Massachusetts Coronavirus Tracker: Reopening; PPP Update; Financial Inclusion; CDC and OSHA Updated Guidance; Equifax Settlement; Deadlines- 6.6.20

Governor Baker Reopening

Phase II will proceed in 2 steps and as in Phase I, includes sector specific rules, protocols and guidance to keep workers and customers safe.

For both Phase I and Phase II, there are 3 levels of state guidance on safer operations:

- General social guidance
- Mandatory workplace standards
- Sector specific protocols/checklists
    - Protocols for retail stores, restaurants and lodging were published earlier this week
    - Protocols for additional outdoor recreational activities were published earlier this week
    - Protocols released for **close contact personal services** and **sectors not otherwise addressed**.

Phase II, Step 1: Monday, June 8th:

- Retail
- Childcare
- Day camps
- Lodging
- Youth sports
- Restaurants: outdoor dining
- Hotels, motels, short term lodgings
- Non-close contact personal services – photography, window washers, career coaching, etc.
- Flight schools
- Beer gardens/breweries/wineries/distilleries – if providing seated food under retail food permits; must follow restaurant guidance
- Non-athletic instruction classes in arts/education/life skills – youths under 18 years of age
- Funeral homes
- Warehouse and distribution centers

New guidance released for Phase II operations of **public and semi-public pools**, **campgrounds**, **playgrounds, spray decks and outdoor fitness areas** and **parks, open space and outdoor education programs**.

Phase II, Step 2: TBD based on public health metrics

- Restaurants: indoor dining
- Close contact personal services – massage, tanning, nail salons, etc.
- Personal trainers

All details about reopening including a list of businesses in each phase and related protocols and guidance can found at www.mass.gov/reopening.

Paycheck Protection Program Flexibility Act of 2020

https://www.congress.gov/bill/116th-congress/house-bill/7010?q=%7B%22search%22%3A%5B%22Paycheck+Protection+Program+Flexibility+Act%22%5D%7D&s=1&r=1

President Donald Trump has signed the Paycheck Protection Program Flexibility Act of 2020 ("PPPFA") into law. The PPPFA amends the Small Business Act and the CARES Act with the goal of providing flexibility and increased benefits to Paycheck Protection Program ("PPP") borrowers. Highlights of the new law include:

- **Amending the PPP's loan maturity provision**: The CARES Act instituted a maximum loan maturity date of 10 years from the date on which the borrower applies for loan forgiveness. Although the CARES Act prescribed a maximum 10-year term of maturity, the Small Business Association ("SBA") guidance subsequently provided with the Department of Treasury provided that the loan maturity date would be two years. **Now the PPPFA amends the CARES Act to require a minimum term of maturity of five years.** This provision applies only to any PPP loans made after the enactment of the PPPFA, but it allows lenders and borrowers to mutually agree to modify existing loan terms (but does not require them to do so).
- **Extending the PPP's "covered period"**: Under the CARES Act, the PPP's covered period ends on June 30, 2020. **The PPPFA extends that date to December 31, 2020**. Small businesses can now spend the loan proceeds until December 31. A follow-on letter authored by five members of the House and Senate stated that the "intention of the extension of the covered … is to allow borrowers who received PPP loans before June 30, 2020 to continue to make expenditures for allowable uses until December 31, 2020," but that "[t]he extension of the covered period does not authorize the SBA to issue any new PPP loans after June 30, 2020, as this date remains fixed by section 1102(b) of the CARES Act."
- **Enlarging the forgiveness period**: The CARES Act requires PPP funds to be spent in the 8 weeks following the loan origination in order to be eligible for forgiveness. **The PPPFA amends the CARES Act to replace the 8-week loan forgiveness period with the earlier of 24 weeks after the disbursement of the loan or December 31, 2020.** Borrowers who received loans before the PPPFA was enacted may retain the original 8-week loan forgiveness period.
- **Expanding the exemption for re-hires**: The CARES Act reduces a borrower's eligibility for loan forgiveness if the borrower reduces the number of full-time equivalent employees ("FTEs") or reduces the compensation of one or more employees between February 15, 2020 and April 26, 2020, but allows employers to avoid reductions to the forgiveness amount if they restore the number of FTEs or compensation by June 30, 2020. **The PPPFA extends the deadline in which to rehire employees or restore compensation levels to December 31, 2020.** Small businesses now have more time to rehire employees or to obtain forgiveness for the loan if social-distancing guidelines and health-related actions from the Centers for Disease Control and Prevention or other agencies prevented the business from operating at the same capacity as it had before March 1.
- **Adds additional exemptions to the loan forgiveness reduction**: The PPPFA also allows borrowers to avoid a reduction in forgiveness amounts if the borrower can (1) document an inability to rehire the individuals employed on February 15, 2020 and an inability to hire "similarly qualified" employees for unfilled positions on or before December 31, 2020, or (2) document an inability to "return to the same level of business activity" that the business experienced before February 15, 2020 "due to compliance with the requirements established or guidance issued" by certain federal agencies from March 1, 2020 to December 31, 2020 "related to the standards for sanitation, social distancing, or any other worker or customer safety requirement

