



March 29, 2020

CARES Act: Provisions for Financial Institutions

On Friday, March 27, 2020 in response to the COVID-19 pandemic, the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) was passed by Congress and signed by President Trump. The CARES Act includes several provisions, **although temporary**, designed to support financial institutions during the COVID-19 pandemic. This alert summarizes certain loan programs and other relief available to financial institutions under the CARES Act.

- **Eligibility to Make Loans Under the Paycheck Protection Program.** Section 1102 of the CARES Act makes \$349 billion available for forgivable loans to businesses with 500 or fewer employees (with certain exceptions for businesses with greater than 500 employees). SBA lenders and other financial institutions authorized by the U.S. Department of Treasury will be permitted to make loans to businesses under this program. A loan made under the program would receive a zero percent risk weight under bank regulatory capital rules (though would not receive any relief for leverage ratio purposes).
- **Federal Deposit Insurance Corporation (“FDIC”) Debt Guarantee Authority.** Section 4008 of the CARES Act provides Congressional authorization for the FDIC to establish a temporary debt guarantee program to guarantee debt (including noninterest-bearing transaction accounts) of depository institutions and their holding companies, without a maximum amount. This provision authorizes an FDIC guarantee similar to that offered by the FDIC’s Temporary Liquidity Guarantee Program in 2008. In addition, the National Credit Union Administration (“NCUA”) is given authority to temporarily increase share insurance coverage for noninterest-bearing transaction accounts. Any such FDIC or NCUA guarantee or increase in deposit insurance coverage must terminate no later than December 31, 2020.
- **Optional Delay in Current Expected Credit Losses (“CECL”) Implementation.** Section 4014 permits banking organizations to delay adoption of the new CECL accounting standard for companies until the earlier of December 31, 2020, and the termination date of the national emergency concerning COVID-19 declared by the President. This would affect all SEC-registered banking organizations for which the CECL accounting standard would otherwise be reflected in their March 31, 2020 earnings statements. (Other banking organizations have adoption dates in 2021 and 2022, which would not be affected by the CARES Act.)
- **Temporary Troubled Debt Restructuring (“TDR”) Relief.** Section 4013 permits financial institutions to suspend, for loan modifications related to COVID-19, requirements otherwise applicable under Generally Accepted Accounting Principles (“GAAP”) to categorize loan modifications as TDRs, and the federal banking agencies must defer to the financial institution’s determination. Specifically, TDR classification would not be required if the loan modification is made in the period from March 1, 2020 through the earlier of December 31, 2020, or 60 days after the date on which the national emergency declaration related to COVID-19 terminates. Note that on March 22, 2020, the federal bank regulatory agencies issued an Interagency Statement on Loan Modifications that similarly permits banks to avoid classification as TDRs of certain short-term modifications of loans in response to COVID-19. However, Section 4013 of the CARES Act appears to offer broader relief than is offered by the Interagency Statement, as the CARE Act’s provisions both (i) impose fewer restrictions on banks’ ability to modify loan terms without the requirement of TDR classification and (ii) require the principal federal banking regulator of a financial institution to defer to the institution’s determination to suspend TDR classification for COVID-19 related loan modifications.

- **Grant of Authority to Comptroller of the Currency (“OCC”) for Legal Lending Limit Waiver.** Section 4011 of the CARES Act amends the legal lending limit (loans to one borrower) framework applicable to national banks and federal savings associations by (i) allowing the OCC to waive such limits for loans to nonbank financial companies and (ii) authorizing the OCC to exempt any transaction or series of transactions from the applicable legal lending limits upon a finding that such exemption is in the public interest and consistent with the purposes of 12 U.S.C. 84. The amendments to the lending limit statute will be effective until the earlier of December 31, 2020, and the termination date of the COVID-19 national emergency.
- **Temporary Reduction in Community Bank Leverage Ratio (“CBLR”).** Section 4012 instructs the federal bank regulatory agencies to issue an interim final rule reducing the minimum CBLR from 9% to 8% until the earlier of December 31, 2020, and the termination date of the COVID-19 national emergency. In addition, the legislation provides that a qualifying community bank which falls below the CBLR, as reduced, during such period will be granted a reasonable grace period to come into compliance. The CBLR framework, as established in the final interagency rule issued in September 2019, permits qualifying highly capitalized banking organizations with less than \$10 billion in total consolidated assets to satisfy their regulatory capital requirements, and to avoid calculating or reporting risk-based capital ratios, by maintaining the CBLR at the level established by the regulation.
- **Credit Protection During the COVID-19 Pandemic.** Section 4021 amends the Fair Credit Reporting Act to provide that, if an institution that furnishes information to credit reporting agencies makes an “accommodation” with respect to one or more payments on a credit obligation or account of a consumer, and the consumer makes the payments or is not required to make one or more payments pursuant to the accommodation, then the furnisher must report such obligation or account as “current” (or as the status reported prior to the accommodation) during the period of accommodation. An “accommodation” is defined as an agreement to defer one or more payments, make a partial payment, forbear any delinquent amounts, modify a loan or contract, or any other assistance or relief granted to a consumer who is affected by the COVID-19 pandemic during the Covered Period (defined below). This requirement applies only to accounts for which the consumer has fulfilled requirements pursuant to the forbearance or modified payment agreement. This credit protection is available beginning on January 31, 2020 and ends at the later of 120 days after the enactment date or 120 days after the date on which the national emergency declaration related to COVID-19 is terminated (“Covered Period”).
- **Other Consumer Provisions.** The CARES Act also includes several other consumer-oriented provisions, including a foreclosure moratorium and a consumer right to request forbearance (see Section 4022). In general, the CARES Act prohibits foreclosures on federally backed mortgage loans for a 60-day period beginning on March 18, 2020 and provides up to one year of forbearance for borrowers under federally backed mortgage loans who have experienced a financial hardship related to COVID-19. Similarly, the legislation includes a 120-day moratorium on eviction filings with respect to certain properties, including where the property is subject to a federally backed mortgage loan. Federally backed mortgages include those purchased or securitized by Fannie Mae or Freddie Mac; insured by the Federal Housing Administration, the U.S. Department of Veterans Affairs or the U.S. Department of Agriculture (“USDA”); and directly issued by USDA. The legislation also includes consumer-oriented protections with respect to multifamily properties with federally backed loans (see Section 4023).

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