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Summary of Governmental and Regulatory Guidance Applicable to Financial Institutions in Connection with the Coronavirus (COVID-19) Pandemic

March 23, 2020

The governor of New York State, the New York State Department of Financial Services ("DFS"), and the Federal banking regulatory agencies have been issuing guidance for financial institutions in connection with the Coronavirus ("COVID-19") pandemic. The following is a summary of pertinent guidance, including the Executive Orders issued by New York State that may impact financial institutions operating within the State.

New York

Executive Order 202.9

On March 21, 2020, Governor Andrew Cuomo issued Executive Order 202.9 to temporarily modify subdivision two of Section 39 of the New York Banking Law to provide that it shall be deemed an unsafe and unsound business practice if, in response to the COVID-19 pandemic any bank subject to the jurisdiction of the DFS shall not grant a forbearance to any person or business who has a financial hardship as a result of the COVID-19 pandemic for a period of ninety days. This modification is effective from March 21, 2020 to April 20, 2020. The DFS Superintendent is directed to ensure under reasonable and prudent circumstances that any licensed or regulated entities provide to consumers in the State an opportunity for a forbearance of payments for a mortgage to any person or entity facing financial hardship due to COVID-19. To facilitate implementation of this relief, the Superintendent is directed to promulgate emergency regulations that applications for forbearances be granted in all reasonable and prudent circumstances. Additionally, the Superintendent is empowered to issue emergency regulations to restrict or modify fees for the use of automated teller machines (ATMs), overdraft fees and credit card late fees for the period of the State disaster emergency.

Executive Order 202.8

On March 20, 2020, the Governor issued Executive Order 202.8 providing there shall be no enforcement of a foreclosure of any residential or commercial property for a period of ninety days.

Guidance on Businesses Deemed to be Essential

On March 20, 2020, the Governor issued Guidance on Essential Services under the "New York State on Pause" Executive Order. All non-essential businesses statewide were required to reduce the in-person workforce at any work locations by 100% no later than March 22, 2020 at 8:00 PM. Essential businesses and entities providing essential services or functions to an essential business are not subject to the in-person restrictions. This 'PAUSE' Guidance clarifies that financial institutions are deemed to be essential businesses. By being permitted to operate as an essential business, financial institutions must continue to comply with the guidance and directives for maintaining a clean and safe work environment issued by the New York State Department of Health.

DFS Guidance Regarding Support for Consumers and Businesses

To help impacted customers during the COVID-19 pandemic, the DFS issued guidance on March 19, 2020, to urge all regulated financial institutions to take reasonable and prudent actions, such as waiving overdraft and ATM fees, waiving late fees for credit card and other loan balances, offering new loans on favorable terms, increasing ATM daily cash withdrawal limits, waiving early withdrawal penalties on time deposits, increasing credit card limits, and offering payment accommodations. All state-regulated financial institutions are encouraged to work with and provide accommodations to their borrowers to the extent reasonable and prudent, including refraining from exercising rights and remedies based on potential technical defaults under material adverse change and other contractual provisions that might be triggered by the COVID-19 pandemic.

DFS Guidance Regarding Support for Borrowers

On March 19, 2020, the DFS issued guidance urging New York State regulated and exempt mortgage servicers (such as certain federal-chartered financial institutions in New York) to consider taking the following actions to alleviate the adverse impact caused by COVID-19 on those mortgage borrowers who are not able to make timely payments:

- Forbearing mortgage payments for 90 days from their due dates;
- Refraining from reporting late payments to credit rating agencies for 90 days;
- Offering mortgagors an additional 90-day grace period to complete trial loan modifications, and ensuring that late payments during the COVID-19 pandemic does not affect their ability to obtain permanent loan modifications;
- Waiving late payment fees and any online payment fees for a period of 90 days;
- Postponing foreclosures and evictions for 90 days;
- Ensuring that mortgagors do not experience a disruption of service if the mortgage servicer closes its office, including making available other avenues for mortgagors to continue to manage their accounts and to make inquiries; and
- Proactively reaching out to mortgagors via app announcements, text, email or otherwise to explain the above-listed assistance being offered to mortgagors.

