

Key Structured Finance and Secondary Market Loan Trading Provisions of the CARES Act

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On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the "Act"). This alert summarizes key structured finance and secondary market loan trading provisions of the Act.

Single Family Residential Mortgage Loans

- Between February 1, 2020, and June 30, 2020, a mortgage borrower with a federally backed mortgage loan related to a 1-4 family residence who has suffered a financial hardship directly or indirectly caused by the COVID-19 emergency may, regardless of delinquency status, request a forbearance of their principal and interest mortgage payment by directly requesting such forbearance from their mortgage servicer.
- For purposes of such forbearance requests, a "federally backed mortgage loan" is any mortgage loan (i) guaranteed by the FHA, (ii) insured under Section 255 of the National Housing Act, (iii) guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992, (iv) made by the Dept. of Agriculture, (v) guaranteed or insured by the Dept. of Agriculture or the Dept. of Veterans Affairs, or (vi) purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.
- Such forbearance shall be granted for up to 180 days, and the forbearance period may be extended an additional 180 days at the borrower's request.
- During the forbearance period, no fees, penalties, or interest shall accrue beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time.
- The servicer shall require no documentation beyond the borrower's attestation that they have suffered a financial hardship directly or indirectly caused by the COVID-19 emergency.

- At the request of the borrower, either the initial or extended forbearance period may be shortened.
- During the 60-day period beginning on March 18, 2020, no servicer of a federally backed mortgage loan may initiate any judicial or nonjudicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale.

Multifamily Residential Mortgage Loans

- Until the earlier of December 31, 2020 or the termination date of the national emergency related to the COVID-19 outbreak (the "Covered Period"), any borrower with a federally backed mortgage loan related to a multifamily (5 or more families) residence who (i) was current on their mortgage loan as of February 1, 2020, and (ii) affirms to their mortgage servicer that they have suffered a financial hardship directly or indirectly caused by the COVID-19 emergency may request a forbearance of their principal and interest mortgage payment by making an oral or written request for such forbearance from their mortgage servicer.
- For purposes of such forbearance requests, a "federally backed mortgage loan" is any mortgage loan that (i) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any federal agency, (ii) is made under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a federal agency, or (iii) is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.
- The mortgage servicer shall document the hardship and forbearance shall be granted for up to 30 days, and the forbearance period may

be extended for two additional 30-day periods at the borrower's request, provided such request is made (i) prior to the end of the Covered Period and (ii) 15 days prior to the end of the current forbearance period.

- At the request of the borrower, the forbearance period may be discontinued.
- During the 60-day period beginning on March 18, 2020, no servicer of a federally backed mortgage loan may initiate any judicial or nonjudicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale.
- Any multifamily borrower that receives a forbearance may not (i) evict a tenant solely for nonpayment, (ii) charge any late fees, charges, or penalties to any nonpaying tenant, (iii) provide any tenant with a notice to vacate, or (iv) require a tenant to vacate before the date that is 30 days after the date such notice was provided.

Business Loans

- The Act creates a new type of U.S. Small Business Administration ("SBA") loan program called the "Paycheck Protection Program." General information regarding the Paycheck Protection Program can be found [here](#).
- Loans made under the Paycheck Protection Program ("covered loans") are eligible to be sold in the secondary market consistent with the rules under the current SBA Section 7(a) program.
- Repayment of a covered loan is subject to deferral for a minimum of six months and a maximum of one year.
- Until June 30, 2020, if a covered loan is sold on the secondary market and an investor declines to approve a permitted deferral request of a lender, the Administrator of the SBA shall purchase the covered loan from the investor so that the impacted borrower may receive such deferral.

Student Loans

- All federal student loan payments shall be suspended through September 30, 2020, and all interest accruing thereon for such period shall be waived.
- A "federal student loan" is a student loan made under the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan Program.
- All suspended payments shall be treated as paid for purposes of credit reporting agency reporting.
- For the purpose of any federal public service loan forgiveness or loan rehabilitation program, all suspended payments shall be treated as if the payment was made.

- Servicers of federal student loans shall suspend all involuntary collection payments, including wage garnishment, reduction of tax refunds, and reduction of social security benefits, through September 30, 2020.

Consumer Credit Reporting

- If a servicer makes a payment accommodation with respect to a current credit obligation or account of a consumer that has not been charged-off and the consumer honors the terms of the accommodation (including, if applicable, by not making payment where no payment is due), the servicer shall report the credit obligation or account as current.
- If a servicer makes a payment accommodation with respect to a noncurrent credit obligation or account of a consumer that has not been charged-off and the consumer honors the terms of the payment accommodation, for as long as the payment accommodation is in effect, the servicer shall report the credit obligation or account as maintaining the delinquency status in effect before the payment accommodation was made.
- If a servicer makes a payment accommodation with respect to a noncurrent credit obligation or account of a consumer that has not been charged-off and the consumer brings the credit obligation or account current while the payment accommodation is in effect, the servicer shall report the credit obligation or account as current.
- For purposes of consumer credit reporting, a "payment accommodation" includes 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.
- For purposes of credit reporting, the "covered period" shall mean the period from January 31, 2020, until the later of 120 days from the date of enactment of the Act or 120 days after the termination of the COVID-19 national emergency.

Relief from Troubled Debt Restructurings

- During the period from March 1, 2020, until the earlier of the December 31, 2020, and 60 days after the termination of the COVID-19 national emergency (the "applicable period"), financial institutions may elect to suspend (i) U.S. GAAP requirements for loan modifications related to the COVID-19 pandemic that would otherwise be categorized as troubled debt restructurings and (ii) the determination that loan modifications caused by COVID-19 pandemic

- effects are troubled debt restructurings.
- Any suspension will be applicable for the term of the loan modification, but only for modifications occurring during the applicable period and for loans that were not more than 30 days delinquent as of December 31, 2019. Modifications may include forbearance arrangements, interest rate modifications, repayment plans, and other similar principal or interest payment deferrals or delays.
- The appropriate federal banking agency (as that term is defined in § 3 of the Federal Deposit Insurance Act and including the National Credit Union Administration) of each financial institution will defer to the financial institution's decision to make a suspension of the relevant U.S. GAAP requirements and/or troubled debt restructuring determinations.
- If financial institutions elect to make the suspensions discussed above for modified loans, the financial institutions should maintain records regarding the amount of loans involved and the appropriate federal banking agencies are permitted to collect data on such loans for supervision.

Relief from CECL Standards

- Banks and savings associations whose deposits are insured by Federal Deposit Insurance Corporation, credit unions, bank holding companies, and any of their affiliates are not required to comply with the Financial Accounting Standards Board Accounting Standards Update No. 2016-13 ("Measurement of Credit Losses on Financial Instruments").
- The primary applicable standard is the current expected credit losses ("CECL") methodology used for estimating credit losses allowances.
- The suspension of this requirement will end on the earlier of December 31, 2020, and the termination of the COVID-19 national emergency.

Relief under the Act has been considered 'Phase III' of the federal government intervention into the secondary market. Phase III may not be the final intervention.

To see our prior alerts and other material related to the pandemic, please visit the [Coronavirus/ COVID-19: Facts, Insights & Resources](#) page of our website by clicking [here](#).

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