

Real Estate Industry Alerts Tracker - December 18, 2020 Issue

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Federal COVID Relief Bill Contains Significant Provisions for CRE and Multifamily Finance

On December 14, 2020, a bipartisan group of U.S. Senators released a summary and draft text of the Bipartisan Emergency COVID Relief Act of 2020 ("the Act"). The Act remains under negotiation among the House, the Senate and the White House. CREFC has highlighted important provisions for CRE and multifamily finance as follows:

Benefits for CRE and Multifamily

Extension of all unemployment assistance for 16 weeks, with supplemental \$300 per week.

Second Round of Paycheck Protection Program (PPP): \$300 Billion

- Second Round PPP for Small Business, including 501c6 organizations, restaurants, live venues, and EIDL grants;
- Simplified loan forgiveness process for borrowers with PPP loans of \$150,000 or less;
- Eligibility is limited to small businesses with 300 or fewer employees that have sustained a 30 percent revenue loss in any quarter of 2020; and
- Allows PPP money to be used for "covered worker protection expenditures," including the purchase, maintenance, or renovation of assets, including "an indoor, outdoor, or combined commercial real estate property."
- **Note:** Existing regulation excludes many CRE and multifamily borrowers from PPP loans although hotels generally were eligible. However, the expanded list of eligible funds may benefit CRE.

Emergency Rent Assistance: \$25 Billion

- Distributed by state and local governments;
- Eligible households are renters with:
- A COVID hardship;
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 - Risk of homelessness or housing instability; and
 - Income not more than 80% of the area median income (AMI);
 - Support can cover up to 18 months of arrears and prospective assistance, with prospective assistance limited to no more than 12 months; and
 - Landlords/owners can assist or apply for rental assistance on behalf of renters.

\$12 billion in Community Development Financial Institutions (CDFI) and Minority Depository Institutions (MDI) to help low-income and minority communities respond to this unprecedented economic downturn; and

\$45 billion in emergency funding for transportation sector (assistance for airlines, airports, buses, Amtrak, and public transit).

Challenges for CRE and Multifamily

Federal CDC eviction moratorium extended through January 31, 2021.

- The CDC eviction moratorium is currently slated to expire December 31, 2020.
- The bill also provides for emergency rental assistance, which may soften the impact of a moratorium.

Extended trouble debt restructuring (“TDR”) relief is currently not included in the text, though it may ultimately be included as negotiations progress. CREFC and its industry partners continue to urge Congress to extend the CARES Act TDR relief.

PPP is largely beneficial to hotels and commercial tenants, although eligibility restrictions imposed by Treasury or SBA limit CRE borrower access to PPP funds.

It is important to note, that if a deal is struck between Congressional leaders, the Act may be different than the current text of the legislation. If the Act is passed by Congress and signed by the President, we will provide an update on the final provisions of the Act.

A copy of the summary may be found [here](#) and the draft text of the bill may be found [here](#).

Governor Cuomo Reopens and Expands Rent Relief Program

On Thursday, December 17, New York Governor Andrew Cuomo announced that he will be expanding the state’s COVID-19 rent relief program by relaxing eligibility requirements and reopening the

application period. Cuomo's announcement comes only two weeks before federal relief funds are set to expire on December 30 and \$60 million of an allotted \$100 million in unspent federal funds would have to be returned to the federal government. The rent relief program, which is administered by the New York State Office of Homes & Community Renewal ("HCR"), will reopen for applications with "expanded eligibility criteria in an effort to serve New Yorkers who may have not had the opportunity to initially apply and those who may have been previously ineligible," according to guidance issued by the state. A significant change in the eligibility requirements is that households are no longer required to have been considered "rent burdened" prior to the pandemic to qualify for the program. "Rent burden" is defined as paying more than 30% of monthly gross income toward rent. Applicants had to show that they lost income between April 1 and July 3, 2020 and household income prior to the pandemic must have been at or below 80% of the Area Median Income. New Yorkers who previously applied for relief under the program do not need to reapply to be reconsidered. HCR will reevaluate any applications that were previously denied according to the revised eligibility requirements and notify applicants if they are approved.

