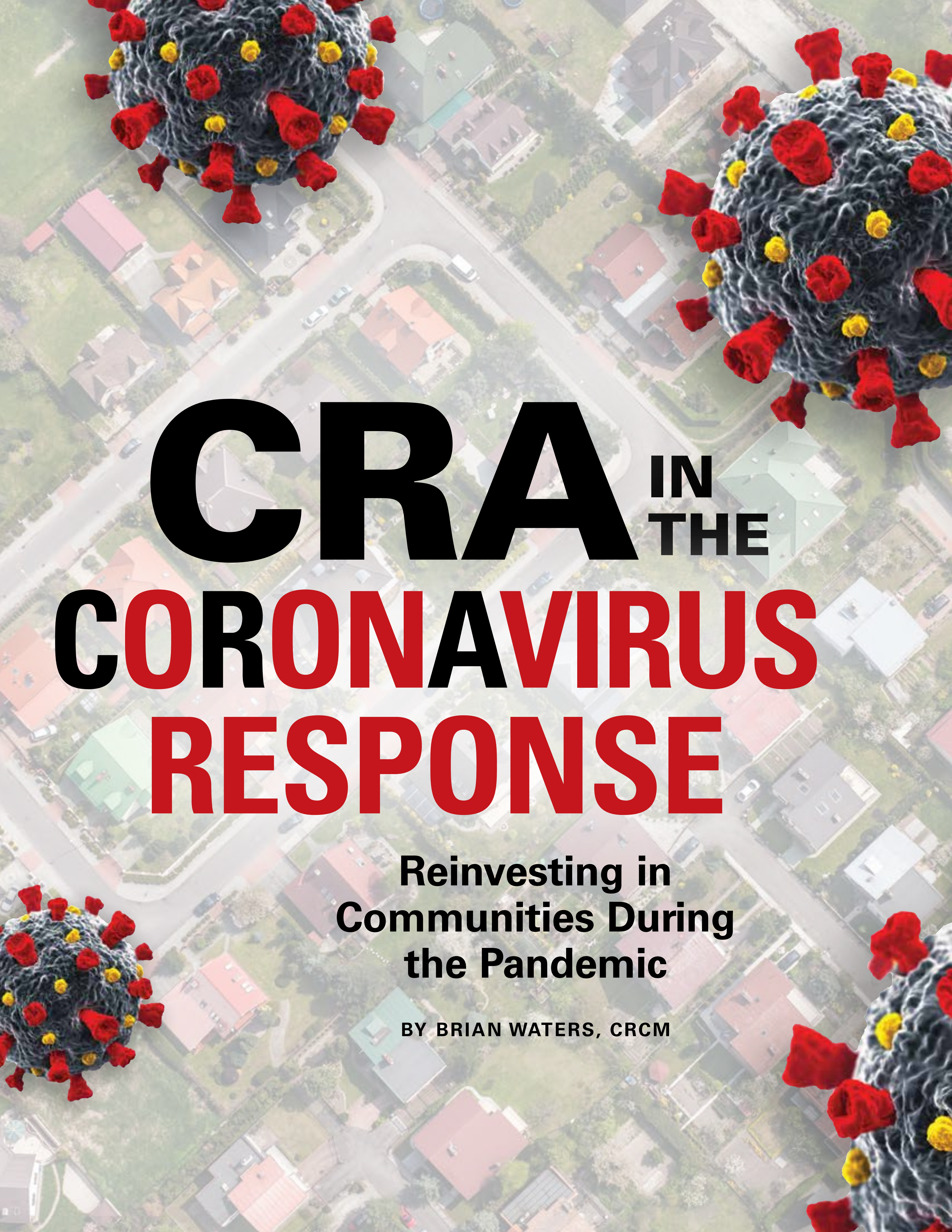
