

Congress Passes the CARES Act Fiscal Stimulus Package to Combat the Coronavirus Pandemic's Economic Impact

Introduction

Davis Polk has prepared two memos describing key portions of the bill just signed into law: the Coronavirus Aid, Relief, and Economic Security Act (**CARES Act**). In this memo, we cover the economic stabilization and small businesses sections of the legislation, including Treasury's financial assistance to states, municipalities and businesses of all sizes affected by the coronavirus pandemic, the Paycheck Protection Program, the new Special Inspector General for Pandemic Recovery and consumer credit, mortgage and evictions protections. In a **companion memo**, we cover tax relief for individuals and businesses.

We do not cover the unemployment, medical or educational sections of the bill, other than a bit on student loans, even though they are tremendously important. If other firms write pieces that we find especially illuminating, we will link to them on our website and share them on LinkedIn.

The Senate passed the bill late on Wednesday night, and the House passed it on Friday afternoon. The President signed it shortly afterwards. The Department of the Treasury, the Federal Reserve and other federal agencies now face the mammoth task of carrying out their new responsibilities.

Economic Stabilization

- The Treasury is authorized to provide loans, guarantees and other investments (for simplicity, "financial assistance") in support of eligible businesses, states and municipalities of up to \$500 billion.
- The \$500 billion package has two different categories:
 - **Airlines and National Security**: \$25 billion for passenger air carriers, \$4 billion for cargo air carriers and \$17 billion for businesses that are critical to maintaining national security, whose continued operations are jeopardized, and which have not otherwise received adequate economic relief under the CARES Act
 - **Businesses, States and Municipalities**: \$454 billion, and any amounts left over from the category above, for Treasury to provide financial assistance to programs or facilities established by the Federal Reserve
 - \$454 billion refers to the amount that Treasury may use to lend, guarantee or invest in support of these programs. We expect that the Federal Reserve will use leverage to lend higher amounts against the assets and capital of SPVs and other vehicles established for the programs.
- Terms and conditions are to be determined by the Secretary. Loans made by Treasury shall be at a rate "determined by the Secretary based on the risk and the current average yield on [Treasuries] of comparable maturity."
- Financial assistance is available only to U.S. businesses, organized under state or federal law that have significant operations and a majority of their employees in the United States.
- No economic stabilization funds may be provided to entities in which the President, the Vice President, the head of an Executive Department or a Member of Congress (or their spouse, child, daughter-in-law or son-in-law) has a "controlling interest," defined as direct or indirect control of 20%+ by vote or value of any class of equity.
 - Before entering into any transaction under Treasury's support to air carriers and businesses that are critical to national security, or the Treasury-supported Federal Reserve programs described below, the entity entering into the transaction must certify that it is not a "covered entity" under these conflict of interest provisions.
- The principal amount of any debt owed by a business, state or municipality that receives financial assistance shall not be reduced through loan forgiveness.

- Treasury is authorized to issue regulations to carry out the purposes of this provision.
 - This grant of regulatory authority specifically includes regulations that provide that the issuance of warrants, stock options or other stock will not result in an ownership change under Section 382 of the Internal Revenue Code.
 - That section generally limits the ability of certain corporations to use net operating loss carryforwards and other tax assets that are generated prior to certain changes in ownership to shelter post-change income.
- Reporting requirements that apply to the Treasury and the Fed are numerous and specific. These include:
 - Any transactions with air carriers or businesses that are critical to national security require public disclosure within 72 hours, detailed reports to Congress within 7 days and further public reports every 30 days.
 - Any new Federal Reserve programs or facilities with support from Treasury require reports to Congress within 7 days, publication of those reports within the next 7 days and further public reports every 30 days.
 - The Treasury Secretary and the Chair of the Federal Reserve must testify to Congress every quarter.

