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# REOPENING AND THE GREAT REOPENING ROLL BACK

A Credit Union's Guide to Best Practices in  
Uncertain Times

*Best Practices Webinar*

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# Reopening and the Great Roll Back - An Overview

**As states are both lifting stay-at-home orders and rolling back phased re-openings, Credit Unions face unprecedented challenges. Is it time to bring staff back to work, and how should employers manage their workforce? Or allow members into facilities? What do Credit Unions need to know about revised court procedures? And what new legislation is on the horizon?**

## **July 2020 Economic “Reality Check”**

- Polls taken at the beginning of the COVID-19 outbreak indicated that most Americans expected to use stimulus checks to pay for rent and food during these uncertain times. However, polls taken in July 2020 indicate that most Americans are spending those checks to pay down debt, purchase consumer products and add to savings. Only 15% are using stimulus checks for necessities
- Updated polls taken in July of 2020 indicated that, although unemployment was expected to rise between 25% - 40%, nationally unemployment stands at 11%. (the mid-Atlantic is averaging 8% while NY, NJ and CA are averaging 15%+) In the event Federal unemployment payments end, forcing a segment of workers to return to their former positions, it is predicted that number would decrease to 6% (still almost double the rate of unemployment in February 2020)
- As governments and businesses struggle to decide whether to reopen and how to reopen, given the recent rise in COVID-19 cases and phased reopening roll backs, 80% of Americans polled favor unemployment and stimulus checks through 2020 so they may choose whether to stay home or return to work

**Today we will look at what to expect from Reopening and what you can do to make that transition smoother. We will discuss:**

- **Phased Opening and Roll Backs; Legislative Action; and the Look Beyond**
- **Court Phased Reopening and Legislative action**
- **Human Resources best practices as business struggle to reopen as states roll back phased reopening**



# Reopening and the Great Roll Back – June’s Phased Reopening

As reported in the New York Times in June 2020, many states having “flattened the curve” of the COVID-19 pandemic, began phased reopening of businesses, with restrictions in order to diminish the number of new COVID-19 cases, highlights as reported include:

- **Pennsylvania:** The governor took a county-by-county approach to shutting down and took a similar approach to reopening, allowing counties to open in phases; by July 3<sup>rd</sup>, the entire state was in the last phase of reopening, but wearing a mask is now required in all public places; starting July 16<sup>th</sup>, indoor dining was reduced to 25% capacity, and bars could open only for restaurant service; social distancing and face coverings when outside the home have now been mandated by the state
- **Maryland:** The governor, who has called for an aggressive response to the virus, allowed some businesses to open, including restaurants to 50% capacity, with social distancing requirements starting May 15<sup>th</sup>, but encouraged the adoption of more restrictive local guidelines as needed; many Maryland jurisdictions, including Baltimore City, Anne Arundel, Baltimore, Howard, Montgomery and Prince George’s counties have adopted slower reopening plans; social distancing and face coverings when outside the home have been mandated by the state (**yesterday governor issues new mask order – not a rollback – but additional safety precaution due to rising number of MD cases and hospitalizations**)
- **District of Columbia:** Washington, D.C., was under one of the nation’s strictest lockdowns until the mayor began reopening on May 29<sup>th</sup>. On June 22<sup>nd</sup>, the mayor opened a second round of businesses and increased restaurant capacity from 25% to 50%; social distancing and face coverings to be worn when outside the home have been mandated by the mayor
- **Virginia:** The governor started reopening much of the state on May 15<sup>th</sup>, but kept northern Virginia, located near Washington, D.C., closed until May 28<sup>th</sup>; all counties moved into Phase 3 on July 1<sup>st</sup>; the governor lifted capacity limits on retail stores, restaurants and bars, but kept some restrictions on indoor seating in place; there was no mandate to wear face coverings in public places or retail outlets until Mid July 2020, although a mandate to wear face coverings indoors has since been put in place



# Reopening and the Great Roll Back – July's Reopening Roll Back

As reported by **Forbes**, in the last week of June 2020, over **40,000 new COVID-19 cases were reported in one day**. As a result, July saw many states hit the pause button, roll back phased reopening or place new prohibitions in place to reduce the number of COVID-19 cases, highlights as reported include:

- **California:** The governor ordered seven counties, including Los Angeles, to close bars and nightspots, and recommended that eight other counties take action on their own to close those businesses; in a statement, the governor said that Covid-19 was “growing stronger” and why “it is critical we take this step to limit the spread of the virus in the counties that are seeing the biggest increases”
- **Texas:** After reporting a 79% increase in its weekly average of coronavirus cases, the Texas governor closed all bars in the state (though they can remain open for take out and delivery) and restaurants must limit capacity—that edict came just one day after the governor said Texas must pause any further reopening as it grapples with record number of cases; he also issued an Executive Order suspending elective surgeries in four counties to preserve hospital bed availability for Covid-19 patients
- **Florida:** Florida has shut down bars in an effort to mitigate a record spike in cases across the state, according to an announcement from Halsey Beshears, Secretary of the Department of Business & Professional Regulation (people from New York, New Jersey and Connecticut must self-quarantine at their own expense for 14 days when they enter Florida (violators may be fined up to \$500 or imprisoned for up to 60 days); with the number of coronavirus cases and hospitalizations spiking in parts of Florida, the mayor of Miami-Dade County, in early July, ordered all short-term vacation rentals in the county closed
- **New York:** New York will delay the reopening of malls, gyms and movie theaters, originally scheduled to open as early as the beginning of July in some parts of the state, while the health department reviews more data on the indoor transmission of the virus; in the latest news from New York, all individuals traveling to New York from 31 “hot spot” states must self-quarantine for 2 weeks upon their arrival in NY (other states have put similar restrictions in place), and those arriving at airports in NY must fill out a Health Department traveler form or face a possible \$2,000 fine and mandatory quarantine order
- **U.S. Government:** During a recent hearing on Capitol Hill, Dr. Anthony Fauci suggested that states may need to reconsider their reopening plans as cases continue to rise across the country. “I wouldn’t necessarily say an absolute shutdown, lockdown, but if someone is going from gateway to Phase 1 to Phase 2 and they get into trouble in Phase 2, they may need to go back to Phase 1,”. Fauci cited Texas, Arizona, and Florida among those states that may need to consider these measures
- **Business News:** Some major retailers and attractions are also closing of their own accord. Disney announced that its Disneyland resort in Anaheim, California would not reopen as scheduled (though Disneyworld, in Florida, has reopened), and Apple announced that it is reclosing its stores in states where Covid-19 cases are spiking (Texas, Arizona and Florida, among others)



# Reopening and the Great Roll Back – August’s Federal Legislation and the Next Stimulus Plan

## MAY 15<sup>TH</sup> HOUSE PASSES Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act

- House lawmakers approved a Democratic proposal to provide \$3 trillion in coronavirus relief that would include a new wave of funding for state and local governments, workers and families highlighted as follows:
  - extending emergency family and medical leave until the end of 2021.
  - adding another round of direct cash payments to Americans (including an expansion of the IRS payment program where Americans will receive up to \$6,000.00 in stimulus payments)
  - extending federal unemployment benefits to the end of January (\$600.00 per week in addition to State unemployment benefits)
  - adding hazard pay for front-line workers and also expanding virus-testing efforts, contact tracing and treatment
  - directing nearly \$1 trillion to state, local and tribal governments, including \$500 billion in direct, flexible aid for state governments and an additional \$357 billion for local governments and counties
  - adding \$200 billion in pandemic hazard pay for essential workers; \$75 billion for coronavirus testing, contact tracing and treatment efforts

**SENATE MAJORITY AND WHITE HOUSE REACTION:** Senate Majority Leader Mitch McConnell (R-Ky.) caked the bill a "seasonal catalog of left-wing oddities" and an "unserious effort.", and the President has signaled that the House legislation, in its current form, would be vetoed

- ***THE LEGISLATION ENACTS SWEEPING CHANGES TO THE FDCPA: CREDITORS ARE DEEMED DEBT COLLECTORS; NO DEBT COLLECTION PERMITTED UNTIL 120 DAYS POST "NATIONAL EMERGENCY"; FDCPA STATUTORY VIOLATIONS INCREASED 10X (\$1,000. TO \$10,000.)***
- As the Senate majority and the White House continue to work through their proposal currently titled **HEALS Act**, and reconciling their proposals with the House passed HEROES Act, here's some of what we can expect to see proposed and negotiated:
  - Another stimulus check to all qualified Americans, although potentially not as generous as passed in the HEROES Act
  - Continuing federal unemployment benefits, either as a current "flat" amount, based on need, or potentially a 70% of salary replacement
  - Return to work bonuses and moratorium on evictions, some form of aid to states and schools
  - Another round of PPP, but this time far more limited in scope and set aside for businesses most in need
  - A 5-year Liability shield or protection for businesses to limit employee COVID-19 based lawsuits
- As both parties have indicated a need for a stimulus package to be passed and implemented, it is expected that a bill will be passed before the August 7<sup>th</sup> recess



# Reopening and the Great Roll Back – Observations and Best Practices for September and Beyond

**Credit Unions need to think about Reopening based on constantly changing Reopening and Roll Back guidelines, Collection Optics and the Needs of Members and Staff:**

## **Credit Union Member Considerations:**

- Stimulus funds checks are being used to pay down debt rather than pay for essentials; unemployment continues to decrease and is now at 11% and may be far less once federal unemployment ends; notwithstanding the current economic trends, 80% of Americans polled want to see stimulus checks and potentially some form of federal unemployment checks continue through 2020
- Recent Phased Reopening appears to be driven more by peoples' desire to no longer stay-at-home, as opposed to medical professional recommendations
- COVID-19 cases are back on the rise across the country, hospital systems are being overwhelmed and, as a result, many states are either pausing or rolling back their phased reopening
- How can Credit Unions best accommodate members who wish to pay down debt, visit branches and meet with Credit Union management and staff, while dealing with the rise in COVID-19 cases, state ordered phased opening freezes or roll backs and, of course, the predicted COVID-19 second wave?

