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COVID-19: The New Stimulus Package

The New Stimulus Package: CARES Act Overview for Latin American Businesses

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Presenters – The New Stimulus Package: CARES Act Overview for Latin American Businesses

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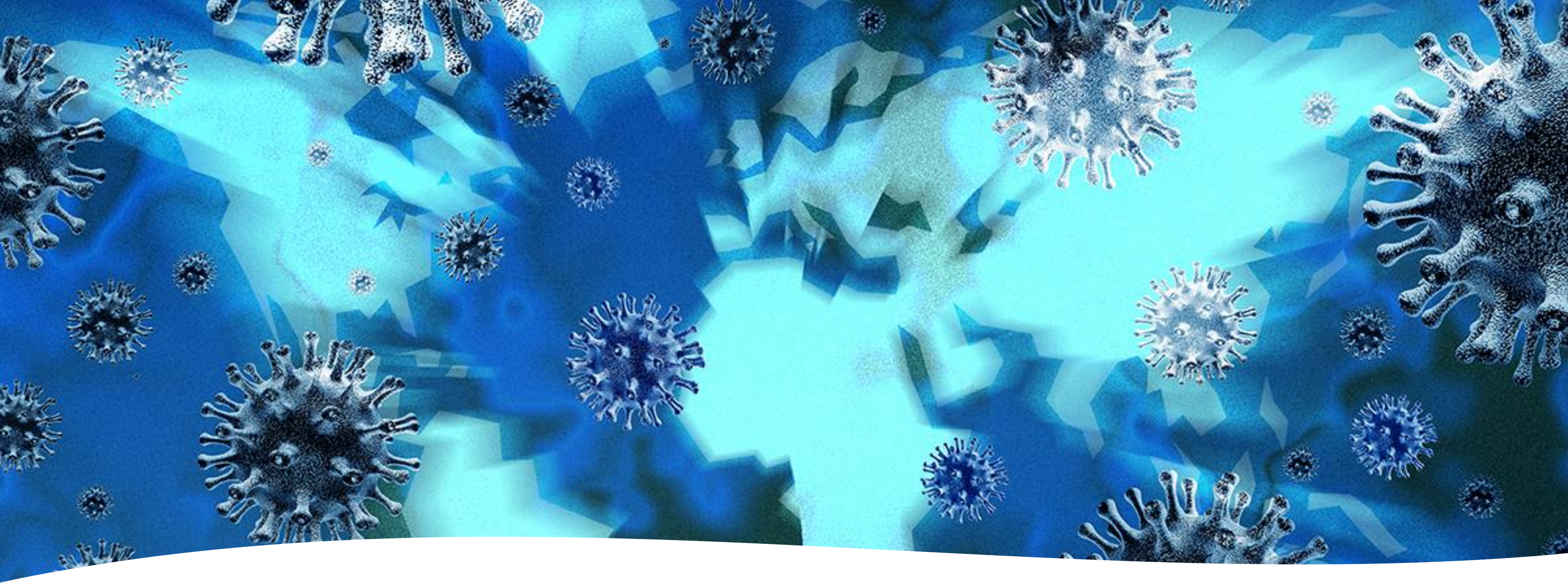


