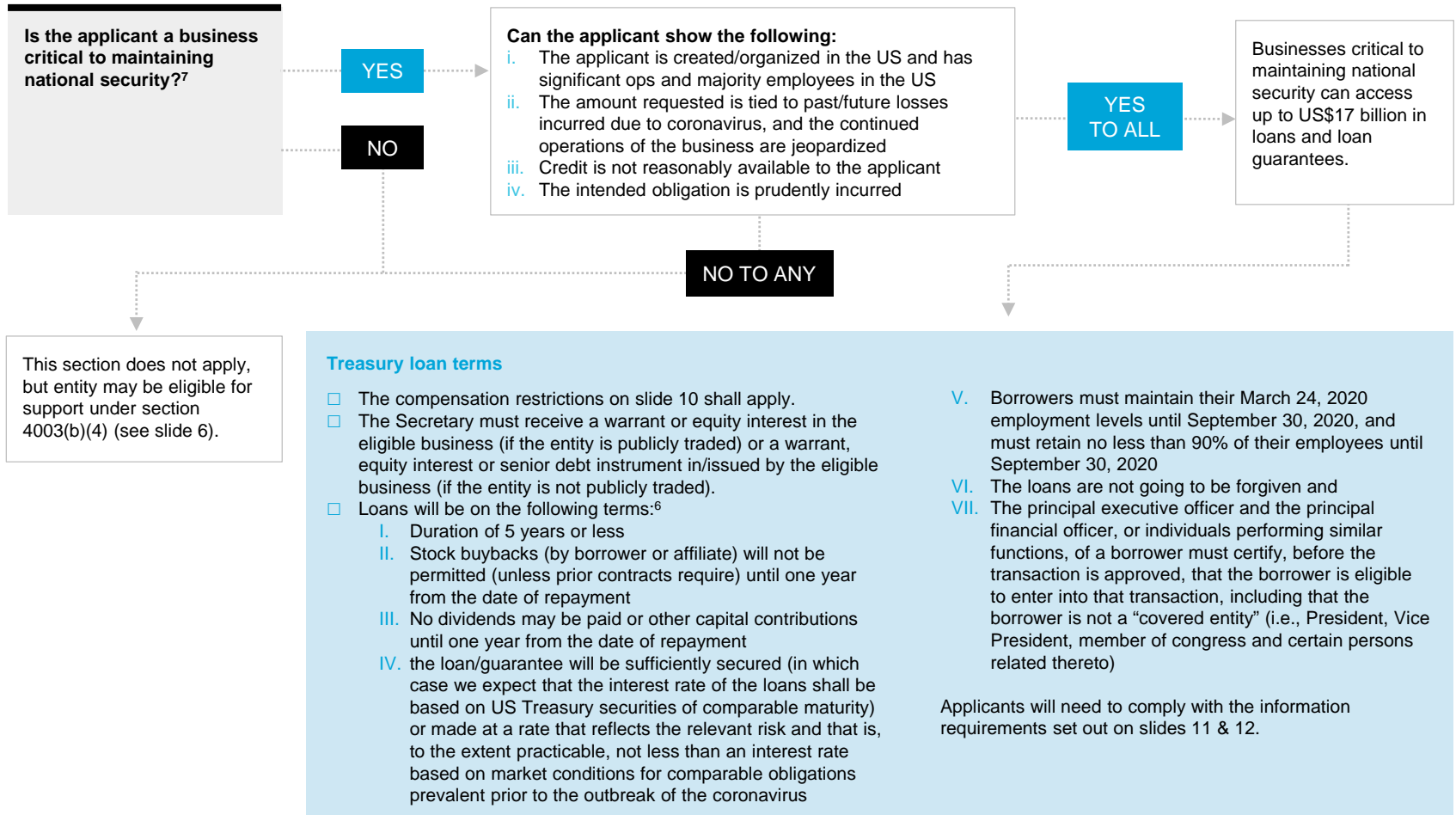
Am I an entity entitled to a loan or a grant under Title IV of the CARES Act?



