Overview of COVID-19 Policies & Programs Affecting the CRE Finance Industry  
(Updated May 4, 2020)

The following chart provides an overview of programs and policies enacted by Congress or the regulators that affect, provide relief, or otherwise benefit specific CRE finance industry components. Links in the chart direct to government or other informational sources on the specific program. Programs and their relevance to CRE finance are described in greater detail later in this document.

<table>
<thead>
<tr>
<th>Capital Markets</th>
<th>Lenders</th>
<th>Investors</th>
<th>Servicers</th>
<th>Borrowers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Agency CMBS</strong></td>
<td><strong>Private-label CMBS</strong></td>
<td><strong>Life Co &amp; Nonbank Lenders</strong></td>
<td><strong>Bank Balance Sheet Lenders</strong></td>
<td><strong>Mortgage REITs/Debt Funds</strong></td>
</tr>
<tr>
<td>PDCF (financing for Legacy and New Issue)</td>
<td>PDCF (financing for Legacy and New Issue AAA PL CMBS)</td>
<td>Tax Relief (NOL; Payroll)</td>
<td>TDR Relief – regulatory capital and supervisory</td>
<td>Tax Relief (NOL; Payroll)</td>
</tr>
<tr>
<td>OMO/SOMA (Purchases of Agency CMBS)</td>
<td>Term Asset-Backed Security Loan Facility (TALF) (Legacy Conduit CMBS Only)</td>
<td>CECL Delay/Capital Relief</td>
<td>Term Asset-Backed Security Loan Facility (TALF) (Legacy Conduit CMBS Only)</td>
<td>IRS REMIC Guidance</td>
</tr>
<tr>
<td>Tax Relief (NOL; Payroll)</td>
<td>Tax Relief (NOL; Payroll)</td>
<td>Fed Discount Window</td>
<td>Tax Relief (NOL; Payroll)</td>
<td>IRS REMIC Guidance</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Tax Relief (NOL; Payroll)</td>
</tr>
</tbody>
</table>

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The purpose of this document is to provide CREFC members an overview of Federal Reserve programs, CARES Act programs, and other regulatory relief provided in response to the COVID-19 crisis that impact the CRE finance industry. This document will be updated as policies change.

Contents

Federal Reserve Programs .......................................................................................................................................................... 3
  Term Asset-Backed Security Loan Facility (TALF) .................................................................................................................. 3
  Primary Dealer Credit Facility .................................................................................................................................................. 5
  Main Street Lending Program .................................................................................................................................................. 6
  Additional Fed Programs .......................................................................................................................................................... 8

CARES Act Programs ............................................................................................................................................................... 9
  Paycheck Protection Program .................................................................................................................................................... 9
  Federally Backed Multifamily Mortgage Forbearance ............................................................................................................. 10
  Accounting Relief (CECL & TDRs) ........................................................................................................................................ 11
  Tax Relief ................................................................................................................................................................................ 12
  Emergency Relief Provisions .................................................................................................................................................. 13

Regulatory Guidance and Actions ........................................................................................................................................ 14
  Federal banking agencies encourage banks to use Federal Reserve discount window ...................................................... 14
  Statement on the Use of Capital and Liquidity Buffers .......................................................................................................... 14
  Joint Statement on the Interaction of Regulatory Capital Rule: Revised Transition of the CECL Methodology ............ 14
  Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised) .................................................................................................................. 14
  Interim Final Rules Modifying the Community Bank Leverage Ratio .............................................................................. 14
  IRS Revenue Procedure 2020-26 ........................................................................................................................................ 15

Forbearance Policies ................................................................................................................................................................. 16
  Federally Backed Multifamily Mortgage Forbearance ........................................................................................................ 16
  Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised) ........................................................................ 17
Federal Reserve Programs

Term Asset-Backed Security Loan Facility (TALF)

TALF Background

TALF is a credit facility authorized under section 13(3) of the Federal Reserve Act intended to help meet the credit needs of consumers and small businesses by facilitating the issuance of asset-backed securities (ABS) and improving secondary market conditions for ABS more generally. This facility is based on a predecessor TALF program announced in November 2008 during the financial crisis. This 2008 TALF program ultimately made over $71 billion in loans with the largest recipients being credit card ABS ($26 billion), auto ABS ($13 billion), and CMBS ($12 billion). The 2008 TALF program was successful in both tightening secondary-market spreads from their distressed levels and revitalizing new-issue transactions.

