NBA Nebraska Bankers Association

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Update

COMPLIANCE

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CARES ACT EXECUTIVE SUMMARY – BANKING ISSUES

The ABA has provided the following Executive Summary of the Coronavirus Aid Relief Economic Security (CARES) Act, the $2 trillion legislative package to provide substantial support for American businesses and individuals in the face of COVID–19. The Senate passed the bill on Wednesday, with the House expected to pass it today and the President to sign it into law immediately following House passage.

The ABA summary highlights the major provisions of the bill that are most relevant to the banking industry. A more thorough and detailed analysis of the legislation is anticipated in the near future, but many questions regarding implementation remain and will only be answered following additional guidance from government agencies.

Executive Summary: "CARES" COVID-19 Phase 3 Response Legislation

I. SBA Lending Programs

Significant Expansion of SBA Lending – with banks as an important part of the delivery mechanism.

- Authorizes $350 billion for three months of 100% guaranteed 7(a) loans to cover payroll costs, interest on mortgage payments, rent obligations, and utilities.
- Applies to businesses with fewer than 500 employees or those that meet SBA's current size standards for 7(a) loans.
- Applies to self-employed or individual contractors.
- Applies to certain nonprofits including 501(c)(3) organizations and 501(c)(19) veterans organizations, and tribal business concerns with fewer than 500 employees.
- Vastly expands universe of lenders authorized to get paycheck loans processed and into the hands of business owners as quickly as possible. This includes banks that previously have not participated in the SBA 7(a) program.
- Authorizes $17 billion to cover six months of payments for payroll and interest for existing SBA 7(a) borrowers. This provision provides relief on existing obligations.
- Establishes a Paycheck Protection Program (PPP):
    - Provides 100% guaranteed loans to cover specific operating costs.
    - The maximum loan size for borrowers is capped at the lesser of 250% of the average monthly payroll costs (with a lookback of one year or relevant period for seasonal businesses), or $10 million.
    - Includes a processing fee payable to lender within 5 days of loan disbursement, based on the loan's size.
        - < $350,000 = 5%
        - $350,000 to $2,000,000 = 3%
        - > $2,000,000 = 1%
    - Interest rate capped at 4%.
    - A portion of any loan issued as part of the PPP, up to or equal to 8 weeks of covered expenses, will be forgiven by SBA and paid to the lender, plus interest.
    - The remaining balance after forgiveness is maintained at the 100% guarantee for the duration of the loan.
- The limit for Express Loans is raised from $350,000 to $1 million through December 31, 2020.
- The existing Interim Final Rule titled: Express Loans, Affiliation Standards is rescinded on date of enactment. This rule detrimentally impacted rural, agricultural focused members as well as members that relied on agents.
- Authorizes $265 million for SBA's Entrepreneurial Development Programs.
- Authorizes $10 billion for additional Emergency Injury Disaster Loans (EIDLs) to be disbursed directly by SBA to those businesses that do not currently qualify for EIDLs. If a borrower applies for EIDL, they cannot apply for PPP due to concerns about double-dipping.
    - These new EIDLs also include an option for a $10,000 cash advance within three days of application that does not have to be paid back even if the borrower's application is subsequently rejected.

- Treasury is granted significant authority to work in coordination with SBA to add additional lenders to disburse funds in the PPP.
- Provides for temporary relief from TDR disclosures for as long as deemed appropriate by appropriate Federal banking agency. General TDR relief is provided in section 4008 (see "Banking Specific Provisions," below).

II. Treasury/Fed Lending Facilities

- Significant Treasury/Fed government-backed lending package, with banks as potential lenders and servicers, totaling $500 billion.
    - $25 billion for passenger air carriers
    - $4 billion for cargo air carriers
    - $17 billion for businesses critical to national security
    - At least $454 billion to loans, loan guarantees, and investments in support of Federal Reserve 13(3) facilities established to aid the U.S. economy, including businesses, nonprofits, states, and municipalities. This support is designed to cover the Fed's losses beyond collateral put up by borrowers, effectively leveraging the investment by Congress. The Administration estimates that this will generate $4 trillion in lending.
        - Part of the Fed support is expected to go to support for lenders to finance businesses and nonprofits having between 500 and 10,000 employees on lenient repayment terms and low interest rates.
- Allows Treasury to designate depository institutions as "Financial Agents of the Secretary" – allowing banks to serve as servicers, for compensation, for these loans.

