



December 13, 2010

Technical Director  
File Reference No. 1880-100  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

Re: File Reference No. 1880-100

Capital One Financial Corporation is a diversified financial services company with \$197 billion in assets that offers a broad spectrum of banking products and financial services to consumers, small businesses, and commercial clients. We appreciate the opportunity to provide comments on the Proposed Accounting Standards Update, *Receivables (Topic 310): Clarifications to Accounting for Troubled Debt Restructurings by Creditors* (the "Proposed Update"), recently issued by the Financial Accounting Standards Board (the "FASB").

Although we support the FASB's stated goal of reducing diversity in practice related to identifying troubled debt restructurings ("TDRs"), we have a number of concerns with the Proposed Update. We believe the proposed guidance is highly subjective, and therefore it may not necessarily meet the FASB's goal of reducing diversity in practice. We also question the practicability of implementing the Proposed Update based on the proposed transition and effective date provisions. In addition, we are concerned about inconsistencies that would be created between accounting principles generally accepted in the United States ("US GAAP"), international financial reporting standards ("IFRS"), regulatory guidance, and even the FASB's own project on accounting for financial instruments.

### **Specific Comments on Proposed Update**

Our specific comments and observations related to the Proposed Update are as follows:

- **The market rate presumption should not be determinative.** The Proposed Update adds paragraph 310-40-15-8A, which states that, "If a debtor does not otherwise have access to funds at a market rate for debt with similar risk characteristics as the restructured debt, the restructuring would be considered to be at below a market rate and therefore should be considered a troubled debt restructuring." Based on our interpretation of the Board's deliberations throughout the project, we do not believe that this paragraph, as currently drafted, is consistent with the Board's intent. We believe that the Board intended for the evaluation of the debtor's access to funds at a market rate for debt with similar risk characteristics to be considered as an indicator in the identification of whether a concession has been granted, but we do not believe that this factor was intended to be presumptively determinative that the modification is a TDR. Furthermore, we point out that the paragraph as currently drafted seems to ignore the consideration of whether the borrower is in financial difficulty under paragraph 310-40-15-5. We agree with what we perceive the Board's intent to have been and recommend that paragraph 310-40-15-8A be revised accordingly in the final ASU.

Paragraph 310-40-15-8A also does not seem to consider that there are various business reasons why a creditor may be willing to restructure a receivable at a rate that is below that to

which the debtor would otherwise have access in the marketplace. The most common reason would be the existence of a customer relationship that extends beyond the receivable being restructured. For example, if a debtor also held deposits with a creditor, that creditor may be willing to restructure a receivable at a rate that is more favorable to the debtor in order to retain that debtor's deposits, as well as to keep the debtor as a customer. The debtor would likely not have access to financing with similar risk characteristics at the same favorable rate at another financial institution. Accordingly, the reason a creditor may restructure a receivable at below a market rate is not necessarily due to the borrower's financial difficulty as much as the creditor's strategy of retaining the debtor as a customer. This is another reason why the evaluation of whether the borrower would otherwise have access to similar funding in the marketplace should be an indicator of whether a concession has been granted, rather than being presumptively determinative. In other words, we are concerned that the increased prominence of the requirement to identify a market interest rate could cause one to conclude that the restructured receivable described above constitutes a TDR despite no evidence that the borrower is in financial difficulty.

- **The proposed guidance should explicitly permit the consideration of a guarantee, if any, in the evaluation of whether the borrower is experiencing financial difficulty.** The proposed guidance adds an additional indicator to the evaluation of whether the borrower is experiencing financial difficulty based on whether default is probable in the foreseeable future. We suggest that the FASB add guidance to explicitly permit the consideration of the existence of a guarantee, if any, in such an evaluation. It is not clear whether the proposed guidance would allow the creditor to look through the debtor to the guarantor when considering the probability of default, or if such an evaluation can only consider the creditworthiness of the debtor in isolation. We believe that the former is more appropriate, since a guarantee on the loan is economically similar to other forms of collateral.
- **The criteria in the Proposed Update may inappropriately identify certain modifications as TDRs.** We believe it is important to identify TDRs based on a set of principles that is reflective of the name that they carry. Unfortunately, we are concerned that the FASB's proposed guidance may expand the population of receivable restructurings that will be considered TDRs to such an extent that it will dilute the value of identifying them in the first place.

