

Clients&Friends Memo

COVID-19 Update: Key Provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act

March 30, 2020

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (the “**Act**”) into law following the Act’s approval by both chambers of Congress. The Act is aimed at reducing the economic impact of the novel coronavirus 2019 (“**COVID-19**”) pandemic and authorizes \$2.1 trillion in aid to various sectors of the economy. This memorandum summarizes several aspects of the Act that may be of interest to our clients and friends, including:

- paycheck protection program provisions;
- loans, loan guarantees and other investments for eligible businesses, states and municipalities;
- business and individual tax provisions;
- certain retirement and pension related provisions;
- bank regulatory provisions;
- credit protection, mortgage loan and residential property provisions;
- student loan provisions; and
- patent and trademark provisions.

Paycheck Protection Program Provisions

The Act amends Section 7(a) of the Small Business Act to include a new guaranteed, unsecured loan program (the “**Paycheck Protection Program**”). The Paycheck Protection Program is an expansion of the Small Business Administration (the “**SBA**”) Economic Injury Disaster Loan program. The program provides for \$349 billion to support loans to a broader segment of small businesses than those that would otherwise be eligible to receive SBA 7(a) loans. The key terms of the program are as follows:

- **Term of Program.** The program will apply retroactively from February 15, 2020 until June 30, 2020. Any 7(a) loan made during this time to an eligible borrower will be considered a “**covered loan**.”
- **Authorized Lenders.** Loans under the program will be immediately available through existing SBA-certified lenders, including banks, credit unions and other financial institutions. In addition, the authority to make loans will be expanded to include additional private sector lenders determined by the SBA and the Treasury to have the necessary qualifications. This opens the door for additional financial services firms to become eligible SBA lenders, including FinTech companies.
- **Eligible Borrowers.** In addition to businesses that previously met SBA size standards, the program will be available to any business, nonprofit organization, veterans organization or tribal business with 500 employees or fewer, as well as individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals. Also, the SBA will relax rules on affiliation, allowing some entities previously deemed too large (such as any individual franchises and any business in the NAICS Sector 72 (Accommodations and Food Services)) to qualify for this program.
- **Use of Proceeds.** The program will expand the allowable uses of SBA loans to include payroll costs, costs related to continuation of group health care benefits, employee salaries and commissions, interest payments on mortgage obligations, rent, utilities and interest on debt obligations incurred before the commencement of the program. A covered loan may also be used to refinance an existing 7(a) loan taken out on or after January 31, 2020 and received before loans under this program became available.
- **Maximum Loan Size.** Loans made under the program generally would be capped at the lesser of (i) \$10 million and (ii) the sum of (x) 250% of an employers’ average monthly payments for payroll costs incurred during the 1-year period before the date on which the loan is made, subject to exceptions for seasonal employers, and (y) the outstanding amount of any loan under the SBA’s Disaster Loan Assistance Program made during the period

beginning on January 31, 2020 and ending on the date on which loans are made available to be refinanced under the program.

- Interest Rate. The interest rate on a loan made pursuant to the program may not exceed 4% per annum.
- Federal Guarantee. The covered loans will be 100% federally guaranteed. After the application of any loan forgiveness, the remaining balance of the covered loan will continue to be 100% federally guaranteed for a term not to exceed 10 years.
- Personal Guarantees, Recourse and Collateral Requirements. No personal guarantee will be required for any loan made under the program, nor will any collateral be required. Furthermore, the SBA will have no recourse against any individual shareholder, member or partner of an eligible business for non-payment, except to the extent such person uses the loan proceeds for an unauthorized purpose.
- Fees and Penalties Waived. There will be no penalties for prepaying a covered loan and the SBA will waive the standard guarantee fee usually charged to 7(a) borrowers.
- Payment Deferral. Lenders will be required to provide complete payment deferment relief for impacted borrowers for a period of not less than six months and not more than one year. All borrowers that were in existence on February 15, 2020 are deemed “impacted” and thus eligible for payment deferral.
- Secondary Market Trading of Covered Loans. Loans made under the program are eligible to be sold in the secondary market consistent with the process for selling other 7(a) loans. The SBA may not collect any fee for any guarantee sold into the secondary market. Until June 30, 2020, if a secondary market purchaser declines to approve a deferral requested by a lender, the SBA will exercise its authority to purchase the loan so that the impacted borrower may receive such a deferral.
- Loan Forgiveness. Borrowers would be eligible for loan forgiveness in an amount, not to exceed the principal amount of the loan, equal to the sum of payroll costs (excluding employees compensated at an annual rate above \$100,000), interest on mortgages, rent and utilities payments incurred or paid during the eight-week period commencing on the date of the loan. The amount of loan forgiveness will be reduced by the (1) total drop in employment at the borrower (compared to either February 15, 2019 – June 20, 2019 or January 1, 2020 – February 29, 2020, as selected by the borrower) and (2) reduction in wages/salary of each employee (excluding employees compensated at an annual rate above \$100,000) of greater than 25% compared to the most recent full quarter such employee was employed. There are exceptions for any such employment or compensation

reductions occurring during the covered period if such reduction is eliminated no later than June 30, 2020. The SBA will purchase at par from the applicable lender the amount of each covered loan that is forgiven.