## **Credit Union Collection Considerations:**

- As you hit the “pause’ button you will need a plan for the accumulated cases and dealing with your bad debt portfolio once you hit the “start’ button – how will you refer accounts (do you need a referral plan) – will you need to stagger letters to avoid “batch” collection letters
- Given court’s closures and inaction you will need to balance collections with the optics of filing lawsuits, setting court hearings and taking judgments once courts begin processing filings (although when that will occur remains unclear) - will you have a managed plan in place for filing new actions
- As the pandemic continues and you deal with rising bad debt and a potential increase in bankruptcy filings, what will you will need to do differently as you resume collection, repossession and foreclosure actions - will you need new policies and more flexibility to deal with the “new economy” – will you need additional staffing (collections vs. customer service reps) to handle the needs of your members and staff

**Helpful links to State Phased-In Reopening and Roll Back and How to Best Reopen your Credit Union for Employees and Members:**

Please see below a link to what the 50 States are doing regarding Phased in Reopening  
<https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html>

Please see the link to the US Chamber of Commerce with guides and helpful hints on reopening  
<https://www.uschamber.com/co/start/strategy/how-to-prepare-offices-for-reopening>  
<https://www.uschamber.com/co/start/strategy/safely-reopening-businesses-tips>



# Legal Considerations – Reopening the Courts

## MD:

- **Phased reopening**
- **Phase III** – July 20<sup>th</sup> to August 30<sup>th</sup>
  - Clerk’s offices open to the public
  - Remote hearings
- **Phase IV** – August 31<sup>st</sup> to October 4<sup>th</sup>
  - Civil non-jury trials
- **Phase V** – October 5<sup>th</sup> forward
  - Full reopening - all proceedings

## DC:

- Courts are currently open
- Public Health Emergency extended to October 9, 2020
  - Collection prohibition in place for 60 days after the Emergency ends – December 8, 2020
  - Prohibition does not apply to original creditors – You can still call and send letters on your accounts

## VA:

- Courts are open
- Re-opening decisions/guidelines made at local level
  - Limits on the number of cases that can be heard in a day
  - Limits on the number of individuals allowed in court houses

A more comprehensive list of State and Local action can be found at:

<https://docs.google.com/spreadsheets/d/1fGU1H2HPd4miayKBil-NeXnta4sB95gUoxPjjAThERY/edit#gid=1273627032>



# Legal Considerations – Remote vs. In-Person hearings

## • Remote Hearings

- Procedural matters (pre-trial and scheduling conferences)
- Non – evidentiary hearings
- Motion hearings which do not require a witness to appear
  - Motions for Default
  - Motions to Dismiss
  - Motions for Summary Judgment
  - Appeals

## • In-Person Hearings

- Substantive hearings which require the court to hear testimony and admit evidence
- Hearings which require a witness to appear
  - Evidentiary motions
  - Ex Parte Proof Hearings
  - Trials



# § Legal Considerations – What to expect when I go to Court?

- Screening questions – Some courts implementing questionnaires
- Temperature checks
- Face masks/coverings mandatory
- Social distancing – In and outside the courtrooms
- Limited access to courtrooms – Only litigants permitted in courtrooms
  - No courtroom crowds
  - Disinfecting courtrooms between dockets
- Fewer court appearances – If courts can dispose of an action without a witness they will do so.
- Fewer cases on a docket, but more dockets throughout the day - If you do go to court, don't be late or your case will be dismissed



# Legal Considerations – Affect on current and future cases

- Current Cases

- MD

- Affidavit judgments – entered between 3/16 and 7/20 vacated
    - Re-scheduled affidavit trial dates are being set

- VA

- Cases being re-scheduled by the court
    - Potential for scheduling conflicts

- DC

- No new civil collection filings
    - Small claims hearings cancelled and have not been re-scheduled
    - Large civil claims already filed are proceeding remotely

- Future Cases

- Backlogs

- Delay in processing new lawsuits
    - Delay in scheduling trials
    - Delays in the timelines to obtain judgments
    - In DC, depending on when collection actions will be permitted to go forward, the backlogs will likely exceed one year

- Refer now

- Expect increased filings in all jurisdictions once economy starts opening back up
    - Want to be at the head of the line to shorten timelines to the extent possible