On March 23, 2020, the Fed announced the recreation of TALF administered by the New York Fed and funded by an equity investment from Treasury. When first announced, eligible assets included only new-issue consumer-focused ABS, but the facility was expanded on April 9, 2020, to include legacy conduit CMBS and other asset classes. New issue Single-Asset Single Borrower (SASB) CMBS and CRE CLOs were not included as eligible assets. The Fed notes in its most recent term sheet that the “feasibility of adding other asset classes to the facility or expanding the scope of existing asset classes will be considered in the future.”

How TALF Works

TALF provides loans to eligible holders of asset-backed securities (ABS). The ABS is the collateral for the loan. Currently, only the highest rated ABS (e.g., AAA) is eligible for TALF. The Fed will value the loan with a “haircut” (a reduction of market value) depending on the type of ABS. A TALF loan has a three-year term, charges interest and fees, and may be prepaid. All loans in the original TALF (2009-2010) were repaid in full, no collateral was surrendered, and the government earned $745.7 million in interest and fees.

Key Terms

- TALF initially will make up to $100 billion of loans available through September 30, 2020. The loans will:
  - Have terms of three years;
  - Be nonrecourse to the borrower; and
  - Fully secured by eligible ABS.
  - With the exception of CLOs and eligible ABS that are government guaranteed, loan rates will be set at 125 basis points over the two-year overnight index swap (OIS) rate for securities with a weighted-average life less than two years, or 125 basis points over the three-year OIS rate for securities with a weighted-average life of two years or greater.

- Eligible Borrowers
  - All U.S. companies that own eligible collateral and maintain an account relationship with a primary dealer are eligible to borrow under TALF.
  - For the purpose of TALF, a U.S. company is defined as a business that is created or organized in the United States or under the laws of the United States and that has significant operations in and a majority of its employees based in the United States.

- Eligible Collateral
  - Underlying credit exposures must be issued on or after March 23, 2020 (with one exception for commercial mortgages, described below):
    - Auto loans and leases;
    - Student loans;
Credit card receivables (both consumer and corporate);
- Equipment loans and leases;
- Floorplan loans;
- Insurance premium finance loans;
- Certain small business loans that are guaranteed by the Small Business Administration;
- Leveraged loans; or
- Commercial mortgages must be issued prior to March 23, 2020 (conduit, not SASB or CRE CLOs).

Credit Rating: CMBS must have the highest long-term investment-grade rating category from at least two eligible rating agencies. The CMBS must not have a credit rating below the highest investment-grade rating category from a rating agency.

Issuance
- CMBS issued on or after March 23, 2020 is not eligible.
- All other eligible ABS must be issued on or after March 23, 2020.
- All or substantially all of the credit exposures underlying eligible ABS must have been originated by a U.S. company, and the issuer of eligible collateral must be a U.S. company.
- For CMBS, the underlying credit exposures must be to real property located in the United States or one of its territories.

Valuation
- Haircuts to par are assigned based on the asset and average life.
- For CMBS, the haircut is 15% up to five years. Beyond five years, the base dollar haircut will increase one percentage point of par for each additional year, up to a maximum of ten years.

Resources
- TALF Term Sheet (Effective April 9, 2020)
- Federal Reserve Press Release (April 9, 2020)
Primary Dealer Credit Facility

Background

The Federal Reserve established a Primary Dealer Credit Facility (PDCF) on March 17, 2020, to support the credit needs of American households and businesses. The facility will allow primary dealers to support smooth market functioning and facilitate the availability of credit to businesses and households.

How PDCF Works

Under the PDCF, the NY Fed provides funding for up to 90 days to the 24 primary dealers through its Open Market Operations (OMO).

Key Terms

- **Loan Features**
  - Term of 90 days;
  - Rate equal to the primary credit rate via the Discount Window;
  - Prepayment allowed at any time; and
  - Recourse loans beyond the pledged collateral to the primary dealer entity.

- **Eligible Borrowers:** Only primary dealers of the New York Fed are eligible to participate in the PDCF.

