NWCUA CARES Act Summary – March 30, 2020

Introduction

In response to the COVID-19 outbreak, Congress passed H.R. 748, the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020. President Donald Trump signed the CARES Act into law on the same day. You can view the CARES Act online here.

The CARES Act is intended as Phase III of federal government support in the wake of the coronavirus health crises and the associated economic fallout. The Act provides a package of over $2 trillion in stimulus to help combat the health crisis and send economic relief to workers and businesses affected by restrictions meant to stop the outbreak's spread.

Below is a summary and analysis of five key sections of the CARES Act. If you have questions about the Coronavirus Aid, Relief, and Economic Security Act, contact the NWCUA's Compliance Team at 800.546.4465, or compliance@nwcua.org.

CARES Act Economic Stabilization and Assistance to Severely Distressed Sectors of the U.S. Economy

The relief found in the Economic Stabilization and Assistance to Severely Distressed Sector of the U.S. Economy affects multiple sectors of the economy. While the Economic Stabilization title of the Act authorizes the Secretary of the Treasury to make loans, loan guarantees, and other investments in support of eligible businesses to states and municipalities in an amount of up to $500 billion, there are also provisions that directly affect credit unions. It is expected that the U.S. Department of Treasury and perhaps impacted agencies will release guidance in the coming weeks to provide further details of the provisions of the law. The guidance may make changes to the summary below.

Does the Act increase the National Share Insurance Fund's coverage for member accounts?

Yes, the Act authorizes the National Credit Union Administration (NCUA) to temporarily increase share insurance coverage in an unlimited amount (with NCUA Board approval) for noninterest-bearing transaction accounts in any federally insured credit union. Increases in the coverage shall terminate no later than Dec. 31, 2020.

How does the Act affect the accounting rules for troubled debt restructurings (TDRs)?

Beginning March 20, 2020, credit unions may elect to suspend requirements under U.S. GAAP for loan modifications related to the coronavirus pandemic that would otherwise be categorized as a troubled debt restructuring (including for impairment for accounting purposes). NCUA must defer to a credit union regarding the determination to make a suspension.

Any suspension shall be applicable for the term of the loan modification, with respect to any modification, including a forbearance arrangement, an interest rate modification, a repayment plan, and any other similar arrangement that defers or delays the payment of principal or interest that occurs during the applicable period for a loan that was not more than 30 days past due as of Dec. 31, 2019. Such election may last no later than 60 days after the lifting of the coronavirus national emergency.

For modified loans for which a suspension is applied, credit unions should continue to maintain records of the volume of loans involved; NCUA may collect data about such loans for supervisory purposes.

What impact does the Act have on the FASB's implementation of CECL?

No credit union shall be required to comply with the Financial Accounting Standards Board's (FASB) Accounting Standards Update No. 2016-13 – Measurement of Credit Losses on Financial Instruments, including the current expected credit losses methodology for credit losses (CECL) through the end of the national emergency or Dec. 31, 2020.

How does the Act apply to credit unions and the Central Liquidity Facility?

The Act enhances access to the CLF for natural persons, adds corporate credit union access to the CLF, and increases resources to meet liquidity needs. These provisions sunset on Dec. 31, 2020.

What provisions are included in the Act to protect the credit of members?

The Act requires furnishers of information to credit bureaus, which agree to an accommodation with respect to one or more payments on a credit obligation or consumer's account. The consumer then makes the payments, or is not required to make one or more payments pursuant to the accommodation, to report affected accounts as "current," or as the status reported prior to the accommodation during the period of the accommodation unless the borrower becomes current (so long as the borrower meets the obligations under the modification). It does not apply to an obligation or account that has been charged-off.

What are the provisions for mortgages?

The Act provides for the right of a consumer to request a forbearance with regard to a federally backed mortgage loan, which includes any loan that is secured by a first or subordinate lien on a residential real property (including individual units of condominiums and cooperatives). This is designed principally for the occupancy of 1 to 4 families, where the borrower is experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency and regardless of delinquency status, by submitting a request to the servicer and affirming that the borrower is experiencing a financial hardship during the COVID-19 emergency for a period of 180 days, with the potential for a second 180-day period.

