

Federal and State Regulators Issue Joint Guidance Encouraging Financial Services Companies to Responsibly Accommodate Borrowers Impacted by COVID-19 and Advising on Business Continuity Planning

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We have been in close communication with our financial services clients to provide timely guidance on how to handle the evolving implications of coronavirus disease 2019 (COVID-19). Many clients have raised concerns regarding how federal and state regulators would view financial institutions that deviate from their standard loss mitigation policies to accommodate customers impacted by COVID-19 when those accommodations are not available to other customers and how to manage this event compared to more common natural disasters. This question has now been answered, at least in part. In a brief joint [statement](#), federal and state financial services regulatory agencies encouraged financial institutions to meet the financial needs of borrowers affected by the coronavirus. The regulators noted that financial institutions should not be subject to examiner criticism if they take prudent efforts that are consistent with safe and sound lending practices to work constructively with borrowers and other customers in affected communities. The regulators included the Board of Governors of the Federal Reserve System, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, and the Conference of State Bank Supervisors.

The guidance gives financial services companies some comfort that the regulators will not levy criticism of such programs for COVID-19 related borrower accommodations, but also reminds financial services companies that accommodations must be offered in a prudent and responsible manner. The guidance also did not provide any specific guidance on how financial services companies should craft and monitor such procedures. The level of sophistication of existing loss mitigation and other borrower accommodation policies varies based upon the

type and size of the company and the particular type of financial product or service being offered. However, the [CFPB encourages](#) borrowers to talk to their lender or servicer about available options including waiving certain fees, allowing the borrower to delay, adjust, or skip some payments, changing the date of the payment, requesting a payment plan, or requesting other types of modifications, as applicable depending on the product. Similarly, the prudential banking regulators [announced actions](#) to support the U.S. economy and allow banks to continue lending to households and businesses, including encouraging banks to use their resources to support households and businesses. These agencies are also beginning to create [COVID-19 resource pages](#) to provide guidance to their regulated institutions.

Financial services companies will be well served to develop their policies thoughtfully and ensure that they can apply them consistently, in a safe and sound manner, that accurately describes the effect of the option to the borrower in a way that mitigates against unfair, deceptive, or abusive acts or practices and that is sensitive to potential fair lending risks. The process of achieving this balance, however, is no small task. Existing federal and state guidance regarding disaster planning, business continuity, and general force majeure borrower accommodations provide some direction.

Due to the unique nature of COVID-19, however, it is far more difficult for a financial services company to assess the scope of borrowers affected by the coronavirus in comparison to borrowers affected by other natural disasters. For example, a hurricane could cause financial distress for a defined group of individuals that live or work in a set geographic region and a hurricane happens at a specific time. For the coronavirus, there is no specific region and the timeline is unclear. In its recently updated [Interagency Statement on Pandemic Planning](#), the Federal Financial Institutions Examination Council (FFIEC) acknowledged the difficulty in determining the scale and duration of a pandemic. Borrowers themselves have difficulty determining if they have the coronavirus or if they were exposed to the coronavirus as testing is still limited. Businesses may be required to close or may choose to implement precautionary procedures that reduce staff on premises or prevent employees from working, even if the employee themselves neither have COVID-19 nor are having to self-quarantine. The loss of income from these circumstances may nonetheless make the customer potentially in need of COVID-19 related accommodation.

McGlinchey's Banking and Consumer Financial Services teams are working closely with our clients to design and amend COVID-19 related policies and procedures that help identify borrowers affected by the coronavirus and permit financial services companies to evaluate each individual troubled borrower in a safe and sound manner. As the economic impact and timeline of the coronavirus are still developing, these policies and procedures need to be detailed enough to identify borrowers affected by the coronavirus and provide for an appropriate response, while also maintaining sufficient flexibility to address the wide range of possible effects.

Finally, financial services companies should make sure to have effective business continuity plans in place for how they will serving customers if a significant number of employees are unable to come to work. As noted above, the FFIEC's Interagency Statement on Pandemic Planning recognizes that some financial institutions may face staffing and other operational challenges from the coronavirus. The federal regulators have indicated they will work with affected financial institutions to schedule examinations or inspections and conveniently provide other services as appropriate. As discussed previously by McGlinchey, the [state regulatory agencies have also begun to offer non-depository licensed companies relief](#) from state laws requiring all regulated activity to take

place from a licensed location in order to allow companies to honor COVID-19 related accommodations for employees without ceasing operations in whole or in part. We encourage you to review your internal business continuity planning guidelines to make sure that you have a preventive program, a documented strategy scaled to the stages of a pandemic outbreak, a comprehensive framework to ensure the continuance of critical operations, a testing program, and an oversight program to ensure that the plan is reviewed and updated. For larger financial services companies, a series of thoughtful changes can be sufficient. For smaller companies, the development and adoption of a plan may be required.

Of course, this situation and the government's response to stabilize the economy are developing rapidly, requiring financial services companies to closely monitor executive orders, legislation, and regulatory guidance at the federal and state levels to ensure compliance and best mitigate against potential risks. We will continue to monitor these developments and will update our clients as quickly as possible.

If you have questions about how your business should respond to COVID-19 or need help on any of the issues summarized above, please reach out to one of the authors of this alert or another member of the firm's Banking and Consumer Financial Services teams.

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