- **Eligible Collateral**
  - All collateral eligible for pledge in OMO;
  - Investment-grade corporate debt securities;
  - International agency securities;
  - Commercial paper;
  - Municipal securities;
  - Mortgage-backed securities (RMBS & CMBS);
  - Asset-backed securities; and
  - Equity securities.
  - Foreign currency-denominated securities are not eligible for pledge under the PDCF at this time.
  - Only AAA-rated securities are accepted for commercial mortgage-backed securities (CMBS), collateralized loan obligations (CLOs), and collateralized debt obligations (CDOs). Other eligible securities as specified above are accepted if rated investment grade (such that BBB- securities and above).
  - Specifically, investment grade commercial paper is accepted: commercial paper rated both A1/P1 and A2/P2.
  - Valuation: The pledged collateral will be valued by Bank of New York Mellon according to a schedule designed to be similar to the margin schedule for lending by the Discount Window, to the extent possible.

Resources

- [PDCF Term Sheet](#)
- [Fed PDCF Site](#)
- [NY Fed PDCF FAQ](#)
Main Street Lending Program

Background

The Federal Reserve established the Main Street Lending Program to enhance support for small and mid-sized businesses that were in good financial standing before the crisis by offering four-year loans to small and large companies employing up to 15,000 workers or with revenues of less than $5 billion. Principal and interest payments will be deferred for one year. The program originally was announced on April 9 and expanded on April 30. Businesses now have three loan options under the program:

- Originate new Main Street loans (Main Street New Loan Facility – MSNLF);
- Originate new Priority Loans (Main Street Priority Loan Facility – MSPLF); or
- Use Main Street loans (Main Street Expanded Loan Facility – MSELF) to increase the size of existing loans to businesses

Main Street loans will be underwritten and originated by banks. Lenders will retain a share of the loans and sell the remaining portion to the Main Street facility, which will purchase up to $600 billion of loans. Firms seeking Main Street loans must commit to make “commercially reasonable efforts to maintain payroll and retain employees.” Borrowers must also follow executive compensation, stock repurchase, and dividend restrictions that apply to direct loan programs under the CARES Act.

<table>
<thead>
<tr>
<th>Main Street Lending Program Loan Options</th>
<th>New Loans</th>
<th>Priority Loans</th>
<th>Expanded Loans</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term</td>
<td>4 years</td>
<td>4 years</td>
<td>4 years</td>
</tr>
<tr>
<td>Minimum Loan Size</td>
<td>$500,000</td>
<td>$500,000</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>Maximum Loan Size</td>
<td>Lesser of $25M or 4x 2019 adjusted EBITDA</td>
<td>Lesser of $25M or 6x 2019 adjusted EBITDA</td>
<td>Lesser of $200M, 35% of outstanding and undrawn available debt, or 6x 2019 adjusted EBITDA</td>
</tr>
<tr>
<td>Risk Retention</td>
<td>5%</td>
<td>15%</td>
<td>5%</td>
</tr>
<tr>
<td>Payment (year one deferred for all)</td>
<td>Years 2-4: 33.33% each year</td>
<td>Years 2-4: 15%, 15%, 70%</td>
<td>Years 2-4: 15%, 15%, 70%</td>
</tr>
<tr>
<td>Rate</td>
<td>LIBOR + 3%</td>
<td>LIBOR + 3%</td>
<td>LIBOR + 3%</td>
</tr>
</tbody>
</table>

Key Terms

- Eligible Lenders: An Eligible Lender is a U.S. federally insured depository institution (including a bank, savings association, or credit union), a U.S. branch or agency of a foreign bank, a U.S. bank holding company, a U.S. savings and loan holding company, a U.S. intermediate holding company of a foreign banking organization, or a U.S. subsidiary of any of the foregoing.
- Eligible Borrowers is a business that:
  - Was established prior to March 13, 2020;
  - Is not an Ineligible Business;
  - Meets at least one of the following two conditions: (i) has 15,000 employees or fewer, or (ii) had 2019 annual revenues of $5 billion or less;
  - Is created or organized in the United States or under the laws of the United States with significant operations in and a majority of its employees based in the United States;
  - Does not also participate in the MSPLF, the MSELF, or the Primary Market Corporate Credit Facility; and
  - Has not received specific support pursuant to the Coronavirus Economic Stabilization Act of 2020 (Subtitle A of Title IV of the CARES Act)
Eligible Borrowers that participate in the Facility may only participate in the MSNLF, the MSPLF, or MSELF. Borrowers in the Facility cannot also participate in the Primary Market Corporate Credit Facility.