related to COVID-19." Now, the limits on loan forgiveness for small businesses that were unable to rehire employees, hire new employees or return to the same level of business activity as before the virus are more flexible.

- **Revises the Interim Final Rule's 75/25 requirements**: The April 3 Interim Final Rule stated that 75% of forgivable funds must be used for payroll costs, although the CARES Act does not include any such restriction. **The PPPFA now appears to mandate that at least 60% of the PPP funds must be used for payroll costs for the borrower to be eligible for any loan forgiveness. The remaining 40% may be used for other allowable uses (qualified payments for mortgage interest, rent, or utilities).** If a borrower does not use at least 60% for payroll costs, the borrower is not eligible for any loan forgiveness. (This provision may be subject to additional clarification through subsequent legislation or guidance.)
- **Amends the deferral provision**: The CARES Act requires lenders to defer payment (including principal, interest, and fees) on PPP loans for at least six months and up to one year. The April 3 Interim Final Rule established the deferral period to be six months. **The PPPFA amends that provision to require lenders to defer payments (including principal, interest, and fees) until the date on which the amount of loan forgiveness is remitted to the lender, including for PPP loans which are sold on the secondary market.**
- **Imposes a deadline for borrowers to seek forgiveness or begin making payments**: **The PPPFA requires borrowers to apply for forgiveness within 10 months after the last day of the Section 1106(a) forgiveness covered period;** otherwise the borrower must begin making payments on the loan.
- **Expands payroll tax deferment eligibility to PPP borrowers**: The CARES Act excluded borrowers who received loan forgiveness under the PPP from being able to defer employer payroll taxes. **The PPPFA eliminates this exclusion.** Small businesses now can take a PPP loan and also qualify for a separate, recently enacted tax credit to defer payroll taxes, currently prohibited to prevent "double dipping."

These changes to the loan forgiveness program will likely require changes to the current loan forgiveness application. The Association will also continue to monitor the enactment of the PPPFA and additional guidance to be issued by the SBA or Treasury.

Regulator Statements on Financial Inclusion

The recent release of public statements on financial inclusion by federal financial institution regulators provides key insight into upcoming direction on possible guidance. As credit unions have consistently experienced, the Federal Financial Institutions Examination Council ("FFIEC") is empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions.

NCUA joined other federal regulators last week as part of the FFIEC and released a statement on the importance of financial inclusion. In reiterating their commitment to financial inclusion, they stated that racism and discrimination must not be tolerated. Upcoming efforts will be dedicated to ensuring that financial institutions provide fair access and fair treatment to everyone in America.

NCUA Chairman Rodney Hood is on record with his top priorities for financial inclusion, which means expanded access to the financial mainstream for underserved communities as well as diverse hiring, contracting and board membership. He believes that diversity is important, but without cultural change that encourages true inclusion, it risks being little more than checking the right boxes.

In May, Chairman Hood launched the creation of the NCUA Culture, Diversity, and Inclusion Council to focus on issues of inclusion. Publicly announced by Chairman Hood during the agency's **Diversity, Equity, and Inclusion Summit** in November 2019, the Council's mission is to build an organizational culture where shared values, beliefs, and behavioral norms around the principles of equity, diversity, inclusion, engagement, and leadership align with the NCUA's strategic priorities to optimize the agency's performance. The council is comprised of 18 employees across the agency's business lines, in both supervisory and non-supervisory roles. Its first activity is an agency-wide survey to examine the NCUA's current organizational culture and to identify areas for improvement. NCUA's Chief Human Capital Officer and Director of the Office of Human Resources, Towanda Brooks, and Office of Minority and Women Inclusion Director, Monica Davy, lead the Council.

