CONSUMER LOAN PROGRAM ALERT

Loan Modifications and Emergency Loans - NCUA Interagency Statement
&
FWW Best Practice Guidance For Consumer Loans

March 23, 2020

On March 22, 2020, the NCUA and the other federal financial regulators issued Interagency Statement on Loan Modifications and Reporting (FIL -22-2020): to encourage credit unions to work with borrowers affected by the COVID-19 virus. The Interagency statement provides guidance to credit unions on how to assist borrowers with loan modifications along with regulator relief for such actions.

In this alert, we outline the relief provided under the Interagency Statement. The Interagency Guidance, which can be found here: https://www.ncua.gov/files/press-releases-news/loan-modifications-reporting-coronavirus.pdf. Also we offer our firm’s guidance to help credit unions efficiently and effectively document two types of loan relief: skip payments and loan modifications, and special emergency loan programs.

NCUA Guidance on Loan Modifications and Reporting

Credit unions granting member concessions through loan modifications and other similar measures generally must consider whether a modification constitutes a “troubled debt restructuring” (TDR). NCUA is providing credit union’s relief from the TDR tracking and reporting burdens for when accommodating affected borrowers with loan modifications. The guidance provides three key clarifications:

- A short-term modification (six months or less) of a loan on which the borrower was current prior to the COVID 19 crisis is not a TDR.
- Credit unions may presume that if a borrower is current on their loan at the time of the modification, they are not experiencing financial difficulty for purposes of TDR analysis, and no further TDR analysis needs to be done.
- Modification or deferral programs mandated by the federal government or a state government (such as a state requirement to suspend mortgage payments) are also not TDRs, irrespective of whether the borrower was current when payments were suspended.

This guidance removes one of the procedural and financial hurdles credit unions faced in granting loan concessions to members seeking relief due to COVID 19 circumstances. And as a reminder, loan modifications do not require new TILA disclosures.

FWW Best Practices for Documenting Loan Modifications

In the remainder of this alert, we provide information on documenting various types of member loan relief for credit unions using our Consumer Loan Program documents.
Skip Payments

Documentation requirements for deferred or skip payments have always created some confusion (especially when a fee is charged) but these are simple modifications with simple documentation needed.

Few (if any) loan agreements provide members with a contractual right to defer or skip payments. Instead, the creditor has discretion to permit (or not permit) deferred or skip payments. Credit unions do not need to be bogged down in a regulatory analysis of change in terms requirements. Skip payment requests can be treated as a simple, temporary waiver of one of the loan requirements (the requirement to make a payment each month). A waiver does not require any notice under Regulation Z, for either open end or closed end loans.

Credit unions can offer skip payments simply by notifying members that the skip payment is available, specifying any conditions or requirements (i.e. which loan types are ineligible, loan must be current at the time of skip, etc.). In addition, the member should be notified that interest will continue to accrue during the skip period and that skipping the payment will require the member to make additional payments to pay off the loan. If there is a fee, the member must be aware of the fee. For vehicle loans, the credit union should also notify members that skipping a payment may affect GAP or other insurance coverage related to the loan and the member should check their policy to be sure.

If the credit union provides a notice to members about a skip payment opportunity via statements or website, all of this information can be included in a very short notice to the members. If the credit union has not notified members of a skip payment program, but is instead responding to the members request by telephone or email, the credit union can simply send a confirming letter. Something as simple as this would suffice: “Pursuant to your request, we will allow you to skip the April payment on your auto loan. Interest continues to accrue and skipping the payment will result in additional payments required to pay off the loan. Check your GAP policy or other credit protection agreements before you skip the payment to be sure you are aware of any impact on coverage.”

In any event, the credit union must retain some documentation that the member has requested or agreed to the payment change. This documentation can be accomplished in a variety of ways - a confirmation letter to the member (as outlined above), the member’s signature on a skip payment request form, or a record of the member’s “click” consent to an online offer. Such documentation must provide a record of the agreed payment change. During this current time of major, daily disruptions and required contactless environment – keep it simple.