- Reimbursement for Loan Processing. The SBA will reimburse a lender authorized to make a covered loan at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan: 5% for loans up to \$350,000, 3% for loans above \$350,000 and below \$2 million, and 1% for loans above \$2 million.
- Regulatory Capital Requirements. For purposes of risk-based capital requirements applied by federal banking agencies and the National Credit Union Administration (“**NCUA**”), loans made under the program will receive a risk weight of 0%. Under Section 4013, the federal banking agencies are required to suspend the requirements under U.S. GAAP applicable to banking institutions with respect to any loan modification “related to” the COVID-19 pandemic, if such loan modification would otherwise be categorized as a troubled debt restructuring (“**TDR**”). Any such COVID-19 related modified loan would not be considered a TDR for accounting purposes, including with respect to the banking institution’s capital calculations. The provisions of Section 4013 apply to only those loan modifications made with respect to loans that were not more than 30 days past due on December 31, 2019. Section 4013’s suspension of TDR requirements apply to loan modifications made between March 1, 2020 and the earlier of December 31, 2020, or 60 days following the termination date of the national emergency concerning the COVID-19 outbreak declared by the President on March 13, 2020 under the National Emergencies Act (the “**COVID-19 Emergency**”), but persist for the duration of the particular loan modification.
- Express Loans. The maximum loan amount for Express Loans, which provide borrowers with revolving lines of credit for working capital purposes, has been increased from \$350,000 to \$1 million.

Loans, Loan Guarantees and Other Investments for Eligible Businesses, States and Municipalities

The Act provides \$500 billion to the Secretary of the Treasury (the “**Treasury Secretary**”) to make loans, loan guarantees and other investments in support of eligible businesses, states and municipalities. An “**eligible business**” is defined as an air carrier or a U.S. business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under the Act. The \$500 billion is allocated among the following:

- Loans and Loan Guarantees to Specified Businesses (the “**Specified Business Loans**”).
 - \$25 billion for (i) passenger air carriers, (ii) eligible businesses that are certified and approved to perform inspection, repair, replacement or overhaul services for air transportation and (iii) ticket agents for air transportation;
 - \$4 billion for cargo air carriers; and
 - \$17 billion for businesses critical to maintaining national security.
- Federal Reserve Programs and Facilities. \$454 billion, as well as any amounts available but not used for the purposes above, for loans, loan guarantees and investments in programs or facilities established by the Federal Reserve for the purpose of providing liquidity to eligible businesses, states and municipalities.

General Terms and Conditions

The loans, loan guarantees and other investments are to be made on such terms and conditions as the Treasury Secretary determines are appropriate. The Treasury Secretary will publish procedures and minimum requirements no later than 10 days after the Act is enacted.

- Prohibition on Loan Forgiveness. The principal amount of any obligation issued by an eligible business, state or municipality under a program described above may not be reduced by loan forgiveness.
- Tax Treatment. Any loan made or guaranteed by the Treasury would be treated as debt for U.S. tax purposes.

Requirements for Specified Business Loans

Specified Business Loans are subject to the following requirements:

- Eligibility.
 - Credit must not be reasonably available to the borrower at the time of the transaction;
 - The borrower's obligation must be prudentially incurred; and
 - The borrower must have incurred or must be expected to incur covered losses such that the continued operations of the business are jeopardized.

- Duration of the Loan or Loan Guarantee. The duration of the loan or loan guarantee must be as short as practicable and not longer than five years.
- Interest Rate. The loan or loan guarantee must be sufficiently secured or made at a rate that reflects the risks of the loan or loan guarantee and is, to the extent practicable, not less than an interest rate based on market conditions prior to the outbreak of COVID-19.
- Protection of Collective Bargaining Agreements. Loans or loan guarantees to businesses may not be conditioned on entering into negotiations regarding pay or other terms and conditions of employment in collective bargaining.
- Obligations of the Borrower. The agreement for the loan or loan guarantee must include the following terms:
 - Prohibition on Buybacks and Dividends. Until the date 12 months after the date of the loan or loan guarantee is no longer outstanding, (1) neither the borrower nor its affiliates may purchase any equity security listed on a national securities exchange of the borrower or any parent company of the borrower, except to the extent required under a contractual obligation in effect prior to the enactment of the Act, and (2) the borrower may not pay dividends or make other capital distributions with respect to its common stock.
 - Employment Levels. The borrower must maintain its employment levels as of March 24, 2020 until September 30, 2020, to the extent practicable, and not reduce its employment level by more than 10%.
 - U.S. Entity. The borrower must certify that it was created or organized in the U.S. or under the laws of the U.S. and has significant operations in, and a majority of its employees based in, the U.S.
- Employee Compensation Limits. Eligible businesses that receive a loan or loan guarantee from the Treasury (or a loan made available under a program providing financing to lenders that make direct loans to eligible businesses, as further described below) must agree, from the date that the loan or loan guarantee agreement is executed until the date that is one year after the date on which the loan or loan guarantee is no longer outstanding, that:
 - No officer or employee of the business whose total compensation exceeded \$425,000 in calendar year 2019 (other than an individual whose compensation is determined through a collective bargaining agreement executed prior to March 1,

2020) will receive (1) total compensation which exceeds, during any 12 consecutive months of such period, the total compensation received during calendar year 2019 or (2) severance pay or other benefits upon termination which exceeds twice the maximum total compensation received during calendar year 2019.

