

Volume 17, Issue 4 / March 23, 2020

Special Release

COVID-19 Business Impact: What Can You Do to Help?

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Today's complex world just got a whole lot more complex with the spread of COVID-19. There are new cases daily, stores have limited hours or are closing, restaurants are restricted to carry-out, schools are closed, and many of you have decided to close your lobbies and service your customers through the drive-through or walk-up windows.

This virus is not only a health crisis but is, in fact, becoming an economic crisis as well. All of us, no matter where located, know someone who is experiencing a loss of income because they must stay home to take care of their child/children. We know someone who works in the restaurant industry and has lost their job because dining in is no longer an option; or someone who works in a retail store that has made the decision to close.

The financial impact is going to hit our customers and hit them fast. With little or no wages coming in, consumers are going to struggle with keeping up with basic needs and managing their bills.

The President announced last week that HUD will temporarily suspend all foreclosures and evictions due to the crisis for a period of 60 days, and both FNMA and FHLMC have announced that mortgage assistance and relief options are available to homeowners affected by COVID-19.

The OCC and FDIC both encourage banks to work with customers affected by this crisis and to do so in a prudent manner. So, what can you do to help? Here are a few suggestions that your institution might consider (this is not an exclusive list).

On the deposit side of the house, consider waiving certain fees during the crisis:

- ATM Fees
- Overdraft Fees
- Waiving early withdrawal penalties

On the lending side of the house, you can:

- Waive late charges
- Waive over-credit limit fees
- Offer a skip-a-payment option
- Modify the terms of the loan

Each option comes with a certain amount of risk that bank management will have to take into consideration. The first is, obviously, there will be a noticeable loss of fee income if fees are waived. However, the loss of income may outweigh the increased reputation risk to your organization if you do nothing. The greatest risk to your organization is firmly rooted in the loan department and the inevitable increase in delinquent loans due to COVID-19. There are a few things to be mindful of when offering concessions or modifications on loans.

Let's explore the skip-a-payment program. This program is typically offered during the summer or holidays, but it may offer some relief to borrowers having trouble making payments due to a disruption in income due to the virus. Remember, if we are changing the terms of a loan, notification may be required, and the type of notification required will vary between open- and closed-end credit.

The first step needs to be a review of your note or credit agreement to determine if it contains a skip-a-payment feature. If it does, HURRAY! No further notification is needed.

If your documents do not include this feature, you have notification obligations. For open-end (non-HELOC) credit, under 1026.9(c)(2) notification is required 45 days prior to changes affecting a consumer's account, unless the change unequivocally benefits the consumer, or the consumer agrees to the change. If payment deferral is considered on a Home Equity Line plan, 1026.9(c) requires written notification at least 15 days prior to the effective date of the change. While a skipped or deferred payment would seem to benefit the customer, in reality, unless the payment and or interest is being forgiven, all you are doing is putting the obligation off until such time as the consumer can once again afford the payment.

An important step in this process is determining how you are prepared to offer relief and how you are going to communicate this to the customer. For example, if you decide to offer the borrower the opportunity to skip one or two payments, your notice might read: "You may skip your April and May payments." If your relief plan includes deferring or waiving finance charges, a word of caution. The Advertisement rules under Regulation Z for open-end credit 1026.(b)(1), a statement such as "We will agree to waive your finance charges for April and May" or "No interest charges for two months" is considered a trigger term and would require further disclosure. You might want to consider structuring the notice so that the borrower must elect to participate by initialing the option and returning it to you. This notice can serve two functions: it fills the requirement to provide notification prior to the change and changes the form from a promotion to a "disclosure." TCA recommends you get written authorization from consumers prior to making changes to the payment stream.

Closed-end credit is somewhat more problematic. Regulation Z at 1026.17(c)(2)(iii) permits you to "informally" defer payments from time to time without providing new disclosures. Time to time – What does that mean? This caveat would be appropriate if the intention is to only skip one or two payments. Deferring more than a couple of payments could be considered a change in the legal obligation (note) and could trigger a refinance.

