

Delaware Coronavirus Tracker: PPP Update; NCUA Exam Guidance; CFPB Consumer Reporting; Mortgage Foreclosures – 6.19.20

PPP Update

The Small Business Administration Office of Capital Access and Treasury have announced that new *Frequently Asked Questions* regarding forgiveness will be available shortly. Until then, the current guidance as of today, June 19th is applicable. Additional questions pending include:

- How is the interest on the loans going to be calculated?
- And how are institutions going to be paid that interest?
- How will the lender move forward with forgiveness and what supporting documentation is required?
- Where and how is this information uploaded and to whom is it uploaded?

Guidance on “non-payroll costs” follows:

Eligible nonpayroll costs. Nonpayroll costs eligible for forgiveness consist of: (a) covered mortgage obligations: payments of mortgage interest (not including any prepayment or payment of principal) on any business mortgage obligation on real or personal property incurred before February 15, 2020 (“business mortgage interest payments”); (b) covered rent obligations: business rent or lease payments pursuant to lease agreements for real or personal property in force before February 15, 2020 (“business rent or lease payments”); and (c) covered utility payments: business payments for a service for the distribution of electricity, gas, water, telephone, transportation, or internet access for which service began before February 15, 2020 (“business utility payments”). An eligible nonpayroll cost must be paid during the Covered Period or incurred during the Covered Period and paid on or before the next regular billing date, even if the billing date is after the Covered Period. Eligible nonpayroll costs cannot exceed 40% of the total forgiveness amount. Count nonpayroll costs that were both paid and incurred only once.

NCUA Update

1. On-Site Operations and Examinations

[NCUA LTCU 20-CU-20: Phased Approach to On-site Operations](#)

Letter to Credit Unions 20-CU-20, “*Phased Approach to On-site Operations*,” NCUA outlines its approach to resuming on-site operations, both at NCUA offices and at credit unions. The transition plan may begin as early as Monday, July 6, 2020, and has built-in flexibility if a later implementation date is necessary. In the transition plan’s first phase, voluntary on-site examinations may begin. Key points:

- specific implementation details will be provided prior to the first phase;
- field and office staff are encouraged to work remotely when possible;
- prudent limits on the number of staff working in offices, social distancing and other precautionary measures will be implemented; and
- additional precautionary measures will include the distribution of appropriate protective supplies to both field and office staff.

Credit unions will be notified of additional changes to procedures and examination protocols. examination and supervision efforts will be coordinated with state supervisory authorities.

2. Service to Hemp-Related Business

[NCUA LTCU 20-CU-19: Additional Guidance Regarding Servicing Hemp-Related Businesses](#)

NCUA encourages credit unions that are serving, or considering serving, hemp-related businesses to review all available information related to this evolving industry. Specifically, credit unions must stay current with the federal, state and Native American tribal laws and regulations that apply to any hemp-related businesses they serve. 17 questions and answers are addressed in the new guidance relative to credit union service to legal hemp-related businesses. NCUA examiners will be collecting data through the examination process concerning the types of services credit unions are providing to hemp-related businesses. Other highlights include:

-Credit unions do not need to file marijuana-related suspicious activity reports ("SARs") on legally operating hemp businesses provided that a credit union "reasonably believes" the businesses are operating lawfully and the activity is not unusual for that business. Credit unions must remain alert to any indication an account owner is engaging in illicit or unusual activities;

-NCUA does not prohibit credit unions from providing services to hemp-related businesses. It does, however, encourage credit unions to thoughtfully consider whether they are able to safely and properly serve hemp-related businesses;

-Lending to a lawfully operating hemp-related business is permissible if conducted safely and soundly, consistent with sound commercial lending practices. Appropriate due diligence procedures for hemp-related accounts is required; and

-Credit unions are expected to employ sufficient customer due diligence procedures to reasonably ensure that credit union member businesses producing or selling hemp-related products are compliant with applicable laws and regulations, such as verification that hemp growers possess a valid state or USDA license to grow hemp.