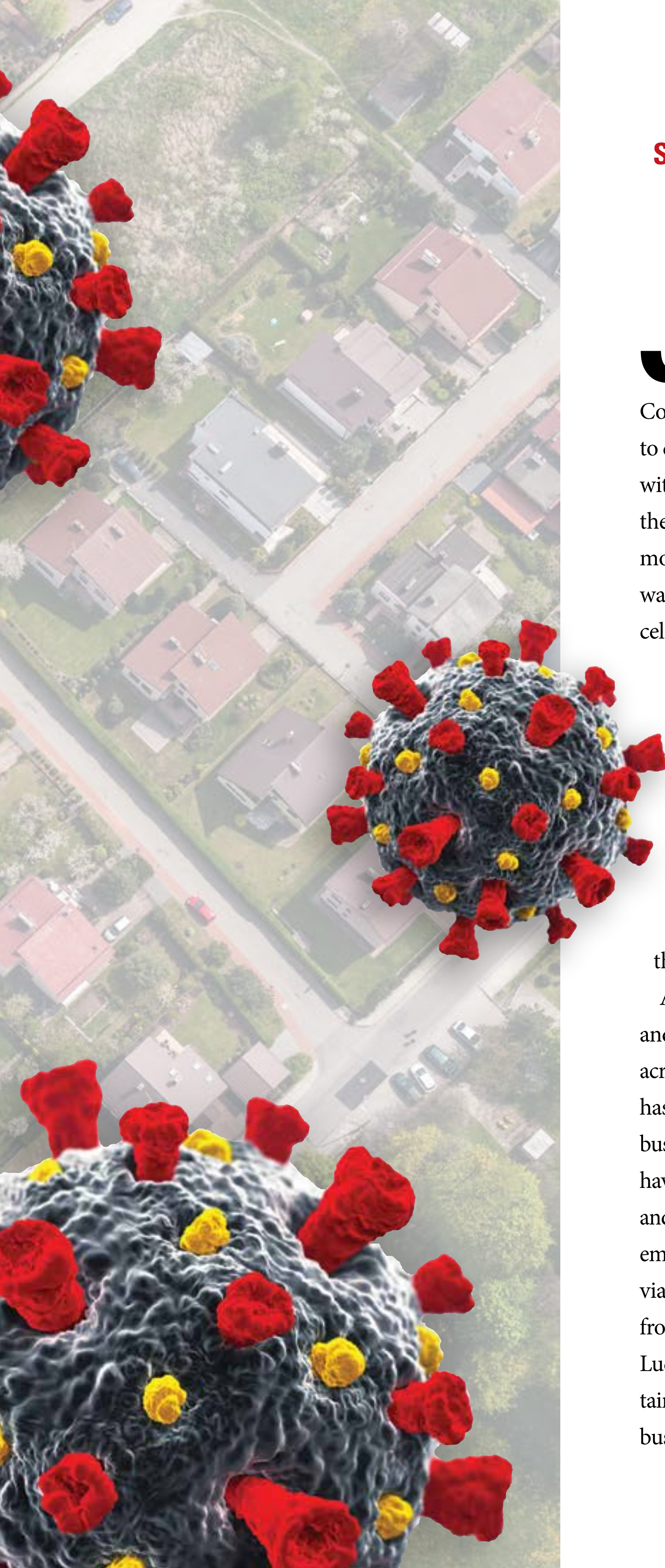