# Legal Considerations – Repossessions and Garnishments

- **Repossessions:**

- MD: No repossessions until the State of Emergency and Catastrophic Health Emergency is lifted
- DC: No repossessions until 60 days after the DC Emergency Declaration expires
- VA: No prohibition
- PA: No prohibition
- NC: No prohibition
- CA: No prohibition
- WA: No prohibition
- FL: No prohibition

- **Garnishments:**

- MD: Garnishments accepted but can't attach CARES Act funds
- DC: No garnishments until 60 days after the DC Emergency Declaration expires
- VA: Certain jurisdictions not processing Wage or Bank Garnishments
- PA: Accepting garnishment filings
- NC: Garnishments are beginning to be processed in most jurisdictions
- CA: Garnishments accepted but can't attach CARES Act funds
- WA: Wage/Bank garnishments on consumer debt have been suspended until State of Emergency is lifted
- FL: Garnishments are beginning to be processed in most jurisdictions



# § Legal Considerations – Foreclosure

## **Federal Guidelines:**

- Government Insured Loans:
  - Department of Veterans Affairs
  - Dept. of Housing and Urban Development
  - Fannie Mae / Freddie Mac
- Moratorium on Foreclosures and Evictions nationwide through August 31, 2020
- Eviction moratorium includes filing an Eviction by a landlord against a tenant if the landlord's loan is insured by any of the above
- Most states, including Maryland and Virginia are requiring additional affidavits affirming that you have complied with the CARES Act or statement that it is inapplicable.

## **State Moratoriums:**

- MD: If Notice of Intent to Foreclose (NOI) was sent before State of Emergency declared; foreclosure may proceed. If no NOI was sent prior to State of Emergency, Executive Order prohibits sending new NOI until State of Emergency is lifted.
- DC: Moratorium expires 60 days after the Emergency Declaration ends. No evictions on existing foreclosures during the moratorium.
- VA: No moratorium currently in effect



# § Legal Considerations – Bankruptcy

## Bankruptcy:

- Bankruptcy Courts open
  - Hearings remain telephonic or through conference calls/zoom.gov
- Courts issued orders extending deadlines to object by 87 days due to COVID-19 pandemic. We are now past those extensions and discharges and hearings on motions are now moving forward
- Proof of Claim deadlines are still in effect and have not been modified – Need to keep filing POC timely
- Courts are routinely granting extensions of time for missing trustee payments due to COVID-19 pandemic. Plan is being extended up to 6 months to cover the missing payments



## Human Resources – The Current State of Re-Opening

- Hopes for a broad 2020 economic re-opening have faded
- Current Administration is still entrenched in the state-led model
- This has resulted in regional disparities, and additional business interruptions
- Congress may lead the way, with dueling benefits initiatives this week
- Regardless of changes, level of federal employee benefits likely decreasing
- Pressure is on for more relief, with federal unemployment benefits ending



# Human Resources - Impact of School Closures On Business Operations

- Most schools will continue distance learning this fall, with limited on-site activity
- Working parents will be facing unprecedented pressures, with no relief in sight
- Employers' perspective on telework solutions must now shift to the long-term
- Places more pressures on financial institutions on safeguarding customer data
- Cyber security should be updated – online criminal activity is steadily increasing



## Human Resources - State of Play: Employer Liability for COVID-19

- State courts have been largely inconsistent on handling ‘public nuisance’ cases
- Congress is considering employer immunity provisions, but enactment is far from clear
- The Feds have made lack of clarity worse, with infighting and lack of Executive Leadership
- States continue to lead the way – VA launched nation’s first Workplace Safety Mandate
- A 6 month emergency legislation, with fines, in effect for an initial period of 6 months
- Other states are now considering adopting the VA model – i.e. Oregon and others





# § Human Resources - HR Management Remains A Big Issue

- Frequency of communications and interactions w/staff will be key to success
- Advisable to designate Head of Human Resources to lead the way on staffing communications
- Make clear to the workforce the company's adoption of CDC Guidelines and local Rules
- Such Guidelines should also cover how to address customer safety
- Also maintain a watch on social media outlets, have a Social Media Policy in place
- Beware of 'Section 7' protected speech, under the National Labor Relations Act



# Human Resources - Other Best Business Practices to Navigate the Crisis

- Maintain clear financial records on the handling and expenditure of PPP Funds
- Maintain Corporate Resolutions on acceptance and conversion of PPP to grants
- Have a written Return to Work Policy in place with employee acknowledgements
- Require logins for visitors, to permit contact tracing if someone tests COVID positive
- Execution of the return to work policy acknowledgement by employees is tantamount to ***assumption of risk***
- Don't expect to rely on signing 'waivers' for returning employees – ***Ineffective***
- Maintain regularly scheduled coordination sessions with your Managers & lead execs



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