



NEW YORK LEAGUE  
OF INDEPENDENT  
BANKERS

Edward T. Lutz  
President – NYLIB  
elutz@nylib.org

June 30, 2020

**The Honorable Mitch McConnell**

Majority Leader  
United States Senate  
317 Russell Senate Office  
Washington, DC 20510

**The Honorable Nancy Pelosi**

Speaker  
United States House of Representatives  
1236 Longworth H.O.B.  
Washington, D.C. 20515

**The Honorable Jerome H. Powell**

Chairman  
Board of Governors of the Federal  
Reserve System  
20th Street and Constitution Avenue N.W.  
Washington, DC 20551

**The Honorable Brian P. Brooks**

Acting Comptroller  
OCC Headquarters  
400 7th St. SW  
Washington, D.C. 20219

**The Honorable Chuck Schumer**

Minority Leader  
United States Senate  
322 Hart Senate Office Building  
Washington DC 20510

**The Honorable Kevin McCarthy**

Minority Leader  
United States House of Representatives  
2468 Rayburn House Office Building  
Washington, D.C. 20515

**The Honorable Jelena McWilliams**

Chairman  
Federal Deposit Insurance Corporation  
550 17th Street, NW  
Washington, DC 20429

**Shayne Kuhaneck**

Acting Technical Director  
Financial Standards Accounting Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Pelosi, Minority Leader McCarthy, Chairman Powell, Chairman McWilliams, Acting Comptroller Brooks, and Acting Technical Director Kuhaneck:

The New York League of Independent Bankers (“NYLIB”) writes to offer its recommendations for COVID-19-related legislative and regulatory action.<sup>1</sup> NYLIB is grateful for the relief provided to community banks by Section 4013 of the CARES Act (the “Act”), which specified that certain COVID-19 related modifications do not constitute troubled debt restructurings (“TDRs”). NYLIB is also grateful for the TDR relief provided by the federal prudential banking regulatory agencies and the Financial Accounting Standards Board (“FASB”) in the *Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised)* published April 7, 2020 (the “Interagency Statement”). However, we believe additional relief is warranted to prevent potentially devastating impacts on community banks in the hard-hit New York metropolitan region and across the United States.

---

<sup>1</sup> NYLIB is a not-for-profit organization which provides community-based financial institutions in the New York metropolitan area and surrounding region with a unique forum for networking and educational opportunities.

By way of background, community banks are the lifeblood of the American economy. As FDIC Chairman Jelena McWilliams has commented:

Small businesses comprise almost half of private-sector employment in the United States, and banks are the most common source of external credit for these businesses. **Despite holding only 13 percent of banking industry assets, our data shows that community banks hold 42 percent of small business loans.** In light of ongoing consolidation in the banking industry, banks' ability to meet the credit needs of this important sector is of vital interest to the FDIC.<sup>2</sup>

The importance of community banks to small business is highlighted by the Small Business Administration's ("SBA's") Paycheck Protection Program ("PPP"). Despite their smaller asset sizes, community banks made 60 percent of loans in the first round of the PPP – and smaller community banks made an even more disproportionately large percentage of PPP loans.<sup>3</sup>

It is thus critical to the American economy that Congress, the federal prudential banking regulatory agencies, and FASB ensure that the community banking sector not only survives the pandemic, but thrives.

### **The Looming Problem**

Passage of the Act and regulatory relief to date has presumed the impact of COVID-19 would be severe but short-term in nature. In light of that presumption, Section 4013 of the Act and the Interagency Statement, which interprets FASB Accounting Standards Codification Subtopic 310-40 ("ASC 310-40"), impose limitations on the extent to which banks and credit unions may decline to account for modifications made to loans impacted by COVID-19 as TDRs.

Specifically:

- Section 4013 of the Act grants banks the ability to make COVID-19-related modifications, without characterizing those modifications as TDRs, during the period beginning March 1, 2020 and ending on the earlier of A) December 31, 2020 or B) 60 days after termination of the National Emergency declared by the President on March 13, 2020. Section 4013 excludes COVID-19-related modifications of loans originated after December 31, 2019 from this relief.

---

<sup>2</sup> FDIC, *FDIC Releases Report on Small Business Lending Survey*, (Oct. 1, 2018) (emphasis added), <https://www.fdic.gov/news/news/press/2018/pr18066.pdf>.

