

Delaware Coronavirus Tracker: State Update; PPP Deadline; Reg. D; Small Dollar Loans; CFPB Wrap-Up; FINCen Scams; IRS EIPs; Data Sharing – 5.20.20

State Update

Governor John Carney extended the State of Emergency, including the stay-at-home-order and other modifications, through May 31. Phase I of Delaware's economic reopening plan includes occupancy limits, physical distancing requirements, and face covering policy. Under Phase I, Legislative Hall, closed since March 12, will remain closed to the public.

The Delaware General Assembly, which has not met in full session since the end of January, plans to convene virtually beginning May 26. The House of Representatives will gather virtually May 26 and approve a resolution authorizing online meetings. The Senate will vote on the measure the next day through Zoom. Additional virtual session days will be announced in the coming weeks.

Out of concern for the health and safety of members, the Association has cancelled its annual Delaware Credit Union Day, scheduled for June 9. As an alternative, please contact the Association to schedule a virtual meeting with local state senators and/or representatives.

PPP Update Form 1502 Deadline

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

48. Question: What is the deadline for lenders to complete the initial SBA Form 1502 reporting process?

Answer: SBA is extending the deadline for lenders to submit the initial SBA Form 1502. Under SBA's interim final rule on disbursements, posted April 28, 2020, lenders must disburse PPP loans within 10 calendar days of loan approval; a loan is considered approved when the loan is assigned a loan number by SBA. That interim final rule also provides that loans for which funds have not been disbursed because a borrower has not submitted required loan documentation within 20 calendar days of loan approval shall be cancelled by the lender. Previously, the deadline for lenders' submission of the initial SBA Form 1502 reporting information was May 22, 2020. **SBA is extending the deadline for lenders to electronically upload the initial SBA Form 1502 reporting information to the later of: (1) May 29, 2020, or (2) 10 calendar days after disbursement or cancellation of the PPP loan.** This extension of the timeline for the initial SBA Form 1502 reporting information will be promptly implemented through revisions to SBA's interim final rules providing an extension to the certification safe harbor and the deadline for SBA Form 1502 reporting.

Federal Reserve Updated FAQs on Regulation D Transaction Limit Removal

The Federal Reserve has updated its Regulation D Frequently Asked Questions to address a number of issues, including information on whether the change is intended to be temporary or permanent.

When the Fed issued the interim final rule amending the definition of "savings deposit" to remove the six transaction limitation, credit unions were unsure whether the change would be permanent or temporary based on the pandemic. Importantly, Regulation CC relies on Regulation D's definitions to determine which accounts are subject to rules like funds availability for checks. The interim final rule pointed to both COVID-19 and recent changes

to reserve requirements as reasons for eliminating the six-transaction limitation. Amended FAQ #3 addresses this issue:

Question 3: Are the recent amendments to Regulation D temporary or permanent?

Answer: On April 24, 2020, the Board of Governors issued an interim final rule amending its Regulation D to delete the six-per-month limit on convenient transfers from "savings deposits." The underlying reason enabling the changes in Regulation D is the FOMC's choice of monetary policy framework of an ample reserve regime. In such a regime, reserve requirements are not needed. As a result, the distinction made by the transfer limit between reservable and non-reservable accounts is also not necessary. The Committee's choice of a monetary policy framework is not a short-term choice. The Board does not have plans to re-impose transfer limits but may make adjustments to the definition of savings accounts in response to comments received on the Board's interim final rule and, in the future, if conditions warrant.

While not a promise of permanency, the response indicates that the removal of the six-transaction limitation from the definition of "savings deposit" is more linked to long-term monetary policy than the pandemic.

An additional FAQ addresses the interplay between Regulation D and Regulation CC:

Question 13: How did the recent amendments to Reg D impact Reg CC?

Answer: On April 24, 2020, the Board of Governors issued an interim final rule amending its Regulation D to delete the six per month limit on convenient transfers from "savings deposits." Among other things, the interim final rule amended the definition of "transaction account" in 12 CFR 204.2(e) such that the definition now includes accounts described in 204.2(d)(2) (savings deposits).

Regulation CC provides that an "account" subject to Regulation CC includes accounts described in 12 CFR 204.2(e) (transaction accounts) but excludes accounts described in 12 CFR 204.2(d)(2) (savings deposits). Because Regulation CC continues to exclude accounts described in 12 CFR 204.2(d)(2) from the Reg CC "account" definition, the recent amendments to Regulation D did not result in savings deposits or accounts described in 12 CFR 204.2(d)(2) now being covered by Regulation CC.

