

COVID-19 NEWS OF INTEREST

# COVID-19: Regulatory Responses Affecting Real Estate

April 3, 2020

## AUTHORS

**Daniel Backer** | **David C. Drewes** | **Thomas J. Henry** | **Carly Glover Saviano**

In the recent weeks, regulatory action at both the federal and state level has been fast-tracked to provide economic relief in response to the COVID-19 pandemic. Key legislation affecting the real estate sector nationally and in New York is outlined below. The applicability and effect of governmental regulation is context-specific, so in all instances, we recommend discussions early and often to determine the best approach for your business. Willkie will continue to monitor the evolution of regulatory activity in order to provide updated guidance as it becomes available.

### ***Federal***

#### Coronavirus Aid, Relief, and Economic Security (CARES) Act

- The CARES Act, signed March 27, 2020, is a \$2T stimulus package to support individuals and businesses affected by COVID-19. The components most likely applicable to real estate clients are the \$350B package for small business loans and the \$500B Treasury fund.
- Small Business Interruption Loans
  - \$350B in small business loans will be made available to small businesses. Eligibility is determined under the Small Business Association (SBA) rules, including parameters based on size and annual receipts. The SBA rules on affiliation generally apply, meaning criteria are aggregated across a business and all of its affiliates. However, affiliation rules are waived for businesses with a NAICS Code beginning in 72 (the

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Accommodation and Food Services sector) including many companies in the hospitality industry, provided there are under 500 employees per physical location. This waiver may open small business loan eligibility for hospitality holdings, although we note that existing hotel mortgage financing most likely restricts additional property-level debt. Other potential beneficiaries include retail and office space tenants. Loan proceeds may be used for payroll costs, healthcare benefits, employee salaries, rent, and interest on mortgage or other debt.

- Coronavirus Economic Stabilization Act
  - The Treasury may authorize up to \$500B in loans and loan guarantees to eligible businesses, which includes (i) air carriers and (ii) businesses that (a) have incurred losses, direct or incremental, as a result of the coronavirus such that continued operations of such businesses are jeopardized and (b) have not otherwise applied for or received economic relief from the CARES Act. Loan proceeds must be used to retain through September 30, 2020, or rehire within four months of the end of the national health emergency, at least 90% of the borrower's workforce, and borrowers will be subject to certain restrictions including limits on executive compensation and dividend payments. The fund will also provide liquidity to financial institutions through new capital market facilities. Further guidance from the Treasury on the implementation of this fund is expected on April 6, 2020. Willkie will continue to monitor developments and provide updated guidance as it becomes available.
  
- Additional Measures Affecting Real Estate Clients
  - Relief for Multifamily Mortgage Borrowers
    - Borrowers of federally backed mortgage loans (i.e., Fannie Mae and Freddie Mac) for certain multifamily properties may request forbearance for up to 180 days, provided that a borrower benefiting from such forbearance may not evict tenants or charge late fees. Outside of the CARES Act, Fannie Mae and Freddie Mac have established policies allowing multifamily landlords to defer loan payments up to 90 days and are discouraging multifamily landlords from evicting tenants for nonpayment.
  
  - Healthcare Funding
    - \$16B in funding will be allocated to the Strategic National Stockpile to increase availability of medical supplies and pharmaceuticals, with possible benefits for both the healthcare sector and industrial/manufacturing tenants.

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### Federal Reserve Policy

- On March 22, 2020, the Fed issued an Interagency Statement addressing a new position on loan modifications and reporting for financial institutions in response to COVID-19. On March 23, 2020, the Fed announced several measures for economic support that may benefit real estate clients.
- Loan Modifications and Reporting for Financial Institutions
  - The Fed and other agencies are encouraging financial institutions to work with borrowers unable to meet payment obligations because of the effects of COVID-19, and will not automatically categorize COVID-19-related loan modifications as troubled debt restructurings (TDRs), including (i) short-term (e.g., six-month) payment deferrals, fee waivers, extensions and other insignificant delays in payment, and (ii) modifications mandated by state programs.
- Federal Open Market Committee to purchase mortgage-backed securities
  - The FOMC will purchase at least \$200B in mortgage-backed securities, including agency commercial mortgage-backed securities.
- Facilities to support credit to large employers
  - The Primary Market Corporate Credit Facility allows not just banks but also investment-grade companies to borrow unsecured from the Fed for up to four years.
  - The Secondary Market Corporate Credit Facility allows the Fed to buy investment-grade corporate bonds and shares of corporate bond ETFs on the open market.
- Facility to support credit to consumers and businesses
  - The Term Asset-Backed Securities Loan Facility enables the Fed to buy asset-backed securities backed by student loans, auto loans, credit card loans, and loans guaranteed by the Small Business Administration.

### ***New York***

### Executive Orders

- Executive Orders signed by Governor Cuomo provide temporary relief to tenants and borrowers in the State of New York affected by COVID-19.

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- Eviction and Foreclosure Moratorium
  - EO 202.8, issued March 20, 2020, prohibits evictions and foreclosures for 90 days. The order applies to commercial and residential foreclosures, but does not apply to UCC foreclosures.
- Mortgage Forbearance
  - EO 202.9, issued March 21, 2020 deems it an unsafe and unsound business practice for banks regulated by the New York Department of Financial Services not to grant forbearance to borrowers for 90 days. This does not apply to non-bank entities or non-New York banks. The order also requires licensed or regulated entities to provide consumers an opportunity for forbearance of mortgage payments, although this does not apply to commercial mortgages.
- Non-Essential Business Closure:
  - EO 202.6, issued March 18, 2020 and modified by EO 202.8, issued March 20, 2020, orders the reduction of in-person work forces for non-essential businesses. This includes non-essential construction other than emergency construction which is necessary to protect health and safety or which would be unsafe if left undone.

### Senate Rent Relief Bill S8125A

- Senate Rent Relief Bill S8125A was introduced before the Senate on March 23, 2020. The bill proposes rent and mortgage relief for tenants and landlords affected by COVID-19.
- Tenant Rent Relief
  - The bill would suspend rent payments and late fees for residential tenants and small business commercial tenants for 90 days, and would automatically renew any leases expiring during such 90-day period.
- Landlord Mortgage Relief
  - The bill would also grant forgiveness on mortgage payments for 90 days for any entity deprived of rent payments pursuant to the bill's rent relief for an amount proportionate to the portion of rents suspended.
- The bill as drafted does not clarify how the relief measures would be applied or enforced, so if the bill is signed into law, significant regulatory agency guidance would be required. Willkie will continue to monitor developments and provide updated guidance as it becomes available.

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Willkie has multidisciplinary teams working with clients to address coronavirus-related matters, including, for example, contractual analysis, litigation, restructuring, financing, employee benefits, SEC and other corporate-related matters. Please click [here](#) to access our publications addressing issues raised by the coronavirus. For advice regarding the coronavirus, please do not hesitate to reach out to your primary Willkie contacts.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

**Daniel Backer**

212 728 8547

dbacker@willkie.com

**David C. Drewes**

212 728 8653

ddrewes@willkie.com

**Thomas J. Henry**

212 728 8750

thenry@willkie.com

**Carly Glover Saviano**

212 728 8849

csaviano@willkie.com

**Erin Kennedy-Gebhart**

212 728 8833

ekennedy-gebhart@willkie.com