

Massachusetts Coronavirus Tracker-Reopening: PPP Audit Tips; CRA FAQs; CA Privacy Rules; IRS Electronic Participant Plan Signatures; Fannie Mae Lender Tool – 6.3.20

Governor Baker Reopening

The Governor did not hold a briefing yesterday. Today, he spoke again about the state's plans to expand testing and the proposal submitted to the federal government last weekend. The Governor made clear that to expand testing and tracing to the levels needed to contain the virus, states need additional resources.

The Governor will detail when Phase II will begin on Saturday, June 6th.

Press Questions

Q: Are you concerned about a new spike in cases due to the protests? Any tools to try to stop protests in the name of public health? He was asked a number of questions about this.

- Anytime there are big gatherings, the potential for spread is real. It will be a few weeks before we know the impacts. Many of the people in the marches/demonstrations have been wearing face coverings.
- There have been protests during the course of the pandemic and the orders we've had in place. Our view is that first amendment rights are a balancing act for government. We appreciate that many involved are wearing face coverings, using hand sanitizer, etc. But this is a balancing act.

Q: Are you concerned that many childcare providers will not be able to open given the new protocols and standards or that they'll go out of business because parents will pull their children out of programs? And would you consider subsidies?

- We understand that childcare providers are small businesses too and we have focused our resources to the 25% of providers that service most vulnerable children.

Q: Can future phases happen sooner if the data continues to trend in the right direction?

- We will see when we get there.

PPP Audit Tips

The Small Business Administration ("SBA") has not clarified exactly how it will address inaccuracies contained in an application with respect to an applicant's eligibility under the size standards, or the loan amount. The risk of criminal liability is likely low for applicants exercising good faith, however, it is prudent to advise all borrowers to maintain detailed records and documentation supporting their loan amount calculation and the expenses satisfied with loan proceeds. Credit unions may want to consider having borrowers add the following documents relating to eligibility and the loan amount to their loan files in case of an audit by the SBA:

1. Organizational chart and documents showing at least all owners owning 20% or more of the borrower, directly or indirectly;
2. Entity formation documents of the borrower, including evidence that the borrower was in business on February 15, 2020;
3. Entity formation documents of all entity owners shown on the organizational chart (if applicable);
4. Internal document with analysis of the affiliation rules as they apply to the borrower;
5. Copies of all IRS Form W-2s issued to employees for 2019;

6. Internal document with the facts used by the borrower to determine which employees resided primarily in the United States based on IRS regulations (26 CFR Section 1.121-1(b)(2));
7. Calculation of size based on one of the three size standards, described above, and how the borrower reached that decision;
8. Monthly payroll reports for 2019 and 2020 year to date (depending on the time periods used to determine average number of employees and average monthly payroll costs);
9. Completed 2019 business tax return or 2019 profit and loss report and balance sheet;
10. Filed 2018 business tax return;
11. Evidence of funds received in the form of an EIDL since January 31, 2020;
12. Evidence of payments for group health care benefits including premiums paid in 2019 and 2020 (year to date including the 8-week period after the loan is awarded); and
13. Evidence of payment of any retirement benefits paid in 2019 and 2020 (year to date including the 8-week period after the loan is awarded).

FAQ's on Community Reinvestment Act Activities during the Coronavirus

Recently, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation posted Community Reinvestment Act ("CRA") frequently asked questions ("FAQS") [FAQs](#) related to Covid-19. The FAQs acknowledge that while Covid-19 affected states are categorized by the Federal Emergency Management Agency (FEMA) as Category B, which would normally not be considered designated disasters under the CRA, the agencies will grant consideration for activities that revitalize or stabilize affected areas by protecting public health and safety. The FAQs frequently refer to the [joint statement](#) on CRA consideration for activities in response to Covid-19, issued by the federal bank agencies last March. At that time, the guidance indicated that the federal bank regulators:

-favorable CRA consideration will be provided for retail banking services and retail lending activities in their assessment areas that respond to the needs of affected low and moderate-income individuals, small businesses, and small farms consistent with safe and sound banking practices;

-activities may include: (i) waiving certain fees; (ii) easing check-cashing restrictions; (iii) expanding the availability of short-term, unsecured credit and increasing credit card limits for creditworthy borrowers; (iv) providing alternative service options; and (v) offering payment accommodations, such as permitting deferred or skipped payments or extending payment due dates to avoid delinquencies and negative credit bureau reporting;

-favorable CRA consideration will be provided for engagement in qualifying community development ("CD") activities, including but not limited to loans, investments, or services that support digital access for low and moderate-income individuals or communities, as well as economic development activities that sustain small business operations;

-favorable consideration will be given to CD activities that help to stabilize communities affected by Covid-19 located in a broader statewide or regional area that encompasses a CRA assessment area, "provided that such institutions are responsive to the CD needs and opportunities that exist in their own assessment area(s)."