CRA IN THE CORONAVIRUS RESPONSE

Reinvesting in Communities During the Pandemic

BY BRIAN WATERS, CRCM

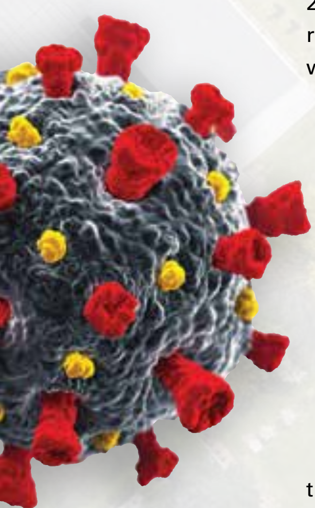


So how does a CRA program adapt when the entire country is a disaster area?

JUST 30 DAYS BEFORE I WROTE THIS, our team at findCRA was making plans to fly to Denver for the 2020 National Interagency Community Reinvestment Conference. We were excited to chat with our customers and build new relationships with bankers from across the country while learning the latest on Community Reinvestment Act (CRA) modernization. The week following the conference, I was hopping on a different plane to fly to Mexico to celebrate the wedding of my friend and business partner and his fiancée. During lunch conversations, our team had discussed the steady trickle of headlines from China about the outbreak of a new virus. We even ordered hand sanitizer as a promotional item for the conference, just to be safe, which we've since distributed to friends, family, and local charities. Like most Americans, we had an awareness about what was happening thousands of miles away, but we weren't concerned.

As I wrap up this article on March 31, 2020, my team and I, our friends and family, our city, and every person across the world find ourselves living in a global reality that hasn't been experienced in over a century. Thousands of businesses are closed, and while banks remain open, most have limited their services to only drive-thru transactions and critical in-person appointments. Like millions of other employees, our team has shifted to remote work, gathering via web conference to facilitate some social interaction from the safety of our home offices and computer screens. Luckily, within the banking industry, jobs have been retained; however, the story is very different for many small businesses and employers across the country.

COVID-19 Actions History



Immediate Domestic Response

The response to the growing pandemic from the U.S. banking industry and regulatory agencies was relatively swift. The first case of COVID-19 was confirmed in the U.S. on January 20, 2020, from a traveler who had recently visited China. Concern grew when the first case was confirmed in a person with no known travel or exposure, a month later on February 26. From there, the virus slowly started to spread in the U.S., with federal and state action response trickling in—some swift, some measured, some slow. By March 31, according to the real-time online tracker maintained by Johns Hopkins University, the U.S. had become the country with the largest number of confirmed COVID-19 cases, totaling nearly 165,000 people. That number will likely grow to hundreds of thousands more in the weeks that follow. (coronavirus.jhu.edu/map.html).

In response to the growing number of confirmed cases and fear of a global recession evoked by the largest single-day point drop in the history of the Dow Jones, President Trump declared a National Emergency on March 13, 2020. Following this declaration, the banking regulators and federal agencies issued a flurry of guidance, mandates, policy statements, and updates. States across the country issued stay-at-home orders, shutting all non-essential businesses. The White House advised against gatherings of more than 10 people as the CDC reinforced the importance of staying home, self-isolating, and social distancing. Cruise lines stopped service, parks closed, airlines flew at less than 20 percent capacity, movie and television productions halted, schools and universities ended in-person classes for the remainder of the school year, and grocery store shelves emptied quickly. The busy world to which we are accustomed, screeched to a stop.

COVID-19 Regulatory Actions

On March 9, prior to the declaration of the National Emergency, the banking regulators issued a formal joint statement encouraging financial institutions to work with customers affected by the pandemic. In this guidance, they took a proactive step to recognize that consumers and small businesses could be heavily impacted by the growing interruption to their services. The guidance reinforced that banks should make safe and sound decisions and could face staffing challenges, but should nonetheless seek ways to work with borrowers, small businesses, and deposit holders experiencing hardships.

Over the following three-week period, several other agencies took steps to address the growing needs of and impacts on communities, consumers, and businesses. On March 12, the Small Business Administration promoted the availability of Economic Injury Disaster Loans to affected small businesses and nonprofits, providing long-term financing to help cover debts, payroll, accounts payable, and other bills and later deferred payments on existing disaster loans until the end of the year. The U.S. Department of Housing and Urban Development implemented a delay on foreclosure and eviction actions for at least 60 days.

The Federal Reserve took multiple actions to support bank lending and market liquidity. Regulators delayed required Call Report and HMDA quarterly filings. On March 26, the banking regulatory agencies issued guidance encouraging banks to make small-dollar loans available to help consumers meet temporary cash-flow imbalances, unexpected expenses, and income disruptions. FDIC Chairman Jelena McWilliams declared, "I want to underscore that our banks are safe. Your FDIC-insured deposits are safe…" in a speech to the Financial Stability Oversight Council on March 26.

