March 27, 2020

Relief for Banks in the COVID-19 CARES Act

On Friday, March 27, in response to the coronavirus (COVID-19) pandemic, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was passed by Congress and signed by President Trump. This alert summarizes certain loan programs and other *relief available to banks* under the CARES Act.

- **Eligibility to Make Loans Under the Paycheck Protection Program.** The CARES Act makes $349 billion available for forgivable loans to businesses with 500 or fewer employees (with certain exceptions for businesses with greater than 500 employees). SBA lenders and other financial institutions authorized by the U.S. Department of Treasury will be permitted to make loans to businesses under this program. (Section 1102)

- **Debt Guarantee Authority.** The CARES Act amends Section 1105 of the Dodd-Frank Wall Street Reform and Consumer Protection Act to authorize the Federal Deposit Insurance Corporation to temporarily establish a debt guarantee program to guarantee debt of solvent insured depositories and depository institution holding companies. Noninterest-bearing transaction accounts may be treated as a debt guarantee program. The programs must terminate by December 31, 2020. (Section 4008)

- **Temporary Lending Limit Waiver.** Nonbank financial companies (as that term is defined in Section 102 of the Financial Stability Act of 2010) are temporarily provided with an exception to the Office of the Comptroller of the Currency's (OCC) lending limits aligned with the exception for financial companies. Additionally, the OCC is temporarily authorized to exempt any transaction from the lending limits if the exemption is in the public interest. The temporary exemption from lending limits and authorization to exempt transactions expires at the earlier of December 31, 2020, or the date on which the national emergency declaration related to COVID-19 is terminated. (Section 4011)

- **Temporary Relief for Community Banks.** Federal banking agencies are required to issue an interim final rule to temporarily reduce the community bank leverage ratio (CBLR) for qualifying community banks from 9 percent to 8 percent, and to provide for a reasonable grace period if a community bank's CBLR falls below the reduced level. During any such grace period, a qualifying community bank to which the grace period applies will be presumed to satisfy the capital and leverage requirements described in Section 201(e) of the Economic Growth, Regulatory Relief, and Consumer Protection Act. The interim rule will become effective on the date issued by the appropriate Federal banking agencies and will expire at the earlier of December 31, 2020, or the date on which the national emergency declaration related to COVID-19 is terminated. (Section 4012)

- **Temporary Relief from Troubled Debt Restructurings.** A financial institution may elect to suspend requirements under U.S. GAAP for loan modifications related to the COVID-19 pandemic that would otherwise be categorized as a troubled debt restructuring and to suspend any determination of a loan modified as being a troubled debt restructuring, including impairment for accounting purposes, as a result of the effects of COVID-19. Any such suspension (1) is applicable for the term of the loan modification, but solely with respect to any modification, repayment plan or 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; and (2) will not apply to any adverse impact on the credit of a borrower that is not related to the COVID-19 pandemic. The election may begin effective March 1, 2020, and end at the earlier of December 31, 2020, or the date that is 60 days after the date on which the national emergency declaration related to COVID-19 is terminated. Financial institutions are directed to maintain records of the volume of loans involved so federal banking agencies may collect data about such loans for supervisory purposes. (Section 4013)

- **Optional Temporary Relief from Current Expected Credit Losses.** An insured depository institution (including a credit union), bank holding company, or any of its affiliates has the option to temporarily delay measuring credit losses on financial instruments under the new Current Expected Credit Losses methodology promulgated under Financial Accounting Standards Board Accounting Standards Update No. 2016-13. The option to delay expires at the earlier of December 31, 2020, or the date on which the national emergency declaration related to COVID-19 is terminated. (Section 4014)

- **Non-Applicability of Restrictions on the Exchange Stabilization Fund.** The statutory limitation on the use of the Exchange Stabilization Fund (Section 131 of the Emergency Economic Stabilization Act of 2008) for guarantee programs for the U.S. money market mutual fund industry is temporarily suspended. Any guarantee must be limited to the total value of a shareholder's holdings in a participating fund as of the close of business on the day before the announcement of the guarantee and must terminate by December 31, 2020. (Section 4015)

- **Temporary Credit Union Provisions; Expanding Liquidity.** Access to the Central Liquidity Facility (CLF), including for corporate credit unions, is temporarily enhanced and resources have been increased through December 31, 2020 to help credit unions meet liquidity needs. (Section 4016)

- **Credit Protection During the COVID-19 Pandemic.** The CARES Act amends the Fair Credit Reporting Act to provide that, if an institution that furnishes information to credit reporting agencies makes an "accommodation" with respect to one or more payments on a credit obligation or account of a consumer, and the consumer makes the payments or is not required to make one or more payments pursuant to the accommodation, then the furnisher must report such obligation or account as "current" (or as the status reported prior to the accommodation) during the period of accommodation. An "accommodation" is defined as an agreement to defer one or more payments, make a partial payment, forbear any delinquent amounts, modify a loan or contract, or any other assistance or relief granted to a consumer who is affected by the COVID-19 pandemic during the Covered Period (defined below). This requirement applies only to accounts for which the consumer has fulfilled requirements pursuant to the forbearance or modified payment agreement. This credit protection is available beginning on January 31, 2020, and ends at the later of 120 days after the enactment date or 120 days after the date on which the national emergency declaration related to COVID-19 is terminated (Covered Period). (Section 4021)

- **Foreclosure Moratorium and Consumer Right to Request Forbearance.** A borrower with a federally-backed mortgage loan may request forbearance regardless of delinquency status by submitting a request to the borrower's servicer and affirming that the borrower is experiencing a financial hardship during the COVID-19 pandemic. Upon such a request, borrowers are provided up to 180 days of forbearance, which will be extended for an additional period of up to 180 days, provided that the borrower requests an extension. During the forbearance period, 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 terms of the mortgage, may accrue on the borrower's account. In addition, Federally-backed mortgage loan servicers are prohibited from initiating any foreclosure process, moving for a foreclosure judgment or order of sale, or executing a foreclosure-related eviction or sale for a 60-day period beginning on March 18, 2020. The authority provided under this

section terminates at the earlier of December 31, 2020, or the date on which the national emergency declaration related to COVID-19 is terminated. (Section 4022)

- **Forbearance of Residential Mortgage Loan Payments for Multifamily Properties with Federally Backed Loans.** Multifamily borrowers who have experienced a financial hardship related to the COVID-19 pandemic with a federally backed multifamily mortgage loan that was current as of February 1, 2020, are provided with up to 90 days of forbearance upon request to the loan servicer. Borrowers receiving forbearance may not evict or charge late fees or penalties to tenants for the duration of the forbearance period. Applicable mortgages include loans to real property designed for 5 or more families that are purchased, insured, or assisted by Fannie Mae, Freddie Mac, or HUD. The authority provided under this section terminates at the earlier of December 31, 2020, or the date on which the national emergency declaration related to COVID-19 is terminated. (Section 4023)

For more Day Pitney alerts and articles related to the impact of COVID-19, as well as information from other reliable sources, please visit our COVID-19 Resource Center.

COVID-19 DISCLAIMER: As you are aware, as a result of the COVID-19 pandemic, things are changing quickly and the effect, enforceability and interpretation of laws may be affected by future events. The material set forth in this document is not an unequivocal statement of law, but instead represents our best interpretation of where things stand as of the date of first publication. We have not attempted to address the potential impacts of all local, state and federal orders that may have been issued in response to the COVID-19 pandemic.

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