Frequently Asked Questions about CARES Act Provisions

Following are answers to questions bankers have asked regarding provisions in the CARES Act. Please note that an extensive separate FAQ exists to address questions specific to the Paycheck Protection Program. You can find ABA's FAQ on the SBA's program here.

This document is provided as an informational resource only and should not be considered as legal advice. If legal advice is needed, please consult your current advisors.

We will update this document—which is intended for ABA members and bankers only—on an ongoing basis.

Accounting/CECL

1. **Are you pursuing having FASB rescind CECL**?

   ABA has long believed that CECL is a misguided, pro-cyclical standard that will hold back the economy in times of stress. We will continue to advance that position before FASB, other regulators, and Congress.

2. **Are you seeing banks take advantage of the CECL delay to the end of the emergency period? Or are most banks proceeding ahead with CECL for Q1 2020?**

   Banks that have talked to ABA are considering a number of factors before making their decision, including their operational capability to perform incurred loss accounting, considering many had suspended their incurred loss accounting systems in mid-January. The biggest factor many banks are citing, however, is uncertainty related to the level of regulatory capital relief they will obtain if CECL is implemented. While the Federal Reserve has issued an interim ruling that has increased the capital relief available for CECL-adopters, specific questions as to the effective date of the relief, as well as whether such relief may be available at all to banks that delay CECL for any period of time, are still outstanding. This requires clarification from the Fed and the SEC and ABA is pursuing both on these fronts.

3. **Is ABA attempting to move the CECL delay in the CARES Act to 2021?**

   We believe the CECL delay included in the CARES Act was, in addition to providing the opportunity of capital relief, intended to relieve banks of the operational complexity of producing CECL estimates throughout the emergency period. Implementing CECL even on December 31, 2020 would require operating dual accounting systems, thereby conflicting with the intent of the law. ABA is, therefore, pursuing with the SEC and others to interpret the CARES Act to allow a delay in implementation to 2021.

4. **What is the accrual status of portfolio loans granted forbearance?**

   Interagency guidance on TDRs issued on March 22 (and updated on April 7 to include consideration of the CARES Act) provides for significant relief from reporting many such loans as nonaccrual. In general, loans subject to COVID-related modifications will generally not be reported as nonaccrual. The determination of charge-off has not been changed, however, so as banks learn more about the likelihood of eventual non-payment, banks should charge-off as usual. ABA is expecting further interagency guidance (and a webinar) that addresses any specific limits on loan modifications and the direction towards related aspects, such as overall loan impairment.

5. **How do we report loans that are currently delinquent that are given deferrals and/or forbearance?**

   The March 22 Interagency guidance (updated on April 7 to include consideration of the CARES Act) notes that loans subject to COVID-related modifications will not be reported as nonaccrual or past due. A COVID-related modification applies if the borrower was past due 30 days or less as of December 31, 2019 (if provided within the period stated above) or is less than 30 days past due after this period. This relief is in effect until the earlier of 60 days after the emergency is terminated or December 31, 2020. ABA is expecting further interagency guidance (including webinars) as conditions change. Reporting of delinquent loans that have yet to be modified will not change.

6. **On each of the Regulator calls, they are advising us to seek guidance from our accountants on the deferral of principal and interest. Can we request the Regulators (FFIEC) to work with FASB to give a final guidance letter on the treatment where everyone will be saying and implementing the same thing?**

   The March 22 Interagency Guidance on TDRs (updated on April 7 to include consideration of the CARES Act) was written in consultation with FASB. During the April 8 FASB meeting, FASB staff indicated that for a forbearance arrangement with no interest accrual (and not reported as a TDR), a bank may elect to recognize interest income during the forbearance period or may elect to not recognize interest and resume recognition when the payments restart. With this in mind, it is highly likely that questions related to the deferral of principal and interest will remain and we recommend further discussing this with your examiner.

7. **Regarding Mortgage Forbearance, how many monthly payments can a portfolio lender defer before being required to put the loan on non-accrual?**

   The March 22 Interagency Guidance on TDRs (and updated on April 7 to include consideration of the CARES Act) does not define specific numbers of payments for those loan modifications that fall under the CARES Act timelines (the earlier of 60 days after the emergency is declared over or December 31, 2020). For those loan modifications performed after that time, the Guidance appears to set a bright line of six months of delay/deferral before a further analysis would be required to prove a loan modification is not a TDR (and, thus, reported as nonaccrual).

