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REGULATORS SCRAMBLE TO DEAL WITH COVID-19 CONCERNS

Like businesses scrambling to deal with a brave new COVID-19 world, regulators too are scrambling. We have outlined some guidance that state and federal regulators have issued in response to the COVID-19 pandemic.

Federal Reserve

In addition to cutting interest rates, purchasing Treasury securities and taking other measures, the Federal Reserve issued a joint press release with the other federal financial regulators and the Conference of State Bank Supervisors encouraging financial institutions to meet the financial needs of customers and members affected by COVID-19. The press release highlights that regulators will work with affected financial institutions in scheduling examinations and inspections and to provide more convenient availability of services in affected communities. See https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200309a.htm?mod=article_inline

Federal Deposit Insurance Corporation

The Federal Deposit Insurance Corporation ("FDIC") issued an interagency statement on the pandemic planning that instructs FDIC-supervised financial institutions to review updated guidance provided by the Federal Financial Institutions Examination Council. The guidance identifies actions that financial institutions should take to minimize the potential adverse effects of a pandemic, specifically in the institution's business continuity plan ("BCP").

The guidance emphasizes that the BCP should address pandemics and provide for a (i) preventive program, (ii) documented strategy scaled to the stages of a pandemic outbreak, (iii) comprehensive framework to ensure the continuance of critical operations, (iv) testing program and (v) oversight program to ensure that the BCP is reviewed and updated. The guidance notes that the pandemic segment of the BCP must be sufficiently flexible to address a wide range of possible effects that could result from a pandemic, and also be reflective of the institution's size, complexity and business activities. See <https://www.fdic.gov/news/news/financial/2020/fil20014a.pdf>

Office of the Comptroller of the Currency

The Office of the Comptroller of the Currency ("OCC") issued a

bulletin that applies to all OCC-supervised banks encouraging banks to take steps to meet the financial services needs of customers adversely affected by COVID-19-related issues. The OCC encourages banks to work with affected customers and communities by making efforts consistent with safe and sound banking practices and applicable law that serve the long-term interests or communities and the financial system, including: waiving certain fees, increasing ATM daily cash withdrawal limits, easing restrictions on cashing out-of-state and non-customer checks, increasing credit card limits for creditworthy borrowers and offering payment accommodations, such as allowing borrowers to defer or skip some payments or extending payment due date.

The OCC emphasizes that prudent efforts to modify the terms on existing loans for affected customers should not be subject to examiner criticism. See <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-15.html>

Consumer Financial Protection Bureau

The Consumer Financial Protection Bureau ("CFPB") published a blog to educate consumers on how to protect themselves financially from the impact of the coronavirus. The blog post urges consumers to contact their lenders and loan servicers if consumers have trouble paying their bills or meeting other financial obligations. See <https://www.consumerfinance.gov/about-us/blog/protect-yourself-financially-from-impact-of-coronavirus/>

State Response

The guidance issued by various state regulatory agencies has varied from state to state. Some states have issued guidance that permits current licensees to work from "unlicensed" branch office locations. For example, the Connecticut Department of Banking issued a memorandum that states that the Department takes a no-action position concerning the requirement that any Connecticut licensable activity by a Consumer Credit Licensee ("CCL") be conducted from a licensed branch office location, effective immediately through April 30, so long as the following criteria are met: (i) the licensable activity is conducted from the home location of an individual working on behalf of a CCL, (ii) the individual is working from home due to a reason relating to the COVID-19 outbreak and has informed the CCL of such reason in writing, (iii) the individual maintains all necessary licenses to conduct such licensable activity, including, but not limited to, mortgage loan originator, loan processor or loan underwriter licensure, as applicable, (iv) none of the

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licensable activity will be conducted in person with members of the public from the home location and (v) the CCL must at all times exercise reasonable supervision of the licensable activity being performed at the home office and ensure appropriate safeguards and controls are established concerning consumer information and data. The Alaska Department of Commerce, Community and Economic Development, Idaho Department of Finance, Kansas Office of the State Bank Commissioner, Mississippi Department of Banking and Consumer Finance, Montana Banking and Financial Institutions Department, Nebraska Department of Banking and Finance, New Hampshire Banking Department, New Mexico Financial Institutions Division, Nevada Division of Mortgage Lending, Oklahoma Department of Consumer Credit, Oregon Division of Financial Regulation, Rhode Island Department of Business Regulation Banking Division, South Dakota Division of Banking, Vermont Department of Financial Regulation, Washington Department of Financial Institutions and Wisconsin Department of Financial Institutions have issued similar guidance and orders.

Other state regulatory agencies, including the Alabama State Banking Department, Massachusetts Division of Banks and the Maryland Office of the Commissioner of Financial Regulation, have issued guidance relating to financial service providers' BCP and pandemic preparedness policy. The North Dakota Department of Financial Institutions is permitting financial institutions to close or reduce service hours at some of their branch locations. Institutions are required to notify the Department of any reduction of hours or services.

The New York Department of Financial Services established a single webpage for up-to-date COVID-19 information for the industry and regulated entities. The NYDFS posted an order that (i) regulated entities and licensees may temporarily relocate any of their authorized places of business, and close any of their branch offices or locations, if adversely affected by the outbreak of COVID-19, provided that such regulated entities and persons give prompt written notice of any such relocation or branch closing to the Superintendent, (ii) participation in a meeting of the board of directors or trustees or of any committee of such board of directors or trustees of a bank, trust company, safe deposit company, investment company, mutual trust investment company, savings bank, savings and loan association or credit union, by telephone, video-conferencing or similar electronic means allowing all persons in the meeting to hear each other constitutes presence in person at a meeting and (iii) the deadline for certain filings, including annual reports of commercial banks, licensed lenders, sales finance companies and money transmitters, be extended by 45 days from the original respective due date.

The Ohio Department of Commerce Division of Financial Institutions informed Ohio bankers that (i) temporary emergency closures of banking office locations must be reported to the Division and for closures lasting longer than two consecutive days (excluding weekends and legal holidays), advance approval from the Superintendent is required and (ii) scheduled examinations in March or April will be conducted remotely or, in some instances such as hard copy loan review, may be delayed for a period of time. The Division has noted that some institutions may wish to limit foot traffic within a branch and provide services only through the drive-through lanes or by appointment. The Division has encouraged financial institutions to take steps to increase the safety of their employees and customers, while at the same time providing alternative service options where possible.

The Nationwide Mortgage Licensing System and Registry has compiled a list of state guidance, available at: <https://nationwidelicencingsystem.org/NMLS%20Document%20Library/Coronavirus%20State%20Agency%20Resource.pdf>.

Financial services providers who work with retailers may want to help their partners (especially smaller ones) deal with COVID-19-related issues by sharing public information affecting their credit programs. □

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