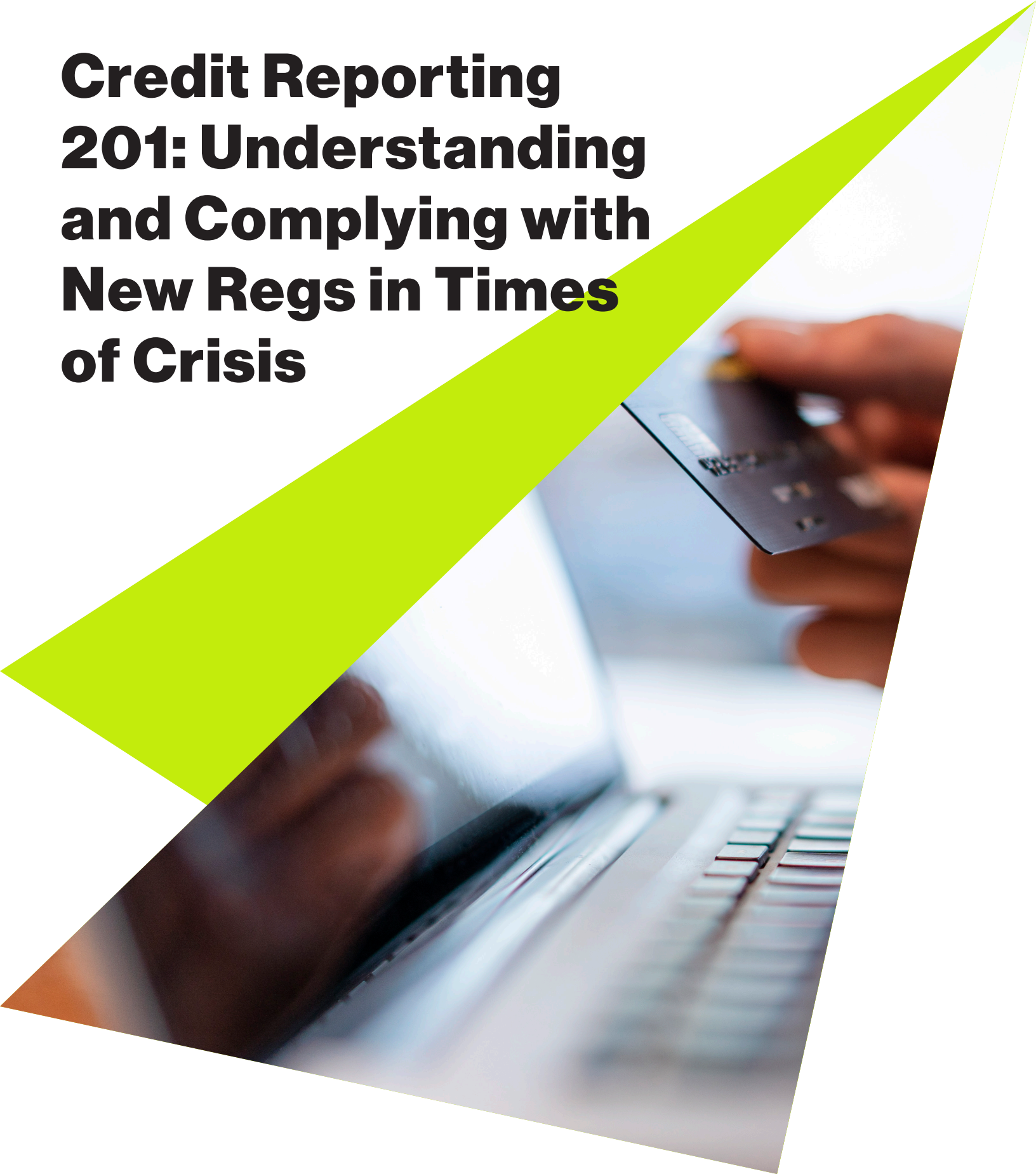


Credit Reporting 201: Understanding and Complying with New Regs in Times of Crisis



Financial Services

Credit Reporting 201: Understanding and Complying with New Regs in Times of Crisis

“In these uncertain times, furnishers have an opportunity to strengthen and protect their relationships with consumers by reporting with accuracy and integrity.”