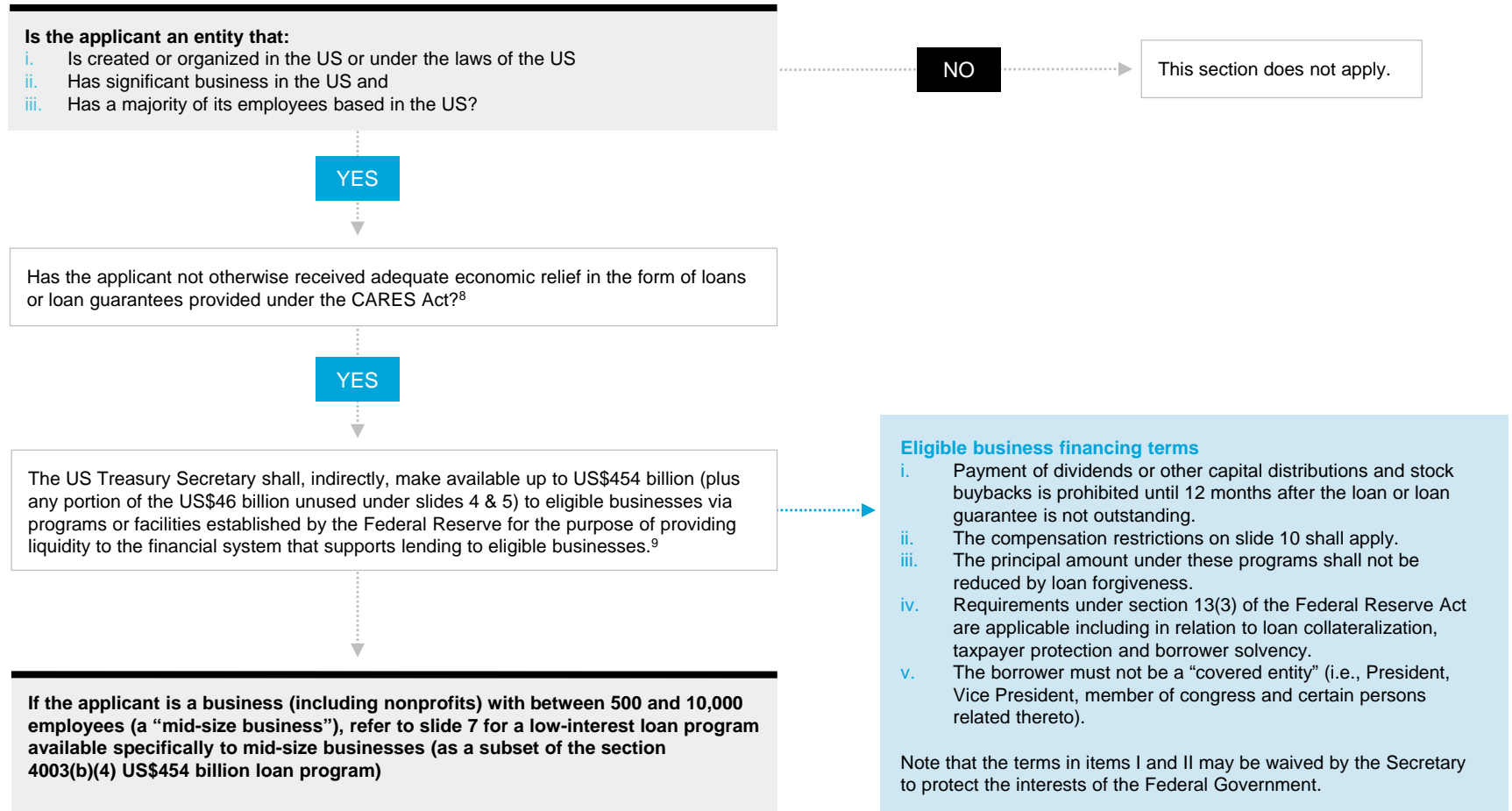
Loans and loan guarantees for passenger air carriers, Part 145 repair facilities and ticketing agents & cargo air carriers