This guidance was enhanced and given more force by Executive Order 202.9 discussed above.

DFS Temporary Relief Order

Recognizing that COVID-19 may present compliance challenges for certain State-regulated entities, on March 12, 2020, the DFS issued an Order Granting Temporary Relief from certain requirements of the New York Banking Law and the New York Financial Services Law and their implementing regulations, most notably:

- Upon written notice to DFS, State-regulated entities may temporarily relocate any of their authorized places of business, and close any of their branch offices or locations, if adversely affected by the pandemic of COVID-19, without complying with the prior notice or application requirements of the Banking Law or Financial Services Law.
- Participation in a board or trustees meeting via telephone, video-conferencing or similar electronic means constitutes an in-person meeting.
- A 45-day extension is granted for certain compliance and reporting filings, including the certification of compliance with cybersecurity requirements and transaction monitoring and filtering program, Annual Reports and Comparative Statements. Please note that the extension does not apply to notices to the Superintendent of a cybersecurity event and the submission of a regulated entity's LIBOR cessation and transition plans.

Federal

Interagency Guidance

Interagency Statement on Loan Modifications

On March 22, 2020, the Federal Reserve Board ("FRB"), Federal Deposit Insurance Corporation ("FDIC"), National Credit Union Administration ("NCUA"), Office of the Comptroller of the Currency ("OCC"), Consumer Financial Protection Bureau ("CFPB"), and the Conference of State Banking Regulators (collectively, the "Agencies") issued an interagency statement on loan modifications and reporting for financial institutions working with borrowers affected by COVID-19.

The Agencies encouraged financial institutions to work with borrowers who are affected by COVID-19, stating that they will not criticize financial institutions that mitigate credit risk through prudent actions consistent with safe and sound practices. The statement confirmed that the regulators will not direct supervised institutions to automatically categorize all COVID-19 related loan modifications as troubled debt restructurings ("TDRs") and provided further guidance on TDRs. The Agencies also set forth supervisory views on past-due and nonaccrual regulatory reporting of loan modification programs.

Joint Statement on CRA Consideration

On March 19, 2020, the FRB, FDIC, and OCC issued a joint statement. The statement states that retail banking services and retail lending activities in a financial institution's assessment area(s) that are responsive to the needs of low- and moderate-income individuals, small businesses, and small farms affected by COVID-19 that are consistent with safe and sound banking practices (such as waiving certain fees, etc.) will be favorably considered. Additionally, financial institutions will receive Community Reinvestment Act ("CRA") consideration for community development activities that help to revitalize or stabilize low- or moderate-income geographies as well as distressed or underserved non-metropolitan middle-income geographies, and that support community services targeted to low- or moderate-income individuals.

The joint statement also states that favorable consideration will be given to community development activities located in a broader statewide or regional area that includes a bank's CRA Assessment Area, provided that the institution is responsive to the community development needs and opportunities that exist in its own assessment area(s). The statement is effective through the six-month period after the national emergency declaration is lifted, unless extended.

Interim Final Rule for Money Market Liquidity Facility

On March 19, 2020, the FRB, FDIC, and OCC issued an interim final rule to ensure that financial institutions will be able to effectively use the Money Market Mutual Fund Liquidity Facility ("MMLF") recently launched by the FRB to enhance the liquidity and functioning of money markets and to support the economy. The interim final rule modifies the FRB, FDIC, and OCC capital rules so that financial institutions receive credit for the low risk of their MMLF activities, reflecting the fact that institutions would be taking no credit or market risk in association with such activities. The change only applies to activities with the MMLF. The FRB issued a set of FAQs on March 21, 2020.

Joint Statement and Interim Final Rule on Use of Capital and Liquidity Buffers

On March 17, 2020, the FRB, FDIC, and OCC issued a joint statement encouraging banking organizations to use their capital and liquidity buffers as they respond to the challenges presented by COVID-19. An interim final rule was also passed that revises the definition of eligible retained income to allow banking organizations to more freely use their capital buffers.

