



Financial Services & Products ADVISORY ■

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Agencies Update Their Interagency Statement on Reporting Loan Modifications

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On April 7, 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), and the Consumer Financial Protection Bureau (CFPB) issued a [Revised Interagency Statement on Loan Modifications by Financial Institutions Working with Customers Affected by the Coronavirus](#), which clarified the interaction between the previous [interagency statement](#) issued on March 22, 2020 (discussed in our advisory [here](#)) and the temporary relief provided by Section 4013 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was signed into law on March 27, 2020.

The previous interagency statement permitted lenders that have programs designed to provide temporary relief to presume 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 troubled debt restructuring (TDR) status. The CARES Act provided further relief by allowing financial institutions to suspend any requirements to classify loan modifications as TDRs for modifications that are: (1) related to COVID-19; (2) executed on a loan that was not more than 30 days past due as of December 31, 2019; and (3) executed between March 1, 2020, and the earlier of 60 days after the date of termination of the national emergency or December 31, 2020. For more information on the CARES Act, please refer to our previous advisory.

Overview of the Revised Interagency Statement

Under some circumstances, a borrower may not qualify under Section 4013 of the CARES Act, but would qualify under the interagency statement (e.g., a borrower current at the time of modification, but more than 30 days past due as of December 31, 2019). The revised interagency statement addresses this issue and provides additional guidance on reporting loan modifications:

- The agencies note that its examiners will continue not to criticize prudent efforts to modify the terms on existing loans to affected customers regardless of whether modifications result in TDRs, Section 4013 loans, or are otherwise adversely classified.

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- A financial institution may account for an eligible loan modification either under Section 4013 or in accordance with ASC Subtopic 310-40. If a loan modification is not eligible under Section 4013, or if the institution elects not to account for the loan modification under Section 4013, the financial institution should evaluate whether the modified loan is a TDR.
- For loan modifications made under Section 4013, institutions do not have to report Section 4013 loans as TDRs in regulatory reports. However, financial institutions should maintain records of the volume of Section 4013 loans that may be collected for supervisory purposes. Institutions should refer to the [Federal Financial Institutions Examination Council \(FFIEC\) Instructions](#) for information on reporting requirements for Section 4013 loans.
- For circumstances when a loan modification is not eligible under Section 4013 or when an institution elects not to apply Section 4013, the guidance in the revised interagency statement remains consistent with the previous statement.
- The agencies restate that the Financial Accounting Standards Board (FASB) has confirmed that short-term modifications made in good faith in response to borrowers who were current before any relief are not TDRs under ASC Subtopic 310-40.
- Government-mandated modification or deferral programs related to COVID-19 would not be in the scope of ASC Subtopic 310-40, for example, a state program that requires institutions to suspend mortgage payments within that state for a specified period.
- 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.
- 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.

The revised interagency statement expands on credit risk guidance and notes that while examiners will not automatically adversely risk rate credits that are affected by COVID-19, all loan modifications “should comply with applicable laws and regulations and be consistent with safe and sound practices (including maintenance of appropriate allowances for loan and lease losses or allowances for credit losses, as applicable).”

Additionally, the agencies discuss consumer protection considerations, which were not included in the previous interagency statement. When working with borrowers, lenders and servicers are expected to “adhere to consumer protection requirements, including fair lending laws, to provide the opportunity for all borrowers to benefit from these arrangements.” However, considering the unique circumstances caused by COVID-19, the agencies “do not expect to take a consumer compliance public enforcement action against an institution, provided that the circumstances were related to the National Emergency and that the institution made good faith efforts to support borrowers and comply with the consumer protection requirements, as well as responded to any needed corrective action.”

The agencies continue to encourage financial institutions to work with borrowers and note that financial institutions “have broad discretion to implement prudent modification programs consistent with the framework included in [the] statement.”

We recommend carefully considering the revised 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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