<sup>3</sup> See, e.g., Peter Rudegeair, Orla McCaffrey and Liz Hoffman, *Small Businesses Were at a Breaking Point. Small Banks Came to the Rescue: Community lenders punched above their weight in the Paycheck Protection Program, the government's lifeline to small businesses*, *The Wall Street Journal* (May 4, 2020), ("Banks with under \$10 billion in assets approved about 60% of loans in the first round of the Paycheck Protection Program, the lending effort's official name, according to the Treasury Department and Small Business Administration. The smallest banks performed even better: Those with \$1 billion or less in assets account for just 6% of all U.S. banking assets, but they and other small specialty lenders approved nearly 20% of loan dollars."), available at <https://www.wsj.com/articles/small-businesses-were-at-a-breaking-point-small-banks-came-to-the-rescue-11588590013>.

- The Interagency Statement allows banks to presume that a modification is not a TDR if the modification is in response to the National Emergency, the borrower was current on payments at the time the modification program is implemented; and the modification is “short-term (e.g., six months).”

While this relief is greatly appreciated by NYLIB and its members, it appears that the adverse economic effects of COVID-19 on many businesses will continue through the remainder of the year and during 2021, meaning that it is very likely many businesses will continue to need COVID-19 related modifications (or additional COVID-19-related modifications) in the fourth quarter of 2020 and during 2021. The TDR relief under the CARES Act is limited to modifications made before December 31, 2020 *at most* and thus is assured to be insufficient to meet the needs of community banks and their borrowers in 2021 (if not earlier in the fourth quarter of 2020, if the National Emergency declaration is terminated prior to October 31, 2020). The TDR relief under Interagency Statement, meanwhile, is limited to “short-term” modifications, and thus will not provide relief for modifications that are longer than six months. Yet not even the rosiest optimist expects that the economic impacts of the pandemic on businesses will be fully resolved six months after the President’s declaration of the National Emergency on March 13, 2020.

In fact, as Federal Reserve Board Chairman Jerome Powell recently testified before the Senate Committee on Banking, Housing, and Urban Affairs, the economy – and in particular the small businesses that are at the heart of the economy – face significant risks from an ongoing and potentially persistent downturn caused by the necessary measures taken to combat COVID-19:

Beginning in mid-March, economic activity fell at an unprecedented speed in response to the outbreak of the virus and the measures taken to control its spread. Even after the unexpectedly positive May employment report, nearly 20 million jobs have been lost on net since February, and the reported unemployment rate has risen about 10 percentage points, to 13.3 percent . . . .

[T]he levels of output and employment remain far below their pre-pandemic levels, and significant uncertainty remains about the timing and strength of the recovery. Much of that economic uncertainty comes from uncertainty about the path of the disease and the effects of measures to contain it. Until the public is confident that the disease is contained, a full recovery is unlikely.

Moreover, the longer the downturn lasts, the greater the potential for longer-term damage from permanent job loss and business closures. Long periods of unemployment can erode workers’ skills and hurt their future job prospects. Persistent unemployment can also negate the gains made by many disadvantaged Americans during the long expansion . . . . The pandemic is presenting acute risks to small businesses . . . . If a small or medium-sized business becomes insolvent because the economy recovers too slowly, we lose more than just that business.

These businesses are the heart of our economy and often embody the work of generations.<sup>4</sup>

Congress and the federal prudential banking regulators have been leaders in the economic response to COVID-19, and continued leadership is needed. Short of implementation of the measures recommended below, we are concerned that the community banking industry, its small business clientele and the economy at large will face substantial and preventable disruption in the fourth quarter of 2020 and/or the first quarter of 2021. Even though many business owners hopefully will be on the path to recovery by this time, many may require additional or new loan modifications. With no further relief, banks will be obligated to classify such modifications as TDRs and therefore test those loans for impairment and reserve against and/or charge-off the difference between the amount of the loan and the recoverable value as of that analysis.