Key Issues for CRE: Leverage and Flexibility

Following the original announcement of the Main Street program, CREFC submitted comments that urged the Fed to tailor the leverage limits to reflect prudent underwriting practices in the commercial real estate mortgage space where EBITDA is not a common measure. CREFC also encouraged the Fed to allow flexibility for businesses to pay workers and other essential obligations, including operating and debt expenses. Click here to read CREFC’s April 16 comments.

On the leverage issue, the April 30 term sheets did not alter the 4x EBITDA or 6x EBITDA metrics, but the FAQ specifically notes that the Federal Reserve and Treasury will be evaluating the feasibility of adjusting the metrics for asset-based borrowers. The relevant language is excerpted below:

Federal Reserve, Treasury Evaluating Feasibility of Alternative Underwriting Metric for Asset-Based Borrowers

_EBITDA is the key underwriting metric required for the MSNLF, MSPLF, and MSELF. The Federal Reserve recognizes that the credit risk of asset-based borrowers, as a matter of practice, is generally not evaluated on the basis of EBITDA. The Federal Reserve and the Treasury Department will be evaluating the feasibility of adjusting the loan eligibility metrics of the Program for such borrowers._

In terms of flexible use of funds, the term sheets restrict paying down certain existing debt, but allow proceeds to be used to pay debt that is “mandatory and due”. The FAQ also lists examples of non-prohibited uses, including repaying a line of credit in the normal course of business usage; taking on and paying additional debt in the normal course of business (e.g., inventory or equipment); or refinancing maturing debt.

Notably, recipients of PPP funds can borrow under the Main Street Facilities. However, eligible businesses may only borrow under one Main Street Facility and cannot borrow if they participated in the Primary Market Corporate Credit Facility (PMCCF).

Ineligible Businesses

In addition to employee size, revenue, domicile, and affiliation requirements, the new term sheets exclude certain entities from eligibility, which align with PPP rules. The term sheets specifically exclude:

Businesses listed in 13 CFR 120.110(b)-(j), (m)-(s), as modified and clarified by SBA regulations for purposes of the PPP on or before April 24, 2020. Such modifications and clarifications include the SBA’s recent interim final rules available at 85 Fed. Reg. 20811, 85 Fed. Reg. 21747, and 85 Fed. Reg. 23450. The Federal Reserve may further modify the application of these restrictions to Main Street.

CREFC had previously joined industry trade letters urging flexibility on PPP business eligibility criteria, and will analyze the latest rules to ensure CRE business have access to relief.

Resources

- Federal Reserve Press Release (April 9, 2020)
- Updated Federal Reserve Press Release (April 30, 2020)
- Main Street New Loan Facility Term Sheet (Effective April 30, 2020)
- Main Street Priority Loan Facility Term Sheet (Effective April 30, 2020)
- Main Street Expanded Loan Facility Term Sheet (Effective April 30, 2020)
- Main Street Lending Program FAQs (April 30, 2020)
**Additional Fed Programs**

- **Commercial Paper Funding Facility (CPFF):** Announced March 17, 2020, CPFF will be structured as a credit facility to a special purpose vehicle (SPV), which will serve as a backstop to facilitate the issuance of term commercial paper by eligible issuers. The New York Fed will commit to lend to the SPV on a recourse basis. The New York Fed will be secured by all the assets of the SPV. The U.S. Treasury Department—using the Exchange Stabilization Fund (ESF)—will provide $10 billion of credit protection to the New York Fed in connection with the CPFF. The SPV will purchase A1/P1 (Tier 1) commercial paper directly from issuers at a rate of three-month overnight index swap (OIS) + 200 basis points. [CPFF Term Sheet](#) (Effective March 17, 2020).

- **Money Market Liquidity Facility (MMLF):** Announced March 18, 2020, MMLF provides liquidity to money market funds by providing nonrecourse loans to banks to purchase eligible assets from MMFs. The Fed takes the credit risk (secured by a $10 billion backstop from the Treasury ESF), and will neutralize the impact on regulatory capital rules for participating banks. Treasuries, agencies, and Tier 1, US-issuer CP is eligible; CDs, Tier 2 CP, and foreign-issuer CP are not. [MMLF Term Sheet](#) (Effective March 23, 2020).

