

# **Massachusetts Emergency Debt Collection Regulation Update – 6.19.20**

## **Emergency Debt Collection Regulation**

On April 17, 2020, Massachusetts Attorney General Maura Healey promulgated emergency regulation 940 CMR 35.00 to address “unfair and deceptive debt collection practices during the state of emergency caused by COVID-19.” The regulation prohibits certain debt collection activities, including debt collection calls, for a period of 90 days beginning on March 26, 2020 until June 24, 2020.

The Attorney General also issued Guidance in Response to Some Frequently Asked Questions (“Guidance”) related to its prior emergency order regarding debt collection, codified at 940 CMR 35.00. The Guidance answers several questions, including who is now considered a debt collector and what constitutes an unfair or deceptive act or practice under the emergency regulation. The Guidance clarified that a credit union is not a debt collector, unless it “uses any name other than his own which would indicate that a third person is collecting or attempting to collect the debt.”

The Guidance also clarified what action is considered an unfair, or deceptive act or practice under the emergency regulation. While the emergency regulation has made the initiation of a communication with an individual via an outgoing phone call an unfair or deceptive act or practice, the Guidance clarified that answering inbound calls and/or returning calls are not prohibited.

Lastly, the Guidance explained that a debt collector is not prohibited from accepting payments pursuant to any order of attachment, but cannot initiate any new action or serve an order for attachment of wages or property. The Guidance also confirmed that all activity “relative to the repossession of a vehicle,” must be halted.

## **Litigation**

ACA International filed a lawsuit in federal district court challenging the constitutionality of certain portions of the emergency regulation and moved for a temporary restraining order (“TRO”) and preliminary injunction. U.S. District Court Judge Richard Stearns entered a TRO temporarily enjoining Massachusetts Attorney General Maura Healey from enforcing the emergency regulation. Technically, collection actions could be made while the TRO is in effect. However, it is not practical or advisable to start and stop collection operations given the small window provided by the TRO, even if it were extended.

As the TRO was set to expire, ACA International filed a Motion for Clarification requesting that Judge Stearns clarify whether he had intended to grant a preliminary injunction along with the TRO. The Motion for Clarification was unopposed by Attorney General Healey.

Judge Stearns granted the Motion for Clarification, confirming that he intended to grant a preliminary injunction as well as the TRO with his prior order. This means that the emergency regulation’s prohibition against debt collection calls in Massachusetts will remain unenforceable for the duration of the regulation period unless the Attorney General successfully moves to dissolve the preliminary injunction. Accordingly, debt collectors may continue or resume debt collection actions in Massachusetts Courts and debt collection calls as long as they otherwise comply with existing Massachusetts and federal debt collection statutes and regulations.

## **Implications of the Court Ruling**

The implications of the court's order finding the two primary features of the Massachusetts Attorney General's COVID-19 debt collection regulation unconstitutional are significant. The Massachusetts Attorney General can no longer enforce the ban on debt collector initiated telephone communications with debtors or the ban on creditor and debt collector initiated lawsuits. Creditors and debt collectors can, for the time being and as long as Judge Stearns' order is in place, operate as they did before the Massachusetts Attorney General issued the new COVID-19 debt collection regulation. This decision permits debt collectors to immediately resume telephone calls and filing lawsuits.

Credit unions should be aware that the TRO and preliminary injunction do not affect those portions of the emergency regulation banning self-help repossession. See 940 CMR 35.03(1). Self-help auto repossessions remain prohibited until the expiration of the emergency regulation on June 24, unless the regulation is extended beyond that date by the Attorney General.

If you have any questions, then please email [complianceconnection@ccua.org](mailto:complianceconnection@ccua.org).