

## Revised Interagency Statement on Loan Modifications by Financial Institutions Working with Customers Affected by the Coronavirus

On March 22, 2020, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), the Consumer Financial Protection Bureau (CFPB), the State Conference of State Banking Supervisors (CSBS), the American Council of State Savings Supervisors (ACSSS) and the National Association of State Credit Union Supervisors (NASCUS) (the “Agencies”) originally issued an Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (the “Interagency Statement”), which provides information to financial institutions who are working with borrowers affected by the COVID-19 pandemic. The **revised interagency statement** attached to the end of this document clarifies the interaction between the March 22, 2020 interagency statement and section 4013 of the CARES Act, Temporary Relief from Troubled Debt Restructurings (section 4013), as well as the agencies’ views on consumer protection considerations. Below is a summary of certain portions.

### Working with Customers

- Loan modification programs are viewed as positive actions that can mitigate adverse effects on borrowers due to COVID-19 and financial institutions are encouraged to work prudently with borrowers.
  - ❖ Financial institutions may want to consider addressing any deferred or skipped payments by either extending the original maturity date or by making those payments due in a balloon payment at the maturity date of the loan.
- Supervised institutions should not automatically categorize all COVID-19 related loan modifications as troubled debt restructurings (“TDRs”).
- Proactive actions, such as mitigating credit risk through prudent actions consistent with safe and sound practices, are in the best interest of financial institutions, borrowers, and the economy.
- To document a Loan Modification, it is suggested that the institution include items such as the borrower’s recovery plans, sources of repayment, additional advances on existing or new loans, and value of the collateral, which could be a part of the borrower’s request.

### Accounting for Loan Modifications

- Modifications of loan terms do not automatically result in TDRs. Short-term modifications made on a good faith basis in response to COVID-19 to borrowers who were current prior to any relief are not TDRs. 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.
- Borrowers are considered current if less than 30 days past due on their contractual payments at the time a modification program is implemented.
- Financial institutions may presume that borrowers that are current on payments 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 in the program.
- The Agencies’ examiners will not automatically adversely risk rate credits that are affected by COVID-19, including those considered TDRs.

### Past Due Reporting

- Financial institutions are not expected to designate loans with deferrals granted due to COVID-19 as past due because of the deferral if the loans are not otherwise reportable as past due.
- If a financial institution agrees to a payment deferral that results in no contractual payments being past due, these loans are not considered past due during the period of the deferral.
  - ❖ For loans subject to a payment deferral program on which payments were past due prior to the borrower being affected by COVID-19, it is the FDIC’s position that the delinquency status of the loan may be adjusted back to the status that existed at the date of the borrower becoming affected, essentially being frozen for the duration of the payment deferral period. For example, if a consumer loan subject to a payment deferral program was 60 days past due on the date of the borrower being affected by COVID-19, an institution would continue to report the loan in its regulatory reports as 60 days past due during the deferral period (unless the loan is reported in nonaccrual status or charged off).

## Nonaccrual Status and Charge-offs

- Generally, loans to stressed borrowers should not be reported as nonaccrual during the short-term arrangements discussed in the Interagency Statement. However, continue to refer to the applicable regulatory reporting instructions, internal accounting policies and charge-off guidance in the instructions for the Consolidated Reports of Condition and Income when determining whether to report loans as nonaccrual assets in regulatory reports.

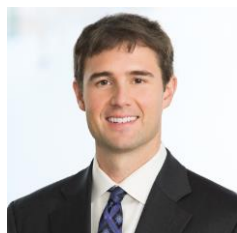
## Discount Window Eligibility

- Loans that have been restructured as described in the Interagency Statement will continue to be eligible as collateral at the FRB's discount window based on the usual criteria.

While the Interagency Statement provides guidance to financial institutions during this time of uncertainty, it fails to address concerns such as interest forgiveness, an interest holiday, or reductions in the current interest rate (other than to that for a new, similar new debt).

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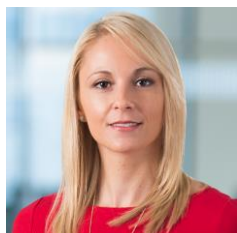
Munsch Hardt Kopf & Harr is continually monitoring for developments related to COVID-19 and will send out additional pieces of information as updates occur. In the interim, please call one of our Finance or Real Estate Finance attorneys if you have any questions or need additional information.