The servicer shall not require any other documentation than the borrower's request and attestation. It will provide the forbearance without fees, penalties, or interest (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the forbearance for up to 180 days. The 180 days may be extended for an additional period of up to 180 days at the request of the borrower, provided that the borrower's request for an extension is made during the covered period, and, at the borrower's request, either the initial or extended period of forbearance may be shortened.

What provisions are there in the Act with regard to foreclosures?

The Act imposes a moratorium on foreclosures except with respect to a vacant or abandoned property. A servicer of a Federally backed mortgage loan may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for not less than the 60-day period beginning on March 18, 2020.

Do the mortgage provisions apply to multifamily borrowers?

Yes, the Act provides for a forbearance upon request from a multifamily (five or more units) borrower with a Federally backed multifamily mortgage loan that was current on its payments as of Feb. 1, 2020, and, upon receipt of the request, the servicer shall document the financial hardship and provide an initial forbearance for up to 30 days, with the possibility of extending an additional two 30-day periods, so long as the request is made during the covered period, and, at least 15 days prior to the end of the forbearance period.

CARES Act Unemployment Assistance, Business Provisions, Health Plan and Labor Provisions

Part of the CARE Act's relief provides additional Pandemic Unemployment Assistance, business provisions for employee retention credits, delayed payment of employer payroll taxes, and various health plan and labor provisions.

How is the CARES Act providing pandemic unemployment assistance?

The CARES Act provides support for unemployment assistance in multiple ways. Five of the key provisions are:

1. Section 2102 - Creates a temporary Pandemic Unemployment Assistance program. The Pandemic Unemployment Assistance program will run through Dec. 31, 2020, providing unemployment benefits to those who do not traditionally qualify for regular unemployment compensation and are unable to work because of the COVID-19 emergency. The Pandemic Unemployment Assistance will cover self-employed workers (gig workers and independent contractors), part-time workers, and those with limited work histories.
2. Section 2104 - Provides an additional $600 in Federal Pandemic Unemployment Compensation to the weekly unemployment compensation an individual receives from their state. This benefit will be for up to four months and is taxable, but will be disregarded in determining Medicaid or CHIP eligibility.
3. Section 2105 - Provides federal funding to states to pay the cost of the first week of unemployment benefits through Dec. 31, 2020, for states that choose to pay recipients as soon as they become unemployed instead of waiting one week before the individual is eligible to receive benefits.
4. Section 2106 - Provides states with flexibility to hire temporary staff, rehire former staff, or take other steps to quickly process unemployment claims.
5. Section 2107 - Provides for an additional 13 weeks of federally funded unemployment compensation for individuals who have exhausted their state unemployment benefits.

Section 3603 - Applications for unemployment compensation and assistance with the application process, to the extent practicable, can be accessible in person, by phone, or online.

What are some of the business provisions of the CARES Act?

The CARES Act contains several business provisions. A few ones of particular interest include:

- The CARES Act provides for a refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 emergency. The credit is available to employers, including non-profits, (1) whose operations have been fully or partially suspended as a result of a government order limiting commerce, travel or group meetings, or (2) gross receipts declined by more than 50% when compared to the same quarter in the prior year. The credit is based on qualified wages paid to the employee and covers the first $10,000 of compensation, including health benefits, paid to an eligible employee.

- The CARES Act allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax through the end of 2020, with all 2020 deferred amounts due in two equal installments – one at the end of 2021 and the other at the end of 2022. The deferral is not provided to employers that avail themselves of SBA 7(a) loans designated for payroll. *(Refer to NWCUA Compliance bulletin CARES Act Keeping Workers Paid on page 7)*.
- The CARES Act also relaxes limitations on Net Operating Losses (NOLs). The provision allows an NOL arising in a tax year beginning in 2018, 2019, or 2020 to be carried back five years.

Businesses should consult their tax professionals regarding the correct accounting of these provisions.

What are the health plan provisions?

