

KENTUCKY BANKER

Kentucky Bankers Association

Serving Kentucky Banks
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Can Better Serve
Their Communities
Since 1891

Ballard Cassidy's STRAIGHT TALK

WHERE ARE YOUR BOOTS? page 9



The Boogie Man is Real

Cyber Attacks are too...

Debra's Two Cents page 11





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To learn more about BBKY and to schedule a personalized visit contact our Account Executive Team at solutions@bbky.com

UNDERSTANDING CHILD TAX CREDIT SCAMS

Seven Ways to Avoid Child Tax Credit Scams

As child tax credit payments are beginning to be dispersed around the country, fraudsters are targeting those who may benefit from these payments. Consider these tips to avoid being the subject of fraudulent activity.

1. BE WARY OF CONTACTS

Customers should be wary of any unsolicited calls, e-mails and text messages. The IRS generally communicates by mail.

2. NEVER PROVIDE PERSONAL INFORMATION

Many fraudsters will offer assistance to “sign up” for the child tax credit. Signing up is not necessary, and payments are based on filed tax returns.

3. CHECK THE LINKS

Customers should not click on links or open attachments as this may lead to money loss, tax-related fraud and identity theft. Any website other than IRS.gov is not an official government website.

4. KNOW YOUR ELIGIBILITY

Only certain individuals are eligible for the child tax credit. Know the eligibility requirements to determine if you should be eligible to avoid unnecessary risk. Eligibility requirements are monitored by the IRS only.

5. DO NOT LISTEN TO THREATS!

The IRS will not leave a pre-recorded, threatening voicemail regarding lawsuits or arrests, nor will it call for taxpayers to verify their personal information in order to receive the credit.

6. CHECK THE FORM OF PAYMENT

Customers will never be asked to send the IRS money via wire transfer, gift card or cryptocurrency. In fact, there should not be any payments by customers associated with the child tax credit.

7. IF IT SOUNDS SUSPICIOUS, BE SUSPICIOUS

If an inquiry seems suspicious, it probably is.





WHO WE ARE: The KBA is a nonprofit trade association that has been providing legislative, legal, compliance and educational services to its member institutions since 1891. KBA's directors and staff work together with its members to make the financial services industry a more effective and successful place to work. The strength of the KBA is bankers unifying as an industry to speak as one voice.

WHAT WE DO: The purpose of the Kentucky Bankers Association is to provide effective advocacy for the financial services industry both in Kentucky and on a national level; to serve as a reliable and responsive source of information and education about areas of interest to the industry; and to provide a catalyst and forum for collective industry action. The KBA does this in 4 ways:

1. Government relations & industry advocacy
2. Information interchange
3. Education
4. Products and services

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KENTUCKY BANKERS ASSOCIATION

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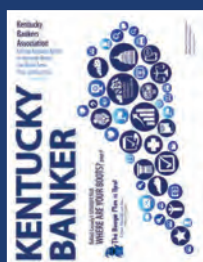
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CHAIRMAN'S CORNER by Mr. J. Wade Berry
President & CEO, Farmers Bank & Trust Co.
2020-2021 KBA Chairman

It Just Doesn't Make Sense

Some things just don't make sense to me. Why do people say "Knock, knock" AFTER entering a room? Why are people surprised when they find the item they've been looking for in the "last place they looked?" Isn't that always true by definition? Why isn't phonetic spelled the way it sounds? And why isn't there mouse-flavored cat food? We all know it would be a huge hit with cats. In banking, there are plenty of things that don't make sense to me. But one particular thing stands out above the rest. "Why would we waste billions of dollars protecting the public from the most consistently trustworthy group of people I know?" I refer, of course, to bankers.

A recent study found that bankers are the 9th most trusted group of professionals in America. In spite of the public's trust in bankers, the banking industry is our nation's 5th most regulated industry. Who does the regulating? Surely the task of regulating such a highly respected group of professionals would fall to a professional body held in even higher esteem? Well, not really. Most of the regulation of banking activities originates in Congress, which happens to be the least trusted profession in America. Does anyone else see a problem here?

I've had the privilege of meeting a lot of bankers over the years. But I've never met more bankers in a short period of time than I have in the past year while serving as Chairman of the Kentucky Bankers Association. Whether I was visiting with bankers from small Kentucky communities like Hickman, Princeton, Paintsville, and Middlesboro, or whether I was visiting with bankers from large cities in states like Pennsylvania, Connecticut, Texas, and Florida, one question kept coming to me: "THESE are the people the bureaucrats spend so much time trying to protect the public from?"

Bankers in general, and community bankers in particular, are some of the most consistently gracious and honorable people you will ever meet. No matter where they're from, bankers tend to be polite, intelligent, low-key, and thoughtful. They take pride in the communities they serve and in the longstanding traditions they uphold. Bankers hoping to advance in their organizations must earn the respect of their leaders by demonstrating a high degree of trustworthiness over an extended period of time. Those traits are about as far you can get from the media-driven image of bankers as greedy, self-serving, scheming opportunists.

I could give you dozens of examples of bankers going above and beyond to do the right thing for their customers. A banker friend shares the story of a customer service representative (CSR) in his bank receiving a call from an elderly lady who seemed unusually anxious or nervous. After taking care of the lady's banking problem calmly and quickly while on the phone, the CSR asked the lady if she felt better since her problem was now solved. The lady thanked the CSR for her help but admitted that she was living every day of her life in fear. She explained that she lived alone and had no family to check on her. Her constant fear was that she would die alone and that her body wouldn't be discovered until days later. The CSR asked the elderly lady if she would feel better if she knew that someone was going to check on her each day. From that day forward, she called the elderly lady every single morning including Christmas until the dear lady finally passed away.

Do consumers need protection from men and women with that type of character?

Bankers are natural rule followers. When a new banking rule or regulation comes out, bankers practically go into a frenzy trying to figure out how to comply immediately. I've never received a call from a banker saying, "Hey man, have you seen the new reg that took effect today? I don't know about you but I'm not gonna' go along with this one. If they bust me I'll just act like I've never heard of it. They won't do anything about it." The thought of a banker doing that is laughable. Let's be honest, banking doesn't exactly attract thrill seekers and anti-establishment types.

Rewards are few for risky, rogue behavior by bankers. And so are examples. In fact, examples of high risk, rogue behavior by bankers are so few that if asked, we would all likely give the same examples. Competition and the free flow of information combine to virtually guarantee that all bankers who are in the business to stay will operate within appropriate boundaries. If your bank's behavior causes consumer harm you'll suffer for it in your local markets long before the CFPB hears about it or has time to act.

"Why would we waste billions of dollars protecting the public from the most consistently trustworthy group of people I know?"

The list of better things to do with taxpayer dollars than regulating rule followers in a highly competitive industry is endless. For starters, our elected leaders could focus on doing things only the government can do such as providing for the national defense, enforcing contracts between individuals, and protecting our citizens from crimes against themselves or their property. My personal list of things I would like our nation's leaders to worry about more than overdraft fees would include fighting terrorism, improving our aging infrastructure, protecting individuals and businesses from cybercriminals, and protecting our borders from illegal immigration. Perhaps some people would be more concerned about mortgage disclosures than the items I listed, but I'm confident that my bank's customers would appreciate my priorities.

In college I changed my major from Physics to Economics because I enjoyed studying the behavior of humans more than I enjoyed studying the behavior of matter. I learned that the study of economics is primarily a study of resource allocation. Taking money out of our taxpayers' hands and using it to regulate a group of people who have earned the taxpayers' trust is a careless and wasteful allocation of our taxpayers' dollars. Bankers have earned the trust and respect of our customers. It's time for our governing bodies to acknowledge that and turn their focus to matters more critical to the well-being of our citizens.



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STRAIGHT TALK by Ballard Cassady
KBA President & CEO
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WHERE ARE YOUR BOOTS?

Some of our board members and I recently attended a national banking leadership conference, one of those where we show up and they tell us what we believe in. There's some contrived dialogue and posturing that pundits like to call kabuki theater, which is really not fair to that Japanese art form; better to just say what they have in common: they're designed to create the appearance of an uncertain outcome when it's actually a foregone conclusion.

