

SILVERMAN  THEOLOGOU

# THE NEW NORMAL

A Credit Union's Guide to the COVID-19 Pandemic

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# Adjusting to the New Normal

**The world has changed significantly in the last 30 days and may never again be the same. How we work, how we live, how we do business, and how we interact with our co-workers and members has all changed**

- A recent poll taken since the COVID-19 outbreak indicates that approx. 64% of those polled anticipate that lost wages, due to the pandemic, will yield at least a \$500 shortfall when trying to pay monthly bills and 27% of all respondents predict a shortfall of \$1000 or more
- Since March 14<sup>th</sup>, nearly 22 million Americans, roughly 13.5% of the labor force, filed unemployment claims, marking it the largest and most dramatic rise in claims on record.

**Today we will look back on the last 30 days and evaluate what has occurred and discuss what potentially comes next. To that end today we will review:**

- Government action and how it is impacting Credit Union charge off and collection activities
- Employee benefits and how Credit Union's can help its employees get the most out of your policies, including reduced co-pays and premium relief
- Human resources issue facing Credit Union's including changes to family leave contained in the CARES Act
- Investment opportunities to bolster Credit Union's "bottom line" during this troubled times

# § Legal Considerations - 30 Days of Pandemic Where We Are and What's Been Done?

**To combat this situation Federal, State and Local governments have rushed to provide grants and loans and pass legislation to stem the tide:**

- **Student Loans:** As part of the CARES Act, principal and interest payments on federal student loans are automatically suspended and servicers of such loans are expected to suspend such payments without waiting for consumer requests
- **Credit Reporting:** Under the federal CARES Act, furnishers of credit information must report accounts as current where the consumer satisfactorily makes payments (or does not need to make payments) pursuant to any accommodation plan reached during the pandemic. Accommodations include deferments, partial payments, forbearance, loan modifications, or other borrower assistance (this provision covers the period beginning 01/31/20, and extends until 120 days after the President rescinds the national emergency declaration, although the provision does not apply to charged off accounts)
- **State of Maryland:** By Executive order, all foreclosure, eviction and repossession activity has been suspended. All Court hearings, except those involving criminal, family matters and requests for injunctive relief, have been suspended although new filings may be accepted electronically
- **District of Columbia:** By order of the DC Council, all collection activities including outbound calls, lawsuits and post judgment proceedings have been suspended until the emergency ends plus 60 days. All Courts are closed as to all hearings except those involving criminal, family matters and requests for injunctive relief
- **Commonwealth of Virginia:** Most Court hearings, except those involving criminal, family matters and requests for injunctive relief, have been suspended although new filings may be accepted electronically
- A more comprehensive list of State and Local action can be found at:  
<https://docs.google.com/spreadsheets/d/1fGU1H2HPd4miayKBil-NeXnta4sB95gUoxPjjAThERY/edit#gid=1273627032>



# Legal Considerations – The Next Round Congressional Action Under Consideration

## Currently Congress is considering two bills modifying the FDCPA including HR 6379 and S 3565:

- HR 6379 the "Take Responsibility for Workers and Families Act" is a 1400 page coronavirus supplemental appropriations act, where in the section entitled "suspension of other consumer loan payments" (pages 534-541) the bill seeks to amend the FDCPA as follows:
  - That original creditors are now defined as "debt collectors" for the purpose of the Act
  - A moratorium is placed on all consumer debt collection (calls, letters, suits, post judgement) for the duration of the declared emergency, plus 120 days (although letters can be sent as payment reminders the letter must note that **no action** will be taken if payment is not remitted)
  - FDCPA violations are now **10x** the current statutory rate (this would apply to original creditors, collection agencies and law firms)
  - Board of Governors of the Federal Reserve System shall set up a facility used to make payments to "covered" financial institutions to pay documented financial losses due to the suspension of debt collection (this section would not assist CU's as they are not part of the FRS)
- S 3565 the "Small Business and Consumer Debt Collection Emergency Relief Act" is a stand alone bill that substantially mirrors the 9 pages of the House bill noted above other than it **does not** provide for compensation to financial institutions for losses



# Legal Considerations – Practical Responses to a Difficult Situation – What’s Next?

**In response to proposed legislation, including HR 6379 and S 3565, which if passed in their current form would have a devastating effect on all lenders, especially non-profit member owned Credit Unions. Now is the time for Credit Unions to “Re-Think” their approach to lending and collections:**

