

Insights

The CARES Act: Provisions Directly Affecting Financial Institutions

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INTRODUCTION

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") will provide emergency assistance to healthcare providers, individuals, families, and businesses affected by the novel Coronavirus ("COVID-19"). Included in the CARES Act are provisions directly affecting financial institutions across the United States. These provisions provide liquidity to financial markets, suspend or modify existing rules or regulations, and allow financial institutions to respond flexibly to the rapidly evolving events perpetuated by the Coronavirus. This Alert provides a general summary of the key provisions in the CARES Act relating to financial institutions.

ANALYSIS

Section 1102 and 1109

Section 1102 amends the Small Business Act (codified at 15 USC 636(a)) to include provisions implementing the Paycheck Protection Program. Under the Paycheck Protection Program, covered loans will have a risk weight of zero percent under capital requirements, including for credit unions. For more information on the Paycheck Protection Program, please see our The CARES Act: Benefits for Small Business article. These covered loans provide businesses with additional funds to maintain payroll, mortgage payments, lease payments and utility payments. Companies with 500 or fewer employees that were operational on February 15, 2020 and adversely affected by COVID-19 qualify for covered loans. Any insured depository institution or credit union that modifies a covered loan in the Paycheck Protection Program will not be required to comply with Financial Accounting Standards Board Accounting Standards Codification Subtopic 310-40 ('Receivables – Troubled Debt Restructurings by Creditors') until the appropriate agency deems necessary. Lenders authorized to make covered loans will be reimbursed for doing so.

Section 1109 requires the Department of the Treasury to establish criteria for insured depository institutions and credit unions to participate in the Paycheck Protection Program to provide loans under the program, so long as an institution remains safe and sound throughout its participation.

Section 4003

Section 4003 provides \$500 billion of funding to the Department of Treasury, with \$454 billion directly appropriated to the Federal Reserve so it may provide loans, loan guarantees, and investments to eligible businesses, States, and municipalities. All direct lending must meet the following criteria: (1) the borrower could not obtain alternative financing, (2) the loan or loan guarantee is sufficiently secured or made at a rate that reflects the risk of the loan or loan guarantee, (3) the duration of loan must be as short as possible and cannot last longer than five years; and (4) the borrower must, until September 30, 2020, maintain employment levels as of March 24, 2020 to the extent practicable. Entities that wish to participate in a loan or loan guarantee must be permanently located in the United States.

Section 4008

Section 4008 amends the Dodd-Frank Wall Street Reform and Consumer Protection Act (codified at 12 USC 5612) to include provisions allowing the Federal Deposit Insurance Corporation to establish a program to guarantee obligations of solvent insured depository institution or solvent depository institution holding companies through December 31, 2020. The amendment also provides the National Credit Union Administration Board the authority to increase share insurance coverage on non-interest bearing transaction accounts until December 31, 2020.

Section 4011

Section 4011 amends the Financial Stability Act of 2010 (codified at 12 USC 84) by providing the Comptroller of the Currency authority to exempt any transaction from the single borrower loan limit for loans made to any nonbank financial company. The Comptroller of the Currency may also exempt any other transaction from lending limited so long as such exemption is in the public interest. The Comptroller of the Currency's exemption authority terminates the sooner of the termination of the national emergency declared by President Trump on March 13, 2020 or December 31, 2020.

Section 4012

Section 4012 requires the appropriate Federal banking agencies to issue an interim final rule lowering the Community Bank Leverage Ratio to 8% for community banks. Section 4012 also grants qualifying community banks a "reasonable grace period" to satisfy with the Community Bank Leverage Ratio. During any such "grace period" a qualifying community bank will be treated as a qualifying community bank and be presumed to satisfy the capital and leverage requirements. The interim rule will be effective the date the appropriate Federal banking agencies issue the interim rule and ends the sooner of the date the termination of the national emergency declared by President Trump on March 13, 2020 ends or December 31, 2020.

Section 4013

Section 4013 allows financial institutions, including credit unions, to temporarily suspend requirements under United States Generally Accepted Accounting Principles ("GAAP") for any loan modifications made related to COVID-19 that would otherwise be considered troubled debt restructuring, including impairments for accounting principles. The applicable period for GAAP suspension lasts from March 1, 2020 to December 31, 2020, or sixty days after the date on which the national emergency declared by President Trump on March 13, 2020 is terminated.