Topics to be discussed

I. Legislative Background

II. Overview of Title I of CARES Act

III. Overview of Title IV of CARES Act

   a. Relief for Specific Industries

   b. Relief for Main Street Businesses

   c. Relief Under Recent Treasury and Fed Programs

   d. Relief for Certain Borrowers

IV. Legislative and Regulatory Outlook

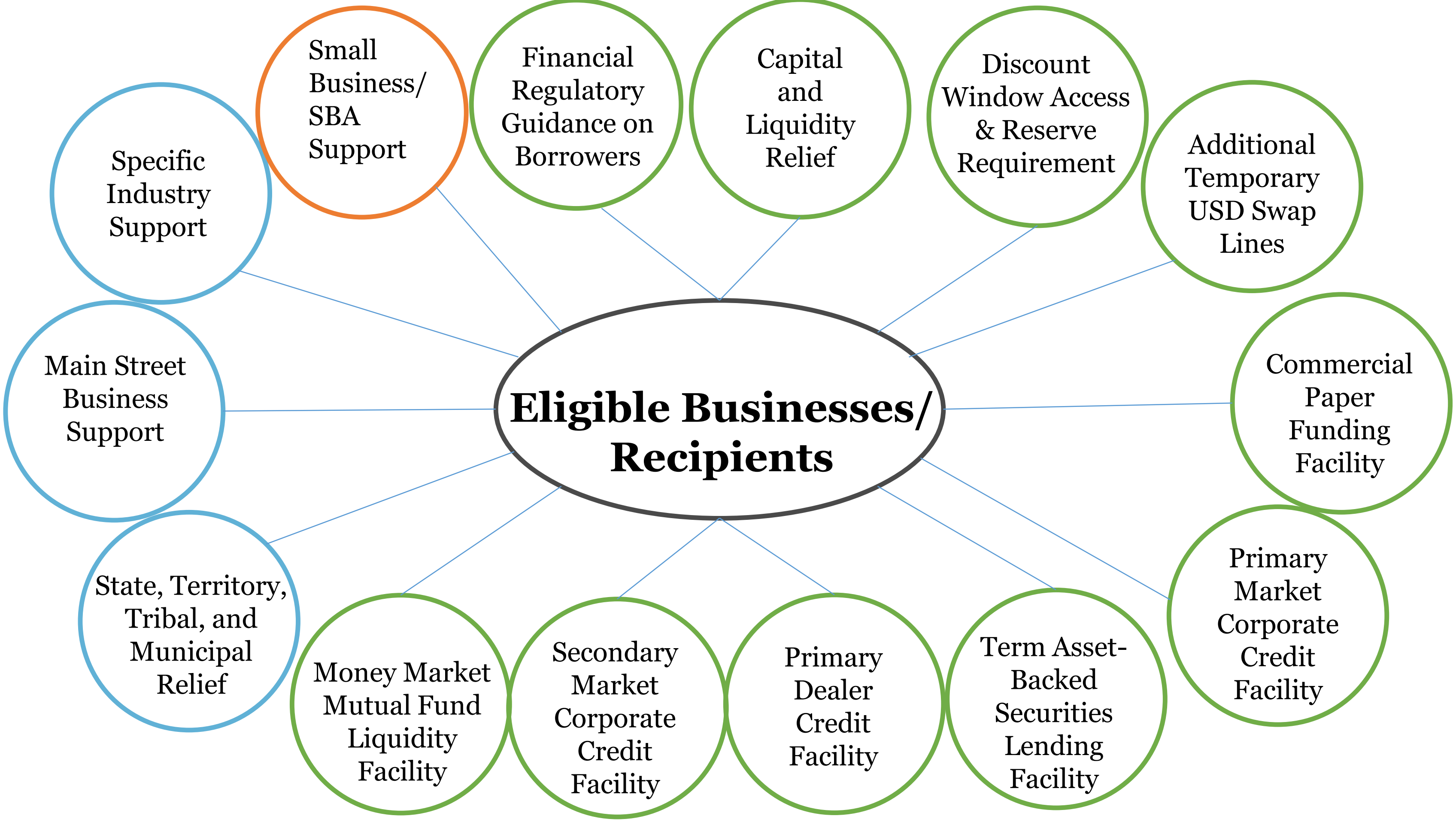
Federal Legislation Relating to COVID-19

- March 6: Coronavirus Preparedness and Response Supplemental Appropriations Act ($8.3 B)
- March 18: Families First Coronavirus Response Act (over $100 B)
- March 27: Coronavirus Aid, Relief and Economic Security (CARES) Act ($2.2 Trillion)
- April 23: Paycheck Protection Program and Healthcare Enhancement Act ($480 billion)

Major Congressional Actions

- CARES Act 3.5 (April 24)
  - $484 billion in coronavirus aid that adds more than $320 billion to the Paycheck Protection Program and increases funding for other small-business relief and for health care facilities.
  - The Act, the fourth aid package since the beginning of the pandemic, brings the USA's response to an unprecedented $3 trillion.