Such charge-offs and reserves are likely to be substantial, causing community banks to sell assets to deleverage and/or raise capital. Asset sales under these conditions would be heavily discounted as the wave of opportunities will create a buyers' market for purchasers, the majority of these beneficiaries will likely be non-banks. These purchasers will then exert recourse against struggling small business owners to strip them of their assets, thereby undermining the original intention of the CARES Act and the financial programs originated thereunder to support small businesses. Bank earnings, capital and employment will suffer in proportion, potentially jeopardizing the very community banks that have proven indispensable to small businesses during this crisis. It is therefore critical that Congress, the federal prudential banking regulatory agencies, and FASB take action now to prevent a preventable economic disruption in the fourth quarter of 2020 or the first quarter of 2021.

### **Recommendations for a Solution**

Fortunately, the foregoing realities can be prevented by allowing banks more time to work collaboratively with their borrowers impacted by COVID-19 without having to classify those loans as TDRs.

Our recommendations are as follows:

- 1) Amend Section 4013 of the CARES Act as follows:
  - Change the definition of “applicable period” to the later of two months after the end of the National Emergency or December 31, 2021; and
  - Change the definition of “applicability” to include loans that were not more than 30 days past due as of March 13, 2020.
  
- 2) Amend FASB ASC 310-40 and related interagency banking regulatory guidance to extend for purposes of COVID-19 the definition of “short-term” from 6 months to 18 months, provided that:

---

<sup>4</sup> Jerome H. Powell, Chairman Board of Governors of the Federal Reserve System, *Semiannual Monetary Policy Report to the Congress* (June 16, 2020), available at <https://www.federalreserve.gov/newsevents/testimony/powell20200616a.htm>.

- Each successive modification granted by banks to borrowers impacted by COVID-19 within the 18-month period must be predicated on an improvement in payment amount and be supported by a documented improvement in key performance metrics (e.g., revenue, debt service coverage ratios and/or qualitative indicators such as new contract executions, decreases in payables, etc.);
- Full payment status must be restored no later than 18 months to avoid TDR designation; and
- Loans to borrowers that file for bankruptcy and/or do not show a relatively steady trend towards rehabilitation must be classified and treated accordingly based on traditional accounting guidance.

These measures would align legal statutes and regulatory agency and accounting guidance while allowing banks the latitude to work collaboratively with small business borrowers that are credibly on a path to recovery without compromising unnecessarily the financial stability and the viability of community banks.

Of note, these measures would not involve further allocations of taxpayer dollars and would likely prevent the need for further financial relief for financial institutions, which will otherwise suffer materially simply due to an accounting treatment that is fundamentally at odds with circumstances unique to COVID-19.

For these reasons, NYLIB, on behalf of its members and the banking industry strongly implore Congress, the federal prudential banking regulatory agencies, and FASB to consider the recommendations herein.

Thank you for your courtesies. Please do not hesitate to contact me if NYLIB can be of assistance.

Sincerely,

/s/ Edward T. Lutz

Edward T. Lutz  
President, NYLIB

cc: *The Honorable Steven Mnuchin*  
*Secretary*  
*U.S. Department of the Treasury*  
*1500 Pennsylvania Avenue, N.W.*  
*Washington, D.C. 20220*

*The Honorable Mike Crapo*  
*Chairman, United States Senate Committee on Banking, Housing, and Urban Affairs*  
*534 Dirksen Senate Office Building*  
*Washington, D.C. 20510*

*The Honorable Sherrod Brown,  
Ranking Member, United States Senate Committee on Banking, Housing, and Urban  
Affairs  
534 Dirksen Senate Office Building  
Washington, D.C. 20510*

*The Honorable Kirsten Gillibrand  
United States Senate  
478 Russell  
Washington, DC 20510*

*The Honorable Maxine Waters,  
Chairwoman, United States House Committee on Financial Services  
U.S. House Committee on Financial Services Democrats  
2129 Rayburn House Office Building  
Washington, DC 20515*

*The Honorable Patrick McHenry, North Carolina,  
Ranking Member, United States House Committee on Financial Services  
U.S. House Committee on Financial Services Republicans  
4340 O'Neill House Office Building  
Washington, DC 20024*

*The Honorable Carolyn Maloney,  
Representative for New York's 12th congressional district  
2308 Rayburn House Office Building  
Washington, DC 20515*

*The Honorable Nydia M. Velázquez  
Representative for New York's 7th congressional district  
2302 Rayburn House Office Building  
Washington, DC 20515*

*The Honorable Jim A. Himes  
Representative for Connecticut's 4th congressional district  
1227 Longworth House Office Building  
Washington, DC 20515*

