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FALL 2020

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Governance, Risk & Compliance (GRC) is a division of Wolters Kluwer, which provides legal and banking professionals with solutions to ensure compliance with ever-changing regulatory and legal obligations, manage risk, increase efficiency, and produce better business outcomes. GRC offers a portfolio of technology-enabled expert services and solutions focused on legal entity compliance, legal operations management, banking product compliance, and banking regulatory compliance.

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Stevie D. Conlon
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"Expect the unexpected." This is the reality of compliance officers as they create a new response playbook to help their institutions comply with both new and existing regulatory rules while also managing operational challenges during a pandemic. These rules and challenges, as well as the various relief provisions intended to help many consumers with economic struggles during the pandemic, complicate the work of compliance officers. And the COVID-19 crisis has also accelerated the adoption of technological solutions by banks and customers, complicating life and business. New challenges trigger new solutions, and in turn, new solutions necessitate new compliance processes. Diligent institutions are adapting and innovating in response.

Compliance management systems should be reviewed to assess whether updates are needed due to the adoption of new solutions. And regulatory change continues unabated, whether it is modernizing the CRA regulation, including the issuance of a final rule by the OCC in late May, and the release of an ANPR by the Federal Reserve Board in September, specialized compliance considerations under pandemic relief provisions, such as the Paycheck Protection Program, or the ongoing changes and updates by prudential regulators or others. Compliance officers and their institutions must adapt and remain vigilant.

This magazine contains a selection of recent articles and white papers written by Wolters Kluwer regulatory compliance experts. We hope you can find a few minutes to read and reflect on these pieces, which cover a variety of topics of significant concern to compliance and risk management professionals.

You can be confident that Wolters Kluwer will be there to support you as you remain focused on staying connected and proactively monitoring risk and compliance. And you can continue to count on us as a trusted business partner, committed to helping you ensure compliance and manage risk through our services and solutions.

We hope that you, your teams, colleagues and families are well and safe during these difficult times and we wish you all the best.

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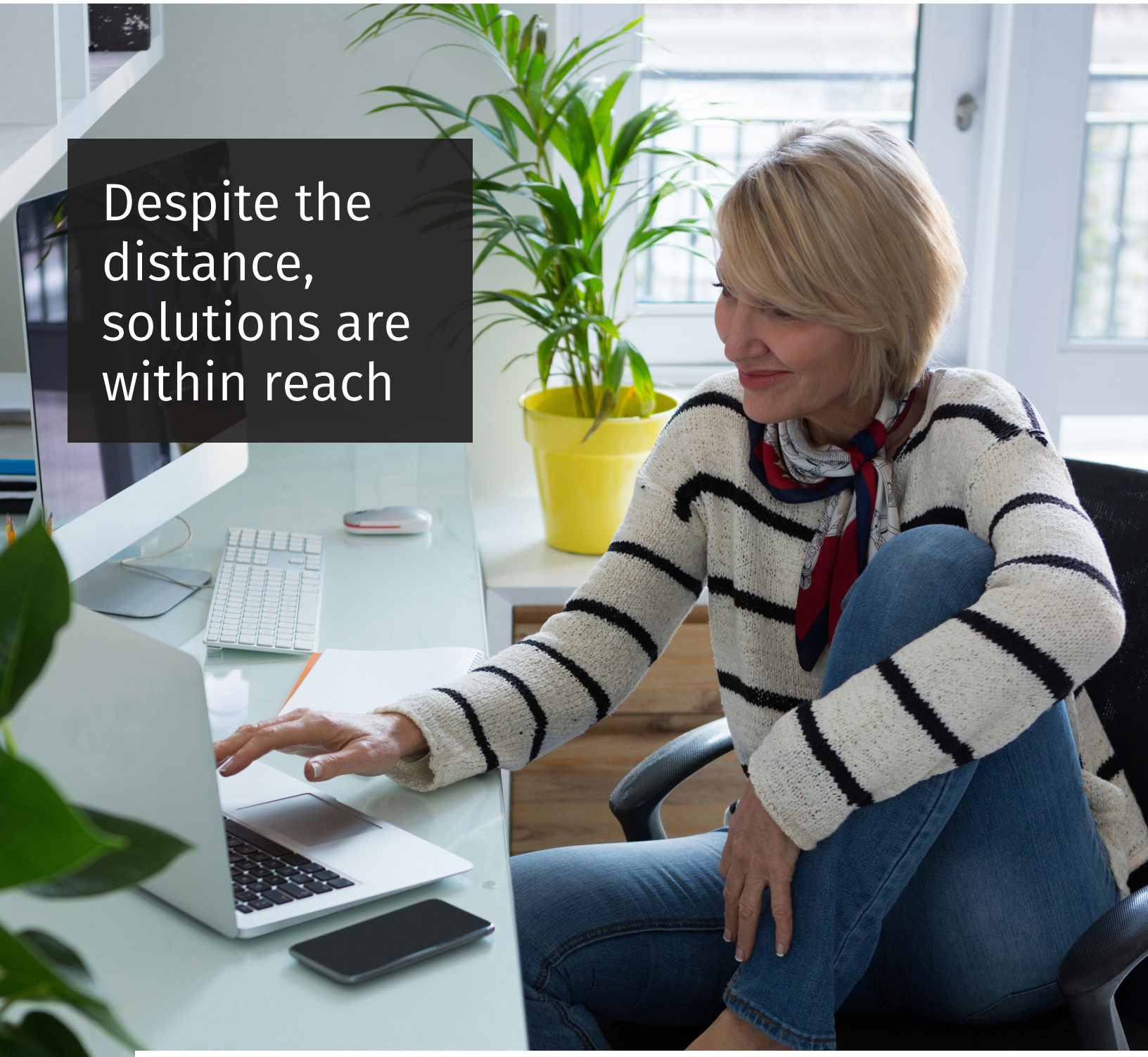
When you have to be right



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Conducting pandemic risk assessments: What banks need to know

By **NEAL DOHERTY**

Regulators will expect banks to be better prepared for the next crisis event, and they have offered guidance on how you should prepare.

Everyone who works in compliance understands the need for flexibility and adaptability. More often than not, new laws are enacted by state legislatures at the stroke of midnight or beyond. These new requirements are often effective immediately, with no lead time and scant guidance on implementation. It is the job of the legal and compliance professionals to figure it out so the business can operationalize the requirements.

Given the COVID-19 pandemic, the current state of affairs makes that environment look like a regulatory paradise. Hopefully the COVID-19 outbreak will be under better control soon and future pandemics will not be a regular occurrence. Let us hope the "new normal" is not normal, and that we get back to business as usual.

The current pandemic has caused a complete change in how we work with financial services clients—and what they view as top priorities. Compliance officers and other stakeholders are being pulled in myriad directions, with priorities changing on a near daily basis.

For example, regulatory compliance projects in the works have been deferred as banks ramped up their ability to process loans under the Paycheck Protection Program, prepare for PPP loan forgiveness, and address a host of other COVID-related challenges.

While it is too late to plan for the current pandemic, regulators will expect financial institutions to be better prepared for the next event, and they have offered guidance on how institutions should prepare.

Show you can scale protective efforts

In response to the outbreak of COVID-19, the Federal Financial Institutions Examination Council issued updated guidance on actions that financial institutions should take to mitigate business impact during a pandemic. This new guidance builds upon guidance issued in 2006 and 2007. "Pandemic planning presents unique challenges to financial institutions," the FFEIC notes. "Unlike most natural or technical disasters and malicious acts, the impact of a pandemic is much more difficult to determine because of the anticipated difference in scale and duration. As a result of these differences, no individual or organization is safe from the potential adverse effects of a pandemic event."

The updated guidance requires financial institutions to take steps to mitigate business impact during a pandemic. Following are some essentials to consider in evaluating

whether your bank is prepared to effectively manage impacts to your business in the wake of the COVID-19 pandemic.

Under the updated federal guidance, financial institutions must have the following:

- A preventive program to reduce the likelihood that an institution's operations will be significantly affected by a pandemic event.
- A documented strategy that provides for scaling the institution's pandemic efforts, so they are consistent with the effects of a particular stage of an outbreak.
- A comprehensive framework of facilities and systems to ensure the institution can continue critical operations in the event that large numbers of employees are absent.
- A testing program to ensure that pandemic planning capabilities are effective.
- An oversight program to ensure ongoing review and updates to the pandemic plan.

State regulators have published similar guidance, including the New York State Department of Financial Services, which requires financial institutions to submit a summary of pandemic preparedness plans to the agency. Under NYDFS's guidance, an institution's preparedness plan must include:

- Preventive measures designed to mitigate the risk of operational disruption.
- A documented strategy addressing the impact of the outbreak in stages.
- Assessment of all facilities and systems necessary to continue critical operations.
- Assessment of potential increased cyber-attacks and fraud.
- Employee protection strategies.
- Assessment of the preparedness of critical third-party service providers;
- Development of a communication plan.
- Testing the plan to ensure the plan is effective.
- Governance and oversight of the plan.

Identify and document all relevant risk

Integral to creating a preparedness plan is conducting a formal risk assessment. The current crisis has underscored the regulatory expectation that a risk assessment take into account the impact of a pandemic, as well as more isolated business continuity events.

Regulators expect financial institutions to identify and document all relevant risk factors and how well those risks are controlled. Per FFIEC guidance, financial institutions should complete the following risk assessment and risk management steps:

- Prioritize the severity of potential business disruptions resulting from a pandemic.
- Perform a gap analysis to determine what steps are needed to mitigate the severity of potential business disruptions.
- Develop a written pandemic plan.
- Require an annual review and approval of a pandemic plan by the Board of Directors or Board committee. .
- Communicate and disseminate the plan and the current status of the pandemic to employees.

In addition, financial institutions should consider the following:

- **Coordination with third parties.** Open communication and coordination with critical third-party service providers is vital.
- **Identification of triggering events.** A triggering event occurs when an environmental change takes place that requires management to implement its response plans based on the pandemic alert status.
- **Employee protection strategies.** Employee protection strategies are critical to sustain an adequate workforce.
- **Mitigating controls.** Control processes can be implemented to mitigate risk and the effects of a pandemic.
- **Remote Access.** Robust employee telecommuting capabilities will be required.

Be formal and proactive

Risk assessments should be formal exercises performed annually. The exact process and methodology may be customized by an institution, however the identification of inherent risk and the alignment of associated risk-mitigating controls providing an assessment of the institution's residual risk is the generally accepted format.

When advising banks on performing a risk assessment, we recommend that our clients establish a formal, proactive risk identification, assessment and mitigation approach and methodology. Important points to consider include:

- The assessment of inherent risks should identify risk factors that align to each applicable requirement, process, or product feature. Drilling down and considering each risk factor in greater detail provides a more thorough understanding of the impact and likelihood of all potential risks.
- The risk assessment approach and methodology should map risk-mitigating controls established to address each risk factor.
- The risk assessment methodology should be based on a mathematically driven formula that scores inherent risk, control effectiveness and the resulting residual risk. Incorporating math as a basis for deriving the scoring enhances reporting and illustrates risk objectively using heat maps.