The CARES Act has several provisions that apply to preventive services and provider and health plans. Some of these provisions include:

- A safe harbor for telehealth services provided under a high-deductible plan (HDHP). Under the safe harbor, an HDHP may provide coverage for all telehealth and other remote care services before the plan's deductible is satisfied without disqualifying a participant from participating in a health savings account.
- The CARES Act requires group health plans and health insurance issuers to cover, without cost-sharing, any qualifying coronavirus preventive services.
- The CARES Act also requires the Health and Human Services Department to issue guidance about sharing patients' protected health information.

Credit unions should discuss the changes for health plans under the CARES Act and Families First Coronavirus Response Act with their health insurance provider.

What are the labor provisions?

The CARES Act includes several labor provisions and clarifications to provisions from the Families First Coronavirus Response Act (FFCRA). Some of these include:

- A limitation stating that an employer is not required to pay more than $200 per day and $10,000 in aggregate for each employee for paid leave under FMLA.
- A clarification for the FFCRA that an employer is not required to pay more than $511 per day and $5,110 in aggregate for each employee when taking emergency paid sick leave under 1, 2, or 3 of Section 5102(a), or $200 per day and $2,000 in aggregate for each employee when taking emergency paid sick leave under 4, 5, or 6 of Section 5102(a).
- Updates eligible employee under EFMLEA to mean an employee who has been employed for at least 30 calendar days and creates rehiring rules to include an employee who was employed for at least 30 calendar days and was laid off by the employer no earlier than March 1, 2020.

Credit unions should consult with HR legal counsel for additional help in understanding the HR implications of the CARES Act.

CARES Act Keeping Workers Paid

Part of the CARES Act's relief authorizes federally guaranteed loans to qualifying small and medium businesses, which are intended to help the businesses continue to provide their employees with payroll and allow them to retain their employees during the COVID-19 emergency. It is expected that the U.S. Department of Treasury and the SBA will release guidance in the coming weeks to provide further detail on the program. This guidance may make changes to the summary below.

What is the Paycheck Protection Program?

The Paycheck Protection Program allows credit unions and other insured lenders to issue Paycheck Protection Loans, which are backed by the Small Business Administration (SBA) under section 7(a) of the Small Business Act. The CARES Act modifies the SBA guarantee of loans made under Paycheck Protection Program to 100%. The provisions create a 'covered period,' which began on Feb. 15, 2020, and ends on June 30, 2020.

Those eligible for the Paycheck Protection Loans include:

- Small businesses with 500 or fewer employees;
- 501(c)(3) nonprofit organizations with 500 or fewer employees;
- 501(c)(19) veterans' organizations with 500 or fewer employees;
- Tribal business concerns with 500 or fewer employees;
- Sole-proprietors;
- Independent contractors; and
- Self-employed individuals.

Business with more than one physical location, but that do not employ more than 500 and are assigned a North American Industry Classification System code beginning with 72 at the time of disbursal are eligible to receive a Paycheck Protection Loan. In addition, the CARES Act waives certain affiliation rules for businesses in the hospitality and restaurant industries, franchises that are approved on the SBA's Franchise Directory, and small businesses that receive financing through the Small Business Investment Company (SBIC) program.

The SBA is required to register the Paycheck Protection Loans not later than 15 days after the date on which the loan is made using the TIN assigned to the borrower.

In general the Paycheck Protection Loans may be used for:

- Payroll costs;
- Costs related to the continuation of group health care benefits, paid sick leave, paid family or medical leave, and insurance premiums;
- Employee salaries, commissions, or similar compensation;
- Payments of interest on any mortgage obligation, provided that it does not include any prepayment of or payment of principal on the mortgage obligation;
- Rent or lease payments;
- Utilities; and

- Interest on any debt obligation incurred before the covered period.

The maximum loan amount is set at the lesser of $10 million or the calculation based on payroll costs over a designated period or time multiplied by 2.5. For the purposes of determining forgiveness amounts, payroll costs will exclude the compensation of any employees in excess of $100,000 in annualized compensation, including qualified sick leave and qualified family leave wages.