Loan Modifications

The FWW Consumer Loan Program documents include a Loan Modification Agreement form that can be used for most simple modifications on consumer loans. Simply by checking the appropriate boxes and filling in the applicable fields, the credit union can provide for reamortized payments with an extended maturity date, temporary payment reductions, and a variety of other changes. A generic form of the modification agreement is attached to this alert.

Emergency Loan Programs With Special Terms

Some credit unions are offering new loans with special terms to help COVID 19 affected members. These terms can include initial introductory rates or extended first payment dates. The Loan Advance Voucher can easily be used to document such loans and comply with the applicable Regulation Z requirements.
Introductory Rates (Step Rate Loans)

A reduced introductory rate (or even a waiver of any interest for a specified period) can be easily handled using the Fixed Rate Loan Advance voucher. Here are the key steps:

- In the “Interest Rate” field at the top of the form, fill in the permanent rate (that will apply after the initial discounted rate period). To the right of that, add (in parentheses) the introductory rate and period, such as (“0% for first 90 days”). Thus, the entire Interest Rate provision would read: “6.90% (0% for first 90 days).”

- The APR will actually be lower than the interest rate, because the APR takes into account both the initial rate period (at the reduced rate) and the rest of the loan term at the full rate.

Here is an example of the disclosures for a $5,000.00 loan for 36 months with 90 days at 0% and the remainder of the loan at 9.00%, with monthly payments of $155.58 beginning 30 days from loan date.

For this loan, the “Interest Rate” field in the loan advance disclosure would read “9.00% (0.00% for first 90 days).” The fed box APR, Finance Charge, Amount Financed, and Total of Payments would look like this:

<table>
<thead>
<tr>
<th>APR</th>
<th>Finance Charge</th>
<th>Amount Financed</th>
<th>Total of Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.52%</td>
<td>$600.88</td>
<td>$5,000.00</td>
<td>$5,600.88</td>
</tr>
</tbody>
</table>

Extended First Payment Period

Of course interest rate relief is not the only relief that most borrowers will need. Borrowers may need payment relief as well. Nothing in Regulation Z or any other regulation requires the credit union to set the first payment due date within any specific time from the loan date. Credit unions can set the first payment date 90 days (or more) from the loan date, and the standard TIL disclosures apply. If the credit union wishes to set the first payment date 90 days from the loan date, you simply calculate the payments on that basis, and disclose accordingly. For example, on a $5,000.00 loan at 9.00% for 36 months, with a loan date of March 23, 2020 and a first payment due date of June 23, 2020, the payment schedule would be:

<table>
<thead>
<tr>
<th>Number of Payments</th>
<th>Amount of Payments</th>
<th>When Payments Are Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>33</td>
<td>$174.19</td>
<td>Monthly, beginning June 23, 2020</td>
</tr>
</tbody>
</table>

In this case, there were only 33 payments because the loan term was 36 months with no payment for 3 months. The APR is 9.00% because there was no initial discounted rate, and even with no payments for 3 months, the interest rate is constant throughout the loan term.

Here is a final example combining both of the above examples: a 36 month loan for $5,000.00 with 0.00% interest for 3 months and no payments for 3 months, then converting to 9.00% interest:

Interest Rate: 9.00% (0.00% for first 90 days)

<table>
<thead>
<tr>
<th>APR</th>
<th>Finance Charge</th>
<th>Amount Financed</th>
<th>Total of Payments</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.52%</td>
<td>$620.56</td>
<td>$5,000.00</td>
<td>$5,620.56</td>
</tr>
<tr>
<td>Number of Payments</td>
<td>Amount of Payments</td>
<td>When Payments Are Due</td>
<td></td>
</tr>
<tr>
<td>--------------------</td>
<td>--------------------</td>
<td>----------------------</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>$170.32</td>
<td>Monthly, beginning June 23, 2020</td>
<td></td>
</tr>
</tbody>
</table>

If you have questions about these issues or other lending and COVID 19 related issues, please contact us.

Hal Scoggins  hscoggins@fwwlaw.com
Brian Witt   bwitt@fwwlaw.com
Kelley Hodney khodney@fwwlaw.com

Farleigh Wada Witt
Farleigh Wada Witt is the Pacific Northwest’s premier credit union law firm, providing expert counsel in every area of financial services.