Banks, viewed as an essential service, remained open, preserving access to cash, credit, and investments. The largest banks, including Wells Fargo, Citibank, and Bank of America, committed to ensuring job security and full pay for all employees through at least the end of 2020. Many other financial institutions increased hourly wages and provided bonuses to ensure employees are being recognized for their efforts to maintain operations and incentivize attendance. The ABA has closely tracked the overall measures taken by banks of all sizes throughout the country in response to the pandemic and compiled those actions into a searchable web-based inventory available on its website. Visit www.aba.com/coronavirus.

All of these efforts culminated in the passage of the Federal CARES Act (Coronavirus Aid, Relief, and Economic Security Act) by Congress on March 27. This unprecedented $2.2 trillion stimulus was quickly created to address the immediate fallout of the pandemic. It provides for direct check payments to most Americans and increased unemployment benefits. It also includes $349 billion for small business loans and over $500 billion in assistance to businesses and state and local governments. Allocations of $130 billion in relief to the medical and hospital industry and $58 billion to the heavily impacted airline industry are also included. While this bill is an important effort, most doubt that it will be the last needed economic stimulus as the impact of the pandemic continues to grow across the U.S. Many economists and medical professionals anticipate an economic shut-down for the remainder of the summer, if not the year.

We all now follow the news daily, if not hourly. Most of us have been asked, or mandated, to stay at home, avoid social interaction, and only venture out for emergencies or essential needs. In my home state of Kentucky, our new governor gives hour-long broadcasts nightly on every news station and just banned nearly all travel out of the state. Banks have been tasked with keeping operations running as smoothly as possible without causing a panic while also maintaining social distancing. This is not the recession of 2008; banks are well-capitalized and safe. But what about our communities?

Currently, no one has perfect answers for any of the questions that have arisen around regulations and guidelines. From restaurants and bars to grocery stores to banks, most of us are receiving a flood of updates in real time, with guidance shifting constantly. While I cannot give hard-and-fast rules for how we should proceed, what I can do is begin to outline how we, as compliance officers and CRA professionals, can leverage the resources we have in banks across the country and the spirit of this powerful regulation to make an impact both now and throughout the extended recovery period after the end of this national emergency. We will come through this to the other side, as humanity has done so many times before–but the need in all of our communities has never been greater.

CRA's Role in the Pandemic

So, in the midst of a health and financial crisis, what role can the Community Reinvestment Act play? Much like the rest of the world's reaction, the CRA response will be extensive over the coming months and years. Immediate action is needed, while other impacts of the pandemic may not even become apparent until weeks or months from now. Among banking regulations, the CRA is closely aligned with addressing the current and emerging needs of communities in the face of this pandemic.

The banking regulators reinforced the important role that CRA can play in pandemic response by issuing an interagency statement on March 19 (www.fdic.gov/news/news/financial/2020/fil20019a.pdf). This statement called for banks to work with affected customers and communities, specifically those that are low- and moderate-income, and reaffirmed that favorable CRA consideration for such activities would be given. The statement spoke to the steps that banks can take to serve disaster areas, provide retail banking services, and revitalize and stabilize affected communities. In total, the statement provides only two and half pages of CRA guidance and leaves a wide berth for interpretation by bankers.

Disaster Areas & Aid

The CRA has long supported revitalization and stabilization for areas affected by natural disasters. Banks receive positive CRA credit for efforts undertaken to support affordable housing, economic development, and revitalization and stabilization in areas that have been designated as Major Disaster Areas by the Federal Emergency Management Agency. At any given time in the last few years, around half of the counties in the United States have had such a designation.