- No officer or employee of the business whose total compensation exceeded \$3 million in calendar year 2019 may receive total compensation which exceeds, during any 12 consecutive months of such period, the sum of (x) \$3 million and (y) 50% of the excess over \$3 million of the total compensation received in calendar year 2019.
- “Total compensation” includes salary, bonuses, awards of stock and other financial benefits.

Air carriers and related contractors participating in certain of the new financial assistance programs are subject to additional limitations on employee compensation.

- Warrant, Equity Interest or Senior Debt Instrument Requirement. The Specified Business Loans must be accompanied with one of the following:

- If the borrower is listed on a national securities exchange, then the Treasury Secretary must receive a warrant or equity interest in the borrower.
- If the borrower is not listed on a national securities exchange, then the Treasury Secretary must receive, in the discretion of the Treasury Secretary, a warrant or equity interest in the borrower or a senior debt instrument issued by the borrower.

The terms and conditions of the warrant, equity interest or senior debt instrument will be set by the Treasury Secretary and must meet the following requirements:

- Purposes. The terms must be designed to provide for the reasonable participation by the Treasury Secretary in equity appreciation or reasonable interest rate premium, as applicable.
- Authority to sell, exercise or surrender. The Treasury Secretary must be able to sell, exercise or surrender the warrant or senior debt instrument. The Treasury Secretary may not exercise voting power with respect to any shares of common stock acquired.

- Sufficiency. If the Treasury Secretary determines that the borrower cannot feasibly issue warrants or other equity interests as required, the Treasury Secretary may accept a senior debt instrument in an amount and on such terms as the Treasury Secretary deems appropriate.

The warrant, equity interest or senior debt requirement has similarities to provisions of the Troubled Asset Relief Program (“TARP”) implemented during the financial crisis of 2008-2009. Similar to the Act, TARP allowed the Treasury Secretary to receive warrants or equity interests in participating institutions. Under TARP, the Treasury Secretary generally invested in non-voting common or preferred stocks if the participating institution was publicly traded or in a senior debt instrument if the participating institution was not publicly traded in order to bolster the capital position of the financial institution receiving the investment, whereas the Act provides for loans to be made to participating businesses. However, the TARP investments were, and the loans made under the Act will be, generally accompanied by warrants or other equity investments in order to provide upside potential to Treasury.

Requirements for Federal Reserve Programs and Facilities

The Act allocates \$454 billion, as well as any amounts available but not used for the Specified Business Loans, for loans, loan guarantees and investments in programs or facilities established by the Federal Reserve for the purpose of providing liquidity to eligible businesses, states and municipalities.

The requirements of Section 13(3) of the Federal Reserve Act would apply to any program or facility. This would include requirements relating to loan collateralization, taxpayer protection and borrower solvency. In addition, a program or facility must have “broad-based eligibility” and not be directed at any specific company or companies. In response to the COVID-19 pandemic, the Federal Reserve has already announced several facilities pursuant to its Section 13(3) authority, including the Commercial Paper Funding Facility, the Primary Dealer Credit Facility, the Money Market Mutual Fund Liquidity Facility, the Term Asset-Backed Securities Loan Facility, the Primary Market Corporate Credit Facility¹ and the Secondary Market Corporate Credit Facility.² The latter two facilities, which were announced before the Act,

¹ This facility is open to investment grade companies and will provide bridge financing of four years. The Federal Reserve will finance a special purpose vehicle (“SPV”) to make loans from the Primary Market Corporate Credit Facility to companies. The Treasury, using the Exchange Stabilization Fund, will make an equity investment in the SPV.

² The Secondary Market Corporate Credit Facility 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. The

expressly exclude from coverage those “companies that are expected to receive direct financial assistance under pending federal legislation.”

Under the Act, a program or facility in which the Treasury Secretary makes a loan, loan guarantee or other investment may only purchase obligations or other interests (either directly from the issuer or in secondary markets, but not including securities that are based on an index or that are based on a diversified pool of securities) from, or make loans or other advances to, businesses that are created or organized in the U.S. or under the laws of the U.S. and that have significant operations in and a majority of its employees based in the U.S.

