Buchalter
COVID-19 Alert

Summary of Federal Financial Institution Regulators' Pronouncements on Assisting Borrowers

As the economic fallout from efforts to contain COVID-19 rapidly develops, Federal financial institution regulators have moved quickly with a series of pronouncements to provide guidance to institutions on dealing with borrowers impacted by COVID-19. To date, federal banking regulators and the Conference of State Bank Supervisors have provided general directives, "encouraging" financial institutions to work with affected customers and suggesting possible steps to be taken. Set forth here is a brief summary of key pronouncements from the agencies concerning borrowers affected by COVID-19.

Some states and local jurisdictions are implementing mandatory requirements that might impact foreclosures and evictions. Please contact us for details regarding particular jurisdictions.

A. **Statements Issued by the Federal bank regulators (the FDIC, Federal Reserve, OCC, CFPB, and National Credit Union Administration) and the Conference of State Bank Supervisors.**

March 9 - Joint Press Release of the Federal Reserve, OCC, FDIC, National Credit Union Administration, CFPB, and Conference of State Bank Supervisors.

March 13 – Federal Reserve, OCC, FDIC, National Credit Union Administration, CFPB, and Conference of State Bank Supervisors; Pandemic Planning: Working With Customers Affected by Coronavirus and Regulatory and Supervisory Assistance. Click HERE.

March 19 – Federal Reserve, OCC and FDIC: Joint Statement on CRA Consideration for Activities in Response to COVID-19.

March 19 - FDIC: updated Frequently Asked Questions for Financial Institutions Affected by the Coronavirus Disease. Click HERE.

March 22 – Federal Reserve, OCC, FDIC, National Credit Union Administration, CFPB, Conference of State Bank Supervisors: Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus. Click HERE.

B. **Uniform Statements From All of These Agencies – No Criticism if Prudently Assisting Borrowers Affected by COVID-19, No Obligation to Report As Past Due.**

In these statements, all of these agencies "encourage" financial institutions to work prudently with borrowers who cannot or may not be able to meet contractual obligations due to the effects of COVID-19, and offer assurances that they will not criticize institutions that mitigate credit risk consistent with safe and sound practices.

All these agencies state that financial institutions are not expected to designate loans with deferrals granted due to COVID-19 as past due because of the deferral. Further, the FDIC's FAQ's address how to report delinquencies. Financial institutions may want to consider addressing deferred or skipped payments by extending the original maturity date or making the payments due on a balloon payment at the maturity date of the loan. If borrowers were current before COVID-19, and then receive accommodations as a result of the effects of COVID-19, they generally should not be reported as past due. Institutions should consult GAAP rules and regulatory requirements. If a borrower was delinquent when the COVID-19 crisis started, the delinquent reporting should be for only the period before the crisis.

C. **FDIC, OCC and Federal Reserve – Examples of Activities Financial Institutions May Undertake to Assist Borrowers.**

The three agencies provide examples of the efforts financial institutions are encouraged to engage in. They may include, but are not limited to:

- Waiving certain fees, such as ATM fees, overdraft fees, late payment charges on credit cards and other loans,
- Waiving early withdrawal penalties on time deposits.
- Increasing ATM daily withdrawal limits.
- Increasing credit card limits for worthy customers.
- Offering payment accommodations (such as deferring or skipping payments or extending due dates) to avoid delinquencies and negative credit bureau reporting caused by COVID-19 related disruptions.
- Modifications of loans as appropriately determined on an individual basis.

D. **FDIC, OCC and Federal Reserve on CRA**

The March 19 CRA statement encouraged financial institutions to work with customers and communities, especially those that are low- and moderate-income. The regulators stated that they will favorably consider such activities in an institution's assessment area for CRA purposes.

If we can be of assistance and to discuss various options and specific situations, please feel free to contact any of the Buchalter Mortgage Banking Industry Group Attorneys below.

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