THE CARES Act: Support for Financial Institutions And Borrowers During the COVID-19 Pandemic

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The recently-enacted Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") includes multiple provisions to support both financial institutions and borrowers during the COVID-19 pandemic. In response to the CARES Act, the Federal Deposit Insurance Corporation ("FDIC") issued its Frequently Asked Questions ("FAQs") to guide financial institutions during this uncertain time. To highlight relevant portions of the FAQs, the FDIC is recommending that lenders and borrowers work together in the following ways:

- **Payment Accommodations**. The FDIC is encouraging financial institutions to provide borrowers affected by the COVID-19 crisis with payment accommodations to allow them to work through the immediate impact of the virus on their financial situation. Recommended options to address deferred or skipped payments include extending the maturity date of a loan or making the deferred/skipped payments due as a balloon payment on the loan maturity date.

- **Reporting of Delinquent Loans.** The FDIC is encouraging lenders to consider the specific facts and circumstances of a borrower's payment accommodations to establish the appropriate reporting requirements. Such reporting should be determined in accordance with the revised terms of the loan resulting from any payment accommodations.

- **Documentation.** Lenders should maintain appropriate documentation with respect to each borrower, including his/her payment status prior to the effect of COVID-19 and his/her performance under the payment accommodation/revised loan.

- **Troubled Debt Restructurings ("TDRs").** The CARES Act provides that short-term loan modifications made on a good faith basis in response to COVID-19 to borrowers who were current prior to any relief (*i.e.*, less than 30 days past due at the time of modification), will not be considered TDRs. Such accommodations include short-term modifications (*e.g.*, six months) such as payment deferrals, fee waivers, extensions of repayment terms, or other delays in payment that are insignificant. This suspension of TDR requirements is in effect from March 1, 2020 and the earlier of December 31, 2020, or 60 days following the termination date of the national emergency concerning the COVID-19 outbreak declared by the President on March 13, 2020.

The FAQs can be viewed in their entirety at https://www.fdic.gov/coronavirus/faq-fi.pdf.

If you are a lender seeking advice regarding the modification options that should be made available to borrowers affected by the COVID-19 virus, please contact the attorneys of the Bankruptcy and Creditors' Rights Department of Tucker Arensberg, P.C. or Maribeth Thomas.