

May 15, 2020

The Honorable Jerome Powell, Chairman  
Board of Governors of the Federal Reserve  
System  
20th Street and Constitution Avenue NW  
Washington, DC 20551

The Honorable Joseph M. Otting,  
Comptroller Office of the Comptroller  
of the Currency  
400 7th Street SW  
Washington, DC 20219

The Honorable Jelena McWilliams, Chair  
Federal Deposit Insurance Corporation  
550 17th Street NW, Room 6028  
Washington, DC 20429

**Re: Furthering Economic Stabilization by Encouraging Financial Institutions to Work Constructively with All Borrowers Affected by COVID-19**

Dear Chairman Powell, Comptroller Otting, and Chair McWilliams:

We appreciate your collective efforts to support the U.S. economy during the economic crisis resulting from the COVID-19 pandemic. We are encouraged by the April 7 “Revised Interagency Statement on Loan Modifications by Financial Institutions Working with Customers Affected by the Coronavirus” (the “Statement”).<sup>1</sup> As described in the Statement, the financial regulatory agencies:

- Encourage financial institutions to work constructively with borrowers affected by COVID-19;
- Will not criticize institutions for prudent loan modifications; and
- Recognize that prudent loan modification programs to financial institution borrowers affected by COVID-19 are positive actions that can effectively manage or mitigate adverse impacts on borrowers due to COVID-19, and lead to improved loan performance and reduced credit risk.

The Statement also:

- Clarifies the interaction between the interagency statement and the optional temporary relief provided in Section 4013 of the CARES Act;
- Provides supervisory views on past due and nonaccrual reporting of loan modification programs; and
- Provides supervisory views on consumer protection considerations.

We are writing to request that you clarify that the guidance in the Statement allows financial institutions to work prudently with all creditworthy borrowers and to exercise discretion in

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<sup>1</sup> Financial Institution Letter 36-2020, “Revised Interagency Statement on Loan Modifications by Financial Institutions Working with Customers Affected by the Coronavirus (April 7, 2020), available at <https://www.fdic.gov/news/news/financial/2020/fil20036.pdf>

modifying terms of lending arrangements with those borrowers consistent with safe and sound banking practices.

Our focus is the debt financing extended by commercial banking institutions to non-bank lenders (NBLs) who, in turn, provide mortgage loan funding to commercial and multifamily property owners of all types. The financing provided by such commercial banking institutions to NBLs generally takes the form of warehouse lines of credit and repurchase agreements, which are collateralized by the mortgage loans originated by the NBLs and the commercial mortgage-related securities held in their portfolios, and are subject to mark-to-market protocols.

***Specifically, we request clarification that, in addition to traditional loan products, lending and financing arrangements, such as warehouse lines and repurchase agreements secured by multifamily and commercial real estate loans and commercial mortgage-related securities, are within the scope of the guidance in the Statement.***

The liquidity provided to NBLs via warehouse lines and repurchase agreements allows NBLs to, in turn, extend debt capital to the commercial and multifamily marketplace, which represents a vital component of the U.S. economy, responsible for some \$1.14 trillion in commercial real estate development and operations or 18.1% of GDP.<sup>2</sup> Much of the financing that NBLs extend is to multifamily property owners, with the balance focused on industrial, office, hotel, and retail assets. While loan sizes vary, most loan sizes are in the \$5 million to \$30 million range.

With the mandated shutdown of the economy as a result of the COVID-19 pandemic, it would be helpful to clarify that the guidance in the Statement applies to the warehouse lines of credit and repurchase agreement credit arrangements described above. With only a minimum of essential businesses in operation, a significant number of commercial real estate tenants are seeking reductions of, or forbearance on, rent payments as their businesses are shuttered. In turn, commercial landlords, facing the certainty of severely lower rental income, are seeking forbearance on or modification of their mortgage loans for the period of time during which the pandemic continues to impact tenants' ability to pay rent.

This is significant for NBLs. Due to requests for forbearance on or modification of the loans and mortgage-related securities underlying lines of credit and repurchase agreements solely as a result of the impact of COVID-19 and the closure of non-essential businesses, commercial banking institutions providing such forms of financing may determine that the underlying loans and securities have declined in value – even though such assets were performing in accordance with their terms prior to the pandemic. As a result, banks may request that NBLs shore up their lines of credit and repurchase agreements with increased amounts of cash or other collateral as margin to supplement their loan portfolio collateral. Alternatively, NBLs may be forced to remove modified or forborne loans as loan portfolio collateral and pay down in full the amount of the financing associated with such loans.

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<sup>2</sup> Source: NAIOP, "Economic Impacts of Commercial Real Estate, 2020 U.S. Edition." Assumes a multiplier effect or the total value of goods and services generated directly and indirectly as a result of construction and related expenditures within the U.S.

Either alternative is likely not financially feasible given the magnitude of the impact of COVID-19 and could result in the failure of many NBLs. Given the current distressed environment, the loss of this substantial source of commercial real estate finance capital and/or constraints to the ability of NBLs to work with their real estate owner borrowers would add further stress to commercial and multifamily property markets and their valuations as well as the underlying apartment tenants and business owners occupying those properties.

Therefore, as commercial banks consider short-term modifications and forbearance on loans secured by commercial and multifamily assets, it would be helpful for federal banking regulators to clarify that, in accordance with recent regulatory directives and the guidance in the Statement, that agency examiners will not criticize commercial banks that apply similar standards to modifications and forbearance on warehouse lines of credit, repurchase agreements, and other extensions of credit to creditworthy NBL borrowers.

We appreciate the opportunity to comment on this important issue.

Respectfully,

U.S. Chamber of Commerce  
CRE Finance Council  
Mortgage Bankers Association  
Nareit  
Institute for Portfolio Alternatives  
ADISA (Alternative & Direct Investment Securities Association)  
International Council of Shopping Centers  
The Real Estate Roundtable  
National Association of REALTORS®  
Institute of Real Estate Management  
CCIM Institute  
Society of Industrial and Office REALTORS®