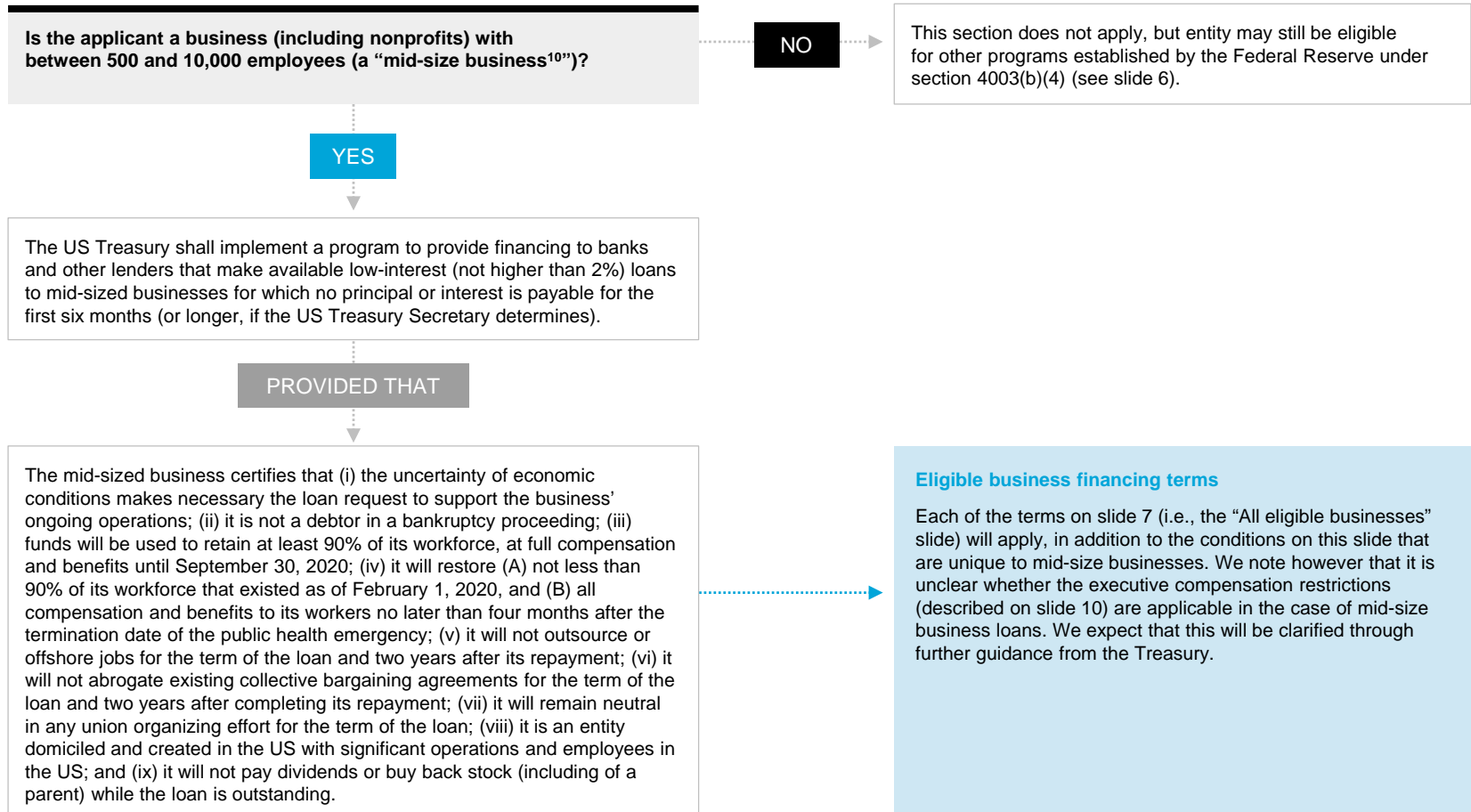
Loans and loan guarantees for businesses critical to maintaining national security



All eligible businesses



Mid-sized businesses (subset of slide 6)



Payroll grants for air carrier workers

Note:

- i. Applicants may also be able to access loans/loan guarantees—refer to slides 4 – 7; and
- ii. There will be a holiday on certain aviation excise taxes until January 1, 2021 pursuant to section 4007

Applicants will need to comply with the application requirements set out on slide 9.

