

# Keeping a Focus on Compliance in the Face of COVID-19

June 18, 2020



Wolters Kluwer

# Notice

- *The information presented in this webinar summarizes general guidance and other sources, based on the existing information available at the time of the presentation.*
- *It is intended only to act as a quick reference and not as a substitute for the law, regulations or official commentary.*
- *Always consult official sources of information, including the regulation text and official commentary, for a complete understanding of the law, including the regulations.*

# Today's Speakers



**Thomas Grundy, CRCM**  
Senior Director



**Ann-Marie Lefebvre,**  
Consulting Manager



**Neal Doherty,**  
Consulting Manager



**Britt Faircloth, CRCM**  
Consulting Manager



**Lori Lennemann,**  
Sr. Regulatory Consultant

# Agenda

- Opening Remarks
- Paycheck Protection Program (PPP) Considerations from a Compliance and Review Perspective
- Fairness in Servicing - Mortgages and Consumer Credit
- Community Reinvestment Act – Capturing and Reporting
- COVID-related Community Development Activities

## HERE'S WHAT YOU SAID...

As a compliance professional operating during the pandemic, which of the following statements can you say are TRUE about your compliance:

**83%** of respondents chose “*Compliance is included as a necessary function* in our business continuity plan.”

**16%** of respondents said that “*Gaps and weaknesses* in our program have become apparent under pandemic-related stress.”

**39%** of respondents chose “It is *strong enough to implement new regulatory requirements* that are effective immediately, even with no lead time and scant guidance on implementation.”

# Opening Remarks

# Pace of US Banking Regulatory Change

Regulator	# of Releases Monitored	New/Changed Laws/Regs
CFPB	306	53
FDIC	618	65
OCC	410	43
FinCEN	45	4
OFAC	202	14
States	1827	1002
<b>Total</b>	<b>4319</b>	<b>1253</b>

- On average 24 new releases weekly
- 12 percent increase over prior year
- COVID-19 related releases comprised nearly 20% of regulatory activity as of May 2020.

# Regulatory Focus

- Credit Reporting
- Debt Collection
- Mortgage Servicing
- Student Loan Servicing
- Truth In Lending Act
- Real Estate Settlement Procedures
- Community Reinvestment Act
- Fintech and Technology Transformation
- Artificial Intelligence and Machine Learning
- Third Party Risk Management
- Financial Crime/BSA/AML/OFAC





# Compliance Concerns, Substantial Risks

- Keeping current with changing regulations
- Compliance program management
- Residential mortgage regulations and the new URLA
- Changes in deposit account regulations
- BSA/AML Requirements
- Fair lending laws and regulations
- UDAAP standards
- Manual compliance processes
- Inadequate staffing



Source: Wolters Kluwer Regulatory & Risk Management Indicator, U.S. Banking Industry - December 2019

# Poll Question #1

**Which of the following is the top risk that you believe will receive escalated priority in the next 12 months at your organization? (choose 1)**

# Preparing You & Your Borrowers for PPP Forgiveness Success

- Communications Strategy
- Employee Training
- PPP Loan Forgiveness Workflow
- Complaint Management
- Documentation Retention
- Post Forgiveness Servicing

# Communications Strategy

- Gather the team
- Determine the target audiences
- Determine the purpose of the communication
- Develop timelines
- Develop content for staff and borrowers
- Determine media formats

# Employee Training

- Lenders should develop end to end training program to assist employees on the following:
  - Application intake and tracking
  - Lender review and decision
  - Communication and follow up regarding incomplete applications
  - Communication regarding denied applications
  - Submission of applications to SBA
  - Communication of SBA's decision
  - Managing communications with upset and frustrated borrowers
  - Instruction and script guidance and escalation issues
  - Timeline for training

# PPP Loan Forgiveness Workflow Considerations

- Application Submission and Tracking
- Key Documentation Requirements
- Lender Review and Decision Process
- Second Review for Denied Requests
- Fraud Monitoring and Other Compliance Considerations

# PPP Loan Forgiveness Workflow Considerations: Application Submission and Tracking

- Lenders should develop a tracking system and pipeline monitoring process for application requests to ensure adherence with 60-day decision deadline.
- The borrower must complete and submit the Loan Forgiveness Application (SBA Form 3508, 3508 EZ or lender equivalent) to its lender (or the lender servicing its loan).
- The SBA has not yet provided guidance on the process by which lenders will submit loan PPP forgiveness applications to the SBA.

