Banking and Finance Law Daily Wrap Up, STRATEGIC PERSPECTIVES—CARES Act impacts on financial services industry examined, (Apr. 7, 2020)

Banking and Finance Law Daily Wrap Up

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By John M. Pachkowski, J.D.

The $2T stimulus found in the CARES Act has several provisions that impact the financial services industry.

The enactment of the Coronavirus Aid, Relief, and Economic Security Act—the CARES Act—is a $2 trillion response to the coronavirus (COVID-19) pandemic and is intended to provide financial assistance for individuals, families, and businesses affected by the COVID-19 pandemic.

Although the CARES Act seeks to address the shortage of key medical supplies and equipment and modifies a wide range of programs and requirements, such as, the tax treatment of withdrawals from retirement accounts, business income, losses, and charitable contributions, Title IV, which is comprised of Sections 4001–4120 of the CARES Act, and is also known as the "Coronavirus Economic Stabilization Act of 2020," provides $500 billion in emergency relief in order to provide liquidity to eligible businesses, states, municipalities and tribes related to losses incurred as a result of the COVID-19 pandemic.

Title IV also affects the lending programs and facilities that the Federal Reserve Board establishes under the Federal Reserve Act. In addition, Title IV provides support to consumers, renters, homeowners, and people experiencing homelessness.

Finally, Sections 4111–4120, which comprises Subtitle B of Title IV, provides up to $32 billion to continue payment of employee wages, salaries, and benefits at airline-related industries; and also addresses domestic air service, including essential air service, aviation excise taxes, and collective bargaining.

This Strategic Perspectives examines the Subtitle A provisions of Title IV, comprising Section 4001–4029; the effect that those provisions have on the financial services industry; and actions taken by the financial services regulators to assist industry participants guidance in implementing the Title IV provisions.

Financial assistance programs for industry and the financial system are set forth in Sections 4002–4004, 4008, 4015–4016, 4019, and 4028–4029 of the CARES Act.

Loans and loan guarantees. Section 4003(b)(1)–(3) of the CARES Act provides a total of $46 billion in funding to provide relief, in the form of loans or loan guarantees for passenger air carriers, aviation repair stations, airline ticket agents cargo air carriers; and to "businesses critical to maintaining national security." These loans or loan guarantees are made directly from the Treasury Department and are subject to various terms and conditions.

Under the Section 4029 of the CARES Act, the authorities to make new loans, guarantees, and other investments terminates after Dec. 31, 2020. Outstanding loans, guarantees, and investments after Dec. 31, 2020, would be allowed to be modified, restructured, or amended, but not forgiven. The duration of the loans, guarantees, and investments made under Section 4003(b)(1) that is modified, restructured, or amended, would not be allowed to extend beyond five years of the origination of the loan or guarantee.

The remaining $454 billion dollars, under Section 4003(b)(4) of the CARES Act, is allocated to loans, loan guarantee, or other investments established by the Federal Reserve Board under its authority found in Section 13(3) of the Federal Reserve Act (FRA) to provide liquidity to the financial system that supports lending to eligible businesses, states, or municipalities.

To provide liquidity during times of crisis, the Fed—like many central banks—is empowered to function as a "lender of last resort" or LOLR, and it uses different tools to fulfill this role. In an emergency, the Fed has the power to provide liquidity to depository institutions using standard, traditional tools, like open market operations

and discount window lending. Under FRA Section 13(3), the also has authority to provide liquidity to non-depository institutions in "unusual and exigent circumstances." Although the Fed has rarely exercised this LOLR clause enacted in 1932, it did use it during the 2007–09 financial crisis to prevent harm to the U.S. economy. Amendments to FRA Section 13(3) made by the Dodd-Frank Act provides that any emergency lending programs must be broad-based and not designed to support a single institution, among other requirements. In addition, Congress requires that the Fed ensure that taxpayers are protected against losses.

Prior to the enactment of the CARES Act, the Fed established a number of lending facilities to address the economic disruptions resulting from the COVID-19 pandemic; and to support the flow of credit to households and businesses.

