

MA Coronavirus Tracker: Debt Collection Regulations Court Ruling; Cares Act 2.0; EIPs to Deceased Members; NCUA Low-Income Designation; SBA PPP FAQs; Remote Notary Webinar – 5.7.20

Court Ruling on Massachusetts Emergency Debt Collection Regulations

The emergency regulation from Massachusetts Attorney General Maura Healy banning certain debt collection calls and lawsuits has been blocked by a federal judge, who said the measure violates the First Amendment rights of collection agencies without adding meaningful protections for consumers. ACA International, a leading trade group for the debt collection industry, sued the Attorney General in federal court. The complaint contends that the regulations do not treat debt collectors equally because of its exceptions and prohibitions of certain communications and conduct. ACA International claims that the regulations have caused significant economic harm to its members and exposes collectors to a heightened risk of litigation, even for activities helpful to consumers.

The complaint also sought declaratory and injunctive relief, along with an emergency motion for a temporary restraining order and preliminary injunction, seeking to have the regulation declared invalid and the Attorney General enjoined from enforcing it. At issue are two prohibitions contained in the regulation: one barring debt collectors from initiating telephone calls to debtors (with certain limited exceptions), and the other barring creditors (credit unions) and debt collectors from initiating new collection lawsuits or acting upon remedies already obtained (e.g., garnishment, seizure, attachment). Specifically exempted from the regulation are collection activities with respect to mortgage loans and residential tenant debt.

The Court granted ACA International Inc.'s request for a temporary restraining order but did not go as far as to strike down the regulation. U.S. District Judge Richard G. Stearns ruled that Attorney General Maura Healey already has robust debt collection safeguards in place and the only thing the emergency regulation does is single out certain types of debt collection and violate commercial free speech.

The order is a temporary restraining order. Such an order is intended to protect the status quo until a final determination of the merits of the claim. An appeal of the ruling has not yet been announced. In the interim, the final sentence of the order is important: "This Order is intended to have no impact on any other law or regulation regarding debt collection that is now in force." The temporary restraining order does not impair the preexisting Massachusetts Attorney General Debt Collection Regulations or other rules. The final outcome of this litigation will not only be significant to Massachusetts debt collectors, creditors and consumers, but may also serve as a blueprint for challenges to similar recent regulations enacted across the country, as well as continued action in Congress in this area.

CARES ACT 2.0

While the situation is fluid, there is a possibility that the next stimulus phase may be released as early as tomorrow in the U.S. House of Representatives. Press reports describe its unveiling as a "Rooseveltian" relief package. As with any legislative package, the present draft contains a mixture of possibilities, good and bad, for credit unions. It is likely to also change very quickly but positive provisions to date include:

- Extension of CLF Expansion
- MBL Flexibility

- Community Capital Improvement Program—offsets cost of forbearance for credit unions under \$10 billion in assets and greater than 50% low income members
- Main Street Lending Facility Implementation
- Community Lender Dedicated Funds for Federal Loan Programs
- On-going PPP Dedicated Funds for Small Lenders and Clean-Up of PPP Program, including BSA Accommodations, Incentives for Smaller Loans and new Borrowers

Negative provisions include:

- Debt Collection/Repossession Moratorium—prohibiting debt collection; requiring forbearance and loan modifications; creation of funds to stop waves of evictions and foreclosures after the pandemic ends; and addressing concerns with in-person mortgage processing
- Overdraft Moratorium
- Requirements to Cash Benefit Checks for Free
- Confession of Judgment Moratorium in Loan Contracts
- Benefit Check Garnishment
- Extending protections to private student loans borrowers and forgiving \$10,000 in student loan debt for private student loan borrowers

There is further chatter that it may pass the House next week on a party-line vote. If these actions occur, then they mark an important first step to advancing to the four party negotiations needed between Senate Majority Leader Mitch McConnell, Speaker of the House Nancy Pelosi, Senate Minority Leader Chuck Schumer, and Treasury Secretary Steven Mnuchin. In any event, any package must still pass through both chambers and be signed into law and it remains unclear how the Senate views the House banking provisions, what are the agreed upon Senate priorities, and how important are the House banking provisions to Senator Schumer.