Title I, Title IV, and Other Federal Stimulus Programs



Title I CARES Act Credit Programs

Small Business Interruption Loans

- **Small or Other Business Interruption Loans**
  - Paycheck Protection Program (PPP) under CARES Act and SBA 7 (A)
    - Eligible Businesses and Entities
    - SBA Affiliation Rules
    - Borrowing Amounts
    - Loan Forgiveness
    - Additional Details
  - Economic Injury Disaster Loan (EIDL) under SBA 7(B) lending program

Paycheck Protection Program

- **Eligible Businesses and Entities**
  - Sole proprietorship or independent contractor and eligible self-employed individuals
  - Small business or other concern that has 500 or fewer employees; or the applicable size standard in number of employees as provided by SBA, if higher
  - Certain passive and other businesses are ineligible
  - Affiliation waived for three types of business:
    - businesses with fewer than 500 employees at one location in the accommodation and food service industry
    - businesses that operate franchises and have a SBA franchise identification code
    - businesses that receive assistance from Small Business Investment Corporation

Paycheck Protection Program Guidance

- Small businesses, sole proprietorships, independent contractors and self employed persons can apply for PPP loans to cover their payroll and other certain expenses through existing SBA lenders.
- Federally insured depository institutions, federally insured credit unions, Farm Credit System institutions, and depository or non-depository financing providers may issue PPP loans.
- An additional $310 billion was added in funding on April 24, 2020.

Paycheck Protection Program

- **Affiliation Rules**
  - Become important when SBA is deciding whether a business's affiliations preclude them from being considered "small"
  - Exists when one business controls or has the power to control another through ownership, management, or other relationships or interactions between the parties
  - Not waived for nonprofits and portfolio companies of private equity-backed, hedge fund-backed, and venture capital-backed businesses; the funds themselves are ineligible
  - Highly specific fact-based inquiry

Paycheck Protection Program

- **Affiliation through Control**
  - Deemed to be in control of all entities in which you own more than 50% of the concern's voting stock
  - Minority shareholder deemed to be in control by SBA if they have the right to appoint board members or have other veto rights
- **Affiliation through Common Management**
  - When officers, directors, managing members, or general partners of a concern control the BOD and/or the management of another business concern
  - A management agreement also can give rise to affiliation

Paycheck Protection Program

- **Borrowing Amounts**
  - Intended to cover 8 weeks of payroll expenses and any additional amounts for making payments towards debt
  - Loan Size determined in one of three ways:
    - In business between February 15, 2019 to June 30, 2019
      - Seasonal Business Rules
    - Not in business between February 15, 2019 – June 30, 2019
    - EIDL taken between February 15, 2020 and June 30, 2020 can be refinanced into a PPP loan

Paycheck Protection Program

- **Loan Forgiveness**
  - Payroll costs incurred during covered 8 week period
  - Reduced by laid-off employees or employees who had their salaries cut by > 25%
  - Reinstituted if employees laid off or reduced between February 15-April 26, 2020 are rehired or their salaries are reinstated by June 30, 2020
  - Principal plus interest forgiven
  - Will not constitute cancellation of indebtedness income for federal tax purposes
  - Unforgiven portion pursuant to lender terms, generally 21% interest and additional 18 month term

Paycheck Protection Program

- **Additional Details**
  - Unsecured loan
  - No precedence over existing debt
  - Collateral and personal guarantees not required
  - Prepayment penalties waived
  - Unforgiven portion term of 2 years at 1%
  - Application deadline is June 30, 2020

Paycheck Protection Program

- **Recent Key Guidance:**
  - FAQ 31 relating to large companies with adequate sources of liquidity (April 23, 2020)
  - New Interim Final Rule relating to private equity and hedge funds (April 24, 2020)

