

APRIL 2020

## HEADLINES

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## UPCOMING EVENTS

Friday Compliance Briefings, *CBANC Webinar*  
Last Friday of each month in 2020!

April 1, 2020, *CBANC Webinar*  
Regulation CC Changes

April 8, 2020, *CBANC Webinar*  
Crafting Your CRB Policy

April 10, 2020, *CBANC Webinar*  
CRB Coffee Break

April 21, 2020, *CBANC Webinar*  
Spring Regulatory & Compliance Update

April 22, 2020, *CBANC Webinar*  
BSA for Seasoned BSA Officers

April 29, 2020, *CBANC Webinar*  
CRB Banking: Meeting with the Regulators

## CRITICAL DATES

**April 6, 2020:** CTR Changes: Sole Proprietorships and Business Entities

**July 1, 2020:** Implementation Date for Regulation CC Adjustments

**July 2020:** Expiration of Exception under Remittance Transfer Rule for Estimates for Certain FIs

**September 1, 2020:** Deadline to comply with CTR changes re: conductors that fulfill multiple roles

**September 1, 2020:** URLA Optional Use Period Commences

**September 30, 2020:** NFIP Expiration

**November 1, 2020:** URLA Mandatory Usage

**January 1, 2022:** Temporary coverage threshold for open-end lines of credit under HMDA expires



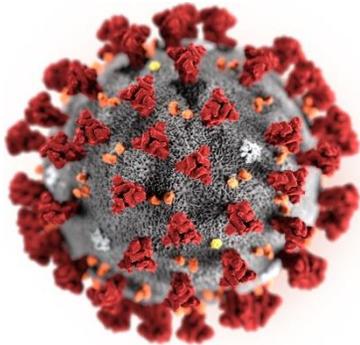
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## COVID-19 COMPLIANCE CONSIDERATIONS



We find ourselves in some uncharted territory here and everyone is having to adjust to rapidly changing conditions and significant new challenges coming at us on a daily basis. You have doubtlessly been inundated with information from many sources. Trying to triage what you need to know to handle what you're facing each day can be daunting, to say the least. Let's try to boil it down a bit for you.

Even before President Trump signed the [CARES Act](#) (a/k/a H.R. 748, or the "Coronavirus Aid, Relief, and Economic Security Act") into law on Friday, March 27<sup>th</sup>, the regulatory agencies were encouraging financial institutions to work with customers to provide much needed access to credit and relief from fees and costs on loans and deposit products, as well as temporary suspension of certain legal actions, including foreclosure. Here are some of the highlights of accommodations prudential regulators have asked banks to consider:

- Waiving certain fees, such as:
  - Automated teller machine (ATM) fees for customers and non-customers.
  - Overdraft fees.
  - Late payment fees on credit cards and other loans.
  - Early withdrawal penalties on time deposits.
- Increasing ATM daily cash withdrawal limits.
- Easing restrictions on cashing out-of-state and non-customer checks.
- Increasing credit card limits for creditworthy borrowers.
- Offering payment accommodations, such as allowing borrowers to defer or skip some payments or extending the payment due date, which would avoid delinquencies and negative credit bureau reporting caused by COVID-19-related disruptions.

Nearly all banks and credit unions jumped on board early to help customers and communities in need as a result of the heavy toll on jobs and household finances travel restrictions and social distancing mandates have taken in such a short amount of time.

### Payment Deferral Programs

A few things to keep in mind regarding payment deferrals or "skip-a-payment" programs:

You may want to consider addressing any deferred or skipped payments by either *extending the original maturity date* or by *making those payments due in a balloon payment at the original maturity*

**date of the loan.** Modifying a loan in this manner does not trigger new disclosures if it is not considered a new extension of credit. However, when deferring or skipping payments, providing borrowers with accurate disclosures that are consistent with federal and state consumer protection laws will help to avoid any misunderstandings relative to the changes in the terms. Your program should clearly communicate to borrowers:

- Maximum number of months that can be deferred.
- Whether the borrower is required to be current at the time (not more than 30 days past due).
- Whether you require documentation of hardship to qualify.
- Whether you are deferring principal, P&I, escrow.
- Whether deferred payments will be paid in a balloon payment at maturity or whether you're extending the maturity date for the number of months deferred.
- Any fee you would charge.
- Indicate that payment deferrals can increase the cost of credit over the life of the loan.
- State that all other terms and conditions of the loan remain in full force and effect.
- State that normal monthly payments will resume following the period of deferral.