The Fed created the Commercial Paper Funding Facility (CPFF) on March 17, 2020, to include high-quality, tax-exempt commercial paper as eligible securities and expanded the CPFF, on March 23, 2020, to include high-quality, tax-exempt commercial paper as eligible securities (see *Banking and Finance Law Daily*, March 17, 2020 and March 23, 2020).

The Money Market Mutual Fund Liquidity Facility (MMLF) was originally created by the Fed on March 18, 2020,, to enhance the liquidity and functioning of money markets; expanded on March 19, 2020, to include state and municipal money markets; and expanded a second time on March 23, 2020, to include a wider range of securities, such as municipal variable rate demand notes and bank certificates of deposit (see *Banking and Finance Law Daily*, March 19, 2020; March 20, 2020; and March 23, 2020).

On March 23, 2020, the Fed also created the Primary Market Corporate Credit Facility (PMCCF) and the Secondary Market Corporate Credit Facility (SMCCF) to support credit to large employer; as well as a third facility, the Term Asset-Backed Securities Loan Facility (TALF). The PMCCF will, among other things, allow companies access to credit so that they are better able to maintain business operations and capacity during the period of dislocations related to the pandemic. This facility is open to investment grade companies and will provide bridge financing of four years. The SMCCF will purchase in the secondary market corporate bonds issued by investment grade U.S. companies and U.S.-listed exchange-traded funds whose investment objective is to provide broad exposure to the market for U.S. investment grade corporate bonds. Under the TALF, the Fed will lend on a non-recourse basis to holders of certain AAA-rated ABS backed by newly and recently originated consumer and small business loans. The Federal Reserve will lend an amount equal to the market value of the ABS less a haircut and will be secured at all times by the ABS (see *Banking and Finance Law Daily*, March 23, 2020).

Terms and conditions. Section 4003(c) of the CARES Act provides the general terms of conditions for loans, loan guarantees, or other investments made by the Treasury Secretary. At a minimum, these terms and conditions shall contain such covenants, representations, warranties, and requirements, including requirements for audits, as deemed appropriate by the Treasury Secretary. In addition, any loans made under Section 4003 must be at a rate based on the risk and the current average yield on outstanding marketable obligations of the United States of comparable maturity.

Section 4003 also provides that:

- after loans are repaid, any surplus funds are transferred to the Social Security Federal Old-Age and Survivors Insurance Trust Fund
- the Treasury Department's administrative costs are capped at $100 million; and the Treasury Department is authorized to hire, enter into contracts, create investment vehicles, and issue regulations to carry out the provisions in Sections 4001–4029 of the CARES Act;
- the Treasury Secretary can use private financial firms as financial agents for the program; and
- tax treatment of assistance is specified as indebtedness; equity acquired does not qualify as a change in ownership for tax purposes.

Airline-related industries. For loans or loan guarantees made to the passenger and cargo air carriers and eligible businesses and businesses critical to maintaining national security, Section 4003(c)(1)(B) requires that

the Treasury Secretary publish, as soon as practicable, but no later than April 5, 2020, procedures for application and minimum requirements, which may be supplemented by the Secretary's discretion.

On March 30, 2020, the Treasury Department published the "Procedures and Minimum Requirements for Loans to Air Carriers and Eligible Businesses and National Security Businesses under Division A, Title IV, Subtitle A of the Coronavirus Aid, Relief, and Economic Security Act"

The document noted, "These procedures and requirements are preliminary. They will be supplemented promptly with additional terms and a loan application form. Further, they may be updated, revised, or modified at any time, and the requirements contained herein may be waived by the Treasury Department in its sole discretion to the extent permitted by law."

The Procedures and Minimum Requirements provide a list of eligible borrowers. They also reiterate the statutory eligibility criteria found at Section 4003(c)(2):

- no credit elsewhere;
- prudent borrowing;
- security/interest rate;
- term of loan;
- no stock buybacks;
- no dividends;
- employment levels;
- certification that the borrower is a U.S. Business; and
- covered losses.

Additionally, the Treasury Secretary may not issue a loan or loan guarantee to passenger and cargo air carriers and eligible businesses and businesses critical to maintaining national security unless the Treasury Secretary either receives warrants or equity, if the business is publicly traded, or warrants, equity or senior debt, if the business is not publicly traded.

