

# CONSUMER COMPLIANCE OUTLOOK®

A FEDERAL RESERVE SYSTEM PUBLICATION FOCUSING ON CONSUMER COMPLIANCE TOPICS

## A MESSAGE FROM GOVERNOR BOWMAN\*

BY GOVERNOR MICHELLE BOWMAN

I hope this message finds you, your families, and your colleagues in good health. On behalf of the Federal Reserve, thank you for the vital and ongoing role you and your institutions play in responding to the economic conditions resulting from COVID-19. In response to the crisis, we have taken several steps to assist you in better serving your customers and communities.

At a time of extraordinary challenges for our nation, community bankers are making important contributions to address the financial needs of families and businesses. Bankers across the country responded swiftly to implement effective measures to protect employees and maintain access to financial services. You have worked creatively to find solutions for your institutions and for those affected by this crisis.

The current environment poses unprecedented levels of uncertainty for the financial services industry given the size, scope, and nature of the pandemic. Economic disruptions caused by the coronavirus have created tremendous strains in financial markets and threatened to impair the flow of credit in the economy. Community banks have a long history of facing and overcoming financial crises. Today, community banks are at the forefront in providing credit quickly to businesses that need it. With the support of the Federal Reserve and other agencies, you are playing a crucial role in facilitating Paycheck Protection Program (PPP) loans to small businesses. In a recent Independent Community Bankers of America survey, despite many challenges, community banks reported they had each made an average of 166 PPP loans during the first round of funding. This success speaks to the flexibility, responsiveness, and commitment of community banks to their customers and communities. Your efforts in response to this event will contribute to the recovery of the economy.

At the Fed, we are doing everything we can to help American families and businesses weather this difficult period. Once the public health issues have been mitigated, state and local authorities will allow businesses to reopen, and people will begin to come back to work. Throughout this time, we will continue to use our tools as appropriate to support a robust economic recovery. As you know, the Federal Reserve has, in partnership with other agencies, and at the direction of Congress, taken steps, unprecedented in size and scope, to assist the economy. The table beginning on page 15 lists the actions regulators have taken to respond to the crisis and support community banks and their efforts to meet the financial needs of customers.

The Federal Reserve appreciates community banks and the indispensable role they play in our response to the economic effects of the COVID-19 pandemic. I encourage you to share any concerns, challenges, and commendations at [outlook@phil.frb.org](mailto:outlook@phil.frb.org). Thank you for your continued efforts to support the economy. ■



Governor Michelle Bowman

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# HOW BANKS CAN HELP CUSTOMERS AND COMMUNITIES RESPOND TO MAJOR DISASTERS AND EMERGENCIES

BY ALINDA MURPHY, SENIOR EXAMINER, FEDERAL RESERVE BANK OF KANSAS CITY

“COVID-19 poses threats to our overall economy, particularly for low-income communities [that] were already struggling prior to this crisis. Banks are poised to provide key leadership during this time and can leverage their resources to reassure customers and stabilize communities.”

— Brina Shrimali, *Federal Reserve Bank of San Francisco Community Development Research Briefs, April 7, 2020*

“Community banks thrive when they find creative ways to serve their communities, using everything they know to build relationships, offer solutions, and make lending decisions.”

— Governor Michelle Bowman, *Federal Reserve Board, February 10, 2020*

“While natural disasters capture headlines and national attention short-term, the work of recovery and rebuilding is long-term.”

— Sylvia Mathews Burwell, *former Secretary of Health and Human Services*

## MAJOR DISASTERS AND EMERGENCIES

Major disasters and emergencies can occur anytime and anywhere. While some crises provide advance notice, others happen suddenly. The ongoing, unprecedented COVID-19 pandemic, as well as several recent natural disasters such as Hurricanes Sandy, Harvey, Maria, and Michael; California wildfires; and the 2019 Midwest floods, highlight the vital role financial institutions play in helping their customers and communities weather and recover from substantial personal and financial impacts. Financial institutions are often key players during and after crises because their staff, customers, and communities may be directly impacted, and they can deploy resources to mitigate some of the resulting hardships.

The Federal Reserve issued guidance early in the COVID-19 emergency to encourage its supervised institutions<sup>1</sup> to help their customers and communities through the crisis. Supervision and Regulation (SR) Letter 20-4/Consumer Affairs (CA) Letter 20-3, “Supervisory Practices Regarding Financial Institutions Affected by Coronavirus,”<sup>2</sup> affirmed that the Federal Reserve’s long-standing guidance included within SR 13-6/CA 13-3, “Supervisory Practices Regarding Banking Organizations and Their Borrowers and Other



Wildfires engulf the mountainside in California's Santiago Canyon near Silverado in 2007.

Customers Affected by a Major Disaster or Emergency,” applies to the current crisis.<sup>3</sup> This guidance lists several means by which institutions may facilitate meeting the immediate and long-term recovery and stabilization needs of their affected customers. This article discusses agency guidance on ways financial institutions can help their customers before, during, and after major disasters and emergencies.

### Types of Crises Covered by the Guidance

Not all disasters and emergencies resulting in hardship are subject to SR 13-6/CA 13-3. This supervisory guidance applies when the President of the United States declares an event to be either a *major disaster* or an *emergency*, as those terms are defined in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §5121, et seq. (the act).

The act defines a *major disaster* as

any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act.<sup>4</sup>

The act defines *emergency*<sup>5</sup> as a determination by the President that “[f]ederal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.”<sup>6</sup> The COVID-19 pandemic meets this definition of emergency, and the President issued a proclamation on March 13, 2020, declaring “that the COVID-19 outbreak

in the United States constitutes a national emergency, beginning March 1, 2020.”<sup>7</sup> The Federal Emergency Management Agency (FEMA) maintains a searchable list on its website of all natural disaster and emergency declarations; financial institutions can visit the site to determine if an event is subject to SR 13-6/CA 13-3.<sup>8</sup>

### Preparing to Assist Customers Before a Crisis

Helping customers through natural disasters and emergencies begins with the board of directors and senior management developing business continuity plans (BCP) to respond to crises that may occur. BCPs identify and manage the adverse effects that crises may have on the institution and its customers. SR 20-3/CA 20-2, “Interagency Statement on Pandemic Planning,”<sup>9</sup> indicates an effective pandemic contingency framework includes plans for communicating with and serving customers, including anticipating how to serve customers when access to institution facilities must be curtailed. It recommends planning and preparing for potential reliance on online banking, telephone banking, automated teller machines (ATMs), and call support services to enhance responsiveness to customer needs and if onsite services become unavailable.

Institutions can proactively enhance customers’ resilience to some types of major disasters before they occur. For example, flooding is the most common natural disaster.<sup>10</sup> The recent *Outlook* article “A View from the Field: Commonly Cited Violations”<sup>11</sup> discusses common flood insurance violations and sound practices to mitigate risks. Institutions can help protect their mortgage and commercial loan customers by maintaining a sound flood insurance compliance program to ensure that borrowers obtaining loans secured by real property located in a special flood hazard area (SFHA) maintain the required amount of

flood insurance.<sup>12</sup> Institutions may also explain that flood insurance required under federal law is subject to limits.<sup>13</sup> If borrowers are insuring properties whose value exceeds the maximum amount of flood insurance available under the law, they may want to consider private flood insurance to fully protect their properties from the risk of flood damage.

In addition, financial institutions can help customers be better prepared for a crisis and have a smoother recovery if one occurs by providing information to consumer and business customers. Useful information may include explaining how to develop crisis preparation and recovery plans, obtain deposited funds, communicate with institution staff during a crisis, and recognize natural disaster scams.<sup>14</sup>

## FINANCIAL INSTITUTIONS POSITION THEMSELVES FOR SUCCESS IN WEATHERING CRISES BY PROACTIVELY HELPING CUSTOMERS AND COMMUNITIES BEFORE, DURING, AND AFTER CRISES.