In recent years, the banking regulators have promoted a more aggressive approach for banks to participate in CRA-qualified support of disaster areas. This was seen most acutely in January 2018, when the banking regulators provided guidance to support disaster recovery efforts in Puerto Rico and the U.S. Virgin Islands following the devastating hurricanes in 2017. In response to those disasters, the agencies provided a special CRA eligibility for activities conducted by any bank in the nation to support the islands, even if the islands were not located in the bank's assessment area.

As of March 31, a total of 29 states and U.S. territories have been designated as Major Disaster Areas due to the pandemic. Unlike other disasters, these designations apply to the entire state. Furthermore, the banking regulators have specifically stated that in response to the declaration of the National Emergency by the President, efforts to support disaster recovery will be recognized as CRA-eligible for the entire nation for a period that extends to six months after the end of the National Emergency.

So how does a CRA program adapt when the entire country is a disaster area? It is important to remember that the declaration of a disaster area doesn't automatically make every activity that a bank conducts in that area, a CRA-eligible community development activity. Every loan and every service doesn't get CRA credit at the bank's next examination. It is imperative that the activities that a bank wishes to consider for CRA-eligibility related to the disaster declaration are responsive to the community needs resulting from the related disaster.

In the case of our current pandemic, the community needs are wide and varied. They include measures to support individuals experiencing job loss and financial hardship; they also include supporting community infrastructure, supply chains, essential services, and disaster response. Additionally, efforts to support small businesses, small farms, and nonprofits that are providing community support services are critical to this unique disaster response. Unfortunately, in many cases, justifying and documenting how a loan or service will assist in pandemic disaster recovery will be easy. This is a disaster more widespread than most of us have known in our lifetimes.

Community Support Services

Naturally, the most immediate CRA response can be providing loans, investments, and services to organizations and programs that are addressing emergency needs within the community. CRA clearly states that efforts undertaken to provide community services to low- and moderate-income individuals are considered community development activities. In an article authored by the Federal Reserve Bank of Dallas on March 27, some specific examples of community services are provided, including activities that provide food supplies and services, access to health care, access to digital services, and economic development activities to sustain small businesses.

Of course, food pantries, food distribution services to the elderly, and health care supportive services spring to mind. In addition, programs to support the homeless, emergency financial assistance, housing preservation, utility assistance, and more will be critical during this time. Other services, while used as CRA-qualified examples in previous guidance, may not immediately be apparent, but

Considering loan modifications and/or extensions to help your customers struggling due to COVID-19?

By Leah M. Hamilton

MANY BANKERS have been asked whether they can offer skip-a-payment programs for their customers with consumer mortgage loans by simply executing a modification to extend the term and noting the month(s) to be skipped. The simple answer is YES! But don't forget the compliance implications that go along with the change.

Flood

If you offer a skip-a-payment program for any of your customers, consumer or commercial, you may do this by way of a modification or amendment to your current agreement. However, if the loan is secured by a building or mobile home and any personal property securing the loan, then a flood determination is triggered when you extend the term of the loan. If you are keeping the same term and adding the deferred payments to the final payment, the flood determination is not triggered.

Under the flood rules, any time you make, increase, renew or extend a loan where the building, mobile home or personal property securing that loan, you must determine whether or not such collateral is in a flood zone. (See www.ecfr.gov/cgi-bin/text-idx?SID=c4e5187d954ef444107863c2722a1178&mc=true&node=pt12.5.339&rgn=div5#se12.5.339_16.)

Institutions may rely on an existing flood determination provided that:

- The current flood determination is less than 7 years old;
- No map changes; and
- Current flood determination was completed on the then-current flood determination form.

If you rely on a prior determination, it is best practice to make a copy of it, list the three requirements with check marks (provided no changes) indicating you verified each of them, and then date and initial it. Lastly, attach it to the Amendment to the note and place in the file so no one has to later search for it. Alternatively, you may be able to have the current one re-certified at a minimal cost—and again, attach it to the Amendment.

are important as well. For example, supporting child care facilities that remain open for essential workers is particularly responsive to community needs. Identifying key resources that coordinate efforts and technical assistance within the local small business, small farm, or startup communities also helps and qualifies under CRA.

