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## **LEGAL UPDATES AND NEWS**

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### **Coronavirus Aid, Relief, and Economic Security Act**

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The Coronavirus Aid, Relief and Economic Security Act (the “CARES Act”) was signed into law on March 27, 2020. It provides over \$2 trillion to combat the coronavirus (COVID-19) and stimulate the economy. Below is a summary of the provisions of the CARES Act that we believe are of most interest to financial institutions. Please note that many of the provisions discussed below end at the earlier of December 31, 2020 or once the President declares that the coronavirus emergency is terminated (the “Presidential Declaration”).

#### **Troubled Debt Restructurings**

The CARES Act went further in providing relief to financial institutions than the interagency guidance provided by the federal regulators on March 22, 2020. The CARES Act relief from troubled debt restructurings applies to the period beginning March 1, 2020 and ending the earlier of December 31, 2020 or 60-days after the date of the Presidential Declaration (the “Applicable Period”).

During the Applicable Period, a financial institution can elect to (i) suspend GAAP for loan modifications related to the COVID-19 pandemic that would otherwise categorize the loan as a troubled debt restructuring and (ii) suspend any determination of a loan modification as a result of the COVID-19 pandemic as being a troubled debt restructuring, including impairment for accounting purposes. This is an internal election by the financial institution and the CARES Act does not specify how an institution makes its election to suspend. As such, a financial institution should be able to make the election on either an individual loan basis or on a loan class/portfolio basis (e.g., all commercial and industrial loans) provided the election to suspend is due to the COVID-19 pandemic. Further, there is nothing in the CARES Act that requires a borrower to agree or consent to the financial institution’s election to suspend or to be notified of the financial institution’s election to suspend. However, the financial institution’s federal regulator is required to defer to the institution’s determination to make any suspension.

Any suspension would be applicable for the term of the loan modification, but solely with respect to any loan modification, including a forbearance arrangement, an interest rate modification, a repayment plan and any other similar arrangement that defers or delays the payment of principal or interest, that occurs during the Applicable Period for a loan that was not more than 30-days past due as of December 31, 2019.

The financial institution is required to maintain records of the volume of modified loans it suspended, and the federal regulators are permitted to collect data on such loans for supervisory purposes.

Public reporting companies should consider the need to disclose the volume of loans it elected to suspend and the effect of such suspension on its financial condition and results of operations.

#### **Capital Relief**

The CARES Act temporarily reduces the Community Bank Leverage Ratio (the “CBLR”) to 8%. This provision also states that if a qualifying community bank falls below the CBLR, it “shall have a reasonable grace period to satisfy” the CBLR. However, there is no indication in the legislation as to what would be a “reasonable” grace period. This provision terminates on the earlier of December 31, 2020 or the date of the Presidential Declaration.

### **CECL Postponed**

The CARES Act delays the implementation of the accounting standard for current expected credit losses (CECL) until the earlier of December 31, 2020 or the date of the Presidential Declaration.

### **Small Business Lending**

The CARES Act provides approximately \$350 billion to fund loans to eligible small businesses through the Small Business Administration's ("SBA") 7(a) loan guaranty program. These loans will be 100% federally guaranteed (principal and interest) through December 31, 2020. Loans will be originated by existing SBA lenders and other lenders that meet criteria to be established by the Secretary of the Treasury. The SBA affiliation rule is permanently waived by the CARES Act.

Eligible borrowers are (i) any businesses with up to 500 employees or that meet the SBA's size standard for its industry, (ii) businesses in the hotel and food service industries that have more than one location and not more than 500 employees at each location, (iii) certain sole proprietors and contractors and (iv) nonprofit organizations. An eligible borrower can borrow up to 2.5 times its monthly payroll up to a maximum amount of \$10 million. The proceeds of the loan can be used for payroll (excluding individual employee compensation over \$100,000 per year), mortgage, interest, rent, insurance, utilities and other qualifying expenses. A borrower can apply to have the amount of the loan comprising up to eight weeks of qualifying payroll and other expenses forgiven by the government. The non-forgiven balance of the loan would have a 10-year term and a maximum interest rate of 4%.

