Kansas
Office of the State Bank Commissioner

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David L. Herndon, Bank Commissioner

Laura Kelly, Governor

An Executive Order issued by Kansas Governor Laura Kelly placed all departments and agencies in the executive branch of state government on Administrative Leave beginning March 23 and extending through at least April 6, 2020. The Office of the State Bank Commissioner (OSBC) is an executive branch state agency and therefore is on Administrative Leave under her Order. All physical OSBC offices are therefore closed.

However, the OSBC is open and conducting its mandated duties. We're simply doing it remotely. All data and voice communications are intact. Regular mail, phone calls, e-mails and package deliveries are being retrieved and routed to appropriate departments or staff and when necessary, prompt responses should be expected. And this website is monitored and updated periodically as necessary. You are urged to check periodically for important updates.

OSBC is aware and has authorized several banks and financial institutions to close or limited access to their lobbies and branches. Our authorization is only granted after assurances that all Kansas statutes are adhered to and bank customers still have access to their accounts. Current approvals for these closures, reduced hours or limited access are granted in two-week intervals and are reviewed on the 1st and 15th of each month. We anticipate that schedule will remain in effect throughout this pandemic.

The OSBC is working with federal banking regulators and is monitoring information issued by Kansas and U.S. government agencies and health organizations. Regulatory agencies have encouraged financial institutions to work with customers adversely impacted by the coronavirus and the OSBC supports these efforts. Customers experiencing financial stresses are urged to work directly with their financial institutions for resolutions. OSBC will take as cooperative of an approach as allowed to help financial institutions and the public through this pandemic. Following are some frequently asked questions and answers by banks and the public we have received.

FAQ's for financial institutions:

1. May a bank offer payment modification for borrowers affected by COVID-19?
   Yes, OSBC encourages Kansas state banks to work with borrowers affected by COVID-19, including asking loan modifications. Loan modifications to be considered include, but are not limited to, deferred or skip payments by extending the original maturity date or making the payments in a balloon payment at the loan's original maturity date. Modifications should be prudent and designed to aide borrowers facing short-term setbacks but should always be targeted toward loan repayment.

2. Do loans that receive payment modifications have to be reported as delinquent or non-performing?
   No. Borrowers who were current prior to becoming affected by COVID-19 and then receive loan payment modifications as a result of the COVID-19 generally would not be reported as past due.

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If all payments are current based on the revised terms of the loan, the loan would not be reported as past due or non-performing

For loans on which payments were delinquent prior to COVID-19 and were then placed on a payment deferral plan, the OSBC aligns with the FDIC's position that the delinquency status of the loan may be adjusted back to the status that existed at the date the borrower became affected by the pandemic.

3. What type of documentation should banks maintain if they grant payment modifications to a borrower affected by COVID-19?
   Banks should document the borrowers' payment status prior to being affected by COVID-19. Documentation should include, at least, a statement from the borrower detailing how the borrower was adversely affected, the borrower's recovery plan, sources for repayment, the need for additional advances on existing loans or new loans and the value of any additional collateral offered. Banks should then assess and comment on the recovery plan as part of their due diligence, documenting all in the borrower's credit file.

4. Is a payment modification a Troubled Debt Restructuring (TDR)?
   A payment modification does not equate to an automatic TDR designation. The TDR designation is an accounting categorization of the Financial Accounting Standards Board (FASB). Federal bank regulatory agencies have confirmed with staff of FASB 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 modifications such as payment deferrals, fee waivers, extension of repayment terms, or other delays in payment that are insignificant.

   Modification of deferral programs mandated by the state or federal government related to COVID-19 would not be in the scope of ACS 310-40, e.g. a state program or order that requires all banks within the state to suspend mortgage payments for a specific period. OSBC examiners will exercise judgment in reviewing loan modifications, including TDRs, and will not automatically adversely risk rate credits that are affected by COVID-19. Further, OSBC examiners will not criticize prudent efforts to modify the terms on existing loans to affected borrowers.

5. Will OSBC examiners make banks categorize all loan modifications related to the coronavirus as a TDR?
   No. The OSBC encourages banks to work with customers impacted by COVID-19 by offering to modify, extend, suspend, or defer repayment terms. OSBC will not direct banks to categorize all loan modifications to borrowers affected by COVID-19 as TDRs. There is additional information on TDRs provided by interagency supervisory guidance.

