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**Pandemic Preparedness and COVID-19**

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[**Business Continuity Planning (BCP)**](https://ithandbook.ffiec.gov/media/274725/ffiec_itbooklet_businesscontinuityplanning.pdf)

Business continuity planning is an enterprise-wide, process-oriented approach that considers technology, business operations, testing and communication strategies that are critical to business continuity planning for the entire business, instead of just the information technology department. The overall goal is to provide financial services guidance about the importance of business continuity planning, which establishes the basis for financial institutions to recover and resume business processes when operations have been disrupted unexpectedly. Because financial institutions play a crucial role in the overall economy, disruptions in service should be minimized in order to maintain public trust and confidence in the financial system. As such, financial institution management should incorporate business continuity considerations into the overall design of their business model to proactively mitigate the risk of service disruptions.

Financial institution management should develop a comprehensive business continuity plan (BCP) as part of the business continuity planning process. The BCP should be based on the size and complexity of the institution and should be consistent with the financial institution's overall business strategy. The goal of the BCP should be to minimize financial losses to the institution, serve customers and financial markets with minimal disruptions, and mitigate the negative effects of disruptions on business operations. Reviewing a financial institution's business continuity planning process, which includes an assessment of the BCP, is an established part of examinations performed by the FFIEC member agencies.

Changes in business processes and technology increased terrorism concerns, recent catastrophic natural disasters, and the threat of a pandemic have focused even greater attention on the need for effective business continuity planning. Consequently, these issues should be given greater consideration in business continuity planning. Financial institution management should consider the potential for area-wide disasters that could affect an entire region and result in significant losses to the institution. The business continuity planning process should address interdependencies, both market-based and geographic, among financial system participants and infrastructure service providers. In most cases, recovery time objectives (RTOs) are now much shorter than they were a few years ago, and for some institutions, RTOs are based on hours and even minutes. Ultimately, all institutions should anticipate and plan for the unexpected and ensure that their business continuity planning process appropriately addresses the lessons they have learned from past disasters.

A financial institution's board and senior management are responsible for overseeing the business continuity planning process, which includes:

* Establishing policy by determining how the institution will manage and control identified risks;
* Allocating knowledgeable personnel and sufficient financial resources to properly implement the BCP;
* Ensuring that the BCP is independently reviewed and approved at least annually;
* Ensuring employees are trained and aware of their roles in the implementation of the BCP;
* Ensuring the BCP is regularly tested on an enterprise-wide basis;
* Reviewing the BCP testing program and test results on a regular basis; and
* Ensuring the BCP is continually updated to reflect the current operating environment.

A financial institution's business continuity planning process should reflect the following objectives:

* The business continuity planning process should include the recovery, resumption, and maintenance of all aspects of the business, not just recovery of the technology components;
* Business continuity planning involves the development of an enterprise wide BCP and the prioritization of business objectives and critical operations that are essential for recovery;
* Business continuity planning includes the integration of the institution's role in financial markets;
* Business continuity planning should include regular updates to the BCP on changes in business processes, audit recommendations, and lessons learned from testing; and
* Business continuity planning represents a cyclical, process-oriented approach that includes a business impact analysis (BIA), a risk assessment, risk management, and risk monitoring and testing.

A business impact analysis (BIA) is the first step in the business continuity planning process and should include the:

* Assessment and prioritization of all business functions and processes, including their interdependencies, as part of a workflow analysis;
* Identification of the potential impact of business disruptions resulting from uncontrolled, non-specific events on the institution's business functions and processes;
* Identification of the legal and regulatory requirements for the institution's business functions and processes;
* Estimation of maximum allowable downtime, as well as the acceptable level of losses, associated with the institution's business functions and processes; and
* Estimation of recovery time objectives (RTOs), recovery point objectives (RPOs), and recovery of the critical path.

The risk assessment is the second step in the business continuity planning process. It should include:

* Evaluating the BIA assumptions using various threat scenarios;
* Analyzing threats based upon the impact to the institution, its customers, and the financial market it serves;
* Prioritizing potential business disruptions based upon their severity, which is determined by their impact on operations and the probability of occurrence; and
* Performing a "gap analysis" that compares the existing BCP to the policies and procedures that should be implemented based on prioritized disruptions identified and their resulting impact on the institution.

Risk management represents the third step in the business continuity planning Business Continuity Planning Booklet Page 9 process. It is defined as the process of identifying, assessing, and reducing risk to an acceptable level through the development, implementation, and maintenance of a written, enterprise wide BCP. The BCP should be:

* Based on a comprehensive BIA and risk assessment;
* Documented in a written program;
* Reviewed and approved by the board and senior management at least annually;
* Disseminated to financial institution employees;
* Properly managed when the maintenance and development of the BCP is outsourced to a third-party;
* Specific regarding what conditions should prompt implementation of the plan and the process for invoking the BCP;
* Specific regarding what immediate steps should be taken during a disruption;
* Flexible to respond to unanticipated threat scenarios and changing internal conditions;
* Focused on the impact of various threats that could potentially disrupt operations rather than on specific events;
* Developed based on valid assumptions and an analysis of interdependencies; and
* Effective in minimizing service disruptions and financial loss through the implementation of mitigation strategies.

Risk monitoring and testing is the final step in the cyclical business continuity planning process. Risk monitoring and testing ensures that the institution's business continuity planning process remains viable through the:

* Incorporation of the BIA and risk assessment into the BCP and testing program;
* Development of an enterprise-wide testing program;
* Assignment of roles and responsibilities for implementation of the testing program;
* Completion of annual, or more frequent, tests of the BCP;
* Evaluation of the testing program and the test results by senior management and the board;
* Assessment of the testing program and test results by an independent party; and
* Revision of the BCP and testing program based upon changes in business operations, audit and examination recommendations, and test results.

[**Pandemic Planning Policy (PPP)**](https://www.ffiec.gov/press/pandemicguidance.pdf)

The FFIEC agencies jointly issued guidance to remind financial institutions that business continuity plans should address the threat of a pandemic outbreak. The guidance identifies actions that financial institutions should take to minimize the potential adverse effects of a pandemic. Specifically, the institution’s BCP should address pandemics and provide for a preventive program, a documented strategy scaled to the stages of a pandemic outbreak, a comprehensive framework to ensure the continuance of critical operations, a testing program and an oversight program to ensure that the plan is reviewed and updated. The pandemic segment of the BCP must be sufficiently flexible to address a wide range of possible effects that could result from a pandemic, and be reflective of the institution’s size, complexity, and business activities.

Pandemics are defined as epidemics or outbreaks in humans of infectious diseases that can spread rapidly over large areas, possibly worldwide. Several pandemics have occurred throughout history, with the most recent being COVID-19. The adverse economic effects of a pandemic could be significant, both nationally and internationally. Due to their crucial financial and economic role, financial institutions should have plans in place that describe how they will manage through a pandemic event. Sound planning should minimize the disruptions to the local and national economy and should help the institution maintain the trust and confidence of its customers.

There are distinct differences between pandemic planning and traditional business continuity planning. When developing business continuity plans, financial institution management typically considers the effect of various natural or man-made disasters that may differ in their severity. These disasters may or may not be predictable, but they are usually short in duration or limited in scope. In most cases, malicious activity, technical disruptions, and natural/man-made disasters typically will only affect a specific geographic area, facility, or system. These threats can usually be mitigated by focusing on resiliency and recovery considerations. Pandemic planning presents unique challenges to financial institution management. Unlike natural disasters, technical disasters, malicious acts, or terrorist events, the impact of a pandemic is much more difficult to determine because of the anticipated difference in scale and duration. The nature of the global economy virtually ensures that the effects of a pandemic event will be widespread and threaten not just a limited geographical region or area, but potentially every continent. In addition, while traditional disasters and disruptions normally have limited time durations, pandemics generally occur in multiple waves, each lasting two to three months. Consequently, no individual or organization is safe from the adverse effects that might result from a pandemic event. Experts predict that perhaps the most significant challenge likely from a severe pandemic event will be staffing shortages due to absenteeism. These differences and challenges highlight the need for all financial institutions, no matter their size, to plan for a pandemic event when developing their BCP.

To address the unique challenges posed by a pandemic, the financial institution’s BCP should provide for:

1. A preventive program to reduce the likelihood that an institution’s operations will be significantly affected by a pandemic event, including monitoring of potential outbreaks, educating employees, communicating and coordinating with critical service providers and suppliers, in addition to providing appropriate hygiene training and tools to employees.
2. A documented strategy that provides for scaling the institution’s pandemic efforts so they are consistent with the effects of a particular stage of a pandemic outbreak, such as first cases of humans contracting the disease overseas, first cases within the United States, and first cases within the organization itself. The strategy will also need to outline plans that state how to recover from a pandemic wave and proper preparations for any following wave(s).
3. A comprehensive framework of facilities, systems, or procedures that provide the organization the capability to continue its critical operations in the event that large numbers of the institution’s staff are unavailable for prolonged periods. Such procedures could include social distancing to minimize staff contact, telecommuting, redirecting customers from branch to electronic banking services, or conducting operations from alternative sites. The framework should consider the impact of customer reactions and the potential demand for, and increased reliance on, online banking, telephone banking, ATMs, and call support services. In addition, consideration should be given to possible actions by public health and other government authorities that may affect critical business functions of a financial institution.
4. A testing program to ensure that the institution’s pandemic planning practices and capabilities are effective and will allow critical operations to continue.
5. An oversight program to ensure ongoing review and updates to the pandemic plan so that policies, standards, and procedures include up-to-date, relevant information provided by governmental sources or by the institution’s monitoring program.

