

Guidance for Credit Unions Accepting Federal Stimulus Checks & Payments for Deposit

By mid-April, the U.S. Treasury will begin issuing stimulus payments to individual and joint taxpayers who qualify in amounts that will vary (*\$1,200 individual, \$2,400 joint/\$500 for each dependent child, etc.*).

The IRS is using 2019 tax returns to determine eligibility or 2018 returns for those who haven't filed for 2019 yet. Couples who filed their taxes jointly last year will get a single, combined payment of up to \$2,400. The funds will be deposited into whatever deposit account was used to deposit a taxpayer's most recent tax refund. But there is no system for taxpayers to inform the IRS of a divorce or separation and those situations will give Credit Unions the most problems.

The stimulus payments will be issued either as: (i) direct deposits to an individual account, or (ii) as a paper check made payable to the taxpayer(s). Taxpayers who have set up direct deposits should get their payments by mid-April. Taxpayers who do not set up direct deposits with the federal government will be mailed a paper check. In early May, the IRS will send out paper checks to those without direct deposit, and it could take around 20 weeks to issue all of the checks.

The following are issues your staff may encounter in administering these deposits:

Direct Deposits

1. Joint Accounts.

- Q.** Does the Credit Union have liability risk if the stimulus funds for joint taxpayers are received via ACH and deposited into an individual account of one of the taxpayers?
- A.** No. Even if the Credit Union may not match the ACH deposits with the account owners, the Credit Union does not have liability for accepting such a direct deposit, because the taxpayer specified where the deposit should be made.

2. Closed Accounts.

- Q.** Can the Credit Union accept a stimulus check for deposit on account that is closed?
- A.** We recommend the Credit Union follow NACHA rules that allow for returns when a previously active account has been closed.

3. Incorrect Deposits.

- Q.** What should the Credit Union do when a member notifies the Credit Union that a deposit has been incorrectly deposited to his or her account?
- A.** We recommend the Credit Union immediately freeze the funds in the account, and follow the U.S. Treasury and NACHA procedures for notifying the Treasury of the error and returning the funds.

4. Funds Availability.

- Q.** Once a Treasury ACH payment is deposited in the member's checking account, what is the availability of the funds?
- A.** For ACH deposits, the stimulus funds are available on the same day as the deposit under NACHA rules and no later than next day under Reg CC.

Check Deposits

1. Joint Accounts.

- Q.** Can a U.S. Government check made payable to joint taxpayers be deposited into an individual account of one of the taxpayers?
- A.** Yes, so long as the check is actually endorsed by both taxpayer payees, the stimulus check can be deposited into an individual account of one of them.

2. Mobile/RDC Deposits.

- Q.** Can a U.S. Government check made payable to joint taxpayers be deposited using the Credit Union's mobile deposit or remote deposit capture program?
- A.** This is a risk issue for the Credit Union. Some mobile deposit and remote deposit capture agreements provide a prohibition on the use of mobile deposits for U.S. Government checks. There is no regulation that prohibits such deposits. Rather, the risk that the U.S. government check is not properly endorsed (i.e. by both payees) justifies the prohibition. Accepting a U.S. Government check that is not properly endorsed poses an even greater risk than for other types of checks.

Under the current circumstances, the Credit Union can consider accepting this risk. However we believe the factors go both ways. On one hand, accepting these deposits can be considered with the understanding the improper endorsement risk is low based on the size of the deposit and low probability that the U.S. Government would seek to impose liability upon the Credit Union at this time. Even if your mobile deposit agreement contains such a prohibition, you can simply waive the prohibition at this time. No modification of the agreement is necessary. On the other hand, the COVID-19 crisis represents another opportunity for fraud or stolen checks and the need for protections. Ultimately this is a risk management decision for the Credit Union.

3. Funds Availability.

- Q.** Once a Treasury stimulus check is deposited in the member's checking account, what is the availability of the funds?
- A.1.** For Treasury check deposits deposited over the counter, by drive-thru or mail, the stimulus funds are available on the next business day.
- A.2.** For Treasury check deposits deposited via mobile/remote deposit services, the stimulus funds are not subject to Reg. CC and the availability is based upon the Credit Union's established availability/holds for mobile deposits in its mobile deposit agreement.

Credit Union Rights on Check Deposits

1. Negative Share Accounts

- Q.** Can the Credit Union accept a stimulus check for deposit on account that is negative, but not closed?
- A.** Yes. The fact that there is an existing negative balance does not preclude the Credit Union from accepting the deposit. Also, the deposit of the check and application to the negative balance should not be viewed as a discouraged collection action. Some Credit Unions may choose to make the full amount of the check available to the member in spite of the negative balance.

2. Statutory Lien or Offset Rights.

- Q.** Can the Credit Union exercise its statutory lien or consensual security interest on the stimulus fund deposit if the member is currently delinquent on a Credit Union loan?
- A.** Given the federal and state executive orders encouraging Credit Unions to refrain from initiating collection actions on loans in default and given the small size of these checks, we recommend Credit Union's refrain from exercising their statutory lien rights or offsets on existing loan accounts that are delinquent. We believe it is likely that regulators would disapprove of such actions. It seems even more likely that such actions would result in negative media and social media coverage.

Third Party Rights to Deposited Funds

1. Third-Party Garnishments.

- Q.** Must the Credit Union honor third-party garnishment actions against the member account following deposit of stimulus payment deposits.
- A.** Despite the federal and state executive orders encouraging creditors to refrain from initiating collection actions on loans in default, the Credit Union is still legally obligated to answer and remit funds subject to any valid garnishment received, even if the funds represent stimulus payment amounts. However, exempt payments (such as SSI) are directly deposited to the account, garnishments are still subject to the federal (and applicable state) exemption calculations based on the lookback period and deposits made to the account.

This Guidance is part of the compliance resources Farleigh Wada Witt has provided to the Northwest Credit Union Association COVID-19 Credit Union Resources – Coronavirus Preparation & Response Resources. For more information about these compliance issues please contact:

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