8. **Fees will be received by banks for originating SBA loans under the PPP program that are 100% guaranteed, with a certain portion forgivable by the SBA if the small business uses the loan proceeds for certain costs: How should loan fees be accounted for -- as a yield adjustment over the life of the loan or upfront when received?**

   The FASB staff indicated during the April 8, 2020 FASB Board meeting that it is currently reviewing the inquiry and will determine the most appropriate way to inform people of the answer in the coming days. We will update this document when the FASB provides additional information.

Consumer Fees

9. **Are there any recommendations about waiving or suspending insufficient funds fees?**

   Some banks are waiving fees, including overdraft, ATM, and late payment fees to provide assistance and flexibility to their customers during the crisis. Several states have issued orders or urged banks to waive such fees. See for example:

   - New York Department of Financial Services Guidance and Continuing Temporary Suspension and Modification Laws Relating to Disaster Emergency
   - California Governor's Office
   - Massachusetts Office of Consumer Affairs and Business Regulation
   - North Carolina Governor's Office

CRA

10. **Will loans originated under the PPP receive CRA credit?**

    In most cases, yes. According to existing examination guidance as well as the March 19, 2020 Interagency Statement on CRA Consideration for Activities in Response to COVID-19, loans that benefit small businesses and small farms impacted by COVID-19 serve the long-term interest of communities and the financial system. Generally, loans to for-profit businesses in amounts of $1 million or less are considered small business loans in CRA evaluations and will be considered as such under the lending test. Additionally, PPP loans to small businesses could receive consideration as innovative or flexible lending practices. Generally, loans to businesses greater than $1 million to small businesses that create or retain jobs would qualify as community development loans under economic development if the loans create or retain jobs or under revitalization/stabilization if they benefit primarily low- and moderate-income areas or distressed middle-income areas.

11. **Will a bank receive CRA credit for assisting COVID-19 impacted businesses that are located outside of the bank's assessment area?**

    The agencies will provide favorable CRA consideration for certain retail banking services, retail lending activities, and community development activities related to this national emergency.

    As stated in the March 19, 2020 Interagency Statement on CRA Consideration for Activities in Response to COVID-19, the agencies will give favorable consideration to community development activities that are located in a broader statewide or regional area that includes a bank's CRA assessment area and that help to stabilize communities affected by COVID-19, provided that the bank is responsive to the community development needs and opportunities in its own assessment area(s).

    Pursuant to the existing CRA regulations, a bank may receive community development credit for loans whose primary purpose is community development (as defined in §__.12(g) of the CRA regulations) and that have not been reported for consideration in the bank's assessment area as a home mortgage, small business, small farm, or consumer loan.

Real Estate Secured Lending – CARES Act Forbearance

12. When do borrowers have the right to defer payments for 6 months? Does the right to forbearance apply to all loans, or just to government insured mortgage loans?

The CARES Act residential forbearance provision (§4022) applies to "federally backed mortgage loan," which are defined as loans guaranteed or insured by Fannie Mae, Freddie Mac, USDA, VA, FHA, and others, and secured by a first or subordinate lien on 1-to-4 family residential real property (including individual units of condominiums and cooperatives). CARES Act forbearance does not apply to pure portfolio loans or to (non-multifamily) commercial credit.

13. Section 4022 of the Act provides that upon request, borrowers must receive "up to" 6 months of forbearance. When is a lesser time period permitted for CARES Act forbearance?

Under the CARES Act, the borrower has the right to receive "up to" 180 days of forbearance, and the borrower may choose to shorten this period. The servicer can discuss other options with the borrower, such as a 90-day forbearance, but the borrower *must* be offered the opportunity to access a full 180 days (and thereafter, the right to extend the forbearance for an additional period of up to 180 days).

14. Has guidance been issued with respect to the information that servicers must collect to qualify the borrower, i.e., Is there a standard application form?

The CARES Act does not appear to allow for the collection of any supplementary information from the borrower other than an affirmation of impact from COVID-19. Section 4022(c)(1) makes clear that upon receiving a request for forbearance from a borrower, the servicer "shall provide" the forbearance with no additional documentation other than the borrower's attestation to a financial hardship caused by the COVID–19 emergency, and forbearance must be provided with no fees, penalties, or added interest.

15. Must a bank offer a forbearance under the CARES Act to a borrower whose loan was in default or delinquent before the COVID-19 pandemic?