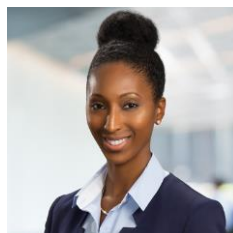
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**Board of Governors of the Federal Reserve System  
Federal Deposit Insurance Corporation  
National Credit Union Administration  
Office of the Comptroller of the Currency  
Consumer Financial Protection Bureau**

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April 7, 2020

**Interagency Statement on Loan Modifications and Reporting for Financial Institutions  
Working with Customers Affected by the Coronavirus (Revised)**

The Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB), in consultation with the state financial regulators,<sup>1</sup> (hereafter, the agencies) are issuing this revised interagency statement to provide additional information to financial institutions that are working with borrowers affected by the Coronavirus Disease 2019 (also referred to as COVID-19). The United States has been operating under a presidentially declared emergency since March 13, 2020 (National Emergency).<sup>2</sup> The agencies understand that this unique and evolving situation could pose temporary business disruptions and challenges that affect banks, credit unions, businesses, borrowers, and the economy.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law.<sup>3</sup> As discussed in more detail below, the CARES Act creates a forbearance program for federally backed mortgage loans, protects borrowers from negative credit reporting due to loan accommodations related to the National Emergency, and provides financial institutions the option to temporarily suspend certain requirements under U.S. generally accepted accounting principles (GAAP) related to troubled debt restructurings (TDR) for a limited period of time to account for the effects of COVID-19.<sup>4</sup>

The agencies originally issued a statement on March 22, 2020, to encourage financial institutions to work prudently with borrowers and to describe the agencies' interpretation of how current accounting rules under U.S. GAAP apply to certain COVID-19-related modifications. This revised interagency statement clarifies the interaction between the March 22, 2020, interagency statement and section 4013 of the CARES Act, *Temporary Relief from Troubled Debt Restructurings* (section 4013), as well as the agencies' views on consumer protection considerations. The agencies will continue to communicate with the industry as this situation unfolds, including through additional statements, webinars, frequently asked questions, and other means, as appropriate.

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<sup>1</sup> The state financial regulators include representatives from the Conference of State Bank Supervisors, the American Council of State Savings Supervisors, and the National Association of State Credit Union Supervisors.

<sup>2</sup> 50 U.S.C. 1601 et seq.

<sup>3</sup> Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (Mar. 27, 2020).

<sup>4</sup> Id. at § 4013.

## **Working with Customers: General Safety and Soundness Considerations**

The agencies encourage financial institutions to work prudently with borrowers who are or may be unable to meet their contractual payment obligations because of the effects of COVID-19. The agencies view loan modification programs as positive actions that can mitigate adverse effects on borrowers due to COVID-19. The agencies will not criticize institutions for working with borrowers in a safe and sound manner. As described below, institutions generally do not need to categorize COVID-19-related modifications as TDRs, and the agencies will not direct supervised institutions to automatically categorize all COVID-19 related loan modifications as TDRs.

The agencies will not criticize financial institutions that mitigate credit risk through prudent actions consistent with safe and sound practices. The agencies consider such proactive measures to be in the best interest of institutions, their borrowers, and the economy. This approach is consistent with the agencies' longstanding practice of encouraging financial institutions to assist borrowers in times of natural disaster and other extreme events although the agencies recognize that the effects of this event are particularly extreme and broad-based. The agencies also will not criticize institutions that work with borrowers as part of a risk mitigation strategy intended to improve an existing non-pass loan.

Financial institutions have broad discretion to implement prudent modification programs consistent with the framework included in this statement.

## **Accounting and Reporting Considerations**

As provided for under the CARES Act, a financial institution may account for an eligible loan modification either under section 4013 or in accordance with ASC Subtopic 310-40.<sup>5</sup> 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.

### *Accounting for Loan Modifications under Section 4013*

To be an eligible loan under section 4013 (section 4013 loan), a loan modification must be (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 (A) 60 days after the date of termination of the National Emergency or (B) December 31, 2020 (applicable period).