Traditional business continuity planning and pandemic planning require management to follow a cyclical process of planning, preparing, responding, and recovering. However, pandemic planning requires additional actions to identify and prioritize essential functions, employees, and resources within the institution and across other business sectors. The issues discussed below highlight the specific challenges faced by management and the mitigating controls that should be considered when developing a pandemic plan.

As with other BCP activities, pandemic planning should not be viewed as solely an Information Technology (IT) issue, but rather as a significant risk to the entire business. As such, an institution’s pandemic planning activities should involve senior business management from all functional, business and product areas, including administrative, human resources, legal, IT support functions, and key product lines. An institution’s board of directors is responsible for overseeing the development of the pandemic plan. The board or a committee thereof should also approve the institution’s written plan and ensure that senior management is investing sufficient resources into planning, monitoring, and testing the final plan. Senior management is responsible for developing the pandemic plan and translating the plan into specific policies, processes, and procedures. Senior management is also responsible for communicating the plan throughout the institution to ensure consistent understanding of the key elements of the plan and to ensure that employees understand their role and responsibilities in responding to a pandemic event. Finally, senior management is responsible for ensuring that the plan is regularly tested and remains relevant to the scope and complexity of the institution’s operations.

The potential effects of a pandemic should be a part of the financial institution’s overall BCP business impact analysis (BIA). The BIA should:

* Assess and prioritize essential business functions and processes that may be affected by a pandemic;
* Identify the potential impact of a pandemic on the institution's essential business functions and processes, and supporting resources;
* Identify the potential impact of a pandemic on customers: those that could be most affected and those that could have the greatest impact on the (local) economy;
* Identify the legal and regulatory requirements for the institution’s business functions and processes;
* Estimate the maximum downtime associated with the institution’s business functions and processes that may occur during a pandemic; • Assess cross training conducted for key business positions and processes; and
* Evaluate the plans of critical service providers for operating during a pandemic. Financial institutions should evaluate the plans and monitor the servicers to ensure critical services are available. Financial institutions may wish to have back-up arrangements to mitigate any risk. Special attention should be directed at the institution’s ability to access leased premises and whether sufficient internet access capacity is available if telecommuting is a key risk mitigation strategy.

The institution’s risk assessment process is critical and has a significant bearing on whether BCP efforts will be successful. Specific risk assessment and risk management actions arising from a pandemic include the following:

**Coordination with Outside Parties**

Open communication and coordination with outside groups, including critical service providers, is an important aspect of pandemic planning. Financial institutions should coordinate information sharing efforts through participation in business and community working groups and develop coalitions with outside parties to provide support and maintenance for vital services during a pandemic. Efforts could include consideration of cooperative arrangements with other financial institutions within the institution’s geographical trade area. In addition, management should coordinate its pandemic planning efforts with local public health and emergency management teams, identify authorities that can take specific actions (e.g., who has the ability to close a building or alter transportation), and plan to alert local and state agencies regarding significant employee absenteeism that may be caused by a sudden pandemic outbreak. Communication with customers and the media is also critical to ensure that accurate information is disseminated about business operations. Critical interdependency challenges require management to ensure an adequate reserve of essential supplies and to proactively manage maintenance of equipment to ensure sustainability during service disruptions. Management should also monitor its service providers, identify potential weaknesses in the service and supply chains, and develop potential alternatives for obtaining critical services and supplies.

**Identification of Triggering Events**

A triggering event occurs when an environmental change takes place that requires management to implement its response plans based on the pandemic alert status. Alerts may be issued by various organizations that have developed surveillance systems to monitor the progression of viral outbreaks. Depending on the severity of the alert, management may need to act quickly to implement elements of its pandemic response plans. Therefore, it is important for management to monitor national and international pandemic news sources in order to be aware of potential outbreaks. Management should monitor websites devoted to national health care issues, identify key points of contact for emergency and health care organizations, and assess potential implications for the financial institution if a pandemic occurs. Management also should communicate to employees and key service providers the actions it plans to take at specific triggering points.

**Employee Protection Strategies**

Employee protection strategies are crucial to sustain an adequate workforce during a pandemic. Institutions should promote employee awareness by communicating the risks of a pandemic outbreak and discussing the steps employees can take to reduce the likelihood of contracting a pandemic virus. The following risk management strategies should be considered:

* Publicize the Centers for Disease Control and Prevention “Cover Your Cough” and “Clean Your Hands” programs or other general hygiene programs;
* Encourage employees to avoid crowded places and public transportation systems;
* Implement “social distancing” techniques to minimize typical face-to-face contact through the use of teleconference calls, video conferencing, flexible work hours, telecommuting, encouraging customers to use online or telephone banking services, ATMs and drive-up windows; and
* Review and consider the use of other non-pharmaceutical interventions developed by the Centers for Disease Control and Prevention

**Mitigating Controls**

Despite the unique challenges posed by a pandemic, there are control processes that management can implement to mitigate risk and the effects of a pandemic. For example, to overcome some of the personnel challenges, management should ensure 9 of 10 that employees are cross-trained and that succession plans have been developed. The institution may be able to leverage plans already established as part of traditional business continuity planning.

**Remote Access**

During a pandemic there may be a high reliance on employee telecommuting, which could put a strain on remote access capabilities such as capacity, bandwidth, and authentication mechanisms. Moreover, employees who typically work onsite may not have remote access authority or the necessary technology infrastructure to work at home. Analysis of remote access capabilities, mapping of related technology infrastructure to employee needs during a pandemic, assessing the infrastructure at the neighborhood level, and considering internal and external capacity are necessary to help ensure telecommuting strategies will work during a pandemic.

Testing for a pandemic may require variations to the scope of traditional disaster recovery and business continuity testing, as potential test scenarios will most likely be different. risk monitoring and testing of the pandemic plan is important to the overall planning process. A key challenge for management is developing a testing program that provides a high degree of assurance that critical business processes, including supporting infrastructure, systems, and applications, will function even during a severe pandemic. A robust program should incorporate testing:

* Roles and responsibilities of management, employees, key suppliers, and customers;
* Key pandemic planning assumptions;
* Increased reliance on online banking, telephone banking, and call center services; and
* Remote access and telecommuting capabilities.

Test results should be reported to management, with appropriate updates made to the pandemic plan and testing program.

[**Information Technology**](https://ithandbook.ffiec.gov/it-booklets.aspx) **and** [**Information Security**](https://ithandbook.ffiec.gov/it-booklets/information-security.aspx)

The FFIEC provides guidance to financial institutions on risk management processes that promote sound and controlled operation of technology environments. Information is one of the most important assets of an institution, and information technology (IT) operations should process and store information in a timely, reliable, secure and resilient manner. IT operations should be addressed in the context of tactical management and daily delivery of technology to capture, transmit, process and store the information assets and support the business processes of the institution. Financial institutions need to understand and evaluate their controls and risk management processes relative to the risks of technology systems and operations that reside in or are connect to the institution.

The evolving role technology plays in supporting the business function has become increasingly complex. IT operations-traditionally housed in a computer data center with user connections through terminals-have become more dynamic and include distributed environments, integrated applications, telecommunication options, Internet connectivity, and an array of computer operating platforms. As the complexity of technology has grown, the financial services industry has increased its reliance on vendors, partners, and other third parties for a variety of technology solutions and services. Institutions will frequently operate or manage various IT resources from these third-party locations. Risks involve more than IT technology and controls include sound processes and well-trained people. Effective support and delivery from IT operations has become vital to the performance of most critical business lines in the institution. Therefore, IT management should work with business line management and end users to determine and deliver appropriate service levels. The FFIEC member agencies expect institution management to implement controls across the institution to mitigate IT operations-related risk consistent with the nature and complexity of the institution's technology environment.

Institutions developing or reviewing their operational controls, procedures, standards, and processes have a variety of third-party sources to draw on for additional guidance, including outside auditors, consulting firms, insurance companies, industry and trade groups, and other technology professionals. In addition, many national and international organizations have developed guidelines and best practices. These guidelines and best practices provide benchmarks institutions can use to develop sound practices. The following organizations are a sample of standard-setting groups.

* The National Institute of Standards and Technology (NIST) at [www.nist.gov](http://www.nist.gov/)
* The International Organization for Standardization (ISO) Information technology at [www.iso.org](http://www.iso.org/)
* The Information Systems Audit and Control Association (ISACA) - Control Objectives for Information Technology (COBIT), at [www.isaca.org/cobit.htm](http://www.isaca.org/cobit.htm)
* The Institute of Internal Auditors, at [www.theiia.org](http://www.theiia.org/)
* The Committee of Sponsoring Organizations (COSO) of the Treadway Commission at [www.coso.org](http://www.coso.org/)

Information Security (IS) is an integral part to the FFIEC’s guidance on Information Technology. Information security is the process by which a financial institution protects the creation, collection, storage, use, transmission and disposal of sensitive information, including the protection of hardware and infrastructure used to store and transmit such information. IS promotes the accepted objectives of confidentiality, integrity, and availability of information and is essential to the overall safety and soundness of an institution. Information Security exists to provide protection from malicious and non-malicious actions that increase the risk of adverse effects on earnings, capital or enterprise value. The potential adverse effects can arise from the following:

* Disclosure of information to unauthorized individuals
* Unavailability or degradation of services
* Misappropriation or theft of information or services
* Modification or destruction of systems or information
* Records that are not timely, accurate, complete or consistent

Institutions must maintain effective information security programs commensurate with their operational complexities. Information security programs should have strong board and senior management support, promote integration of security activities and controls throughout the institution's business processes, and establish clear accountability for carrying out security responsibilities. In addition, because of the frequency and severity of cyber-attacks, the institution should place an increasing focus on cybersecurity controls, a key component of information security.

