

Financial Institutions Receive Federal COVID-19 Relief

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On March 27, 2020, Congress approved the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act" or the "Act") to provide financial assistance to individuals and businesses in response to the spread of COVID-19. The Act includes approximately \$2 trillion in assistance; a total of \$454 billion is provided to the Federal Reserve System to support its lending facilities.

The [CARES Act](#) includes a number of provisions designed to support financial institutions during the COVID-19 pandemic. In addition, in recent days, the U.S. federal banking agencies and the U.S. Securities and Exchange Commission ("SEC") have issued updated guidance and requirements for financial institutions dealing with issues related to COVID-19. Together, these measures provide substantial relief for U.S. financial institutions and allow financial institutions to support their customers.

Bank Fees and Small Business Administration ("SBA") Coordination

The Act significantly expands the SBA's Business Loan and Disaster Loan Programs. Generally, under the [Paycheck Protection Program \(PPP\)](#) the Act will allow companies with fewer than 500 employees to obtain *forgivable* loans of up to \$10 million each from local SBA lenders through the Small Business Administration's existing 7(a) loan guarantee program. Additionally, Governor Tom Wolf has announced the availability of low-interest loans for small businesses (and eligible non-profits), for all Pennsylvania counties through the SBA. The SBA's Economic Injury Disaster Loans (EIDLs) offer up to \$2 million in assistance to provide vital economic support to small businesses to help overcome the temporary loss of revenue they are experiencing.

Additionally, the Act requires that the SBA Administrator work with the FDIC, OCC and state banking regulators to:

- Eliminate the requirement for lenders to increase their reserves that would otherwise apply based on payments received under the SBA loan programs;
- Waive statutory limits on maximum loan maturities for certain loans; and
- Extend lender site visit requirements to account for volume increases, travel restrictions, etc., during the COVID-19 emergency to not more than 60 days after an adverse event that sends a loan into liquidation, or not more than 90 days after a payment default.

The Act also provides that loans issued under the SBA's 7(a) guarantee program are to carry a zero percent risk weight for regulatory capital purposes.

Suspension of GAAP for Loan Modifications

The Act includes provisions designed to encourage banks to work with borrowers experiencing financial difficulties in

connection with the pandemic. A financial institution may elect to suspend certain requirements under U.S. Generally Accepted Accounting Principles ("GAAP") for loan modifications related to the COVID-19 pandemic that would otherwise be categorized as a troubled debt restructuring (TDR). For such modifications, the federal banking agencies are to defer to the financial institution's determination. The covered period for such modifications begins on March 1, 2020, and ends the earlier of December 31, 2020, or 60 days after the date on which the national emergency declaration related to coronavirus terminates.

Support for Community Banks

The Act requires the federal banking agencies to temporarily reduce the Community Bank Leverage Ratio ("CBLR") for qualifying community banks from 9% to 8% and provides for a reasonable grace period if a community bank's CBLR falls below the prescribed level. This requirement, which will be implemented by interim final rule, would expire at the earlier of December 31, 2020, or the date on which the national emergency declaration related to COVID-19 terminates.

CECL Impact Delayed

The Current Expected Credit Losses ("CECL") accounting standard, which changes how banks account for expected losses on their assets, has been controversial because of its potential impact on banks' capital and willingness to lend in times of economic stress. The CARES Act permits an insured depository institution, bank holding company or any affiliate thereof to temporarily delay measuring credit losses on financial instruments using the CECL until the earlier of December 31, 2020, or the date on which the coronavirus-related national emergency declaration terminates. In addition to this delay, on March 27, 2020, the FRB, FDIC, and OCC issued an emergency rule stating that banks required to adopt CECL in 2020 may delay its estimated impact on their regulatory capital for two years.

Consumer Protection Provisions

The CARES Act includes a number of provisions designed to help consumers. Most notably for banks, these provisions include a moratorium on foreclosures and a consumer right to request forbearance for mortgages. In general, the 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 with federally backed mortgage loans who have experienced a financial hardship related to COVID-19. Similarly, the Act 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. The Act also includes consumer protections with respect to multifamily properties.

Oversight and Supervision

The CARES Act includes oversight mechanisms similar to those included as part of the Troubled Asset Relief Program in 2008. The Act establishes the Office of the Special Inspector General for Pandemic Recovery, which will conduct, supervise and coordinate audits and investigations of the making, purchase, management and sale of loans, loan guarantees and other investments made by the U.S. Department of the Treasury. It also establishes a Congressional Oversight Commission to conduct oversight of implementation of certain provisions.

