Coronavirus and Financial Institutions: What Banks and Lenders Need to Know

This complimentary webinar discusses how financial services firms can navigate through the challenges posed by the Coronavirus (COVID-19) outbreak.

Webinar Topics:

• **What Actions Financial Institutions Should Be Taking Now (Steve Eisen)**

• Planning for Insolvency and Bankruptcy Issues (John McJunkin)

• Cybersecurity and Data Privacy Considerations (Matt White)

• Potential Litigation Issues (Matt Mulqueen)

Wednesday, March 25

1:00 – 2:00 p.m. CT

2:00 – 3:00 p.m. ET

What Actions Financial Institutions Should Be Taking Now

BY SteveN J. Eisen[[1]](#footnote-1)

1. Actions Being Taken by Financial Institutions – need to review almost daily, form a Coronavirus Oversite Committee; decide what to do:

A. Examples – Customers – decide whether a condition to assistance requires some type of certification of the virus impact on the customer.

1. “Redirecting” customers (don’t say “closing” lobbies); encouraging customers to use online, mobile, ATM, and voice banking services. Drive-thru only and/or curbside loans.

2. If meet by “appointment only” – questionnaire – sign or not. Sample questions:

• Have you recently traveled out of the country?

• Have you been exposed to a confirmed case of the coronavirus?

• Are you showing any cold or flu symptoms? Do you have a fever?

• Are you or are you caring for a person in a high-risk group (those over 60, immunocompromised, etc…)?

3. Cash inventory on hand to meet customer demands (the FDIC suggests “Financial institutions may want to remind customers about the safety of their money in a financial institution that is FDIC-insured and discuss deposit insurance coverage of the customer’s accounts.” (see Q&A below).

4. Directives on what collectors say to customers – be nice or not.

5. Defer or forbear interest or principal payments[[2]](#footnote-2) - some suggestions for dealing with customers requesting deferral or other temporary relief from meeting loan obligations from a Baker Donelson Alert[[3]](#footnote-3):

* Require that the borrower submit its request in writing and specifically reference the coronavirus basis for such request. It is important that the lender “paper its file” (whether by email or letter) in reference to these requests as future guidance or regulatory action could be specifically tied to coronavirus-based requests for relief.
* Lenders should send a responsive communication (email or letter) to each borrower requesting relief on commercial loan obligations. This communication may include a statement that the lender will review the request according to the terms of the loan documents, applicable laws, and lender’s internal process. The communication should also include standard reservation of rights and related provisions. This step may not be necessary if the lender is prepared to deliver a written agreement to the borrower.
* Each lender should consider its options (again, subject to future regulatory requirements or guidance). Some of these options may include a temporary deferral of payments due, whether any fees or amounts will be waived, and whether any covenants will be tolled during a deferral or standstill period. Other considerations may include whether any deferred amounts will be due at the end of the deferral period or added to the balance due at maturity.
* Any deferral or other accommodation should be pursuant to a written agreement signed by all loan parties (including guarantors). Similar to the response communication referenced above, it should include reservation of rights and similar lender protective language. It should also acknowledge the borrower’s request and the coronavirus basis for the accommodation.

6. Waive late, overdraft, CD early withdrawal etc…fees; fee refunds.

7. Establishing or extending lines of credit, HELOCs, and CC limits.

8. Don’t report late payments to credit bureau.

9. Suspending foreclosures (HUD, Fannie, and Freddie have done for 60 days); if don’t, might be a problem to contest if courts are closed.

10. Restricted business travel for employees and postponed/canceled large meetings and other events.

11. Warning customers about fraud-related schemes associated with the virus.

12. Increasing ATM daily cash withdrawal limits, replenish cash often.

13. Easing restrictions on cashing out-of-state and non-customer checks.

14. Provide some freebee services like financial and investment tools and apps, online exercise programs while everyone is cooped up at home, job posting blogs, food delivery options, online videos, online educational courses.…

15. “Man” the phones so customers can talk to human beings more quickly if they have banking questions.

16. Consider options of communications for those that are digitally challenged.

17. “BE PROACTIVE” – reach out to customers and critical service providers before they call you (but don’t scare them too badly).