The Treasury Secretary may make loans, loan guarantees or other investments as part of a program or facility that provides direct loans. A “**direct loan**” is a bilateral loan agreement entered into directly with the borrower and may not be a syndicated loan, a loan originated by a financial institution in the ordinary course of business, or a securities or capital market transaction. To qualify, the borrower must agree:

- Prohibition on Buybacks and Dividends. Until the date 12 months after the date on which the direct loan is no longer outstanding, (1) not to purchase an equity security of the eligible business or any parent company of the eligible business while the direct loan is outstanding, except as required under an agreement in effect as of March 27, 2020 and (2) not to pay dividends or make other capital distributions with respect to its common stock.
- Employee Compensation Limits. Until the date that is one year after the date on which the loan or loan guarantee is no longer outstanding, that:
 - No officer or employee of the business whose total compensation exceeded \$425,000 in calendar year 2019 (other than an individual whose compensation is determined through a collective bargaining agreement executed prior to March 1, 2020) will receive (1) total compensation which exceeds, during any 12 consecutive months of such period, the total compensation received during calendar year 2019 or (2) severance pay or other benefits upon termination which exceeds twice the maximum total compensation received during calendar year 2019.
 - No officer or employee of the business whose total compensation exceeded \$3 million in calendar year 2019 may receive total compensation which exceeds, during any 12 consecutive months of such period, the sum of (x)

Treasury, using the Exchange Stabilization Fund, will make an equity investment in the SPV established by the Federal Reserve for this facility.

\$3 million and (y) 50% of the excess over \$3 million of the total compensation received in calendar year 2019.

- “Total compensation” includes salary, bonuses, awards of stock and other financial benefits.
- Waiver by the Treasury Secretary. These requirements may be waived by the Treasury Secretary upon a determination that such a waiver is necessary to protect the interests of the federal government.

As authorized by the Act, the Federal Reserve’s direct loans to corporations (rather than to banks and other financial institutions) is particularly notable, as such credit was not extended by the Federal Reserve during the last financial crisis.

Assistance for Mid-Sized Businesses

The Treasury Secretary will also endeavor to seek the implementation of a program or facility that provides financing to lenders that make direct loans to eligible businesses including, to the extent practicable, nonprofit organizations, with between 500 and 10,000 employees, with such direct loans being subject to an annualized interest rate not higher than 2%.³ For the first six months after the loan is made (or longer, as determined by the Treasury Secretary), no principal or interest will be due or payable. Borrowers must make the following certifications:

- Eligibility.
 - The uncertainty of the economic conditions makes necessary the loan request to support the borrower’s ongoing operations;
 - The borrower is domiciled in the U.S. with significant operations and employees in the U.S.;
 - The borrower is not a debtor in a bankruptcy proceeding; and

³ Any financing provided for such businesses is separate and distinct from assistance that could be offered under the Main Street Business Lending Program. That program, which would support lending to eligible small-and-medium sized businesses and complement efforts by the SBA, is expected to be formally announced by the Federal Reserve soon.

- The borrower is created or organized in the U.S. or under the laws of the U.S. and has significant operations in and a majority of its employees based in the U.S.
- Prohibition on Dividends. The borrower will not pay dividends with respect to the common stock of the eligible business, or repurchase an equity security that is listed on a national securities exchange of the borrower or any parent company of the recipient while the direct loan is outstanding, except to the extent required under a contractual obligation in effect as of March 27, 2020.
- Workforce Levels. The funds will be used to retain at least 90% of the borrower's workforce, at full compensation and benefits, until September 30, 2020.
- Restoration of Workforce, Compensation and Benefits. The borrower intends to restore not less than 90% of the borrower's workforce that existed as of February 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 Emergency.
- Prohibition on Outsourcing. The borrower will not outsource or offshore jobs for the term of the loan and two years after completing repayment of the loan.
- Protection of Collective Bargaining Agreements. The borrower will not abrogate existing collective bargaining agreements during the term of the loan and for two years after repayment, and will remain neutral in any union organizing effort for the term of the loan.

Government Participants

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

Conflicts of Interest

The Act prohibits an entity in which a "covered individual" directly or indirectly holds at least a 20% interest from participating in any transaction described above. The term "**covered individual**" is defined to include the President, the Vice President, the head of an executive department or a member of Congress, as well as the spouse, child, son-in-law or daughter-in-law, as determined under applicable common law, of the foregoing individuals.

Special Inspector General and Oversight Commission

- Special Inspector General. The Act establishes the Office of the Special Inspector General for Pandemic Recovery led by a Special Inspector General for Pandemic Recovery (the “**Special Inspector General**”) appointed by the President, by and with the advice and consent of the Senate. The Special Inspector General will conduct, supervise, and coordinate audits and investigations of the making, purchase, management and sale of loans, loan guarantees and other investments made by the Treasury Secretary under any program established under the Act, and the management by the Treasury Secretary of any program established under the Act.
 - Duration. The Office of the Special Inspector General terminates five years after the enactment of the Act.
 - Subpoena Authority. The Special Inspector General has authority to request information for its reviews, including through subpoena.
 - Quarterly Reports. Not later than 60 days after the date on which the Special Inspector General is confirmed, and once every calendar quarter thereafter, the Special Inspector General will submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General. The reports must include detailed statements of all loans, loan guarantees, other transactions, obligations, expenditures and revenues associated with any program established by the Treasury Secretary.
- Congressional Oversight Commission. The Act also establishes a Congressional Oversight Commission to oversee implementation of the Act by the Treasury and the Federal Reserve.
- Reports and Testimony. Treasury and the Federal Reserve are required to provide detailed reports and disclosures to Congress and the public on various transactions and financial assistance provided under the Act. In addition, the Treasury Secretary and the Federal Reserve Chairman must appear, on a quarterly basis, before the Senate Banking Committee and the House Financial Services Committee to testify on their obligations and transactions entered into under the Act.

