March 25, 2020

Hon. Scott A. White, Chair
Financial Condition (E) Committee
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Hon. Eric Cioppa, Vice Chair
Financial Condition (E) Committee
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Re: Industry Request for Clarification of Life Risk-Based Capital Treatment of Mortgages Affected by COVID-19

Dear Commissioner White and Superintendent Cioppa:

The undersigned organizations respectfully request that the National Association of Insurance Commissioners (NAIC) issue immediate clarifying guidance that temporary forbearance, deferrals, or modifications of mortgage loans in response to the COVID-19 event will not trigger treatment as a restructured or delinquent loan for accounting purposes under SSAP No. 36 – *Troubled Debt Restructurings*, and for purposes of Life Risk-Based Capital.

The United States has been operating under a presidentially declared state of emergency since March 13, 2020. Social distancing advisories and mandatory business shutdowns are having immediate impacts on borrower properties in nearly every aspect of the commercial real estate world, which is especially challenging in the retail and hospitality sectors. Servicers for mortgages held by life insurance companies are fielding pressing calls from borrowers seeking temporary relief due to the impact of COVID-19.

Unfortunately, the ability of life insurance companies to make appropriate business decisions to address those requests is impaired by uncertainty around accounting and the risk-based capital consequences of those actions. For example, would offering a short-term modification (e.g., accepting interest-only payments for a limited period) trigger risk-based capital treatment as a restructured loan; or would loans subject to short-term forbearance or deferrals be considered delinquent for risk-based capital purposes (CM6 status) when they are more than 90 days past due as a result of temporary forbearance or deferrals? Considering the impact to the loans is due to temporary health and safety actions taken to quell the spread of COVID-19, we believe the answer to both of those questions is no.

Accordingly, we request that NAIC prioritize issuing immediate clarifying guidance that:

- **Restructured Loans.**
  - Troubled Debt Restructuring (TDR): We request that the NAIC Statutory Accounting Principles (E) Working Group (SAPWG) issue an Interpretation (INT) concurring with guidance issued in an "Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus" and affirmed by the Financial Accounting Standards Board (FASB) on March 22, 2020. A concurring INT issued by SAPWG should maintain consistency between statutory and GAAP accounting with regard to TDRs under SSAP No. 36 – *Troubled Debt Restructurings* and the FASB's recent guidance.
  - RBC: Mortgage loans subject to short-term modifications or government-mandated modifications related to COVID-19 economic effects will not be treated as restructured loans for purposes of Life Risk-Based Capital (i.e., will not affect the origination date, value, value date, and Net Operating Income and therefore would not impact the CM1-CM5 categorization); and
- **Loans Past Due.** Mortgage loans subject to short-term forbearances or deferrals related to COVID-19 economic effects will not be treated as delinquent for purposes of Life Risk-Based Capital (i.e., >90-days Delinquent CM6 status) and if determined to be collectible would not be considered non-admitted (i.e., >180-days delinquent) for purposes of NAIC accounting and reporting.

We note the clarifications requested above would be consistent with comparable guidance provided to banks by their respective regulators in consultation with the FASB. Specifically, on March 22, 2020:

Federal Prudential Regulators released an Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus issued by federal prudential regulators; and

FASB released a Statement on Prudential Regulator Guidance Concerning Trouble Debt Restructurings, stating that the guidance in the Interagency Statement "was developed in consultation with the staff of the FASB who concur with this approach and stand ready to assist stakeholders with any question they may have during this time."

For your convenience, we attach as an appendix a side-by-side comparison of the requested NAIC clarifications and the comparable sections of the Interagency Statement.

We urge NAIC to make this a top priority and take immediate action. The resulting clarity will better enable life insurance companies to work prudently and swiftly with borrowers, mitigate COVID-19 impacts on borrowers, on life insurance companies, and on the nation's economy; and ultimately to lead to improved loan performance and reduced credit risk. Only the NAIC can provide that certainty.

We appreciate your consideration of our request at this extraordinarily busy time. Our organizations would be pleased to provide you with additional information or to help in any way we can.

Sincerely,

Paul S. Graham III, Senior Vice President, Policy Development
American Council of Life Insurers

Chris Burgoyne, Vice President, Government and Political Affairs
American Hotel & Lodging Association

Chirag K. Shah, Vice President for Government Affairs and Counsel
Asian American Hotel Owners Association

Justin Ailes, Managing Director, Government Relations
CRE Finance Council

Jennifer Platt, Vice President, Federal Operations
International Council of Shopping Centers

Bruce Oliver, Associate Vice President, Commercial/Multifamily Policy
Mortgage Bankers Association

Gregory Scott Brown, Senior Vice President, Government Affairs
National Apartment Association

Aquiles Suarez, Senior Vice President for Government Affairs
NAIOP Commercial Real Estate Development Association

Dave Borsos, Vice President, Capital Markets
National Multifamily Housing Council

Clifton E. (Chip) Rodgers, Jr., Senior Vice President
The Real Estate Roundtable

cc: Hon. Mike Consedine
Hon. Jillian Froment
Hon. Todd Kiser

Appendix

Comparison: Requested Life RBC Clarifications and Interagency Statement

Requested Clarification

Restructured Loans

Mortgage loans subject to short-term modifications or government-mandated modifications related to COVID-19 economic effects will not be treated as restructured loans for purposes of Life Risk-Based Capital (i.e., will not affect the origination date, value, value date, and Net Operating Income and therefore would not impact the CM1-CM5 categorization).

Interagency Statement [footnotes in original]

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.[1] 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.[2] 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

[1] The TDR designation is an accounting categorization, as promulgated by the FASB and codified within Accounting Standards Codification (ASC) Subtopic 310-40, Receivables – Troubled Debt Restructurings by Creditors (ASC 310-40).

[2] According to ASC 310-40, factors to be considered in making this determination, which could be qualitative, are whether the amount of delayed restructured payments is insignificant relative to the unpaid principal or collateral value of the debt, thereby resulting in an insignificant shortfall in the contractual amount due from the borrower, and whether the delay in timing of the restructured payment period is insignificant relative to the frequency of payments due under the debt, the debt's original contractual maturity, or the debt's original expected duration.

Requested Clarification	Interagency Statement [footnotes in original]
	result in the loans being considered restructured or modified for the purposes of their respective risk-based capital rule [3]
Loans Past Due	**Past Due Reporting**
Mortgage loans subject to short-term forbearances or deferrals related to COVID-19 economic effects will not be treated as delinquent for purposes of Life Risk-Based Capital (i.e., >90-days Delinquent CM6 status) and if determined to be collectible would not be considered non-admitted (i.e. >180-days delinquent) for purposes of NAIC accounting and 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.[4]

[3] Although NCUA's Risk-Based Capital rule does not go into effect until January 1, 2022, the NCUA agrees with the language in this guidance regarding working with borrowers of one-to-four family residential mortgages.

[4] This applies for risk-based capital purposes as well. In addition, the underlying exposure of a securitization would not be considered past due or to have contractually deferred payments under 12 CFR 3.43(b)(2) or 12 CFR 3.144(b)(2) (OCC), 12 CFR 217.43(b)(2) or 12 CFR 217.144(b) (FRB), or 12 CFR 324.43(b)(2) or 12 CFR 324.144(b)(2) (FDIC) due solely to such a payment deferral.