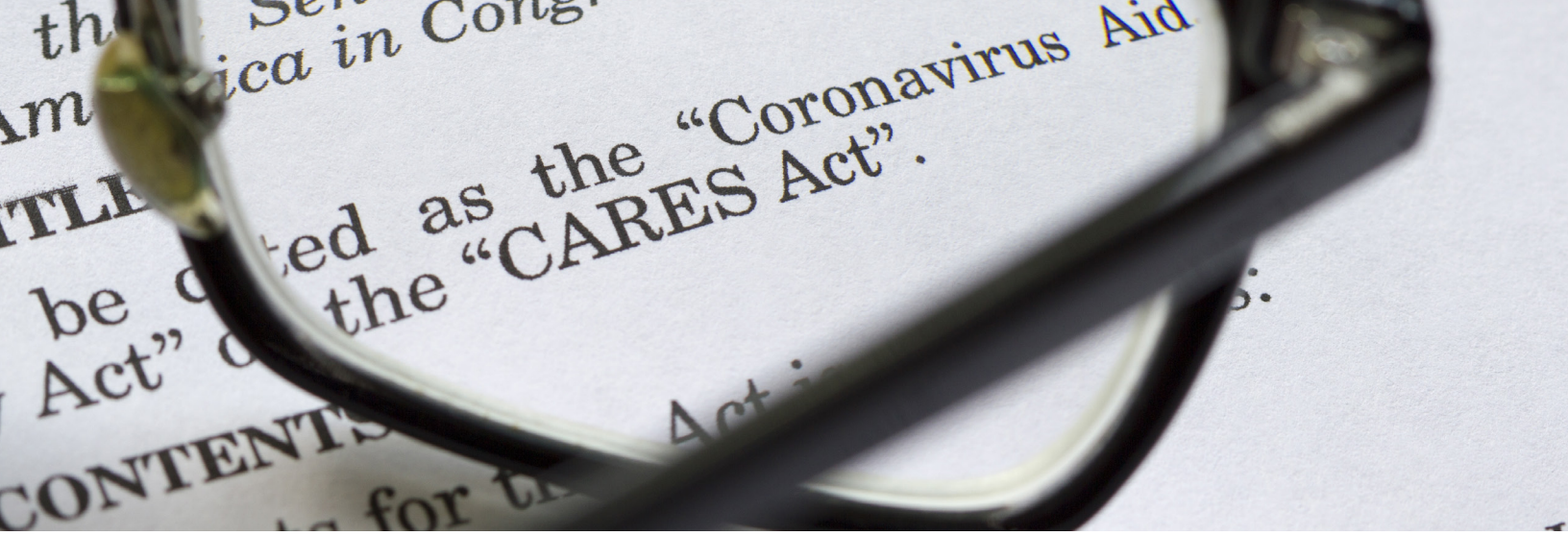
Conducting the risk assessment to this level of detail and objectivity not only positions companies to a proactive risk management posture, but it serves as an invaluable control inventory and ongoing living record of a company's risk position.

Now more than ever, regulators will expect financial institutions to have properly assessed the risks from pandemics and to develop appropriate preparedness and response plans. When the next pandemic arrives, regulators will want financial institutions to implement those plans to help mitigate operational impacts. For all our sakes, let's hope they don't have to.

Published in ABA Banking Journal, April 2020

About the author

Neal Doherty is an attorney and compliance professional with 20 years of experience in the financial services sector. In his role, Doherty advises clients on building effective compliance management systems and risk assessment processes for managing and mitigating compliance, fair lending and UDAAP risks.



Is your mortgage servicing program CARES Act-compliant?

By **THOMAS GRUNDY, CRCM**

The COVID-19 pandemic has thrust the world into an unimaginably difficult situation. Though authors of science fiction may try, no one could have fully anticipated the scale and speed with which the pandemic would impact the economy. For mortgage lenders and servicers, the pandemic will prove to be a test of business continuity planning while managing process and regulatory changes in real time, all while maintaining fairness and compliance across all aspects of day-to-day operations.

The CARES Act (Pub. L. No. 116-136; the "Act") was enacted on March 27, 2020, to provide financial assistance and other types of relief as the negative economic impact of the COVID-19 pandemic set in across the country. The consumer finance provisions under Title IV of the Act directly address helping Americans struggling to make mortgage payments due to the economic slowdown caused by the pandemic. These provisions cover "Federally backed mortgage loans," which are defined under the Act as any loan that is secured by a first or subordinate lien on residential real property designed principally for the occupancy of from one-to-four families that is:

- Insured by the Federal Housing Administration or under the National Housing Act;
- Guaranteed or insured by the Department of Veterans Affairs or the Department of Agriculture; or
- Purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

For servicers of mortgages not covered by the CARES Act, the provisions of the Act serve as guidance applicable to servicers helping millions of borrowers with covered loans. Given the profound impact of the pandemic across all sectors of the economy and its 24-hour coverage in the news, consumers are acutely aware of important elements of the assistance made available by the law. However, awareness of important details is generally lost on the average consumer. Thus, for servicers of non-federally backed mortgages, it is likely that the calls are, and will, come in large volume from borrowers seeking help from loan servicers. Helping borrowers stay in their homes and maintaining their lives generally yields a positive outcome over the long haul for borrowers, lenders, local economies and the government.

Consumer right to request forbearance

Section 4022 of the Act provides that a borrower experiencing financial hardship due to the COVID-19 pandemic can request forbearance for a federally-backed mortgage loan regardless of delinquency status. This process occurs through the submission of a request by a borrower to the servicer of his or her mortgage affirming that he or she is experiencing a financial hardship during the COVID–19 emergency. Upon this request by a borrower, the servicer is required to grant forbearance for up to 180 days. The servicer shall extend the duration of the forbearance for an additional period of up to 180 days.

Upon receiving a request for forbearance from a borrower, the law provides that a servicer shall grant the request with no additional documentation required other than the borrower's attestation to a financial hardship caused by the COVID–19 emergency. The law explicitly provides that during the period of forbearance "no fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract" can be assessed on the borrower.

Servicers should be careful to comply with this prohibition. Governance process and system-driven controls must ensure that no fees, penalties, or interest beyond the amounts scheduled or calculated—as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract¬—are charged. These controls must remain fully established in connection with the 180-day forbearance period, as well as an extension for an additional period of up to 180 days, provided that the request is made during the covered period (although not specifically defined in the law, it presumably means during the original 180-day period) and that at the borrower's request, either the initial or extended period of forbearance may be shortened.

Foreclosure moratorium

Section 4022(c)(2) of the Act further provides that servicers of federally-backed mortgage loans may not initiate any judicial or non-judicial foreclosure process, move for a foreclosure judgment or order of sale, or execute a foreclosure-related eviction or foreclosure sale for not less than the 60-day period beginning on March 18, 2020. The Act provided an exception for a vacant or abandoned property. While the 60-day period expired on May 17, 2020, it is always prudent to closely monitor foreclosure and collection policies, procedures, and actual practices to ensure fairness and appropriate customer treatment at all times.

Forbearance of residential mortgage loan payments for multifamily properties

Section 4023 of the CARES Act provides that during the covered period, a multifamily borrower with a federally-backed multifamily mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency may request a forbearance. The Act defines a "multifamily borrower" as a borrower of a residential mortgage loan that is secured by a lien against a property comprising five or more dwelling units. Federally -backed, in the case of multifamily, is defined as any loan other than temporary financing (e.g., construction loan) that is made in whole or in part, insured, guaranteed, supplemented, or assisted in any way, by:

- Any officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development; or
- A housing or related program administered by any other such officer or agency, or which is purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

The term "covered period" is specifically defined under Section 4023(f)(5) to mean the period beginning on the date of enactment of the CARES Act and ending on the sooner of the termination date of the national emergency concerning the novel coronavirus disease outbreak as declared by the President on March 13, 2020, or December 31, 2020.

Section 4023(b) of the Act provides that a multifamily borrower with a federally-backed multifamily mortgage loan that was in a current status as of February 1, 2020 can submit a verbal or written request for forbearance. The borrower must affirm to the servicer that he/she is experiencing a financial hardship during the COVID–19 emergency.

The Act allows for a forbearance period for up to 30 days, with up to two additional 30-day periods. The request for an extension must be made during the covered period, and, at least 15 days prior to the end of the forbearance period. The Act provides that a multifamily borrower shall have the option to discontinue the forbearance at any time. It is also notable that Section 4023(d) provides protections for renters during the forbearance period. Multifamily borrowers who receive a forbearance may not evict or initiate the eviction of a tenant solely for nonpayment of rent or other fees or charges and may

not charge any late fees, penalties, or other charges to a tenant for late payment of rent.

The Act prohibits eviction or initiation of eviction during the forbearance solely for nonpayment of rent, fees or other charges. The Act further prohibits any charge to the tenant for any late fees, penalties, or other described charges for late payment of rent. Section 4023(e) provides that a multifamily borrower who receives a forbearance may not require a tenant to vacate prior to the date that is 30 days after the date on which the borrower provides the tenant with a notice to vacate and may not issue a notice to vacate until after the expiration of the forbearance.

Agency guidance factors into the equation

On April 3rd, 2020, the J*oint Statement on Supervisory and Enforcement Practices Regarding the Mortgage Servicing Rules in Response to the COVID-19 Emergency and the CARES Act ("Joint Statement")* was released. This was a joint statement by the Consumer Financial Protection Bureau ("CFPB"), Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, and Conference of State Bank Supervisor (collectively the "agencies") whereby they formally recognized the serious impact of the COVID-19 emergency on consumers and on the operations of many supervised entities, including mortgage servicers. The agencies stated an understanding that that the COVID-19 crisis could impose temporary business disruptions and staffing challenges, thereby impeding the ability of lenders and servicers to assist consumers.

Moreover, the agencies are emphasizing the potential for consumer confusion about how to access and exercise options offered by mortgage servicers. In issuing the *Joint Statement*, the agencies clarified the application of the mortgage servicing rules under Regulation X and established expectations for supervision and enforcement relative to the rules on short-term options as the industry works through the covered period.

Coinciding with the release of the Joint Statement, the CFPB issued *The Bureau's Mortgage Servicing Rules FAQs related to the COVID-19 Emergency ("FAQs")*. The *FAQs* support the Joint Statement by addressing common questions and themes. While not a substitute for Regulation X, Regulation Z, or the associated official interpretations, the *FAQs* provide focus for helping servicers managing burgeoning requests from borrowers for help.

Short-Term Loss Mitigation Options. Regulation X generally requires servicers to obtain a complete loss-mitigation application before evaluating a mortgage borrower for a loss-mitigation option, such as a loan modification or short sale. However, the *FAQs* stipulate that CARES Act forbearance qualifies as a "short-term repayment forbearance program" under Regulation X. A servicer may offer a short-term payment forbearance program or a short-term repayment plan to a borrower, based upon an evaluation of an incomplete loss mitigation application.

The *FAQs* go a step further in stating that a servicer may offer any loss-mitigation options to a borrower who has not submitted an application at all. The *FAQs* address communications requirements associated with short-term payment forbearance. The *FAQs* provide that "until further notice" servicers will not be cited in an examination or that the agencies intend to take supervisory or enforcement action for failing to provide acknowledgement notice within the five days of application for forbearance. The only qualifier is that servicers should make a good faith effort to provide notices and take the related actions within a reasonable time.

Subsequent notices provided to the borrower provide information detailing the specific payment terms; duration of the program or plan; that the program or plan is based on an evaluation of an incomplete application; that other loss mitigation options may be available, and that the borrower has the option to submit a complete loss mitigation application to receive an evaluation for all available options, regardless of whether the borrower accepts the short-term program or plan.