# PPP Loan Forgiveness Workflow Considerations:

## Key Documentation Requirements

- Eligible payroll expenses documenting cash compensation paid to employees
- Eligible mortgage interest, rent/lease payments, and utility payments with documentation proving the existence of the obligation before February 15, 2020
- Payroll reports to determine the number of full-time equivalent employees per month and their compensation during the comparison period and covered period
- Documentation proving written offers of employment and any employee rejections; firings for cause; voluntary resignations; written requests by an employee to reduce work schedule



# Poll Question #2

How prepared is your institution to handle PPP loan forgiveness requests?

# PPP Loan Forgiveness Workflow Considerations:

## Lender Review and Decision Process

- Lenders are expected to perform a good-faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning amounts eligible for loan forgiveness.
- If the lender identifies errors in the borrower's calculation or lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue.
- Lenders must issue a decision to SBA on a loan forgiveness application not later than 60 days after receipt of a complete loan forgiveness application from the borrower.

# PPP Loan Forgiveness Workflow Considerations:

## Second Review for Denied Requests

- Evaluate how borrowers were supported in completing application package:
  - Adequacy of communication regarding application requirements;
  - Effectiveness of controls established to ensure same level of service;
  - Ensure demographic information provided by the borrower is not used in a discriminatory manner and that the borrower was not required to submit demographic information when collection is optional;
  - Evaluate denials of forgiveness for potential fair lending risk; and
  - Issue an adverse action notice to document the forgiveness denial decision.

# PPP Loan Forgiveness Workflow Considerations: Fraud Monitoring and Other Compliance Considerations

- Risk of fraud if a borrower is declined due to documentation provided; and reapplies with documentation that directly conflicts with original documentation.
- Lenders must adhere to compliance requirements, otherwise the lender's PPP fees and potentially loan guaranty could be jeopardized
- Consider ECOA/Regulation B notice requirements and other lending related regulatory requirements.

# Documentation Retention Considerations

- Maintain all documentation related to the borrower's PPP loan and loan forgiveness request
- Maintain clear, accurate, and concise communication with borrowers
- Document the communication of SBA's loan forgiveness decision
- Track your forgiveness applications
- Retain loan maintenance documentation
- Remind your borrower of the borrower's retention requirements

# Complaint Management

- Many borrowers likely thought all loans would be completely forgiven.
- Be prepared to deal with an increase in complaints and communications with upset and frustrated borrowers.
- Enhance complaint monitoring processes.
- Provide additional training to staff to report any PPP forgiveness complaints or threats of litigation; and
- Track complaints for trending and analysis.

# Post Forgiveness Loan Servicing

- Lenders need an effective transition plan for frustrated borrowers who are now in a repayment phase;
- Develop or continue existing servicing plans for servicing, reporting and default management based on SBA's requirements;
- Understand requirements for SBA Form 1502 reporting; and
- Develop customized loss mitigation and collection strategies for loans with a remaining balance.

# Fairness in Servicing



# PPP Fairness Considerations

Fairness considerations relating to PPP lending are continuing to emerge. These may include allegations and/or concerns relating to:

- **Gating:**

Requirements that an applicant have an existing depository and/or lending relationship with the institution

