

Interpretation of the Statutory Accounting Principles Working Group

INT 20-03: Troubled Debt Restructuring Due to COVID-19

INT 20-03 Dates Discussed

Email Vote to Expose March 26, 2020; April 15, 2020

INT 20-03 References

SSAP No. 36—Troubled Debt Restructuring

INT 20-03 Issue

1. A previously unknown virus began transmitting between October 2019 and March 2020, with the first deaths in the U.S. reported in early March 2020. The disease caused by the virus is known as Coronavirus Disease 2019 (COVID-19). Several states and cities have issued “stay home” orders and forced all non-essential businesses to temporarily close. This led to a significant increase in unemployment and the potential permanent closure of many businesses. Total economic damage is still being assessed however the total impact is likely to exceed \$1 trillion in the U.S. alone.

2. In response to COVID-19, Congress and Federal and state prudential banking regulators have considered provisions pertaining to mortgage loans as a result of the effects of the COVID-19. These provisions are intended to be applicable for the term of the loan modification, but solely with respect to a modification, including a forbearance arrangement, an interest rate modification, a repayment plan, and any other similar arrangement that defers or delays the payment of principal or interest, that occurs during the applicable period for a loan that was not more than 30 days past due as of December 31, 2019.

3. Furthermore, guidance has been issued by the Financial Condition (E) Committee to all U.S. insurers filing with the NAIC in an effort to encourage insurers to work with borrowers who are unable to, or may become unable to meet their contractual payment obligations because of the effects of COVID-19. As detailed in that guidance, the Committee, which is the NAIC parent committee of all the solvency policy making task forces and working groups of the NAIC, supports the use of prudent loan modifications that can mitigate the impact of COVID-19.

4. This interpretation considers the interagency guidance issued by Federal and state prudential banking regulators on March 22, 2020 addressing whether the modification of mortgage loan or bank loan terms in response to COVID-19 shall be considered a troubled debt restructuring.

INT 20-03 Discussion

5. *SSAP No. 36—Troubled Debt Restructuring* provides guidance, predominantly adopted from U.S. GAAP, in determining whether a debt restructuring is considered a troubled debt restructuring. Additionally, *SSAP No. 36* provides accounting and disclosure guidance when a troubled debt restructuring has been deemed to occur. Pursuant to existing guidance in *SSAP No. 36*, a debt restructuring is not necessarily considered a troubled debt restructuring and a creditor must assess whether the debtor is experiencing financial difficulties. The guidance also indicates that a delay in payment that is insignificant is not a concession

6. On March 22, 2020, the Federal and state prudential banking regulators issued a joint statement that included guidance on their approach to the accounting for loan modifications in light of the economic impact of the coronavirus pandemic. The guidance was developed in consultation with the staff of the FASB who concur with the approach and indicated that they stand ready to assist stakeholders with any questions. This interagency statement is provided below and is accessible through the FASB response via the following link:

https://fasb.org/cs/Satellite?c=FASBContent_C&cid=1176174374016&pagename=FASB%2FFASBContent_C%2FNewsPage

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

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), and the State Banking Regulators (hereafter, the agencies), are issuing this interagency statement to provide additional information to financial institutions who 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, and financial institutions and their customers are affected by COVID-19. 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. 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.

Working with Customers

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 and will not direct supervised institutions to automatically categorize all COVID-19 related loan modifications as troubled debt restructurings (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 actions 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. 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.

Accounting for Loan Modifications

Modifications of loan terms do not automatically result in TDRs. According to U.S. GAAP, 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. The agencies have confirmed with staff of the Financial Accounting Standards Board (FASB) 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. 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 considered current are those that are less than 30 days past due on their contractual payments at the time a modification program is implemented.

Working with borrowers that 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. For modification programs designed to provide temporary relief for current borrowers affected by COVID-19, 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.

Modification or deferral programs mandated by the federal or a state government related to COVID-19 would not be in the scope of ASC 310-40, e.g., a state program that requires all institutions within that state to suspend mortgage payments for a specified period.

The agencies' examiners will exercise judgment in reviewing loan modifications, including TDRs, and will not automatically adversely risk rate credits that are affected by COVID-19, including those considered TDRs. Regardless of whether modifications result in loans that are considered TDRs or are adversely classified, agency examiners will not criticize prudent efforts to modify the terms on existing loans to affected customers.