Financial institutions accounting for eligible loans under section 4013 are not required to apply ASC Subtopic 310-40 to the section 4013 loans for the term of the loan modification. Financial institutions do not have to report section 4013 loans as TDRs in regulatory reports.<sup>6</sup> However, consistent with section 4013, financial institutions should maintain records of the

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<sup>5</sup> ASC Subtopic 310-40, Receivables—Troubled Debt Restructurings by Creditors (ASC Subtopic 310-40).

<sup>6</sup> For banks and savings associations, the Consolidated Reports of Condition and Income (Call Report) Schedule RC-C, Part I, Memoranda item 1; Schedule RC-N, Memoranda item 1; and Schedule RC-O, Memoranda item 16, the Consolidated Statements for Holding Companies (FR Y-9C) Schedule HC-C, Part I, Memoranda item 1; and

volume of section 4013 loans. Data about section 4013 loans may be collected for supervisory purposes. Institutions do not need to determine impairment associated with certain loan concessions that would otherwise have been required for TDRs (e.g., interest rate concessions, payment deferrals, or loan extensions). For the most recent information on reporting requirements for section 4013 loans, refer to the Federal Financial Institutions Examination Council Instructions.<sup>7</sup>

#### *Accounting for other Loan Modifications Not under Section 4013*

There are circumstances in which a loan modification may not be eligible under Section 4013 or in which an institution elects not to apply Section 4013. For example, a loan that is modified after the end of the applicable period would not be eligible under Section 4013. For such loans, the guidance below applies.

Modifications of loan terms do not automatically result in TDRs. According to ASC Subtopic 310-40, a restructuring of a debt constitutes a TDR if the creditor, for economic or legal reasons related to the debtor's financial difficulties, grants a concession to the debtor that it would not otherwise consider.<sup>8</sup> The agencies have confirmed with staff of the Financial Accounting Standards Board (FASB)<sup>9</sup> that short-term modifications made on a good faith basis in response to COVID-19 to borrowers who were current prior to any relief are not TDRs under ASC Subtopic 310-40. This includes short-term (e.g., six months) modifications such as payment deferrals, fee waivers, extensions of repayment terms, or delays in payment that are insignificant.<sup>10</sup> Borrowers considered current are those that are less than 30 days past due on their contractual payments at the time a modification program is implemented.

Accordingly, working with borrowers who are current on existing loans, either individually or as part of a program for creditworthy borrowers who are experiencing short-term financial or operational problems as a result of COVID-19 generally would not be considered TDRs. More specifically, financial institutions may presume that borrowers 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 in the program, if:

- The modification is in response to the National Emergency;

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Schedule HC-N, Memoranda item 1, and for credit unions, NCUA Form 5300 Loans & Leases Schedule and on Schedule A.

<sup>7</sup> Refer to [www.ffiec.gov](http://www.ffiec.gov) for FFIEC Instructions.

<sup>8</sup> The TDR designation is an accounting categorization, as promulgated by the FASB and codified within Accounting Standards Codification (ASC) Subtopic 310-40, Receivables – Troubled Debt Restructurings by Creditors (ASC Subtopic 310-40).

<sup>9</sup> [FASB Statement on Prudential Regulatory Guidance Concerning Troubled Debt Restructurings](#).

<sup>10</sup> According to ASC Subtopic 310-40, factors to be considered in making this determination, which could be qualitative, are whether the amount of delayed restructured payments is insignificant relative to the unpaid principal or collateral value of the debt, thereby resulting in an insignificant shortfall in the contractual amount due from the borrower, and whether the delay in timing of the restructured payment period is insignificant relative to the frequency of payments due under the debt, the debt's original contractual maturity, or the debt's original expected duration.

- The borrower was current on payments at the time the modification program is implemented; and
- The modification is short-term (e.g., six months).

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.

### *Credit Risk*

The agencies' examiners will exercise judgment in reviewing loan modifications and will not automatically adversely risk rate credits that are affected by COVID-19. All loan modifications should comply with applicable laws<sup>11</sup> 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). Regardless of whether modifications result in loans that are considered TDRs, section 4013 loans, or are adversely classified, agency examiners will not criticize prudent efforts to modify the terms on existing loans to affected customers.

