

Delaware Coronavirus Tracker: Reopening; PPP Update; Accounting Guidance; NCUA EXIM Partnership and FOM Litigation; Regulation D Survey; Deadlines – 6.10.20

Governor Carney Reopening

<https://governor.delaware.gov/delawares-recovery/>

[https://governor.delaware.gov/wp-](https://governor.delaware.gov/wp-content/uploads/sites/24/2020/06/Delaware-Economic-Reopening-PHASE-2.pdf)

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Governor John Carney recently extended the state-of-emergency declaration another 30 days. The state will enter the second phase of reopening on June 15. In the second phase, retailers, restaurants and other businesses that were permitted to open at 30% of fire occupancy limits in the first phase may expand to 60% of fire occupancy limits.

PPP Upcoming Procedures and Update

The Small Business Administration ("SBA"), in consultation with the Department of Treasury, is expected to promptly issue rules and guidance, **a modified borrower application form, and a modified loan forgiveness application implementing the new legislative amendments to the PPP.** These modifications will implement the following important changes:

- Extend the covered period for loan forgiveness from eight weeks after the date of loan disbursement to 24 weeks after the date of loan disbursement, providing substantially greater flexibility for borrowers to qualify for loan forgiveness. Borrowers who have already received PPP loans retain the option to use an eight-week covered period.
- Lower the requirements that 75 percent of a borrower's loan proceeds must be used for payroll costs and that 75 percent of the loan forgiveness amount must have been spent on payroll costs during the 24-week loan forgiveness covered period to 60 percent for each of these requirements. If a borrower uses less than 60 percent of the loan amount for payroll costs during the forgiveness covered period, the borrower will continue to be eligible for partial loan forgiveness, subject to at least 60 percent of the loan forgiveness amount having been used for payroll costs.
- Provide a safe harbor from reductions in loan forgiveness based on reductions in full-time equivalent employees for borrowers that are unable to return to the same level of business activity the business was operating at before February 15, 2020, due to compliance with requirements or guidance issued between March 1, 2020 and December 31, 2020 by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, or the Occupational Safety and Health Administration, related to worker or customer safety requirements related to COVID-19.
- Provide a safe harbor from reductions in loan forgiveness based on reductions in full-time equivalent employees, to provide protections for borrowers that are both unable to rehire individuals who were employees of the borrower on February 15, 2020, and unable to hire similarly qualified employees for unfilled positions by December 31, 2020.
- **Increase to five years the maturity of PPP loans that are approved by SBA (based on the date SBA assigns a loan number) on or after June 5, 2020.**

- Extend the deferral period for borrower payments of principal, interest, and fees on PPP loans to the date that SBA remits the borrower's loan forgiveness amount to the lender (or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's loan forgiveness covered period).
- In addition, the new rules will confirm that June 30, 2020, remains the last date on which a PPP loan application can be approved.

Other recent updates include:

-June 30th is the last day to get a PPP loan funded in ETRAN

Now 24 weeks or December 31st 2020 as the covered period.

-60 percent for salaries and 40 percent for other expenses. There is no cliff so it is possible to get forgiveness if less than 60 percent. The reduction would be proportional. IFR is currently in development and will be out shortly.

-If the loan stands, and is not forgiven in whole or part, then loans made before June 5th can be extended to the 5 years if the Lender and Borrower agree to modify the note (allonge). They can extend the term out to 5 years. All loans made after June 5th will automatically have a 5 year term.

-The application form for both borrowers and lenders is now being worked on but it is now 24 weeks.

-If a business were unable to re-hire, replace employees, return to economic viability, or have impact based on closure and social distancing, they will be covered and any inability to reemploy will be part of the forgiveness equation. It will create greater opportunity.

Applications will end on June 30th and the ETRAN system will be off for PPP and no funds will be available.