Last week, NCUA Board Member Todd Harper released a statement. He highlighted his future goals and next steps in this area: continuing to build a diverse and inclusive workforce; enhancing support for minority depository institutions; and enforcing fair lending laws and funding initiatives aimed at closing the wealth gap.

In addressing NCUA's summit on the issue, Board Member J. Mark Watters stated that the value diversity, equity and inclusion brings to credit unions is growth. Credit unions will be more successful when reflecting their field-of-membership including on staff, in leadership and on boards of directors. Diversity is not about having employees who are different, but rather it is about using the differences employees have to make a difference in the bottom line.

In Massachusetts, the Division of Banks led a legislatively required Special Commission ("Commission") to plan, develop, and implement strategies to support and promote minority-owned real estate and financial services organizations in the Commonwealth. The Commission was charged to identify barriers to professional licensure for socially or economically disadvantaged persons including, but not limited to, barriers to obtaining mortgage lending and broker licenses, state credit union and other charters, and insurance or carrier licenses. The report, compiled with credit union input, is entitled *A Review of Barriers And Recommendations: Report of the Commission to Plan, Develop, and Implement Strategies to Support and Promote Minority-Owned Real Estate and Financial Services Organizations in the Commonwealth* and may be found at **https://www.ccua.org/advocacy/massachusetts-advocacy/regulatory/Massachusetts Special Commission Supporting Minority Owned Entities.**

The report contains a national and New England perspective, as well sections dedicated to financial services and to barriers to entry, with regard to minority business ownership and advancement in the financial services and real estate sectors in the Commonwealth. Barriers included:

- capital/initial investment;
- regulatory burden, including turnover in the mortgage lending sectors and risk and compliance management expertise;
- financial and credit reports;
- language barriers; and
- networking.

Of particular interest in the Commission report is Section X relating to recommendations which could help break down the identified barriers that minorities face when entering the financial services or real estate industries. Topics included:

- capital;

- regulatory burden;
- mentorships;
- improve compensation options;
- education and training;
- networking; and
- industry outreach.

The report also sets forth a list of resources which includes organizations and resources for minority individuals and business owners considering businesses in financial services, such as the Massachusetts Growth Capital Corporation, which is a local organization providing financing to small business owners, and other regional, state and local opportunities.

Credit unions may find it helpful or useful to review the report as important programs or services for minority individuals and/or businesses are considered.

CDC Updated Guidance

Recently, the Centers for Disease Control and Prevention ("CDC") issued **updated guidance** detailing steps employers and office building managers should take prior to reopening. At a minimum, the CDC's updated guidance reiterates the importance of employer preparedness, hygiene protocols, and communications with employees in order to keep them apprised of the steps being taken to protect them. While the CDC's guidance is not binding, it is a valuable resource for credit unions as employers seeking to protect their workforce as they return to the office and those seeking to update or improve their COVID-19 workplace plans. Please note that the reopening requirements at the state level are often directly linked to CDC guidance.

The guidance focuses on four major topics: Evaluation of the Workspace, Assessment of Risk, Implementation of Workplace Controls, and Education. In short, the guidance encourages employers to evaluate and address potential COVID-19 related hazards, and provides steps businesses can take to minimize exposure or transmission once their doors are opened. Portions of the CDC's updated guidance are highlighted below:

Creation and Implementation of COVID-19 Workplace Health and Safety Plan

The CDC encourages employers to implement and update as necessary a COVID-19 workplace health and safety plan specific to its workplace, which identifies all areas and job tasks with potential exposures to COVID-19, and includes control measures to eliminate or reduce such exposures.

Evaluation of Offices and Buildings for Readiness for Reentry and Occupancy

The evaluation involves checking heating, air flow or ventilation, and air conditioning systems; ensuring the system(s) are working properly; and increasing circulation of outdoor air where possible. In addition, employers should verify any other systems (e.g., mechanical and life safety systems) are operational, and no other hazards associated with unoccupied buildings exist (e.g., rodents, mold, or stagnant water).

