



COVID-19 5x5 series: Insights and actions

CARES Act litigation readiness



As a result of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), businesses received more than \$300 billion in forgivable loans to pay their employees and cover other operating expenses during the COVID-19 crisis. But could the banks involved in making those loans face an increased risk of litigation? To help financial institutions prepare, this summary provides insights and actions around risks related to the CARES Act.

5 insights you should know

Increased scrutiny from the US government and class actions initiated already by CARES Act applicants has resulted in increased potential risk of litigation for financial lending institutions participating in this program.

Due to the rapid set-up and nonstandard nature of the CARES program combined with the remote nature of the workforce with COVID 19, financial institutions may not be engaging in the same data controls they would in a normal working environment.

Based on the accelerated ramp-up of the CARES Act and the remote workforce, financial institutions may need to locate and identify structured or loan application data that resides in non-traditional areas of the data ecosystem in order to respond to investigations or litigations.

Government regulators and plaintiffs are well versed in the traditional loan application workflow and understand that not all data will reside in the application systems, but potential data could be found in a variety of locations such as email, chat, text, etc.

As financial institutions become aware of potential risks, counsel will need the support and coordination of the organization to address and execute on data preservation strategies as it prepares to respond to litigation and/or investigation.



5 actions to take now

Identify all relevant information and documentation. In order to be prepared for possible litigation, organizations should identify type, location, and ownership of all potentially relevant data. This includes data residing in loan processing applications.

Identify the risks that may have been introduced to during the COVID-19 pandemic. Understand the impacts to the organization's data preservation process by non-traditional provisioning (e.g., access was given to use personal devices, thumb drives, third-party sharing applications that had previously been prohibited).

Centralize loan application documentation from all sources. Organizations should centralize all pertinent loan documentation back into traditional repositories, update any relevant data governance policies or preservation playbooks, and create an audit trail to reflect the appropriate actions taken.

Refresh policies and notifications related to the remote workforce. Financial institutions should refresh notifications related to unstructured data governance to its remote workforce and develop a self-reporting vehicle to identify potential data loss risks in order to prepare for upcoming discovery requests as best as they can.

Execute data preservation strategies. Counsel should connect with all necessary stakeholders within business (e.g., loan approval team, loan servicing), IT, and other support services as well as outside counsel to execute on data extraction and preservation strategies to prepare for potential litigation.

Connect with us

Bryan Foster

Principal
Deloitte Transactions and
Business Analytics LLP

Sean Riley

Principal
Deloitte Transactions and
Business Analytics LLP

Bart Siegel

Managing Director
Deloitte Transactions and
Business Analytics LLP

Nirav N. Parikh

Manager
Deloitte Transactions and
Business Analytics LLP

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