- **Primary Market Corporate Credit Facility (PMCCF):** Announced March 23, 2020, PMCCF provides liquidity for new investment grade bond and loan issuances. [PMCCF Term Sheet](#) (Effective April 9, 2020).

- **Secondary Market Corporate Credit Facility (SMCCF):** Announced March 23, 2020, SMCCF provides liquidity for outstanding investment grade corporate bonds. [SMCCF Term Sheet](#) (Effective April 9, 2020).

- **Municipal Liquidity Facility (MLF):** Originally announced on April 9, 2020, and updated on April 27, MLF supports lending to US states, cities (>250,000 residents), and counties >500,000 residents. [MLF Term Sheet](#) (Updated April 27, 2020).
CARES Act Programs
Paycheck Protection Program

Overview

The CARES Act legislation established a new Small Business Administration (SBA) loan program, known as the Paycheck Protection Program (PPP) that directs $670 billion in potentially forgivable loans to businesses with fewer than 500 employees. The loan amount is based on a business’ payroll, and most of the proceeds are intended to be used by the business to continue to pay its employees. Loan proceeds may be used for other allowable expenses, including rent and mortgage interest payments, but SBA and Treasury have capped the forgiveness amount for non-payroll expenses at 25%. As such, at least 75% of the loan proceeds are expected to be used for payroll while the remaining percentage can be used for other approved expenditures. On April 23, CREFC published a guide to CMBS and PPP loans.

To apply for funds, small businesses must contact an SBA approved bank or other approved SBA lender to submit an application. While the initial $349 billion fund was exhausted on April 16, Congress approved $320 billion in additional funds on April 23.

Key Terms

- **Amount**
  - Two months of the average monthly payroll costs from 2019 plus an additional 25%;
  - $10 million cap

- **Loan Terms**
  - 1.00% Fixed interest rate
  - Two-year term
  - Payments deferred for six months
  - Nonrecourse
  - No prepayment penalty

- **Allowable Expenses (Eight-week period after loan is made)**
  - Payroll Costs, including benefits (salaries capped at $100,000)
  - Mortgage Interest
  - Rent
  - Utility Costs

- ** Forgiveness Eligibility**
  - At least 75% of loan used on payroll costs
  - No more than 25% used on eligible, non-payroll costs
  - Reduced forgiveness if staff headcount or payroll levels decrease (25% or more).

- **Eligible Businesses**
  - Generally, businesses, self-employed, and independent contractors with fewer than 500 employees
  - In some industries, the 500-employee threshold may be greater. [Click here](#) for more detail.
  - SBA and Treasury interim final rules may prevent certain passive businesses, including some landlords and developers not actively occupying the assets, from accessing the PPP. These limitations and guidelines are complex and sometimes inconsistent, and industry groups are seeking clarification.

Resources

- Complete List of Government Resources
- Top-Line PPP Overview
- Borrower Information
- Interim Final Rule 1 (Apr 2)
- Interim Final Rule on Applicable Affiliation Rules
- Interim Final Rule on Eligibility Criteria (Apr 14)
- Interim Final Rule (Apr 24)
- Frequently Asked Questions (May 3)
Federally Backed Multifamily Mortgage Forbearance

Overview

The CARES Act allows multifamily borrowers with a federally backed mortgage (e.g., GSE or HUD) to obtain up to 90 days of forbearance if they are experiencing a COVID-19 financial hardship. If borrowers are in forbearance, they may not evict tenants for nonpayment of rent for the duration of the forbearance. They also may not change fees or penalties for nonpayment of rent. Fannie Mae and Freddie Mac, and their regulator the Federal Housing Finance Agency (FHFA), had previously announced a similar forbearance program.

Key Terms

- **Forbearance Period:** When a multifamily borrower requests a forbearance, the servicer shall:
  - Document the financial hardship;
  - Provide the forbearance for up to 30 days; and
  - Extend the forbearance for up to two additional 30-day periods upon the request of the borrower provided that, the borrower’s request for an extension is made during the covered period, and, at least 15 days prior to the end of the original forbearance period. (Public Law 116-136, §4023(c)).

