



Insights: Alerts

# CARES Act | Important CARES Act Provisions for Financial Institutions

March 27, 2020

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*Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main [COVID-19 Task Force page](#) and/or your email for updates.*

The CARES Act includes actions specifically designed to provide various levels of temporary regulatory relief to financial institutions and to support the financial services industry as a whole. Following are the key areas in which the CARES Act provides relief to the financial services industry:

## **Up to \$500 Billion in Emergency Liquidity for Eligible Businesses**

The CARES Act authorizes the Secretary of the Treasury to provide up to \$500 billion in liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of COVID-19. Eligible business is defined broadly – it is any U.S. business that has not otherwise received adequate relief in the form of loans or loan guarantees under the CARES Act. The liquidity provided can take the form of loans, loan guarantees, and other investments. In particular, the CARES Act allows for programs and facilities established by the Board of Governors of the Federal Reserve System to provide liquidity to the financial system to support eligible businesses by purchasing obligations or other interests directly from issuers or on the secondary market.

The Secretary of the Treasury has broad discretion to determine the terms and conditions of the loans, loan guarantees, and other investments, and the CARES Act directs the Secretary of the Treasury to publish procedures for applying to and minimum requirements for such loans, loan guarantees, and other investments. Loans and loan guarantees provided pursuant to this section must be made to applicants for which credit is not otherwise reasonably available, and the loans or loan guarantees must be sufficiently secured or made at a rate that reflects the risks. The loans and loan guarantees may not be longer than five years, and the borrower cannot repurchase any outstanding equity while the loan or loan guarantee is outstanding.

## **FDIC Debt Guarantee Authority**

The CARES Act authorizes the FDIC to guarantee obligations of solvent insured depository institutions without a maximum guarantee until December 31, 2020 by creating a debt guarantee program under the emergency financial stabilization statute, 12 USC § 5612. The CARES Act achieves this by removing the 12 USC § 5612(f)'s provision against construing such a program as a debt guarantee program and explicitly grants the authorizations necessary for this provision of the CARES Act under 12 USC § 5612(c)(1), (c)(2), and (d).

## **OCC's Authority to Waive Loans-to-One Borrower Limits**

12 USC § 84(a) currently provides limits (as a percentage of a national bank's unimpaired capital and unimpaired surplus) on the amount that a national bank can loan to any one borrower as implemented in the OCC regulations governing loans to one borrower. The CARES Act authorizes the OCC to use its exemption authority under the loans to one borrower statute to exempt loans or other extensions of credit to any non-bank financial entity, in addition to providing such exemptions to financial institutions, from the loans to one borrower aggregate limits. These provisions are effective until the end of the calendar year or at the conclusion of the COVID-19 public health emergency, whichever occurs first.

## **Temporary Reduction of Community Bank Leverage Ratio**

In September of 2019, the FDIC approved a final rule implementing Section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which exempts qualifying community banks (depository institutions with total consolidated assets of less than \$10 billion and which satisfy certain risk profile analyses) from complex Basel III capital calculation requirements. Qualifying community banks must maintain a leveraged capital ratio ("**Community Bank Leverage Ratio**" or "**CBLR**") of 9% or greater. The CARES Act directs banking agencies to issue regulations to lower such CBLR requirement to 8% and allow for a reasonable grace period to meet such CBLR requirement. During the grace period, a qualifying community bank shall be presumed to satisfy the capital and leverage requirements of Section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act and implementing regulations thereunder. These regulations shall also be effective until the end of the calendar year or at the conclusion of the COVID-19 public health emergency, whichever occurs first.

## **Temporary Suspension of U.S. GAAP as Applied to Troubled Debt Restructurings**

The CARE Act provides for a period of time, beginning on March 1, 2020 and ending 60 days after the conclusion of the COVID-19 emergency declaration, during which appropriate Federal banking agencies may elect to suspend requirements under U.S. GAAP principles that would otherwise classify a loan modification related to the COVID-19 pandemic as a troubled debt restructuring. Such Federal banking agencies may also elect to suspend any determination that a loan modified as a result of the COVID-19 pandemic is a troubled debt restructuring, including impairment for accounting purposes. Suspensions under this provision are effective for the term of the loan modification, but such modification must occur during the abovementioned period, and the loan must not be over 30 days past due as of December 31, 2019.

## **Temporary Suspension of CECL**

Finally, the CARES Act exempts insured depository institutions and bank holding companies from complying with the Financial Accounting Standards Board Accounting Standards Update No. 2016-13 ("Measurement of Credit Losses on Financial Instruments" (commonly known as "**CECL**")), including the current expected credit losses methodology for estimating allowances for credit losses. This provision is effective until the end of the calendar year or at the conclusion of the COVID-19 public health emergency, whichever occurs first.

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We will provide updates on the passage of, or amendments to the CARES Act, as that information becomes available. In addition, updates on the CARES Act, other provisions of that Act that may be relevant to your business, and other issues and challenges related to COVID-19 can be found in the legal alerts published by our [Coronavirus \(COVID-19\) Task Force](#).

## Related People

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