

Loan Modifications Due to COVID-19 Pandemic: FDIC Answers CARES Act FAQs

By: Nancy Sabol Frantz, Marissa Levy, Timothy E. Davis and Kristen E. Andreoli

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In support of financial institutions and borrowers during the COVID-19 pandemic, the newly enacted Coronavirus Aid, Relief, and Economic Security Act (CARES Act) includes a number of provisions permitting lenders to suspend, during a covered period, requirements under U.S. Generally Accepted Accounting Principles (GAAP) with respect to categorizing certain loan modifications as a troubled debt restructuring (TDR) due to COVID-19. In light of the CARES Act, the Federal Deposit Insurance Corporation (FDIC) issued a series of answers to FAQs for financial institutions with respect to loan modifications. The FAQs help guide lenders as well as borrowers as they address pending defaults under existing credit facilities. The FAQs encourage financial institutions to work with borrowers who may be unable to meet their payment obligations due to COVID-19 in several ways:

Payment Accommodations

Short-term accommodations which modify, extend, suspend or defer repayment terms should be intended to facilitate the borrower's ability to work through the immediate impact of the virus. According to the FAQs, all loan accommodation programs should ultimately be targeted towards repayment. To that end, the FDIC recommends that financial institutions address 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.

Short-Term Modifications

Significantly, agency examiners will not categorically regard all COVID-19 related loan modifications as TDRs. Short-term (e.g. six months) modifications made on a good faith basis in response to COVID-19 events to borrowers who were current prior to any relief will not be considered TDRs. For modifications designed to provide temporary relief for current borrowers affected by COVID-19, financial institutions are directed to presume that borrowers who are current on payments are not experiencing financial difficulties at the time of the modification, thereby avoiding TDR status and further analysis. Of note, modifications or deferral programs mandated by the federal or state governments related to COVID-19 are outside the scope of this guidance. Even when modifications are deemed to be TDRs or are adversely classified, they will not be criticized by the agencies so long as the lenders attempted to work with the borrowers using prudent efforts to modify the loan.

Frozen Delinquencies

Furthermore, financial institutions are not expected to designate loans with deferrals granted due to COVID-19 as past due because of the deferral so long as all payments are current in accordance with the revised terms of the loan. For borrowers who were past due prior to being affected by COVID-19, it is the FDIC's position that the delinquency status of the loan will be "frozen" for the duration of the deferral period.

Real Estate Collateral

The FAQs provide guidance regarding certain operational issues with respect to loans secured by real estate. For example, if an appraiser is unable access the interior of a property due to conditions related to the COVID-19 pandemic, appraisers can make an extraordinary assumption about the interior of the property upon a variety of reasonable bases, including, but not limited to: having conducted a recent prior inspection of the property, obtaining an affidavit and/or pictures from the borrower regarding the interior, and determining that the use of an extraordinary assumption will still result in a credible analysis.

Also, financial institutions do not have to obtain an updated property valuation when granting a short-term loan modification to a borrower affected by COVID-19. The FAQs refer to the 2010 Interagency Appraisal and Evaluation Guidelines, which note that "a loan modification that entails a decrease in the interest rate or a single extension of a limited or short-term nature would not be viewed as a subsequent transaction." Financial institutions should conduct fact-specific reviews to determine whether a long-term loan modification constitutes a subsequent transaction, which would necessitate updated valuation information.

If you have questions relating to a specific loan, please contact Nancy Sabol Frantz (frantzn@whiteandwilliams.com; 215.864.7026), Timothy E. Davis (davist@whiteandwilliams.com; 215.864.6829), Marissa Levy (levymp@whiteandwilliams.com; 646.837.5753), Kristen E. Andreoli (andreolik@whiteandwilliams.com; 212.631.1256), or another member of our Real Estate and Finance Groups.

As we continue to monitor the novel coronavirus (COVID-19), White and Williams lawyers are working collaboratively to stay current on developments and counsel clients through the various legal and business issues that may arise across a variety of sectors. Read all of the updates [here](#).

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