

DE COVID-19 Tracker: Request for 3 Regulatory Changes; Cares Act 2.0; PPP; CECL Guidance – 5.8.20

Request For Federal Regulatory Suggestions for Change

The Association is in the process of preparing a request to the National Credit Union Administration to look ahead and highlight the top continuing regulatory problems or concerns experienced by your credit union during this health emergency. To ensure that member views are prioritized and represented, please forward your **top 3 specific requests** to advocacyde@ccua.org by Friday, May 15. For example, credit unions seek continued, if not permanent, examination flexibility. This item will be advanced together with additional issues raised by members.

CARES ACT 2.0

The Association continues to remain alert to impact the next stimulus package. In doing so, the Association received the following information:

- No complete package is ready. The banking provisions will likely comprise no more than 10% of the bill. Credit union only provisions, governing member business loans and the extension of the Central Liquidity Facility expansion, are small relative to anticipated size and complexity of the overall package.
- Many of the possible provisions for inclusion do not have legislative language drafted. Members tend to withhold support until they read the text.
- The financial services sections are further along in drafting than others.
- Earlier relief packages passed with bipartisan support; the next one will be more challenging to do so.
- Concern continues on the unintended consequences of the proposals, focusing primarily on the debt collection provision.
- Representative Sherman introduced a revised version of his MBL bill with Chairwoman Waters as a cosponsor. This is a good indication that leadership is behind the bill being included in the package.
- Congressman Ritchie Neal, Chairman of the House Ways and Means Committee, is working around the clock on the "Phase Four" stimulus bill and continues to target release for next week. He plans to include substantial support for state and local governments, as well as another round of stimulus checks in the House version.
- Provisions forgiving \$10,000 in student loan debt for private student loan borrowers are on the far end of the ideological spectrum best suited to be addressed, if and when, in long term goals.
- Protection from liability is still under discussion and difficult for lawmakers to balance business confidence without a waiver of class actions lawsuits and employee safety. The Association continues try to find a way to obtain a safe harbor for credit unions dependent upon compliance with guidelines and best practices from the CDC, and no negligent or careless activities to obtain some level of protection.

At this stage everything remains in play and is fluid.

SBA PPP Update

The Small Business Administration ("SBA") released CONTROL NO.: 5000-20025 governing a *Temporary Increase to SBA Express Maximum Loan Amount and Permanent Changes to Fee Relief for SBA Express loans to Veteran-Owned Small Businesses in the CARES Act*. The guidance relates to SBA Express loans. The SBA Express maximum loan amount temporarily increased to \$1,000,000 through December 31, 2020. Also, for all SBA Express loans to

veteran-owned small businesses approved on or after March 27, 2020, the upfront guaranty fee will permanently be zero. Attached is the guidance.

The SBA continues to report that there is still plenty of funding for the PPP program. More information and instructions concerning forgiveness is expected soon.

New CECL Interagency Guidance Released

The National Credit Union Administration, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency just issued the following interagency policy statements governing:

-the measurement of expected credit losses using the CECL methodology and updates concepts and practices detailed in existing supervisory guidance that remain applicable; and
-principles for establishing a system of independent, ongoing credit risk review in accordance with safety and soundness standards.

- [Interagency Policy Statement on Allowances for Credit Losses](#)

The interagency Policy Statement:

- Describes the CECL methodology for determining allowances for credit losses (ACLs) on financial assets measured at amortized cost (including loans held for investment and held to maturity debt securities), net investments in leases, and certain off-balance-sheet credit exposures in accordance with FASB ASC Subtopic 326-20;
- Explains the estimation of an ACL for an impaired available-for-sale debt security in accordance with FASB ASC Subtopic 326-30; and
- Includes and updates concepts and practices detailed in the existing policy statements that remain relevant under FASB ASC Topic 326.

Also, in the Policy Statement, the agencies:

- did not make any changes to the responsibilities of the board of directors;
- retained the suggestion to compare actual credit losses to estimated credit losses in the final Policy Statement;
- found that the Policy Statement provides sufficient flexibility with respect to management's evaluation of data needs and made no modification;
- eliminated any reference to the income statement category in which amounts needed to adjust the liability for expected credit losses for off-balance-sheet credit exposures should be reported in the agencies' regulatory reports; and
- added language to clarify that external auditor independence may be impaired if the external auditor performs validation activities for management when the external auditor also conducts the institution's independent financial statement audit.

The Policy Statement noted the following comments submitted specific to credit unions and which were also raised by the Association:

- that credit unions be exempted from FASB ASC Topic 326 which were determined to be outside of the scope of the final Policy Statement and will be addressed in other communications by the NCUA, if necessary; and
- that consideration be given to the impact FASB ASC Topic 326 will have on credit union capital levels. The final Policy Statement does not address capital requirements, but noted that the NCUA is considering a rulemaking that will address the potential impact to regulatory net worth.

The Association's comment letter submitted last December was one of only 23 comment letters submitted from trade associations, financial institutions, and individuals.

NCUA's May 2002 Interpretive Ruling and Policy Statement 02-3, Allowance for Loan and Lease Losses Methodologies and Documentation for Federally-Insured Credit Unions will be rescinded once the FASB ASC Topic 326 is effective for all institutions.

- [Interagency Guidance on Credit Risk Review Systems](#)

The interagency guidance:

- articulates principles for sound credit risk management that include a system of independent, ongoing credit risk review and appropriate communication to management and the board of directors regarding the performance of the institution's loan portfolio;
- describes a broad set of practices and principles to be considered when developing and maintaining a credit risk review system, including: qualifications and independence of credit risk review personnel; the frequency, scope, and depth of reviews; and the review, follow-up, communication, and distribution of results; and
- reflects current industry credit review practices, as well as terminology that is consistent with Accounting Standards Update No. 2016-13, which introduces the current expected credit losses (CECL) methodology and replaces the existing incurred loss methodology in U.S. GAAP.