Institutions should also assess and refine their controls on an ongoing basis. The condition of a financial institution's controls, however, is just one indicator of its overall security posture. Other indicators include the ability of the institution's board and management to continually review the institution's security posture and react appropriately in the face of rapidly changing threats, technologies, and business conditions. Information security is far more effective when management does the following:

* Integrates processes, people, and technology to maintain a risk profile that is in accordance with the board's risk appetite.
* Aligns the information security program with the enterprise risk management program and identifies, measures, mitigates, and monitors risk.

Because risk mitigation frequently depends on institution-specific factors, this booklet describes processes and controls that an institution can use to protect information and supporting systems from various threats. Management should be able to identify and characterize the threats, assess the risks, make decisions regarding the implementation of appropriate controls, and provide appropriate monitoring and reporting.

Financial institutions may outsource some or all their IT-related functions. Although the use of outsourcing may change the location of certain activities from financial institutions to third-party service providers, outsourcing does not change the regulatory expectations for an effective information security program. Financial institution's need to ascertain their risk management process, including the duties, obligations, and responsibilities of the third-party service provider regarding information security and the oversight exercised by the financial institution.

**Cybersecurity and Pandemics**

Cybersecurity is the process by which an organization protects and secures its systems, media and facilities that process and maintain information vital to its operations. Cybersecurity firms are reporting an uptick in attacks against a range of targets, all using the ongoing COVID-19 pandemic as a ploy to trick victims into running malware. Banks are not immune to this. Targeted spearphishing campaigns from hackers internationally to deliver malware continues to be on the rise, imitating trusted organizations like the World Health Organization and the U.S. Center for Disease Control and Prevention. This includes COVID-19 related emails to deliver spam, steal credentials, and infect victims with malware. Attackers are not just using the coronavirus as a cover for spreading malware. There appears to also be a coronavirus-themed business email compromise attack, designed to trick businesses into turning over their money. Spoofed emails attempt to trick a victim company’s customers to pay an outstanding balance but to a different bank than usual “due to the coronavirus outbreak.”

**Miscellaneous Considerations**

**\*It is important to note that this is not an all-inclusive breakdown of other considerations. This is an area of regulatory compliance that continues to be evolving daily in response to the unique circumstances COVID-19 continues to bring.**

**All information noted below is accurate as of March 30, 2020. Be aware that additional guidance, statements and materials may be available after this date.**

**Counterfeit Cash**

COVID-19 has reduced the U.S. Secret Service’s capacity to process counterfeit submissions. Until further notice, do not send counterfeit currency to the U.S. Secret Service. Banks are ordered to collect suspected counterfeits and submit them upon notification that the U.S. Secret Service has returned to normal operations.

<https://www.uscurrency.gov/report-counterfeit>

**Essential Critical Infrastructure Workers**

DHS/CISA issued guidance deeming certain workers within the financial services sector "Essential Critical Infrastructure Workers.” This included the following:

* Workers who are needed to process and maintain systems for processing financial transactions and services (e.g. payment, clearing, and settlement; wholesale funding; insurance services; and capital markets activities)
* Workers who are needed to provide consumer access to banking and lending services, including ATMs, and to move currency and payments (e.g.- armored cash carriers).
* Workers who support financial operations, such as those staffing data and security operations centers

<https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>

Additionally, Secretary Mnuchin issued guidance on the same infrastructure concerns: <https://www.sifma.org/wp-content/uploads/2020/03/Financial-Services-Sector-Essential-Critical-Infrastructure-Workers.pdf>

C/A offers a compliance credential tool as well found here: <https://compliancealliance.com/find-a-tool/tool/covid-19-essential-critical-infrastructure-worker-credential>. It may be presented as evidence of this designation, if requested by law enforcement or public officials enforcing stay-at-home or shelter-in-place orders. Always remind employees to carry unexpired government-issued identification as well.

**Appraisals**

The Appraisal Foundation issued the following FAQ regarding USPAP interior inspection requirements during a pandemic: <https://appraisalfoundation.sharefile.com/share/view/s9059805b5b44df08>. In summary, appraisers and users of appraisal services are to be informed that the USPAP does not require an inspection unless necessary to produce credible assignment results (USPAP Standards Rule 1-2, Standards Rule 2-2, and Advisory Opinion 2 for further guidance). When an interior inspection would customarily be part of the scope of the work, a health or other emergency condition may require an appraiser to make an extraordinary assumption about the interior or a property. This is permitted by USPAP as long as the appraiser has a reasonable basis for the extraordinary assumptions and as long as its use still results in a credible analysis. Additional FAQ guidance can be found here: <http://www.appraisalfoundation.org/iMIS/TAF/Coronavirus_and_Appraisers.aspx>

**Flood Requirements**

As of March 29, 2020 FEMA, has extended the grace period to renew flood insurance policies from 30 days to 120 days. This extension applies to NFIP flood insurance policies with an expiration date between February 13-June 15, 2020. To avoid a lapse in coverage, there is typically a 30-day grace period to renew policies. However, due to the widespread economic disruption arising from this pandemic, FEMA recognizes that flood insurance policyholders may not meet the standard policy renewal deadline.

For more information about renewing flood insurance policies or resolving an underpayment, policyholders are to contact their insurance carriers or call the National Flood Insurance Program Call Center at: 1-877-336-2627.

Additional commentary is found here: <https://www.fema.gov/news-release/2020/03/29/fema-extends-grace-period-flood-insurance-renewal-premiums>

Despite the fact that the FEMA changes extended the “grace period of policies from 30 to 120 days, the most recent final rule stated that banks are required to start the timing for force placement purposes based on the actual expiration date and not to take into account any grace period:

The Agencies understand that flood insurance policies under the NFIP will often provide policyholders with a “grace period” of typically 30 days following the expiration date to pay the renewal premiums and fees to restore the policy and ensure continuous coverage. However, the Agencies also understand that any flood insurance coverage provided by the NFIP policy during the grace period would cover only the lender's interest. The borrower's interest would be covered during the grace period only if the borrower pays the renewal premium within the grace period.[[*62*](https://www.federalregister.gov/documents/2015/07/21/2015-15956/loans-in-areas-having-special-flood-hazards#footnote-62-p43231)]Because there may be a lack of continuous flood coverage protecting the borrower's interest during this “grace period,” the Agencies consider the policy to have lapsed as of the expiration date provided by the policy.

<https://www.federalregister.gov/d/2015-15956/p-193>

With that being said, the conservative interpretation is the regulatory requirements do not change regarding force placement. Without additional guidance, it is unclear how financial institutions are to reconcile FEMA’s extension with how it will help borrowers if the bank’s force placement requirements are not also extended. For the time being, banks are advised to follow the conservative interpretation and remain in compliance with current force placement timing in the regulation and to also contact your primary regulator for additional guidance.

**Taxes**

Per [IR-2020-58](https://www.irs.gov/newsroom/tax-day-now-july-15-treasury-irs-extend-filing-deadline-and-federal-tax-payments-regardless-of-amount-owed), Tax Day is now July 15th. The IRS has extended the filing deadline and federal tax payments regardless of the amount. Additional information can be found here: <https://www.irs.gov/coronavirus>.

**FDIC FIL Updates**

The FDIC continues to issue Financial Institution Letters (FILs) announcing new delays to regulatory requirements. The most up-to-date provisions can be found here: <https://www.fdic.gov/news/news/financial/index.html>

**SARs Reporting Requirements**

FinCEN requests financial institutions affected by the COVID-19 pandemic to contact FinCEN and their functional regulator as soon as practicable if a COVID-19 affected financial institution has concern about any potential delays in its ability to file required Bank Secrecy Act (BSA) reports. Financial institutions seeking to contact FinCEN should call FinCEN’s Regulatory Support Section (RSS) at 1-800-949-2732 and select Option 6 or email at [FRC@fincen.gov](mailto:FRC@fincen.gov). FinCEN’s RSS will continue to be available to support financial institutions for the duration of the COVID-19 pandemic.

FinCEN reported emerging trends:

* Imposter Scams—Bad actors attempt to solicit donations, steal personal information, or distribute malware by impersonating government agencies (e.g.- CDC), international organizations (e.g.- WHO) or healthcare organizations.
* Investment Scams – The U.S. Securities and Exchange Commission (SEC) urged investors to be wary of COVID-19-related investment scams, such as promotions that falsely claim that the products or services of publicly traded companies can prevent, detect, or cure coronavirus.
* Product Scams – The U.S. Federal Trade Commission (FTC) and U.S. Food and Drug Administration (FDA) have issued public statements and warning letters to companies selling unapproved or misbranded products that make false health claims pertaining to COVID-19. Additionally, FinCEN has received reports regarding fraudulent marketing of COVID-19-related supplies, such as certain facemasks.
* Insider Trading – FinCEN has received reports regarding suspected COVID-19-related insider trading.

Additionally, for suspected suspicious activities linked to COVID-19, along with checking the appropriate suspicious activity report-template (SAR-template) box(es) for certain typologies, FinCEN also encourages financial institutions to enter “COVID19” in Field 2 of the SAR-template.

Financial institutions are also encouraged to review information from other relevant functional regulators as updates are available. FinCEN will continue to monitor this situation and will periodically be releasing updates for financial institutions as appropriate.

**CFPB Reporting Flexibility**

The CFPB is postponing some data collections from industry on Bureau-related rules to allow companies to focus on responding to consumers in need and making changes to its supervisory activities to account for operational challenges at regulated entities.

The Bureau will not expect quarterly information reporting by certain mortgage lenders as required under the Home Mortgage Disclosure Act (HMDA) and Regulation C. During this time, entities should continue collecting and recording HMDA data in anticipation of making annual submissions. The Bureau will provide information on when and how institutions will be expected to commence what would have been new quarterly HMDA data submissions.