AICPA Accounting Guidance for forgivable PPP loans

<https://www.aicpa.org/content/dam/aicpa/interestareas/frc/downloadabledocuments/tqa-sections/tqa-section-3200-18.pdf>

The AICPA worked with the FASB staff and others to develop technical question and answers ("TQA") for *Borrower Accounting for a Forgivable Loan Received Under the Small Business Administration Paycheck Protection Program*. The TQA addresses accounting for nongovernmental entities only (which include business entities and not-for-profit entities ("NFPs")). The TQA explains that an entity accounting for the PPP loan under Topic 470:

- Would initially record the cash inflow from the PPP loan as a financial liability and would accrue interest in accordance with the interest method under ASC Subtopic 835-30.
- Would not impute additional interest at a market rate.
- Would continue to record the proceeds from the loan as a liability until either (1) the loan is partly or wholly forgiven and the debtor has been legally released or (2) the debtor pays off the loan.
- Would reduce the liability by the amount forgiven and record a gain on extinguishment once the loan is partly or wholly forgiven and legal release is received.

According to the TQA, if a nongovernmental entity that is not an NFP (that is, it is a business entity) expects to meet the PPP's eligibility criteria and concludes that the PPP loan represents, in substance, a grant that is expected to be forgiven, it may analogize to IAS 20 to account for the PPP loan. An entity accounting by analogy to IAS 20 would not be able to recognize government assistance until there is reasonable assurance that any conditions attached to the assistance will be met and the assistance will be received. Once there is reasonable assurance that the conditions will be met, the earnings impact of the government grants would be recorded on a systematic basis over the periods in which the entity recognizes as expenses the related costs for which the grants are intended to compensate.

NCUA and EXIM Educational Initiative

The Export-Import Bank of the United States ("EXIM") and the National Credit Union Administration (NCUA) have launched a three-year collaborative effort to promote EXIM export financing products among federally-insured credit unions and their members. The initiative will facilitate the engagement of credit unions in export financing, thereby leading to expanded opportunities for businesses, more jobs, and prosperity to local communities. The Memorandum of Understanding signed represents EXIM's first-ever targeted outreach to credit unions providing important support to small businesses, especially those that may be exporting for the first time.

Helping small businesses to gain access to capital is an essential shared goal between both organizations. One solution is to point lenders and borrowers toward the support resources that already exist. Credit unions fill that gap and serve as an information gateway to connect small business owners. Accordingly, NCUA will work with EXIM to develop educational and training initiatives on export financing opportunities to share with credit unions, so that they can educate their small-business members about the available opportunities such as an EXIM guaranteed loan. These loans are exempt from the member business cap of 12.25 percent. While not all credit unions work with small businesses that handle export trade, for those that do, being able to share information with small business borrowers on where to go for help with financing will be beneficial.

For NCUA, this endeavor is similar to the successful agreement it forged with the Small Business Administration. As part of EXIM's recent reauthorization, Congress directed EXIM to build on the agency's robust support of small businesses even further, and the partnership with NCUA and credit unions is an important step toward that goal.

NCUA Field-of-Membership Litigation

The American Bankers Association ("ABA") filed another brief as part of the pending field of membership litigation earlier this week responding to the National Credit Union Administration's ("NCUA") recent brief. The central debate advanced by the ABA is the interpretation of the Chevron doctrine, which is the landmark case in which the United States Supreme Court set forth the legal test for determining whether to grant deference to a government agency's interpretation of a statute which it administers. In its latest brief, the ABA characterizes the NCUA's response as containing "extravagant interpretations of 'local community' and 'rural district'."

The U.S. Supreme Court has scheduled the ABA's petition for its June 25th conference, meaning there will most likely be a decision announced on whether the petition is granted on Monday, June 29. There is also a possibility that this decision also could be announced on Friday, June 26.

Regulation D Survey

The Board of Governors of the Federal Reserve System ("Fed") is seeking comments on an interim final rule adopted in April to delete the numeric limit of six (6) transfers and withdrawals per month from savings deposits accounts under *Regulation D, Reserve Requirements of Depository Institutions*.

The Association plans to file a comment letter to the Fed and seeks member input to inform its response on the Regulation D change and related issues in the current economic environment. Member feedback is the backbone of the Association's comment letters, and is sought in the form of a brief survey, available [HERE](#). Your response is requested no later than Friday, June 19.

The full proposal by the Federal Reserve is available [HERE](#).

Upcoming Deadlines

PPP-June 30, 2020

NCUA Minority Depository Institution Mentoring Grant-June 30, 2020