IRS Guidance on Economic Impact Payments to Deceased Individuals

The IRS has updated its guidance through a series of Frequently Asked Questions relative to credit union members receiving economic impact payments (“EIPs”) through ACH and checks. One result of the CARES Act is automatic payment of these funds by the IRS to eligible individuals. Questions have remained relative to what an individual should do if he received an EIP payable to a deceased credit union member. The updated FAQs provide clarity on this issue.

The IRS explains that deceased individuals do not qualify for EIPs. The IRS states that if the individual “died before receipt of the payment,” they are not eligible. It further notes that EIPs paid to deceased individuals “should be returned to the IRS by following the instructions about repayments.” The IRS addresses the returning of payment procedures elsewhere in the guidance.

The guidance does not place any requirements or obligations on credit unions regarding EIPs paid to deceased individuals. Instead, the guidance is addressed to the individual who received the EIP. This is consistent with ACH posting rules and the fact that the ACH files indicate the payment is a tax refund. Nothing in the guidance or NACHA rules prevents a credit union from electing to return an ACH transaction as account holder deceased if its procedures indicate that that is the appropriate course of action based on the circumstances. It will then be up to Treasury and the IRS to sort out the appropriate next steps.

While credit unions are not responsible for preventing EIPs from posting to an account, rejecting properly endorsed EIP checks or otherwise returning payments made to deceased

individuals, some credit unions may want to provide information as a member service. Credit unions may find it helpful to direct members to the IRS's [Economic Impact Payment Information Center](#) for more information on how the member can return an EIP. The updated FAQs are as follows:

Question: Does someone who has died qualify for the Payment? (added May 6, 2020)

Answer: No. A Payment made to someone who died before receipt of the Payment should be returned to the IRS by following the instructions in the Q&A about repayments. Return the entire Payment unless the Payment was made to joint filers and one spouse had not died before receipt of the Payment, in which case, you only need to return the portion of the Payment made on account of the decedent. This amount will be \$1,200 unless adjusted gross income exceeded \$150,000

Question: Does someone who is a resident alien qualify for the Payment? (added May 6, 2020)

Answer: A person who is a non-resident alien in 2020 is not eligible for the Payment. A person who is a qualifying resident alien with a valid SSN is eligible for the Payment only if he or she is a qualifying resident alien in 2020 and could not be claimed as a dependent of another taxpayer for 2020. Aliens who received a Payment but are not qualifying resident aliens for 2020 should return the Payment to the IRS by following the instructions about repayments.

Question: Does someone who is incarcerated qualify for the Payment? (added May 6, 2020)

Answer: No. A Payment made to someone who is incarcerated should be returned to the IRS by following the instructions about repayments. A person is incarcerated if he or she is described in one or more of clauses (i) through (v) of Section 202(x)(1)(A) of the Social Security Act (42 U.S.C. § 402(x)(1)(A)(i) through (v)). For a Payment made with respect to a joint return where only one spouse is incarcerated, you only need to return the portion of the Payment made on account of the incarcerated spouse. This amount will be \$1,200 unless adjusted gross income exceeded \$150,000

New NCUA Rules For Low-Income Designations

NCUA Board Chairman Rodney Hood has announced an expansion of the agency's low-income designation analysis to include military members. Guidance with additional information about the updated methodology and additional options credit unions will have to incorporate their military members in the low-income designation process will be promulgated by NCUA likely through an upcoming letter to credit unions.

Updated SBA PPP Frequently Asked Questions – Non-Discrimination

Treasury and the Small Business Administration have updated its Frequently Asked Questions list relative to the Payroll Protection Plan. A new question on non-discrimination is below:

45. Question: Is an employer that repays its PPP loan by the safe harbor deadline (May 14, 2020) eligible for the Employee Retention Credit?

Answer: Yes. An employer that applied for a PPP loan, received payment, and repays the loan by the safe harbor deadline (May 14, 2020) will be treated as though the employer had not received a covered loan under the PPP for purposes of the Employee Retention Credit. Therefore, the employer will be eligible for the credit if the employer is otherwise an eligible employer for purposes of the credit.

<https://home.treasury.gov/system/files/136/IFR-Nondiscrimination-and-Additional-Eligibility-Criteria.pdf>

Massachusetts Remote Notary Emergency Law Webinar

The Association will host an educational program on the new remote notary law in Massachusetts on Tuesday, May 12th, from 11:00 AM – Noon. Please register by email at advocacyma@ccua.org. Advance questions are welcome and a webinar link will be sent upon registration confirmation.