Servicers are required to provide the second communication in cases where the borrower remains delinquent near the end of the forbearance program or repayment plan. The servicer must contact the borrower prior to the end of the forbearance period and determine whether the borrower needs to complete the loss mitigation application and proceed with a full loss mitigation evaluation. The CFPB allows servicers the flexibility to add language to the subsequent notices to clarify why they are offering short-term options and to help avoid borrower confusion. The *FAQs* state that servicers are under no requirement to tailor the first or second communications and may use similar content as a means to conserve resources during the pandemic.

Early Intervention Requirements. Four questions relative to early intervention requirements are addressed in the

FAQs. The first two questions address whether servicers are required to comply with live contact requirements and early intervention written notice requirements, and they clarify the associated timelines in Regulation X, 12 CFR 1024.39(a) and (b). Similar to the agencies' position on notifications, compliance with live contact and provision of the 45-day letter is generally expected. The *FAQs* clarify that the agencies have agreed that they do not intend to cite in an examination or bring an enforcement action against servicers for delays in establishing or making good faith efforts to establish live contact and provide written notice. The focus during the pandemic is on "good faith efforts," which the *FAQs* clarify consist of "reasonable steps, under the circumstances" that are defined as "calling the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer."

The *FAQs* also contextualize what might constitute good faith, suggesting that the servicer should consider the length of a borrower's delinquency, as well as a borrower's failure to respond to a servicer's repeated attempts at communication. Servicers will be considered in compliance with the early intervention live contact requirements if the servicer has established and is maintaining ongoing contact with a borrower under the loss mitigation procedures. The *FAQs* remind that live contact requirements are not applicable when a borrower is performing as agreed under a loss mitigation.

The third and fourth questions address whether a servicer has to comply with early intervention, live contact and written notice requirements if the borrower is participating in CARES Act forbearance. The *FAQs* explain that the answers to these questions depend on circumstances, noting that borrowers can request a CARES Act forbearance regardless of delinquency status. More direct to the point here is that if the borrower is delinquent, the servicer must comply with early intervention requirements.

Continuity of Contact Requirements. The *FAQs* recognize that servicers may experience customer service call center staffing challenges due to the pandemic. As such, assigning a "single point of contact" to each delinquent borrower may prove difficult. The *FAQs* grant some flexibility on this requirement, stating that "servicers must maintain policies and procedures reasonably designed to assign personnel to a delinquent borrower that can assist the borrower with loss mitigation options" and that a "servicer has discretion to determine whether to assign a single person or a team of personnel."

Annual Escrow Statement. The *FAQs*, in response to the question of whether servicers must conduct the annual escrow analysis and send annual escrow statements required by Regulation X, stipulates that the answer is yes. This response recognizes that escrow statements may generate call volume and contribute to borrower anxiety. Similar to earlier questions, the agencies do not intend to cite in an examination or bring an enforcement action against servicers for delays in sending the annual escrow statement—provided servicers make a good faith effort within a reasonable time.

The agencies suggest that servicers inform the borrower that they are forgoing collection for several months on any shortage or deficiency. The *FAQs* provide a reminder of the exemption from providing an annual escrow account statement when a borrower is more than 30 days past due. For borrowers who are subsequently reinstated and return to current status, servicers must provide a history of the account since the last annual statement within 90 days of the account's reinstatement date to current status.

Electronic Communications with Borrowers. The *FAQs* affirm that servicers may send servicing notices in electronic form and are subject to the requirements of the Electronic Signatures in Global and National Commerce Act.

Payoff Statements. The *FAQs* address the question of whether servicers can take more than seven business days to provide a payoff statement due to operational challenges brought on by the pandemic. The *FAQs* state that while the servicer does not need to provide the statement within seven business days, it should be provided within a "reasonable time."

Exemptions for Small Servicers. To the question of whether small servicers[1] are subject to the requirements, the *FAQs* provide that small servicers do not have to comply with the early intervention and continuity of contact requirements. Small servicers must comply with the foreclosure restrictions of Regulation X, 12 CFR 1024.41(j), as well as the escrow requirements of Regulation X, 12 CFR 1024.17. With respect to foreclosure restrictions, the *FAQs* make it clear that small servicers shall not:

- Provide the first notice or filing required to foreclose, unless the:
    - Borrower's mortgage loan obligation is more than 120 days delinquent,
    - Foreclosure is based on a borrower's violation of a due-on-sale clause, or

- Servicer is joining the foreclosure action of a superior or subordinate lienholder;

- Provide the first notice or filing required to foreclose if a borrower is performing pursuant to the terms of a loss mitigation agreement
- Move for foreclosure judgment or order of sale or conduct a foreclosure sale in the case of a borrower who is performing pursuant to the terms of a loss mitigation agreement.

The *FAQs* also remind that small servicers are subject to and must comply with the payoff statement provisions in Regulation Z, 12 CFR 1026.36(c)(3).

Conclusion

These are truly unprecedented times. Consumers are facing difficult choices. As the *Joint Statement* underscores, mortgage servicers play a vital role in assisting consumers in providing options for paying their mortgages. The current crisis presents potential financial challenges to borrowers; the CARES Act Section 4022 and 4023 are intended to provide some measure of related relief. However, there is a risk of confusion for borrowers, lenders and mortgage servicers.

The flexibility that the agencies are able to offer pursuant to the *Joint Statement* and as further clarified by the CFPB's *FAQs* helps to reduce the immediate regulatory risk and pressure. The focus is on making a good faith effort to respond to the needs of borrowers. However, mortgage servicers must make certain that their existing Regulation X-related compliance practices for loss mitigation are appropriately modified in light of the guidance set forth in the Act and the guidance published by the agencies.

Given the stress of the times we're living through, it is vital to not lose sight of the fact that these efforts must be fulfilled in a fair and responsible manner. Through reasonable efforts to maintain a tone of fairness and compassion; to ensure that governance is up to date with regulatory guidance; that processes and system controls are in alignment; and that reasonable monitoring of workflows and production output is conducted, the mortgage servicing industry can and must move forward. While resources may be stressed, keep an eye to the future, knowing that the metrics of the current period will tell the story of the good faith effort made.

Published in DS News, June 4, 2020

About the author

Thomas Grundy, CRCM, is Senior Director, U.S. Advisory Services for Wolters Kluwer. He has 34 years of combined experience as a former regulator, compliance professional, and consultant. Grundy launched his career as an examiner for the Office of the Comptroller of the Currency and later served as an oversight examiner for the Federal Reserve Board in Washington. In addition, he has served as a compliance officer for fintech and traditional banking and financial services organizations. In his current role, he advises banking, credit union, mortgage, student lending, and financial technology clients.

[1] A servicer is a small servicer if it:

- Together with any affiliates, services 5,000 or fewer mortgage loans, and the servicer (or an affiliate) is the creditor or assignee for all of them;
- Is a nonprofit entity, meaning it is designated as a nonprofit under section 501(c)(3) of the Internal Revenue Code of 1986, that services 5,000 or fewer mortgage loans (including any mortgage loans serviced on behalf of associated nonprofit entities), for all of which it (or an associated nonprofit entity) is the creditor; or
- Is a Housing Finance Agency, as defined in 24 CFR § 266.5.

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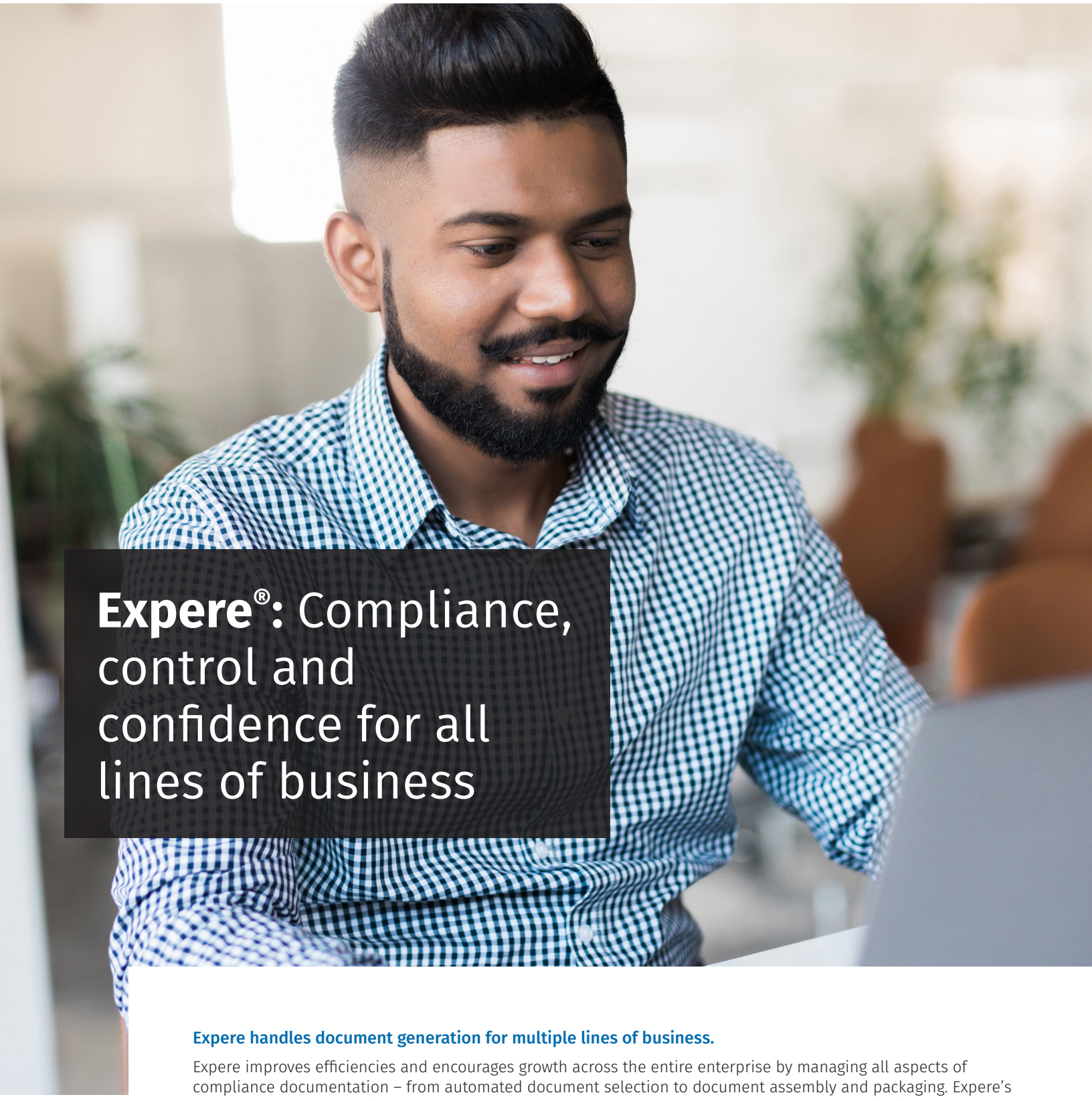

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Fairness in the face of crisis: Fair and responsible banking in the midst of chaos

By **BRITT FAIRCLOTH, CRCM**

As a compliance officer, I have always recognized that change is constant, and I accept that fact sometimes grudgingly. While regulatory change generally has ample implementation or lead time, March 2020, has brought a different kind of change; one that is significant, sudden and jarring. These days you can't just ask who moved your cheese—assuming you could find cheese in the grocery store, that is—you must quickly and effectively adapt to an entirely new normal.

With the COVID-19 pandemic and associated social distancing guidelines, many lenders began working remotely from home in March, and that adjustment has brought significant challenges. Despite an unexpected shortage of toilet paper and other products, the cat walking across the keyboard during video meetings, and family members causing distractions in the background, most of us have learned to navigate new ways of meeting and being mostly productive remotely, with the occasional virtual happy hour thrown in.