Moreover, Section 4003(d)(3) explicitly prohibits loan forgiveness.

Other provisions in Subtitle A of Title IV of the CARES Act that affect loans or loan guarantees for the airline-related industries include:

- Section 4005 addressing the continuation of domestic air service, including essential air service to small communities;
- Sections 4006 and 4119 requiring coordination of Title IV implementation with the Transportation Secretary; and
- Section 4007 suspending aviation excise taxes until Jan. 1, 2021.

Fed programs and facilities. The terms and conditions for FRA Section 13(3) programs and facilities are set forth in Section 4003(c)(3) and only apply to "direct loans." For purposes of the CARES Act, a "direct loan" is defined as a loan under a bilateral loan agreement that is both entered into directly with an eligible business as borrower, and not part of a syndicated loan, a loan originated by a financial institution in the ordinary course of business, or a securities or capital markets transaction.

Section 4003(c)(3) also applies a number of restrictions on these direct loans. These restrictions include:

- no stock buybacks, unless contractually obligated, until 12 months after the direct loan is no longer outstanding;
- no dividend payments on common stock until 12 months after the direct loan is no longer outstanding; and
- limitations on certain officer and employee compensation as set forth in Section 4004.

The officer and employee compensation limitations are based on compensation received on the 2019 calendar year. Specifically, in any loan agreement between the Treasury Secretary and a business receiving a loan or

loan guarantee would need to stipulate that between the agreement's execution date and one year after the loan or loan guarantee's termination, any business official or employee who received more than $3,000,000 in total compensation in 2019 cannot receive more than $3,000,000 plus one half of the sum of their total 2019 compensation minus $3,000,000 during 12 consecutive months in that period.

The Treasury Secretary has the discretion waive these restrictions on Federal Reserve direct loans upon a determination that the waiver is necessary to protect the interests of the federal government. However, the Treasury Secretary must make himself available to testify before the Senate Banking Committee and House Financial Services Committee if he exercises a waiver.

Mid-sized business assistance. Section 4003(c)(3) also provides that the Treasury Secretary "shall endeavor to seek the implementation of a [Federal Reserve] program or facility" that provides financing to lenders that make direct loans to businesses and, to the extent practicable, non-profits with between 500 and 10,000 employees, with loans being subject to an annualized interest rate that is not higher than 2 percent per annum. Any eligible borrower applying for a direct loan in this specific facility is required make a good-faith certification regarding certain aspects of its business. Among other things, the eligible borrower must certify that it:

- will, with the funds it receives, retain at least 90 percent of the recipient's workforce, at full compensation and benefits, until Sept. 30, 2020;
- intends to restore not less than 90 percent of the workforce of the recipient that existed as of Feb. 1, 2020, and to restore all compensation and benefits to the workers of the recipient no later than four months after the termination date of the COVID-19 public health emergency; and
- will not outsource or offshore jobs for the term of the loan and two years after completing repayment of the loan.

Main Street Lending Program. Finally, Section 4003(c)(3) gives the Fed discretion to establish a Main Street Lending Program or other similar program or facility that supports lending to small and mid-size businesses, on such terms and conditions as the Fed may set consistent with FRA Section 13(3). The Main Street Business Lending Program would not be required to impose the same conditions as the Assistance for Mid-Sized Businesses.

Conflicts of interest. One final provision of the CARES Act affecting the loan and loan guarantees provided in Section 4003 is a conflicts of interest provision that make certain entities ineligible to participate in Section 4003 transactions.

Section 4019 of the CARES Act provides that an ineligible entity is a "covered individual" who owns a "controlling interest" in that entity. "Controlling interest" is defined as "not less than 20 percent, by vote or value, of the outstanding amount of any class of equity interest in an entity".

"Covered individuals" are the President, the Vice President, an executive department head, a Member of Congress, or the spouse, child, or spouse of a child of any of those individuals.

Finally, the principal executive officer and the principal financial officer, or individuals performing similar functions, of an entity seeking to enter a transaction under section 4003 shall, before that transaction is approved, certify to the Treasury Secretary and the Fed that the entity is eligible to engage in that transaction, including that the entity is not a covered entity.