### Assistance During and Immediately After a Crisis

During a natural disaster, such as a major flood, financial institutions may focus on maintaining staff communications and infrastructure. Similarly, during federal emergencies, such as COVID-19, institutions may have heightened customer service and community communications challenges that continue over an extended time period, as well as staff communications and infrastructure concerns. In either event, senior management may rely heavily on its BCP to address issues as they arise and effectively respond to customers.

Financial institutions may consider taking the specific actions listed in SR 13-6/CA 13-3 and CA 20-4, “CRA Consideration for Activities in Response to the Coronavirus,”<sup>15</sup> or other activities appropriate to the crisis, to ensure customers have access to their deposited funds and can manage loan obligations. Having access to deposited funds helps customers address immediate liquidity needs and avoids frustrating income disruptions during and shortly after a crisis. Moreover, helping borrowers manage their loan obligations can ease cash-flow pressures and improve their capacity to service debt, which facilitates the financial institution’s ability to collect on the loans.<sup>16</sup> SR 13-6/CA 13-3 and CA 20-4 include the caveat that the following actions to

help customers should be implemented safely and soundly, with proper management controls and oversight:

- Waiving ATM fees for customers and noncustomers;
- Increasing ATM daily cash withdrawal limits;
- Waiving overdraft fees;
- Waiving early withdrawal penalties on time deposits;
- Easing restrictions on cashing out-of-state and noncustomer checks;
- Using nondocumentary (i.e., public databases, credit reporting agencies, and contacts with other financial institutions) as well as documentary verification methods to identify customers and noncustomers making transactions;
- Increasing credit card limits for creditworthy customers;
- Expanding the availability of other short-term, unsecured credit products for creditworthy borrowers;
- Providing alternative service options to customers in light of limited ability to access branches;
- Offering payment accommodations, such as allowing borrowers to defer or skip payments or extending the payment due date, which would avoid delinquencies and negative credit bureau reporting, caused by COVID-19-related issues; and
- Offering small-dollar consumer and small business loans, including, but not limited to, open-end lines of credit, closed-end installment loans, and appropriately structured single payment loans for temporary cash-flow needs.

As the current emergency unfolds, Federal Reserve and interagency statements have encouraged institutions to originate prudent, small-dollar loans to consumers and small businesses and provide loan payment accommodations and modifications. Such actions may mitigate the immediate and long-term impacts of this emergency on customers.<sup>17</sup> Agency statements indicate financial institutions working constructively with borrowers will not be subject to supervisory criticism.<sup>18</sup>

The agencies recognize the staffing and operational constraints financial institutions face and have also provided guidance on how institutions may comply with federal consumer protection laws and regulations in ways that ease compliance burden without harming customers. In pages 15 to 18 of this issue, we have provided a list of Federal Reserve resources that institutions may find useful in exploring assistance for customers. Existing and recently issued supervisory statements from the Consumer Financial Protection Bureau (Bureau) additionally provide guidance

on compliance with certain regulatory requirements when an institution is affected by a natural disaster or emergency, including Regulation B's loan application and valuation provisions.<sup>19</sup> The Bureau's supervisory statements also address the Real Estate Settlement Procedures Act's loan servicing provisions<sup>20</sup> and the Fair Credit Reporting Act's requirements for institutions that furnish information to consumer reporting agencies.<sup>21</sup>

Maintaining open communication channels during and immediately after a natural disaster or emergency will allow customers to be aware of temporary relocations and the availability of services. Some consumers may need help understanding and accessing alternative service options, such as mobile banking, or to communicate with institution staff regarding ongoing issues, such as pending loan applications. With regard to agency communications, for institutions supervised by the Federal Reserve, SR 13-6/CA 13-3 suggests the institution should advise the appropriate Federal Reserve Bank of any temporary changes when a major disaster or emergency may result in power, telecommunications, staffing, or other issues requiring the financial institution to limit or cease operations at its location(s) or move to other facilities.

### **Ongoing Strategies for Longer-Term Crisis Recovery Efforts**

In the weeks and months after a major disaster or at the end of an emergency period, financial institutions have additional opportunities to facilitate customers' and communities' access to capital that will help them stabilize financially and rebuild infrastructure. In addition to these services that may be provided during and immediately after the crisis, SR 13-6/CA 13-3 lists the following ways a financial institution may help longer-term recovery efforts:

- Waiving availability restrictions of Regulation CC funds when insurance checks are deposited;
- Easing credit terms for new loans;
- Increasing credit card limits for creditworthy customers;
- Waiving late fees for credit card and other loan balances;
- Offering payment accommodations and prudent loan workout arrangements; and
- Easing documentation requirements<sup>22</sup> or credit extension terms for new loans.

Financial institutions may also help customers and communities by monitoring possible disaster-related scams and fraudulent activity that can undermine customer recovery efforts, including scams related to state or federal relief payments. Some relief scams are designed to steal recovery funds from recipients (i.e., identity theft and fraudulent contractors) or divert funds to individuals or



Tornado Alley is a broad area in the central U.S. that is prone to frequent tornado activity.

businesses not harmed by the crisis, thus, depriving capital from the customers and communities most in need of assistance.

Customer complaints can support financial institutions' monitoring of customer and community experiences during and after a natural disaster or emergency. Hearing customer pain points can inform senior management where customer communications need enhancement, identify gaps in customer service, and reveal opportunities to reposition resources.

### **CONCLUSION**

Major disasters and emergencies impose severe hardships on financial institutions and their customers, but they eventually will end. Financial institutions position themselves for success in weathering crises by proactively helping customers and communities before, during, and after crises. This article discussed several ways institutions supervised by the Federal Reserve may address the immediate and longer-term needs of customers and communities facing major disasters or emergencies. It discussed ways institutions can help build the financial resilience of customers and communities prior to a natural disaster, including by ensuring that borrowers maintain adequate flood insurance. Although Federal Reserve guidance only addresses federally declared major natural disasters and emergencies, financial institutions may consider using these methods, as appropriate, to help customers in the wake of local and regional crises. Financial institutions should contact their primary regulators with specific questions about preparing for and responding to natural disasters or emergencies. ■