- **Renter Protections During Forbearance Period:** A multifamily borrower that receives a forbearance under this section may not, for the duration of the forbearance:
  - Evict or initiate the eviction of a tenant from a dwelling unit located in or on the applicable property solely for nonpayment of rent or other fees or charges; or
  - Charge any late fees, penalties, or other charges to a tenant described in paragraph (1) for late payment of rent.
  - May not require a tenant to vacate a dwelling unit located in or on the applicable property before the date that is 30 days after the date on which the borrower provides the tenant with a notice to vacate; and
  - May not issue a notice to vacate until after the expiration of the forbearance.

- **Federally Backed Multifamily Mortgage Loan Definition:** The term “Federally backed multifamily mortgage loan” includes any loan (other than temporary financing such as a construction loan) that:
  - Is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and
  - Is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association

- **Section 4024 prevents eviction filings for federally backed mortgage (multifamily and single family), and certain housing programs (vouchers). The moratorium extends 120 days after the passage of the CARES Act (March 27, 2020).**

Resources

- Text of CARE Act
- FHFA Forbearance Announcement
- Fannie Mae Multifamily Forbearance Notice
- Freddie Mac Multifamily Forbearance Notice
- Fannie Mae Multifamily Updates
- Freddie Mac Multifamily Updates
Accounting Relief (CECL & TDRs)

Overview

The CARES Act provides limited, temporary relief for banks and some insured depository institutions on the current expected credit loss (CECL) accounting methodology. The CARES Act provides temporary relief to all US GAAP adherents on Troubled Debt Restructurings (TDR) related to loan modifications due to the COVID-19 emergency.

Current Expected Credit Loss Delay

An insured depository institution (including a credit union), bank holding company, or any of its affiliates (IDI) has the option to temporarily delay measuring credit losses on financial instruments under the new Current Expected Credit Losses methodology. Such option to delay expires at the earlier of December 31, 2020, or the date on which the national emergency declaration related to coronavirus is terminated. The federal banking regulators also issued an interim final rule that allows IDIs to keep the CECL standard largely in place but mitigates the balance sheet effects by netting go-forward losses related to credit loss reserving against regulatory capital over a five-year period (delay for two years followed by three-year phase-out).

On April 3, 2020, the Office of the Chief Accountant at the SEC announced that it and the Financial Accounting Standards Board (FASB) would not be revising or suspending any accounting standards at this time, including the current expected credit loss (CECL). As of March 31, 2020, the larger nonbank financials must begin reporting using the CECL standard, which requires lenders and investors to reserve for estimated life-of-loan losses on day one of origination or acquisition.

CREFC submitted a letter on April 2, 2020, recommending that the SEC and FASB delay the CECL standard. The CARES Act and an Interim Final Rule from the Federal Deposit Insurance Corporation (FDIC), Federal Reserve, and Office of the Comptroller of the Currency (OCC) mandated an optional delay for insured depository institutions and revised the transition of CECL reserves into regulatory capital over the next five years. CREFC’s letter argued that the SEC should extend the optional relief to all companies.

Troubled Debt Restructurings

Financial institutions receive temporary relief from Troubled Debt Restructurings (TDR) required under U.S. GAAP for loan modifications related to the coronavirus pandemic, and may suspend any such determination regarding loans modified as a result of the effects of the coronavirus. Such election may begin on March 1, 2020 and last no later than 60 days after the lifting of the coronavirus national health emergency.

Resources

- CECL Text of CARES Act
- TDR Text of CARES Act
- Joint Agency Interim Final Rule CECL
- SEC Statement on Financial Reporting
- CREFC CECL Delay Letter
Tax Relief

Overview

The CARES Act included several tax provisions allowing deferral or additional flexibility for various business taxes:

- **Deferral of employer payroll taxes**, which must be repaid over the following two years.

- **Net operating loss (NOL)** in 2018, 2019, or 2020 can be carried back five years and will temporarily be allowed to fully offset income.

- **Qualified Improvement Property** technical fix that allows costs to be immediately written-off rather than having to depreciate over a 39-year life of the building (this is a fix of an error in the 2017 tax law).

- **Modification of limitation on business interest**, which raises the business interest deduction limit from 30% to 50%.

- **Employee retention credit** for employers subject to closure due to COVID-19, which allows a credit against applicable employment taxes for each calendar quarter an amount equal to 50% of the qualified wages.

