**March 2020**

**COVID-19 Pandemic Response**

*Please Note: Michigan Credit Union League services are designed to provide accurate information with regard to the subject matter covered, with the understanding that the League does not render legal services. For specific legal advice, please consult with your credit union’s attorney.*

**Q.1. Regarding extensions on loans for people affected by the COVID-19 (temp job loss, loss of hours, etc.) has there been any updated guidance issued?  We would like to have something for auditors and examiners when and if this is needed on a member’s loan file.  Any suggestions or guidance would be appreciated.**

**A.** The NCUA recently issued a letter and FAQs to credit unions yesterday that discussed working with members: [https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/ncua-actions-related-covid-19](https://protect-us.mimecast.com/s/myVWClYMlxf29kVVsG-OTk?domain=ncua.gov)

**Working with Members**

The credit union industry has a long history of assisting their members in times of need. This letter outlines a number of strategies credit unions may consider when determining how to work with their members to address the impact of, and challenges associated with, COVID-19. I want to assure you that the NCUA’s examiners will not criticize a credit union’s efforts to provide prudent relief for members when such efforts are conducted in a reasonable manner with proper controls and management oversight.

The NCUA encourages credit unions to work with affected borrowers. A credit union’s efforts to work with members in communities under stress may contribute to the strength and recovery of these communities. Such efforts also serve the long-term interests of impacted credit unions, and may include:

* Waiving automated teller machine (ATM) fees
* Increasing ATM daily cash withdrawal limits
* Waiving overdraft fees
* Waiving early withdrawal penalties on time deposits
* Waiving availability restrictions on insurance checks
* Easing restrictions on cashing out-of-state and non-member checks
* Easing credit terms for new loans for members who qualify
* Offering or expanding payday alternative loan programs
* Increasing credit card limits for creditworthy borrowers
* Waiving late fees for credit card and other loan balances
* Offering payment accommodations, such as allowing borrowers to defer or skip some payments, or extending the payment due dates, which would avoid delinquencies and negative credit bureau reporting caused by any COVID-19-related disruptions

The NCUA emphasizes that prudent efforts to adjust or alter terms on existing loans in affected areas will not be subject to examiner criticism. For example, a credit union may work with a borrower to extend the terms of repayment or otherwise restructure the borrower’s debt obligations. Such efforts can ease pressures on troubled borrowers, improve their capacity to service debt, and strengthen a credit union’s ability to collect on its loans.

Credit unions may also ease terms for new loans to affected borrowers where prudent. This may help consumer and business members deal with any impact on their cash flows due to COVID- 19.

The NCUA recognizes there may be other accommodations that could assist members and communities in responding to challenges associated with COVID-19. We encourage credit unions to consult with their respective NCUA regional office or state regulator regarding additional actions that may help address the situation.

**Q.2. I am looking for help on what we can and can’t do about our annual meeting which is scheduled during the pandemic.  I currently am looking at postponing the dinner until the fall or conducting it virtually.  Can you guide me on this?**

**A.** The NCUA and DIFS have issued guidance to credit unions. For federal credit unions, the NCUA issued a Letter to Credit Unions with FAQs to address this and other questions.  Questions 1 and 2 in the NCUA’s letter deal with these questions directly: <https://www.ncua.gov/files/letters-credit-unions/20-cu-02-ncua-actions-related-covid-19.pdf>

**1. What flexibilities exist for federal credit unions (FCUs) in planning annual meetings?**

The FCU Act requires a FCU to hold an annual meeting “at such time and place” as stated in the FCU’s bylaws each calendar year.1 Other than this requirement to hold an in-person meeting annually, the FCU Act is silent. The FCU Bylaws echo this requirement, and provide additional details regarding how to conduct the meeting, where to conduct the meeting, and how to provide notice of the meeting. The FCU Bylaws permit virtual attendance at an annual meeting provided an in-person meeting is held for those who cannot attend virtually or choose to attend in-person.2

A FCU has flexibility to postpone its annual meeting. While there is no law or regulation that prohibits a FCU from postponing its annual meeting, it should provide notice of the rescheduled meeting as required in the FCU Bylaws. Under current circumstances, a FCU might consider delaying its annual meeting until a more appropriate time. A FCU can amend the date of its annual meeting by using the fill-in-the-blank provision in its bylaws with the two-thirds vote of its board, without seeking the NCUA’s approval.