Assessment of Risk

Employers should conduct a "thorough hazard assessment" of the office to identify where and how employees could potentially be exposed to COVID-19 in the office or office building (e.g., common areas or break rooms). Depending on the assessed risk of exposure or transmission, the employer should consider implementing various safety measures and workplace controls.

Implementing Workplace Controls

Develop hazard controls using the "**hierarchy of controls**," including: engineering controls to isolate workers from hazards (e.g., taking steps to reconfigure workspaces and physically separate employees to allow for social distancing or improving ventilation) and administrative controls to modify or change how individuals work (e.g., encouraging employees who are sick to stay home; screening employees prior to entry into the workplace; requiring facial coverings; providing incentives for employees who regularly use public transportation).

Education of Employees and Supervisors

The importance of communication with employees and other workplace constituents regarding actions taken to protect its employees and reduce the risk of exposure or transmission cannot be overstated. These communications (including posters and notices) should be frequent and easy to understand. Topics to cover include: symptoms of COVID-19, staying home when sick, social distancing, hygiene protocols, masks and personal protective equipment ("PPE"), and best practices for minimizing transmission in the workplace (as well as outside of work).

OSHA Updated Guidance on Recordkeeping

Occupational Safety and Health Administration ("OSHA") has issued new **interim guidance** on recordkeeping for COVID-19 cases in the workplace which supersedes and supplements previous guidance.

New Guidance on Recordkeeping Requirements & COVID-19

OSHA recordkeeping requirements now mandate that COVID-19 is a recordable illness, and employers should record cases in their OSHA 300 log if all of the following conditions are fulfilled:

1. The case is a confirmed diagnosis of COVID-19 as defined by the CDC;
2. The case is "work-related," which in OSHA regulations means if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness; and
3. The case involves one or more of the general recording criteria specified by OSHA regulations, which are cases that involve one or more of the following: death, days away from work, restricted work, transfer to another job, medical treatment beyond first aid, loss of consciousness, or a significant injury or illness diagnosed by a physician or other licensed healthcare professional.

OSHA requires employers to attempt to determine if COVID-19 cases are work-related, but recognizes that determining the work-relatedness of cases is difficult. OSHA is exercising its enforcement discretion to determine if employers have complied with this obligation by assessing the following factors:

1. The reasonableness of the employer's investigation into work-relatedness:
   - Ask the employee how they believe they have contracted the virus.
   - Discuss with the employee any work or out-of-work activities that may have led to the illness, while respecting their privacy.
   - Review the employee's work environment for potential exposure to the virus. This review should take into account if other workers in that environment have contracted COVID-19.

2. The evidence available to the employer:
   - This means the evidence reasonably available to the employer at the time the work-relatedness determination is likely what can be learned from talking to the affected employee and reviewing the employee's work environment.

3. The evidence that a COVID-19 illness was contracted at work:
    - The employer should take into account all reasonably available evidence.
    - The employer should consider possible sources of exposure. For instance, an employee's COVID-19 illness is probably work-related if:
        - Several cases develop among co-workers who work closely together.
        - The case developed after lengthy, close exposure to a customer or client who also has a confirmed COVID-19 case.
        - The employee's work brings them into close and frequent contact with the public in a locality with ongoing community transmission.
    - The employer should always consider if there is an alternative explanation, or more than one source of exposure.

An employer that makes a reasonable and good faith inquiry in accordance with these factors and still cannot determine whether it is more likely than not (a more than 50% chance) that exposure at the workplace caused the COVID-19 case does not need to record the illness. Recording an incidence of COVID-19 in which workplace exposure likely played a causal role does not itself mean that the employer has violated an OSHA standard. Employers should not simply record every case of COVID-19 as work-related without basis, since that could also lead to a penalty for keeping incorrect records. The most important action an employer can take to ensure good recordkeeping practices is to prioritize a thorough work-relatedness inquiry, using the steps outlined by OSHA above, and record the process so OSHA can see that the inquiry was reasonable and in good faith, and that the determination of the work-relatedness of the COVID-19 case was based on the inquiry's findings.