Now that we have tackled those new challenges and settled in for what could be an extended period of business as unusual, thanks to the COVID-19 pandemic, the next challenge may be keeping the concept of fair and responsible banking central throughout all aspects of the lending product lifecycle in the midst of what truly amounts to chaos for many.

Marketing and sales

An institution's population of loan applicants is often a direct result of marketing and active sales efforts. As such, fairness in those efforts is critical. Given the anticipated economic impact of the pandemic—including its effect in creating increased demand for consumer loans and small business credit, and the desire on the part of lenders to help customers make their way through unprecedented challenges—fairness in the marketing and sales process may require additional attention from the compliance department.

Compliance should monitor closely for indications of steering potential applicants to certain products. While it is true that regulators are encouraging banks to work with their customers and have specifically encouraged small dollar lending, consider the potentially inadvertent risks that could result.[1] While small dollar lending may be the best product for some borrowers, others may benefit from a different product, such as the extension of a line of credit or a refinance. If certain demographics

or geographies are targeted for products that could be deemed more expensive, or otherwise less favorable, that marketing could lead to a claim of predatory lending. Applicants should understand options for all products for which they may qualify.

Additionally, it is reasonable to expect that both existing and new customers are increasingly adopting online and mobile banking access for conducting routine banking transactions. The proliferation of digital marketing and application platforms in recent years stands to become even more prominent as consumers look for access to financial services from home. While digital marketing and application processes provide ease of access and expand market reach, they also carry unique risks.

Digital marketing, for example, generally allows an institution to target marketing content to recipients based on pre-determined criteria. This type of marketing can be quick and cost effective, but to maintain compliance, those pre-determined criteria must be fair and non-discriminatory. Specific attention should be paid to any exclusionary criteria used in the selection of recipients. Targeting criteria should not exclude potential applicants based on any prohibited basis or any factor that could be a proxy for a prohibited basis. This can be a challenge when third parties are leveraged for marketing services. Be certain that the criteria used, whether generated internally or by a third-party vendor, are fully understood and vetted.

Digital application processes may be a particularly attractive option for customers at this time. While incredibly convenient, applicants using online or mobile application processes should receive the same treatment, disclosures, and information that an applicant would receive in person. Web and mobile applications may provide those disclosures and other important language in a format that differs from print, which could increase the risk for Unfair, Deceptive, or Abusive Acts and Practices ("UDAAP"). Part of a robust review mechanism should include a review of the application process and associated information and disclosures in the environment that mirrors that of the client. It also may be prudent to offer hard copy disclosures by mail for applicants upon request.

The bottom line is, now more than ever, institutions should ensure that marketing content is clear and fair, and that marketing materials are provided across all applicable market segments. Proper review mechanisms for all materials and processes should remain firmly in place, though that may be a challenge with the shift to a remote working environment.

Processing: underwriting and pricing

Over time, many institutions have shifted to centralized loan processing, underwriting and pricing functions, and that shift has served to reduce the risk of fair lending issues that could be caused by employee discretion. With dispersed employees working remotely, combined with an increased demand for credit from customers impacted by the pandemic, institutions are likely to experience new challenges, or a resurgence of old challenges.

One overarching question to consider is this: Can your normal, operational processes be maintained in this remote, rapidly changing environment? If employees cannot easily access the intranet for current loan policy or underwriting guidelines, for example, there may be an increased risk of a remote employee utilizing an older version of a policy and/or diverging from current approved processes. It is critical that institutions make available, by any means necessary, the appropriate policies, procedures and other guidance needed for these teams to do their jobs in a fair and consistent manner. This may mean that institutions need to verify access to SharePoint sites, or other file sharing protocols, or provide information via secure emails. Quality control efforts may also need to be increased during this time to ensure that proper processes are being followed.

Normal workflow processes may be impacted, such as a second review of denials, before adverse action notices are sent to applicants. Be aware of regulatory timelines and make sure that you can maintain compliance with those timelines even in the current environment. Often times, processing and underwriting teams can be responsible for documenting exceptions as part of their daily workflow. These processes are crucial to maintaining fairness throughout the loan processing, underwriting and pricing process. Validate that underwriting and pricing exception approval and documentation requirements remain in place, and make sure that individuals with required approval authority are available.

Other operational challenges may begin to surface, as well. For example, can closings be scheduled in a reasonable timeframe? If an appraisal or another piece of the process is delayed due to a third-party provider, can an institution close before a rate lock ends? While rates are expected to remain low, it may be viewed as unfair to charge a client an increased rate or fees due to a situation beyond their control.

Remember that customers may also be facing unique challenges during this time. Many may not have the capability at home to scan and upload requested

documentation to a lender. This means that some clients may not easily be able to upload income verification. Additionally, loan processing teams may struggle to obtain employment verification if there are third-party provider or employer limitations. Depending on the loan program, an institution may decide to waive certain requirements and it will be important to ensure that any waivers are being applied consistently and fairly.

Account servicing and customer service

While many customers are leveraging remote access technologies for everyday banking tasks, customer service interaction, such as call center volume, may also see an increase. Whether it is a question about online or mobile banking functionality, questions about branch access for services that may need to be completed in person, or other inquiries, there will be instances where customers need to speak directly to a customer service representative.

Compliance staff should be fully aware of any issues arising from and working with the business to monitor for potential access or level of service challenges. This is particularly crucial during the COVID-19 pandemic, as stay-at-home mandates require a higher degree of remote operation. Maintaining a full staffing schedule within your customer service operations will depend on employee availability, whether from an office location or remotely. If you maintain a process for Limited English Proficiency ("LEP") customers, be mindful of continuity of process and whether third-party language services and multi-lingual staff will be available as needed.

In addition, a careful review of branch outages may need to be prioritized. If branch locations are closed or otherwise providing limited services, Compliance should validate that customers in neighborhoods from all income levels or minority concentrations have reasonable access to branch facilities and services as needed. It should not be more difficult for borrowers in low-income or high-minority neighborhoods to access branch services.

Fairness in the treatment of accounts should also be monitored. Availability of funds may be more crucial than ever for some borrowers. While institutions generally need to manage risk, the decisions about funds availability must be made consistently and fairly. Fee waivers should also be carefully monitored. It is understandable that institutions will possibly be more accommodating or lenient in this time as it relates to potential fees, such as overdraft fees. All applicable employees should have clear guidance on issuing fee waivers to facilitate application of temporary policies and processes in a consistent and non-discriminatory manner.

Loss mitigation

Social distancing guidelines and business closures have already led to record-breaking unemployment claims, and it is nearly impossible to judge the true impact currently. Given what many expect to be a lingering economic impact from the current pandemic, all institutions should expect an increase in loss mitigation activity.

Institutions are likely already receiving an increased number of requests for relief in the form of payment deferrals. Thorough analysis of those requests, and the actions taken in response to those requests should be a Compliance priority. Again, consistency and fairness should be at the absolute heart of this process. This could be particularly challenging if staffing levels become inadequate. Bringing in new staff, whether external hires or transfers from other operational areas, could lead to additional risk if new employees are not fully familiar with the approved policies, processes and procedures. Increased quality control processes should be added to assist in mitigating that risk.

Legislative directives regarding forbearances and moratoriums on foreclosures and evictions have been published, and institutions need to be prepared to properly comply with any guidance issued by regulatory, federal, state, or other local government agencies.[2] Compliance with any newly issued legislation can be challenging, and recent guidance may prove to be particularly difficult. Current published guidelines indicate that borrowers must be able to contact the institution with their request via text message, telephone, email or fax. Monitoring different methods of contact and complying with necessary timelines will require structured processes for each method of communication. Documentation may also present unique challenges. While calls may be recorded, emails saved, and faxed letters scanned, text message requests may be more difficult, particularly for smaller institutions.

The pace of guidance and legislation has been much more rapid than any previous guidance issued, and compliance officers should be actively engaged in monitoring for changes and updates to ensure that those changes are communicated to all stakeholders for proper compliance in a timely manner.

The elephant in the room: Business continuity planning and disaster recovery

While each stage in the lending lifecycle has its own set of unique risks and considerations, institutions simply cannot ignore the elephant in the room – Business Continuity Planning ("BCP") and Disaster Recovery. Institutions of all sizes and complexities are generally well-versed in some manner of BCP or Disaster Recovery. Nothing, however, has prepared the nation, or its financial institutions for the situation we currently face.

Typical BCP and Disaster Recovery activities focus on events that are generally natural disasters which, while impactful, tend to have a somewhat known window of time and a limited geographic reach. The national and global reach of the pandemic, along with the unknown timeframe of impact, is unprecedented. As such, novel challenges can be expected.

The COVID-19 pandemic has created almost instantaneous change to the manner in which institutions operate. Any sudden change injects a tremendous amount of risk across the board. That risk needs to be considered in the context of potential impact to fairness in how the institution transacts with its customers. This change in operations is likely to, or already is, causing certain constraints.

Information Technology ("IT") constraints may be the most widespread. IT will need to provide necessary equipment and support to many employees who will be working remotely for the first time, and likely for an extended period of time. In addition, IT will need to maintain systems and processes to facilitate the ability of lending staff to maintain operations. This may include critical security patches for remote user computers, as well as potential system updates issued by software providers. Failure in these processes could result in issues with privacy or could lead to an inability of employees to adequately and effectively comply with laws and regulations.

Staff outages could also be an increased area of risk. Given the nature of the pandemic, institutions should expect that employees may be impacted. Whether an employee falls ill or is otherwise unable to perform their job functions, perhaps due to caring for children or other family members, staffing levels may change. Compliance needs to fully understand the impact of any staffing changes on critical compliance processes. For example, how many employees have authority for exception approvals? How many employees perform a second review of denied applications? What about the level of quality control staff? If there is a single point of failure, such as a single employee responsible for a critical task, arrangements need to be made to ensure that additional employees understand approved processes and are able to step in, if needed.

Throughout the lending life cycle, and this entire pandemic, remember that many people are vulnerable right now—whether they have traditionally been deemed a protected class or not. There are laws and regulations that we absolutely must follow. As citizens of the world, however, life and circumstances are giving us the best possible motivation and incentive we could ever have to take care of our customers and each other. I like to think that beyond regulation, we have a higher code to aspire to—fairness.

Published in MBA NewsLink, April 2020

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Britt Faircloth, CRCM is the Fair and Responsible Banking Consulting Manager for Wolters Kluwer U.S. Advisory Services, where she focuses on Fair and Responsible Banking, CRA, HMDA, fair lending and redlining data analytics for institutions of all sizes, including CRA and fair lending market analysis, fair lending risk reviews, and integrated redlining reviews. In this role, Faircloth brings over 20 years of relevant banking and regulatory compliance experience to assist institutions in performing fair lending risk assessments, UDAAP risk assessments, CRA self-assessments, compliance management system (CMS) reviews, complaint management program reviews, third party vendor program reviews, and other types of quantitative and qualitative data analytics.

1 https://files.consumerfinance.gov/f/documents/cfpb_interagency-statement_small-dollar-lending-covid-19_2020-03.pdf

2 https://www.hud.gov/sites/dfiles/OCHCO/documents/20-04hsgml.pdf

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CARES Act Section 4021: Complying with the Fair Credit Reporting Act

By **BRITT FAIRCLOTH, CRCM**

Nothing seems as simple as it was a few short months ago. Managing work-life balance, buying hand sanitizer, or suddenly trying to figure out the optimal Wi-Fi location to work from home — while the rest of the family is simultaneously using it for work and remote learning activities — is tremendously challenging. In the midst of this chaos, compliance officers must simultaneously focus on tracking, analyzing, and implementing rapidly changing regulatory guidance. One example of this impacts credit reporting.