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6. Do modified loans need to be reported as non-accrual, reflect appropriate ACL or ALLL, and be charged-off?
   Each bank should refer to their internal accounting policies and regulatory reporting instructions when determining whether to report loans with accommodations to borrowers affected by COVID-19 as non-accrual assets in regulatory reports.

   All banks are required to maintain an appropriate ALLL for these loans. If it becomes apparent that a loan will not be repaid, the bank should adhere to its loan grading system and determine the appropriate accrual status. Credit losses should be recognized according to internal charge-off policies as soon as a loss is reasonably determined.

7. If a bank experiencing liquidity issues as a result of COVID-19, may it sell investment securities that were classified "held to maturity" (HTM) to meet those liquidity needs without calling into question that bank's intent to hold its other investment securities to maturity?
   Yes. Accounting standards indicate that events that are isolated, nonrecurring and unusual for the bank that could not be reasonably anticipated as cause the bank to sell an HTM security without calling into question its intent to hold other HTM securities to maturity. In the case of COVID-19, it is reasonable to say that a bank would not have been expected to anticipate the pandemic.

8. How should a bank deal with customers seeking to withdraw large amounts of cash and does a bank have a duty to protect customers looking to hold onto large sums of cash?
   Bank staff should remind and assure customers about the safety of having their money in a bank that is FDIC-insured and discuss deposit insurance coverage of the customer's accounts. Banks should closely monitor deposits, withdrawals, and the availability of cash to ensure the bank is prepared to handle customer's cash needs. But if customers do decide to withdraw and hold large sums of cash they do so at their own risk.

9. Should a bank consider delaying its Community Bank Leverage Ratio (CBLR)?
   The decision on whether to elect the CBLR is left to the individual bank. Banks will select their CBLR election on the March 31, 2020 Call Report. The decision to elect CBLR on the March Call Report is not binding and may be reversed in a subsequent quarter.

10. Can appraisal standards for real property be relaxed or deferred if an appraiser cannot or will not access the interior of a property?
    The Uniform Standards of Professional Appraisal Practice (USPAP) addresses situations where access to the interior of a property may not be feasible. USPAP permits an appraiser to make an extraordinary assumption about the interior of a property due to health concerns or other emergency conditions such as a pandemic.

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11. Are banks operating through the coronavirus with reduced staff expected to meet the same reporting timeframes as though they were operating fully staffed?
    Banks are allowed an additional 30 days to file the March Call Report without incurring a penalty. FinCEN has encouraged banks to contact them if there are any potential delays in the ability to file required BSA reports.

12. What resources are available to banks for further guidance?
    - FIL-22-2020: *Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus.,* REVISED April 7, 2020 https://www.fdic.gov/news/news/press/2020/pr20049a.pdf
    - FIL-19-2020: *Joint Statement on CRA Consideration for Activities in Response to COVID-19,* March 19, 2020, https://www.fdic.gov/news/news/financial/2020/fil20019a.pdf.
    - FIL-17-2020: *FDIC Statement on Financial Institutions Working with Customers Affected by the Coronavirus and Regulatory and Supervisory Assistance;* March 13, 2020, https://www.fdic.gov/news/news/financial/2020/fil20017a.pdf.
    - FFIEC Statement on Pandemic Planning, March 6, 2020, https://www.ffiec.gove/press/pr030620.htm
    - Financial. Crimes Enforcement Network (FinCEN) Encourages Financial Institutions to Communicate Concerns Related to the Coronavirus Disease 2019 (COVID-19) and to Remain Alert to Related Illicit Financial Activity, March 16, 2020. https://www.fincen.gov/news/news-releases/financial-crimes-enforcement-network-fincen-encourages-financial-institutions
    - Call Report forms and instructions: https://www.fdic.gov/ffiec_report_forms.htm.
    - Accounting and Regulatory Reporting Questions and Answers: https://www.ffiec.gov/katrina.htm
    - FIL-50-2013: Troubled Debt Restructurings Interagency Supervisory Guidance: https://www.fdic.gov/news/news/financial/2013/fil13050.html