Additional information may be found [here](#).

CMBS Delinquency Rate Remain Steady In November

In its November 2020 Monthly Loan Performance Report, CREFC reported that the CMBS delinquency rate decreased from 8.3% in October to 8.2% in November. Although the rate decrease is negligible, it represents the fifth consecutive monthly decline in delinquency rates. The percentage of loans within or beyond their grace periods, but not yet declared delinquent, also decreased slightly in November (down from 3.2% to 2.6%). Additionally, the percentage of CMBS loans in special servicing also decreased slightly in November (down from 10.3% to 10.2%). The report attributes such improvements in delinquency rates to forbearances granted by lenders.

A copy of the report may be found [here](#).

Bank and Life Company Delinquencies Remain Low

CREFC's November 2020 Monthly Loan Performance Report showed that the delinquency rates for banks and life insurance companies continue to be low. The 30+ day delinquency rate for bank loans (not including multifamily loans) is currently 1.18% through the third quarter. By contrast, the year-end delinquency rate for bank loans for 2019 was 0.76%. For life insurance companies, the 60+ day delinquency rate at the end of the third quarter was 0.17% as compared to 0.04% at year-end for 2019.

New Jersey Landlords Sue Governor Murphy to Block Rent Relief Order

A group of residential property owners in southern New Jersey filed suit seeking to block Executive Order 128, which was signed by Governor Murphy in April 2020. The order enabled tenants to pay portions of their rent with the security deposit without replenishing the security deposit unless or until the landlord and tenant extend the lease or enter into a new one. While the order does not bar

landlords from trying to recoup any damages that would have otherwise been reimbursed from the security deposit, landlords will not benefit from the safety net that is provided by having such funds readily available in a landlord-controlled account if the deposit is applied towards rent payments. In their suit, the landlords claim that Executive Order 128 unlawfully modifies the terms of the agreements they negotiated with their tenants. The landlords are seeking to have Executive Order 128 declared to be in violation of the New Jersey State Constitution and are seeking to have its enforcement blocked.

Additional information may be found [here](#).

Freddie Mac Investment Index Rebounds in the Third Quarter

As a result of the pandemic, the Freddie Mac Apartment Investment Index was negative for the first time since the Great Recession in the second quarter of 2020. According to Freddie Mac:

- Six metropolitan areas contracted during the third quarter while nineteen other markets experienced quarterly growth during the same period.
- The index rose nationally by 1.9% in the third quarter as a result of a mix of net operating income growth and property price growth. Seventeen markets experienced growth, while eight markets declined.
- Net operating income declined overall in 2020 with seven markets posting a net gain and eighteen markets posting net loss. The hardest hit markets were New York and San Francisco with double digit losses.

Additional information may be found [here](#).

The NYC Council Passes New Bill that Allows the Department of Buildings to Issue Interim Certificates of Occupancy

While not COVID-related, we felt it is important to inform our readers that on December 10, 2020, the New York City Council passed Intro. 2033, which, according the Department of Building's ("DOB") press release "removes bureaucratic hurdles in the development and move-in process for building owners and occupants throughout the five boroughs." The new law creates Interim Certificates of Occupancy ("ICO"), which are a new type of temporary Certificate of Occupancy that do not require renewals every 90 days, saving building owners time and related renewal costs. The DOB may authorize the occupancy of certain floors in a building prior to completion of the permitted construction work for the project upon satisfactory inspection of the completed floors and the issuance of an ICO by the DOB. The bill does not apply to residential buildings with less than four dwelling units, or parking structures.

The DOB applauded the passage of the new legislation and stated that the measure cuts "red tape for the construction industry while also providing peace of mind to commercial and residential tenants by allowing them to move into a newly constructed space without having to worry about their temporary Certificate of Occupancy expiring." The issuance of a ICO means that the completed

portions of the building for which ICOs have been issued “have no outstanding violations, have no outstanding issues requiring remediation, and do not need further DOB approvals with respect to that portion of the building.”

A copy of the bill may be found [here](#) and the related press release may be found [here](#).