Debt guarantee authority. Sections 1104, 1105 and 1106 of the Dodd-Frank Act (DFA) established a mechanism for the Federal Deposit Insurance Corporation to create a program to guarantee obligations of solvent insured depository institutions or solvent depository institution holding companies during times of severe economic distress.

DFA Section 1105 authorizes the FDIC to establish a program to guarantee the debt of solvent banks—i.e., banks whose assets are greater than their liabilities—if the FDIC and the Fed determine that a "liquidity event" is in progress. In addition, DFA Section 1105 requires that Congress pass a joint resolution of approval of the guarantee program.

As enacted, DFA Section 1105 does not allow the program to guarantee deposits held at banks. The FDIC insures deposits up to a maximum of $250,000 per account. Businesses and government, however, often have noninterest bearing accounts that exceed that maximum.

Section 4008 of the CARES Act amends DFA Section 1105 to allow the FDIC to guarantee deposits in such transaction accounts, similar to the guarantee program created in response to 2007–2009 financial crisis. Section 4008 also preemptively grants approval of a guarantee program of any amount, thereby bypassing the congressional joint resolution.

Preemptive approval of guarantee programs exists until Dec. 31, 2020.

Moreover, Section 4008 of the CARES Act also allows the National Credit Union Administration Board to increase the share insurance coverage provided by the National Credit Union Share Insurance Fund (NCUSIF) on any noninterest-bearing transaction account in any federally insured credit union without exception. This increase in NCUA share insurance coverage terminates no later than Dec. 31, 2020.

ESF restrictions. In light of the economic effects caused by the COVID-19 pandemic, the Treasury Department has been using its Exchange Stabilization Fund (ESF) as a backstop to cover any losses the Fed may incur through lending programs created to cope with the COVID-19 pandemic. The ESF was created by Congress in the Gold Reserve Act in 1934 as a reserve to stabilize the U.S. dollar in case of turmoil in foreign currency markets after the U.S. abandoned the gold standard.

In 2008, the ESF was used to guarantee U.S. money market mutual funds to stop a run on money markets. Section 131 of the Emergency Economic Stabilization Act of 2008 (ESSA) prohibited the use of the ESF to guarantee money markets in the future.

Section 4015 temporarily suspends the ESSA prohibition to permit a guarantee and appropriate any funds paid out from the ESF in excess of fees under the guarantee. The guarantee terminates on Dec. 31, 2020.

Finally, once the guarantee ends at the end of 2020, Section 4015 requires an appropriation of funds to reimburse the ESF for any funds that are used for the Treasury Money Market Funds Guaranty Program for the United States money market mutual fund industry to the extent a claim payment made exceeds the balance of fees collected by the fund.

Corporate credit unions. Section 4016 of the CARES Act temporarily enhances access to the Central Liquidity Facility (CLF) for "corporate credit unions" to meet liquidity needs as long as they have made reasonable efforts to first use primary sources of liquidity, such as their balance sheets and market funding sources.

The CLF is a mixed ownership government corporation created to improve the general financial stability of credit unions by serving as a liquidity lender to credit unions experiencing unusual or unexpected liquidity shortfalls. A corporate credit union is a member-owned, member-controlled, not-for-profit cooperative financial institution formed to serve other credit unions, also referred to as natural person credit unions.

Section 4016 also increases resources available to meet liquidity needs through the facility by temporarily expanding the ability to borrow to a value 16 times the subscribed capital stock and surplus of the CLF, up from the statutory limit of 12 times.

Oversight. Several provisions of the CARES Act provide for oversight in a number of ways.

SIGPR. Section 4018 of the CARES Act establishes a Special Inspector General for Pandemic Recovery (SIGPR). The SIGPR is appointed by the President with the advice and consent of the Senate as soon as is practicable after activity under Section 4003 begins. The nomination is made based on integrity and relevant subject matter expertise. The SIGPR is subject to removal by the President subject to the congressional notification requirements in Section 3(b) of the Inspector General Act of 1978.