B. Examples – Employees (be consistent)

1. Splitting depts (like IT) into separate locations; executive management rotation; alternate work schedule.

2. Work from home – especially if more susceptible, exposed, traveled, caring for kids or others, …beef up cybersecurity[[4]](#footnote-4), deal with traffic congestion; issue more laptops; Note: banks’ employees are deemed essential for various purposes (<http://www.tnbankers.org.sitemason.com/sm_files/Corona/Financial_Services_Sector_Essential_Critical_Infrastructure_Workers.pdf>).

3. How pay employees – full pay, sick days, disability, extended child leave.

4. Benefit enhancements - expand child care benefits, teledoc access, no deductibles, waiver of prior authorization for coronavirus diagnosis, no cost share for plan members for test, increased access to prescription medications, mental health consultation, and consultants on how to talk to kids re virus (Families First Coronavirus Response Act signed March 18 provides tax credits for employers who offer sick leave, family leave, or medical leave to their employees who are affected, see Baker Donelson Alert at <https://www.bakerdonelson.com/coronavirus-dol-issues-initial-qa-guidance-on-the-families-first-coronavirus-response-act?utm_source=vuture&utm_medium=email&utm_campaign=20200325%20-%20alert%20-%20l%26e>).

5. Enhanced cleaning procedures and cleaning supplies.

C. Examples – Shareholders

1. Annual Shareholder Meetings – virtual (conference call, Webex, …); see TCA §48-17-109:

“Unless the charter or bylaws provide otherwise, the corporation may permit any or all shareholders to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all shareholders participating may simultaneously hear each other during the meeting. A shareholder who participates in a meeting by this means is deemed to be present in person at the meeting.”

2. Be aware of securities law disclosure obligations in communications with shareholders (whether public or not): broad dissemination, accuracy.

3. Blackout period for insiders to be considered.

4. SEC Filing Guidance – SEC issues an order that extends its previous filing relief for companies who can’t file timely due to coronavirus issues to 34 Act filings due through July 1; also provides relief from proxy delivery requirements when delivery service has been suspended in a particular area and a good faith effort has been made to furnish the materials (see <https://www.sec.gov/news/press-release/2020-73>).

5. Consider suspending any share repurchases. See II.F. below and CARES Act.

1. Actions Being Taken by Regulators – old proverb says, “Its easier to ask permission than forgiveness”

* Update of Interagency Pandemic Planning guidelines – update business continuity plans (<https://www.fdic.gov/news/news/financial/2020/fil20014a.pdf>), March 6
* Interagency Statement on Loan Modifications (including state regulators) issued Sunday, March 22 (<https://www.fdic.gov/news/news/press/2020/pr20038a.pdf?source=govdelivery&utm_medium=email&utm_source=govdelivery>) includes some of the following statements:
* The agencies encourage financial institutions to work prudently with borrowers who are or may be unable to meet their contractual payment obligations because of the effects of COVID-19.
* The agencies will not criticize institutions for working with borrowers and will not direct supervised institutions to automatically categorize all COVID19 related loan modifications as troubled debt restructurings (TDRs).
* The agencies’ examiners will exercise judgment in reviewing loan modifications, including TDRs, and will not automatically adversely risk rate credits that are affected by COVID-19….…agency examiners will not criticize prudent efforts to modify the terms on existing loans to affected customers.
* The agencies will not criticize financial institutions that mitigate credit risk through prudent actions consistent with safe and sound practices.
* The agencies have confirmed with staff of the Financial Accounting Standards Board (FASB) that short-term modifications made on a good faith basis in response to COVID-19 to borrowers who were current prior to any relief, are not TDRs. This includes short-term (e.g., six months) modifications…. The FASB acknowledged their agreement in a Media Advisory the same Sunday night (see [www.fasb.org/cs/Satellite?c=FASBContent\_C&cid=1176174374016&pagename=FASB%2FFASBContent\_C%2FNewsPage](http://www.fasb.org/cs/Satellite?c=FASBContent_C&cid=1176174374016&pagename=FASB%2FFASBContent_C%2FNewsPage)).
* FDIC encourages banks to “provide borrowers … with payment accommodations,” and “the FDIC supports and will not criticize efforts to accommodate customers in a safe and sound manner” (see Frequently Asked Questions for Financial Institutions <https://www.fdic.gov/coronavirus/faq-fi.pdf> and FDIC Statement on Financial Institutions Working with Customers <https://www.fdic.gov/news/news/financial/2020/fil20017a.pdf>), including:

1. Extending the original maturity date or by making those payments due in a balloon.
2. Borrowers who were current prior to becoming affected by COVID-19 and then receive payment accommodations as a result of the effects of COVID-19 generally would not be reported as past due payment at the maturity date of the loan.
3. For loans subject to a payment deferral program on which payments were past due prior to the borrower being affected by COVID-19, it is the FDIC’s position that the delinquency status of the loan may be adjusted back to the status that existed at the date of the borrower becoming affected, essentially being frozen for the duration of the payment deferral period.
4. Financial institutions should determine whether loans with payment accommodations made to borrowers affected by COVID-19 should separately be reported as TDRs in separate memoranda items for such loans in regulatory reports.
5. Each financial institution should refer to the applicable regulatory reporting instructions, as well as its internal accounting policies, in determining whether to report loans with accommodations to customers affected by COVID-19 as nonaccrual assets in regulatory reports.
6. How should financial institutions handle customers wearing masks coming into a branch? It may be difficult to distinguish between a customer and a bank robber. The FDIC encourages financial institutions to provide appropriate training to staff and to take appropriate measures to maintain the security of their staff as well as their customers. Local law enforcement should be contacted whenever staff are concerned about individuals on bank premises.
7. Financial institutions should consult with appraisers and other persons performing real estate inspections about alternative arrangements if the property owner does not want to permit access to the interior of a property due to concerns related to COVID-19.
8. On March 16, 2020, the Financial Crimes Enforcement Network (FinCEN) issued a press release encouraging financial institutions affected by COVID-19 to contact FinCEN and their functional regulators as soon as practicable if there were concerns about any potential delays in their ability to file required BSA reports.