Treasury Support for Air Carriers and Businesses Critical to National Security

- Treasury may provide loans or guarantees to air carriers and to businesses that are critical to national security, pursuant to application procedures and minimum requirements that Treasury must publish within 10 days.
 - For loans or guarantees to a publicly traded company, Treasury must receive warrants or equity.
 - Treasury may also receive senior debt for loans or guarantees to a company that is not publicly traded, or if the Secretary determines that a public company cannot feasibly issue equity or warrants.
 - Taxpayers must reasonably participate in equity appreciation, or receive a reasonable interest rate for debt.
 - Treasury shall not exercise voting power with respect to any shares it acquires.
 - Treasury may sell, exercise or surrender a warrant at its discretion for the primary benefit of taxpayers.
- Treasury may provide a loan or guarantee to a company if it reaches the following determinations:
 - Credit is not otherwise “reasonably available” to the company at the time of the transaction
 - The obligation is “prudently incurred” by the company
 - The loan or guarantee is “sufficiently secured” **or** made at a rate that reflects its riskiness and is no lower than what a comparable rate would have been before the coronavirus outbreak
 - The duration of the loan or guarantee is “as short as practicable,” and no longer than 5 years
- A company that receives a loan or guarantee¹ must agree to the following conditions while its loan or guarantee remains outstanding, plus an additional 12 months (or otherwise, as noted):
 - No stock buybacks, except to the extent required by a pre-existing contractual obligation
 - No payment of dividends or other capital distributions on common stock
 - Must maintain its employment levels as of March 24, 2020 “to the extent practicable,” and in any case must not reduce its employment levels by more than 10%, until September 30, 2020
 - Legally binding restrictions on employee compensation:
 - For any officer or employee (excluding union employees) whose 2019 “total compensation” (e.g., salary, bonus, equity awards and other “financial benefits”) exceeded \$425,000, total compensation for any 12-month period is capped at 2019 total compensation levels.

¹ Section 4003(c)(2) refers only to loans and loan guarantees; unclear whether the same standards would apply to other investments. The same ambiguity is also present in section 4004, which sets forth the limits on certain employees’ compensation.

- For any officer or employee whose total compensation exceeded \$3.0 million in 2019, total compensation for any 12-month period is capped at the sum of (a) \$3.0 million *plus* (b) 50% of the excess over \$3.0 million of 2019 total compensation.
- For any officer or employee in either of these categories, severance payouts on a termination of employment are capped at 2x 2019 maximum total compensation.
- The bill does not prescribe how compensation should be calculated (e.g., how equity awards should be valued), which will presumably come in regulations.
- For air carrier borrowers, the Treasury Secretary must coordinate with the Department of Transportation on lending, and can require continued service of existing routes “to the extent reasonable and practicable.”
- The bill also includes a holiday from (a) the 7.5% aviation excise tax for the transportation of passengers, (b) the 6.25% aviation excise tax for the transportation of cargo and (c) taxes on certain uses and transportation of kerosene as aviation fuel, in each case until January 1, 2021.

Treasury Support for Federal Reserve Programs and Facilities

- Treasury may provide loans, guarantees and other investments in programs or facilities established by the Federal Reserve for the purpose of providing liquidity to the financial system that supports lending to eligible businesses, states or municipalities.
 - The requirements of Section 13(3) of the Federal Reserve Act would apply, including:²
 - No loans to an insolvent entity, or one borrowing for the purpose of lending to an insolvent entity
 - Facilities must have broad-based eligibility, i.e., providing liquidity to an identifiable market or sector of the financial system, not to assist one or more specific companies to avoid bankruptcy
 - Loans must be fully secured, and at rates above what market rates would be in normal circumstances
- The Federal Reserve’s programs or facilities may support lending to eligible businesses, states and municipalities by
 - purchasing “obligations or other interests” either directly from the issuer or on secondary markets, or
 - making loans.
- Treasury’s financial assistance to Federal Reserve programs or facilities may take the form of equity or credit protection provided to an SPV or otherwise using the Exchange Stabilization Fund.
 - Treasury has **already provided** \$10 billion each (\$50 billion total) of equity or credit protection to five existing Federal Reserve facilities: **CPFF**, **MLLF**, **TALF**, **PMCCF** and **SMCCF**.
 - The Federal Reserve’s term sheets for the Primary and Secondary Market Corporate Credit Facilities (**PMCCF** and **SMCCF**) state explicitly that “companies that are expected to receive direct financial assistance under pending federal legislation” are excluded from these facilities.
- Additional restrictions apply to Treasury’s provision of financial assistance to a program or facility that makes “direct loans” to eligible businesses.
 - Treasury may not provide financial assistance to a program or facility that makes direct loans unless the borrowers agree to the following conditions while the loan is outstanding, plus an additional 12 months:
 - No stock buybacks, except to the extent required by a preexisting contractual obligation

² The Federal Reserve has already established a number of facilities. Here is a link to [Davis Polk’s two-page overview](#) of the Fed’s actions to address the coronavirus crisis, with embedded links to the primary materials on the Fed’s website and our memos on each facility.