On April 3, 2020, the president announced his intent to nominate Brian D. Miller to be the SIGPR. Miller currently serves as Special Assistant to the President and Senior Associate Counsel in the Office of White House Counsel.

The CARES Act requires the SIGPR to conduct audits and investigations of the Treasury Secretary's activities under the CARES Act. This includes collecting and summarizing specified data on the programs established by the Treasury Secretary including lists of businesses participating in the programs. The information on the programs established by the Treasury Secretary must be reported quarterly.

To fulfill these duties, the SIGPR is authorized to hire staff, enter into contracts as necessary, and collect information from federal government entities. Of the $500 billion appropriated in Section 4027 of the CARES Act, $25 million is available to support the SIGPR's activities.

Democratic Congressional leaders questioned the president's intent to nominate Miller to serve as the SIGPR, arguing that the position should be free from politics, the lawmakers contend that Miller cannot be independent after serving in the White House. The Senate Banking Committee's Ranking Member Sherrod Brown (D-Ohio) called the nomination "troubling," adding, "I fought for increased oversight in the CARES Act because Congress must hold the Trump administration accountable for how they administer these programs and guarantee that corporations getting taxpayer money put their workers first. I question whether Mr. Miller is able to do that." Speaker of the House Nancy Pelosi (D-Calif) said the president's choice makes even more urgent the need for the bipartisan House Select Committee on the Coronavirus Crisis, "which will ensure that taxpayer dollars are being used wisely and efficiently to help workers and not to be exploited by profiteers and price-gougers" (see *Banking and Finance Law Daily*, April 6, 2020).

Congressional Oversight Commission. The Congressional Oversight Commission is established by Section 4020 of the CARES Act and is to conduct oversight of the Fed's and Treasury's implementation of Title IV provisions. Its operations will terminate on Sept. 30, 2025.

The Oversight Commission must submit reports on the use of the authorities granted to the agencies under these provisions and the impact and effectiveness of the loans, guarantee programs, and investments made under Subtitle A, as well as the extent to which information on these transactions contributed to market transparency.

The Oversight Commission is to comprise five members selected by the House and Senate majority and minority leaderships. The commission may hold hearings and obtain data from federal department or agency heads.

Funding for the Oversight Commission's operations are derived, on an equally shared basis for the from the applicable fund of the House of Representatives and the contingent fund of the Senate.

Reports and congressional testimony. The oversight provision of the CARES Act calls on the Fed and Treasury Department to submit reports regarding their activities.

Section 4026 of the CARES Act requires the Treasury Department to publish a description of any assistance to passenger air carriers, cargo air carriers, and businesses critical to national security under Section 4003(b) on its website within 72 hours. Also, the Treasury Department must post on its website criteria and guidelines for applications to, as well as contracts associated with, loans and guarantees made pursuant to the CARES Act.

In addition, Treasury must publish a report every 14 days for one year following enactment of the CARES Act, and every 30 days thereafter, summarizing actions in that period; and loan and guarantee programs summaries every 30 days.

Section 4026 requires the Fed to provide reports in accordance with 12 U.S.C. §343(3)(C)(i) to Congress within seven days of authorizing a new facility or other assistance. Additionally, the Fed is to provide reports to Congress on outstanding loan and guarantee programs every 30 days These reports are to be publicly released within seven days of delivery to Congress.

The Treasury Secretary and the Fed Chair are also required, under Section 4026, to testify quarterly to Congress on the obligations and activities pursuant to the CARES Act.

Finally, the Government Accountability Office must provide a report within nine months of enactment and annually throughout the year succeeding the last year of outstanding loans and guarantees.

Statutory requirements temporarily exempted. Sections 4009–4014 and 4017 of Title V provide a number of temporary exemptions from statutory requirements that are imposed on financial institutions and government agency operations.

Sunshine in Government. Section 4009 allows the Federal Reserve to suspend Sunshine in Government requirements if the Fed provides in writing that unusual and exigent circumstances exist, the Fed may conduct meetings without regard to the Sunshine in Government requirements.