Guidance on Safeguarding Workplaces During COVID-19
This guidance does not create new legal obligations, but it provides helpful information and advice on measures employers can take to limit the risk of exposure and infection for their employees, and how to respond if an employee does become ill. It is a good resource for credit unions that want to check their current COVID-19 workplace plan against OSHA's advice to identify areas for improvement.

Equifax Settlement
The United States District Court for the Northern District of Georgia, Atlanta Division, which has jurisdiction over the Equifax data breach matter granted the motion to preliminarily approve A settlement. The settlement provides that class members may seek compensation of $4.50 per alerted on card and up to $5,000 for any documented out of pocket costs and fraud associated with the data breach. As the status of the settlement progresses, notice will be sent by the settlement administrator regarding the settlement along with information about how to file and submit a claim either electronically or via U.S. mail.

Attached is the relevant Order.

Upcoming Deadlines
NCUA Comment Letter on Joint Ownership Share Accounts: July 6, 2020
CFPB Final Rule on Remittance Transfers Under the Electronic Fund Transfer Act (Regulation E): July 21, 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re: Equifax, Inc. Customer Data Security Breach Litigation	MDL Docket No. 2800 Case No.: 1:17-md-2800-TWT This document relates to: FINANCIAL INSTITUTIONS TRACK

PRELIMINARY APPROVAL ORDER

This matter is before the Court on Plaintiffs' Unopposed Motion for Preliminary Approval of the Settlement between Financial Institution Plaintiffs, for themselves and on behalf of the Settlement Class, and the Association Plaintiffs (collectively, "Plaintiffs"), and the Defendants Equifax Inc. and Equifax Information Services LLC (collectively, "Defendants" or "Equifax") for consideration of whether the Settlement reached by the parties should be preliminarily approved, the proposed Settlement Class preliminarily certified, and the proposed plan for notifying the Settlement Class approved. Having reviewed the proposed Settlement, together with its exhibits, and based upon the relevant papers and all prior proceedings in this matter, the Court has determined the proposed Settlement satisfies the criteria for preliminary approval, the proposed Settlement Class is likely

to be certified for settlement purposes, and the proposed notice plan is approved.[1] Accordingly, good cause appearing in the record, Plaintiffs' Motion is GRANTED, and **IT IS HEREBY ORDERED THAT**:

Provisional Certification of the Settlement Class

(1) The Court finds that it is likely to certify the following Settlement Class:

> All Financial Institutions in the United States (including its Territories and the District of Columbia) that issued Alerted On Payment Cards which means any payment card (including debit or credit cards) that was identified as having been at risk as a result of the Data Breach in the following alerts or documents issued by Visa, MasterCard, Discover, or American Express: (i) in an alert in the MasterCard series ADC 004129-US-17 (e.g., ADC 004129-US-17-1, ADC 004129-US-17-2, ADC 004129-US-17-3); (ii) in an alert in the Visa series US-2017-0448-PA (e.g., US-2017-0448a-PA, US-2017-0448b-PA, US-2017-0448c-PA); (iii) in alert American Express Incident Number C1709012512; and (iv) in a similar notice issued by Discover, the recipients of which were identified by Discover in discovery in the Action.
>
> Excluded from the class are the Court, and any immediate family members of the Court; directors, officers, and employees of Defendants; parents, subsidiaries, and any entity in which Defendants have a controlling interest; and Financial Institutions who timely and validly request exclusion from the Settlement Class.

This Settlement Class is provisionally certified for purposes of settlement only.

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[1] Unless otherwise indicated, capitalized terms used herein have the same meaning as in the Settlement.

(2) The Court determines that for settlement purposes the proposed Settlement Class likely meets all the requirements of Federal Rule of Civil Procedure 23(a) and (b)(3), namely that the class is so numerous that joinder of all members is impractical; that there are common issues of law and fact; that the claims of the class representatives are typical of absent class members; that the class representatives will fairly and adequately protect the interests of the class as they have no interests antagonistic to or in conflict with the class and have retained experienced and competent counsel to prosecute this matter; that common issues predominate over any individual issues; and that a class action is the superior means of adjudicating the controversy.

(3) The Financial Institution Plaintiffs are designated and appointed as the Settlement Class Representatives.