The deferral or payment extension agreement with the borrower should also clearly spell out the modified terms, any fees, next payment due date and other relevant information.

When it comes to legal entities looking for relief, a deferral or modification does not necessarily qualify as a triggering event to obtain **beneficial ownership** information. However, you may need obtain beneficial ownership information if:

- You have not previously obtained beneficial ownership information;
- You require additional credit review or underwriting for the deferral or modification; or,
- Your internal policy defines a deferral or modification as a triggering event.



Otherwise, you can utilize the “recertification” aspect of the Beneficial Ownership Rule whereby you can verify, verbally or in writing with the customer, that existing beneficial ownership information remains accurate. While the rule provides for verbal confirmation, we recommend you have a

process to document your recertification (e.g. file notes, recertification form, etc.) to ensure your communication with the customer is appropriately evidenced.

### **Flood Determination**

Keep in mind that a new flood determination is required when you make, increase, renew or extend (MIRE) an existing loan. Consequently, you will need to make sure you're meeting this requirement when doing payment deferrals or modifications. You can use an existing determination as long as:

- It is not more than 7 years old,
- There have been no mapping changes since the prior determination, and
- The original determination was made using a SFHD form.

Be mindful that if a property is located within a flood zone, you are required to provide the customer notice of that designation regardless of whether you utilize an existing determination.

### **Escrow**

If the payment includes escrow for taxes and insurance and you are also deferring the escrow portion of the payment, you can address the shortfall in the year-end analysis, or you could do a short-year statement and reset the annual analysis cycle to avoid payment shock later on.

### **TDR Classification**

The agencies have confirmed with staff of the Financial Accounting Standards Board (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 (e.g., six months) modifications such as payment deferrals, fee waivers, extensions of repayment terms, or other delays in payment that are insignificant.<sup>2</sup> Borrowers considered current are those that are less than 30 days past due on their contractual payments at the time a modification program is implemented.

### **Credit Bureau Reporting**

H.R. 748 ([CARES Act](#), a/k/a COVID-19 Relief Bill) was signed into law on Friday, March 27, 2020.

Section 4021 addresses credit reporting for loans that have been granted payment relief through deferrals or skipped payments as a result of the current pandemic and national emergency declaration. It requires banks to report the credit obligation or account as current; or if the credit obligation or account was delinquent before the accommodation, maintain the delinquent status



during the period in which the accommodation is in effect; and if the consumer brings the credit obligation or account current during the period, report the credit obligation or account as current.

If the loan was, for example, 30 days past due at the time, you will continue to report it as 30 days past due and not advance the delinquency status for the deferral period. There is specific Metro2

codes that are designed to neutralize any negative impact of payment deferrals on a consumer's credit score. The [Consumer Data Industry Association](#) (CDIA) provides information about how to code loans with payment deferrals or forbearance agreements as a result of COVID-19 impact. The link is to their slide deck for the presentation. Here's the [link](#) to the on-demand replay. Continuing to report prevents unexplained gaps in the payment history record that could impair the consumer's ability to qualify for credit down the road, or at the very least, place unnecessary hurdles into a future credit application process.

### **Foreclosure Moratorium and Right to Request Forbearance**

Section 4022 of the CARES Act requires institutions to grant forbearance up to 180 days, with an additional period of up to 180 days at the borrower's request, provided that borrower submits a request to the servicer and affirms financial hardship during the COVID-19 emergency. During a period of forbearance described in this subsection, no fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract, shall accrue on the borrower's account. This provision applies to Federally backed mortgage loans, regardless of delinquency status. Those are any loan which is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1- to 4- families that is—

- (A) insured by the Federal Housing Administration under title II of the National Housing Act ([12 U.S.C. 1707](#) et seq.);
- (B) insured under section 255 of the National Housing Act ([12 U.S.C. 1715z-20](#));
- (C) guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a, 1715z-13b);
- (D) guaranteed or insured by the Department of Veterans Affairs;
- (E) guaranteed or insured by the Department of Agriculture;
- (F) made by the Department of Agriculture; or
- (G) purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

There is a similar provision for Federally backed multifamily mortgage loans with a forbearance period of 30 days, plus two additional 30-day periods if needed. Refer to Section 4023 of the CARES Act.