The FCU Bylaws also permit adjournment of a meeting for lack of a quorum, but the reconvened meeting must occur 7 to 14 days after the originally scheduled meeting.3 In some cases, this provision could provide sufficient flexibility, depending on the date of the meeting.

Finally, the FCU Bylaws allow four options for conducting elections. If a credit union’s board or management determines that a different option would be more convenient, they may amend the credit union’s bylaws with the vote of two-thirds of the directors.4 Even if a FCU conducts its elections by mail ballot or electronically, however, it still must conduct an annual meeting, with a quorum of members present in-person.5

**2. If a FCU delays its annual meeting and election, what happens to the FCU’s Board?**

Under the FCU Bylaws, the term of a FCU director continues until “the election and qualification of successors.” Accordingly, if a FCU delays an annual meeting, the current directors’ terms continue until the FCU holds its meeting and election. If there is a vacancy on the Board, the FCU may fill it by a majority vote of the remaining directors. Directors appointed in this manner, however, hold office only until the next meeting.

DIFS issued the following guidance to state chartered credit unions:

**Annual Meetings**

DIFS has received several inquiries from institutions considering cancellation of their planned annual meeting.    If a board determines it is appropriate and necessary to cancel a planned annual meeting for the safety of attendees during current circumstances they may do so.

We are encouraging all institutions to make those decisions based upon the safety of attendees and your individual institution’s circumstances (which may include consideration of expected/historical attendance volume, the logistics of voting which may be needed, etal.)  In light of the current extraordinary conditions in Michigan, please do not feel obligated to hold your annual meeting in the month(s) stated in your bylaws for 2020 – postponements for safety reasons in 2020 will not be cited in your examination reports.

If practical and reasonable, please consider alternate means of achieving the statutorily-required minimum required annual meeting (within the calendar year, as prescribed in [Section 351](https://protect-us.mimecast.com/s/O6g4CrkMr8h83KNBF7LK_s?domain=legislature.mi.gov) of the Michigan Credit Union Act ) through alternate means (e.g. video conferencing, etal.) at a later date in 2020.    Should you later find this impossible or impractical from a safety standpoint, please notify Denice Schultheiss at SchultheissD@michigan.gov by 11/30/20 of the details of that determination.

**Q.3. Is it possible that the pandemic will put our members at risk of scams?  What should we do to help prevent it?**

**A.** The guidance that the NCUA issued on the coronavirus has an FAQ addressing this, and it includes helpful suggestions that can be shared with members: <https://www.ncua.gov/coronavirus/frequently-asked-questions-regarding-covid-19-ncua-and-credit-union-operations#q10>

**10. Are there any scams related to the coronavirus that credit unions and consumers should be aware of?**

On March 6, 2020 the Cybersecurity and Infrastructure Security Agency (CISA) released an [alert](https://www.ncua.gov/exit-disclaimer?url=https%3A%2F%2Fwww.us-cert.gov%2Fncas%2Fcurrent-activity%2F2020%2F03%2F06%2Fdefending-against-covid-19-cyber-scams) reminding individuals to remain vigilant for scams related to the coronavirus. Cyber actors may send emails with malicious attachments or links to fraudulent websites to trick victims into revealing sensitive information or donating to fraudulent charities or causes. Exercise caution in handling any email with a COVID-19-related subject line, attachment, or hyperlink, and be wary of social media pleas, texts, or calls related to COVID-19.

CISA encourages individuals to remain vigilant and take the following precautions.

* Avoid clicking on links in unsolicited emails and be wary of email attachments. See [Using Caution with Email Attachments](https://www.ncua.gov/exit-disclaimer?url=https%3A%2F%2Fwww.us-cert.gov%2Fncas%2Ftips%2FST04-010) and [Avoiding Social Engineering and Phishing Scams](https://www.ncua.gov/exit-disclaimer?url=https%3A%2F%2Fwww.us-cert.gov%2Fncas%2Ftips%2FST04-014) for more information.
* Use trusted sources — such as legitimate, government websites — for up-to-date, fact-based information about COVID-19.
* Do not reveal personal or financial information in email, and do not respond to email solicitations for this information.
* Verify a charity’s authenticity before making donations. Review the Federal Trade Commission’s page on [Charity Scams](https://www.ncua.gov/exit-disclaimer?url=https%3A%2F%2Fwww.consumer.ftc.gov%2Farticles%2F0074-giving-charity) for more information.
* Review CISA Insights on [Risk Management for COVID-19](https://www.ncua.gov/exit-disclaimer?url=https%3A%2F%2Fwww.cisa.gov%2Fsites%2Fdefault%2Ffiles%2Fpublications%2F20_0306_cisa_insights_risk_management_for_novel_coronavirus.pdf) for more information.”