Business and Individual Tax Provisions

The Act includes several provisions intended to provide tax relief to both businesses and individuals, including by rolling back some measures implemented by the Tax Cuts and Jobs Act of 2017 (the “**2017 Tax Act**”).

- Business Tax Provisions.
 - Temporarily Repeal Excess Business Loss Limitation. Section 461(l), enacted as part of the 2017 Tax Act, generally precludes non-corporate taxpayers from deducting net business losses in excess of \$250,000 (adjusted for inflation) in any taxable year before 2026. The Act repeals this limitation for 2018 and 2019.
 - Temporarily Increase Business Interest Deduction Limitation. Section 163(j), enacted as part of the 2017 Tax Act, generally precludes taxpayers from deducting interest expense in excess of business interest income plus 30% of EBITDA (or of EBIT, beginning in 2022). The Act raises the 30% EBITDA threshold to 50% for 2019 and 2020 and allows taxpayers to elect to use 2019 EBITDA for taxable years beginning in 2020.
 - Temporarily Ease NOL Limitations. The 2017 Tax Act prohibits most corporate taxpayers from carrying back net operating losses (“**NOLs**”) to offset a previous year’s taxable income and limits the NOLs that can be deducted in any year to 80% of taxable income (calculated before giving effect to the NOLs). By contrast, before the 2017 Tax Act, NOLs generally could be carried back up to two years and could offset up to 90% of taxable income. The Act permits taxpayers to carry back 2018, 2019, and 2020 NOLs for up to five years, and to offset 100% of their income with NOLs in taxable years beginning before 2021.

Corporate taxpayers will welcome the Act’s temporary repeal of the 2017 Tax Act’s ill-conceived limits on deductions and NOL usage. However, it remains to be seen whether and to what extent these changes will generate immediate cash savings. Most corporations operate on a calendar-year basis, and many did not have significant losses in recent years. Accordingly, many corporations may have to wait until 2021 to calculate their 2020 losses, carry them back and file for refunds. Moreover, the ability to carry back NOLs might not be as valuable for companies with offshore operations because reductions in a company’s U.S. taxable income could increase the company’s tax bill in respect of global intangible low-tax income.

- Preclude Government Investment from Causing a Section 382 Ownership Change. Section 382 strictly limits the amount of net operating losses and built-in losses a corporation can use after it undergoes an ownership change. As with the TARP program implemented in response to the last financial crisis, the Act requires Treasury to provide guidance to the effect that the government’s investment in a company in accordance with the Act “does not result in an ownership change for purposes of section 382.” The Act is silent as to the consequences of a subsequent sale of an acquired interest.

- Accelerate Corporate AMT Credit Recovery. Before its repeal, the corporate alternative minimum tax (“**AMT**”) generated tax credits that could be used against a corporation’s regular tax in future years. The TCJA repealed the corporate AMT and provided that these credits could be taken as refundable credits over several years, with 100% of any remainder being paid out in 2021. The Act makes any remaining AMT tax credits fully refundable for the 2019 taxable year.
- Individual Tax Provisions.
 - Provide Cash Payments to Individuals. The Act provides for direct cash payments of up to \$1,200 per adult individual, plus \$500 per child, with phase-outs beginning at \$75,000 of taxable income for individuals (and a complete phase-out at \$99,000).
 - Expand the Charitable Contribution Deduction. The Act (1) allows non-itemizing taxpayers to deduct up to \$300 of cash contributions in 2020, (2) allows itemizing taxpayers to take charitable deductions on cash contributions in 2020 without regard to the 60% of adjusted gross income limitation and (3) allows corporations to take charitable deductions on cash contributions in 2020 up to 25% of their taxable income (instead of 10% under current law).
 - Exclude Certain Employer Student Loan Payments from Employee Income. The Act excludes from an employee’s taxable income the first \$5,250 of student loan payments made by his or her employer after the enactment of the Act and before 2021.

Certain Retirement and Pension Related Provisions

- Delay in Funding of Single-Employer Pension Plans. Under the Act, the minimum required contributions that would otherwise be due in 2020 can be delayed until January 1, 2021. However, any amount so delayed is increased by interest accruing between the original due date and the payment date, at the effective rate of interest for the plan for the plan year which includes the payment date.
- Relief Related to Retirement Plans for Individuals.
 - Waiver of 10% Early Withdrawal Penalty Tax on Early Distributions from Eligible Retirement Plans. The Act waives the 10% penalty tax on early distributions for distributions up to \$100,000 in 2020 made to an individual (i) who is diagnosed with COVID-19, (ii) whose spouse or dependent is so diagnosed or (iii) who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, having work hours reduced due to the virus, or closing or reducing hours of a business owned or operated by the individual due to the virus.