### **Subsidy for SBA 7(a) Loans<sup>1</sup>**

Section 1112 of the [CARES Act](#) states that the Administrator shall pay the principal, interest, and any associated fees that are owed on a covered loan in a regular servicing status:

- (A) with respect to a covered loan made before the date of enactment of this Act and not on deferment, for the 6-month period beginning with the next payment due on the covered loan;
- (B) with respect to a covered loan made before the date of enactment of this Act and on deferment, for the 6-month period beginning with the next payment due on the covered loan after the deferment period; and
- (C) with respect to a covered loan made during the period beginning on the date of enactment of this Act and ending on the date that is 6 months after such date of enactment, for the 6-month period beginning with the first payment due on the covered loan.

### **Appraisal Considerations – Suspending Interior Inspections**

Fannie Mae issued a Lender Letter ([LL-2020-04](#)) stating that they will allow either a desktop appraisal or an exterior-only inspection appraisal in lieu of the interior and exterior inspection appraisal (i.e., traditional appraisal). If a traditional appraisal is not obtained and there is insufficient information about the property for an appraiser to be able to complete an appraisal assignment with a desktop or exterior-only inspection appraisal, the loan will not be eligible for delivery. Additionally, Lenders are encouraged to accept appraisal waiver offers when eligible and provided through DU to address concerns around contact between appraisers and homeowners. Please refer to the letter for additional details and guidelines.

### **Temporary Office Closures**

We have been asked whether supervisory approval is required to temporarily close an office location due to the COVID-19 pandemic. The FDIC issued a recent FAQ stating that it does not require an application to temporarily close a facility due to staffing challenges or to take precautionary measures. However, you should check with your state regulator in case state laws are more restrictive, and you should notify your regulator and customers of any temporary closures and availability of alternative service options as soon as practical.

### **CRA Credit**

The FDIC, Federal Reserve and OCC issued a [joint statement](#) on March 19, 2020 to encourage financial institutions to meet the financial services needs of their customers and members in areas affected by COVID-19. The agencies emphasize that prudent efforts to modify the terms on new or

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<sup>1</sup> See H.R. 748 for specific definitions of covered loans and programs. <https://www.congress.gov/bill/116th-congress/house-bill/748/text#toc-H0137A01952844D9DA9C8FEC2047B490D>

existing loans for affected low- and moderate-income customers, small businesses, and small farms will receive CRA consideration and not be subject to examiner criticism. For example, when appropriate, a financial institution may restructure a borrower's debt obligations due to temporary hardships resulting from COVID-19-related issues. Such efforts can ease cash flow pressures on affected borrowers, improve their capacity to service debt, help to recover or maintain customers' financial capacity, and facilitate the financial institution's ability to collect on its loans.

Financial institutions may also receive CRA consideration for easing terms for new loans to affected low- and moderate-income customers, small businesses, and small farms, consistent with prudent banking practices. Such practices may help customers to recover or maintain their financial capacity and enhance their ability to service their debt. The agencies encourage financial institutions to work with their respective supervisory agency regarding additional actions that may effectively manage or mitigate any adverse impact due to COVID-19, consistent with safe and sound banking practices and applicable consumer protection laws.

The COVID-19 emergency has had a significant economic impact that may extend beyond banks' assessment areas. Therefore, the agencies are reminding institutions that favorable consideration will be given to community development activities located in a broader statewide or regional area that includes a bank's CRA Assessment Area and that help to stabilize communities affected by the COVID-19, provided that such institutions are responsive to the community development needs and opportunities that exist in their own assessment area(s). This statement shall be effective through the six-month period after the national emergency declaration is lifted, unless extended by the agencies.