- No payment of dividends or other capital distributions on common stock
- The same restrictions on employee compensation as described in the previous section, i.e. no raises for an officer or employee who made more than \$425,000, and pay cuts for any who made more than \$3 million.
- The Secretary may waive these requirements with respect to a Federal Reserve program or facility (but likely not with respect to an individual borrower) upon a determination that the waiver is necessary to protect the federal government's interests, but would need to testify to Congress regarding the reasons why.
- A "direct loan" is a loan made under a bilateral loan agreement entered into directly with the borrower.
 - The definition of direct loans would explicitly exclude syndicated loans, loans originated by a financial institution in the ordinary course of business, and securities or capital market transactions.
- *Financial Assistance for Mid-Sized Businesses*. Treasury shall endeavor to seek the implementation of a program by the Federal Reserve that provides financing to banks and other lenders that make direct loans to eligible businesses including nonprofits with 500–10,000 employees.
- The interest rate on the loans would be capped at 2%, with no payments due for the first 6 months.
- Borrowers would be required to provide good-faith certification to a list of conditions, which include:
 - Will retain at least 90% of current workforce until September 30, 2020, at full compensation and benefits
 - Intends to restore at least 90% of their workforce levels as of February 1, 2020 within 4 months of the end of the coronavirus public health emergency
 - No payment of dividends and no stock buybacks while loan is outstanding,³ except as required under existing contractual obligation
 - Borrower is domiciled in the United States and not in bankruptcy
 - No outsourcing or offshoring jobs for 2 years after completing repayment
 - Will remain neutral in any union organizing effort for the term of the loan, and will not breach a collective bargaining agreement for 2 years after completing repayment
- *Fed Main Street Business Lending*. Separate from the CARES Act, the Federal Reserve on March 23, 2020 **announced** that it soon expects to establish a Main Street Business Lending Program.
 - The Senate bill clarifies that the Assistance for Mid-Sized Businesses would be **in addition to** any Federal Reserve Main Street Business Lending Program.
 - The Federal Reserve Main Street Business Lending Program would **not** be required to impose the same conditions as the Assistance for Mid-Sized Businesses announced in the Senate bill, and thus may be a more flexible program.
- *Financial Assistance for States and Municipalities*. Treasury shall also endeavor to seek the implementation of a program by the Federal Reserve that supports lending to States and municipalities.

Temporary Full Guarantee of Money Market Mutual Funds (MMMFs) as of Date of Announcement

- Currently, the Exchange Stabilization Fund cannot be used to guarantee MMMFs because of a statutory prohibition put in place after the Financial Crisis. Consistent with the Treasury proposal, the CARES Act temporarily lifts this prohibition until December 31, 2020.

³ A higher-level provision (section 4003(c)(3)(A)(ii)) applying to Treasury-supported Federal Reserve programs and facilities in general requires borrowers to agree not to pay dividends or buy back shares while a loan is outstanding plus 12 months. The precise interaction between this provision and the more specific certification provisions for the Mid-Sized Businesses program is unclear.

- The CARES Act would permit guarantees up to the value on the day prior to the day of the guarantee's announcement.

Time-Limited Specific Measures

All of the following measures would remain in place until the end of the national emergency or December 31, 2020, whichever is earlier:

