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INSIGHT

CARES Act Bank and Credit Union Relief: Expirations and Extensions Under P.L. 116-260

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The economic effects of the Coronavirus Disease 2019 (COVID-19) pandemic may cause numerous borrowers to miss loan repayments, potentially leading to distress at banks and credit unions. As part of Congress's response, Division A of the CARES Act (P.L. 116-136) included six sections—4008, 4011, 4012, 4013, 4014, and 4016—that either temporarily relaxed regulations facing banks and credit unions or provided regulators additional temporary authorities to support those institutions and their lending. Those sections are examined in CRS Insight IN11318, *The CARES Act (P.L. 116-136): Provisions Designed to Help Banks and Credit Unions*, and CRS Insight IN11307, *The CARES Act (P.L. 116-136) Section 4008: FDIC Bank Debt Guarantee Authority*. This Insight identifies which provisions were extended by the Consolidated Appropriations Act, 2021 (P.L. 116-260); which provisions expired; and the possible implications of those extensions and expirations.

As enacted, the CARES Act provisions would have expired on the earlier of (1) the termination date of the COVID-19 national emergency declared by the President on March 13, 2020, under the National Emergencies Act (P.L. 94-412) or (2) the end of 2020. P.L. 116-260, Division N, Sections 540 and 541, extended the expiration date of CARES Act Sections 4013, 4014, and 4016 until the earlier of the emergency termination date or the end of 2021. The act did not extend Sections 4008, 4011, and 4012, and they expired on December 31, 2020.

Extended Provisions

Section 4013 requires federal bank and credit union regulators to allow lenders to suspend the Generally Accepted Accounting Principles requirements for recognizing any potential COVID-related losses from a *troubled debt restructuring* loan modification.

Section 4014 gives banks and credit unions the option to temporarily delay the implementation of the *Current Expected Credit Loss* (CECL) accounting standard, a newly adopted methodology used in accounting for future loan losses. (On August 26, 2020, the bank regulators finalized a rule allowing banks to delay CECL's adoption for up to two years, longer than the Section 4014 mandate.) Extending these accounting provisions permits banks to delay (1) recognizing certain losses as they accommodate borrowers and (2) incurring the costs of making an accounting switch during the pandemic. If the effects of the pandemic dissipate relatively quickly, these provisions would likely present relatively little risk. If the effects persist, these provisions may obscure how bad bank conditions are, possibly causing banks and regulators to take necessary corrective actions too late. For example, if it is unclear that a bank is headed to an unavoidable failure, the Federal Deposit Insurance Corporation (FDIC) may not realize that the institution should be resolved as soon as it otherwise would, possibly leading to larger losses to the Deposit Insurance Fund.

Section 4016 temporarily expands access to the Central Liquidity Facility (CLF)—a liquidity facility for credit unions administered by the National Credit Union Administration (NCUA)—for credit unions to meet liquidity needs so long as credit unions first made reasonable efforts to use primary sources of liquidity, such as their balance sheets and market funding sources. Section 4016 also increases resources available to meet liquidity needs through the facility by temporarily increasing its ability to borrow up to a value 16 times the CLF's subscribed capital stock and surplus (up from the statutory limit of 12 times). As of October 31, 2020, the CLF had no outstanding loans or borrowings; membership had risen to 352 credit unions and agents from 279 credit unions in March. Extending these provisions means that qualifying credit unions will have greater access to one source of funding during a time when financial stress could be high. However, CLF advances are funded by borrowing from the Federal Financing Bank, which is backed by the U.S. government. Thus, expanding CLF access and borrowing authority exposes the government to greater potential losses.

Expired Provisions

Section 4008 of the CARES Act expanded the FDIC's authority to guarantee bank liabilities under Section 1105 of the Dodd-Frank Act, allowing the agency to guarantee non-interest bearing transaction accounts. The section also preemptively granted the necessary congressional approval for such a program up to any limit. It also granted the NCUA the authority to increase their insurance limit on non-interest bearing transaction accounts to any amount.

Section 4011 granted the Office of the Comptroller of the Currency (OCC) broad authority to exempt loans from the limits national banks face on lending large amounts to a single borrower when it is "in the public interest." A CRS search did not find any indication that the OCC, FDIC, or NCUA exercised these authorities since enactment. This could indicate that the authorities are unnecessary to address pandemic-related issues. However, the full financial effects that the pandemic will have on banks and credit unions is still unknown. (For example, it is unclear what will happen to loan performance when CARES-mandated loan forbearances end.) If bank or credit union conditions deteriorate significantly, the regulators might want to use the authorities if they were still available.

Section 4012 directed regulators to lower the Community Bank Leverage Ratio (CBLR) from 9% to 8% and give banks that fall below that level a grace period to come back into compliance. The CBLR is an optional capital rule available to certain small banks. Regulators have discretion over aspects of the rule, including exactly where within the range of 8%-10% to set the ratio. By allowing qualifying banks to temporarily hold less capital, those banks could potentially make more loans but with less of a buffer to safeguard against losses. The rule issued by bank regulators that lowered the CBLR to 8% through the end of 2020 in accordance with Section 4012 also raises the CBLR in increments to 8.5% in 2021 before returning it to 9% on January 1, 2022. Thus, the regulators used their discretionary authority to reduce capital requirements in 2021 compared to the beginning of 2020. This, and the regulators' existing authority to lower the CBLR to 8% if they determine it is warranted, arguably reduced the need to extend the provision.

Author Information

David W. Perkins
Specialist in Macroeconomic Policy

Raj Gnanarajah
Analyst in Financial Economics

Darryl E. Getter
Specialist in Financial Economics

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