Economic Injury Disaster Loans

- Up to 2 million, 30 year term at 3.75% (profit) or 2.75% (nonprofit)
- Grant award of up to $10,000, approved in 3 days
- If apply for both, EIDL subtracted from the amount forgiven under PPP
- Cannot be used for same purposes:
  - Designed as working capital loans to pay bills that otherwise cannot be paid due to disaster, such as fixed debt, accounts payable, etc.
  - Not to be used for business expansion
  - Additional $10 billion in funds added to program on April 24, 2020

Title IV CARES Act Credit Programs

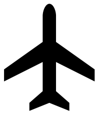
Title IV of the CARES Act

- Provides **$500 billion** to Treasury's Exchange Stabilization Fund to provide loans, loan guarantees, and other investments
  - Direct lending to specific industries
  - **$454 billion** is available for Federal Reserve loans, loan guarantees, and investments to **eligible businesses**, states, and municipalities
- An "**Eligible Business**" is a U.S. business that has not otherwise received adequate economic relief under the CARES Act's other provisions

Credit Support for Specific Industries

The Secretary of the Treasury is authorized to make loans and loan guarantees to:

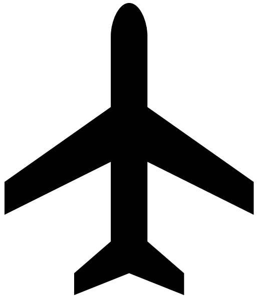
- The airline industry
  - Passenger air carriers **($25 billion)**
  - Cargo air carriers **($4 billion)**
- Businesses critical to national security **($17 billion)**




- Performing under a "DX"-priority rated contract or order under the Defense Priorities and Allocations System regulations
- Operating under a valid top secret facility security clearance
- Recommended and certified by SECDEF or DNI in the discretion of the Treasury Secretary

Businesses in these sectors are eligible if:

- Alternative financing is not reasonably available and the assistance is "prudently incurred"
- It is domiciled in the U.S. and has significant operations and a majority of its employees based in the U.S.



Loan Conditions for Specific Industries

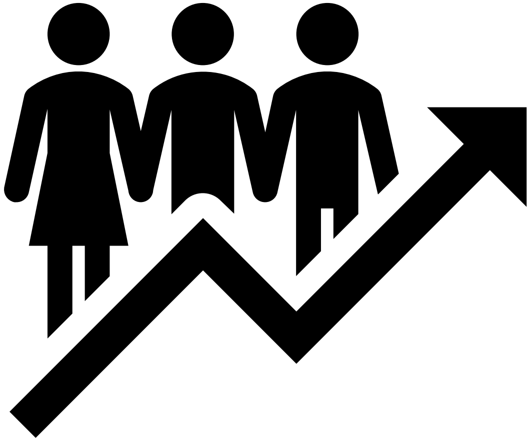
- Secured or made at interest rate reflecting risk of loan
- Duration shorter than 5 years
- Employment level may not decrease by more than 10% from March 24 level
- Not eligible for loan forgiveness
- Restrictions on executive compensation
- Restrictions on dividends and stock buybacks
- Real-time public disclosure terms of loans
- The government must receive warrants, equity, or senior debt
- The Secretary of Transportation may require air carriers to maintain some scheduled services

Payroll Support for Air Carriers ✈

- Treasury is authorized to provide payroll support payments to passenger air carries, cargo air carriers and contractors for air carries.
  - A contractor performs catering functions or services at an airport including loading and unloading, passenger assistance, security, ticketing and check in, ground handling of aircraft or cleaning and sanitization functions.
- Recipients of funds must be organized under the laws of the United States, and the president at least 2/3 of the board of directors must be U.S. Citizens.
- The maximum award amount is the compensation paid by the applicant to its employees from April 1, 2019 through September 30, 2020.
- The awards must be used exclusively for the continuation of employee wages, salaries and benefits.
- Recipients must refrain from laying off or furloughing employees or reducing pay rates and benefits until September 30, 2020.
- Recipients are prohibited from conducting stock buybacks and issuing dividends until September 30, 2021.
- Applications may not be accepted after April 27, 2020.