**Q.4. There have been several tests that came back positive for COVID-19 in our area. Can we close or restrict access to our branches to reduce physical contact and maintain social distancing?**

**A.** The NCUA and DIFS have issued guidance to credit unions regarding closing or restricting access to branches. For federal credit unions, the NCUA issued a Letter to Credit Unions with the following FAQ:

**4. May a FCU restrict access or close its facilities?**

Yes. A FCU may adopt reasonable measures to safeguard the health and safety of its staff and members. CUs taking these measures, however, should ensure they apply the policy in a uniform and consistent manner. **FCUs should follow the direction of any federal, state or local authorities with respect to social distancing or related measures (emphasis added).**

There is no federal law or regulation that requires FCUs to be open certain hours or days or that would prevent a FCU from closing its offices. Credit unions have the flexibility to make reasonable, good faith decisions to close branches and offer members services available through other channels such as by phone, at automated teller machines, or via online and mobile platforms. This can include situations where advance notice is not feasible as a closure may need to occur quickly. Decisions to close branches can be ratified by the credit union board by email or at the next board meeting. Credit unions do not need to notify NCUA of branch closures unless there is an interruption in vital member services exceeding two days, in which case credit unions have five days to notify their regional director as set forth in 12 C.F.R. 748.1(b). FISCUs may be subject to different requirements under state law or regulation.

DIFS issued the following guidance to state chartered credit unions:

**Closures/Notifications**

Please remember to notify the Office of Credit Unions (DIFS-OCU@michigan.gov) if you choose to (temporarily or permanently) close 1 or more of your credit union locations (pursuant to Section 221 of the Michigan Credit Union Act).   Please include the date(s) of the planned closure and the location being closed.   Please include in your notification any significant impact you anticipate to the delivery of financial services to your membership.   (Slight modifications to operating hours or methods do not require notice, unless you anticipate a material decline in your ability to deliver financial services at that particular location.)

Please also keep the Office of Credit Unions apprised of any other significant developments within your institution that you anticipate will result in consumers contacting DIFS with questions, so that we can best answer them.  Please include the name and phone number of a contact for your credit union where we might refer such calls as appropriate.

As indicated in the recent [Letter](https://protect-us.mimecast.com/s/KCFtCv29ylF70mBkSXR3pi?domain=michigan.gov) issued, please be sure you have strong communications of your preparedness and your consumer safety endeavors, particularly with your members, to assuage concerns and keep them informed of your ongoing plans/methods to provide key financial services to them.

**Q.5. What do we do if a member comes into the credit union and states they have COVID-19, or if members that come in and just appear to have symptoms?  We want to keep our staff and other members safe.**

**A.** Michigan’s Department of Health and Human Services (DHHS) and the Centers for Disease Control and Prevention (CDC) have recommendations on disinfecting your branch and what employees should do if they believe they’ve been exposed:

1. You should disinfect everything according to the CDC guidelines.  You should close the branch while you do this: <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/cleaning-disinfection.html>

**Cleaning and Disinfection After Persons Suspected/Confirmed to Have COVID-19 Have Been in the Facility**

**Timing and location of cleaning and disinfection of surfaces**

* At a school, daycare center, office, or other facility that does not house people overnight:
	+ It is recommended to **close off areas used by the ill persons and wait as long as practical before beginning cleaning and disinfection** to minimize potential for exposure to respiratory droplets. **Open outside doors and windows to increase air circulation in the area.** If possible, wait up to 24 hours before beginning cleaning and disinfection.
	+ **Cleaning staff should clean and disinfect all areas (e.g., offices, bathrooms, and common areas) used by the ill persons**, focusing especially on frequently touched surfaces**.**