Agency hiring flexibility. Certain authorities and rules for civil service hiring found in Title 5 of the U.S. Code are temporarily exempted by Section 4010 of the CARES Act. This temporary exemption will allow Secretary of Housing and Urban Development, Securities and Exchange Commission, and Commodity Futures Trading Commission to recruit and appoint candidates to fill temporary and term appointments upon a determination that expedited procedures are necessary to respond to COVID-19. The exemption exists until the earliest of the date the COVID-19 public health emergency ends or the end of 2020.

Lending limit waiver. The lending limits for national banks, which is codified at 12 U.S.C §84, generally restricts banks on how much they can lend to a single borrower relative to their capital and other balance sheet characteristics, unless the loan qualifies for an exception. The Office of the Comptroller of the Currency has relatively narrow authority to approve certain loans for an exception to the limit. Section 4011 of the CARES Act grants the OCC broad authority to exempt loans when it is in the public interest. The OCC's temporary authority exists until the earliest of the date the COVID-19 public health emergency ends or the end of 2020.

CBLR framework. In order to afford certain smaller banks regulatory relief to satisfy their capital adequacy requirements, the Economic Growth, Regulatory Relief and Consumer Protection Act, enacted in 2018, required the OCC, Fed, and Federal Deposit Insurance Corporation to establish a Community Bank Leverage Ratio, or CBLR framework for calculating and reporting capital ratios. Qualifying community banking organizations that elect to use the CBLR framework and that maintain a leverage ratio of greater than 9 percent are considered to have satisfied the risk-based and leverage capital requirements in the agencies' capital rules.

Section 4012 of the CARES Act directs the OCC, Fed, and FDIC to issue an interim rule lowering the CBLR to 8 percent and to provide qualifying banks that fall below that level a reasonable grace period to come back into compliance with the CBLR. Section 4012 also provides that during the grace period, a qualifying community bank to which the grace period applies may continue to be treated as a qualifying community bank and shall be presumed to satisfy the capital and leverage requirements under the statutory CBLR framework.

The lowered CBLR level will last until the earliest of the date the COVID-19 public health emergency ends or the end of 2020.

The OCC, Fed, and FDIC implemented the Section 4012 requirements by issuing two interim final rules. The first interim final rule provided that, as of the second quarter 2020, and continuing until the end of the year, a banking organization with a leverage ratio of 8 percent or greater may elect to use the community bank leverage ratio framework. The second interim rule established the gradual transition the community bank leverage ratio will go through until the end of 2021. The community bank leverage ratio will be 8 percent beginning in the second quarter and for the remainder of calendar year 2020, 8.5 percent for calendar year 2021, and 9 percent thereafter. The agencies also set forth a two-quarter grace period for a qualifying community banking organization whose leverage ratio falls no more than 1 percent below the applicable community bank leverage ratio. The community bank leverage ratio requirement will not be re-established at greater than 9 percent until Jan. 1, 2022. This gradual transition is intended to allow community banking organizations to focus on supporting lending to creditworthy households and businesses (see *Banking and Finance Law Daily*, April 6, 2020).

Sections 4013 and 4014 of the CARES Act provides exemptions to accounting requirements for banks that hold certain products on their balance sheet.

Temporary TDR relief. Under U.S. generally accepted accounting principles (GAAP), a restructuring of a debt constitutes a troubled debt restructuring (TDR) if the creditor for economic or legal reasons related to the debtor's financial difficulties grants a concession to the debtor that it would not otherwise consider. GAAP then requires

the lender to reflect in its financial records any potential loss as a result of a TDR, which in turn, could negatively impact the lender's ability to meet regulatory requirements. Section 4013 requires OCC, Fed, and FDIC, along with the National Credit Union Administration, to allow lenders to determine if they should suspend the GAAP requirements for recognizing any potential COVID-19-related losses from a TDR related to a loan modification.

The temporary TDR relief expires the earlier of 60 days after the COVID-19 public health emergency declaration is lifted or the end of 2020.

On the same day the CARES Act was signed into law—March 27, 2020—the FDIC issued a set of revised frequently asked questions for financial institutions whose operation are being affected by COVID-19 pandemic.