- *Return of the FDIC's and NCUA's Temporary Liquidity Guarantee Authority* as was used in the 2009 Financial Crisis. FDIC is authorized to establish a guarantee program for debt obligations of solvent insured depository institutions or depository institution holding companies, with a maximum amount specified by the FDIC.
 - Under the relevant provision of the Dodd-Frank Act, the guarantee program requires determination of a liquidity event by the Federal Reserve and FDIC.
- *Increase in Deposit Insurance*. The authorities of the FDIC and NCUA Board are expanded in the following respects:
 - FDIC is given the power to guarantee the deposits of solvent insured depository institutions held in noninterest-bearing business transaction accounts, as was done during the 2008 Financial Crisis, with a maximum amount specified by the FDIC.
 - NCUA Board is authorized to provide unlimited share insurance coverage to any federally insured credit union with respect to noninterest-bearing transaction accounts.
- *Expansion of National Banks' Lending Limits*. The authority of the OCC to provide exemptions is expanded in the following respects:
 - Exemptions from the lending limits are expanded to include loans or extensions of "credit to nonbank financial companies" that are approved by the OCC.
 - OCC has authority to exempt any transactions from lending limits that it determines are in the public interest and consistent with the lending limits' purposes.
- *Reduced Community Bank Leverage Ratio*. Federal banking agencies are instructed to relax certain requirements applicable to a "qualifying community bank," as defined in the Economic Growth, Regulatory Relief, and Consumer Protection Act, which would:
 - Lower the Community Bank Leverage Ratio to 8%
 - Establish a reasonable grace period for community banks that fall below the new 8% threshold
- *Expansion of the NCUA's Central Liquidity Facility*. The breadth of the facility is expanded by permitting corporate credit unions to apply for funds, setting aside the restriction that a borrower cannot have the intent to expand its portfolio of loans and investments and increasing the borrowing cap for the facility.
- *Increased Flexibility for Federal Reserve Meetings*. Certain public disclosure requirements under the Government in the Sunshine Act are relaxed.
 - Federal Reserve Board may temporarily conduct meetings irrespective of the requirements if the Chair determines in writing that unusual and exigent circumstances exist. Board must keep a record of all votes and the reasons for these votes under this relief provision.
- *Increased Flexibility for Agency Hiring*. Certain hiring qualifications are set aside to allow the SEC, CFTC and HUD to hire candidates for temporary and term positions, if those agencies determine it necessary and appropriate to address the coronavirus.

Additional Economic Stabilization Measures

- *Financial Agents of the United States*. Treasury Secretary is authorized to designate financial institutions as "financial agents of the United States" to perform "all reasonable duties the Secretary determines necessary to respond to the coronavirus."

- The concept of “financial agents” has existed since the 19th century and is explicitly contemplated under the National Bank Act and some state banking statutes.
- Responsibilities and obligations of financial agents are set by contract, and Treasury’s [website](#) lists current and inactive financial agency agreements (**FAAs**).
- Recent examples of FAA contracts include fiduciary duties of loyalty and fair dealing, and a requirement to “act at all times in the best interests of the United States when carrying out its responsibilities under this FAA and in all matters connected with this agency relationship.”
- **Treatment as Indebtedness for Treasury Loans and Guarantees.** Any loan or guarantee from Treasury will be treated as indebtedness for U.S. federal income tax purposes that is issued for its stated principal amount and the stated interest on which will be “qualified stated interest” that is deductible as it accrues.
- **Relief from Troubled Debt Restructurings.** Financial institutions may suspend U.S. generally accepted accounting principles (**GAAP**) requirements for COVID-19-related loan modifications that would otherwise constitute troubled debt restructurings, including suspending determinations of “impairment for accounting purposes” for any such loan.
 - Federal banking agencies must defer to financial institutions’ determinations in making such suspensions.
 - Another provision of the draft bill similarly suspends these GAAP requirements for loans made as part of the Paycheck Protection Program, described below.
- **Relief from Current Expected Credit Losses Standards.** The bill provides temporary relief from the current expected credit losses (**CECL**) methodology, which would have required banking organizations’ anticipated losses on nonperforming loans to be recorded for accounting purposes at an earlier point than previous requirements.
 - Banking organizations are not required to comply with CECL from the date of enactment of the CARES Act to the earlier of (1) termination of public health emergency and (2) December 31, 2020.

Small Business Loans

- The Senate bill includes a \$349 billion appropriation for a significant expansion of guaranteed lending under Section 7(a) of the Small Business Act, through a new Paycheck Protection Program (**PPP**), among other programs.

Paycheck Protection Program

- The PPP covers eligible small business concerns, business concerns, nonprofit organizations, veterans organizations, individuals who operate as sole proprietors or independent contractors, self-employed individuals and Tribal business concerns.⁴
 - Loans under the PPP are available to eligible recipients through June 30, 2020, with streamlined eligibility criteria.
 - Existing SBA lenders are delegated the authority to approve and make loans to eligible recipients that (a) were in operation on February 15, 2020, and (b) had employees to which they paid salaries and for which they paid payroll taxes, or that paid independent contractors.
 - Borrowers also need to make good-faith certifications that (a) current economic uncertainty makes the loan necessary, and (b) the proceeds would be used for retaining workers, maintaining payroll or covering existing overhead costs, but would not need to show that credit was unavailable elsewhere.

⁴ “Small business concerns” are for-profit, independently owned and operated entities that are not dominant in their field of operation, and that meet the size requirements under the relevant SBA program. Nonprofits that receive Medicaid reimbursements are not eligible to receive loans under the PPP.