The CARES Act does not require that a borrower be current to obtain a forbearance; it requires only that the borrower attest to a financial hardship caused by the COVID-19 emergency. Without further clarification from Congress or the banking regulators, it appears that a bank must offer a CARES Act forbearance to borrowers whose federally backed mortgage loans were in default or delinquency before the COVID-19 pandemic.

16. How long is the "coverage period" during which borrowers have the right to forbearance?

Section 4022 does not define the term “coverage period.” Therefore, technically, the mortgage forbearance provisions of Section 4022 have no sunset date, and borrowers can request forbearances under Section 4022 indefinitely if their financial difficulty caused by the COVID-19 national emergency continues. However, assuming there is a technical corrections bill, ABA will recommend that the covered period be defined to be the earlier of the termination of the national emergency or December 31, 2020, which corresponds to the covered period for the multifamily forbearance provision.

17. If a bank denies a request from a customer for a loan modification, forbearance or deferral, must the bank provide an adverse action notice under Regulation B?

Generally speaking, a bank that declines an application for a loan modification, forbearance, or deferral must follow Regulation B's rules for adverse action in § 1002.9. If the bank declines the borrower's request because the loan for which the borrower is seeking relief is in default or delinquent, an adverse action notice is not required. Guidance provided by the Federal Reserve in 2009 regarding adverse action for HAMP refinances offers an excellent analysis of this issue.

However, banks should note that the CARES Act appears to require a bank to provide a forbearance to a borrower even if the borrower's loan was in default or delinquency before the COVID-19 pandemic began. The CARES Act applies to all federally backed mortgages, but does not apply to pure portfolio loans.

18. Will we need to record a modification for mortgage loan deferrals?

The CARES Act does not address post-forbearance modification requirements. The GSEs or agencies may require a servicer to record modifications for mortgage loan deferrals pursuant to their program requirements. Banks should consult applicable state laws and appropriate GSE/program guidelines for recording requirements.

19. Do TILA and other consumer protection regulations apply to payment deferrals on residential mortgage loans?

Generally, yes. Servicers must continue to comply with all consumer protection regulations applicable to mortgage servicing operations, including TILA, RESPA, TCPA, etc. However, the CFPB and the FFIEC agencies recently issued a joint policy statement granting flexibility to servicers for certain requirements of Regulation X, provided the servicer makes good faith efforts to comply with the specific requirements. In addition, the CFPB issued FAQs outlining specific relief from certain mortgage servicing rules.

20. Can you provide any guidance regarding the format of monthly mortgage statements during deferral periods for mortgage loans?

The FFIEC agencies recently issued a joint policy statement intended to clarify the application of mortgage servicing rules and the agencies’ flexible approach to supervision and enforcement related to certain rules during this emergency. However, the joint policy statement did not address requirements under Regulation Z for periodic statements.

21. Where can we get more information on using balloon payments as a post-forbearance repayment or rehabilitation option?

The CARES Act does not address post-forbearance loan elements. Banks must consult investor guidelines, regulators and legal counsel when assembling post-forbearance options that include balloon payments and other loan modification options.

22. Who is reimbursing mortgage servicers for the payments on behalf of borrowers to the GSEs and others for P&I payments during forbearance period?

The CARES Act does not create liquidity or other support mechanisms for servicers. The servicer must continue to remit payments, per the serving agreement with the agency. Discussions to provide liquidity support to servicers are ongoing.

23. The CARES Act specifically requires servicers to grant forbearances on "federally backed loans." On April 3, 2020, the banking agencies, the CFPB and the Conference of State Bank Supervisors issued guidance announcing a flexible supervisory and enforcement approach to communications with borrowers that are required by the CFPB's mortgage servicing rules. The CFPB also released compliance FAQs to further explain the guidance. Do the guidance and the FAQs apply to portfolio loans, as well as federally backed mortgages covered by the CARES Act?

The guidance and FAQs are not limited to CARES Act-covered loans. Specifically, the guidance states that:

"The agencies believe that the flexibility provided in this Joint Statement and the FAQs will enable servicers to provide borrowers with timely assistance, ensure that all borrowers are treated fairly and get the assistance they need, and focus on placing consumers in short-term forbearance programs voluntarily offered by the servicer or otherwise required by the CARES Act." *(Added 04/15/20)*

Real Estate Secured Lending – Flood Insurance and Escrow

24. Will flood determination and notice requirements apply if the term of a loan is not extended as a result of forbearance?