# ENDNOTES\*

- <sup>1</sup> The Federal Reserve is the primary federal regulator for state member banks, bank holding companies, savings and loan holding companies, and U.S. offices of foreign banking organizations, including those with \$10 billion or less in consolidated assets.
- <sup>2</sup> See SR 20-4/CA 20-3, “Supervisory Practices Regarding Financial Institutions Affected by Coronavirus,” March 13, 2020.
- <sup>3</sup> See SR 13-6/CA 13-3, “Supervisory Practices Regarding Banking Organizations and Their Borrowers and Other Customers Affected by a Major Disaster or Emergency,” March 29, 2018.
- <sup>4</sup> See 42 U.S.C. §5122(1).
- <sup>5</sup> See CA 20-4, “CRA Consideration for Activities in Response to the Coronavirus,” March 19, 2020.
- <sup>6</sup> See 42 U.S.C. §5122(2).
- <sup>7</sup> See 85 *Federal Register* 15,337, March 18, 2020.
- <sup>8</sup> See FEMA, Disaster Declarations by Year.
- <sup>9</sup> See SR 20-3/CA 20-2, “Interagency Statement on Pandemic Planning,” March 10, 2020.
- <sup>10</sup> See “Flooding: America’s #1 Natural Hazard!” FEMA Release 1530-027, August 16, 2004.
- <sup>11</sup> See Kamilah Exum, “A View from the Field: Commonly Cited Violations,” *Consumer Compliance Outlook*, First Issue 2020.
- <sup>12</sup> Generally, before a loan secured by improved real estate is made, increased, extended, or renewed, banks must determine whether the improved real estate is located in a SFHA. If the improved property is in a SFHA and the community in which the property is located participates in the National Flood Insurance Program, the institution must ensure adequate flood insurance is in place prior to loan closing. See Kenneth Benton and Michael Schiraldi, “Flood Insurance Compliance Requirements,” *Consumer Compliance Outlook*, Third/Fourth Quarter 2015; Blessing Chimwanda and Danielle Martinage, “Agencies Issue Final Rule for New Flood Insurance Requirements,” *Consumer Compliance Outlook*, Third/Fourth Quarter 2015; see CA 19-10, “Revised Interagency Examination Procedures for the Flood Disaster Protection Act,” August 22, 2019.
- <sup>13</sup> For residential properties, the current limit is \$250,000 for the property and \$100,000 for its contents. For commercial properties, the current limit is \$500,000 for the property and \$500,000 for its contents.
- <sup>14</sup> See, e.g., Federal Deposit Insurance Corporation’s “Natural Disaster Impact on Bank Operations: Advice for Consumers and Business Owners,” May 23, 2019; Consumer Financial Protection Bureau (Bureau)’s “Preparing, Recovering, and Rebuilding after Disasters and Emergencies.”
- <sup>15</sup> See CA 20-4, “CRA Consideration for Activities in Response to the Coronavirus,” March 19, 2020.
- <sup>16</sup> See CA 20-4, “CRA Consideration for Activities in Response to the Coronavirus,” March 19, 2020.
- <sup>17</sup> See SR 20-7/CA 20-5, “Joint Statement Encouraging Responsible Small-Dollar Lending in Response to COVID-19,” March 30, 2020; “Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus,” March 22, 2020.
- <sup>18</sup> See “Agencies Encourage Financial Institutions to Meet Financial Needs of Customers and Members Affected by Coronavirus,” March 9, 2020; “Agencies Issue Revised Interagency Statement on Loan Modifications by Financial Institutions Working with Customers Affected by the Coronavirus,” April 7, 2020; and CA 20-4, “CRA Consideration for Activities in Response to the Coronavirus,” March 19, 2020.
- <sup>19</sup> See the Bureau’s “Statement on Supervisory Practices Regarding Financial Institutions and Consumers Affected by a Major Disaster or Emergency,” September 14, 2018; “The Bureau’s Mortgage Origination Rules FAQs Related to the COVID-19 Emergency: ECOA Valuations Rule,” April 29, 2020.
- <sup>20</sup> See the “Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act,” April 3, 2020.
- <sup>21</sup> See the Bureau’s “Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act,” April 1, 2020.
- <sup>22</sup> For the COVID-19 pandemic, there was interagency deferral of certain appraisal requirements for 120 days after loan closing. See “Interagency Statement on Appraisals and Evaluations for Real Estate Related Financial Transactions Affected by the Coronavirus,” April 14, 2020.

\* Note: The links for the references listed in the Endnotes are available on the *Consumer Compliance Outlook* website at [consumercomplianceoutlook.org](http://consumercomplianceoutlook.org).

# FURNISHERS' OBLIGATIONS FOR CONSUMER CREDIT INFORMATION UNDER THE CARES ACT, FCRA, AND ECOA

BY MAUREEN YAP, SENIOR COUNSEL, DIVISION OF CONSUMER AND COMMUNITY AFFAIRS, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

As the nation grapples with the health and financial effects of the COVID-19 pandemic, the continued operation of the credit reporting system can play a critical role in the functioning of the consumer financial services market. Most creditors rely on the information in credit reports in deciding whether to grant credit — including mortgage loans, auto loans, credit cards, and private student loans. These reports can also be used, among other permissible purposes, to help landlords determine eligibility for rental housing, to help insurers set premiums for automobile, homeowners, and other insurance, and to help employers assess job applicants.

Over the years, Congress has taken steps to ensure the fairness and accuracy of these reports. The two primary federal credit reporting laws are the Fair Credit Reporting Act (FCRA) and the Equal Credit Opportunity Act (ECOA). The FCRA, as implemented by Regulation V, imposes certain requirements on entities that furnish information about consumers to consumer reporting agencies (CRAs).<sup>1</sup> The ECOA, as implemented by Regulation B, generally prohibits discrimination in any aspect of a credit transaction, including furnishing credit information, and contains certain specific requirements for creditors who furnish credit information about accounts used or held by spouses.<sup>2</sup>

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law to provide relief to consumers and businesses struggling during the COVID-19 emergency.<sup>3</sup> Among other things, the CARES Act amended the FCRA to address furnishers' responsibilities.<sup>4</sup> Generally, the amendment requires furnishers who provide a credit accommodation to a consumer affected by the COVID-19 pandemic to continue to report the consumer's account or credit obligation as "current." This provision ensures that consumers affected by the pandemic can obtain essential relief without jeopardizing their credit scores and their future ability to rent or buy a home, purchase a car, obtain a credit card or student loan, obtain affordable insurance, or secure employment.

To generate awareness of the important role of furnishers of credit information, *Outlook* published an article in 2012 titled, "Furnishers' Compliance Obligations for Consumer Credit Information under the FCRA and ECOA."<sup>5</sup> Because of the importance of credit reporting information, as well as the changes under the CARES Act, we are refreshing this article with updated information.

## FAIR CREDIT REPORTING ACT/REGULATION V

Section 623 of the FCRA and Regulation V generally provide that a furnisher must not furnish inaccurate consumer information to a CRA, and that furnishers must investigate a consumer's dispute that the furnished information is inaccurate or incomplete. At the federal level, the Consumer Financial Protection Bureau (Bureau), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the National Credit Union Administration (NCUA) have supervisory authority for depository institutions' compliance with the FCRA.<sup>6</sup> For most provisions of the FCRA, the Board, FDIC, OCC, and NCUA have supervisory authority for depository institutions with assets of \$10 billion or less. For depository institutions with assets over \$10 billion, the Bureau has the authority. In addition, the state attorneys general have enforcement authority.<sup>7</sup> Finally, private plaintiffs have the right to file lawsuits with respect to the furnisher's obligation to investigate a consumer dispute filed with a CRA.<sup>8</sup>

### Coverage

Generally, Section 623 of the FCRA applies to any "person" who furnishes information related to a "consumer" to a "consumer reporting agency." The term *person* is broadly defined as "any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity."<sup>9</sup> The term *consumer* is limited to "an individual."<sup>10</sup> The term *consumer reporting agency* (CRA) refers to "any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports."<sup>11</sup>

In addition, Regulation V defines a furnisher as "an entity that furnishes information relating to consumers to one or more consumer reporting agencies for inclusion in a consumer report."<sup>12</sup>

### The CARES Act: Duty to Report Certain Information During the COVID-19 Pandemic

*Coverage.* A new provision of the FCRA added by the CARES Act imposes certain duties on a furnisher that

makes an “accommodation” with respect to one or more payments on a credit obligation or account of a consumer (a covered furnisher).<sup>13</sup> The new provision states that the “the term ‘accommodation’ includes an agreement to defer 1 or more payments, make a partial payment, forbear any delinquent amounts, modify a loan or contract, or any other assistance or relief granted to a consumer who is affected by the coronavirus disease 2019 (COVID-19) pandemic during the covered period.”<sup>14</sup> The term *covered period* begins on January 31, 2020, and ends 120 days after the termination of the COVID-19 national emergency.<sup>15</sup> The provision does not apply to a credit obligation or account of a consumer that has been charged off.<sup>16</sup>

## A PERSON WHO REGULARLY FURNISHES INFORMATION TO CRAS MUST NOTIFY THE CRAS WHEN A CONSUMER VOLUNTARILY CLOSES A CREDIT ACCOUNT.

**Reporting.** Under this new provision, a covered furnisher must report the credit obligation or account as current if:

- The credit obligation or account was current before the accommodation and the consumer makes the payments pursuant to the accommodation;
- The credit obligation or account was current before the accommodation and the consumer is not required to make one or more payments pursuant to the accommodation; or
- The credit obligation or account was delinquent before the accommodation and the consumer brings the credit obligation or account current.

A covered furnisher must maintain the delinquent status during the period in which the accommodation is in effect if the credit obligation or account was delinquent before the accommodation.<sup>17</sup>

The other provisions of Section 623 of the FCRA — including the duty to provide accurate information, the duty to implement reasonable policies and procedures, and the duty to investigate disputes — remain in effect and are described next.

