

# Interagency Guidance on Loan Modifications by Financial Institutions for Customers Affected by COVID-19

## Coronavirus Legal Advisory

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Recognizing the massive disruption to the U.S. economy and the American people created by COVID-19, federal banking regulators, consisting of the FDIC, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the National Credit Union Administration, together with the Consumer Financial Protection Bureau and the State Conference of Bank Supervisors, issued a joint statement on March 22, 2020, titled "Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus."

### Key Takeaways:

- **Loan modification programs prudently undertaken in good faith in response to COVID-19 will be viewed positively by banking regulators.**
- **A short-term loan modification in response to COVID-19 for a borrower that was current prior to the loan modification is not a troubled debt restructuring.**

The statement is intended to encourage, through loan modification programs, banks and other financial institutions to work constructively with and accommodate borrowers encountering difficulties in meeting loan payment obligations due to the effects of COVID-19. The collective view of the agencies is that a loan modification program that is prudently undertaken in good faith by the financial institution as a response to COVID-19 will be viewed as a positive action that will not be criticized by banking regulators.

In the case of a creditworthy borrower that is current on existing loan payments, the agencies indicate that accommodations made to the borrower intended to provide temporary relief from the borrower's short-term financial and operational problems caused by COVID-19 generally will not result in the loan being considered a troubled debt restructuring (TDR). Under U.S. GAAP, a restructuring of debt constitutes a TDR if the creditor, for economic or legal reasons related to the debtor's financial problems, grants a concession to the debtor that it would not otherwise consider. This guidance is backed by the staff of the Financial Accounting Standards Board, which has confirmed that a short-term loan modification in response to COVID-19 for a borrower that was current prior to the loan modification is not a TDR.

A borrower is considered current if it is less than 30 days past due on its contractual payments at the time the loan modification becomes effective. Such a loan modification that is short term

(e.g., for six months or less) could include payment deferrals, fee waivers, extensions of repayment terms or other delays in payment that are “insignificant.” Factors to be considered include (i) the insignificance of the amount of delayed payments relative to the unpaid principal or collateral value and (ii) the insignificance of the delay in the repayment period relative to the frequency of payments or the loan’s original maturity date. Financial institutions could address deferred or skipped payments by extending the original maturity date or making those skipped or deferred payments due in a balloon payment at loan maturity.

The guidance offers assurance to banks and other financial institutions that examiners will not automatically adversely risk rate credit that is affected by COVID-19, including loans considered TDRs, and will not criticize a financial institution’s prudent loan modification efforts. The guidance also provides assurance to financial institutions that working with borrowers of prudently underwritten one-to-four family residential mortgages that are not past-due or carried in nonaccrual status will not result in the loans being restructured or modified for the purposes of risk-based capital rules.

With respect to regulatory reporting by financial institutions, the guidance indicates that loans with deferrals granted solely due to COVID-19 are not required to be reported as past due during the deferral period. Rather, past due status should be based on the due date stipulated in the modified loan documents. During the short-term modification period, the modified loans should generally not be reported as nonaccrual assets. Banks must consider the specific facts and circumstances to determine the appropriate reporting treatment in accordance with GAAP and regulatory reporting instructions.

If a loan was past due before the borrower became affected by COVID-19, the delinquency status of the loan should be adjusted back to the status that existed at the date the borrower was affected. For example, if a consumer loan subject to a payment deferral program was 60 days past due on the date the borrower was affected by COVID-19, the bank would continue to report the loan in its regulatory reports as 60 days past due during the deferral period.

The FDIC has stressed the importance of providing borrowers with accurate disclosures consistent with federal and state consumer protection laws to help avoid any misunderstandings regarding a loan modification.

The complete text of the March 22, 2020, Interagency Statement on Loan Modifications by Financial Institutions Working with Customers Affected by the Coronavirus is available [here](#).

We are available to answer questions and assist our clients regarding payment accommodations and related disclosure obligations.