Main Street Lending Program (MSLP)

- The CARES Act does not limit the discretion of the Federal Reserve to establish a "**Main Street Lending Program**" or other similar program or facility that supports lending to small- and mid-sized businesses on terms consistent with the authority given to the Federal Reserve by Section 13(3) of the Federal Reserve Act

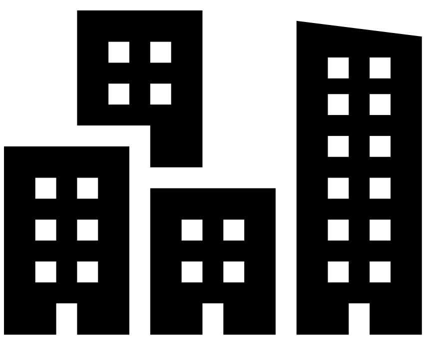


Main Street Lending Program Implementation

- On April 9, the Federal Reserve created two main street lending programs
  - New Loan Facility
  - Expanded Loan Facility to increase loans existing before April 9
- The Federal Reserve will purchase up to $600 billion in main street loans, and the Treasury will inject $75 million into the program to support loans to businesses.
- The Federal Reserve will purchase a **95%** participation interest in MSLP loans while the lender financial institution will retain a **5%** interest in the loan.

MSLP Eligibility

- Lenders
  - U.S.-insured depository institutions (*i.e*, banks, thrifts and credit unions)
  - Bank holding companies
  - Savings and loan holding companies



- Borrowers
  - In good financial standing prior to the COVID-19 crisis
  - Employ fewer than **10,000 workers** or have 2019 revenues less than **$2.5 billion**
  - organized in the United States
  - significant operations in and a majority of its employees based in the United States
  - *May not* use both the New Loan Facility and the Expanded Loan Facility
  - *May not* use MSLP and Primary Market Corporate Credit Facility
  - *May* use both MSLP and **PPP**

MSLP Terms

- Minimum size: $1 million.
- Maximum size:
  - **New Loan Facility**: lesser of $25 million and an amount that, together with the borrowers existing and committed but undrawn debt, does not exceed **4** times the borrower's 2019 EBITDA
  - **Expanded Loan Facility**: the lesser of $150 million, **30%** of the borrower's existing outstanding and committed but undrawn bank debt, or an amount that, when added to the borrower's existing and committed but undrawn debt, does not exceed **6** times the borrower's 2019 EBITDA
- Adjustable interest rate: SOFR plus **250** to **400** basis points
- Term: **4 years**
- Deferral: **1 year**
- Prepayment: permitted without penalty or premium
- Collateral:
  - **New Loan Facility**: none required
  - **Expanded Loan Facility**: required to be secured pro rata with the existing loan if collateralized

MSLP Conditions

- Borrower must make *reasonable efforts* to maintain **payroll** and retain employees during the term of the loan.
- Borrower *must not* pay **dividends** or **repurchase** its stock for 12 months after the loan is repaid.
- Borrower must comply with CARES Act compensation limits on employees earning over $425,000 and $3,000,000 in 2019.

Title IV Accountability Provisions

- CARES Act establishes a Congressional Oversight Commission and Pandemic Response Accountability Committee
- CARES Act establishes within Treasury an Office of the Special Inspector General for Pandemic Recovery. The Special Inspector General is tasked with conducting audits and investigations of loans and loan guarantees made by Treasury under Title IV
- CARES Act requires Treasury to publish on its website a plain language description about each loan and loan guarantee within 72 hours of the transaction, including the date of application, date of application approval, and identity of the recipient-borrower

