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CLIENT ALERT

This Is Not 2008: U.S. Federal Banking Regulators Respond to COVID-19

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Unlike the financial crisis of 2008, when dislocations in the capital markets were at the root of the credit crunch and ensuing economic instability, the current market upheaval is healthcare driven. This has a profound impact on how effectively U.S. federal banking regulators can assist in mitigating the effects of COVID-19. The central issue is how quickly banks can provide their business customers with the necessary assistance to help customers continue business operations.

The primary U.S. federal banking regulators— the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation —have provided banks with preliminary guidance on how to assist businesses with credit facilities who are experiencing financial hardship as a direct result of the COVID-19 outbreak.

Since 2008, U.S. banks have substantially increased their levels of capital and liquidity in excess of regulatory mandated minimums. While federal banking regulators expect that banks will continue to manage their capital actions and liquidity risk prudently, they are encouraging banks to be flexible when confronted with credit requests that are related to COVID-19.

In a recently released joint statement, the regulators said that the “capital and liquidity buffers were designed to provide banking organizations with the means to support the economy in adverse situations and allow banking organizations to continue to serve households and businesses. The agencies support banking organizations that choose to use their capital and liquidity buffers to lend and undertake other supportive actions in a safe and sound manner.”

More specifically, the OCC recently set out distinct areas where federally regulated banks, including community banks, can respond to customers with greater flexibility than would otherwise be the case. Actions taken by banks based on borrower requests such as payment accommodations, allowing borrowers to defer or skip some payments, extending the payment due date, engaging in more significant troubled debt restructurings and other remedies designed to ease cash flow pressures on affected borrowers are all to be evaluated on a case-by-case basis and are to be consistent with prudent banking practices, but with an eye to assist borrowers in acute financial distress.

The regulators have stated they will support and generally not criticize efforts to mitigate the financial strain on customers, provided that such efforts are conducted in a safe and sound manner. To provide further flexibility, regulators have reiterated their longstanding practice to take into account unusual circumstances when reviewing a bank’s financial condition, particularly in those instances where the expectation of an increase in the levels of nonperforming loans rises as a result of external circumstances.

Banks are already inundated with calls from businesses and individual customers who are experiencing the initial wave of financial distress. The flow of requests will not abate in the near future. While taking care of family and employees is of primary concern, the financial health of a business is also high on the list of priorities in these unprecedented times. Taking stock of current loan facilities to determine if there might be an impending payment or covenant compliance issue, or if an increase in a line of credit limit will help bridge a cash shortfall, are all considerations that should be discussed with your banker, your financial professional, and your legal counsel at the earliest possible time. If help is needed, addressing financial issues now is the most prudent course of action. The FDIC has collected numerous communications and has created an FAQ page with COVID-19 information for banking customers on its website at https://www.fdic.gov/coronavirus/index.html

Should you need to review or develop a plan addressing current or potential issues related to your existing credit facility, the Crowell & Moring Commercial Finance, Lending and Financial Restructuring team is available to assist with ensuring your financial stability during the COVID-19 crisis.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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