### **BSA Reporting**

On March 16, 2020, the Financial Crimes Enforcement Network (FinCEN) issued a press release encouraging financial institutions affected by COVID-19 to contact FinCEN and their functional regulators as soon as practicable if there were concerns about any potential delays in their ability to file required BSA reports. FinCEN's Regulatory Support Section will continue to be available to support financial institutions for the duration of the COVID19 pandemic. Financial institutions supervised by the FDIC should contact their Regional Office to discuss any concerns with filing BSA reports.

### **Quarterly HMDA Reporting**

Beginning in 2020, financial institutions that reported a combined total of at least 60,000 applications and covered loans, excluding purchased covered loans, in the preceding calendar year, are required to file quarterly (except for the fourth quarter) in addition to annually.

The CFPB announced that as of March 26, 2020, and until further notice, it does not intend to cite in an examination or initiate an enforcement action against any institution for failure to report its HMDA data quarterly. See [CFPB Letter](#).

## **Reserve Requirements**

The Federal Reserve Board [announced](#) on March 15, 2020 that it has reduced reserve requirement ratios to zero percent effective on March 26, the beginning of the next reserve maintenance period. This action eliminates reserve requirements for thousands of depository institutions and will help to support lending to households and businesses. This relates to reserve requirements for transactional accounts, but does not alter Regulation D transaction limits or Call Report classifications.

## **Keeping up with Risk Management and Reporting Requirements**

Regulatory agencies have expressed their intention to be flexible with banks affected by the pandemic crisis, understanding the constraints on staffing and disruption to operations brought on by this unprecedented situation and national emergency declaration. It is important that you maintain open communication with your prudential regulator if you are falling behind in risk management or reporting requirements. Various pressure relief valves have been installed, including adjustments to scheduling and scope of regulatory exams, but not everything is flexible.

## **CORONAVIRUS SCAMS ON THE RISE**

Unfortunately, when the country experiences a new threat, whether physical, financial, environmental, or as we're experiencing now - biological, new scams seem to sprout up overnight. Why can't these people use their talents for good???? We're seeing it ramp up significantly now as banks are setting up remote work environments for employees to comply with social distancing requirements and still provide critical financial services to consumers and businesses. In many cases, these employees have never had to worry about the security threats and conditions for remote access....and neither have many banks and credit unions...At least not on this scale.

Not only does your CISO need to be aware of threats and establish protocols for remote access to bank systems, they need to impress upon staff, especially now, to be very wary about accessing potentially harmful sites or apps on bank-issued devices. We also need to make sure there are established protocols around destruction of confidential or sensitive customer and bank information when working from home or remote sites.

The Department of Justice issued a press release following the major explosion of COVID-19 cases, advising consumers to be aware of a variety of new scams already being reported, including:

- Online individuals and businesses selling fake cures for COVID-19 and other forms of fraud;
- Phishing emails from entities posing as the Centers for Disease Control (CDC) or World Health Organization (WHO);
- Malicious websites and apps appearing to share what seems to be important virus-related statistics, only to lock access to devices until payment is received;

- Non-existent charitable organizations seeking donations.

The DOJ suspects new scams will continue to emerge as the threat increases. As bankers, we should continually update our staff on the ever-changing situation to help protect our customers from the spread of the virus, but to protect them from malicious activity spread by others. Additionally, with the potential for government stimulus checks it is guaranteed we will see an exponential rise in check fraud as well.

The DOJ has also warned that children who are home from school and spending more time online may be at increased risk for exploitation. Anyone can be targeted by hackers and scammers.

Continue to advise customers:

- Not to panic by reminding them that their deposits are safe and federally insured;
- Beware of fraudulent claims of a cure for COVID-19 on the Internet;
- The CDC and other governing bodies do not send emails asking for personal information;
- Seek news from reliable sources regarding COVID-19.

With the passage of a \$2 trillion stimulus package, consumers and businesses across the nation will be receiving checks soon. If you are unsure of the legitimacy of a stimulus check presented, be sure to review it for all identifying marks of a United States Treasury Check.

The Department of Justice recommends the following platforms for concerned citizens to report fraud related to COVID-19:

- National Center for Disaster Fraud Hotline at 866.720.5721 or via email at [disaster@leo.gov](mailto:disaster@leo.gov)
- FBI at [tips.fbi.gov](https://tips.fbi.gov)
- For a cyber scan consumers can submit a claim through <https://www.ic3.gov/default.aspx>

Each day we are met with significant new challenges surrounding COVID-19. It is important that we work together to protect our customers and our financial system during this unprecedented crisis. Remember, we will all get through this together!

