

Summary of Senate Omnibus CARES Act

On March 25, 2020, the U.S. Senate voted unanimously to advance legislation entitled the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act). This 880-page legislation has major implications for the U.S. economy and affects financial institutions in several ways. Earlier this afternoon, the House passed the \$2 trillion stimulus package, which now goes to the President for signature. The following summary highlights those sections of the legislation most directly impacting the banking industry. RMA will supplement this briefing by adding links to the pertinent provisions of the bill following its passage into law.

Title I – Keeping American Workers Paid and Employed Act

The CARES Act amends the Small Business Act (SBA) to create a new Business Loan Program category. The bill allows the Small Business Administration (SBA), through June 30, 2020, to provide 100 percent federally backed loans up to a maximum amount to eligible businesses to help pay operational costs such as payroll, rent, health benefits, insurance premiums, and utilities. With certain conditions, these loans are forgivable.

The bill provides an authorization level of \$349 billion for the SBA 7(a) loan program through June 30, 2020. The legislation increases the maximum 7(a) loan amount to \$10 million and provides a formula for businesses to determine the size of the loan. Allowable uses of the loan include payroll support for employee salaries, paid sick or medical leave, insurance premiums, mortgage payments, and any other debt obligations. Collateral and personal guarantee requirements under the 7(a) program will be waived. Interest rates for covered loans will not exceed 4 percent.

Loans will be guaranteed to 100 percent through December 31, 2020, at which point guarantee percentages will return to 75 percent for loans exceeding \$150,000 and 85 percent for loans equal to or less than \$150,000.

The bill delegates authority to lenders to make determinations on borrower eligibility and creditworthiness, sidestepping usual SBA channels and processes. New lenders are invited to join the program and will be provided the same authorities as existing lenders.

The new program contains few borrower requirements. Those include:

- The loan is necessary for continued operations during the COVID-19 emergency.
- The funds will be used to retain workers and maintain payroll or make mortgage, lease, and utility payments.
- The applicant does not have any other application pending under the program for the same purpose.
- From February 15, 2020, until December 31, 2020, the applicant has not received duplicative amounts under the program.

Funds may be used for employee compensation, paid leave, severance payments, health benefits, retirement benefits, payroll taxes, and sole proprietor compensation up to \$100,000 per year prorated for the covered period. Funds may also be used for mortgage interest payments, rent/lease payments, and utilities. Funds may not be used for employee compensation above \$100,000 per year, federal taxes, compensation to non-U.S. residents, and sick and family leave wages covered under other programs.

In addition to business concerns that qualify under current SBA criteria, eligible businesses under the new program include any business concern, nonprofit organization, veterans' organization, or Tribal business if it employs not more than the greater of:

- 500 employees; or
- If applicable, the size standard in number of employees established by the SBA for the industry in which it operates.

The bill also provides a special eligibility for businesses in the hospitality and dining industries.

The bill increases the maximum amount for a loan under the SBA Express Loan Program from \$350,000 to \$1 million through December 31, 2020, after which point the Express loan will have a maximum of \$500,000.

A loan made under the SBA's Disaster Loan Program on or after January 31, 2020, may be refinanced as part of a covered loan under this new program as soon as these new loans are made available.

The bill provides that indebtedness is forgiven in an amount equal to the following costs incurred and payments made during the covered period:

- Payroll costs.
- Interest payments on mortgages.
- Rent.
- Utility payments.

Forgiveness amounts will be reduced based upon employee reductions or reductions in wages, based upon a reduction formula.

Forgiveness payments must be made by the SBA within 90 days of determining the ultimate forgiveness amount. The SBA has 30 days following enactment of the CARES Act to issue regulations on the forgiveness provisions.

The bill contains other loan program provisions:

- Waives certain fees that would otherwise apply under the SBA Act, as well as the usual requirement that a small business operation be unable to obtain credit elsewhere.
- Provides that loan balances following any forgiveness reductions will continue to be guaranteed by the SBA in accordance with the program.

