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Regulators Further Clarify Guidance Regarding Loan Modifications and Reporting

by Cliff Stanford and Anna Chong

On Sunday, March 22, 2020, the Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), Consumer Financial Protection Bureau (CFPB), and Conference of State Bank Supervisors (CSBS) issued an Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus, which offered additional clarification on previous agency guidance for working with borrowers affected by the coronavirus pandemic.

The FRB, FDIC, and OCC, as well as various state banking regulators, have each recently issued guidance that included examples of the accommodations that financial institutions should extend customers during the coronavirus pandemic. This guidance generally encouraged banks to work with their customers prudently, signaling also that examiners were directed to "exercise significant flexibility." For example, the FRB, FDIC, OCC, NCUA, CSBS, and CFPB have jointly stated that "financial institutions should work constructively with borrowers and other customers in affected communities" and that "prudent efforts that are consistent with safe and sound lending practices should not be subject to examiner criticism." Examples of accommodations included waiving fees, extending payment terms, raising credit limits, and easing credit terms for new loans.

In their prior guidance, the FDIC and OCC also encouraged banks to individually determine whether loans with payment accommodations made to borrowers affected by COVID-19 should be reported as troubled debt restructurings (TDRs), but reiterated that TDR designations (for accounting purposes) do not automatically result in adverse classification. The FRB referenced the Call Report instructions and Accounting Standards Codification Subtopic 310-40, "Receivables – Troubled Debt Restructurings by Creditors" (ASC 310-40) for additional information about TDRs.

Apparently to address any inconsistencies and to provide additional guidance in a single voice, the interagency statement discusses how the participating agencies will view loan modifications in particular, including the following points:

- The agencies will not criticize institutions for "prudently" working with borrowers, regardless of whether loans are TDRs or become adversely classified.

- The agencies will not direct supervised institutions to automatically categorize all coronavirus-related loan modifications as TDRs.
- Even for loans that may be TDRs, the agencies "will not automatically adversely risk rate credits that are affected by COVID-19."
- Loans for which a deferral or loan modification is granted due to COVID-19 do not have to be designated as past due or nonaccrual solely because of the deferral or loan modification. Nonaccrual reporting is only required if the lender determines that the loan will not be repaid, following the charge-off guidance in the Call Report instructions.
- Lenders that have general programs designed to provide temporary relief may presume that borrowers that are current (less than 30 days past due at the time of the modification) are not experiencing financial difficulties at the time of the modification for purposes of determining TDR status, and thus no further TDR analysis is required for each loan modification.
- The Financial Accounting Standards Board (FASB) has confirmed with the agencies that short-term modifications made in good faith in response to borrowers who were current before any relief are not TDRs. Specifically, the participating agencies stated that "this includes short-term (e.g., six months) modifications such as payment deferrals, fee waivers, extensions of repayment terms, or other delays in payment that are insignificant."
- Federally or state-mandated modification or deferral programs would not be in the scope of ASC 310-40 and therefore would not require TDR analysis. For example, the governor of New York recently issued Executive Order No. 202.9, mandating certain loan forbearance for banks subject to the jurisdiction of the New York State Department of Financial Services.
- Working with borrowers of one-to-four family residential mortgages (that are prudently underwritten and not past due or carried in nonaccrual status) will not result in the loans being considered restricted or modified for purposes of the risk-based capital rules issued by the FRB, FDIC, and OCC.

We recommend carefully considering the interagency statement as it applies to your individual institution and borrowers and continuing to monitor published guidance moving forward. Note that federal and state regulators are issuing additional law and guidance as the COVID-19 situation evolves. If you encounter any specific issues that are not addressed in the regulatory guidance, please feel free to contact us.

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