Section 4014

Section 4014 grants financial institutions, including credit union, temporary relief from using the Current Expected Credit Losses (CECL) standards. This relief ends the earlier of the date on which the national emergency declared by President Trump on March 13, 2020 is terminated or December 31, 2020.

Section 4016

Section 4016 amends the Federal Credit Union Act (codified at 12 USC 1795 et seq) to expand the National Credit Union Administration's Central Liquidity Facility ("Facility") by allowing it to borrow an amount up to sixteen times the subscribed capital stock and surplus of the Facility. The expansion of the Facility ends December 31, 2020.

Section 4021

Section 4021 of the CARES Act amends the Fair Credit Reporting Act ("FCRA") (codified at 15 U.S.C. 1681s-2(a)(1)) to include a new subsection requiring a person furnishing information under the FCRA to report a credit obligation or account as "current" if an "accommodation" was made by the furnisher. If the consumer's credit obligation was delinquent prior to an "accommodation," the furnisher is required to maintain the delinquent status during the period of the accommodation, and if the consumer brings the account current during the accommodation, report the credit obligation or account as "current". The latter requirement does not apply to any consumer credit obligation or account that has been charged off.

The definition of "accommodation" includes an agreement to defer one (1) or more payments, make a partial payment, forbear any delinquent accounts, modify a loan, or any other relief granted to a consumer affected by COVID-19 during the "covered period" (beginning Jan. 31, 2020 and ending 120 days after enactment of the CARES Act or after the national emergency declared by President Trump on March 13, 2020 is terminated).

Section 4022

Section 4022 allows borrowers with a Federally backed mortgage during the "covered period" to request forbearance on a Federally backed mortgage loan, regardless of its delinquency status. Borrowers need only submit the request to their servicer and affirm the borrower is experiencing hardship due to the COVID-19 emergency. The "covered period" under Section 4022 lasts from the enactment of the CARES Act and ends the sooner of the termination date of the national emergency declared by President Trump on March 13, 2020 or December 31, 2020.

The length of the forbearance will last up to sixty (60) days and can be extended for up to four, thirty day periods, so long as such requests are made during the covered period. During the period of forbearance, no fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all payments on time and in full under the mortgage contract will accrue on the borrower's account.

Services are required to grant the forbearance upon the borrower's presentment of documentation attesting to the borrower's financial hardship caused by the COVID-19 emergency. Servicers will also be required to do the following:

- Make or disburse payments from any escrow account established on the mortgage loan; and

- Evaluate borrower's ability to return to making mortgage payments at the end of the forbearance

If borrower is able to return to making mortgage payments servicer must:

- Reinstate the loan with no penalties, fees, or interest beyond the amounts scheduled;
- Provide a written repayment plan with no penalties or fees; or
- At the borrower's request, extend the term of the loan for period that is at least the same as the forbearance period;

If the borrower is unable financially to return to making regular mortgage payments at the end of the forbearance period and if the borrower elects, or if the borrower is able to return to making regular mortgage payment but elects, the servicer must:

- Evaluate borrower for loan modification options without regard to whether borrower has previously requested such modification; and
- Modify the loan if the borrower qualifies for such modification, with no additional penalties or interest

Servicers of Federally backed mortgages will also be required to provide borrowers notice of their right to request forbearance in each periodic statement provided to borrower throughout the COVID-19 Emergency.

Section 4023

Section 4023 provides forbearance of residential mortgage loan payments for multifamily properties with federally back loans. A multifamily borrower with Federally backed loans that was current on payments as of February 1, 2020 may submit an oral or written forbearance request to the borrower's servicer affirming the borrower's hardship due to COVID-19. Servicers will be required to document the hardship and provide the forbearance for up to 30 days and extend that forbearance period for up to two additional 30 day periods.

Any borrower that receives a forbearance (and for the duration of such forbearance) may not evict tenants for the nonpayment of rent or other fees.

The "covered period" under Section 4023 lasts from the enactment of the CARES Act and ends the sooner of the termination date of the national emergency declared by President Trump on March 13, 2020 or December 31, 2020.

CONCLUSION

The Krieg DeVault Financial Services team is closely monitoring the regulatory response to the COVID-19 pandemic and able to assist your institution navigate the myriad of issues this unprecedented crises presents. As further



updates occur, this Alert will be updated.