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An Update From Bodman PLC

Bodman PLC | COVID-19 Response Team Website

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Short Term Loan Modifications to Borrowers

The potential negative implications associated with financial concessions ease as financial institutions are encouraged by federal regulators and Congress to make short-term loan modifications to borrowers effected by COVID-19.

On March 22, 2020, the federal financial institution regulatory agencies (including The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau) and the State Banking Regulators published an interagency statement encouraging 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 U.S. GAAP, the restructuring of a debt constitutes a troubled debt restructuring ("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 confirm 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. 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.

The agencies also state that 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."

To provide even further relief, Section 4013 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") provides that financial institutions may elect to suspend the requirements under U.S. GAAP for loan modifications related to COVID-19 that would otherwise be categorized as a TDR and suspend any determination of a loan modified as a result of the effects of COVID-19 as being a TDR. Any suspension of the TDR requirements under Section 4013 of the CARES Act is "applicable for the term of the loan modification, but solely with respect to any modification, including a forbearance arrangement, an interest rate modification, a repayment plan, and any other similar arrangement that defers or delays the payment of principal or interest, that occurs during the applicable period for a loan that was not more than 30 days past due as of December 31, 2019." The "applicable period" is defined as "March 1, 2020 and ending on the earlier of December 31, 2020 or the date that is 60 days after the date on which the national emergency concerning the [COVID-19] outbreak . . . terminates."

Bodman continues to monitor developments in the financial industry and we will continue to provide updates. We encourage you to contact a Bodman attorney if you have any questions or concerns about the potential impacts COVID-19 may have on your institution and transactions.