- Loan proceeds can be used for payroll support (including group health costs and insurance premiums), employee salaries, mortgage interest or rent payments, utility payments, and interest on existing debt obligations, rather than just the capital costs allowable under existing Section 7(a) programs.
- The loans will be at an interest rate no higher than 4%, with all loan fees, as well as collateral and personal guarantee requirements and subsidy recoupment fees, waived, and with 100% of loans guaranteed by the federal government.
- Lending is on a nonrecourse basis, unless an individual member of the borrower misuses the loan proceeds.
- The PPP includes a limit on the size of eligible recipients—the greater of 500 employees or the existing SBA **size standard** for employees for the industry in which the borrower operates. It also allows for some flexibility with respect to the implementation of these standards. For instance:
 - In applying these size guidelines, there are exceptions to the existing affiliation **rules** for (a) accommodations and food services business concerns with no more than 500 employees, (b) business concerns operating as franchises, and (c) business concerns that receive funding from small business investment companies.
 - Other than these exceptions, the existing SBA affiliation rules continue to apply to loans under the PPP. These affiliation rules generally aggregate the employees of companies that are under common control, and, as a result, portfolio companies controlled by private equity sponsors and other investment firms may not be eligible to participate in the program.
 - In addition, business concerns in the accommodations and food services industries that have more than one physical location and no more than 500 employees at each location would be eligible to receive a loan under the PPP.
 - Separately, the bill would rescind the interim final affiliation rules, which the SBA published on February 10, 2020.
- The PPP would authorize loan amounts up to the lesser of (a) \$10 million or (b) 2.5 times average monthly payroll costs, plus the value of any existing EIDL loan received after January 31, 2020—i.e., PPP loans can be used to repay or refinance certain existing EIDL loans.
 - The PPP sets out a comprehensive definition of “payroll costs” (e.g. salary, cash tips, leave benefits, insurance and retirement benefits)—a definition that excludes (a) any compensation for individual employees in excess of a salary of \$100,000, as prorated for the period from February 15 to June 30, 2020, and (b) compensation paid to employees residing outside the United States.
 - For sole proprietors and independent contractors, “payroll costs” are similarly defined, and include any annual compensation, commissions or other similar payments up to \$100,000, as prorated for the period from February 15 to June 30, 2020.
 - There are special provisions for seasonal businesses and businesses that were not in operation between February 15 and June 30, 2019.
- Lenders are required to defer payments on PPP loans for between six months and one year, with the Small Business Administration to issue deferment guidance to lenders within 30 days of enactment.
- The portion of loans used to cover payroll, mortgage, rent or utility costs from February 15 to June 30, 2020 are eligible for forgiveness, with the forgiven amount nontaxable.
 - In order to incentivize the retention of employees at existing salaries, the amount of loan forgiveness is reduced by:
 - Any reduction in the average number of monthly full-time equivalent (FTE) employees employed by the loan recipient during the eight weeks following disbursement of the loan (the covered period) as compared to the average number of monthly FTE employees employed by the recipient during, at the recipient’s election, either the period between February 15 and June 30, 2019 or the period between January 1 and February 29, 2020 (the reference period), with special rules for seasonal employers; for

example, if the recipient had an average of 95 FTE employees during the covered period and an average of 100 FTE employees during the reference period, then the recipient would only be entitled to 95% of the loan forgiveness that would otherwise be available; and

