



# PAYMENT DEFERRALS & COMPLIANCE ISSUES

## ASSISTING BORROWERS DURING THE PANDEMIC CRISIS

by Sarah Oliver, CRCM  
& Janet Munns, CRCM

### Payment Deferrals & Compliance Issues: Assisting Borrowers During the Pandemic Crisis

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*What should Compliance be thinking about as management discusses payment deferrals on loans during the COVID-19 pandemic?*

We've received this question several times in the past week. We take pleasure in seeing our industry simply trying to do the right thing by its consumer borrowers, and the comradery it brings. While not an exhaustive list, here are some things for Compliance Officers to think about and discuss with management. Some of these issues depend on the product, the collateral, and especially what you will do with the skipped or deferred payments and the related interest amounts due.

1. A deferral is a change in terms that needs to be agreed to by the borrower, and state law may require the consent and signature of all co-borrowers. There are different ways to offer deferrals and to deal with the related interest amounts due. We recommend working with your attorneys on the language of the deferral/modification, and ensuring your systems will do what you say they are going to do.
2. Consider whether everyone is eligible for the deferral. If not, how do borrowers apply? Make sure you consider any fair lending impact.
3. Will you charge a fee for the deferral? Given the reason for need as a pandemic, consider UDAAP from all angles first.
4. Will the deferred payments result in a balloon payment at maturity when the loan maturity is not being extended? This fact should be disclosed.
5. Similar issues as these are discussed in the June 2019 issue of [FDIC Consumer Compliance Highlights](#), "The FDIC has observed examples of actions financial institutions have taken to mitigate potential risks related to their Skip-A-Payment programs. For example:
  - Providing consumers with clear and adequate disclosures that detail how the program will work and the potential impact of the program on a consumer's loan;
  - Clearly defining customer eligibility criteria;
  - Providing training to staff in advance of launching the program; and
  - Setting monitoring protocols for adherence to institutions' policies."
6. Will you pull credit in making the decision? If you decline a deferral you may need to provide adverse action notices under Regulation B/ECOA, and Credit Score Disclosures under Regulation V/FCRA.

7. For loans secured by real estate located in a Special Flood Hazard Area, you must provide a new Notice of Special Flood Hazards if the maturity is being extended or the principal balance is being increased. Additionally, a new determination is required if the current Flood Determination on file is not dated within seven years on the same subject property. If you decide to charge a fee for the flood determination, it needs to be disclosed to the borrower in advance.
8. What change will the deferral program have on accounts with escrow? Be sure to disclose everything up front to borrowers, especially if it is likely to cause an escrow shortage or deficiency in the coming year. Refer to [12 CFR §1024.17\(f\)](#).
9. Make sure your systems are set so that consumers who are paid current today are not reported past due or charged late fees when taking advantage of immediate payment accommodations.
10. And lastly, communicate with your primary regulator in the case of any concern and document your reasoning for decisions regarding the program. The regulators are [encouraging financial institutions](#) to “provide borrowers affected in a variety of ways by the COVID-19 outbreak with payment accommodations that facilitate their ability to work through the immediate impact of the virus.” The ultimate goal is to provide short-term assistance that can help the borrower and the community to recover.

During this unprecedented COVID-19 pandemic, we will continue to provide support to our clients, and wish you the very best in health as we move forward. Please [contact us](#) if you have questions and continue to check our [COVID-19 RESOURCE HUB](#) website for sources of information and updates.

*This article is current as of March 23, 2020 and may not be updated for regulatory changes occurring after this date. The opinion expressed here is for informational purposes only and readers are encouraged to review any current state or federal law and regulation that applies in all jurisdictions where a company operates, and to seek legal counsel as necessary.*

## **ABOUT THE AUTHORS**

### **Sarah Oliver, CRCM**

Sarah is a manager and a consultant in the Financial Institution Advisory Group of Saltmarsh, Cleaveland & Gund. Her primary areas of expertise include providing compliance reviews, assisting with special research matters and consulting on deposit and lending related regulations as well as social media approaches for financial institutions. She especially enjoys contributing to and writing compliance related articles for several national industry organizations.

### **Janet Munns, CRCM**

Janet is a consultant in the Financial Institution Advisory Group of Saltmarsh, Cleaveland & Gund. Her primary areas of expertise include loan compliance reviews, secondary market lending operations internal audits, and HMDA data integrity reviews. Janet has over thirty years of diverse banking experience, focused in the areas of regulatory compliance, banking operations and development of policies and procedures.