- Establishes a maximum maturity date for loans under the program from the date the borrower applies for loan forgiveness.
- Provides that loans under the program are eligible to be sold in the secondary market consistent with rules under the current Business Loan Program.
- Mandates a zero risk-weight on these loans for purposes of bank regulatory capital requirements.
- For loans modified in a troubled debt restructuring related to COVID-19, provides temporary relief from FASB's TDR disclosure requirements.
- Sets forth compensation limits for participating lenders based upon loan amount.

The bill instructs the Administration to work with federal and state bank regulatory authorities to:

- Waive statutory limits on maximum loan maturities for certain covered loans.
- Cease requirements for lenders to increase their reserves based on payments received from the Administration.
- Extend lender site visitation requirements to account for volume increases, travel restrictions, etc. during the COVID-19 emergency to (i) not more than 60 days following the occurrence of an adverse event that sends a loan into liquidation and (ii) not more than 90 days after a payment default.

Title II – Assistance for American Workers, Families, and Businesses

This Title provides federal funding for unemployment compensation and for recovery rebates for U.S. taxpayers. It also makes changes to tax provisions related to retirement plans and Individual Retirement Accounts. Additionally, it provides an employee retention credit for businesses based upon certain specific criteria. Further, it suspends certain changes to the loss provisions made by the Tax Cuts and Jobs Act.

Title III – Supporting America's Health Care System in the Fight Against the Coronavirus

This Title makes certain changes to the Family Medical Leave Act and Families First Act.

Title IV – Economic Stabilization and Assistance to Severely Distressed Sectors

This Title provides \$500 billion to the U.S. Treasury's Exchange Stabilization Fund for loans, loan guarantees, and investments in the Federal Reserve's lending facilities to support states, municipalities, and "eligible businesses." The \$500 billion will be allocated as follows:

- \$25 billion in loans and loan guarantees for air carriers;
- \$4 billion in loans and loan guarantees for cargo air carriers;
- \$17 billion in loans and loan guarantees for businesses critical to maintaining national security;
- and

- \$454 billion for loans, loan guarantees, and investments in support of facilities established by the Federal Reserve to support lending to eligible businesses, states, and municipalities. These programs include the Money Market Mutual Fund Liquidity Facility, the Commercial Paper Funding Facility, the Primary Market Corporate Credit Facility, the Secondary Market Corporate Credit Facility, and the Term Asset-Backed Securities Loan Facility.

The bill requires the Secretary of the Treasury to publish application procedures and minimum requirements for this assistance within 10 days of enactment. The Treasury Secretary will have discretion to make loans and loan guarantees for a duration no longer than five years and at an interest rate not less than the prevailing market rates prior to the COVID-19 outbreak. The loans cannot be forgiven.

To qualify, a business must be U.S.-domiciled and its employees must be predominantly located in the U.S. The business must also show that alternative financing is not reasonably available. For 12 months after the expiration of the loan or loan guarantee, the business will be prohibited from buying back its company stock, paying dividends or making other capital distributions, and reducing its workforce by more than 10 percent.

The bill encourages the Federal Reserve to establish a facility that supports lending to small- and mid-size businesses. It also instructs the Treasury Secretary to ensure that nonprofit organizations and businesses between 500 and 10,000 employees have access to a specific loan facility with loans not higher than 2 percent per year and no payments due for the first six months. Certain other qualifying criteria will also be applied.

The Treasury Secretary is also instructed to “endeavor to seek the implementation of a program or facility” that provides liquidity to the financial system that supports lending to states and municipalities.

In order for an eligible borrower to participate in CARES Act funding programs, the borrower must agree to cap all employee compensation for a period ending one year after the loan is repaid.

The bill establishes an Office of the Special Inspector General for Pandemic Recovery. This Office will function for five years and will be tasked with conducting, supervising, and coordinating audits and investigations of the making, purchase, management, and sale of loans, loan guarantees, and other investments decided upon by the Treasury Secretary. The Inspector General must file quarterly reports with Congress detailing all such activities.