**How to Clean and Disinfect**

**Surfaces**

* If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection.
* For disinfection, diluted household bleach solutions, alcohol solutions with at least 70% alcohol, and most common EPA-registered household disinfectants should be effective.
	+ Diluted household bleach solutions can be used if appropriate for the surface. Follow manufacturer’s instructions for application and proper ventilation. Check to ensure the product is not past its expiration date. Never mix household bleach with ammonia or any other cleanser. Unexpired household bleach will be effective against coronaviruses when properly diluted.
* Prepare a bleach solution by mixing:
	+ 5 tablespoons (1/3rd cup) bleach per gallon of water or
	+ 4 teaspoons bleach per quart of water
	+ [Products with EPA-approved emerging viral pathogens](https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2) are expected to be effective against COVID-19 based on data for harder to kill viruses. Follow the manufacturer’s instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.).
	+ For soft (porous) surfaces such as carpeted floor, rugs, and drapes, remove visible contamination if present and clean with appropriate cleaners indicated for use on these surfaces. After cleaning:
	+ If the items can be laundered, launder items in accordance with the manufacturer’s instructions using the warmest appropriate water setting for the items and then dry items completely.
	+ Otherwise, use products with the EPA-approved emerging viral pathogens claims (examples at [this link](https://www.americanchemistry.com/Novel-Coronavirus-Fighting-Products-List.pdf)) that are suitable for porous surfaces

**Linens, Clothing, and Other Items That Go in the Laundry**

* Do not shake dirty laundry; this minimize the possibility of dispersing virus through the air.
* Wash items as appropriate in accordance with the manufacturer’s instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely. Dirty laundry that has been in contact with an ill person can be washed with other people’s items.
* Clean and disinfect hampers or other carts for transporting laundry according to guidance above for hard or soft surfaces.

**Personal Protective Equipment (PPE) and Hand Hygiene:**

* **Cleaning staff should wear disposable gloves and gowns for all tasks in the cleaning process, including handling trash**.
	+ Gloves and gowns should be compatible with the disinfectant products being used.
	+ Additional PPE might be required based on the cleaning/disinfectant products being used and whether there is a risk of splash.
	+ Gloves and gowns should be removed carefully to avoid contamination of the wearer and the surrounding area. Be sure to [**clean**](https://www.cdc.gov/handwashing/when-how-handwashing.html)**hands** after removing gloves.
* Gloves should be removed after cleaning a room or area occupied by ill persons. [Clean hands](https://www.cdc.gov/handwashing/when-how-handwashing.html) immediately after gloves are removed.
* Cleaning staff should immediately report breaches in PPE (e.g., tear in gloves) or any potential exposures to their supervisor.
* **Cleaning staff and others should**[**clean**](https://www.cdc.gov/handwashing/when-how-handwashing.html)**hands often**, including immediately after removing gloves and after contact with an ill person, by washing hands with soap and water for 20 seconds. If soap and water are not available and hands are not visibly dirty, an alcohol-based hand sanitizer that contains 60%-95% alcohol may be used. However, if hands are visibly dirty, always wash hands with soap and water.
* Follow normal preventive actions while at work and home, including cleaning hands and avoiding touching eyes, nose, or mouth with unwashed hands.
	+ Additional key times to clean hands include:
		- After blowing one’s nose, coughing, or sneezing
		- After using the restroom
		- Before eating or preparing food
		- After contact with animals or pets
		- Before and after providing routine care for another person who needs assistance (e.g., a child)
1. Employees should self-monitor for 14 days for symptoms. If possible, employees should self-quarantine for 14 days.  Keep in mind that at this time that the state of Michigan doesn’t have the ability to test those who have only been exposed – they are testing only individuals with symptoms.
2. If your employees start having symptoms, they should call their physician first for instructions.
3. If the member intentionally entered the credit union, told you that you are now infected, and you know the members name you should call the local police.  DHHS said that if the member did have COVID-19 they are supposed to be in quarantine.

If you want more information from DHHS, they have a coronavirus website which includes a COVID-19 hotline: <https://www.michigan.gov/coronavirus/>

A credit union could also call their county health department for guidance and more information.