- Beyond what's been in place to date, Credit Unions need to create new policies to deal with members and their hardships (stimulus checks are not protected funds but are not intended to pay bills)
- Provide new guidance concerning settlement and extending payment plans
- Balance collections and managing bad debt with the optics of lawsuits, court hearings and judgments against sick and/or unemployed individuals
- Need to start thinking about POST PANDEMIC collections and customer care to deal with member unemployment and the potential exponential rise in bankruptcy filings
- Prepare for the coming wave - POST PANDEMIC bad debt portfolio - new policies, more flexibility, additional staffing (collections vs. customer service reps)



# Insurance Carrier Premium Defaults and Relief

## Premium Relief

- Carriers are assisting businesses, during this time of turmoil and uncertainty, to make sure they can still meet the same expectations their employees have of them, without having to lose Employee Benefits or having to lay off workforce
  - Most major carriers are helping with premium deferral options
    - On a case by case basis carriers have been helping businesses figure out if premium deferral is the correct option for them
  - Typical range is between 60 to 120 days
  - It is also dependent upon the carrier, and can only be on a case-by-case basis
  - In most cases, there is zero interest and no late payment penalties
  - Relaxed eligibility for laid off, furloughed & employees whose hours have dropped below full-time





# Insurance Carrier Premium Deferrals and Relief

## Premium Relief Strategy & PPP

- Did you take advantage of the Premium Relief from your carrier?
  - If so, need to develop an effective strategy to make sure you are not sacrificing the forgivability of part of your PPP loan
  - We recommend you talk it through with your insurance consultant and accounting firm
  - If you have any questions or concerns, we are always here to assist





# Insurance Carrier Premium Deferrals and Relief

## **COVID-19 Insurance Carrier Changes/Benefits**

- Many of the major insurance carriers are waiving copays, coinsurance and deductibles for visits associated with COVID-19 testing, whether the care is received in a physician's office, an urgent care center or an emergency department. That means:
  - No Deductible
  - No Co-payments
  - No Co-insurance

Carriers are also waiving Prescription refill limits on maintenance medications.





# Insurance Carrier Premium Deferrals and Relief

## **COVID-19 Insurance Carrier Changes/Benefits**

- We always recommend speaking with your current insurance consultant, as well as your accounting firm, however for your knowledge and convenience see the link below which has an active and updating list of carrier responses to Covid-19 policies
- If you are interested in receiving up to date emails from The Capital Group on COVID-19 legislation as well as USG, State and Local responses to COVID-19, please let us know so we can send you our weekly emails with the latest updates

<https://capgroupfinancial.com/covid-19/>



# Human Resources – Emergency Paid Sick Leave and Expanded Family and Medical Leave Act

Under the new Relief Act, employers are required to provide up to 2 weeks of paid sick leave, at the regular pay rate, to employees who need to take leave from work for specified reasons related to COVID-19, including:

- The employee or someone the employee is caring for is subject to a government quarantine order or has been advised by a health care provider to self-quarantine;
- The employee is experiencing COVID-19 symptoms and seeking medical attention; or,
- The employee is caring for a son or daughter whose school/place of care is closed or whose child care provider is unavailable to reasons related to COVID-19.

The Act also provides up to an additional 10 weeks of paid “expanded family and medical leave” where an employee is unable to work due to need for leave to care for a child whose school or child care provider is closed or unavailable due to COVID-19.

As a practical matter, it is an economic disincentive for employees to take family leave to care for a child – temporary furlough under the new benefits provides higher pay.

In addressing these kinds of ongoing situations, close communications with the employee is key.



# Human Resources – Leave Requests

Employers must document the following:

- The name of employee requesting leave;
- The date(s) for which leave is requested;
- The reason for the leave; and
- A statement from the employee that he or she is unable to work, including the reason.

If an employee is requesting leave due to being subject to a quarantine or isolation order or to care for an individual subject to such order, employers, within reason, should request and document the name of the government entity that issued the order.

If an employee requests leave to self-quarantine based on the advice of a health care provider or to care for an individual who is self-quarantined based on such advice, employer should additionally document the name of the health care provider who gave the advice.

For employees requesting leave to care for a child whose school or place of care is closed, or child care provider is unavailable, employers must document the name of the child being cared for, name of the school, place of care, or child provider that has closed.