On Friday, March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"; Pub. L. No. 116-136) was signed into law. Much of the focus of the CARES Act has been on the funding provided to assist individuals and small businesses during the negative economic impact of the pandemic, as well as assisting homeowners to keep their homes and to protect their credit.

Section 4021 of the CARES Act, Credit Protections During COVID-19, temporarily amends Section 623(a)(1) of the Fair Credit Reporting Act ("FCRA"). Under this temporary amendment, an institution that makes an accommodation for one or more payments on a consumer credit obligation must report the obligation or account as current, provided that the account was current at the time of the request. While at first glance this does not seem complicated, it is likely that institutions will experience some logistical challenges in complying with the temporary change.

Timing

One challenge is likely to be in understanding the applicability of the reporting requirements based on the timing of the accommodation. Section 4021 defines an accommodation as including "an agreement to defer one 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." The covered period is defined as the period beginning on January 31, 2020, and ending on the later of:

- 120 days after the enactment of the subparagraph; or
- 120 days after the date on which the national emergency concerning the COVID-19 outbreak—declared by the President on March 13, 2020, under the National Emergencies Act—terminates.

Although the date that is 120 days after the date of enactment of the subparagraph is known, the COVID-19 related national emergency termination date is not

currently known. With a yet undefined end date for the temporary reporting change, institutions will need to implement temporary adjustments to their FCRA policies and procedures and will need to closely monitor for any updates that can establish the end of the temporary period. A record of policy and procedure changes should also be maintained to ensure that changes can be communicated both internally and to examiners as needed. Additionally, while the CARES Act was not signed into law until late March, the covered period for this reporting change begins retroactively on January 31, 2020.

Given the retroactively applied requirement, an added challenge will be identifying those who may have made an accommodation request between January 31 and the passage of the CARES Act to ensure that those accounts are appropriately reported to credit bureaus. In order to manage the risk of non-compliance, institutions will need to implement testing or other added quality control measures to validate that accounts granted an accommodation during this period are being reported in a consistent, compliant manner. This could require a full review of all accommodation requests received during this time in order to facilitate any necessary adjustments in reporting.

Automation

Many repetitive tasks in institutions are now managed via automation, and that generally includes credit reporting. While automation is often an effective regulatory control reducing the potential for human error at a transactional level, it could, in this case, be the cause of a systemic failure if not managed and monitored properly.

At a minimum, institutions will need to update systems to report an account's default status in compliance with the temporary change. Those accounts that were current when requesting the accommodation must be reported as current during the accommodation period, whereas those that were in default prior to the accommodation request should be reported as in default. Should the consumer bring the account current during the period, the account should be reported as current. Institutions will need to test updates to credit reporting systems automation to validate that the changes result in accurately reporting the account status. This should include validation of changes from any vendors utilized in the credit reporting process.

It also is important to note that changes in automated processes may not capture those accommodation requests made prior to the changes. Manual identification and updates may be required on at least some accounts.

Disputes

As a general matter, credit reporters should have procedures in place for responding to credit disputes in a timely, compliant manner. The rules governing the credit dispute process are not affected by the temporary amendment and should be consistently followed. Disputes during this time could also serve as a warning system or a way to catch and correct accounts that were erroneously reported in a default status.

Increases in the volume of credit disputes should be closely monitored and thoroughly understood. If errors in credit reporting are discovered, a root cause analysis should be conducted to determine any gap in processes and to appropriately establish remediation and resolution. This should include an effort on the part of the institution to proactively locate other impacted accounts and take necessary steps for remediation.

Final thoughts

The CARES Act is intended to assist both consumers and businesses alike with the anticipated long-term economic impacts of COVID-19. Properly reporting credit data can play a critical role in mitigating the impact for numerous borrowers. Here, well intentioned lenders who do not account in a timely manner for Section 4021's impact during the temporary period could inappropriately report deferrals or payment delinquencies in a way that is inconsistent with the Act's intent to mitigate potential short-term adverse consequences to lenders during the pandemic. Compliance officers should address compliance with this temporary amendment and closely monitor credit reporting to ensure that consumers do not suffer unreasonable long-term impacts from reduced credit scores.

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A radically new approach to simplifying regulatory compliance

By **SK KARANAM**

The use of regtech technology is helping banks manage federal and state regulatory demands

Financial institutions in the U.S. are grappling with an overwhelming number of regulations at the state and federal level that are constantly changing—including regulations that sound very similar in nature, but can differ substantively in their technical ramifications. For an organization operating across multi-state jurisdictions, the number of regulatory compliance requirements and obligations that need to be managed can ratchet up quickly in today's environment, into the hundreds of thousands.

In this environment, it can be an uphill battle to serve the bank's customers efficiently while transforming their own business models. This comes as a result of the push for electronic banking, in addition to focusing on increasing the bank's shareholder value. Understanding the potential impact of relevant state-level and federal laws, in relation to business strategies, operating models and compliance processes, requires significant capacity and legal expertise. The regulatory burden and expense associated with it can be significant.

Of course, this is not a new challenge. Banks have had to manage the complexities of and interplay between state and federal law for many years. In recent years, however, the banking industry has faced increased regulatory scrutiny. A number of states have stepped up certain regulatory activities in response to the federal government taking a step back in some areas. This development has put much more emphasis on state law compliance.

Today, banks need to be able to demonstrate that they know which laws affect their business, and that they have taken appropriate steps to identify and mitigate these risks. They also need to prove—to auditors and regulatory authorities—that they are in compliance with all applicable rules and regulations.

Finally, financial institutions are continuing to drive efficiencies and economies. Thus, many modern financial organizations are looking at how they can manage state and federal law compliance much more efficiently than they have in the past.

The rising role of regtech

Technology has long played a role in regulatory compliance, providing financial institutions with the tools to navigate regulatory information and manage regulatory risk and compliance.

In response to increasing compliance burdens, and advances in machine learning and other fields of artificial intelligence (AI), purpose-built regulatory technology (regtech) solutions have emerged. These platforms are geared toward solving sector-specific challenges such as identifying regulatory requirements across different states and managing the pace of regulatory change efficiently.

Interest in regtech is growing across the banking industry, as more organizations are asking whether regtech can:

- Help in analyzing how regulations compare with each other and identify on which points they are consistent;
- Enable compliance teams to apply those obligations in a coherent way within the institution;
- Decrease burden on the compliance department to have all the systems, processes and controls in place in support of regulatory requirements; and
- Ensure increased control for managing regulatory risk.

To find valuable answers to these questions, it's important to view regtech in the right context.

Regtech is an enabler, not a strategy.

Firstly, it's important to understand that regtech does not alter the guiding principles of a compliance organization. Core strategies for managing regulatory exposure and pressures do not need to change. No matter the degree to which regtech tools are incorporated into an institution's processes, banks can and must continue to focus on their customers and align their regulatory compliance strategies with their key business goals.

Ultimately, the purpose of regtech solutions is to support the overall strategy rather than re-direct it, by enabling financial institutions to manage their regulatory compliance obligations in the most efficient and practical way.

Regtech is a gateway to modernize regulatory compliance programs.

Compliance departments in banks have historically operated under budget, and resource constraints are viewed as a cost function within a bank. Some business leaders erroneously believe that compliance departments are operating in a deregulated environment, and therefore, they should be able to cut back on compliance departments. In reality, compliance departments are dealing with increased requirements from state regulatory bodies and newer topics, such as consumer privacy and cyber security, are demanding their attention.

Compliance professionals should embrace new technologies in order to move beyond antiquated approaches that can put banks at risk. Cutting-edge technologies, such as robotic process automation, AI and machine learning, can help modernize and improve virtually any regulatory compliance program. This not only drives better insights and business outcomes but can also create foster a sustainable and accountable compliance program.

Human expertise is indispensable.

Advanced technologies need not and will not eclipse the role or function of a legal expert, compliance officer or other human financial services professional. In fact, human experts can and will continue to be an integral part of an institution's compliance program to provide the needed adjudication and validation of technology-aided regulatory compliance content.

Banks are understandably reluctant to move beyond traditional methods of legal research and compliance program management. However, writing regulatory obligations manually can be resource intensive, prohibitively expensive and not sustainable.

With a regtech solution in place, banks can still use their own expertise to guide clients to understand their legal requirements—with smart technology providing additional support.

The power of regtech

Regtech platforms augmented with expert-trained AI models can offer a host of advantages for banks and their customers. Some key benefits are outlined below.

Analyzing unstructured data can be insightful.

It's not that we haven't had technology solutions available in the past, such as enterprise software and regulatory content feeds, to support regulatory compliance management. However, these traditional systems left one critical gap that regtech solutions have emerged to address—getting critical insights from the vast lake

of unstructured regulatory and institutional data that financial institutions deal with today.

It's incredibly challenging to keep track of the different regulations issued by different state and federal regulators, especially when each regulator publishes information in different formats. This is an area where regtech solutions can add unique value, because they are able to analyze these unstructured data sets and extract the critical legal requirements that apply to the organization.

Understanding regulatory requirements and applying these to business and risk management decision-making requires a substantial amount of resources, including the expertise of lawyers and compliance officers. This can be a time-consuming and expensive affair for many financial institutions. Regtech can help banks to drive efficiencies and control costs in this area.

The power of machine-readable regulations and obligations

A regtech solution can:

- Take a vast amount of state law across multiple jurisdictions and organize it in a way that is relevant to the bank;
- Structure regulatory content into machine-friendly formats within a workflow system;
- Help develop and standardize regulatory obligations in one place and make them bank specific; and
- Easily embed regulatory obligations within a bank's first line of defense.

Regtech can help aggregate similar sounding regulatory requirements into one bank specific regulatory obligation. For example, an auto lending institution doing business in all 50 jurisdictions needs to provide clear and concise guidance to its call center agents. This guidance is critical for agents to make informed and compliant decisions around details, such as whether late fees are applicable in a specific market.

Using machine learning and other AI capabilities, regtech solutions can also identify patterns across state law and identify ways in which an institution can write a single obligation that meets multiple jurisdictions' requirements. This way, a bank can shrink hundreds of compliance requirements down to a more manageable number of regulatory obligations.

Augmented intelligence

As a concept, AI has been met with some fear and trepidation in the market—leaving compliance officers and other experts wondering whether their jobs will soon be lost to intelligent technology. And on the other side of the spectrum, there are those who believe that AI-enabled technologies are a panacea for all compliance pain points.

All parties need to understand that regulatory compliance problems are not entirely technical problems; and no matter how sophisticated the AI capabilities of a regtech platform are, human expertise remains indispensable.

Financial institutions should, therefore, view machine learning and other types of AI in the context of augmented intelligence—where advanced technology solutions are combined with human knowledge and professional judgment to provide smart regulatory insights that are validated by experts.

Rather than replacing human expertise, trailblazing technologies, such as AI and robotic process automation, allow human experts to focus on the more interesting and complex aspects of their roles, rather than the labor-intensive data management tasks that were not particularly satisfying in the first place. For instance, a bank's lawyers are still required to conduct legal research, yet they can now organize content through AI-based tagging and apply a taxonomy (relating to a topic, product or jurisdiction, for example) that swiftly makes this data more accessible and relevant to customers and other stakeholders. Additionally, machine learning and machine-aided compliance tools can go into that structured content and organize it further in logical groupings where there are commonalities. This further categorization refinement of complex regulations can help a bank by searching and report on topic, product or jurisdiction.