*The Honorable Josh Gottheimer  
Representative for New Jersey 5th congressional district  
213 Cannon HOB  
Washington, DC 20515*

*The Honorable Gregory W. Meeks  
Representative for New York's 5th congressional district  
2310 Rayburn HOB  
Washington, DC 20515*

*The Honorable Alexandria Ocasio-Cortez  
Representative for New York's 14th congressional district  
229 Cannon HOB  
Washington, DC 20515*

*The Honorable Lee M. Zeldin  
Representative for New York's 1st congressional district  
2441 Rayburn House Office Building  
Washington, DC 20515*

*The Honorable Blaine Luetkemeyer  
Representative for Missouri's 3rd congressional district  
2230 Rayburn HOB  
Washington, D.C. 20515*

*John C. Williams,  
President and Chief Executive Officer  
Federal Reserve Bank of New York  
33 Liberty Street  
New York, NY 10045*

*Michael Strine  
First Vice President, Federal Reserve Bank of New York  
Federal Reserve Bank of New York  
33 Liberty Street  
New York, NY 10045*

*Kevin Stiroh  
Executive Vice President – Supervision  
Federal Reserve Bank of New York  
33 Liberty Street  
New York, NY 10045*

*Doreen R. Eberley,  
Director, Division of Risk Management Supervision  
Federal Deposit Insurance Corporation  
550 17th Street, NW, Washington, DC 20429*

*Frank R. Hughes  
Regional Director, Division of Risk Management Supervision (New York)  
New York Regional Office  
Federal Deposit Insurance Corporation  
350 Fifth Avenue  
Suite 1200  
New York, NY 10118-0110*

*Jessica A. Kaemingk,  
Deputy Regional Director, Division of Risk Management Supervision (New York)  
New York Regional Office  
Federal Deposit Insurance Corporation  
350 Fifth Avenue  
Suite 1200  
New York, NY 10118-0110*

*Beverly F. Cole  
Deputy Comptroller, Northeastern District  
Northeastern District Main Office  
Office of the Comptroller of the Currency  
340 Madison Ave.  
New York, NY 10173*

*Michael Moriarty,  
Associate Deputy Comptroller, Midsize and Community Bank Supervision, Northeastern  
District  
Northeastern District Main Office  
Office of the Comptroller of the Currency  
340 Madison Ave.  
New York, NY 10173*

*Cindy Coleman  
Associate Deputy Comptroller, Midsize and Community Bank Supervision, Northeastern  
District  
Northeastern District Main Office  
Office of the Comptroller of the Currency  
340 Madison Ave.  
New York, NY 10173*

*Melinda Bosworth  
Assistant Deputy Comptroller  
New York (Edison, NJ) Field Office, Northeastern District  
Office of the Comptroller of the Currency  
New York (Edison, NJ) Field Office  
343 Thornall Street, Suite 610  
Edison, NJ 08837*

*Thomas S. Angstadt*  
*Assistant Deputy Comptroller*  
*New York (Edison, NJ) Field Office, Northeastern District*  
*Office of the Comptroller of the Currency*  
*New York (Edison, NJ) Field Office*  
*343 Thornall Street, Suite 610*  
*Edison, NJ 08837*

*Ed Dowling*  
*Assistant Deputy Comptroller*  
*New York (New York) Field Office, Northeastern District*  
*Office of the Comptroller of the Currency*  
*340 Madison Avenue, 4th Floor*  
*New York, NY 10022*

*Kerry Ann Samuel*  
*Assistant Deputy Comptroller*  
*New York (New York) Field Office, Northeastern District*  
*Office of the Comptroller of the Currency*  
*340 Madison Avenue, 4th Floor*  
*New York, NY 10173*

*The Honorable Linda Lacewell*  
*Superintendent*  
*New York State Department of Financial Services*  
*1 State Street*  
*New York, NY 10004-1511*

*Yolanda Ford*  
*Deputy Superintendent of Banks, Community and Regional Banks*  
*New York State Department of Financial Services*  
*1 State Street*  
*New York, NY 10004-1511*

*The Honorable Kevin B. Hagler*  
*Chairman*  
*Conference of State Bank Supervisors*  
*1129 20th Street, N.W., 9th Floor*  
*Washington, DC 20036*