Anyone who believed that this conference was aimed at discovering what the industry wants and needs got schooled. What they brought home was a clear understanding of what Washington leadership wants and needs. Heck, we even had a little lovefest segment for the CFPB, and guess what? Their regulations aren't as bad as we all thought they were!!

The conference was an illustration of last month's article on the way our industry is being sucked into the abyss of ideological issues at the expense of what we actually exist to do, i.e., serve our ENTIRE communities. I took the "risk" of claiming that banking exists to serve our customer's and communities' financial needs without any kind of discrimination. Even when the issue is credit-worthiness, we've developed programs to help. The last thing we need is being pressured into discrimination on the basis of partisan ideology!

So, the conference included a townhall segment of predictably staged dialogue — until a question from the floor asked why banking is "at the table" with the Green Movement to discuss what banking can do to address climate change. Why are we at "The Table" of any typically partisan ideological issue group? The prepared answer was that it's better for us to have our "boots under The Table" so that we can add to the conversation those particulars needed about banking (a "tactical move" if you will... HA!). After almost 40 years of lobbying, I can tell you we just asked for more "inclusion" on social issues because we showed a weakness.

An actual short dialogue broke out when the person at the microphone pointed out that when you sit at The Table and the majority decides against you, you get painted with their decision. When you try to fight that decision in political arenas, you predictably get back: "You were at The Table and had your chance to speak and no one agreed with you."

"This is boiling down to a bureaucrats view of the world versus a practitioners view of the same."

So, The Table writes legislation — like every loan having an environmental impact statement attached — that carries with it the tacit approval of the banking industry. Should not, instead, our army of boots be on the battlefield of Congress fighting this nonsense in no uncertain terms, instead of playing footsie at The Table? Shouldn't leadership consist of working to defeat new and unnecessary regulations that make it harder to get loans and support our communities?

The response, if I might paraphrase a bit: this appeases the activist mob at our D.C. door. And you bankers out there in the hinterlands of energy states like Kentucky, Texas, Pennsylvania, Oklahoma, North Dakota, etc.? You're just not nearly as intimidating. This is boiling down to a bureaucrats view of the world versus a practitioners view of the same.

If our lawmakers in D.C. are as easy to intimidate as its lobbying class, I like our chances of donning our own boots, the kind made for marching to Washington and delivering our own message. Heck, if you want to put your boots under a table, let's do it over dinner and catch up about family and friends NOT new regulations!

Either way we have our Convention coming up September 19th to 22nd at the Grove Park Inn and maybe we can have some kind of real dialogue about what our industry should be doing in Washington.

—Have an opinion? Have a great story?— —Have an experience? Have a topical subject?—

Whether it is an opinion on a current issue, an inspirational community story, an experience you would like to share with other bankers or an article on a current subject in our industry, did you know YOU could submit a story to KENTUCKY BANKER magazine? Write from 500 to 1000 words, send us any pictures you have associated with the article you wrote and send it to Managing Editor, Josh Fischer jfischer@kybanks.com

All submissions are subject to editorial team review. The editorial team reserves sole authority to publish or reject submissions. On opinion pieces, the submission will be marked as the opinion of the writer; the KBA does not endorse outside submissions.

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MORGAN POTTINGER MCGARVEY



MY TWO CENTS by Debra Stamper
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Check Under Your Desk.. **The Boogeyman is Real!**

At the KBA's Regulators' Forums, each regulator was given an opportunity to speak briefly about concerns or trends seen in the banking industry before the audience was allowed to ask questions. Without exception, each regulator addressed cyber security as a primary concern. It isn't difficult to see why. The criminals are getting ever more sophisticated in their attacks.

Customers, both individual and businesses, are relying on technology to do their business. Banks had record numbers of employees working from home for a prolonged period of time during COVID. Cellphones are used like computers. These are just a few reasons that cyber security is an increasing concern.

But, cyber security isn't just about protecting your data and seeing that your customers and employees are doing the same. It is also about having a game plan for action by the bank if a breach happens to you.

Ransomware attacks have become the cyber boogeyman in today's news. These attacks put you in the terrible position of knowing that someone has your data, but also knowing that they have not yet used it. The whole point of a ransomware attack is just as the name suggests—the bad guy will return your data ... at a cost.

And... rather than try to decide what you will do once you find yourself in the middle of a ransomware attack, you should prepare yourself in advance. There are several steps that should be taken and most certainly are being taken in your bank:

- Conduct regular internal cyber "exams" to determine where your vulnerabilities are. These may be done by employees, IF your team has the skills necessary. Review your skill sets carefully and hire experts or retain a vendor to assist with these tests if you cannot perform them on your own. Clean up and secure any risks that you identify. Do this on a regular basis.
- Back up your data regularly. Test your backups. But, remember, backups do not protect you from the dangers of a cyber breach or ransomware attack. Backups may allow you to continue operations and to notify customers of breaches,

but they obviously DO NOT protect your data from being utilized criminally.

- Patch and update software and operating systems IMMEDIATELY. This is not something that can be scheduled as a regular quarterly, monthly, weekly or even end of day event. Never knowingly leave your systems open to risk! (According to the U.S. Cybersecurity and Infrastructure Security Agency (CISA) the top vulnerabilities in 2020 resulted from failure to patch software primarily in use by remote workers, VPNs, and cloud-based technology.)
- If you are breached and/or receive a ransomware demand, do not sit and ponder it. Report such events immediately to your regulators and federal law enforcement and customers (as required by law).
- Make sure your IT staff is up to date on the most current vulnerabilities and attacks.
- Ensure that employees who are working remotely have the authority to do so and understand the additional threats that can result from use of wireless devices (including cell phones) and from public wifi.
- Make sure employees who use their cell phones for work purposes understand how existing and/or added apps can result in dangers to their or bank data.
- Check your bank's insurance coverages to determine if they sufficiently cover the bank's risk of cyber attacks and ransomware demands. Our staff is certainly willing to help with this determination.

As so eloquently sang by KC and the Sunshine Band:

*I'm your boogie man that's what I am
I'm here to do whatever I can*

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KBA President & CEO Ballard Cassady Named One of 20 People to Know in Banking by Louisville Business First

LOUISVILLE (July 22, 2021) - KBA President and CEO Ballard W. Cassady Jr. was named one of 20 People to Know in Banking by *Louisville Business First*. He sat down with the publication to reflect on his 35 years at the KBA, and his 45 years in banking.

How has the Covid-19 pandemic changed the banking industry?

Banking became more flexible, and it's moving more of its customers to internet services faster than expected. The impetus was the federal government's need to use banks for a quick roll-out of the Payroll Protection Program (PPP), which acknowledged banking's unique capacities and integrity, even though some members of Congress don't see it that way. The federal piece of PPP was an SBA portal that couldn't handle \$350 billion in 30 days. So, bankers literally worked 24/7 to access an overloaded portal at non-peak hours. It was a case of, "that which doesn't kill us makes us stronger."

How will the new presidential administration affect banking regulations and oversight?

If the first 130 days are any indication, we can expect the return to more consumer-burdensome regulations. The problem for our customers is that those extra layers of regulation can prevent a bank from giving customers what they're asking for. That's why the last administration reduced regulations. Some regs have even had unintended consequences, like preventing a bank from serving specific groups and areas. The fact is, a bank needs every qualified borrower it can find to prosper. I've never met a banker that turned away a loan for a reason that didn't relate to a regulation.

What can traditional banks learn from the fintech industry?

Banks get closer to the fintech industry by the day. But if that happens in a careless way, we could see wreckage, for individuals and for the whole economy. Banks have basic regulations for good reasons, like quality, safety and soundness. Banks insure their deposits, and those deposits make up the money they lend, unlike fintech's venture investor funds. Those are differences that demand thoughtful regulation. But banks are already starting to partner where fintech's technology and algorithms have been strong. The details will likely get worked out over time.

What is your biggest career accomplishment?

I can say which was the most fun... I became a bank president at 28 years old because the bank had a major regulatory problem. Its board Chair told me they couldn't find a "real banker" to take the job because of the career risk. In six months, the bank had its regulatory oversight removed and we had set an earnings record.