- Inclusion in income is spread over 2020, 2021 and 2022, unless otherwise elected.
- For the three-year period beginning on the date after the distribution is received, the participant can contribute up to the amount received as a coronavirus-related distribution to a plan to which the participant could make an eligible rollover contribution (and if so contributed, the distribution will be treated as a nontaxable eligible rollover distribution).
- Increased Loan Amount from Qualified Plans. The Act has increased the limit on loans from qualified employer plans to be the lesser of (x) \$100,000 (instead of \$50,000) and (y) the present value (instead of ½ the present value) of the employee's nonforfeitable accrued benefit under the plan (or, if greater, \$10,000). The Act also delays the due date for outstanding loans from qualified employer plans that would otherwise be due in 2020 for one year.
- Temporary Waiver of Required Minimum Distributions. Required minimum distributions are waived during 2020 for defined contribution retirement plans, therefore permitting a further deferral of taxes and allowing account balances to rebound.

Bank Regulatory Provisions

- Temporary Liquidity Guarantee Authority Expanded to Cover Certain Deposits.
 - The Act expands the authority under the Temporary Liquidity Guarantee Authority ("TLGA"), which was created during the last financial crisis by Section 1105 of the Dodd-Frank Act. That authority permits the Federal Deposit Insurance Corporation ("FDIC") to establish a guarantee program for debt obligations of solvent insured depository institutions or depository institution holding companies (and their affiliates), upon a joint determination by FDIC and the Federal Reserve that a "liquidity event" has occurred, and subject to coverage limits adopted by the FDIC. Under Section 4008 of the Act, the existing TLGA authority of the FDIC is modified to allow the FDIC to guarantee the deposits of solvent insured depository institutions held in noninterest-bearing business transaction accounts. A similar expansion of deposit insurance coverage existed under the Dodd-Frank Act (until 2012), but was unlimited in coverage amount and was made under separate authority. The FDIC's expanded TLGA authority (and any expanded coverage) would expire on December 31, 2020.
 - Separately, Section 4008 authorizes the NCUA's Board to authorize unlimited share insurance coverage on noninterest-bearing transaction accounts at a federally insured credit union. This authority (and any expanded coverage) expires December 31, 2020.

- OCC Authority to Waive Lending Limits. The Act expands the authority of the Office of the Comptroller of the Currency (“**OCC**”) to grant exemptions from the National Bank Act’s lending limits under 12 U.S.C. § 84. Specifically, Section 4011 permits the OCC to grant a waiver of lending limits for a loan made by a national bank to any nonbank financial company, if approved by the OCC. Previously, the OCC’s authority was limited to a national bank’s loans made to financial institutions (or financial institution in receivership). In addition, the OCC is permitted to exempt *any* transaction from the lending limits if the OCC determines the exemption is in the public interest and consistent with the lending limits’ purposes. This provision expires either on the termination date of the COVID-19 Emergency or December 31, 2020, whichever is sooner.
- Reduced Community Bank Leverage Ratio. Section 4012 of the Act requires the federal banking agencies to adopt an interim rule relaxing certain requirements applicable to the capital requirements of a “qualifying community bank,” as defined in the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018. This interim rule would reduce the Community Bank Leverage Ratio to 8%, and confer a reasonable grace period for restoring compliance with respect to a community bank that falls below the new 8% threshold. This provision expires on the termination date of the COVID-19 Emergency or December 31, 2020, whichever is sooner.
- Suspension of TDR Requirements. Under Section 4013, the federal banking agencies are required to suspend the requirements under U.S. GAAP applicable to banking institutions with respect to any loan modification “related to” the COVID-19 pandemic, if such loan modification would otherwise be categorized as a TDR. Any such COVID-19-related modified loan would not be considered a TDR for accounting purposes, including with respect to a banking institution’s capital calculations. Section 4013 applies to loan modifications for loans that were not more than 30 days past due on December 31, 2019. Suspension applies for loan modifications made between March 1, 2020 and the earlier of (i) December 31, 2020 and (ii) 60 days following the termination date of the COVID-19 Emergency, but extend for the duration of the particular loan modification.
- Temporary Relief from CECL Standards. Section 4014 provides that no depository institution, bank holding company, or any affiliate thereof, is required to comply with the FAS 2016-13 (Measurement of Credit Losses on Financial Instruments), including the current expected credit losses (“**CECL**”) methodology for estimating allowances for credit losses included in FAS 2016-13. The suspension of CECL requirements for financial organizations expires on the termination date of the COVID-19 Emergency or December 31, 2020, whichever is sooner.