### **Residential and Multifamily Mortgage Foreclosures**

*Residential Mortgages* – A borrower of a federally backed mortgage loan (VA, FHA, USDA, Freddie and Fannie) experiencing financial hardship due, directly or indirectly to the COVID-19 pandemic may request forbearance from paying their mortgage by submitting a request to the borrower's servicer affirming their financial hardship during the COVID-19 emergency. A forbearance shall be granted for up to 180 days, which can be extended for an additional 180-day period upon the request of the borrower. During that time, no fees, penalties or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the mortgage contract will accrue on the borrower's account. Except for vacant or abandoned property, the servicer of a federally backed mortgage is prohibited from taking any foreclosure action, including any eviction or sale action, for not less than the 60-day period beginning March 18, 2020.

*Multifamily Mortgages* – A multifamily borrower of a federally backed mortgage loan that was current as of February 1, 2020, may submit an oral or written request for forbearance to the borrower's servicer affirming that the borrower is experiencing financial hardship during the COVID-19 emergency. A forbearance shall be granted for up to 30 days, which can be extended for up to two additional 30-day periods upon the request of the borrower. During the time of the forbearance, the multifamily borrower cannot evict or initiate the eviction of a tenant or charge any late fees, penalties or other charges to a tenant for late payment of rent. Additionally, a multifamily borrower that receives a forbearance may not require a tenant to vacate a dwelling unit before a date that is 30 days after the date on which the borrower provides the tenant notice to vacate and may not issue a notice to vacate until after the expiration of the forbearance.

### NOL Carryback

The CARES Act permits a five-year net operating loss (NOL) carryback for tax years 2018, 2019 and 2020 that allows businesses to recover 100% of the taxes paid in prior years.

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<b>Eric Luse</b>	■ (202) 274-2002	<a href="mailto:eluse@luselaw.com">eluse@luselaw.com</a>
<b>John Gorman</b>	■ (202) 274-2001	<a href="mailto:jgorman@luselaw.com">jgorman@luselaw.com</a>
<b>Lawrence Spaccasi</b>	■ (202) 274-2037	<a href="mailto:lspaccasi@luselaw.com">lspaccasi@luselaw.com</a>
<b>Kip Weissman</b>	■ (202) 274-2029	<a href="mailto:kweissman@luselaw.com">kweissman@luselaw.com</a>
<b>Benjamin Azoff</b>	■ (202) 274-2010	<a href="mailto:bazoff@luselaw.com">bazoff@luselaw.com</a>
<b>Michael Brown</b>	■ (202) 274-2003	<a href="mailto:mbrown@luselaw.com">mbrown@luselaw.com</a>
<b>Scott Brown</b>	■ (202) 274-2013	<a href="mailto:sbrown@luselaw.com">sbrown@luselaw.com</a>
<b>Victor Cangelosi</b>	■ (202) 274-2028	<a href="mailto:vcangelosi@luselaw.com">vcangelosi@luselaw.com</a>
<b>Jeffrey Cardone</b>	■ (202) 274-2033	<a href="mailto:jcardone@luselaw.com">jcardone@luselaw.com</a>
<b>Joseph Daly</b>	■ (202) 274-2034	<a href="mailto:jdaly@luselaw.com">jdaly@luselaw.com</a>
<b>Thomas Hutton</b>	■ (202) 274-2027	<a href="mailto:thutton@luselaw.com">thutton@luselaw.com</a>
<b>Kent Krudys</b>	■ (202) 274-2019	<a href="mailto:kkrudys@luselaw.com">kkrudys@luselaw.com</a>
<b>Steven Lanter</b>	■ (202) 274-2004	<a href="mailto:slanter@luselaw.com">slanter@luselaw.com</a>
<b>Gary Lax</b>	■ (202) 274-2031	<a href="mailto:glax@luselaw.com">glax@luselaw.com</a>
<b>Marc Levy</b>	■ (202) 274-2009	<a href="mailto:mlevy@luselaw.com">mlevy@luselaw.com</a>
<b>Ned Quint</b>	■ (202) 274-2007	<a href="mailto:nquint@luselaw.com">nquint@luselaw.com</a>