The Bureau also will not expect the reporting of certain information related to credit card and prepaid accounts under the Truth in Lending Act, Regulation Z, and Regulation E. This includes the annual submissions concerning agreements between credit card issuers and institutions of higher education; quarterly submission of consumer credit card agreements; collection of certain credit card price and availability information; and submission of prepaid account agreements and related information.

Additionally, the following data collections are being postponed:

* a survey of financial institutions that seeks 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 Property Assessed Clean Energy financing to consumers for the purposes of implementing Section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

To the extent the submission of this information is required by law, the Bureau is issuing policy statements indicating that it does not intend to cite in an examination or initiate an enforcement action against any entity for failure to submit such information when required. The Bureau will notify entities at a later date of when and how to submit information under these requirements. Entities should maintain records sufficient to allow them to make delayed submissions pursuant to Bureau guidance.

The Bureau also announced that as a result of operational challenges confronted by institutions due to the pandemic, the Bureau will work with affected financial institutions in scheduling examinations and other supervisory activities to minimize disruption and burden. When conducting examinations and other supervisory activities and in determining whether to take enforcement action, the Bureau will consider the circumstances that entities may face as a result of the COVID-19 pandemic and will be sensitive to good-faith efforts demonstrably designed to assist consumers.

Statement on Supervisory and Enforcement Practices Regarding Quarterly Reporting Under the Home Mortgage Disclosure Act: <https://files.consumerfinance.gov/f/documents/cfpb_hmda-statement_covid-19_2020-03.pdf>

Statement on Supervisory and Enforcement Practices Regarding Bureau Information Collections for Credit Card and Prepaid Account Issuers: <https://files.consumerfinance.gov/f/documents/cfpb_data-collection-statement_covid-19_2020-03.pdf>

Statement on Bureau Supervisory and Enforcement Response to COVID-19 Pandemic: <https://files.consumerfinance.gov/f/documents/cfpb_supervisory-enforcement-statement_covid-19_2020-03.pdf>

**Federal Reserve**

As the coronavirus pandemic spreads and is causing tremendous hardship across the United States and around the world, the Federal Reserve is using its full range of authorities to provide support for the flow of credit to American consumers and businesses. The Fed have cut its target for the federal funds rate, or the rate banks pay to borrow from each other overnight by a total of 1.5 percentage points since March 3, bringing it down to a range of 0 percent to 0.25 percent. The federal funds rate is a benchmark for other short-term rates, and also affects longer-term rates, so a move like this is aimed at lowering the cost of borrowing on mortgages, auto loans, home equity loans and other loans. It will also reduce the interest income that savers get.

The Fed is also offering forward guidance on the future path of its key interest rate, signaling that rates will likely remain low until it is confident that the economy has weathered the recent events and is on track to achieve employment and price stability goals. This guidance also puts a downward pressure on longer-term rates.

The Fed also has resumed purchasing massive amounts of securities—Treasury and mortgage-backed securities markets have become dysfunctional since the COVID-19 outbreak and the Fed aims to restore market functioning to continue to allow credit to flow. On March 23rd, the Fed made purchases open-ended. It also expanded purchases to include commercial mortgage-backed securities to help finance multi-family housing. It also issued forward guidance to reassure markets that it will purchase Treasury securities and agency mortgage-backed securities in the amounts needed to support smooth market functioning and effective transmission of monetary policy to broader financial conditions and the economy. This is unofficially being called “quantitative easing” (QE).

Through the Primary Dealer Credit Facility (PDCF), established under Section 13(3) of the Federal Reserve Act, the Fed will offer low interest rate loans up to 90 days to 24 large financial institutions known as primary dealers. The dealers will in turn provide the Fed with equities and other investment grade debt securities, including commercial paper and municipal bonds as collateral. The aim is to keep credit markets functioning.

The Fed has also relaunched the Money Market Mutual Fund Liquidity Facility (MMLF) which lends to banks against collateral they purchase from prime money market funds, commercial papers and Treasury securities. Investors due to COVID-19 have been withdrawing from money market funds. The Fed has again invoked Section 13(3) and obtained permission from the Treasury to provide $10 billion from its Exchange Stabilization Fund to cover potential losses.

The Fed is encouraging banks to increase lending during this downtown and temporarily relaxing regulatory requirements in regard to capital and liquidity buffers. The additional loss-absorbing capital required currently can be used during this downturn to stimulate lending and the Fed is encouraging that now, which includes a technical change to its TLAC (total loss-absorbing capacity) requirement, which includes capital and long-term debt.

Additional guidance can be found here: <https://www.federalreserve.gov/>

**Small Dollar Lending**

The Federal Reserve, the FDIC, the NCUA, the OCC and the CFPB (the “Agencies”), in response to COVID-19 and its adverse impact on customers and operations of banks, savings associations and credit unions (“financial institutions”), have issued in the month of March several statements encouraging financial institutions to meet the financial services needs of their customers and members in areas affected by COVID-19. Guidance was provided on March 19th, 2020 in regards to Community Reinvestment Act (CRA) by the Federal Reserve, FDIC and OCC stating that for CRA purposes, the Agencies will favorably consider retail banking and lending activities that met the needs of affected low-and moderate-income individuals, small businesses and small farms as long as these activities were consistent with safe and sound banking practices and applicable laws, including consumer protection laws. This statement also noted that such activities could include offering short-term, unsecured credit products for creditworthy borrowers.

A separate statement was issued March 26th, 2020 to again encourage financial institutions to offer responsible small-dollar loans to both consumers and small businesses. Offering small-dollar loans can play a vital role in helping customers meet their needs for credit due to temporary cash-flow imbalances, unexpected expenses, or income short-falls during periods of economic stress or disaster recoveries.

Financial institutions currently are allowed to make responsible small-dollar loans—such loans are offered through a variety of loan structures that may include open-end lines of credit, closed-end installment loans, or appropriately structured single payment loans. For borrowers who experience unexpected circumstances and cannot repay the loan as structured, financial institutions are encouraged to consider workout strategies designed to help enable borrowers to repay the principal of the loan while mitigating the need to re-borrow.

For all products, financial institutions should offer loans in a manner that is consistent with safe and sound practices, providing fair treatment of consumers, and comply with applicable statutes and regulations, including consumer protection laws.

The Agencies are working on future guidance and lending principles for responsible small-dollar loans to facilitate the ability of financial institutions to more effectively meet the ongoing credit needs of their communities and customers.

While the Agencies may be pushing for small-dollar lending, consumer advocate groups are concerned of entrapment of consumers in a cycle of repeated re-borrowing into crushing debt. Financial institutions need to be aware of reputational concerns when it comes to small-dollar lending. It is no secret small-dollar loans play an important role in meeting customer’s credit needs. There is the risk that small-dollar loans could end of resembling payday loans that carry high interest rates and entrap people in cycles of debt. Financial institutions have a responsibility to not exploit the situation. Consumer protection measures need to remain at the forefront of this guidance—it is being advocated that financial institutions should not charge interest rates on small dollar loans that are higher than 36%, especially when financial institutions have access to interest-free loans from the federal government.

**CECL Extension**

Financial institutions required to convert to the current expected credit losses (CECL) account standard this year can delay the estimated regulatory capital effects until 2022. Additionally, lenders have three years to phase in any capital hits that would have taken place during the two-year delay, according to the Agencies’ interim final rule. To switch to CECL is expected to significantly increase the amount of cash banks set aside to cover impaired loans. This would cut into the banks’ regulatory capital and in turn, profitability.

CECL requires banks to forecast losses on the life of a loan as soon as they originate and record it on their balance sheet. Previously, banks did not record losses until an event persuaded them that a borrower may not be able to make loan payments in full.

This rule change is not mandatory—banks can continue to use guidance from February 2019 that permits them to phase in CECL’s day-one impact on regulatory capital over three years.

Additional guidance can be found here: <https://www.fdic.gov/news/news/press/2020/pr20041b.pdf>

**Labor Considerations**

The U.S. Department of Labor issued a Field Assistance Bulletin 2020-1 addressing the Temporary Non-Enforcement Period Applicable to the Families First Coronavirus Response Act (FFCRA). President Trump signed the FFCRA into law March 18, 2020. It is designed to help both employees and their employers by providing, for private employers, paid sick and family leave that is dollar-for-dollar reimbursed through a refundable tax credit. To enable public and private employers who are covered by the Act to come into compliance with the new statute, WHD will observe a temporary period of non-enforcement of the FFCRA for the period of March 18-April 17. 2020.

The Department will not be being enforcement actions against any public or private employers for violations of the Act occurring within 30 days of the enactment of the FFCRA. An employer would be found not to have violated the FFCRA if they acted reasonably and in good faith when all of the following facts are present during this time period:

* Employer remedies any violations, including by making all affected employees whole as soon as practicable.
  + As explained in a Joint Statement by the Department, the Treasury Department and the Internal Revenue Service issued on March 20, 2020, this program is designed to ensure that all covered employers have access to sufficient resources to pay required sick leave and family leave wages.
* The violations of the Act were not “willful” based on the criteria set forth in *McLaughlin v. Richland Shoe*, 486 U.S. 128, 133 (1988) (the employer “either knew or showed reckless disregard for the matter of whether its conduct was prohibited…”).
* The Department receives a written commitment from the employer to comply with the Act in the future.

If a public or private employer either (i) violates the Act willfully, (ii) fails to provide a written commitment to future compliance with the Act, or (iii) fails to remedy the violation upon notification by Department, the Department reserves the right to exercise its enforcement authority.

April 17, 2020 this limited stay of enforcement will be lifted, and the Department will begin to fully enforce violations of the Act, as appropriate and consistent with the law.