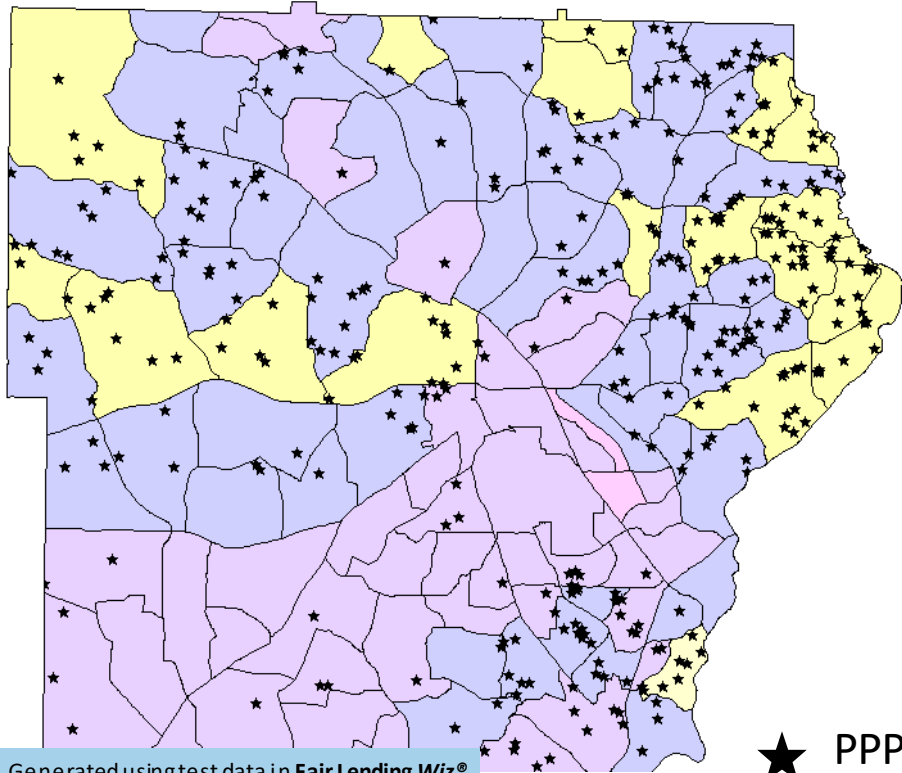
- **Shuffling:**

Institutions re-ordering applications and taking those with the highest loan amounts first to increase fees under the PPP

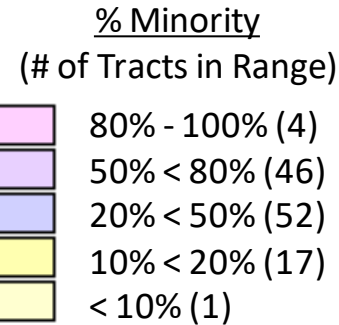
- **Distribution of Lending to Women and Minority Owned Businesses:**

The potential that due to gating, shuffling, or other factors and institution may not have equally serviced businesses that are women or minority owned, or businesses that are in minority areas

# PPP Lending Analysis



PPP Lending by Tract Minority					
	Count	%		Count	%
<b>PPP Loans Originated:</b> Majority Minority Tracts	53	14.64%	<b>Non-Farm Businesses:</b> Majority Minority Tracts	30,468	34.10%
<b>PPP Loans Originated:</b> Lower Minority Tracts	309	85.36%	<b>Non-Farm Businesses:</b> Lower Minority Tracts	58,872	65.90%
<b>Total Area PPP Loans Originated</b>	362	100.00%	<b>Total Area Non-Farm Businesses</b>	89,340	100.00%



★ PPP Loans Originated

Generated using test data in Fair Lending Wiz®

## Regulatory Focus on Fairness

**In a CFPB blog posting on April 27<sup>th</sup>, the Bureau reminded consumers and business owners of the applicability of anti-discrimination laws when exercising CARES Act options:**

As small business owners and lenders work together to access the CARES Act options or other loan programs, anti-discrimination laws, such as the federal Equal Credit Opportunity Act, protect business owners from discrimination because of race, color, national origin, sex, and other protected characteristics. These protections apply to new and existing customers (including depository customers) seeking loans at financial institutions. The Bureau has resources in English and in Spanish with warning signs about lending discrimination. Some examples of potential warning signs of lending discrimination based on race, sex, or other protected category include:

- Refusal of available loan or workout option even though you qualify for it based on advertised requirements
- Offers of credit or workout options with a higher rate or worse terms than the one you applied for, even though you qualify for the lower rate
- Discouragement from applying for credit by the lender because of a protected characteristic
- Denial of credit, but are not given a reason why or told how to find out why
- Negative comments about race, national origin, sex, or other protected statuses