Bringing humans into the loop in a strategic and intelligent way is the future of automation and AI; and market-leading regtech platforms are now making this possible.

Choosing the right regtech solution

Here are some key elements to consider before planning, choosing and implementing a regulatory technology solution:

1. Does your bank have a big data problem?

AI-enabled regtech solutions are most suited to

organizations that must make sense of large volumes of unstructured regulatory and/or business content. Because machine learning, natural language processing and other AI technologies rely on a steady stream of data to be most effective, these technologies may not add as much value in banks that do not deal with vast amounts of data.

2. Are you familiar with new technologies within regtech?

To determine if a particular regtech solution can solve your bank's regulatory compliance need, it is important to understand the differences between machine learning, natural language processing, robotic process automation and related technology capabilities. This will enable compliance officers to ask strategic questions during the due diligence process to help choose the right regtech solution.

At the same time, ensure that your vendor knows enough about your business needs and level of in-house expertise, to develop a fit-for-purpose solution.

3. Does the solution complement human expert and machine learning abilities?

Technologies, like AI and software robotics, should be introduced in a supporting role to digest and analyze data intelligently, deliver information faster and identify regulatory impacts more proactively. Ideally, you want a vendor that can effectively combine AI, automation and expert capabilities that plays to each resource's strength and also integrates seamlessly with mission-critical enterprise software. Some regtech solutions rely on its customer to be the human expert in the machine-aided process. Working with vendors that have both the technology and the experts to deliver a value-added service with our solutions that streamlines the customers' process of having the requirements already extracted and proposed groupings.

4. Does the software have workflow capabilities?

Rather than trying to stay on top of disparate data feeds and point solutions, you could opt for a technology platform that enables you to manage all data and regulatory compliance processes from a central location. This way, you can capture the flow of new regulations in a single data base with all obligations, then assign tasks and feed relevant data into processes across your institution.

A regtech capability that provides both content and workflow management capabilities can dramatically increase transparency and control.

5. Is your solution supporting a repeatable and sustainable process?

To future-proof your compliance management program, you need the tools to actively monitor state and federal regulations and factor in how emerging regulations could impact current approaches.

It's also ideal to choose a platform that offers some form of extensibility, which allows you to move information out from your systems to whatever workflow systems you will be using. To achieve this, you could choose a smart content feed that is platform-agnostic and can be consumed in any technology through an export and import process.

Closing thoughts

When it is planned and implemented effectively as part of a broader compliance program management toolkit, the regtech approach can serve as a key resource for a bank's compliance team, while enabling the institution to reduce operational costs and enhance its overall risk management capabilities.

Regtech that combines the strengths of human expertise, AI and robotics can play a valuable role in the future of financial services regulation.

Published in ABA Bank Compliance magazine, Jan/Feb 2020

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Back to basics: The building blocks of effective regulatory examination management

By **ELAINE DUFFUS**

Compliance officers are holding the proverbial ball when it comes to managing regulatory compliance examinations. Those who have experienced consistent, positive outcomes typically attribute their success to the fact they have a plan that they stick to, year after year, to help ensure there are no surprises and to portray their organization in the best possible light.

Before your financial institution begins prepping for a federal, state or SRO regulatory compliance examination, consider these commonsense but oft-forgotten ABC's that many successful regulatory compliance examinations have in common.

Whether you have automated your examination process or not, these principles will help reduce some of the stress associated with regulatory compliance examinations at your institution. If you are a seasoned compliance professional, it is likely that all or most of these steps will be familiar—but this is a great primer to share with newer compliance professionals whom you are mentoring. If you are new to regulatory compliance in the financial services industry, welcome aboard and please take note.

While some of these ABC's may seem almost too basic, it has been my experience that when strict protocols are not required, especially in the heat of an examination, corners can get cut: suddenly, one's records of production are incomplete, or other problems arise that can come back to haunt your institution.

A is for advance work

Always ensure you are prepared to discuss with your regulator what is new or changed at your institution since your last examination by keeping regulators' expectations in mind when:

1. Conducting regulatory change management;
2. Assigning compliance training;
3. Incorporating regulatory compliance requirements into business processes;
4. Monitoring operations for adherence to compliance requirements;
5. Considering material new or changed products, customers, locations and services;
6. Taking internal corrective action; and
7. Updating Compliance Program materials .

B is for before the exam

Before your institution's next regulatory exam, be prepared to respond knowledgeably to questions related to items noted during the previous examination cycle, even those identified by other regulators. This is especially important if you are new to the institution. You never want to hear an examiner say, "How could you not know we were going to ask you about that?" But what can you do to avoid this dynamic? Here are a few best practices:

1. Review the last few examination records and make sure your institution is not repeating a finding—even a small one. Be particularly wary of items resolved during a previous exam that may have fallen off everyone's radar. No item that made its way into an examiner's report is too small to pay attention to and ensure the item was addressed—especially if it could have a negative impact on customers. Do not rely on every item making its way to a spreadsheet maintained by the institution—review the actual examiner's report.
2. Read and acknowledge your regulators' Examination Priorities or similar release every year by understanding each item as it applies to your institution and if you have not done so already, conduct testing or monitoring in those areas.
3. Educate supervisory and senior leadership about current regulatory compliance issues facing the industry. Include recent actions by your institution's regulator(s) such as new or changed laws, rules, regulations, and guidance—and where relevant to your institution, enforcement and disciplinary actions.
4. Be prepared to demonstrate adjustments to policies, procedures, risks, and controls made to account for new or changed laws, rules, or regulations.

C is for centralizing the process

Consider centralizing the documentation and examination process to safeguard against having an incomplete record or other issues. Best practices include assigning a reliable resource (Exam Manager) to own the examination record. This will make the examiner's life easier and ensure the institution responds timely to inquiries. Consider having all exam matters and documentation flow through this resource.

D is for documentation best practices

Scrutinize the initial and any subsequent production requests, including instructions provided as to type of document(s) accepted, submission process, or other elements of the exam process particular to that regulator. If you are not certain or have questions, contact the examiner. Best practices related to documentation include:

1. Deliver only what the regulator requests. Avoid producing any artifact without a thorough review by senior compliance personnel.
2. Clearly mark each item to its corresponding naming convention used by the regulator. The institution's record does not have to mirror the regulator's taxonomy, but it must include it to avoid confusion. Best to mirror if possible.
3. Documents and reporting produced should look the same year over year; otherwise, explain the reasons for any substantive changes (e.g., new system).

E is for examiners are people too

Let your examiner know through your words and actions that you understand and apply their guidance. Use the "magic words" your examiner uses—avoid using internal jargon to explain how your institution functions.

Take advantage of all the exam prep materials and guidance your regulator provides.

Seek out your examiner's opinion on thorny compliance questions (after vetting with your Law Department). They are unlikely to give you hard and fast answers, but the examiner may help you frame how your institution should handle an issue or respond to an inquiry from the business.

Ensure your examiner understands who the Exam Manager is and how they will interact during the exam.

F is for first impression

If possible, at or prior to the examination, create and deliver a compelling but brief story of your institution, its products and services, customers, footprint, and strategic vision. Include how you plan to deliver more value to your customers (e.g., improved authentication methods, etc.). Share a copy of the presentation with your examiner(s) for reference during the exam.

Remember to have the presentation fully vetted by Compliance, Legal and Senior Leadership to ensure it is factual and to ensure they are familiar with how the elements of the institution's business model are framed.

You may also want to share in your introductory meeting, at a high-level, those issues that your type of institution has identified as the high-level risks associated with your business model and how they are addressed.

G is for gaps identified

Consider apprising your examiner of identified gaps in your regulatory compliance program related to their scope of inquiry, along with an appropriate-level explanation of mitigation efforts. Examiners will appreciate your candor and have a healthier respect for your risk assessment process.

Ensure that a robust process is in place to show how your compliance policies are operationalized where appropriate by procedures and managed for effectiveness by controls. Consider conducting a mock examination or have one conducted by a third-party. To be effective, do not cut corners during a mock exam.

H is for handling the exam

Remember to apply your institution's data protection and on-site security protocols.

Be on time with production items or give notice of the delay prior to the due date or time. Explain the delay honestly in a way that does not point to problems with your institution's recordkeeping. Let the examiner know when they can expect the item—then deliver it by or before that time. Avoid tardiness at meetings with your examiner by all personnel.

Help reduce the number of follow-up documentation requests from your examiner by ensuring that the initial material your institution provides is completely responsive to the question(s) asked and does not require a lot of explanation. Senior compliance personnel should review and approve all items prior to production.

Require all requests to be in writing and use the regulator's taxonomy for tracking. Often, an examiner will ask the institution to produce something already produced for another purpose. Only proper recordkeeping by your Exam Manager will ensure that connection is made, and the right artifact provided again.

It is okay to respectfully question the need for production items that may not apply to your business model or to suggest alternate records once you fully understand the purpose of a request.

Retain a copy of every communication related to the examination, particularly those between the institution and the examiner(s), the Exam Manager, and anyone related to exam production and those that explain an exception, anomaly or material decision made related to the examination.

I is for innovative examination management solutions

Following a consistent process, whether automated or manual, will reward institutions, especially over time. Automation of the regulatory examination process will further ensure consistency by utilizing workflows, calendaring, checklists, and other tools that will provide robust monitoring, tracking, and reporting on your examination(s).

Innovative, automated, compliance solutions are becoming more user-friendly, reliable, and affordable. If you have not done so already, seriously consider automating to the extent possible the examination process for your institution.

J is for judicious recordkeeping

When the onsite examination has ended, take time to go through the record of the examination and judiciously organize. Where necessary, appropriate, and permissible, revise the record such as cleaning up hastily taken notes to ensure their meaning will be apparent to a reviewer. Include senior leadership in this review to facilitate understanding and to ensure that compliance, legal and business personnel are on the same page as to the handling of the exam, how the institution responded, and any expectations regarding results.

K is for kick off remediation

You were likely apprised of potential findings by your examiner in the exit interview or at times throughout the examination process. Ensure appropriate committees and senior leaders are informed and involved in determining ownership and supervision of remediation efforts. There should be clear ownership, supervision, documentation and tracking of each finding to remediation. Once

complete, appropriate controls should be assigned and monitored for effectiveness.

Once you receive the official examination results, review them carefully to ensure your institution is addressing all findings including those considered "observations." Respectfully question the application of findings to your institution if you have a well-reasoned argument as to why the finding is not warranted.

L is for last words

You have survived an examination of your institution and now have a robust record of the event and any continued handling that is required. So, no need to continue with the alphabet, as you have this process under control. Now just lather, rinse and repeat!

Best of luck on your next regulatory compliance examination.

As published in BankBeat.Biz magazine, August 2020.

About the author

Elaine F. Duffus, CSCP, CFCS, FLMI, JD, is a senior specialized consultant on the financial services compliance program management solutions team at Wolters Kluwer. She brings more than 20 years of professional expertise including positions as chief compliance officer in the insurance, securities and banking industries to engagements relating to regulatory insight, regulatory change management (RCM), compliance and ethics governance, risk and controls assessments, compliance testing, complaint management, and exam and inquiry management. Her work includes helping clients assess, understand and manage their regulatory content needs.

When servicing loans, keep the focus on the borrower experience

By **CHRIS ZIMMERMAN**

It's clear that the industry is continuing to place laser-like focus on improving and controlling the borrower experience when servicing loans. Great strides have been made toward this end, but it's a mindset that needs to be at the core of every decision point along the way. The COVID-19 pandemic places a renewed and critical need to focus on the borrower experience.