The FDIC FAQs addressed when payment accommodations will become TDRs. First, short term accommodations (e.g. six months) made on a good faith basis, such as payment deferrals, fee waivers, extensions of repayment terms, etc. to borrowers who had been current will not be considered TDRs. The guidance does note however, that modifications or deferral programs mandated by the federal or state governments related to COVID-19 are outside its scope. The FDIC also indicated that examiners will not criticize prudent efforts to modify terms of existing loans of affected customers. In addition, the FAQs provided that in an effort to encourage financial institutions to work with borrowers impacted by COVID-19, the FDIC will not require banks to categorize all loan modifications related to COVID-19 as TDRs. FDIC examiners will exercise flexibility in reviewing credits impacted by COVID-19 (see *Banking and Finance Law Daily*, April 3, 2020).

Optional CECL relief. The adoption by the Financial Accounting Standards Board of its Financial Instruments —Credit Losses project by issuing Accounting Standards Update No. 2016-13, *Financial Instruments—Credit Losses (Topic 326)*, commonly referred to as CECL. Under the CECL standard requires public-traded banking institutions to measure all expected credit losses for financial instruments held at the reporting date based on historical experience, current conditions, and reasonable and supportable forecasts. All public companies were required to issue financial statements that incorporated CECL for reporting periods beginning Dec. 15, 2019.

Section 4014 of the CARES Act provide banking institutions, including credit unions, the option to temporarily delay CECL implementation. The CARES Act's optional, temporary relief ends on the earlier of the termination date of the current national emergency, declared by the President on March 13, 2020, under the National Emergencies Act concerning the COVID-19 outbreak, or Dec. 31, 2020.

On the same day the CARES Act was signed into law—March 27, 2020—the OCC, Fed, and FDIC issued an interim final rule—CECL IFR—that delayed the estimated impact on regulatory capital stemming from the implementation of CECL. Specifically, the CECL IFR provided banking organizations that are required, as of Jan. 1, 2020, to adopt CECL for accounting purposes U.S. GAAP during 2020 an option to delay an estimate of CECL's impact on regulatory capital. In a nutshell, the CECL IFR gradually phases in the full effect of CECL on regulatory capital, providing a five-year transition period to allow banking organizations to better focus on supporting lending to creditworthy households and businesses due to recent disruptions in economic conditions caused by COVID-19 (see *Banking and Finance Law Daily*, March 27, 2020).

Furthermore, the three agencies issued a joint statement clarifying interaction of their CECL revised transition and the statutory relief afforded under the CARES Act. Under the agencies' joint statement, no banking organization is required to comply with CECL during the statutory relief period in the CARES Act, including banking organizations that otherwise would be required to adopt CECL in 2020 under U.S. GAAP. These banking organizations may delay compliance with CECL until the statutory relief period expires. In addition, banking organizations that elect to use the CARES Act's relief may also elect the regulatory capital relief provided under the CECL IFR after the expiration of the statutory relief period. If a banking organization chooses to apply CECL pursuant to U.S. GAAP in 2020, it may elect to obtain the full benefit from the regulatory capital relief provided under the CECL IFR, that is, the five-year transition period. The joint statement also noted that the five-year transition period under the CECL IFR begins on the date it would have been required to adopt CECL under U.S. GAAP, regardless of whether the banking organization uses the CARES Act's relief. For a banking organization that uses the CARES Act's relief, and subsequently opts to use the relief provided in the CECL

IFR, the initial two-year transition period would be reduced by the number of quarters during which the banking organization uses the statutory relief (see *Banking and Finance Law Daily*, March 31, 2020).

DPA oversight. Section 4017 of the CARES Act waives certain congressional oversight and reporting requirements under the Defense Production Act of 1950 for purchases or loans made to expand productive capacity for amounts greater than $50 million.

Consumer protections. Although the most Title IV of the CARES Act is intended to provide financial assistance to certain businesses and allow the Fed to use its full FRA 13 (30 emergency lending programs to respond to the economic effect of the COVID-19 pandemic), there a number of provisions that provide enhanced consumer protections, especially for borrowers and renters.