We'd done traditional things like streamlining operations and cleaning up lending practices, but it also involved accounting devices that recovered some tax monies and some incredible luck around an historic interest rate move.

Tell us about an interaction with a client that has stuck with you.

The KBA has members rather than clients. Last year, I got an email at 11 p.m. from a woman running a day care for first responders who was struggling to get a PPP loan. I called a KBA banker, who told me to give her his cell number and to call him that night. At 12:30 a.m., she e-mailed to tell me our KBA banker had worked out all the details and set a closing for three days later. Every Kentucky banker was heroic at some point in 2020, but this is one that will stick with me.

What technology has proved transformative for the banking industry and why?

Simple, the internet. That's where FinTech's and banks meet and compete.

How would you describe banking customers' attitudes as we emerge from the pandemic?

New surveys show our customers are giving their primary bank high marks. Those who describe their service as "excellent" or "very good" is at 96%. Those higher-than-ever ratings reflect the way banks stepped into the pandemic crisis to lend over \$500 billion of their own money, trusting the government to honor their promise to forgive those loans or insure them through the SBA — despite a lack of timely lending guidelines. With customers' livelihoods and local jobs hanging in the balance, banks faced that risk and made the loans at top speed. It was like building a plane while you're flying it.

Will we ever see a cashless society? Why or why not?

At a speech I gave as Commissioner of Banking in 1985, I said we would be cashless in 10 years. Obviously, my crystal ball was a little cloudy, but we're getting closer. My children do everything via phone, but they still carry cash for those increasingly rare occasions it's needed. No one wants a cashless society any more than the IRS — it enables easier tracking of revenue and spending. But how soon will we get there? Given my track record, I'd better dodge the question this time.

Haylin Adams Day

The Peoples Bank in Glasgow celebrated Haylin Adams Day on Friday, July 23, 2021! Haylin is a Glasgow native and was a fourth place finisher on the ninth season of Food Network's Kids Baking Championship. The Peoples Bank honored Haylin with a reception and a Proclamation by the city of Glasgow and Barren County. The Peoples Bank additionally, contributed \$500 to Barren County Reads & Feeds as well as \$500 to Shop with a Trooper in honor of Haylin.



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 <p>Charlie Crowley</p>	 <p>Chris Chapman</p>	 <p>Chad Hull</p>	 <p>Tony Latini</p>	<p>December 2020</p> <p>\$15,000,000</p> <p>STURGIS BANCORP, INC.</p> <p>5.00% Fixed-to-Floating Rate Subordinated Notes</p> <p>Sole Placement Agent</p>	<p>December 2020</p> <p>\$31,000,000</p> <p>CODORUS VALLEY BANCORP, INC.</p> <p>4.50% Fixed-to-Floating Rate Subordinated Notes</p> <p>Sole Placement Agent</p>	

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Bankers Title of Central Kentucky, LLC Will Celebrate Two Decades of Business

On October 15, 2021, Bankers Title of Central Kentucky, LLC will celebrate twenty years of providing valuable title insurance underwriting expertise and unmatched customer service to its customers. In recognition of this milestone, the agency owner banks and staff will be presented with a commemorative award during a board meeting.

Bankers Title of Central Kentucky was founded in 2001 by Investors Title Insurance Company, eight community banks, and the Kentucky Bankers Association (KBA) to provide title insurance services to customers statewide. The agency is currently owned by six of the initial community banks that founded the agency along with the KBA and Investors Title. A full list of agency owners is provided below.

Bankers Title of Central Kentucky provides comprehensive title insurance and professional services for residential and commercial real estate transactions and prides itself in maintaining long-lasting relationships with customers.

They are an agent of Investors Title Insurance Company, an underwriter that consistently achieves the highest financial stability ratings offered by industry rating firms. For more information, please visit btcentralky.com and invtitle.com

Bankers Title of Central Kentucky Bank Owners: Citizens Guaranty Bank, Commercial Bank, Community Trust, Inc., First State Bank of the Southeast, Inc., Peoples Exchange Bank, and The Farmers National Bank of Danville.



Pictured Left: Claude Bentley retires as Chairman of Bankers Title of Central Kentucky. Pictured with Norma Carroll.

Pictured Right: Hank Allen Elected Chairman of Bankers Title of Central Kentucky. Claude Bentley on right.

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CORRESPONDENT BANK DIVISION

Commonwealth Bank & Trust to become part of Stock Yards Bank & Trust

LOUISVILLE (Aug. 3, 2021) – Stock Yards Bank & Trust has entered into a definitive agreement to acquire Louisville-based Commonwealth Bank & Trust. Combining the strengths of these two community banks that are deeply rooted in Kentucky further solidifies Stock Yards Bank's position as a premier financial institution in the region.

"As community bankers, we need to take the initiative to build relationships and earn the trust of the people we serve," said Stock Yards Bank Chairman and CEO James A. (Ja) Hillebrand. "This acquisition is further proof that Stock Yards Bank is dedicated to growing with the evolving needs of our customers, adding scale, security and strength while staying in line with our existing values."

The combined stock and cash transaction with Commonwealth Bancshares, Inc., representing a total consideration of approximately \$153 million, is expected to close during the fourth quarter of 2021, subject to completion of customary regulatory approval and closing conditions.

"The mutual admiration and collaboration between these two banks goes back many years," said Commonwealth Bank President and CEO John W. Key. "This acquisition brings us together to create a premier financial institution unlike anything that this region has ever seen. I truly believe this will be transformational for our Commonwealth Bank customers and the communities we serve."

Key will join Stock Yards Bank in a senior management position as Director of Strategic Initiatives and will serve as a voting member of the company's Executive Loan Committee, Strategic Planning Committee and Operations Committee.

Commonwealth Bank is headquartered in Louisville and operates 16 branches including 10 branches in Jefferson County, four in Shelby County and two in Northern Kentucky, as well as several remote mortgage offices across the state. It has over \$1.3 billion in Bank assets and manages \$2.6 billion in wealth management and Trust assets. The combined banks will service customers through 79 branches with total assets of approx. \$7.4 billion, \$4.9 billion in gross loans, \$6.4 billion in deposits and \$7 billion in Trust assets under management.

"Community banking isn't about size, it's about service," said Hillebrand. "Both of these banks understand that relationships are more important than assets. Together, we will be more nimble and powerful to help more consumers and businesses in this region to meet their financial goals."

In addition to more options for locations and expanded services, Commonwealth Bank customers will now benefit from the shared best practices and depth of experience from the teams at these two well-established banks. As Commonwealth customers transfer into the Stock Yards Bank family, they will find their hometown location staffed by many of the same bankers they've built relationships with over the years.

This is Stock Yards Bank's second major acquisition of 2021 following the recent acquisition of Kentucky Bank, including 19 branch locations across central and eastern Kentucky. Stock Yards Bank has valuable experience transitioning customers through the past acquisitions of King Southern Bank, Bank of Oldham County and currently Kentucky Bank working to ensure for a smooth and swift conversion.

*"Community banking
isn't about size,
it's about service."*

Stock Yards Bank Chairman and CEO
James A. (Ja) Hillebrand

About Stock Yards Bancshares, Inc.:

Louisville, Kentucky-based Stock Yards Bancorp, Inc., with \$6.1 billion in assets, was incorporated in 1988 as a bank holding company. It is the parent company of Stock Yards Bank & Trust Company, which was established in 1904. The Company's common shares trade on the NASDAQ Global Select Market under the symbol SYBT. For more information about Stock Yards Bancorp, visit the Company's website at syb.com. It has branches in Louisville, central, eastern and northern Kentucky as well as Cincinnati and Indianapolis markets.

About Commonwealth Bancshares, Inc.:

Commonwealth Bancshares has \$1.3 billion in assets, and manages \$2.6 billion in wealth and trust assets, including \$200 million of assets in association with its Bowling Green partner, Landmark Financial Advisors. Commonwealth Bank & Trust, founded in 1881, is headquartered in Louisville, Kentucky and currently operates 14 retail branches across Jefferson and Shelby Counties and two branches in northern Kentucky.

