Insights

The CARES Act: Flexibility for Lenders

March 26, 2020

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 lenders across the United States, providing temporary waivers and flexibility in uncertain times.

Specifically, the CARES Act provides flexibility for lenders to modify existing loans for borrowers effected by COVID-19 without having to categorize the modification as a troubled debt restructuring under generally accepted accounting principles ("GAAP").

Under the CARES ACT, financial institutions may elect to suspend GAAP requirements pertaining to loan modifications related to the effects of COVID-19 that would otherwise be categorized as a troubled debt restructuring under GAAP. In addition, the CARES Act provides the option for financial institutions to suspend any determination of a modified loan during the applicable period as being categorized as a troubled debt restructuring under GAAP.

Loan modifications covered by the CARES Act are limited to forbearance arrangements, interest rate modifications, repayment plans or other similar arrangements that defer or delay the payment of principal or interest that occurs during the applicable period.

Financial institutions may begin utilizing this election as of March 1, 2020 and it will be available until 60 days after the termination of the COVID-19 national emergency declaration or December 31, 2020, whichever is earlier. It is important to note that Congress included language to restrict the applicability of this election to loans affected by COVID-19. Financial institutions may only take advantage of this election for loans that were not more than 30 days past due as of December 31, 2019.

The CARES Act also provides a temporary waiver for the lending limits imposed by the Financial Stability Act of 2010 (codified at 12 USC 84). The Financial Stability Act of 2010, among other things, limits the extensions of credit to a person or business entity that national banking associations can have outstanding. The Act temporarily authorizes the Comptroller of the Currency to exempt any transaction or series of transactions from the lending limits if the exemption is in the public interest.

The Comptroller's temporary authorization to exempt transactions will expire 60 days after the termination of the COVID-19 national emergency declaration or December 31, 2020, whichever is earlier.

If you have any further questions feel free to contact **Kelsie L. Breit** or a member of our **Commercial Lending Team**
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