The bill establishes a bi-partisan Congressional Oversight Commission to conduct oversight of the Treasury Department and the Federal Reserve and the agencies’ implementation of the CARES Act. The Oversight Commission’s authority terminates on September 30, 2025.

The bill requires the Treasury Secretary to publish on the Department’s web site a plain language description of each loan and loan guarantee within 72 hours of the transaction. The bill prohibits any company in which the President, Vice President, executive department head, Member of Congress, or any spouse, child, son-in-law, or daughter-in-law own a controlling interest, from participating in these programs.

The bill provides that a borrower with a federally backed mortgage loan may request forbearance, regardless of delinquency status and without penalties, fees, or interest, by submitting a request to the borrower's servicer and affirming financial hardship due to COVID-19. A forbearance must be granted for up to 180 days and extended for an additional period of up to 180 days at the request of the borrower. The Act also prohibits the servicer of a federally backed mortgage loan, except for a vacant or abandoned property, to initiate any foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for at least 60 days beginning on March 18, 2020.

The bill prevents landlords from bringing legal causes of action to recover possession from tenants for nonpayment for 120 days if the dwelling is a property insured, guaranteed, supplemented, protected, or assisted in any way by the HUD, Fannie Mae, Freddie Mac, the rural housing voucher program, or the Violence Against Women Act of 1994.

The bill allows financial institutions to make loan modifications related to COVID-19 or its effects without being categorized as a troubled debt restructuring. Such suspensions are applicable for the term of the loan modification, and may be made from March 1, 2020, through the earlier of (i) 60 days after the expiration of the national emergency declaration or (ii) December 31, 2020.

The bill requires reports to credit reporting agencies to show accounts as "current" even when there has been an account forbearance or agreement to modify payments on an account impacted by COVID-19. This will apply from January 31, 2020, through the later of 120 days after (i) enactment, or (ii) expiration of the national emergency declaration.

The bill grants an insured depository institution, bank holding company, or any of its affiliates the option to temporarily delay measuring credit losses on financial instruments under the Current Expected Credit Losses methodology. This option expires at the earlier of December 31, 2020, or the date on which the national emergency declaration related to COVID-19 is terminated.

The bill amends Section 1105 of the Dodd-Frank Act to allow for a guarantee of deposits held by insured depository institutions to be treated as a debt guarantee program. More specifically, through December 31, 2020:

- The FDIC may establish a program to guarantee obligations of solvent insured depository institutions or solvent depository institution holding companies; and
- The NCUA may temporarily increase the share insurance coverage on any non-interest-bearing transaction account in any federally insured credit union.

The bill requires prudential banking agencies to adopt an interim final rule reducing the community bank leverage ratio from 9 percent to 8 percent and providing a grace period for qualifying community banks to satisfy the requirement. This interim rule will expire the earlier of (i) the expiration of the national emergency declaration, or (ii) December 31, 2020.



The bill treats loans made or guaranteed by the U.S. Treasury as debt for federal income tax purposes. The Act instructs the U.S. Treasury to issue guidance ensuring that ownership interests arising from loans and loan guarantees provided by the federal government under the CARES Act do not trigger a change in ownership for section 382 purposes.

Title V – Coronavirus Relief Funds

This Title appropriates \$150 billion for states, territories, Indian Tribes, and local governments to respond to the COVID-19 emergency. The Treasury Secretary is charged with the administration of these funds under detailed allocation procedures and with significant oversight authorities.

Title VI – Miscellaneous Provisions

Title VI provides emergency appropriations for various programs that may be available to companies. Relevant provisions include:

- Rural development programs – The Business and Industry Guarantee Program will receive \$20.5 million through September 30, 2020, to support loans to rural business owners.
- Economic development - \$1.5 billion will be added to the Economic Adjustment Assistance Program to aid in rebuilding impacted industries such as tourism or manufacturing supply chains.
- Cybersecurity and infrastructure security - \$9.1 million will be provided to the Cybersecurity and Infrastructure Security Agency (CISA) to support interagency critical infrastructure coordination and operations during the COVID-19 pandemic.