* The OCC also encourages banks to work with their customers (<https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-15.html>) “prudent efforts to modify the terms on existing loans for affected customers should not be subject to examiner criticism … The OCC supports and generally will not criticize efforts to accommodate customers in a safe and sound manner.”
* Regulators allow banks to take prudent action without prior approval, i.e., branch shutdown (TDFI says notify afterwards, FDIC says “The FDIC does not require an application to temporarily close a facility due to staffing challenges or to take precautionary measures;” and OCC says “notify their OCC supervisory office and their customers of temporary closure of a bank’s facilities and the availability of any alternative service options as soon as practical”).
* Regulators urge banks to use excess capital for lending, not buybacks or dividends (<https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-17.html> and <https://www.occ.gov/news-issuances/news-releases/2020/nr-ia-2020-34.html>). CARES Act prohibits buybacks for companies getting loans under the Act.
* Regulators issued “Q&As on Statement Regarding the Use of Capital and Liquidity Buffers” (see <https://www.federalreserve.gov/supervisionreg/srletters/SR2005a1.pdf>) which indicates encourages “banking organizations to make prudent use of their liquidity buffers in times of stress in order to continue to meet obligations to creditors and other counterparties while also continuing to support households and businesses. … The supervisory response to a banking organization that has a liquidity buffer that falls below any applicable regulatory requirements will depend on the particular facts and circumstances facing the firm. … supervisors will not change the supervisory assessment and rating of a banking organization solely on this basis.” With respect to a bank’s “capital buffers,” recent “modification will allow banking organizations to dip into their capital buffers and continue lending without facing abrupt regulatory restrictions.”
* CRA credit for certain actions (March 19) (see <https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-19.html>).
* Joint Statement Encouraging Responsible Small-Dollar Lending in Response to COVID-19 to both consumers and small businesses (March 26) (<https://www.fdic.gov/news/news/press/2020/pr20039a.pdf>), but regulators say more guidance will be forthcoming
* Fed actions to buy commercial paper, support the Money Market Fund Liquidity Facility, and purchase securities.
* Regulators suspending on-site exams and just conduct offsite (Tennessee Governor’s Executive Order suspended requirements to have exams within certain time periods). Commissioners implementing “exam pause,” so banks can spend time on customer issues and not exams. Fed will suspend exams under $100B through April.
* The Basel Committee on Banking Supervision announced March 27 that it will delay from Jan 1 2022 to 2023 the implementation of the Basel IV capital standards.
* Call Report filing relief - FFIEC issued a 30-day extension for the March 31 call reports (see <https://www.ffiec.gov/press/pr032520.htm>); Fed issued similar extension for certain other Fed reports. If institutions will be delayed, they should notify their regulators.
* SBA Programs: Disaster Loan Program (see <https://www.sba.gov/funding-programs/disaster-assistance>) and the Paycheck Protection Program (see <https://www.sba.gov/funding-programs/loans/paycheck-protection-program#section-header-0>), as well as the following Baker Donelson Alerts:
* Coronavirus: Resources Materials Available for Small Business Administration Economic Injury Disaster Loans (March 24) [www.bakerdonelson.com/coronavirus-resources-materials-available-for-small-business-administration-economic-injury-disaster-loans](http://www.bakerdonelson.com/coronavirus-resources-materials-available-for-small-business-administration-economic-injury-disaster-loans)
* Coronavirus: How Louisiana Businesses Can Apply For SBA Economic Injury Disaster Loans, republished in New Orleans City Business (March 19, 2020) <https://www.bakerdonelson.com/coronavirus-how-louisiana-businesses-can-apply-for-sba-economic-injury-disaster-loans>
* Coronavirus: Small Business Administration to Make Economic Injury Disaster Loans Available in Response to Pandemic" (March 13) [www.bakerdonelson.com/coronavirus-small-business-administration-to-make-economic-injury-disaster-loans-available-in-response-to-pandemic](http://www.bakerdonelson.com/coronavirus-small-business-administration-to-make-economic-injury-disaster-loans-available-in-response-to-pandemic)
* CARES Act: Understanding SBA Loan Programs to Determine Eligibility and Best Fit for Your Company (March 27) ([www.bakerdonelson.com/cares-act-understanding-sba-loan-programs-to-determine-eligibility-and-best-fit-for-your-company?utm\_source=vuture&utm\_medium=email&utm\_campaign=20200326%20-%20alert%20-%20sba](http://www.bakerdonelson.com/cares-act-understanding-sba-loan-programs-to-determine-eligibility-and-best-fit-for-your-company?utm_source=vuture&utm_medium=email&utm_campaign=20200326%20-%20alert%20-%20sba))
* CARES Act: Understanding SBA's Loan Eligibility Requirements, Including Affiliation Rules" (March 30) <https://www.bakerdonelson.com/CARES-act-understanding-SBAs-loan-eligibility-requirements-including-affiliation-rules>

1. Actions Needed to Be Addressed
2. Congress – CARES Act being considered this week includes:

* FDIC authority to enact deposit insurance on certain transaction accounts with no limit through December 31 – the old TAG program. FDIC developing specifics.
* The safe harbor community bank leverage ratio changed from 9% to 8% through the earlier of when the health emergency ends or December 31 – opens the door to further discussion for longer term.
* TDR relief - Suspends TDR treatment for loans modified related to virus impact for 60 days after the health emergency ends.
* Lending limit waiver—waives national bank lending limits through the earlier of when the health emergency ends or December 31 – state banks can use wildcard statutes to implement as well.
* CECL implementation suspension through the earlier of when the health emergency ends or December 31 – opens the door to further discussion for longer term.
* SBA lending program (see above) where all insured lenders can offer, not just those who are regular SBA lenders.
* Tax credit for companies affected who retain employees anyway.