Bankruptcy...

Preparation is the Key to Optimizing Outcomes

by Mary Elisabeth Naumann, Jackson Kelly PLLC

Bankruptcy filing rates have remained subdued as we emerge from COVID-19 restrictions. However, most of the governmentally mandated or funded relief measures that have sustained many individuals and businesses are set to expire in the coming months. The removal of the support measures increases the risk of increased bankruptcy filings.

For financial institutions, preparation is critical to optimizing bankruptcy outcomes. In this article, we review bankruptcy basics, outline the practical steps you should take, and highlight significant issues you need to address. Bankruptcy law is complex and nuanced. Often, consulting with counsel early in the process can result in lower costs and better outcomes.

Bankruptcy Basics

Every bankruptcy case begins with a bankruptcy petition. Debtors must also file a Statement of Financial Affairs or “SOFA” and numerous schedules outlining their assets, liabilities, financial condition, and other important information. Debtors have a choice of what type or “chapter” of bankruptcy they want to file, and each Chapter has its own benefits, burdens, and consequences for both debtors and creditors.

Chapter 7 may be filed by individuals or other legal entities. Chapter 7 always involves a liquidation by a third party, a Chapter 7 Trustee. The Chapter 7 Trustee gathers and sells a debtor’s nonexempt assets and distributes any proceeds to creditors.

Chapter 11 cases are most often filed by businesses, but may also be filed by high asset individuals not eligible for Chapter 13. Chapter 11 allows the debtor to run the case, not a trustee. A Chapter 11 can result in a liquidation or reorganization of the debtor’s assets accomplished via a “Plan,” which must be voted on by the creditors. These cases can also involve a creditors committee. Chapter 11 cases are typically the most complex, and expensive, types of cases.

Small Business Debtor Reorganizations (SBRA) cases, or Subchapter V Cases, are a simplified and condensed version of the Chapter 11 process that make reorganization less expensive for debtors with less than \$7,500,000 in debt.

Chapter 12 cases provide a streamlined process (which was the basis for the SBRA) for the reorganization of “family farmers” or “family fishermen” with regular annual income.

Chapter 13 allows individuals who do not qualify for Chapter 11 to reorganize. Chapter 13 debtors must have a regular income and their debt is limited to a statutory threshold.

Practical Steps for Creditors

Check your notice procedures

For financial institutions, preparation before cases are filed is critical. Make sure you have a solid process for handling papers received from a Bankruptcy Court. Designate an employee responsible for coordinating all bankruptcy matters. Bankruptcy proceedings have very strict deadlines. Ensure that bankruptcy notices receive the appropriate and timely attention that they deserve. You can proactively check for filings impacting you via PACER. You can also specify how you wish to receive bankruptcy notices by using the National Creditor Registration Service (NCRS).

Initial Steps

Review the filing

When you receive notice of a filing, immediately review the petition and related schedules. These documents can provide insight into the debtor’s intentions.

Understand the debtor

Immediately review all documentation related to the debtor. At a minimum answer the following questions:

- Are they an account holder?
- Are they a mortgagee?
- Are they a party to a loan? If so, what kind?
- How much money is your organization owed?
- How much money does the debtor hold in your organization’s accounts?

Immediately check the deadlines

Bankruptcy proceedings are driven by deadlines, make sure to be aware of and calendar them throughout the case, including:

- Proof of Claim Bar Date
- Rule 341 Meeting of Creditors
- Deadline to File Objections to Discharge
- Deadline for Objections to a Disclosure Statement
- Deadline for Objections to and Voting on a Plan

Be aware of the automatic stay

Upon a bankruptcy filing, an injunction called the “automatic stay” goes into effect immediately. The automatic stay stops all collection actions against a debtor (for example, wage garnishments, collections, foreclosures, and repossessions).

While there are exceptions, the consequences of violating the stay may be significant. Always presume it applies until you can confirm that an exception exists or you receive relief from the stay from the court.

BANKRUPTCY

Assess secured status

Secured creditors have specific rights in bankruptcy. Immediately assess your position to determine whether a loan is secured. Compile the security documents and assess whether security interests were properly perfected. Determine collateral's nature, location, status, and value. All of this affects the strategy for the bankruptcy case.

Significant Issues

You should develop and document a clear strategy for dealing with each bankruptcy filing. There are a number of significant issues that should be carefully considered in developing the strategy.

Other obligees

A bankruptcy filing protects the debtor and, in most cases, the automatic stay only applies to the debtor. You may have rights against co-obligors or guarantors.

Setoff

If the debtor is both a borrower and a depositor, you may have the right to setoff the amount held on deposit against the amount owed on the loan. These rights are complex, so consult immediately with counsel to determine the best way to protect and then exercise them.

Proofs of Claim

Most cases require creditors to file a proof of claim to obtain any distribution from the debtor. Filing a proof of claim can have unanticipated consequences (such as waiver of a jury trial right), so carefully determine whether you have to file one. While proofs of claim are typically filed with the court, Chapter 11 Debtors often use claims agents and provide specific instructions to file the claims with the claims agent and not with the court, so carefully review court notices.

Discharge exceptions

The result of a bankruptcy can be the entry of an order discharging the debtor from liability for certain debts, barring creditors from taking any action to enforce or collect discharged debts. However, there are exceptions to the discharge, including for certain types of loans and debts and for bad actions, like fraud. Make sure to review the exceptions to discharge to determine whether an exception applies.

End of case planning

The conclusion of a case can result in the discharge of a debt. Make sure that your records reflect the disposition of the debt or account following the conclusion of the case. Significant liability may be associated with attempting to collect on discharged obligations.

Final Notes

Regardless of the type of case filed, creditors should protect their interests by knowing the facts, consulting counsel, and participating meaningfully in the bankruptcy process. To mitigate costs, participation should include communicating early and often with the debtor and other parties-in-interest to try to avoid needless (and expensive) motion practice. Consider involving outside counsel early in the process if the size and complexity of the case so warrant.

Mary Elisabeth Naumann is a member at Jackson Kelly PLLC and has been practicing bankruptcy law for 20 years. JK has a nationwide bankruptcy practice, representing debtors, lenders, creditors, purchasers of bankruptcy estate assets, and trustees and defending clients in post-bankruptcy adversary proceedings involving allegations of breaches of fiduciary duties. Mary Beth can be contacted at mnaumann@jacksonkelly.com or 859-255-9500.



COMPLIANCE CORNER with Timothy A. Schenk
KBA Assistant General Counsel
tschenk@kybanks.com

COMPLIANCE QUESTIONS & ANSWERS

With the emergence of the Covid-19 Delta Variant and new regulatory restrictions, compliance officers must adapt quickly to ensure compliance in various forms. As a result, we are receiving many questions on how to respond to these issues. We wanted to share highlights of those discussions and answers.

We have a lot of customers receiving the child tax credit. Has there been any guidance on whether the Advance Child Tax Credit is subject to Garnishment or levy? Or are they considered protected federal funds? We have been receiving a lot of garnishments and are curious if these funds are subject to garnishment or protected.

The Advance Child Care Tax Credit is generally not exempt from a valid garnishment.

IRS question and answer G4 states:

Advance Child Tax Credit payments are not exempt from garnishment by non-federal creditors under federal law. Therefore, to the extent permitted by the laws of your state and local government, your advance Child Tax Credit payments may be subject to garnishment by your state, local government, and private creditors, including pursuant to a court order involving a non-federal party (which can include fines related to a crime, administrative court fees, restitution, and other court-ordered debts).

Some states and financial institutions have chosen to protect these payments. However these payments are still protected from offset by the federal government. For example, if a taxpayer has a judgment against them obtained by a private party but also owes assessed federal taxes, the IRS will not subject the payment to offset with respect to the federal taxes.

Kentucky current does not have any statutes or regulations protecting these funds. Consequently, so long as the garnishment is not from the federal government, the garnishment should be honored. However, it should be noted that you should follow your internal garnishment procedures, including processing, record keeping and prioritization of garnishments.

