



Your Borrower is Nearing the End of Their Loan Accommodation...Now What?

At the time a borrower is about to end a period of accommodation, are they able to resume their contractual obligation? Is the borrower still having financial hardships? What should an institution consider at this time?

For loans that are in this situation, especially in the midst of our COVID-19 environment, an institution is faced with a variety of risk management concerns. Determining how to proceed can be particularly challenging.

The FFIEC, on behalf of its members, has issued a **joint statement** on this topic to help clarify what an institution should consider, which is generally applicable to both **commercial and retail loan accommodations**. The joint statement addresses a variety of topics, including:

- **Risk management practices** – such as effective monitoring that helps an institution recognize deterioration and loss exposure in a timely manner;
- **Well-structured and sustainable accommodations** – which includes evaluation of a borrower's repayment capacity and well-designed accommodation options;
- **Consumer protection** – which includes sustainable options and clear communications provided before the end of the accommodation period;
- **Accounting and regulatory reporting** – which addresses generally accepted accounting principles (GAAP), allowances for loan and lease losses (ALLL), and allowances for credit losses (ACL); and
- **Internal control systems** – such as qualify assurance, credit risk review, and operational risk management.

Stakeholders are encouraged to read this informative joint statement, which will assist in the identification, measurement, and monitoring of credit risks of such loans. Interested persons may find the joint statement [here](#).

BSA/AML Enforcement

It's been a busy month for communications about **BSA/AML Enforcement**.

First, on August 13th, an interagency statement was issued. The Federal Reserve, FDIC, NCUA and OCC issued a Joint Statement on **Enforcement of Bank Secrecy Act / Anti-Money Laundering Requirements**.

Online Compliance Consulting Update!

The Online Compliance Consulting Dashboard has been enhanced!

- **NEW COVID-19-Related Resources** – A searchable listing of resources can be found at the top of the Online Compliance Dashboard in the COVID-19 section.
- Updated Regulatory Deadlines Workbook
- Updated Flood Hub, BSA Vault and HMDA Section Resources
- NEW Knowledge Base Articles - SBA Paycheck Protection Program FAQs, CFPB HMDA FAQs
- SCS Annual BSA Webinar Slide Deck
- Updated Compliance Calendar
- July 2020 News

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<http://compliance.smslp.com/>

At a high level, this joint statement:

- addresses situations where **mandatory cease and desist orders** will be used to address noncompliance; and
- provides some clarity in what situations **discretion** may be used to issue an enforcement action or the use other supervisory actions.

While BSA stakeholders are encouraged to read the joint statement, some **takeaways** include:

- Clarification that **no new expectations are included** in this statement.
- A listing of various situations where **BSA/AML compliance program failures** will result in a cease and desist order, which would include a review of all relevant facts and circumstances. Details are provided with regard to the failure to establish a reasonably designed program, as well as the failure to correct previously reported problems.
- Clarification that addresses the **identification of violations** of law in an examination report, or other written document. As mentioned, "*certain isolated or technical violations of law and other issues or suggestions for improvement may be **communicated through other means.***"
- Clarification that **isolated or technical violations or deficiencies** are generally **not** considered kinds of problems that would result in an enforcement action.

Interested persons can find the Joint Statement [here](#).

Second, on August 18th, FinCEN issued their own Statement on **Enforcement of the Bank Secrecy Act**. As administrator of the BSA, FinCEN is clarifying the factors that determine their **enforcement response** to violations of the BSA.

While BSA stakeholders are encouraged to read FinCEN's statement, one takeaway that we wanted to highlight was as follows:

"When FinCEN takes an enforcement action, it will seek to establish a violation of law based on applicable statutes and regulations. FinCEN will not treat noncompliance with a standard of conduct announced solely in a guidance document as itself a violation of law."

Interested persons can find FinCEN's Statement [here](#).

Reg. B – Request for Information

Earlier this month, the CFPB published a **Notice and Request for Comment** in the Federal Register. The Bureau is requesting information to "*identify opportunities to prevent credit discrimination, encourage responsible innovation, promote fair, equitable, and nondiscriminatory access to credit, address potential regulatory uncertainty, and develop viable solutions to regulatory compliance challenges*" under ECOA and Regulation B.

Of note, the issuance includes a request to respond to specific issues. There are **10 questions** contained in the Notice, which touch on a variety of topics, such as **disparate impact, limited English proficiency, small business lending, sexual orientation and gender identity discrimination, and artificial intelligence**.

Those wishing to comment may do so by **December 1, 2020**, (which has been extended from the initial October 2nd date). Instructions are included in the Notice, with encouragement for comments to be submitted electronically.

Interested persons may find the Notice [here](#) and the extension [here](#).

Calendar Reminders

- **8/29** - Quarterly HMDA LAR Submission Deadline for Certain Reporters (*Note: While an institution may quarterly report, the CFPB's [3/26/2020 issuance](#) stated that, until further notice, it does not intend to take action against an institution's failure to quarterly report HMDA data.*)
- **9/1** – FinCEN's CTR instruction adjustment related to an individual subject with multiple Part 1, Item 2 roles is effective



Our next **Be Prepared!** Compliance Update webinar is scheduled for **September, 29 2020**. Details will be provided when available.

BEWARE – Spoofed SBA Webpage

Institutions participating in **SBA lending** should take note of the latest alert from the **Cybersecurity and Infrastructure Security Agency (CISA)**.

Earlier this month, CISA released a statement about their tracking of an **unknown malicious cyber actor** that is utilizing **phishing emails and spoofing** the **SBA COVID-19** loan relief page. As mentioned therein:

“As we can see, heinous COVID-19-themed fraud schemes continue to perpetuate, and the common denominator seems to be enticing unsuspecting victims to provide funds, passwords or personal identifying information,” said John Riggi, AHA senior advisor for cybersecurity and risk. “To mitigate these threats, educate staff, always independently verify solicitations (even from ‘trusted’ sources), never provide down payments for PPE without verification and reputable references, and be suspect of any solicitations that claim to be affiliated with a government agency.”

Interested persons may find CISA’s Alert [here](#).

HMDA News

Earlier this month, the CFPB announced **two new HMDA resources**:

- A **Filing Instructions Guide (FIG)** for HMDA data collected in 2021, and
- A **Supplemental Guide for Quarterly Filers** for 2021.

The announcement included a reminder that the Bureau does not intend to cite in an exam any institution for failure to report its HMDA data quarterly, until further notice. Interested persons may find the Bureau’s announcement [here](#).

Convenient and Affordable Compliance Assistance

Do you need help preparing for the upcoming regulatory requirements? SC+S can help with our **Online Compliance Consulting Services**, which combines the ease of online tools with the guidance of a compliance expert.

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