

PUBLICATION

Coronavirus: Lenders Navigate Providing Relief to Borrowers and Acting Prudently to Manage Lending Risk

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March 23, 2020

We've heard from representatives of both federal and state banking regulators that they intend to work with banks as banks work with their customers in addressing the potential business impacts of COVID-19 (coronavirus). The regulators are encouraging financial institutions to take prudent steps to assist customers and communities affected by the global health pandemic. For example, banks can receive credit under the Community Reinvestment Act for lending to low- and moderate- income borrowers and small businesses. In addition, lenders – banks and unregulated financial institutions – are receiving numerous requests from borrowers for payment and other relief from commercial loan obligations. It is important that lenders carefully consider the position they will take in response to these requests.

After consideration of any regulatory requirements, we suggest that lenders also consider the following in evaluating requests from commercial borrowers for deferral or other temporary relief from meeting loan obligations:

1. 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.
2. 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.
3. 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.
4. 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.
5. Lenders should be aware before giving deferrals or other accommodations that loans with interest rate swaps in place will trigger special issues.

6. Lenders should also be aware of troubled debt restructuring issues raised by deferrals or accommodations. The Board of Governors of the Federal Reserve System, Conference of State Bank Supervisors, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency issued a [joint press release](#) on Sunday, March 22, regarding additional information the agencies have provided to encourage financial institutions to work with borrowers affected by coronavirus.

Notably, this guidance provides that short-term modifications made on a good faith basis in response to coronavirus to borrowers who were current prior to any relief are not TDRs. This includes short-term – for example, six months – modifications such as payment deferrals, fee waivers, extensions of repayment terms, or other delays in payment that are insignificant.

Baker Donelson's Financial Services professionals are working with multiple lenders (including banks, CMBS special servicers, life companies, and funds) in developing responses to this unprecedented impact on both the business community and financial institutions. If you have any questions regarding these issues or how your financial institution can improve its pandemic protocols, please contact any member of Baker Donelson's [Financial Services Team](#). Also, we've been working with our clients on multiple other legal issues arising from the COVID-19 crises. Please visit our [Coronavirus \(COVID-19\): What You Need to Know information page](#) on our website for additional resources.