STRADLEY RONON

Banking Alert

A Publication of the Stradley Ronon
Banking Practice Group

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APRIL 2, 2020

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Coronavirus Economic Stabilization Act of 2020 and Related Provisions

The Economic Stabilization and Assistance to Severely Distressed Sectors of the U.S. Economy portion of the CARES Act endeavors to provide and facilitate liquidity in sectors of the economy adversely affected by the coronavirus pandemic. The law aims to support the American economy in two primary ways: (1) through the authorization of $500 billion dollars in funding; and (2) by relaxing certain banking requirements and limitations.[1]

1. **Funding.** The law authorizes the Secretary of the Treasury (or its designee, which may include depositories, brokers, dealers and other financial institutions) to provide up to $500 billion in additional funding to support the liquidity needs of eligible businesses, states and municipalities incurring losses as a result of the coronavirus outbreak in accordance with the Federal Credit Reform Act of 1990. The CARES Act provides funding in two primary ways: (a) funding existing facilities created by the Federal Reserve (the Fed) and certain industries; and (b) encouraging the creation of a new facility by the Fed to support mid-sized businesses.

   a. **Funding existing credit facilities and certain industries:**

   - Of the $500 billion, an aggregate of up to $46 billion will be specifically earmarked for publicly traded businesses critical to maintaining national security and passenger and cargo air carriers and related businesses.

   - The remaining $454 billion, plus any unused earmarked funds, are to be used to fund lending facilities[2] recently established or expanded by the Fed for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, states, or municipalities. The funding under this section may take the following forms:

     - Purchasing obligations or interests directly from issuers;

     - Purchasing other obligations in secondary markets or otherwise; or

     - Making loans (or guaranteeing loans) or other advances secured by collateral.

   - Funding Terms:

     - Typical representations, warranties and covenants as the Secretary deems appropriate;

    - Pricing based on risk and current average yield on outstanding marketable U.S. obligations of comparable maturity; and

    - Five years or less.

- Funding Conditions:

    - For one year following repayment of any obligation under these programs, borrowers will be restricted from engaging in stock repurchases (with an exception for an existing contractual obligation) or issuing of dividends;

    - Substantial restrictions on executive compensation for borrowers that last for one year following repayment of any obligation; and

    - Businesses shall not reduce employment levels (as of March 24, 2020) by more than 10%.

b. **New credit facility to be formed by the Fed**

- In addition to providing funding to existing Fed facilities, the law encourages the Fed to establish a new facility that would provide financing to banks and other lenders to make direct loans to mid-sized businesses with between 500 and 10,000 employees. These loans will have an annualized interest rate at a maximum of 2% and will not require principal or interest payments for at least six months.

- Limitations on receiving funds:

    - Must be to support ongoing business functions during this period.

    - Must be used to retain at least 90% of a recipient's workforce, at full compensation and benefits, until Sept. 30, 2020.

    - The recipient must intend to restore at least 90% of workforce that existed on Feb. 1, 2020, and restore all compensation and benefits to workers within four months of the end of Health and Human Services Administration's public health emergency declared Jan. 31, 2020.

    - The borrower cannot be a debtor currently in bankruptcy proceedings.

    - The borrower will not:

        - Buy back stocks or pay dividends while the loans are outstanding;

        - Outsource jobs until at least two years after the loan is repaid;

        - End collective bargaining agreements for at least two years after the loan is repaid; and

        - Attempt to block any union organization effort while the loan is outstanding.

2. **Relax certain regulatory standards to increase lending capacity.** In addition to making federal funds available to eligible businesses, states and municipalities, the law eases certain existing laws and regulations in order to free up additional funding from banks and other nonbank lenders. The law:

    - Allows the Office of the Comptroller of the Currency, at its discretion, to waive lending limits on unsecured credit to nonbank financial companies;

    - Lowers the Community Bank Leverage Ratio to 8% from 9%;

    - Allows financial institutions to suspend requirements under GAAP for current and recent loan modifications which would result in a determination that the modification be categorized as troubled debt restructuring;

    - Allows financial institutions to delay implementation of the Financial Accounting Standards Board's new Current Expected Credit Losses rule (CECL) until the earlier of Dec. 31, 2020 or the time when the national health emergency declared by POTUS on March 13, 2020 has terminated;

    - Suspends restrictions on the Treasury's Exchange Stabilization Fund that prevents it being used to support money market mutual fund credit facilities;

    - Expands the number of credit unions that can seek relief from the National Credit Union Central Liquidity Facility (the Liquidity Facility) to include any credit union approved by the National Credit Union Administration Board;

    - Removes a prerequisite that credit unions seek other sources of liquidity before accessing the Liquidity Facility;

- Allows the Federal Deposit Insurance Corporation to guarantee bank debt upon a determination of the FDIC's board; and

- Allows temporary reprieve from capital requirements related to certain loan modifications.

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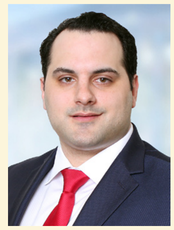
[1] Section 4001 *et seq.*

[2] The Fed has created six facilities in the last few weeks – the Primary Dealer Credit Facility, Commercial Paper Funding Facility, the Primary Market Corporate Credit Facility, the Secondary Market Corporate Credit Facility, the Term-Asset Backed Securities Loan Facility and the Money Market Mutual Fund Liquidity Facility – with plans to create more.



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