In addition, the FRB, the FDIC, and the OCC note that efforts to work with borrowers of one-to four family residential mortgages as described in the modification section of this document, 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.

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 loan documents. 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.

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 refer to the charge-off guidance in the instructions for the Consolidated Reports of Condition and Income.

Discount Window Eligibility

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

7. On March 27, 2020, President Trump signed into law the *Coronavirus Aid, Relief and Economic Security Act* (CARES Act). The provisions in Section 4013 specifically address temporary relief from troubled debt restructurings:

SEC. 4013. TEMPORARY RELIEF FROM TROUBLED DEBT RESTRUCTURINGS.

(a) DEFINITIONS.—In this section:

(1) APPLICABLE PERIOD.—The term “applicable period” means the period beginning on March 1, 2020 and ending on the earlier of December 31, 2020, or the date that is 60 days after the date on which the national emergency concerning the novel coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates.

(2) APPROPRIATE FEDERAL BANKING AGENCY.—The term “appropriate Federal banking agency”— (A) has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and (B) includes the National Credit Union Administration.

(b) SUSPENSION.—

(1) IN GENERAL.—During the applicable period, a financial institution may elect to— (A) suspend the requirements under United States generally accepted accounting principles for loan modifications related to the coronavirus disease 2019 (COVID–19) pandemic that would otherwise be categorized as a troubled debt restructuring; and (B) suspend any determination of a loan modified as a result of the effects of the coronavirus disease 2019 (COVID–19) pandemic as being a troubled debt restructuring, including impairment for accounting purposes.

(2) APPLICABILITY.—Any suspension under paragraph (1)—

(A) shall be applicable for the term of the loan modification, but solely with respect to any modification, including a forbearance arrangement, an interest rate modification, a repayment plan, and any other similar arrangement that defers or delays the payment of principal or interest, that occurs during the applicable period for a loan that was not more than 30 days past due as of December 31, 2019; and

(B) shall not apply to any adverse impact on the credit of a borrower that is not related to the coronavirus disease 2019 (COVID–19) pandemic.

(c) DEFERENCE.—The appropriate Federal banking agency of the financial institution shall defer to the determination of the financial institution to make a suspension under this section.

(d) RECORDS.—For modified loans for which suspensions under subsection (a) apply—

(1) financial institutions should continue to maintain records of the volume of loans involved; and

(2) the appropriate Federal banking agencies may collect data about such loans for supervisory purposes.

8. On April 7, 2020, the Federal and state prudential banking regulators issued a revised joint statement to reflect the issuance of the CARES Act:

<https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200407a1.pdf>

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) (hereafter, the agencies), in consultation with the state financial regulators, 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 COVID19). The United States has been operating under a presidentially declared emergency since March 13, 2020 (National Emergency). 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. 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.

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.

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 310-40.5. 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. However, consistent with section 4013, financial institutions should maintain records of the 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.

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. The agencies have confirmed with staff of the Financial Accounting Standards Board (FASB) 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. 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;
- 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 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.

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.

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 refer to the charge-off guidance in the instructions for the Consolidated Reports of Condition and Income.

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. 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. 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. 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.

INT 20-03 Consensus

9. The Working Group reached a consensus to clarify that a modification of mortgage loan or bank loan terms in response to COVID-19 shall follow the provisions detailed in the April 7, 2020 “Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus” (detailed in paragraph 8) and the provisions of the CARES Act (detailed in paragraph 7) in determining whether the modification shall be reported as a troubled debt restructuring within SSAP No. 36.

10. This interpretation is effective for the specific purpose to address loan modifications in response to COVID-19. Consistent with the CARES act, this interpretation is only applicable for the term of the loan modification, but solely with respect to any modification, including a forbearance arrangement, interest rate modification, a repayment plan and other similar arrangement that defer or delays the payment of principal or interest for a loan that was not more than 30 days past due as of December 31, 2019. As determined in the CARES Act, this interpretation will only be applicable for the period beginning on March 1, 2020 and ending on the earlier of December 31, 2020, or the date that is 60 days after the date on which the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates.

INT 20-03 Status

11. The Statutory Accounting Principles (E) Working Group will subsequently review this interpretation to determine if an extension is needed to the effective date.

G:\FRS\DATA\Stat Acctg\3. National Meetings\A. National Meeting Materials\2020\4-15-20 - INTs\adoptions\INT 20-03 - TDR for COVID-19.docx