The March joint statement is effective until six months after the national emergency declaration is lifted, unless extended by the federal agencies.

Among other things, the new FAQs discuss how Paycheck Protection Program and Main Street Lending Program loans may be eligible for CRA consideration and how examiners will consider affordable housing measures under the CRA. The FAQs are an excellent resource for both credit unions and examiners. Although some of the responses appear somewhat logical, they also help to promote conscious CRA efforts. The FAQs are expected to be posted to the website of the Massachusetts Division of Banks shortly for reference and use by state chartered credit unions.

California Privacy Rules Update

California's Attorney General recently submitted proposed regulations for approval under the state's new digital privacy law which gives consumers the right to request that their data be deleted from e-commerce websites and social media. Three new rights are at the heart of the California Consumer Privacy Act ("CCPA"), the strongest consumer data privacy law in the nation: the right to know, the right to delete, and the right to opt out.

The privacy bill was passed in June 2018 with a compliance deadline of January 1, 2020.

The state proposed draft regulations in October 2019 and opened them to public comment.

The regulations have been submitted to the California Office of Administrative Law and upon approval will be filed with the Secretary of State and become enforceable.

The Association is preparing information, summaries, and educational sessions to assist credit unions in navigating the new rules as they become final and determining the scope of their application to individual member credit unions and their operations.

IRS Relief to Retirement Plan Participants to Sign Elections Remotely

The Internal Revenue Service has provided temporary administrative relief to help certain retirement plan participants or beneficiaries who need to make participant elections by allowing flexibility for remote signatures. The change relates to signatures of the individual making the election to be witnessed in the physical presence of a plan representative or notary public, including a spousal consent ("the physical presence requirement").

[**Notice 2020-42**](#) provides participants, beneficiaries, and administrators of qualified retirement plans and other tax-favored retirement arrangements with temporary relief from the physical presence requirement for any participant election (1) witnessed by a notary public in a state that permits remote notarization, or (2) witnessed by a plan representative using certain safeguards. The guidance accommodates local shutdowns and social distancing practices and is intended to facilitate the payment of coronavirus-related distributions and plan loans to qualified individuals, as permitted by the CARES Act.

Under today's guidance, in the case of a participant election witnessed by a notary public, for the period from Jan. 1, 2020, through Dec. 31, 2020, the individual may use an electronic system facilitating remote notarization if executed via live audio-video technology that otherwise satisfies the requirements of participant elections and that is consistent with state law requirements that apply to the notary public. For the same period, in the case of a participant election witnessed by a plan representative, the individual may use an electronic system using live audio-video technology if the following requirements are satisfied:

1. The individual must be effectively able to access the electronic medium used to make the participant election;
2. The electronic system must be reasonably designed to preclude any person other than the appropriate individual from making the participant election;
3. The electronic system must provide the individual making the election with a reasonable opportunity to review, confirm, modify, or rescind the terms of the election before it becomes effective; and

4. The individual making the election, within a reasonable time, must receive confirmation of the election through either a written paper document or an electronic medium under a system that satisfies the applicable notice requirements.

Additional information about tax relief for those affected by the COVID-19 pandemic can be found on [IRS.gov](https://www.irs.gov).

New Fannie Mae Homeowner, Renter, Lender, Servicer Tool-Here to Help

Fannie Mae has [announced](#) a new [online resource](#) for homeowners and renters titled, "Here to Help," which compiles tools and resources to assist consumers with financial hardships due to the Covid-19 pandemic. The online portal features videos, fact sheets, and mortgage loan look-up tools for consumers and also provides [lenders and servicers](#) with tools to better assist their customers, including explanations of loss mitigation offerings and training videos for loan servicers.