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INSIGHT

The CARES Act (P.L. 116-136): Provisions Designed to Help Banks and Credit Unions

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Individuals and businesses have significantly reduced economic activity in response to the coronavirus (COVID-19) outbreak, potentially inflicting unanticipated losses on banks and credit unions and possibly putting them in financial distress. Because these institutions are vital to the functioning of the economy, the government has created "safety nets" to prevent them from failing and to protect depositors. To reduce the likelihood that these safety nets need to be used, the depository regulators have implemented "safety and soundness" regulations, which include rules related to banks' lending, capital, and liquidity. Regulators also have the authority to supervise banks, which includes the periodic collection and examination of banks financial information.

As part of Congress's response to COVID-19, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136) includes four sections—4011, 4012, 4013, and 4014—that temporarily relax some of the regulations banks face. Section 4016 expands access to the Central Liquidity Facility, which is a liquidity facility for credit unions that exists at the National Credit Union Administration (NCUA). This Insight examines those sections. For descriptions of all sections of Title IV of the CARES Act, see CRS Report R46301, *Title IV Provisions of the CARES Act (P.L. 116-136)*, coordinated by Andrew P. Scott.

In addition to regulatory relief, other measures to shore up liquidity and capital reserves at financial institutions have been put forth. The CARES Act expands the Federal Deposit Insurance Corporation's (FDIC's) authority to guarantee bank liabilities, which is the subject of CRS Insight IN11307, *The CARES Act (P.L. 116-136) Section 4008: FDIC Bank Debt Guarantee Authority*, by David W. Perkins. CRS Insight IN11278, *Banking Regulators' Response to COVID-19* describes the actions taken by depository regulators under exiting authority to address issues in the banking industry. CRS Insight IN11259, *Federal Reserve: Recent Actions in Response to COVID-19* discusses the programs the Federal Reserve has set up to provide liquidity to financial markets.

OCC Lending Limit Waiver

National banks are subject to limits on how much they can lend to a single borrower relative to their capital and their portfolio characteristics, unless the loan qualifies for an exception enumerated by statute.

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The Office of the Comptroller of the Currency (OCC) generally has relatively narrow authority to approve certain loans for an exception to the limit. Section 4011 grants the OCC broad authority to exempt loans when it is "in the public interest." This authority terminates the earlier of (1) the date the public health emergency ends or (2) the end of 2020.

Small Bank Capital Relief

Banks face a variety of safety and soundness requirements regarding how much capital they must hold to protect against possible losses. Capital is a relatively expensive source of funding, and so requiring higher levels can reduce the amount banks lend. Certain small banks can elect to be subject to a single, relatively simple—but relatively high—capital rule called the Community Bank Leverage Ratio (CBLR). Bank regulators are authorized to set the ratio between 8% and 10%. Prior to the enactment of the CARES Act, it was set at 9%. Section 4012 directs regulators to lower it to 8% and to give banks that fall below that level a reasonable grace period to come back into compliance with the CBLR. This relief expires the earlier of (1) the date the public health emergency ends or (2) the end of 2020.

Accounting for Troubled Debt Restructuring

A Troubled Debt Restructuring (TDR) is a concession by a lender to a troubled borrower that it would not generally consider under normal circumstances. Generally Accepted Accounting Principles (GAAP) require the lender to reflect in its financial records any potential loss as a result of a TDR. Recording of such losses could negatively impact the lender's ability to meet regulatory requirements. Section 4013 requires federal bank and credit union regulators to allow lenders to determine if they should suspend the GAAP requirements for recognizing any potential COVID-related losses from a TDR related to a loan modification. This relief expires the earlier of (1) 60 days after the public health emergency declaration is lifted or (2) the end of 2020.

Accounting for Expected Loan Losses

Credit loss reserves help mitigate the income overstatement on loans and other assets by adjusting for potential future losses on related loans and other assets. In response to banks' financial challenges during and after the 2007-2009 financial crisis, the Financial Accounting Standards Board promulgated a new credit loss standard—Current Expected Credit Loss (CECL)—in June 2016. CECL requires early recognition of losses as compared to the current methodology. All public companies were required to issue financial statements that incorporated CECL for reporting periods beginning December 15, 2019. Section 4014 gives banks and credit unions the option to temporarily delay CECL implementation until the earlier of (1) the date the public health emergency ends or (2) the end of 2020.

The bank regulators (the OCC, the Federal Reserve, and the FDIC) have issued a joint Interim Final Rule that allows banks to delay CECL's adoption for up to two years. The new CECL rule also delays the accumulation of regulatory capital by two years. As before, the new CECL rule allows accumulation of regulatory capital to meet CECL's requirements over three years after the initial two-year delay.

Credit Union Relief

Section 4016 temporarily enhances access to the Central Liquidity Facility (CLF) for credit unions to meet liquidity needs as long as credit unions have first made reasonable efforts to use primary sources of liquidity, such as their balance sheets and market funding sources. Section 4016 also increases resources available to meet liquidity needs through the facility by temporarily expanding the ability to borrow up to a value 16 times the CLF's subscribed capital stock and surplus (up from the statutory limit of 12 times). The increase in the CLF borrowing threshold expires December 31, 2020.

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