Flood Disaster Protection Act (FDPA) compliance requirements, including flood zone determinations and notice to borrowers, are triggered whenever a regulated lending institution makes, increases, renews or extends any loan secured by improved real property. Making, increasing, renewing, or extending a loan is a "MIRE event." The FFIEC agencies have not addressed whether forbearance or other loan modifications that do not result in a term extension are triggers for flood compliance. However, after past disasters ABA members have reported that examiners considered such loan adjustments to be MIRE events, which triggered flood compliance requirements.

Note, however, that in some circumstances lenders may rely on a previous flood zone determination, when increasing, extending, or renewing a loan (not making), if the previous determination is not more than seven years old. Also note that a new notice to be signed by the borrower should serve as a reminder that carrying flood coverage remains a condition of the loan as required under the FDPA (if applicable) and that this aspect is not part of the forbearance agreement.

25. Does CARES Act forbearance include the requirement to advance payments toward escrow such as taxes and insurance, or do requirements require coverage of P&I elements of the mortgage?

The CARES Act does not explicitly address treatment of escrow advances. However, section 4022(c) generally requires servicers to treat borrowers as if they had made all contractual payments on time and in full under the terms of the mortgage contract. This language implies that servicers will be required to advance any escrow amounts that are mandated under their contractual obligations with the creditor. Servicers should consult the appropriate GSE or federal agency program, as those guidelines will address escrow obligations.

Real Estate Secured Lending – Multifamily (5+ Units) and Commercial Real Estate

26. Does the CARES Act include protections for multifamily properties?

Yes, there are provisions that provide mortgage payment forbearance for borrowers with federally backed multifamily (5+ units) loans, and those borrowers who are granted forbearance must abide by an eviction moratorium.

Borrowers who were current on their mortgage payments as of Feb. 1, 2020 may request forbearance from their servicer after attesting that they are experiencing COVID-19 financial hardship. The initial period of forbearance is 30 days. Two additional forbearance periods of 30 days each are available as long as the borrower submits a request for extension at least 15 days prior to the end of the initial forbearance period and during the “covered period,” which will end on the earlier of the termination of the COVID-19 national emergency or Dec. 31, 2020.

For the duration of the forbearance, multifamily borrowers cannot: (1) evict or initiate eviction procedures against tenants for nonpayment of rent or charge late fees, penalties or other charges to tenants for late payment of rent; and (2) require tenants to vacate the property until 30 days after the landlord provides the tenant with a notice to vacate and that notice may not be issued until after the expiration of the forbearance. These restrictions are not limited to tenants affected by COVID-19, but appear to apply to all tenants regardless of their situation.

27. Does the CARES Act include relief for commercial real estate owners with have tenants who have been impacted by COVID-19?

Forbearance under the CARES Act is *only* available to owners of multifamily (5+ units) residential properties secured by a "federally backed mortgages" (Fannie Mae, Freddie Mac, FHA, etc.).

Real Estate Secured Lending – Foreclosure

28. Should we be continuing to send Notice of Intent to Foreclose and breach letters to delinquent borrowers who have not contacted the bank for a forbearance at this time?

Under CARES Act Section 4022(c)(2), except with respect to vacant or abandoned property, there is a 60-day foreclosure moratorium for servicers of a federally backed mortgage loans effective March 18, 2020.

29. Can a bank foreclose on a commercial property now?

Yes. The CARES Act provisions on foreclosure moratoria do not cover foreclosures on commercial (non-multifamily) property.

30. Does the 60-day pause in foreclosures apply to portfolio loans?

No. The CARES Act foreclosure moratorium applies to "federally backed mortgage loans," which are defined as loans supported or insured by Fannie Mae, Freddie Mac, Federal Housing Administration (and other agencies), and secured by a first or subordinate lien on 1-to-4 family residential real property (including individual units of condominiums and cooperatives). The moratorium does not apply to pure portfolio loans.

Federal Home Loan Banks

31. How are the Federal Home Loan Banks treating collateral impacted by the COVID-19 crisis?

Each FHLB has its own policies on FHLB collateral, so it is important to check your respective FHLB website or contact your FHLB representative to determine their collateral policy. The regulator of the FHLBs, the Federal Housing Finance Agency, has issued a statement allowing FHLBs to accept collateral with modifications or forbearance as a result of the COVID-19 emergency. As of now, none of the 11 FHLBs is increasing haircuts on existing collateral pledged for advances.

32. Will the FHLBs continue to require a wet ink signature on a modification agreement for their Mortgage Purchase and Mortgage Purchasing Finance Programs?

The Federal Housing Finance Agency, has issued a statement that the FHLBs can accept electronically or digitally signed modifications. The statement is silent as to the acceptability of electronic or digitally signed documents for loan originations.

