

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

GOFERR Stakeholder Advisory Board

Attached is a summary of the recent New Hampshire Governor's Office For Emergency Relief and Recovery ("GOFERR") Stakeholder Advisory committee. The focus of the session was on housing and various presentations were made by local groups and address evictions, foreclosures, affordable housing and other related areas with recommendations for funding and change. The next meeting will be held on Tuesday, May 12th, and will address a timetable for making additional recommendations. The next group of presenters will be from the healthcare, agriculture, and hospitality/tourism industries.

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>

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 Healy 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.

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 advocacynh@ccua.org. Advance questions are welcome and a webinar link will be sent upon registration confirmation



GOFERR STAKEHOLDER ADVISORY BOARD, 5/7/2020

Updates from the Governor's Office for Emergency Relief & Recovery Staff

The Governor's Office For Emergency Relief and Recovery (GOFERR) staff informed the board that the Department of Health and Human Services (DHHS) is providing more information about providers who have received funding and they will post it on the GOFERR website soon.

Chairwoman Donnalee Lozeau, Southern NH Community Action Program, indicated they will be joining the GOFERR's Legislative Advisory Board (LAB) call tomorrow at 1 pm to have a joint discussion for the first half an hour.

Presentations

Attorney Sarah Mattson Duston, Executive Director, NH Legal Assistance (NHLA)

Attorney Sarah Mattson Duston indicated housing makes up 40% of NHLA's cases. She believes they are in the calm before the storm because of the moratorium on evictions and foreclosures. She said once this crisis ends households are going to have to pay their rent and mortgages which have accumulated throughout the crisis. She also stated re-housing can be nearly impossible for many low-income residents with housing vacancy rates so low in New Hampshire. NHLA expects a surge in need by 20-25% based on the Great Recession in 2008-2011. NHLA needs \$1 million more a year until the economy recovers. NHLA is considering private-public partnerships to temporarily increase their legal staff to face a potential surge.

NHLA recommended a \$3 million civil legal aid fund to be used over several years.

Elissa Margolin, Director, Housing Action NH

Director Margolin stated the state needs to plan carefully to try and avoid exponential growth in evictions, foreclosures and homelessness after bridge measures, including moratoriums on evictions, mortgage forbearance and stimulus subsidies, are removed. Before COVID-19, half of all renters were struggling with rental costs with major cost increases due to the state's 0.75% vacancy rate. Director Margolin explained homeless shelters are going to face major challenges with social distancing requirements likely forcing shelters to reduce capacity levels which already were not meeting the needs.

Housing Action NH proposed the following solutions:

- \$70 million – Rent Subsidy Program – Administered by NH Housing Finance Authority
- \$25 million – Homeless Shelter Adaptation Program – Administered by NH Housing Authority



- \$5 million – Foreclosure Prevention Program – Administered by Home Help NH
- \$10 million – Affordable Housing Pipeline Program

Newton Kershaw, CEO Head of Acquisitions, Elm Grove Companies

Newton Kershaw informed the board Elm Grove Companies owns and manages over 1,500 apartments and additional commercial properties. He indicated they have seen a significant reduction in rental collection particularly in low income housing. He did indicate they have not seen the significant reduction they anticipate with federal stimulus and unemployment assistance.

He recommended a Residential Rent Stabilization Program with \$70-\$105 million. He indicated the recommendation is based on an estimated 15% reduction in rent payments for 2-3 months from the state's 189,000 apartments with an average payment of \$1,251 a month.

Attorney Kenneth Viscarello, Sheehan Phinney Bass & Green

Attorney Viscarello focused his presentation on the Low Income Housing Tax Credit (LIHTC) program, which he stated is important for investors to continue to make a dent in the state's significant need for affordable housing. The capital provided from the LIHTC credits allows for the developer to put down less capital and set more affordable rental rates. They are anticipating a 6-10% drop in LIHTCs. Additionally, difficulty in obtaining construction materials, permitting and other construction delays are making developers more cautious about taking on a tax credit project which will likely take over a year.

Attorney Viscarello recommended a \$10-\$20 million fund in the New Hampshire Housing Finance Authority's affordable housing fund to provide zero/low interest loans to developers of potential affordable housing developments in the next year.

Evelyn Whelton, President, Mortgage Bankers & Brokers Association of NH (MBBA-NH)

President Whelton highlighted the issues in the foreclosure realm. She stated 64% of the 378,742 owner-occupied households in the state have a monthly mortgage payment. She explained there is a lot of confusion around forbearance from the CARES Act and there is a need for increased education of a homeowner's options.

MBBA recommends a \$5 million homeownership relief and \$20 million for housing recovery.

- \$5 million for homeownership relief
 - \$3.05 million for recovery for non-federally backed mortgages
 - \$1.5 million for pre-foreclosure counseling



- \$300,000 for outreach/communication
- \$150,000 for HomeHelpNH 2-1-1 outreach
- \$20 million for homeownership recovery
 - \$16 million in Down Payment Assistance (DPA)
 - Could help 2,570 homeowners
 - \$4 million in a revolving Emergency Home Repair fund
 - Could help 267 residents at an average loan amount of \$15,000

Chris Norwood, Chair, NH Association of Realtors (NHAR)

NHAR Chair Norwood gave an overview of the real estate market. He indicated March was not indicative to the long-term impacts of the pandemic because most of the closings began months before the crisis. But they are anticipating a 20-40% reduction in residential real estate sales in the next 12 months. One area he wanted to highlight was the commercial real estate rental market. Nationally, 30-50% of all retail tenants have either not paid April or May rent or have sent a letter requesting an abatement. The number is around 10% of all office tenants and 5% of industrial tenants.

NHAR recommends an undefined amount of funding to Business & Economic Affairs to help inform businesses about their re-opening options. They also recommended the Business Finance Authority's (BFA) targeted relief fund proposal made at a previous meeting to help commercial property owners and businesses.

Dean Christon, Executive Director, NH Housing Finance Authority (NHHFA)

Director Christon gave a summation of the questionnaire results from a broad range of housing stakeholders. The consensus recommendations incorporate many of those already made by other presenters. The recommendations are:

- \$70 million for rent stabilization.
 - NHHFA projects 11,000 households will not be able to pay rent or face eviction after emergency protections are lifted. This funding would be for direct homeowner and rental assistance over the next six months.
- \$25 million for homeless shelter adaptation.
- \$20 million for down payment and closing cost assistance.
- \$10 million (at least) for multi-family housing development financing.
- \$5 million for foreclosure intervention.
 - It would use the HomeHelpNH 2-1-1 program.



Discussions Regarding Recommendations

GOFERR Director Jerry Little joined the call to provide an overall update of GOFERR activity. He indicated the LAB is recommending the money be released in chunks and potentially start putting out 15% of the money monthly beginning in June. Chairwoman Lozeau indicated an important piece of information the board still needs is what the federal government means by “spend” by December 30. She asked if that means the “spend” is allocating it to businesses or does it mean the business has to spend it by then. Director Little believes GOFERR believes there is not a need for a business to spend all the money by December 30.

The next meeting will be on Tuesday, May 12th, and they will spend some time going into greater detail on a timetable for making additional recommendations. The next group of presenters will be healthcare, agriculture, and hospitality/tourism.