

March 26, 2020

FINANCIAL INSTITUTIONS DEVELOPMENTS

*Stimulus Bill Authorizes FDIC Guarantee of Bank Debt and
Unlimited Deposit Insurance of Transaction Accounts*

The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), passed by the U.S. Senate yesterday, grants the Federal Deposit Insurance Corporation (the “FDIC”) immediate authority to establish liquidity guarantee programs for insured depository institutions and their holding companies (including any affiliates). As we mentioned in our March 24, 2020 [Memorandum](#), the government is looking to the measures taken in response to the 2008 financial crisis as a guide to how to respond to today’s economic reality. The FDIC liquidity programs were a critical tool used during the 2008 financial crisis to unlock debt markets and stabilize deposit funding.

In 2008, the FDIC took extraordinary action in establishing the Temporary Liquidity Guarantee Program (“TLGP”). The TLGP provided a limited-term guarantee for certain newly issued debt of depository institutions and their holding companies (and eligible affiliates) through the Debt Guarantee Program. The TLGP also provided unlimited deposit insurance for certain transaction accounts (noninterest-bearing deposit accounts from which the depositor is permitted to make withdrawals at will, such as checking accounts) under the Transaction Account Guarantee Program. The TLGP was unprecedented and enormous in scope. At the height of these programs, the FDIC guaranteed almost \$350 billion in outstanding debt and insured over \$800 billion in deposits. In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act cut back on the FDIC’s emergency powers, erecting procedural barriers to the establishment of another Debt Guarantee Program and specifically prohibiting the creation of a future program like the Transaction Account Guarantee Program.

Section 4008 of the CARES Act grants the FDIC immediate authorization to reestablish these guarantee programs. Going forward, noninterest-bearing transaction accounts could once again enjoy unlimited deposit insurance. Similarly, newly issued debt of depository institutions and their holding companies (and eligible affiliates) could also be FDIC guaranteed. The CARES Act requires that any programs and guarantees created thereunder must terminate no later than December 31, 2020.

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