### **Duty to Provide CRAs with Accurate Information**

**Prohibition on Reporting Inaccurate Information.** Section 623(a) of the FCRA generally prohibits a person from

furnishing inaccurate information to a CRA. The standards for the prohibition differ, depending on whether the person specifies an address for receipt of notices from consumers concerning inaccurate information. If the person specifies such an address, it may not furnish information relating to a consumer to any CRA, if (a) the consumer notified the person, at the specified address, that the information is inaccurate, and (b) the information is, in fact, inaccurate.<sup>18</sup>

If the person does not specify such an address, the FCRA prohibits the person from reporting information to a CRA if the furnisher “knows or has reasonable cause to believe that the information is inaccurate.”<sup>19</sup> The statute defines *reasonable cause to believe that the information is inaccurate* to mean “having specific knowledge, other than solely allegations by the consumer, that would cause a reasonable person to have substantial doubts about the accuracy of the information.”<sup>20</sup>

**Duty to Promptly Correct and Update Information.** Section 623(a) of the FCRA also requires a person who regularly furnishes information to CRAs to promptly notify a CRA if the person determines the previously furnished information is not complete or accurate.<sup>21</sup> The person must then provide corrected information and ensure it does not re-furnish the incomplete or inaccurate information.

**Duty to Provide Notice of Dispute.** If a consumer disputes the completeness or accuracy of furnished information, the furnisher must provide a notice of the dispute to the CRAs when furnishing the disputed information.<sup>22</sup>

**Duty to Provide Notice of Accounts Closed Voluntarily.** A person who regularly furnishes information to CRAs must notify the CRAs when a consumer voluntarily closes a credit account.<sup>23</sup> This notice must be included in the information regularly furnished for the period in which the account is closed.

**Duty to Provide Dates of Delinquency.** When an account is placed for collection, is charged to profit or loss, or a similar action is taken, and that delinquency is furnished to a CRA, the furnisher must notify the CRA of the date of delinquency on the account no later than 90 days after furnishing the information.<sup>24</sup> This date is the month and year the account first becomes delinquent, not when the creditor places the account for collections, charges the account to profit or loss, or takes a similar action.<sup>25</sup>

**Duty to Prevent Repollution of Consumer Reports.** If a consumer submits an identity theft report to a furnisher indicating that furnished information resulted from identity theft, the furnisher must not report the information to the CRAs unless the furnisher subsequently knows or is informed by the consumer that the information is correct.<sup>26</sup> In addition, furnishers are required to maintain reasonable procedures to respond to notifications from the CRAs relating to information that results from identify theft to prevent re-furnishing this information.



## **Duty to Provide the Customer with a Notice about Negative Information**

*Duty to Provide a Notice to the Customer.* If a financial institution that extends credit and regularly furnishes information to a nationwide CRA furnishes negative information to the CRAs about a credit extension, the financial institution must provide a clear and conspicuous written notice to the customer indicating that it furnished negative information to the CRAs.<sup>27</sup> The term *negative information* means “information concerning a customer’s delinquencies, late payments, insolvency, or any form of default.”<sup>28</sup>

*Timing of Notice.* The financial institution must provide the notice to the customer no later than 30 days after furnishing the negative information to a CRA. After providing the notice, the financial institution is not required to send the customer additional notices if it furnishes additional negative information to the CRAs about the same transaction, credit extension, account, or customer.<sup>29</sup>

*Format of Notice.* The notice generally may be included on or with any notice of default, any billing statement, or any other materials provided to the customers; however, if the notice is provided to the customer prior to furnishing the negative information to a CRA, the notice may not be included in the initial disclosures provided under Section 127(a) of the Truth in Lending Act.<sup>30</sup> Two model forms (Model Notices of Furnishing Negative Information) are available in Appendix B of Regulation V.<sup>31</sup> Although use of the model forms is not required, a financial institution is deemed to comply with the requirements if it uses one of the model forms.<sup>32</sup>

## **Duty to Implement Reasonable Policies and Procedures**

Regulation V requires furnishers to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the consumer information furnished to CRAs.<sup>33</sup>

*Accuracy* means that the information the furnisher provides to a CRA correctly:

- Identifies the appropriate consumer;
- Reflects the account’s terms and liability; and
- Reflects the consumer’s performance with respect to the account.<sup>34</sup>

*Integrity* means the information the furnisher provides to a CRA:

- Is substantiated by the furnisher’s records at the time it is furnished;
- Is in a form designed to minimize the likelihood that the information may be incorrectly reflected in a consumer report;
- Includes the information in the furnisher’s possession regarding the credit limit, if applicable; and

- Includes any other information in the furnisher’s possession that the Bureau has determined the absence of which would likely be materially misleading in evaluating a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.<sup>35</sup>

Regulation V requires that the furnisher’s policies and procedures be appropriate to the nature, size, complexity, and scope of its activities.<sup>36</sup> In developing the policies and procedures, a furnisher must consider the Interagency Guidelines Concerning the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies found in Appendix E of Regulation V (Interagency Guidelines), and incorporate those guidelines, as appropriate. Each furnisher must also review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.

The Interagency Guidelines include:

- Using standard data reporting formats and standard procedures for compiling and furnishing data, where feasible, such as electronic transmission of information about consumers to CRAs;
- Deleting, updating, and correcting information in the furnisher’s records, as appropriate, to avoid furnishing inaccurate information;
- Conducting reasonable investigations of disputes;
- Establishing and implementing appropriate internal controls regarding the accuracy and integrity of information about consumers furnished to CRAs, such as by implementing standard procedures and verifying random samples of information provided to CRAs; and
- Training staff that participates in activities related to the furnishing of information about consumers to CRAs.<sup>37</sup>

## **Duty to Investigate Disputes Filed Directly with the Furnisher**

The FCRA and Regulation V generally require a furnisher to conduct a reasonable investigation of a dispute submitted directly to a furnisher by a consumer concerning the accuracy of any information contained in a consumer report and pertaining to an account or other relationship that the furnisher has or had with the consumer (direct dispute).<sup>38</sup>

*Covered Disputes.* A furnisher is required to investigate if the dispute relates to:

- The consumer’s liability for a credit account or other debt with the furnisher;
- The terms of a credit account or other debt with the furnisher;
- The consumer’s performance or other conduct

concerning an account or other relationship with the furnisher; or

- Any other information contained in a consumer report for an account or other relationship with the furnisher that bears on the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.<sup>39</sup>

The direct dispute rule does not apply if the dispute relates to the consumer's identifying information, the identity of past or present employers, or inquiries or requests for a consumer report. It also does not apply to disputes relating to information that is derived from public records, provided to a CRA by another furnisher, or related to fraud alerts or active duty alerts.<sup>40</sup> Finally, the rule does not apply if the furnisher has a reasonable belief that the direct dispute is submitted by a credit repair organization, is prepared on behalf of the consumer by a credit repair organization, or is submitted on a form supplied to the consumer by a credit repair organization.<sup>41</sup>

## COMPLIANCE WITH THE CREDIT REPORTING LAWS CAN PROMOTE FAIR AND EFFICIENT ACCESS TO CREDIT, BENEFITING CONSUMERS AND CREDITORS ALIKE.

*Consumer's Obligation to Submit a Proper Notice of Dispute.* A furnisher is required to investigate the dispute only if the consumer submitted the dispute notice to one of the following addresses:

- An address the furnisher provided that is listed on the consumer report;
- An address the furnisher clearly and conspicuously identified for submitting direct disputes that is provided to the consumer in writing or, if the consumer agrees, electronically; or
- If no address is specified, any business address of the furnisher.<sup>42</sup>

Moreover, the consumer's dispute notice must include:

- Sufficient information to identify the account or other relationship in dispute;

- The specific information being disputed;
- An explanation of the basis for the dispute; and
- All supporting documentation reasonably required by the furnisher to substantiate the basis of the dispute.<sup>43</sup>

*Furnisher's Duty to Investigate.* Upon receiving a consumer's proper notice of dispute, the furnisher must conduct a reasonable investigation of the dispute.<sup>44</sup> The furnisher also must review all relevant information provided by the consumer with the dispute notice.