The Paycheck Protection Program provides for the delegation of authority. This is the ability for lenders to make determinations on a borrower's eligibility and creditworthiness without going through all of the SBA's channels. This delegation of authority is extended to all current 7(a) lenders who make these loans to small businesses and will provide the same authority to lenders who join the program to make these loans.

In evaluating the eligibility of a borrower, a lender shall consider if the business:

- Was in operation on Feb. 15, 2020;
- Had employees for whom the borrower paid salaries and payroll taxes; or
- Paid independent contractors, as reported on Form 1099-MISC.

The program provides a limitation on a borrower from receiving both a Paycheck Protection Loan and an Economic Injury Disaster Loan through the SBA for the same purpose. However, a borrower who has an EIDL loan unrelated to the COVID-19 emergency may apply for a Paycheck Protection Loan with an option to refinance the EIDL loan into the Paycheck Protection Loan.

Borrowers applying for a Paycheck Protection Loan must make a good faith certification that:

- The uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;
- Acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;
- The eligible recipient does not have an application pending for a loan under the Paycheck Protection Program for the same purpose and duplicative amounts applied for; and
- During the period from Feb. 15, 2020 to Dec. 31, 2020, that the eligible recipient has not received amounts under the Paycheck Protection Program for the same purpose and duplicative amount as is being applied for.

The Paycheck Protection Program also waives a number of 7(a) program requirements, such as:

- Borrower and lender fees for participation in the program;
- The credit elsewhere test for funds provided under the program; and
- Collateral and personal guarantee requirements under the program.

Other characteristics of the program include:

- For any portion of a loan that was not used for forgiveness purposes, the remaining loan balance will have a maturity of not more than 10 years, and the guarantee for that portion of the loan will remain intact;

- The maximum interest rate is set at 4% APR;
- Borrowers may not be charged any prepayment fees.

Under the Paycheck Protection Program the SBA will consider that each borrower could require the lender to defer loan payments for a period of 6 to 12 months.

The SBA's issued guidance to lenders and agents is to ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets, including veterans and members of the military community, small business concerns owned and controlled by socially and economically disadvantaged individuals.

Does the CARES Act provide for SBA loan forgiveness?

The CARES Act establishes that a Paycheck Protection Loan may receive forgiveness equal to the amount spent by the borrower during an 8-week period after the loan origination date for payroll costs, interest on any mortgage, payment of rent or any lease, and payment for utility services. The mortgage interest, rent or lease, and utility services must have been in place prior to Feb. 15, 2020.

The amounts forgiven may not exceed the principal amount of the Paycheck Protection. In addition, as encouragement to maintain or even bring back workers, the amount forgiven will be reduced proportionally by any reduction in employees retained compared to the prior year and reduced by the reduction in pay of any employee beyond 25% of their prior year compensation.

Borrowers that re-hire employees who have already been laid off due to the COVID-19 emergency will not be penalized for having a reduced payroll at the beginning of the period and the payroll costs of any such employee is eligible for loan forgiveness. The payroll forgiveness extends to additional wages paid to tipped employees.

Each borrower seeking loan forgiveness must apply with the lender servicing the loan. The application will need to include:

- Documentation verifying the number of full-time equivalent employees on payroll and pay rates for current year and the prior year periods including:
    - Payroll tax filings reported to the IRS; and
    - State income, payroll, and unemployment insurance filings.
- Documentation, including cancelled checks, payment receipts, transcripts of accounts, or other documents verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments;
- A certification from the representative who is authorized to make a certification on behalf of the business that:
    - The documentation presented is true and correct; and
    - The amount for which forgiveness is requested was used to retain employees, make interest payments on a covered mortgage obligation, make payments on a covered rent obligation, or make covered utility payments; and
    - Any other documentation that the SBA determines as necessary.

The borrowers must submit the documentation since the CARES Act prohibits forgiveness without documentation. Credit unions will have up to 60 days after receiving an application for loan forgiveness to make a decision on the application.

