November 10, 2020

The Honorable Randal Quarles
Vice Chairman of Supervision
Board of Governors of the Federal Reserve System

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation

Mr. Brian Brooks
Acting Comptroller of the Currency
Office of the Comptroller of the Currency

The Honorable Rodney Hood
Chairman
National Credit Union Administration

The Honorable Kathy Kraninger
Director
Consumer Financial Protection Bureau

Re: **Request for Additional Guidance under the Interagency Statements on Troubled Debt Restructurings**

Ladies and Gentlemen:

As the end of 2020 approaches, the undersigned organizations urge the agencies above (Agencies) to provide guidance that COVID-19-related loan modifications with terms totaling more than six months (e.g., up to 18 months) do not automatically result in troubled debt restructurings (TDR) under the *Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised)* and *Joint Statement on Additional Loan Accommodates Related to COVID-19* (Interagency Statements). We also urge the Agencies to reinforce that financial institutions may use their reasonable judgment when assessing credit risk during the unique circumstances of the pandemic.

Extend TDR Relief to Allow for an Incremental Approach

Early on in the pandemic, the Agencies took proactive and decisive action to allow financial institutions to deliver meaningful relief to customers by providing guidance that short-term loan modifications with terms of up to sixth months would not automatically result in a TDR. Congress also took action to provide TDR relief in section 4013 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which does not limit the term of a loan modification for modifications made by December 31, 2020. To date, these actions have been particularly effective in allowing lenders to offer prudent relief to commercial real estate borrowers who have been acutely affected by the pandemic and whose properties are reasonably expected to return to viability post the pandemic.

Unfortunately for financial institutions and borrowers, many of the modifications granted under the Interagency Statement and section 4013 of the CARES Act are reaching the end of their six-month terms at that same time that the CARES Act protections are set to expire on December 31, 2020. This confluence of events creates challenges for any financial institution that determines that it is most prudent to continue employing a deliberate, incremental approach when its manages requests for further extensions of those existing modifications, where the combined terms of all modifications will be greater than six months.

- If an institution elects to continue to employ an incremental approach, any incremental loan modification that occurs after year-end 2020 will result in an automatic TDR.
- Alternatively, the financial institution can avoid TDR treatment by making a loan modification before the end of 2020 with a term as long as could possibly be necessary, forgoing its incremental approach.

To foster and support financial institutions' continued use of an incremental approach to managing loan modifications during the pandemic, we urge the Agencies to provide guidance that a loan modification with a term greater than six months (*e.g.*, up to 18 months combined) will not automatically result in a TDR under the Interagency Statements.

Credit Assessments

We recognize TDR relief does not also relieve a financial institution from responsibility for managing the credit risk of the loan. For example, even if a loan modification does not result in a TDR under the CARES Act or under the Interagency Statements, financial institutions will need to critically assess and monitor the credit risk of the loan as modified and under current circumstances. As a result, it will be critical going forward for the Agencies to continue to recognize the need for financial institutions to have flexibility to use their reasonable, market-based judgment when assessing credit risk under the current idiosyncratic circumstances of the pandemic. Business-as-usual approaches may not be effective or appropriate. For example, in some cases, commercial properties will have a viable pathway to stabilization, but recognizing that fact in a risk assessment may require an adjustment to pre-pandemic approaches. We encourage the Agencies to reaffirm that financial institutions have flexibility to use reasonable and prudent judgment to give borrowers and lenders more time to see properties and loans through this pandemic.

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Again, we appreciate the action by the Agencies to proactively issue the Interagency Statements early in the National Emergency to provide financial institutions with the flexibility they needed to do the right thing, even if that meant not doing business as usual. We now urge the Agencies to provide financial institutions with the additional flexibility they need to continue to do the right thing, by providing guidance that modifications up to 18 months do not automatically result in TDRs and reinforcing financial institutions' flexibility to use their reasonable and expert judgment when assessing credit risk. Because this issue is urgent, we request that the Agencies issue such a clarification and reaffirmation as soon as possible.

Sincerely,

Mortgage Bankers Association
American Hotel & Lodging Association
American Resort Development Association
Asian American Hotel Owners Association
CRE Finance Council
International Council of Shopping Centers
Latino Hotel Association
Nareit
The Real Estate Roundtable

cc: Conference of State Bank Supervisors
American Council of State Savings Supervisors
National Association of State Credit Union Supervisors