The furnisher has 30 days from the receipt of the dispute notice (with the possibility for a 15-day extension under certain circumstances) to complete the investigation and report the results to the consumer.<sup>45</sup> If the furnisher finds that the information reported was inaccurate, the furnisher must promptly notify each CRA to which it provided the inaccurate information of the determination and provide the changes necessary to make the information accurate.<sup>46</sup>

*Exception for Frivolous or Irrelevant Disputes.* A furnisher is not required to investigate a direct dispute if the furnisher has reasonably determined that the dispute is frivolous or irrelevant.<sup>47</sup> Under Regulation V, a dispute is frivolous or irrelevant if the dispute notice (1) does not contain sufficient information to investigate the dispute, (2) raises a dispute about information exempted from the rule, or (3) raises a dispute that is substantially the same as a dispute previously submitted by the consumer and resolved in accordance with the regulations. If the furnisher determines that a dispute is frivolous or irrelevant, the furnisher has five business days to notify the consumer of its determination. The notice must include the reasons for the determination and identify any information required to investigate the disputed information.

### Duty to Investigate Disputes Filed with CRAs

The FCRA requires furnishers to investigate consumer disputes filed with the CRAs about information the furnishers provided.<sup>48</sup> More specifically, when a furnisher receives notice from a CRA that a consumer disputes the completeness or accuracy of information the furnisher provided to the CRA, the furnisher must investigate the disputed information, review all relevant information the CRA provided, and report the results of its investigation to the CRA.<sup>49</sup> If the furnisher determines the information it provided was incomplete or inaccurate, the furnisher must notify all nationwide CRAs to which the information was furnished of its findings.<sup>50</sup> Finally, if the furnisher determines the disputed information is inaccurate or incomplete or cannot be verified, the furnisher must promptly modify or delete the information or permanently block the reporting of that information.<sup>51</sup> The furnisher generally has 30 days from the date the consumer filed the dispute with the CRA to complete its investigation and make appropriate notifications, but the investigation period may be extended an additional 15 days in some circumstances.<sup>52</sup>

## EQUAL CREDIT OPPORTUNITY ACT/REGULATION B

Regulation B, which implements the ECOA, imposes certain obligations on creditors that furnish credit information to CRAs.<sup>53</sup> In addition, Regulation B prohibits discrimination on a prohibited basis regarding any aspect of a credit transaction.<sup>54</sup> At the federal level, the Board, FDIC, OCC, and NCUA have supervisory authority for ECOA and Regulation B for depository institutions with assets of \$10 billion or less.<sup>55</sup> For depository institutions with assets over \$10 billion, the Bureau has this authority. Also, if any of these agencies has reason to believe that the creditor engaged in a pattern or practice of discrimination, then the agency must refer the matter to the U.S. Department of Justice.<sup>56</sup> The Board has referred one matter involving discrimination on the basis of sex and marital status in credit reporting.<sup>57</sup> In this matter, the creditor failed to provide information to CRAs about the payment history of spouses (almost all of whom were women) who were contractually obligated on the note.

In addition to the federal regulators, private plaintiffs have the right to file lawsuits under the ECOA.<sup>58</sup> Violations of Regulation B can subject creditors to civil liability for actual and punitive damages in individual and class actions.<sup>59</sup> If a furnisher fails to comply with the regulation because of an inadvertent error, there is no violation.<sup>60</sup> The term *inadvertent error* means “a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid such errors,”<sup>61</sup> but it does not include an error of legal judgment.<sup>62</sup> Upon discovering the error, the furnisher must correct it as soon as possible.

### Coverage

Regulation B applies to a *creditor*, which is broadly defined to mean “a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit.”<sup>63</sup> The Official Staff Commentary to the regulation clarifies that the furnisher requirements only apply to consumer credit.<sup>64</sup> Moreover, they apply only to creditors that opt to furnish credit information to CRAs or to other creditors; a creditor is not required to furnish credit information on its accounts.

### Duties for Accounts Held or Used by Spouses

Section 1002.10 of Regulation B imposes three obligations on creditors furnishing consumer credit information to the CRAs for accounts held or used by spouses.

First, a creditor must designate accounts to reflect both spouses’ participation in the accounts in the following circumstances:

- For new accounts, when the spouse is an authorized user or is contractually liable on the account (except as a guarantor, surety, endorser, or similar party); and

- For existing accounts, when one of the spouses makes a written request to reflect both spouses’ participation on the account. In this situation, the furnisher must change the designation on the account within 90 days after receiving the written request.<sup>65</sup>

Second, when an account is designated to reflect the participation of both spouses, the creditor must furnish the information to the CRAs in a way that enables the CRAs to provide access to the information in the name of each spouse.<sup>66</sup>

Finally, if a creditor receives an inquiry about an account that reflects both spouses participating, the creditor must furnish the information in the name of the spouse for whom the information is requested.<sup>67</sup> For example, if the inquiry concerns an account on which a husband and wife both participate, and the inquiry specifically is about the wife, the creditor must provide the information in the wife’s name.

### Prohibition on Discrimination

In addition to the specific furnisher provisions, Regulation B broadly prohibits creditors from discriminating in any aspect of the credit transaction on any prohibited basis.<sup>68</sup> The term *credit transaction* includes the “furnishing of credit information.”<sup>69</sup> The term *prohibited basis* means “race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the applicant’s receipt of income, in whole or part, from any public assistance program; or the applicant’s exercise in good faith of a right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the [Bureau].”<sup>70</sup> This general rule covers, for example, the administration of accounts and the treatment of delinquent or slow accounts.<sup>71</sup>

## CONCLUSION

Credit reports play an important role for consumers and creditors. Specific provisions of the CARES Act, the FCRA, Regulation V, the ECOA, and Regulation B are designed to ensure the fairness and accuracy of these reports. Financial institutions that furnish information to the CRAs should have adequate policies and procedures in place to ensure that they are complying with these requirements, including procedures to periodically test systems to verify compliance. Compliance with the credit reporting laws can promote fair and efficient access to credit, benefiting consumers and creditors alike. Specific questions should be addressed to your primary regulator. ■