For example, suppose that we are the creditor for a large commercial construction loan, and that construction of the final stage of the property has fallen behind schedule by a single month. The debtor will not be paid by the ultimate owner of the property until construction is complete, and so we may grant an extension to the debtor to repay interest and principal one month later when construction is complete. In this scenario, we might conclude under the proposed guidance that default is "probable in the foreseeable future." However, that default is not due to the financial difficulty of the borrower as much as the operational difficulty of completing construction as scheduled and collecting payment from the ultimate owner of the property. And since we would be unable to scope out the modification as an insignificant delay in cash flows, we may conclude, based on our interpretation of the proposed guidance, that the modification represents a TDR. However, we question the value of labeling a delay in payment due to a minor delay in the progress of construction as a TDR.

Expanding the population of loans that are identified as TDRs, particularly when we do not believe that the loan is impaired, may actually produce the counterintuitive effect of reducing the allowance for loan losses due to the differences in the methods of calculating impairment under ASC 310-10-35 versus ASC 450. We believe this reduces the usefulness of our

allowance for loan losses to investors. While the FASB may have intended for this project to improve disclosures about TDRs, we believe this highlights the fact that the identification of TDRs is inextricably linked with measurement guidance that has an impact on the financial statements. We do not believe that this potentially counterintuitive impact on the allowance for loan losses was intended by the Board, so we suggest that the Board consider alternative methods of improving disclosures about loan modifications for investors, rather than providing additional interpretive guidance related to TDRs.

- **The Proposed Update is inconsistent with guidance from banking regulators.** The Proposed Update adds paragraph 310-40-55-10C to the FASB Accounting Standards Codification, which states that, “A restructuring that results in an insignificant delay in contractual cash flows may still be considered a troubled debt restructuring.” This paragraph is inconsistent with recently issued guidance from the Office of the Comptroller of the Currency (“OCC”) and the Center for Audit Quality (“CAQ”). Both OCC Policy Interpretation – Supervisory Memorandum 2009-7 and the CAQ White Paper, *Application of Statement 114 to Modifications of Residential Mortgage Loans that Qualify as Troubled Debt Restructurings*, permit scope exceptions for certain modifications of three months or less. As a result, the Proposed Update would significantly expand the number of modifications that must be evaluated as TDRs than is currently required by regulatory (or FASB) guidance.

We believe that the Board may have added paragraph 310-40-55-10C in an attempt to reduce diversity in practice, particularly among unregulated entities who may apply different interpretations of what represents an “insignificant” delay in cash flows. However, we believe that this provision may actually create more differences than it resolves between regulated and nonregulated entities. Accordingly, we recommend that the Board remove this paragraph in the final ASU.

We do not believe there is much value in identifying loans with relatively insignificant impairment charges as TDRs to users of financial statements. We believe that a scope exception for modifications of three months or less would maintain current industry practice and align both FASB and regulatory guidance while still providing investors with useful information.

- **The proposed transition and effective date provisions are not operational.** In particular, the transition provisions, which require us to reevaluate whether receivables restructured on or after the beginning of the earliest period presented are TDRs, are overly burdensome and will require a great deal of effort. In our case, assuming that the effective date remains the same, we would have to reevaluate all loan modifications that occurred on or after January 1, 2009. Identifying what the market rate would have been at the time of each modification would be extremely difficult.

Our perception of the transition provisions in the Proposed Update is that the Board may be trying to provide information to investors about modifications that occurred during a period of high, and perhaps unprecedented, activity in receivable restructurings. However, we point out that the financial crisis began well before January 1, 2009. The transition provisions as proposed still will not cover the duration of the financial crisis, so we question the value of reevaluating modifications that occurred on or after the beginning of the earliest period presented.

As an alternative, we suggest that the final ASU should be applied prospectively for the identification of TDRs that occur on or after the beginning of the period in which the ASU is

issued. We believe this would mitigate any concern related to entities rushing to make modifications before the new guidance goes into effect, while still providing investors with timely information about current modification activities. Furthermore, it would align the transition provisions related to the identification of TDRs with the measurement guidance for newly identified TDRs, which we believe would be less confusing to investors.