The NCUA expects credit unions to remain alert to any indication an account owner is involved in any illicit or unusual activities. Credit unions must comply with BSA and AML requirements to file a Suspicious Activity Report (SAR) for any activity that appears to involve potential money laundering or illegal or suspicious activity.

3. Congressional Report Details Efforts to Preserve Minority Credit Unions

<https://www.ncua.gov/newsroom/press-release/2020/ncuas-hood-juneteenth-compels-us-advance-goal-financial-inclusion>

In the spirit of fostering greater financial inclusion for all Americans, the NCUA issued its annual report to Congress detailing the financial condition of minority credit unions in 2019 and the agency's efforts to preserve and promote the formation of minority depository institutions. The ***2019 Annual Report to Congress on Preserving Minority Depository Institutions*** is submitted in accordance with Section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and Section 367 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

A federally-insured credit union can qualify as an MDI if 50 percent or more of its current members, eligible potential members, and board members are minorities. A "minority" is defined as any "Black American, Asian American, Hispanic American, or Native American," as defined in Section 308 FIRREA Act. Through the [NCUA's MDI Preservation Program](#), MDI credit unions have access to grants and loans, training and technical assistance, and guidance from their examiners.

CFPB CARES Act Consumer Reporting

The Consumer Financial Protection Bureau (CFPB) issued a Bulletin entitled [Consumer Reporting FAQs Related to the CARES Act and COVID-19 Pandemic](#). The CFPB's Bulletin reminds creditors that compliance with the Fair Credit Reporting Act, as amended

by the CARES Act, will require more than simply adding a code for natural or declared disaster or forbearance in the special comments field.

To comply with the CARES Act, a creditor must report a loan as "current" if it were current before the accommodation. In addition, the creditor may not advance the loan's delinquency level if it were delinquent before the accommodation. Adding a special comment code for a disaster or forbearance, without more, will not comply with the CARES Act reporting requirements.

As the Bureau explained:

"Furnishing a special comment code indicating that a consumer with an account is impacted by a disaster or that the consumer's account is in forbearance does not provide consumer reporting agencies with this CARES Act-required information and therefore furnishing such a comment code is not a substitute for complying with these requirements." (FAQ #8, emphasis added.)

That is, furnishers must review all of the data they report to make sure a loan under an accommodation is accurately reported under the CARES Act. For example:

"information a furnisher provides about an account's payment status, scheduled monthly payment, and the amount past due may all need to be updated to accurately reflect that a consumer's account is current consistent with the CARES Act." (FAQ #7.)

The Bureau's guidance reminds credit unions to evaluate their use of multiple credit reporting fields and codes that, in combination, will show whether the creditor has complied with the nuanced reporting the CARES Act requires about borrowers who receive an accommodation.

Mortgage Foreclosures/Evictions Update

Due to the ongoing COVID-19 pandemic, the FHFA announced that Fannie Mae and Freddie Mac have extended the single-family moratorium on foreclosures and evictions until at least August 31, 2020. The foreclosure moratorium applies to Enterprise-backed, single-family mortgages only. Enterprise-backed mortgages are mortgages owned by or securitized by Fannie Mae or Freddie Mac. The current moratorium was set to expire on June 30th. The agencies will continue to monitor the situation and make adjustments as needed.

HUD also announced that it has [extended its moratorium to August 31, 2020](#) on foreclosures and evictions for FHA Title II Single Family mortgage programs.

The VA and USDA also have their own foreclosure moratoriums currently in place through June 30, 2020. It is likely that these agencies will similarly follow the lead of FHFA and HUD and extend their moratoriums.

The foreclosure moratorium does not apply to vacant or abandoned properties.

It should be noted that the agencies and state and federal regulators continue to encourage lenders to work with borrowers even if they have a loan that is not federally-backed.