# ENDNOTES\*

- <sup>1</sup> Fair Credit Reporting Act, 15 U.S.C. §1681 et seq., implemented in part by Regulation V, 12 C.F.R. Part 1022. Most of the furnisher requirements discussed in this article under Section 623 of the FCRA (15 U.S.C. §1681s-2) do not have implementing regulations, so furnishers must focus on the statutory requirements.
- <sup>2</sup> Equal Credit Reporting Act, 15 U.S.C. §1691 et seq., implemented by Regulation B, 12 C.F.R. Part 1002. In addition, under the ECOA, Regulation B (12 C.F.R. §1002.9), and the FCRA (15 U.S.C. §1681m), consumers and businesses applying for credit must be provided notice of the reasons a creditor took adverse action on the application or on an existing credit account in certain circumstances.
- <sup>3</sup> Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020).
- <sup>4</sup> Section 4021 of the CARES Act amended Section 623(a)(1) of the FCRA (15 U.S.C. §1681s-2(a)(1)).
- <sup>5</sup> Kenneth Benton and Casey McHugh, Federal Reserve Bank of Philadelphia, “Furnishers’ Compliance Obligations for Consumer Credit Information under the FCRA and ECOA,” *Consumer Compliance Outlook* (Second Quarter 2012).
- <sup>6</sup> See 15 U.S.C. §1681s(b), §1681s-2(d).
- <sup>7</sup> See 15 U.S.C. §1681s(c), §1681s-2(d).
- <sup>8</sup> See 15 U.S.C. §1681s-2(c).
- <sup>9</sup> See 15 U.S.C. §1681a(b).
- <sup>10</sup> See 15 U.S.C. §1681a(c).
- <sup>11</sup> See 15 U.S.C. §1681a(f).
- <sup>12</sup> See 12 C.F.R. §1022.41(c). An entity is not a furnisher when it: (1) provides information to a consumer reporting agency solely to obtain a consumer report in accordance with Sections 604(a) and (f) of the FCRA; (2) is acting as a “consumer reporting agency” as defined in Section 603(f) of the FCRA; (3) is a consumer to whom the furnished information pertains; or (4) is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer, and who provides information about the consumer’s character, general reputation, personal characteristics, or mode of living in response to a specific request from a consumer reporting agency.
- <sup>13</sup> See 15 U.S.C. §1681s-2(a)(1)(F), as added by Section 4021 of the CARES Act.
- <sup>14</sup> See 15 U.S.C. §1681s-2(a)(1)(F)(i)(I).
- <sup>15</sup> See 15 U.S.C. §1681s-2(a)(1)(F)(i)(II). Under the National Emergencies Act, an emergency declaration will automatically terminate on the one-year anniversary of the declaration if the President does not extend it during the 90-day period before the anniversary. 50 U.S.C. §1622(d). An emergency declaration can also be terminated by a joint resolution of Congress enacted into law or by a Presidential proclamation. 50 U.S.C. §1622(a).
- <sup>16</sup> See 15 U.S.C. §1681s-2(a)(1)(F)(iii).
- <sup>17</sup> See 15 U.S.C. §1681s-2(a)(1)(F)(ii).
- <sup>18</sup> See 15 U.S.C. §1681s-2(a)(1)(B). FCRA does not require a person to specify an address for receipt of notices from consumers concerning inaccurate information. 15 U.S.C. §1681s-2(a)(1)(C).
- <sup>19</sup> See 15 U.S.C. §1681s-2(a)(1)(A).
- <sup>20</sup> See 15 U.S.C. §1681s-2(a)(1)(D).
- <sup>21</sup> See 15 U.S.C. §1681s-2(a)(2)(B).
- <sup>22</sup> See 15 U.S.C. §1681s-2(a)(3).
- <sup>23</sup> See 15 U.S.C. §1681s-2(a)(4).
- <sup>24</sup> See 15 U.S.C. §1681s-2(a)(5).
- <sup>25</sup> See 15 U.S.C. §1681c(a).
- <sup>26</sup> See 15 U.S.C. §1681s-2(a)(6).
- <sup>27</sup> See 15 U.S.C. §1681s-2(a)(7).
- <sup>28</sup> See 15 U.S.C. §1681s-2(a)(7)(G)(i).
- <sup>29</sup> See 15 U.S.C. §1681s-2(a)(7)(A)-(B).
- <sup>30</sup> See 15 U.S.C. §1681s-2(a)(7)(B)(ii) and (C)(i).
- <sup>31</sup> See 12 C.F.R. Part 1022, Appendix B – Model Notices of Furnishing Negative Information.
- <sup>32</sup> See 15 U.S.C. §1681s-2(a)(7)(D).
- <sup>33</sup> See 12 C.F.R. §1022.42. The FCRA requires the Bureau to establish and maintain guidelines for furnishers regarding the accuracy and integrity of furnished information and to prescribe regulations requiring furnishers to establish reasonable policies and procedures to implement these guidelines. 15 U.S.C. §1681s-2(e).

\* Note: The links for the references listed in the Endnotes are available on the *Consumer Compliance Outlook* website at [consumercomplianceoutlook.org](http://consumercomplianceoutlook.org).

<sup>34</sup> See 12 C.F.R. §1022.41(a).

<sup>35</sup> See 12 C.F.R. §1022.41(d).

<sup>36</sup> See 12 C.F.R. §1022.42.

<sup>37</sup> See 12 C.F.R. Part 1022, Appendix E, paragraph III.

<sup>38</sup> The general direct dispute requirements are found at 15 U.S.C. §1681s-2(a)(8); 12 C.F.R. §1022.43. The definition of *direct dispute* is found at 12 C.F.R. §1022.41(b).

<sup>39</sup> See 12 C.F.R. §1022.43(a).

<sup>40</sup> See 12 C.F.R. §1022.43(b)(1).

<sup>41</sup> See 12 C.F.R. §1022.43(b)(2).

<sup>42</sup> See 12 C.F.R. §1022.43(c).

<sup>43</sup> See 12 C.F.R. §1022.43(d).

<sup>44</sup> See 12 C.F.R. §1022.43 (e).

<sup>45</sup> See 12 C.F.R. §1022.43(e)(3).

<sup>46</sup> See 12 C.F.R. §1022.43(e)(4).

<sup>47</sup> See 12 C.F.R. §1022.43(f).

<sup>48</sup> See 15 U.S.C. §1681s-2(b).

<sup>49</sup> See 15 U.S.C. §1681s-2(b)(1)(A)-(C).

<sup>50</sup> See 15 U.S.C. §1681s-2(b)(1)(D).

<sup>51</sup> See 15 U.S.C. §1681s-2(b)(1)(E).

<sup>52</sup> See 15 U.S.C. §1681s-2(b)(2).

<sup>53</sup> See 12 C.F.R. §1002.10.

<sup>54</sup> See 12 C.F.R. §1002.4(a).

<sup>55</sup> See 15 U.S.C. §1691c.

<sup>56</sup> See 15 U.S.C. §1691e(g).

<sup>57</sup> See Board of Governors of the Federal Reserve, *98th Annual Report* (2011).

<sup>58</sup> See 15 U.S.C. §1691e.

<sup>59</sup> See 12 C.F.R. §1002.16(b)(1).

<sup>60</sup> See 12 C.F.R. §1002.16(c).

<sup>61</sup> See 12 C.F.R. §1002.2(s).

<sup>62</sup> See 12 C.F.R. §1002.16(c), Comment 1.

<sup>63</sup> See 12 C.F.R. §1002.2(l).

<sup>64</sup> See 12 C.F.R. §1002.10, Comment 1.

<sup>65</sup> See 12 C.F.R. §1002.10(a).

<sup>66</sup> See 12 C.F.R. §1002.10(b).

<sup>67</sup> See 12 C.F.R. §1002.10(c).

<sup>68</sup> See 12 C.F.R. §1002.4(a).

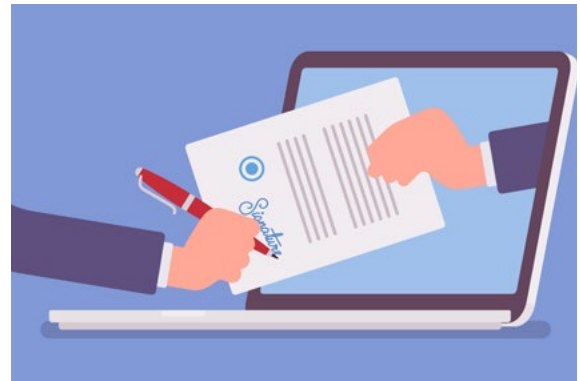
<sup>69</sup> See 12 C.F.R. §1002.2(m).

<sup>70</sup> See 12 C.F.R. §1002.2(z).

<sup>71</sup> See 12 C.F.R. §1002.4(a), Comment 1.

## E-SIGN ACT AND THE COVID-19 PANDEMIC

To protect their customers and employees during the COVID-19 pandemic, many financial institutions are encouraging their customers to conduct transactions electronically. In addition, many state and local government authorities have issued orders asking residents to practice social distancing and shelter-in-place, and to close businesses other than those that are considered essential services. While banks are considered an essential service, many consumers may prefer conducting transactions electronically to reduce the risk of becoming infected. Moreover, the Federal Financial Institutions Examination Council recently issued the “Interagency Statement on Pandemic Planning,”<sup>1</sup> which suggests that institutions consider “encouraging customers to use online or telephone banking services, ATMs and drive-up windows.”



From a consumer compliance perspective, this potential increase in electronic transactions highlights the importance of financial institutions’ obligations under the Electronic Signatures in Global and National Commerce Act (E-Sign Act).<sup>2</sup> Under the E-Sign Act, electronic signatures, documents, and records for transactions have the same validity as written signatures and printed documents, provided certain requirements are met. The E-Sign Act also preempts state laws to the contrary.