## Human Resources – Practical Considerations

- Company needs not deplete operating capital in light of the new temporary furlough provisions, which provide more money for a longer period of time.
- Employer has unique discretion to check employees' health for maintenance of safe work environment, including temperature checks if necessary and appropriate.
- Should consider pursuing funds which may be available under the new Paycheck Protection Act (PPP). First round likely will be depleted but probably be supplemented.
- If PPP funds are used for core purposes such as payroll and rent, the loan becomes a grant and does not need to be repaid.
- New Congressional provisions do not supplant the employer's continued authority to remove employees for reasons of inadequate performance.



# Human Resources - The Virginia Values Act

- The Virginia Values Act amends the Virginia Human Rights Act ("VHRA") to create a cause of action for unlawful discrimination in public accommodations, employment, housing practices, and credit on the basis of sexual orientation and gender identity.
- The Act allows that every employer in Virginia with more than 5 employees is now subject to the VHRA, and not just for claims of gender identity and sexual orientation discrimination.
- Allows the causes of action to be pursued privately by the aggrieved individual or, in certain circumstances, by the Attorney General.
- The Virginia Values Act has removed the caps placed under the VHRA and courts may award prevailing employees "compensatory and punitive damages" and uncapped "reasonable attorney fees and costs." The court may also issue injunctive relief.
- Before civil action can be taken, the aggrieved individual must file a complain with the Division of Human Rights of the Department of Law, participate in an administrative process, and retrieve a notice of their right to commence a civil action.

