

Massachusetts Coronavirus Tracker: Reopening and Phase II Occupancy; State House Update; PPP Update; Accounting Guidance; NCUA EXIM and FOM Litigation; Regulation D Survey; Deadlines – 6.10.20

Governor Baker Reopening

Governor Charlie Baker did not hold a daily briefing on Monday but did so yesterday. Lieutenant Governor Karyn Polito spoke about the launch of Phase II. She reminded businesses that the state has published specific safety guidance and protocols for a variety of sectors. She specifically noted that the state has recently published safety standards and protocols for libraries, driving schools, flight schools, occupational schools as well as updated guidance for phase 1 businesses. All of this guidance can be found at: www.mass.gov/reopening.

Phase II of the reopening plan has begun. The most recent orders issued regarding Phase II:

[Revised order on social gatherings](#)
[Phase II re-opening order](#)

Phase II Reopening and Credit Union Occupancy Limits

Governor Baker has allowed businesses classified under Phase II to begin entering establishments and preparing for opening on June 8th. The second phase of the plan allows restaurants to begin serving customers in outdoor dining areas, camps and daycare facilities may open, and in-store retail sales may begin. Importantly, the Governor's order does not increase the permitted gathering size above the current limit of 10 people.

Credit unions were classified at the outset of the pandemic as essential businesses allowed to remain open. As essential services providers, credit unions continue to be subject to applicable safety requirements, effective May 25, to include:

- Self-certification of compliance with the [mandatory workplace safety standards](#): social distancing; hygiene, staffing and operations; and cleaning and disinfecting.
- Posting of [employer, employee](#) reopening information, in the form of posters, as well as a [self-certification attestation](#) in the form of a checklist.

Additional clarity was necessary as Massachusetts began to enter its reopening phases, as there is a notable difference between credit union general use office space and retail branch/main office space with private staff offices. The Association sought and received guidance from the state on the classification of credit union branches and locations which contain a mix of both office and retail space.

A credit union space that is exclusively office space should follow [Safety Standards for Office Spaces](#). This includes credit unions possessing office buildings, back office facilities, or other non-retail facilities with office space.

If the area contains both office space and public space, the credit union should follow [Safety Standards for Retail Businesses](#), and include members and employees in their occupancy count. This includes credit union branches and spaces that contain both office space and public space such as lobbies. As essential services providers, credit unions have until July 1st to comply with the occupancy rules. Specific information on retail occupancy limits can be found below.

Each credit union is encouraged to use its best judgment to make its own business decision, which is fact driven in light of its facilities configuration, if it crosses sector guidance, for compliance purposes. The Association remains available at any time to discuss the

application of any portion of the phases of the Administration's Reopening Report with any member credit union when convenient for members.

Sector Guidance for Retail Spaces:

Each retail store must monitor customer entries and exits and limit occupancy at all times to the greater of the following:

- 8 persons (including staff) per 1,000 square feet of accessible, indoor space; or
- 40% of the retail store's maximum permitted occupancy as documented in its occupancy permit on record with the municipal building department or other municipal record holder.
- Retail stores for which no permitted occupancy limitation is on record may rely on the 8 persons per 1,000 square feet method.

Other relevant guidance notes that such spaces must place markers outside of the retail store to ensure 6 feet of distance for members who are waiting outside to enter. Indoors, separation of 6 feet or more between individuals must be ensured where possible:

- Close or reconfigure worker common spaces and high density areas where workers are likely to congregate (e.g., break rooms, eating areas) to allow social distancing.
- Physical partitions must separate workstations that cannot be spaced out (partitions must be at least 6 feet in height).
- Install physical barriers for checkout stations where possible, otherwise maintain 6 feet distance where not possible.
- Install visual social distancing markers to encourage customers to remain 6 feet apart (e.g., lines outside of the stores if applicable, lines to make payments, lines to use the restroom).
- Establish directional aisles to manage customer flow for foot traffic, if possible, to minimize contact (e.g., one-way entrance and exit to the store, one-way aisles). Post clearly visible signage regarding these policies.
- Stagger lunch and break times, regulating max number of people in one place and ensuring at least 6 feet of physical distancing.
- Require face coverings for all workers and customers, except where unsafe due to medical condition or disability.

Finally, frequent cleaning and disinfection of the retail site must be conducted.

The Safety Standards and Checklist: Retail Businesses is available [HERE](#). The Retail Business Protocol Summary is available [HERE](#). The Retail Business Checklist is available [HERE](#).

Press Questions

Q: The Governor was asked about bars being moved from an earlier phase to phase 4.

- He said this move was based on experiences in other places.

Q: He was asked about testing and the drop in the number of tests in recent days.

- The Governor noted that the number of tests is a result on demand, but over time we are expanding sites and seeking funding to expand the testing guidelines and launch an ongoing testing initiative.

Q: Outdoor/indoor – what is the difference?

- Air circulation is the key difference, re-circulating air is an issue.

Q: WHO is now saying that asymptomatic carriers may not spread the disease, what is your reaction to that?

- Need to read more and read the actual study, but it looks like the WHO drew this conclusion based on a small amount of data. The Governor and many in the healthcare industry remain skeptical of their findings.

State House Update

New emergency rules have been adopted to allow for further off-site participation in pandemic-era formal sessions in the Senate. The rules ([S 2756](#)) allow for members to speak during session over a telephone line or other electronic means, makes face masks mandatory in the chamber and limits who may be physically present in the chamber. Bills pending include transportation, bonds, and early and mail in voting.

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