# Consumer Vulnerability

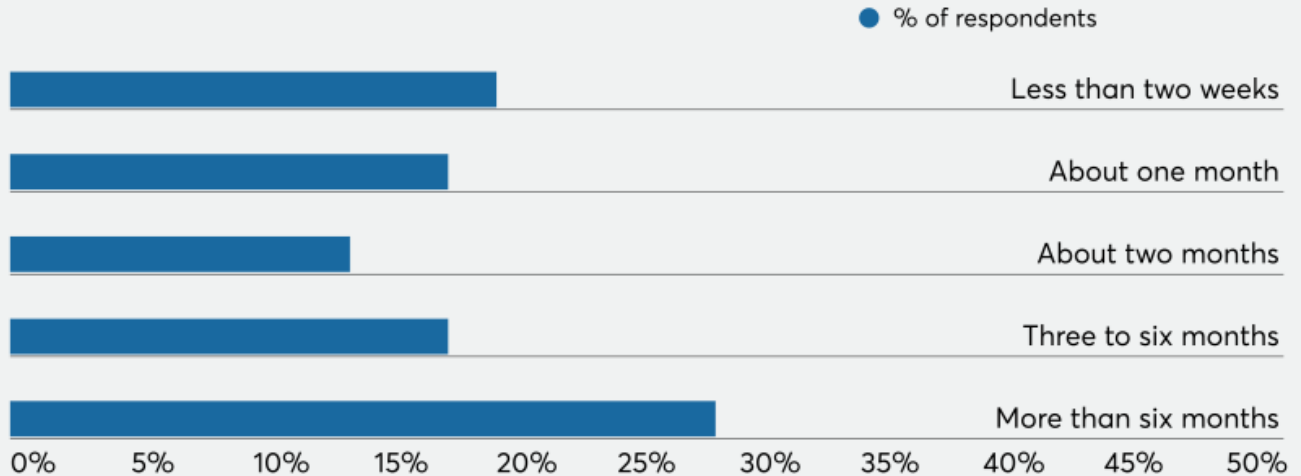
## CFPB Survey: Pre-COVID-19

# 52%

of households responded that they would not be able to cover expenses for more than two months.

### Living on the edge

Even before the pandemic, more than half of U.S. households said they would not be able to cover expenses for more than two months if they lost their main source of income



Source: CFPB "Making Ends Meet" survey, May 2019

## Fairness Program

Given the increase in vulnerable populations and the overall impact of the COVID-19 pandemic, a careful review of the fairness program and associated monitoring may be necessary. Possible adjustments include:

- Training Needs
  - Validate that all employees involved in the credit process, including any temporary or reassigned employees have had the appropriate fair lending and UDAAP training
- Increased Quality Control
  - Second review process enhancements
- Additional Fair Lending analysis
  - Credit card or other consumer lending hardship assistance
  - Mortgage loss mitigation activity

# Fairness Performance Analysis

Analysis of performance should include testing for:

- Overt Discrimination
- Disparate Impact
- Disparate Treatment

Specific areas of focus may include:

- Disparities in Denial rates
- Statistical analysis (where applicable)
- Matched pair or benchmark overlap testing
- Geographic distribution of workouts or other assistance granted and denied
- Distribution of credit line increases, decreases and restrictions
- Average Rate Adjustment

# Disparities in Denial Rates

## Focal Point Report

File Type: Consumer  
 File Name: Loan Mods\_Loss Mit  
 Filter:

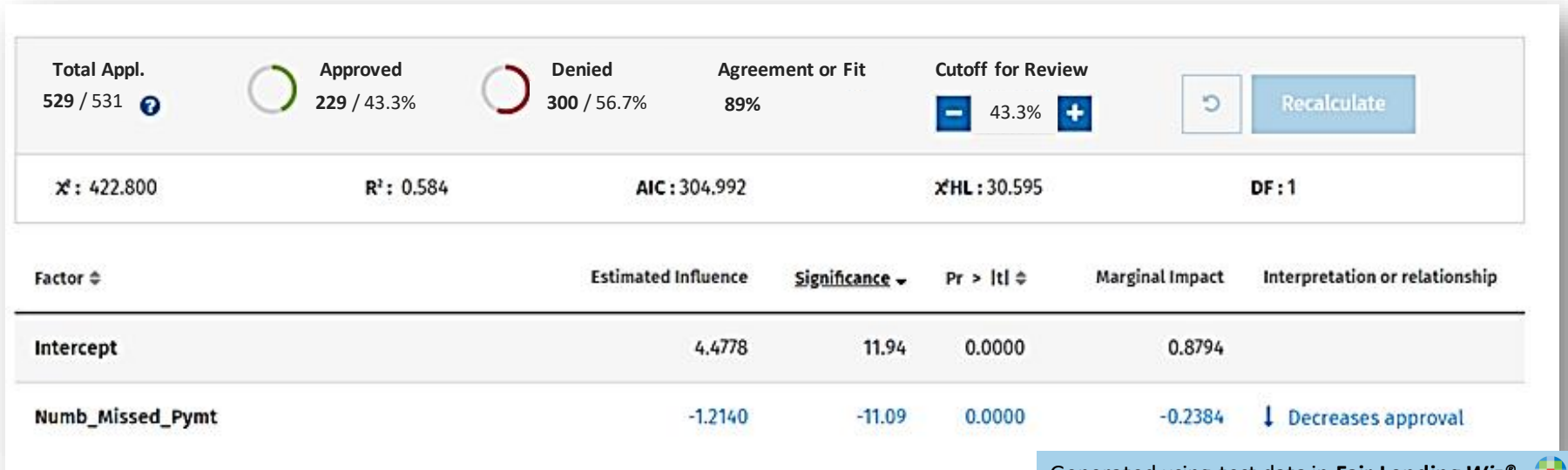
Statistically Significant: ■  
 Over Benchmark: ■  
 Control Group: ■