Fair Lending and PPP Loans

33. Do fair lending laws apply to the SBA's Paycheck Protection Program (PPP)?

Yes. The Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691 et seq., implemented by the CFPB's Regulation B, 12 CFR § 1002.1 et seq., applies to commercial as well as consumer credit. Regulation B prohibits a bank, as a creditor, from discriminating against an applicant on the basis of race, color, national origin, sex, marital status, religion, age, receipt of income from public assistance, or the exercise of a right under certain consumer protection laws.

Regulation B prohibits not only discrimination against an applicant for credit, but also prohibits discouraging a prospective applicant from applying for credit, on a prohibited basis.

State fair lending laws may also apply to commercial credit, and may extend protections on other bases, e.g., individuals with disabilities.

34. Does Regulation B require a bank to participate in the PPP?

No, Regulation B does not require a bank to participate in any particular loan program. However, if a bank decides to participate in a loan program, it must do so consistent with Regulation B and any applicable state fair lending laws.

35. May a bank decide to offer PPP loans only to its existing customers? In the alternative, may a bank decide to give priority to applications from its existing customers?

Generally, Regulation B does not expressly prohibit a bank from limiting PPP loans to existing customers, or prioritizing applications from existing customers. Regulation B prohibits a bank from discriminating against an applicant, or discouraging a person from applying, on a prohibited basis, e.g., race, sex, national origin, etc. The banking agencies also interpret Regulation B to prohibit discrimination based on a proxy for a prohibited basis. Being an existing customer of the bank is not a prohibited basis under Regulation B, and it does not appear to be a proxy for a prohibited basis.

However, a bank that wants to limit PPP loans to existing customers, or to prioritize applications from those customers, should first discuss such policies with its compliance and legal team. As with all bank policies, consistent application is important. If exceptions to policy are permitted, they should be documented based on objective business reasons. Exceptions should be monitored to help ensure that the bank does not inadvertently disfavor applicants on a prohibited basis.

36. Will a bank that limits PPP loans based on customer relationship be subject to disparate impact claims?

Regulators routinely examine banks for fair lending, and a fair lending exam may include a review for disparate impact. Disparate impact occurs when a bank uses a neutral policy that disproportionately impacts one or more protected classes, and the policy is not necessary to achieve a business objective or the business objective could be achieved through a less discriminatory alternative. A bank that limits PPP loans to its existing customers should discuss any potential for disparate impact with its compliance and legal team and document its business reasons for the policy.

37. If a non-customer applies for a PPP loan, and the bank declines the application because it limits those loans to its existing customers, is the bank required to send an adverse action notice to the non-customer applicant?

Yes, the bank must comply with Regulation B's requirement to give an adverse action notice to a business that applies to the bank for a loan and is declined. See 12 CFR § 1002.9. However, for business credit applicants, the requirements for adverse action notices are somewhat less stringent than for consumer credit, as outlined here:

- For a business applicant with revenues of $1 million or less, the bank must still provide notice of action taken within specific time frames, e.g., within 30 days of receipt of a complete application, but may provide the notice orally instead of in writing. The bank has the option, under § 1002.9(a)(3)(i)(B), to either disclose at the time of application that the applicant has a right to the reasons for denial, or to provide that disclosure orally when the bank notifies the applicant of the action taken.

- If the business applicant's revenues exceed $1 million, the bank may provide notice within a reasonable time of taking action, the notice may be oral, and the bank need only provide specific reasons for denial upon the applicant's written request. See 12 CFR § 1002.9(a)(3).

38. Is an adverse notice required if an applicant does not meet the SBA's program eligibility and underwriting requirements? The SBA's Interim Final Rule states that "Each lender's underwriting obligation under the PPP is limited to the items above and reviewing the "Paycheck Protection Application Form." Also, Regulation B provides an exception to adverse action for "[a] refusal to extend credit because applicable law prohibits the creditor from extending the credit requested…" (12 CFR § 1002.2(c)(2)(iv).)

A bank that declines an application for the PPP program must follow Regulation B's rules for adverse action, which are somewhat relaxed for business applicants, as outlined in the answer to Question 46. The SBA's Interim Final Rule (IFR) explains what is necessary to obtain an SBA guarantee on the loan—and it does not appear to override or repeal ECOA and Regulation B. For similar reasons, it is unclear whether a bank could rely on § 1002.2(c)(2)(iv) to avoid giving notice of action taken. SBA's IFR does not appear to be a law prohibiting the lender from making a loan to a business. Instead, the IFR outlines the specific conditions under which SBA will guarantee a particular type of business loan.