We are experiencing a resurgence of Covid in our community. Can an employer require employees who have classic Covid symptoms be tested? In the past, we have requested employees to be tested in order to know if other employees have been exposed and, if they test positive, to set a date they can return to work. We have an employee that is certain she has Covid and does not want to be tested, but we would like for her to be tested.

Generally speaking, the U.S. Equal Employment Opportunity Commission (EEOC) is the best entity to follow in terms of what you can and cannot do as an employer.

While the EEOC does not directly address this question, it generally covers the issue in question A.6 stating: May an employer administer a COVID-19 test (a test to detect the presence of the COVID-19 virus) when evaluating an employee's initial or continued presence in the workplace?

The EEOC's answer is that the ADA requires that any mandatory medical test of employees be "job related and consistent with business necessity." Applying this standard to the current circumstances of the COVID-19 pandemic, employers may take screening steps to determine if employees entering the workplace have COVID-19 because an individual with the virus will pose a direct threat to the health of others. Therefore an employer may choose to administer COVID-19 testing to employees before initially permitting them to enter the workplace and/or periodically to determine if their presence in the workplace poses a direct threat to others. The ADA does not interfere with employers following recommendations by the CDC or other public health authorities regarding whether, when, and for whom testing or other screening is appropriate. Testing administered by employers consistent with current CDC guidance will meet the ADA's "business necessity" standard.

Consistent with the ADA standard, employers should ensure that the tests are considered accurate and reliable. For example, employers may review information from the U.S. Food and Drug Administration about what may or may not be considered safe and accurate testing, as well as guidance from CDC or other public health authorities. Because the CDC and FDA may revise their recommendations based on new information, it may be helpful to check these agency websites for updates. Employers may wish to consider the incidence of false-positives or false-negatives associated with a particular test. Note that a positive test result reveals that an individual most likely has a current infection and may be able to transmit the virus to others. A negative test result means that the individual did not have detectable COVID-19 at the time of testing.

A negative test does not mean the employee will not acquire the virus later. Based on guidance from medical and public health authorities, employers should still require—to the greatest extent possible—that employees observe infection control practices (such as social distancing, regular handwashing, and other measures) in the workplace to prevent transmission of COVID-19.

It should be further noted that question and answer four states that "employees who become ill with symptoms of Covid-19 should leave the workplace" and the "ADA does not interfere with employers following this advice." Furthermore, question and answer seven clarifies that antibody tests results are not an acceptable form of test and "should not be used to make decisions about returning persons to work." Under EEOC guidance, if you are only asking a particular employee to undergo screening or testing, you must have a "reasonable belief based on objective evidence that this person might have the disease."



COMPLIANCE CORNER with Timothy A. Schenk
KBA Assistant General Counsel
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COMPLIANCE QUESTIONS & ANSWERS

There are also confidentiality factors to consider under the ADA which are addressed by the EEOC.

This is a fact-specific question and the guidance may change, but generally speaking, you may require an employee to get a Covid-19 test prior to admitting them into the workplace. However, consistency and monitoring current guidelines are critical in EEOC compliance.

We had an employee pass away unexpectedly and were considering closing the branch so that employees may attend the funeral. Is this okay and are there any notification requirements?

Yes. KRS § 286.3-193(3) states:

A bank, or an office thereof, may, because of an emergency or any other reason deemed sufficient by the bank, close on any day or days which it would normally be open for business by giving five (5) business days' notice of the closing to the public by posting a statement to that effect in a conspicuous place in the office of the bank which will be closed unless the giving of the notice is impractical because of the existence of an emergency or other condition.

Ideally, you should provide five (5) days notice of your branch closing. However, you may close it with less notice if, for example, the funeral is to be held in less than five (5) days.

Please feel free to reach out to me at tschenk@kybanks.com if you have any questions.




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CHAIRMAN'S CUP CLAY SHOOT

Friday, October 1, 2021

The Sporting Club at the Farm

New Albany, Indiana

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Not Enough to Go Around

by Ben Lawrence, Managing Partner, Louisville Geek

“There weren’t enough chips to go around.”

It’s the year 2035 and I’m sitting around a campfire with my youngest daughter, who is now 21. Thus far, our conversation has centered around her final year of college, her future plans, and (cringe) boys. Out of nowhere, she takes a sip of wine, gives me a curious look, and says, “Tell me about the COVID 19 pandemic.”

Just the thought of revisiting those days makes me wince. Two weeks to flatten the curve. The lockdowns. Homeschooling! The craziness and uncertainty of it all. Before I brush off the question, I remind myself she was only three years old when the pandemic ravaged the world and changed, well, everything.

“What do you want to know?” I ask.

She indicates she learned about the pandemic in school. She’d heard stories about the lockdowns, the masks, and major events getting cancelled. She had a general idea of what happened, but I could tell she wanted to know more.

“Tell me something I might have missed,” she says.

I take a deep breath (something we all did a lot of in 2020), collect my thoughts, and begin explaining how the pandemic created a reliance on things our 2019 selves couldn’t ever have imagined, like laptops and internet bandwidth. I explain how the pandemic constrained worldwide production of goods from iPhones to new cars due to the chip shortage.

“Excuse me, did you say, ‘chip shortage’? I’ve read stories about people hoarding toilet paper, but Doritos?”

I digress.

What exactly is the chip shortage?

Since late 2020, these tiny integrated circuits that are nowadays found in practically every manufactured device with a battery or a plug – from microwaves to TVs to cars to toothbrushes – have been in short supply. Auto companies, which rely on chips from everything from the computer management of engines to drive assistance systems, have been the most visible victims of the chip shortage.

What caused the chip shortage?

At first glance, the chip shortage might seem like a classic bullwhip effect resulting from a bump in consumer demand brought on by the 2020 pandemic. At first, consumer spending tanked. Then, a couple months later, consumers stocked up on all kinds of chip-heavy gad-

gets such as laptops and tablets for their home offices, remote learning, and entertainment. The manufacturers that build those devices then sent a wave of semiconductor orders rippling up the supply chain. This quickly overwhelmed the few chip foundries that manufacture virtually all of the world’s computer chips.

However, a more detailed look at the current logjam suggests the issues stem from a deep clash of different industry cultures, one that will likely pose ongoing operational challenges as semiconductors assume a central role in the electronic systems driving automotive and other industrial products.

Why this won’t be a quick fix.

Making computer chips is a complex process. It’s difficult and expensive to build new facilities to manufacture the vital silicon component, which means companies have to rely on existing plants. A new semiconductor factory can cost up to \$20 billion to build. Lasers print billions of transistors onto tiny areas of silicon wafers; it can take three to four months to turn a large silicon wafer into a useable batch of chips. A variety of analysts agree that the most problematic shortages will begin to ease in the third or fourth quarter of 2021, though it could take much of 2022 for the resulting chips to work their way through the supply chain to products.



FOR MORE INFORMATION
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Testimonial

"Louisville Geek is one of our favorite vendors. They came highly recommended by a couple of our other vendors who were familiar with them. One of the things I greatly appreciated was their flexible pricing. They tailored our proposal in a way that there was no waste – we definitely get what we pay for with them."

Christy Carpenter
Executive VP & CTO
Springfield State Bank

Liability Sensitivity is Dead

by Chad McKeithen, Managing Director
Fixed-Income Strategies, Duncan-Williams

The introduction of quantitative easing (QE) has forever altered bank interest rate risk management. In 2008, the Fed injected its first round of QE, and by 2015, the Fed had grown its balance sheet from almost zero to \$4 trillion. The massive injection of liquidity pushed interest rates to historic lows but the additional money supply also decimated interest rate volatility. Since 2015, average interest rate volatility (measured with the MOVE Index) has remained 42% lower than pre-QE. The lower rate volatility filtered over to deposit sensitivity and has all but done away with liability sensitivity at most depository institutions. We can see this by looking at historical Cost of Funds (COFs) beta sensitivity during three separate periods of rising Fed Funds rates.

