



INDEPENDENT COMMUNITY  
BANKERS of AMERICA®

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## Community Bank Provisions of the CARES Act

On March 25, the U.S. Senate passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The House of Representatives is expected to pass the legislation, and the president is expected to sign it into law. ICBA succeeded in including a number of provisions that will help community banks sustain critical economic activity with access to credit to struggling small businesses, families, and individuals.

Note that many of these provisions, which are described below, expire at year-end or upon termination of the national emergency. However, ICBA has successfully extended past emergency economic provisions, such as the 2008 TAG program, and will press for extension of the community bank regulatory relief included in the CARES Act should they warrant extension.

Many open questions remain regarding the details of the provisions described below. These questions will not be clarified until the agencies issue guidance, which we expect they will do on an expedited basis. ICBA will continue to provide information to community bankers as the details of the Act come into focus.

### SMALL BUSINESS CREDIT

- » **Guaranteed Lending to Sustain Small Business Employment.** The Act provides \$350 billion of small business “paycheck protection” loans through the SBA 7(a) program. Eligible borrowers include COVID-19-affected businesses with fewer than 500 employees, and the maximum loan size is \$10 million. Loan payments are deferred for six months. Loan proceeds used for certain purposes are forgiven and reimbursed to the lender by SBA. These purposes include up to 8 weeks of: payroll, mortgage interest, rent, and utilities. Loan underwriting terms are relaxed and loan fees are waived. The portion of the loan that is not forgiven has a term of 10 years and an interest rate not to exceed 4 percent. The guarantee level is 100 percent through year-end 2020. The program will be available to all current 7(a) lenders as well as lenders that do not currently participate in the 7(a) program according to criteria to be established by the Secretary of the Treasury.
- » **SBA Affiliation Rule Waived.** The Act permanently waives the new SBA affiliation rules that arbitrarily disqualify certain franchise and other small businesses from SBA lending.

### COMMUNITY BANK REGULATION

- » **Authority to Guarantee Transaction Accounts.** The Act gives authority to the FDIC to fully guarantee transaction account deposits. These actions must be approved not only by the FDIC but also by the Federal Reserve Board and the Treasury Secretary and must be ratified by Congress using an expedited process. ICBA will advocate for reinstatement of the transaction account guarantee (TAG) program. These changes would help stabilize the financial system and support the flow of credit in our communities. Authority for these changes expires at year-end 2020.
- » **Community Bank Capital Relief.** The Act temporarily extends the community bank leverage ratio (CBLR) election to some 400 more community banks across the country by reducing the qualifying threshold capital ratio from 9 percent to 8 percent. The CBLR provides relief from complex capital calculations for qualifying community banks. An 8 percent CBLR will help community banks to sustain and increase credit flows for vulnerable small businesses. This change will expire on the earlier of December 31, 2020 or the date on which the national emergency declaration related to the coronavirus expires.

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- » **Delay New Accounting Rule to Sustain Lending.** The Act delays application of the new Current Expected Credit Losses standard in order to avoid disincentives to lending. In the current economic environment, community banks should be focused on working with challenged borrowers. This provision expires at the earlier of year-end 2020 or at the expiration of the national emergency declaration.
  - » **New Flexibility to Work with Troubled Borrowers.** The Act provides that for the duration of the pandemic crisis loan modifications due to the impact of the coronavirus that would otherwise be classified as “trouble debt restructuring” (TDR) under US GAAP will not be so classified. This provision gives community banks flexibility to work with borrowers without being subject to undesirable accounting or capital effects or examiner criticism. The provision is in effect between March 1, 2020 and no later than 60 days after the expiration of the national emergency related to the coronavirus
  - » **Lending Limits Waived.** The Act temporarily authorizes the OCC to waive national bank lending limits until the earlier of year-end 2020 or the end of the national emergency.

## TAX RELIEF

- » **Refund Prior Year Taxes Paid.** The Act creates a 5-year net operating loss (NOL) carryback for tax years 2018, 2019, and 2020 to allow businesses with losses to recover taxes paid in prior years. Moreover, the provision allows a taxpayer to recover up to 100 percent of taxes paid versus the current limitation of 80 percent. A 5-year NOL carryback was a critical source of funds for struggling businesses during the financial crisis of 2008-2009 and its wake.
- » **Expanded Business Interest Deduction.** The Act allows businesses with revenues of more than \$25 million annually to deduct interest up to 50 percent (up from 30 percent) of EBITA for tax years 2019 and 2020. Business with less than \$25 million in annual revenues have no limitation on the deduction of business interest.
- » **Delay of Payroll Tax and Tax Deposits.** The Act defers collection of employer payroll taxes (6.2 percent of wages) until 2021. One half of deferred taxes are due at year-end 2021 and the remainder are due year-end 2022.

## AGRICULTURE & RURAL AMERICA

- » **Funding USDA Commodity Credit Corporation Support for Livestock and Specialty Crop Producers.** The bill provides \$14 billion to replenish USDA’s Commodity Credit Corporation (CCC) to fund farm programs. It provides a separate infusion of \$9.5 billion into the CCC for livestock, dairy, and specialty crop producers. Additional rural development funds are provided.

## MORTGAGE FORBEARANCE

- » **Forbearance on Federally Backed Mortgages.** In addition to the positive provisions noted above, the Act provides that any borrower with a federally backed mortgage (e.g., Fannie, Freddie, VA, FHA, USDA) may request forbearance for up to one year. Owners of apartment buildings can also seek forbearance on federally backed mortgages on the condition that they not evict tenants or charge late fees. ICBA is seeking relief for mortgage servicers who will be severely challenged by this provision.
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