(4) The following lawyers, who were previously appointed by the Court as interim Co-Lead Counsel, are designated as Class Counsel pursuant to Fed. R. Civ. P. 23(g): Joseph P. Guglielmo of Scott+Scott Attorneys at Law, LLP; Gary F. Lynch of Carlson Lynch, LLP. The Court finds that these lawyers are experienced and will adequately protect the interests of the Settlement Class.

Preliminary Approval of the Proposed Settlement

(5) Upon preliminary review as required under Rule 23(e)(2), the Court finds it will likely be able to approve the proposed settlement, that the agreement

appears to be fair, reasonable, and adequate, and that it warrants issuance of notice to the Settlement Class. Accordingly, the proposed Settlement is preliminarily approved.

Final Approval Hearing

(6) A Final Approval Hearing shall take place before the Court on **October 22, 2020 at 2:00 p.m.** in Courtroom 9C before in Courtroom 2108 before Chief United States District Judge Thomas W. Thrash, Jr. of the United States District Court for the Northern District of Georgia, Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303-3309, to determine, among other things, whether: (a) the proposed Settlement Class should be finally certified for settlement purposes pursuant to Federal Rule of Civil Procedure 23; (b) the Settlement should be finally approved as fair, reasonable and adequate and, in accordance with the Settlement's terms, all claims in the Complaint and Litigation should be dismissed with prejudice; (c) Settlement Class Members should be bound by the releases set forth in the Settlement; (d) the proposed Final Approval Order and Judgment should be entered; (e) the application of Class Counsel for an award of attorneys' fees, costs, and expenses should be approved; and (f) the application for Service Awards to the Settlement Class Representatives should be approved. Any other matters the Court deems necessary and appropriate will also be addressed at the hearing.

(7) Class Counsel shall submit their application for fees, costs, and expenses and the application for Service Awards at least 14 days before the Opt-out/Objection Deadline. Objectors, if any, shall file any response to Class Counsel's motions no later than 17 days prior to the Final Approval Hearing. By no later than 10 days prior to the Final Approval Hearing, responses shall be filed, if any, to any filings by objectors, and any replies in support of final approval of the Settlement and/or Class Counsel's application for attorneys' fees, costs, and expenses and for Service Awards shall be filed.

(8) Any Settlement Class Member that has not timely and properly excluded itself from the Settlement Class in the manner described below, may appear at the Final Approval Hearing in person or by counsel and be heard, to the extent allowed by the Court, regarding the proposed Settlement; provided, however, that no Settlement Class Member that has elected to exclude itself from the Settlement Class shall be entitled to object or otherwise appear, and, further provided, that no Settlement Class Member shall be heard in opposition to the Settlement unless the Settlement Class Member complies with the requirements of this Order pertaining to objections, which are described below.

Administration

(9) Analytics Consulting, LLC ("Analytics") is appointed as the Settlement Administrator, with responsibility for Claims Administration, the Notice Program,

and all other obligations of the Claims Administrator as set forth in the Settlement. The Settlement Administrator's fees, as well as all other costs and expenses associated with notice and administration, will be paid by Equifax, as provided in the Settlement.

Notice to the Class

(10) The Notice Program set forth in the Settlement, including the forms of Notice and Claim Form attached as exhibits to the Settlement, satisfy the requirements of Federal Rule of Civil Procedure 23 and due process and thus are approved. Non-material modifications to the exhibits may be made without further order of the Court. The Settlement Administrator is directed to carry out the Notice Program in conformance with the Settlement and to perform all other tasks that the Settlement requires.

(11) The Court finds that the form, content, and method of giving notice to the Settlement Class as described in the Settlement and exhibits: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the action, the terms of the proposed Settlement, and their rights under the proposed Settlement; (c) are reasonable and constitute due, adequate, and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any

other legal requirements. The Court further finds that the notice is written in plain language, uses simple terminology, and is designed to be readily understandable by Settlement Class Members.