Every decision should start with the question, "How does this impact the borrower experience?" From there, some of the questions you should ask yourself include:

- Where are my communication touchpoints with a borrower?
- How do I better control the borrower experience?
- Are my borrower communications consistent and compliant?
- Do I have controls in place over borrower communication templates?
- How flexible and scalable is my technology when defaults increase, portfolio sizes grow, or new regulatory requirements need to be implemented?
- How do I prevent borrower complaints?
- How do I make the loss mitigation process more efficient?

Customer communications: The core of the customer experience

A large part of the focus on the borrower experience starts and ends with customer communications. It's important that servicers have consistent and compliant borrower communications, and that they identify borrower touchpoints. Servicers want cleaner, more consistent and borrower-friendly letters, while also ensuring they are compliant.

In addition to monitoring for regulatory changes, servicers must analyze regulatory, procedural and product changes and operationalize them within systems, processes, training and documents. All of these operational components place a strain on resources and increase costs. Letters that go hand-in-hand with a process need to be delivered in a standard, uniform, and compliant manner. From a document perspective, the internal process to incorporate changes is often not efficient or timely.

Forward-looking servicers are seeking solutions that are flexible and allow them to address and comply with frequently changing regulatory requirements seamlessly and proactively. Technology that can be used to create, manage, test and deploy documents improve servicer efficiencies.

Regulatory requirements and implementation timelines

Regulatory and investor loss mitigation program changes can often have short implementation timelines and place strain on resources to meet mandatory effective dates. When notifications are issued, servicers begin the time- and resource-consumptive task of interpreting them and implementing or changing processes, as needed. Success in this arena requires staying on top of federal, investor/insurer, and state compliance requirements.

Change happens fast: Be positioned for a rapid response

In 2017 alone, we saw Fannie Mae and Freddie Mac issue the new Flex Modification program, several new disaster relief programs, and the release of the Veterans Affairs Affordable Modification program. On February 22, 2018, the FHA announced a new loss mitigation program: the Disaster Standalone Partial Claim. This mandatory program requires new documents and procedures. Fewer than 70 days were provided to implement the program. Similarly, on March 7, 2018, the USDA announced via email, that Chapter 18, HB-1-3555 would be updated with a publication and effective date of May 1, 2018. Servicers had less than two months to review and implement 67 pages of new loss mitigation requirements, including new procedures and documents. On September 19, 2018, Fannie Mae and Freddie Mac announced a significant re-write of their model evaluation clauses, impacting over 14 separate documents. Additionally, California revised its Homeowners Bill of Rights requiring new documents and procedures for loss mitigation and foreclosure. Both California and the GSEs all chose January 1, 2019, as the mandatory compliance date for their document overhauls, significantly taxing mortgage servicer compliance and technical staff.

On May 13, 2020, Fannie Mae and Freddie Mac announced the COVID-19 Payment Deferral Program in response to the pandemic. Servicers were required to begin evaluating borrowers for the Deferral Program beginning on July 1, 2020, for those borrowers whose hardships were related to COVID-19. In a few short weeks, servicers were required to implement processes and documents under this new program. Servicers also needed to comply with the credit reporting provisions of the CARES Act, all while dealing with an unprecedented volume of forbearance requests.

Historically, disaster relief programs have been a key touchpoint with borrowers. Government agencies and investors were quick to act, implementing improved disaster relief options for impacted borrowers. However, there are always opportunities to become more proactive to educate borrowers in advance of a natural disaster. By leveraging data, servicers can improve the borrower experience through communications that educate and help borrowers prepare— prior to being impacted by one of these life-changing events. By thinking outside the box and being proactive, servicers can become a champion for the borrower, which, in turn, can only help build trust and increase customer satisfaction.

Maintaining controlled, clear, consistent and compliant documents

Across servicing, it's not uncommon for servicers to maintain document compliance by supporting hundreds to thousands of letter templates. Maintaining this number of templates—while also ensuring they are controlled, consistent and compliant—is a daunting task. Core servicing platforms have limitations and deficiencies that can make implementing letters difficult. For a large servicer that has a servicing footprint in multiple states, the complexity can become overwhelming.

Dynamic document generation creates a better experience for borrowers. By leveraging plain language drafting styles, dynamic document generation make documents easier to read and allows for custom tailoring to the transaction, while maintaining compliance that is more critical than ever.

While there have been advances in servicing technology since the 2008 mortgage crisis, many servicers still use a myriad solutions pieced together to manage the borrower

communications process. The end result leads to manual processes, significant overhead, and a solution that isn't scalable when defaults increase or portfolio sizes grow. All of these outcomes negatively impact the borrower experience.

Maintaining compliance with complex loss mitigation and foreclosure processes is critical for servicers—both from a risk and borrower experience standpoint. In today's regulatory environment, servicers are held to much higher standards relating to these critical borrower touch points. The ability to leverage and implement flexible and scalable solutions to manage processes is critical. Delinquencies and defaults are cyclical in nature. Prior to the COVID-19 pandemic, delinquencies had receded to pre-housing crisis levels but the risk of non-compliance still remained. Those servicers that implemented flexible and scalable solutions prior to the pandemic will be better positioned to navigate the road ahead. If a new solution has not already been put in place, there is little time left to do so.

Eliminate paper from the workflow and streamline loss mitigation

As it pertains to consistency in communications for loss mitigation, the ability to make loan modification programs less paper-intensive and clearer is an area that improves the borrower experience. With the sunset of the Home Affordable Modification Program (HAMP) and implementation of the Fannie/Freddie Flex Modification program, we have seen a positive shift in that direction.

Fannie Mae combined the features of the Fannie Mae Home Affordable Modification Program (HAMP), Standard Modification, and Streamlined Modification into the Fannie Mae Flex Modification program. The goal was to offer servicers an easier, flexible way of helping more borrowers qualify for a loan modification in a changing housing environment. HAMP has allowed for a more streamlined and synchronized approach for GSE loan modification, with fewer documents required to complete the application process.

The recent introduction of the Fannie Mae/Freddie Mac COVID-19 Payment Deferral program was another step towards streamlining the loss mitigation process. The new program was designed to be a simple and efficient solution for borrowers who complete COVID-19-related forbearance plans or who have a confirmed but resolved COVID-19 financial hardship. The solution was designed to be simple to explain to borrowers and eliminated the requirement for a trial period to reduce the borrower touchpoints that would be required for a loan modification.

While the implementation of the Flex Modification and COVID-19 Payment Deferral programs were well received by the industry, there's still a need for a more standard and streamlined approach to loss mitigation programs outside of the GSE efforts. FHA servicing requirements are still challenging for servicers to execute. The requirements are complex and labor-intensive for servicers and borrowers alike. A similar collaborative approach to the implementation of the Flex Modification program would be a significant step towards improving the borrower experience through increased home retention for FHA borrowers.

Delivering documents electronically: Digital solutions are on the rise

Wanting to streamline the delivery and execution of servicing documents, servicers are increasingly looking to adopt digital solutions to electronically route, execute and store servicing documents. In today's age, adopting e-delivery solutions in combination with a borrower self-service portal can drastically improve the borrower experience. Servicers continue to look to leverage these capabilities for loss mitigation and disaster relief programs to reduce timelines, streamline processes, and reduce costs. Investors/insurers such as Fannie Mae and Freddie Mac, already allow for electronic signatures and remote online notarization (RON) for servicing documents, such as loan modification agreements. With social distancing requirements in place due to the COVID-19 pandemic and the wave of post-forbearance workouts on the horizon, servicers have an opportunity to leverage electronic solutions to improve the borrower experience and reduce costs. Through borrower self-service portals, the industry is empowering the borrower, which ultimately improves the borrower experience for those facing financial hardship.

Finding a solution: Focus on customer and current requirements

As the servicing industry continues to look to improve the borrower experience through e-delivery technology solutions, consideration must be made to ensure one is aligned with any compliance requirements that may dictate how notices must be delivered to borrowers. As more states continue to adopt electronic notary capabilities, servicers will have an even greater opportunity to leverage e-sign capabilities, which are currently permitted for various investor/insurer loan modification programs. Moving toward the digital experience in servicing will greatly improve the borrower experience in the current pandemic environment.

As of July 2020, 26 states have enacted legislation specifically authorizing RON as an acceptable method of notarization. As a result of COVID-19, many remaining states continue to quickly pass different forms of Remote Ink Notarization (RIN) that do not clearly meet the minimum standards of RON required for real estate transactions. In response, on July 1, 2020, the MBA announced that in partnership with the American Land Title Association and the National Association of Realtors, a model executive order has been developed to assist remaining states in enabling remote notarizations during the COVID-19 pandemic.

When looking for the right solution, make sure it's for the long run; with one eye toward accounting for an evolving regulatory environment and another toward making sure your processes continually improve the borrower experience.

About the author

Chris Zimmerman, Product Manager at Wolters Kluwer, has spent 15 years in the mortgage servicing space managing all aspects of mortgage servicing. In his prior roles, he has helped some of the nation's largest servicers implement servicing policies, procedures and controls that ensured compliance with state and federal regulatory requirements; government-sponsored loan modification and refinance programs; and investor/insurer servicing guidelines. He also helped these institutions develop, implement and execute upon risk and control self-assessments, key risk indicators, and vendor oversight measures. In his role with Wolters Kluwer, he manages the Expere product, a suite of solutions that helps servicers improve efficiencies by managing all aspects of document compliance, from automated document selection to document assembly, packaging and delivery.

Unprecedented forbearance numbers and post-forbearance workouts

The CARES Act has led to an unprecedented number of borrowers in forbearance. While the increase has stabilized over the past few weeks, MBA Forbearance Survey data estimates 4.3 million homeowners are in forbearance. Upon expiration of the forbearance period, servicers will be faced with a tidal wave of post-forbearance loss mitigation workouts that will present significant challenges.

While those in the industry can see the wave of higher volumes coming, predicting the size and timing is difficult. There's no comparable event like the industry is facing today. The underlying cause is a global pandemic, which is quite different than the impact of the financial crisis because there was time to prepare for the increase in delinquencies and defaults. The suddenness and magnitude of this event presents different challenges.

While some states have started efforts to re-open and stimulate their economies, most have a phased approach. There could be additional impact if the predictions are correct about a second round of COVID-19 in the fall. Many servicers are offering forbearance periods in 90-day increments. Not all borrowers are using their right for forbearance in the same way. June data reflects that some have exited forbearance, while others have chosen it to conserve cash, or to use it as an insurance policy while continuing to make their monthly payments. The current economic environment seems to suggest that while some borrowers have exited forbearance there could be a longer duration of forbearance periods for others.

Mortgage delinquencies on the rise

Another challenge is trying to forecast the volume of delinquency and foreclosures. According to *Black Knight's First Look At May 2020 Mortgage Data*, an additional 723,000 homeowners became past due on their mortgages, pushing the national delinquency rate to its highest level in eight and a half years. Serious delinquencies are on the rise as well, increasing by more than 50 percent over the past two months. Foreclosure starts and sales remain at record lows due to COVID-19 moratoriums. The Federal Housing Finance Agency recently announced that Fannie Mae and Freddie Mac will extend their single-family moratorium on foreclosures and evictions until at least August 31, 2020. While some businesses are re-opening, it's unlikely they will call all employees back and other businesses may not re-open at all. These factors will result in a population of borrowers who will be delinquent and transition to foreclosure.