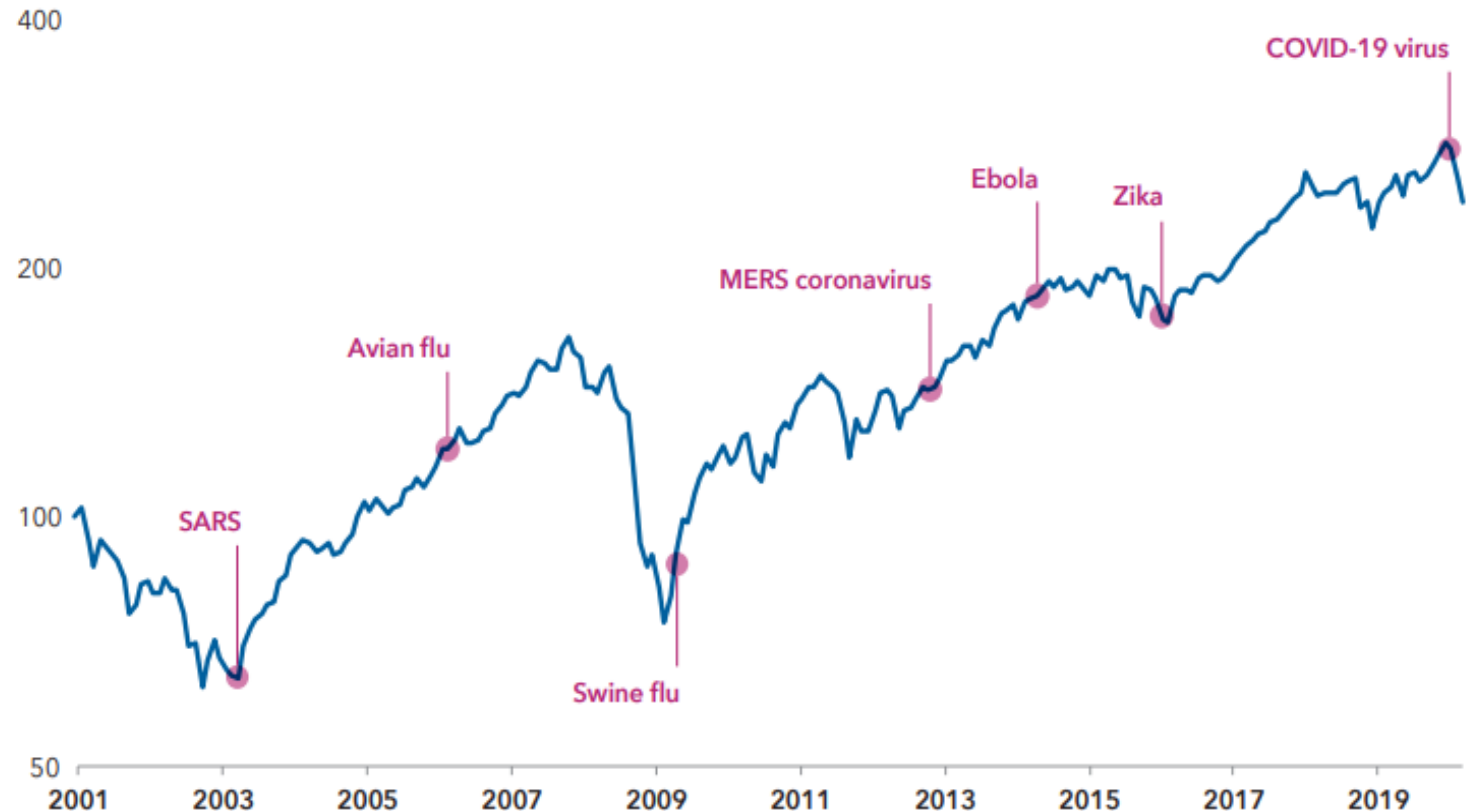


# Investing During Uncertain Times and Benefits Funding

**Timing is everything:  
A health epidemic doesn't  
have to mean market  
contagion**

Global equity markets have powered through past viral outbreaks

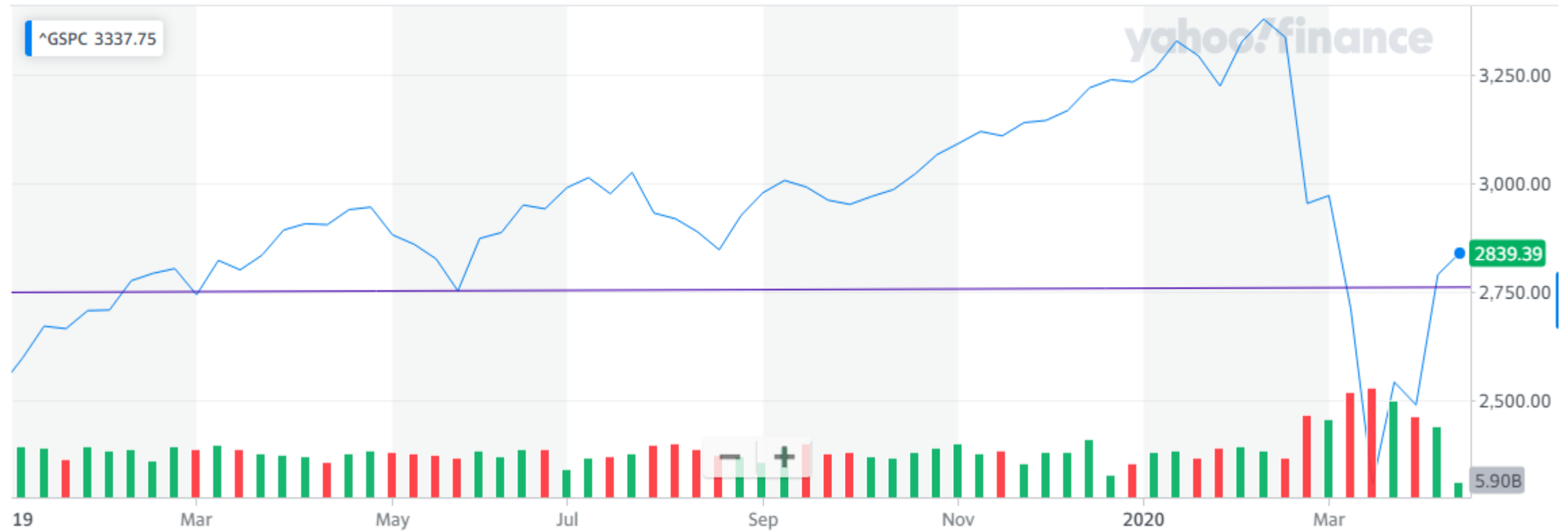
MSCI ACWI index levels



Sources: Centers for Disease Control and Prevention, RIMES, MSCI. As of 3/9/20. Chart shown on a logarithmic scale. Total return index levels in USD, indexed to 100 on 12/31/2000. Disease labels are estimates of when the outbreak was first reported.

# Investing During Uncertain Times and Pre-Funding – Where are We Now?

With the coronavirus now spreading to every state in the country, many industries have been forced to relocate their operations to work-from-home arrangements, while some – travel, recreation, dining, etc. – have had major disruptions in their ability to function entirely. This has led to one of the swiftest market pullback in history, as markets cope with the uncertainty surrounding the short & long-term effects on economic production.