### *Regulatory Capital*

The FRB, the FDIC, and the OCC note that efforts to work with borrowers of one-to-four family residential mortgages as described above, where the loans are prudently underwritten, and not 90 days or more past due or carried in nonaccrual status, will not result in the loans being considered restructured or modified for the purposes of their respective risk-based capital rules.<sup>12</sup>

### *Past Due Reporting*

With regard to loans not otherwise reportable as past due, financial institutions are not expected to designate loans with deferrals granted due to COVID-19 as past due because of the deferral. A loan's payment date is governed by the due date stipulated in the legal agreement. If a financial institution agrees to a payment deferral, this may result in no contractual payments being past due, and these loans are not considered past due during the period of the deferral.<sup>13</sup>

### *Nonaccrual Status and Charge-offs*

Each financial institution should refer to the applicable regulatory reporting instructions, as well as its internal accounting policies, to determine if loans to stressed borrowers should be reported as nonaccrual assets in regulatory reports. However, during the short-term arrangements discussed in this statement, these loans generally should not be reported as nonaccrual. As more information becomes available indicating a specific loan will not be repaid, institutions should

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<sup>11</sup> Federal credit unions should be cognizant of loan maturity limits set forth in the Federal Credit Union Act, 12 U.S.C. § 1757, and 12 C.F.R. § 701.21(c)(4).

<sup>12</sup> Although NCUA's Risk-Based Capital rule does not go into effect until January 1, 2022, the NCUA agrees with the language in this guidance regarding working with borrowers of one-to-four family residential mortgages.

<sup>13</sup> This applies for risk-based capital purposes as well. In addition, the underlying exposure of a securitization would not be considered past due or to have contractually deferred payments under 12 CFR 3.43(b)(2) or 12 CFR 3.144(b)(2) (OCC), 12 CFR 217.43(b)(2) or 12 CFR 217.144(b) (FRB), or 12 CFR 324.43(b)(2) or 12 CFR 324.144(b)(2) (FDIC) due solely to such a payment deferral.

refer to the charge-off guidance in the instructions for the Consolidated Reports of Condition and Income.<sup>14</sup>

### **Discount Window Eligibility**

Institutions are reminded that loans that have been restructured as described under this statement will generally continue to be eligible as collateral at the FRB's discount window based on the usual criteria.

### **Working with Customers: Consumer Protection Considerations**

The agencies encourage financial institutions to consider prudent arrangements that can ease cash flow pressures on affected borrowers, improve their capacity to service debt, increase the potential for financially stressed residential borrowers to keep their homes, and facilitate the financial institution's ability to collect on its loans.<sup>15</sup> Additionally, such prudent arrangements may mitigate the long-term impact of this emergency on consumers by avoiding delinquencies and other adverse consequences.

When working with borrowers, lenders and servicers should adhere to consumer protection requirements, including fair lending laws, to provide the opportunity for all borrowers to benefit from these arrangements.<sup>16</sup> When exercising supervisory and enforcement responsibilities, the agencies will take into account the unique circumstances impacting borrowers and institutions resulting from the National Emergency. The agencies will take into account an institution's good-faith efforts demonstrably designed to support consumers and comply with consumer protection laws.<sup>17</sup> The agencies expect that supervisory feedback for institutions will be focused on identifying issues, correcting deficiencies, and ensuring appropriate remediation to consumers. 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.

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<sup>14</sup> For federally insured credit unions, refer to NCUA LCU 03-CU-01.

<sup>15</sup> For Community Reinvestment Act treatment of certain activities in response to the COVID-19 emergency, see the *Joint Statement on CRA Consideration for Activities in Response to COVID-19* (March 19, 2020), available at <https://www.federalreserve.gov/supervisionreg/caletters/CA%202020-4%20Attachment.pdf>.

<sup>16</sup> In addition to the CARES Act, to the extent applicable, other actions taken by federal and state entities may result in certain consumer protections for borrowers.

<sup>17</sup> As reflected in the Uniform Interagency Consumer Compliance Ratings System, the agencies recognize that compliance management programs vary based on the size, complexity, and risk profile of supervised institutions. The agencies further recognize that institutions can promote consumer protection by preventing, self-identifying, and addressing compliance issues in a proactive manner. See FFIEC Guidance on the Uniform Interagency Consumer Compliance Rating System, available at: [https://www.ffiec.gov/press/PDF/FFIEC\\_CCR\\_SystemFR\\_Notice.pdf](https://www.ffiec.gov/press/PDF/FFIEC_CCR_SystemFR_Notice.pdf).