Federal credit unions could expel a member that intentionally tries to infect other members and employees if the action is justified under their policy and takes the expulsion to their membership for a vote.  Otherwise, the federal credit union could limit the services of this member: <https://mi.leagueinfosight.com/accounts/membership-expulsion-andor-service-limitation-michigan>

**Ground One: Expulsion for Cause**
A federal credit union (FCU) can expel a member for any reason, as long as:

1. The justification constitutes cause as defined in the credit union's written policy; and
2. Two-thirds of the attending membership approves the expulsion at a special meeting called for this purpose.

An FCU must adhere to both these requirements to expel a member and cannot circumvent them by simply creating a "member loss expulsion" policy. Therefore, if the credit union wishes to expel a member simply on the grounds that the member has caused the credit union a loss, it must:

1. Formulate a written policy that articulates what constitutes "cause" for expulsion;
2. Have its board review, and then by majority vote of a quorum of directors, approve and adopt the policy;
3. Provide each member of the credit union with written notice of the policy as adopted by the board (e.g., a letter, newsletter, or brochure) which states the policy's effective date, that must be mailed thirty days prior to the effective date, to each member's current address appearing on the credit union's records;
4. Ensure that all new members are provided with written notice of the policy either prior to, or upon application for membership;
5. Ensure that the policy is uniformly and impartially applied to all members who have given the credit union cause for expulsion (i.e., all members of the credit union who have caused the credit union a loss must be expelled under the policy, not just members the credit union wishes to expel); and
6. Call a special membership meeting where any and all expulsions based on "cause" must be approved by two-thirds of the members in attendance.

Note: very few credit unions ever expel members of the credit union through a membership vote, due to a potential backlash of members, potential legal problems, or other negative public relations issues.

**Limitation of Services Policy**

All members are entitled to maintain a single share (defined as the par value share or membership share) in the credit union and are eligible to attend, participate and vote at the annual and special meetings of the members and maintain a share account.  No other access to products, services, or facilities is a right of membership.  All such access may be reduced or limited at the discretion of the credit union.

A “member in good standing” is a member who:

* Maintains at least their minimum share, as defined within the credit union’s bylaws;
* Has not had any account with the credit union closed due to abuse or negligent behavior;
* Has not caused a financial loss to the credit union;
* Has not engaged in violent, belligerent, disruptive, or abusive activities such as:
	+ Violence, intimidation, threats, harassment, or physical or verbal abuse of duly elected or appointed officials or employees of the credit union, members, or agents of the credit union.  This includes actions while on credit union premises and through use of telephone, mail, email or other electronic method;
	+ Causes or threatens damage to credit union property;
	+ Unauthorized use or access of credit union property;
	+ Knowingly disseminating incorrect, misleading, confidential, or proprietary information regarding the credit union; or
* Any actions that may cause material risk or financial harm to the credit union.

The credit union can limit services for violent, belligerent, disruptive, or abusive activities if there is a logical relationship between the objectionable activities and the services to be suspended.  If the credit union pursues a suspension of services, they will notify the member accordingly.

The credit union should be aware that even members who are NOT in good standing still retain their right to attend, participate, and vote at the annual and special meetings and maintain a share account.

It is also noted that nothing in the FCU Act or the FCU bylaws prevents a FCU from using whatever lawful means it deems necessary to address circumstances in which a member poses a risk of harm to the FCU, its member or its staff, such as contacting local law enforcement or seeking a restraining order.

If you’re a state chartered credit union you have more leeway when it comes to expelling members.  So if you do know the identity of the member and your policies include member expulsion for a misdeed, including physical and verbal abuse against another member or employee of the credit union, then you can expel this member for threatening the health of your other members and employees: [http://www.legislature.mi.gov/(S(c4roab0cgepijwpcotpbh53l))/mileg.aspx?page=getObject&objectName=mcl-490-357](http://www.legislature.mi.gov/%28S%28c4roab0cgepijwpcotpbh53l%29%29/mileg.aspx?page=getObject&objectName=mcl-490-357)

(1) The general manager or chief executive officer of a domestic credit union, or his or her designee, may suspend some or all services to a member, or terminate the membership of any person, that does any of the following:

         (a) Causes a loss to the domestic credit union.

(b) Commits fraud or another misdeed against the domestic credit union or against a person on the premises of the domestic credit union.

(c) Engages in inappropriate behavior involving another individual, such as physical or verbal abuse of another member or an employee of the credit union.