Is the applicant:

- i. A passenger air carrier
- ii. A cargo air carrier or
- iii. A person that performs (under contract with a passenger air carrier) catering functions, functions on the property of an airport that are directly related to the air transportation of persons, property or mail, including but not limited to loading/unloading of property on aircraft, disability assistance, security, airport ticketing and check-in, ground-handling of aircraft or aircraft cleaning and waste removal (or is a subcontractor that performs such functions) (“Contractor”)

NO

This section does not apply.

YES TO ANY

The Secretary of the Treasury shall provide grants to be used exclusively for wages, salaries and benefits to:¹¹

- i. Passenger air carriers for up to US\$25 billion
- ii. Cargo air carriers for up to US\$4 billion and
- iii. Contractors for up to US\$3 billion

PROVIDED THAT

The applicant agrees to:

- i. Not furlough, lay off or reduce pay for employees of the applicant and its subsidiaries (or, in the discretion of the Treasury, any affiliated entity) until September 30
- ii. Not buy back shares or pay dividends (applicable to both the borrower and any affiliate) and
- iii. Implement limits on executive compensation (described on slide 10)

Treasury grant terms

Payments to awardable entities shall be based on salaries and benefits for the period from April 1, 2019, through September 30, 2019 reported to the Department of Transportation (or sworn financial statements, if the air carrier or contractor is not required to report to the DOT) (these will be audited by Treasury).¹² Not later than April 6, 2020, the Secretary of the Treasury shall make initial payments to air carriers that submit requests for financial assistance. The Secretary may receive warrants, options, preferred stock, debt securities, notes or other financial instruments issued by recipients of financial assistance which, in the sole determination of the Secretary, provide appropriate compensation to the Federal Government for the provision of financial assistance. The Treasury department may refuse to provide payroll support to applicants that have taken, or are currently being evaluated for any action to commence a bankruptcy or insolvency filing in any applicable jurisdiction, or any applicant that has been debarred, suspended, deemed ineligible or voluntarily excluded from participation. An applicant that is an air carrier must comply with requirements to maintain scheduled air transportation service that the Secretary of Transportation deems necessary to ensure services to any point served by that air carrier before March 1, 2020.

The Treasury Department may pro-rate the amounts available in the event that the awardable amounts for any category exceed the allocated funds for that category.

Air carrier worker support (continued)

Application details

Applicants must:

- Complete a Payroll Support Application Form (which includes a proposal identifying a financial instrument that provides appropriate compensation to the Federal Government)¹³
- Enter into a “Payroll Support Agreement,” which will include the assurances set out on this slide, the executive compensation restrictions described on slide 10, provisions for clawback of payments upon the applicant’s failure to satisfy its assurances, the conditions of the agreement and other conditions and covenants and
- Submit their applications as soon as possible, ideally prior to April 3, 2020 to avoid approval delays (and in any event, submissions should be lodged no later than April 27, 2020). Treasury may in its discretion consider applications after April 27, subject to availability of funds

Compensation restrictions¹⁴

The executive compensation restrictions referred to on slides 4 – 8 are as follows:

1. No officer or employee whose total compensation exceeded US\$425,000 in 2019 may receive (a) total compensation during any 12 consecutive months that exceeds his or her total compensation in 2019, or (b) severance pay or other benefits upon termination of employment in excess of twice his or her total compensation in 2019 and
2. No officer or employee whose total compensation exceeded US\$3.0 million in 2019 may receive total compensation during any 12 consecutive months in excess of US\$3.0 million + 50% of the excess over US\$3.0 million of his or her 2019 total compensation

In the case of a business that receives a loan or a loan guarantee, the aforementioned restrictions on executive compensation will apply from the date of such loan or loan guarantee until one year after the date on which it is no longer outstanding. In the case of a business that receives payroll support, such restrictions will apply from March 24, 2020 until March 24, 2022.

“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.

Note: It is not clear whether the executive compensation restrictions will apply to loans to mid-sized businesses under § 4003(c)(3)(D). We expect that this will be clarified through further guidance from the Treasury.

Information requirements – Section 4003(b)(1),(2) & (3) loans¹⁵

Applicants for a section 4003(b)(1), (2) or (3) loan will need to submit the following information:

Debt

A description of the borrower's existing secured and unsecured debt, bank and other credit lines with outstanding and maximum balances, and major classes of existing security holders and creditors.

Debt service

A description of the borrower's scheduled debt service for the next three years.