Before information related to a consumer transaction that is required to be in writing can be provided electronically, the E-Sign Act requires that a six-step consumer consent process be completed. *Outlook* reviewed the six-step process in a 2009 article, and we encourage financial institutions to review the requirements discussed in the article and test their systems for compliance.<sup>3</sup>

Institutions should note that the E-Sign Act does not apply to certain notices, including any notice of default, acceleration, repossession, foreclosure, eviction, or the right to cure for a mortgage or lease of an individual’s primary residence.<sup>4</sup>

Finally, to the extent state law may apply (for example, addressing whether notarized signatures can be provided electronically), financial institutions should review applicable state law. ■

## ENDNOTES\*

<sup>1</sup> See the Federal Financial Institutions Examination Council’s “Interagency Statement on Pandemic Planning,” March 6, 2020.

<sup>2</sup> See 15 U.S.C. §7001 et seq.

<sup>3</sup> Jeffrey Paul and Gary Louis, “Moving from Paper to Electronics: Consumer Compliance Under the E-Sign Act,” *Consumer Compliance Outlook*, Fourth Quarter 2009.

<sup>4</sup> See 15 U.S.C. §7003(b)(2)(B).

\* Note: The links for the references listed in the Endnotes are available on the *Consumer Compliance Outlook* website at [consumercomplianceoutlook.org](http://consumercomplianceoutlook.org).

# FEDERAL RESERVE STATEMENTS RELATED TO THE COVID-19 EMERGENCY AND CONSUMER COMPLIANCE<sup>1</sup>

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| <p><b>05/06/2020</b></p>   | <p><b>Flood Insurance Compliance in Response to the Coronavirus (CA 20-7)</b></p>   |
| <p><b>Mortgage Loans<br/>(Reg. H, 12 C.F.R. 208)</b></p>   | <ul style="list-style-type: none"> <li>• This Federal Reserve Consumer Affairs (CA) letter provides two flood insurance questions and answers to assist state member banks in their efforts to meet the financial needs of their customers.</li> <li>• The first question addresses the extent to which a bank would be required to make a new flood zone determination and provide new notices of special flood hazards for the extended loan if the bank works with its borrowers by extending maturities/payments or balloon payments because of the COVID-19 emergency.             <ul style="list-style-type: none"> <li>◦ Generally, although there is no emergency exception in the regulation, the Federal Reserve will take into account an institution’s good-faith efforts, demonstrably designed to support consumers and to comply with the flood insurance requirements.</li> </ul> </li> <li>• The second question describes lender compliance options in connection with the extended renewal grace period provided in FEMA Bulletin W-20002 (dated March 29, 2020).</li> </ul>  |
| <p><b>04/24/2020</b></p>   | <p><b>Interim Final Rule Regarding Reserve Requirements of Depository Institutions</b></p>  |
| <p><b>Savings Deposit Accounts<br/>(Reg. D, 12 C.F.R. Part 204)</b></p>                                    | <ul style="list-style-type: none"> <li>• This Federal Reserve interim final rule removes the six-per-month limit on certain kinds of transfers and withdrawals from savings deposit accounts.</li> <li>• The rule is intended to provide depository institutions’ customers more convenient access to their funds.</li> </ul>   |
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| <p><b>04/14/2020</b></p>   | <p><b>Interim Final Rule Regarding Real Estate Appraisals (12 C.F.R. Part 225)<br/>Interagency Statement on Appraisals and Evaluations for Real Estate Related Financial Transactions Affected by the Coronavirus</b></p>   |
| <p><b>Real Estate Appraisals and Evaluations<br/>(12 C.F.R. Part 225; Reg. B, 12 C.F.R. Part 1002)</b></p> | <ul style="list-style-type: none"> <li>• The Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) issued an interim final rule to address how banks should conduct appraisals and evaluations during the COVID-19 emergency. (The National Credit Union Administration (NCUA) separately issued an identical Interim Final Rule.)             <ul style="list-style-type: none"> <li>◦ The rule provides a temporary deferral of the requirement for an appraisal or an evaluation for 120 days after closing for loans booked through December 31, 2020.</li> </ul> </li> <li>• The interim final rule states that the agencies expect institutions to use best efforts and available information to develop a well-informed estimate of the collateral value of the subject property and to develop an appropriate risk mitigation strategy if the appraisal or evaluation ultimately reveals a market value significantly lower than the expected market value.</li> <li>• The risk mitigation strategy should consider safety and soundness risk to the institution, balanced with mitigation of financial harm to borrowers affected by COVID-19.</li> <li>• In addition, the Board, the Consumer Financial Protection Bureau (Bureau), FDIC, NCUA, and OCC in consultation with the state financial regulators, issued a separate interagency statement that reminds banks about flexibility in the agencies’ appraisal regulations, including under Regulation B, which implements the Equal Credit Opportunity Act.</li> </ul> |

<sup>1</sup> Please visit the Federal Reserve Board’s COVID-19 resource page for the most current listing of supervisory and regulatory responses to the COVID-19 pandemic.

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| <p><b>04/07/2020</b></p>  | <p><b>Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus (Revised)</b></p>   |
| <p><b>Loans<br/>(Consumer statutes and regulations applicable to loans)</b></p>                           | <ul style="list-style-type: none"> <li>• The Board, Bureau, FDIC, NCUA, and OCC issued this statement to clarify the interaction between the March 22 interagency statement and the Coronavirus Aid, Relief, and Economic Security (CARES) Act and to describe consumer protection considerations for working with borrowers.</li> <li>• The agencies encourage financial institutions to consider prudent arrangements that can increase the potential for financially stressed residential borrowers to keep their homes.</li> <li>• When exercising supervisory and enforcement responsibilities related to consumer compliance, the agencies will take into account the unique circumstances impacting borrowers and institutions resulting from the COVID-19 emergency.</li> <li>• The agencies will also take into account an institution’s good faith efforts, demonstrably designed to support consumers and comply with consumer protection laws.</li> <li>• In addition, the agencies expect that supervisory feedback for institutions will be focused on identifying issues, correcting deficiencies, and ensuring appropriate remediation to consumers.</li> <li>• Finally, the agencies do not expect to take a consumer compliance public enforcement action against an institution, provided that the circumstances were related to the COVID-19 emergency, the institution made good-faith efforts to support borrowers and to comply with the consumer protection requirements, and the institution responded to any needed corrective action.</li> </ul> |
| <p><b>04/03/2020</b></p>  | <p><b>Joint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act</b></p>   |
| <p><b>Mortgage Loans<br/>(Reg. X, 12 C.F.R. Part 1026)</b></p>  | <ul style="list-style-type: none"> <li>• The Board, Bureau, FDIC, NCUA, OCC, and Conference of State Bank Supervisors (CSBS) issued this statement to provide regulatory flexibility for mortgage servicers on certain timelines and actions required under Regulation X for certain loss mitigation initiatives, including under the CARES Act.</li> <li>• The agencies restated a portion of the CARES Act, which states that borrowers in a federally backed mortgage loan may request forbearance from their mortgage servicer. In response, servicers must allow borrowers to defer their mortgage payments for up to 180 days and possibly longer.</li> </ul>   |
| <p><b>03/31/2020</b></p>  | <p><b>Home Mortgage Disclosure Act (HMDA) Quarterly Reporting During the COVID-19 Pandemic (CA 20-6)</b></p>  |
| <p><b>Mortgage Loans<br/>(Reg. C, 12 C.F.R. Part 1003)</b></p>  | <ul style="list-style-type: none"> <li>• On March 26, 2020, the Bureau issued a statement to inform its supervised financial institutions that it does not intend to cite in an examination or initiate an enforcement action for failure to report the quarterly HMDA data.</li> <li>• The Federal Reserve CA Letter 20-6 serves as notice that the Board will take the same approach to provide its supervised financial institutions with flexibility, reduce administrative burden, and allow the institution to focus its time and attention on serving its customers.</li> </ul>  |
| <p><b>03/26/2020</b></p>  | <p><b>Joint Statement Encouraging Responsible Small-Dollar Lending in Response to COVID-19 (SR 20-7/CA 20-5)</b></p>  |
| <p><b>Small-Dollar Loans<br/>(Consumer statutes and regulations applicable to small-dollar loans)</b></p> | <ul style="list-style-type: none"> <li>• The Board, Bureau, FDIC, NCUA, and OCC issued this statement to encourage financial institutions to offer responsible small-dollar loans to both consumers and small businesses.</li> <li>• Responsibly offered small-dollar loans can help consumers meet their needs for credit because of temporary cash-flow imbalances, unexpected expenses, or income shortfalls during periods of economic stress or disaster recoveries.</li> <li>• The current regulatory framework allows financial institutions to make responsible small-dollar loans, including, but not limited to, open-end lines of credit, closed-end installment loans, and appropriately structured single payment loans.</li> </ul>  |