Refer to: <https://www.dol.gov/agencies/whd/field-assistance-bulletins/2020-1>

Additionally, the U.S. Department of Labor provided a helpful FAQ on the FFCRA to assist financial institutions with compliance on their responsibilities and rights. See generally: <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

**Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the Paycheck Protection Program Summary**

On March 27, 2020, the President signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) which provides a $2 trillion stimulus package in response to the COVID-19 pandemic. In particular, Section 1102 of the Act creates a new “Paycheck Protection Program” (PPP) to be added to the existing Small Business Act. The Program authorizes the Small Business Administration (SBA) to 100% guarantee all PPP loans. The SBA is required to provide guidance to PPP lenders within 30 days of enactment of the CARES Act.

**Eligibility**

***Lenders***

The Act authorizes the SBA and U.S. Department of Treasury to extend authority to make PPP loans to additional lenders beyond those already certified to make regular SBA 7(a) loans. This means that lenders do not have to currently be certified SBA lenders to participate in the PPP, which creates an important lending option for our community bank members. Note that additional lenders approved by Treasury are only permitted to make PPP loans, not regular SBA 7(a) loans. Additional lenders must have necessary qualifications to process, close, disburse, and service PPP loans. On the other hand, there is no requirement for any Bank to make PPP loans.

***Borrowers***

A borrower eligible for a PPP loan includes any for-profit business concern, nonprofit organization, veteran’s organization, or Tribal business concern, if the business employs 500 or fewer employees. “Employees” for this purpose includes full-time, part-time, and “other” employees. Sole proprietors, independent contractors and self-employed individuals are also eligible to receive a covered loan.

An eligible recipient applying for a covered loan must provide a good faith certification. The certification must state:

* *“That the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;*
* *Acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;*
* *That the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and*
* *During the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.”*

**Covered Loan Terms**

***Maximum Loan Amount***

The maximum loan amount for a PPP covered loan is determined under the formula below. In any case, the maximum loan amount may not exceed $10,000,000.

*The product obtained by multiplying: 2.5 x the average total monthly payments for payroll costs incurred over a one-year period prior to the origination date.*

*+*

*The outstanding amount of any SBA EIDL loan (Economic Injury Disaster Loan).*

***Maximum Maturity Date***

Covered loans shall have a maximum maturity of 10 years.

***Maximum Interest Rate***

The interest rate for covered loans must not exceed 4 percent.

***Prepayment Penalties***

A prepayment penalty is not allowed for any payment made on a covered loan.

***Nonrecourse***

The SBA Administrator shall have no recourse against any eligible recipient of a covered loan.

***Collateral and Guarantee***

Borrowers cannot be required to provide a personal guarantee for a covered loan, and no collateral can be required for the covered loan.

**Covered Period**

PPP loans must be made between February 15, 2020 and June 30, 2020. The deadline for applying for a PPP loan is June 30, 2020.

**Loan Deferment**

PPP lenders must provide complete payment deferment relief for borrowers with PPP loans for a period of not less than 6 months and not more than 1 year. The deferment must include principal, interest, and fees, but interest accrues during the deferment period.

**Secondary Market**

If a PPP loan is sold on the secondary market and an investor declines to approve a deferral request, the SBA will purchase the loan so that the borrower can receive the deferral period above.

**Allowable Uses**

Loan proceeds may be used for:

* Payroll costs;
* Group healthcare benefits during the covered period, including paid sick, medical or family leave, and insurance premiums;
* Employee salaries, commissions, or similar compensations;
* Payments of mortgage interest (excluding principal);
* Rent;
* Utilities; and
* Interest on any other debt obligations that were incurred during the covered period.

In evaluating eligibility of a borrower for this purpose, a lender must consider whether the borrower:

* Was in operation on February 15, 2020; and
* Had employees for whom the borrower paid salaries and payroll taxes or paid independent contractors.

**Payroll Costs**

Payroll costs equal:

* Salary, wage, commission, or similar compensation (maximum of $100,000);
* Payment of cash tip or equivalent;
* Payment for vacation, parental, family, medical, or sick leave;
* Allowance for dismissal or separation;
* Payment for healthcare benefits;
* Payment for retirement benefits; and
* Payment of payroll taxes.

It also includes compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings or similar compensation from self-employment. This is also capped at a maximum of $100,000 per year, prorated for the covered period.

**Fees and Penalties**

During the covered loan period with respect to a covered loan, the SBA waives fees and penalties.

**SBA Reimbursement for Processing PPP Loans**

***Reimbursement Amounts***

SBA shall reimburse a lender authorized to make a PPP loan at a rate of:

* 5% for loans of not more than $350,000;
* 3% for loans between $350,000 and $2 million; and
* 1% for loans over $2 million.

The amount is based on the balance of the financing outstanding at the time of the disbursement of the PPP loan.

***Fee Limits***

An agent that assists an eligible borrower for preparing an application for a PPP loan may not collect a fee in excess of the limits established by the SBA.

***Timing***

A reimbursement shall not be made later than 5 days after the disbursement of the PPP loan.

**Duplication**

A recipient of an Economic Injury Disaster Loan (EIDL) made between January 31, 2020 and June 30, 2020 is still eligible to apply for a PPP loan during the covered period.

**Regulatory Capital**

Covered loans shall receive a zero-percent risk weight.

Covered loans shall receive temporary relief from troubled debt restructuring (TDR) disclosures. An FDIC-insured institution that modifies a PPP loan in a TDR on or after March 13, 2020 shall not be required to comply with the FASB TDR standards until such time and under such circumstances as the appropriate federal banking agency deems appropriate.

**SBA and PPP Guidance**

The Paycheck Protection Program is designed to provide a direct incentive for small businesses to keep their workers on payroll by providing each small business a loan up to $10 million for payroll and certain other expenses.

If all employees are kept on payroll for eight weeks, SBA will forgive the portion of the loans used for payroll, rent, mortgage interest, or utilities. Up to 100 percent of the loan is forgivable.

**Eligibility**

* Businesses – including eligible non-profits, Veterans organizations, Tribal concerns, sole proprietorships, self-employed individuals, and independent contractors described in the Small Business Act – with 500 or fewer employees may apply.
* Businesses in certain industries may have more than 500 employees if they meet the SBA’s size standards for those industries.

Banks are required to stay vigilant of updates from the SBA regarding PPP. Additional information can be found here: <https://www.sba.gov/funding-programs/loans/paycheck-protection-program>

**Resources**

**\*It is important to note that this is not an all-inclusive breakdown of other applicable resources. This is an area of regulatory compliance that continues to be evolving daily in response to the unique circumstances COVID-19 continues to bring.**

**All information noted below is accurate as of March 30, 2020. Be aware that additional guidance, statements and materials may be available after this date. For the most up-to-date consolidations of agencies guidance, refer to Compliance Alliance’s Pandemic Resources toolkit here:** [**C/A Pandemic Resources**](https://compliancealliance.com/pandemic-resources#CA)

**Compliance Alliance Tools**

* + [COVID-19 Skip-A-Payment Offer Letter](https://compliancealliance.com/find-a-tool/tool/covid-19-skip-a-payment-offer-letter)
  + [COVID-19 Sample Regulator Notice](https://www.compliancealliance.com/find-a-tool/tool/covid-19-sample-regulator-notice)
  + [COVID-19 Employee Prescreening Questionnaire](https://www.compliancealliance.com/find-a-tool/tool/covid-19-employee-prescreening-questionnaire)
  + [COVID-19 Customer Prescreening Questionnaire](https://www.compliancealliance.com/find-a-tool/tool/covid-19-customer-prescreening-questionnaire)
  + [Pandemic Checklist for Financial Institutions](https://www.compliancealliance.com/find-a-tool/tool/pandemic-checklist-for-financial-institutions)
  + [COVID-19 Loan Modification Summary](https://www.compliancealliance.com/find-a-tool/tool/covid-19-loan-modification-summary)
  + [COVID-19 Essential Critical Infrastructure Worker Credential Letter](https://www.compliancealliance.com/find-a-tool/tool/covid-19-essential-critical-infrastructure-worker-credential)
  + [Business Continuity Plan Policy](https://www.compliancealliance.com/find-a-tool/tool/business-continuity-plan-policy)
  + [Business Impact Analysis](https://www.compliancealliance.com/find-a-tool/tool/business-impact-analysis)
  + [COVID-19 Help Sheet](https://www.compliancealliance.com/find-a-tool/tool/covid-19-help-sheet)
  + [COVID-19 Lobby Closing Notice (Sample 1)](https://www.compliancealliance.com/find-a-tool/tool/covid-19-sample-lobby-closing-notice)
  + [COVID-19 Lobby Closing Notice (Sample 2)](https://www.compliancealliance.com/find-a-tool/tool/covid-19-lobby-closing-notice-sample-2)
  + [COVID-19 Sample Customer Letter](https://www.compliancealliance.com/find-a-tool/tool/covid-19-sample-customer-letter)
  + [COVID-19 Skip-A-Payment Request Form](https://www.compliancealliance.com/find-a-tool/tool/skip-a-payment-request-form)
  + [Cybersecurity Policy](https://www.compliancealliance.com/find-a-tool/tool/cybersecurity-policy)
  + [Incident Preparedness Monitoring Checklist](https://www.compliancealliance.com/find-a-tool/tool/incident-preparedness-monitoring-checklist)
  + [Incident Response Plan](https://www.compliancealliance.com/find-a-tool/tool/incident-response-plan)
  + [Information Systems Security Policy](https://www.compliancealliance.com/find-a-tool/tool/information-systems-security-policy)
  + [Lobby Closing Notice](https://www.compliancealliance.com/find-a-tool/tool/lobby-closing-notice)
  + [Pandemic Policy](https://www.compliancealliance.com/find-a-tool/tool/pandemic-policy)
  + [Security Risk Assessment](https://www.compliancealliance.com/find-a-tool/tool/security-risk-assessment)
  + [The First 24 Hour Checklist for Incident Response](https://www.compliancealliance.com/find-a-tool/tool/the-first-24-hour-checklist-for-incident-response)