- The amount of any reduction in total salary or wages of any employee during the covered period that is in excess of 25% of the total salary or wages of the employee during the most recent full quarter during which the employee was employed (taking into account only employees who did not receive, during any single pay period in 2019, wages or salary at an annualized rate of pay in an amount more than \$100,000).
- In order to incentivize the rehiring of employees and the reversal of any recent salary reductions, loan forgiveness will be determined without regard to the reduction in the number of FTEs of a loan recipient and any reduction in salary or wages of employees of a loan recipient, in each case in between February 15, 2020 and 30 days after enactment of the CARES Act, that is eliminated prior to June 30, 2020.
- There are detailed application and documentation requirements for borrowers seeking forgiveness, with lenders required to decide any such application within 60 days, with forgiveness capped at the amount of the loan principal.
 - To limit lender exposure, the SBA is required to remit the forgiven amounts to lenders within 90 days of the lender determining the amount of forgiveness.
 - Lenders can report anticipated forgiveness amounts to the SBA in advance of a formal determination, with the SBA required to purchase these reported amounts, including on a pooled basis, within five days.
- There is a hold harmless provision insulating lenders from enforcement action or penalties with respect to forgiveness where the lender received verified documentation from an eligible recipient.
- Other forms of lender protection include (a) reimbursement by the SBA for processing at a rate of 1% to 5% of the financing amount outstanding at the time of loan disbursement, depending on loan size and (b) risk weighting of 0% for PPP loans in connection with the calculation of risk-based capital requirements.
 - The sale of PPP loans on the secondary market is prohibited until a borrower requested forgiveness (i.e., only the remaining, non-forgiven balance could be sold on the secondary market), and the SBA would be required to fully guarantee the non-forgiveness balance of the loans, the maximum maturity of which would be 10 years.
- The Small Business Administration will administer the PPP, with existing SBA lenders given the authority to make and approve loans thereunder.
 - The SBA is encouraged to issue guidance urging lenders to focus lending on small business concerns in underserved or rural markets, businesses in operation for less than two years, and businesses owned by members of the military community, socially and economically disadvantaged individuals and women.
- In addition, Treasury is directed to take the lead with other financial regulators, including the Farm Credit Administration, to establish criteria for insured depository, farm credit and other lending institutions to participate in offering loans for the duration of the coronavirus national emergency, with exceptions where participation would compromise safety and soundness.
 - Treasury will administer loans under this portion of the program using Treasury, rather than SBA, infrastructure, and subject to Treasury rulemaking, although the loans generally need to comply with the same requirements as other PPP loans.
- The existing Section 7(a) criminal penalty provisions have been expanded to cover PPP loans, with the SBA inspector general given \$25 million in increased funding in connection with oversight of the expanded programs.

Other Small Business Programs

- The legislation also includes or expands a number of other programs targeted at small businesses:
 - Raising the maximum loan available under the existing **Express Loan program** from \$350,000 to \$1 million
 - Supporting a grant program for small business development centers to facilitate coronavirus-related entrepreneurial development, with priority for women and minority business centers
 - Expanding the existing Economic Injury Disaster loan program, including by easing eligibility requirements, making it easier for eligible businesses to obtain advances under the loan, and by expanding the types of businesses eligible to receive such loans to include startups, individuals doing business as sole contractors and sole proprietors, cooperatives, and ESOPs insofar as they do not employ more than 500 employees
 - Requiring the SBA to pay for six months the principal, interest and associated fees for SBA-guaranteed loans made under existing SBA loan programs that are in regular servicing status, with borrowers relieved of the obligation to pay these amounts and financial institution lenders encouraged not to increase their reserves in connection with such payments
 - Encouraging the SBA to work with lenders generally to encourage deferments and extended maturities on all SBA loans
 - The bill also includes a provision that eases bankruptcy rules for small businesses, including by (a) increasing from \$2.75 million to \$7.5 million the amount of debt a debtor can have and still qualify as a “small business debtor” and (b) amending certain of the exceptions for qualification as a small business debtor
- SBA has emergency rulemaking authority, and has 15 days to promulgate implementing regulations, without regard to ordinary notice requirements.

Special Inspector General for Pandemic Recovery and Congressional Oversight

- The Office of the Special Inspector General for Pandemic Recovery (**SIGPR**) is established within Treasury, whose head is:
 - Nominated on the basis of integrity and qualifications by the President, subject to Senate confirmation
 - Removable without cause by the President, who must communicate the reasons for removal in writing to the House and Senate within 30 days
- SIGPR’s duties are to conduct, supervise and coordinate audits and investigations of the making, purchase, management and sales of loans and guarantees by Treasury using economic stabilization funds.
 - SIGPR has subpoena power and other wide-ranging authority to request records and information.
 - SIGPR must report to Congress any unreasonable refusal to provide requested information.
- SIGPR is required to submit reports to Congress within 60 days of confirmation, and quarterly thereafter, with detailed statements of all of the loans, guarantees and other investments, as well as obligations, expenditures and revenues under any program established by Treasury using economic stabilization funds.
 - Treasury must either correct any deficiencies identified by SIGPR, or certify to Congress that no action is necessary or appropriate.
 - SIGPR is also granted authority and \$25 million for personnel, facilities and other resources.
- A Congressional Oversight Commission is established to conduct oversight of implementation by the Treasury and the Federal Reserve of the CARES Act’s economic stabilization provisions.
- The Commission has five members. The Chairperson is jointly appointed by Speaker of the House and Senate Majority Leader. Each of the remaining four members is appointed by the majority and minority of each chamber, respectively.