Additionally, closing the digital divide has never been a more critical need, as work, education, healthcare, and other services move to a virtual environment. Programs that provide for digital literacy, assistance in navigating digital services, access to broadband internet, or donation of computers to homes in need also provide a needed service for individuals to access information and resources from the safety of their home.

Within the new CRA modernization proposed rule, the FDIC and OCC have affirmatively stated that financial education is a need that affects all income levels and have proposed that any financial literacy actions undertaken by a bank should be considered as community development.

The Newly Unemployed

As of the week of March 16, over 3.3 million people filed for unemployment in the U.S., five times more than the previous record of 695,000 in 1982 (www.bbc.com/news/business-52050426). This increase immediately drove the national unemployment rate to 5.5 percent, in contrast to the 3.5 percent unemployment reported at the end of February. As state governments mandated the closing of all non-essential businesses, many hourly and salaried workers were forced to stay at home, without the option to work remotely. On March 31, the Federal Reserve Bank of St. Louis issued estimates that the nation's unemployment could reach 47 million with an overall unemployment rate of 32 percent, exceeding the 25 percent unemployment of the Great Recession and equating to over 52 million unemployed workers in the civilian labor force.

As unemployment claims rise, banks are faced with a mounting crisis. In this current pandemic, many of the newly unemployed were previously at work in service, hospitality, and manufacturing jobs. Without an end to quarantine measures in sight, the best option for these individuals is to file for unemployment. However, with reduced or no income, the ability to service debt and pay mortgage loans becomes increasingly doubtful.

The banking regulators have called upon banks to take actions such as waiving ATM, check cashing, and overdraft fees. They've also encouraged banks to explore alternative delivery channels and easing terms on new

UDAAP

There have been several consent orders related to skip-a-pay programs that went awry. To avoid concerns, be sure to explain the program to customers in a way they can understand it. For example, if interest will continue to accrue during the deferment period then you will need to disclose the impact to customers. Final payments will be impacted by many factors but you can tell them generally that the final payment could increase twofold or more, as applicable.

Other Considerations

Remember also that an extension is a contractual amendment requiring signatures of both parties (borrower and institution).

This type of modification to solely defer the payments short term and extend the loan term does not trigger any new disclosures, including TRID disclosures.

Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus

The federal financial regulatory agencies and state banking regulators (the "Agencies") have also issued an interagency statement encouraging financial institutions to work constructively with borrowers affected by COVID-19 and providing additional information regarding loan modifications (**www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200322a1.pdf**). The Agencies encourage financial institutions to work with borrowers and will not criticize institutions for doing so in a safe and sound manner. Additionally, they have stated that they will not automatically categorize loan modifications as troubled debt restructurings (TDRs), reminding institutions that not all modifications of loan terms result in a TDR. The joint statement also provides supervisory views on past-due and nonaccrual regulatory reporting of loan modification programs. Short-term modifications that are made in good faith in response to COVID-19 to borrowers, who were current prior to any such relief, are not TDRs. Such short-term modifications may include—for example, six months of payment deferrals, waiver of fees, term extensions or other alternative delays in payment that are insignificant.

The agencies view prudent loan modification programs offered to financial institution customers affected by COVID-19 as positive and proactive actions that can manage or mitigate adverse impacts on borrowers, and lead to improved loan performance and reduced credit risk. Regardless of whether modifications are considered TDRs or are adversely classified, agency examiners will not criticize prudent efforts to modify terms on existing loans for affected customers.

ABOUT THE AUTHOR

LEAH M. HAMILTON, J.D., is a Vice President and Senior Consultant with ProBank Austin's Education Division (probank.com). With nearly 25 years of experience in the financial services industry, her compliance knowledge spans Lending, Deposits, BSA/AML and Compliance Management. As a compliance expert, Leah has served as a lead advisor on consent order remediation engagements and management responses to examiner concerns. In addition, Leah has trained more than 1,000 lenders on TRID and served as a TRID and HMDA subject matter advisor to the American Bankers Association. Reach her at lhamilton@probank.com.

loans. Banks are uniquely positioned to provide financial relief to affected individuals. Flexibility in loan servicing, delivery of retail services, and support for small businesses and consumers affected by the pandemic will be a key component of CRA programs going forward.