Prior to 2008, COFs betas were 50-60% for all banks and in the mid 40% range for community banks. So, if the Fed increased the Fed Funds rate from 0.00% - 1.00% in a year then a community bank typically increased their COFs by 45% or by 45bps for every 100bps the FOMC hiked the overnight rate. But we can see that this changed dramatically during the 2015-2018 FOMC rate hikes. COFs only moved about 21% of the Fed's rate hikes. The reason is because there was so much more supply of liquidity money in the system. As a result of lower deposit sensitivity banks became every more asset sensitive and we also saw extremely large NIM improvements between 2015 and 2018.

Now we have another round of stimulus that the FOMC has introduced into the money supply. The Fed's balance sheet, as of Aug 2, 2021, is now at \$8.25 trillion. This dwarfs the \$4 trillion added between 2008 and 2015. Liquidity is as high as it has ever been and is not going away any time soon. The additional liquidity will lower deposit beta sensitivity even more the next go round. This makes banks even more asset sensitive than before. Asset sensitivity is not a good thing. Extremely asset sensitive banks typically have low returns because they are forgoing current earnings to remain positioned for higher rates. So there is an opportunity cost (low revenue) to remain so interest rate risk free. Banks need to take this into account when managing the A/L process and when making decisions about what to do with cash, loans and bonds. At a minimum, high levels of cash need to be put to work in longer duration, higher earning assets.

At a minimum, high levels of cash need to be put to work in longer duration, higher earning assets.

If there is fear about deposits being drawn down then make sure the assets are highly liquid with minimal credit risk (Treasury, agency wrapped bonds). Fixed rate loan durations should be longer. This would also make banks more competitive with their targeted clients. Bond portfolios should be longer. The average duration of a portfolio is typically about 4 years. We have been working with A/L managers to get those durations out to 5 - 6 years.

If the Fed is going to be on hold with overnight rates for the next few years and then the beta sensitivity is low from that point on then the banking industry is looking at many years before there is risk from liability sensitivity. They need to begin to plan more strategically given the increase in money supply.

All Banks			
	FF Increase	COF Increase	Beta %, COF to FF
1999-2001	175	101	58%
2004-2006	425	215	51%
2015-2018	225	49	22%

Banks < 10 billion			
	FF Increase	COF Increase	Beta %, COF to FF
1999-2001	175	80	46%
2004-2006	425	186	44%
2015-2018	225	47	21%



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How Working from Home is Impacting the Cyber Threat Landscape



“In a study conducted by the Ponemon Institute and IBM Security, 54% of responding organizations across industries had required remote work in response to the pandemic, and 70% of those respondents said that remote work would increase the cost of data breaches.”

In order to understand changes to the threat landscape, it’s important to take a step back and review what has changed from a broader IT and business perspectives.

When the pandemic struck, more than a year ago, many organizations had to rush in sending their employees home. Few organizations had an updated incident response or business continuity plan with detailed information on how to respond to a global pandemic. There was no time for planning, no time to go through thorough change management. In some situations, employees were simply given new laptops and were sent home as quickly as possible.

Many questions started to arise: How to use the technology? How to stay productive? But what about security and privacy? How to protect sensitive information and systems from unauthorized access and disclosure in this new paradigm?

Few organizations had a playbook that they could leverage for this scenario. Here are some interesting statistics from IBM’s Security Work from Home Survey that supports this idea:

- 52 percent are using their personal laptops for work – often with no new tools to secure it, and 45 percent haven’t received any new training.
- More than half have not been provided with new guidelines on how to handle highly regulated PII while working from home. This is despite more than 42 percent of people who manage PII as part of their regular jobs now doing so at home.
- More than 50 percent of respondents don’t know of any new company policies related to customer data handling, password management and more.

Organizations need to update the scope of security and risk assessments to account for remote work.

For example, consider the diagram (at right) that depicts some of these new risks. Going through this updated risk assessment process, here are a few thoughts to consider:

A lot of malware can infect computers via email or simply browsing the internet. Controls around protecting these activities can be different when working from the office vs. working remotely. At the office, there might be a web proxy or a firewall that is inspecting and protecting web traffic. If there is not a VPN connection or an agent on remote devices, this might leave a gap in the control environment.

When talking about “handling sensitive data,” it is very important to understand the rules of engagement. For example, employees might be tempted to use their personal Gmail account or Google drive (or DropBox) to transfer sensitive business documents in order to access them from home. They may be focused on meeting a deadline and might not think about the data security risk. Consider how sensitive data is handled in its entire lifecycle: from storing, sharing, printing, to disposal.

Here are other examples of questions to address during a risk assessment:

- Can organizational emails be accessed from personal devices? Is the anti-phishing protection working from personal devices?
- Can all users install applications on laptops or do they need to go through IT for installation? Users should not be local administrators of their devices as malware could do more damage.
- Is there a list of authorized applications that can be safely installed and kept up to date?
- Are remote computers fully managed and patched? Can IT deploy security updates remotely?

It’s important to review your risk assessment framework and see if and how these risks apply to your organization in this new paradigm post-pandemic.



How to Maintain a Worry-Free Overdraft Strategy **JMFA**

by John Cohron, JMFA Chief Executive Officer

As the overall economy is making strides, many Americans continue to experience financial difficulties as they did before the COVID-19 pandemic. Amid concerns over the impact the last year and a half have had on consumers' financial well-being, a few members of Congress have once again called attention to claims of deceptive practices relating to financial services.

For instance, on the 10th anniversary of the Consumer Financial Protection Bureau (CFPB), Massachusetts Senator Elizabeth Warren—a long-time critic of undisclosed overdraft practices—called for oversight to “hold bad actors accountable for predatory behavior.”

In June, New York Congresswoman Carolyn Maloney introduced legislation to amend the Truth in Lending Act to establish “fair and transparent practices related to the marketing and provision of overdraft coverage programs.” Like her eight previous attempts, the proposed Overdraft Protection Act of 2021 targets unreasonable fees, undisclosed processes and procedures; limits the number of fees charged; requires consumer opt-in for overdraft coverage; seeks to improve transparency and disclosures; and more.

Latest proposal lacks anything new

Interestingly, many of Representative Maloney's recommendations have already been put into place. It seems unlikely this latest legislative effort will restrict the ability of community banks to provide such a valuable service to customers. Since 2005, regulators have been consistent in addressing issues related to providing consumers with clear, easily understandable disclosures and ongoing compliant communication to increase awareness of how to access and utilize overdraft services. With that said, if you are offering a well-managed, easy-to-understand and consumer-focused program, you are headed in the right direction.

Commit to improving customer communications

With the continued focus on transparency, it's a responsible business practice to have simplified and effective communication with your customers. Reviewing and evaluating your program's communication impact is the best way to alleviate any confusion about how your program works and the fees associated with its use. For that reason, having the right resources to offer effective employee training is essential to achieving successful results.

Given that the work environment has been disrupted for so long, regularly offering educational opportunities for all staff interacting with customers can make all the difference. Whether in-person, by phone, through a chat function, or on your website or social media—your customers should hear the same message.

Without periodic reminders and reinforcement, it's not unusual for important details and best practices to be overlooked. Often staff may lose

Ongoing employee education and transparency are invaluable.

the confidence to explain program specifics that continue to attract the attention of some lawmakers and consumer advocates.

Comprehensive training delivered through convenient and effective channels for all learning styles ensures employees have a more thorough understanding of your overdraft program details and the certainty to explain the service to your customers with confidence.

Be mindful of expectations and best practices

In addition to providing staff training resources, your program's practices and procedures need to measure up to both regulatory and consumer expectations. Here are a few things to consider that can put your bank at risk if your program is out of sync:

- *Are your overdraft fees significantly greater than the amount of the item being cleared?*
- *Do your item-clearing procedures maximize overdrafts and related fees?*
- *Do you charge overdraft fees on ATM and debit card transactions to those who have not opted in for the service?*
- *Are your overdraft limits and fees consistent and easy to understand?*
- *How knowledgeable is your staff when it comes to disclosing the details of how your overdraft program works? Do all of your customers hear the same message?*
- *Are your customers well informed about the alternative services you provide to help them with occasional liquidity needs?*

Mitigate potential compliance concerns

While there are currently no imminent signs of new overdraft program regulations, the focus on consumer protection issues remains strong. An experienced overdraft program provider will help you navigate the complexities of the regulatory environment and mitigate any potential compliance issues—including litigation.