39. On April 16, SBA announced that it would no longer accept PPP applications due to lack of funding. Is a bank required to comply with Regulation B's adverse action requirements for applications already in its pipeline and any applications taken after the SBA's announcement?

Regulation B provides that adverse action occurs when a creditor refuses to grant credit in substantially the amount or on substantially the *terms* requested *in an application*, unless the creditor makes a counteroffer and the applicant accepts it. 12 CFR 1002.2(c)(1). On the other hand, adverse action does not occur when an applicant requests *a type of credit* that the creditor does not offer. 12 CFR 1002.2(c)(2)(v). Banks should consult with their compliance and legal teams when considering whether to provide adverse action notices for applications the bank takes while SBA is not accepting PPP applications. Arguably, the PPP loan program is a "type of credit" that a bank does not offer when SBA is not accepting PPP applications. Under this approach, a an adverse action notice is not required. However, regulators may view this scenario as adverse action – because they may view the "type of credit" as commercial credit, while the PPP program represents specific terms the applicant requested, e.g., a fixed rate and loan forgiveness as outlined in the PPP program, and the creditor declined to provide those terms. Regulation B Comment 1002.2(c)(2)(v)-1 states that as between "type of credit" and "terms," "[w]hen an applicant applies for credit and the creditor does not offer the credit *terms* requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of down payment), a denial of the application for that reason is adverse action" unless a counteroffer is made and accepted.

Note that because adverse action is premised on receipt of an application (or an inquiry that becomes an application under Comment 1002.2(f)-3), the bank may decide not to take any PPP applications while the PPP program lacks funding. The bank generally would not have adverse action obligations toward prospective applicants who ask to apply for a PPP loan.

FCRA/Credit Reporting

40. The CARES Act included an amendment to the Fair Credit Reporting Act (FCRA) which requires furnishers who make "an accommodation" to report accounts as current if the consumer makes a reduced payment or makes no payments as agreed between the consumer and creditor. Will the credit bureaus make these changes or does the bank have to work with its core service provider?

If the bank relies on a core provider to report, it should work with its core provider to ensure accounts are properly coded. The amendment generally reflects current reporting standards applicable during a natural disaster.

41. Must banks made accommodations?

The FCRA amendment does not require banks to enter into accommodation agreements with borrowers; however, other provisions of the CARES Act, for example section 4022, which requires forbearance on Federally backed one to four family mortgages and section 4023, which requires forbearance on Federally backed multifamily residential properties.

42. Does reporting as current apply to portfolio loans as well or just government backed loans?

The requirement applies to all loans where there is a forbearance agreement.

43. If the loan is reported current for the duration of the accommodation, should a special comment code be used to indicate forbearance or disaster, or should no special comment code be entered?

The bank may report a special comment code. It may use only one special comment code and should use the code that is most relevant (forbearance or natural disaster). For example, AW (natural disaster) cannot be reported at the same time as CP (account in forbearance). The primary requirement is to treat the account as current.

44. If the account was delinquent before the accommodation, does the bank report the account as current?

No, the bank should maintain the delinquent status during the period in which the accommodation is in effect unless the consumer brings the credit obligation or account current during or as part of the accommodation.

45. If the account was charged-off, must the bank report the account as current?

No, the requirement to report accounts as current if an accommodation has been made because the borrower was impacted by COVID-19 does not apply to charged-off accounts.

46. When borrowers are more than 30 days past due when they request COVID-19 relief, can the bank report accounts as past due up to the date of the request, or must the bank amend prior month reports to the bureaus?

Generally, the bank need not amend prior reports if the borrower was delinquent prior to the accommodation. However, because the CARES Act provision is effective as of January 31, 2020, banks may have some borrowers who were impacted by COVID-19 before March for whom the banks may want to grant an accommodation retroactively. Based on the CDC numbers and the fact that the President did not declare a state of emergency until March 13, the number of those borrowers should be low.

For borrowers who are more than 30 days past due when they request COVID-19 relief, the bank can report accounts as past due, unless the accommodation is effective as of an earlier date. Under the CARES Act, the bank would report the account as of the effective date (assuming the borrower was not yet delinquent, or the accommodation brought the account current).