Resources

- [Tax Section of CARES Act](#)
Emergency Relief Provisions

Overview

- The CARES Act Section 4003 provides $500 billion to the Treasury's Exchange Stabilization Fund (ESF) to support additional liquidity facilities:
  - $25 billion for passenger air carriers;
  - $4 billion for cargo air carriers;
  - $17 billion for businesses important to maintaining national security; and
  - $454 billion for loans, loan guarantees, and investments in support of the Federal Reserve’s lending facilities to eligible businesses, states, and municipalities.

- On April 9, 2020, Treasury announced its initial use of the money, which includes funding for additional and existing Federal Reserve facilities:
  - $75 billion equity investment in a Special Purpose Vehicle (SPV) to implement the Main Street Business Lending Program. Enables up to $600 billion in new financing for businesses up to 10,000 employees.
  - $35 billion equity investment in the Municipal Liquidity Facility, which will provide up to $500 billion in direct financing to state and local governments.
  - $75 billion equity investment in SPC to implement the Primary and Secondary Market Corporate Credit Facilities (PMCCF and SMCCF), which will be used to purchase eligible corporate debt. Combined, the facilities provide an additional $750 billion in liquidity.

- Limitations on companies accepting funds
  - Section 4004 of the CARES Act places certain limitations borrowers must agree to when using certain proceeds from the emergency relief funds, including compensation, stock repurchase, and capital distribution restrictions. These limitations are currently effective for the Main Street Lending Program.
  - Currently, the limitations do not appear to apply to the other Federal Reserve facilities.
  - The Treasury Secretary has the authority to waive the restrictions, but the Secretary must testify before Congress on the reasons for the waiver.

Resources

- Emergency Relief Provision of the CARES Act
- Treasury Announcement (Apr 9)
- Federal Reserve Announcement (Apr 9)
- Main Street New Loan Facility Term Sheet
- Main Street Expanded Loan Facility Term Sheet
Regulatory Guidance and Actions

Federal banking agencies encourage banks to use Federal Reserve discount window

- March 16, 2020: The federal bank regulatory agencies released a statement encouraging banks to use the Federal Reserve's "discount window" so that they can continue supporting households and businesses.
- The discount window provides short-term loans to banks and plays an important role in supporting the liquidity and stability of the banking system. By providing ready access to funding, the discount window helps depository institutions manage their liquidity risks efficiently and avoid actions that have negative consequences for their customers. Thus, the discount window supports the smooth flow of credit to households and businesses.

Statement on the Use of Capital and Liquidity Buffers

- March 19, 2020: The Federal Reserve, FDIC, and OCC (agencies) released a statement encouraging banking organizations to use their capital and liquidity buffers as they respond to the challenges presented by the effects of the coronavirus.
- The agencies support banking organizations that choose to use their capital and liquidity buffers to lend and undertake other supportive actions in a safe and sound manner. The agencies expect banking organizations to continue to manage their capital actions and liquidity risk prudently.
- [Link to Joint Statement]

Joint Statement on the Interaction of Regulatory Capital Rule: Revised Transition of the CECL Methodology

- March 31, 2020: The federal bank regulatory agencies released a joint statement clarifying the interaction between the CECL IFR and the CARES Act for purposes of regulatory capital requirements.
- [Link to Joint Statement]

Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised)

- April 7, 2020: The Federal Reserve, FDIC, OCC, the National Credit Union Administration (NCUA), the Consumer Financial Protection Bureau (CFPB), and the State Banking Regulators (hereafter, the agencies) issued revised interagency statement to provide additional information to financial institutions who are working with borrowers affected by COVID-19. Highlights from the statement include:
  - The agencies encourage financial institutions to work prudently with borrowers who are or may be unable to meet their contractual payment obligations because of the effects of COVID-19. The agencies view loan modification programs as positive actions that can mitigate adverse effects on borrowers due to COVID-19.
  - Guidance on accounting and reporting modifications, including TDRs and loan modifications.
- [Link to Interagency Guidance]

Interim Final Rules Modifying the Community Bank Leverage Ratio

- April 6, 2020: The Federal Reserve, FDIC, and OCC issued two interim final rules temporarily lowering the community bank leverage ratio to 8 percent.
- [Link to Announcement]
IRS Revenue Procedure 2020-26

On Monday, April 13, 2020 the Internal Revenue Service (IRS) published Revenue Procedure 2020-26 (Rev. Proc. 2020-26), which clarifies safe harbors to existing real estate mortgage-backed securitization vehicles that hold loans in a COVID-19 forbearance program. Rev. Proc. 2020-26 applies exclusively to real estate loans (not to student or credit card loans), and is beneficial to Real Estate Mortgage Investment Conduit (REMICs). Rev. Proc. 2020-26 also provides safe harbors relating to future REMICs that securitize mortgage loans in which the borrower has previously participated in a COVID-19 forbearance program prior to securitization.