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| 03/24/2020   | <b>Federal Reserve Statement on Supervisory Activities</b>  |
| <b>All products and services</b><br><b>(All consumer statutes and regulations)</b> | <ul style="list-style-type: none"> <li>• This Federal Reserve statement explains that, for all firms, the Federal Reserve will focus on continued monitoring and analysis of operations, liquidity, capital, asset quality, and impact on consumers.</li> <li>• For larger institutions, the Federal Reserve will also focus on monitoring operational resiliency and potential impacts on broader financial stability.</li> <li>• For supervised institutions with less than \$100 billion in total consolidated assets, the Federal Reserve generally intends to cease examination activity except where the examination work is critical to safety and soundness or consumer protection or is required to address an urgent or immediate need. <ul style="list-style-type: none"> <li>◦ “Critical” examination work could include, but is not limited to, for example, examinations of less-than-satisfactorily rated state member banks where the Federal Reserve is aware of consumer protection issues that are an immediate threat to consumers or monitoring identifies an unusual circumstance.</li> </ul> </li> <li>• For supervised institutions with assets greater than \$100 billion, the Federal Reserve intends to defer a significant portion of planned examination activity based on its assessment of the burden on the institution and the importance of the examination activity to the supervisory understanding of the firm, consumer protection, or financial stability.</li> <li>• The Federal Reserve is generally extending the time periods for remediating noncritical existing supervisory findings by 90 days.</li> </ul> |
| 03/22/2020   | <b>Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus</b>  |
| <b>Loans</b><br><b>(Consumer statutes and regulations applicable to loans)</b>     | <ul style="list-style-type: none"> <li>• The Board, Bureau, FDIC, NCUA, OCC, and CSBS issued this statement to encourage financial institutions to work prudently with borrowers who are or may be unable to meet their contractual payment obligations because of the effects of COVID-19.</li> <li>• It explains that the agencies view loan modification programs as positive actions that can mitigate adverse effects on borrowers because of COVID-19.</li> <li>• The statement describes the agencies’ interpretation of how current accounting rules under U.S. GAAP apply to certain COVID-19-related modifications.</li> <li>• Working with borrowers that are current on existing loans generally would not be considered Troubled Debt Restructurings (TDRs).</li> </ul>  |
| 03/19/2020   | <b>Joint Statement on Community Reinvestment Act (CRA) Consideration for Activities in Response to COVID-19 (CA 20-4)</b>   |
| <b>All products and services</b><br><b>(Reg. BB, 12 C.F.R. Part 288)</b>           | <ul style="list-style-type: none"> <li>• The Board, FDIC, and OCC issued this statement to confirm that, pursuant to the CRA, the agencies will favorably consider retail banking services and retail lending activities in a financial institution’s assessment areas that are responsive to the needs of low- and moderate-income individuals, small businesses, and small farms affected by COVID-19, consistent with safe and sound banking practices.</li> <li>• Additionally, in light of the declaration of a national emergency, this statement clarifies that financial institutions will receive CRA consideration for community development activities.</li> </ul>   |
| 03/13/2020   | <b>Supervisory Practices Regarding Financial Institutions Affected by the Coronavirus (SR 20-4/CA 20-3)</b>   |
| <b>All products and services</b><br><b>(All consumer statutes and regulations)</b> | <ul style="list-style-type: none"> <li>• This Federal Reserve SR/CA letter encourages financial institutions to review SR 13-6/CA 13-3, “Supervisory Practices Regarding Banking Organizations and Their Borrowers and Other Customers Affected by a Major Disaster or Emergency,” for examples of efforts that financial institutions may want to consider in working with customers affected by COVID-19.</li> </ul>  |

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| 03/10/2020   | <b>Interagency Statement on Pandemic Planning (SR 20-3/CA 20-2)</b>   |
| <b>All products and services</b><br><b>(Not applicable)</b>                        | <ul style="list-style-type: none"> <li>The Federal Financial Institutions Examination Council (Board, Bureau, FDIC, NCUA, OCC, and State Liaison Committee) issued this statement to encourage financial institutions to review and update their business continuity plans to address the threat of a pandemic outbreak and its potential impact on the delivery of critical financial services.</li> </ul> |
| 03/09/2020   | <b>Agencies Encourage Financial Institutions to Meet Financial Needs of Customers and Members Affected by the Coronavirus</b>   |
| <b>All products and services</b><br><b>(All consumer statutes and regulations)</b> | <ul style="list-style-type: none"> <li>The Board, Bureau, FDIC, NCUA, OCC, and CSBS issued this press release to encourage financial institutions to meet the financial needs of customers and members affected by the Coronavirus.</li> <li>The agencies will provide appropriate regulatory assistance to affected institutions subject to their supervision.</li> </ul>                                  |

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# REGULATORY CALENDAR

| EFFECTIVE DATE†                 | IMPLEMENTING REGULATION | REGULATORY CHANGE   |
|---------------------------------|-------------------------|---|
| 01/01/2022                      | Reg. C                  | Final rule establishing 200 loans as the permanent Home Mortgage Disclosure Act (HMDA) data reporting threshold for open-end lines of credit  |
| 11/19/2020                      | 12 C.F.R. Part 1041     | Final rule delaying compliance date for mandatory underwriting provisions of the payday lending rule  |
| 07/01/2020                      | Reg. C                  | Final rule increasing HMDA reporting threshold for closed-end loans from 25 to 100  |
| 07/01/2020<br>(most provisions) | Reg. CC                 | Final rule implementing required adjustments to the Expedited Funds Availability Act's (EFAA) dollar amounts  |
| 05/04/2020                      | Reg. X/Reg. Z           | Interpretive rule regarding the application of certain provisions in the TILA-RESPA Integrated Disclosure Rule and Regulation Z Right of Rescission Rules in light of the COVID-19 pandemic   |
| 04/28/2020                      | Reg. D                  | Interim final rule deleting the six-per-month limit on transfers and withdrawals from savings deposits  |
| 04/27/2020                      | Reg. E                  | Interpretive rule that government pandemic relief payments are not subject to prohibition against compulsory electronic fund transfers  |
| 11/24/2019                      | Reg. Z                  | Interpretive rule regarding the obligations of a loan origination organization under Regulation Z when an employee is a loan originator pursuant to temporary authority under the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) |
| N/A                             | Reg. F                  | Proposed rule requiring debt collectors to disclose when statute of limitations has expired for the debt they are attempting to collect   |
| N/A                             | Reg. E                  | Proposed rule increasing exemption threshold for foreign remittance transfers to 500 transfers and to make permanent the temporary use of estimates by depository institutions  |
| N/A                             | Reg. C                  | Advanced notice of proposed rulemaking to change the requirements for some of the HMDA data fields  |
| N/A                             | Reg. F                  | Proposed rule implementing the Fair Debt Collection Practices Act   |

† Proposed rules do not have an effective date.

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## CALENDAR OF EVENTS

*Outlook* regularly publishes upcoming compliance events that may be of interest to our readers. Because most events have been canceled in response to the COVID-19 pandemic, we are not listing events for this issue. We will resume publishing events when the pandemic has subsided and events are rescheduled.

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