- Beji Varghese, Partner

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) was signed into law and provides several provisions to assist Americans during this time and beyond. Specifically, the CARES Act looks to protect the U.S. consumer and ensure that this pandemic does not also cause additional burdens relating to their ability to obtain credit in the future. The CARES Act lays out for financial service firms and credit reporting data furnishers how to address credit reporting during this period. Institutions that do not comply with new credit reporting regulations risk regulatory and litigation actions resulting from non-compliance with the Fair Credit Reporting Act (FCRA) and the CARES Act.

What should financial institutions and data furnishers that report to the credit reporting agencies be aware of during this pandemic? What steps should these companies take to achieve compliance in this turbulent time?

How Does the CARES Act Impact Credit Reporting?

Section 4021 of the CARES Act adds a new provision to Section 623(a)(1) Fair Credit Reporting Act (FCRA) that provides special instructions for reporting consumer credit information to credit reporting agencies during the coronavirus pandemic. The new provision dictates that when a furnisher provides an “accommodation” (e.g., an agreement to defer one or more payments, allow partial payments, or modify a loan) to a consumer and the consumer makes the payments or is not required to, the furnisher shall:

- Report the account as current; or,
- If the account was delinquent before the accommodation, maintain the delinquency status and, if the account becomes current during the accommodation period, report the account current.

The covered period for this reporting is January 31, 2020, to the later of:

- July 25, 2020, (120 days after the date of enactment of March 27, 2020; or,
- 120 days after the date on which the national emergency concerning COVID-19 terminates, which is undetermined at this point.

Additionally, Section 3515 of the CARES Act provides temporary relief for federal student loan borrowers whereby “for the purpose of reporting information about the loan to a consumer reporting agency, any payment that has been suspended is treated as if it were a regularly scheduled payment made by a borrower.”



How Does This Impact Data Furnishers?

While at face value, the CARES Act relating to credit reporting is straight-forward, making the necessary changes to current processes, systems, and operations to ensure compliance can be challenging.

The overarching goal of the regulation and guidance directs financial institutions to ensure that borrower credit is not adversely impacted and to report consumers accurately during this difficult period. In order to report accurately, financial institutions and data furnishers should consider the following when implementing these regulations and guidance:



Monitor the changing state and federal regulations to ensure policies, procedures and processes, and reporting are aligned with regulatory requirements;



Operationalize change and update policies and procedures for new plans and credit reporting approaches for consumers on COVID-19 accommodation plans;



Determine the appropriate reporting approach for your organization based on Consumer Data Industry Association (CDIA) guidance, the Credit Reporting Resource Guide (CRRG) FAQs (specifically, FAQ 44, FAQ 45, FAQ 58, and FAQ 67) and your organization, system capability, and products offered;



Evaluate and update systems to ensure that capture and reporting for COVID-19 accommodation plans can be processed and provide accurate reporting in your Metro 2® file;



Conduct a review of your Metro 2® files to validate that the data in the servicing system for borrowers with COVID-19 accommodations are appropriately reflected in the file and ensure alignment with the CARES Act; and,



Train employees for handling disputes.

What Have Regulators and States Said Regarding Credit Reporting?

A handful of states proactively issued guidance ahead of the CARES Act to address credit reporting and potential impacts to their residents. Generally, the state guidance directs financial institutions to work with their consumers and to refrain from negative credit reporting, such as inaccurate reporting of delinquency. Financial institutions and data furnishers have the responsibility to follow the CARES Act and FCRA, which aligns with states' goals of preventing negative credit reporting.

On April 1, 2020, the Consumer Financial Protection Bureau (CFPB) issued a policy statement reiterating the responsibilities of financial institutions and data furnishers under the CARES Act and FCRA. Regarding the furnishing of consumer information to the credit reporting agencies, the CFPB stated:

"While companies generally are not legally obligated to furnish information to consumer reporting agencies, the Bureau encourages them to continue furnishing information despite the current crisis. Furnishers providing accurate information to consumer reporting agencies produces substantial benefits for consumers, users of consumer reports, and the economy as a whole.

The CARES Act, a section of which amends the FCRA, generally requires furnishers to report as current certain credit obligations for which furnishers make payment accommodations to consumers affected by COVID-19 who have sought such accommodations from their lenders. The Bureau expects furnishers to comply with the CARES Act and will work with furnishers as needed to help them do so."

This guidance relates to the furnishing of data for all financial consumer products, not just mortgages. For mortgages, specifically, Freddie Mac, Fannie Mae, the U.S. Department of Veterans Affairs, the Federal Housing Administration, and the Department of Agriculture have subsequently revised their servicing guidelines to align with the CARES Act as it relates to credit reporting.

