

TYPES NOT MAPPED YET April 23, 2020 | TTR not mapped yet | Sarah A. Wade, Garrett M. Fischer

COVID-19: When a bank loan restructure may not be a troubled debt restructuring (revised)

Since our [March 2020 blog post](#), the Federal banking and credit union regulators (FRB, FDIC, NCUA, OCC and CFPB) (collectively, the “Agencies”) published revised guidance clarifying the relationship between the March 22, 2020 Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (“March Guidance”) and Section 4013 ([here](#)) of the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), which was signed into law on March 27, 2020.

As was the case with the March Guidance, the Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised) ([here](#)) (“Revised Guidance”) states that the Agencies continue to “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.” According to the Revised Guidance, “[f]inancial institutions have broad discretion to implement prudent modification programs consistent with the framework included in [the Revised Guidance],” provided that, such actions are implemented in a “safe and sound manner.” Furthermore, loan modifications related to COVID-19 should not be automatically classified as a Troubled Debt Restructuring (a “TDR”) under the accounting rules.

As set forth in the Revised Guidance, a financial institution may account for an eligible loan modification in one of two ways—either pursuant to Section 4013 of the CARES Act or under ASC Subtopic 310-40. If a loan modification is not eligible under Section 4013 of the CARES Act, or if the institution elects not to account for the loan modification under Section 4013 of the CARES Act, the financial institution should evaluate whether the modified loan is a TDR.

To be an eligible loan under Section 4013 of the CARES Act, the loan modification must meet the following eligibility requirements: such 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)” (“Section 4013 Loans”). In such cases, although a financial institution should maintain records regarding the volume of such Section 4013 Loans, they are not required to report the same as TDRs within regulatory reports (although other supervisory data may be collected).

Not all loan modifications, however, will be eligible as a Section 4013 Loan, or a financial institution may elect not to apply the eligibility requirements of Section 4013 Loans. In such cases, this does not, in and of itself, mean that such loan modifications should be classified as TDRs. Rather, “[a]ccording 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**. (emphasis added) 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.”

“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).”

In other words, the Agencies continue to encourage prudent modifications for borrowers experiencing COVID-19 related difficulties in a safe and sound manner and provide two separate accounting frameworks under which such modifications can avoid classification as a TDR. Section 4013 of the CARES Act, ASC Subtopic 310-40 and the Revised Guidance should be read and understood fully prior to assembling a program to address COVID-19 related loan modifications. In addition, the Agencies will present a Webinar on this topic on Friday, April 24, 2020, from 3:00 to 4:00 p.m. Eastern Daylight Time (EDT), the announcement for which can be found [here](#).

authorsTest

sarah

Sarah A. Wade

garrett

Garrett M. Fischer