And by increasing your commitment to employee training and program transparency, you can worry less about successfully demonstrating your commitment to providing conscientious financial services to all of your customers.

ABOUT JMFA

JMFA is one of the most-trusted names in overdraft consulting, focused on communication, transparency and improving client outcomes with a 100% compliant overdraft service. JMFA can help you deliver measurable results with proven solutions. To learn more, please contact your local JMFA representative or call us at (800) 809-2307.

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Expertise. Defined.

expert *adj* highly skillful, or knowledgeable (in a particular subject); *noun* someone who is highly skilled or knowledgeable;
expertise *noun* skill, know-how,
KenBanc, KBA Benefit Solutions.



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KBA Kentucky Bankers Association

Our wealth as an Association is in the people who serve you.

What did 2020 and the pandemic teach you?
You can get used to being lonely, and that is not a good thing!



KBA STAFF PROFILE: Debra Stamper, EVP & General Counsel

Full Name: Debra **Hometown:** Louisville

College(s) and Degree(s): Spalding University BA (Art/Art History, Education minor); University of London, England (Certificate of Completion in English Literature); Brandies University (Juris Doctor)

Family: John Hudson (partner); Drew (daughter) and Alexis (son-in-law) Laurentin Costa and Lucas (2-year-old GRANDSON and the CENTER OF THE UNIVERSE); Sebastian (DHL cat); and, Maxwell (Schnorkie dog)

Teams you root for: All Kentucky Teams, unless they play University of Louisville, then it is UofL! And, any team my nephew Logan is playing on.

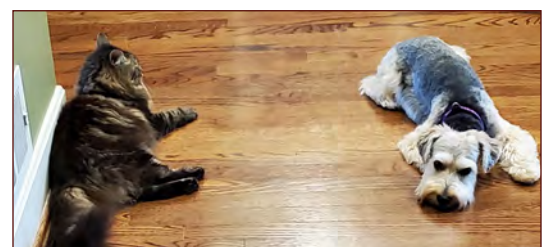
Hobbies: My Grandson, Halloween, Reading, Painting, Gardening, Photography, Travel, Watching Movies, Spending Time with Friends and Family, Baking, Finding New Friends in the Oddest Places

Favorite movie: What Dreams May Come **Favorite quote:** "Here's the deal..."

How long have you been with the KBA? 25 years

How do you like working at the KBA? Some years have been better than others—2008 was a tough one.

What is/are your favorite KBA memory(ies)? The first time I went to Frankfort with Ballard and Cooper, they told me that I would not need anything as I was really just going to learn how it was done and to answer any legal questions about our position, should they arise. We were sitting in the committee hearing and John gets a call. He and Ballard confer; John writes something on a scrap of paper and hands it to me and it reads: "We have to go to the Governor's office. If we aren't back in time you will have to cover for us, but these notes will help." They leave. I look at the paper—I can't read a single word—there were probably only five words regardless. I go to the table a nervous wreck. I introduce myself and start to talk about the bill and the Chairman interrupts me for the vote, which went our way. Ballard and Cooper FORGOT to tell me that they had already canvassed the committee members and the bill would fly out. From that point on, I was prepared.



Ask the vCISO

Hiring a vCISO - is it right for your bank?

Is your team stretched too far in meeting regulatory IT requirements?
Are you concerned about your bank's IT security posture?
Are you having trouble assessing the security measures used by your vendors?

Then you may need the services of a Chief Information Security Officer (CISO.) This C-level executive typically drives policies and projects tied to an organization's security maturity. However, finding and hiring a qualified CISO is difficult. There is great demand for this type of executive, and there are not enough CISOs for open positions.

That means they are scarce, expensive (average salary is \$250,000, according to some reports), and potentially difficult positions to fill. Meanwhile, your bank needs this expertise to move forward with initiatives.

Enter the "virtual" CISO – a position based on a fractional share model. For a fraction of the cost of hiring this executive, your bank can hire a vCISO to accomplish specific projects.

Typical vCISO services

You can start small by tasking your vCISO to perform a monthly security health check. The health check may include reviewing network activity and network and critical banking applications access.

You can get help creating and maintaining the Information Security Program documentation that regulators require.

A vCISO can also assist with annual reports required by your regulatory authority and facilitate annual Information Technology and Information Security audits – both internal and external along with annual penetration testing.

A vCISO can take an active role in your Vendor Management Program, maintaining a Master Vendor List, assisting with contract reviews, performing potential new vendor due diligence, and developing Vendor-related policies.

A vCISO could also assist your bank with IT strategic planning, budgeting, and development.

Elements of a successful engagement

Clearly-defined scope: All parties in the relationship should be clear on what the vCISO will work on – and so should the contract. The scope should also include a timeframe for completing the work as well as a clearly defined governance reporting structure.

Organization buy-in: A vCISO will work with and be a champion for your bank's IT team. The vCISO can add board-level credibility to IT team initiatives and potentially improve processes and team assignments. But if your IT team sees the vCISO as a threat, trouble could arise in the form of roadblocks and obfuscation. Good communication around the hiring of a vCISO is imperative.

Executives also need to remember that simply hiring a vCISO to handle projects is not enough. The contracted executive also must have the necessary budget and authority to execute their role.

It's a waste of time and resources to hire a vCISO simply to fulfill an audit requirement or to write policies that end up gathering dust on a shelf.

Industry expertise: Choose a vCISO who understands your industry – and your bank's needs, whether you are a community bank or a publicly traded one. A vCISO who understands your market trends and challenges can truly enhance your bank's security posture.

To explore how a vCISO might benefit your bank, call

(502) 400-3300

or email jmallory@imagequest.com

MILTON BARTLEY, CEO



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The Black and White of TRID Timing

by John Berteau, Associate General Counsel
KBA Partner Compliance Alliance

There are so many ways to violate TRID. Mastering the content requirements (knowing what to put where) is a difficult task for even the most seasoned compliance professional and is the source of numerous violations. Conquering the timing requirements (knowing when to give what) seems to be a much easier assignment but is one that also causes numerous violations. When it comes to what information to include in disclosures, and in which section, there is a lot of gray area, too much, in fact. However, when it comes to when to give the disclosures, the regulations are a lot more black and white.

Let's face it, TRID is difficult. First, even the name is challenging: TRID is an acronym made up of other acronyms. TRID is short for TILA-RESPA Integrated Disclosures. TILA is an acronym for the Truth in Lending Act, and RESPA is an acronym for the Real Estate Settlement Procedures Act. Second, many things related to TRID are conditional: the definition of "application" is very different than most other regulations, there are multiple definitions of "business day," and the regulations do not even address every common scenario, let alone every conceivable scenario. Third, the requirements are spread out: be sure to check the regulation, the commentary, the published guidance, any FAQs, and the occasional final rule preamble if you want to understand a requirement the best you can.

If you've read this far, then you should know that the TRID requirements are largely about giving an applicant two "named" disclosures: the Loan Estimate and the Closing Disclosure. The Loan Estimate is a reliable estimate of costs given early in the process to loan applicants in order to allow them to shop around for the best loan. The Closing Disclosure is a precise listing of costs given just before closing to let the applicant know what the confirmed cost of credit is.

In order for an extension of credit to be subject to the TRID requirements it must be all of the following: 1) closed-end, 2) made to a consumer, 3) for a consumer purpose, and 4) secured by real property. Once you've determined that your extension of credit is subject to the TRID requirements, the clock may have already started.

The Loan Estimate (Contents: 1026.37; Timing 1026.19(e))

The clock on the TRID timing requirements begin as soon as the bank receives an "application," which is defined specifically as the submission of the applicant's name, income, Social Security Number, collateral property address, estimated value of the collateral property and the loan amount requested. Once a bank has received all six pieces of information the clock has started, and the bank is required to send the applicant a copy of the Loan Estimate within three business days. For this purpose, a business day is any day that the bank is open for carrying on substantially all of its business functions. This means some banks will count Saturdays for this window to send the Loan Estimate, and others will not. This is sometimes referred to as the "general definition of business day." The regulations do not require that the initial Loan Estimate be received by any particular number of business days, so any questions of the receipt of the Loan Estimate are almost always in relation to loan closing.