We note that on December 9, 2010, the FASB issued Proposed Accounting Standards Update, *Deferral of the Effective Date of Disclosures about Troubled Debt Restructurings in Update No. 2010-20* (“Proposed Deferral Update”), to delay indefinitely the effective date of the disclosures about TDRs in Accounting Standards Update No. 2010-20, *Receivables (Topic 310): Disclosures about the Credit Quality of Financing Receivables and the Allowance for Credit Losses* (“ASU 2010-20”). According to the Summary and Questions for Respondents of the Proposed Deferral Update, the effective date of the new disclosures about TDRs for public entities and the guidance for determining what constitutes a TDR would then be coordinated. We fully support the issuance of an Accounting Standards Update to align the effective date of the disclosures about TDRs required by ASU 2010-20 with the effective date of any final guidance for identifying a TDR.

- **The Proposed Update does not advance the FASB’s goal of converging with IFRS and is inconsistent with the FASB’s (and the IASB’s) current project on Accounting for Financial Instruments.** In fact, the Proposed Update actually diverges from IFRS because it creates additional indicators for identifying TDRs, whereas IFRS does not currently incorporate the concept of TDRs in its guidance at all. Neither the FASB nor the International Accounting Standards Board (“IASB”) have considered the identification of TDRs in their joint or separate deliberations on accounting for financial instruments, and no such guidance was provided in either of their respective exposure drafts released in 2010. Furthermore, if the FASB does indeed achieve its goal of creating a single impairment model for all financial instruments, it will reduce the relevance of identifying TDRs in the first place. We question whether the costs truly outweigh the benefits of expanding a concept that may only be applied for a limited time period.

### **Responses to Questions for Respondents**

**Question 1:** Would precluding creditors from applying the guidance in paragraph 470-60-55-10, create any operational challenges for determining whether a troubled debt restructuring exists? If yes, please explain why.

**No, we do not believe that precluding creditors from applying the guidance in paragraph 470-60-55-10 will create operational challenges for determining whether a TDR exists. We currently apply the guidance in paragraph 470-60-55-10 as one of a number of factors used to identify TDRs, but we have not considered that guidance to be determinative in isolation.**

**Question 2:** Do you believe that the proposed changes to the guidance for determining whether a troubled debt restructuring exists would result in a more consistent application of troubled debt restructuring guidance? If not, please explain why.

**We are less concerned with the consistent application of the TDR guidance in the Proposed Update, and more concerned with the potential that the Proposed Update may inappropriately identify certain modifications as TDRs. Please see the discussion in the body of our letter above.**

**Question 3:** The Board decided that a creditor may consider that a debtor is experiencing financial difficulty when payment default is considered to be “probable in the foreseeable future.” Do you believe that this is an appropriate threshold for such an assessment? If not, please explain why.

**Yes. However, as discussed above, we suggest that the FASB provide additional guidance to explicitly permit the consideration of the existence of a guarantee, if any, in such an evaluation.**

**Question 4:** Are the proposed transition and effective date provisions operational? If not, please explain why.

**No. For the reasons stated above, we do not believe that the proposed transition and effective date provisions are operational. As an alternative, we suggest that the FASB consider requiring prospective application of content that affects financial statement disclosures for receivables restructured on or after the beginning of the period in which a final Accounting Standards Update is issued.**

**Question 5:** Should the transition and effective date be different for nonpublic entities versus public entities? If so, please explain why.

**No. We believe that the transition and effective date provisions in the final Accounting Standards Update should be operational for both public and nonpublic entities alike.**

**Question 6:** Should early adoption of the proposed amendments in this Update be permitted? If so, please explain why.

**We believe that the FASB may be asking this question because of the difference in the effective date for certain disclosures about TDRs, as described in ASU 2010-20, and the effective date of the Proposed Update. Part of the value of early adoption would be that preparers would not have to implement two sets of changes related to disclosures about TDRs in consecutive quarters.**

**However, on December 9, 2010, the FASB issued the Proposed Deferral Update to delay indefinitely the effective date of the disclosures about TDRs in ASU 2010-20. According to the Summary and Questions for Respondents of the Proposed Deferral Update, the effective date of the new disclosures about TDRs for public entities and the guidance for determining what constitutes a TDR would then be coordinated. We fully support the issuance of an Accounting Standards Update to align the effective date of the disclosures about TDRs required by ASU 2010-20 with the effective date of any final guidance for identifying a TDR.**

If you have any questions about our comments, please contact Pam Koch at (804) 284-0152.

Sincerely,



Susan McFarland  
Executive Vice President and Controller