Toggle: T-Stat Count

Borrower Characteristic	Record Count	Origination		Denial			Above Threshold		APR		Note Rate		APR - Note Rate	
		Count	% Row	% Total	Count	%	Ratio	Count	Ratio	Average	vs Target	Average	vs Target	Average
Tract Minority														
10% - 19%	102	49	48.04%	22.37%	53	51.96%	1.01	0.00	4.96		3.66		1.30	
20% - 49%	201	83	41.29%	37.90%	117	58.21%	1.13	0.00	4.86	-0.07	3.58	0.08	1.28	-0.14
50% - 79%	104	36	34.62%	16.44%	68	65.38%	1.27	0.00	5.14	0.22	3.61	0.11	1.53	0.11
80% - 100%	44	13	29.55%	5.94%	31	70.45%	1.37	0.00	4.82	-0.10	3.93	0.43	0.90	-0.53
< 10%	72	35	48.61%	15.98%	37	51.39%	1	0.00	4.55	-0.37	4.11	0.61	0.43	-0.99
Not Available	8	3	37.50%	1.37%	4	50.00%	0.97	0.00	4.92	0.00	3.50	0.00	1.42	0.00

Generated using test data in Fair Lending Wiz® 

# Statistical Analysis - Regression





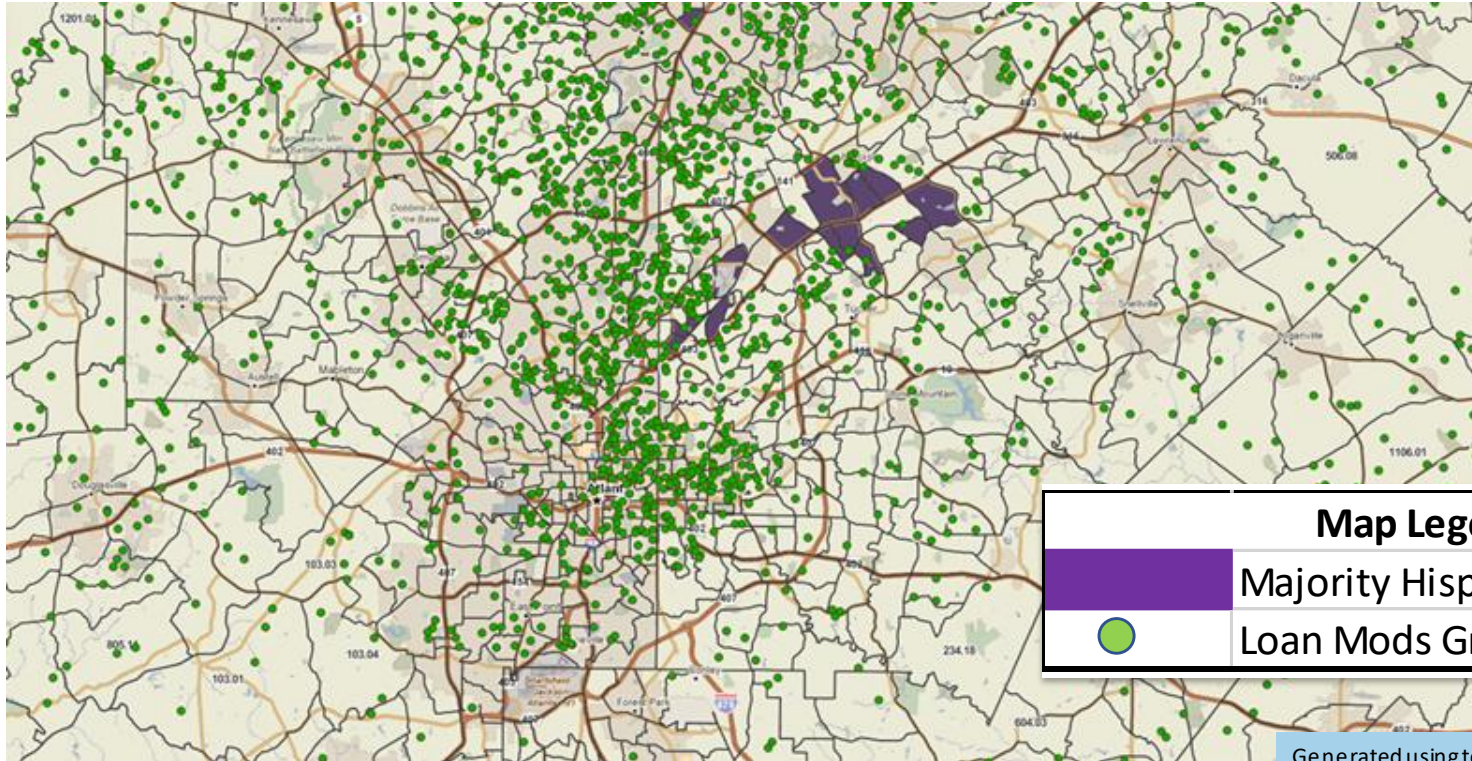
# Regression Results

View by  % of Row  % of Column [Export data](#) [Show legend](#)

Tract Minority	▲ Denied & Review	■ Approved & Review	● Properly Denied	◆ Properly Approved	Total
Tract Minority	▲ Denied & Review	0 0.00%	33 45.83%	35 48.61%	72 100.00%
* <10%	4 5.56%	0 0.00%	49 48.04%	49 48.04%	102 100.00%
10% - 19%	4 3.92%	2 1.00%	111 ↑ 55.50%	81 ↓ 40.50%	200 100.00%
20% - 49%	6 3.00%	1 0.96%	41 39.42%	43 41.35%	104 100.00%
50% - 79%	19 ↑ 18.27%	1 2.27%	8 ↓ 18.18%	14 ↓ 31.82%	44 100.00%
80% - 100%	21 ↑ 47.73%	0 0.00%	4 57.14%	3 42.86%	7 100.00%
Not Available	0 0.00%	0 0.00%	4 57.14%	3 42.86%	7 100.00%