The principles described in the interagency guidance are designed to be commensurate with the institution's size, nature and scope of operations, loan portfolio types, risk profile, and risk management practices. Also, the NCUA Examiner's Guide will be updated to reflect this new guidance.

Also, in the Policy Statement, the agencies noted that effective credit risk reviews:

- focus on loans with high-risk indicators and emphasizes that an effective scope is risk-based and includes loans or portfolios that have high-risk indicators, exceptions to policy, are experiencing rapid growth, or have other risk attributes. The final guidance provides examples of high-risk indicators and other characteristics of loans that may warrant additional review, but does not prescribe specific targets or thresholds. Institutions can select their own high-risk indicators, keeping in mind how the indicators fit the characteristics of the overall portfolio and how the indicators help to reinforce safe and sound practices;
- start with a written credit risk review policy that is typically reviewed and approved at least annually;
- should report all noted deficiencies and weaknesses to the board of directors. Credit reviews may prioritize findings of weaknesses or deficiencies; however, allowing management to determine the materiality of findings can compromise the independence of the credit review process;
- possess experience of personnel which includes knowledge of the institution's portfolio and experience with underwriting. Specific personnel qualifications are the purview of management and the board and are typically reflective of the institution's business model;
- reflect revisions to the final guidance which provide flexibility to institutions in determining the scope and depth of the loan review for all loan portfolios; and
- requires a system of independent, ongoing credit review and appropriate communication to management and to the board of directors. Whether or not the institution has a dedicated credit risk review department, it is prudent for the credit risk review function to report directly to the institution's board of directors or a committee thereof. This reporting structure allows the credit risk review function to

provide the board of directors with an independent assessment of the overall quality of loan portfolios and other areas of credit exposure as mandated. Senior management may be responsible for appropriate administrative functions, provided such an arrangement does not compromise the independence of the credit risk review function.

The Association's comment letter submitted last December was one of only 19 comment letters submitted from trade associations, financial institutions, and members of the public.

The interagency Policy Statements will be effective at the time of each credit union's adoption of the credit losses accounting standard.



SBA Information Notice

TO: All SBA Employees and SBA Express Lenders

CONTROL NO.: 5000-20025

SUBJECT: Temporary Increase to SBA Express Maximum Loan Amount and Permanent Changes to Fee Relief for SBA Express loans to Veteran-Owned Small Businesses in the CARES Act

EFFECTIVE: May 7, 2020

On March 27, 2020, President Trump signed into law the [Coronavirus Aid, Relief, and Economic Security Act \(“CARES Act”\)](#) (P.L.116-136). This Notice announces the changes to the SBA Express Loan Program made by the CARES Act.

SBA Express Maximum Loan Amount Temporarily Increased to \$1,000,000 through December 31, 2020:

- Section 1102(c) of the CARES Act amends Section 7(a)(31)(D) of the [Small Business Act](#) (15 U.S.C. 636(a)(31)(D)) by temporarily increasing the maximum loan amount under the SBA Express Loan Program from \$350,000 to \$1,000,000 for loans approved from March 27, 2020 through December 31, 2020. The maximum loan amount under the SBA Express Loan Program will automatically revert to a maximum of \$350,000 effective January 1, 2021. It is important to note that this temporary increase to the SBA Express maximum loan amount does not apply to Export Express loans (Section 7(a)(34) of the Small Business Act), which remains at a maximum loan amount of \$500,000.
- SBA Express loans approved prior to March 27, 2020 may not be increased to a total loan amount of more than \$350,000. If the borrower needs additional funding, the borrower must request a new loan.
- SBA Express loans approved on or after March 27, 2020 may be increased up to a maximum of \$1,000,000 in the aggregate for all outstanding SBA Express loans to the Borrower (and its affiliates). After December 31, 2020, an increase to an SBA Express loan that would bring the aggregate SBA Express loan approval amount(s) to a level exceeding \$350,000 will not be permitted.

- A Borrower (including its affiliates) may have multiple SBA Express loans at one time; however, the aggregate SBA Express loan amount for all outstanding SBA Express loans may not exceed \$1,000,000 during the period from March 27, 2020 through December 31, 2020.
- Lenders are reminded that, in accordance with SOP 50 10 5(K), Subpart B, Chapter 2, Paragraph V.E.9., a Lender may not refinance its own existing SBA debt (including an existing SBA Express loan) with an SBA Express loan. Existing SBA-guaranteed loans may not be refinanced under SBA Express. The only exceptions are:

If the transaction is the purchase of an existing business that has an existing SBA loan that is not with the requesting SBA Express Lender; and

If the Applicant needs additional financing and the existing Lender is unable or unwilling to increase the existing SBA loan or make a second loan, and the new loan will meet the 10 percent improvement to debt service coverage requirement, as applicable.

Upfront Guaranty Fee Relief for SBA Express loans to Veteran-Owned Small Businesses:

Section 1102(d) of the CARES Act amends Section 7(a)(31)(G) of the Small Business Act (15 U.S.C. 636(a)(31)(G)) by removing the exception provision in paragraph 7(a)(31)(G)(ii) for guaranty fee waivers for veteran-owned businesses. As a result of this change to the Small Business Act, for all SBA Express loans to veteran-owned small businesses approved on or after March 27, 2020, the upfront guaranty fee will permanently be zero.

Questions

If you have any questions regarding this notice, please contact your local SBA field office or the service centers. To locate your local office or service center, please go to <https://www.sba.gov/about-sba/sba-locations>.

Dianna L. Seaborn
Director
Office of Financial Assistance