Exclusions from the Class

(12) Any Settlement Class Member that wishes to be excluded from the Settlement Class must mail a written notification of the intent to exclude itself to the Settlement Administrator, Class Counsel, and Equifax's counsel at the addresses provided in the Notice, postmarked no later than **September 2, 2020** (the "Opt-Out Deadline") and sent via first class postage pre-paid United States mail. The written notification must include the name of this Litigation (the "Financial Institution Track" in *In re: Equifax, Inc. Customer Data Security Breach Litigation*, Case No. 1:17-md-2800-TWT (N.D. Ga.); the full name, address, and telephone number of the Settlement Class Member; the name, address, email address, telephone number, position, and signature of the individual who is acting on behalf of the Settlement Class Member; the words "Request for Exclusion" at the top of the document or a statement in the body of the document requesting exclusion from the Settlement; and the total number of payment cards issued by the Settlement Class Member that were identified as having been at risk as a result of the Data Breach in any alerts or similar documents by Visa, MasterCard, Discover, and American Express. If the Settlement Class Member fails to provide all of the required information on or before the

deadlines specified in the Settlement and fails to cure any deficiency within the time allowed in the Settlement, then its attempt to opt out shall be invalid and have no legal effect, and the Settlement Class Member shall be bound by the Settlement, including the releases, if finally approved.

(13) All Settlement Class Members who submit valid and timely notices of their intent to be excluded from the Settlement shall not receive any benefits of or be bound by the terms of the Settlement. Any Settlement Class Member that does not timely and validly exclude itself from the Settlement shall be bound by the terms of the Settlement. If final judgment is entered, any Settlement Class Member that has not submitted a timely, valid written notice of exclusion from the Settlement (in accordance with the requirements of the Settlement) shall be bound by all subsequent proceedings, orders and judgments in this matter, the Settlement, including but not limited to the releases set forth in the Settlement, and the Final Approval Order and Judgment.

(14) The Settlement Administrator shall provide the parties with copies of all opt-out notifications promptly upon receipt, and a final list of all that have timely and validly excluded themselves from the Settlement Class in accordance with the terms of the Settlement, which Class Counsel may move to file under seal with the Court no later than ten (10) days prior to the Final Approval Hearing.

Objections to the Settlement

(15) A Settlement Class Member that complies with the requirements of this Order may object to the Settlement, the request of Class Counsel for an award of attorneys' fees, costs, and expenses, and/or the request for Service Awards.

(16) No Settlement Class Member shall be heard, and no papers, briefs, pleadings, or other documents submitted by any Settlement Class Member shall be received and considered by the Court, unless the objection is (a) electronically filed with the Court by the Objection Deadline; or (b) mailed first-class postage prepaid to the Clerk of Court, Class Counsel, and Equifax's Counsel, at the addresses listed in the Notice, and postmarked by no later than the Objection Deadline, which shall be **September 2, 2020**, as specified in the Notice. Objections shall not exceed twenty-five (25) pages. For the objection to be considered by the Court, the objection shall set forth:

a. the name of the Litigation: *In re: Equifax, Inc. Customer Data Security Breach Litigation*, No. 1:17-md-2800-TWT (N.D. Ga.) ("Financial Institution Track");

b. the full name of the objector and full name, address, email address, and telephone number of the person acting on its behalf;

c. an explanation of the basis upon which the objector claims to be a Settlement Class Member;

d. whether the objection applies only to the objector, a specific subset of the Settlement Class, or the entire Settlement Class;

e. all grounds for the objection stated, with specificity, accompanied by any legal support for the objection;

f. the identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement Agreement, Class Counsel's request for attorney's fees, costs, and expenses, or the application for Service Awards;

g. the identity of all representatives (including counsel representing the objector) who will appear at the Final Approval Hearing;

h. the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, the caption of each case in which the objector has made such objection, and a copy of any orders related to or ruling upon the objector's prior such objections that were issued by the trial and appellate courts in each listed case;

i. if the objector is represented by an attorney who intends to seek fees and expenses from anyone other than the objectors he or she represents, the objection should also include: (i) a description of the attorney's legal background and prior experience in connection with class action litigation; (ii) the amount of fees sought by the attorney for representing the objector and the factual and legal justification for the fees being sought; (iii) a statement regarding whether the fees being sought are calculated on the basis of a lodestar, contingency, or other method; (iv) the number of hours already spent by the attorney and an estimate of the hours to be spent in the future; and (v) the attorney's hourly rate;

j. any and all agreements that relate to the objection or the process of objecting, whether written or verbal, between the objector or objector's counsel and any other person or entity;

k. a description of all evidence to be presented at the Final Approval Hearing in support of the objection, including a list of any witnesses, a

summary of the expected testimony from each witness, and a copy of any documents or other non-oral material to be presented;

l. a statement indicating whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and

m. the objector (or the objector's attorney's) signature on the written objection.