<b>Total</b>	<b>54 10.21%</b>	<b>4 0.76%</b>	<b>246 46.50%</b>	<b>225 42.53%</b>	<b>529 100.00%</b>

Generated using test data in Fair Lending Wiz®

# Geographic Analysis



Generated using test data in Fair Lending Wiz®

# CRA & PPP

# Are COVID-19 affected states and jurisdictions considered CRA designated disaster areas?

- Follow's the Federal Emergency Management Agency (“FEMA”) guidance
  - Public Assistance Category B
  - Not *normally* considered a CRA disaster area
- Agencies will *consider* activities that revitalize or stabilize areas that **protect public health and safety**, particularly for
  - Low- or moderate-income individuals
  - Low- or moderate-income geographies
  - Distressed or underserved nonmetropolitan middle-income geographies
- Effective through the **six-month period after** the national emergency declaration is lifted
  - May be extended by the Agencies

# Are bank loans made under the Paycheck Protection Program eligible for CRA consideration?

## Retail lending test

- Loans \$1 million or less made to a:
  - For-profit business
  - Nonprofit organization
    - Loan must be secured by non-residential, non-farm real estate
- Located in:
  - Low- or moderate-income geography or
  - Distressed or underserved nonmetropolitan middle-income geography
- Made to:
  - A small business having gross annual revenues (“GAR”) of \$1 million or less

# How will activities undertaken in response to COVID-19 that are responsive to community needs be considered in CRA examinations?