The debate between modification and refinance has been going on for ages. Regulation Z's definition of a refinance (1026.20(a)) is "when an existing obligation is satisfied and replaced by a new obligation, undertaken by the same consumer." When offering any type of skipped or deferred payment, it is critical that the language you use in communicating this option to the consumer does not imply payments are cancelled or that the original terms of the loan are cancelled. Discussing your plans for modification with your legal counsel is also recommended to ensure your changes are modifications and there are no state law requirements to be concerned with.

If you are making modifications to real estate mortgages, the loan may include an escrow for property maintenance (*i.e.*, real estate taxes and insurance). How will a skipped or forgiven payment affect the escrow? Remember, RESPA requires you to make timely payments for these escrowed items and there will likely be an escrow shortage. When analysis is run later in the year, your borrowers may experience payment shock. Bank management should carefully consider the relief that will be provided and the impact it will have not only on the borrower but the bank as well. For some borrowers, their loss of income may be short term; others may see an extended period of disruption due to the loss of the employment due to the virus.

Any modification of existing loans should be thoroughly reviewed to determine if the changes fall into a troubled debt restructure category. Not all modifications or workouts will fall into the TDR category and each request should be reviewed based on the facts and circumstances for that specific transaction.

Many of you may remember TCA's webinar *Regulation Z in the Real World*, which covered the disclosure requirements for closed-end credit when loans are modified, assumed or refinanced. To help make these requirements easier to review, the attached Required Subsequent Disclosure Chart has been designed to assist you in determining what additional disclosures may be required.

Regardless of whether you make payment considerations on open- or closed-end credit and you have modified a consumer's payment or deferred that payment, make sure you make the necessary changes to your core system. If payments are being received under any type of agreement, formal or informal, the borrower cannot be reported delinquent to the credit bureau.

Because of the impact COVID-19 will have on our economy, it is likely that we will continue to see changes or easing of underwriting standards or regulatory requirements. Be sure to monitor bulletins from your investors, FNMA/FHLMC, HUD and other credible sources. Whatever you decide to do to offer relief during this unprecedented time, be sure to detail what deferral or relief programs you will offer. Your plan should include parameters on how you will determine eligibility. FNMA/FHLMC are not requiring documentation of the borrower's hardship, but you may want to include parameters such as the account must be in good standing prior to COVID-19 restrictions. Create procedures that include notification, processing the request, tracking of the affected accounts and account servicing. All applicable staff should be trained on the options available and what to do if a request is made.

Finally, it is important to remember during this time of social distancing, we are **all in this together**. We may need to temporarily retreat to our separate corners but as members of the community, we come together to help and support those who need it.

Rest assured that TCA will be here to address whatever compliance questions or scenarios you have and will continue to be A Better Way to support your compliance efforts.



Required Subsequent Disclosure Chart

	Work Outs and TDRs	Modifications	Construction Loans	Assumptions (closed-end)	Open-End Credit	HELOC
Application or written request	1	1	1	2	1	1
LE	4	4	4	2	3	3
Early Program Disclosure	3	3	3	3	3	3
ARM Disclosure (if applicable)	3	3	3	2	3	3
Flood	2	2	2	2	5	5
CD	4	4	3	2	3	3
Escrow Account Disclosure	6	6	6	2	6	6
Affiliated Business Disclosure	3	3	3	2	3	3
Servicing Transfer Disclosure	3	3	3	2	3	3
Right to Cancel	8	8	3	8	2	8
CHARM Booklet (if applicable)	3	3	3	2	3	3
Your Home Loan Toolkit (Purchases only)	3	3	3	9	3	3

Legend

1 – Best Practice for both open- and closed-end credit	6 – Required if escrow account is added.
2 – Required for closed-end credit if secured by real estate	7 – If variable rate feature is added, the change is considered a refinance.
3 – Not required	8 – If new money is added
4 – May be required if changes fall into refinance category. Consult legal counsel.	9 – If the assumption is considered a purchase
5 – Required for open-end credit if secured by real estate	