Industry staffed for a historically low delinquency environment

Prior to COVID-19, servicers were staffed for a historically low delinquency/default environment. With this event hitting the industry quickly, finding and hiring the volume of correctly skilled staff in time to address the post-forbearance wave is a challenge. To augment hiring efforts, it may be necessary to re-deploy existing staff.

Employees working from home create additional challenges. How do you effectively train staff with frequently changing requirements in a virtual environment? Training is critically important to make sure agents are providing the right message to borrowers. Third-party administrators and vendors that offer complete Business Processing Outsourcing services could be leaned on to augment the staffing pressure.

Customer communications: The core of the customer experience

It's critically important to be thinking about the customer experience as you navigate the road ahead. Both written and verbal customer communications are at the core of the customer experience. It's critical to know where your borrower touchpoints are, and even more crucial to ensure consistent, clear and compliant communications. Borrower education on post-forbearance relief options and well-trained staff whom keep updated on changing requirements are both needed to prevent borrower confusion. Scripts are a useful tool for communicating with borrowers. Fannie and Freddie have scripts available on their servicing page, which can be leveraged for government-sponsored enterprise loans and programs.

Complaints are an early indicator of a breakdown in your communication process and should be looked at closely.

Here are some key questions to ask internally to ensure a positive customer experience:

- How do I better influence the borrower experience?
- What are the communication touchpoints with a borrower?
- Are the borrower communications consistent and compliant?
- Do I have controls in place over borrower communication templates?
- How do I prevent borrower complaints?
- How flexible and scalable is my technology when defaults increase, portfolio sizes grow, or new regulatory requirements need to be implemented?
- How do I make the loss mitigation process more efficient?

Move toward the digital experience

Will today's environment move the servicing industry more quickly toward the digital experience? The servicing industry has historically been behind other lines of business, such as origination, when it comes to adopting electronic solutions. Self-service portals, in conjunction with the borrower's consent to receive electronic notices, are used by some servicers today; but there's an opportunity to leverage electronic signature capabilities. The standards in the origination space can serve as the foundation for servicing as it moves toward the full digital experience. The Mortgage Industry Standards Maintenance Organization (MISMO) recently established a working group to apply digital mortgage standards to the loan modification process. Investors and insurers, such as Fannie Mae and Freddie Mac, already allow for electronic signatures on modification agreements. Compliance will be key, especially where recording and notarization may be required. Many states have either enacted remote online notarization (RON) laws and rules or are looking to enact them. The current environment with COVID-19 and the adoption of RON laws make this the opportune time for the servicing industry to move toward the digital experience.

Increase your capabilities and face the workout influx with trusted solutions from Wolters Kluwer

The global pandemic has increased the rise of forbearance requests and providing quick workout relief to clients is more critical than ever. It has also accelerated the need for digital lending technologies as signatures must be acquired remotely. A seamless, transparent and socially distant process will ease tensions, move quickly and adhere to compliance requirements. The Wolters Kluwer team has the technology, compliance expertise and business augmentation capability to help. Contact a Wolters Kluwer representative today to learn more.

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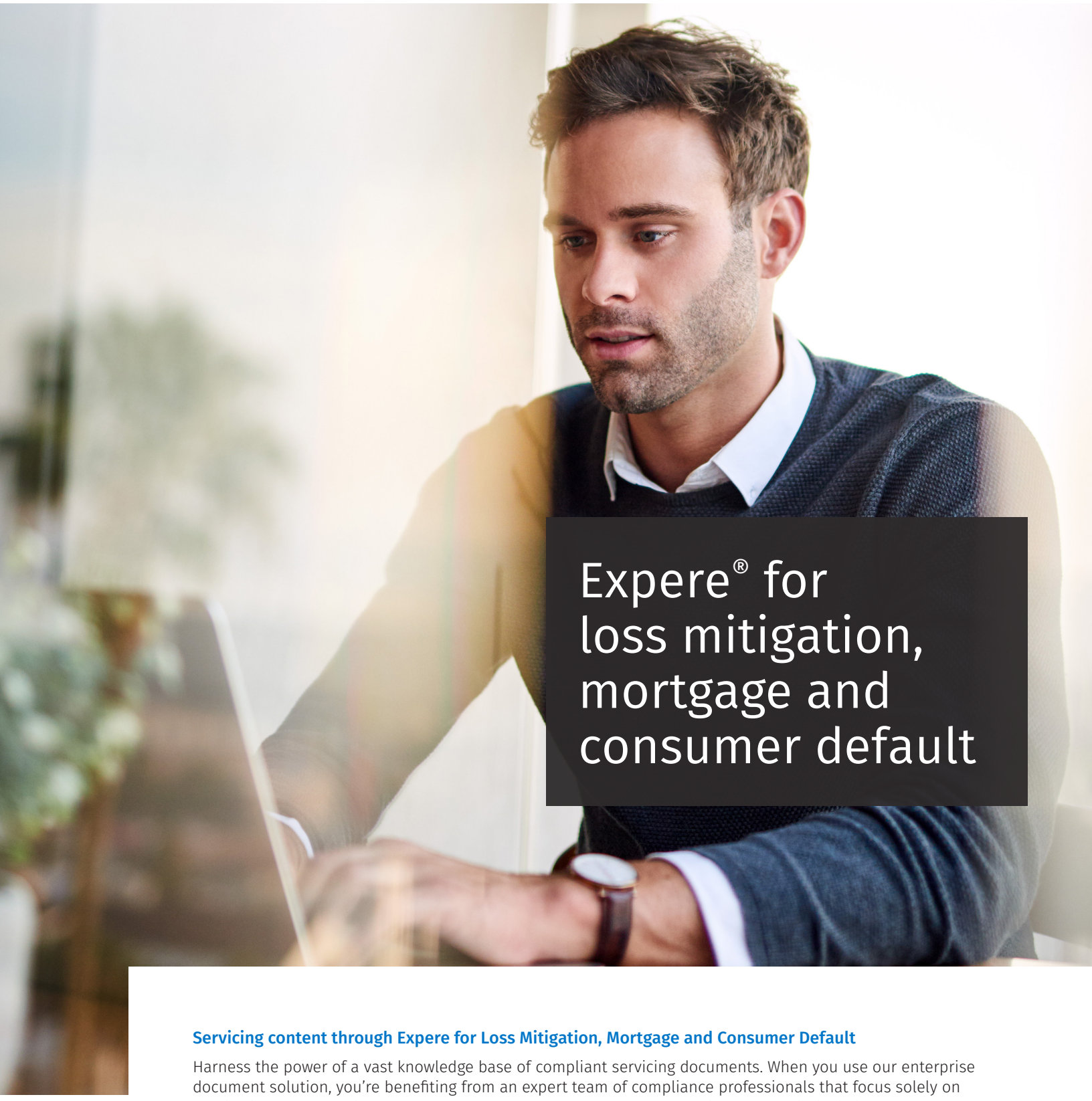

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Leveraging machine-assisted language translation to serve LEP mortgage customers

By **SAM HOLLE**

Regulators are increasingly requiring, and the market is expecting, the financial services industry to do a better job meeting the needs of Limited English Proficiency (LEP) borrowers by providing translated, non-executable copies of loan documents, also known as convenience documents.

One reason the industry is slow to embrace non-English language (NEL) convenience documents is because of the perceived compliance risk and the potential high costs of translating technical content. Some lenders fear that if they only translate some of their documents, they may be vulnerable to fair lending claims for not offering all product types to all customers. Others have raised UDAAP concerns. If the lender cannot guarantee that customers will be provided with translated documents throughout the life of the loan, then might the lender be accused of being deceptive by providing advertising and application materials in NEL?

Despite the regulatory uncertainties, many lenders want to enter the LEP consumer space. And, for good reason—it's a big market. The percentage of LEP consumers is growing and shows no signs of slowing down anytime soon.

What is the mortgage translation clearinghouse?

While many in the industry want to pursue LEP customers, they are dissuaded by the technical and financial challenges of translating their loan document collection. In response, the Federal Housing Finance Agency (FHFA), Freddie Mac, and Fannie Mae created the Mortgage Translations Clearinghouse, a collection of resources that includes a standardized glossary of mortgage terms and an archive of translated documents.

Although the Mortgage Translation Clearinghouse collection is a good starting point for a NEL document program, it's not a complete solution. The documents are incomplete, not customized and possibly outdated. While many translated Fannie Mae model notes and security agreements are available, state-specific disclosures are often missing. With few exceptions, the documents that are present in the archive cannot be used out-of-the-box and need revisions to reflect the institution-specific content that is present on the lender's English versions.

Most model forms, including English language forms, lack the state-mandated content required to actually use them in commerce.

Maintenance is always an issue for loan documents, but it is particularly challenging for translated content. State legislatures, regulators and the courts routinely publish new requirements ensuring that document compliance is a moving target. Document vendors frequently publish updated content, so maintaining parity between the English and translated versions can be burdensome.

A better alternative

Machine-assisted translation software offers some promising solutions to address many of these issues. Machine learning and artificial intelligence (AI) are increasingly being leveraged to assist skilled bank compliance personnel. Machine-assisted translations follow a similar trajectory.

One of the most practical ways that technology can assist is through translation memory software, which is essentially a database of different groupings of text. The software recognizes when text has already been translated and suggests reusing the translated text. This is particularly useful for legal documents, given that particular phrasings have precedential value or their meaning is well understood. Further, states often require that documents use specific phrasings or text. This can result in a significant amount of text being eligible for reuse from one mortgage document to another—a great scenario for leveraging machine learning. Translation memory software also assists with content updates and maintenance issues by isolating content that has changed and suggesting appropriate updates.

While machine translation software has made significant strides, it will not replace human translators—at least in the near term. In fact, by lowering production costs, it may help grow the market for translated content and lead to increased opportunities. Translating financial documents requires people with a deep understanding of the target language and subject matter to ensure that the translation maintains the original intent and context. Much of this work is done post-editing, where the machine produces a translation and then a human corrects the mistakes. Over time, the machine learns from the mistakes and creates more accurate translations.

This is the same work pattern that we see in other areas of financial services. Modern compliance departments rely heavily on software to sort and prioritize the firehose of legislative and regulatory change into a manageable stream of categorized information to be reviewed by the appropriate subject matter expert. Although much of this information sorting used to be performed by paralegals or entry-level associates, it is now automated. Leading businesses are taking the process even further, using AI to suggest the specific documents that should be reviewed in response to regulatory change.

As demographics, customer expectations, and new regulatory requirements evolve, the industry is obliged to provide a higher level of service to LEP communities. Lenders would be well served to consider how to leverage the many technological advances in machine-assisted translations—all of which are lowering barriers to entry by significantly reducing the cost of maintaining documents in multiple languages.

About the author

Sam Holle JD, CRCM, is a Senior Consultant with Wolters Kluwer's Regulatory Compliance Analysis group. He is responsible for managing the compliance aspects of the loan servicing lines of business. Mr. Holle advises the business on its development of next-generation compliance solutions.

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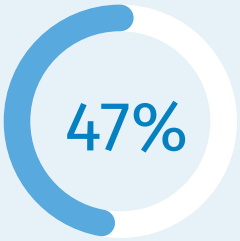
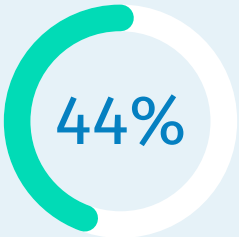
Top obstacles to implementing an effective compliance program

Source: 2019 Risk Indicator Survey, Wolters Kluwer



Manual processes

Inadequate staffing



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