The amounts forgiven will be treated as a cancelation of debt by the lender and included in an application to loan guaranteed under section 7(a) of the Small Business Act. Upon receiving the lender's report of an expected loan forgiveness for a loan or a pool of loans, the SBA will purchase such amount of the loan from the lender. The SBA has 90 days after the date of forgiveness to remit to the lender the amount equal to the forgiveness, plus any interest accrued through the date of payment.

The cancelation of indebtedness resulting from the loan forgiveness will not be included in the borrower's taxable income.

The SBA is required to issue guidance and regulations for the loan forgiveness of Paycheck Protection Loans not later than 30 days after the CARES Act is enacted. The CARES Act was enacted on March 27, 2020, which gives the SBA until April 26, 2020, to issue the guidance and regulations.

We're not currently offering SBA 7(a) lending. Can we participate in the Paycheck Protection Loan Program?

Yes, the CARES Act establishes the authority of the U.S. Department of Treasury, and other federal financial regulatory agencies (including the NCUA), to authorize banks and insured credit unions to participate in loans made under the Paycheck Protection Program.

For credit unions admitted under this authority, they will give the Treasury the authority to issue regulations and guidance for terms concerning lender compensation, underwriting standards, interest rates, and maturities. Interest rates are capped at 4% under the Paycheck Protection Program.

What are the Emergency EIDL grants and loans, and what can they be used for?

The CARES Act expands the eligibility for access to Economic Injury Disaster Loans (EIDL) to include:

- A business with not more than 500 employees;
- Any individual who operates under a sole proprietorship, with or without employees, or as an independent contractor;
- A cooperative with not more than 500 employees;
- An Employee Stock Ownership Plan organization with not more than 500 employees; or
- A tribal small business concern with not more than 500 employees.

The CARES Act also adds to the list of eligible entities:

- Private nonprofit organizations
- Small agricultural cooperatives

The CARES Act requires that for any SBA EIDL loans made in response to the COVID-19 emergency, that the SBA waive any personal guarantee on advances and loans below $200,000 as long as the applicant has been in business for at least 1 year prior to the disaster. In addition, there are provisions that allow the SBA to approve and offer EIDL loans based solely on the applicant's credit score or to use an alternative method to determine the applicant's ability to repay.

The EIDL provisions establish an Emergency Grant to allow an eligible entity that has applied for an EIDL loan to request an advance on the loan of not more than $10,000, which the SBA must distribute within 3 days. The applicant is not required to repay advance payments, even if the EIDL loan is denied after the advance was made. The advance payments must be used for providing paid sick leave to employees, maintaining payroll, meeting increased costs to obtain materials, making rent or mortgage payments, and repaying obligations that cannot be met due to revenue losses.

The advance payment is considered loan forgiveness if the applicant transfers into a loan made under the Paycheck Protection Program.

CARES Act Retirement Savings Plan Provisions (Sections 2202 and 2203)

Part of the CARES Act's relief permits individuals in eligible retirement plans to receive coronavirus-related distributions for any taxable year up to $100,000. In addition, the CARES Act waives the required minimum distribution for certain defined contribution plans and IRAs for calendar year 2020.

What are the special rules for use of retirement funds in Section 2202?

Section 2202 of the CARES Act allows individuals to receive a coronavirus-related distribution up to $100,000 without incurring the 10% early withdrawal penalty from eligible retirement accounts for coronavirus-related purposes on or after January 1, 2020.

Eligible retirement plans are:

- Individual Retirement Account described in section 408(a);
- Individual Retirement Annuity described in section 408(b) (other than an endowment contract);
- A qualified trust;
- Annuity plan described in section 403(a);
- Eligible deferred compensation plan described in section 457(b); and
- Annuity contract described in section 403(b).

The distribution can only be made to a "qualified individual" who is defined as an individual:

I. Who is diagnosed with COVID-19 by a test approved by the CDC;
II. Whose spouse or dependent is diagnosed with COVID-19 by a test approved by the CDC; or
III. Who experiences adverse financial consequences as a result of being quarantined, being furloughed or laid off or working hours reduced due to such virus or disease, being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or other factors as determined by the Secretary of Treasury.