**Consumer Information**

* [OCC Frequently Asked Questions for Bank Customers Regarding COVID-19](https://www.helpwithmybank.gov/get-answers/covid-19/faqs-covid-19.html)
* [Information to help protect yourself financially from the Consumer Financial Protection Bureau](https://www.consumerfinance.gov/about-us/blog/protect-yourself-financially-from-impact-of-coronavirus/)
* [Answers to frequently asked questions from the Federal Deposit Insurance Corporation](https://www.fdic.gov/coronavirus/faq-customer.pdf)
* [Assistance with questions and complaints regarding national banks and federal savings associations](https://www.helpwithmybank.gov/complaints/index-file-a-bank-complaint.html)

**Supervisory Guidance**

* [OCC Bulletin 2020-22: Short-Term Investment Funds: Interim Final Rule and Order](https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-22.html)
* [OCC Bulletin 2020-21: Troubled Debt Restructurings: Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working With Customers Affected by COVID-19](https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-21.html)
* [OCC Bulletin 2020-20: Licensing Filings: Use of Electronic Methods for Submission of Licensing Filings](https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-20.html)
* [OCC Bulletin 2020-19: Pandemic Planning: Joint Statement on Community Reinvestment Act Consideration for Activities in Response to COVID-19](https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-19.html)
* [OCC Bulletin 2020-18: Money Market Liquidity Facility: Interim Final Rule](https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-18.html)
* [OCC Bulletin 2020-17: Pandemic Planning: Joint Questions and Answers Regarding Statement About the Use of Capital and Liquidity Buffers](https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-17.html)
* [OCC Bulletin 2020-15: Pandemic Planning: Working With Customers Affected by Coronavirus and Regulatory Assistance](https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-15.html)
* [FFIEC Highlights Pandemic Preparedness Guidance](https://www.ffiec.gov/press/pr030620.htm)
* [OCC Bulletin 2020-13:  Pandemic Planning: Updated FFIEC Guidance](https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-13.html)
* [OCC Bulletin 2006-12:  Interagency advisory on influenza pandemic preparedness](https://www.occ.gov/news-issuances/bulletins/2006/bulletin-2006-12.html)
* [Joint Statement on CRA Consideration for Activities in Response to the COVID-19](https://www.fdic.gov/news/news/financial/2020/fil20019.html)
* [Responding to a Declaration of a Legal Holiday or a Natural Disaster: Supervisory Guidance on Natural Disasters and Other Emergency Conditions (Sept. 2012)](https://www.occ.gov/news-issuances/bulletins/2012/bulletin-2012-28.html)
* [Major Disasters: Interagency Examiner Guidance for Institutions Affected by Major Disasters (December 2017)](https://www.occ.gov/news-issuances/bulletins/2017/bulletin-2017-61.html)
* [FINRA Regulatory Notice 20-08: Pandemic-Related Business Continuity Planning, Guidance and Regulatory Relief](https://www.finra.org/sites/default/files/2020-03/Regulatory-Notice-20-08.pdf)
* [Disaster Recovery and Your Money: A Basic To-Do List](https://www.fdic.gov/consumers/consumer/news/cnsum11/disasterrecovery.html) (FDIC Consumer News)
* [When People Face Tough Times, Crooks Try to Profit](https://www.fdic.gov/consumers/consumer/news/cnsum14/profit.html) (FDIC Consumer News)
* FAQ for those impacted by Coronavirus Disease 2019 (COVID-19):
  + [For Financial Institutions](https://www.fdic.gov/coronavirus/faq-fi.pdf)—Updated March 19, 2020
  + [For Bank Customers](https://www.fdic.gov/coronavirus/faq-customer.pdf)—Updated March 20, 2020

**News Releases**

* [NR 2020-39 Agencies Provide Additional Information to Encourage Financial Institutions to Work with Borrowers Affected by COVID-19](https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-39.html)
* [NR 2020-38 OCC Revises Short-Term Investment Fund Rule](https://www.occ.gov/news-issuances/news-releases/2020/nr-occ-2020-38.html)
* [NR 2020-36 Federal Bank Regulatory Agencies Issue Interim Final Rule for Money Market Liquidity Facility](https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-36.html)
* [NR 2020-34 Federal Banking Agencies Provide Banks Additional Flexibility to Support Households and Businesses](https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-34.html)
* [NR 2020-32 Federal Banking Agencies Encourage Banks to Use Federal Reserve Discount Window](https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-32.html)
* [NR 2020-30 Agencies Encourage Financial Institutions to Meet Financial Needs of Communities Affected by Coronavirus](https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-30.html)
* [FDIC Chairman Urges FASB to Delay Certain Accounting Rules Amid Pandemic](https://www.fdic.gov/news/news/press/2020/pr20036.html)
* [Coronavirus Response: Common Practices for Community Banks](https://bankingjournal.aba.com/2020/03/coronavirus-response-common-practices-for-community-banks/#_ga=2.126022542.2053847811.1584980962-551761503.1576517897)
* [Amid Local Lockdowns, Treasury Issues Documentation for Bankers](https://bankingjournal.aba.com/2020/03/amid-local-lockdowns-treasury-issues-documentation-for-bankers/#_ga=2.126022542.2053847811.1584980962-551761503.1576517897)
* [ABA Emphasizes Promoting Loan Growth, Protecting Borrowers in Coronavirus Relief Bill](https://bankingjournal.aba.com/2020/03/aba-emphasizes-promoting-loan-growth-protecting-borrowers-in-coronavirus-relief-bill/#_ga=2.21164856.2053847811.1584980962-551761503.1576517897)
* [President’s Coronavirus Guidelines for America: 15 Day to Slow the Spread (March 2020)](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf)

**Cybersecurity and Fraud**

* [Avoid Coronavirus Scams](https://www.aba.com/banking-topics/risk-management/incident-response/ftc.gov/coronavirus)
* [CISA Insights: Risk Management for Novel Coronavirus](https://www.cisa.gov/sites/default/files/publications/20_0306_cisa_insights_risk_management_for_novel_coronavirus_0.pdf) (COVID-19) (March 6)
* [Defending Against COVID-19 Cyber Scams](https://www.us-cert.gov/ncas/current-activity/2020/03/06/defending-against-covid-19-cyber-scams) (March 6)
* [FBI PSA: Increase in Fraud Schemes Related to COVID-19 Pandemic](https://www.ic3.gov/media/2020/200320.aspx) (March 20)
* [NCCoE Telework Security Overview & Tip Guide](https://www.nist.gov/system/files/documents/2020/03/18/Telework%20Overview%20and%20Tips.pdf)
* [U.S. Attorney’s Office on alert for fraud allegations regarding COVID-19](https://www.justice.gov/usao-wdwa/pr/us-attorney-s-office-alert-fraud-allegations-regarding-covid-19)
* [U.S. Secret Service’s Global Investigative Operations Center Alert: Coronavirus Scams](https://www.aba.com/-/media/documents/incident-response/usss-coronavirus-scams-03042020.pdf?rev=1f7178fe0a364da7be62bf09c911228a&hash=65C03ACF0C0608BB9DEDBC79DE0EF1AF) (March 4)
* FIN-2017-A007- Advisory to Financial Institutions Regarding Disaster-Related Fraud (October 31, 2017): <https://www.fincen.gov/sites/default/files/advisory/2017-10-31/FinCEN%20Advisory%20FIN-2017-A007-508%20Compliant.pdf>
* FTC and FDA joint updated statement concerning product scams: <https://www.consumer.ftc.gov/blog/2020/03/ftc-fda-warnings-sent-sellers-scam-coronavirus-treatments>
* SEC Notice on COVID-19 related investment scams: <https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_coronavirus>
* WHO statement concerning imposter scams: <https://www.who.int/about/communications/cyber-security>

**General COVID-19 Resources**

* [Centers for Disease Control and Prevention](https://www.cdc.gov/coronavirus/2019-ncov/index.html)
* [Department of Homeland Security](https://www.dhs.gov/keywords/coronavirus-covid-19)
* [U.S. Department of State overseas travel information](https://travel.state.gov/content/travel/en/traveladvisories/ea/novel-coronavirus-hubei-province--china.html)
* [World Health Organization](https://www.who.int/emergencies/diseases/novel-coronavirus-2019)
* [Ready.gov](https://www.ready.gov/pandemic) - Prepare your home and family in the event of a pandemic.
* [What the U.S. Government is Doing](https://www.usa.gov/coronavirus)  (Spanish: <https://gobierno.usa.gov/coronavirus>)
* [Coronavirus.gov](https://www.coronavirus.gov/)
* [USA.gov Coronavirus Website](https://www.usa.gov/coronavirus)
* [Department of Health and Human Services (DHHS)](https://www.hhs.gov/)
* [Department of Labor Occupational Safety and Health Administration (OSHA)](https://www.osha.gov/SLTC/covid-19/)
* [Business Pandemic Influenza Planning Checklist (DHSS) Checklist](https://www.cdc.gov/flu/pandemic-resources/pdf/businesschecklist.pdf)
* [U.S. Department of Veterans Affairs (VA)](https://www.publichealth.va.gov/n-coronavirus/#utm_source=VA%20Alerts&utm_medium=banner&utm_campaign=Coronavirus&utm_content=link1)
* [Department of Agriculture (USDA)](https://www.usda.gov/coronavirus)
* [Department of State Travel Advisories](https://travel.state.gov/content/travel/en/traveladvisories/ea/novel-coronavirus-hubei-province--china.html)
* [U.S. Agency for International Development (USAID)](https://www.usaid.gov/coronavirus-covid-19)
* [Coronavirus disease 2019 (COVID-19): What do Older Adults and People with Disabilities Need to Know?](https://acl.gov/COVID-19)

**FAQS and Answers**

**\*It is important to note that answers provided are accurate as of Agency statements and guidance provided by March 30, 2020. This is an area of regulatory compliance that continues to be evolving daily in response to the unique circumstances COVID-19 continues to bring.**

**Be aware that additional guidance, statements and materials made available after this date may have altered answers provided below. Always consult your Regulator, your Bank’s Compliance Department or verification of regulatory questions.**

**Loan Modifications/Lending**

**QUESTION 1: Can banks do payment deferrals?**

**Answer:** There's not a direct federal prohibition, but you also want to check for any restrictions in your state law--local counsel or your state banker’s association would be good resources for that. Generally speaking, you don't want to allow so many skipped months or interest on the payments so that the borrower ends up with negative amortization. You should also check for usury limits and restrictions on any deferrals fees that can be charged in association with this.