What Do Financial Institutions Need to Consider When Furnishing Credit Reporting Data Under the CARES Act?

Given the responsibility to continue accurate reporting through Metro 2® file submissions during this period, financial institutions and data furnishers need to understand how to operationalize the CARES Act credit reporting rules and ensure compliance. To this end, the CDIA issued guidance on April 2, 2020, for data furnishers to assist with Metro 2® reporting in accordance with the CARES Act.

In line with the CARES Act and the CFPB, CDIA has recommended not suppressing or suspending reporting. The CDIA guidance directs data furnishers to leverage the CRRG and provides reporting scenarios for current accounts on an accommodation plan, accounts that are delinquent prior to an accommodation plan, and accounts that are brought current during an accommodation plan. A recap of their reporting guidance is on the following page.



CDIA's CARES Act Reporting Guidelines

Metro 2® Field	Account is Current Prior to Accommodation	Account is Delinquent Prior to Accommodation	Account is Brought Current During the Accommodation
Highest Credit or Original Loan Amount	The total amount borrowed	The total amount borrowed	The total amount borrowed
Credit Limit	Assigned Credit Limit for the account	Assigned Credit Limit for the account	Assigned Credit Limit for the account
Scheduled Monthly Payment Amount	Zero	Zero	Zero
Amount Status Code	11 (Current account)	Delinquency Status 71 - 84 as reported prior to the Accommodation period (Example: 30-day delinquency prior to the period remains a 30-day delinquency throughout the Accommodation period.)	11 (Current account) or 13 (Paid account)
Payment History Profile (report all prior history)	<ul style="list-style-type: none"> Report value zero for the months during the Accommodation period. As an option, increment the Payment History Profile with value D during the Accommodation period. 	<ul style="list-style-type: none"> Report value zero for the months during the Accommodation period. As an option, increment the Payment History Profile with value D during the Accommodation period. 	<ul style="list-style-type: none"> Report appropriate code that specifies the previous month's Account Status for each month the account is in the Accommodation period. As an option, increment the Payment History Profile with value D during the Accommodation period.
Current Balance	Outstanding balance amount	Outstanding balance amount	Outstanding balance amount OR zero if Paid
Amount Past Due (APD)	Zero	APD as reported prior to the accommodation period.	Zero

Data furnishers can also elect to use the Special Comment codes for deferred, forbearance, and natural disaster, if this aligns with your policies and procedures. If you choose to use these Special Comment codes, do so in accordance with CRRG Metro 2® FAQ 44 (Deferred), FAQ 45 (Forbearance), or FAQ 58 (Natural Disaster).

Key Steps for Financial Institutions and Data Furnishers



Ensure your organization is reporting accurately given the regulations across federal, state, and investors. Data furnishers should continue to comply with guidelines as outlined by the CARES Act, FCRA, and the CFPB during and after the accommodation period, rather than suppress reporting for consumers on an accommodation plan.



Operationalize regulatory changes by leveraging regulatory change management tools, compliance, and reporting programs to implement changes, assess risks associated with misreporting credit, and potential pitfalls relating to the handling of credit disputes.



After expiration of the requirements, data furnishers should **continue to follow FCRA** and report consumers accurately based on the accommodation or modification plans agreed upon between the borrower and their servicer/lender.



Data furnishers should look to the CDIA's **CRRG for how to report accurately** and consult with legal and regulator experts on impacts to your organization during an accommodation plan as well as after the regulation expires.

Conclusion

As the pandemic continues to cause economic uncertainty and contraction in the labor market, financial institutions and data furnishers have an obligation to comply with reporting regulations and guidance, including the CARES Act and FCRA. They also have a responsibility to ensure that unwarranted negative reporting, such as reporting inaccurate delinquency when on an accommodation plan, is not reported to the credit reporting agencies during the accommodation plan.

Reference Links

CARES Act: <https://www.congress.gov/bill/116th-congress/house-bill/748/text?q=%7B%22search%22%3A%5B%22h.r.748%22%5D%7D&r=1&s=1>

CFPB: https://files.consumerfinance.gov/f/documents/cfpb_credit-reporting-policy-statement_cares-act_2020-04.pdf

CDIA: <https://cdia-news.s3.amazonaws.com/COVID-19/CRA+Data+Reporting++COVID-19+CARES+Act+Guidance+4-2-2020-2.pdf>



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