- Expansion of the NCUA's Central Liquidity Facility. Section 4016 of the Act expands the funding available to credit unions to apply for funds from the NCUA Central Liquidity Facility. The Act sets aside the existing restriction that a credit union seeking to borrow from that facility cannot have the intent to expand its portfolio of loans and investments. Section 4016 also increases the borrowing cap for the Facility.

Credit Protection, Mortgage Loan and Residential Property Provisions

- Credit Protection. Section 4021 of the Act amends Section 623(a)(1) of the Fair Credit Reporting Act (“**FCRA**”) to provide credit protection during the COVID-19 Emergency to borrowers affected by the COVID-19 Emergency.
 - “Accommodations” to Consumers. If a furnisher (as that term is used in the FCRA) makes an “accommodation” with respect to one or more payments on a credit obligation or account of a consumer (excluding any credit obligation or account of a consumer that has been charged-off), and the consumer makes the payments or is not required to make one or more payments pursuant to the accommodation, the furnisher is required to report the credit obligation or account as current; or if the credit obligation or account was delinquent before the accommodation (i) to maintain the delinquent status during the period in which the accommodation is in effect and (ii) if the consumer brings the credit obligation or account current during the accommodation period, to report the credit obligation or account as current.
 - Key Definition. The term “**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, defined to mean the period beginning on January 31, 2020 and ending on the later of 120 days after the date of enactment of this subparagraph or 120 days after the date on which the COVID-19 Emergency terminates.
- Forbearances – Federally Backed Mortgage Loans. During the covered period, a borrower with a Federally backed mortgage loan (as defined below) experiencing a financial hardship due, directly or indirectly, to the COVID-19 Emergency may request forbearance on the Federally backed mortgage loan, 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 Emergency.
 - Duration; Fees. Upon request by a borrower, a forbearance is required to be granted with no additional documentation required other than the borrower’s attestation to a financial hardship caused by the COVID-19 Emergency, for up to 180 days, and such

forbearance is required to be extended for an additional period of up to 180 days at the request of the borrower. During a period of forbearance, 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 contract, are permitted to accrue on the borrower's account.

- **Foreclosure Moratorium.** Except with respect to a vacant or abandoned property, a servicer of a Federally backed mortgage loan may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for not less than the 60-day period beginning on March 18, 2020.
- **Key Definition.** The term "**Federally backed mortgage loan**" includes any loan which is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families that is (i) insured by the Federal Housing Administration under Title II of the National Housing Act (12 U.S.C. § 1707 *et seq.*), (ii) insured under Section 255 of the National Housing Act (12 U.S.C. § 1715z-20), (iii) guaranteed under Section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. §§ 1715z-13a, 1715z-13b), (iv) guaranteed or insured by the Department of Veterans Affairs; (v) guaranteed or insured by the Department of Agriculture, (vi) made by the Department of Agriculture or (vii) purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.
- **Forbearances – Federally Backed Multifamily Mortgage Loans.** During the covered period, a multifamily borrower with a Federally backed multifamily mortgage loan (as defined below) experiencing a financial hardship due, directly or indirectly, to the COVID-19 Emergency may request a forbearance, provided such borrower was current on its payments as of February 1, 2020. Such borrower may submit an oral or written request for forbearance to the borrower's servicer affirming that the multifamily borrower is experiencing a financial hardship during the COVID-19 Emergency.
 - **Forbearance Period.** Upon receipt of request for forbearance from a multifamily borrower, a servicer is required to document the financial hardship, to provide the forbearance for up to 30 days, and to extend the forbearance for up to two additional 30-day periods upon the request of the borrower, provided that the borrower's request for an extension is made during the covered period (as defined below) and at least 15 days prior to the end of the applicable forbearance period.
 - **Renter Protections during Forbearance Period.** A multifamily borrower that receives a forbearance may not, for the duration of the forbearance, (i) evict or initiate the eviction

of a tenant from a dwelling unit located in or on the applicable property solely for nonpayment of rent or other fees or charges or (ii) charge any late fees, penalties or other charges to a tenant for late payment of rent. Furthermore, the multifamily borrower may not require a tenant to vacate a dwelling unit located in or on the applicable property before the date that is 30 days after the date on which the borrower provides the tenant with a notice to vacate, nor may it issue a notice to vacate until after the expiration of the forbearance.

- **Covered Period.** For the purposes of the forbearance provisions, the term “**covered period**” means the period beginning on March 27, 2020, and ending on the earlier of the termination date of the COVID-19 Emergency or December 31, 2020.
- **Key Definition.** For the purposes of this provision, the term “**Federally backed multifamily mortgage loan**” includes any loan (other than temporary financing such as a construction loan) that (A) is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of five or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property and (B) is made in whole or in part, or insured, guaranteed, supplemented or assisted in any way, by any officer or agency of the federal government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.
- **Temporary Moratorium on Eviction Filings.** During the 120-day period beginning on March 27, 2020, the lessor of a covered dwelling (as defined below) may not: (i) make, or cause to be made, any court filing to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges, (ii) charge fees, penalties or other charges to the tenant related to such nonpayment of rent, (iii) may not require the tenant to vacate the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate and (iv) may not issue a notice to vacate until after the expiration of the 120-day period referred to above.
- **Key Definitions.** This provision applies to covered dwellings on covered properties. A “**covered dwelling**” is a dwelling that is occupied by a tenant pursuant to a residential lease, or without a lease or with a lease terminable under state law that is on a covered property. A “**covered property**” means any property that (i) participates in a covered housing program (as defined in Section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. § 12491(a))), (ii) participates in the rural housing voucher program under Section 542 of the Housing Act of 1949 (42 U.S.C. § 1490r) or (iii) has a