The bank would want to be sure to consider and disclose credit life/disability insurance running less than the full loan term; mortgage escrow account maintenance and possible shortages resulting from a deferred payment; interest continuing to accrue during a deferred-payment month; when a deferred payment’s interest will be paid; whether a deferred payment generates added interest over the life of the loan; and how the final loan payment is affected.

Granted, the current situation is unprecedented, and the agencies also have specifically advised that the bank should meet the credit needs of its community, so we'd expect there to be regulatory leniency if this is being done to help borrowers specifically in the COVID-19 context. C/A has the interagency guidance, as well as all other guidance related to pandemic, here: <https://compliancealliance.com/pandemic-resources>

The bank may find C/A’s newsletter on Skip-A-Payment programs generally helpful:  
<https://compliancealliance.com/news-events/november-2018-newsletters>  
As well as C/A’s Pandemic Toolkit:  
<https://compliancealliance.com/find-a-tool/by-toolkit/business-continuity-pandemic>

**QUESTION 2: Does counsel have to execute a modification agreement or can it just be a change in the bank’s system?**

**Answer:** Generally speaking, if there's satisfaction and replacement, or if the bank changes the rate based on a new variable rate feature, it will be considered a refinance which would require new disclosures. We also interpret that it's best practice to provide new disclosures for any increase in credit, or if the prior obligation has already matured. So if any of these are occurring, that's when a new set of disclosures should be provided.

If none of these are occurring, then you can just create a modification agreement. This would not be subject to federal law but should be drawn up by the bank's counsel just like the note would be. In addition, for skipped payments in particular, there has been quite a bit of scrutiny surrounding these so we'd advise reviewing the recent guidance on them – C/A did a rundown of it here:  
<https://www.compliancealliance.com/news-events/october-2018-newsletters#Skip-A-Pay%20Programs>  
And some of the recent supervisory notes here: <https://www.fdic.gov/regulations/examinations/consumercomplsupervisoryhighlights.pdf> (page 5).

**QUESTION 3: Can we charge a fee for the loan modification or deferral program? Does it require new evidence of joint intent or intent to proceed if we want to charge a fee?**

**Answer:** Fees are permissible at the federal level but the bank would need to consider reputational risks. It is important to note that charging a fee alone would not necessarily be a trigger of a refinance regarding additional disclosure requirements for Reg. Z purposes.

**QUESTION 4: Can we accrue interest during the deferral period?**

**Answer:** There isn't federal guidance addressing whether interest can still accumulate during the deferrals, but typically interest does accrue during the deferral period. However, C/A would recommend disclosing credit life/disability insurance running less than the full loan term; mortgage escrow account maintenance and possible shortages resulting from a deferred payment; interest continuing to accrue during a deferred-payment month; when a deferred payment’s interest will be paid; whether a deferred payment generates added interest over the life of the loan; and how the final loan payment is affected.

There is some helpful guidance that the FDIC published in a newsletter at <https://www.fdic.gov/regulations/examinations/consumercomplsupervisoryhighlights.pdf>, which details the concerns that can arise with these, including fair lending, UDAAP, contractual issues, etc.

Additionally, C/A has a few more things to watch out for from a compliance perspective in our comment here: <https://compliancealliance.com/news-events/november-2018-newsletters#Skip-A-Pay>

**QUESTION 5: How many months can we allow the borrower to defer?**

**Answer:** The bank wants to be avoiding circumstances where you’re putting the customer in negative amortization or some other detriment because of the extension/modification. Generally, one to three months is a normal deferment period but it would be up to the bank to examine what is best for the customer.

**QUESTION 6: Do we have to extend the maturity date or can we just add the deferred payment(s) at the end as a balloon?**

**Answer:** This would be determined by state law requirements and should be reviewed by bank counsel. There is not a federal prohibition on these, but extending the maturity date is generally considered less risky, especially if the deferral period is longer.

**QUESTION 7: Does this affect our ATR/QM determination?**

**Answer:** The main concern for compliance purposes is usually whether a given change would be considered a "refinancing" for Reg. Z purposes, which can be found in 1026.20(a) here: <https://www.consumerfinance.gov/eregulations/1026-20/2016-14782_20160627#1026-20>

If it is, then that's when ATR applies, new disclosures must be provided, etc.

C/A also recently published an article on this here: <https://www.compliancealliance.com/flipbooks/Monthly-Magazines/CA-Access-October-2019/#p=4> .

**QUESTION 8: What if the changes make the APR inaccurate? Would the bank need to provide restitution?**

**Answer:** Generally, the APR should not be changing by virtue of a deferral. But if and while it may change the APR, it gets back to the main question of whether there is a "Refinancing" with regard to whether the new APR has to be redisclosed.

**QUESTION 9: What are the differences between mortgage, commercial purpose, consumer non-real estate, credit cards and unsecured for programs like this? What is the difference between a skip-payment, payment deferral, loan forbearance and loan modification?**

**Answer:** If these are for consumer mortgages subject to RESPA and the bank is offering this as a loss mitigation option, then the bank would want to follow those procedures. Additionally, for loans subject to Reg. Z (including TRID) and HMDA, the bank would need to continue following notice, disclosures and other requirements as applicable. There may also be state specific requirements that permit or prohibit skip payment type deferrals. Always checking with bank counsel will assist with implementing a successful program.

A loan forbearance is a temporary postponement of loan payments, typically on a mortgage. It is a form of repayment relief granted by the bank in lieu of forcing a property into foreclosure. It takes a borrower’s payments and decreases (i.e.- only making interest payments) or completely suspends them for a specified period. However, generally interest continues to accrue.

A loan deferral is where the lender agrees to let the borrower pay a lower payment or no payment at all for a month—or two, or three—but generally not much longer than that with the expectation that the borrower will resume regular payment schedules after the deferment ends. Interest may or may not accrue during this time period.

A loan modification is a change to the terms of an existing loan by the lender. It may involve a reduction in interest rate, an extension of the length of time for repayment, a different type of loan, or any combination the lender sees prudent. A modification can become a refinance with additional disclosure other requirements if the rate is increased or a variable rate feature is being added. Changes in the terms of an existing loan, such as changing the amortization schedule and adding a balloon payment will not constitute a refinancing, unless the original obligation is satisfied and replaced by a new obligation.

**QUESTION 10: Are periodic statements still required during a forbearance or skip-a-payment period?**

**Answer:** The answer is yes. There are only limited circumstances within Reg Z for closed or open-end loans where a periodic statements would not be required. See generally:

Open-End

* 1. ***Periodic statements not required.****Periodic statements need not be sent in the following cases:*  
     *i. If the creditor adjusts an account balance so that at the end of the cycle the balance is less than $1 - so long as no finance charge has been imposed on the account for that cycle.*  
     *ii. If a statement was returned as undeliverable. If a new address is provided, however, within a reasonable time before the creditor must send a statement, the creditor must resume sending statements. Receiving the address at least 20 days before the end of a cycle would be a reasonable amount of time to prepare the statement for that cycle. For example, if an address is received 22 days before the end of the June cycle, the creditor must send the periodic statement for the June cycle. (****See****§ 1026.13(a)(7).)*  
     <https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1026/Interp-5/#5-b-2-i-Interp>

Closed End

4. **Opting Out**. A consumer may not opt of out receiving periodic statements altogether. However, consumers who have demonstrated the ability to access statements online may opt out of receiving notifications that statements are available. Such an ability may be demonstrated, for example, by the consumer receiving notification that the statements are available, going to the Web site where the information is available, reviewing the information about their account, and selecting a link or option there to indicate they no longer would like to receive notifications when new statements are available.

<https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1026/41/#41-a-Interp-4>

Additionally, there are for closed-end some exemptions to periodic statements if the loan is a reverse mortgage, a timeshare plan, coupon books (if certain requirements are met) or small servicers. See generally: [§ 1026.41(e)](https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1026/41/#e) and [§ 1026.41(e)(4)](https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1026/41/#e-4). Borrowers in bankruptcy also have an exemption if specific conditions are met as well. See generally: [§ 1026.41(e)(5)](https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1026/41/#e-5)

**QUESTION 11: Do we have to allow deferrals, or would there be any scrutiny if we choose not to?**

**Answer:** It is likely the bank may face scrutiny for not assisting customers during this time, especially with Agency guidance stating banks need to be supporting their communities. The bank may also face fair lending, disparate impact, ECOA and other concerns if you offer to some but not all assessment areas/REMAs. With that being said, there is the backlash of reputational risk the bank could potentially face for not assisting and being there for the communities’ needs. But ultimately, it is the bank’s risk threshold and business justifications that drive these types of decisions. Regardless of what the bank chooses, documentation is going to be crucial when responding to regulators.