Employment levels

The borrower's employment levels, by head count and total compensation amount, as of March 24, 2020, and any proposed changes to the borrower's employment levels, relative to March 24, 2020, during 2020.

Financial statements

The consolidated financial statements of the borrower and any corporate parents for the previous three years, including, if available, financial statements that have been audited by an independent certified public accountant, including any associated notes, and any interim financial statements and associated notes for the current fiscal year.

Covered losses

A description of the covered losses that the borrower has incurred or will incur as a result of coronavirus, by line items detailing the cause of the loss, such as reduced demand, unavailability of credit, unbudgeted medical expenses or other causes.

Lack of credit elsewhere

Evidence based on factors such as market conditions, the borrower's circumstances, or relationships with existing and potential creditors that the borrower cannot reasonably obtain credit elsewhere.

Passenger service operations

For borrowers that are passenger air carriers, the borrower's available seat miles, revenue per seat mile, and cost per available seat mile for 2019, and a forecast of the same for 2020 that was prepared by or for the air carrier no earlier than October 1, 2019, including any assumptions underlying the forecast.

Information requirements – Section 4003(b)(1),(2) & (3) loans¹⁵ (continued)

Cargo service operations

For borrowers that are cargo air carriers, the borrower's available ton miles, revenue per ton mile, and cost per available ton mile for 2019, and a forecast of the same for 2020 that was prepared by or for the air carrier no earlier than October 1, 2019, including any assumptions underlying the forecast.

Security

A description of the type and general value of all security, including but not limited to assets, property and revenue streams, available to be pledged by the borrower and its subsidiaries to secure the loan, on both a senior and a subordinated basis.

Use of proceeds

The purposes for which the borrower will use the loan proceeds.

Financial needs

Quantitative information on the borrower's financial needs for the remainder of 2020, including expected revenues, operating costs and credit, and how the loan will address those needs together with other sources of funding and financing, such as Air Carrier Worker Support payments under Division A, Title IV, Subtitle B of the Act.

Operating plan

A discussion of the borrower's operating plan for the remainder of 2020 if the loan is approved, including how the proposed loan fits within the borrower's business plan and an analysis showing that the loan is prudently incurred.

Cost restructuring

A description of any plans the borrower has to restructure its obligations, contracts, staffing or organization to improve the borrower's financial condition.