Federally backed mortgage loan or a Federally backed multifamily mortgage loan. While the definition of Federally backed multifamily mortgage loan in this provision is identical to the definition in the Federally backed multifamily forbearance provision, the definition of Federally backed mortgage loan differs slightly by, among other things, excluding temporary financing, such as construction loans, but including loans made to prepay an existing loan secured by the same property in such definition.

Student Loan Provisions

- Suspension of All Payments on Federal Student Loans through September 30, 2020. Under the Act, the Secretary of the Department of Education will suspend all payments due for federal student loans made under the William D. Ford Federal Direct Loan Program and the Federal Family Education Loan Program (that are held by the Department of Education) through September 30, 2020. Interest will not accrue on these loans during the period of this suspension.
- Payments Will Be Deemed to Have Been Made for Certain Purposes. The Secretary of the Department of Education will deem each month for which a loan payment is suspended as if the borrower of the loan had made a payment for the purpose of any loan forgiveness program or rehabilitation program authorized under the Higher Education Act of 1965. The Secretary of the Department of Education must also ensure that, for the purpose of reporting information to a consumer reporting agency, any payment that has been suspended is treated as if it were a regularly scheduled payment made by a borrower.
- Suspension of Involuntary Collections. During the period in which the Secretary of the Department of Education suspends payments on a loan, the Secretary of the Department of Education will also suspend all involuntary collection related to the loan, including wage garnishment, reduction of a tax refund, reduction of any other federal benefit payment by administrative offset and any other involuntary collection activity by the Secretary of the Department of Education.

Patent and Trademark Provisions

- Deadlines. In order to address a concern raised by patent and trademark owners, the Act gives temporary authority to the Director of the U.S. Patent and Trademark Office (“**USPTO**”) in “tolling, waiving, adjusting or modifying a timing deadline” under the relevant patent and trademark statutes. The Director must determine if the COVID-19 pandemic “materially affects the functioning” of the USPTO, “prejudices the rights” of those appearing before the USPTO, or “prevents” such persons from appearing before the office from filing a document or fee. If the Director determines that relief from pending deadlines is justified, he must publish a notice with his decision. The Director has been given wide

latitude to suspend pending deadlines, as the Act allows the Director to suspend deadlines for a “period exceeding 120 days” as long as he submits an appropriate report to Congress. This authority will last for 60 days after the end of the COVID-19 Emergency. The Director’s power to suspend deadlines in view of the COVID-19 pandemic will sunset two years following the enactment of the bill.

These provisions represent a win for patent and trademark owners because the USPTO previously indicated that did not have legal authority to extend statutory deadlines absent a further act of Congress. See USPTO, Relief Available to Patent and Trademark Applicants, Patentees and Trademark Owners Affected by the Coronavirus Outbreak (Mar. 16, 2020). Workarounds, such as the USPTO waiving fees for applications seeking to revive patent and trademark applications that were abandoned due to missed deadlines, were criticized as insufficient. Thus, in addition to safeguarding patent and trademark owners against collateral damages brought on by the COVID-19 pandemic, these provisions of the Act send a strong signal that Congress will take proactive steps to protect the intellectual property rights central to the U.S. economy.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

Andy Alin	+1 212 504 6899	andrew.alin@cwt.com
Joseph Beach	+1 704 348 2335	joseph.beach@cwt.com
Richard Brand	+1 212 504 5757	richard.brand@cwt.com
Scott Cammarn	+1 704 348 5363	scott.cammarn@cwt.com
Mark Chorazak	+1 212 504 6565	mark.chorazak@cwt.com
Sophie Cuthbertson	+1 202 862 2341	sophie.cuthbertson@cwt.com
Michael Gambio	+1 212 504 6825	michael.gambio@cwt.com
Chris Gavin	+1 212 504 6760	chris.gavin@cwt.com
Chris Hughes	+1 212 504 6891	christopher.hughes@cwt.com
Vivian Maese	+1 212 504 5555	vivian.maese@cwt.com
Braden McCurrach	+1 212 504 6788	braden.mccurrach@cwt.com
William Mills	+1 212 504 6436	william.mills@cwt.com
John Moehringer	+1 212 504 6731	john.moehringer@cwt.com
Jason Schwartz	+1 202 862 2277	jason.schwartz@cwt.com
Linda Swartz	+1 212 504 6062	linda.swartz@cwt.com
David Teigman	+1 212 504 6101	david.teigman@cwt.com