The bank is only required to honor the estimates given on the Loan Estimate for ten business days, after which the Loan Estimate expires and if the applicant decides to proceed after expiration it is up to the bank

whether to honor the existing estimates or provide an applicant with a new Loan Estimate with new estimated costs. Expiration is determined using the definition of business day that will include Saturday for some banks and will not for others.

Occasionally a fee will need to be increased due to the information relied on by the bank when issuing the Loan Estimate being inaccurate. This is referred to as a changed circumstance, change in circumstance or change of circumstance. Regardless of what you call it, when this happens, in order for the bank to pass this increase off to the applicant, the bank must send a revised Loan Estimate within three business days of learning of the increase in the fee, using the definition that will include Saturdays for some banks and will not for other banks.

For the purposes of loan closing, any revised Loan Estimate must be received no later than four business days prior to loan closing. This definition of business day includes all calendar days other than Sundays and legal public holidays. This is sometimes called the "specific definition of business day." However, since this is a receipt requirement and not a sending requirement, it is important to point out that a TRID disclosure is considered to be received three business days after it is sent, using the definition that includes all calendar days other than Sundays and legal public holidays.

The Closing Disclosure (Contents: 1026.38; Timing: 1026.19(f))

Before closing a loan, the bank must send the Closing Disclosure to the applicant. The closing disclosure must be received at least three business days prior to loan closing, using the definition that includes all calendar days other than Sundays and legal public holidays. If there is a change to the loan such that the APR becomes inaccurate, there is a prepayment penalty added or there is a change in loan product, the bank is required to provide a revised Closing Disclosure to the applicant, which must be received at least three business days prior to closing, using the definition that includes all calendar days other than Sundays and legal public holidays.

After closing a loan, if during the thirty-calendar day period following the loan closing, an event in connection with the loan closing causes the Closing Disclosure to be inaccurate and the inaccuracy results to a change in the amount paid by the consumer, the bank is required to send a copy of the revised Closing Disclosure no later than thirty-calendar days after discovering such inaccuracy.

If the bank discovers a non-numeric clerical error within the sixty-calendar day period following the loan closing, the bank is required to send a copy of the revised Closing Disclosure no later than sixty calendar days after loan closing.

If the amount paid by the consumer exceeds the amount indicated on the Closing Disclosure, the bank is to provide a refund and a revised Closing Disclosure no later than sixty calendar days after the loan closing.



How to Get a New Risk or Compliance Officer Up to Speed

by Michael Berman, founder and CEO, Ncontracts

Training is important for anyone entering a new role at a financial institution—but that's not the only way to help a new employee get up to speed. When onboarding a new employee, especially in a specialized role such as risk or compliance management, it's important to leverage every tool in your box to help that employee understand their new role and begin contributing to the institution.

Looking for ways to help a new risk manager or compliance officer hit the ground running? Here are tips for three scenarios.

If you have time for a coordinated handoff...

If a long-time employee is retiring or being promoted to another position, your new risk or compliance officer may have the opportunity to work with their predecessor for a direct handoff of institutional knowledge. This is the best possible scenario—and it can be made even better with a good risk management or compliance solution in place.

An organized compliance officer will have all their policies and procedures in one centralized location that they can show their successor. However, it's even more helpful if those policies and procedures can be easily cross-referenced and looked up by regulation. This will help the new staffer to understand the connection between specific policies or procedures and the applicable regulations (because there are often more than one) they implement. This is especially helpful when regulations are inevitably updated, making it easy to identify what documents need to be edited to reflect the changes.

The same holds true for risk assessments. Knowing which risk assessments were conducted when, the results of those assessments, and what they mean for the institution's overall risk profile is essential to being a good risk manager. Sure, you could stash all those reports in a binder, but that won't alert the risk manager when the next assessment is due or ensure all the assessments are conducted using the same assessment scale and framework. It won't let the new risk manager assess overall enterprise risk management (ERM) at a glance or assess risk in real-time.

A documented audit trail is also immensely helpful. A long-established risk or compliance officer may log activities in a spreadsheet and supplement that document with an encyclopedia of risk and compliance activities documented in their brain.

They generally know who did what when—even if no one remembered to record it. That neural record won't be any help to a new staffer.

If your FI anticipates the departure of a superstar risk or compliance officer (or even just a good one), make sure they have a centralized, organized location to document all their knowledge. From risk assessment ratings and controls to reporting and audit trails to complaints, findings management, and board approval of policies, it's important for everything to be recorded to ensure a more seamless transition. It ensures that your new staffer will spend less time catching up on what's going on and more time actively monitoring and managing risk.

If they are going to inherit a mess...

Let's be honest. Sometimes a FI's risk management or compliance program isn't where it needs to be. It can even be a downright mess.

Policies, procedures, and other key documents may be on paper, in file folders or drawers, and on hard drives and share drives across the institution—if they exist in the first place. Examiners may be not-so-subtly hinting that your program needs a substantial overhaul. The new staffer may need to make sense of a tangled web or be expected to build an entirely new program.

If your new risk or compliance officer will be tasked with developing a brand-new program, there are two options. They can research and build everything from scratch or the FI can adopt a solution that provides a framework and the tools for implementing a program.

The benefit of building a program from scratch is that it can be customized to the exact specifications of the institution—once the risk or compliance officer sorts out what those needs are.

continued: Ncontracts Gets you Up to Speed

The downside is that can take a very long time, especially if the FI isn't used to having in-depth discussions about risk.

Adopting a risk or compliance management solution gives your new staffer a head start when it comes to building a new program. From controls and risk libraries to compliance alerts and libraries of standard rules, regulations, and implementation plans, it provides a framework that can cut implementation time by more than half.

It also gives staffers access to experts in risk management and compliance management that can offer insights into best practices.

If they are new to risk and compliance...

Good compliance talent is hard to find. Sometimes the best option is growing that talent in-house by promoting a bright, organized, and motivated employee.

When bringing on a risk or compliance officer that doesn't have a background in risk or compliance, the best way to shorten the learning curve is to provide them with tools that will help them learn on the job. I'm not talking just about compliance or risk training, which is a bare minimum requirement. I'm talking about a tool that will guide them through the entire process.

Risk and compliance management software helps new staffers more quickly understand the scope of the FI's program and what needs to be done next. It also helps them keep pace with regulatory change—alerting them to changes applicable to the FI. Instead of reading hundreds or thousands of pages of regulation, employees can read an executive summary that tells them what the changes are (and offers suggestions on what needs to be done to comply).

Software also provides reports, showing what risk and compliance activities require attention and who is tasked with doing them, to help new compliance officers understand the big-picture issues that need to be addressed so they can focus their learning on the most pressing concerns.

These solutions also come with extensive support and training, giving your staff access to a bench of risk and compliance experts who can help them get up to speed quickly.

If your FI is anticipating significant changes to the staffing of its risk or compliance management programs, an ERM or compliance management solution may be just what you need to ensure a smooth transition or set the stage for a fresh start.



FOR MORE INFORMATION
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Testimonial

"Without Ncontract's executive summaries that are being provided, I can't imagine coming up with the time to thoroughly review annual reports ranging from SOC/SSAE reviews, audited financials, business continuity plans and reviews and determining how well our vendors have performed, it would be overwhelming!"

Mr. Jonas Billingsley
Vendor Management
German American Bank, Owensboro



MICHAEL BERMAN, J.D., is the founder and CEO of Ncontracts, a leading provider of risk management solutions. His extensive background in legal and regulatory matters has afforded him unique insights into solving operational risk management challenges and drives Ncontracts' mission to efficiently and effectively manage operational risk. During his legal career, Mr. Berman was involved in numerous regulatory, compliance, and contract management challenges and assisted in the development of information systems to better manage these efforts. Prior to founding Ncontracts, he was General Counsel for Goldleaf Financial Solutions, Tecniflex, Inc. and Imagic Corporation. Mr. Berman is a well-regarded speaker at financial institution conferences on risk management. He received his undergraduate degree from Cornell University and holds a J.D. degree from the University of Tennessee.

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