The updated FAQs are available [HERE](#).

Interagency Lending Principles for Offering Responsible Small-Dollar Loans

<https://www.ncua.gov/newsroom/press-release/2020/federal-agencies-share-principles-offering-responsible-small-dollar-loans>

The National Credit Union Administration Board and other federal financial institution regulators have issued principles to encourage credit unions and others to offer responsible small-dollar loans to members for both consumer and small business purposes. The agencies recognize the important role that responsibly offered small-dollar loans can play in meeting ongoing needs for credit due to temporary cash-flow imbalances, unexpected expenses, or income shortfalls, including during periods of economic stress, national emergencies, or disaster recoveries. Well-designed small-dollar lending programs can result in successful repayment outcomes that demonstrate positive credit behavior and transition into additional financial products.

These lending principles cover a variety of small dollar loan structures that may include open-end lines of credit with applicable minimum payments or closed-end loans with

appropriate shorter-term single payment or longer-term installment payment structures. Responsible small-dollar loan programs generally reflect the following characteristics:

- A high percentage of customers successfully repaying their small dollar loans in accordance with original loan terms, which is a key indicator of affordability, eligibility, and appropriate underwriting;
- Repayment terms, pricing, and safeguards that minimize adverse customer outcomes, including cycles of debt due to rollovers or reborrowing; and
- Repayment outcomes and program structures that enhance a borrower's financial capabilities.

New or expanded existing responsible small dollar lending programs should:

- Be consistent with sound risk management principles, inclusive of appropriate policies;
- Align with the credit union's overall business plans and strategies;
- Include effectively managed deployment of innovative technology or processes for members who may not meet a credit union's traditional underwriting standards;
- Be implemented in-house or through effectively managed third-party relationships; and
- Be offered in a manner that ensures fair access to financial services, fair treatment of members, and compliance with applicable laws and regulations, including fair lending and consumer protection laws.

Core Lending Principles to Adopt:

Federal credit unions offering PALs small-dollar loans under 12 CFR 701.21(c)(7)(iii) and (iv) must follow the specified regulatory framework for those loan programs. Refer to Interagency Statement on the Use of Alternative Data in Credit Underwriting (December 3, 2019). FIL-82-2019 (December 13, 2019). Also, NCUA Letter to Credit Unions 07-CU-13, "Evaluating Third Party Relationships" (December 2007) and NCUA Supervisory Letter 07-01, "Evaluating Third Party Relationships" (October 2007).

Consumer Financial Protection Bureau Wrap-Up

The Consumer Financial Protection Bureau recently released two new FAQ documents outlining responsibilities of certain financial firms during the coronavirus ("COVID-19") pandemic, and a statement regarding billing error responsibilities of credit card issuers and other open-end non-home secured creditors.

The first new FAQ document is entitled, "*The Bureau's Payments and Deposits Rules FAQs related to the COVID-19 Pandemic*," and is [available here](#). This document advises financial and depository institutions that they may change account terms due to the pandemic as long as they provide appropriate notice to consumers. Additionally, the CFPB reminds providers of checking, savings, or prepaid accounts that they can change account terms without advance notice provided that the change is clearly favorable to the consumer.

The CFPB's second FAQ document, "*Open-End (not Home-Secured) Rules FAQs related to the COVID-19 Pandemic*," is [available here](#). These FAQs describe regulatory flexibilities for open-end non-home secured creditors, all aimed at assisting consumers who have been impacted by the pandemic. Generally, the advice is for creditors to "communicate proactively with consumers to provide helpful information and resources."

The CFPB also released a "*Statement on Supervisory and Enforcement Practices Regarding Regulation Z Billing Error Resolution Timeframes in Light of the COVID-19 Pandemic*," [available here](#). The statement highlights responsibilities of open-end, non-home secured creditors, including those subject to the Truth-in-Lending Act, and aims to

provide them with temporary and targeted relief to ensure that they are able to assist their consumers and accurately resolve their billing error claims.

In its release of these new resources, the CFPB made a point of encouraging financial firms to continue to provide the kind of assistance to their communities that many have been providing, such as waiving fees, lowering minimum-balance requirements, and implementing changes in account terms that benefit consumers.