(17) In addition, any Settlement Class Member that objects to the proposed Settlement must make itself available to be deposed regarding the grounds for its objection and must provide along with its objection the dates when the objector will be available to be deposed during the period from when the objection is filed through the date seven days before the Final Approval Hearing.

(18) Any Settlement Class Member that fails to comply with the provisions in this Order will waive and forfeit any and all rights it may have to object, and shall be bound by all the terms of the Settlement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, the releases in the Settlement, if finally approved. Any Settlement Class Member who both objects to the Settlement and opts out will be deemed to have opted out and the objection shall be deemed null and void.

Claims Process and Distribution Plan

(19) The Settlement establishes a process for assessing and determining the validity and value of claims and a methodology for paying Settlement Class

Members that submit a timely, valid Claim Form. The Court preliminarily approves this process.

(20) Settlement Class Members that qualify for and wish to submit a Claim Form shall do so in accordance with the requirements and procedures specified in the Notice and the Claim Form. If the Settlement is finally approved, all Settlement Class Members that qualify for any benefit under the Settlement but fail to submit a claim in accordance with the requirements and procedures specified in the Notice and Claim Form shall be forever barred from receiving any such benefit, but will in all other respects be subject to and bound by the provisions of the Settlement, including the releases included in the Settlement, and the Final Approval Order and Judgment.

Termination of the Settlement and Use of this Order

(21) This Order shall become null and void and shall be without prejudice to the rights of the Parties, all of which shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement is not finally approved by the Court or is terminated in accordance with the terms of the Settlement. In such event, the Settlement shall become null and void and be of no further force and effect, and neither the Settlement (including any Settlement-related filings) nor the Court's orders, including this Order, relating to the Settlement shall be used or referred to for any purpose whatsoever.

(22) If the Settlement is not finally approved or there is no Effective Date under the terms of the Settlement, then this Order shall be of no force or effect; shall not be construed or used as an admission, concession, or declaration by or against Equifax of any fault, wrongdoing, breach, or liability; shall not be construed or used as an admission, concession, or declaration by or against any Settlement Class Representative or any other Settlement Class Member that its claims lack merit or that the relief requested is inappropriate, improper, unavailable; and shall not constitute a waiver by any party of any defense (including without limitation any defense to class certification) or claims it may have in this Litigation or in any other lawsuit.

Stay of Proceedings

(23) Except as necessary to effectuate this Order, this matter and any deadlines set by the Court in this matter are stayed and suspended pending the Final Approval Hearing and issuance of the Final Approval Order and Judgment, or until further order of this Court.

Continuance of Final Approval Hearing

(24) The Court reserves the right to adjourn or continue the Final Approval Hearing and related deadlines without further written notice to the Settlement Class. If the Court alters any of those dates or times, the revised dates and times shall be posted on the website maintained by the Settlement Administrator.

Actions by Settlement Class Members

(25) The Court stays and enjoins, pending Final Approval of the Settlement, any actions, lawsuits, or other proceedings brought by Settlement Class Members against Equifax related to the Data Breach.

Summary of Deadlines

(26) The Settlement, as preliminarily approved in this Order, shall be administered according to its terms pending the Final Approval Hearing. Deadlines arising under the Settlement and this Order include but are not limited to the following:

- Notice Deadline: July 6, 2020
- Objection and Opt-Out Deadline: September 2, 2020
- Claims Deadline: December 31, 2020
- Final Approval Hearing: October 22, 2020 at 2:00 p.m.
- Application for Attorneys' Fees, Expenses and Service Awards ("Fee Application"): August 19, 2020
- Motion for Final Approval of the Settlement ("Final Approval Motion"): September 21, 2020
- Objectors', if any, Response to Final Approval Motion and Fee Application October 5, 2020

- Replies in Support of Final Approval and Fee Motion October 12, 2020

IT IS SO ORDERED this 4th day of June, 2020.

Thomas W. Thrash

Hon. Thomas W. Thrash, Jr.
Chief U.S. District Judge