III. Banking Specific Provisions

- **Troubled Debt Restructuring (TDR) Relief** – From March 1, 2020 through 60 days after the end of the national emergency (or December 31, 2020 if earlier), a financial institution may elect to suspend GAAP principles and regulatory determinations with respect to loan modifications related to COVID-19 that would otherwise be categorized as TDRs. Banking agencies must defer to the financial institution's election.
- **Debt Guarantee Program** – Modifies the Dodd-Frank Act to give the FDIC authority to establish a temporary program to guarantee bank debt. The FDIC is granted broad discretion to guarantee bank liabilities, specifically including noninterest bearing transaction accounts. The FDIC will determine whether to exercise its authority and as to what liabilities.
- **CECL delay** – Financial Institutions (banks, bank holding companies and affiliates and credit unions) are not required to comply with CECL from the date of enactment until the earlier of the end of the national emergency or December 31, 2020.
- **8% Community Bank Leverage Ratio** – CBLR is a provision of S. 2155 that gives banks under $10 billion the ability to eliminate risk-based capital compliance if they meet a simple leverage ratio of between 8-10%. Regulators have set the CBLR at 9%. The CARES Act sets the CBLR at 8% until the sooner of the end of 2020 or the end of the national emergency.

- **National bank lending limit waivers** – through the sooner of the end of the national emergency or December 31, 2020, creates an exception from loan limits for national banks to lend to nonbank financial companies.
- **Consumer Reporting** – Requires that credit furnishers that agree to defer payments, forbear on any delinquent credit or account, or provide any other relief to consumers during the national emergency period must report the account to Credit Reporting Agencies as current.

IV. Mortgage Forbearance

- **Single Family Forbearance** – Establishes forbearance requirements and terms for loans backed by federal government agencies or GSEs.
    - Bill requires mortgage GSE/agency servicers to grant up to 180 days of forbearance to borrowers who request and make an affirmation of financial hardship due to COVID-19. That initial period must be extended up to another 180 days at borrower's request.
    - Bill restricts servicers from assessing penalties, fees or extra interest during the forbearance period.
    - Forbearance requirements are limited to guaranteed or insured loans and therefore pose no direct impact on pure portfolio lenders.
- **Multi-Family (5+ units) Forbearance** – Borrower may request forbearance for a 30-day period, with up to two 30-day extensions.
    - Servicers are required to document borrower's hardship.
    - Borrowers must provide tenant protections, including prohibitions on evictions for non-payment or late payment fees.
    - Limited to guaranteed or insured loans; no impact on portfolio lenders.

V. Other Specific Provisions of Interest

- **Ag –** Provides $14 billion for the Commodity Credit Corporation and $9.5 billion for additional assistance to producers. The funds provided for the Commodity Credit Corporation and additional assistance will be used by agricultural customers to prevent funding shortfalls. This will allow banks to help customers through cash flow issues.
- **Bankruptcy** – Increases the amount of debt to $7.5 million (currently $2.5 million) a small business may have in order to use the "fast track" small business changes to Chapter 11 enacted earlier this year. It also provides that, for consumers in Chapter 13 repayment plans, emergency income received from the government as a result of the COVID 19 crisis need not be paid to creditors and cannot be considered when calculating the consumer's income for bankruptcy purposes. Additionally, the consumer may extend the repayment plan from 5 to 7 years if the consumer can show the extension is necessary due to financial constraints from the COVID 19 crisis. Sunsets one-year after enactment.
- **Small Business Administration Funding –** $562 million for administrative expenses and program subsidies for the SBA Disaster Loan Program.
- **Federal Student Loan 6 Month Deferral Period –** Allows Department of Education to defer payments, principal, and interest for federal student loans for the next 6 months without penalty to the student. This applies only to federal student loans, not private loans.
- **Student Loan Employer Assistance Programs** – Includes Warner/Thune legislation to exclude employer-provided student loan payments from income for both employer and employee.

- **Credit Unions –** NCUA Central Liquidity Facility (CLF) is expanded to lend to all credit unions, including corporate credit unions; increase leverage from 12x to 16x; and credit unions may borrow from the CLF to expand their portfolio, not just meet short-term liquidity needs. This authority expires at the end of 2020.
- **Money Market Mutual Fund Backstop –** Allows the Department of Treasury to use the emergency stabilization fund to provide a backstop for money market mutual funds. The amount is limited to the value as of close of business on the day before the announcement of the guarantee and terminates not later than December 31, 2020.
- **Health Savings Accounts –** Improves Health Savings Accounts (HSAs) to make them more versatile and attractive to users (and potentially increase deposits for banks) by covering telehealth services and OTC drugs; however, all employers that provide HSAs, including banks, are now required to cover testing and treatment of COVID-19 without cost sharing in their employer-sponsored health insurance.

VI. Matters of General Interest

- **Tax** –
  - Individual provisions: Authorizes payments to most Americans, allows penalty-free withdrawals of retirement funds under certain circumstances and waives limits on charitable deductions.
  - Corporate provisions: Includes employee retention credit, delay of payment of payroll taxes, expanded net operating loss carrybacks, additional allowance for pass-through losses, acceleration of corporate AMT credits allowed under 2017 tax bill, and less restrictive limits on business interest expense.
- **Labor –** Makes changes to paid family leave, unemployment insurance, and other provisions that may impact banks as employers.
- **Health –** Not directly applicable to banks, but includes provisions that address medical supply chain issues, FDA issues, medical insurance, threshold Medicare/Medicaid issues, and a "Marshall Plan for Hospitals."