Financial Literacy

While new lending to support disaster recovery and other business and consumer needs is important, a greater need in the coming months will be flexibility in loan servicing. Under their guidance, the agencies have asked banks to offer payment deferrals and skip payment plans or loan modifications to affected borrowers. Utility companies have taken a similar approach by declaring that they will not disconnect water and electricity service in the short term. But a quick search of posts on social media reveals that many consumers don't understand the process to request assistance or the lingering impact of deploying these solutions.

Savvy CRA professionals have utilized financial literacy as a key community development service for many years. The need to adjust the delivery and focus of that financial literacy in response to the current financial climate is critical. The first step is getting the word out to consumers about the options that banks have created to assist them in deferring payments, modifying loans, and avoiding negative credit reporting. Social media is an important way to introduce this message, but for affected borrowers, more direct action and education will be needed. Some borrowers who always had a strong payment history may now be faced with late payments and are afraid, or unsure of how, to ask for guidance. Now's the time to reach out proactively to consumers, to walk them through options available from the bank to help.

Additionally, the idea of a skipped payment or payment deferral can seem very attractive when money is tight. (See the sidebar on page 10.) Even for individuals who are still employed, the desire to save cash by skipping payments or only paying minimum balances can be tempting. However, many consumers may not realize that a skipped payment isn't a forgiven or forgotten payment. Financial education around the impact of skipped and deferred payments and the resulting impacts to credit scores and payment histories has never been more crucial.

Within the new CRA modernization proposed rule, the Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC) have affirmatively stated that financial education is a need that affects all income levels. They have proposed that any financial literacy actions undertaken by a bank should be considered as community development. In this time of mounting financial uncertainty, CRA professionals can calm some fear simply by communicating with and educating consumers on these key financial concepts.

What's Next

Like so many other industries around the world, banking will need to be agile and responsive in an untested way for the foreseeable future. As a representative of their banks, CRA professionals have the opportunity to lead their staff and their community in meeting emerging needs uniquely. As a bridge between community needs and financial resources, it is our responsibility to the nation to seek out ways to empower and support individuals, small businesses, and the community as a whole through these difficult times. I have no doubt that we can rise to meet this challenge and create a new space in the future where CRA will continue to be a leader in meeting so many essential community needs. ■

ABOUT THE AUTHOR

BRIAN WATERS, CRCM, is the President and Co-Founder of findCRA, on online search engine that allows banks to identify CRA-qualified nonprofits and build instant performance context with its powerful tools to streamline CRA success. He has nearly 20 years experience in banking compliance and community development and is a resident of Louisville, KY. Contact him at **brian@findCRA.com**.

ABA RESOURCES

Coronavirus Resources:

ABA Executive Summary on Coronavirus Aid, Relief & Economic Security (CARES) Act (for ABA member banks): aba.com/advocacy/policy-analysis/aba-executive-summary-cares-act

Visit aba.com/Coronavirus to find:

- Recordings of webinars on business continuity and managing pandemic operational risk, department by department
- FAQs addressing banker concerns about branch operations, employee safety and other topics
- Common practices banks have put in place in response to the pandemic
- A Coronavirus Communications Toolkit
- Situational updates and regulatory guidance

Visit aba.com/CoronavirusResponse and you can see how banks like yours are helping their employees and customers during this difficult time. This page is aimed at educating the public and policymakers about the industry's proactive measures, and the content is updated daily.

ABA Coronavirus Response Network (for ABA member banks): www.aba.com/COVIDdiscussion

CRA guidance, statutes, rules and regulations, exam procedures and staff analysis: www.aba.com/banking-topics/compliance/acts/community-reinvestment-act