SEC Updates

In addition to the relief provided under the CARES Act, the SEC has, by Order, temporarily relaxed filing requirements

for financial institutions that are reporting companies. These include:

- Through July 1, 2020, reporting companies that are unable to fulfill the notarization requirement for creating a Form ID to access EDGAR can still submit forms, under the condition that they explain how COVID-19 affected them, and submit a notarized copy within 90 days of accessing EDGAR.
- Filing deadlines for public companies with reports that would have been due between March 1, 2020 and April 30, 2020 are now extended by 45 days. This extension applies to current reports on Form 8-K and quarterly reports on Form 10-Q that become due during such time, Form 10-K filings for registrants with a calendar fiscal year, and any Schedule 13G that is required to be filed during such time.

In addition, the [SEC Order](#) provides:

- For Form S-3 (and for well-known seasoned issuer ("WKSI") status), a company will be considered current and timely if it was current and timely in its reporting as of March 1, 2020 and it files any report due during the relief period within 45 days of the filing deadline for the report.
- For Form S-8 eligibility requirements and the current public information eligibility requirements of Rule 144(c), a company will be considered current in its Exchange Act filing requirements if it was current as of March 1, 2020 and it files any report due during the relief period within 45 days of the filing deadline for the report.
- Companies that receive an extension on filing Exchange Act annual reports or quarterly reports will be considered to have a due date 45 days after the filing deadline for the report. As such, those companies will be permitted to rely on Rule 12b-25 if they are unable to file the required reports on or before the extended due date.

The extension does not apply to the requirement to file Schedule 13D, or amendment thereto. It also does not apply to Section 16 beneficial ownership reports, including Form 3 and Form 4.

Any registrant relying on the Order must furnish to the SEC a Form 8-K or Form 6-K, as applicable, by the original filing deadline of the subject report stating: (i) that it is relying on the Order, (ii) a brief description of the reasons why it could not file such report, schedule, or form on a timely basis, (iii) the estimated date by which the report is expected to be filed, and (iv) if appropriate, a risk factor explaining the impact of COVID-19 on its business. If the reason that the subject report cannot be filed timely relates to the inability of any person, other than the registrant, to furnish any required opinion, report or certification (e.g., an auditor's opinion on audited financial statements), the Form 8-K or Form 6-K must attach as an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report, or certification by the deadline. The registrant then must file the subject report no later than 45 days after the original filing deadline. The subject report, when filed, must disclose that the registrant is relying on the Order and state the reasons why the registrant could not file such report on a timely basis.

Additionally, the SEC's Division of Corporation Finance recently issued [detailed guidance](#) on how companies should assess and communicate their risks associated with COVID-19. Disclosure of these risks and COVID-19-related effects may be necessary or appropriate in management's discussion and analysis, the business section, risk factors, legal proceedings, disclosure controls and procedures, internal control over financial reporting, and the financial statements. Factors to consider should include, but are not limited to, the following:

- How has COVID-19 impacted your capital and financial resources, including your overall liquidity position and outlook? This discussion should include consideration of recently-enacted legislation; for example, under the discussion of the CARES Act, SBA loans are to carry a zero percent risk weight for regulatory capital purposes.
- Do you anticipate any material impairments, increases in allowances for credit losses, restructuring charges, other expenses, or changes in accounting judgments that have had or are reasonably likely to have a material impact on your financial statements?
- How has COVID-19 impacted your financial condition and results of operations? In light of changing trends and the overall economic outlook, how do you expect COVID-19 to impact your future operating results and near-and-long-term financial condition?
- How do you expect COVID-19 to affect assets on your balance sheet and your ability to timely account for those assets?
- Have you experienced challenges in implementing your business continuity plans or do you foresee requiring material expenditures to do so?
- Have COVID-19-related circumstances, such as remote work arrangements, adversely affected your ability to maintain operations, including financial reporting systems, internal control over financial reporting and disclosure controls and procedures?
- Do you expect COVID-19 to materially affect the demand for your products or services, including loans?

Reporting companies also must consider whether and when to restrict trading in the company's securities. For example, where a company has become aware of a risk related to COVID-19 that would be material to investors, the company and its insiders should refrain from trading.

If you have questions regarding how the CARES Act, SEC guidance, or recent regulatory actions affect your financial institution or its customers, please contact [Amanda Kowalski](#), [Kimberly Decker](#) or [Paul Mattaini](#).

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