## Community Development lending test

- Loans greater than \$1 million
- Primary purpose of community development
  - Affordable Housing for LMI individuals or families
  - Community services targeted to LMI individuals
  - Activities that promote economic development\*
  - Activities that revitalize or stabilize LMI geographies, designated disaster areas or distressed or underserved non-metropolitan middle-income geographies
  - *Activities that help to stabilize COVID-19 designated disaster areas by protecting public health and safety, particularly for low- or moderate-income individuals or geographies*

\*Loans that meet the economic development size and purpose tests

- A loan to a small business (GAR <=\$1million) that creates or retains jobs
  - For low- or moderate-income individuals
  - In low- or moderate-income geographies

## For PPP loans reported as small business loans, should a bank report revenue on the CRA loan register (“LR”) based on what it had previously gathered about that business?

### Small business defined

- A business or farm having gross annual revenues (“GAR”) of \$1 million or less
- During the ordinary course of business, a bank that collected and considered GAR in making its credit decision can use that information to indicate the size of a business on its LR
- If a bank did not collect GAR from a business, that loan will not be considered in evaluating a bank’s performance in lending to “small” businesses
- Banks that have access to a borrower’s GAR information **may, but are not required to,** report that information
- Banks will not be penalized for reporting large numbers of loans to businesses in which GAR was not available
  - Due to the COVID-19 emergency

## How will PPP loans be considered when evaluating the borrower and geographic distribution of loans and the distribution of loans inside and outside of bank assessment areas?

The distribution of loans is considered during the evaluation of a bank's performance, specifically:

- How many loans a bank made **inside and outside** its assessment area(s)?
- How many loans were made to **small businesses** (determined by GAR)?
- How are small business loans dispersed throughout the different income levels within an assessment area(s)?

The current environment presents unique challenges. Performance context is key in demonstrating how a bank is meeting the credit needs of its communities while supporting the demands brought about by PPP, for instance, a larger than normal proportion of loans made beyond a bank's delineated assessment area(s).

*Documentation, such as geocoding, must be accurate!*



# Lending Inside and Outside of the Assessment Area

Loan Category	Number of Loans				Total #	Dollar Amount of Loans \$(000s)				Total \$(000s)	
	Inside		Outside			Inside		Outside			
	#	%	#	%		\$	%	\$	%		
Home Mortgage											
2018	353	40.8	513	59.2	866	32,744	42.7	43,961	57.3	76,705	
<b>Subtotal</b>	<b>353</b>	<b>40.8</b>	<b>513</b>	<b>59.2</b>	<b>866</b>	<b>32,744</b>	<b>42.7</b>	<b>43,961</b>	<b>57.3</b>	<b>76,705</b>	
Small Business											
2018	57	34.3	109	65.7	166	11,899	43.2	15,675	56.8	27,574	
<b>Subtotal</b>	<b>57</b>	<b>34.3</b>	<b>109</b>	<b>65.7</b>	<b>166</b>	<b>11,899</b>	<b>43.2</b>	<b>15,675</b>	<b>56.8</b>	<b>27,574</b>	
Small Farm											
2018	6	25.0	18	75.0	24	335	22.9	1,126	77.1	1,461	
<b>Subtotal</b>	<b>6</b>	<b>25.0</b>	<b>18</b>	<b>75.0</b>	<b>24</b>	<b>335</b>	<b>22.9</b>	<b>1,126</b>	<b>77.1</b>	<b>1,461</b>	
<b>Total</b>	<b>416</b>	<b>39.4</b>	<b>640</b>	<b>60.6</b>	<b>1,056</b>	<b>44,978</b>	<b>42.5</b>	<b>60,762</b>	<b>57.5</b>	<b>105,740</b>	

Source: Evaluation Period: 1/1/2018 - 12/31/2018 Bank Data  
Due to rounding, totals may not equal 100.0

Generated using test data in CRA Wiz®



# Resources

Community Reinvestment Act (CRA) Frequently Asked Questions Related to COVID-19

**Question 1:** Are COVID-19 affected states and jurisdictions considered CRA designated disaster areas?

**Response 1:** The agencies believe that the Coronavirus Disease (COVID-19) national emergency raises unique needs for revitalization and stabilization activities that differ from those typically undertaken in response to natural disasters or other emergencies. The Federal Emergency Management Agency (FEMA) has issued major disaster declarations that include assistance for emergency protective measures (Public Assistance Category B) for all 50 states, the District of Columbia, and certain U.S. territories in connection with COVID-19. Areas identified for Category B assistance are not normally considered designated disaster areas under CRA because of the temporary nature of the activities covered under this category of assistance. However, the agencies believe that it is appropriate to recognize such COVID-19 designated disaster areas due to the circumstances of this national pandemic; therefore, the agencies will grant consideration for activities that revitalize or stabilize these areas by protecting public health and safety,<sup>1</sup> particularly for low- or moderate-income individuals, low- or moderate-income geographies, or distressed or underserved nonmetropolitan middle-income geographies. Examples of qualified activities include loans, investments, or community development services that support:

- Emergency medical care, including medical facility services and supplies, temporary medical facilities, and enhanced medical/hospital capacity;
- Purchase and distribution of personal protective equipment;
- Provision of emergency food supplies; or
- Assistance to state, tribal, territorial, or local governments for emergency management and to support communications of general health and safety information to the public.