1. TDR’s (troubled debt restructures) – Fed says this is an accounting issue; TDR ≠ classification; FDIC says “while a TDR designation means a modified loan is impaired for accounting purposes, it does not automatically result in an adverse classification. (<https://www.fdic.gov/news/news/financial/2020/fil20017a.pdf>); the OCC indicates “Modifications of existing loans should be evaluated individually to determine whether they represent troubled debt restructurings. … This evaluation requires judgment, as not all modifications will result in a troubled debt restructuring.” (<https://www.occ.gov/news-issuances/bulletins/2020/bulletin-2020-15.html>); the March 22 issuance above addresses the latest resolution.
2. FASB
3. CECL delay – FDIC Chairman McWilliams called for delay (see <https://www.fdic.gov/news/news/press/2020/pr20036.html>) as well as many Congressman (see [www.tnbankers.org.sitemason.com/sm\_files/Corona/Letter\_to\_FSOC\_on\_CECL\_Implementation[5].pdf](http://www.tnbankers.org.sitemason.com/sm_files/Corona/Letter_to_FSOC_on_CECL_Implementation%5b5%5d.pdf)). May be addressed in the CARES Act.
4. Fieldwork could pose a particular problem for auditors. The regulators (SEC and PCAOB) expressed concern that auditors may have difficulty gaining access to the evidence and people they need to support their audit opinion. The most immediate effect the regulators raised in the statement concerned the disclosures mandated by FASB Accounting Standards Codification (ASC) Topic 855, Subsequent Events (see <https://www.journalofaccountancy.com/news/2020/mar/how-coronavirus-may-affect-financial-reporting-auditing-23087.html>).
5. Treasury - considering guaranty of money market mutual funds.
6. State Laws:
7. Original Signatures – some states still require “wet ink” – Texas, Oklahoma, Arkansas – relief granted during hurricanes, so need to do so again; some states such as NY are allowing for notarization via video; Connecticut is going to look into remote notarization on March 23. About ½ states already had electronic notarization laws (pending in CA and NY).
8. Register’s offices or secretary of state offices closed or inaccessible; companies like Simplifile (<https://simplifile.com/services/e-recording/e-recording-for-counties/>) track where electronic filings can be made and which offices are open or closed.
9. General – more and more clarity that prudent decisions in working with customers won’t be criticized; include lifting of compliance burdens, such as mailed notice requirements, redemption rights, etc….
10. Resources

A. American Bankers Association ([www.aba.com/banking-topics/risk-management/incident-response/coronavirus?utm\_campaign=NEWSBYTES-SPECIAL-20200319&utm\_medium=email&utm\_source=Eloqua](http://www.aba.com/banking-topics/risk-management/incident-response/coronavirus?utm_campaign=NEWSBYTES-SPECIAL-20200319&utm_medium=email&utm_source=Eloqua)).

B. OCC ([www.occ.gov/topics/supervision-and-examination/bank-operations/covid-19-information/convid-19-info-index.html](http://www.occ.gov/topics/supervision-and-examination/bank-operations/covid-19-information/convid-19-info-index.html)).

C. FDIC ([www.fdic.gov/coronavirus/index.html](http://www.fdic.gov/coronavirus/index.html)).

D. Each State Bankers Association Web Pages, i.e., Tennessee Bankers Association ([www.tnbankers.org/covid19](https://protect-us.mimecast.com/s/lMidCn5YpyHWOOkyfJlhfR?domain=tnbankers.org)).

E. Baker Donelson's Coronavirus: What You Need to Know ([www.bakerdonelson.com/coronavirus](http://www.bakerdonelson.com/coronavirus)).

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2. States considering own legislation, like in NY where a regulation issued March 24 directs state-regulated financial institutions to give mortgage borrowers and possibly other borrowers at least 90 days of forbearance if they can link their financial hardship resulting to the virus. It also contains requirements on financial institutions to provide relief on ATM fees and credit card late payment fees. [↑](#footnote-ref-2)
3. [www.bakerdonelson.com/coronavirus-lenders-navigate-providing-relief-to-borrowers-and-acting-prudently-to-manage-lending-risk](http://www.bakerdonelson.com/coronavirus-lenders-navigate-providing-relief-to-borrowers-and-acting-prudently-to-manage-lending-risk); see also [www.bakerdonelson.com/coronavirus-what-lenders-should-do-now](http://www.bakerdonelson.com/coronavirus-what-lenders-should-do-now). [↑](#footnote-ref-3)
4. See Baker Donelson Alert at <https://www.bakerdonelson.com/coronavirus-privacy-and-cybersecurity-considerations-for-financial-institutions> and the PowerPoint for this webinar. [↑](#footnote-ref-4)