Title IV: Facilitation of Bank Lending

- Policy goal of encouraging banks to work with borrowers by easing reporting requirements that could otherwise negatively impact regulatory classifications and loan loss allowances
- Relief from Financial Accounting Standards on Current Expected Credit Loss
- Troubled Debt Restructurings for borrowers affected by COVID-19, suspension of generally accepted accounting principles for reporting loan modifications
- Capital ratio requirement for community banks reduced from 9% to 8%
- Federal Deposit Insurance Corporation authorized to further guarantee obligations of depositary institutions
- Office of Comptroller authorized to exempt transactions from lending limits
- Foreclosure moratorium on federally backed mortgage loans and consumer right to request forbearance

Federal Reserve and Treasury Programs to Facilitate Liquidity for the U.S. Capital Markets

Federal Reserve Facilities

Facility	Function
Primary Market Corporate Facility	Funding backstop for corporate debt Investment-grade ratted issuers
Secondary Market Corporate Facility	Purchase eligible individual corporate bonds and ETFs in the secondary market
Term Asset-Backed Securities Loan Facility	Support asset backed securities market by providing loans for new issuances of AAA tranches
Commercial Paper Funding Facility	Funding backstop for term commercial paper purchases; A1 rating
Money Market Mutual Fund Liquidity Facility	Loans to eligible borrowers to support MMFs

Actions Taken by the Financial Agencies to Encourage Lending and Facilitate Loan Modifications

1. **Meeting the Financial Needs of Affected Borrowers**
   - On March 9, 2020, the Federal Reserve, FDIC, OCC, NCUA, and state bank regulators issued a statement "encouraging" financial institutions to meet the financial services needs of their customers and members in areas affected by COVID-19
2. **Community Reinvestment Act Favorable Consideration**
   - On March 19, 2020, the Federal Reserve, FDIC, and OCC issued a joint statement on Community Reinvestment Act (CRA) consideration for activities in response to COVID-19, stating that for CRA purposes, the agencies will favorably consider retail banking and lending activities that meet the needs of affected low- and moderate-income individuals, small businesses, and small farms, consistent with safe and sound banking practices and applicable laws, including consumer protection laws

Actions Taken by the Financial Agencies to Encourage Lending and Facilitate Loan Modifications (Continued)

3. Short-Term Loan Modifications

On March 23, 2020, the Financial Agencies issued an Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus. The Guidance does two key things:

- Short-term loan modifications (for loans of all types) granted to borrowers that have become financially distressed as a result of economic conditions created by COVID-19 will not result in a loan being classified a troubled debt restructuring (TDR). According to U.S. GAAP, a restructuring of a loan or other credit constitutes a TDR if the lender/creditor, for economic or legal reasons related to the debtor's financial difficulties, grants a concession to the debtor that it would not otherwise consider
    - The Financial Agencies have confirmed with staff of the Financial Accounting Standards Board that short-term (e.g., 6 months or less) loan modifications made on a good faith basis in response to COVID-19 for borrowers who were current prior to any relief, are not TDRs
    - Modification actions can include payment deferrals, fee waivers, extensions of repayment terms, or other delays in payment that are insignificant
- Bank regulators will not criticize bankers for granting short-term loan modification relief, if the action taken is done in good faith. This represents a departure from past practice (Great Recession)

Paycheck Protection Program Lending (PPPL) Facility

- In order to provide the necessary liquidity for Paycheck Protection Program loans to small businesses affected by COVID-19 under Title II of the CARES Act, the Federal Reserve banks will lend to PPP lenders, secured by the PPP loans.
- Under the interim final rule issued April 9, PPP loans will receive a zero percent risk weight under the regulatory capital rules so that risk-based capital requirements will not prevent lenders from participating in the PPPL facility.

Legislative and Regulatory Outlook and Update

Future Congressional and Regulatory Actions

- Congress is likely to consider at least one more Coronavirus-related bill
  - Senate will return to D.C. on May 4
  - House schedule is uncertain, but Speaker Pelosi is developing the "next bill"
- Subsequent legislation will reportedly focus on economic growth
  - Infrastructure funding (roads and bridges, broadband, clean water)
  - Assistance to state and local governments
  - Liability protections for employers and workers
  - More healthcare resources for testing, tracing, quarantine and treatment
  - Any technical changes required to the first four bills
- Stay Tuned!

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