Credit union retirement plan administrators may rely on a certification that the individual has met one of the criteria to be a qualified individual in determining whether any distribution is a coronavirus-related distribution.

The CARES Act allows individuals to repay any coronavirus-related distribution during a 3-year repayment period to any eligible retirement plan. Repayment within the three-year period will be treated as having satisfied the general 60-day rollover requirement.

In the case of any coronavirus-related distribution, income attributable to such distributions would be subject to tax over three years, any amount required will be included in the gross income for the taxable year unless the taxpayer elects not to have it apply for any taxable years. Members should consult with their tax professionals regarding their options.

What are the temporary waiver of required minimum distribution rules for certain retirement plans and accounts in Section 2203?

Section 2203 waives the required minimum distribution (RMD) for certain defined contribution plans and IRAs for calendar year 2020. Due to recent market declines caused by the economic fallout of the COVID-19 emergency, many participants 70 ½ and older are receiving RMDs from severely impacted IRAs and other defined contribution plans.

The CARES Act provides relief to individuals who would otherwise be required to withdraw funds and applies to individuals who attained 70 ½ or older in 2019 and allows them to waive distributions made on or after January 1, 2020.

Plans or annuity contracts need to be amended with Section 2203 by the last day of the first plan year beginning on or after January 1, 2022.

CARES Act Recovery Rebates

Part of the CARES Act's relief provides recovery rebates for individuals. These direct cash payments are intended to provide a boost to the current struggling economy by giving money to those who are in the most need of additional support.

Who is eligible for the recovery rebates, and how much will they receive?

For purposes of the recovery rebate an 'eligible individual' means any individual other than:

- Any nonresident alien individual;
- Anyone who was claimed as a dependent on another person's tax return; or
- An estate or trust.

The rebates include:

- $1,200 for an eligible individual ($2,400 in case of eligible individual filing a joint return; and
- $500 per qualifying child.

Will the amount of the recovery rebate be adjusted based on someone's income?

The amount of the rebate will start phasing out based on the taxpayer's adjusted gross income. The phase out starts at $75,000 for individuals, $112,000 for head of household, or $150,000 for married filing jointly. The rebate amount is reduced by $5 for every $100 of the taxpayer's income that exceeds the phase-out threshold and is completely eliminated for single filers with incomes over $99,000, $146,500 for head of household filers with one child, or joint filers with incomes over $198,000 with no children.

How will the recovery rebates be delivered?

The IRS will disburse the refunds electronically to any account to which the taxpayer has authorized, on or after Jan. 1, 2018, to receive their tax refund from the IRS. If the IRS does not have an authorized account to send the rebate to electronically, a Treasury check will be mailed.

Will the IRS notify people after the rebates have been sent?

Not later than 15 days after the IRS has distributed a payment to an eligible taxpayer, the IRS will send a notice by mail to the taxpayer's last known address. This notice will indicate the method the payment was sent, the amount of the payment, and a phone number to contact the appropriate point of contact at the IRS to report any failure to receive such payment.

When will the recovery rebates be sent?

The CARES Act does not contain a specific date other than to say the rebates should be sent as rapidly as possible.

What will people need to do in order to receive the rebate?

For the vast majority of individuals, no action will be needed on their part. The IRS will use the taxpayer's 2019 tax return, or their 2018 tax return if they have not yet filed their 2019 tax return.

The CARES Act also instructs the Treasury in coordination with the Commissioner of Social Security to engage in a public campaign to alert all individuals of their eligibility for the recovery rebates and how to receive it if they have not filed either a 2019 or 2018 tax return.

Are recovery rebates taxable?

The recovery rebates would not be counted as taxable income for the recipients since the rebates are a credit against tax liability and are refundable for taxpayers with no liability to offset.

What about seniors whose only income is from Social Security or a veteran whose only income is veterans' disability?

Those whose income is only social security, veterans' disability, or other federal benefit payment, are still eligible to receive the recovery rebates. This is contingent on them not being a dependent of another taxpayer.