Rev. Proc. 2020-26 does not change existing requirements, but it clarifies that forbearances consistent with the below conditions will not result in adverse effects for REMICs with respect to tax status.

Covered Forbearances
Rev. Proc. 2020-26 applies to mortgage loans currently held by a REMIC or an investment trust, as well as to mortgage loans acquired by a future REMIC regardless of whether a loan conforms to CARES Act requirements (i.e., GSE loans), so long as those loans fit the following conditions:

- Forbearance is provided by a holder or servicer and is made pursuant to a forbearance program for borrowers experiencing a financial hardship related to COVID-19; and
- The governing forbearance program is through a state-mandated loan forbearance program of three to six months or some similar program.

In these cases, the loans will not be considered to have been subject to a “significant modification” as per the Rev. Proc. 2020-26. In the event that the loan is already included in a REMIC, the action will not jeopardize the REMIC’s tax status. A loan meeting the above forbearance criteria may be included in a future REMIC on the basis that there would be no concerns about “improper knowledge” that, pre-issuance, any of the REMIC parties had prior understanding that the loan would default.
Forbearance Policies
The below information is covered elsewhere in the document. It is reproduced here for your convenience.

Federally Backed Multifamily Mortgage Forbearance

Overview
The CARES Act allows multifamily borrowers with a federally backed mortgage (e.g., GSE or HUD) to obtain up to 90 days of forbearance if they are experiencing a COVID-19 financial hardship. If borrowers are in forbearance, they may not evict tenants for nonpayment of rent for the duration of the forbearance. They also may not change fees or penalties for nonpayment of rent. Fannie Mae and Freddie Mac, and their regulator the Federal Housing Finance Agency (FHFA), had previously announced a similar forbearance program.

Key Terms

• **Forbearance Period:** When a multifamily borrower requests a forbearance, the servicer shall:
  o Document the financial hardship;
  o Provide the forbearance for up to 30 days; and
  o Extend the forbearance for up to two additional 30-day periods upon the request of the borrower provided that, the borrower’s request for an extension is made during the covered period, and, at least 15 days prior to the end of the original forbearance period. ([Public Law 116-136, §4023(c)]).

• **Renter Protections During Forbearance Period:** A multifamily borrower that receives a forbearance under this section may not, for the duration of the forbearance:
  o Evict or initiate the eviction of a tenant from a dwelling unit located in or on the applicable property solely for nonpayment of rent or other fees or charges; or
  o Charge any late fees, penalties, or other charges to a tenant described in paragraph (1) for late payment of rent.
  o May not require a tenant to vacate a dwelling unit located in or on the applicable property before the date that is 30 days after the date on which the borrower provides the tenant with a notice to vacate; and
  o May not issue a notice to vacate until after the expiration of the forbearance.

• **Federally Backed Multifamily Mortgage Loan Definition:** The term “Federally backed multifamily mortgage loan” includes any loan (other than temporary financing such as a construction loan) that
  o Is secured by a first or subordinate lien on residential multifamily real property designed principally for the occupancy of 5 or more families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and
  o Is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or agency, or is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association

• **Section 4024 prevents eviction filings for federally backed mortgage (multifamily and single family), and certain housing programs (vouchers). The moratorium extends 120 days after the passage of the CARES Act (March 27, 2020).**

Resources

• [Text of CARE Act](#)
• [FHFA Forbearance Announcement](#)
• [Fannie Mae Multifamily Forbearance Notice](#)
• [Fannie Mae Multifamily Updates](#)
• [Freddie Mac Multifamily Updates](#)
April 7, 2020: The Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), the Consumer Financial Protection Bureau (CFPB), and the State Banking Regulators (hereafter, the agencies) issued a revised interagency statement to provide additional information to financial institutions who are working with borrowers affected by COVID-19. Highlights from the statement include:

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