Financial Crimes Enforcement Network Advisory on Medical Scams

The Financial Crimes Enforcement Network ("FinCEN") has issued an advisory, FIN-2020-A002, to alert financial institutions to rising medical scams related to the COVID-19 pandemic.

BSA data, as well as information from law enforcement and other sources, indicate possible illicit activities related to the COVID-19 pandemic regarding: (1) fraudulent cures, tests, vaccines, and services; (2) non-delivery scams; and (3) price gouging and hoarding of medical-related items, such as face masks and hand sanitizer.

The advisory contains a number of red flag indicators to help financial institutions identify COVID-19-related medical scams, and to assist them in detecting, preventing, and reporting suspicious transactions associated with the COVID-19 pandemic. This is the first of several advisories FinCEN intends to issue concerning financial crimes related to the COVID-19 pandemic.

FinCEN requests that institutions:

- Reference this advisory by including the key term "COVID-19 FIN-2020-A002" in SAR field 2 (Filing Institution Note to FinCEN) and the narrative to indicate a connection between the suspicious activity being reported and the activities highlighted in this advisory.
- Select SAR field 34(z) (Fraud - other) as the associated suspicious activity type to indicate a connection between the suspicious activity being reported and COVID-19. Include the type of fraud and/or name of the scam or product (e.g., Product Fraud – non delivery scam) in SAR field 34(z).
- FinCEN issued a companion notice that provides detailed filing instructions for reporting COVID-19-related crime ("FinCEN Notice Related to COVID-19").

The medical scam advisory may be found [here](#). The companion notice on BSA reporting requirements may be found [here](#).

IRS Issue Number: COVID Tax Tip 2020-59 – Tips for Differing Economic Impact Payments

Some consumers might receive a different amount than they expected in their Economic Impact Payment.

Eligible individuals receive a payment for \$1,200. Two eligible individuals filing a joint return receive \$2,400. And, eligible individuals receive up to an additional \$500 for each qualifying child who meets the conditions outlined on the [Qualifying Child Requirements](#) page.

The Economic Impact Payment is automatic for eligible people who filed a tax return in 2018 or 2019. They are also automatic for those who are not required to file a tax return but who receive:

- Social Security retirement, survivor or disability benefits.
- Railroad Retirement benefits.

- Supplemental Security Income.
- Veterans Affairs benefits.

People who receive less than expected can go to [IRS.gov](https://www.irs.gov) and review this [chart to check the payment they should receive](#). It has examples that use filing status and income to calculate the payment amount. The following are some common things that help explain what may have happened:

- The taxpayer hasn't filed a 2019 tax return, and their payment was based on the 2018 return. This could also be the case if the IRS has not finished processing the 2019 return.
- The [qualifying child](#) is not under the age of 17. For purposes of the payment, the child's age is how old they are at the end of the year for the tax return on which the IRS bases the payment amount. If a dependent is 17 or older, they don't qualify for the additional \$500. This includes a parent or other relative, and college students.
- The Economic Impact Payment was offset by past-due child support. While this is the only offset that can affect the payment amount, federal law allows creditors to garnish a payment once it is deposited into an account.

In many instances, eligible taxpayers who received a payment that was smaller than expected may get an additional amount early next year when they file their 2020 federal income tax return. Anyone with questions about the payment can visit the [Economic Impact Payments Information Center](#). It has answers to questions about eligibility, payment amounts, what to expect, and when to expect it.

Coronavirus Data Sharing with Law Enforcement

More than 11 million people have been tested in the U.S. for COVID-19, all with the assurance that their private medical information would remain protected and undisclosed. Yet, public officials in at least two-thirds of states are sharing the addresses of people who tested positive with first responders, from police officers to firefighters to EMTs. At least 10 of those states also share the patients' names. Sharing the information does not violate medical privacy laws according to guidance issued by the U.S. Department of Health and Human Services.

State and local health departments keep track of who has received a test in their region and then provide the information to dispatch centers in states that share the addresses of those who tested positive. States that go further and also share the names include: Colorado, Iowa, Louisiana, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, South Dakota and Tennessee. Wisconsin did so briefly but stopped earlier this month. The New Hampshire Department of Health and Human Services agreed to start sharing names and addresses in mid-March, but some first responders also informed local leaders of positive cases. Since then, they have acknowledged that the practice was a misunderstanding and has subsequently been stopped. No additional issues have been experienced in New Hampshire to date.