- The Oversight Commission is required to report to Congress every 30 days on:
 - Use by the Treasury and the Fed of their authorities, including contracting and administration
 - Impact of the loans, guarantees and investments on the financial well-being of the people of the United States and the U.S. economy, financial markets and financial institutions
 - Extent to which the information made available on transactions using economic stabilization funds has contributed to market transparency
 - Effectiveness of the loans, guarantees and investments made with economic stabilization funds in minimizing long-term costs and maximizing benefits for taxpayers
- Oversight Commission has the authority to hold hearings and receive evidence. Upon the request of the Chairperson, federal agencies must furnish information necessary for the Commission to carry out its responsibilities.
- The PPP is also subject to reporting requirements; the Small Business Administration must report to Congress within 6 months with a detailed expenditure plan for using the amounts under the PPP.

Student Loans

- The bill would suspend payments relating to federal student loans through September 30, 2020, and during this period no interest would accrue.
 - Suspension of payments would not impact borrowers' ability to qualify for federal student-loan forgiveness programs and would be treated as if borrowers made their regularly scheduled payments for reporting to consumer reporting agencies.
 - Involuntary collection would be suspended, including (a) wage garnishment, (b) tax fund reduction by debt amount, (c) other federal benefit reduction by administrative offset and (d) other forms of involuntary collection activity by the Secretary of Education.

Consumer Credit, Mortgage and Evictions Protections

Temporary Consumer Credit Protection

- Amends the Fair Credit Reporting Act to provide temporary relief to consumers as follows:
 - Covers a period from January 31, 2020 to the later of 120 days after enactment, or 120 days after the coronavirus national emergency ends.
 - During this period, accommodations made by creditors (e.g., agreement to accept partial payment, deferment, forbearance or modification) would not impact reporting on that consumer account.
 - Accounts that are current would remain current during the relief period, irrespective of any accommodations; delinquent accounts would remain delinquent, unless brought current by the consumer.
 - The temporary relief does not apply in the case of charge-offs.

Temporary Foreclosure Protection

- Borrowers would have the right to request up to 360 days of forbearance (180 days, plus one 180-day renewal) on federally backed mortgage loans, if they experience financial hardship directly or indirectly due to the public health emergency.
 - During the forbearance period, no interest, fees or penalties will accrue aside from the scheduled or calculated amounts that would apply if borrowers did make their regularly scheduled payments.
 - Servicers must grant such forbearance even if the borrower already is delinquent, with no documentation required other than a borrower attestation of financial hardship.
- 60-day moratorium takes effect, beginning on March 18, 2020, on foreclosure actions, including execution of foreclosure-related evictions or sales by servicers of federally backed mortgage loans.

- Borrowers on federally backed multifamily mortgage loans would have a similar right of forbearance up to 90 days, including an initial 30-day period, plus two 30-day renewals.
 - Multifamily borrowers must have been current as of February 1, 2020 to qualify for forbearance.
 - Renters also receive protection during the forbearance period, as multifamily borrowers receiving forbearance may not evict or charge late fees, penalties or other charges to their tenants due to late payment or nonpayment of rent.

Temporary Eviction Protection

- 120-day moratorium imposed on all eviction actions, as well as fees, penalties or other charges for nonpayment by landlords for certain properties, including those with federally backed mortgage loans.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

William J. Chudd	+1 212 450 4089	william.chudd@davispolk.com
Luigi L. De Ghenghi	+1 212 450 4296	luigi.deghenghi@davispolk.com
Randall D. Guynn	+1 212 450 4239	randall.guynn@davispolk.com
Lee Hochbaum	+1 212 450 4736	lee.hochbaum@davispolk.com
Margaret E. Tahyar	+1 212 450 4379	margaret.tahyar@davispolk.com
John A. Atchley III	+1 212 450 3469	john.atchley@davispolk.com
Eric B. Lewin	+1 212 450 3701	eric.lewin@davispolk.com
Suiwen Liang	+1 212 450 3974	suiwen.liang@davispolk.com
Andrew B. Samuel	+1 212 450 3186	andrew.samuel@davispolk.com

© 2020 Davis Polk & Wardwell LLP | 450 Lexington Avenue | New York, NY 10017

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's [privacy notice](#) for further details.