**Question 2:** How long will the agencies grant consideration for activities that revitalize or stabilize COVID-19 designated disaster areas?

**Response 2:** The March 19, 2020 Joint Statement<sup>1</sup> indicates that it is effective through the six-month period after the national emergency declaration is lifted, unless extended by the agencies. With specific reference to COVID-19 related revitalization and

<sup>1</sup> <https://www.fema.gov/news-release/2020/03/19/coronavirus-covid-19-pandemic-eligible-emergency>

OCC:

Link: [CRA Q&A related to COVID-19](#)



Board of Governors of the Federal Reserve System  
Federal Deposit Insurance Corporation  
Office of the Comptroller of the Currency

March 19, 2020

**Joint Statement on CRA Consideration for Activities in Response to COVID-19**

The Board of Governors of the Federal Reserve System (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the agencies) recognize the potential for Coronavirus Disease (also referred to as COVID-19) to adversely affect the customers and operations of financial institutions. On March 9, 2020, the federal financial institution regulatory agencies and state bank regulators issued a statement to encourage financial institutions to meet the financial services needs of their customers and members in areas affected by COVID-19.<sup>1</sup>

Consistent with the March 9, 2020, statement and existing information that the agencies have provided in prior communications on disasters and national emergencies, the agencies encourage financial institutions to work with affected customers and communities, particularly those that are low- and moderate-income. The agencies recognize that such efforts—when consistent with safe and sound banking practices and applicable laws, including consumer protection laws—serve the long-term interests of these communities and the financial system.

**Working with Customers.** Pursuant to the Community Reinvestment Act (CRA), the agencies will favorably consider retail banking services and retail lending activities in a financial institution's assessment areas that are responsive to the needs of low- and moderate-income individuals, small businesses, and small farms affected by COVID-19 and that are consistent with safe and sound banking practices. These activities may include:

- Waiving certain fees, such as:
  - Automated teller machine (ATM) fees for customer deposits
  - Overdraft fees,
  - Late payment fees on credit cards and other loans
  - Early withdrawal penalties on time deposits;
- Easing restrictions on cashing out-of-state and non-customer checks;

Federal Reserve:

Link: [Joint Statement on CRA Consideration for Activities in Response to COVID-19](#)



# Wolters Kluwer Resources

## Featured Solutions

- [Consulting Services](#)
- [Expere® Servicing & Loss Mitigation](#)
- [CRA Wiz](#)
- [Fair Lending Wiz](#)
- [OneSumX for Regulatory Change](#)



**Contact Us : (800) 261-3111**

## Featured Consulting Services:

- [CMS Reviews](#)
- [Risk Assessments](#)
- [Paycheck Protection Program Issue-Focused Consulting](#)
- [Mortgage Servicing Compliance Review](#)



## Expert Insights

- **ARTICLE:** [Lender Compliance Implications of the 60-Day PPP Loan Forgiveness Application Deadline](#) by Neal Doherty & Stevie Conlon
- **ARTICLE:** [Is Your Mortgage Servicing Program CARES Act-Compliant?](#) by Tom Grundy
- **ARTICLE:** [CARES Act Section 4021: Complying with the Fair Credit Reporting Act](#) by Britt Faircloth, CRCM
- **PODCAST:** [Banking Compliance Insights by Wolters Kluwer](#)
  - *Episode 1: COVID-19: 1502 Reporting Under the Paycheck Protection Program*
  - *Episode 2: PPP Legislative Updates That Impact 1502 Filings and Procedures for Submission*



**Covid-19 Regulatory Change:** [Subscribe for complimentary COVID-19 filterable bulletins](#) outlining notable financial industry regulatory updates, powered by OneSumX for Regulatory Change Management

Please use chat to submit your question.

Q&A