SULLIVAN & CROMWELL LLP

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Interagency Statement on Loan Modifications and Reporting

Regulators Issue Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by COVID-19

SUMMARY

On March 22, 2020, federal financial institution regulators[1] and the Conference of State Bank Supervisors (collectively, the "Agencies") published an interagency statement (the "Statement") encouraging financial institutions to "work prudently with borrowers who are or may be unable to meet their payment obligations because of the effects" of Coronavirus Disease 2019 ("COVID-19").[2] The Statement notes that (i) the Agencies will not criticize institutions for working with borrowers and (ii) will not direct supervised institutions to automatically categorize all COVID-19-related loan modifications as troubled debt restructurings ("TDRs").

BACKGROUND

Since March 13, 2020, the United States has been operating under a state of emergency declared by President Trump in response to the spread of COVID-19. COVID-19 and related governmental responses have affected financial institutions and their customers, and may continue to create economic challenges, including through business disruptions. In response to this impact, the Agencies issued the Statement to clarify the Agencies' views on loan modifications for customers that are affected by COVID-19.

DISCUSSION

The Statement address five issues:

- the Agencies' views on loan modifications for affected customers;

- the accounting treatment of modified loans;
- past due reporting for loans granted deferrals due to COVID-19;
- nonaccrual status and charge-offs of loans to stressed borrowers; and
- discount window eligibility.

A. LOAN MODIFICATIONS FOR AFFECTED CUSTOMERS

The Statement encourages 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 Statement also notes that the "[A]gencies view loan modification programs as positive actions that can mitigate adverse [e]ffects on borrowers due to COVID-19." To that end, the Statement reminds financial institutions that, consistent with the Agencies' approach in times of emergency, the Agencies will not criticize financial institutions that work with borrowers through prudent, safe and sound practices, and will not direct financial institutions to categorize all COVID-19-related modifications as TDRs.

The FRB, FDIC and OCC also note in the Statement that modifications for borrowers of one-to-four family residential mortgages, "where the loans are prudently underwritten, and not 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."

B. ACCOUNTING TREATMENT OF MODIFIED LOANS

The Statement notes that the Agencies have confirmed with FASB staff that short-term modifications, including payment deferrals, fee waivers, extensions of repayment terms or other insignificant delays in payment, "made on a good faith basis in response to COVID-19 to borrowers who were current prior to any relief, are not TDRs." The Statement also provides that no TDR analysis would be required, and financial institutions are permitted to "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," with respect to modification programs designed to provide temporary relief for current borrowers. Even for those loans that are considered TDRs, examiners "will not automatically adversely risk rate credits that are affected by COVID-19."

C. PAST DUE REPORTING FOR LOANS GRANTED DEFERRALS DUE TO COVID-19

Financial institutions are not required to designate as past due loans for which a deferral has been granted due to COVID-19 solely because of the deferral. Loans that are otherwise reportable as past due would continue to be reported as past due.

D. NONACCRUAL STATUS AND CHARGE-OFFS OF LOANS TO STRESSED BORROWERS

The Statement notes that loans subject to short-term modifications generally should not be reported as nonaccrual. Financial institutions should, however, continue to analyze loans under applicable reporting instructions and internal accounting policies, and may need to report a loan as nonaccrual if information becomes available to indicate that the loan will not be repaid.

E. DISCOUNT WINDOW ELIGIBILITY

The Statement reminds financial institutions that loans restructured for borrowers affected by COVID-19 "will continue to be eligible as collateral at the FRB's discount window based on the usual criteria."

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ENDNOTES

1 The federal regulators that issued the Statement include the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency and the Consumer Financial Protection Bureau.

2 Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus, *available at* https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200322a1.pdf.

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