**QUESTION 12: Can we offer deferrals to just one type of customer or loan? For example, just mortgages?**

**Answer:** The bank is free to offer a deferral program to whatever loan product it chooses, granted that it’s a justified business decision. With that being said, the Agency guidance has stated banks need to be available and assisting their communities during a time of need. Documentation will be crucial in justifying your assistance being granted to customers and assessment areas/REMAs. Of course, the bank will always need to be considering fair lending, ECOA, and disparate impact ramifications for their program.

**QUESTION 13: Do we have to provide an adverse action notice if we deny a request for a payment deferral?**

**Answer:** There are arguments on either side of this debate, but the conservative approach, and one that C/A recommends, would be to provide the adverse action notice when you deny a modification request.

**QUESTION 14: Is a payment deferral considered a MIRE event for flood purposes?**

**Answer:** If this payment deferral is extending the maturity (even by 1 month) it triggers the flood determination and escrow requirement. Otherwise, if the deferral increases the loan or is considered a loan renewal, the deferral should also be treated as a MIRE event. In addition, flood insurance is required to be escrowed for loans made, increased, renewed or extended after 1/1/2016.

**QUESTION 15: What are the UDAAP concerns with skipped payments?**

**Answer:** Agreements include the following elements for UDAAP considerations:

* Whether interest will continue to accrue during the deferment period;
* Whether the loan’s maturity date will be extended by the pertinent time period to account for any skipped payments; and
* A disclosure that participation in this promotion is voluntary and is not a legally required condition on the borrower’s existing loan.

**QUESTION 16: Would the payment deferral make the loan a TDR?**

**Answer:** The agencies encourage financial institutions to work with borrowers, will not criticize institutions for doing so in a safe and sound manner, and will not direct supervised institutions to automatically categorize loan modifications as troubled debt restructurings (TDRs). The joint statement also provides supervisory views on past-due and nonaccrual regulatory reporting of loan modification programs.

The statement reminds institutions that not all modifications of loan terms result in a TDR.

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—for example, six months—modifications such as payment deferrals, fee waivers, extensions of repayment terms, or other delays in payment that are insignificant.

The agencies' examiners will exercise judgment in reviewing loan modifications, including TDRs, and will not automatically adversely risk rate credits that are affected, including those considered TDRs. Regardless of whether modifications are considered TDRs or are adversely classified, agency examiners will not criticize prudent efforts to modify terms on existing loans for affected customers.

However, even given this guidance, institutions should consider the factors listed in the Interagency Guidance when making its determination. The Interagency Guidance on COVID-modifications and TDRs can be found here: <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200322a1.pdf>

**QUESTION 17: Does the payment deferral require a new, written application or can it be oral?**

**Answer:** Skipped payments are not necessarily an application for new credit, but it is a request to defer a payment. In other words, it does not have to involve a new loan or increased credit on an existing loan.

Whether or not the application can be written or oral would be dictated by bank policy. Application for Reg Z purposes is merely the submission of a consumer’s financial information for the purposes of obtaining an extension of credit; an ECOA application is either written or oral requests for extensions of credit that is made in accordance with procedures used by a creditor for the type of credit requested; and for HMDA, an application mirrors Regulation B.

Bank policy is going to dictate whether it accepts oral applications—in light of recent circumstances, you would want to document why you would be accepting oral applications when in bank history, it was not an acceptable practice.

**QUESTION 18: Do we have to obtain a new appraisal or evaluation for a payment deferral? Or can the bank just revalidate an existing one?**

**Answer:** When the loan involves a refinancing or assumption by the same lender who obtained the original flood determination on the same property, the lender may rely on the previous determination only if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made. A loan refinancing or assumption made by a lender different from the one who obtained the original determination constitutes a new loan, thereby requiring a new determination. Further, if the same lender makes multiple loans to the same borrower secured by the same improved real estate, the lender may rely on its previous determination if the original determination was made not more than seven years before the date of the transaction, the basis for the determination was set forth on the SFHDF, and there were no map revisions or updates affecting the security property since the original determination was made.  
<https://www.federalregister.gov/d/E9-17129/p-443>

The Agencies allow an institution to use an existing appraisal or evaluation to support a subsequent transaction in certain circumstances. Therefore, an institution should establish criteria for assessing whether an existing appraisal or evaluation continues to reflect the market value of the property (that is, remains valid). Such criteria will vary depending upon the condition of the property and the marketplace, and the nature of the transaction. The documentation in the credit file should provide the facts and analysis to support the institution's conclusion that the existing appraisal or evaluation may be used in the subsequent transaction. A new appraisal or evaluation is necessary if the originally reported market value has changed due to factors such as:

* Passage of time.
* Volatility of the local market.
* Changes in terms and availability of financing.
* Natural disasters.
* Limited or over supply of competing properties.
* Improvements to the subject property or competing properties.
* Lack of maintenance of the subject or competing properties.
* Changes in underlying economic and market assumptions, such as capitalization rates and lease terms.
* Changes in zoning, building materials, or technology.
* Environmental contamination.

<https://www.fdic.gov/regulations/laws/rules/5000-4800.html>

**QUESTION 19: How does the payment deferral affect RESPA escrow disclosures and requirements?**

Generally, what would happen with deferrals is that it would result in an escrow shortage for which the bank can either do nothing after the next analysis is run, or the bank can require the borrower to repay the shortage over the course of at least 12 months. If this is just going to be a deferral or a modification and not a refinance, there are no specific disclosures required, but of course you'll want to give documentation to the customer explaining what is happening and any effects that might have on them (later maturity, escrow catch up, modification fee, etc).

**QUESTION 20: Can we give notice that we will do a payment deferral for all loans and require that the borrower “opt out” if the borrower does not want the deferral?**

**Answer:** Unfortunately, this would be dictated by the legal terms of your note agreement. Whether or not the bank can unilaterally make a change to payments, loan term/length, accrue interest, etc. would need to be reviewed by bank legal counsel. But generally, they are not that broad and loan deferrals are generally not built into the loan agreement, and we would discourage this approach from a UDAAP perspective.

**Branch Closures/Reduced Hours**

**QUESTION 1: In the midst of COVID-19, we are making some exceptions to our policies. We have closed our Main branch lobby, but we are still open at our drive thru location. Is anything required?**

**Answer:** Notice to both the general public and your regulatory agency is highly recommended, even when a branch is just going to drive-thru only. C/A’s understanding is to contact your local field office or EIC if this is close to an exam. This is the guidance the FDIC recently issued:

"Alternative Service Options for Customers: The FDIC understands that financial institutions may need to temporarily close a facility due to staffing challenges or to take precautionary measures. For example, some institutions may wish to limit foot traffic within a branch and provide services only through the drive-through lanes. The FDIC encourages financial institutions to reduce disruptions to their customers, provide alternative service options when practical, and reopen affected facilities when it is safe to do so. Affected financial institutions are encouraged to notify their primary federal or state regulator and their customers of temporary closure of an institution’s facilities and the availability of any alternative service options as soon as practical. In such case in which operational challenges persist, the FDIC, working with the state authority, will expedite, as appropriate, any request to operate temporary facilities to provide more convenient availability of services. In most cases, a telephone notice to the FDIC or state authority will suffice to start the approval process, with the necessary written notification being submitted shortly thereafter."  
<https://www.fdic.gov/news/news/financial/2020/fil20017a.pdf>

Also, there is a specific exemption for temporary closings that are not in the bank's control, and C/A would have to believe that a regulator would interpret that an emergency closing due to Coronavirus would fall within that scope.

Section 42 also does not apply when a branch ceases operation but is not closed by an institution. Thus, the law does not apply to:

* A temporary interruption of service caused by an event beyond the institution's control (e.g., a natural catastrophe), if the insured depository institution plans to restore branching services at the site in a timely manner; ...  
  POLICY STATEMENT: <https://www.fdic.gov/regulations/laws/rules/5000-3830.html>

**Operations Questions**

**QUESTION 1: We are beginning to receive dispute, dispute questions from our branches concerning cancellations of airline flights and hotel room stays because of the Coronavirus. Are there any special rules for disputes due to a pandemic? I know the airlines will reschedule for free through April 2021. But some road traveler’s may not be able to leave their state to get to the hotel they have rented. Please advise.**

**Answer:** The bank still must accept the disputes and follow all relative regulatory and contractual requirements as applicable with Visa or Mastercard regarding liability limitations.

**QUESTION 2: Banks are receiving several requests for large cash withdrawals in the midst of the coronavirus situation. What are banks allowed to do?**

**Answer:** Changing withdrawal limits on consumer accounts generally requires advance notice under both Reg. DD: <https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1030/5/#a-1>  
and Reg. E: <https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1005/8/#a-1>  
  
There is the following exception in Reg. E specifically:

"(2) Prior notice exception. A financial institution need not give prior notice if an immediate change in terms or conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system. If the institution makes such a change permanent and disclosure would not jeopardize the security of the account or system, the institution shall notify the consumer in writing on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent."  
<https://www.consumerfinance.gov/policy-compliance/rulemaking/regulations/1005/8/#a-2>

Whether this fits the current pandemic situation is not 100% clear of course - what C/A and other industry insiders are generally recommending in this situation is to keep an open line of communication with the bank's regulator. If the bank properly communicates this, documents its business reasoning for needing to limit, and gives as much advance notice as possible, C/A would expect that there would be low risk of examiner criticism.

**QUESTION 3: Is there any caution on waiving CD penalties, overdraft fees, etc. due to the current coronavirus issue we are all dealing with and a banks effort to assist their customers?**

**Answer**: The bank would just want to be sure that it applies it consistently and that it keeps safety and soundness into consideration. The regulators are encouraging banks to work with customers during this time.