## INDUSTRY HIGHLIGHTS

- The FDIC issued a statement clarifying the interaction between the interim final rule that provides a 5-year transition period for the impact of the current expected credit loss methodology (CECL) on regulatory capital and the temporary CECL relief provided by the Coronavirus Aid, Relief and Economic Security Act. While we don't typically credit-related issues, this is an area where compliance has most likely been pulled into the discussion.

- The CFPB issued a request for information to assist the Taskforce on Federal Consumer Financial Law with recommendations on harmonizing, modernizing and updating the federal consumer financial laws.
- The CFPB announced it is provided needed flexibility to enable financial companies to work with customers in need as they respond to the COVID-19 pandemic. In addition to HMDA relief mentioned within our leading article, the Bureau will not expect the reporting of certain information related to credit card and prepaid accounts under Regulations Z and E. Data collection has also been postponed for a survey of financial institutions seeking information on the cost of compliance in connection with pending rulemaking on Section 1071 of the Dodd-Frank Act and a survey of firms providing PACE financing to consumers for the purposes of implementing Section 307 of the Regulatory Relief Act.
- The CFPB released its annual report to Congress on the administration of the Fair Debt Collection Practices Act (FDCPA), highlighting the continued efforts by the Bureau and the FTC to stop unlawful debt collection practices, including vigorous law enforcement, consumer education and public outreach, and policy initiatives.
- The FDIC extended the comment period for its request for information on potential ways to modernize sign and advertising rules. Comments may be submitted through April 20, 2020.
- The Department of Defense published an amendment to its interpretive rule for the Military Lending Act, withdrawing previously amended Q&A #2 that addressed credit extended for the purposes of purchasing a motor vehicle or personal property while also simultaneously extending credit in an amount greater than the purchase price. By withdrawing this Q&A, the requirements revert back to the 2016 Interpretive Rule. The DoD also added a new section to address the use of Individual Taxpayer Identification Numbers (ITINs) to identify covered persons.

## PENDING LEGISLATION

- **Home Mortgage Disclosure Act:** NPRM proposes to raise the coverage thresholds for collecting and reporting data about closed-end mortgage loans and open-end lines of credit; ANPRM addresses certain data points and coverage of business-or commercial-purpose properties
- **Qualified Mortgages:** ANPRM seeks information related to the expiration of the temporary qualified mortgage provision applicable to certain mortgage loans eligible for purchase or guarantee by the Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac. This provision is scheduled to expire no later than January 10, 2021.
- **Overdraft Programs:** CFPB is conducting a review of the Overdraft Rule, specifically seeking comment on the economic impact of the Rule on small entities. This review may assist the Bureau in determining whether the Overdraft Rule should be continued without change or amended or rescinded to minimize any significant economic impact of the rule upon small entities.
- **Escrow Relief for HPMLs:** Relief would exempt from certain escrow requirements a 1<sup>st</sup> lien

HPML made by an insured depository institution or credit union that has assets of \$10B or less and originated 1,000 or fewer mortgages in the preceding year. This provision is currently awaiting rulemaking.

- **Debt Collection:** ANPRM has been issued to provide consumers with clear protections against debt collector harassment; set clear, bright-line limits on the number of calls a debt collector may make; clarify how debt collectors may communicate (e.g. phone, text, email, etc.); and, require debt collectors to provide additional information to consumers to help them identify debts and respond to collection attempts.
- **Larger Participants and Non-Bank Lender Registration:** The CFPB is continuing rulemaking activities that will further establish the Bureau's nonbank supervisory authority by defining larger participants of certain markets for consumer financial products and services.
- **Women-Owned, Minority-Owned and Small Business Data Collection:** Rulemaking remains on hold as there does not appear to be a permissible way to collect this data under Regulation B.
- **Regulatory Reviews and Assessments:** The CFPB continues its review of rules it has issued and those it has adopted from other agencies to determine their ongoing effectiveness.