March will be the trickiest month because the CARES Act did not pass until March 27, and many furnishers who report as of the end of the month will not have had time to make adjustments for the March 31 reporting date if the accommodation was effective earlier than March 31. Thus, by way of example, if a borrower requested relief on March 13 because the borrower was impacted by COVID-19, and the bank made the accommodation effective March 13, the account would be reported as current if the accommodation brought or kept the account current as of March 31; or the status would be frozen at the prior delinquent status so that further delinquency did not accrue as of March. If it wasn't so reported, the bank would need to adjust the payment history for March either by manual update or in the next reporting cycle.

See additional information about credit reporting requirements.

47. Have regulators released guidance about supervisory and enforcement expectations regarding requirements that credit bureaus and banks respond to consumer disputes about information provided to credit bureaus within the statutory timeframes? (Updated per CFPB 4/7/20)

Yes, the CFPB, recognizing that "some consumer reporting agencies and furnishers may experience significant reductions in staff, difficulty in taking disputes, or lack of access to necessary information," has indicated in its Statement on Supervisory and Enforcement Practices Regarding the Fair Credit Reporting Act and Regulation V in Light of the CARES Act that:

> *In evaluating compliance with the FCRA as a result of the pandemic, the Bureau will consider a consumer reporting agency's or furnisher's individual circumstances and does not intend to cite in an examination or bring an enforcement action against a consumer reporting agency or furnisher making good faith efforts to investigate disputes as quickly as possible, even if dispute investigations take longer than the statutory timeframe.*

The CFPB also noted that furnishers and consumer reporting agencies may take advantage of statutory and regulatory provisions that eliminate the obligation to investigate disputes submitted by credit repair organizations and disputes they reasonably determine to be frivolous or irrelevant.

Deposit Insurance/FDIC Debt Guarantee

48. Is there an expected timeline for an FDIC announcement on Authority program?

The timeline for the FDIC to act is uncertain. The CARES Act only gives the FDIC authority to implement a program to guarantee bank obligations. In order to implement such a program, the FDIC would need to work together with the Federal Reserve and Treasury to determine the need for such a program. While these agencies are monitoring bank liquidity, ABA is seeking bankers to tell their story to demonstrate the need for such a program at liquidity@aba.com.

49. Any updates on FDIC insurance coverage? Has it been increased temporarily?

It has not been increased at this time – it remains $250,000.

FMLA/Banks as Employers

50. Do the paid leave provisions in the "Families First Coronavirus Response Act" (FFCRA) expire or continue indefinitely?

The paid leave provisions expire on December 31, 2020.

51. After the school year ends, can an employee claim eligibility for Expanded Family and Medical Leave (i.e., paid FMLA leave), even though the employee would have had to arrange for day care during that time?

Yes, if the employee's childcare arrangements are unavailable due to the coronavirus. The FFCRA states that an employee has a qualifying need to take the Expanded Family and Medical Leave (i.e., paid FMLA leave) if the employee is "unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age . . . if the school or place of care has been closed, or the child care provider . . . is unavailable" (emphasis added).

52. May an employee use the paid FMLA leave provided under the FFCRA if the employee has taken FMLA leave previously? For example, if the employee recently had a baby and used most of the 12 weeks of leave provided by the FMLA, and now has no childcare because of the coronavirus, can the employee take additional FMLA leave under the FFCRA's paid FMLA leave provision?

The paid FMLA leave provided by the FFCRA does not expand the total number of weeks of FMLA leave an employee may take. If the employee has already taken some FMLA leave, the employee may take up to the remaining portion of the 12-week leave for the (paid) Expanded Family and Medical Leave provided by the FFCRA.

53. It appears that an employee who is unable to work due to a need to care for a child may be eligible for both the Expanded Family and Medical Leave (paid FMLA leave) and Emergency Paid Sick Leave. How do these two provisions interact?

The Department of Labor's temporary rule states that an employee who qualifies for both paid FMLA leave and paid sick leave under the FFCRA will receive Emergency Paid Sick Leave for the first two weeks, and then paid FMLA leave for the remainder of the 12 weeks.

54. If an employee must wait a certain period of time for the results of a coronavirus test and cannot work during this time, but the test comes back negative, can the employee retroactively apply and receive paid sick leave for the days the employee stayed home?

Paid sick leave is available to an employee who is experiencing symptoms of COVID-19 and seeking a medical diagnosis or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

55. If the employee receives a negative test for COVID-19 but has symptoms and is asked by the bank to quarantine, is the employee eligible for paid sick leave?