Interagency Statement on Pandemic Planning

On March 6, 2020, the Federal Financial Institutions Examination Council ("FFIEC"), on behalf of its member agencies, issued guidance to remind financial institutions that business continuity plans should address the threat of a pandemic and its potential impact on the delivery of critical financial services and identifies actions that financial institutions should take to minimize the potential adverse effects of a pandemic.

Federal Reserve Board-Specific Information

Guidance on Supporting Flow of Credit to Households and Businesses

On March 15, 2020, the FRB announced a series of actions to support the flow of credit to households and businesses and thereby promote its maximum employment and price stability goals. This included measures related to the discount window, intraday credit, bank capital and liquidity buffers, and reducing reserve requirement ratios to zero percent effective on March 26, 2020, the beginning of the next reserve maintenance period.

Supervisory Practices Regarding Financial Institutions Affected by COVID-19

On March 13, 2020, the Federal Reserve Board issued a supervisory letter which discusses the supervisory practices that the Federal Reserve System will employ when financial institutions and their customers are affected by COVID-19.

FDIC-Specific Information

FDIC Statement on Regulatory and Supervisory Assistance

On March 13, 2020, the FDIC issued a statement encouraging FDIC-regulated financial institutions to work with customers affected by COVID-19. The FDIC also stated it will work with affected financial institutions to reduce burden when scheduling examinations, and will not assess penalties or take other supervisory action against institutions that take reasonable and prudent steps to comply with regulatory reporting requirements if those institutions are unable to fully satisfy those requirements because of the effects of COVID-19.

The FDIC also stated that it understands that financial institutions may need to temporarily close a facility due to staffing challenges or to take precautionary measures. The FDIC encourages financial institutions to reduce disruptions to their customers, provide alternative service options when practical, and reopen affected facilities when it is safe to do so. Affected financial institutions are encouraged to notify their primary federal or state regulator and their customers of temporary closure of an institution's facilities and the availability of any alternative service options as soon as practical.

FDIC FAQs

The FDIC has published a list of FAQs addressing operational issues, available resources and how to work with borrowers here.

OCC-Specific Information

OCC Bulletin 2020-15

On March 13, 2020, the OCC issued Bulletin 2020-15 encouraging OCC-supervised banks to take steps to meet the financial services needs of customers adversely affected by COVID-19-related issues. This guidance is similar to the FDIC, FRB, and NCUA, and includes suggestions such as waiving certain fees, increasing ATM daily cash withdrawal limits, and offering payment accommodations.

The bulletin also provides that the OCC will consider the unusual circumstances banks face when reviewing a bank's financial condition and determining any supervisory response, and an understanding that some banks may need to temporarily close or otherwise reduce access to a facility because of staffing challenges or to take precautionary measures.

NCUA-Specific Information

Letter Regarding NCUA Actions Related to COVID-19

On March 16, 2020, the NCUA issued a supervisory letter encouraging credit unions to work with those affected by COVID-19 by waiving certain fees and offering payment accommodations. The NCUA also stated that examiners will work with credit union staff to facilitate the secure exchange of information needed to conduct offsite examination and supervision work, and will be mindful of the impact of information requests on any credit unions experiencing operational and staffing challenges associated with responding to COVID-19. The NCUA also simultaneously released FAQs related to the COVID-19 pandemic, and credit union operations, which were further updated on March 18, 2020.

Further Information

Each agency has set up its own specific website with information related to COVID-19. The FDIC's website can be found here. The OCC's website can be found here. The FRB's website can be found here. The NCUA's website can be found here. The DFS website can be found here.

We will continue to monitor this rapidly changing environment and provide updates as necessary. If you have any questions regarding a financial institution's obligations during this time, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenllp.com, Kevin Patterson at (516) 296-9196 or via email at kpatterson@cullenllp.com, Elizabeth A. Murphy at (516) 296-9154 or via email at emurphy@cullenllp.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenllp.com.

Practices

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