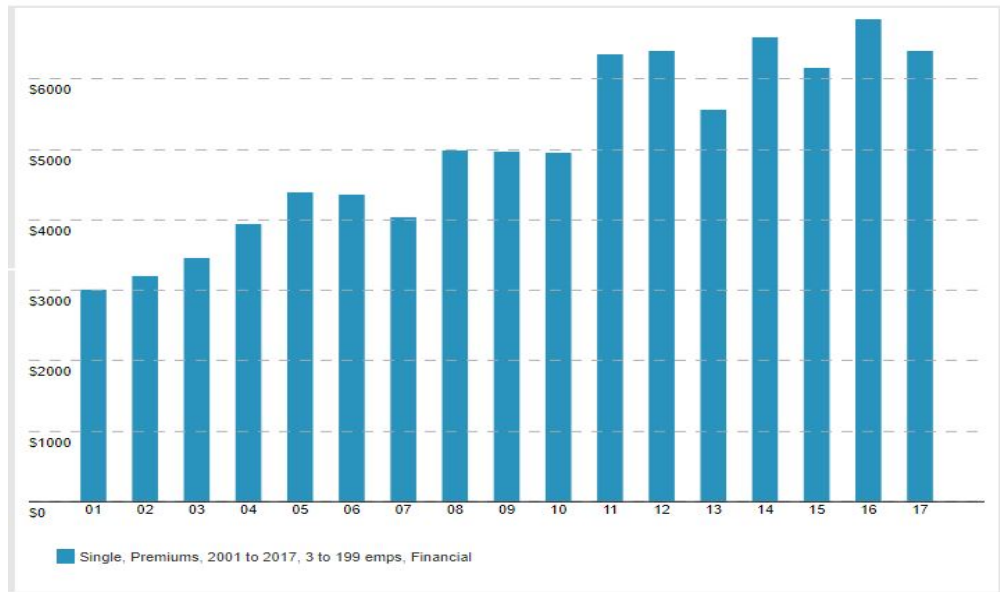


# Investing During Uncertain Times and Benefits Funding

## Other Financial Considerations

- Declining Credit Union net interest income is not sufficient to cover rising employee benefits costs
- Healthcare premiums and other benefit costs continue to rise. Premiums for family healthcare coverage have increased 19% since 2012 and 55% since 2007

3.12%  
↓  
2.89%







# Investing During Uncertain Times and Benefits Pre-Funding

## Using Benefits Pre-Funding to Bridge the Gap

- How do Credit Unions take advantage of these changes in the market and hedge against declining interest income and the increasing cost of employee benefits? Benefits Pre-Funding!
- In 2003, the National Credit Union Administration amended Regulation 701.19, giving federally chartered credit unions the ability to place assets earmarked for future employee benefits costs into investment funds that are normally impermissible, or otherwise non-traditional Investments
- This change in the regulation permits credit unions to place assets earmarked for future employee benefits in higher yielding investments, which in turn bridges the gap between declining net income margins and rising benefits costs



# Investing During Uncertain Times and Benefits Pre-Funding

## **NCUA-Approved Non-Traditional Investments**

### **Non-Traditional Investments**

- An investment that falls outside of the NCUA regulations 701.19 and 703, which govern investment practices of credit unions, such as corporate bonds and equities
- Expenses such as salaries, overtime pay, incentives or holiday gifts cannot be pre-funded

### **Benefit offsets include:**

- Employee Group Healthcare
- 401(k) matching contributions
- Long and Short Term Disability & Life Insurance
- Dental Insurance
- Defined benefit pension plan investments



# Investing During Uncertain Times and Benefits Pre-Funding

## Current Market Conditions and Benefits Pre-Funding

- Current market conditions make this a good time to invest
- NCUA sanction benefits pre-funding permits Credit Unions to invest in and reap the benefits of the stock market and other non-permissible investments
- Benefits Pre-Funding allows Credit Unions the opportunity to take advantage of the current market conditions to invest in non-traditional assets at a good entry point
- Benefits Pre-Funding can improve Credit Union Financials and increase ROA
- Benefits Pre-Funding could create a situation where your employee benefits expense is budget neutral
- Benefits Pre-Funding allows Credit Unions to offer a more robust benefits package despite rising employee benefits costs



For Additional Information



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