



South Carolina
DEPARTMENT OF CONSUMER AFFAIRS
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PROTECTING CONSUMERS SINCE 1975

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INTERIM GUIDANCE FOR BUSINESSES (6/1/2020)

On March 13, 2020, Governor Henry McMaster declared a state of emergency for the State of South Carolina due to the Novel Coronavirus (COVID-19). Since then, the Governor has issued several Executive Orders relating to the closure of certain “non-essential” businesses. The Governor has ordered that all requests for clarification as to whether the order applies to your business must be made through the South Carolina Department of Commerce in accordance with the Clarification and Provisional Determination Process set forth in Section 2 of Executive Order No. 2020-18. These procedures can also be found by visiting www.sccommerce.com.

Businesses have sought guidance from the Department of Consumer Affairs (Department) regarding the implementation of business activities during the COVID-19 pandemic, including payment or performance deferrals and modifications. This Interim Guidance addresses those issues raised and is intended for all persons and entities:

1. engaging in consumer credit transactions or other activities governed by the Consumer Protection Code, Title 37 of the South Carolina Code of Laws, and
2. subject to the Department’s oversight.

Nothing contained herein amends the South Carolina Consumer Protection Code, or any regulations promulgated thereunder. This specifically includes all state and federal data collection, reporting, and security requirements generally applicable to businesses. This Interim Guidance is effective through August 31, 2020, but is also subject to change or withdrawal.

Deferrals and Modifications

The Department strongly encourages businesses to work with borrowers during this crisis, and to be practical, flexible, and empathetic. Efforts to work with borrowers in communities under stress may contribute to the health and recovery of these communities. These types of efforts serve the long-term interests of both borrowers and businesses, provided the efforts are performed in a reasonable manner with proper controls and management oversight. Businesses should continue to communicate with borrowers through methods that borrowers have agreed to, in accordance with state and federal debt collection laws.

ADMINISTRATOR Tel.: (803) 734-4233	PUBLIC INFORMATION Tel.: (803) 734-4296	CONSUMER ADVOCACY Tel.: (803) 734-4200	LEGAL/ LICENSING Tel.: (803) 734-0046	CONSUMER COMPLAINTS Tel.: (803) 734-4200	ID THEFT UNIT Tel.: (803) 434-4200	PROCUREMENT & ACCOUNTING Tel.: (803) 734-4264
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WEBSITE: WWW.CONSUMER.SC.GOV **E-MAIL:** SCDCA@SCCONSUMER.GOV **Toll Free in SC:** (800) 922-1594 **TDD/TTY:** (800) 735-2905

The Department strongly encourages businesses to adopt the following measures during this crisis:

- Increasing communication with borrowers regarding COVID-19 and the recommended methods for borrowers to contact the lender, especially if the lender has altered operations due to COVID-19.
- Offering modifications or workout strategies to borrowers to help ensure successful repayment, including deferred or partial payments, which would avoid delinquencies and negative credit reporting.
- Waiving late charges during the disaster declaration.
- Waiving deferment charges or waiving additional finance charges resulting from a deferment.
- Waiving nonsufficient funds fees for dishonored payments or unsuccessful ACH withdrawals.
- Suspending charging off accounts.
- Suspending repossessions of collateral and foreclosure of real property. (For certain FHA-insured mortgages, the Department of Housing and Urban Development has placed a moratorium on foreclosures).

Businesses are reminded that to the extent any modified terms are excessive, unfair, oppressive, or unconscionable they may be addressed by the Department, including pursuant to the Administrator's powers under Chapter 6 of the Consumer Protection Code. At this time, the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, does not require additional disclosures for loan modifications; however, certain post-consummation events, such as refinances require additional disclosures. For more information, see 12 CFR 1026.20.

Escrow Accounts

The CFPB administers Regulation X, which sets out requirements of escrow accounts. In general, servicers must continue to comply with Regulation X, 12 CFR 1024.17(k)'s requirements concerning timely disbursements from escrow accounts. The CFPB has issued guidance that the federal agencies do not intend to take supervisory or enforcement action against mortgage servicers for delays in sending annual escrow statements, provided that servicers are making good faith efforts to provide these statements within a reasonable time. See the CFPB's statement regarding mortgage servicing during the crisis [here](#). Any questions regarding the servicing of escrow accounts should be directed to the CFPB.

South Carolina law, specifically Section 37-22-190(A)(11), requires mortgage servicers to comply with the escrow account requirements in Regulation X. A failure to comply with Regulation X is unlawful under Section 37-22-190(A)(11). Violations of these provisions will be reviewed on a case-by-case basis.

Electronic Signatures

In addition, some businesses may now be considering using electronic signatures in response to COVID-19. Electronic signatures are generally allowed under the South Carolina Uniform Electronic Transactions Act, S.C. Code Ann. § 26-6-10 *et seq.*, and the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 *et seq.* (“E-Sign Act”). These statutes should be read in conjunction with any other applicable federal or state law related to the industry and/or transaction to ensure compliance with all standards.

The federal E-Sign Act, 15 U.S.C. §§ 7001–7006, includes requirements for electronic disclosures and signatures. The E-Sign Act allows a disclosure to be made electronically only if the consumer consents to an electronic disclosure using a specified procedure that demonstrates the consumer’s ability to receive the disclosure electronically. 15 U.S.C. § 7001(c)(1)(A).

Before consenting, the consumer must be given a clear and conspicuous statement of:

- Any right or option to get the disclosure in non-electronic form;
- The right to withdraw consent and the procedures for and consequences of doing so;
- What transactions the consumer’s consent applies to;
- The procedures for updating the information needed to contact the consumer electronically; and
- How, after consenting to electronic disclosures, to obtain a paper copy of any disclosures, and whether any fee will be imposed. 15 U.S.C. § 7001(c)(1)(B).

The consumer must be given a statement of the hardware and software requirements for access to and retention of electronic records, and must either give consent electronically to receive electronic disclosures, or must confirm consent electronically. 15 U.S.C. § 7001(c)(1)(C). The electronic record is not enforceable against the recipient if a sender inhibits the ability of a recipient to store or print an electronic record. S.C. Code Ann. § 26-6-80(C).

Additional Resources

The Department encourages all South Carolina citizens to be safe. Additional guidance for businesses and consumers can be found on the “COVID-19 Resources” pages of the Department’s website at www.consumer.sc.gov.

The Department would also like to provide the following additional resources:

[For Businesses: Joint Statement Encouraging Responsible Small-Dollar Lending in Response to COVID-19 \(Board of Governors of the Federal Reserve System; Consumer Financial Protection Bureau; Federal Deposit Insurance Corporation; National Credit Union Administration; and Office of the Comptroller of the Currency\)](#)

[For Businesses: Interagency Statement on Loan Modifications and Reporting for Financial Institutions Working with Customers Affected by the Coronavirus \(Consumer Financial Protection Bureau\)](#)

Due to the constantly evolving scope of the pandemic, the Department encourages all businesses to keep informed and updated on reliable information regarding COVID-19 from the Governor's Office and all other federal, state, and local authorities. The Governor's Office website is accessible [here](#). All Executive Orders can be found [here](#). The South Carolina Department of Health and Environmental Control (DHEC) is also a good source of information. Their website is www.scdhec.gov. Additional information is provided by the Center for Disease Control (CDC) [Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019](#). Finally, business resources including non-essential closure list, clarification, and small business loan information can be found on the South Carolina Department of Commerce's website, accessible [here](#).