Most likely, yes, because the employee is experiencing symptoms of COVID-19. As stated above, paid sick leave is available to an employee who is experiencing symptoms of COVID-19 and seeking a medical diagnosis or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.

56. Why did Congress make the paid leave provisions in the FFCRA effective 15 days after enactment and not earlier, when employers already had employees needing to use the leave provided by the legislation?

Congress sets dates for legislation. Here, these provisions became effective within 15 days of the legislation's enactment. The Department of Labor clarified that the law's effective date is April 1.

57. Does the paid FMLA leave provisions in the FFCRA apply to a community bank that, because it has fewer than 50 employees, was not required under the then-existing law to provide FMLA leave?

Yes, unless you are subject to the complete exemption for certain small businesses with fewer than 50 employees. A small business with fewer than 50 employees may deny an employee's leave request if, among other reasons, providing the leave "would entail a substantial risk to the financial health or operational capabilities of the business because of their specialized skills, knowledge of the business, or responsibilities." This standard would appear to permit a bank with fewer than 50 employees to deny a request for paid leave to an employee whose work is needed to keep an operational component or line of business of the bank open.

58. Would the FFCRA's paid sick leave provisions apply to an employee that has been asked by the bank to quarantine because that person has traveled and possibly been exposed?

It depends. Paid sick leave is available to an employee who is subject to a Federal, State, or local quarantine or isolation order related to COVID-19, is experiencing symptoms of COVID-19 and seeking a medical diagnosis, or who has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. Because of the employee's travel, he or she may be subject to a Federal, State, or local quarantine or isolation order and thus would qualify for paid sick leave.

Brokered Deposits

59. Given all the payment forbearance we are being requested/required to absorb, compounded by the likelihood for potential credit losses as a result of COVID - 19, liquidity will no doubt become stressed. Thus, all available liquidity sources must be available to undertake this enormous endeavor. However, banks that fall below Well Capitalized will be subject to the

liquidity restraints and rate caps of Section 29 of the FDA Act. Can we the industry get a stay on the enforcement of the statute or get the statue amended as proposed by the FDIC?

ABA has long sought changes to Section 29 of the FDI Act; the FDIC is currently considering an overhaul of its brokered deposit framework. ABA will continue to advocate to both Congress and the FDIC to modernize the statute and regulations.

Lending Programs

60. **How should banks explain the National Security loan program to their government contractor customers? Is this available to any size defense contractor?**

    The Treasury is required to publish procedures within 10 days of enactment – Monday, April 6.

61. **Under the Main Street Lending program, will local banks be able to approach the Fed on behalf of borrowers, or will businesses have to approach the Fed directly? More broadly, what is the bank's role?**

    The Fed and Treasury are still determining procedures for this program.

Ag Questions

62. **Does the CARES Act provide direct stimulus for farmers and ranchers, especially in light of low commodity prices?**

    The law provides $14 billion for the Commodity Credit Corporation and $9.5 billion for additional assistance to producers.

Capital

63. **Regarding the Community Bank Capital Ratio, when does the reduction to 8% expire and what is the possibility of maintaining it at 8%?**

    Effective for the second quarter, the banking agencies issued interim final rules setting the CBLR at 8% for the remainder of calendar year 2020, at 8.5% for calendar year 2021, and 9% thereafter. We will continue to ask regulators to keep the CBLR at 8%, especially if the downturn persists, so that banks can better support their communities.

Bank Secrecy Act (BSA) Compliance

64. **What are the CTR filing requirements?**

    FinCEN also acknowledges that there may be delays in filing CTRs under current circumstances. Therefore, it has suspended a February ruling that would have required CTR filings to include location information for entities. That revision would have taken effect on April 6 for individual filers and September 1 for batch filers. Banks that have already made the change to comply with the new requirements can continue operating under the February ruling.

Separately, on March 16, FInCEN stated that if banks are facing challenges due to the national emergency, particularly meeting filing deadlines, they should contact the FinCEN helpline for advice. At the same time, banks should keep both FinCEN and their prudential regulator informed of changing circumstances.

65. How should a bank contact FinCEN?

To help banks comply with the changed circumstances, FinCEN has created a new contact mechanism. Banks that need assistance should go to the FinCEN website (www.fincen.gov) and then at the center of the bottom of the first page, click on the tab labelled “Need Assistance.” On the form that pops up, bankers should select “COVID-19” from the dropdown menu under “Subject” towards the bottom of the form (just above the message section). FinCEN will respond to the extent possible and reminds bankers to keep their prudential supervisor and FinCEN informed about any changed circumstances