FCRA protection. Section 4021 of the CARES Act amends the Fair Credit Reporting Act to requires data furnishers, such as banks, credit card companies, debt collection agencies, and other companies that process financial information, during the COVID-19 pandemic "covered period" to report to the credit bureaus that consumers are current on their credit obligations if they enter into an agreement to defer, forbear, modify, make partial payments, or get any other assistance on their loan payments from a financial institution and fulfil those requirements, provided they were current before this period. If the consumer was delinquent before the covered period, then the furnisher should maintain the delinquent status unless the consumer brings the account or obligation current.

The CARES Act's "covered period" began on Jan. 31, 2020, and ends the later of: 120 days after enactment, or 120 days after the national emergency declared by the President on March 13, 2020, terminates.

In light of the CARES Act relief, the Consumer Financial Protection Bureau provided guidance to credit reporting agencies and information furnishers about CARES Act compliance. The CFPB is encouraging credit reporters and furnishers to continue to furnish information to reporting agencies despite the current crises. The guidance also indicates that the CFPB expects furnishers to comply with this provision of the CARES Act, and the CFPB will work with furnishers as needed to help them comply. The guidance also noted that although the FRCA generally requires consumer reporting agencies and furnishers to investigate consumer disputes within 30 days of receipt of the consumer's dispute, the timeframe may be extended to 45 days if the consumer provides additional relevant information (see *Banking and Finance Law Daily*, April 2, 2020).

Foreclosure moratorium and forbearance requests. Consumers are given the right to request a forbearance, a temporary reprieve from loan payments, under Section 4022 of the CARES Act. That section also provides a moratorium on foreclosures on loans certain federally insured or guaranteed mortgages, as well as loans purchased or securitized by Freddie Mac or Fannie Mae.

Forbearance could be granted for up to 180 days, and could be extended up to 180 days, without accruing fees, penalties, or interest beyond the amounts scheduled for regular payments. Servicers would need to notify borrowers of their right to request forbearance.

Section 4022 of the CARES Act also prevents mortgage servicers from starting a judicial or non-judicial foreclosure process for a 60-day period beginning March 18, 2020. This moratorium does not apply to vacant or abandoned properties.

The Section 4022 moratorium codifies March 18, 2020, action taken by the Federal Housing Finance Agency, as conservator for Fannie Mae and Freddie Mac, which directed Fannie Mae and Freddie Mac to suspend foreclosures and evictions for at least 60 days due to the coronavirus national emergency. At the same time, the Department of Housing and Urban Development authorized the Federal Housing Administration to implement an immediate foreclosure and eviction 60-day moratorium for single family homeowners with FHA-insured mortgages. HUD's 60-day moratorium applies to the initiation of foreclosures and to the completion of foreclosures in process. Evictions of persons from properties secured by FHA-insured Single-Family mortgages are likewise suspended for a period of 60 days. In addition, deadlines of the first legal action and reasonable diligence timelines are extended by 60 days (see *Banking and Finance Law Daily*, March 19, 2020).

Forbearance for multifamily properties. Section 4023 of the CARES Act allows multifamily borrowers with federally backed multifamily mortgage loans, who were current on payments as of Feb. 1, 2020, to request forbearance for a period up to 30 days. The forbearance can be extended up to two additional 30-day periods.

Any borrower receiving forbearance under Section 4023 would not be allowed to initiate any eviction action or charge any late fees or other penalties to a tenant dwelling in the property on the loan. Additionally, a borrower who received forbearance would not be allowed to require a tenant to vacate a dwelling before 30 days after the date the borrower provides notice to vacate, and a notice to vacate could not be issued until the expiration of forbearance.

The Section 4023 forbearance provision expires the earlier of: the date the COVID-19 public health emergency ends or the end of 2020.

The final consumer protection provision of the CARES Act prohibits eviction actions and fees, penalties, or other charges to tenants of properties that participate in covered housing programs, such as public housing and the Section 8 Housing Choice Voucher Program for a period of 120 days following enactment of the CARES Act. This temporary eviction moratorium under Section 4024 also applies to properties that have either a federally backed single family mortgage or multifamily loan. Finally, during this eviction moratorium, lessors of these units would be banned from issuing a notice to vacate until after the provision expires, and tenants would be given an additional 30 days from the issuance of a notice to vacate.

Companies: Fannie Mae; Freddie Mac

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