Conditions to accessing funds under Title IV

	Created/organized in the US with significant ops/majority employees in the US?	Interest rate	Executive compensation restrictions?	Restriction on dividends and stock buybacks?	Maintain employment levels?	Warrant required?	Required to demonstrate "covered losses"?	Restriction on loan forgiveness?	Duration	Required to demonstrate no alternative credit?	Not a "covered entity"?	Borrower must be solvent?	Other
Loans to passenger air carriers, repair/maintenance entities, and cargo air carriers loans under Subtitle A, § 4003 (b)(1)-(2)	Yes	Secured or at a rate that reflects the relevant risk (and to the extent practicable, not less than an interest rate based on market conditions for comparable obligations prior to COVID-19).	Yes	Yes. Prohibited until one year from the date of repayment. Stock buybacks also prohibited by an "affiliate."	Yes. 90% retention of workforce until September 30, 2020.	Yes. The Secretary must receive a warrant or equity interest in the eligible business (if the entity is publicly traded) or a warrant, equity interest or senior debt instrument in/issued by the eligible business (if the entity is not publicly traded).	Yes	Yes	Less than 5 years	Yes	Yes	No	A borrower that is an air carrier must comply with requirements to maintain scheduled air transportation service that the Secretary of Transportation deems necessary to ensure services to any point served by that air carrier before March 1, 2020.
Loans to businesses critical to maintaining national security under Subtitle A, under § 4003 (b)(3)	Yes	Secured or at a rate that reflects the relevant risk (and to the extent practicable, not less than an interest rate based on market conditions for comparable obligations prior to COVID-19).	Yes	Yes. Prohibited until one year from the date of repayment. Stock buybacks also prohibited by an "affiliate."	Yes. 90% retention of workforce until September 30, 2020.	Yes. The Secretary must receive a warrant or equity interest in the eligible business (if the entity is publicly traded) or a warrant, equity interest or senior debt instrument in/issued by the eligible business (if the entity is not publicly traded).	Yes	Yes	Less than 5 years	Yes	Yes	No	
Loans to all eligible businesses under Subtitle A, § 4003(b)(4)	Yes	At a rate based on the risk and the current average yield on outstanding marketable obligations of the US of comparable maturity.	Yes	Yes. Prohibited until one year from the date of repayment.	No.	No	No	Yes	Not specified	No	Yes	No	
Loans to mid-sized businesses under Subtitle A, § 4003(c)(3)(D)	Yes	No more than 2%	Yes (to be confirmed)	Yes. Prohibited while the loan is outstanding.	Yes. 90% retention of workforce until September 30, 2020. Restore not less than 90% of February 1, 2020, workforce and all compensation to workers no later than 4 months after termination of public health emergency. Refrain from outsourcing or offshoring jobs.	No	Required to certify that the uncertainty of economic conditions makes necessary the loan request to support the business' ongoing operations.	Yes	Not specified, but interest-free period to last for at least six months.	No	Yes	Must certify not a debtor in bankruptcy proceedings.	Must certify: (i) will not abrogate existing collective bargaining agreements until 2 years after repayment; and (j) will remain neutral in any union organizing effort for the term of the loan.
Grants to air carrier worker support under Subtitle B, § 4112	Unclear	N/A	Yes	Yes. Prohibited until one year from the date of repayment. Stock buybacks also prohibited by an "affiliate."	Yes. Cannot furlough, lay off or reduce pay for employees of the applicant and its subsidiaries (or in the discretion of the Secretary, any affiliated entity) until September 30.	Secretary <u>may</u> receive warrants, stock options, preferred stock, debt securities, notes or other financial instruments issued by recipients of financial assistance	No	N/A	N/A	No	Yes	The Treasury Department may refuse to provide to applicants that have taken, or are evaluating, any action to commence a bankruptcy or insolvency filing applicants applicant that have been debarred, suspended, deemed ineligible or voluntarily excluded from participation.	An air carrier applicant must comply with requirements to maintain scheduled air transportation service that the Secretary of Transportation deems necessary to ensure services to any point served by that air carrier before March 1, 2020.

Endnotes

¹ CARES Act, Title IV, Subtitle A (Coronavirus Economic Stabilization Act of 2020), section 4003(b)(1)&(2),

² “Passenger air carrier” means an air carrier that, during the period from April 1, 2019, to September 30, 2019, derived more than 50% of its air transportation revenue from the transportation of passengers.

³ Part 145 of title 14, Code of Federal Regulations.

⁴ Defined in section 40102 of title 49, United States Code as “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.”

⁵ “Cargo air carrier” means an air carrier that, during the time period from April 1, 2019 to September 30, 2019, derived more than 50% of its air transportation revenue from the transportation of property or mail, or both.

⁶ The Secretary of the Treasury will issue further guidelines for eligibility and repayment terms on or before April 6, 2020.

⁷ This term is not defined in the CARES Act. Although this category may capture businesses that operate in certain critical infrastructure sectors of the economy, the intention of this category may be somewhat narrower and may only apply to defense contractors.

⁸ At this point, it remains unclear which businesses would qualify as “businesses that have not otherwise received adequate economic relief in the form of loans or loan guarantees” under the Act. However, we expect that the Treasury will provide further guidance on this issue.

⁹ CARES Act, Title IV, Subtitle A (Coronavirus Economic Stabilization Act of 2020), section 4003(b)(4). We expect that guidelines will be issued to further clarify the details of, and requirements for, this funding.

¹⁰ CARES Act, Title IV, Subtitle A (Coronavirus Economic Stabilization Act of 2020), section 4003(c)(3)(D).

¹¹ CARES Act, Title IV, Subtitle B (Air Carrier Worker Support).

¹² The Secretary of the Treasury will publish procedures for air carriers and contractors to submit requests on or before April 1, 2020.

¹³ As set out in the Treasury guidelines issued on March 30, 2020.

¹⁴ CARES Act, Title IV, Subtitle A (Section 4004).

¹⁵ Treasury Loans Guidance issued March 30 2020. Note that additional guidelines and information requirements will be released.



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